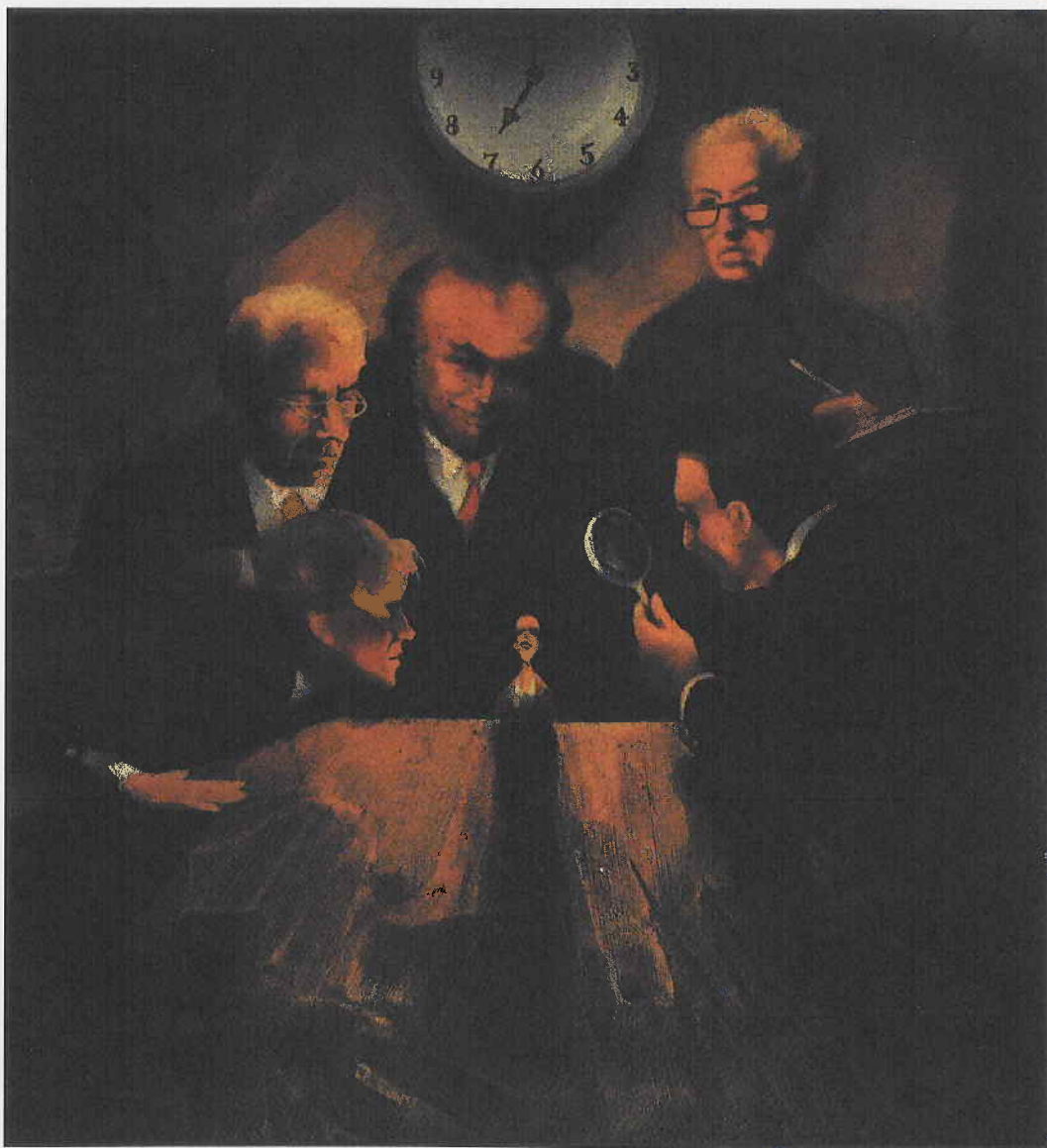


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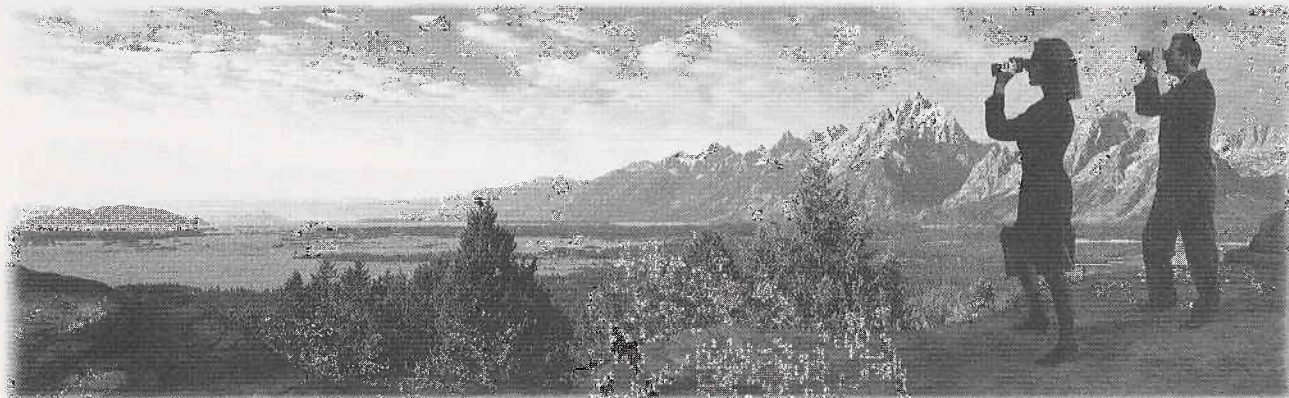
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Voir Dire is an independent intellectual journal for lawyers who litigate cases, and judges who decide them. *Voir Dire* is published twice a year by the Litigation Section of the Utah State Bar.

Voir Dire was created to provide members of the Utah State Bar with an alternative forum to examine issues and express opinions about the adversary system. *Voir Dire* strives to be practical and concrete, lively and readable, and will not avoid controversy or unpopular viewpoints.

The Editorial Board encourages submission of manuscripts of original articles, book reviews, comments, case notes, and letters from members of the Utah State Bar concerning the adversarial process and other material of interest to attorneys who venture into the litigation arena.

All contributions must be typewritten, double spaced electronic printouts, with all references and footnotes numbered consecutively, on 8 1/2" by 11 1/2" paper. Manuscripts should be submitted with an electronic disk to the *Voir Dire* Editorial Board, 645 South 200 East, Salt Lake City, Utah 84111.

Publishing and editorial decisions are based on the Editorial Board's judgment of the quality of the writing, the timeliness of the article, and the potential interest of the readers of *Voir Dire*. If a submission is accepted for publication, the Editorial Board reserves the right to make deletions to conform to space limitations.

No submission will be published that contains defamatory or obscene material, violates the Rules of Professional Conduct, or which may otherwise subject the Litigation Section, the Utah State Bar, the Bar Commissioners, or any employee of the Utah State Bar to civil or criminal liability.

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PRESIDENT'S MESSAGE

What Really Happens at the Women Lawyers of Utah Retreat

by Charlotte L. Miller

The great truth is that women actually like men, and men can never believe it.

—Isabel Patterson

For several years I have attended the Women Lawyers of Utah (WLU) retreat. Each time before and after the event I am asked a variety of questions: "What do you women do at a retreat?" "Isn't it just a men bashing session?" "Why do you still need women's organizations since there are so many of you now?" The questions are usually accompanied with looks of distrust and trepidation.

This year the National Association of Women Judges met in Salt Lake City, we are celebrating women in the legal profession at the First Hundred dinner, and I happen to be president of the Bar—and a woman. So I thought it was a good time (and maybe even my responsibility) to try to answer these questions, at least from my perspective.

As with most things, myth and imagination are far more interesting than reality. I'm afraid that is also true of the WLU retreat. There are no secret handshakes, animal or human sacrifices, or hazing rituals. Rather, most of the retreat is spent attending continuing legal education programs—effective oral advocacy, writing styles, client development, client interview techniques. Sometimes these programs will focus on issues that may be encountered more often by women. The social part of the retreat includes dinner, time in the hot tub, hiking with Liz King, and mostly catching up with acquaintances. It provides an opportunity for new lawyers to meet more experienced lawyers in a relaxed, intimate setting. I have heard little, if any, complaining about men. Social conversation often focuses on

how to fill the roles of a parent, lawyer and spouse. It is always helpful to learn that even those who appear to juggle those roles with grace and ease, struggle daily. I suppose some men may be disappointed to learn that they are not the center of conversation at the WLU retreat, just as some women may be disappointed to find they are not at the heart of conversations among men.

Although there are an increasing number of women in the legal profession, women are still in the minority. In Utah, seventeen percent of Bar members are women. Because women often are in the minority, especially in positions of power, it is helpful for them to share experiences. I often find myself as the only woman at a business meeting, and there continue to be people who don't know how to interact professionally with professional women. For me, it has been helpful to share difficult experiences so that I can find better ways to react, or not to react, to those situations in the future. Some men continue to be uncomfortable with women in the workplace and therefore make inappropriate comments or take positions that may result in harm to a woman professionally. For example, men who are uncomfortable engaging in business lunches with women, or traveling with a woman colleague, may prevent the woman from having the same opportunities as a man. Finding constructive and educational methods for addressing these situations is one of the benefits of events like the WLU retreat.

It is encouraging that men are also supportive of women in the legal profession. Recently, I attended a National Conference of Bar Presidents convention with some of my colleagues from

the Utah State Bar. I sat down one morning at a breakfast table, and two of my colleagues sat on either side of me. A president-elect from an eastern state was sitting across from us and I introduced myself as the president of the Utah State Bar, and I introduced my colleagues. Another attorney complimented Utah on its participation at the convention. The eastern president-elect commented, "They sure know who to put in the middle—the young, good looking chick." My male colleagues were appalled and irritated at the remark. The eastern president-elect immediately lost any credibility with other attorneys at the table. They went out of their way to apologize for the comment and make sure I was not uncomfortable. We have since had great fun laughing at this gentleman's expense. It did me little, if any, harm because this gentleman has no power or authority over me, but imagine how he must make the women associates in his firm feel—if there are any.

One of the greatest examples of support for women in the legal profession is this year's recipient of the Dorothy Merrill Brothers Award. The Bar gives this award to an individual who has contributed to the advancement of women in the legal profession. This year's recipient is James B. Lee. Constance Lundberg nominated James Lee because he was instrumental in getting her hired at Parsons, Behle and Latimer twenty-five years ago when firms in Salt Lake would not hire women. After James fought to get Constance hired he encouraged other firms to hire women. Constance wrote in her nomination:

James called partners of other firms and chided them, in a good humored, razzing way, about not

hiring women too. One named partner of another major firm said they were afraid to hire me, because they thought they couldn't control me. James' answer: 'Why the hell would you want a lawyer you could control?'

James not only enabled Constance to have a job, he assigned her major accounts and mentored her. Amazingly, James is still encouraging women lawyers today. Lois Baar, who works with James now, also nominated him. She writes:

James hasn't given speeches on women's rights. He hasn't joined Women Lawyers of Utah. He hasn't headed up a commission focused solely on women in the legal profession . . . [M]y nomination is based

on first hand knowledge of Jim's contribution inside Parsons Behle & Latimer. This is a difficult and rare contribution because it involves building relationships and mentoring women in a way that helps them to learn and gather experiences that make them feel like equals in a profession that has not always welcomed women.

I was extraordinarily lucky to work at Parsons, Behle and Latimer—and for Constance and James before I went to law school. Some of the first lawyers I ever met in my life were Constance Lundberg, Barbara Polich, and Kathleen Lowe, and some of their colleagues—Larry Stevens, Daniel Allred and Randy Dryer. What I realize now is that I never thought of Constance,

Barbara and Kathy as "women" lawyers. Each had her own style and all were respected lawyers in the firm. That experience gave me a positive and healthy view of the legal profession. I credit James Lee for creating an atmosphere in which lawyers were allowed to grow in their profession without regard to gender, long before it was politically correct or fashionable to be a "liberated" man.

We all should look to James Lee as an example. If we are more like him, there eventually may be no need for women's organizations and retreats, or the need for them will evolve to serve another purpose.

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COMMISSIONER'S REPORT

I'm Back!

by Steven M. Kaufman

It has been six months since I was President of the Utah State Bar. It seems like six years. I have the grand opportunity of once more bending your ear, writing about anything I choose, this being about my fifteenth time at the computer, attempting to convey something of worth. After six years on the Bar Commission, and about seventeen years of Bar work, I sometimes wonder if I have much more to say. But I now have a new computer, and I still have a couple of words left. I sit in an interesting position, not only as an immediate past President but also as an active, voting Bar Commissioner from the Second District. I have the history of the Bar and all that I have experienced in its leadership role and also the ongoing interaction as a Commissioner. This is a difficult but enlightening position from which I must temper my involvement. Obviously, I still have important work to do, but I have to let others take their best shot without trying to take over. To the best of my knowledge, I am the first to have this experience, as a President, and then again as a Bar Commissioner. It is wonderful to still be involved in the day to day workings of the Bar, but obviously to a much lesser degree. I used to spend weekends, workdays, holidays, any day, doing Bar work. Now I actually go to work and practice law. I cannot begin to tell you what a change from being the Prez to practicing law again. Don't get me wrong. A Bar Commissioner still involves a great deal of outside time and effort, but it does not require a dedication for a year like the position of President. It allows me to step back and watch somewhat, rather than always having to be one step ahead.

When I was told I would have the

opportunity to write for the *Voir Dire* edition of our *Bar Journal*, I felt especially proud because these editions offer our membership a new avenue of learning. This allows for yet another format for us to express our ideas and ideals. I have spent over twenty years in the practice of law, and as most of you know, my agenda has been to promote civility and professionalism. I've written about "kissing lawyers" and received a great deal of feedback over the years. We did a promotion about the good things lawyers do entitled "Did you hear the one about the lawyer?" To the extent I could, I took that message to Bars around the nation when I was President. The editorial staff of this particular edition, although allowing me full editorial freedom, asked me to talk about what I learned from other state Bars while I had the opportunity to meet and greet their leadership. I can tell you that we are on the cutting edge when it comes to state Bars. Although we are a small to mid-size Bar, we have leadership that commands big ideas. We are progressive in the way we view our duties and obligations as Bar leaders. We have members of the Bar and its Commission alike who are working for a better Bar, not for just today, but for our future membership. We have a commitment to our members which, I found, to be unparalleled. And that is serious stuff because I visited several state Bars, attended both regional and national conventions where people spoke about every issue one might imagine. I picked up important ideas, but what I mostly did was revitalize my vision for our Bar. It is a vision held by most past Presidents and our current President, and I am confident future Presidents will carry the same flag. That flag is the flag of justice

and fair play, caring for all mankind so that all have equal access to an honest justice, civility and professionalism within our ranks, and a keen desire to make the practice of law continue to top the list of noble professions. I could go on and on about the way our Bar works, what I learned as President, and what I am learning as a Bar Commissioner again. But I feel it is more important to only suggest that this Bar has had a continued high level of leadership, with a membership that overall is tops in my book, with a judiciary that continues to glow as a light for all to aspire to, with a professional and caring staff to facilitate the needs of our membership.

For the record, it is a beautiful day. Yesterday was Thanksgiving and we have much to be thankful for. I am thankful for all of your friendships. I am thankful that I have the privilege to practice law in a state where professionalism and civility are not just buzzwords, but are ideals of our membership. I am thankful I had one more chance to bend your ear, take a moment of your time, and that you allow me the grand privilege of being a lawyer among your ranks. This will probably be my last opportunity to have this wonderful forum, at least for awhile. By the time you read this, it will be 1998, so may I also wish you a wonderful and fulfilling New Year! I hope to talk to you again.

FROM OUR PERSPECTIVE

Let Us Not Waver in Our Commitment to Provide Legal Services for Utah's Poor

In this column in the Summer 1995 issue, we expressed dismay at what appeared to be the inevitable extinction of the Legal Services Corporation. Since that time, we have been paying close attention to the Bar's efforts on several fronts to provide the poor with meaningful access to the courts, and to the membership's responses to various proposals made by Bar leadership for filling the gaping holes left by the near-demise of the LSC. We hope that what we perceive as a wavering commitment to pick up the slack is merely a reflection of the growing pains inherent in implementing what is, after all, a revolutionary approach to achieving equal justice by ensuring equal access.

In response to the funding crisis at Utah Legal Services Corporation, which received more than eighty percent of its budget from the LSC, the Utah State Bar in 1996 formed the Access to Justice Task Force. Its mission was to review legal services alternatives for Utah's poor, and to look into various options for improving those services.

The recent bad news from the Task Force is that, even as funding resources are disappearing, the legal needs of the poor are "overwhelming." Access to Justice Task Force, Preliminary Final Report, at 2. No surprise there. But what does the Task Force propose that we do about it? Clearly, some sort of organized effort on the part of the Bar is essential; also essential is the membership's commitment to support those efforts, not only with dollars and with donated time, but with public affirmation that access to the courts is essential to sustaining our collective freedom.

The Task Force recommended that the Bar coordinate pro bono programs

by sponsoring its own projects, as well as by recruiting and training attorneys to participate in pro bono projects sponsored by other organizations. Early requests for volunteers provoked hundreds of willing attorneys to step forward, but there were no practical means of assigning them to particular cases. The Task Force rightly considers this the Bar administration's role, and, for the last eighteen months or so, the Bar has funded a position aimed at the monumental task of matching volunteer attorneys to cases. Last year, however, the Pro Bono Project staff position went vacant for a period during which cases were not placed. The delay in case placement presumably was compounded further by the necessity of training the person newly hired. Given the "overwhelming" nature of the problem, the Bar ought to fund additional staff positions for this essential project, and take steps to avoid personnel vacancies.

Another of the Task Force's recommendations concerns licensing legal assistants. Although both sides of this matter are addressed more thoroughly in one of this issue's Point/Counterpoint pieces, we favor the Task Force's view that the Bar should look into licensing legal assistants to permit them to provide limited legal services, so long as they work under the close supervision of an attorney. In this manner, the agencies providing legal services to the poor could increase the number of clients served without increasing their budgets.

Perhaps the most controversial of the Task Force's recommendations is its recommendation that attorneys be required, as a condition of renewing their licenses, to report the amount of

pro bono work performed during the preceding year. Frankly, we're baffled by the negative responses we've heard, although nobody seems to want to make a public, in-print stand on the point. Indeed, the heat being generated is proportionate to what we'd expect if the Bar were proposing to mandate the *performance* of pro bono work, rather than merely its *reporting*. We hope that this doesn't signify the membership's lack of commitment to performing such work, but it is difficult to come up with alternative reasons for all the flap.

"Equal justice under law" should be more than a catchy phrase carved in stone above the United States Supreme Court. Achieving that lofty goal, a necessary predicate of which is access to the courts, requires more than lip-service from Bar leadership. We urge the Bar leadership to continue its efforts to provide dynamic leadership, and work toward establishing an innovative, adequately funded means of ensuring that those with low income have meaningful access to justice.

This is not enough, however. The Bar's membership must get solidly behind the recommendations of the Task Force; token efforts are insufficient. By common assent, we have just contributed a substantial sum to beautify the new courts complex, arguably the most significant, and grand, public building erected in downtown Salt Lake City in this half of the century. But we must ensure that this is not the greatest measure of our contribution to the public good. Only by safeguarding access to that grand new building for rich and poor alike can we claim that we have met our obligation to ensure equal justice.

REPORT FROM THE CHAIR

In my first Report, I thought I should let you know a little bit about "the Chair," give you an overview of the masterminds leading the Litigation Section, a.k.a. the Executive Committee and a rundown of the overwhelming benefits of Section membership, and issue a plea for help.

"The Chair" this year is more akin to a Sam's Club Synthetic side chair, rather than the Ethan Allan Leather Wingback of my predecessors. I am your basic blue-collar insurance defense attorney who works behind a Steelcase desk in Murray, Utah. I don't have the influence or power of some of my "big name" predecessors. I also don't have the legal experience of the majority of the members of this Section, as I am just entering into my tenth year of practice.

Why, then, or *how* did I ever become "the Chair?" Quite simply, three years ago Rocky Anderson asked me to take a few notes at an 8 a.m. Executive Committee meeting. A little bleary-eyed and very naive, I wholeheartedly accepted the assignment. Rocky also asked me to keep track of the Section's finances. Too embarrassed to publicly admit that I had never balanced my personal checking account, I begrudgingly took on that assignment as well. Three years later, and with funds still in the Section account, I ascended to the position of "the Chair."

The key component of the Section's administrative ensemble is not "the Chair," but the versatile, yet durable Executive Committee. The Committee is comprised of a hybrid of the Section's membership—lawyers from large, small,

and solo firms, corporate attorneys, lawyers from state and county government, representatives from Young Lawyers, the Minority Bar, and Women Lawyers. The Committee is also fortunate to receive tremendous insight from the Bench as well. A domestic relations commissioner, and state and appellate court judges complete the committee.

The Executive Committee meets monthly. But the majority of the Section's projects are generated in the subcommittees that meet as needed. Members of the Executive Committee chair the subcommittees. The Section's Executive Committee members are identified in this issue's masthead, and the subcommittees are listed below.

More than 860 astute members of the Bar have availed themselves of the accoutrements of Section membership. A mere \$35 Section fee entitles members to discounts to all Section-sponsored seminars—the Trial Academy, Evening With Third District Court Judges, quarterly CLE luncheons, and the NITA Trial Practice Seminar. The Section owns approximately 170 CLE tapes and videos. Section members may check out the tapes at no charge, while everyone else pays \$30 per rental.

The Section also provides several benefits with no price tag attached. *Voir Dire*, published twice a year for the entire Bar, is partially subsidized by Section funds. The Section also sponsors Mid-year and Annual Meeting keynote speakers. Mandatory new lawyer ethics training, legislative research, and the Model Utah Jury Instructions emanate from Section sub-

committees as well.

During 1998, the Section is planning to co-sponsor a seminar on appellate advocacy. A Section pro bono project is also in the makes, along with a social event. Finally, we hope to have all of the Section news and events on-line on the Bar's Web Site.

We need assistance in helping the Section accomplish the items on this ambitious slate of events. Although the Section has more members than any other of the Bar's organizations, the number of members volunteering for subcommittees is few. With many new events, projects, and/or subcommittees, perhaps several of you would be interested in becoming more involved. Please take a look at the list of subcommittees, call the committee chair, and volunteer to help. You, too, may one day become "the Chair."

Vickie Kidman

