

# BARRISTER

January-March 1988

## IN-HOUSE VS. OUT-HOUSE

An Outside View of Client-Lawyer Relations From the Inside

Patrick A. Shea\*



Patrick A. Shea

In 1985, I left Van Cott, Bagley, Cornwall & McCarthy to become General Counsel for KUTV and its affiliated communications companies. The premise of the move was to switch from the "hawkeye" reactive private legal practice to, what I considered to be, a General Marshall, reflective in-house legal practice. After seven years of private practice and two years of practice in Washington, D.C., I was frustrated that I was not involved in the client's planning and implementation of business decisions. Rather, I was called in as the Monday morning quarterback, well after the business decisions were made, when a problem arose that the client believed could only be solved by a lawyer.

I miss certain aspects of my private law practice at Van Cott, Bagley, Cornwall & McCarthy. For instance, the camaraderie of the law firm was a constant source of humor and comfort. When a legal problem seemed insurmountable, I could always walk next door, discuss the problem with another lawyer and reach a satisfactory solution, a solution which would have taken

much longer to arrive at independently, if at all. In the law firm, there existed a common respect for and understanding of the law and the legal processes. Non-lawyers often fail to grasp (or do not seem to care about) the intricacies of a summary judgment or the process of a deposition.

However, I do not miss certain aspects of my private law practice. I do not miss law firm politics, the China Wall pecking order, client-generated crises, billings, billable hours, and, what I describe as, "other world" residue. This "other world" residue includes distinguished lawyers who specialize in retaining significant clients, yet operate in the halcyon days of legal practice when clients did not question bills and always had time for another story.

Now, let me try to describe some of the major characteristics of in-house practice. In a way, an in-house lawyer may be described as an outsider within a company. There are, to my surprise, as many, if not more, intense jurisdictional jealousies as exist in any law firm. For the in-house lawyer, the robe on your back (or the

degree on your wall) often defines the room you, the lawyer, may be permitted to enter. And, just as the private legal client often did not tell the lawyer the whole story, fellow employees, frequently, selectively, omit or edit important bits of information. In either case, the lawyer's ability to provide effective legal advice is hindered as a result.

At KUTV, my time is divided between handling a variety of business transactions and dealing with problems relating to threatened or actual litigation. My experiences at Van Cott, Bagley, Cornwall & McCarthy were similar. However, now having been the lawyer and, in many instances and at least in part, the client, I offer the following advice to lawyers in private practice:

1. CLIENTS ARE NOT IMPRESSED BY INTELLECTUAL EXERCISE WITHOUT PURPOSE. In law school, a friend and I would diagram the "mental gymnastics" (our term) of some of our classmates. We believed the students

**INSIDE: TWO SECTION MEMBERS CHOSEN AS  
YOUNG MILITARY LAWYERS OF THE YEAR**

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## CALENDAR OF EVENTS 1988

APRIL '88	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)
6	
4-8	YLS Election Nominations
8-10	Rocky Mountain/Southwest Regional Affiliate Outreach Project Meeting (Las Vegas, Nev.)
11-12	YLS Election Platform Statements Filed, and Statements and Ballots Mailed
12-22	YLS Election Balloting
25	YLS Election Results Announced
30	Law Day Run This Is The Place Monument 9:00 a.m. Starting Time
	Meet-a-Lawyer Fair Ogden Mall
MAY '88	
2	Law Day Luncheon Noon, Ft. Douglas
2-3	Meet-a-Lawyer Fair Crossroads Mall, Salt Lake City
4	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)
JUNE '88	
1	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)

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## *In-House vs. Out-House*

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performing were attempting to impress the professors with their (in many cases, self-perceived) mental agility. When such intellectual exercises are performed for the client, the client often assumes they will only result in an unnecessary expense. Consequently, the lawyer should try to answer the client's questions directly, without trying to unnecessarily impress them or satisfy the "law professor." The lawyer certainly should make follow-up suggestions to the client, but need not delve into the aspects of the law that might be enjoyed or appreciated by another lawyer, but that are beyond the needs of the client.

In giving advice to a client, the lawyer should make sure that, if intuitive "red flags" have gone up over a client problem, the lawyer makes follow-up suggestions and phone calls. What was good advice for situation A may have been misapplied by the client to situation B without the lawyer's knowledge. As a client, I appreciate phone calls, inquiring whether and how a particular problem was handled. Moreover, such calls allow the client (with the lawyer's assistance) to explore and consider ways to ensure the problem does not resurface in the existing or another business context.

2. IS THE LEGAL ADVICE BEING USED AS INTENDED? As indicated above, the lawyer should attempt to find out if the legal bullet produced for the client is being used for the purpose originally intended. All too often a client, because of the cost, will take the "form" created by the lawyer and, without further consultation, modify the form to fit what they perceive to be a similar situation. As a lawyer, you can appreciate how this seemingly innocuous application of the initial solution can cause enormous legal problems. At KUTV, I often refer to the George Hatch (the Chairman and owner of KUTV) School of Law. George Hatch is a genius in the communications business; he somehow

knows what the communications marketplace will need five or ten years ahead of his competitors. However, George Hatch also is famous for saying, "Oh, just use the old forms." Ninety percent of the time, the old forms probably would work. However, the 10% of the time that the "old forms" do not work can easily cost the client 100% more in monthly billings. Consequently, the lawyer should tactfully ensure that the client does not inadvisedly "use the old forms."

3. BILLING IS A SOURCE OF ENORMOUS MISUNDERSTANDING. The relationship between KUTV and Van Cott, Bagley, Cornwall & McCarthy is clear regarding billings for legal services. KUTV always receives, for each legal matter, monthly reports, which show the number of hours billed to date, the present monthly billable hours, and the projected billable hours to completion. Obviously, the projections to completion often are a best "guesstimate." However, the reports provide a useful chart, which allows me to more effectively allocate my resources than would otherwise be the case, and to ascertain whether any particular segment of our communications business is requiring a disproportionate amount of legal resources.

Under any billing procedure, where significant and, perhaps, unexpected increases in legal fees arise, an advance notice to the client may be warranted and is always wise. Tom Berggren, my primary contact at Van Cott, Bagley, Cornwall & McCarthy, contacts me in advance, if there are any significant increases or deviations that will be shown in the monthly report. This advance conversation allows me to communicate with the officers responsible for the financial well-being of KUTV and make sure that the business activity generating the billing has been (and that the legal bill will be) approved, and to determine whether the business activity should continue.

One more suggestion, which many attorneys seem hesitant to implement, is to follow-up after legal bills have been sent to the client. Clients often consider an outstanding bill as an indirect way of financing the client's business. Generally, clients are aware that lawyers do not like

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## ***In-House vs. Out-House***

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suings their clients and, as a result, use lawyers as an indirect financier of the client's business. However, with a considered approach, the lawyer can nudge the client into paying the bill for legal services timely. I believe this improves the attorney-client relationship and ensures that accrued expenses do not create unnecessary tension between the client and the lawyer.

**4. GET USED TO MAKING ESTIMATES.** Some legal matters, particularly those involving litigation, do not lend themselves to accurate estimates of legal fees. Nonetheless, an estimate is good practice, for the client and the lawyer. The practice forces the lawyer to consider the immediate and long-range legal problems, which should ensure that most important legal aspects of the matter will be anticipated and, at least to the same extent, unnecessary problems, time and research avoided.

**5. CLIENTS LIKE THEIR LAWYERS TO TAKE AN INTEREST IN THE CLIENT'S BUSINESS.** If a lawyer reads legal or other publications that may interest the client, the lawyer should share them with the client. If there is a seminar, lecture or other activity that may interest the client, the lawyer should inform, and, perhaps, take the client to the activity. Shared experiences often provide a life raft for maintaining the client-lawyer relationship during periods of tension or difficulty.

**6. LET THE CLIENT MAKE THE FINAL DECISION.** I have been involved, both as outside counsel and inside counsel, on matters where there has been a "take-charge attorney." Admittedly, some clients prefer a lawyer at the helm, making the critical decisions. However, nothing damages attorney-client relationships more

than the client's, often unarticulated, resentment of the lawyer who does not outline the options available to the client in making a particular decision. Consequently, before discussing a matter with the client, personally or otherwise, the lawyer should attempt to delineate the options available in a particular situation, as described by the client. Then, the lawyer should make recommendations describing the upside and downside of each option. And, in every case, the outside lawyer should make the client understand that the client will be making the final decision.

Remember, as outside counsel, a lawyer is not involved in the client's entire business day-in and day-out and, unfortunately, clients often perceive lawyers as attempting to control (or manipulate) the law to suit the lawyer's, rather than the client's needs. Accordingly, the lawyer must attempt to understand the client and the client's needs. The lawyer must make every effort to overcome any misperception by the client about who is in charge. Such misperceptions can be harmful to the client and the client's business and, perhaps by loss of the client, costly for the lawyer.

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## PRESIDENT'S REPORT



Stuart W. Hinckley\*

The Section is sponsoring some activities in the next few months that will be of interest to many young lawyers. The Membership Support Committee of the Section has scheduled brown bag luncheons that will continue to feature interesting speakers discussing topics pertinent to young lawyers. Highlights are as follows:

The Section's Law Day Committee will be cosponsoring events with the Senior Bar that will give interested young lawyers an opportunity to share their skills with the public. Volunteers are needed to meet the public at the Law Day Information Fair that will be held May 1-2, 1988, at the Crossroads Mall. Additional volunteers are needed during Law Week to participate in a planned televised panel discussion and radio talk shows.

In addition, the Section's Needs of the Elderly Committee will be sponsoring lectures at senior citizens centers, located outside of Salt Lake County, during Law Week. These lectures will be centered around the Section's Senior Citizens Handbook, which succinctly outlines legal

matters that are especially interesting to senior citizens.

These are a few of the programs that are being sponsored by the Section. Your participation is essential to the success of these programs. I encourage you to actively join in Section activities by calling the chairpersons listed in this publication. You do not need to have any particular expertise to participate. The committee chairpersons will do their best to match your area of expertise with the committee needs and, in some cases, such as with the senior citizen lectures, the committee will provide you with the information necessary to successfully complete an assignment. None of these assignments will consume an inordinate amount of time. Just inform the chairperson of your availability, and the chairperson will tailor an assignment that will fit your calendar.

(Editor's Note: For information regarding certain Section Committees, please see the "Worth Noting" section of the *Barrister*.)

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\*Mr. Hinckley is a 1983 graduate of the J. Reuben Clark Law School, Brigham Young University, and is Chief of the Human Resources Division of the Utah Attorney General's Office.



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# LEGISLATIVE NEWS



## THERE OUGHT TO BE A LAW

Robin L. Riggs\*

One could describe the actions of the 1988 Utah Legislature very well by paraphrasing Will Rogers: "I never met a bill I didn't like." For the first time in many years, the focus of the legislative session has not been on state budgets and taxes. Because of tight money, a sluggish economy, and tax increase protesters, there is little room for discussion after the budget. However, this dearth of debate on the budget does not mean that legislators are without things to discuss. In lieu of the fiscal fights, legislators are introducing bills on pet projects or constituent concerns that have been left unattended in recent years, resulting in a record number of bills being filed this year. This has also led to an increase in political rancor between the Democrats and the Republicans, urban and rural legislators, and House and Senate members. Although most of the legislation is somewhat run-of-the-mill, there are a number of creative measures being considered that may raise an eyebrow or two. Consider the following:

- Allowing homeless persons to vote by designating a "point of contact," as opposed to a "home address," for voter registration purposes.
- Making it a felony to knowingly expose a person to the AIDS virus.
- Providing procedures and standards regarding joint legal custody of a child.

- Imposing a stamp tax on controlled substances confiscated in drug busts.
- Allowing a parent to commit his or her child to a substance abuse treatment facility without the child's consent.
- Permitting high school students to attend the public high school of their choice.
- Increasing the penalty for desecrating a dead body.
- Providing "home confinement" as a sentencing alternative.
- Requiring "urban areas" to become part of a city, town, or consolidated city/county.

Other, more frivolous measures that may be considered include:

- Recognizing the "dutch oven" for its contribution to the settlement of the West.
- Designating the allosaurus as the official state fossil.
- Designating "Parley's soil" as the official state soil.

In addition, there are always "technical amendments" and "housekeeping bills" that really contain items of substance—which often come back to haunt the unsuspecting legislator. And, in the legislative hall, one thing said may mean another; like lawyers, legislators have a jargon all their own, which is generally unfathomable by the general public. A sampling:

Legispeak	Translation
<i>It's a delicate compromise.</i>	Change one comma, and the lobby will kill it.
<i>It's important that we let the legislative process work.</i>	We don't know what we're doing, but maybe if we stall long enough someone will think of something.
<i>I had not planned to speak on this bill, but...</i>	Get ready. I'm warming up for a long speech.
<i>This is truly a non-partisan bill.</i>	There isn't enough support in either party by itself to muster enough votes to pass this lousy bill.
<i>With a few amendments, this could be a good bill.</i>	This bill is a turkey. Maybe we can love it to death.
<i>It's an agreed bill.</i>	The lobbyists have cut a deal, and the people have been screwed again.
<i>He's flexible.</i>	He'll cave in when the time is right.

*I don't want the misconceptions about this bill to go uncorrected.* Don't believe a word they are saying. They are all lies.

(Source: *State Legislature*, The National Conference of State Legislatures, February 1988.)

At this point you may be thinking that the legislative process is rather frivolous, if not down-right wasteful. It can be frivolous and is almost certainly wasteful to some degree. But the beauty of the process is not so much that great law was made, but that it provides a sort of super-forum for all of those ideas of the people that might otherwise not ever receive consideration. And notwithstanding the three or four measures passed per year that seem silly or strange, the other 300 that pass are added to a pretty solid body of good, creative laws. In spite of all the posturing and the rhetoric, Will Rogers would have probably liked this group of legislators.

\*Mr. Riggs is a 1982 graduate of the J. Reuben Clark Law School, Brigham Young University, and is Associate General Counsel for the Utah Legislature.

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# PRACTICE POINTERS

## DRAFTING AN EFFECTIVE DEMAND LETTER

Barbara K. Berrett\*

Demand Letters are typically sent after the decision to litigate has been reached. Nevertheless, sending such a letter is perceived as a necessary precursor to the act of commencing suit. Because the sending of a Demand Letter has become such a well-worn custom in the legal profession, strongly held convictions have evolved as to the content of these letters and the manner in which the demand is made. There are, of course, the fundamental elements of a Demand Letter. These elements include: stating the factual basis of your client's claim; suggesting the general legal theory, if not apparent, which entitles your client to the relief sought; and educating the person receiving the letter that, if your client does not receive satisfaction within a certain time, legal action will be initiated.

One of my first assignments after becoming a member of the Bar was to draft a Demand Letter. When I received the assignment from a senior associate in my law firm, I, in my naivete, drafted a fairly straightforward letter covering the foregoing elements. Upon submission of my letter for approval, I was immediately informed that there were additional, equally fundamental elements of a Demand Letter of which I apparently was ignorant. There are, I learned, certain phrases and techniques, as well as an overall tone and tenure, which are seen by most of the legal profession to be essential to the proper presentation of a Demand Letter. For instance, parenthetical numerals were added beside the stated dollar amount, lest there be some confusion regarding the meaning of the term "the sum of One Thousand Dollars [\$1,000.00];" a veiled threat that attorneys' fees would be recoverable was added, even though none was authorized by contract or statute; underlining and capitalizing entire phrases was indicated; and, most importantly, the words "Govern yourself accordingly" were added in large red letters at the end of the letter as a final warning.

Unfortunately, just when I thought I had mastered the drafting of a proper Demand Letter, I noted that, as is to be expected, every attorney seems to have developed a peculiar notion as to what sacred phrases or manner of presentation should be employed. For example, some attorneys apparently use the Demand Letter to vent emotion which typically cannot be adequately expressed in the relatively sterile format of a breach of contract complaint. Phrases on the order of "rife with inaccuracies and misrepresentation," "succumbing to a golden tongue," "utter and extreme breach of fiduciary duty," "documents foisted on my client" and "tarred with the same brush" are actual examples of how many lawyers use the Demand Letter to exhibit a flair for dramatics.

The use of rhetorical questions also is common in Demand Letters. "Might we have a reply at your earliest convenience?" Sometimes these questions are even answered. "Can I make my position any clearer to you? I do not know how!" Additionally, while many lawyers seem to enjoy the opportunity to draft a truly menacing letter, others seem to be uncomfortable with this approach. These attorneys attempt to buffer more threatening phrases with genteel or polite language, such as, "Kindly govern yourself accordingly" and "I respectfully, but strongly, suggest you abandon your claim immediately."

Another typical feature of a Demand Letter is the declaration that the satisfaction demanded must be made within a stated deadline. Ten (10) days seems to be the overwhelming favorite. Unfortunately, these artificially created deadlines are typically never rigidly enforced. A response which is anything short of "take a hike" will buy you at least another ten (10) days to two (2) weeks. Responses premised on existing vacation plans, lost files and "on-going investigations" appear to be both popular and successful. Often this process will go on for months, just as long as it proceeds in ten (10) day increments, so that

on the fourth (4th) Demand Letter in a series, what was intended to represent a looming doomsday is reduced to a trivial afterthought. Somehow I doubt that this concluding paragraph leaves the reader with a sense of urgency: "In my previous correspondence I insisted that you abandon your previous demand and do so within ten (10) days of August 11 . . . subsequently on August 17, demand was likewise made . . . Please consider this a *final* demand that you abandon your position and do so within ten (10) days of the date of this letter."

Finally, it appears to be universally agreed that the most crucial element of a proper Demand Letter is concluding the letter with a catchy, but impressive, admonition. This all-important concluding warning should be drafted to fill the reader with a sense of foreboding. Phrases I have seen most commonly used to impart this feeling of doom are "Govern yourself accordingly" and its counterpart, "Kindly govern yourself accordingly." There is, however, some room for innovation. Some have used "May common sense prevail in your thinking," and, believe it or not, "Discretion is the better part of valor." One attorney warned, "Proceed otherwise at your peril!" My personal favorite, though, has to be "What goes around comes around." One can only marvel as to why such imposing language so seldom results in immediate action.

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*\*Ms. Berrett is a 1984 graduate of the University of Utah College of Law, is associated with Purser, Overholt and Okazaki, and is an Associate Editor of the Barrister.*

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# WORTH NOTING

## TWO SECTION MEMBERS CHOSEN AS YOUNG MILITARY LAWYERS OF THE YEAR

Every year each of the five uniformed services of the United States Military recognizes an outstanding Young Military Lawyer of the Year. For 1987, Utah Young Lawyers' Section members Samuel McVey and Richard O. Hatch were selected as the Young Military Lawyers of the Year for their respective departments of the Military.

The American Bar Association selected Captain Samuel McVey of Twentynine Palms, California as the Young Military Lawyer of the Year for the Department of Marines. The 32-year-old member of the Combat Center Staff, Judge Advocate Office, is currently the administrative law officer responsible for all aspects of environmental, contractual labor and installation law.

Captain McVey graduated with distinction (Magna Cum Laude) with a Bachelor of Science degree from the U.S. Naval Academy, Annapolis, Maryland, in 1977. He was also a Burke Scholar. After graduating from Annapolis, McVey was commissioned a Second Lieutenant in the Marine Corps and was one of eight Marines selected to attend a funded law school program. McVey attended Brigham Young University in Provo, Utah where he graduated Magna Cum Laude in 1983. At BYU, McVey served as Note and Comment Editor on the BYU Law Review and was also a member of the Order of the Coif.

Captain McVey's achievements include the implementation of a temporary restraining order program for prevention of domestic violence. He has spent much of his free time assisting seventy battered women and one battered man in obtaining temporary restraining orders. In addition, McVey has been active in getting an incest diversion program established for the purpose of rehabilitating parents found to have been involved in child sexual abuse.

Lt. Col. William J. Lukas, Staff Judge Advocate, said of McVey: "His fine reputation and outstanding performance in all aspects of his professional and family life has led to his nomination from the

Combat Center. Captain McVey personifies all of the proven qualities of leadership. As a Marine officer, he sets an example that both his peers and subordinates emulate; his exemplary virtues extend to his off-duty activities."

In addition to his Marine Corps duties, McVey is a coach for a youth soccer team, an adviser for the Boy Scouts, an active participant in the PTA and various church, city and unit sports activities. Captain McVey is married to Connie McVey and they have five children.

The American Bar Association selected Captain Richard O. Hatch of Annandale, Virginia as the Young Military Lawyer of the Year for the Department of the Army. Mr. Hatch attended J. Reuben Clark Law School, Brigham Young University, and was chosen as the Editor-in-Chief of the Journal of Legal Studies. Upon graduation (Cum Laude), Hatch began active duty with the Department of the Army, beginning in October, 1982 as a Judge Advocate First Lieutenant. Hatch attended the Judge Advocate basic course in Charlottesville, Virginia and upon completion of the course in January, 1983 was named an Honor Graduate. He was thereafter assigned for two years to the Office of the Staff Judge Advocate at Fort Lewis, Washington.

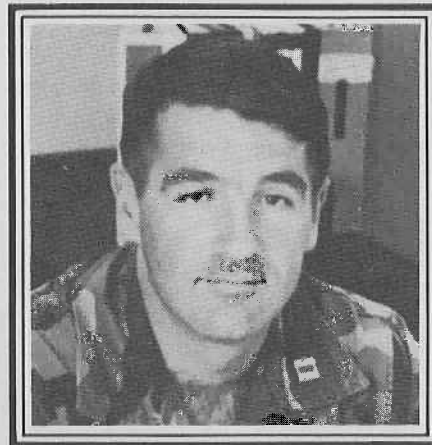
While in Washington, Hatch served as a Legal Assistance Officer, counseling soldiers and their dependents concerning their legal rights and responsibilities. From July, 1983 until June, 1984 he served as trial counsel, prosecuting Military court-martial and, as a Special Assistant U.S. Attorney, prosecuting cases in the United States Magistrate's Court. Hatch also served as a Military Magistrate during this period and in this capacity was charged with responsibility for issuing warrants and making determinations concerning the continued incarceration of soldiers placed in pretrial confinement.

William K. Suter, Acting Judge Advocate General, said of Mr. Hatch: "Captain Hatch's work at Fort Lewis, Washington was outstanding and noted for its excellence in every regard. He quickly established himself as the top young lawyer on the entire post and was selected for a

commission in the Regular Army in November, 1984. Immediately after a selection to Regular Army status, he was transferred to the Pentagon and assigned to the Army's Litigation Division as an action officer in the Civilian Personnel Branch. The fact that the Army would assign a junior lawyer with but two years experience to its highest profile legal division is indeed a compliment to the capabilities of Captain Hatch and the potential the Army has observed in him. From 1985 to the present, Captain Hatch has served with singular distinction in the Litigation Division on the staff of the Judge Advocate General of the Army. This gifted young attorney has displayed the legal talents of a seasoned practitioner of many years' experience."

Among his accomplishments, Captain Hatch has been given substantial responsibility for the Army's defense of its drug testing program.

Captain Hatch is also involved in a myriad of community and church activities. He and his wife, Keri E. Hatch, are the parents of four children.



*Captain Samuel McVey*



*Captain Richard O. Hatch*

## **Worth Noting**

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### **ELECTION OF SECTION OFFICERS**

The election of the 1988-89 officers of the Young Lawyers Section of the Utah State Bar is fast approaching. Nominations for President-Elect, Secretary, Treasurer and ABA/YLD District Representative will be accepted from April 4, 1988 through April 8, 1988. The election timetable will be as follows:

*Nominations Open: April 4, 1988*

*Nominations Close: April 8, 1988*

*Platform Statements Filed: April 11, 1988*

*Platform Statements and Ballots Mailed:  
April 12, 1988*

*Balloting: April 12-22, 1988*

*Election Results Announced:  
April 25, 1988*

All nominations must be received no later than 5:00 p.m. on April 8, 1988.

Nominations should be sent to Stewart W. Hinckley, 236 State Capitol, Salt Lake City, Utah 84114, telephone: 533-7640. You may obtain a copy of the Election Handbook of the Utah State Bar Young Lawyers Section by writing or calling Stewart Hinckley at the above address, or by writing or calling Jerry Fenn at 10 Exchange Place, 11th floor, P.O. Box 45000, Salt Lake City, Utah 84145, telephone: 322-9137.

### **BARRISTERS BUY BRICKS**

The members of the Executive Council of the Young Lawyers Section have collectively donated \$100 (from their pockets) to the Shelter the Homeless Committee for the purchase of a brick. While this amount may seem a bit costly to some, the money is for a worthy cause. The Committee is currently in need of money to construct a shelter, which, when completed, will house 110 homeless families and nearly 250 homeless men. In addition to providing housing, the shelter will provide a transitional school for children, medical clinics, and counseling facilities.

A donation of \$100 entitles a contributor (or group) to an engraved plaque affixed to a brick in the new shelter. Each contributor (or group) selects the inscription to be engraved on the six by two inch plate.

The Executive Council challenges local law firms, companies, and each young lawyer to match their donation and purchase a brick for this worthy cause. For more information, or to make a contribution, please contact: Shelter the Homeless, 345 South 600 East, Salt Lake City, Utah 84102-4084, (801) 328-0211.

### **NOMINATIONS SOUGHT FOR LIBERTY BELL AWARD**

The Young Lawyers Section is seeking applications for the Liberty Bell Award to be presented on Law Day, May 1, 1988. The criteria for the award are:

1. *Recipient must be a non-lawyer;*
2. *Recipient promotes a better understanding of the Constitution and the Bill of Rights;*
3. *Recipient stimulates a deeper sense of individual responsibility, encouraging citizens to recognize their duties as well as their rights;*
4. *Recipient contributes to the effective functioning of our government; and*
5. *Recipient fosters a better understanding and appreciation of our laws.*

All nominations must be submitted, in writing, no later than April 4, 1988 to: Sharon Sonnenreich—Jones, Waldo, Holbrook & McDonough, 1500 First Interstate Plaza, 170 South Main, Salt Lake City, Utah 84101.

### **NOMINATIONS SOUGHT FOR OUTSTANDING YOUNG LAWYER OF THE YEAR AWARD**

The Young Lawyers Section of the Utah State Bar is soliciting applications for its Outstanding Young Lawyer of the Year award. To qualify for the award, an attorney must be a member of the Young Lawyers Section, that is, under 36 years old or admitted to practice law for less than six years. The following criteria will be

considered in making the award:

1. *The nature and extent of service to the profession, including involvement in Bar activities and other efforts on behalf of fellow Young Lawyers.*
2. *The degree of achievement, or high professional competence and ability.*
3. *The extent to which the Young Lawyer has demonstrated professional integrity and high ethical standards.*
4. *The nature and extent of community service, both as a lawyer and as a citizen.*

All nominations must be submitted, in writing, no later than April 4, 1988 to: Sharon Sonnenreich—Jones, Waldo, Holbrook & McDonough, 1500 First Interstate Plaza, 170 South Main, Salt Lake City, Utah 84101.

### **ART AND LAW**

Several members of the *Barrister* Editorial Committee recently had lunch with Terry Kogan, Professor of Law at the University of Utah Law School. The purpose of the lunch "date" was to discuss "Art Law" with Professor Kogan. Professor Kogan (does not rhyme with Gauguin) will conduct a two-hour, one-semester course entitled "Issues in Art Law" at the University of Utah Law School. (Professor Kogan joined the faculty of the University of Utah in 1984, after practicing law for several years in Boston. He holds a law degree from Yale University and undergraduate philosophy degrees from Columbia College and Oxford University.) This article summarizes the luncheon discussion, and outlines certain "Art Law" issues, which will be addressed by Professor Kogan in his seminar.

Art law necessarily encompasses both legal and aesthetic questions. For example, one might imagine there is not much occasion to ask "What is art?" However, art and the law often interact in the customs and immigration context. For example, a legal discussion concerning the definition of art can be found in cases that consider whether certain objects should be recognized as works of art, which should be

(continued on page 12)



# ANNOUNCEMENTS

## LAW DAY PLANS INCLUDE EDUCATING UTAH SENIOR CITIZENS

The Young Lawyers Law Day and Needs of Elderly Committees are in the process of planning a major public education effort on Law Day. Current plans include not only the traditional Meet-a-Lawyer information fairs at the Crossroads Plaza in Salt Lake City and the Ogden City Mall in Ogden, but also a major senior citizen education effort throughout Utah, a special lecture at the Salt Lake County Library, and a series of media presentations. In the next few months both committees will be seeking volunteers to help out in these educational efforts.

The Meet-a-Lawyer information fair, a service provided in each of the last 4 years, will provide members of the public with the opportunity to discuss their legal problems with lawyers at a Mall information booth.

Last year over 40 lawyers donated 2 hours of their time to this project. The Committee hopes to have at least 60 lawyers participate in this year's fair. The statewide senior citizens' educational effort will feature young lawyer volunteers who will visit senior citizens' centers and provide brief presentations on legal issues. Volunteers for these presentations will be provided with copies of the *Utah Senior Citizens' Handbook*, a 60-page guide to laws and programs affecting Utah senior citizens. The Committee will identify locations for these lectures and will prepare packets and materials to enable volunteers to give presentations with minimal advance preparation. These informational presentations will be coordinated with a series of media presentations planned by the Senior Bar Needs of the Elderly Committee.

Finally, the Law Day Committee will co-sponsor a special library lecture during Law Week at the main branch of the Salt Lake County Library on the Utah Court system. The lecture is one of the popular "Law School for Non-Lawyers" presented throughout the year by the Young Lawyers Section Law Related Education Committee.

These Law Day programs will provide an excellent opportunity for community service. For more information and to volunteer, call Keith Kelly (532-1234).

## LAW DAY RUN SET FOR APRIL 30

The Sixth Bob Miller Memorial Law Day Run will be held Saturday, April 30, 1988, beginning at 9:00 a.m., at This Is The Place Monument inside Pioneer Trail State Park. The five kilometer course will follow the same route as in previous years, with awards being presented in thirteen separate categories for both male and female. Categories include: Attorneys over 40 and under 40, law students, law faculty, law enforcement, judges, legal secretaries and personnel, paralegal and legal assistants, and five open categories ranging from children under age 14 to masters over the age of 50.

Pre-registration will be \$6.00 and day of the race registration will be \$7.00. Once again, law firm team competition will be interesting and competitive, each three men/two women team must pay an additional \$10.00 registration fee to participate. Also of interest this year will be the Second Annual T-shirt Design Competition, won last year by Kipp & Christian. Any group may enter the T-shirt competition by simply showing up at the run with a unique and well-designed T-shirt worn by all members of the group.

Registration forms are available at all major athletic shoe stores in the Salt Lake Valley, from the Bar Office, and may be requested by notifying Gary Johnson, at Richards, Brandt, Miller & Nelson, Telephone 531-1777.

The much-praised and always well-designed Bob Miller Memorial Law Day Run T-shirt will be given to all registrants, and prizes will be given to the top three finishers in each category. The law firm team competition traveling trophy, which remains in the halls of Snow, Christensen & Martineau, will once again be up for grabs, and a plaque for the best T-shirt design will be presented to the T-shirt winners.

Come join the fun and participate in one of the best five kilometer runs anywhere in Utah.

## UTAH LAWYERS FOR THE ARTS TO HOST RECEPTION

On Tuesday, May 17, 1988, the Utah Lawyers for the Arts will host a reception

for artists and lawyers. The reception will be from 6:00 to 8:00 p.m. at the Salt Lake Art Center, located at 20 South West Temple, Salt Lake City, Utah. Music will be provided by the Zephyr String Quartet. For more information, please call Sue Vogel (521-3200), Guy Kroesche (532-3333), or Phyllis Vetter (538-1076).

## LAW-RELATED EDUCATION COMMITTEE PRESENTS LAW SCHOOL FOR NON-LAWYERS LECTURE SERIES

The Law-Related Education Committee of the Young Lawyers Section of the Utah State Bar has presented two lectures in a five-part series known as "Law School for Non-Lawyers." The first session of Law School for Non-Lawyers was presented at the Salt Lake County Library in January. Larry R. Laycock of Snow, Christensen & Martineau gave a presentation on the State and Federal Court Systems and Gary Chryster, a sole practitioner in Provo and *pro tem* Judge of the Eighth Circuit Court, Provo Division Small Claims Court, gave a presentation on Small Claims Court Practice and Procedure.

In February, Gordon Jensen of Robert DeBry & Associates and Wendy Bates, a sole practitioner in the Salt Lake area, presented the second lecture in the series. Their topic was Landlord/Tenant Law. In March, the third lecture in the series, focusing on Criminal Law, was presented.

Approximately 50 people attended each session. Many of those in attendance participated actively in the discussion and posed thoughtful questions on the topics presented, as well as other general areas of the law. Those who attended reported that the meetings were informative and satisfied a public need for a source of information about the law.

Following is the schedule for the remaining sessions of Law School for Non-Lawyers.

*Commercial Law for Consumers*

April 20, 1988

*Personal Injury and Property Damage*

May 18, 1988

For further information concerning Law School for Non-Lawyers, please contact Stanford P. Fitts of Beesley and Fairclough, 310 Deseret Book Building, 40 East South Temple, Salt Lake City, Utah 84111. Telephone: (801) 538-2100.

## COMMITTEE REPORTS

### BRIDGE-THE-GAP COMMITTEE HARD AT WORK

Since the traditional semi-annual "Bridge the Gap" seminars have been put on hold by the Bar pending the development of a mandatory program, this has been a year of transition for the Bridge-the-Gap Committee. Through representation on the Steering Committee of the Bar's Post Law School Training Committee, the committee was able to work on the drafting of the petition for a mandatory program, now pending before the Utah Supreme Court.

The Bridge-the-Gap Committee is also working to represent the interests of young lawyers in the Bar's development of a Pilot Apprenticeship Program. The committee again assisted the Bar staff with the fall swearing-in ceremony and is working on section recruitment.

### UTAH STATE BAR YOUNG LAWYERS SECTION IMMIGRATION ASSISTANCE

The two main projects of the Immigration Assistance Committee have focused on the implementation of the Immigration Reform and Control Act of 1986. That federal bill provides for legalization of undocumented aliens residing in the United States who can show residence since January 2, 1982. The young lawyers in Utah have been asked to assist Utah Immigration Project which is a qualified designated entry (QDE), which is processing applications in Utah. To date 1,000 people have applied for residency. If you are interested in assisting in this effort, please contact Mr. Tony Lopez at 531-1177. Training is available and the reward of assistance cannot be matched.

The second project is a letter writing campaign to our congressmen. There are two bills before Congress which we believe should be adopted. The first would assure family unity. This means that families with some members who are qualified and some members unqualified would not be split and deported. The second piece of legislation would extend the application period from May 4, 1988 to November 30, 1988. All Section members are encouraged to support this extension.

## COMMENTARY

### POST-ITS PROLIFERATION\*

I used to really like 3M's "Post-it Notes," those note pads that can be stuck and unstuck as needed. As a bit of an office products buff, I can still remember when they were first introduced. What a novel idea—notes that can be attached where pertinent and then removed without damaging the surface.

I have read with interest several articles written about the product and its incredible marketing success and about its discovery by a 3M engineer. The engineer failed in an attempt to develop a new, strong adhesive on note pads. Today law offices teem with yellow Post-its of the 1½ x 2 inch, 3 x 3 inch and 3 x 5 inch variety.

I use Post-its for many purposes, attaching them to dictation tapes to identify the dictation and to prevent inadvertent erasure and applying them to various documents to route them or to request particular actions to be taken. I also use them as book marks, to note important passages in documents and books and as "To Do" reminders placed in conspicuous places.

I am beginning to wonder about the usefulness of Post-its, however. To put it bluntly, the indiscriminate use of Post-its threatens the tidiness of the law office environment. There are files in our office in which virtually every page of every document has a Post-it attached, usually with a small message included. The result is very untidy. A folder designed to attractively enclose a group of documents can look very dogged indeed when 50 to 100 Post-its protrude. How much good can a note or reminder attached to every page in a book or group of documents be? It reminds me of the style of highlighting reading materials in which substantially all of the text is marked. Trying to read documents littered with Post-its is virtually impossible.

Another insidious problem with Post-its is their unintended immortality. Post-its which have obviously served their purpose remain attached nonetheless. Documents properly placed in a file bear notes stating "Send to file." Books resting in their proper place on library shelves bear messages such as "Return to library." People seem afraid to remove a Post-it once the message contained on it has been delivered.

The irony here is that the innovation that led to Post-its' success, detachability, is not being used. Civic minded citizens who would not think to deface books or documents with permanent markers or notes will affix Post-its with abandon. Might as well take a small piece of paper and affix it with superglue as use a Post-it.

The corporate wizards at the 3M Company would be well-advised to take the initiative in this matter, before Post-its' lucrative position in the marketplace suffers as the conscientious office workers of the world unite to put an end to Post-it Pollution. Perhaps 3M could include a notice on its packaging stating, "Not intended for Permanent Application," or "Remember: Post-its Are Removable."

While I have no vested interest in the future of Post-it Notes, I recommend that a more thoughtful approach to their use is in everyone's interest. Do something today that will make a difference, remove a Post-it.

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*\*The author, fearing reprisal from the area representative for 3M (and possible loss of future "Post-it Notes" shipments), chooses to remain anonymous.*



# EDITOR'S COLUMN

*T. Patrick Casey\**

Ever since I started law school, almost ten years ago, I have had to deal with the stereotyped image that seems to go with being a lawyer. The way people expect lawyers to have a certain mind set, personality type, and system of personal and ethical values has always bothered me. I attribute this in some measure to the portrayal of lawyers in the movies and, of course, on television.

Some of the characteristics attributed to lawyers in the media are positive ones—the “typical” television lawyer is intelligent, articulate and assertive. However, television, theatrical and movie attorneys are also typically egotistical, dishonest, manipulative, and greedy, at least to some degree. There are exceptions (Perry Mason was always a clean-cut, decent sort of fellow, as I remember him, and even some of the more positive characters on *L.A. Law*, while they may have large egos and live in the fast lane of yuppie materialism, also have some sympathetic characteristics.) Nevertheless, on the whole, I think lawyers as a group fare poorly in most dramatic portrayals.

Dismissing this phenomenon as merely an unfortunate byproduct of our avocation would be all too easy. One might reason that the legal profession, consisting by and large of capable, successful individuals and occupying a position of particularly great power and influence in our society, is bound to be the target of envy and the brunt of humor among those who know no better. Unfortunately, however, more than an image problem exists. Something about the image rings true to a lot of people, not only the writers of scripts who persist in their portrayal of the profession in a negative light but also the audiences who demand the products of those writers.

I am persuaded that we lawyers, perhaps in innocence and unaware that we are doing so, play a large role in creating the public perception of lawyers. We play a game with a set of rules that are foreign to non-initiates, and we as a profession make those rules. When the results of a legal proceeding stir a public outcry, we may try to explain why, in our view, the legal system is right and the public perception of what has occurred is wrong, but more likely we simply shrug our shoulders and chalk up another one to ignorance.

Most of us, I presume, would not directly lie or encourage our clients to do so. Nevertheless, we are expected, in the interests of effective advocacy, to seek within the limits set by our system of professional ethics to protect our clients from having to disclose damaging information, even if the result is deceptive or misleading. Small wonder, then, that we lawyers are viewed as dishonest or manipulative, when our sole justification for conduct that most people would consider dishonest lies in a body of professional standards that only lawyers fully understand and embrace.

A sad commentary on the game we play is that some members of our profession consider it acceptable and even necessary to secretly record telephone conversations with other lawyers and non-lawyers on the grounds of promoting truth. Although in my experience most attorneys truly do prefer to deal with one another with integrity and candor, our legal system seems to breed among some the mentality that our success as advocates is somehow related to the number of “weapons” that we are willing and able to bring to bear. Fortunately, the number of lawyers who exhibit that kind of mentality seems to be relatively small. Unfortunately, the number of clients who expect lawyers to behave that way is considerably large.

I am not making a case for the abolition of the precepts of advocacy upon which our legal system rests. I might do so if I were

clever enough to devise a preferable system of justice and dispute resolution, but I am not. My point is merely this—each of us shares in the responsibility for the way our profession is perceived. The way we conduct ourselves affects our fellow practitioners and makes a distinct impression upon our clients and the other non-lawyers with whom we come in contact. We are constantly faced with the choice between integrity and expediency. Rather than stoop to the least common denominator, let each of us demand integrity not only from ourselves but also from those around us.

*\*Mr. Casey, a 1981 graduate of the University of Michigan Law School, is associated with Parsons, Behle & Latimer and is an Associate Editor of the Barrister.*

## Young Lawyers Section Utah State Bar

(1987-1988)

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## Worth Noting

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given favorable treatment under the immigration and customs laws.

Further, legal issues arise in determining whether, to what extent, and how artists retain any rights to their works sold at public or private auction or otherwise. In France, artists have a "moral right" in and to their works. In the United States, some states have legislation requiring that artists be given a percentage of the sales price every time their work is sold.

Moreover, legal (and, perhaps moral) issues arise when a private collector alters a work of art, or when the public seeks to alter or remove works of art ostensibly created "for" the public. Richard Serra's Tilted Arc in New York City is an example of what has generated this sort of controversy. The Tilted Arc, a massive wall of steel, cut through an open, public plaza

frequented by a great number of people; some of those people reacted negatively to the placement of the Tilted Arc and, despite the alleged "artistic" value of the Tilted Arc, disagreed with any such value and lobbied for its removal.

Other legal issues are raised in determining what makes an original work of art more valuable than a copy, whether the public should have an absolute right to view art owned by public museums (or a right to prevent sales of works into private collections), and whether countries should be able to reclaim historical works of art that have left their countries.

We hope the foregoing has heightened your interest in art and law. Unfortunately, though, Professor Kogan did not seem excited when the members of the *Barrister* Editorial Committee suggested that members of the Bar might crash the course. Lawyers, then, apparently must attempt to satisfy any curiosity in this area independently. Alternatively, lawyers who do have an interest in art and law may

become members of Utah Lawyers for the Arts. For information contact Sue Vogel (521-3200), Bill Holyoak (521-5800), or Guy Kroesche (532-3333).

Young Lawyers Section of the Utah State Bar

# BARRISTER

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