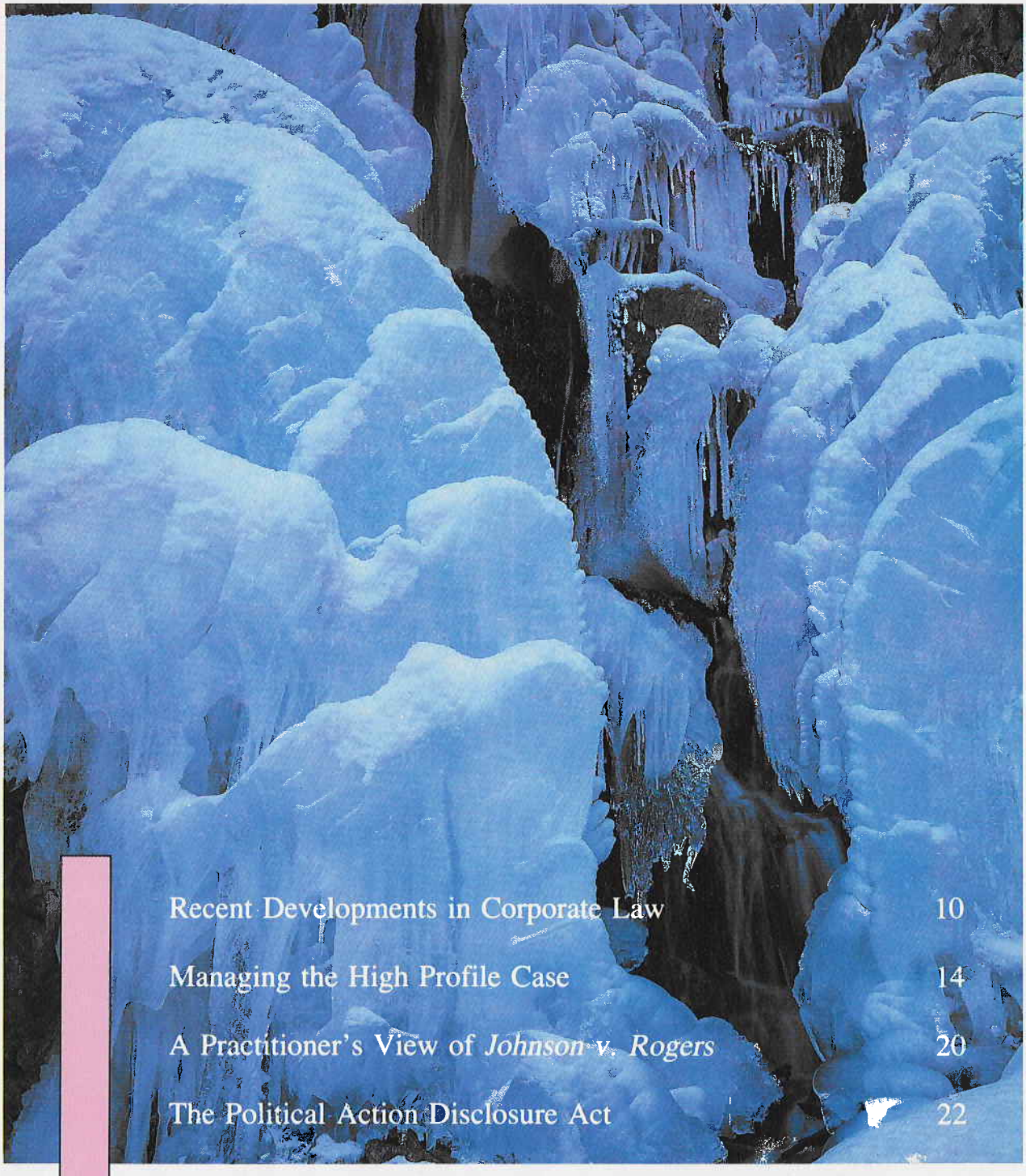
UTAH BAR JOURNAL

Vol. 2, No. 1 January 1989



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UTAH BAR JOURNAL

Vol. 2, No. 1 January 1989

COVER: "Ice Formation in Big Cottonwood Canyon" by Chris P. Wangsgard, a partner in the firm of VanCott, Bagley, Cornwall & McCarthy.

The Utah Bar Journal is published monthly, except July and August, by the Utah State Bar. One copy of each issue is furnished to members as part of their State Bar dues. Subscription price to others, $20; Single copies, $2.50; second-class postage paid at Salt Lake City, Utah. For information on advertising rates and space reservation, call or write Utah State Bar offices.

LETTERS

Editor:

"Autumn Cottonwoods" by Chris Wangsgard, which appeared on your November issue, was the most beautiful photograph I have ever seen on the cover of the *Utah Bar Journal.* Congratulations to you and to your photographer. I would very much like to own a print large enough for framing. . .

. . . I hope to see photos by Mr. Wangsgard on future issues of the *Utah Bar Journal.*

Marie Iverson, Secretary
ROGER NUTTALL AND ASSOCIATES
Salt Lake City, Utah

So does the staff of the Utah Bar Journal. *The staff also welcomes the submission of photographs from others who would like to have their work considered for publication.*

Editor

Editor:

I recently enjoyed reading an excellent booklet pertaining to the late Judge [Utah Supreme Court Justice] R. LeRoy Tuckett written by retired Utah Supreme Court Justice J. Allan Crockett.

I was very pleased and interested having been born and reared in Payson, Utah, a community adjoining the Santaquin area.

I knew Judge Tuckett well, and our Honorable Judge Allan Crockett was indeed very masterful in his discourse pertaining to Justice Tuckett and his private life. . .

. . . such a tribute is wonderful for our public to be more informed about these talented, willing individuals who have served us faithfully for so many years. Well done!

Thelma Smurthwaite
Salt Lake City, Utah

Editor:

The recent Utah Supreme Court case of *Johnson v. Rogers,* 90 Utah Adv. Rep. (1988), was reviewed in two separate articles in Volume I, No. 3, of the *Utah Bar Journal* (November 1988). The two articles contradicted each other as to what the Supreme Court said. In David Black's article "Punitive Damages in Utah," Mr. Black stated that "the Supreme Court reversed the trial court's summary judgment to the defendants and stated that in view of the facts, plaintiffs were entitled to a jury verdict on the question of whether NAC authorized the act or whether the employee was recklessly employed" (page 13). On page 23 of the same issue in "Case Summaries" by William D. Holyoak and Clark R. Nielsen, we find the following contradictory assessment:

> In a partially concurring opinion, written by Justice Zimmerman and joined by Chief Justice Hall and Justice Stewart (thereby making it the view of a majority of the court on the issues it addressed), the three justices agreed that the restatement standard should apply, but concluded that the trial court should determine upon remand whether sufficient evidence existed to send the case to the jury on this issue.

I rather agree with Messrs. Holyoak and Nielsen.

Edward J. McDonough
Berman & O'Rorke
Salt Lake City, Utah

Mr. Black responds: The sentences referred to, suggesting that plaintiffs were entitled to a jury verdict, were phrased incorrectly and as the latter writer indicates, should have stated that plaintiffs may be entitled to a jury verdict if so determined by the trial court on remand.

INVITATION TO SUBMIT ARTICLES

Utah Bar Journal readers are invited to submit articles to be considered for publication in the *Journal.*

Articles should be topics and issues of current interest. Narrowly focused or highly specialized subjects should be treated in a way that is of general interest and understandability. Articles of a humorous or lighter nature will also be considered.

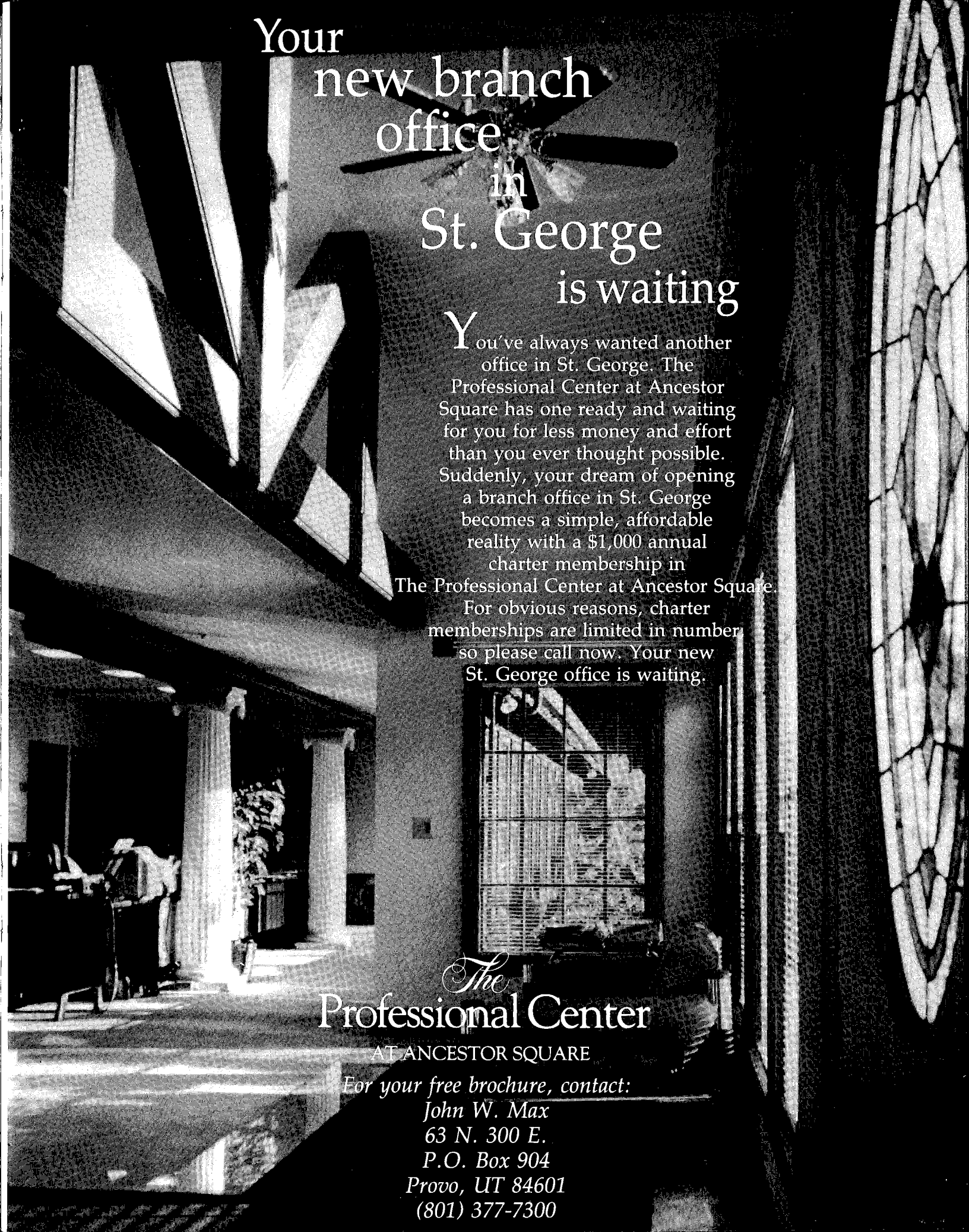
The *Utah Bar Journal* staff will seriously and conscientiously review all articles, but reserves the right to reject articles it considers, for example, inappropriate, poorly written, poorly researched, of too limited interest or to have been recently covered in earlier *Journal* issues.

Manuscripts must be typed, double spaced, and accompanied by brief biographical information about the author. Although there is no minimum or maximum length, the length of any article submitted must be reasonable and appropriate for the subject covered and must obviously fit within the physical limitations of the *Journal.* Submissions should be made to the *Utah Bar Journal,* State Bar Offices.

The *Journal* staff will edit punctuation, spelling and style as required. Articles may be cut as appropriate and needed, but cuts that are substantial or which could affect the overall impact of the article will not be made without consultation with the author.

If an article has been previously published elsewhere, the submission should include a statement that includes the name and type of publication, when it was published and any other information that would affect the editor's decision concerning publication in the *Journal.*

The editor also welcomes oral inquiries about possible articles.



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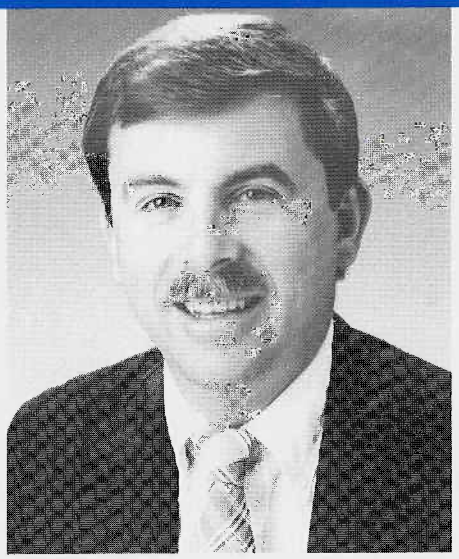
PRESIDENT'S MESSAGE

Did you hear the one about the lawyer who. . . ?

We've all been there—at the party or the business meeting or the family gathering—and someone will invariably tell a lawyer or a judge a joke like "What's brown and black and looks good on a lawyer—a doberman," or "What do you have when you have 10 lawyers buried up to their necks in sand? Not enough sand," or "I saw a strange sight the other day—a lawyer walking down the street with his hands in his own pockets!" And when those jokes are told the crowd will voice its approval, look critically at you and wait for someone else to come up with another "Well, did you hear about the lawyer who. . . ?"

To say the least, those exchanges are uncomfortable for lawyers and for the most part unjustified, and I for one am getting tired of the continuous assault on our profession—be it in the form of humor or otherwise. That is especially so when I see the thousands of hours of volunteer time that lawyers and judges freely give to their profession, their fellow citizens and their community. Lawyers are always helping the poor, the elderly, students, minorities, charities, and civic groups. They unselfishly give of their time and talents in the hope that our communities, our institutions and our system will become a little better, a little more responsive to the needs of each of us.

This year I've been trying to get that message out to the public. I've been speaking whenever asked by civic groups such as the Kiwanis, Exchange and Rotary clubs, local Bar Associations, and anyone else who may want to hear about the positive things lawyers and judges do, but for which they seldom or ever receive fair credit or recognition. I've told my audiences that I'm getting tired of the incessant lawyer jokes. I've told them about the high Code of Professional Responsibility to which we all attempt to adhere. I've asked them to look around and see if they can find another profession that requires the stringent and extensive ethical standards that we impose upon and apply to ourselves. I've asked them to identify a public service project undertaken by any other profession that even closely reaches the magnitude of the Law and Justice Center—a $3.2 million



Kent Kasting

project with $1.1+ million in lawyer donations. It is a first-of-its-kind facility that is already serving the public with a variety of programs—all without the expenditure of one taxpayer dollar. I've asked them to honestly and objectively think where our nation, and in fact our society, would be if dedicated lawyers had not been around to give of their time and talent. I've asked them to consider what Lewis Land said about lawyers:

> I am the lawyer. I displaced brute force with mercy, justice and equity. I taught mankind to respect the rights of others to their property, to their personal liberty, to freedom of conscience, to free speech and free assembly. I am the spokesman of the righteous causes. I plead for the poor, the prosecuted, the widows and orphans. I maintain honor in the marketplace. I am the champion of unpopular cases. I am the foe of tyranny, oppression and bureaucracy. I pleaded for the freedom of the slave in Greece and for the captive in Rome. I fought the Stamp Act. I wrote the Declaration of Independence and The Rights of Man. I defended the slaves. I was an abolitionist. I issued the Emancipation Proclamation. In every land, in every clime, I punish the wicked, protect the innocent and raise the lowly, and oppose brutality and injustice. I fought in every war for liberty. I stand in the way of public clamor and the tyranny of majority. I plead for the rich man, lest prejudice prevent him from getting justice, and I insist that the poor man be accorded all his rights and privileges. I seek the equality of mankind regardless of race, color, caste and sex or religion. I hate fraud, deceit or trickery. I am forbidden to serve two masters or to compromise justice. I am the conservative of the past, the liberal of the present and the radical of the future. I believe in convention, but I cut the Gordian knot of formalism and red tape to do justice and equality. I am the scapegoat of the world. I hold the rights of mankind in the hollow of my hand, but am unable to obtain recognition of my own. I am the pioneer. I am the last to renounce the past and to overturn the present. I am the just judge and the righteous ruler. I hear before I condemn. I seek the best in everyone. I am the lawyer.

The responses I've received from the people I've spoken to have been positive. I have not been forced from the podium or the unwilling recipient of tomatoes jettisoned from the crowd. To the contrary, I've seen reactions such as, "Well, I've never looked at it that way before," or "Kasting may have a point there."

During the remainder of my term as your president, I intend to continue my efforts in getting the message out to the public that lawyers and judges are honest, hard-working, caring individuals committed to the high ethical standards of their profession.

However, I do not believe that the duty to educate the public about the legal profession falls only on the shoulders of a Bar president. It is an obligation that each of us as members of the legal profession have. We have to stand up for our profession. We have to be vocal about it. We have to register our dissatisfaction if someone elects to malign lawyers and judges. And whether the jokes we hear are malicious or innocent, our duty is not to chuckle and sheepishly move into the background, but rather to say, "Hold on a minute, that may be funny, but let me tell you what lawyers and judges really do—what they are really about." You might also want to tell them the one about the lawyer who, when asked what he was going to do with a large contingent fee he had just received, responded and said, "I'll just keep practicing law until it runs out."

Or you could tell them the "rest of the story," about Shakespeare's would-be line, "Let's kill all the lawyers." That line is taken out of context. The dialogue appears in *The Second Part of King Henry III.* Jack Cade is a would-be rebel of questionable character. He describes to a group of townspeople the Utopia they would enjoy if only

Cade were king.

Cade: And when I am king, as king I shall be...there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord.

At this point, Dick the Butcher, who questions Cade's proposition, tries to encourage Cade to continue his fantasy:

Dick: The first thing we do, let's kill all the lawyers.

Cade readily agrees, and responds:

Cade: I did but seal once to a thing, and I was never my own man since.

Apparently, Cade once made a contract, and a lawyer held him to it!

As Myron Moskovitz has said: Shakespeare's meaning seems clear: In a fool's paradise, there will be limitless quantities of food and drink; all will think alike—so there will be no disputes—and all will worship the fool. Killing all the lawyers will ensure that people will be as free as children, not having to keep their bargains. Since there will be no disputes, lawyers will be unnecessary anyway. For better or worse, the real world does not quite fit Cade's dreams. In our quests for limited quantities of food and drink (and more), disputes arise, and someone—such as lawyers—must help to resolve them.

This is the message that we as lawyers and judges have to convey to the public. We have a duty as trained advocates to defend the honor and integrity of our profession, and we can discharge that duty by letting the public know the great society in which we live, work and play would not be if there were no lawyers to assist people in charting a course through a most complex and ever-changing world, and that lawyers' jokes for the most part are inaccurate and simply not that funny.

By the way, did you hear the one about the doctor who...?

By Kent M. Kasting, President

COMMISSIONER'S REPORT

Dear Colleague:

For many years, I have sensed that the Utah Bar Association does not enjoy the respect and support of its members to the degree that it should. My views in this regard have been reinforced by my experiences since becoming a Bar commissioner. There is, in my opinion, a sizable schism within our Bar.

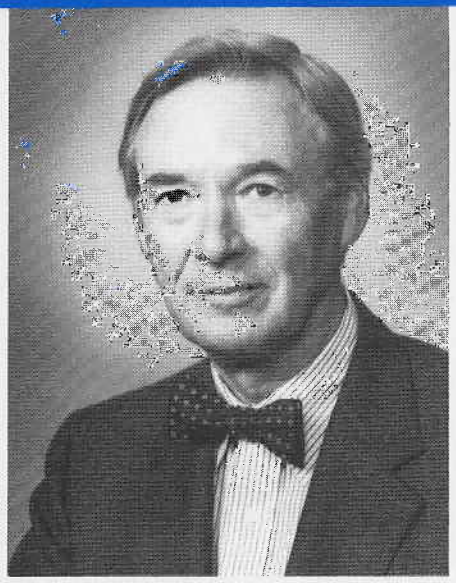
Many of our members feel that the Bar leadership has become the private province of the large Salt Lake firms. Some think it is a continuum of the Salt Lake County Bar. I don't believe either to be true, but the history of our leadership would support these conclusions and the fact that many think this is an unhealthy condition within our Bar.

There is also the unfairness attendant to the disparity of lawyers represented by each commissioner. There are 11 commissioners, one from each division except the third which has seven commissioners. The number of lawyers represented by each commissioner is as follows:

First Division (First Judicial District)	74 lawyers
Second Division (Second Judicial District)	290 lawyers
Third Division (Third Judicial District)	408 lawyers
Fourth Division (Fourth Judicial District)	354 lawyers
Fifth Division (Fifth, Sixth, Seventh and Eight Judicial Districts)	145 lawyers

The problem is most exacerbated in the Fifth Division, for there are few geographic ties and no broad, underlying social or professional contacts. This is to a lesser degree also true in the Fourth Division. Many of the lawyers have never met their representative. Under the circumstances, a sizable portion of our Bar feels disenfranchised.

Our recent experience with the Law and Justice Center points out the underlying fragility of our present organization. Some of our members have told us that the center was for the benefit of the few and that it was an expensive undertaking that imposed unwarranted financial burdens on the membership without their consent. The age-old evil of "taxation without representation"



Jackson B. Howard

was at the heart of their complaints, for it is obvious that six members of our 11-member commission had it within their power to make major policy changes and incur large obligations. (Incidentally, the decision eventually was unanimous and I personally believe it to be a wise and necessary undertaking.)

As a practical matter, we do not have a forum to which any lawyer can become a leader or a representative. The reasons are apparent.

For these and many other reasons which are implicit in the question, I brought the issue to the attention of the Commission and President Kasting has appointed me chairman of a committee to research and investigate the question with the charge of making a report to the commission regarding our findings. The committee members, in addition to myself, are James H. Clegg, Salt Lake City; Brian R. Florence, Ogden; and Paul M. Durham, Salt Lake City.

To date, we have met with the Eastern Utah Bar and the Uintah Basin Bar and have obtained some input and impressions. Those Bars are each undertaking an analysis within their own jurisdictions. We intend to meet with all the local Bars this year. In addition, we have prepared a questionnaire which you will soon receive. It is important that each of you take the time to respond to that questionnaire. Your opinion is truly important to our decision.

The experience of other similar Bars in the country suggests that the most probable alternative to our present organization would be a two-tier structure which would include a House of Delegates from 50 to 100 delegates selected on a dual basis of geography and numbers represented. That body would meet once or twice a year for the purpose of approving the budget, making major policy decisions, and selecting from its body officers and a Board of Commissioners (Board of Governors) to manage the regular operation of the Bar.

It is too early to discuss other alternative possibilities, and there is not the space in this letter to intelligently analyze the pros and cons of any proposal. My purpose here is to make you aware that the commission is concerned and working on methods to improve our organization and to bring greater harmony and more active participation from our members.

If you have any questions or suggestions on this subject; you may address them to me either at the Bar office or my office in Provo.

Respectfully,

Jackson Howard

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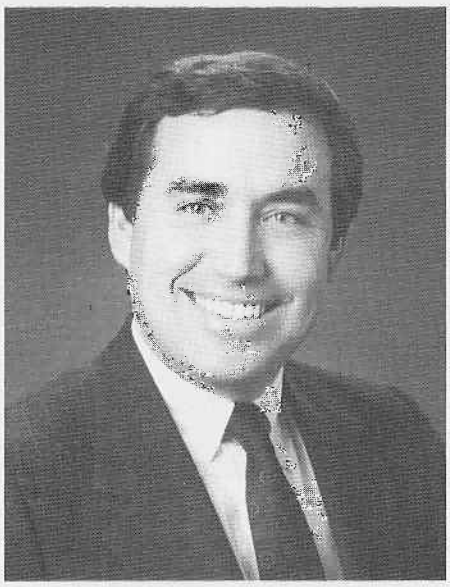
Recent Developments in Corporate Law

By P. Christian Anderson

The following is a distillation of information presented at the most recent State Bar convention in San Diego, highlighting significant developments in the areas of corporate and securities law during the previous year. The statutes, rules and judicial decisions described below should now be familiar to practitioners in those areas. However, I have attempted to select from the information previously presented those items most likely to be of interest to members of the Bar generally.



MR. ANDERSON is a partner of the Salt Lake City law firm of Rogers, Anderson & Poelman. He previously practiced for seven years with the California law firm of Wilson, Sonsini, Goodrich & Rosati and for two years in the Salt Lake City office of the New York firm of LeBoeuf, Lamb, Leiby & MacRae. Mr. Anderson is a 1978 graduate of the University of Utah College of Law.

SEC ADOPTION OF RULE 701

On April 7, 1988, the Securities and Exchange Commision (the "SEC") adopted Rule 701, which provides an exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") for offers and sales of securities issued by non-reporting companies pursuant to certain compensatory benefit plans and written contracts. This rule could have a significant impact on the use of employee stock incentive plans and arrangements by companies eligible to rely on the rule.

In the past, a significant concern for privately held companies has been the lack of a readily available exemption from the Securities Act's registration requirements for securities issued pursuant to employee stock option and purchase plans. Companies offering broad employee participation in such plans have had a particularly difficult task establishing the availability of an exemption.

The use of employee stock option plans has also often resulted in the disappointment of employees who have failed to understand the restrictions imposed by Rule 144. Such employees frequently assume that once their employer has a registered public offering of securities, or "goes public," the shares previously acquired by them can be traded without restriction. Unfortunately, this is not true, as such shares are typically "restricted securities" which cannot be sold under Rule 144 until they have been held two years after the date of exercise of the option and payment for the shares. Even employees aware of the holding period requirements have been surprised to learn that their shares may have become freely tradeable sooner had they waited to exercise their options. This is because employers with option plans frequently register those plans on Form S-8 promptly after becoming reporting companies. However, while all unexercised options may be included within such registrations, the number of previously issued shares that may be included is limited (to 10 percent of the total number of shares available under all registered employee benefit plans).

Rule 701 alleviates the two problems described above by (i) providing an exemption from the Securities Act's registration requirements for securities issued by non-reporting issuers pursuant to compensatory benefit plans and written contracts between the issuer or its parent- or majority-owned subsidiaries and their employees, directors, general partners, trustees, officers, consultants and advisers, and (ii) exempting shares issued under Rule 701 from the two-year holding period requirement of Rule 144, allowing them to be resold 90 days after the issuer's initial public offering (non-affiliates are also relieved from the public information, volume limitation and notice requirements of Rule 144). Since Rule 701 applies to unexercised options granted prior to becoming a reporting company as well as to shares issued pursuant to such options, whether exercised before or after a public offering, issuers may also avoid the need to use Form S-8 to register shares issuable under Rule 701 options.

Rule 701 restricts the amount of securities that can be offered and sold in reliance on the rule. The amount of securities that may be subject to outstanding offers (options) in reliance on the rule, plus the amount of securities sold in the preceding 12 months in reliance on the rule, may not exceed the greater of (i) $500,000, (ii) 15 percent of the issuer's total assets or (iii) 15 percent of the outstanding securities of the class being offered. In any case, the aggregate offering price of securities subject to outstanding offers and sold during the preceding 12 months may not exceed $5 million. Rule 701 and accompanying Rules 702 and 703 impose other limitations on the use of the exemption. Rule 702 requires the issuer to file a notice on Form 701 within 30 days after aggregate sales pursuant to Rule 701 exceed $100,000, and thereafter annually within 30 days following the end of the issuer's fiscal year.

Significantly, Rule 701 permits issuers to rely on the rule with respect to offers made prior to its adoption. Accordingly, it would be wise for companies to review all past offers (*i.e.*, option grants) under employee plans to determine if any steps should be

taken to secure the benefits of Rule 701.

Any offer or sale of securities must comply with state as well as federal laws and regulations. Accordingly, an issuer cannot assume that an offer or sale of securities exempt from the Securities Act's registration requirements, by reason of Rule 701, will also be exempt from state securities registration and qualification requirements. It will be interesting to see whether Utah and other states take action to provide exemptions consistent with that allowed by Rule 701.

SEC ADOPTION OF CHANGES TO REGULATION D

The SEC has recently adopted significant amendments to the rules comprising Regulation D. The revisions, which became effective April 11, 1988:

(a) Expand the definition of accredited investors to include:

(i) additional institutional investors, including savings and loan associations and similar associations such as credit unions, whether acting for their own accounts or as fiduciaries, and broker/dealers registered under the Securities Exchange Act of 1934 (the "Exchange Act") and purchasing for their own account;

(ii) ERISA plans which have savings and loan associations as plan fiduciaries;

(iii) self-directed employee plans where investment decisions are solely within the control of an accredited investor;

(iv) corporations, partnerships and business trusts with total assets in excess of $5 million; and

(v) a couple with joint income in excess of $300,000;

(b) Eliminate the $150,000 purchaser from the definition of accredited investors;

(c) Increase the total offering amount permitted for Rule 504 offerings from $500,000 to $1 million; provided that no more than $500,000 worth of securities are offered and sold without registration under state securities laws;

(d) Revise general solicitation restrictions under Rule 504 for certain state registered offerings; and

(e) Adjust the disclosure standards for offerings of less than $2 million to parallel more closely the requirements applicable to Regulation A offerings.

ADDITIONAL PROPOSED CHANGES TO REGULATION D

(a) *Innocent and Immaterial Violations.* The SEC has proposed a new Rule 508 that would provide a good faith substantial compliance defense for "innocent and immaterial" Regulation D violations. The proposed rule would provide a defense against loss of the Regulation D exemption if the parties involved are able to show a reasonable and good-faith effort to comply with the regulation and any violations are isolated and insignificant.

(b) *Changes to Filing Requirements.* Under the proposed rule changes, the Form D filing requirement found in Rule 503 would continue, but such filing would no longer be a condition to the availability of the Regulation D exemptions. However, proposed Rule 507 would provide an incentive for timely filing of the form by disqualifying an issuer from the use of Regulation D exemptions if it has been found to have violated the filing requirement. The SEC would have the power to waive disqualification upon a showing of good cause.

(c) *Further Accredited Investor Changes.* Additional revisions to the definition of accredited investor have been proposed, including the addition of certain plans established and maintained by the governments of the states or their political subdivisions as well as their agencies and instrumentalities, for the benefit of their employees. Such plans must have either a bank, savings and loan association, insurance company or registered investment adviser as their plan fiduciary and must impose certain requirements regarding fiduciary responsibility.

(d) *Demonstrating Restricted Nature of Securities.* Securities acquired under Regulation D transactions have the same restricted status as securities acquired in a transaction under Section 4(s) of the Securities Act and cannot be resold without registration or exemption. Issuers are obligated to ensure that no improper distributions of their restricted securities occur and to take reasonable care to assure that purchasers are not underwriters. Current Rule 502(d) lists certain actions which must be taken to reflect such reasonable care, including the placement of legends on certificates and notifications to purchasers. Under the proposed rule change, the actions listed in Rule 502(d) would no longer be required as a condition to a Regulation D exemption. Taking such actions, however, would be a satisfactory demonstration of the requisite standard of reasonable care.

UTAH LEGISLATION IMPACTING THE PRACTICE OF CORPORATE LAW

The following bills were passed by the 1988 session of the Utah Legislature and became effective on April 25, 1988:

(a) *Directors (HB 176) (See Section 33 and 34 of the Utah Business Corporation Act).* This legislation:

(i) changes the law regarding the required minimum number of directors for Utah corporations, to provide that if a corporation has less than three shareholders, the minimum number of directors may be equal to the number of shareholders; and

(ii) clarifies that directors are not required to serve against their will, by specifying that a person may not be named as a director without his or her consent, and that a director may resign at any time upon written notice to a corporation.

I believe that the intent of HB 176 was a good one—to provide increased flexibility to the management of corporations with fewer than three shareholders. However, I also believe that HB 176 is flawed in certain respects. For instance, why is a corporation with a single shareholder allowed to have

one director but not permitted to have two directors? There appears to be no logical explanation. Furthermore, are no directors required for so long as no shares have been issued? Since no corporation can issue shares until after it is created by the filing of the Articles of Incorporation, at the time of such filing, every corporation will have zero shareholders. Accordingly, it would appear that a newly formed corporation need not indicate any initial directors in its Articles of Incorporation, defeating the purpose of the provisions of Sections 34(2) and 48(k) of the Utah Business Corporation Act calling for initial directors to be named in the Articles of Incorporation. I do not know whether the Division of Corporations and Commercial Code is now accepting for filing Articles of Incorporation which show no initial directors. If corporations are permitted to be created without any initial directors, it is unclear who can elect the initial directors or take any other actions on behalf of such corporations. In states not requiring directors to be named in the charter documents, the incorporators are typically authorized to elect directors and officers and to take other actions appropriate to perfect the organization of the corporation. Utah statutes only authorize incorporators to sign and deliver Articles of Incorporation and to call the organizational meeting of the directors named in the Articles. Finally, if the Articles of Incorporation establish less than three initial directors, as permitted by HB 176, and the number of shareholders later increases to three or more but the bylaws fail to fix a number of directors, what is the effect of the provision that in the absence of a bylaw the number of directors shall be the number stated in the Articles? I would recommend that legislation be introduced to address these concerns.

(b) *Same-Day Processing of Corporate Documents (HB 141) (See Sections 100.5 and 124.5 of the Utah Non-profit Corporation and Cooperative Association Act, the later Section of which should have made part of the Utah Business Corporation Act).* This bill directs the Division of Corporations and Commercial Code to provide expedited, 24-hour processing of corporate documents and authorizes the Division to charge and collect a fee for this expedited service (currently $25).

(c) *Corporate Dividends (SB 11) (See sections 2(7) and (10) of the Utah Business Corporation Act).* The purpose of this legislation is to clarify that a corporation with subsidiaries can use consolidated financial accounting to determine surplus out of which it may declare a dividend.

(d) *Division of Corporations and Commercial Code Amendments (SB 106) (See Title 46 of the Utah Code).* The Division of Corporations and Commercial Code proposed the amendments included in this bill. The bill repeals the existing laws relating to Notaries Public and enacts a new "Notaries Public Reform Act." I will not discuss the new notary law in this article, but you should be aware that it presents some traps for the unwary. For example, a notary public may not perform a notarial act if the notary will receive any fee, advantage, right, interest or other consideration, in excess of the statutory notary fee, from a transaction connected with the notarial act. This provision would prevent an attorney from notarizing a document prepared for a client, and may also be construed to prevent the attorney's secretary from notarizing such a document.

The bill also makes certain changes to the Utah Business Corporation Act, the Utah Non-profit Corporation and Cooperative Association Act, and the Utah Assumed Name Statutes. The principal modifications are summarized below:

(i) A corporate or assumed name not in English must be, for purposes of recordation, translated into English (in addition to the existing requirement that it be transliterated into letters of the English alphabet).

(ii) A non-profit corporation may amend its articles of incorporation to become a business corporation, and a business corporation may amend its articles to become a non-profit corporation.

(iii) A foreign corporation which has had its certificate of authority revoked may requalify to transact business in Utah by reapplying for a new certificate of authority and by complying with all applicable provisions of law, including the payment of any past-due taxes, assessments, penalties and fees.

(iv) The time allowed for reinstatement of a corporation suspended and dissolved for failure to file an annual report or pay corporate franchise taxes has been shortened from three years to one year. The time for which the corporate name and any assumed name of a dissolved corporation is protected from use by another personal entity has also been shortened from three years to one year.

CASES OF GENERAL INTEREST

(a) *Public Company Disclosure Obligations (Establishment of Materiality Standard).*

By its decision in *Basic Inc. v. Levinson*, 108 S.Ct. 978 (1988), the U.S. Supreme Court expanded the obligation of a publicly traded corporation to disclose preliminary merger negotiations. The Court rejected the "bright line" test of materiality that had been adopted by various lower courts and pursuant to which preliminary merger negotiations were not considered material or required to be disclosed until an agreement-in-principle had been reached regarding price and structure. The Court concluded that materiality in the merger context depends on the probability that the transaction will be consummated, on the significance of the transaction to the issuer, and the significance a reasonable investor would place on the negotiations. In short, whether merger negotiations in any particular case are material depends on the facts, so the materiality issue must be determined on a case-by-case basis.

In a broader context, the Supreme Court has adopted its standard for determining whether information is material. The test is one of balancing the probability of the event occurring against the impact or significance of the event should it occur.

(b) *In Pari Delicto Defense in Securities Actions.*

The Supreme Court, in *Pinter v. Dahl*, (108 S.Ct. 2063 (1988), has confirmed that

the "in pari delicto" or "equal fault" defense is available in securities actions (specifically private actions under Sect. 12(1) of the Securities Act, other than Sect. 10(b) and Rule 10b-5 actions, to which the defense was previously held to be applicable. The Court offered a two-part test to determine the availability of the defense. First, the plaintiff must be at least substantially or equally responsible for the illegal action (in this case, the issuer's failure to register or to perfect an exemption). Second, preclusion of the suit must not significantly interfere with public policy (in this case, effective enforcement of securities laws and protection of the investing public). The Court determined that in this instance the second test would be satisfied if the investor were primarily a promoter and not primarily an investor. The Court also addressed the issue of whether someone not transferring title to shares can be liable for Sect. 12(1) actions. The Court concluded that a non-owner who solicits a stock purchase, motivated at least in part by a desire to serve his own financial interests or those of the security owner, might be liable as a seller for Sect. 12(1) purposes.

(c) *Completion of Part-or-None Offering by Other Than Genuine Market Transactions.*

In C.E. Carlson, Inc. v. Securities Exchange Commission (10th Cir., June 10, 1988), the petitioners were the managing underwriter for a part-or-none public offering of shares of a newly formed corporation and a broker-dealer who was associated with the underwriter and also an officer and director of the issuing entity. Unable to sell the minimum number of shares required by the prospectus to close the offering, the petitioners attempted to avoid the failure of the offering by having the remaining shares purchased by the individual petitioner and two partnerships which he controlled. The SEC determined that by such actions the petitioners had violated certain anti-fraud provisions of the federal securities laws (including Sect. 17(a) of the Securities Act; Sect. 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"); Rules 10b-5 and 10b-9; Sect. 15(c)(2) of the Exchange Act; and Rule 15(c)(2). The underwriter was to receive a 10 percent commission upon successful completion of the offering. Proceeds from the offering were to be held in escrow until the required minimum number of shares had been sold. If the minimum was not reached within the offering period, investors' funds were to be returned. Unable to otherwise complete the offering, the petitioners and related entities purchased the remaining shares as indicated above, to permit the funds to be released to the issuer and commissions to be paid to the petitioners. The purchases in question were made in part with borrowed funds that were repaid out of the proceeds of the offering, and they enabled the issuer to avoid refunding amounts paid by public investors. The petitioners appealed the SEC's confirmation of an administrative law judge's decision. The 10th Circuit agreed with the SEC's reasoning that an underwriter or issuer may not represent that securities are being sold on a part-or-none basis unless the offering is contingent on the refund feature of the offering. The potential refund of investor subscriptions, should the market judge the terms of the offering unsatisfactory, offers some protection to investors. In the instant case the funds to purchase the last shares in essence came from the offering itself, so the offering appeared successful, but not by genuine market transactions.

(d) *Vicarious Liability of Shareholder Attorneys.*

In Stewart v. Coffman, 748 P.2d 579 (Utah App. 1988), the Utah Court of Appeals considered the issue of whether a shareholder of a law firm organized under the Utah Professional Corporation Act is vicariously liable for the acts or omissions of another shareholder of the firm. The court determined that there is no such liability if the shareholder did not participate in the alleged acts or omissions.

(e) *Invalid Bylaw Provision Possibly Enforceable Contract.*

In *McKee v. Williams*, 741 P.2d 978 (Utah App. 1987), the Utah Appeals court indicated that a bylaw provision that is invalid as a matter of general corporate law may be enforceable between shareholders assenting to it under principles of contract law. The case involved what was arguably a stock forfeiture provision in corporate bylaws that was unsupported by any charter authorization.

"Managing the High Profile Case"
(Taking the Constitution Seriously)

REMARKS OF BRUCE S. JENKINS
CHIEF JUDGE, UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

1988 UTAH JUDICIAL CONFERENCE
OGDEN, UTAH
SEPTEMBER 29, 1988

I am genuinely honored to be here. I think this may be the first time in Utah history—prestatehood, poststatehood—where a sitting federal judge has been asked to speak at a statewide gathering of state court judges.

From territorial beginnings, that amounts to 141 years.

From statehood, that amounts to 92 years.

As a court, we appreciate the invitation, the camaraderie, and hope to merit your confidence.

Even so, I speak to you today with some hesitation.

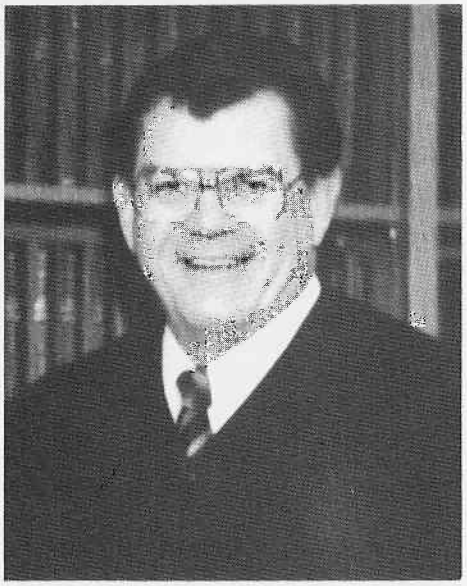
I operate under a cloud. Let me lay it out so that everybody knows exactly what I mean.

Earlier this year, in a low profile case, the federal district court was placed under a curse. I point this out to you not by way of excuse—nor indeed by way of explanation. I simply tell you the fact so that you can better evaluate my remarks. (I do take some comfort in the fact that the curse came directly from a defendant and not through counsel.)

One bright day, a defendant standing by the side of his court-appointed attorney wanted me to reconsider a pro se motion filed by him which I had previously denied. The following took place.

The court:"...we're going to set a trial date today. Your motion to dismiss I have considered, sir. It looks to me like you have nothing to add to it. The motion will be denied. Let's fix a date."

Defendant: "Your honor, I am bound by the laws of God to state to you that you are in violation of your oath—that you are a criminal under the laws of this United States of America. You have been and are a traitor of the United States of America. I command in the name of Jesus Christ the angels speedily take your spirit to the spirit prison and there retain you until the resurrection of the unjust, in the name of Jesus Christ, amen."



The court: "Okay. Now let's fix a trial date."

Now that is an experience only a trial judge could have. However, I am confident that if the matter went on appeal, the Appelate Bench might suggest that the curse raised serious questions of fact which require an evidentiary hearing and would probably reverse and remand for further proceedings.

Please don't think that I took the curse lightly. Shortly after I was favored with a curse, I was reading in a book picked up at an idle moment from a remainder table. It told of Father Divine, a black, self-appointed cleric who claimed to be God on Earth. He flourished during the Depression days when I was a child. He got into trouble with the law. After trial, he was sentenced. Four days later, the judge died. Father Divine, in response to an interview, merely said: "I didn't really want to do it."

Let me offer a toast—perhaps a prayer: God willing, may we meet together again at this time next year.

At any rate, please appreciate the baggage of the curse.

I was asked to speak on management of the high profile case. Implicit in that challenge—and it was a challenge—is the other side of the coin. I call that side "taking the constitution seriously."

I want to say a few things in general before I make certain suggestions in particular. I relish the opportunity to talk with fellow judges because we come from a common culture, having learned to think in a common way. We speak a common language, and our values, goals and objectives are the same.

The clues for meeting and mastering the ever-present problems of a high profile case are found in a few fundamental ideas footed in the constitution, in particular, and in the history of the legal system in general.

We are still, some 201 years after the instrument was first signed, trying to meet the preamble-stated agenda. We are still endeavoring to form a more perfect union. We are still endeavoring to establish justice, promote domestic tranquility and secure the blessings of liberty for ourselves and our posterity.

How miraculously wise of the founding fathers to create a system of dual sovereignties and separated powers. But we are still fighting the never-ending battle of fragmented power—the geographic battle, which we call federalism, and on the federal level, the efforts of one branch of government to enlarge itself at the expense of another. We forever man the boundary lines of governmental power.

As background for the burden of my discussion, I want to talk briefly about what courts are all about and will take a few moments to describe some common characteristics of the courts. I do this to revisit fundamentals with you. In the popular literature of the day, there is much confusion about the fundamentals—much confusion and much nonsense. We need first to think

clearly about court purpose and court process, and the fundamental values they reflect.

What is our purpose?

To what and to whom do we owe our allegiance?

In the briefest way possible, our job is to do justice. Micah said it best: Do justice, love mercy, walk humbly.

When I entered upon this job, I took an oath. When you entered upon yours, you took a similar oath. Every appellate judge in the federal system, including a justice of the United States Supreme Court, takes a similar oath.

Let me read it to you. "I do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a United States District Judge according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God." I keep a copy of that under glass on my desk. I keep a copy before me on the bench.

When I suggested that the subtitle of the topic for discussion—the other side of the coin—was taking the constitution seriously, I meant what I said.

The oath summarizes eloquently court purpose and court manner.

Administer justice.

Fairly.

Agreeably to the constitution and laws.

If done well, the court product is accepted by most of the populace, even if they disagree with it.

The reasons for that, in my opinion, are three characteristics that courts have which, I believe, persuade acceptance by most members of the populace.

I call them continuity, stability, integrity.

Let me illustrate. Our courts provide cultural *continuity*. We bind the past and the present with the future. Courts may reach back into the reservoir of experience and use that past experience in resolving similar present-day problems. We look to precedent.

Our courts provide *stability*. We are essentially conservative institutions in the classic sense. We can deter other branches of government from running too fast or stop them from exercising power outside of their rightful boundaries. We arbitrate between contending factions which hold government power.

Our courts provide *integrity*. That is a handy label—a shorthand way of observing that:

(a) Courts are passive. They don't seek business. They are available.

(b) Courts are disinterested. Not uninterested. Disinterested. They have no ax to grind. They stand apart.

(c) Courts move at a different pace. They have an obligation to take time to think. (Thought, not being a performing art, is often unnoticed.)

(d) Courts place high emphasis on the method of reason and the value of talk, the meaning of words.

Continuity, stability, integrity. These, it seems to me, are some of the reasons the American populace is generally willing to abide by what a court says even if, on occasion, they disagree with what it says.

These observations provide a glimpse of some facets of our actions relating to judicial process and judicial product.

Our goal is a just product.

Our means is a fair process, sometimes called due process.

Our fundamental guide is that venerable instrument we call the constitution.

Hauntingly present in the confluence of process and just product are standards of fairness relating to government conduct.

Techniques have been developed historically to restrict government conduct which is considered unfair.

The clues for meeting and mastering the ever-present problems of a high profile case are found in a few fundamental ideas footed in the constitution.

Many of these have been institutionalized.

For example, a person charged with a crime is *presumed* to be innocent. The fact that he is charged is supposed to say nothing about the truth of the charge until the truth is found—where a fact finder gives us "ver" (truth) "dict" (to say). The charge as we all know is an invitation to community judgment.

The government has a solemn obligation to demonstrate guilt beyond a reasonable doubt—no mean burden. No more solemn obligation exists.

While old-fashioned in the eyes of some, on the federal level grand jury activity, determining whether one is even to be charged, is supposed to be secret. The effort is, of course, to be fair to a person who may be a target but cannot properly be charged, in short to minimize the damage to his status or reputation, if no charge is forthcoming.

As a means of deterring improper government conduct in procuring evidence, we have developed a procedure called a motion to suppress, where the essential fairness of evidence gathering on the part of government may be examined, and if found to be beyond the bounds of fair activity, use of the evidence can be precluded. This is not done for the purpose of condoning criminal conduct of any kind, but of educating those engaged in law enforcement that *they* must be fair, that *their* actions must be constitutional, that *they* are expected to conduct themselves as officers of the government in an appropriate and lawful fashion. It is no excuse to say that the crooks aren't fair, or that one must fight fire with fire, or that gutter tactics require gutter tactics.

In the interest of fairness, we allow the defense of "entrapment" when a target claims that he was tempted to violate the law by a lawbreaking but insulated governmental officer.

What I am trying to illustrate here is something that the legal philosophers, the moral philosophers, the thoughtful spokesmen of the great religious systems of the world have all said.

Means and ends must harmonize.

Means and ends must be consistent.

One cannot achieve a just judicial product by using unfair means—fabricated documents, untested testimony, surprise information. My sermon for the day.

No one says that we must administer justice fairly and agreeably to the constitution and laws of the United States except in high profile cases.

The same obligation of providing a fair judicial process and just product is equally there and—because of variable factors—more challenging to achieve.

A Michael Deaver, an Ollie North, a Billy Sol Estes, a Sam Sheppard, a Joseph Smith, a Gary Bishop, a Mark Hofmann, a Harry Bridges, a Charlie Chaplin, a Ted Bundy, a William Presser, a Joseph Paul Franklin, a Bess Myerson, are all entitled to fair process and a just judicial product.

With them, as with anyone else, we need to take the constitution seriously.

I have talked of court mission, and have described court characteristics, and have preached that means and ends must be consistent. Now, I want to pause here to make a distinction.

It is an important distinction, often blurred, often overlooked, often simply ignored.

It is an important distinction lost in the shuffle of life or descending media deadlines.

In the social order, a court trial is not a media event.

A trial is a public event which may be observed and reported by the media. The purpose of a trial is not exposition nor entertainment. The purpose of a trial is justice—a word deservedly used with great humility.

The presumption of openness—a public trial—is *not* meant to supply 30-second headlines for the 5 o'clock news or to fill in the blanks in the newspaper dummy. It is to ensure that the judicial process is a just process and to obviate star chamber consequences with all of their attendant evils.

Let me give you a rough analogy. One does not run a business for the purpose of keeping the books. One keeps the books in order to run a business. A word from a more ancient source—man is not made for the Sabbath, the Sabbath is made for man.

A trial is not a media event. All of society needs to think clearly about that and, having thought clearly, *act* responsibly.

There is a wonderful instruction which I give in all criminal cases. I always get a little misty eyed when I give it because I believe it.

> You are expected to use your good common sense in considering the evidence in the case. If the defendant is proved guilty beyond a reasonable doubt, say so. If he is not proved guilty, say so. The question is never "will the government win or lose?" The government always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

A defendant is presumed innocent. He is entitled to a public trial. He is entitled to "fairness" found in "due process," and the trial judge—with or without the help of the attorneys, with or without the help of others—has a constitutional mandate to try to give it to him.

A trial is not an athletic contest. It is not a war. And while answers sought appear categorical—guilty, not guilty; for plaintiff, against defendant; for defendant, against plaintiff—naive though it sounds, the search is a search for truth—verdict—by means of a fair process.

Words can be wonderful. One of the most intriguing of studies is exploring the history of words. Let me give you an example. Take the word verdict.

Ver Truth
Dict To Say

To say the truth. In our search for truth, idealistic as it may be, we give information to a jury to ask them to "say the truth" to produce a ver dict.

We ask them to do that from information presented in open court and tested by the historic tools of trial, examination and cross-examination of witnesses, and the presentation of exhibits.

A witness is someone who knows something helpful in a case. He offers testimony at the behest of one party or another according to rules which have been formulated through the centuries.

From what a jury hears and sees *in open court*—evidence—it is called upon to "say the truth." No mean task. No mean responsibility.

Justice Felix Frankfurter remarked in *Irvin V. Dowd* back in 1961 as follows:

> Not a term passes without this court being importuned to review convictions, had in states throughout the country, in which substantial claims are made that a jury trial has been distorted because of inflammatory newspaper accounts—too often, as in this case, with the prosecutor's collaboration—exerting pressures upon potential jurors before trial and even during the course of trial, thereby making it extremely difficult, if not impossible, to secure a jury capable of taking in, free of prepossessions, evidence submitted in open court. Indeed such extraneous influences, in violation of the decencies guaranteed by our constitution, are sometimes so powerful that an accused is forced, as a practical matter, to forego trial by jury.

366 U.S. 717, 730 (concurring opinion).

Back in 1968, The Kaufman Committee reported to the judicial conference of the United States on the problems arising on the free press—fair trial issue.

In one paragraph of the report it states:

> The problem is by no means new. American legal history is studded with notorious examples of the impact of widespread and uncontrolled inflammatory publicity upon the administration of criminal justice. The trial of Prof. Webster in 1850, the Lizzie Borden Case in 1893, the Hall-Mills Case, the Trial of Sacco and Vanzetti, and the Hauptmann Case are only a few instances. The events surrounding the assassination of President Kennedy in November 1963 graphically illustrate the effect of pervasive news coverage and publicity on the right of a defendant to a trial by an impartial jury. Because of this publicity, the president's commission felt, "It would have been a most difficult task to select an unprejudiced jury, either in Dallas or elsewhere."

45 F.R.D. 391, 394-95 (footnotes omitted).

The citations extend back to the trial of Aaron Burr before Chief Justice Marshal in 1807. Defense counsel urged that the jurors had been prejudiced against Burr because of articles carried in the *Alexandria Expositor* and other newspapers.

Even then Chief Justice Marshal noted:

> The jury should enter upon the trial with minds open to those impressions which the testimony and the law of the case ought to make, not with those preconceived opinions which will resist those impressions.

The crux of the problem, according to the Kaufman Report, lies in simultaneously applying to the administration of criminal justice two constitutional rights—the right of the news media to publish, on the one hand, and the right of the individual accused of crime to an impartial jury on the other.

The first amendment provides in part:

"Congress shall make no law***bridging the freedom of speech, or of the press***."

The sixth amendment provides in part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed***."

The contour of a case, whether high or low, is a function of the publicity it receives.

It is a high profile case because of sustained and pervasive publicity prior to and during trial.

In a series of decisions, the Supreme Court has made it clear that convictions obtained under conditions permeated with prejudicial publicity cannot stand.

In *Sheppard v. Maxfield*, the Sam Sheppard Case, 384 U.S. 333 (1966), the Supreme Court laid down a mandate to the courts to deal with the problems caused by the impact of publicity on the jury system.

The court ruled that "the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom...." 384 U.S. at 363. The court stated:

> From the cases coming here, we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. *Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.* And Appellate Tribunals have the duty to make an independent evaluation of the cir-

cumstances.***We must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. *The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences.* Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function.

384 U.S. at 362-63 (emphasis supplied).

That case spawned Bar committees and judicial conference reports and a spate of law review articles and even a few books. It energized some Bar associations and some media persons, including some in Utah, to come up with agreed upon protocols—ethical standards, guidelines for lawyers and media representatives.

Standards were promulgated in 1969.

They were updated in 1981. They are even now, 1989, being updated.

In my opinion, like the Dead Sea scrolls, they remain unknown to many and a mystery to most, particularly if measured by the conduct of many of the persons and institutions which assisted in their formulation.

They are honored in the breach each day.

Back in 1965, Skelly Wright, now deceased but then a circuit judge for the District of Columbia circuit, said this:

> I realize, of course, that the conduct of the press in the past with reference to the protection of the rights of the accused has not been exemplary. Moreover, even after the press has erred on the side of prejudicial publicity in landmark cases, such as the Teapot Dome Scandal, Sacco and Vanzetti, and the Lindbergh kidnapping, its acts of contrition have consisted of little more than the utterance of pious platitudes. After each of these great news events, extreme pressure was brought to bear on the press to use self-restraint in reporting information which might prejudice the accused's right to a fair trial. Each time, a committee of the American Society of Newspaper Editors was appointed, and each time the report of the committee amounted to a pious plea for freedom of the press.

38 F.R.D. 435, 439-40.

Perhaps the Court of Appeals of the 10th Circuit was right in 1967 when it said: "The problem presented is incapable of a satisfactory solution." *Mares v. United States*, 383 F.2d 805, 808 (10th Cir. 1967).

Persons of good will, persons with professional responsibility, persons who care deeply about the constitution ought to be able to do better than that.

Let me now turn to techniques in dealing with some aspects of the cause celebre.

Some come from authoritative cases or texts or standards of professional conduct or protocol or federal regulations. Some come from frustrating personal experience.

First, let me warn you that the contempt power in dealing with persons other than parties, attorneys or court personnel is illusory. Under the cases it is somnolent, almost entirely dead. Justice Stewart of pornography definition fame and Justice Jackson thought a spark of life remained, but don't count on it in your lifetime or mine.

The power of contempt is most effectively used as internal power realistically available in dealing with parties, witnesses, jurors, officers of the court, court personnel.

Of course, if the media intervenes in a case, as they sometimes do in high profile cases, they may become a party, subjecting themselves to the orders of the court. As Justice Frankfurter noted, in the opinion cited earlier, "The court has not yet decided that, while convictions must be reversed and miscarriages of justice result because the minds of jurors or potential jurors were poisoned, the poisoner is constitutionally protected in plying his trade." 366 U.S. at 730.

The fact that the contempt power is there doesn't mean you have to use it.

The fact that it is there may relieve you from having to use it.

Remember means and ends, due process, just product. In order to achieve that in an appropriate case, you may have to change the location where a case is to be tried from a community where passions and opinions run high to a more neutral site.

You may have to change the time—let

things calm down—allow people to think again—if such waiting can be compatible with the constitutional right to a speedy trial. Depending on the circumstances, it may be wise to hear a matter quickly rather than delay. Publicity builds on itself. Saturation takes time. There may well be less damage in hearing a matter earlier than later. A speedy trial may serve the public purpose in more ways than one.

You may have to remind the attorneys, prosecutors, defense attorneys and their associates of their professional oaths, their professional responsibilities, their statutory responsibilities, and point out that a professional tries his case in open court and on the record, and you expect them to live up to their responsibilities. It is not appropriate to fan the flames of popular sentiment. As has been pointed out by the high court, attorneys are often sources of unbridled comment on cases, and it is necessary to bring this source of prejudicial information under control. The high court characterized unbridled comment as "habitual misconduct" which it called "highly censurable and worthy of disciplinary measures." Some persons, for reasons of their own, may not understand any other language.

You must be alert to making admonitory instructions—reminding jurors of their responsibilities in reference to evidence and outside sources of information. Most, as you know, are very conscientious. An occasional inquiry as to whether they are keeping faith with the court reminds them again. Advising them to bring to your attention any untoward matter can be helpful in assisting jurors to live up to their oath.

Enlarge the venire. Bring in whatever numbers of persons you need to provide a basis for obtaining an unpredisposed panel.

One thing I can do for you is to make available to you a means of voir dire examination which can speed up the process of asking questions, particularly of a sensitive nature, which will enable those intimately involved in the trial to make judgments as to prospective jurors. This is ordinarily done by agreement of counsel. It is done in writing. It is done with full participation by counsel in the formulation of questions and public commitment to prospective jurors as to how the information will be handled.

Using it, it was possible in two half days plus a full day to seat a jury which was passed for cause, when questions had been raised as to whether it would be possible to seat a jury at all.

Be generous in enlarging peremptory strikes. Better to spend the time and energy early than to try the case again.

Sequestration. It is such an easy word to use. It is very difficult to sequester a jury. The personal trauma to some lasts forever. Common folklore in our shop is that the last time we sequestered, we ended up with two divorces and one marriage. It simply must be a last desperate resort.

Follow the admonition of the high court to make use of side bar and chamber conferences outside the presence of the jury and all but participants to deal with matters of high sensitivity which, if made known to the jury, directly or indirectly, would taint the process and raise questions as to the result.

Adopt a special rule if need be as to procedure which, if violated, would be subject to sanctions.

Insulate witnesses from new interviews during the trial period.

No one is suggesting that all phases of a criminal case be closed to the public, that public business be conducted behind closed doors. There is, of course, a presumption in favor of openness. Closure must be justified by overriding interests. In the vast majority of cases, there is no need for closure to ensure a fair trial. However, under the extraordinary circumstances of a high profile case, the interest in a fair process and a just result may override—at least temporarily—any first amendment right of access.

It is not a question of censorship, but of timing. Closed proceedings are still conducted on the record in the presence of counsel. That which is sealed can be unsealed at an appropriate time, after the threat to a fair trial has passed. The public's asserted right to know is not necessarily incompatible with the defendant's right to a fair trial. But sometimes it's a question of *when* the public is entitled to know. Fairness to the defendant sometimes requires that the publicity come after an impartial jury has been seated and has been insulated from prejudicial information.

Fair trial—free press presents the classic dilemma—a choice, not just for the judge, but for all parties concerned including at times the venerable, irrepressible and, at times, irresponsible fourth estate.

The choice is not between what is right and wrong. The difficult choice is between what is right and right.

Do we want a press which is almost free?

Do we want a trial which is almost fair?

As a judge, according to the cases which provide our trial discipline, if there is a genuine question, we have the obligation to stand on the side of fair trial.

Otherwise, we have the dubious distinction of having the high court say, as they said so eloquently in the Sheppard Case, do it again, do it again.

The press at every turn has to say to itself, will this, if published, detract from the process and taint the judicial product?

Time, in a sensitive judicial process, is so important and the press is so bent on being first. Think twice and then think again. Try to do something in depth when all the information is available rather than something shallow, or speculative, or incorrect, and uninformed *now*.

Is it too much to ask that one be part of the solution rather than part of the problem?

We return to means and ends and their need to harmonize. Fair trial. Just judicial product.

Some people think those means and ends are important in the year of our bicentennial plus one.

Such social rights are not picked off the shelf at the 7-Eleven. We are where we are case by case, step by step, court by court. Lawyers, judges, newsmen, citizens all need to take such constitutional rights seriously. Lawyers and judges have to do so. Newsmen with their privileged position have the power to do so. They have a choice. They needn't do so. Where much is given, much is expected.

It is absolutely imperative that newsmen with their position of privilege report fairly, honestly and evenhandedly. The public never knows when they don't do so. It is of small moment to say to someone go look at the dusty verbatim court record to get the rest of the story, when the rest of the story never gets told.

All citizens, lawyers, judges, newsmen need to work together to continue to protect fair trial and a just judicial product. The first amendment is first because it epitomizes the need of societies to run on adequate, accurate, evenhanded information. The first amendment needs to bolster the others, fortify the others, cooperate with the others, harmonize with the others.

First amendment privilege should never be used to detract, diminish, taint or frustrate the purpose of the other amendments in providing due process and a just judicial product.

How to manage a high profile case? I have talked of techniques and furnished source materials to you. They help, but they don't really answer the question.

All of us, including the press, manage a high profile case by taking the constitution seriously whether we have to or not.

CASES

Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) (extending the qualified first amendment right of access to preliminary hearings).

Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984) (upholding against first amendment challenge a

protective order barring dissemination of information gained through discovery in a civil action).

Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) (extending qualified right of access to juror voir dire).

Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (striking down state statute requiring closure of criminal trials during the testimony of minor victims of sex offenses).

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) (finding a first amendment right of public access to criminal trials).

Gannett Co. v. DePasquale, 443 U.S. 368 (1979) (upholding a trial court's closure of a pretrial suppression hearing where all the participants in the litigation agreed that the hearing should be closed to protect the defendants' fair-trial rights).

Nebraska Press Association v. Stuart, 427 U.S. 539 (1976) (striking down a court order prohibiting the reporting of a criminal defendant's confessions or admissions and other facts "strongly implicative" of the accused).

New York Times Co. v. United States, 403 U.S. 713 (1971) (upholding the district courts' refusal to enjoin newspapers from publishing the "Pentagon papers" and in the process reaffirming the heavy presumption against the constitutionality of prior restraints of expression).

Sheppard v. Maxwell, 384 U.S. 333 (1966) (overturning the defendant's conviction due to massive, pervasive and prejudicial publicity—a good example of how *not* to manage a high profile case).

Estes v. Texas, 381 U.S. 532 (1965) (reversing a conviction because of the televising of the defendant's criminal trial over his objections).

Irvin v. Dowd, 366 U.S. 717 (1961) (overturning a conviction on due process grounds because of juror prejudice caused by pretrial publicity).

Society of Professional Journalists v. Secretary of Labor, 616 F. Supp. 569 (D. Utah 1985) (finding a constitutional right of access to certain formal administrative proceedings), *appeal dismissed and opinion vacated*, 832 F.2d 1180 (10th Cir. 1987).

Society of Professional Journalists v. Bullock, 743 P.2d 1166 (Utah 1987) (setting out the steps a trial court should follow in determining whether to close a pretrial proceeding and overturning an order denying access to pretrial competency proceedings where the proper procedure was not followed).

KUTV, Inc. v. Wilkinson, 686 P.2d 456 (Utah 1984) (setting out the standards for orders restraining pretrial publicity and upholding the trial court's order restraining the media's dissemination of information about a defendant's alleged connections with organized crime until after the jury retired).

Kearns-Tribune Corp. v. Lewis, 685 P.2d 515 (Utah 1984) (finding that the public has a limited right of access to preliminary hearings under both the federal and state constitutions and explaining the criteria and procedures for courts to follow in determining whether to deny or restrict access to assure a fair trial).

KUTV, Inc. v. Conder, 635 P.2d 412 (Utah 1981) (vacating an order closing proceedings to determine whether a prosecutor had violated a prior, valid secrecy order).

Other Sources

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Utah Judicial Council Rule 4-401.

A Practitioner's View of *Johnson v. Rogers*

By Kevin P. McBride

In the recent case of *Johnson v. Rogers*,[1] the Utah Supreme Court further clarified the law in several critical areas of tort litigation. An excellent summary of the full opinion is found in the November *Bar Journal* "Case Summaries" column by William Holyoak and Clark Nielsen, and will not be repeated here.

This article addresses two parts of the Supreme Court's opinion in *Johnson* that may be of particular concern for practitioners and judges at the trial court level: (1) the problem that remains in instructing a jury on punitive damages, and (2) the question of applying the court's analysis to cases involving negligent infliction of emotional distress.

1. *Instructing the Jury on Punitive Damages*

In *Johnson* the trial court dismissed plaintiffs' claims for punitive damages, ruling that "actual malice," "evil intent" or "malice in fact" was the applicable standard. The Supreme Court reversed and remanded, holding that the more stringent standard for punitive damages relied on by the trial court applies only to false imprisonment cases. The Court further held:

> The standard for punitive damages in non-false imprisonment cases is clear: they may be imposed for conduct that is willful and malicious or that manifests a knowing and reckless disregard toward the rights of others.[2]

This ruling significantly clarifies the standard for punitive damages. However, the remainder of the opinion leaves ambiguity for the practitioner and trial judge faced with drafting jury instructions. In various paragraphs of the opinion, the Supreme Court used the following phrases in identifying the underlying rationale and/or basis for an award of punitive damages:

> [A]ctual malice or reckless disregard of the rights of others . . .[3]

> [O]utrageous conduct that is either willful or knowingly reckless . . .[4]

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> [C]onduct which is knowingly reckless and exhibits a high degree of disregard for the safety of others.[5]

> [E]xtreme, outrageous and shocking behavior . . .[6]

> [K]nowing and reckless disregard for the rights of others.[7]

We do know from *Johnson* that punitive damages may be awarded in non-false imprisonment cases based on a "knowing and reckless disregard" standard. However, how this standard will be perceived by a jury may well depend on which phrase or phrases a trial court uses in its instructions.

Continuing a critical look at language used by the Court, there is also room to question the phraseology of *Johnson's* companion case, *Miskin v. Carter*.[8] In *Miskin v. Carter* the Supreme Court affirmed the trial court's dismissal of a punitive damages claim, stating:

> [P]unitive damages may be awarded only if they serve society's interest in punishing and deterring outrageous and malicious conduct which is not likely to be deterred by other means.[9]

A *Miskin v. Carter* instruction that punitive damages are for "punishing and deterring outrageous and malicious conduct . . ." would likely confuse a jury also instructed under a "knowing and reckless" standard for awarding punitive damages. In fact, an "outrageous and malicious conduct" instruction could easily be perceived by the jury as the "actual malice" or "malice in fact" standard the Court tried to get away from in *Johnson*.

The subtle distinctions in phraseology contained in *Johnson v. Rogers* and *Miskin v. Carter* may yet give us difficulty in deriving uniform standards for instructing the jury on punitive damages, and will likely be further clarified by the Supreme Court.

2. *Applying the Court's Analysis to Negligent Infliction of Emotional Distress Cases.*

In analyzing the Court's position on negligent infliction of emotional distress, the practitioner should first note that the majority opinion written by Justice Durham is significantly altered by the concurring opinion authored by Justice Zimmerman and joined by the other three justices. If there was ever a time to read the concurring opinion, this is it.

In the main opinion, Justice Durham proposed the adoption of the *"Dillon"* rule, recognizing a claim of negligent infliction of emotional distress if the plaintiff's injury is reasonably foreseeable, which in turn is defined by:

> (1) whether the plaintiff was located near the scene of the accident; (2) whether the emotional trauma to the plaintiff was caused by actually witnessing the accident; and (3) whether the plaintiff and the victim were closely related.[10]

The concurring opinion, which is the position of four of the justices and therefore is the actual majority opinion, adopts the "zone of danger" rule found in Restatement (Second) of Torts Sect. 313.

The Restatement rule restricts recovery to cases where there is, in effect, (1) negligent conduct of the defendant, (2) that threatens the plaintiff with emotional distress likely to result in bodily harm because of fright, shock or other emotional disturbance, (3) arising to the plaintiff out of fear for his or her *own safety* and (4) results in physical injury or illness to the plaintiff.[11]

Several aspects of the opinion should be considered. First, even though the *Johnson* case involved a father-son relationship, it would appear that under the Restatement rule the relationship was not a factor to be considered in allowing the father a cause of action. The father's claim had to be based on emotional distress resulting from the father's reasonable apprehension for his *own* safety, not based on the emotional distress a father might naturally suffer by seeing his son injured. Under the Restatement rule, only victims directly in the line of injury, i.e., "direct victims," are allowed a cause of action. Bystanders faced with no personal threat of harm, i.e., "secondary victims," are not allowed a cause of action.

The second thing to consider is that although the concurring opinion adopted the Restatement rule, Justice Zimmerman noted:

> At some future date, we may determine that there is merit in some of the other approaches surveyed in Justice Durham's opinion. However, until we have had experience with the cause of action, I conclude that it is best to take the more conservative approach and adopt the Restatement rule as written.[12]

This suggests to the plaintiffs' bar that when a client would have a legitimate claim for negligent infliction of emotional distress under a broader standard, the attorney should seriously consider bringing that claim and argue for application of the *Dillon* rule favored by Justice Durham or a broader foreseeability rule adopted by other courts. Justice Zimmerman seemed to suggest that we are heading in that direction.

Finally, the language of the concurring opinion, together with Justice Durham's position in the main opinion, suggests that there may be some room for re-examining the adoption of a loss-of-consortium claim, rejected by the Supreme Court in *Hackford v. Utah Power & Light Co.*[13] The majority opinion in *Hackford*, authored by Justice Zimmerman, refused to recognize the Married Woman's Act as providing a loss-of-consortium claim for spouses. The opinion was based in significant part on the potential difficulty in drawing a line between spouse claimants and potential other claimants who suffer secondary emotional harm, such as children, in-laws, lovers and close friends.[14] In the concurring opinion in *Johnson*, Justice Zimmerman refers to *Hackford* and states that he has:

> [S]erious concerns about the theoretical rationality of any limits that can be imposed on liability for negligent infliction of emotional distress.[15]

The current theoretical distinction between *Hackford* and *Johnson* is maintainable as long as the Court continues to allow recovery only to direct victims under the Restatement rule, not to bystanders. The Court does not have to engage in a line-drawing process under the Restatement zone-of-danger rule, because no recovery is allowed to *any* secondary victims. However, if the Court expands the standard for negligent infliction of emotional distress to allow recovery to bystanders, there would be no theoretical distinction between an emotional distress claim resulting from fear for the safety of another, and an emotional distress claim for loss of consortium resulting from injury to another. Both plaintiffs would be secondary victims. The Court would then be engaged in a line-drawing procedure, which would logically compel the same procedure be applied to loss-of-consortium cases.

Again, the opinions in *Johnson* suggest that claims for negligent infliction of emotional distress to secondary victims of all types may be recognized by the Supreme Court in the future. Therefore, such claims should be seriously considered by the plaintiffs' bar under the appropriate set of facts.

**Robert Henderson is gratefully acknowledged for his ideas regarding punitive damages.*

[1] *90 Utah Adv. Rep. 3 (Aug. 25, 1988).*
[2] Id. *at 4.*
[3] Id. *at 5.*
[4] Id. *at 5.*
[5] Id. *at 5.*
[6] Id. *at 5.*
[7] Id. *at 12.*
[8] *90 Utah Adv. Rep. 19 (Aug. 25, 1988).*
[9] Id. *at 20.*
[10] *90 Utah Adv. Rep. at 9.*
[11] *See Restatement (Second) of Torts Sect. 313, Comment d. (Emphasis added).*
[12] Johnson *at 13.*
[13] *740 P.2d 1281 (Utah 1987).*
[14] *Id.* at 1286.
[15] Johnson *at p.13.*

The Political Action Disclosure Act

By Gordon D. Strachan and Gary R. Thorup

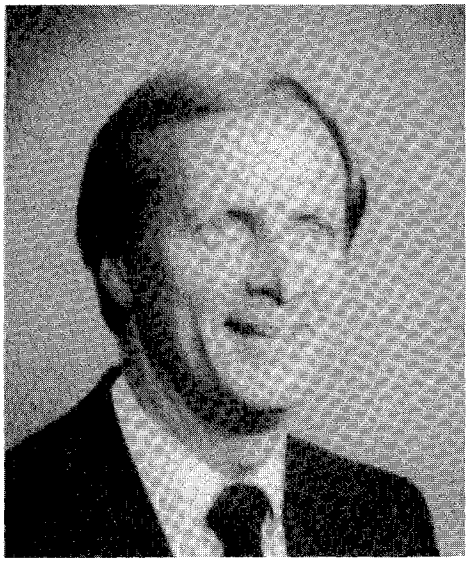
During the 1988 General Legislative Session, the Utah State Legislature enacted Senate Bill No. 177, titled "Political Action Disclosure Act." A review of 1988 election records demonstrates that there are some compliance problems per those governed by the Act. Any lawyer who advises political action committees or corporations on political matters should be aware of the scope of this Act.

HISTORY

In 1985, an Election Law Task Force was created by the State Legislature to study Utah election laws. One of the Task Force's subcommittees, chaired by former Rep. James Moss (R), was assigned to study political action committees. After studying the matter, that subcommittee proposed legislation which Rep. Moss sponsored as House Bill No. 90 in the 1986 legislative session. That proposal passed the House but died in the Senate Rules Committee. In 1987, a similar proposal was sponsored by Rep. Craig Moody (R), as House Bill No. 276; however, this bill failed to pass either house. Both the 1986 and 1987 proposals were actively supported by Lt. Gov. Val Oveson, Utah's chief election officer.

During the 1986 general election, the Democrats made significant gains in the legislature, particularly in the House where they gained 13 seats. In addition, more subtle changes affected the makeup of the 1987 Legislature when several incumbent Republicans lost primary battles. Nonetheless, the Republicans maintained control of these seats. Much of the upheaval was credited to certain political action committees which aggressively participated in the campaigns of many legislators.

In the aftermath of the Legislature's significant 1987 education-related tax increases, a grass-roots movement sprang into existence seeking public support for four initiative petitions: one to reduce property taxes; one to roll-back the 1987 tax increases; one to allow tax credits for sending children to private schools; and one to require disclosure of contributions made to candidates by political action committees. The last initiative proposal was patterned after House Bill No. 276 which failed during the 1987 Legislature. The apparent goal of the initiative was to require political action committees to disclose their true involvement in elections and their influence over candidates.



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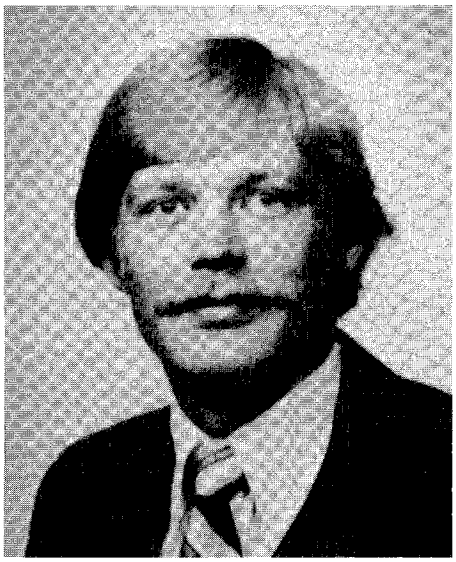

GARY R. THORUP received his bachelor of arts degree in political science in 1977, magna cum laude, from the University of Utah. He obtained his law degree in 1980 at the University of Utah College of Law and his L.L.M. (Taxation) from the New York University School of Law.

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In partial response to the grass-roots movement, and possibly as an attempt to pacify it, the legislature moved in 1988 to enact a disclosure law patterned, in large measure, after the initiative petition. Proposed as Senate Bill No. 177, this bill, sponsored by Sen. Jack Bangerter (R), was eventually enacted as the "Political Action Disclosure Act" and is codified at Utah Code Ann. Sect. 20-14a-1 et seq. (1953), as amended. As a result of this enactment, the similar initiative petition was withdrawn. The "Political Action Disclosure Act" requires disclosure of certain election finance information by certain legal entities. It is important to understand its basic concepts in order to best advise clients on compliance issues.

ANALYSIS OF THE POLITICAL ACTION DISCLOSURE ACT

Utah was one of the last states to adopt a law requiring political action committees (PACs) and corporations to disclose contributions made to campaigns for state office. Federal law and many states also impose some limits on the amount which may be contributed to individual candidates. Unlike those other laws, Utah's Political Action Disclosure Act does not purport to restrict or prohibit campaign contributions in any fashion. Its sole intent is to

require the disclosure of contributions made to political action committees and of expenditures made by political action committees and corporations to candidates for certain political offices.

The Act is comprised of six sections, the most important of which is section two (2), which provides the operational definitions governing the Act. The key definitions of the Act are of the terms "candidates," "corporation" and "political action committee." The term "candidate is defined in Sect. 20-14a-2(2) as ". . . any person who files a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state senator, state representative, state school board or local school board." This term is important because the only contributions or expenditures for which the Act requires disclosure are those made to a candidate. Inasmuch as no person becomes a candidate for purposes of the Act until a "declaration of candidacy" statement is filed pursuant to Utah Code Ann. Sect. 20-4-9 (1953), as amended, presumably no contributions or expenditures made prior to the filing of the declaration need be disclosed. Similarly, if expenditures are made in lobbying endeavors or contributions are made to a candidate for an office not designated in the Act, no disclosure is required. Examples of contributions and expenditures *not* subject to the Act's disclosure requirements are: (1) the purchase of tickets to the Governor's Ball. The ball is an annual event and is held whether or not an incumbent governor ever files a declaration of candidacy for re-election at the next general election. Generally, this event is held prior to the time a *potential* candidate is required to file a declaration of candidacy; (2) contributions made to state legislators and other elected or appointed state officials who seek state or national leadership positions such as Speaker of the House or President of the National Governor's Conference; (3) general lobbying expenditures made to affect legislation; (4) contributions made to support or defeat ballot proposals; and (5) contributions to non-designated elected offices such as county and city offices.

The only entities required by the Act to disclose contributions and expenditures are "political action committees" and "corporations." Disclosure may apparently be avoided if an entity can avoid being classified as either a corporation or a political action committee, as defined in the Act. Generally, a "political action committee" is ". . . an entity, or any group of individuals or entities . . . that solicits or receives contributions . . . or makes contributions to influence . . . any person to refrain from voting or to vote for or to vote against any *candidate*. . . ." Specifically excluded from this definition, however, are: (1) political parties; (2) individuals; (3) corporations; (4) related individuals contributing from joint checking accounts; and (5) entities providing goods and services to a candidate or candidate committee in the regular course of its business and at the same price offered to the general public.

A "corporation" is generally any kind of business organization that is registered as a corporation or is authorized to do business in Utah and which makes any expenditure to a candidate out of corporate funds. A corporation does not include, however: (1) an individual; (2) a sole proprietorship; (3) a partnership; or (4) a corporation's political action committee. It is relatively easy to avoid the disclosure requirements under these definitions. For example, if, rather than contributing directly to a candidate, a political action committee were to make a contribution to a political party which, by previous agreement, donates a similar dollar amount to a candidate, no disclosure is required of either the political action committee or the political party. The political action committee is exempt because the contribution was not made to a candidate. The political party is exempt because political parties are specifically excluded from the definitions of a corporation or a political action committee under the Act. The only disclosure of any part of the transaction would appear in the candidate's financial report as a contribution received from the party. This theoretical ploy may have been used during the past election. The records on file at the Lt. Governor's office disclose that a large political action committee made three substantial contributions to one of the major political parties which, coincidentally, made identical dollar-amount contributions within a day or two later to one of its candidates who had been endorsed by the same political action committee which made the original contribution. Of course, the Lt. Governor's office does not have access to the details of the transaction, but it would appear that either the political action committee or the candidate did not want the public, the press or the opposing candidates to know of the contributions.

The only entities required by the Act to disclose contributions and expenditures are "corporations."

In the event a political action committee or a corporation does make or intends to make a contribution to, or an expenditure on behalf of a candidate, they should be apprised of the disclosure requirements imposed by the Act. First, if the entity is a political action committee, it must file a "statement of organization" with the Lt. Governor within seven days of its receipt or expenditure of at least $750 in any calendar year. The definition of the term "expenditure" is quite broad and includes a purchase, payment, distribution, loan, advance, deposit, gift, a contract, promise or agreement to make an expenditure, personal services rendered without charge or at a discount and goods offered at a discount. The "statement of organization" requires disclosure of the names and addresses of the committee, its officers, the entity it represents, any affiliated organizations, the committee's treasurer or chief financial officer and of each member of the committee. Second, if the entity is either a political action committee or a corporation which expends at least $750 in any calendar year for declared candidates, it must file financial disclosure reports five days preceding a primary election, five days preceding a general election and within 30 days following a general election. The report must disclose the source of any funds received as contributions and the identity of any candidate, candidate campaign committee or political action committee receiving expenditures from the reporting entity. The only exception to this reporting requirement is for contributions received by political action committees in amounts of $150 or less, which contributions are required to be aggregated rather than separately reported.

Any person violating the provisions of the Act may be subjected to criminal prosecution as a Class B misdemeanor; however, no civil penalties are prescribed.

WHAT THE ACT DOES NOT DO

Prior to the enactment of the Disclosure Act, the "Corrupt Practices in Elections" act, Utah Code Ann. Sect. 20-14-1 et seq. (1953), as amended, already imposed certain reporting requirements on persons becoming candidates for certain political offices; however, it does not appear that any real attempt was made by the Legislature to make the disclosure Act provisions consistent with the existing law. For instance, under the "Corrupt Practices in Elections" act, the term "candidate" does not include state and local school board candidates as

does the Disclosure Act, but it does view a person as a candidate if the person receives contributions or makes expenditures "with a view to bringing about the candidate's nomination or election." Therefore, an undeclared candidate who is "testing-the-waters" is required to report contributions received; however, the political action committee or corporation which actually made the contribution need not report until after the person files a declaration of candidacy, if ever.

Under the Disclosure Act, the terms "contribution" and "expenditure" include express, legally enforceable contracts, promises or agreements to make a contribution or an expenditure, however; the Corrupt Practices Act includes within its definition of "contribution" and "expenditure," *all* contracts, promises or agreements, whether express or implied and whether or not legally enforceable. In addition, political action committees and corporations are required, under the Disclosure Act, to file reports of contributions and expenditures within five days of a primary election, within five days of the general election, and within 30 days after the general election; however, under the Corrupt Practices Act, candidates for governor, lieutenant governor, state auditor, state treasurer and attorney general are required to file reports on July 10, Oct. 10, Dec. 10 and on the fifth day preceding a general election. As a result of the staggered filing periods, candidates, political action committees and corporations can time their contributions and expenditures in order to give the greatest advantage to a campaign while receiving the least amount of negative publicity. In this same regard, neither Act defines precisely when a contribution or an expenditure is deemed received or made. This problem came to light when a candidate for state auditor held a New York fund-raising activity and failed to report certain contributions on the candidate's next filing report. The candidate's rationale was that the fund-raising organizers had not yet turned the money over to the candidate's campaign committee. In this instance, the political action committee or corporation may have been required to disclose the contribution made to the candidate, but the candidate did not yet have to report the receipt of the contribution. The rules for state legislative and school board races are even more inconsistent. Candidates for legislative seats are required to file only one financial report under the Corrupt Practices Act, which is due 30 days after the final election, unless a candidate is eliminated in a primary election, in which event, filing is required 30 days after the primary. School board candidates do not have to file at all. Under the Disclosure Act, the PACs and corporations contributing to these races are required to disclose the contributions in a timely fashion.

REVIEW OF THE FIRST YEAR'S COMPLIANCE

Utah's recently enacted Disclosure Act does not appear to be patterned after any particular state's campaign finance legislation. Consequently, the first interpretations of its provisions will be made initially by Lt. Gov. Val Oveson and his legal counsel. Certain inquiries have already been submitted to and answered by the Attorney General's office.

Although only a partial review of this election year's filings has been performed, it is clear that the law is not completely understood and compliance is spotty. For instance, one national labor union reported that it raised and expended approximately $370,000 nationwide, however, it only expended $1,000 on behalf of one Utah candidate and identified no Utah contributors since they all contributed less than $150. Utah regulators indicate they have no need for the national information. In addition, one of the candidates for governor declared on his financial report that his own corporation either expended or loaned in excess of $340,000 to his campaign; however, the corporation itself has failed to file a disclosure statement.

In a recent interview with Lt. Gov. Oveson and Deputy Lt. Gov. David Hansen, they identified the procedures their office would follow in monitoring for compliance with state election laws:

1. The election staff will be directed to make at least a cursory review of all disclosure filings to determine if a good faith attempt has been made to comply.

2. The election staff will perform some random cross-checking of candidate financial statements with PAC and corporation disclosure statements. If discrepancies are found notices will be sent to PACs and corporations to rectify discrepancies.

3. If glaring defects or obvious discrepancies appear which are not resolved after inquiry, the Lt. Gov. will transmit the information either to the attorney general or the appropriate county attorney.

4. The lieutenant governor recognizes the current budgetary and manpower limitations of his election staff, but in light of current economic situations, does not currently intend to seek any additional budget in order to perform full compliance-type audits.

5. Organizations such as Common Cause have previously provided independent, but unofficial, review of candidate financial statements and have shown interest and will be allowed to do the same type of review of PAC and corporation disclosure statements.

While recognizing that the current law is not perfect, Lt. Gov. Val Oveson believes it is premature to suggest amendments to the Disclosure Act for the 1989 General Legislative Session. Rather, he will review compliance problems identified during this election year and, hopefully, prepare some "technical" correction amendments for submission in the 1990 General Legislative Session. These amendments could be enacted and be in effect prior to the 1990 general election.

One potential change in Utah election law might be the creation of an independent, non-elected election commission, as is used by the federal system and by a number of states. Lt. Gov. Oveson is not yet prepared to advocate an independent election commission, but is willing to study the issue. One disadvantage to continuing the election monitoring functions in an elective office is that the staff is subject to change each time political tides change. Any "institutional memory" which a professional staff could provide is lost with the outgoing lieutenant governor and his staff. Another potential problem with the current system is the risk that politically active corporate clients may make good faith attempts to comply with the Disclosure Act, but may find themselves subject to prosecution at the hands of a newly elected political opponent.

CONCLUSION

The Legislature or the lieutenant governor should consider creating a task force to study the problems with the compliance and enforcement of Utah's election laws. In addition, attempts should be made to educate the public as to their statutory duties under the Disclosure Act, including the promulgation of interpretive rules.

Bar Commission Highlights

The Bar Commission met on Oct. 28 at the Utah Law and Justice Center. During the meeting, the commission:

Accepted with regret the resignation of Commissioner Gordon L. Low and discussed applicable Bylaw provisions for the filling of the vacancy. Unanimously approved a resolution extending the commission's most sincere appreciation to Commissioner Gordon L. Low for his exemplary service to the Bar in his capacity as Bar commissioner.

Ratified the action of the Executive Committee granting limited authority of the Needs of the Elderly Committee to lobby in opposition to the tax initiatives.

Received a report of the Law and Justice Center operations noting active and increasing event scheduling and utilization of the building.

Received a report of public relations consultant, John Becker, concerning a new radio program for the Bar on KSL Radio to be aired each Monday at 10:00 a.m.

Received a report of the survey undertaken by Dan Jones and Associates and co-sponsored by the Utah State Bar, the Utah Bar Foundation, the Salt Lake County Bar, Women Lawyers of Utah and the Hispanic Bar Association. This report is summarized elsewhere in this issue of the *Utah Bar Journal*. In connection with the survey report, the commission approved resolutions to (1) announce the fact of the survey and a general description of the survey in the next available issue of the *Utah Bar Journal*; (2) publish a series of articles in the *Utah Bar Journal* utilizing the raw data of the survey; (3) direct that a meeting of the co-sponsors of this survey be scheduled to analyze the importance and opportunity for new program and policy direction; (4) determine that a summary of the survey should be presented to the membership at the mid-year meeting of the Bar and (5) urged that the Bar consider presenting an inexpensive seminar on the subject matter of the survey at the Law and Justice Center.

Received a report on the work of the Constable Task Force of the Utah Commission on Criminal and Juvenile Justice with discussion including representatives of various affected groups, and thereafter referred the matter for study by the Litigation Section and the Courts and Judges Committee.

Received a report of the Young Lawyer's Section, authorizing the filing of two grant applications by the section for partial funding of the Young Lawyer's Section Law for the Clergy Project and the video and audio public service announcements.

Received a report of the Executive Director on various administrative matters, noting an interim report of the Fee Arbitration Committee, proposed leases for the Utah Bar Foundation and American Arbitration Association offices in the Utah Law and Justice Center and approved a proposed policy change developed by the CLE Advisory Committee.

Approved the name change of the Corporation Section to become known as the Business Law Section of the Utah State Bar.

Received a report of the Delivery of Legal Services Committee recommending changes in the design of the Lawyer Referral Service Program and approved the concept and design of the changes which include implementation of a modest means panel.

Received the report of the Legislative Affairs Committee including a research memorandum regarding lobbying policies for the Bar. Approved a policy based on the legal analysis set forth in the report with an amendment to add a provision for a two-thirds vote of the Bar Commissioners present and voting at a commission meeting in order for the Bar to take a position on a legislative matter. Further information concerning this policy will be published elsewhere in the *Utah Bar Journal*.

Received the report on discipline matters from Bar Counsel, acting on proposed private reprimands, reviewing status information on certain formal complaints, approving the reinstatement of Mr. Paul Landes of Stockton, Calif., and received a status report on the new Supreme Court Advisory Committee on the Rules of Professional Conduct.

Received a report on bar admissions, approving waivers relevant to the MPRE exam for certain applicants. Received a report of the grievance hearing panel and approved recommendations of the panel on four grievance petitions. Reviewed a petition for waiver for educational requirements for admission to the Bar and denied the petition based on provisions of the applicable rule.

Received and committed for further study proposed amendments to Rule Three submitted by Steven Henriod on behalf of an applicant.

Received a report of the Budget and Finance Committee, authorized the negotiation of a line of credit necessary for effective financial management of the Bar for the transition period with appropriate controls on the use of said line of credit.

Received a report on pending litigation by the Litigation Oversight Committee, noting in particular the recent Third Circuit Court of Appeals case upholding the constitutionality of the mandatory Bar.

Received a report of ABA delegate Norman Johnson on actions taken by the ABA House of Delegates at its annual meeting in Toronto in August.

Received a report of the executive director on the pending visit to Utah by ABA President-Elect Stanley Chauvin and certain high-ranking members of the ABA.

Met in joint session with the Executive Committee of the Salt Lake County Bar Association, reviewing the current projects of the Salt Lake County Bar, including its luncheon series, the Christmas dinner dance, the community relations project and lawyer assistance project and a proposed survey of members of the Bar who reside in Salt Lake County to be undertaken in the near future. President Kasting reviewed for Salt Lake County Bar officials current activities and programs of the Utah State Bar and the Utah Law and Justice Center. Further discussion included the habeas corpus representation in Salt Lake County and the problem of attorney appointments for the Third District Court, out of which discussion it was agreed that the County Bar and the State Bar would explore the development of training sessions for attorneys so appointed to enable appointees to fulfill their professional responsibilities in a competent manner.

NOTE: A full version of all Bar Commission meetings and the agendas for each monthly meeting are available for inspection at the office of the executive director.

Notice

Any mail to be received by the Fourth District Court in and for Utah County, State of Utah, should be directed to the following address: Fourth District Court Clerk, 51 S. University, Room 108, Provo, UT 84601.

Seven BYU Professors Appointed to Elite Law Organizations

Seven BYU Law School professors have recently received appointments to elite national and international legal organizations.

H. Reese Hansen, associate dean of the law school and professor of law, has been appointed to the National Conference of Commissioners on Uniform State Laws. J. Clifton Fleming, associate dean of the law school and professor of law, and Professors Constance Lundberg, Douglas Floyd and Lynn Wardle have been appointed to membership in the American Law Institute. Professor Douglas Parker has been named to the executive committee of the Jewish Law Association. Professor Stephen G. Wood, a former associate dean of the law school, has been named to the leadership of the Administrative Law and Regulatory Practice Section of the American Bar Association.

The American Law Institute (ALI), in which Professors Fleming, Lundberg, Floyd and Wardle received membership, was organized in 1923 "to promote the clarification and simplification of the law and its better adaptation to social needs." Founders of the organization included Elihu Root, Harlan Fiske Stone, who later served as chief justice of the United States Supreme Court, Benjamin Cardozo and Learned Hand.

To fulfill its purpose, the Institute has produced the Restatement of Law series. These important legal works attempt to articulate the current status of the laws of the United States in particular areas. The Restatements have been cited as substantive authority by federal courts and state courts in all 50 states.

Of the approximately 640,000 lawyers in the United States, only about 2,100 have been invited to membership in the ALI.

The National Conference of Commissioners on Uniform State Laws, to which Dean Hansen was nominated, is composed of four commissioners from each state, the District of Columbia and Puerto Rico.

The conference was founded in 1892 to bring about, by voluntary state action, greater unanimity in the law prevailing throughout the United States. When founded the conference included participants from only seven states. Membership since that time has expanded to all states.

Since its inception, the conference has drafted over 200 uniform laws on numerous subjects and in various fields of law. In addition to their work in drafting the uniform acts, commissioners are charged with the responsibility to encourage passage of the uniform acts by the legislatures of their respective states.

Professor Wood's leadership assignment in the Administrative Law and Regulatory Practice Section of the ABA caps a long history of service to the American Bar Association. He has been active in the Administrative Law and Regulatory Practice Section for several years. He also served as chair of the Immigration, Naturalization and Aliens Committee and the Civil Rights and Employment Discrimination Committee, and as vice chair of the International and Comparative Administrative Law Committee and the Continuing Legal Education Programs Committee.

Professor Parker is the only non-Jew to serve on the executive committee of the Jewish Law Association. The Association includes members from throughout the world. The executive committee is composed of approximately nine members, including two from the United States. The Association holds biannual conferences, with every other conference held in Israel.

Professor Parker has prepared an encyclopedic dictionary of Jewish law, a Jewish law textbook and a volume of the Jewish Law Annual that abstracted all articles on Jewish law published in the United States between 1980 and 1985. He is currently abstracting articles from 1985 to 1988. He also spent a year on the Hebrew University Faculty of Law in Jerusalem as a visiting research professor in 1983.

Federal Bar Seminar

Presented by top-rate faculty, including all federal district judges in Utah. This program will include substantive presentations, break-out sessions and complete reference materials. Topics will include Tax Fraud, Grand Jury Representation, Defense Contractor Fraud, RICO, and other areas of interest to both the seasoned criminal practitioner as well as the civil practitioner who is encountering these issues with more regularity than in the past. Luncheon included.

Date: Feb. 10, 1989
Place: Salt Lake City, Utah
Time: 9:00 a.m. to 5:00 p.m.

For registration and fee information, call Marilyn at 359-4100.

BYU Sponsors Trade Bill Conference

On Jan. 13 and 14, BYU Law School, in conjunction with BYU's Kennedy Center and School of Management and a number of prominent law firms, will sponsor a conference on the recently enacted Omnibus Trade Bill. The Trade Bill is the most sweeping trade legislation in half a century, and virtually no aspect of American economic life will be left unaffected by it.

Among the topics to be addressed at the conference will be trade law revision, encouragement of exports, international technology trade, intellectual property rights, international banking and others.

The conference will feature a number of the leading experts on the Trade Bill, including Alan Holmer—Deputy U.S. Trade Representative; Jean Anderson—Special Assistant to the Undersecretary, U.S. Department of Commerce; and Russell Munk—Assistant General Counsel International, Department of Treasury.

A $50 fee will be charged for materials and other conference costs. For additional information, please contact Carolyn Stewart at 378-6384.

Notice of Decision Re: Process Servers

Process served by private process servers and unauthorized individuals, other than a summons, complaint and subpoena, are subject to being quashed or invalidated under the Declaratory Judgment rendered by Judge John A. Rokich in *Utah State Constable's Association v. Richard Heinecke,* et al., C86-5298, Third Judicial District Court of Salt Lake County, dated Jan. 29, 1988. This class action suit defined the defendant class as private process servers and unauthorized individuals serving legal process, court orders, and court documents, other than a summons, complaint and subpoena. The judgment imposes a permanent injunction restraining the members of the class from serving any process other than a summons, complaint and subpoena. The ruling carefully analyzes all types of process and clearly delineates what process can be served by members of the defendant class. To avoid having service quashed or invalidated, attorneys should research this case and utilize authorized process servers, including sheriffs and constables, for the service of their process. If you have questions, contact Ralph C. Petty, 531-6686.

Claim of the Month

ALLEGED ERROR OR OMISSION

The insured is alleged to have failed to adequately protect his client in the sale of a garbage disposal business.

RESUME OF CLAIM

The client owned a garbage disposal business which had the collection franchise for a city and county. Client agreed to sell to buyer with the sale contingent on a franchise extension by the city. The city insisted that the franchise be put out to bid. The client/seller and buyer decided to enter into an agreement whereby the prospective buyer paid seller $2,000 for the right to purchase the business at the agreed-upon price. This option was to remain open until after the franchise was awarded.

The franchise was awarded to the prospective buyer who then declined to exercise the option.

The client claims that the insured should have protected the client by requiring the buyer to purchase the business if the franchise was awarded. The client claims that he was not fully apprised of the difference between an option and a purchase agreement.

HOW CLAIM MIGHT HAVE BEEN AVOIDED

This claim might have been avoided if the insured had discussed the effect of an option versus a purchase agreement. Although, in this case, the insured insists the option was fully explained to the client, there is no documentation to that effect in his file.

Without documentation, the case comes down to a swearing contest which the insured attorney usually does not win.

25th Anniversary of the Utah Bar Foundation

The Utah Bar Foundation is now celebrating its 25th year of community service since its incorporation on Dec. 13, 1963. The incorporators of the Foundation were Calvin Behle, Junius Romney, Earl Tanner, Charles Welch, Jr. and James E. Faust. These incorporators envisioned that the Foundation would be able to support community legal education and legal assistance to the disadvantaged through gifts, donations, bequests, devises and membership contributions. The Foundation's membership was declared to be all members of the Utah State Bar. Although a few members made financial contributions, the finances of the Foundation and the number of projects that could be accomplished were very small.

The long-standing Judicial History Project recently resulted in the publication of *The Federal Judiciary in Utah* by Clifford L. Ashton, covers the history of the territorial federal judges for the territory of Utah 1848 to 1896 and United States District Judges for the District of Utah 1896 to 1978. (Copies are available through the Foundation at a cost of $15.) This project was the result of generous contributions from Calvin and Hope Behle and the C. Comstock Clayton Foundation. Additional historical works on Utah's judges continues.

In 1975, the Foundation, under the direction of President J. Thomas Greene, received a grant for the TULIP project, otherwise known as The Utah Legal Information Project. Many other projects were analyzed, but lack of funds prevented the Foundation from developing them.

In 1983, the Utah Supreme Court approved the Foundation's petition to implement the Interest On Lawyers Trust Accounts program (IOLTA). IOLTA provided the necessary financial base to allow the Foundation to accomplish many of its long-standing goals by supporting law-related, public interest programs. Under IOLTA, the Foundation receives the interest from the trust accounts of participating Utah lawyers. The IOLTA program is now in its fifth year and has distributed over $408,454.75 in grants to such causes as Legal Aid Society, Legal Center for the Handicapped, Utah Legal Services and the Utah Law-Related Citizenship Education Project. The Foundation has also sponsored the public information series "Legal Briefs" on KUED Channel 7 which is hosted by Judge J. Dennis Fredrick.

The Foundation awards grants for the purposes of promoting legal education and increasing knowledge and awareness of the law in the community, assisting in the providing of legal services to the disadvantaged, improving the administration of justice and serving other worthwhile law-related public purposes. Anyone desiring a grant from the Foundation must make application before May 31 for consideration for distribution of funds in July of that year. Applications may be obtained from the Foundation.

This Fall, the Foundation hired its first employee and established an office at the Law and Justice Center. This will allow the Foundation to serve the public and its members more effectively.

The Foundation's efforts have served the community well and reflected positively on Utah's lawyers. The Utah Bar Foundation efforts have been made possible with great help from its officers and trustees. The current officers and trustees are Richard C. Cahoon, president; Hon. Norman H. Jackson, vice president; H. Michael Keller, secretary/treasurer; David S. Kunz, trustee; Ellen M. Maycock, trustee; Stephen B. Nebeker, trustee; David E. Salisbury, trustee.

Past presidents include: Calvin Behle (1963 to 1964); Junius Romney (1964 to 1965); Earl Tanner (1965 to 1966 and 1978 to 1980), Joseph Jones (1966 to 1971), Hon. J. Thomas Greene (1972 to 1974), David E. Salisbury (1975 to 1978), Hon. George W. Latimer (1980 to 1982) and Richard C. Cahoon (1982 to present). Congratulations on your 25th anniversary!

New Jones Poll Reflects Differences in Attitudes and Experiences of Utah Lawyers

The Utah State Bar Commission has received and reviewed a compilation of data from a comprehensive survey of Bar membership to identify differences in attitudes and experiences in the legal profession. The data was collected by Dan Jones & Associates to allow comparisons on the status and perceptions of white male attorneys, female attorneys, attorneys of minority/ethnic descent and handicapped attorneys.

The Bar co-sponsored the survey with the Utah Bar Foundation, the Salt Lake County Bar Association, Women Lawyers of Utah and the Hispanic Bar Association. The Needs of Women and Minorities Committee, under the leadership of Kathleen Barrett and Louise Knauer, worked directly with Dan Jones & Associates in the development of the survey. Ms. Barrett presented the findings to the Bar Commission in November.

The survey began in July 1988, initially drawing on three focus groups in which 39 attorneys participated. Their input greatly assisted in the development of a questionnaire which was administered by telephone interviews with a randomly selected sample of 200 female attorneys and 200 white male attorneys. The Jones also attempted to interview all minority and handicapped attorneys in Utah, and ultimately completed 34 interviews with minority members of the Bar and eight with handicapped attorneys.

According to Bar President Kent M. Kasting, the data reveals the wide range of experiences and often divergent opinions and expectations held by members of the Bar. For example, white male and handicapped attorneys rank "satisfying the client" as the top priority of personal goals, while female attorneys consider the "intellectual stimulation" of law as most important. On the other hand, "being of service to society" surfaces at the top of minority attorneys' list of goals and objectives.

The study also reveals that it isn't unusual for attorneys to change jobs. With the exception of female attorneys, approximately two-thirds of the respondents switched employers at least once since entering the law profession. Slightly over half of the females did so. Of course, women are also more likely to have attended law school more recently than male attorneys, and differences in values or career patterns may reflect this factor.

Among those attorneys who change employers, white males tended to cite better opportunities (20 percent) dissatisfaction with job or boss (12 percent), or a desire to practice solo (10 percent). Female lawyers who switched employers were often dissatisfied with the former job or boss (16 percent), moved to a different state (14 percent) or were looking for a better opportunity (12 percent).

Mr. Kasting said the study is valuable in helping to design and implement programs which will serve the varying needs of Utah attorneys.

An overview of the study will be presented at the mid-year meeting of the Bar in St. George on March 16, 1989, and future issues of the *Utah Bar Journal* will include articles focusing on particular areas of interest suggested by this study.

DISCIPLINE CORNER

PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violating Rule 8.4(c) for engaging in conduct involving misrepresentation by stating that he would make or had already made payments to a title company, which payments were not forthcoming for a period of four years.

2. For negotiating a settlement check contrary to instructions from opposing counsel, and for failing to release a lien prior to negotiating the check, an attorney was privately reprimanded for violating DR 1-102(A)(3), for conduct involving misrepresentation.

3. For failing voluntarily to notify the court, law enforcement or the prosecutor after learning that he had unknowingly received stolen funds as a portion of his legal fee, and for failing to return any of the legal fee representing the stolen funds after he became aware that they were stolen, although the attorney directed his clients to make immediate repayment to the victims of any and all of the stolen proceeds which they had paid to him for attorney's fees, an attorney was privately reprimanded for violation of DR 1-102(A)(5) and (6) for conduct prejudicial to the administration of justice and conduct adversely reflecting on his fitness to practice law.

4. An attorney was privately reprimanded for neglecting a legal matter entrusted to him under DR 6-101(A)(3) by failing to file a complaint or bring his client's matter to some type of resolution for a period of four years, failing formally to terminate representation of the client or indicate to the client that the case lacked merit, and failing to respond to oral and written communication from the client inquiring as to the status of the case.

5. An attorney was privately reprimanded for violation of DR 1-102(A)(4) for misrepresentation for failure to pay for photographic evidence ordered in anticipation of trial and actually used at trial, for failure to respond to a small claims judgment against him, and for the use of the appellate process in an effort to delay the ability to execute on the judgment.

DISBARMENT

John H. McDonald has been disbarred from the practice of law in the state of Utah, effective Nov. 8, 1988, for violating: DR 9-102(B)(3) and (4) for failure to render an appropriate accounting with two clients and failure to remit monies owing to the Workers' Compensation Fund; DR 2-110(A)(2) for prejudicing a client's interest by failing to return property and papers to the client upon termination of representation and failing to apprise the client of the current status of his pending actions; DR 6-101(A)(2) for inadequate preparation by failing to timely and appropriately resist a Motion for Summary Judgment; DR 7-101(A)(2) and (3) for intentionally failing to carry out a contract of employment and intentionally causing prejudice to the client by failing to communicate with the client regarding the status of the action and thereafter performing legal services not authorized by the client; DR 1-102(A)(4) for misrepresentation and deceit in representing to a client that medical bills were paid from settlement proceeds when a hospital bill was not paid and continuing thereafter to represent that the bill would be paid and in failing to return to a client a portion of stock proceeds which the attorney sold and which belonged to the client; and DR 1-102(A)(6) by engaging in conduct adversely reflecting on fitness to practice by engaging in a pattern of misconduct as outlined above.

Mental Disability Law is Focus of ABA Handbook

The American Bar Association's Mental and Physical Disability Law Reporter has released an updated and expanded version of its handbook, "Mental Disability Law: A Primer." This third edition focuses on substantive mental disability law topics, highlighting and citing the relevant case decisions and federal legislation over the past 15 years.

The 75-page booklet explains to legal practitioners how to represent and communicate with persons who have mental disabilities; the meanings of key medical, psychological and disability-related terminology; and reasons attorneys or advocates would want to represent disabled clients as part of their legal practices.

The Primer is designed for lawyers, advocates and judges new to this area of law, law students, and graduate students and professionals in related disciplines.

Issues examined in the Primer include determination in employment; housing and other social services; the right to treatment and the right to refuse treatment; the right to education; involuntary civil and criminal commitments; outpatient commitment; substitute decision-making, including guardianship; and professional liability.

Single copies of the Primer are available for $10; for orders of 10 or more, the charge is $6.50 per copy. There is a $3 charge per order for postage and handling. Checks should be made payable to "ABA/FJE," and orders or inquiries should be directed to the ABA Commission on the Mentally Disabled, 1800 M Street NW, Suite 200, Washington, D.C. 20036.

EDITOR'S NOTE: Review copies of "Mental Disability Law: A Primer" are available by contacting Patricia McCormick at (202) 331-2240.

Litigation Report and Update

Nov. 15, 1988

The August/September 1988 issue of the *Utah State Bar Journal* contained a Litigation Report published for the purpose of informing our members as to what litigation had been filed against your Association, its staff, officers and Commissioners. Your Bar Commission believes it to be most important to keep members informed of the status of any such pending litigation on a regular basis. The following information is intended to update you as to additional developments which have occurred in relation to individual cases and to inform you of new litigation filed against the Bar. Similar updated reports using the same format will appear on a regular basis in future issues of the *Utah Bar Journal.*

SUMMARY OF LITIGATION

PLAINTIFF (COUNSEL) AND DATE OF FILING	CAUSE OF ACTION	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
1. Wendy W. Krough (Brian Barnard) Fld. 11/17/87 [1, 2]	A 1983 Civil Rights action for wrongful termination seeking a declaration that the USB is a state agency, $30,000 in compensatory damages, $500,000 in punitive damages and attorney's fees and costs.	U.S. Dist. Ct. J. Jenkins, C-87-0991-J	C. Burdick, C. Kipp, R. Rees	USB and individual commissioners dismissed as Ps on USB's Motion to Dismiss. Trial scheduled for Feb. 27-28, 1989, for remaining Ds Hutchinson, Basset, & Nesset Sale; $4,804.55 paid toward insurance deductible.
2. Wendy W. Krough (Brian Barnard) Fld. 1/25/88 [1]	Plaintiff's challenge to the extent of continuing insurance coverage under COBRA alleging that the USB is a state agency, $10,000 compensatory damages and $10,000+ punitive damages, costs and attorney's fees.	U.S. Dist. Ct. J. Winder, C-88-52W	C. Burdick, C. Kipp, R. Rees	Stipulation by parties to continue insurance coverage at the employee's expense pending wrongful termination lawsuit and pending a decision re: the extent of continuing insurance coverage.
3. Wendy W. Krogh (Brian Barnard) Fld. 11/30/87	Unemployment compensation appeal seeking unemployment benefits.	Utah Ind. Commission/Board of Review, 88-BR-157	C. Burdick	Board of Review affirmed ALJ's decision holding that USB fired claimant for just cause; no appeal has been filed; decision is final. Case resolved in USB's favor.
4. Brian Barnard (Pro se) Fld. 2/8/88 [1, 4]	Disclosure of Bar staff salaries under the *Utah Information and Practices Act* seeking a declaration that the USB is a state agency, injunctive relief and $100 to $1,000 exemplary damages, costs and attorney's fees.	Third Dist. Ct. S. Wilkinson, C-88-0578 and S. Crt.	C. Burdick, R. Burbidge, C. Kipp	Summary judgment granted in favor of P requiring specific salary information to be disclosed, denying damages, attorney's fee claims and declaring USB to be a state agency; cross appeals filed and USB's Motion to Stay Execution of the Judgment granted on 5/20/88; all appeal briefs filed—waiting scheduling of oral argument; $6,706.09 paid in general attorney's fees to USB attorneys.
5. Brian Barnard (Pro se) Fld. 2/16/88 [1]	Action for injunctive and declaratory relief to prevent USB from suspending P for refusing to provide certain information on the licensing form and to determine whether certain licensing form information is "private" information. It also seeks a declaration that the USB is a state agency, injunctive relief and $100 to $1,000 exemplary damages, costs and attorney's fees.	Third Dist. Ct. J. Brian, C-88-0801.	R. Burbidge, C. Kipp, R. Rees	Discovery and P's Motion for Judgment on the Pleadings and/or Motion for Summary Judgment pending without date; on 6/14, USB's Motion to Stay granted pending appeal of #4 above; $2,311.30 paid toward insurance deductible.
6. Brian Barnard (Pro se) Fld. 3/21/88 [1]	Attempt to reopen the lawsuit settled approximately 1 year ago re: publishing letters to the editor in the Bar Letter; current action seeks declaratory relief for deprivation of first amendment rights for failure of the State Bar to publish a recent proposed letter to the editor from P. Action was brought pursuant to 42 USC 1983 seeking a declaration that the USB is a state agency, $10,000+ compensatory damages, $5,000 punitive damages against each defendant and attorney's fees and costs.	U.S. Dist. Ct. J. Sam, C-88-02395 and 10th Cir.	G. Hanni	6/3/88—Judge Sam granted USB's Motion for Summary Judgment dismissing the complaint; P filed an appeal to 10th Cir.; on 9/9/88, Appellant's brief filed; USB brief filed; case awaiting scheduling; $5,000 paid toward insurance deductible.

SUMMARY OF LITIGATION

PLAINTIFF (COUNSEL) AND DATE OF FILING	CAUSE OF ACTION	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
7. Brian Barnard, Brad Parker (Pro se) Fld. 5/1/88 [8]	Civil rights action challenging use of mandatory dues for discretionary bar functioning as violation of first and 14th Amendments, injunctive relief, attorney's fees and costs.	U.S. Dist. Ct. J. Greene, C-88-379A. Case reassigned to J. Burciaga, New Mex. U.S. Dist. Crt.	C. Kipp, R. Rees	Answers filed on behalf of Bar Executive Dir. of Bar, and Commissioners. P served 221 interrogatories on USB. Interrogatories and subparts total 1,000 and cover period of 1935 to present. USB filed Motion for Protective Order based on cost to respond but is voluntarily providing as much information as can reasonably be located.
8. Ernest and Sharon Bailey; (John Borsos) Dennis and Reta Job (Pro se) Fld. 12/16/87, 12/21/87 [1, 5]	USB's alleged breach of fiduciary duty for failure to discipline Richard Calder and/or adequately warn P's of Mr. Calder's alleged incompetency seeking Writ of Mandamus and $500,000 in damages (Jobs) and $800,000 in damages (Baileys).	U.S. Dist. Ct. J. Winder, C-87-1062W C-87-1069J.	C. Kipp, R. Rees	USB's Motion to Dismiss, previously under advisement, granted on 8/2/88 holding that U.S. Dist. Crt. has no jurisdiction over D by virtue of 11th Amendent nor does Dist. Crt. have subject matter jurisdiction. Time for appeal has run; case resolved in USB's favor; $2,900.03 paid in attorney's fees to USB attorneys.
9. Ernest and Sharon Bailey (John Borsos) Fld. 12/16/87 [1, 5]	USB's alleged breach of fiduciary duty for failure to discipline Richard Calder seeking Writ of Mandamus and $800,000 in damages, a "state agency" declaration, attorney's fees and costs.	Third Dist. Ct. J. Wilkinson, C-87-8124.	C. Kipp, R. Rees	D's Motion to Consolidate this action with the companion state action and Motion to Dismiss currently pending; Ps have taken no further steps to prosecute.
10. Dennis and Reta Job (John Borsos) Fld. 12/17/87 [1, 5]	USB's alleged breach of fiduciary duty for failure to discipline Richard Calder seeking Writ of Mandamas and $500,000 in damages, a "state agency" declaration, attorney's fees and costs.	Third Dist. Ct. J. Rokich, C-87-08173.	C. Kipp, R. Rees	USB's Motion to Consolidate this action with companion state action; Motion to Dismiss currently pending; Ps have taken no further steps to prosecute.
11. Myron Hamilton (Pro se) Fld. 3/2/88 [1, 6]	Civil rights action claiming the State Bar is depriving P of his constitutional right to represent himself. (USB filed an unauthorized practice of law action against P in state court in 2/88 for representing third parties.) Seeking a "state agency" declaration, injunctive relief, $10,000+ in damages, attorney's fees and costs.	U.S. Dist. Ct. J. Winder, C-88-1755.	C. Kipp, R. Rees	USB's Motion for Summary Judgment granted on 10/5/88, Magistrate Boyce noting that no cause of action was stated and action was frivolous. Appeal time has run; case resolved in USB's favor.
12. Ronald O. Neerings (Brian Barnard) Fld. 6/9/88 [1, 7]	February 1988 unsuccessful Bar Exam applicant's action against USB for releasing Bar examination information seeking a "state agency" declaration, injunctive relief, $10,000+ compensatory damages, $100 to $1,000 in punitive damages, attorney's fees and costs.	Third Dist. Ct. J. Sawaya, C-88-3807.	C. Kipp, R. Rees	P has filed Motion for Partial Summary Judgment; USB will be filing Motion for Summary Judgment; both motions scheduled for hearing on 12/5/88; discovery is completed.
13. Richard Tyree, Joseph Bonacci (Pro se) Fld. 5/23/88[9]	A purported class action (600 member) lawsuit claiming that USB committed nonfeasance and participated in racketeering by failing to take action during a four-year period when Assistant U.S. Attorney was admitted to practice in federal court but was not yet admitted to practice in State of Utah; Ps seeking $500,000 per class member and disbarment of USB members assisting in Dance's "unauthorized" practice of law.	Third Dist. Ct. J. Wilkinson, C-88-4239.	C. Burdick	USB has not yet been served; other named D filed Notice of Removal to U.S. Dist. Ct. on 10/25/88.

FOOTNOTES ON SUMMARY OF LITIGATION

[1] *These complaints allege that the Utah State Bar is a governmental entity, i.e., a state agency. The relief requested in each of those suits can only be granted if the Utah State Bar is first found to be a state agency. That underlying issue, apart from the other substantive issues, e.g., release of salary information, licensing form information, negligence in disciplining Mr. Calder, has significant implications for the Utah State Bar with regard to the ultimate control and regulation of the Bar. The Commissioners have unanimously made the decision to aggressively defend these lawsuits.*

[2] *Employee terminated Nov. 16, 1987, at 12 noon, complaint signed Nov. 16, 1987, and filed Nov. 17, 1987, at 10:43 a.m.*

[3] *All information related to relationship of USB and ULJC was published in USB News Letters prior to the date suit was filed, e.g., March 1987.*

[4] *Salary ranges provided by USB to plaintiff prior to suit being filed in a letter to plaintiff dated Dec. 9, 1987.*
i.e. Executives, $32,000 to $62,000
Administrators, $19,000 to $27,500
Support Staff, $13,000 to $17,500

[5] *A formal complaint is currently pending against Mr. Calder which is being prosecuted by special counsel, David Leta; a disciplinary trial was held Nov. 14 and 15, 1988.*

[6] *The USB is presently plaintiff in three unauthorized practice of law cases. No counterclaims have been filed. Defendants are David Browne, Lawrence Jacobsen and Myron Hamilton (See #13 above).*

[7] *The plaintiff in this action is not the Ronald E. Nehring who is an active member in good standing of our Bar. The plaintiff took and passed the July 1988 Bar Examination and was admitted to the Bar in October 1988.*

[8] *This case was filed after a United States District Court for the District of Wisconsin declared the integrated Bar of Wisconsin unconstitutional. That decision is on appeal to the Seventh Circuit. All briefs are in and the case has been argued. The USB along with 15 other states joined in an Amicus Brief. A decision is expected in December 1988 or January 1989. On Sept. 12, 1988, the U.S. Court of Appeals for the Third Circuit in the case of* Hollar v. Virgin Islands *(CA3, No. 87-3487) held that the integrated Bar of the Virgin Islands was constitutionally permissible.*

[9] *Ps are incarcerated in federal prison and were prosecuted by Wayne Dance, assistant U.S. Attorney (who is the other named defendant) during a period in which the U.S. Dist. Crt. admitted Mr. Dance to practice in U.S. Dist. Crt. prior to his admission to the Utah State Bar.*

SUMMARY OF INSURANCE COVERAGE

With the exceptions of the unauthorized practice of law cases, the defense of each of the above lawsuits has been tendered to our Officers and Directors' liability insurance carrier, the Home Insurance Co. That company has accepted each defense except the most recent case of *Tyree v. USB* (see item #15 above). It is expected that defense will be kept in house. Our present policy provides coverage for $1 million in claims. However, our coverage also requires a $5,000 deductible on each claim. Payments toward those $5,000 deductibles have been made by your Association to the Home Insurance Company as invoices on each particular case have been received.

As of this date, five lawsuits filed against your Association have been resolved in its favor. The total amount paid toward our deductible and general attorney fees on all lawsuits to date is *$23,823.84*. That sum does not reflect time spent by Bar Counsel, her staff, nor USB staff in responding to the lawsuits.

CONCLUSION

Your Bar Commission will continue to defend where appropriate and address all pending lawsuits in accord with the directives of our Association and welcomes any comments and suggestions that any of our members may have. We also will continue to regularly update you on the status of all pending litigation.

THE UTAH STATE BAR
COMMISSION (531-9077)

Utah Lawyers for the Arts Hosts Series of "Meet the Artist" Receptions

Utah Lawyers for the Arts will host the first in a series of "Meet the Artist/Wine and Cheese Receptions" on Thursday, Jan. 26, 1989. The reception will be from 5:30 to 7:30 p.m. on the 15th floor of Van Cott, Bagley, Cornwall & McCarthy, 50 S. Main, Salt Lake City, Utah.

Ririe-Woodbury Dance Company will be highlighted at the inaugural reception. Ririe-Woodbury will introduce its members and artistic staff, make a brief presentation and run a performance video. Ririe-Woodbury Dance Company has received worldwide recognition for the spirit of artistic innovation evident in all its works and an ongoing commitment to community arts, education and dance awareness. The company has invigorated audiences throughout Europe, Asia, South Africa, South America, Canada, the Virgin Islands and nearly every state in the United States Shirley Ririe and Joanne Woodbury, currently celebrating a 25-year association, have drawn national attention as modern dance choreographers and performers, and have spawned a new sophisticated generation of dance enthusiasts, choreographers and teachers.

Please note the reception on your calendars and plan to attend. If you have any questions concerning the reception or Utah Lawyers for the Arts, please contact Guy Kroesche or David Arrington at Van Cott, Bagley.

Advanced Course for Legal Secretaries Offered

The "Advanced Course for Legal Secretaries," which is an official course of the National Association of Legal Secretaries, will be taught winter quarter at the University of Utah College of Law. The course is sponsored by the Salt Lake Legal Secretaries Association and will be held Jan. 4 to March 15, 1989, in Room 105 of the College of Law on Wednesday evenings from 6:15 to 9:15 p.m.

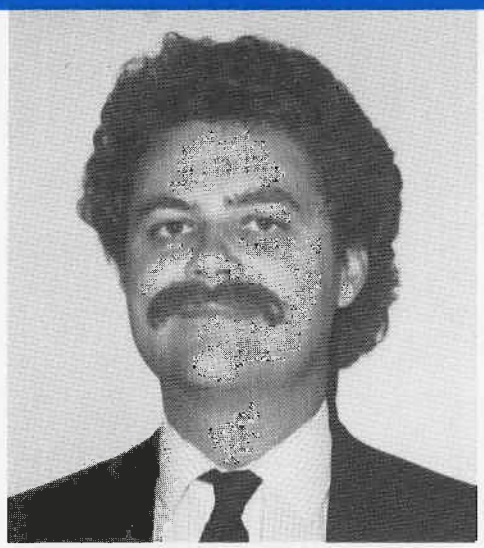
Marsha L. Gibler, PLS, legal education chairman of the Salt Lake Legal Secretaries Association, announces that the course will include litigation, criminal procedures, legal research, contracts/torts, estate planning, wills and probate, federal appellate procedure, state appellate procedure, real estate and bankruptcy.

A NALS Certificate of Completion will be awarded to students who meet all course requirements. Payment of the $98 registration fee may be mailed to the Salt Lake Legal Secretaries Association, P.O. Box 25, Salt Lake City, Utah 84110-0025.

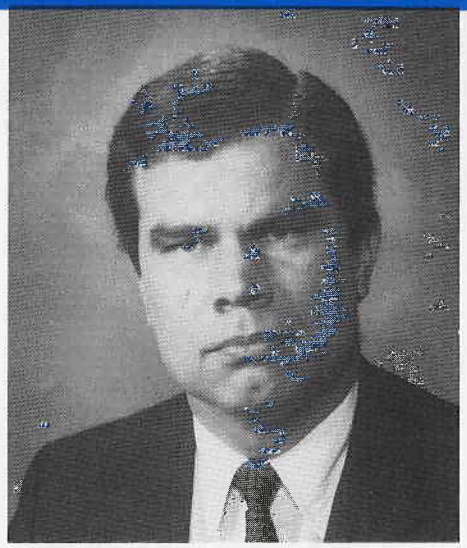
For further information, contact Marsha L. Gibler, PLS, at 531-7870.

CASE SUMMARIES

By William D. Holyoak
and
Clark R. Nielsen



William D. Holyoak



Clark R. Nielsen

PRESUMPTION OF JOINT OWNERSHIP OF PROPERTY IN A MARITAL PARTNERSHIP

The Supreme Court (Justice Durham) reversed an allocation by the Court of Appeals of a substantial amount of cash between the surviving husband and the estate of his deceased wife. The money was found by the husband in a roasting pan in the couple's kitchen, after his wife's death. Both had made financial contributions to the operation of the household. Refusing to award the money to the wife's estate, the Court of Appeals had opined that the burden of proving ownership was improperly placed upon the husband because the estate, as claimant, failed to initially establish a prime facie case of ownership. (See *Estate of Gorrell v. Gorrell*, 740 P.2d 267, 268 (Ct. App. 1987). Ignoring the issue of the initial burden of proof, the Supreme Court treated the marital relationship as a partnership wherein resources are pooled and expenses shared. Absent proof of actual ownership by either party, the property is rebuttably presumed to be owned equally by husband and wife, as tenants in common. *Estate of Gorrell*, 95 Utah Adv. Rpt. 10 (Sup. Ct., Nov. 8, 1988).

PRIORITY OF SECURITY INTEREST ON MOTOR VEHICLE REGISTRATIONS

The Court of Appeals (J. Bench) affirmed the trial court's summary determination of competing ownership interests in a horse trailer registered by certificate of title with the State Motor Vehicles Division. The plaintiff lender had perfected a security interest in the trailer and was listed as a lienholder on the title to "a 1980 horse trailer," with a VIN "84057."

Later, defendant Young purchased the same trailer at a sheriff's sale, with her title describing the trailer as a "1977" model with a VIN of "084057." The panel concluded that the discrepancies in the model year and the serial number, where a "leading" zero was omitted, were not so misleading as to prevent the purchaser at sheriff's sale from discovering the plaintiff's prior security interest. Therefore, the perfected security interest took priority over a subsequent sheriff's title because a purchaser at a judicial sale acquires only the title that the debtor had. *Basin Loans, Inc. v. Utah State Tax Comm'n, et al.*, 95 Utah Adv. Rpt. 23 (Ct. App., Nov. 14, 1988).

Attorneys should recognize the impact of this and other such decisions on computer searches of information filed with government agencies. A search will be inaccurate if the information requested is not identical to the data stored. For example, under some data storage systems, inclusion of "leading zero" in an identification number may be necessary to accurately disclose the existing number. Deletion of a "leading zero" may prevent retrieval of the information or may produce inaccurate data, adhering to the computer maxim: "Garbage In—Garbage Out."

COURT OF APPEALS JURISDICTION ON EXTRADITION; SUMMARY DISPOSITION

Per curiam, the Law and Motion Panel of the Court of Appeals held that its jurisdiction under Utah Code Ann. Sect. 78-2a-3(2)(g) (1988) includes an attempt by an Idaho fugitive to prevent his return to Idaho by extradition. Appeals "involving a criminal conviction" include habeas corpus proceedings to fight extradition. The court also articulated standards by which a case may be considered for summary disposition under Rule 10, R. Utah Ct. App., either on its own motion or that of a party.

J. Orme dissented from the panel's ruling on the sua sponte issue of jurisdiction. *Mario Hernandez v. Hayward*, 96 Utah Adv. Rpt. (Ct. App., Nov. 18, 1988).

EVIDENCE—JUDICIAL NOTICE OF JUDGMENT

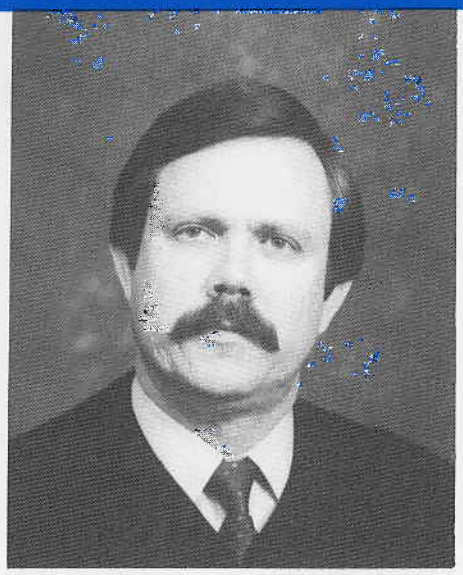
A court may not take judicial notice of a judgment in another case. The judgment must be placed into evidence by its proponent. Thus held the Court of Appeals (J. Billings) in ruling that the juvenile court improperly took judicial notice of the father's homicide conviction in terminating his parental rights.

The error was, however, harmless, as there was other adequate evidence that the father was himself an unfit parent.

State, in Re C.Y., et al. v. Yates, 96 Utah Adv. Rpt. (Ct. App., Nov. 18, 1988).

DUI—TRAFFIC STOPS AND MIRANDA WARNINGS

The United States Supreme Court, *per curiam*, held that an ordinary traffic stop does not rise to the level of a custodial stop or formal arrest requiring a *Miranda* warning. Therefore, the defendant's comments and admissions to the police officer that defendant had been drinking, which were made after being stopped but before formal arrest and warning, were properly admitted at trial. *Penns. v. Bruder*, Docket 88-161, 57 U.S.L.W. 3311 (U.S. Sup. Ct., Nov. 1, 1988).



Silent But Significant Changes

By Judge Timothy R. Hanson

One of the most significant events affecting the administration of the district courts in the state's history will likely go unnoticed. Unnoticed, not because it is unimportant, but because the practitioner and the citizen dealing with the courts will not likely see any outward sign of change.

Since statehood, the district courts have been county-funded. While judges and reporters are paid by the state, all other support staff, with few exceptions, and court facilities are county provided.

Even though the working relationship between the judges and the elected county officials have been amicable regarding the operation of the court, and any differences that arose were for the most part resolved, the financing system grew to be antiquated and difficult for the county employees who had to work within the system. Not only, for example, were court clerks subject to "two masters" so to speak, the elected court clerk and the judge, but the county clerk was a separate official elected by the people and not subject to the direct supervision of the district court judges.

In the early days of the judiciary, there were only the district courts and the Supreme Court as courts of record and, of course, the Supreme Court was state-funded in its entirety since inception. As new levels of court were added, such as trial and appellate courts of limited jurisdiction, they were state-funded courts. Court clerks and personnel in those systems were state employees, directly responsible to the judge or judges and/or a state-funded court executive.

JUDGE TIMOTHY R. HANSON was appointed to the Third District Court in 1982 by Gov. Scott Matheson. He received his law degree from the University of Utah in 1970 and was a managing officer in the law firm of Hanson, Russon, Hanson & Dunn from 1970 until his appointment to the bench. He is currently a member of the Utah Judicial Council, the Judicial Council's Gender and Justice Task Force and the Utah Supreme Court Advisory Committee on Rules of Evidence.

Those in many quarters believed that the district court should be in the mainstream and should become a full partner in the state's judiciary. Also, it is difficult to comprehend how we could hold judges accountable for the manner in which the court operated when they had no substantial say over the administrative personnel upon whom they relied for support. These concerns were particularly true as the state became more urban and the rural districts became closer to the major metropolitan centers of the state through modern transportation and communication.

In an effort to respond to these growing concerns, in January 1986 the state's Judicial Council created a commission to study the district courts and make recommendations as appropriate for improvement. The commission was chaired by state Sen. Kay S. Cornaby, with Judge J. Dennis Frederick of the Third Judicial District acting as vice chair. On the commission were other legislative, judicial and executive leaders. In addition to state government representatives, the commission also was made up of key county government, Utah State Bar and citizen representatives.

In September 1986, following substantial in-depth study and testimony from various interested persons, the commission issued its report. While the report dealt with many areas of concern regarding the operation of the district courts, the principal issue was state funding. The other issues identified in the report and dealt with by the commission were closely intertwined with the concept of state funding.

The Judicial Council, upon receipt of the commission's report, directed that appropriate implementation legislation be drafted, and a bill was filed in the 1987 legislature. In view of the then present and continuing economic climate, the Judicial Council determined that the bill needed a proposal for funding and worked out such a plan, which was included in the proposed legislation.

Unfortunately, for reasons that are not

relevant here, the legislature did not act on the proposed state funding of the district courts, and the proposal failed in the 1987 session.

State funding of the district courts remained as the No. 1 priority of the Judicial Council in the 1988 legislative session. New methods of funding and other necessary compromises were developed, and modified legislation was submitted. The legislation was successful in 1988 and was identified as Senate Bill 146, and known as the "District Court Act." The legislation has been codified into various sections of the Utah Code as applicable, but is primarily found in Section 78-3-11.5, Utah Code Ann., 1953 as amended, and following sections.

The legislation provided that the various counties had the option of joining the state system. All counties, with the exception of Sevier County, have opted to have the district court in their county state funded. Generally speaking, the counties are financially benefited by the state takeover. The decisions as to whether or not to join the state system in some counties were difficult in that political and historical issues presented important considerations. While the counties lost the revenues generated by the district courts, such as it is, they also were relieved of the funding requirements.

The timetable for implementation of state funding under Senate Bill 146 was a phased-in process. Facilities will be assumed by the state on July 1, 1988, and county personnel come aboard as state employees on Jan. 1, 1989.

During the phase-in period, the State Court Administrator's Office logged untold hours dealing with county officials on the nuts and bolts of the transfer, including difficult personnel problems primarily created because of the switch in employers. For the most part, the transition has gone smoothly. Logistical problems and personnel difficulties still remain, but likely will be worked out with time and experience.

Accordingly, as of Jan. 1, 1989, all persons who work in direct support of the courts, those people employed through the Court Administrator's Office or those persons who work in the court clerks' offices are Utah State employees. All facilities which house the courts are either state-owned or state-leased, including the furniture and furnishings contained therein.

The benefit of the overall operation in both urban and rural districts is that everyone in a particular office works for the same entity, to wit: the state. As manpower requirements fluctuate, personnel can be temporarily reassigned to assist as the need dictates. Duplication of positions that existed under the former system can be eliminated, and those positions are being consolidated where appropriate, reducing costs and expense. While there is no move to unify the courts into a single trial court system, consolidation of administration is highly desirable and one of the principal goals of the new system.

In asking the legislature to pass Senate Bill 146, the judiciary indicated to the legislators that taxpayer money could be saved through administrative consolidation. Even at the early stages of the transition, that is occurring. The judiciary is committed to wise utilization of available tax dollars, and state funding of the district courts provides another vehicle to reach that end.

In anticipation of the Jan. 1, 1989, assumption of county personnel into the state system, various actions have taken place in the district courts. In Salt Lake and other similarly situated counties, the traditional elected county clerk who has heretofore served as clerk of the court will no longer serve in that capacity. An appointed clerk of the court will serve each district court location. These clerks' single duty will be efficient operation of the court clerks' offices, and they are responsible to the judge or the judges in their particular district and supervisors from the Court Administrator's Office.

Clerks' offices are being reorganized to take advantage of the special talents that key court personnel possess and, where applicable, uniform administrative policies and procedures will apply.

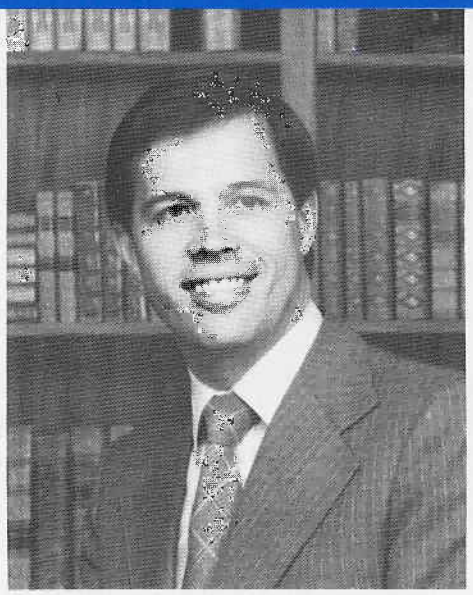
The end result should be more efficient, more responsive and more productive district courts. Even though it will not be a highly visible change in the way the district courts do business, it should allow the district court line personnel, as well as administrators, to provide better service to the attorneys practicing before the district courts in this state, and ultimately benefit their clients who seek resolution of their cases in the district courts.

Utah State Bar

1989 MID-YEAR MEETING

March 16-18

St. George, Utah



1989 Legislative Preview

An Analysis of the Composition of the 48th Legislature and Selected Issues It Will Likely Consider

By Douglas A. Taggart

When the 1989 General Session of the Utah Legislature convenes on January 9, 1989, twenty of its 104 seats will be occupied by new legislators. Seventeen of the 75 seats in the House of Representatives will change hands, as eight Republicans replace fellow Republicans, four Republicans sit in seats previously held by Democrats, and five Democrats take seats previously held by Republicans. The result is a net gain of one seat by the Democrats, leaving the balance of power in favor of the Republicans by a margin of 47 to 28, still a considerable majority, but insufficient without bipartisan assistance to effect the two-thirds majority required to take such actions as suspending procedural rules, cutting off debate, overriding gubernatorial vetoes, adopting early effective dates for legislation, and acting on proposed constitutional amendments.

The new House of Representatives will also see some major changes in its leadership. Nolan E. Karras (R-Weber) will replace Glen E. Brown (R-Rich, Morgan, Summit, Wasatch) as Speaker of the House, Craig Moody (R-Salt Lake) will move into Rep. Karras' former position as majority leader, David M. Adams (R-San Juan, Grand) will replace defeated Olene S. Walker as majority whip, and Byron R. Harward (R-Utah) will replace retired Jack F. DeMann as majority assistant whip. On the Democratic side of the aisle, Mike Dmitrich (D-Carbon, Emery, Grand) will retain his position as minority leader, Frank R. Pignanelli (D-Salt Lake) will replace Blaze D. Wharton (D-Salt Lake) as minority whip, and Brent H. Goodfellow (D-Salt Lake) will remain as minority assistant whip.

In the Senate, three of its 29 seats will change hands. Of these, two will be held by Republicans replacing other Republicans, and one will be held by a Republican taking a seat previously held by a Democrat, resulting in a net gain of one seat by the Republicans to increase its majority to 22 to 7 (over 75 percent of the Senate). No changes will be made in the Senate leadership. Arnold Christensen (R-Salt Lake) will remain as Senate president, Cary G. Peterson (R-Juab, Millard, Sanpete, Wayne, Piute, Sevier, Beaver) will be majority leader, and Dix H. McMullin (R-Salt Lake) will be majority whip. W. Rex Black (D-Salt Lake) will remain as minority leader and Eldon A. Money (D-Utah) will be minority whip.

At the date of this writing, chairmen and membership of the legislative committees have not yet been assigned.

Several major issues of general interest to members of the Bar have been proposed for consideration at the 1989 General Session. A few of these proposals are summarized below.

PUNITIVE DAMAGES. The Tort and Insurance Reform Task Force (the "task force") created during the 1988 Legislature and comprised of 19 members appointed by the President of the Senate and the Speaker of the House, after studying several proposal relating to the issue of punitive damages, endorsed proposed legislation[1] that would permit punitive damages to be awarded "only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or fraudulent conduct." This limitation would not apply if the claim arose out of the tortfeasor's operation of a motor vehicle while voluntarily intoxicated, presumably leaving such cases to be decided without regard to the existence of compensatory damages[2] based upon the plaintiff's ability to prove by a preponderance of the evidence[3] that the de-

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DOUGLAS A. TAGGART graduated cum laude *from the Brigham Young University Law School in 1978. He has practiced law in California and Utah, served as Associate General Counsel for the Utah Legislature and currently is Counsel for Beneficial Life Insurance Company. He is a member of the Legislative Affairs Committee of the Utah State Bar and is the Legislative Report Editor for the* Utah Bar Journal.

fendant acted with "knowing and reckless indifference and disregard toward the rights of others."[4] Evidence of the tortfeasor's financial condition would not be admissible until liability for punitive damages has been determined, and 50 percent of any punitive damages in excess of $20,000 would be payable to the state after payment of attorneys' fees and costs.

MANDATED DEMAND FOR JUDGMENT. Another proposed bill[5] studied by the task force would implement a "demand for judgment" procedure in civil actions in order to discourage the filing of non-meritorious claims and encourage early settlement of those that are meritorious by requiring parties to seriously evaluate their cases and make reasonable offers of settlement early in the course of the litigation. This procedure requires the plaintiff to make a demand for judgment against each defendant within 90 days after commencing his action. If he does not do so, his case is subject to dismissal with prejudice. If he makes the demand and it is not accepted by the defendant, and if the final judgment equals or exceeds the amount of the demand, the defendant must pay interest on the amount of the demand (less the amount of any counteroffer proposed by the defendant and rejected by the plaintiff) from the date the demand was made. If the judgment is less than the amount of the demand, it will be reduced by the amount of attorneys' fees and costs incurred by the defendant after the date of the demand, and these reductions will be taken into account before computing the plaintiff's attorneys' fees.

PRODUCT LIABILITY. The task force endorsed proposed legislation[6] that would repeal the statute of repose contained in Utah's Product Liability Act[7] that was declared unconstitutional by the Utah Supreme Court in 1985.[8] The proposed bill replaces the faulty statute of repose with a provision that "a manufacturer or product seller is not subject to liability to a claimant for harm under [the act] if the manufacturer or product seller proves by a preponderance of the evidence that the harm was caused after the product's useful safe life had expired." "Useful safe life" is rebuttably presumed to be 10 years, subject to various exceptions and limitations such as where a longer warranty is given, intentional misrepresentation or fraudulent concealment is involved, the injury-causing aspect of the product was not reasonably discoverable during the 10-year period or the harm caused during that period did not manifest itself until after that time. The proposed bill establishes a two-year statute of limitations from the time both the harm and its cause should have been discovered. Standards of liability of manufacturers and sellers of products are also set forth.

OTHER TORT REFORM ISSUES. The task force also examined issues relating to medical malpractice, the collateral source rule and limits on non-economic damages. Although none of the proposals relating to these matters received the approval of the task force, they are issues that are likely to resurface during the legislative session.

GRAND JURIES. The Legislative Judiciary Interim Committee endorsed a proposed bill[9] relating to the operation and financing of grand juries. The bill would place grand juries under the supervision of the Court of Appeals, give them statewide powers, increase the number of members to not less than nine nor more than 15 (with eight votes being required to return an indictment), require warnings to persons who are subjects or targets of grand jury investigations, allow witnesses to have counsel present, permit grand juries to receive evidence without regard to the formal rules of evidence (although an indictment may not be returned solely on the basis of incompetent hearsay), allow witnesses to present exculpatory evidence and require prosecutors to disclose any such evidence, and require a finding of clear and convincing evidence (rather than evidence that would "justify a conviction by a jury trial"[10]) before an indictment may be returned.

OTHER CRIMINAL INVESTIGATION AND PROSECUTION PROPOSALS. Other proposed bills would revise the subpoena powers of prosecutors in conducting criminal investigations so as to be consistent with standards recently set forth by the Utah Supreme Court,[11] provide for use rather than transactional immunity,[12] provide for the appointment of a special prosecutor in certain circumstances[13] and change the existing county attorney system to a district attorney system.[14]

VISITATION RIGHTS. Proposals regarding the visitation rights of non-custodial parents are also expected to come before the Legislature. One of these proposals[15] would require the payment of child support into a trust fund if visitation is denied. Another[16] would provide for the negotiation of custody and visitation issues with a counselor and the representation of a child's interests by a counselor and attorney.

CHILD SUPPORT. The Legislature is expected to act on proposals to modify the state's child support guidelines. Although advisory guidelines are currently in place,[17] the state will lose federal funding unless it implements, by October 1, 1989, a rebuttable presumption that the guidelines are applicable absent a specific court finding to the contrary.[18]

JUSTICE COURTS. A bill[19] has been proposed that would provide for the jurisdiction and operation of justice courts and the appointment, training and compensation of justice court judges.

JUDICIAL SALARIES. The Executive and Judicial Compensation Commission has recommended that judicial compensation be raised by increasing the salaries for Associate Justices of the Supreme Court to $80,000 per year, with other judges' salaries proportionately increased based on the percentage schedule set forth in U.C.A. Sect. 67-8-2. It is expected that this recommendation will be made to the Legislature as a part of its appropriation process.

Most of the legislative proposals discussed above have been embodied in bills to be introduced when the Legislature convenes. However, as of the date of this writing, none of the bills has been prefiled by a sponsoring legislator or given an identifying number. Obviously, these bills will change, and others will emerge, as the various dynamics of the legislative process are applied.

Interested members of the Bar would be well advised to follow these and other legislative proposals as they develop, and are encouraged to get involved in the legislative process by providing such input as they consider appropriate.

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[1] "Punitive Damages Amendments," 1989 General Session, Nov. 15, 1988, Draft (Office of Legislative Research and General Counsel).
[2] *Nash v. Craigco, Inc.*, 585 P.2d 775, 778 (Utah 1978).
[3] *Wilson v. Oldroyd*, 267 P.2d 759, 765 (Utah 1954).
[4] *Johnson v. Rogers*, 90 Utah Adv. Rep. 3, 4 (Aug. 25, 1988).
[5] "Mandated Demand for Judgment," 1989 General Session, Nov. 28, 1988, Draft (Office of Legislative Research and General Counsel).
[6] "Products Liability Amendments," 1989 General Session, Nov. 18, 1988, Draft (Office of Legislative Research and General Counsel).
[7] Utah Code Annotated Sect. 78-15-1 et seq.
[8] *Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985).
[9] "Grand Jury Reform," 1989 General Session, Sept. 20, 1988 Draft (Office of Legislative Research and General Counsel).
[10] Utah Code Annotated Sect. 77-11-5.
[11] "Subpoena Powers," 1989 General Session, Sept. 20, 1988, Draft (Office of Legislative Research and General Counsel); see *In Re: Matter of Criminal Investigation, Seventh District Court No. CS-1*, 754 P.2d 633 (Utah 1988).
[12] "Prosecution Immunity Amendments," 1989 General Session, Sept. 8, 1988, Draft (Office of Legislative Research and General Counsel).
[13] "Special Prosecutor Amendments," 1989 General Session, Oct. 5, 1988, Draft (Office of Legislative Research and General Counsel).
[14] "Prosecution Revisions," 1989 General Session, Dec. 14, 1988, Draft (Office of Legislative Research and General Counsel).
[15] "Visitation Rights," 1989 General Session, Sept. 20, 1988, Draft (Office of Legislative Research and General Counsel).
[16] "Child Custody and Visitation Amendments," 1989 General Session, Sept. 20, 1988, Draft (Office of Legislative Research and General Counsel).
[17] Utah Code of Judicial Administration, Rule 4-904.
[18] 42 U.S.C.S. Sect. 667(b), as amended by P.L. 100-485 (1988).
[19] "Justice Courts Amendments," 1989 General Session, Nov. 3, 1988, Draft (Office of Legislative Research and General Counsel).

STATE BAR CLE CALENDAR

FRANCHISE SECTION SEMINAR

The Franchise Section of the Utah State Bar announces a Continuing Legal Education Seminar open to all attorneys to be held at the Utah Law and Justice Center. There will be an experienced faculty covering basic franchise topics of interest to all attorneys including:

Problems of franchising from the perspective of the franchisor, David E. Neff; overview of federal and state disclosure and registration requirements, C. Jeffrey Thompson; franchisor-franchisee ongoing relationships and termination, Professor Lionel H. Frankel; using trademark, patent and trade secret agreements, Vaughn W. North. There will be printed material that will be of value to you in your practice.

Date: Jan. 12, 1989
Place: Utah Law and Justice Center
Fee: $65
Time: 8:30 a.m. to 1:30 p.m.

BAD FAITH INSURANCE LITIGATION

A live via satellite program demonstrating litigation techniques and a substantive update of the case law in this emerging area of the law. Presents material as a working knowledge for both insurance defense counsel and plaintiff's counsel.

Date: Jan. 19, 1989
Place: Utah Law and Justice Center
Fee: $135
Time: 10:00 a.m. to 2:00 p.m.

PERSONAL AND ESTATE PLANNING FOR THE ELDERLY

As the population ages, the market for estate planning and other legal services for the elderly will continue to expand rapidly. General practitioners and others interested in adding estate planning for the elderly to their practice repertoire will be interested in this estate planning course which covers recent techniques and legal ramifications of particular interest to elderly clients.

Date: Jan. 26, 1989
Place: Utah Law and Justice Center
Fee: $135
Time: 10:00 a.m. to 2:00 p.m.

WHAT YOU NEED TO KNOW ABOUT THE NEW TAXPAYER BILL OF RIGHTS

A live via satellite program on the new Omnibus Taxpayer Bill of Rights, passed by Congress at the end of October 1988 in response to a broadly held view that some additional protections were needed for taxpayers in our federal tax system. This new law will have a substantial impact on taxpayers, practitioners, Internal Revenue Service employees and accountants as well.

Date: Feb. 2, 1989
Place: Utah Law and Justice Center
Fee: $135
Time: 10:00 a.m. to 2:00 p.m.

JOINT VENTURES

A live via satellite course covering essential drafting techniques and counseling considerations for handling joint ventures successfully. Cover all the bases and avoid potential malpractice claims with the information and techniques discussed in this course.

Date: Feb. 9, 1989
Place: Utah Law and Justice Center
Fee: $135
Time: 10:00 a.m. to 2:00 p.m.

MERGERS AND ACQUISITIONS: TECHNIQUES AND STRATEGIES

A live via satellite program covering the practical and technical problems of structuring mergers and acquisitions. This program is designed for corporate finance lawyers, financing professionals and business executives.

Date: Feb. 14, 1989
Place: Utah Law and Justice Center
Fee: $160
Time: 8:00 a.m. to 3:00 p.m.

DESIGN AND CONSTRUCTION CONTRACTS

A live via satellite program covering case law and litigation strategies in construction contract cases. Contract interpretation, party identification, development and use of documentary evidence, and expert witnesses will be featured.

Date: Feb. 23, 1989
Place: Utah Law and Justice Center
Fee: $135
Time: 10:00 a.m. to 2:00 p.m.

RECENT DEVELOPMENTS IN COMMERCIAL LAW

A live via satellite program covering a thorough update on UCC developments. This will be especially for practitioners who have not had occasion to handle UCC matters in recent years and involves an article analysis and application of the UCC for today's practitioners.

Date: Feb. 28, 1989
Place: Utah Law and Justice Center
Fee: $160
Time: 8:00 a.m. to 3:00 p.m.

LEGISLATION AS A REMEDY

Have you been frustrated in your practice of law because of an ambiguous, unfair, or archaic law? Plan to attend a seminar presented by the Utah State Bar in conjunction with the Office of Legislative Research and General Counsel and learn more about the legislative process, about how to make positive changes in the law, and about how you can use legislation to resolve recurring problems with the law.

In this seminar a Utah legislator will review the legislative process; legislative counsel will present an overview on how to draft legislation; and a panel of experienced lobbyists will answer your questions and describe how to successfully shepherd a bill through the legislature. This seminar includes an excellent handbook.

Date: March 21, 1989
Place: State Capitol—Salt Lake City, Utah Room 403
Fee: $25
Time: 1:00 p.m.

CLE REGISTRATION FORM

DATE	TITLE	LOCATION	FEE
☐ Jan. 12	Franchise Section Seminar	L & J Center	$65
☐ Jan. 19	Bad Faith Insurance Litigation	L & J Center	$135
☐ Jan. 26	Personal and Estate Planning for the Elderly	L & J Center	$135
☐ Feb. 2	What You Need to Know About The New Taxpayer Bill of Rights	L & J Center	$135
☐ Feb. 9	Joint Ventures	L & J Center	$135
☐ Feb. 14	Mergers and Acquisitions: Techniques and Strategies	L & J Center	$160
☐ Feb. 23	Design and Construction Contracts	L & J Center	$135
☐ Feb. 28	Recent Developments in Commercial Law	L & J Center	$160

Total fee(s) enclosed $ _____
Make all checks payable to the Utah State Bar/CLE

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THE FINAL SAY

by M. Karlynn Hinman

When I was young, my father would regale and amaze us with his recitations—more properly, kitchen sink performances—of the great Shakespeare speeches, proclaimed with spirit and dry humor. He came from a time when education included memorizing things.

My favorite was always Hamlet, probably because I was young and it sounded strange and complex. I thought it very grown up to be included among its listeners. "Aye, there's the rub." I thought my father brilliant because he could explain what that meant.

My own education was part of later, more modern times. I read, but not nearly so much as my parents thought proper. I hardly memorized a thing. I did get as far as "Alas, poor Yoric," but there isn't a lot of mileage in that line without the rest—even at the kitchen sink.

Many of us were blessed by something called English 101, an Introduction to Shakespeare. We all read Lear and Hamlet and even some of the comedies. There was a paper due somewhere during the semester about the role of the fool in Shakespeare. That has all come back to me since joining the *Journal* committee. The fool has taken on a new and more immediate meaning.

Only a fool would accept the assignment to be funny on command. Surely, that is beyond the capability of a mere lawyer. We can be aggressive and surly and dramatic (or at least melodramatic) virtually on command. We regularly and arrogantly expose our innermost intellectual processes to the world, whether before juries or judges, whether orally or in a brief on a most esoteric point of law.

We even submit articles to the *Journal*, to be read by our peers—or at least the editors who determine whether to put us in print. We turn from an intricate dispute over real estate boundaries to the vagaries of summary judgment to a confrontation with a federal alphabet agency, hardly batting an eye. But be funny on command? Few of us have the talent—as that inner voice screams while we bravely make the effort. There are some Clarence Darrows and even some Portias among us, but few Jack Bennys.

Humor is a funny thing and that is not just a redundancy. It varies with culture and with age, both the years and the era. A 5-year-old loves the simplest and silliest knock, knock: who's there? Grrrr! Grrrr who? Grrrrandpa! Eleven-year-old girls giggle at everything. Greeks apparently laughed at obscene caricatures, and the pun is universal and sometimes, mistakenly I think, called low.

Humor can be painful, sophisticated, educational, bawdy, subtle, truthful. Anything and anyone can be its subject. Terribly funny ethnic jokes are frowned upon in proper circles. Purple grape and elephant jokes have had their vogue. They fade and then revive, mutated by new jargon and a clever tongue. Humor can be a wordless picture or a one-liner accompanying a common occurrence. It may be a troop of Roman soldiers, marching to their drill sergeant's cadence: Hup, II, III, IV.

In our profession, it may be the wild circumstances of a case which boggle the mind and tickle the wit, the occasional word play of a sagacious judge, the cartoon of the judge donning robes and asking, "Mirror, mirror on the wall, who's the fairest of us all?" The dimensions of humor are bounded only by the wit and the imagination of the viewer, the reader or the auditor.

But how to be funny? On command? Surely you must be joking! Shakespeare's fools must have known, but their profession was hazardous. At least we know that poor Yoric had gone to his grave. What was his last word? Who knows. At least he was tender and kindly toward the young prince who felt kindly toward him.

Those who follow in his footsteps can only hope for like kindness—and, perchance, a lot of help in providing a last word here. This time, an essay; perhaps next time, something funny—but always the undertone from *Midsummer's Night*: "Alas, what fools these mortals be."

A LETTER NOT TO THE EDITOR

The recently revived hearings on compensation to Southern Utah radiation victims led Mr. I.M. Woolley to thank Dan S. Bushnell, who represented a group of Cedar City sheepmen whose sheep and lambs were decimated after above-ground nuclear testing. Mr. Bushnell took the cases to the United States Supreme Court, where they won three of the four needed votes for certiorari in claims involving fraud on the court and constitutional tort. The letter from Mr. Woolley is reproduced here.

Dear Dan:

Ewe will no doubt be surprised to receive this letter since we are not often herd from. One of our young ramikins, R.U. Woolley II, wool deliver our message to ewe by Shofar. He comes with a bag full of good wishes for ewer dame; our ewesteem is to be lane at ewer feet. Indeed, ewe do us honor when ewe wear our threads. People call us stupid, but it didn't take us four years at a university to get our sheepskin. Ewe humans' interest in sheepskin has put us in the sacrificial role. But on balambs, we still have hope for the human race. Ewe will not have herd "baa humbug" from us, and we hope to knit a friendship. But to the issues at foot.

It was shear pleasure watching ewe shepherd our case through the courts. Thanks for tyring to get us a gnu trial. It behooves us all to offer praise and not just Basque in radiated glory.

As ewe well know, we went to court like lambs to the slaughter. We expected judges

on a woolsack, but we got some woolly-headed thinking. We knew litigation was a gambol, but we never expected to confront such baaad men and lyres. We never saw so many black sheep. We saw each mutt on the stand; we remember those past oral arguments with dismay.

How could they be so tallow? We herd everything; we knew they were trying to fleece us. Snow wonder we've been upset. Wood ewe please tell us why they tried so hard to make us look sheepish, grinning all the while?

For years we have lived with our lambentations. We knew we were lost; we needed help in the worsted way. We were the pitcher of despair; it was hard to be meek, but you didn't let them pull the wool over ewer eyes!

It was no fun getting clipped in the wild and wooly West, but we had our turn to try to ram it down their throats. We know how often ewe stayed up past ewer bedtime, studying in the lamblight.

Ewe cared. Even though we lost, we can no longer be folded, stapled and spindled. Ewe never thought our tail of whoa was but a yarn. Our pens are humbled, we have no flocked wallpaper, but no one stands mout on the issues we raised. Our hearts are Mary.

By the way, are ewe sure ewe didn't go to Yale? We'll buy ewe a drink at Morry's some day. Ewe might like the mead. O well, one does run into a lot of bleating hearts up there, but Leicester day than before.

Let us not ramble a-bout; we were proud to see ewe goat to it. You really tried to lambaste those crooks. We'll always be there, uncloven behind ewe, because ewe are all wool and a yard wide. We will remember ewe tenderly—it has been like two sheeps passing in the night.

Sincerely ewers,

The Sheep
By I.M. Woolley

Editor's Note

This new *Bar Journal* section, dedicated to providing humorous insights into law and life in general will be published ☐ occassionally, ☐ regularly, ☐ seldom (please check preference) as the demand and, more importantly, the supply of appropriate material dictates. Accordingly, your input of hilarious, amusing, droll or witty, anecdotes, stories and material is earnestly solicited. Attribution of authorship (or the withholding thereof in maintenance of anonymity, will be cheerfully provided for all material published—or, if you wish, attribution will be withheld pending a determination of reader reaction to the material. In any case, please let us hear from you—or is it ewe?

CLASSIFIED ADS

For information concerning classified ads, please contact Paige Holtry at the Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111, or phone 531-9077.

POSITIONS SOUGHT

Attorney with over 10 years' experience in tax, real estate, corporate and general business law seeks position with Salt Lake City firm. Please reply: Box 9056, Salt Lake City, UT 84109.

I would like to work with an expert—someone highly skilled in either tax, ERISA, bankruptcy, securities, etc. I am a past state supreme court clerk and a member of the Utah State Bar. For further information or suggestions, please contact the Bar office.

Expanding estate planning and tax firm is seeking a full-time attorney with 0 to 3 years' experience. Send resume to Mitton & Burningham, 36 S. State, Suite 1200, Salt Lake City, UT 84111.

Need to fill a legal assistant position? Call Job Bank, Joy Nunn, 521-3200. Job Bank is a service to the legal community by the Legal Assistants Association of Utah (LAAU). No fees are involved.

POSITIONS AVAILABLE

Medium-size firm in south valley needs aggressive associate with 1 to 2 years' litigation experience. Firm practices general civil litigation with strong emphasis on employee side labor, employment and discrimination actions. Salary commensurate with experience.

Multistate, Salt Lake City based law firm, offers a unique merger opportunity for hard working, competent and profitable attorneys or small firms. Let our management and marketing styles benefit you starting today. If you desire the added prestige and income potential which can come from association with Salt Lake's fastest growing law firm please forward your personal or firm resume to Kent Cramer, % Adamson, Clark and Gill, 2100 University Club Building, 136 E. South Temple, Salt Lake City, UT 84111.

The Utah Attorney General's Office expects to fill an opening for an antitrust enforcement lawyer. From 2 to 6 years in practice, with experience in antitrust and trial work preferred. A background in economics and business is also helpful. Will assist in developing major antitrust actions under state statute, both civil and criminal. Initial screening will be by resume only. Send a current resume within 10 days indicating interest to Utah Attorney General, % Paul M. Tinker, 236 State Capitol, Salt Lake City, UT 84114.

FURNITURE AND BOOKS FOR SALE

Utah Code Annotated, Michie Hardbound Edition, complete with Supplemental Pocket Parts. Best offer. 581-1211.

1988 Martindale-Hubbell National Lawyers Directory, complete set, never used, best offer. 581-1211.

Classic lawyers bookcases, 2 sets of 5 stackable shelves with glass doors, from late Judge Willis Ritter's estate. $250 each or best offer. 581-1211.

Four sets of Utah Code Annotated (1953 as amended), complete and up to date, excellent condition. Tracy Richards, 363-3300.

Complete set United States Code Service (USCS), up to date, excellent condition. Janice, 544-4221.

ALR second, third and fourth, complete with ALR Digest to third and fourth Federal and Index to Annotations. Excellent condition. Janice, 544-4221.

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350 S. 400 E. Attorney wanted to share large, deluxe office space with 2 other attorneys. Non-smokers only. Ample parking, utilities, library, conference room and receptionist included in $400 per month. Call 364-4200 or 531-1900.

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559 E. South Temple. Attorney wanted to share office suite with 3 other attorneys. Price is negotiable based on needs. Referral work available. Contact Reid Russell or Louise Knauer at 532-1601.

330 E. 400 S. Attorney wanted to share large office suite with 2 other attorneys. $300 per month. Utilities and telephone system included. Free parking. Receptionist, copier, word processor and library available. Call 322-5556.

MISCELLANEOUS

Small business law firm seeks to buy practice of retiring individual or other business law practices in Salt Lake City area. Will also consider mergers. Replies remain strictly confidential. Reply Box Y."

Volunteer attorneys are needed to act as hearing examiners before administrative hearings conducted by Salt Lake City Corporation. Hearings will involve business license denials and revocations as well as other municipal issues. Interested persons should contact Larry V. Spendlove, Assistant Salt Lake City Attorney, Salt Lake City Hall, 324 S. State Street, Suite 510, Salt Lake City, UT 84111, (801) 535-7788.

DONATIONS

LOOKING FOR A TAX DEDUCTION! The Utah Bar Foundation is in need of a typewriter and computer. If you or your firm would be interested in donating either of these items to the foundation, please contact Kay Krivanec, Utah Bar Foundation office, at 531-9077.

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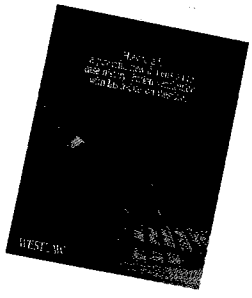

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