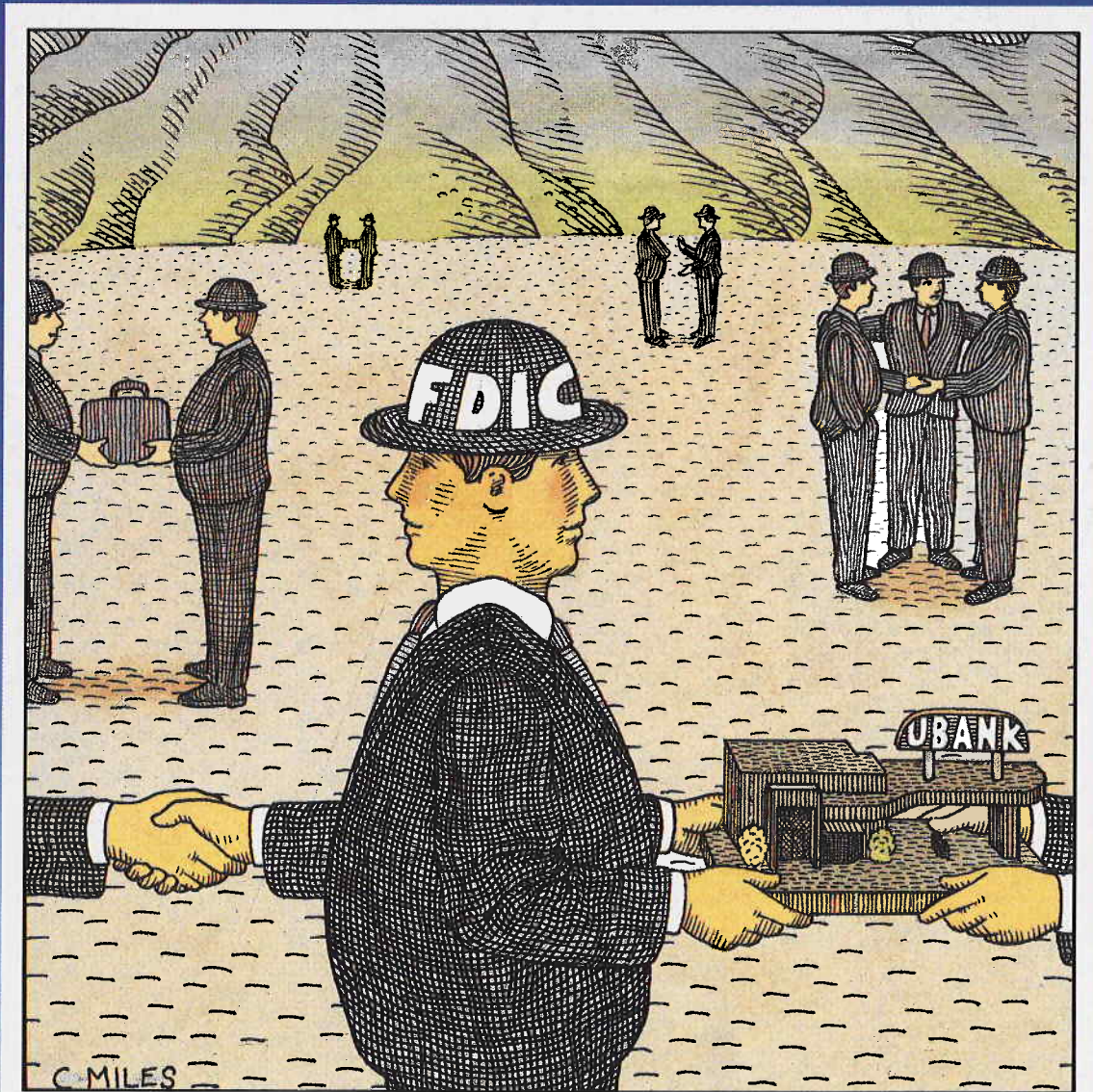


# UTAH BAR JOURNAL

Vol. 2, No. 2

February 1989



The FDIC and Failed State Banks

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A Plea for Bargaining—and Justice

12

# The Utah State Bar 1989 Mid-Year Meeting

March 16 to 18, 1989

**P**ack your shamrocks and shillelagh for St. Patrick's Day shenanigans in conjunction with the Mid-Year Meeting of the Utah State Bar. We're not sure if St. Patrick ever met St. George, but nonetheless, they'll be getting things together this March when Utah lawyers gather under the warm spring sun in St. George, Utah.

The program includes updates on the legislature and case law, and a judicial panel which will respond to questions and pet peeves from attorneys. A full complement of continuing legal education sessions will cover the topics of jury research and the art of negotiation.

There will be plenty of time to enjoy the desert sun while participating in planned outdoor activities or by enjoying the St. George climate on your own.

The meetings will be held at the Holiday Inn where a block of rooms has been reserved for Bar members. Last year there were more registrations than expected, so an additional block of rooms is being held at the Hilton Inn.

Registration materials were mailed to Utah attorneys during the first week of January. Questions regarding the program or meeting arrangements can be answered by committee members or the Bar staff.

The opening reception and registration is Thursday, March 16. Meetings begin on Friday, March 17, and conclude with an awards luncheon on Saturday afternoon featuring Daniel R. White, a lawyer, author and legal humorist. His frequent speaking engagements and writing leave time for the occasional practice of law. He has written *The Official Lawyer's Handbook*, *White's Law Dictionary* and most recently *What Lawyers Do... And How to Make Them Work For You*, which was a Book of the Month Club selection.

## Thursday, March 16, 1989

6:00 p.m. to 8:00 p.m. Registration and Reception  
Holiday Inn Sabra Room

## Friday, March 17, 1989— WEAR YOUR GREEN

8:00 a.m. Registration—Holiday Inn Lobby  
Continental Breakfast—Sabra Room  
GENERAL SESSION—Sabra Room  
Welcome and Announcements  
Kent M. Kasting, President  
Paul T. Moxley, Co-chair  
LaMar Winward, Co-chair

8:15 a.m. The Art of Negotiation  
Professor Gerald R. Williams

9:45 a.m. Case Law Update  
Justice Michael D. Zimmerman  
Judge Gregory K. Orme

10:15 a.m. Legislative Update  
Roger D. Sandack

10:45 a.m. How to Avoid Being a Target of an Ethics Complaint  
or Malpractice Claim  
Carman Kipp, Moderator  
Paul S. Felt  
Virginia ("Ginger") Smith  
Don J. Roney  
Christine A. Burdick

11:30 a.m. Review of the Dan Jones Survey on Lawyer Attitudes  
and Expectations  
Kathleen Barrett

12:00 Noon Casual Poolside Luncheon

1:00 p.m. SPORTING EVENTS  
Golf Tournament at Red Hills Golf Course  
Tennis Tournament at Vic Braden's  
Tennis Camp at Green Valley  
Trap Shooting at Green Valley

6:00 p.m. ST. PATRICK'S DAY PARTY—Holiday Inn.  
Join in a night of delicious Irish delights and dancing.  
Green clothing will be the order of the evening along  
with green beverages. Green T-shirts with the meeting  
logo will be available from the registration desk for \$8.

## Saturday, March 18, 1989

7:30 a.m. Sunrise 5-K run

8:00 a.m. CONCURRENT BREAKOUT SESSIONS  
A. Psychological Strategies of Juror Persuasion—  
Cinema 1  
Dr. Dan Gallipeau  
B. The Utah Administrative Procedures Act: Three  
Different Assessments After 15 Months of  
Experience—Cinema 2  
Henry Chai  
Steven Eklund  
Judge Russell Bench

9:00 a.m. GENERAL SESSION—Cinema 1  
How is the Business of the Court? Lawyers' Concerns  
About the Administration of Justice by the Courts—A  
Panel. Questions should be submitted to Doug Parry  
prior to the beginning of the session.  
Douglas J. Parry, Moderator  
Judge Pamela T. Greenwood  
Judge Scott Daniels  
Judge Leonard H. Russon  
Judge Don V. Tibbs  
Judge Rodney S. Page  
Scott M. Matheson  
Robert Van Sciver  
Bert L. Dart  
H. James Clegg  
James R. Holbrook  
Nancy Sue Bergeson

10:30 a.m. Break

10:45 a.m. CONCURRENT BREAKOUT SESSIONS  
A. Innovative Techniques in Courtroom Exhibits—  
Cinema 1  
Dr. Dan Gallipeau  
B. Substance Abuse  
Rita Baden  
Spencer E. Austin  
Mark E. Kleinfield

12:00 p.m. Awards Luncheon  
Holiday Inn Sabra Room  
Dan R. White

### MID-YEAR MEETING PROGRAM COMMITTEE

Paul T. Moxley and LaMar J. Windward, co-chairmen, Jan C. Graham, Stephen J. Mikita, Hon. Michael R. Murphy, Carolyn Nichols, Douglas J. Parry, Hon. John A. Rokich, Joanne C. Slotnik, Hans Q. Chamberlain, commission liaison, Stephen F. Hutchinson and Barbara R. Bassett.

# UTAH BAR JOURNAL

Vol. 2, No. 2

February 1989

■  
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■  
COVER: Our thanks to Chris Miles, an art major at the University of Utah, for the cover artwork which depicts the dual role oftentimes played by the FDIC in winding up the affairs of a failed state bank. Chris has also had illustrations published in the *Logan Herald Journal* and *Parent Express* magazine.

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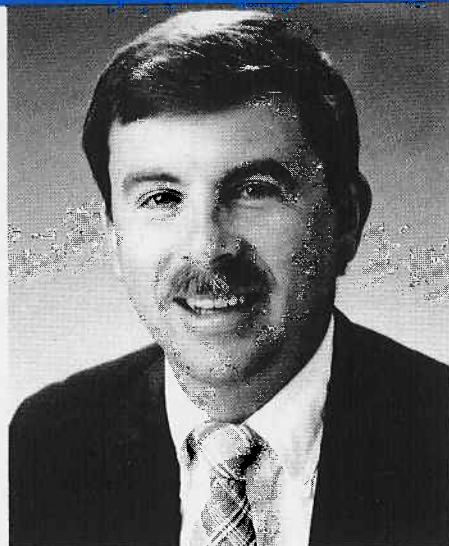
## Overhead—You Know It When You Pay It!

*(Perhaps You Don't When You Don't)*

This President's Message is being written about that debilitating, sometimes terminal, ailment often unaffectionately referred to as "overhead"—what the lawyer has to pay before he or she gets paid! I hope that what I say below is also informative and useful to lawyers and judges who have the good fortune of not having direct responsibility to pay all of those monthly bills, assessments, premiums, fees and costs that rise up and demand immediate and substantive response in the form of reduction in bank account balances each month.

Once in a while, we read in the papers or hear on the radio one of those stories about the lawyer or lawyers who have "hit it big" and received fees perceived by many to be adequate enough to support immediate retirement and at least monthly sojourns to Tahiti, the Virgin Islands, the French Riviera or other exotic places where the rich congregate to play. By and large, however, the usual cases lawyers handle rarely qualify as the "bonanza case." In reality, lawyers, as private practitioners, are principally engaged in attempting to solve the problems of people and businesses as quickly and painlessly as possible for a fee usually based on the hours it takes to adequately and competently respond to the client's needs. Simply put, the vast majority of lawyers charge by the hour and, hopefully, get paid by the hour. Getting paid is not often as easy as it sounds, and as one sage practitioner once said, "A good lawyer works 12 hours, bills six hours and collects three hours a day." That may be somewhat exaggerated, but as all of us who have been in the practice know, billing a fee is far different than collecting a fee.

Now, to the point of the story: attorneys' fees vis-à-vis overhead. The legal practice in the United States today is far different than what it was 20, 15 or even 10 years ago. Our society has geometrically grown in terms of complexity of relationships, behavioral requirements and conflicting needs



Kent Kasting

and demands. Necessarily, the legal service, in response to those changes, has had to become more extensive more detailed and more involved—all of which requires the expenditure of more time and costs to ensure that the courses of our clients are safely charted through those hazardous seas which have more sand bars and hidden reefs than ever before.

Whether we like it or not, society has told the private practitioner that carbon paper and tissue copies no longer are acceptable; that "FAX machines" are "in"; that simply having a copy of the *Utah Code* won't get you by; that your expert had better have charts, graphs, models and all other sorts of gimmicks to talk about in addition to that learned treatise that was once so often the foundation for his opinion; and that to get things done, you've got to have a phone system which will allow great numbers of lawyers, judges and parties to participate in that critical conference call. And the bottom line is all of these new developments and devices result in increased overhead, newer and greater costs, and the expenditure of large sums of money to keep the law office operational, effective and competitive.

So, the next time you hear about or consider the amounts charged by lawyers, please also remember what it now costs to do business. Perhaps a few facts and figures bring what I'm trying to say into clearer focus. Some of the examples below are based on my own firm's experience with nine lawyers, but I believe them to be fairly representative of the costs Utah lawyers incur in the practice of law, and of course the amount of overhead increases in proportion to the number of lawyers in the firm. A normal lawyer or law firm's overhead runs around 50 percent to 60 percent. At

\$100 per hour, that means \$50 to \$60 goes to overhead.

In our shop, we pay over \$5,000 per month for rent. Average office space in Salt Lake goes for about \$1 per square foot per month. We pay about \$2,000 per year per lawyer for malpractice insurance. Our telephone bill, excluding long distance, runs about \$1,200 per month. That voracious postage meter which some firms lease consumes about \$750 in postage every two weeks. The copier we have is mid-line, costs about \$14,000 to buy, or \$425 per month to lease, and that doesn't include annual maintenance, contract costs, paper, toner, the new drum and everything else it takes to make the thing dependable.

And then there are the salaries for the receptionist, the runner, the legal secretary, the paralegal and the associates. Legal secretaries' salaries range from \$1,500 to \$2,000 per month, and the starting salaries for associates in Salt Lake are about \$30,000 per year. Salaries, plus the 7.51 percent FICA employer contribution, health and life insurance premiums, vacation and pension benefits, are most expensive, but most necessary to ensure that the lawyer has top quality people serving the client.

Oh, and don't forget about the library. A new *Utah Code* costs \$600 to buy and about \$250 to \$300 per year to keep current. But in order to practice law today, you need more than a *Code* and legal encyclopedia to get you by, and it seems like each set of books you have in your library costs \$400 to \$600 per year to keep current. And that doesn't include what it costs to buy them. And there's Lexis and Westlaw, both of which a few years ago were novelties, but now seem to be necessities.

Then there are office supplies, equipment lease payments, including those computers that are constantly in need of upgrading, in spite of the salesman's promise that his system will meet your needs for at least a decade. There are the personal property taxes, the accountant's fees, the fire and hazard insurance, the magazine subscriptions, the Bar dues, the CLE fees, the *Martindale-Hubbel* listing (this year our one page cost about \$1,300), monthly parking (we pay about \$400 to \$500 per month,) the deposition costs—many of which are never collected—and a myriad other incidental expenses which we all continually, but unsuccessfully, try to escape or at least minimize.

The lawyers' plague of overhead is further complicated and compounded by another distasteful facet of the practice called

"accounts receivable"—what the lawyer pays up front in terms of overhead and expenditure of time in anticipation that his bill will be paid in a timely fashion by an ever-so-grateful client. Many times that client is either not able to pay the bill or, in retrospect, concludes that he or she could have achieved a better and quicker result without the assistance of a lawyer. Like it or not, accounts receivable are a major problem and concern of most law firms and writing off accounts entirely or discounting them substantially is not an uncommon practice. When you consider the fact that the overhead goes on whether or not the client pays you, you can more readily understand many of the frustrations the private prac-

itioner experiences in trying to run a law office and earn a reasonably acceptable salary.

The purpose of this message is not to cry "sour grapes" about the private practice of law. Rather, I thought it appropriate for all members of the legal profession in Utah to at least be updated on what it costs to practice law these days and to remember that when an attorney sends his or her bill, the work has already been done and the expenses have already been paid. It was also intended to dispell the notion that may exist that attorneys take home whatever fees they may receive or be awarded. To the contrary, 50 percent to 60 percent goes to office overhead—a law firm's chronic ailment.

### DIRECTORY UPDATE AND CORRECTIONS

In our recently distributed Utah State Bar Directory Supplement, Robert G. Wright was inadvertently omitted from the Supplement. Below are the names and addresses of both Robert G. Wright and W. Robert Wright.

#### Robert G. Wright

Bar #5363  
50 S. Main Street, #700  
Salt Lake City, UT 84110  
(801) 531-1777

#### W. Robert Wright

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170 S. Main Street, #1500  
Salt Lake City, UT 84101  
(801) 521-3200

2035 E. 3300 SO. #306  
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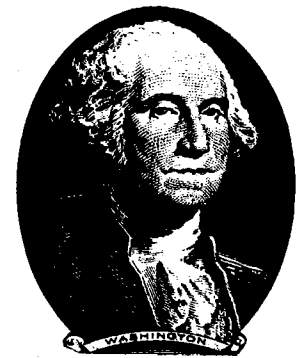
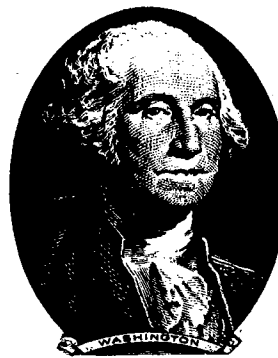
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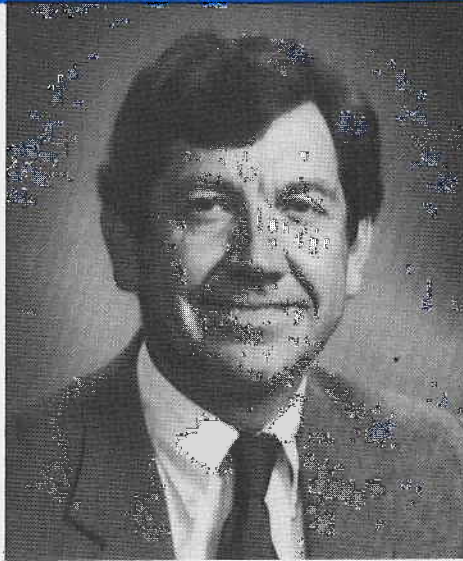


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## COMMISSIONER'S REPORT



*H. James Clegg*

I had hoped to entitle this article something majestic like "The Vision from the Summit." Unfortunately, the best I can do is "A View From the Foothills Through Thinning Fog."

I have now been a member of your Bar Commission for about six most interesting months. It is not quite what I expected. The "ups" have been great; the "downs" pretty discouraging. The greatest up is seeing lawyers and judges put in so much time and effort to keep the legal system working. It really doesn't just happen by itself. The completion and occupancy of the Law and Justice Center has been a very exhilarating event, attracting national attention and spotlighting our Bar. More needs to be done to fulfill the vision to use the concrete, steel and pleasant decor to fulfill societal needs, but everyone is enthusiastic.

The hardest personal "down" has been review of some appealed disciplinary matters. Those involving dishonesty or breach of fiduciary duty are easy; some involve issues which are not so black-and-white. The responsibility to protect the public from unethical practices requires different considerations than the customary presumptions of innocence, guilt beyond a reasonable doubt and right against self-incrimination. I've probably proved what I instinctively knew: I agonize too much to be a good judge.

A most interesting challenge is serving with Jackson Howard, Brian Florence and Paul Durham on a committee to study the organization of the Utah State Bar and make recommendations for changes. I am still struggling to learn how our own system works and, at the same time, we are studying the structures of other bars. Suggestions so far go all the way from adjusting the size of districts to provide a more uniform number of voters per commission-seat to adding a fairly large parliamentary body of lawyers, perhaps 50 to 100, between the membership and the Commission in the hope of having better communication with and direction from the members of the Bar.

On November 2, 1988, Jackson and I drove to Price to meet with the Eastern Utah Bar Association to elicit the views of its membership. Jackson and Paul had already gone to a similar meeting involving the Uintah Basin Bar Association at Vernal. We appreciated the views and sentiments received concerning structure and ideas for improvement.

One of the least enjoyable facets is the depleted treasury. There is no money for

frills, not even payment for mileage for our trip to Price, for example. Jackson and I don't begrudge the time required but it would be nice to have a bit of expense money around.

I have reviewed the expenditures and am dismayed only at the costs of legal defense and malpractice insurance. The State Bar's costs and budget reflect, in some measure at least, the claims made. While I am pretty ignorant about claims which preceded my service on the Commission, I am not particularly impressed with those presently pending. My review of the allegations and defenses makes me sure that I would have done about the same thing as my predecessors. Moreover, I am just about as confident that most, if not all, Utah lawyers would have done the same thing and that I would have supported them in it. So why is it that a very few of our number can so affect the goals, sentiments and desires of the vast majority and impoverish the exchequer in the process? Perhaps it's time to see if some sort of Alternative Dispute Resolution would not be preferable.

Anyway, it's a real education and, on balance, I'm enjoying it!

