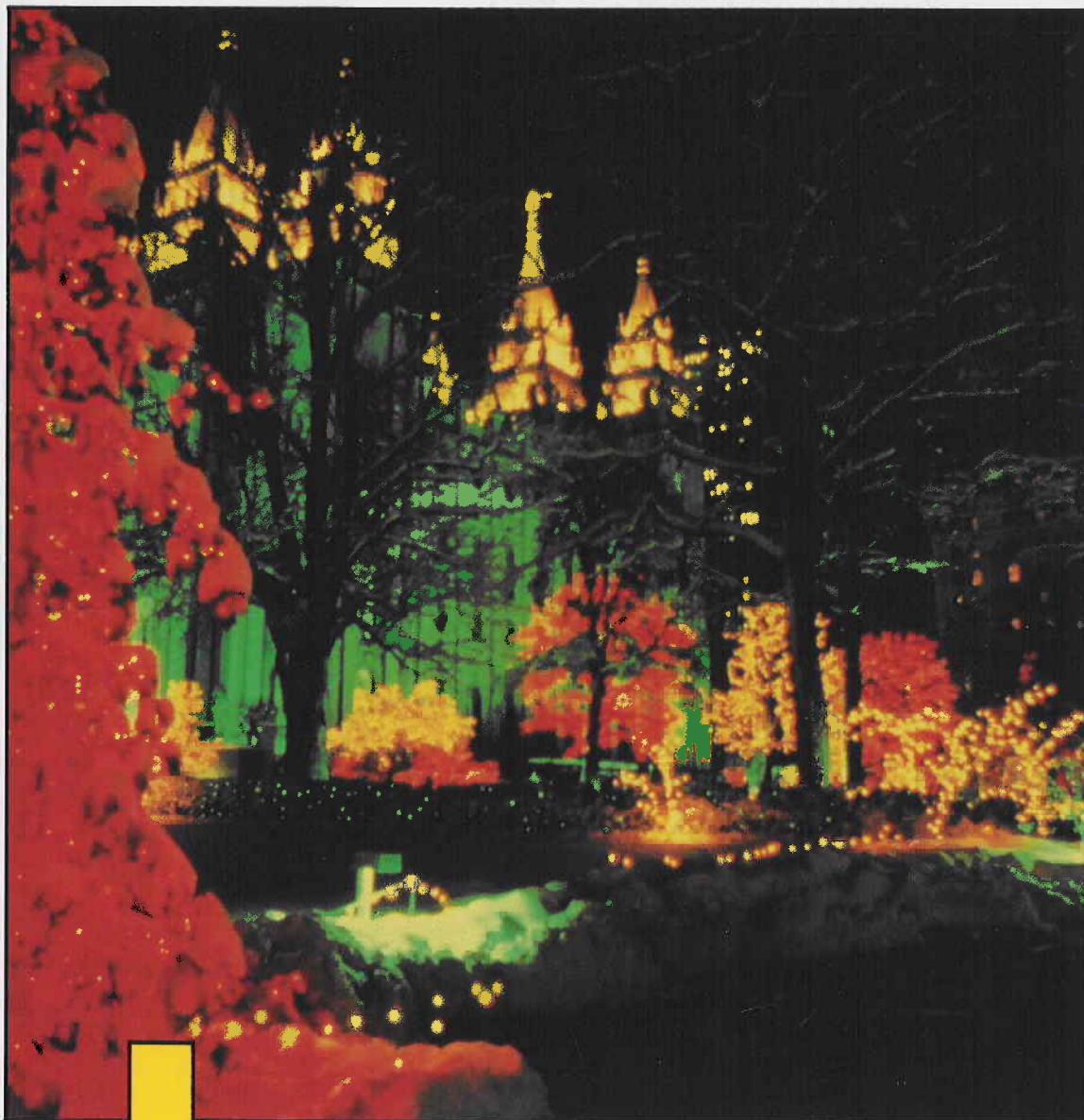


UTAH BAR JOURNAL

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December 1989



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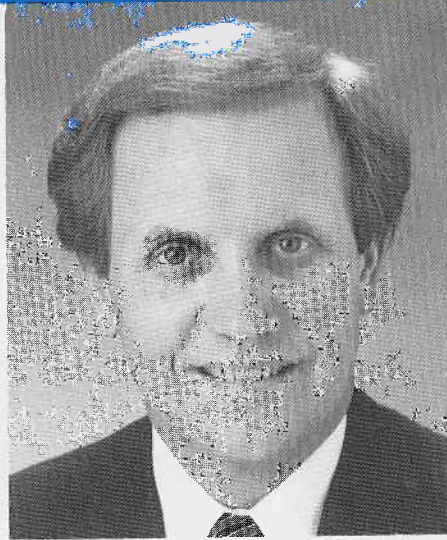
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COVER: Salt Lake City holiday scene.

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The Bar's Spirit of "Volunteerism"

By Hans Q. Chamberlain

With so many time demands, professional people in general are often finding fewer opportunities to participate in job-related associations and organizations. This is not the trend with lawyers in Utah, however. Even with increased professional pressures, attorneys in the state are becoming more—not less—active in their communities, civic organizations and Bar programs.

I have really come to appreciate the many lawyers and judges who volunteer their time in so many different ways. I want to not only commend them for this great contribution, but to encourage others to become similarly committed and to share with you why I feel each one of us has a responsibility to engage in public service. Without the volunteer, the Bar simply could not function as it does.

I was recently reminded that 20 percent of all the people who have ever lived are alive today. As civilization progresses, we find it more difficult to live together. When population erupts, the world shrinks in every other dimension. We must, therefore, continually recognize that as our society grows ever more and more complicated and more personal, the need for voluntary work becomes more critical. We must realize that in a large and relatively complex society such as ours, some people are going to get hurt

through no special fault of their own. Numerous people require help, not because of fire, flood or other natural disaster, but because of heredity, culture and social environment. Great burdens sometimes fall upon people who are not equipped either physically or mentally to carry them. Without your willingness to provide public service to those in need, many would go unaided. Too often, we expect government to solve all of these problems, when in fact, government will never come close to filling this void.

Much of the Bar work gets done by teams of people working on boards, sections or committees. They accomplish their goal because they are interested in working toward the good of the organization and do so with intelligence, energy and good will.

Whether or not you serve on a Bar committee, a section or in some other community service, it is noteworthy that lawyers are particularly valuable on service boards and committees because of their habitual way of looking at things. They apply their experience so as to locate the problem, validate it as one affecting a particular group, set up research and collect information, consider all of the various ways of solving the problem and reach a decision. Lawyers have recognized the principle that

while many may talk learnedly and with self-satisfaction about a particular project, all that talk achieves nothing unless action and personal involvement is implemented.

In addition to the social contacts one makes in public service, there are also personal values in voluntary service. The volunteer enjoys the unique quality of experience that is his when he shares his viewpoints and works with others in pursuit of both individual and common goals. The volunteer has recognized that he or she receives much from society and in turn has the privilege of contributing to it. They have already learned that public service is not something done of necessity to earn a living or maintain their status, but is something they have elected to do as a gesture of free will—as their contribution to their fellowmen.

When we review the lists of civic organizations, public projects and governmental board appointments, we see that lawyers are there in strong numbers. As lawyers and judges, we are helping to determine the future of our communities, cities and the state. Indeed, many of our colleagues also play important rolls in national circles as well.

This increased activity by Utah attorneys is also reflected in participation in Bar ac-

tivities. We are finding that the Mid-Year and Annual Meetings attract more and more Bar members every year. As a matter of fact, our successful Mid-Year Meeting has outgrown the convention facilities in St. George, and this year will be held in two sessions, one in Salt Lake and the other in Scottsdale, Arizona, while Utah's Dixie expands its accommodations to hopefully handle our growing numbers in years to come. As a side note, I was relatively surprised to discover that Utah is one of few states that holds a Mid-Year meeting, but because it has been so successful, the Bar is committed to maintaining this as a major program.

We have also seen a substantial growth in the number of committees and sections of the Bar, and an increase in active participation by Utah attorneys in projects undertaken by the sections and committees. During the last four years, 12 new committees and sections have been established. Why? Because the need existed, and Utah lawyers took the initiative to fill it.

Similarly, the programs and services sponsored by Utah attorneys throughout the Utah State Bar have seen substantial growth since 1985. The scope of these nearly doubled during this period, taking a greater amount of contributed time from members of the Bar to make them effective, to say nothing of the administrative time and resources from the Bar's budget that were required to ensure their successful operation. In my view, it is time and money well spent.

When you consider the impact of new programs like "Tuesday Night Bar," to provide much needed legal aid, and "New Lawyers CLE" which gives young lawyers a long overdue assist as they enter the practice, it is very gratifying to know the members of the Utah State Bar are giving so unselfishly of themselves. Furthermore, it is impossible to calculate the thousands of hours that are contributed as "pro bono" work, and yet many of the needy are still denied access to the judicial system because they cannot afford a lawyer. One recent study indicates that more than 40 percent of the poor who need a lawyer do not have access to one. Hopefully, each of you will expand your pro bono commitment and assist those in need.

The volunteer soon recognizes that in the long run and in the last resort, self-interest cannot be separated from the interests of the rest of the community. By helping to supply something that is needed, either to the legal community or in other areas of public service, the volunteer worker is indeed promoting and protecting the welfare of all of the community.

Utah Bar Foundation Publishes Cliff Ashton's History of the Federal Judiciary in Utah

The Utah Bar Foundation is pleased to announce that Clifford Ashton's history entitled *The Federal Judiciary In Utah* has been published in hardbound form and is now available for purchase at a cost of \$15.00. Cliff's many years of experience as a trial attorney and his well-known skill as a raconteur give him a unique perspective on the history of Utah's Federal Judiciary. The book chronicles the federal judges from the early pioneer days of the State of Deseret, through the religious and political turmoil of the Utah Territory, to the controversial era of Judge Willis Ritter. The publication of this interesting book has been made possible by the generous contributions to the Foundation by Calvin and Hope Behle and the C. Comstock Clayton Foundation. Copies may be purchased by completing the attached form and mailing it to the Utah State Bar Office together with your check made payable to the Utah Bar Foundation in the amount of \$15.00 for single copies. There is a discounted price for orders of multiple copies: 10-24 volumes at \$12.50 each, more than 25 volumes at \$10.00 each. Price includes postage and handling.

'The Federal Judiciary In Utah'

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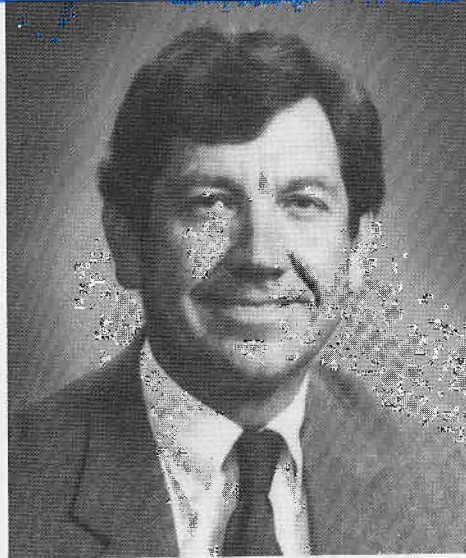
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COMMISSIONER'S REPORT



By H. James Clegg

After a year's service as a Commissioner, the role of the Bar in our society and the responsibilities of Bar members to each other becomes clearer. It is easier to criticize an institution if you don't know how it works and how it developed. It is easy to question whether it works or even state flatly that it does not work; coming up with a more workable structure is a different problem altogether. A substitute format might well fail the test of time, something the present system passes.

This is not to suggest, however, that improvements are not needed, particularly in obtaining greater efficiency in some of our programs and procedures.

An example is discipline. The disciplinary process serves many functions, most of which are laudatory. (1) It requires a client and an attorney who are at odds to verbalize their disputes to an impartial panel; (2) the panel and Bar counsel can ask questions or make comments which often excise the communication problems so common in these disputes; (3) the attorney often gets some help in analyzing the problem and an opportunity to remedy it without further ado, and (4) even if not satisfied with the ultimate result, the client's need to complain and be heard is satisfied.

The downside of the procedure is the

great deal of time required of the screening panel members, Bar Counsel and, if appealed, the Commissioners and Supreme Court. The lawyer members of the screening panel can probably justify their contributions on the basis of the needs of the profession. Most of us want the profession to be self-policing even though there is a cost involved. The lay members of the panels do not have this compulsion and they serve as a matter of civic responsibility. All members of the screening panel would probably rather be doing something else than sorting through lines of others which might or might not be soiled.

As it now stands, a lawyer is not required to attend the hearing before the screening panel. He is notified of the risk of default should he fail to do so; however, many choose not to appear because (1) they find the situation distasteful; (2) they do not wish a confrontation with the client; (3) they think the client's complaint is ill-taken and will be easily disproved by documents submitted, or (4) arrogance and egoism prevent their participation.

This failure to appear often creates problems later. A client does not always frame an artful bill of particulars in describing his dissatisfaction with the lawyer. As the hearing unfolds, the panel may see issues not

addressed by the written materials submitted by the lawyer. Even if the evidence is exactly as expected, the lawyer may have misjudged the credibility of the client or the gravity of the complaint. Lastly, the lawyer may have expected a less severe sanction than the one recommended by the screening panel.

In any event, dissatisfied with the recommendation, the lawyer appeals to the Board of Bar Commissioners which designates a three-commissioner hearing panel. Under the practice, the client does not get to speak at this proceeding even though he may attend. This puts the client in the unhappy position of hearing the lawyer's side of the story without an opportunity to rebut. The lawyer is by now probably represented by very able counsel because he is now taking the matter seriously. The client must stand mute even though he disagrees with the recitations he is hearing. The hearing panel has never heard the client and cannot judge his credibility. Based on what it sees and hears, the hearing panel may recommend a different result than did the screening panel. While the odds may be good that its result is better informed simply because both sides have finally been stated, there is room for a mistake because they were not stated in the same time frame and to the same persons.

Undoubtedly, the members of the screening panel feel that they have wasted their time if the hearing panel recommends no sanction or a lesser sanction than did the screening panel. The client's position is even worse; he felt wronged in the first place, went to a great deal of trouble to try to right that wrong, felt that he had succeeded at least to a degree and then had the "victory" taken away or reduced.

I am of the mind that an attorney who does not personally appear before a screening panel without prior excuse should forfeit his right of appeal. Even though this is harsh, the challenged attorney has an obligation to uphold the integrity of the system at every stage, even when he is personally involved or offended and feelings may be hostile. Even if he was not the tiniest bit at fault, he was at least "involved" in the creation of the dispute; whether it was within his power or not, he failed to remedy the matter before a complaint was filed. Without pre-judging him at all, when considering the impositions on the other persons involved, it does not seem unfair to require his full attention and effort toward resolution at the earliest stage.

I realize the potential for problems. In an extreme case, an attorney might be concerned about speaking for fear of incrimination or consider himself at risk of divulging a privileged communication. These extraordinary problems should be dealt with sensitively if ever they arise. It may be they never do.

I suspect that this small step would remedy the inefficiency and hazard of the present procedure. If it does not, we can consider more formal steps, such as having the screening panel hearing reported and treating all other levels as pure appeals, without further evidence and giving due presumption of correctness to credibility calls made by the screening panel.

Lastly, I am becoming inclined toward Commissioner Howard's position that an attorney who is adjudged in violation of ethics rules and has no defense of merit should have to pay the costs to the Bar of resolving the matter. This does not just contemplate out-of-pocket costs, but includes reasonable hourly rates for Bar Counsel and her office in investigating and presenting the matter. The risk of substantial financial cost just might have the beneficial effect of encouraging resolution of client disputes before they reach the complaint stage; if not, it might at least discourage repetition of the offense. Repetitions are more common than you might think.

What do you think?

Meeting and Conference Rooms Designed For You

Members of the Utah State Bar, Law Firms, and Law-Related Organizations are invited to use the meeting and conference rooms at the new Law and Justice Center. They are available daytime and evenings, and are ideal for

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The costs for use of the Law and Justice Center are significantly less than similar facilities in a hotel . . . and specifically designed for your use. Adjacent free parking is one more advantage, making this an ideal location for your event.

For information and reservations for the Utah Law and Justice Center, contact Kaesi Johansen, 531-9077.

