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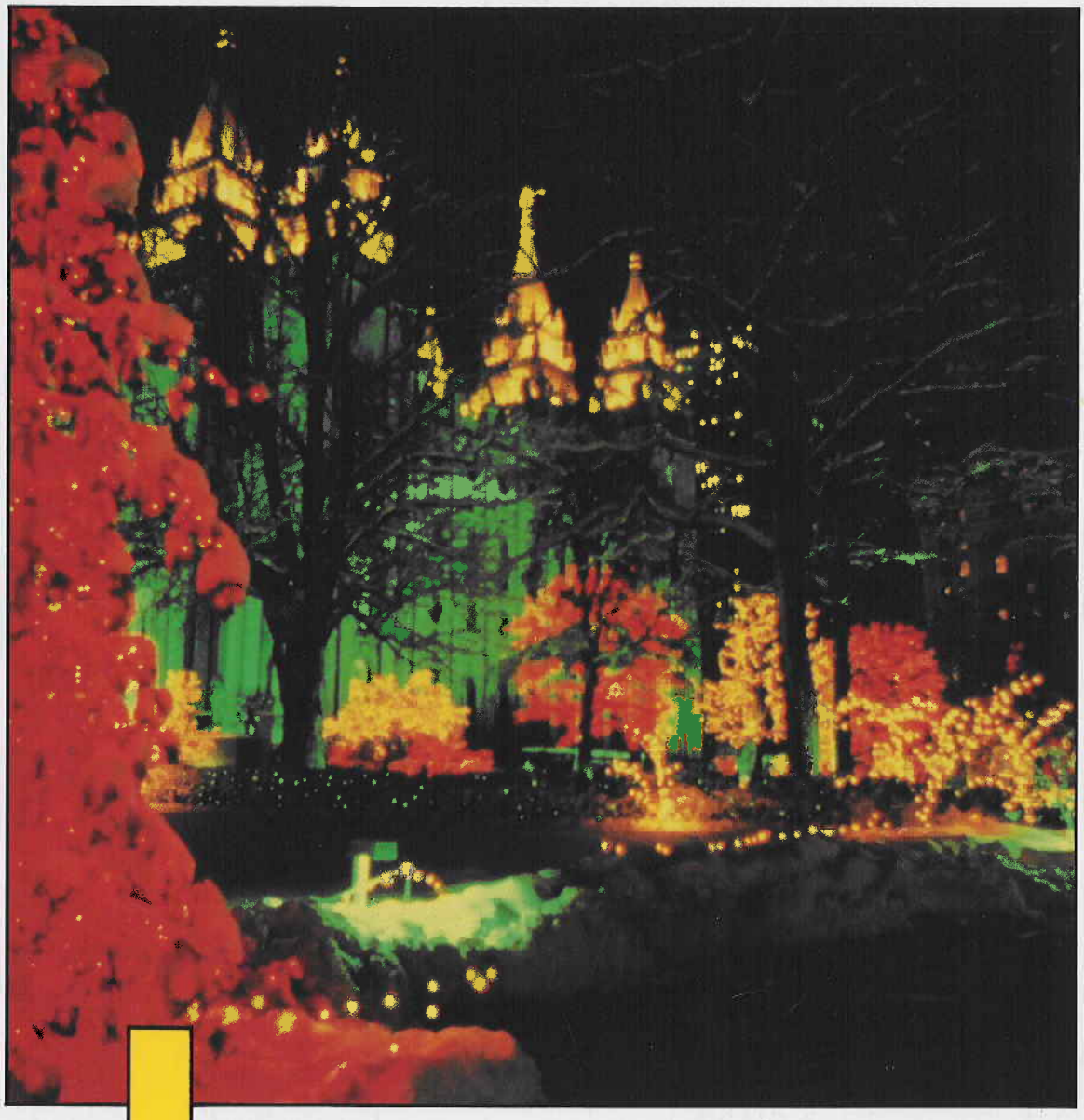

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COVER: Salt Lake City holiday scene.

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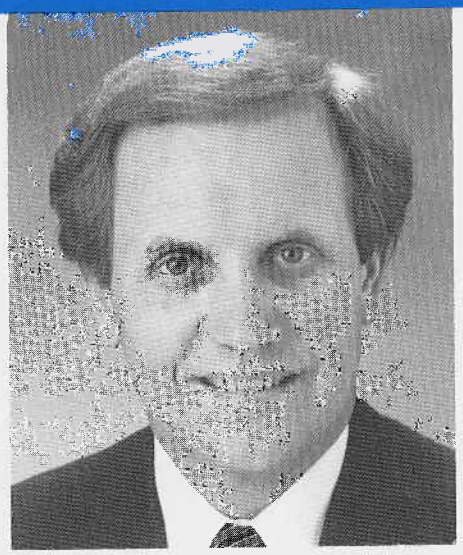

The Bar's Spirit of "Volunteerism"

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'

by Clifford Ashton

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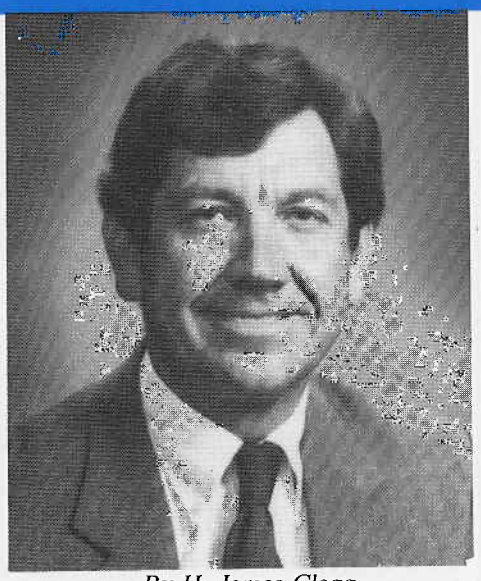
COMMISSIONER'S REPORT



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 linen 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?

Evolution of Alimony in Utah

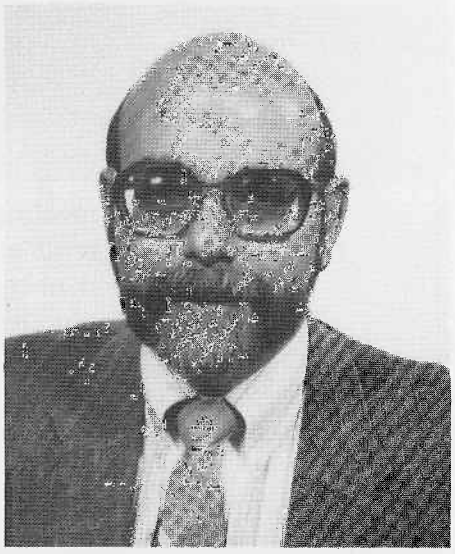
By David S. Dolowitz, J.D.

The statute governing alimony in Utah is a very simple one which grants substantial authority to the trial court. Section 30-3-5(1), Utah Code Ann. (1989), provides that, when a Decree of Divorce is rendered, the Court may include in it "equitable orders relating to the children, property and parties." Although this statute has been amended numerous times in the last 45 years, this operative language has remained static. Yet, while this provision remained unaltered, the law governing alimony has evolved along with the legal and social concepts underpinning alimony awards.

In most states, alimony was awarded to the innocent spouse, generally the wife, at the termination of a marriage. The alimony award was partially for support and partially to punish the "guilty" husband for causing the breakup of the marriage. *Alimony: New Strategies for Pursuit and Defense*, A.B.A. Sec. Family Law 1-32 (1988) (hereinafter cited as *Alimony*). For substantially longer than most states, Utah has considered alimony to be necessary for support and not tied to fault. For example, in *Schuster v. Schuster*, 88 Utah 257, 265, 53 P.2d 428, 431 (1936), the Court determined that the marital breakdown was the fault of the wife, yet she was ruled not to have forfeited her right to alimony. This ruling varied from most other states at that time, but since then most states have adopted Utah's position. *Alimony*, *supra*, at 1-32.

In 1937, the Utah Supreme Court in *Pinion v. Pinion*, 92 Utah 255, 259-60, 67 P.2d 265 (1937), delineated the criteria which should be examined in awarding alimony. These were re-examined and restated 14 years later in *MacDonald v. MacDonald*, 120 Utah 573, 581-82, 236 P.2d 1066, 1070 (1951). These are:

1. The social position and standard of living of each party before the marriage.
2. The respective ages of the parties.
3. What each may have given up for the marriage.
4. What money or property each brought into the marriage.
5. The physical and mental health of the parties.
6. The relative ability, training and education of the parties.
7. The duration of the marriage.
8. The present income of the parties and the property acquired during the marriage and owned either jointly or by either of them at the time of the divorce.
9. How property was acquired and the efforts of each in doing so.
10. Children reared, their present ages, and obligations to the children or help which may in some instances be expected by the children.
11. The present age and life expectancy of each of the parties.
12. The happiness and pleasure or lack of it experienced during the marriage.
13. Any extraordinary sacrifices, devotion or care which may have been given to the spouse or others, such as mother, father, etc., and obligations to other dependents having a secondary right to support.
14. The present standards of living and needs of each, including the cost of living.



Member of Board of Directors of Cohne, Rappaport & Segal; Fellow, American Academy of Matrimonial Lawyers; Past President and Member of the Executive Committee, Family Law Section, Utah State Bar Association; Family Law Section, Utah State Bar's "Lawyer of the Year"; Chairman, Utah Supreme Court, Advisory Committee for Juvenile Court Rules of Procedure.

The standards for an award of alimony were examined and articulated in a more concise form in *English v. English*, 565 P.2d 409, 411-12 (Utah 1977). The Utah Supreme Court directed trial courts to consider the length of the marriage and the contributions of each party to their joint financial success, but noted that the trial court must make a careful distinction between distributing property which must be done on an equitable basis, from the post-marital duty of support and maintenance. The Court then stated that:

> The purpose of alimony is to provide support for the wife and not to inflict punitive damages on the husband. Alimony is not intended as a penalty against the husband nor a reward to the wife.

565 P.2d at 411 (quoting 2 Nelson, *Divorce and Annulment* at 11-12 (1961). The Court continued, adopting the rationale of the Arizona courts, that:

> [T]he most important function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage, and to prevent the wife from becoming a public charge. . . .[C]riteria considered in determining a reasonable award for support and maintenance include the financial conditions and needs of the wife; the ability of the wife to produce a sufficient income for herself; and the ability of the husband to provide

support.

Finally, the Court observed:

> The amount of alimony is measured by the wife's needs and requirements, considering her station in life, and upon the husband's ability to pay.

Id. at 412 (quoting *Hendricks v. Hendricks*, 91 Utah 553, 559, 63 P.2d 277, 279 (1936)). *English* was followed by *Read v. Read*, 594 P.2d 871, 872 (Utah 1979), where the Supreme Court ruled that fault should not be used in setting alimony or dividing property to impose punishment upon either party. These decisions, coupled with the decision in *Mullins v. Mullins*, 26 Utah 2d 82, 83 485 P.2d 663, 664 (Utah 1971), where the Court ruled that when each party had grounds for divorce each could be awarded a divorce, completely separated the question of fault from financial need in determining alimony. This set the stage for the evolution of law to the present situation of confronting the dichotomy of the desire to provide alimony based on need to maintain the standard of living enjoyed during the marriage and the conflicting social goal of an alimony award which encourages rehabilitation and self-support by the recipient.

The reconciliation of continuing the standard of marital living versus rehabilitative alimony and self-support often appears in decisions rendered in the last 12 years without recognition of or discussion of their inherent conflict. The standard articulated in *English* was restated in *Gramme v. Gramme*, 587 P.2d 144 (Utah 1978), where the Utah Supreme Court stated:

> The purpose of alimony is to provide post-marital support; it is intended neither as a penalty imposed on the husband nor as a reward granted to the wife. Its function is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage and to prevent her from becoming a public charge. Important criteria in determining a reasonable award for support and maintenance are the financial conditions and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of the husband to provide support.

Id. at 147. This language focuses fully on support and would appear to preclude consideration of rehabilitation, yet any lawyer who has tried a case before Utah courts knows that rehabilitation is a consideration which must be addressed in litigating an alimony claim. In this respect, the law reflects the tensions of society itself which demand both rehabilitation of and support for a former spouse.

In 1983, the Utah Supreme Court, speaking through Justice Durham, reviewed the questions and criteria which emerged in decisions between *MacDonald* and *English*, in *Higley v. Higley*, 676 P.2d 379 (Utah 1983). To reconcile these decisions, the Court reviewed the articulated criteria for an alimony award and then examined the pragmatic consideration of the economic situation facing the parties, particularly a woman emerging from a marriage. Justice Durham noted that government surveys had determined that women earned $.59 for every dollar earned by a man. *Id.* at 381. While this is dicta (and remains true today), the implication is clear that economics must be considered by courts when setting alimony awards. This implication arises not only from the language, but also from the fact that, immediately following that language, there is the specific declaration:

"Fault should not be used in setting alimony . . . to impose punishment."

> An alimony award should, in as far as possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage.

Id. at 381.

Since these decisions, the Utah Supreme Court and the Utah Court of Appeals have worked to articulate a framework for application of these principles to reconcile consideration of support against rehabilitation. The courts have provided guidelines that work for many cases, but have not dealt with certain questions which still remain.

I. SPECIFIC SITUATIONS AND PROBLEMS

A. Long-Term Marriages

In *Jones v. Jones*, 700 P.2d 1072 (Utah 1985), *Olson v. Olson*, 704 P.2d 564 (Utah 1985), and *Gardner v. Gardner*, 748 P.2d 1076 (Utah 1988), the Utah Supreme Court articulated the rule that permanent alimony should be awarded after a long-term marriage.[1] In *Jones*, the Court reversed a declining rehabilitative alimony award finding that such an award was inappropriate because of the length of the marriage and the circumstances of the parties. In *Gardner*, the Supreme Court utilizing the criteria of *Jones* and *Higley v. Higley, supra*, declared that the trial court failed to consider the respective living standards of the parties and ruled that alimony must maintain the recipient at a level as close as possible to the living standard enjoyed during the marriage.

Another discussion of this issue occurs in *Davis v. Davis*, 749 P.2d 647 (Utah 1988), where the Court examined and rejected the husband's challenge to the trial court's award of alimony in the sum of $750 per month to his wife who was employed and would have, as a result of the alimony and her employment, an annual income of approximately $36,000 per year. The Court noted that the standard of living that would thus be experienced by the wife was less than the parties enjoyed during the marriage, but was sufficient to fall within the parameters of discretion of the trial court. *Id.* at 649.

The Utah Court of Appeals followed and applied these criteria in several decisions. In *Rasband v. Rasband*, 752 P.2d 1331, 1335 (Utah App. 1988), the Court rejected a decreasing alimony award and required the trial court to award adequate alimony on a permanent basis after a 30-year marriage during which the wife had remained at home to maintain the household, had aided the husband in his career and had held only part-time, short-term, minimal-wage jobs during the marriage. In *Asper v. Asper*, 753 P.2d 978, 981 (Utah App. 1988), the court of appeals vacated an award of $1 per year to the wife and remanded for further consideration in light of *Jones* and *Gramme v. Gramme, supra*, where the husband earned approximately three times the income of the wife and the trial court failed to explain its award in the face of this discrepancy and a 27-year marriage. Then, in *Naranjo v. Naranjo*, 751 P.2d 1144 (Utah App. 1988), a 17-year marriage with no children was found by the court of appeals to be a long-term marriage and, utilizing the rationale discussed above, upheld an alimony award of approximately one-third of the income of the husband ($800 of $2,300 per month).

These general rules governing alimony for a long-term marriage relationship thus have been set out and applied by the Utah Supreme Court and the Utah Court of Appeals. However, these courts have not carefully discussed the underlying rationale for these rulings. Had they done so, guidelines could be formulated to assist in the deter-

mination of indefinite alimony as opposed to or in linkage with rehabilitative alimony. Formulated guidelines should examine the fact that a wife who has functioned as a homemaker has given up her opportunity to obtain an earning capacity for herself by developing her own career and seniority within her chosen field. When the Court determines short-term or long-term alimony within a long-term marriage (all of these decisions involved wives), the fact that the wife has not pursued her education or employment, but has neither remained in the home as a homemaker and mother or has devoted a substantial block of her time to be a homemaker and mother, has not been recognized by the courts as a sacrifice in her career development in order to permit the husband to develop his career and his seniority or to maintain the home for the beefit of the couple's children, and which can never be recovered.

Considering divorce as a partnership dissolution, the alimony decision should be considered as an equitable adjustment returning to the wife a portion of the career development and seniority acquired by the parties and vested in the husband. *See Carter v. Carter*, 584 P.2d 904, 906 (Utah 1978). This is the only means by which, in most marriages, a wife can be compensated for the distribution of this mutually acquired asset. This analysis is particularly applicable to *Davis, supra*, where the wife obtained sufficient education and career experience to be a teacher with some seniority, but had interrupted her education and her career development to keep the parties' home and raise their child. She made career choices which coincided with the needs of the parties' child. Her sacrifice permitted the husband to develop the skills to earn substantially more income than could be earned by her.

The Utah appellate courts dealt with the situation of the career-sacrificing housewife in *Jones* and *Olson* and the situation of a wife who has attained an ability for a level of self-support, even though not at the same level she could have enjoyed during the marriage, in *Davis*. The Court appropriately applied the same criteria to each case in determining what should be the governing law and resulting adjustment to the lives of the divorcing parties. In a long-term marriage situation, it is almost impossible for a rehabilitative award to compensate the sacrificing spouse and return to her the value of these contributions. Thus, absent other compensating factors, indefinite or permanent alimony is required.

One problem in applying this rule is knowing precisely what is the definition of the term "long-term marriage." Examination of appellate decisions regarding permanent alimony or indefinite alimony raises the question as to precisely how long a marriage is required to have existed to qualify as a long-term marriage for the invocation of these criteria. This becomes particularly important in evaluating two circumstances that come before the courts. There are the cases of the young married couple who have young children placed in the custody of their mother who must support herself and the children while adjusting her training and career to care for the children and the older woman who has entered into a second marriage, generally making substantial changes in her economic situation to enter into that marriage. In the second situation, the wife may give up her employment, her alimony, dispose of property and make substantial economic adjustments which result in her transition from a state of economic independence to one of economic dependence. In each of these situations, the woman cannot be returned to the status she had before the marriage.

In a long-term marriage it is almost impossible to compensate the sacrificing spouse.

The question of whether criteria articulated for the long-term marriage should be applied to a shorter marriage remains unanswered. The economic circumstance of women discussed in *Higley v. Higley, supra*, who earn approximately 60 percent of what men earn, has not noticeably changed since the publication of that decision. Thus, a woman who has interrupted her employment, whether to bear children or to enter into a second marriage relationship, will frequently suffer economic consequences that do not affect her husband as a result of the marriage. If long-term alimony criteria are not applied, she suffers for the marriage, yet there is no clear mandate from either the statute or the appellate courts that these factors should be considered or applied. Nor have guidelines been articulated as to how much is a fair rehabilitation award or how long a time period should be utilized if the case is appropriate for rehabilitative alimony.

B. Special Need

In *Noble v. Noble*, 761 P.2d 1369 (Utah 1988), the Utah Supreme Court addressed the case of a short-term marriage terminating in the face of special needs created during the marriage. The parties were married in 1977 when the wife was 34 years old and the husband was 58 years old. It was the second marriage for each. Approximately three years later, the husband attempted to murder his wife and to commit suicide. Both efforts failed. The Court was confronted with both an action for tort and an action for divorce. The trial court in the divorce action made the determination that the husband could pay no more than $750 per month as alimony although the wife had a need of $2,600 per month for living expenses. To address the wife's expenses created by the husband's conduct and considering the projected life spans of the parties, the trial court awarded substantial premarital property of the husband to the wife along with $750 per month alimony.

The Utah Supreme Court ruled that the divorce action was not an appropriate place to resolve the tort action, but upheld the $750 per month alimony award finding that it met the tests that had been articulated when examining the financial condition and needs of the party seeking alimony, the party's ability to produce sufficient income to meet her need and the ability of the other party to pay support. *Id.* at 1371-72. The Court found that the trial court had appropriately considered each of these factors and the need to provide support for the wife both in terms of the time period after the husband's demise (since he was substantially older than she, it was presumed he would die sooner) and to meet the shortfall in her need. *Id.* at 372. While this case involved specific needs created by the husband, the language of the decision was not that specific in rejecting the attack on the alimony award made by the husband. The Supreme Court reviewed its regular criteria for establishing an alimony award and, despite the fact that the marriage was only three years in duration, affirmed a permanent alimony award and the transfer of property to help meet unmet needs.

If the ruling in *Noble, supra*, is not limited to its facts, then the case stands for the proposition that a trial court should not consider the duration of a marriage when examining a special need for support arising during the marriage. The decision exposes the problems in indefinite alimony versus rehabilitative alimony that must be reconciled by the Court. For example, if a woman gives up her employment and she is employed in a field where contacts or seniority are important, she may suffer debilitation in

her ability to earn future income even after only a short-term marriage, as her client base will be dissipated, her contacts gone and length of service interrupted and, perhaps, not even the job will be available to her. Application of the *Noble* decision would appear to require permanent alimony. Yet, this is the type of case that would normally be considered as one justifying rehabilitative, not indefinite, alimony. Another example of the unresolved conflict is *Boyle v. Boyle*, 735 P.2d 669 (Utah App. 1987), where, after a seven-year marriage, no alimony was awarded. The Court decided that the wife could support herself, but did not fully examine her circumstances in the instant terms.

The key to reconciling these decisions would appear to be the trial court's careful application of the criteria used in establishing alimony in Utah. It is noteworthy that, in *Boyle*, the trial court declined to award permanent alimony because the marriage was not a long-term marriage and that the decree entered by the trial court restored each party to the condition which existed at the time of the marriage. 735 P.2d at 671. This could not be done in *Noble*. It would, thus, appear that the resolution of this issue, particularly as it relates to the second-marriage question, is whether the trial court's award can place a spouse back into the position occupied prior to the marriage. In *Boyle*, the Court felt that could be done. In *Noble*, it was clear that it could not.

C. Source of the Money

It would be assumed, in examining the language of the articulated criteria for payment, the source of payment of alimony must come from the income of the payor. That assumption is not correct. In *Sampinos v. Sampinos*, 750 P.2d 615, 618 (Utah App. 1988), the Utah Court of Appeals upheld the trial court's determination that alimony should be paid based on the needs of the wife and her inability to produce income for herself, even though the source of the money would be liquidation proceeds from the husband's sole and separate property.

While not declaring that the current spouse of the payee's former spouse would be required to pay alimony, the Utah Supreme Court did declare that trial courts could appropriately consider the income earned by a second spouse in evaluating the resources and income of the payor spouse when considering alimony. *Paffel v. Paffel*, 732 P.2d 96, 102 (Utah 1986).

The Utah Supreme Court ruled in *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988), that property inherited by a spouse or gifted to a spouse during the course of the marriage ordinarily would be the separate property of that spouse, but the separate property would be considered as an income source when considering alimony and child support.[2]

The Utah Court of Appeals remanded a case to the trial court in *Johnson v. Johnson*, 771 P.2d 696, 699-700 (Utah App. 1989), including in its directions the mandate that the trial court consider the income produced by assets awarded the wife in determining the alimony award. Then, in an opinion published June 6, 1989, the Court stated:

> The ultimate test of an alimony award is whether the party receiving alimony will be able to support him or herself "as nearly as possible at the standard of living . . . enjoyed during the marriage."

Schindler v. Schindler, 776 P.2d 84, 90 (Utah App. 1989) quoting *English v. English*, 565 P.2d 409, 411 (Utah 1977).

These decisions raise the implication that if sufficient income-producing property is transferred to the wife to support her after the divorce in the same standard of living enjoyed during the marriage, an alimony award would not be appropriate. This raises the possibility that property transfer awards coupled with declining alimony awards (the alimony to decline as the property is transferred) will serve as an alimony replacement, thus linking alimony and property awards into a total economic package in appropriate cases contrary to the admonition in *English*.

Professional degrees are not property which can be awarded in a divorce, but alimony can be a compensating mechanism.

D. Professional Practices

In *Petersen v. Petersen*, 737 P.2d 237, 242 (Utah App. 1978), and *Rayburn v. Rayburn*, 738 P.2d 238, 240 (Utah App. 1987), the Utah Court of Appeals held that professional degrees and licenses were not property which could be awarded in a divorce, but that where the education and license were earned by joint efforts during the marriage and they produced income to the practicing professional spouse, it was appropriate to use alimony as a compensating mechanism. In the discussion in *Petersen*, the Utah Court of Appeals indicated alimony which would not be terminable on remarriage (permanent alimony) could be an appropriate method of compensating a spouse for the sacrifice of helping the other spouse to secure an advanced degree. 737 P.2d at 242. In fact, if you consider the economic theory that the ability to earn income is what is acquired, alimony which is taxable income to the payee and tax deductible to the payor is the most economically appropriate award.

In *Martinez v. Martinez*, 754 P.2d 69 (Utah App. 1988), the court of appeals confronted a case where mutual sacrifices produced a professional degree and license, but the divorce occurred before the wife could enjoy the fruits of the mutual effort. The trial court awarded alimony and child support based on the pre-professional practice income of the husband and awarded no compensation to the non-professional wife to adjust for the enhanced earning ability secured by the husband during the marriage. The Utah Court of Appeals first awarded alimony substantially above that awarded by the trial court, reasoning that application of the ordinary criteria (living standard during the marriage) was inapplicable where that would result in the payee spouse continuing to live in the depressed standard of living which was maintained to allow the professional spouse to acquire the professional education. *Id.* at 74-75. The Court ruled that the economic analysis dealing with need and ability to pay with the overall goal of maintaining a spouse and living standard must be adjusted where the professional degree arrived concomitantly with the divorce.

Turning to the concept of compensation for the professional education, the Court ruled that there should be equitable restitution to the non-professional spouse and remanded the matter for determination of an appropriate amount. Certiorari has been granted by the Utah Supreme Court to re-examine the concept of equitable restitution.[3] *Martinez*, 765 P.2d 1277 (Utah 1988). That question has been argued to and is now pending before the Supreme Court.

II. MODIFICATION OF ALIMONY

It has generally been considered to be the Utah rule that if alimony is not awarded in the original Decree, it is forever barred. In *Georgedes v. Georgedes*, 627 P.2d 44, 46 n.1 (Utah 1981), the Utah Supreme Court indicated that this was not necessarily true. The Court stated that because there were changes in the statute effected since the original declaration of that rule, the traditional rule was subject to question and alimony could possibly be awarded, although not awarded in the initial Decree.[4]

The first case dealing with this footnote arrived before the court of appeals and was resolved in *Kinsman v. Kinsman*, 748 P.2d 210 (Utah App. 1988). The wife originally surrendered her right to alimony as part of the settlement of the case in which the husband agreed to pay a series of debts which would, when completely paid, place the wife in the position she held at the time the parties were married. Shortly after the Decree was entered, the husband filed for bankruptcy in California and discharged the obligations he had assumed in the agreement and been ordered to pay in the Decree. The wife returned to the Court for alimony. The trial court awarded it to her and the husband appealed. The Court of Appeals affirmed the trial court, but in a split decision utilized a rationale not implicit in either *Georgedes* or the statutory language. The majority affirmed the trial court, finding that the husband's action constituted a breach of contract. His actions were ruled to have produced a failure of consideration which, considering that the divorce was entered pursuant to stipulation, allowed the wife to reopen the matter and secure an award of alimony. *Id.* at 212-213.

In his concurrence, Judge Jackson sought to implement what the Utah Supreme Court had indicated in *Georgedes* would exist, that is, ongoing authority in the trial courts to award alimony after divorce if changed circumstances make it appropriate. *Id.* at 213-216. The majority opined that this authority should not be given to the trial courts. *Id.* at 212 n.2.

Because of the split in the opinions, the language of Sect. 30-3-5(3) of the Utah Code and the footnote in *Georgedes*, it is anticipated that further development in this area of alimony law will occur.

The Utah Court of Appeals examined the question of what factors should be involved in increasing alimony in *Throckmorton v. Throckmorton*, 767 P.2d 121, 124-25 (Utah App. 1988). Looking to the decision of the Utah Supreme Court in *Naylor v. Naylor*, 700 P.2d 707 (1985) (discussed *infra* at 24), the Court declared that the threshold requirement is the demonstration of a substantial change of circumstances, then application of the standard criteria. In *Throckmorton*, the payee spouse was awarded $1 a year in the original Decree. Most of the money transferred to her came in the form of child support. The children were all emancipated and she had no ability to earn income on her own when the case came back before the Court. The husband had retired and had pension income available to him. The trial court increased the alimony and the court of appeals found that, on the record presented, the increase did not appear substantial enough. The case was remanded for a determination of the wife's actual need in setting the amount of increase.

In *Beckstead v. Beckstead*, 663 P.2d 47, 48 (Utah 1983), the Utah Supreme Court found that a trial court appropriately increased alimony when the husband filed bankruptcy and discharged debts he had been ordered to pay. His action required the wife to pay some of them. The husband's bankruptcy was determined to have created a substantial change of circumstances, supporting the trial court's increased award.

III. TERMINATION OF ALIMONY

The Utah Court of Appeals in *Fullmer v. Fullmer*, 761 P.2d 942 (Utah App. 1988), considered the criteria for terminating alimony. The Court noted that the trial court retains continuing jurisdiction to terminate alimony under the provisions of Sect. 30-3-5(3) of the Utah Code.[5] To terminate alimony, the trial court must be persuaded that the payee will be able to support herself or himself at a standard of living to which she/he was accustomed during the parties' marriage, or that the payor is no longer able to pay as originally ordered by the Court. *Id.* at 951.

Alimony can be increased if there is a substantial change of circumstances.

In *Anderson v. Anderson*, 759 P.2d 476, 478 (Utah App. 1988), the Utah Court of Appeals ruled that it was not appropriate to have alimony terminate on completion of education or attainment of full-time employment. It was ruled that the matter should be returned to the trial court to reconsider the alimony award in light of the completed education or full-time employment commensurate to the alimony award factors articulated in *Jones v. Jones, supra.*

Both *Anderson and Jones*, when combined with the rationale of the Utah Supreme Court decision in *Naylor v. Naylor*, 700 P.2d 707, 709 (1985), where the Utah Supreme Court affirmed the trial court decision extending an alimony award which was originally of set duration and rehabilitative in nature, support the concept of either indefinite alimony, permanent alimony or rehabilitative alimony as any of these awards may be reconsidered by the trial court after a change in circumstances. The trial courts retain the ability to determine whether or not the alimony award has served its purposes. This could erase the distinction between rehabilitative and indefinite alimony. What is clear is that an award of permanent or indefinite alimony can be brought back to the Court for further review in appropriate circumstances with articulated criteria.

Unfortunately, this blurring leaves a problem which must be addressed. Rehabilitative alimony has a dual nature—carrot and stick. The carrot is support while obtaining the education or job training and experience to become self-supporting. The stick is loss of alimony if the ability to become self-supporting is secured. *See Carter v. Carter, supra.* This conflict in the underlying values between incentive and need is a difficult problem which will require further thought and experimentation.

IV. ANTENUPTIAL AGREEMENTS

Utah law regarding antenuptial agreements had not been clear until the Utah Supreme Court decision of *Huck v. Huck*, 734 P.2d 417, 419 (Utah 1986), when the Court declared that prenuptial agreements would be upheld and applied in regard to property, so long as there was non-fraud, coercion or material nondisclosure, but ruled that they would not be applicable to support of the parties or their children.

The Utah Court of Appeals applied this rule in *Berman v. Berman*, 749 P.2d 1271 (Utah App. 1988). The Court determined that a trial court had not strictly applied an antenuptial agreement according to its terms and, in doing so, erred. It reversed the trial court and required additional property to be given to the husband. However, it also determined that the decision of the trial court regarding support should also be vacated because the trial court should consider the alimony needs of the spouse who had just lost the property in light of the fact that she would no longer have the property which had been awarded to her by the trial court. Alimony, it declared, should be set based on the usual criteria when that matter came again before the trial court.

CONCLUSION

Utah law regarding alimony has been substantially clarified in recent years. The articulated goal of the courts in making an alimony award is to maintain the parties as nearly as possible in the living standard that they enjoyed prior to the divorce. The courts have not addressed the question of the criteria to be used in determining if this should be done by permanent alimony, indefinite

alimony or rehabilitative alimony, but the criteria have been articulated to guide the trial courts in examining the need of the payee spouse, the ability of the payee spouse to generate income to meet that need and the ability of the payor spouse to make payments. Now that the general rules are in place, specific applications, particularly in determining what are long-term marriages and what will be done with special needs situations, are emerging from the general rules that have been established.

The phrase "permanent alimony" is a misnomer. The term should be "indefinite" or "indeterminate alimony" in light of the statutory provisions of Sect. 30-3-5(3), Utah Code Ann. (1989), which provide the Court with continuing jurisdiction to make changes for the support and maintenance of the parties. This has been interpreted to mean an award of alimony may be made where not originally awarded. *Kinsman v. Kinsman*, 748 P.2d 210, 212 (Utah App. 1988); *see also Georgedes v. Georgedes*, 627 P.2d 44 (Utah 1981); and Sect. 30-3-5(5), Utah Code Ann. (1989) which provides for automatic termination of alimony on remarriage unless the decree specifically provides otherwise. This means that the Court can create permanent alimony by a decree that it will not terminate. This would be permanent alimony versus indefinite alimony that terminates upon remarriage by application of this provision or cohabitation under Sect. 30-3-5(6), Utah Code Ann. (1989). "Permanent alimony" should be defined as alimony which has been made permanent by the trial court in its order and all other alimony awards should be referred to as "indefinite alimony" to help differentiate the two. This becomes particularly important in examining the decisions of the Utah Court of Appeals dealing with compensation for professional education. *See infra* at 18-20. Interestingly, so long as alimony meets the provisions of Sect. 71 of the Internal Revenue Code, it would be deductible for tax purposes despite remarriage.

[2] The appropriate treatment of premarital property varies from divorce case to divorce case; the overriding consideration is that the division be equitable. *See Newmeyer v. Newmeyer*, 745 P.2d 1276, 1977-78 (Utah 1987).

[3] The Utah Supreme Court declined to comment or rule on equitable restitution in the course of its decision in *Gardner v. Gardner*, 748 P.2d 1076, 1080 (Utah 1988), though it noted that the Utah Court of Appeals had made the *Peterson* and *Rayburn* decisions.

[4] The present language of the statute to which the Court was referring provides:

> The Court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health and dental care, or the distribution of the property as is reasonable and necessary.

Utah Code Ann. Section 30-3-5(3) (1989) (emphasis added).

[5] Sect. 30-3-5(3) of the Utah Code provides in part:

> The Court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties . . . as is reasonable and necessary.

Utah Code Ann. Section 30-3-5(3) (1989).

How to Bend a Crowbar in a Sand Pile: The Mechanic's Lien Legislation of 1989

By George A. Hunt

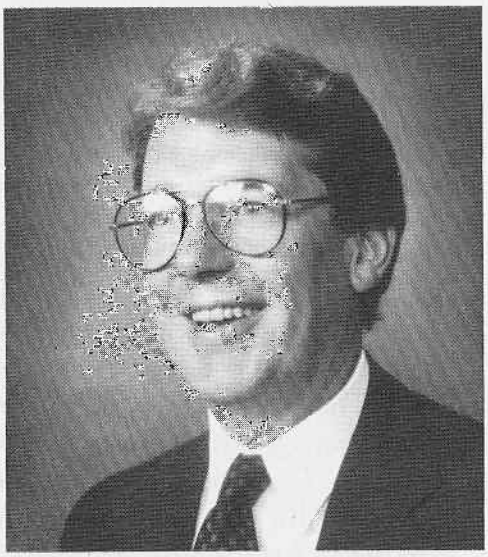
I. HISTORICAL OVERVIEW

The general scheme of Utah's mechanic's lien statute (Utah Code Ann. Sect. 38-1-1 et seq. (1953 as amended)) has existed in the same general format since a time prior to statehood. It was first codified in 1898 and, with relatively minor amendments, has remained generally the same.

In recent years, however, the so called "relation-back doctrine" has created a number of significant problems in the mechanic's lien area. The relation-back doctrine stems from Sect. 10 of the Act which essentially provides that all mechanic's liens have equal time priority regardless of when they are filed. This doctrine has been expanded by a variety of fairly recent Supreme Court decisions, which in essence conclude that all liens relate back to the time when the first work was performed on the property by anyone, even though the first persons performing work may have been fully paid and satisfied. *See, e.g., 1st of Denver Mortgage Investors v. C.N. Zundell & Associates*, 600 P.2d 521 (Utah 1979). Since 1979 this doctrine has caused increasing problems for title insurance companies and lenders.

A typical problem scenario plays something like this:

> Lender places a first deed of trust on a tract of what appears to be raw land, the title insurance company insures it and the construction project proceeds. In what seems to be typical Utah developer fashion, a substantial portion of the construction funds are spent on a new Mercedes, material men are left unpaid and liens are filed. Clever counsel for the lien claimants discovers that the underground sewer and water pipes and some surveying and staking were performed on the property prior to the time the deed of trust was filed of record. Thus all the subsequently filed liens relate back to a priority date before the deed of trust was filed. The title insurance company now has major difficulties with priority.



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Because no established method other than physical inspection exists for the title searcher to ascertain whether prior work had been done on the property, the lender and its title company can get sandbagged.

In states such as Nevada, as a condition precedent to filing a Mechanic's Lien, a notice of intent to lien must be served on the Owner in order to perfect the right to file a lien. Nev. Rev. St. Sect. 108.245. Thus, a title searcher can ascertain from the record property owner who has the right to lien prior to insuring a deed of trust and can determine whether potential for subsequent lien filings actually exists. Utah has had no similar requirement.

In addition to the problems experienced by lenders and title insurers, some general contractors also experienced difficulty. Their plight involved subsequently filed liens by lower tier subcontractors and material men with whom they had no contractual privity. They were often at risk because they would certify to the owner that all bills had been paid, only to find later that their subcontractors had failed to pay their lower tier subs and suppliers.

Frustration borne of the inability to accurately ascertain the existence of lien claimants before insuring the property or before final payment by contractors led, in part, to a demand for some type of preliminary notice statute in Utah. Unfortunately, the cure appears to be worse than the disease.

II. THE PRELIMINARY NOTICE AMENDMENTS

Senate Bill 0198, which became effective on April 24, 1989, among other things, added Sect. 27 to Chapter 1 of Title 38 of the Utah Code. This section attempts to establish a preliminary lien notice requirement in the state of Utah.

In a broad sense, this provision seeks to provide that a general contractor should file a document with the County Clerk entitled "Notice of Commencement." This document should contain the name and address of the owner of the project or improvement, the name and address of the contractor, the name of the surety providing the payment bond, if any, the name of the project and the address of the project. The Clerk then files this document and cross-indexes it by name of contractor, name of project and address of the project. If this notice of commencement is filed, it triggers the requirement for a preliminary notice of lien to be served by all persons or entities providing labor, service, equipment or material to a project, except subcontractors who have direct privity with the general contractor and persons performing labor for wages. Failure to give the preliminary notice precludes the lawful filing of a lien.[1] The preliminary notice is not filed, rather, it is served by mail on the original (general) contractor. For some reason, it is not required to be served upon the owner or lenders.

The most striking feature of Sect. 27 is that the exceptions are broader than its application. The first subsection of this title exempts all residential housing, which is then defined to include single-family detached housing, multifamily attached housing up to and including four-plexes and "rental housing." This definition creates more problems than it solves. The catchall phrase "rental housing" could include multifamily housing larger than a four-plex and could also include condominium projects where the units are intended for rental rather than sale. Commercial and industrial projects are not exempted but the drafters failed to address oil and gas liens under Chapter 10 of Title 38 which are closely related to the mechanic's lien statute and derive much of their procedure from it. It is thus an open question whether or not the preliminary notice provisions apply to oil and gas liens.

A careful reading of Sect. 27 discloses that its provisions are, for the most part, illusory. If the general contractor does not file a notice of commencement on a new project, the preliminary notice requirements do not apply. And, there is no penalty to the general contractor if a notice of commencement is not filed.[2] Thus, at least from the perspective of an owner or lender, the entire application of this new statute can be avoided on the project if the general contractor simply fails to file a notice of commencement.

One is driven to ask rhetorically what is being accomplished by this legislation and who, if anyone, is being protected? If the general contractor decides to spend all the construction money on foreign cars and not pay the subs, neither the owner nor the lender are any wiser because they don't know who the subs are and have no way to find out—the preliminary notices have only been served on the general contractor. Also, if the general contractor is lazy or negligent or both and fails to file a notice of commencement, then no one gets the protection of the preliminary notice provisions and none of the provisions of Sect. 27 apply.

At best, a diligent general contractor can protect the property and its contractual interest from late filed, unknown and undiscovered liens. However, the lender and owner must rely on the general contractor for this information since they are provided none of record or through independent service of the notice.

What we have then is classic special interest legislation where the interests of commercial and industrial general contractors has been served and the interests of everyone else ignored or compromised.

One thing is certain, the existence of Sect. 27 is going to seriously complicate the business of lawyers who are asked to either review title or file liens on behalf of potential mechanic's lien claimants. Prudence will require each lawyer to ask at least the following questions in order to ascertain whether a lien can be filed, or if filed, whether it is valid.

1. Is the client a general contractor, a subcontractor in privity with the general contractor or a lower tier sub or supplier?
2. Is the client a laborer working for wages?
3. Has a notice of commencement been filed for the project?
4. Is the project residential, and if so what kind of residential?
5. In view of the answers to the foregoing, does Sect. 27 apply?

If the Sect. does apply and if the client is not a general contractor or someone in privity with the general contractor, then the lawyer must give the requisite notices.

In effect, Sect. 27 creates several new classes of lien claimants. The creation of these classes seriously complicates the lawyer's job in either ascertaining what is necessary in order to file a lien or deciding whether a lien which has been filed is valid.

If the general contractor is lazy or negligent, no one may get protection from the preliminary notice provisions.

This legislation will be great for lawyers and perhaps some general contractors. Whether anyone else will benefit is questionable.

III. OTHER CHANGES

In addition to the preliminary notice requirements of Sect. 27, Senate Bill 0198 also made some additional changes, beneficial to the overall mechanic's lien scheme.

Sect. 38-1-7(1) was amended to provide a standardized "time for filing" requirement. Now, all mechanic's liens, whether by general contractor, subcontractor or supplier, must be filed within 80 days after substantial completion of the project or improvement. This amendment eliminates the 100-day/80-day distinction between "original" (general) contractors and sub/lower tier contractors. It makes sense and will simplify the statute.

Senate Bill 0198 also clarified language in the Mechanic's Lien Act, expressly including *equipment* and *services* as lienable items.

Finally, recovery of attorneys' fees was legislated back into the public contract bonding statute after having been adroitly removed a few years ago. Utah Code Ann. Sect. 63-56-38(4) (1953, as amended).

At the same time Senate Bill 0198 was working its way through the legislative process, on the other side of the state house, the House of Representatives enacted House Bill 62 which also amended Section 38-1-7—but in a different particular. Prior to April 29, 1985, the statutes required that a lien had to be "verified" in order to be filed. The courts construed this to mean that someone had to swear that the contents of the lien were true—a mere acknowledgement would not suffice. *See, e.g., First Security Mortgage Co. v. Hansen*, 631 P.2d 919 (Utah 1981). In 1985, the contractors' lobby succeeded in having the verification requirement eliminated. House Bill 062 reinstates the requirement by mandating that a lien contain "an acknowledgement or certificate as required under Chapter 3, Title 57." Presumably what all this means is that for liens filed after April 24, 1989, one must have a proper notary acknowledgement[3] which, to be safe, also contains the magic words "subscribed and sworn" or their substantial equivalent. Utah Code Ann. Section 57-3-1 (1953, as amended).

IV. SUMMARY

Overall, the 1989 amendments to the Mechanic's Lien Act and related statutes will probably be a boon to lawyers and a bane for everyone else. It is very unfortunate that the preliminary notice changes were not more thoughtful. Problems could have been solved rather than created. Perhaps next year.

[1] Compliance with this provision is now also a requirement under the bonding statutes, Utah Code Ann. Sect. 14-2-5 and Sect. 63-56-38.1 (1953, as amended).

[2] *Cf.* Nev. Rev. Stat. Sect. 108.246 (1986). The Nevada statute requires the general contractor to inform the owner of all notices served, or be subject to license revocation proceedings.

[3] The reader is referred to the new notary act amendments to Title 46, Utah Code Ann. for review.

BAR COMMISSION HIGHLIGHTS

At the regularly scheduled meeting of the Board of Bar Commissioners held at the Utah Law and Justice Center on September 29, the following reports were received and actions taken:

1. Approved the minutes of the August 25 and September 7 meetings.

2. Received a special report of actions taken at the Annual Meeting of the ABA House of Delegates, including issues of continuing concern to the ABA.

3. Received a liaison report on the Judicial Council activities including further developments in the Judicial Performance Evaluation process. Approved resolution to express concern regarding the unavailability of judges to each court level during judicial conferences.

4. Approved a resolution requesting study and recommendations from the Character and Fitness Committee regarding certain of its procedures and practices.

5. Authorized the Executive Committee to retain a consultant to study the usage and rates for meeting rooms in the Law and Justice Center and to report its recommendations to the Commission.

6. Received report of the Executive Committee and President Chamberlain miscellaneous administrative items. Approved a policy request from the Administrative Practice Section concerning the creation of an associate member category. Noted the preparations under way for the implementation of the 1990 Apprenticeship Program and the New Lawyer CLE Program. Extended congratulations to Rex Lee on the occasion of his inauguration as President of Brigham Young University. Approved a proposal from the Litigation Section to develop updated jury instruction forms for Utah.

7. Received the report and appearance of the Lawyer Benefits Committee and from Don Roney and Barbara Rainey to present the periodic professional liability insurance program claims report. Although, for the recent period, claims have approximately equaled premiums paid and premiums have not been increased for two or three years, there will soon be a rate increase of approximately 10 percent. A loss prevention seminar cosponsored with the Bar is scheduled in March 1990.

8. Received monthly report of the Executive Director noting the development by the Salt Lake County Bar of new Pro Bono Program efforts, the hosting of the 1990 ABA Pro Bono Conference, the negotiation of a lease for office space within the Utah Law and Justice Center for Attorney Title Guaranty Fund of Utah, and the final dissolution of Utah Prepaid Legal Services Plan with proceeds therefrom to inure to the Utah Bar Foundation.

9. Received a report on the status of the Annual and Mid-Year Meetings for 1989-90 and an accounting for the 1989 Annual Meeting.

10. Met with counsel to discuss pending litigation matters then authorized a special committee to study the legal, ethical and policy issues raised with regard to judges sitting on the Bar Commission and processes to be followed.

11. Received a preliminary report on the Legislative Affairs Committee.

12. Conducted a Disciplinary hearing on a petition challenging the jurisdiction of the Ethics and Discipline Committee Screening Panel. The issue was whether or not the panel had jurisdiction or authority to proceed with the investigation and adjudication of a disciplinary complaint against a sitting judge where the complaint related to alleged misconduct occurring prior to the respondent's appointment to the bench. After oral argument from the respondent and Bar Counsel and reference to the Rules of Integration and Management of the Utah State Bar, the Commission affirmed the jurisdiction of the Bar and the Ethics and Discipline Committee Screening Panel for the investigation and adjudication of the matter.

13. Received the monthly Admissions report, approving the reinstatement of attorney Nancy Ryerson, the report of the Character and Fitness Committee with regard to one applicant and the slate of applicants for the October Attorney Examination.

14. Received the monthly report of the Office of Bar Counsel approving or otherwise reviewing discipline matters as are reported in the *Bar Journal.*

15. Received the monthly report of the Young Lawyers Section noting its successful leadership retreat, the recruitment of new volunteers for the Section's 15 committees, the recent legal employers fair held at the Law and Justice Center and the commencement of the "People's Law Program" conducted in conjunction with the Salt Lake Community Education Division. Approved a request for authority to solicit funding from law firms to underwrite the cost of a reception for new admittees and approved the authority of the Section to apply for miscellaneous ABA grants for Section activities.

A full copy of the minutes of this and other meetings of the Board of Bar Commissioners is available for inspection by members of the Bar and the public at the Office of the Executive Director.

Discipline Corner

ADMONITIONS

1. An attorney was admonished for failing to clarify the scope of his attorney/client relationship at the outset of representation in violation of DR 6-101(A)(3) and Rule 1.4. The Panel suggested that in the future the attorney clarify the scope of his representation in writing at the outset.

2. An attorney was admonished for failing to provide a timely accounting for money received on behalf of a client in violation of Rule 1.14(d). The attorney was also admonished for violating Rule 1.13 (b) for neglect and lack of response to the client's numerous requests for status reports. The neglect, however, was mitigated by the attorney's prompt and complete response to the discipline process.

PRIVATE REPRIMAND

1. An attorney was privately reprimanded for neglecting a collection matter during a two-year time period in violation of DR 6-101(A)(3) and Rule 1.3, and for violating Rule 1.4(a) for failing to return the client's numerous phone calls or updating the client on the status of the case. The sanction was aggravated by the attorney's nonresponsiveness to the disciplinary process, though, the attorney's lack of prior disciplinary misconduct was a factor in mitigation.

2. An attorney was privately reprimanded for violating the following rules: (a) Rule 1.3 for failing to file a complaint and serve three temporary restraining orders with reasonable diligence; (b) Rule 1.13(b) by failing to refund the unused portion of his retainer; (c) Rule 1.14 for failing to return the client's file after the attorney had been dismissed; and (d) Rule 8.1(b) for the attorney's nonresponsiveness to the Office of Bar Counsel's requests for information constituting a failure to respond to a lawful demand for information from a disciplinary authority. The sanction was aggravated due to the attorney's substantial experience in the practice of law and two prior private reprimands concerning past misconduct similar to the instant action.

3. An attorney was privately reprimanded for failing to clearly state and establish a fee agreement with his client, in violation of Rule 1.5(b), and for violating Rule 1.14(b)(6) for improperly withdrawing from a pending matter without prior approval from the court.

4. An attorney was privately reprimanded for violating Rule 1.3 for neglecting to prepare a guardianship order granted by the Court for over a year. The sanction was mitigated by the attorney's filing of the Order after being requested to do so by the disciplinary panel.

5. An attorney was privately reprimanded for violating Rule 1.3 because the attorney had failed to adequately review and respond to a bankruptcy notice resulting in the client being unnecessarily deprived of their work vehicle for a period of time. The sanction was aggravated by the resulting inconvenience to the client but was mitigated by the attorney's admission of the wrongdoing.

PUBLIC REPRIMAND

1. On September 11, 1989, David K. Smith was publicly reprimanded for violating Rule VIII(h) of the Procedures of Discipline of the Utah State Bar by engaging in a pattern of misconduct involving neglect. Within the past two and a half years, Mr. Smith had been admonished once and privately reprimanded three times for neglecting legal matters entrusted to him. The sanction was aggravated by Mr. Smith's substantial experience in the practice of law.

SUSPENSIONS

1. On September 11, 1989, Gerald Hansen was suspended from the practice of law for six months with four months stayed pending successful completion of two 30-day suspensions to be served within one year following the date of suspension and contingent upon successful completion of a one-year period of probation. Mr. Hansen violated Rule 1.4(a), DR 6-101(A)(3), Rule 1.3, and Rule 8.4(c) by failing to respond to his clients' requests for status reports, refusing to return his clients' phone calls, failing to file an action within the statutory period, and generally engaging in a pattern of neglect and misconduct. The sanction was mitigated by Mr. Hansen's admissions of his wrongdoing and his willingness to be supervised by another attorney.

2. On September 14, 1989, James N. Barber was suspended from the practice of law for six months with the suspension stayed pending his successful completion of 24 months of probation and his payment of restitution to the involved parties. Mr. Barber violated DR 1-102(A)(4) by misrepresenting his handling of his client's case and DR 6-101(A)(3), for neglecting to prepare an answer for his client which, in turn, led to a default judgement. Mr. Barber represented that he would move to set aside the judgement but neglected to do so. His client was then adversely affected by the inactions of Mr. Barber. Aggravating factors included Mr. Barber's prior disciplinary history involving matters of neglect and his substantial experience in the practice of law. A factor of mitigation was that during a period of neglect Mr. Barber was experiencing health problems.

Notice to Active Members Third Division

Pursuant to Rule (C)5 of the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for two members from the Third Division. Applicants must be nominated by written petition of 10 or more active members of the State Bar residing in the Third Division. Nominating petitions may be obtained from the Bar Office on or after March 15 and completed petitions must be received no later than April 12. Ballots will be mailed on or about May 3 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on May 31.

If you have questions concerning this procedure please contact Barbara Bassett, Associate Director at the Bar Office 531-9077.

Court Practice Seminar

The University of Utah College of Law Alumni Association will present its Annual Court Practice Seminar on both Wednesday, January 24 and Wednesday, January 31, 1990 in the law school's Sutherland Moot Courtroom beginning at 5:30 p.m.

The focus of this year's seminar is to provide an update on the significant decisions in the area of civil and criminal case law and procedure from the Utah Supreme Court, Utah Court of Appeals, Tenth Circuit Court of Appeals and the U.S. Supreme Court. Panels will include distinguished jurists, scholars and practitioners, and CLE credit will be offered.

The Civil Law Seminar is scheduled for January 24 and the Criminal Law Seminar will be held January 31. The cost for individual seminars is $45 in advance and $50 at the door. The cost for both seminars is $75 in advance and $85 at the door. Reservations can be made by calling Holly Hale at 581-3153.

Supreme Court Clarifies Bar Lobbying Role

In an order dated November 3, the Utah Supreme Court clarified the permissible limits of lobbying activities of the Utah State Bar. The Court adopted the recommendations of its ad hoc committee established for the purpose of reviewing the legislative activities of the Utah State Bar and the Rules of Integration governing such activities. Specifically, the Court amended Rule (c)15 of the Rules of Integration as follows with direction to the Bar that applicable bylaws and policies of the Bar be amended to be consistent with the ruling.

"Speakers Bureau" Service Available

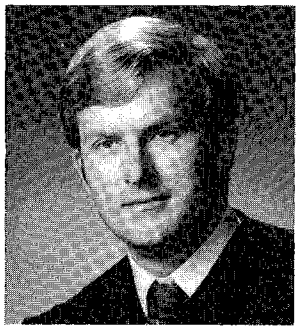
The Law Related Education Committee's subcommittee on Volunteers is handling a "Speakers Bureau" service for the Bar this year. Elementary schools, high schools, clubs, civic groups or other organizations sometimes request the Bar to supply them with speakers for classes, meetings or other affairs. There are also other projects of the Law Related Education and Law Day committee which require members of the Bar who are willing to volunteer their knowledge, time and expertise in assisting in presentations or other public oriented activities. We need your help. If you are willing to be available to accept a speaking assignment or assist in other worthwhile projects, please contact Bryan A. Larson, McKAY, BURTON & THURMAN, 1200 Kennecott Building, 10 E. South Temple, Salt Lake City, UT 84133. Telephone: 521-4135.

Utah State Bar's Needs of Children Committee

"What happens to me when my parents separate or get divorced? Do I have to go to court? Will I have to move? Do I still see the parent I don't live with?" These are typical questions that children ask when their family is breaking up. More important, these are the questions that children may be afraid to ask. If the questions are asked—or if the parent brings them up, what are the answers? Utah Children and the Utah State Bar's Needs of Children Committee will help parents with the answers to these questions with a booklet to be published this fall. "Where Do I Stand? A Child's Legal Guide to Separation and Divorce" is a 32-page booklet for children written in a question/answer format. The text is interspersed with cartoons depicting puzzled, frustrated, angry, and sometimes happy mothers, fathers and children.

"Where Do I Stand?" is a joint project of the Utah State Bar's Needs of Children Committee and Utah Children. A similar publication produced in Ontario, Canada is the model for the booklet. The text is being developed by family law attorneys and parents. Partial funding for the booklet project has been provided by the Utah Bar Foundation. Utah Children plans to distribute the booklet free of charge to attorneys in family law practice throughout the state, to the Legal Aid Society of Salt Lake and to Utah Legal Services. The book will also be made available to family counselors, and family support and social service agencies. Individuals or agencies interested in receiving copies of "Where Do I Stand?" may write or call the office of Utah Children at 401 13th Avenue, Suite 411, Salt Lake City, UT 84103, (801) 521-1441.

Judge Michael L. Hutchings Named as Law School Honored Alumnus of the Year



Judge Michael L. Hutchings was named by Brigham Young University's J. Reuben Clark Law School as "1989 Honored Alumnus of the Year" during proceedings at the law school on Thursday, October 19, 1989.

Judge Hutchings received his Juris Doctorate degree in 1979. While in law school, he served on the Brigham Young University Law Review. In 1976, he graduated with honors from BYU with a Bachelor's Degree in Political Science.

Judge Hutchings was appointed to the Circuit Court bench in 1983 by Gov. Scott Matheson. In 1988, he was honored as "Circuit Court Judge of the Year" by the Utah State Bar. He presently is a member of the State Judicial Council—the administrative and policy making governing body of the judiciary. He is also a member of the Fee Arbitration Committee of the Utah State Bar Association, the Salt Lake County Criminal Justice Advisory Committee and is a member of the *Bar Journal* Editorial Board.

Local Attorney Attends National Workshop Exploring Lawyers Assistance Programs

J. Stephen Mikita, Chairman of the Lawyers Helping Lawyers Committee was among 75 participants from 37 states and Canada who convened in Chicago recently to discuss and compare their efforts in assisting lawyers with substance abuse problems. In addition to learning the specifics of program operations, the participants discussed the importance of educating the profession about substance abuse, particularly early detection of a problem.

Mikita says that "the primary objective of our Committee this year is to increase lawyer awareness of our program which not only assists lawyers with substance abuse problems but also those attorneys and judges who may be suffering from an underlying emotional or psychological problem."

Most participants agreed that the key to any program's success was the confidentiality and immunity rule which gave lawyers confidence in the program and enabled members of the assistance committee to work unencumbered by reporting requirements.

Young Lawyer Section Utah State Bar Annual "Sub-for-Santa" Project

"We need everybody's help," said Brian M. Barnard in announcing the beginning of the annual Utah State Bar YOUNG LAWYER SECTION "Sub-for-Santa" project in conjunction with *The Salt Lake Tribune*. "The legal community opens their hearts annually for this service project, and this year will not be an exception." As a clearinghouse, *The Tribune* program matches those willing to share at Christmas time with families needing help. Almost 60 years ago *The Tribune's* program began to make sure that needy children in Salt Lake are not forgotten at Christmas.

"This is an opportunity to be directly involved with a family in need," Project Coordinator Barnard stated. "We want attorneys to directly participate. The smiling face of a needy child helped by the Sub-for-Santa program is the message of Christmas.

"This program helps our neighbors. Reach out, give a hand to those in need and see wonderful results. Last year, several Salt Lake law firms sponsored five families."

Members of the Young Lawyers Section will contact Salt Lake attorneys to answer any question regarding the program and to encourage them to call *The Tribune* Sub-for-Santa program (237-2830) to sign up and sponsor a family (or two).

Interested law firms are asked to designate a person to coordinate the project and work with the Young Lawyers Section and *The Tribune* to select a family, purchase gifts and groceries and deliver them before Christmas.

"Last year, *The Tribune* helped more than 2.000 children enjoy Christmas. With the help of the legal community, we will reach more families and children this year," said Barnard.

For small law firms that cannot sponsor a family, the Section again encourages contributions to help *The Tribune* fill in where sponsors to help directly cannot be found. Monetary contributions payable to "Sub-for-Santa," should be sent to "Sub-for-Santa," Young Lawyers Section, Attn: Brian Barnard, 214 E. 500 S., Salt Lake City, UT 84111-3204.

Questions regarding this Young Lawyers Section project should be referred to Brian M. Barnard, 328-9532.

YOUR BLOOD
or
YOUR MONEY!!

As part of its continuing community service efforts the **YOUNG LAWYERS SECTION** has agreed to co-sponsor an annual high school blood drive program with Intermountain Health Care in Salt Lake County.

The yearlong contest between high school students will increase blood donations among the younger population and hopefully secure regular donors for the long-term future. The high school that donates the most blood receives a scholarship given, at the school's discretion, to a student who participated in the program.

The Young Lawyers Section has agreed to help fund the annual scholarship.

This is an opportunity for lawyers to serve the community and to increase the public's awareness that **LAWYERS CARE!**

Even if you haven't contributed blood in the Young Lawyers Section's regular blood drives, you can now aid its blood drive programs through a small contribution to this scholarship fund. If every attorney in the state contributes only one dollar, an endowment can be established and the scholarship permanently funded! **JUST ONE DOLLAR!**

Please send your donation of one dollar ($1) to:

Young Lawyers Section—
I.H.C. Blood Drive Endowment
% BRIAN M. BARNARD, Chairman
214 E. Fifth South
Salt Lake City, UT 84111-3204

If you have questions or suggestions, please call Brian Barnard, Chairman, Blood Drive (328-9532).

1989-90 Bar Directory Omission

The following active Bar member was inadvertently omitted from the 1989-90 Bar Directory.

Adamson, Craig G. **521-6383**
310 S. Main Street, #1330
Salt Lake City, UT 84101

Please note this correction in your current Directory. The Bar regrets any inconvenience this may have caused.

Monet Earns Certified Professional Legal Secretary Title

Jeneal Monet of West Valley City has earned the title "Certified Professional Legal Secretary" (Certified PLS) by successfully completing a two-day examination given by the National Association of Legal Secretaries.

Ms. Monet is a member of the Salt Lake Legal Secretaries Association and is currently serving as its recording secretary. She has had 12 years of legal experience and is presently employed by the law firm of Christensen, Jensen & Powell as a legal secretary for Ray Christensen and Gainer Waldbillig. She also teaches a legal secretarial course at the Salt Lake Community College in the evenings.

The Certified Professional Legal Secretary examination is given in March and September by the National Association of Legal Secretaries through the cooperation of colleges and universities across the nation. The examination covers seven areas: written communication skills and knowledge; ethics; legal secretarial procedures; legal secretarial accounting; legal terminology, techniques and procedures; exercise of judgement; and legal secretarial skills. For further information regarding the examination, contact Jeneal Monet at 355-3431.

Proposed Modification to Rule C(15) of the Rules of Integration and Management

a. Authority to Engage in Legislative Activities.

Pursuant to Article VIII, Section 4 of the Utah Constitution, the Utah Supreme Court hereby authorizes and directs the Board of Commissioners of the Utah State Bar to engage in legislative activities.

b. Authority and Responsibility of Board of Bar Commissioners.

(i) Scope of Authority. The Board of Bar Commissioners is authorized and directed to study and provide assistance on public policy issues and to adopt positions on behalf of the Board on public policy issues. The Board is authorized to review and analyze pending legislation, to provide technical assistance to the legislature, the Governor, the Judicial Council and other public bodies upon request and to adopt a position in support of or in opposition to a policy initiative, to adopt no position on a policy initiative, or to remain silent on a policy initiative. The position of the Board shall not be construed as the position of the Supreme Court or binding on the Supreme Court in any way.

(ii) Scope of Policy Issues for Consideration. The Board's consideration of public policy issues shall be limited to those issues concerning the courts of this state, procedure and evidence in the courts, the administration of justice, the practice of law and matters of substantive law on which the collective expertise of lawyers has special relevance and/or which may affect an individual's ability to access legal services or the legal system.

(iii) Submission of Issues for Consideration. Public policy issues may be submitted to the Board for consideration in accordance with written procedures established by the Board.

(iv) Adoption of Board Position. The adoption of a Board position shall be in accordance with written procedures established by the Board.

(v) Record of Board Positions. The Board shall prepare and maintain a written record of the Board's positions on public policy issues and shall ensure reasonable notice and distribution to the members of the Bar.

c. Legislative Affairs Committee.

The Board may establish a Legislative Affairs Committee to assist in carrying out its responsibilities as set forth in paragraph II.A. The Committee's membership and procedures shall encourage broad participation and input and compliance with this policy.

d. Rebate Procedure

The Board shall establish, as part of its annual budget, a legislative budget which shall include all reasonable administrative expenses attributable to the Bar's legislative activities. The Board shall identify each member's pro rata portion of the amount budgeted for legislative activities and establish a fair and equitable rebate procedure of that amount for State Bar members who object to any legislative position taken by the Board.

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

PLANTIFF (COUNSEL) AND DATE OF FILING	CAUSE OF ACTION	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
1. Wendy W. Krogh (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, 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 D's and USB's Motion to Dismiss. Trial held Feb. 27-28, March 1-2; judgment in favor of D's; no cause of action on USB's counterclaim; USB's request for costs denied; P's request for attorney's fees denied; $5,000 paid toward insurance deductible.
2. Wendy W. Krogh (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, attorney's fees and costs.	U.S. Dist. Ct. J. Winder, C-88-52-W	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; P's Motion to Dismiss and to Determine Prevailing Party Status and Request for attorney's fees denied and D's Motion for Summary Judgment and dismissal granted.
3. 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, injunction relief and $100 to $1,000 exemplary damages, attorney's fees and costs.	Third Dist. Ct. S. Wilkinson, C-88-0578 and S. Crt.	C. Burdick, R. Burbridge, C. Kipp	Summary Judgment granted in favor of P requiring specific salary information to be disclosed, denying damages and attorney's fee claims and declaring USB to be a state agency; cross appeals filled and USB's Motion in Stay Execution on the Judgment granted on 5/20/88; all appeal briefs filed—scheduled for December 5, 1989 oral argument; $10,367.59 paid in general attorney's fees to USB attorneys; $5,000 paid on insurance deductible.
4. 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, attorney's fees and costs.	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 #3 above; $2,311.30 paid toward insurance deductible.

SUMMARY OF LITIGATION

PLANTIFF (COUNSEL) AND DATE OF FILING	CAUSE OF ACTION	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
5. Brian Barnard (Pro se) Fld. 3/21/88[1]	Attempt to re-open 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, attorney's fees and costs.	U.S. Dist. Ct. J. Sam, C-88-02395 and Tenth 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 Appealant's brief filed; USB brief filed; oral argument scheduled for Nov. 17, 1989; $5,000 paid toward insurance deductible.
6. Brian Barnard, Brad Parker (Pro se) Fld. 5/1/88 [7]	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 Director 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; P's Motion for Preliminary Injunction re: lobbying summarily denied December 28, 1988; D's Answers to Interrogatories filed; D's Supplemental Answers to Interrogatories filed; stipulation to stay action pending resolution of Petition In Re Lobbying filed by P, B. Barnard, with Utah S. Ct; $5,000 paid on insurance deductible.
7. 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; P's have taken no further steps to prosecute.
8. 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 Mandamus 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.
9. Ronald O. Neerings (Brian Barnard) Fld. 6/9/88[1,6]	Feb. 1988 unsuccessful Third Dist. Bar Exam applicant's Ct. action against USB for J. Sawaya 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 filed Motion for Summary Judgment; both motions heard 12/13/88; P's Motion for Partial Summary Judgment denied; D's Motion for Summary Judgment for Dismissal with prejudice granted. D's request for costs granted; N of appeal filed with Utah S. Ct; $5,000 paid in insurance deductible.
10. Richard Tyree, Joseph Bonnaci (Pro se) Fld. 5/23/88[8]	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 Asstistant U.S. Attorney was admitted to practice in fed. crt. but was not yet admitted to practice in State of Utah; P's 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; removal granted and case dismissed as to other named D.

SUMMARY OF LITIGATION

PLANTIFF (COUNSEL) AND DATE OF FILING	CAUSE OF ACTION	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
11. L.R.T. (real name not disclosed) (Brian Barnard) Fld. 12/8/88	A 1983 civil rights action alleging deprivation of substantive and procedural due process in USB's 1986 denial of admission to practice law resulting from P's felony conviction.	U.S. Dist. Crt. J. Jenkins, 88-C-1141W		Answer filed 1/6/89; P's Motion to Not Disclose P's Actual Name granted; USB's Motion for Protective Order re: admission file granted; Discovery in process; $5,000 paid on insurance deductible.
12. Brian Barnard (Pro se) Fld. 8/2/89	Action for injunctive relief against Toni M. Sutliff, Assoc. Bar Counsel, to enjoin disciplinary process for failure to provide P with certian requested information prior to the time such information was available to Assoc. Bar Counsel for release to P.	Third Dist. Crt. J. Hansen	C. Kipp R. Rees C. Burdick	D's Motion to Dismiss filed; P filed Voluntary Dismiss; D filing for Rule 11 sanctions and attorney's fees.
13. Richard Crandall (Brian Barnard) Fld. 7/21/89	1983 civil rights action against USB and Bar Commissioners alleging improper conduct for failing to reinstate Crandall, after suspension for failure to timely pay Bar dues in the face of several pending formal complaints with serious discipline under consideration; seeking declaratory relief and money damages of at least $250,000.	Fed. Dist. Crt. J. Jenkins	T. Kay, C. Burdick	D's Motion to Dismiss filed and argued Sept. 26, 1989; awaiting decision; P filed Interrogatories and Requests for Admission with service of complaint; Ds seeking Protective Order pending decision on Motion to Dismiss—$5,000 paid on insurance deductible.

FOOTNOTES ON SUMMARY OF LITIGATION

[1-4] *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 Association and its members. For that reason, the Board of Bar Commissioners has unanimously made the decision to aggressively defend these lawsuits.*

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

[6] *This case was filed after a U.S. District Court for the District of Wisconsin declared the integrated Bar of Wisconsin unconstitutional. That decision was appealed to the Seventh Circuit where the Court of Appeals reversed the fed. dist. crt. P's in that case filed a Writ of Certiorari with the U.S. Supreme Court which was denied October 2, 1989. The U.S. Supreme Court did accept cert on a California case* Keller v. Supreme Court *which held that the use of mandatory dues could be used for certain legislative lobbying but not political campaigning. The USB along with 15 other states joined in an Amicus Brief. On September 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.*

[7, 8] *Disciplinary trial against Mr. Calder prosecuted by special counsel, David Leta, resulting in a recommendation of disbarment; Mr. Calder is appealing that recommendation.*

[9] *The plaintiff is 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.*

[10] *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

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 in each case. 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 as billings on each particular case have been received.

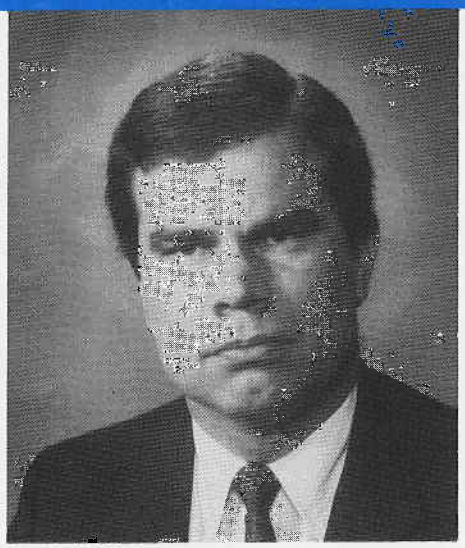
As of this date, six lawsuits filed against your Association have been resolved in its favor. The total amount paid toward our deductible and general attorney's fees on all lawsuits to date is **$58,552.31**; that sum does not reflect time spent by Bar Counsel, her staff nor USB staff in responding to 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)

CASE SUMMARIES



By Clark R. Nielsen

APPELLATE REVIEW—SUFFICIENCY OF FINDINGS OF FACT

In a construction contract dispute, the Utah Supreme Court provides some helpful insight as to the level of deference an appellate judge should give to the trial court's Findings of Fact and Conclusions of Law. A.C.P. and Tel-Tech enjoyed a cooperative relationship in the installation of food and dairy processing equipment until a dispute arose on a job as to construction extras. A.C.P. sued Tel-Tech for the unpaid extras and then, after judgment, appealed the trial court's award as insufficient. Analyzing the evidence, the appellate court increased the damage award slightly but, by and large, affirmed the trial court.

In its appeal, A.C.P. complained that the trial court had "mechanically" adopted the proposed findings prepared by opposing counsel. The majority opinion (J. Howe) found no indication from the record that the trial judge had not adequately deliberated and considered the merits in entering its findings and judgment. The findings were not considered deficiently incomplete, conflicting or ambiguous. Although the evidence did not support every aspect of the findings, they were not sufficiently defective to be totally discarded.

In his concurring opinion, J. Zimmerman frankly discusses his own "level of scrutiny" of a trial court's findings and conclusion which have been prepared by trial counsel. Underscoring the vital role of findings and conclusions in the judicial process, Justice Zimmerman suggests that a more critical review should be given when counsel's proposals are adopted by the trial judge without modification.

The clear lesson to attorneys who prepare proposed findings to encapsulate either the judge's oral findings or a memorandum decision, or as an initial proposal, is that the attorneys "should be cautious lest in their zeal, they include proposals that may undermine the integrity of the judgment they hope to obtain."

The majority opinion also states that the rules of civil procedure do not require a trial court to give notice of entry of findings and judgment but places that burden upon counsel to ascertain the date of entry. However, the opinion fails to address Rule 77(d), U.R. Civ. P., which requires the clerk of the court to serve notice by mail of the entry of an order or judgment—presumably in substantially the same manner as the federal court clerk. Although copies of the notice are provided to the clerk by counsel, Rule 77 says the notice is to be mailed by the clerk. This rule has never been followed or practiced since its inception, presumably because of the potential administrative cost and burden. Any purpose of this rule has never been addressed and, since the advent of Rule 58A(d) which requires counsel to give notice of the entry of judgment, the rule is inutile and should be discarded.

Automatic Control Products Corp. v. Tel-Tech, Inc., Utah Supreme Court, No. 20422, Filed October 6, 1989.

LANDOWNER LIABILITY

The Utah Limitation of Landowner Liability Act (U.C.A. Sects. 57-14-1 to -7) does not insulate from liability a cabin owner whose son and friends are asphyxiated while staying at the cabin. Interpreting the statute, the Supreme Court held that the purpose of the act is to open more land and water areas for public recreation use by the public at large. Justice Durham rejects the arguments by the defendant cabin owner that the statutory language encompassed the private use of the cabin by other friends albeit without permission.

State laws are liberally construed with a view to effect the legislative intent and to promote justice. The court concurred in the reasoning adopted by other state courts that apply similar statutes. Landowners who do

not make their property available to the public at large for recreational purposes may not invoke the protection of the act.

Crawford v. Tilley, 119 Ut. Adv. Rep. 32 (9/29/89).

UNAVAILABILITY OF A CHILD-VICTIM WITNESS

In another divided decision, the Supreme Court reversed a defendant's conviction of aggravated sexual abuse of a 5-year-old child. At trial, a videotape interview was introduced under Utah Code Ann. Sect. 77-35-15.5(1) (repealed effective July 1990) when the child was found to be unavailable as a witness because of her age and the stress of testifying. Defendant argued that the videotape evidence denied him a right of confrontation and cross-examination. Stopping short of addressing the validity of Sect. 77-35-15.5, the lead opinion by J. Howe (J. Hall concurring) holds that in this case, even after giving due deference to the applicable findings, "we cannot agree that the . . . victim's statement can be viewed as reliable so as to qualify for admission without having been subjected to cross-examination." The ability to cross-examine an accuser is at the very core of the constitutional right of confrontation. Because the guarantees of trustworthiness and reliability of the evidence were lacking, the defendant should not have been denied his right of confrontation and cross-examination. Justice Howe then describes the ambiguities and conflicts in the victim's statements on the videotape. Also, the evidence would not be admissible under the "catchall" exceptions to hearsay in Evidence Rules 803(24) and 804(b)(5).

The erroneous admission of the videotape was also not considered a harmless error. The opinion does not evaluate the harmlessness of the error in light of the mother's eyewitness testimony and other evidence, other than to summarily conclude that her testimony "was weakened because of her history of psychotic delusions." This summary depreciation of the mother's testimony seems inconsistent with the opinion's reliance upon that same testimony to describe the acts of abuse in rather graphic detail.

Justice Zimmerman concurred in Justice Howe's opinion reversing the conviction and remanding for retrial but added that, in his view, the state had also failed to adequately demonstrate that the child was "unavailable" as a witness. Even if the child's testimony was reliable, it could not be admitted because the child was not shown to be unavailable so as to satisfy Sect. 76-5-411(1). Although Justice Zimmerman does not discuss the relationship between Sect. 76-5-411(1) and Sect. 77-35-15.5, he has previously applied his analysis of "unavailability" under Sect. 76-5-411(1) in *State v. Webb,* 113 Utah Adv. Rep. 23, 24-27 (1989). These sections require very similar determinations of reliability and trustworthiness, and the admission of a videotape interview must satisfy the requirements of both sections. *See also State v. Lamper,* 116 Utah Adv. Rep. 14 (1989). Justice Stewart concurred in the concurring opinion of Justice Zimmerman.

Again, Justice Durham registered her strong dissent to the diminution of child-victim protections, arguing that the philosophical underpinnings and legislative purposes of Sect. 77-35-15.5 support its constitutionality. She views the victim-witness in this case as sufficiently "unavailable" to satisfy the statutory and evidentiary rule exceptions to hearsay evidence. The dissent focuses upon the expert testimony of the serious impact of actual potential and trauma to the good to show her "mental infirmity" as a witness. J. Durham finds the record evidence sufficient to defer to the trial court's finding of "unavailability." In this context, the needs and requirements of society and the individual victim outweigh the value of the constitutional protection of confrontation afforded an accused.

Justice Durham also criticizes the majority's unexplained refusal to value the remaining evidence (aside from the victim's statements) and sustain the finding of sexual abuse by the defendant. At worst, the videotape would constitute harmless error. The opinion does not address the mother's asserted lack of credibility to the majority.

For other jurisdictions, *compare State v. Conklin,* Minn. Sup. Ct., No. C5-88-545 (8/18/89) (upholding that state's statute on the admissibility of child-victim statements and denying cross-examination and confrontation. Although the trial judge's required findings regarding trauma and impact on the child were held insufficient in that case, the statute was constitutional under the Confrontation Clause. 45 Crim. Law Rptr. 1085) *with State v. Pilkey,* Tenn. Sup. Ct., Crim. No. 150 (8/7/89) (statute that permits the introduction of a videotape violates the Confrontation Clause even if defendant is given an opportunity of cross-examination at trial).

State v. Lenaburg, 118 Utah Adv. Rep. 18 (9/28/89) (J. Howe, with J. Hall concurring; J. Zimmerman, concurring opinion with J. Stewart concurring; J. Durham, dissenting opinion).

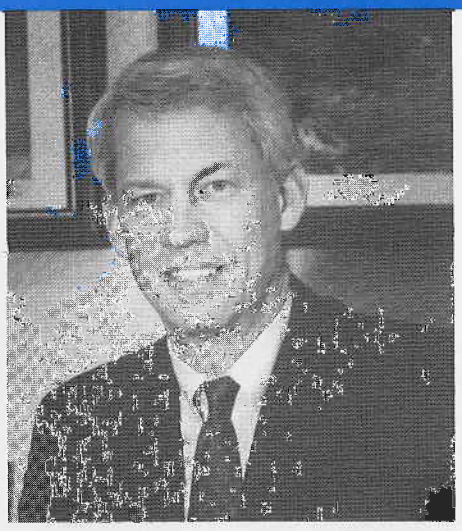
Significant Cases Before the U.S. Supreme Court. The current term of the U.S. Supreme Court harbors several cases of potential interest to the bar and its members:

Pavelic & Leflore v. Marvel Entertainment Group, No. 88-791. Whether sanctions under Rule 11 may be imposed not only on the attorney but also on the attorney's law firm.

Peel v. Illinois Attorney Registration, etc., No. 88-1775. The extent to which an attorney may advertise and proclaim himself or herself as a specialist in a particular field of law contrary to Disciplinary Rule 2-105 and Model Rule 7.4.

Harney & Moore v. Fineberg, No. 89-136. Constitutional challenge to California statutory limitations on contingent fees in medical malpractice cases.

Kelley v. State Bar of California, No. 88-1905. The right of a state bar organization to use mandatory bar dues to fund political lobbying and ideological organizations. Does such use violate an attorney's first amendment rights?



What to Expect From the 1990 General Session of the Utah State Legislature

By John T. Nielsen

JOHN T. NIELSEN is a partner in the law firm of Van Cott, Bagley, Cornwall & McCarthy. He is the former Utah Commissioner of Public Safety and Chief Criminal Deputy of the Salt Lake County Attorney's Office. Mr. Nielsen practices in the areas of government, administrative and regulatory matters, natural resource and environmental law and general litigation.

The profile of the 1990 General Session of the Utah Legislature is beginning to emerge from the lengthy interim committee meetings that have occupied legislators for the better part of the summer and fall. Already, it is evident that there will be several emotional and potentially divisive issues confronting the legislature next year.

For the first time in several years, the legislature will be presented with a budget surplus which is both a blessing and a curse. There may be additional monies for education, social programs and other infrastructure needs; at the same time there is already considerable jockeying for the surplus funds which may make the job of the budget wizards even more difficult than in years of austerity. There is no question but that school funding will be a major issue and we can expect the legislature to be responsive to those needs, but there will also be considerable pressure from social services and public employees for their share of the surplus pie.

Abortion also promises to be an emotional issue and there are at least two bills presently being drafted to make Utah's abortion statutes as restrictive as the law will allow.

There are several issues that have been the subject of Interim Study Committee action and various task forces which have been working throughout the summer and fall and whose work will likely generate legislation worth watching. The following are but a few of those study issues and prefiled bills which will be of interest in the 1990 session:

UNIFORM TRANSFERS TO MINORS ACT

House Bill 26, sponsored by Representative John L. Valentine, prefiled October 6, 1989. This is an act which implements a version of the Uniform Transfers to Minors Act. Many states have adopted this uniform act and Utah now finds itself out of uniformity. This bill makes several changes in current law regarding the treatment of transfers to minors.

AMENDMENT TO RULE 63—UTAH RULES OF CIVIL PROCEDURE

This proposal would allow litigants one challenge as to judges. It would apply to both civil and criminal cases. Attempts are currently under way to convince the Judicial Council to amend Rule 63 and if this is not successful then the proponents will pursue a Bill in the General Session.

CENTRAL PANEL FOR ADMINISTRATIVE LAW JUDGES

This bill is in the drafting stage and has not yet been prefiled, but proposes the centralization of all of the state administrative law judges. Presently, various departments of state government employ their own administrative law judges. This method of adjudication in the administrative and regulatory agencies of government is often criticized because of a perceived lack of impartiality. Additionally, there are many who believe that a more efficient use of these quasi judicial positions could be had by utilizing a centralized panel, the members of which could hear a variety of issues from various administrative agencies.

LEGISLATOR CONFLICT OF INTEREST AND LOBBYIST DISCLOSURE ACTS

It is very likely that bills will be introduced to require members of the legislature to declare any potential conflicts of interest

they may have with respect to legislation they are sponsoring or supporting. Closely related will likely be a bill to require lobbyists to disclose who they represent and the sources of their income.

RULES OF CRIMINAL PROCEDURE MODIFICATION AND DISTRICT ATTORNEY SYSTEM

Those who practice criminal law will be interested in several legislative initiatives this year. Important among them will be a proposal to change the current format of the procedural rules for criminal practice. It will be proposed to remove from the statute many of the current rules which are considered procedural only and to deal with such matters through the rule making process. Only those matters which are substantive in nature would be codified in the present statutory scheme.

For several years now, a proposal to revive the District Attorney system in Utah has been gaining momentum. Many prominent prosecutors have suggested that the current county attorney system does not serve the best interest of the citizens in that it does not provide for competent and professional criminal prosecution in many areas of the state. Although there is still some dispute as to the format for such a system, a bill proposing conversion to some form of full-time district attorney/criminal prosecutor system will likely be presented.

TELECOMMUNICATIONS

The 1989 general session of the legislature, by Senate Joint Resolution 12, instructed the Utah State Tax Commission to study the possibility of the taxation of telecommunication services, particularly interstate telecommunications and access charges. Various proposals have been studied during the interim and it is likely that one or more bills will surface. These bills propose to tax customer access line charges, carrier access charges and interstate telecommunications. Such a bill may have a considerably broader effect than originally thought in that it would tax such charges intitiated for any purpose, including bank wire transfers, etc.

ENVIRONMENTAL REGULATION

Like last year, the 1990 Session promises to be rather active as it applies to environmental regulation. During the last several months, a Solid Waste Task Force has been at work and has proposed a number of possible legislative solutions to the ever increasing solid waste burden on our land fills and other disposal facilities. Much of what is proposed deals with the recycling alternative and the creation of markets for recycled products. Additionally, at least two bills have been prepared and prefiled dealing with the ever increasing problem of waste tire disposal. These bills are also essentially recycling bills.

The continuing heated issue of toxic and medical wastes will likely receive attention in the 1990 Session. A draft proposal which would restrict the ability of hazardous waste incinerator projects to continue to be built in Utah may be presented.

UTAH LIQUOR LAWS

A task force studying Utah liquor laws has concluded its work, presented a report, and made several recommendations which would substantially amend the present method of the distribution of alcohol in the State of Utah. Among those recommendations are the following: The elimination of brown bagging, increase in the number of restaurant licenses, elimination of the mini-bottle method of dispensing liquor and replacing it with a calibrated meter dispensing device, advertising restrictions to prohibit public advertising in private clubs, sports stadiums and arenas, licensing of establishments that sell beer on premises for consumption, mandatory minimum fines for conviction of selling beer to minors and for minors convicted of buying or attempting to buy beer, increase funding for liquor law enforcement, the allowance of consumption of liquor in limousines, elimination of the $100,000/$300,000 cap on dram shop liability and proof of dram shop insurance for all liquor licensees, allowance for licensed liquor lounges at the international airport, and other miscellaneous enforcement and licensing recommendations. One or more of these recommendations will likely be presented in the form of a bill in the next session.

"...there will be several emotional and potentially divisive issues confronting the legislature next year."

IOLTA Honor Roll

As the Utah Bar Foundation comes to the conclusion of its 25th year, it is appropriate to honor all of you who have supported the Foundation by converting your Trust Accounts to the IOLTA Program (Interest on Lawyers Trust Accounts). Thanks to you, the Foundation received $183,021 in interest from the IOLTA Program in 1988.

We encourage all of you whose firms are not on the IOLTA Honor Roll to take the time to join the IOLTA Program. It is a great way to improve our image as lawyers.

Please enroll today. Thanks for all of your support.

Richard C. Cahoon
President
Utah Bar Foundation

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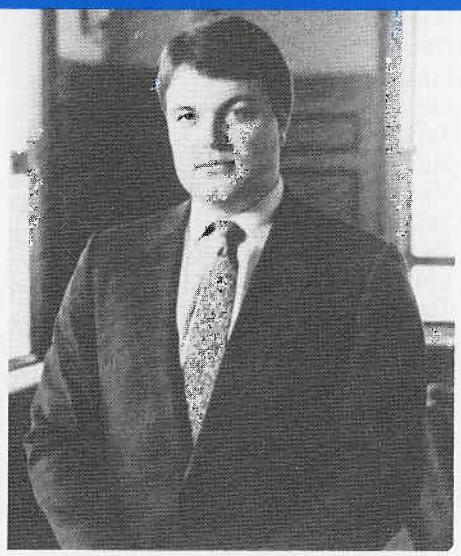


Officer's Message

By Larry R. Laycock, Secretary

While I was sitting at my desk at home, feverishly working my way through a large appellate record, my 3-year-old daughter stood at my side with a puzzled look on her face. When I asked her what was wrong, she replied:

"Dad, I know that you're 'a ttorney;' but what does 'a ttorney' do?"

It was clear to me that a discussion of the constitutionality of medical malpractice statutes of limitations as applied to minors would probably not satisfy her inquiry, so I settled for the following simple definition: "An attorney is someone who learns about laws and rules, and uses what he learns to help people who are frightened, hurt or in trouble. Sometimes attorneys help people avoid getting into trouble or help people make plans for success and take care of what they own." My 3-year-old smiled and was pleased to know that her Dad is "a ttorney," because, as she put it, " 'a ttorney' is a nice person." I was left to ponder the importance of my daughter's question and its application to my professional priorities.

Edmund Burke once wrote that "[i]t is not, what a lawyer tells me I may do; but what humanity, reason and justice tell me I ought to do. . . . I am not determining a point of law; I am restoring tranquility." (Letter to Sheriffs of Bristol 1777) Hopefully, the virtues, spoken of by Burke, will govern our professional priorities and personal pursuits so we might achieve both tranquility and resolution of legal controversy. In other words, what we, as attorneys, tell others they should do, should reflect our commitment to justice, humanity and reason.

My simple definition of what an attorney should do is reflected in the Preamble to the Utah State Bar Rules of Professional Conduct which outlines some of a lawyer's responsibilities as follows:

> As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the Bar regulate itself in the public interest.

In a profession born of contention, conflict, argument and opposition, it is not surprising that many lawyers lose sight of the responsibility and privilege of devoting professional time and civic influence in strengthening legal education, serving public interests and improving the administration of justice. Too often the vision of young lawyers is blurred by a relentless selfishness, and further obscured by the necessity of meeting billing requirements and obtaining the oxymoronic goal of "financial security—at any cost."

MR. LAYCOCK graduated with a B.A. in 1983 from Brigham Young University. He received his J.D. (cum laude) from J. Reuben Clark Law School, Brigham Young University in 1986. He was a member of Phi Alpha Delta, the Order of the Barristers, Brigham Young University Board of Advocates (1984-86) and the American Inn of Courts I (1985-86), the national Moot Court Team and received the A.H. Christensen Memorial Advocacy Award. He joined Snow, Christensen & Martineau in 1986.

Mr. Laycock's practice with the firm is generally in litigation, with emphasis on medical malpractice and health law matters.

He is a member of the American Bar Association and has served as a member of the Executive Committee and as Publicity Chairman of the Young Lawyers Section, Utah State Bar, from 1987 through the present.

The Young Lawyers Section service committees offer numerous opportunities to devote professional time and civic influence to promote public service and education by helping people who are frightened, hurt or in trouble or by assisting people to avoid legal controversy.

Each Tuesday night, a group of young lawyers assembles at the Law and Justice Center to participate in the "Tuesday Night Bar," answering legal questions framed by people who cannot afford legal services.

Each week, other young lawyers devote hours of preparation and instruction time teaching a series of legal seminars for non-lawyers in the "People's Law" program which is presented in conjunction with the Salt Lake School District's Division of Community Education.

Other young lawyers give their time to present lectures to senior citizen centers throughout the state. Over 52 volunteer young lawyers participated in the Law Day Fair program in which they provided legal information, pamphlets on specific legal issues and made referrals for approximately 450 people.

The Membership Support Committee sponsored two Continuing Legal Education seminars at annual meetings for the Utah State Bar and also sponsored monthly brown bag luncheons where leaders of the profession and members of the judiciary made presentations to young lawyers.

The Community Services Committee continues its efforts to conduct blood drives and the annual Sub-For-Santa program. Other volunteers conduct voter registration projects and recruit volunteers and provide materials for the Salt Lake Homeless Shelter.

Publicity and Publication Committees collect, write and edit articles for contribution to the Utah State Bar Journal and continue to improve the dissemination of information about the Young Lawyer's activities and accomplishments.

In summary, the Young Lawyer's Section offers an opportunity for young lawyers to be "a ttorney" who uses what he learns about laws and rules to help people who are frightened, hurt or in trouble. Of the 4,081 active members of the Utah State Bar, 1,438 are members of the Young Lawyer's Section. Accordingly, at least 35 percent of the active attorneys in Utah are beginning their legal careers. These beginnings create an enormous opportunity and responsibility to shape the future practice of law in Utah. I encourage all young lawyers to be "a ttorney" who actively participates in law-related public service through the programs and activities offered so that our beginning commitment foreshadows a continuing commitment for years to come. As T.S. Eliot noted: "[w]hat we call the beginning is often the end and to make an end is to make a beginning. The end is where we start from."

Year-End Tax Planning for Young Lawyers

By David K. Armstrong, J.D., CPA

As we approach the end of the year, our minds typically drift toward the upcoming ski season, visiting with friends and family, and holiday festivities. In addition, December is an ideal time to take a look at your personal tax situation. Although not quite as exciting as trimming the tree or buying gifts, reviewing your tax situation may turn up some strategies that can still be implemented to save you money.

Year-end tax planning takes on added significance this year because several tax benefits expire at year-end, while other benefits have just recently come into effect during the year. On top of that, Congress is currently considering new legislation which may change certain strategies entirely. The following is a list of practical ideas for Young Lawyers to consider when examining their tax situation. Please note that these suggestions are general in nature and may not apply to your specific situation.

INTEREST EXPENSE

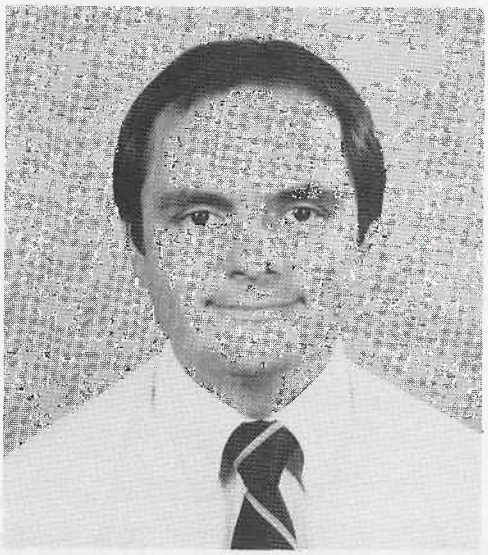
As most of you know, interest on your home mortgage is fully deductible. This is true for a first mortgage as well as up to $100,000 of home equity debt. However, for 1989 your deduction for consumer debt interest is limited to 20 percent of the total amount of interest paid during the year. This limitation drops to 10 percent in 1990. In 1991 and future years, no consumer debt interest expenses will be allowed at all.

For tax planning purposes you should consider paying off consumer debt prior to 1990 in order to maximize your deduction. Another option is to take out a home equity loan to pay off your consumer debt. The interest on the home equity loan will be fully deductible in future years. This alternative, however, should be approached with caution since it places your home at risk.

OFTEN OVERLOOKED MISCELLANEOUS DEDUCTIONS

Miscellaneous itemized deductions are only deductible to the extent they exceed 2 percent of your adjusted gross income. For this reason, you should dig deep into your financial records and try to come up with as many of these deductions as you can. The following is a list of often overlooked miscellaneous deductions applicable to Young Lawyers:

- Unreimbursed business expenses.
- Business travel away from home (including meals and lodging).
- Business entertainment expense.
- Subscriptions to legal or business journals.
- Bar dues.
- Job seeking expenses (in same business).
- Continuing legal education expenses.
- Investment expenses (including expenses for an investment newsletter, investment advice, management fees of mutual funds, safety deposit box rentals, etc.).
- Tax preparation fees or other tax-related fees or expenses, including seminars and books on taxes.
- Office in the home if used exclusively for business.
- Personal computer if directly related and required by your business.



DAVID K. ARMSTRONG is an associate with Allen, Nelson, Hardy & Evans. He graduated cum laude from J. Reuben Clark Law School, Brigham Young University, in 1988. He was Editor-in-Chief of BYU's Journal of Public Law. *Mr. Armstrong received his Master of Accountancy with emphasis in Taxation from BYU in 1981 and his BS in accounting from BYU in 1980. Mr. Armstrong was a Senior Accountant for Arthur Young & Company, for whom he worked three years. He served as Vice President of Financial Synergies Advisory, Inc. in Houston, Texas, for one year. Mr. Armstrong has experience with financial planning, investment analysis, estate and tax planning; he has written and edited articles dealing with these subjects. The Barrister* is pleased to have Mr. Armstrong, a member of the Young Lawyers Section, contribute this article.

RETIREMENT PLANS

There are a number of options to consider with regard to retirement plans. The most common means of funding a retirement plan is the IRA. An IRA offers an opportunity to deduct up to $2,000 individually, $2,250 if a spousal IRA is used or $4,000 if both spouses are working. The deduction is limited or disallowed altogether if (1) you are covered by an employer sponsored pension plan, and (2) your income exceeds certain limitations ($50,000 for married filing jointly).

Even though you may not qualify for an IRA deduction, establishing and contributing to an IRA account may still be a good idea. All income earned on the IRA is deferred until it is withdrawn. This increases your return on your IRA investment because the funds will grow tax free.

Setting up an IRA account is as easy as visiting your local financial institution or brokerage house. If you don't have $2,000 to spare, you can put in as much or as little as you like (up to the above mentioned limits). The important thing to remember is that whatever amount you put in will give you an immediate deduction for 1989 and also start you on your way to building a retirement nest egg.

If you need additional time to decide on whether or not to proceed with an IRA—do not worry. You do not have to set up or fund your IRA until April 15, 1990. If you are expecting a sizable tax refund this year, one unique strategy is to fund your IRA with your tax refund. This is accomplished by filing your tax return as early as possible,

deducting an appropriate amount for an IRA contribution and then using all or a portion of your tax refund to fund the IRA before April 15, 1990.

In addition to an IRA, those Young Lawyers who are self-employed may want to consider establishing a Keogh plan. A Keogh is a retirement plan for self-employed which allows generous contributions. In order to get a deduction for 1989, the Keogh plan must be set up before year end. The funding of the Keogh, however, does not have to occur until the due date of your return—including extensions. Since you do not need to fund a Keogh until your return is filed, contributions to a Keogh are one of the few year-end tax planning strategies that can be implemented long after year-end has passed—that is as long as the plan was established before December 31.

If you are lucky enough to be associated with a firm which has a 401(k) plan, you can contribute up to $7,627 in 1989. This is another excellent strategy for loosening your tax bite while building a substantial savings.

NEW HOMEOWNERS

Young Lawyers who purchased homes this year should review their closing statements for any "points" paid for securing their mortgage. Points actually paid by a home purchaser to secure a mortgage on a principal residence are normally fully deductible. If, however, the points are not paid out of the buyer's pocket, but are financed as part of the mortgage, then they must be amortized and deducted over the life of the loan.

DEDUCTIONS ON PASSIVE ACTIVITIES

Some Young Lawyers may be involved in passive activities. Passive activities include real estate rentals, limited partnerships and business operations in which you do not materially participate. The amount of loss you can deduct from these passive activities is limited to the amount of passive income you have. For those of you who have passive losses, your tax planning should include investigation of investments that generate passive income. When investigating these investments, remember that interest and dividends are considered "portfolio income" and are not allowed to offset passive losses.

There are two exceptions to the stringent passive loss rules. First, if your investment was acquired prior to October 23, 1986, you can still deduct 20 percent of the passive losses in 1989. The second exception applies to active participants in rental real estate. If you have rental property you can deduct up to $25,000 of losses against your other income. This exception is phased out for taxpayers with income between $100,000 and $150,000.

EXTRA CHRISTMAS BONUS

Have you ever thought you could use an extra $100 around Christmastime? Here is an easy way to get it. Many of you will wind up getting tax refunds next year. For those of you in that situation, a quick check of your withholding situation may yield big benefits. If you determine that you have already had enough tax withheld for the year you may want to consider filing an amended W-4 withholding exemption form with your employer. By adjusting your withholding for the last two pay checks you can take home a little extra money just in time for Christmas shopping. I have personally implemented this strategy and will be getting an extra $150 for Christmas. Before implementing this strategy, do a quick tax calculation to be sure you are not putting yourself in trouble come tax time.

"Year-end tax planning takes on added significance this year. . . ."

NEW PROPOSED LAW

The House Ways and Means Committee recently approved the Revenue Reconciliation Bill of 1989. (Believe it or not, this is the fifth major tax law change in the last 10 years.) The new proposed law contains some major changes as well as a few minor changes. Attracting the most attention is the proposed resurrection of the capital gains exclusion which was eliminated in the 1986 Tax Act. The capital gains provision will allow you to exclude 30 percent (making an effective rate of 19.6 percent if you are in the 28 percent bracket) of the long-term capital gains occurring on assets or property held for longer than one year and sold between September 14, 1989 and January 1, 1992. The exclusion, however, is only temporary. Sales of assets purchased after January 1, 1992, will not be eligible for the capital gains exclusion but will be subject to certain inflation indexing rules which will increase the basis of the assets sold.

Young Lawyers who are self-employed may also be pleased to hear that a last-minute provision was inserted in the proposed law giving a two-year extension to the 25 percent deduction self-employed individuals can take for health insurance expenses. That provision was scheduled to expire at year-end.

Currently, the Tax Bill faces a tough battle in working its way through full House and Senate approval. Hopefully, by year-end things will be ironed out and we will have a better idea on how to plan for the future.

SUMMARY

Hopefully, some of these suggestions will be of use to you. I recommend that when your family begins pulling out the Christmas decorations, you take a few minutes and pull out your financial records to see if any of these suggestions can help you out. Christmastime typically causes a heavy drain on your cash flow. Why not treat yourself to a little extra cash this year by taking advantage of year-end tax planning strategies?

Young Lawyers Section of the Utah State Bar Sponsors Reception for Lawyers and Judges Attending the National Conference on Child Abuse and Neglect

The Young Lawyers Section of the Utah State Bar sponsored a reception for lawyers and judges who were attending The National Conference on Child Abuse and Neglect. The reception was held on Monday, October 23, at the Law and Justice Center.

Individuals who attended the reception were transported from the Salt Palace to the Law and Justice Center by a shuttle which the YLS provided.

The reception was made possible by contributions from the following law firms and individuals: Corporon & Williams; Jones, Waldo, Holbrook & McDonough; Kirton, McConkie & Poelman; Littlefield & Peterson; Parsons, Behle & Latimer; John D. Sheaffer Jr.; Snow, Christensen & Martineau; and Watkiss & Campbell.

Utah Legal Employer Information Fair

On September 6, 1989, second- and third-year law students at the J. Reuben Clark Law School and the University of Utah Law School attended an employment fair at the Law and Justice Center from 7:00 to 9:00 p.m. The Utah Legal Employer Information Fair was sponsored by the Young Lawyers Section of the Utah State Bar. The costs of the fair were underwritten by the placement offices of the two law schools.

The fair generated the support and interest of 26 law firms, and each firm had at least two representatives. Tables were set up for each firm to field questions and answers to prospective employees. Approximately 170 law students attended.

Kathy D. Pullins, Director of BYU Legal Career Services, and Francine Curran, Director of U of U Legal Career Services, coordinated their efforts with the YLS who invited employers, scheduled the facility, and prepared fliers with general information for law students.

The employment fair was very successful. Plans are in the making for holding the fair again this spring and next fall.

NOTICE FIRST INTERSTATE BANK TRUST ACCOUNTS

All attorneys who are enrolled in the IOLTA program and have trust accounts with First Interstate Bank, please check your balance for extra interest paid to the firm. The IOLTA system at First Interstate is now up and running, but please check for interest that was missed during 1989. If you have any questions, please call Kay Krivanec at 531-9077.

1990 MID-YEAR MEETING

REGISTRATION, ACCOMMODATION AND TRAVEL INFORMATION There is one form required for meeting registration and one for travel and accommodations. Complete the Registration Form today and mail it to the Utah State Bar before January 3 to ensure your registration. Complete and mail the Travel and Accommodation Form to Terra Travel to make room and travel reservations. The airline and hotel will hold space at reduced rates for Bar members until December 15, 1989.

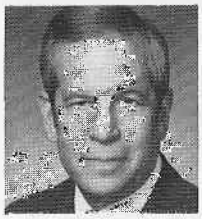
THE BAR WELCOMES SPECIAL PARTICIPANTS IN THE MID-YEAR MEETING

L. Stanley Chauvin, Jr. is President of the American Bar Association. He received his law degree from the University of Louisville in 1961, and practices law in Louisville, Kentucky, in the firm of Alagia, Day, Marshall, Mintmire & Chauvin. Mr. Chauvin has chaired many committees for the ABA, and is a former president of the American Judicature Society and director of the National Judicial College.

Alan R. Nelson, M.D. is President of the American Medical Association. He is a private practitioner of internal medicine and endocrinology in Salt Lake City and was president of the Utah Medical Association. Dr. Nelson graduated from the Northwestern University School of Medicine. Dr. Nelson has been an AMA spokesman at congressional hearings on national health insurance, peer review, and vaccine injury compensation.

Robert Coulson is President of the American Arbitration Association. He graduated from Yale University and Harvard Law School. Before joining the AAA, he practiced law in New York City. He has written and lectured extensively on the settlement of disputes and is author of *How to Stay Out of Court, Labor Arbitration, Business Arbitration,* and *Family Mediation Will Work for You.*

John P. Frank is a member of the Phoenix law firm of Lewis and Roca. He received his J.S.D. from Yale University in 1947, and was awarded an LL.D. by Lawrence University in 1981. Mr. Frank is the author of several books, including *Cases on the Construction* and *Marble Palace, The Supreme Court in American Life.* He has served on the Arizona Appellate Court Nominating Committee and the Ninth Circuit Merit Selection Committee.



Mark A. Harrison is a member of the Phoenix law firm of Harrison, Harper, Christian & Dichter. He received his law degree from Harvard Law School. Mr. Harrison has been president of the Western States Bar Conference, the National Conference of Bar Presidents, the State Bar of Arizona and the Maricopa County Bar Association. He is recent past chairman of the ABA Special Coordinating Committee on Professionalism.

SALT LAKE SESSION PROGRAM

WEDNESDAY, JANUARY 17, 1990

12:15 PM **Registration – Law & Justice Center Lobby**

1:00 PM **Can Doctors and Lawyers Work Together on Future Health-Related Issues?**

L. Stanley Chauvin, Jr., President, American Bar Association
Dr. Alan R. Nelson, President, American Medical Association
Leslie Pickering Francis, Professor of Law, U of U
Elliot J. Williams, Defense Litigator, Snow, Christensen & Martineau
Roger T. Sharp, Plaintiff Litigation, Sole Practitioner
Dr. Linda Cordell Leckman, General Surgeon
Dr. Jay Q. Jacobsen, Assistant Professor of Internal Medicine, University of Utah
Dr. Thomas C. King, Assistant Dean of the Department of Surgery, Columbia University
Ken Verdoia, Senior Producer, KUED TV, moderator

3:00 PM **Break**

3:15 PM **Medical Legal Panel Continues**

5:00 - 6:30 PM **Cocktail Reception** in honor of Utah's senior lawyers practicing for 50 years or more, hosted by Van Cott, Bagley, Cornwall & McCarthy

THURSDAY, JANUARY 18, 1990

Utah Law & Justice Center

8:00 AM **Registration and Continental Breakfast**

8:15 AM **Whom Does the Bar Serve?**

Panelists:

Jonathan K. Butler, President, Utah Young Lawyers Section
Patricia W. Christensen, Partner, Kimball, Parr, Crockett & Waddoups
Cecelia M. Espenoza, Deputy City Prosecutor, Salt Lake City Prosecutor Office
Kent M. Kasting, Partner, Dart, Adamson & Kasting
Reed L. Martineau, Senior Partner, Snow, Christensen & Martineau

Anne Milne, Director, Utah Legal Services
Ronald J. Yengich, Partner, Yengich, Rich, Xaiz & Metos

9:30 AM **Mid-Year Meeting Awards Presentations** to the Distinguished Lawyer Emeritus, Distinguished Lawyer in Public Service, Distinguished Non-Lawyer for Service to the Bar, Distinguished Lawyer Posthumous Award, Distinguished Section, and Distinguished Committee

10:00 AM **Break**

10:15 AM **Alternative Dispute Resolution: "A Better Means to an End?"**

Presentation by Robert Coulson, President, American Arbitration Association

Panel Discussion

Robert F. Babcock, Partner, Walstad & Babcock
Monica D. Christy, Ph.D., Director, Intermountain Counseling Center
Richard W. Giauque, President, Giauque, Williams, Wilcox & Bendinger
David Nelson, Vice President, Covey & Co.
D. Frank Wilkins, Former Justice, Utah Supreme Court; Of Counsel, Haley & Stolebarger

12:00 PM **Sandwich Buffet**

12:45 PM **Four Concurrent Presentations**

1. **Natural Resources Discussion of new State Ground Water Quality Regulations, Utah's Superfund Statute, Clean Air and Underground Storage Tanks**

   Panelists:
   Brent Bradford, Deputy Director, Utah Division of Environmental Health
   Shelly Cordon, Associate Director, Utah Petroleum Association
   Lucy B. Jenkins, Shareholder, Parsons, Behle & Latimer
   Don H. Ostler, Director, Utah Bureau of Water Pollution Control

2. **Criminal Litigation:** Reviewing the Recent Decisions on Expert Testimony – "Making New Law with a Joyous Frenzy"

   Hon. Ronald N. Boyce, Magistrate, U.S. District Court

   Panelists:
   Edward K. Brass, Sole Practitioner
   Walter F. Bugden, Partner, Bugden & Lundgren
   Leslie A. Lewis, Associate, Jones, Waldo Holbrook & McDonough
   Robert N. Parrish, Litigation Division, Utah Attorney General's Office

3. **Litigation Technology:** What You Need to Know in the 90's

   David O. Seeley, Shareholder, Workman, Nydegger & Jensen, P.C.
   Presentation by the Litigation Section

4. **Buying and Selling a Business** – A Multi-Disciplinary Approach

   Thomas E. K. Cerruti, Shareholder, Jones, Waldo, Holbrook & McDonough
   William G. Fowler, Of Counsel, Van Cott, Bagley, Cornwall & McCarthy
   Richard B. Johns, Shareholder, Jones, Waldo, Holbrook & McDonough
   W. Brent Maxfield, Tax Partner-in-Charge, KPMG Peat Marwick
   John R. Morris, Jr., Partner, LeBoeuf, Lamb, Leiby & MacRae
   Gretta C. Spendlove, Moderator, Shareholder, Jones, Waldo, Holbrook & McDonough

3:00 PM **Adjourn Salt Lake Session.** Depart for Arizona.

ARIZONA SESSION PROGRAM

FRIDAY, JANUARY 19, 1990
Inn at McCormick Ranch, Scottsdale

8:00 AM **Registration and Continental Breakfast – Lower Lobby**

8:30 AM **The Care and Feeding of Appeals – Superstition Ballroom**

John Frank, Partner, Lewis and Roca
Hon. Christine M. Durham, Justice, Utah Supreme Court
Susan Freeman, Lewis and Roca
Janet Napolitano, Lewis and Roca

9:45 AM **Break**

10:00 AM **Professionalism Revitalized:** A Special Presentation followed by comments from selected members of the Bench and Bar

Mark A. Harrison, member of the law firm of Harrison, Harper, Christian & Dichter
Donald B. Holbrook, Executive Vice President and Chief Legal Officer, American Stores Company, and past President of Jones, Waldo, Holbrook & McDonough

12:45 PM **Golf Tournament**

6:40 PM **Pool Side Mexican Fiesta**

Sponsored by Attorneys' Title Guaranty Fund, Inc.

SATURDAY, JANUARY 20, 1990

7:00 AM **Run the Ranch** – a 4.2 mile fun run beginning from the parking lot at Northern Avenue

8:00 AM **Continental Breakfast**

8:30 AM **Two Concurrent Breakout Sessions**

1. Presentation by Attorneys' Title Guaranty Fund, Inc.
2. Irving Younger Videotaped Presentation on Cross Examination.
   Sponsored by the Litigation Section

9:30 AM **Pro Bono: Will it Stop Being Just an Option?** A Discussion of the Arizona Supreme Court's Current Consideration of Mandatory Pro Bono, and Practice Pointers on How to Fit Pro Bono Work Into Your Schedule.

A presentation by Women Lawyers Association of Arizona, Maricopa County Chapter

10:30 AM **Break**

10:45 AM **Law Firm Economics**

A Presentation by Carole C. Jordan, Staff Consultant, San Francisco Office of Altman & Weil

12:45 PM **Tennis Tournament**

Golf Tournament

SUNDAY, JANUARY 21, 1990

10:00 AM **Brunch** (available on your own)

MID-YEAR MEETING PROGRAM COMMITTEE:

Jan C. Graham, chair, Ross C. Anderson, Elizabeth K. Brennan, Carol Clawson, Glen A. Cook, The Hon. Pamela T. Greenwood, Leslie A. Lewis, John A. Snow, Stephen F. Hutchinson and Barbara R. Bassett.

GENERAL INFORMATION

Refunds

Refunds for meeting registration and fees will be made in full if cancellation is received in writing on or before January 5, 1990. There will be a $15.00 processing fee.

Certificates for MCLE Credits

The Mid-year Meeting seminars will provide CLE credit for those in attendance. Attendance verification procedures will comply with Utah's MCLE Rule. Certificates of attendance will be forwarded upon request to states having Continuing Legal Education requirements.

Program Materials

Printed course materials will be provided to each registrant.

Messages

Check the bulletin board at the registration desk for your messages.

Spouses

Spouses are cordially invited to attend all programs and social activities. Spouses who are lawyers and plan on attending the CLE seminars must pay a separate registration fee.

The 1990 Mid-year Meeting of the Utah State Bar will be held in two sessions, the first in Salt Lake City followed by a session in Scottsdale, Arizona. You may register for the entire meeting, or choose to attend one or the other session.

The Bar Commission selected this format to accommodate the need to sponsor continuing legal education which would meet the new education requirements which become effective in January, and to provide Bar members with an opportunity to break away from the Utah winter.

For the last three years, St. George has been the location for the Mid-year, but we have moved the location to Arizona while facilities are being built in St. George to accommodate our growing numbers.

The Salt Lake session will offer many stimulating credit hours of legal education. We are extremely pleased our meeting will provide an historic forum for joint presentations by American Bar Association President L. Stanley Chauvin and American Medical Association President Alan R. Nelson, M.D.

Following the afternoon session, the Law and Justice Center will be the location for a reception in honor of the Bar's senior members. All registrants and partners are invited to attend.

From 8:00 AM on Thursday, January 18, educational sessions will continue. The awards presentations will be conducted during the morning. The Salt Lake session will adjourn at 3:00 PM.

The Bar has made special arrangements with Delta Air Lines for lowest fares for travel to Arizona. Flights depart for Phoenix during the afternoon and evening. You'll want to confirm your travel arrangements early to ensure flight availability.

The Inn at McCormick Ranch is the setting for the second session of the Mid-year Meeting, beginning with the first seminar at 8:30 AM on Friday, January 19. Meetings on Friday and Saturday will adjourn at noon to provide a full afternoon for you to enjoy the Arizona climate. Golf and tennis tournaments are planned.

We believe this will be a very productive, educational and enjoyable Mid-year Meeting and look forward to your participation.

Jan Graham

CLE CALENDAR

THE RESTRUCTURED THRIFT INDUSTRY AFTER FIRREA—A GUIDE FOR THE PRACTITIONER

A live via satellite seminar. Enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) is having a major impact on the structure of the thrift industry, the operations of financial institutions and the future of the entire financial industry. This program is designed to provide practitioners with a guide to the major provisions of FIRREA, its impact on short- and long-term planning and activities, and the obligations it imposes and opportunities it offers. The experienced faculty will also examine the changing role of regulators under the new law, including the FDIC and the Restoration Trust Corporation. Regulatory authorities, dealing with the regulators and the new regulatory and enforcement powers, and their effects on the operation of a thrift will be considered.

This program should be of interest to decision-makers at thrift institutions, those who represent the institutions, in-house counsel and those whose clients have an interest in the future of thrift and financial institutions. It is designed to provide a guide to the provisions of FIRREA as they affect the operations, decision-making and its functioning of thrift institutions.

Date: December 5, 1989
Place: Utah Law and Justice Center
Fee: $160
Time: 8:00 a.m. to 3:00 p.m.

"LAWYERING TO HOUSE THE HOMELESS: CREATIVE TOOLS"

A live via satellite seminar. Homelessness and the shortage of decent, safe, affordable housing for lower income Americans are growing problems in the United States. Attorneys practicing in real estate, corporate, tax, general business and other specialties can play a vital role in combatting the housing crisis by building upon their legal expertise to assist in the creation and preservation of affordable housing. Taking the pragmatic approach that the best way to combat homelessness is to provide affordable and stable shelter, this four-hour seminar will explore ways in which lawyers can aid non-profit groups and others in the production of new or rehabilitated, low-cost, permanent housing.

Date: December 7, 1989
Place: Utah Law and Justice Center
Fee: $25
Time: 10:00 a.m. to 2:00 p.m.

1990 AGRIBUSINESS TAX STRATEGIES

A live via satellite seminar. "Family farms can survive and be profitable," an official of the Farm Credit Corporation recently declared. You as counselor can show your farmer and other agribusiness clients how. Farmers and others whose incomes are dependent on agriculture are subject to unique provisions under the Internal Revenue Code. These clients need a knowledgeable resource for their income and tax planning needs. This seminar will teach you how to maximize your agribusiness client's cash flow and profit by making full use of every available tax advantage—whether the business is financially troubled or not.

Date: December 12, 1989
Place: Utah Law and Justice Center
Fee: $160
Time: 8:00 a.m. to 3:00 p.m.

CORPORATE MERGERS AND ACQUISITIONS

This two-day advanced course is designed to offer the experienced corporate lawyer an overview of some of the more sophisticated strategies and techniques, as well as the latest developments, in the field of corporate mergers and acquisitions. The program will cover (i) tax considerations in structuring the acquisition; (ii) methods of formulating the purchase price; (iii) issues that should be considered by both purchaser's and seller's counsel in negotiating the acquisition of a closely held company (or a subsidiary or division of a publicly held company); and (iv) special problems that should be considered in leveraged buyouts and when acquiring divisions and subsidiaries.

The faculty will identify and discuss some of the major as well as more subtle issues that may (or should) arise in the context of the acquisition. Important tax considerations will also be noted, with particular reference to the effect of the recent changes in the tax laws. Included in the program will be a discussion of the factors to be considered in the structuring of a negotiated transaction and the determination of the purchase price, as well as a mock negotiation of an acquisition agreement as a vehicle for identifying the various issues that should be considered, both from the purchaser's and seller's perspectives.

Continuing Legal Education Credit Pending.
Date: February 8 through 9, 1989
Place: Olympic Hotel, Park City, Utah
Fee: $375
Time: February 8, 9:00 a.m. to 4:30 p.m.
February 9, 8:30 a.m. to 4:00 p.m.

HOW TO HANDLE BASIC COPYRIGHT AND TRADEMARK PROBLEMS

A live via satellite seminar.
Date: February 13, 1989
Place: Utah Law and Justice Center
Fee: $160
Time: 8:00 a.m. to 3:00 p.m.

PROFESSIONAL LIABILITY LOSS CONTROL SEMINAR

The Utah State Bar announces a loss control seminar to be presented in conjunction with The Home Insurance Company and your local administrator, Rollins Burdick Hunter of Utah, Inc. This three-hour seminar will cover loss control ideas, including a discussion of conflict of interest exposures and hazardous areas of practice. The latest trends in professional liability claims and their prevention will also be discussed, as well as a look at local claims statistics. The seminar will include a panel discussion on the above subjects as well as insights into the lawyers professional liability marketplace. Individuals on the panel will be Mr. Joseph Action, J.D., publisher of *Lawyers Liability Review Journal*, Mr. Thomas Kay, J.D., Utah State Bar Professional Liability Insurance Committee representative, and Mr. Mark Dougherty, J.D., Assistant Vice President and Claims Coordinator for Professional Liability Underwriting Managers (PLUM). Please take time to reserve your space for this informative seminar. Call Barbara Rainey at Rollins Burdick Hunter of Utah, Inc. (488-2550) for more details.

Continuing Legal Education Credit pending.
Date: March 5, 1990
Place: Utah Law and Justice Center
Fee: $50
Time: 12:00 to 5:00 p.m.

CLE REGISTRATION FORM

	DATE	TITLE	LOCATION	FEE
☐	Dec. 5	The Restructured Thrift Industry After FIRREA—A Guide for the Practitioner	L & J Center	$160
☐	Dec. 7	Lawyering to House the Homeless: Creative Tools	L & J Center	$25
☐	Dec. 12	1990 Agribusiness Tax Strategies	L & J Center	$160
☐	Feb. 8-9	Corporate Mergers and Acquisitions	Park City	$375
☐	Feb. 13	How to Handle Basic Copyright and Trademark Problems	L & J Center	$160
☐	March 5	Professional Liability Loss Control Seminar	L & J Center	$50

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

Name Phone Firm or Company

Address, City, State and ZIP American Express, MasterCard/VISA Expiration Date

Draw NYE!
We Have a Study for the Bar!

By M. KarLynn Hinman

To be FRANK, this study of the active, inactive and out-of-state members of the Utah State Bar is MOORE FULLER of SOHME STRATE, SPECIALE, STARK and WRYE facts the REEDER can see in BLACK and WHITE than we FELT necessary. You MAYCOCK your head, but REED inSTEAD. UNO it is true. Lest anyone think it hard to SWALLOW or wish to let out a LUSTY HOLLAAR, the Editor, in Calvins, DEAMERs, for it is wholly without proof—not even 86. The author, whose PEMBROKE, says DITTO.

This ELEGANTE study has followed the double mixed window blind method recently SHEPHERDed to fame by a group of local chemists. The STOREY goes beLOWE the SURFASS and has been expanded by a cold infusion from a parapsychotic paradigm which gives HINTZE of being endemic.

Not one member of the Utah Bar is yellow, though several are GREEN, one GRAY and some REDD or even ALLRED. Although unconfirmed by available data, it is believed that some are blue, making this a Bar of many HUGHES.

No member is old, but a number are YOUNG, some are MINERs or ALDER and there was one GRAMPP. Several come from ENGLAND or are ENGLISH; one is JERMAN and one is from HOLLAND. There are many -SONS, no daughters, a few MAWs and EVES and at least one is a MAHAN MANN. They are BARUSCH on America and defend LYBERTy, especially those with a BEARD. Truth BURNS in their souls.

At least one has a LITTLE MONEY; several offer PRICES; some are RICH with RICHES; and at least two have a few NICHOLS or are even RICHER from DUNNING debtors. Some have large BILLINGS but none is FRIE, although one has been FREED. They pay their BILLS at BANKS when DEW, and each generally FITTS the description of a GOODMAN. Most have the MEANS to go as FARR as DAVIS County or even FARRER to CAINE County or FARRAWAY to HOUSTON.

They are GOOD at their CREERS and endure their PAYNES. They just grin and BARRETT while dealing with DYER problems. They MOCK and LEAR at adversity. Their temperaments vary: one is MOODY, others BOYLE, but few raise KANE. At least one DAINES to admit he MABEY LOVELESS, but enjoys SCHMUTZing and WATKISSes he can get from HIRSCHI chocolates.

Few give an INCE in WARR or in TUFT, WILDE and SAVAGE BATTLE. Commanded by a SENIOR SARGENT, they MARSHALL their CANNONS, SPIKES and GUNNs, preferably a WINCHESTER with SHELLS, depart from their CHAMBERS and HAMMER away. They carry SHIELDS that do not RUST to WARD off a MAJOR SLAUGHTER. They show true BRITT.

Some are real DAHLs, others HANDY and one works HARD. The public must GRANT that their wit is DRYER and their views do PIERCE—in three directions: EAST, WEST and NORTH. One WENTZ the other way—WINDWARD to SUTHERLAND. They COPE with situations that would make others' HARE KEARL, but they do carry ACOMB except the BALDWINners. They seldom STRONG-arm, although they are ARMSTRONG. Their CUMMINGS or going PHILLIPS a PAGE ORR two suitable to REID (they do like READING) during a CRUSE or on a LARK in the SUMMERS. They MOSELEY generate GOODWILL and LOVE and are sometimes MEEK and sometimes WISE as SOLOMON. They are bound by their BOND. They have little to HYDE, are seldom RASH, but some have STOLEN HARTS. It is hard to line their qualifications into a ROE or PATTENs.

Those who have a HOUSE or HOLMES

live BYWATER, at CAMP, ATWOODs Cross or in GREENWOODS, on a RIDGE, in a GLADE, on HILLS or KNOWLES, in GLENNS, by a LAKE or on the HEATHs. Some live near PARKs, or by a BROOKE, a MARSH, a KANELL or a POND. One owns a HOLBROOK. Some are ERBIN; one has a CASTLE with a WICKER BENCH and a velvet KIRTON in the HALL and ROSEs on the WALL and by the GATES. One has a LITTLEFIELD with BULLOCKs, STEEDs and a BLOOM that looks like a DAZEY.

They GROW IVIE and PLANT DURHAM or OATES in their FIELDS and push lawn MOWERs, then COULAM selves off in a POOLE. They enjoy KASTING for HADDOCK and SPURGEON and they ROWE and go BOHLING, SWAN diving or hit HOMERs for a local team. Many are STURDY WALKERS at a quick PACE for MILES; others take ROOT like a TREE or TREASE—OAKS and BURCH with GROTH toward a BRANCH. Some have CARRs and one a VAN with a DENT at the BOTTUM.

Their DAYs are FULLER than most with CALLs. They like to BOSS, but do not GROENE about the LONG KJARs WELLING up inside. Their WORK is seldom DUNN, yet they DANCE and even attend BALLs. They PERRY the thrusts of the LAWS. They face cold AYRE, SNOWs, FROST, HALE, GALE, HAYES and GRISLEY WINTER storms with CURTISy. There is TRUEBLOOD royalty among them: NOBLE KINGS, ROYBAL PRINCES, a LORD, a BARON, an EARL and several KNIGHTS with SQUIRES.

One has BRASS, some are FLINT or other STONE, others rare as GARNETT or JEWELLs or good as GOLD. STEEL is their heavy metal, and there is a lot of BRAUNs. They favor COKE with LEMMON, GRAHAM crackers, APPEL BROWN Betty, CURRY, COLLARD GREENEs, FRANKFURTs with BEANs, BERRYs, CAMPBELL soup, DUNCAN doughnuts and ice cream COHENs for lunch, which they eat with sterling CUTLERy. They indulge in a little BOOS or CALVERT.

They go to CHURCH and some are PARSONS, BISHOPs, a POPE or a RECTOR and some are MASONs. There must be a Druid because there is a HOLYOAK. They celebrate EASTER and NOEL with A MEDLEY of CARROLLs. As BIRD watchers, they favor the FINCH, the DRAKE and HAWKES on the WING.

They HUNT for CASEs by the GROSS and one RIGGS them up while others HATCH up new arguments in a WEBB of intrigue. They are as clever as a FOX and know WATTS up as they DART about. They CRANE their necks to find an OMAN or a sure SINE of success. They BADGER and put HEATON witnesses, seldom HARRIS in tough SESSIONS, but give no LEEway. They sometimes CROW or roar like LYONS, but they are SMART even when their words sound like BOYCEtrous BARKING. Few go BLANCK under pressure, but they do HOWELL when they lose. Charges of LARSONy are unfounded, and FOWLER things have been said of them. They are WYLIE, frequently WRIGHT and make a good WORKMAN.

They are JACQUES of many trades: BAKERs, BARBERs, BARKERs, a BUCHER, BUTLERs, CARPENTERs, CARTERs, CARVERs, CHANDLERs, CLARKs, COOKs, COOPERs, MILLERs, GLAZIERs, GARDNERs, SANDERs, FISHERs, SMITHs and GOLDSMITHs, TANNERs, THATCHERs, TAYLORs, PACKERs, a PURSER, PORTERs, a POTTER, a SADLER and DRAPERs. One is a real ZENGER, and one is just a LAWYER, wearing COATES and a MITTON.

Ring the BELLS and hear the HORN BLAUER; let MUSICK ring and banjos PLENK! Bar members WADE where others FEHR to tread, although one STUBBS her toes in public. They deserve a SEAL of approval. They are NEELEY perfect. There is a SHEEN about them. There is no need to FILLMORE space with ENKE since an exhausted study should not be GUSHEE, but GEE, they are revered by their EYREs.

New Address or Phone?

Please contact the Utah State Bar when your address or phone number changes. This will ensure accurate information for Bar records and for the Annual Bar Directory.

Call (801) 531-9077 or toll-free from outside Salt Lake City 1-800-662-9054, or use this coupon and mail.

Name _____

Bar Number _____

Old Telephone _____

New Telephone _____

Old Address _____

_____

_____

New Address _____

_____

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Mail to: **The Utah State Bar**
645 South 200 East
Salt Lake City, Utah 84111

CLASSIFIED ADS

OFFICE SPACE AVAILABLE

Attractive office and location in Salt Lake City, with well-established practitioners. $440 per month includes phones, reception services, photocopying, conference room and parking. Secretarial, FAX and telex services are available, if desired. Call us at 487-7834.

One or two beautiful window offices in professionally decorated suite available for sublease from small law firm. Complete facilities, including FAX, telephone, conference room, library, kitchen, reception service provided. Gorgeous building featuring center six-story atrium with fountain. Please call 269-0200.

Small Salt Lake City law firm seeking attorney to occupy existing office space. Convenient downtown location close to courts. Overflow legal work and secretarial service negotiable. Call 359-0999, ask for Penny. McDonald & Bullen, 455 E. 500 S., Suite 200, Salt Lake City, Utah.

Share with three established attorneys. Prime location (Key Bank Tower). One large window office or one small office. Conference room, phones, receptionist. Also available: Xerox, word processing, shared secretarial available or area for full-time secretary. Also share on library, supplies, etc. Please call (801) 521-7500.

SHARED OFFICE SPACE—Attorney has office space available, including conference room and telephones, in prime location at 7001 S. 900 E. Receptionist and secretarial services available or you may provide your own. Easy access to freeway, belt route and major traffic routes; free, convenient parking. Very reasonable costs. Call 562-5555.

Office space for one or two attorneys. Receptionist available. 263 E. 2100 S., 484-0091.

POSITIONS AVAILABLE

Las Vegas based 50-plus attorney firm, with diversified client base, has immediate need for attorney with minimum three years' LL.M experience in following areas of tax law: individual, corporate, partnership, trust and estates.

Requirements for this position include admission to the Nevada Bar or a willingness to become eligible for admission as soon as practicable.

Salary is negotiable depending on experience.

Please send your resumé along with salary history to: Richard P. McCann, J.D., % Beckely, Singleton, DeLanoy, Jenison & List, Chtd., 411 E. Bonneville, Las Vegas, NV 89101. All responses will be held in strict confidence.

SERVICES AVAILABLE

Attorneys needed for volume referrals by legal program. Requirements for free law firm listing: Free initial consultation and 15 percent off your usual fees. To apply: Send firm resumé and written confirmation that these benefits can be provided. Reply: Helpline, P.O. Box 16254, Seattle, WA 98126.

SPECIAL ANNOUNCEMENTS

The Office of the Clerk is accepting applications for the position of *Deputy Intake Clerk*. The position is a Judicial Salary Plan Grade 5, with a starting salary per year of $15,738.

INITIAL ASSIGNMENT: Serve as intake clerk, logging in new case filings and pleadings; receipting filing fees; copying court documents; and responding to inquiries concerning legal process and case file information. Act as liaison between the court, counsel, litigants, the public and court-related agencies. The position requires basic understanding of and familiarity with computers, the ability to type at the rate of 60 net words per minute, and the initiative to accomplish assigned work independently and accurately within limits for completion. Applicants should be well groomed and have good communication skills.

MINIMUM REQUIREMENTS: Applicants must have a minimum of three years' clerical experience in government service or private enterprise which provided a fundamental understanding of office clerical procedures and protocols. A bachelor's degree may be substituted for the clerical experience requirement.

DESIRABLE QUALIFICATIONS: Prior court or law-related experience helpful and desirable.

APPLICATIONS: All applicants must complete cover letter and an SF-171 Form (Application for Federal Employment). Forms are available at most federal government agencies or at the address shown below, during normal working hours 8:00 a.m. to 4:30 p.m. Monday through Friday. To be considered, submit application by close of business on **October 20, 1989**, to: Clerk of the Court, United States District Court, Attention: Intake Position, 350 S. Main Street, Room 204, Salt Lake City, UT 84101. Equal Opportunity Employer.

The Office of the Clerk is now accepting applications for the position of *Deputy Clerk*. The position is a Judicial Salary Plan Grade 5-6, with a starting salary per year of $15,738 to $17,542.

INITIAL ASSIGNMENT: Serve as Appeals and Naturalization Deputy. Responsible for coordinating the transition of cases from the District to the Circuit Court. Prepares records of appeal, furnishes information on appellate procedure; distributes necessary forms to expedite appeals; acts as liaison with members of the Bar and other practitioners, and advises and counsels them on the requirements of the rules; answers correspondence. Prepares all certificates of naturalization and coordinates setup and conduct of naturalization ceremonies. Work produced must be accurate and demonstrate careful attention to detail.

MINIMUM REQUIREMENTS: Applicants must be a high school graduate and a have a minimum of two years' clerical experience in government service or private enterprise which provided a good knowledge of office clerical procedures. A bachelor's degree may be substituted for clerical experience. The position requires the ability to work independently and accurately. Applicants should have good communication and interpersonal skills. Successful applicant will be subject to background investigation as a condition of employment.

QUALIFICATIONS: Prior court or law-related experience highly desirable. To qualify for the JSP 6, the applicant must have one year of progressively responsible clerical or administrative experience.

APPLICATION PROCEDURE: Interested applicants who meet the qualifications should prepare a cover letter and Application for Federal Employment (Standard Form 171) and submit with relevant supporting documentation to the address listed below. SF-171 Forms are available for pickup at the address listed below from 8:00 a.m. to 4:30 p.m. Monday through Friday. Applications received by the close of business on **Friday, October 20, 1989**, will be considered. Submit application packets to: United States District Court for the District of Utah, Office of the Clerk of Court, Room 204, U.S. Courthouse, 350 S. Main Street, Salt Lake City, UT 84101. Equal Opportunity Employer.

Mr. William D. Holyoak
185 South State #600
P.O. Box 11898
Salt Lake City, UT 84147-0898

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