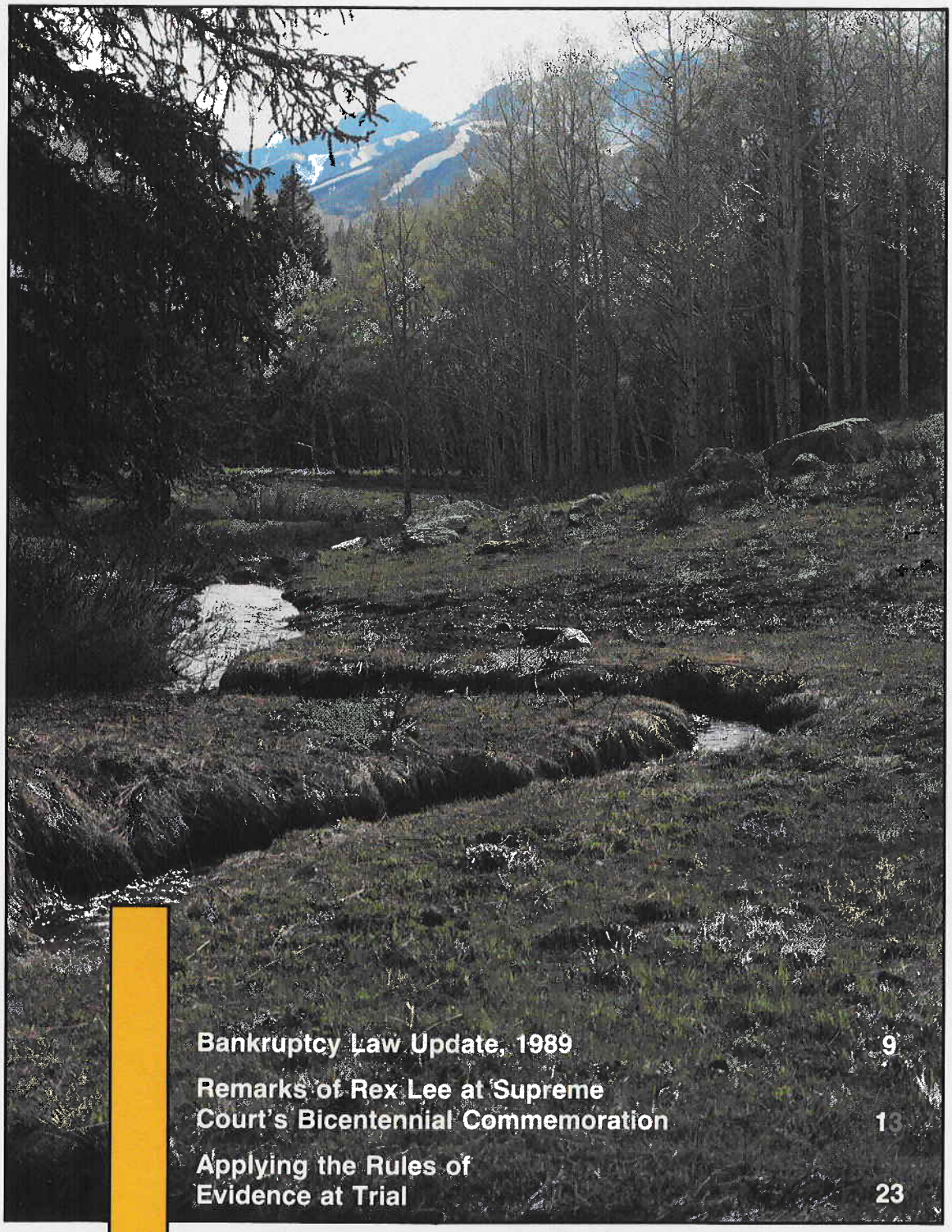
UTAH BAR JOURNAL

Vol. 3, No. 4 April 1990



THE QUESTAR CORPORATION
Employee Stock Purchase Plan
(An Employee Stock Ownership Plan)

has purchased common shares of

QUESTAR CORPORATION

in a leveraged ESOP transaction

We served as independent financial advisors to First Security Bank of Utah as to the value of common shares purchased by The Questar Employee Stock Purchase Plan (an Employee Stock Ownership Plan).

HOULIHAN DORTON JONES NICOLATUS & STUART INC.
VALUATION ADVISORS

HENDSUB DOD, INC.

A newly formed corporation organized by Henderson Investment Company and members of management has acquired the business of

DOD ELECTRONICS

We rendered an opinion of solvency in support of this transaction.

HOULIHAN DORTON JONES NICOLATUS & STUART INC.
VALUATION ADVISORS

ALTA GOLD CORPORATION
(previously Silver King Mines, Inc.)

has merged with

PACIFIC SILVER CORP.

We rendered a fairness opinion as to the common stock exchange ratio used to merge the above companies.

HOULIHAN DORTON JONES NICOLATUS & STUART INC.
VALUATION ADVISORS

BONNEVILLE PACIFIC CORPORATION

has acquired 80% of the common stock of

RECOMP, INC.

We rendered a fairness opinion to the Board of Directors of Bonneville Pacific Corporation as to the value of the acquired common stock of Recomp, Inc.

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COVER: Our thanks to Harry Caston of McKay, Burton & Thurman for the cover photograph, Millcreek Canyon, Salt Lake County.

Members of the Utah Bar who are interested in having their color slides published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, Salt Lake City, UT 84111, 532-5200.

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

LETTERS

CORRECTION NOTE: Regrets to Mr. Jathan Janove whose name, which appeared with his letter in the March 1990 issue of the *Bar Journal*, was misspelled as "Ganove."

Dear Editor:

I read Mr. Davis' report in the March 1990 issue carefully in an attempt to clear up the confusion in my own mind regarding the change in billing cycle for Bar dues. I must confess that the report left me as confused as ever.

Mr. Davis says, "Obviously, this change [the change in billing cycle from a calendar to a fiscal year] would require payment of Bar dues twice in the 1990 calendar year only." If by this he means that we will pay dues once in January or February, for the calendar year 1990, and once at the end of the year for the period January 1, 1991, to June 30, 1991, I have no problem with the concept. My confusion arises over the billing statement which I, along with all other Bar members, received in early January when the change was first proposed. It sought payment for the period July 1, 1989, to June 30, 1990. If Mr. Davis means by his statement that a similar billing will take place in 1990, then I have serious problems with the concept.

It seems obvious to me that the proposal as first made would result in my paying dues twice for the same six-month period, whether that be July 1, 1989, to December 31, 1989, or July 1, 1990, to December 31, 1990. I find nothing in Mr. Davis' report which dissuades me of that notion, and I object to what amounts to a dues increase, if even for a one-time, six-month period only, under the rubric of "a change in billing cycle." Before I can support the change requested by the Bar, I will have to receive a satisfactory explanation as to just what periods of time I am paying dues.

Very truly yours,
R. Steven Chambers

Dear Editor:

I hope you'll consider one more shot at Richard Lamm. I write because other letters have missed the mark. They are too kind.

Too many lawyers! Rings in people's ears like "too much crime," and carries with it the same connotation; there is an evil spreading across the land. In Mr. Lamm's version of the tale, it is an economic evil. It is the "i" word, inefficiency. Given this monstrous growth of lawyers, the corporation that is America cannot compete against the corporation that is Japan or the corporation that is West Germany.

Mr. Lamm should make more valid comparisons than "we have 25 times more lawyers per capita than Japan." Isn't Japan that recent monarchy, converted of late to representative government and their unique brand of nationalist capitalism by a proselyting mushroom cloud? Isn't Japan that one big extended corporate family, prone to self-denial for the good of the company? Yes, the U.S. and Japan. Now there are two countries that on the surface should have the same per capita demand for legal services. Absolute nonsense.

Mr. Lamm's most telling argument against his thesis of too many lawyers flows from his own statement of facts. Four out of 10 Rhodes scholars, independently assessing their futures, determine legal careers to be potentially economically rewarding and (hopefully) personally fulfilling. Have we brainwashed or coerced these gifted, misguided students into a life of economic crime against the corporate state? Fundamental principles of economics and human nature tell us otherwise.

We have passed (not painlessly) from an agrarian to an industrialized, to an information/services society. If the next step is U.S.A., Inc. and we don't compete with Japan, Inc. or the Far East, Inc. or Europe, Inc., why should the cry be "shoot all the lawyers?" After all, lawyers fill a staff role in corporate America, similar to accountants. They advise, others direct. Shouldn't we be eliminating those corporate managers who unwisely take the advice of counsel and doom their corporation to (horrors!) inefficiency?

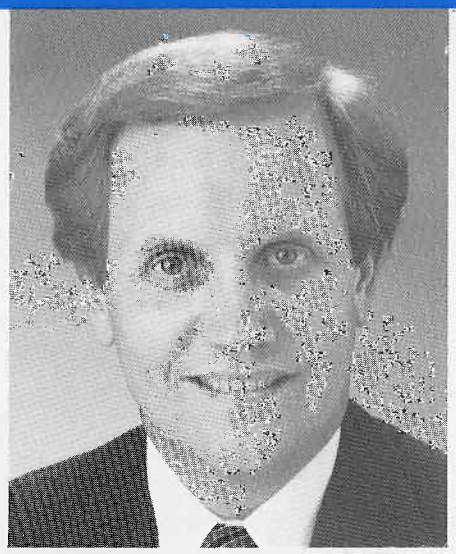
I hope I haven't disguised my disdain for Mr. Lamm's vision of the approaching global village as a hot-bed of nation-corporations competing for the economic prize (whatever that is) that goes to the one who creates the most wealth (whatever that is) the most efficiently (however that's measured).

We should have more lawyers. We need more people trained to scrutinize the facts with a healthy dose of skepticism, understand the relevant issues and articulate their conclusions. We need more people who can advocate unpopular positions, who can tolerate and even encourage dissenting viewpoints, who can oppose the oppressors. (I'll stop before you get all choked up).

As for too much litigation, yes, I agree, let's retire the litigious bastards; you know those lawyers who would rather be in court suing their mothers than at home opening presents on Christmas morning. But, wait, even here we may be rash in our judgment. Without the gadflies, those men and women who test the system's limits, would we be actively exploring alternative dispute resolution mechanisms? Would we be looking at statutory methods of allocating economic risk, of limiting damage awards? Would we have taken these steps simply on the force of Mr. Lamm's impassioned pleas to be efficient? For devotees of "Saturday Night Live" in the golden era, they know the only answer to such deep questions can be Steve Martin's familiar "Nah."

There can never be enough people who "think like lawyers." I like 'em. But, since I'm already on board the train, I do advocate pulling out of the station by restricting the number of new lawyers allowed to enter the practice. What, no takers? Ah, well, we'll have to try and maintain our meager standards of living by more legitimate means. Mr. Lamm and me.

Sincerely,
E. Jay Sheen



By Hans Q. Chamberlain

A Crisis in the Judicial System: The Drug War

A major portion of the mid-year meeting of the American Bar Association addressed the effect the Drug War is having on the judicial system and on every facet of human life. I realize we hear a great deal about drugs these days, but I consider this message to be as important as any I have written this year.

There appears to be little doubt that we are currently losing the War on Drugs. I know this is a message that many will not want to hear, but it is very real. The U.S. currently has 4,000,000 chronic drug users and 12,000,000 occasional users. Arrest and subsequent prosecution of these offenders is literally swamping the judicial system and will continue to do so for future generations. Some statistics bear this out:

1. We are currently sending 1,800 persons to prison per week. An average prison holds 900 inmates, so we should be building two prisons per week just to stay even.

2. Even though the crimes of burglary and murder are down 13 percent over the last 10 years, approximately 1 million men and women are now incarcerated. We spent $30 billion in 1989 to keep people in prison.

3. It isn't just the southern border states that are the ones affected. In Iowa, for example, 68 percent of felony arrests are drug related, while in Virginia, 60 percent of felony arrests are drug arrests.

4. In 1989, it is estimated that 34 million crimes were committed, but only 1 million arrests were made. This means 33 million offenders went unpunished. Law enforcement experts tell us that even with better equipment and more policemen, law enforcement can't do a lot more than they are doing to prevent the crimes of rape and burglary which are often related to illicit drug use or alcohol abuse.

5. In Dade County, Florida (with a population of 1.5 million), 115,000 people went through its jail system last year. Of those who were incarcerated and tested for drugs, 70 percent to 80 percent had evidence of a controlled substance in their system.

6. Throughout the United States, civil cases are substantially delayed or are not getting tried at all because of the number of drug-related cases—drug trials are taking six to eight weeks to try and sentencings are taking from one hour to one day to complete.

In the Report and Recommendations of the Boston Bar Association Task Force on Drugs and the Courts, this statement seems to sum up where we are at:

> "Of far greater concern to this Task Force is the overwhelming evidence that there is no real strategy to win any major battles, let alone the War itself. We seem determined to arrest more drug offenders without any consideration for the fact that they will not receive punishment for one to two years. We seem determined to increase mandatory sentencing provisions of our drug laws with no consideration of the substantial evidence that those laws, however well intentioned, have greatly contributed to the collapse of the criminal justice system. The infrastructure itself is literally falling apart. There are too few judges, in too few courtrooms, to send too many inmates to too few jail cells.
>
> In all our work we have discovered one point of consensus. It is the simple truth that "justice delayed is justice denied." We speak not only of the justice for the criminal offender but also for the victims of this drug plague."

I recognize that Utah does not have a "Dade County." However, it is naive to believe that Utah does not have a major drug problem. Look at any law and motion calendar and it is easy to see that the judicial system throughout our state is suffering from the effects of the Drug War. There is a growing feeling, and perhaps one well founded, that society does not believe nor does it expect its criminal justice system to solve the narcotics problem. At present, however, law enforcement and judges are those who are having to mop it up day after day, because it will

always be there tomorrow.

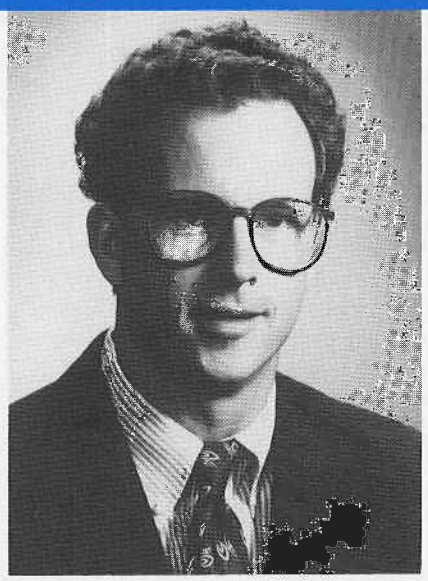
What can we do? Naturally, each one of us has a personal responsibility to get involved. But we must also get involved as an organized Bar. The legislature needs to be fully informed on the subject and recognize the effect on both the civil and criminal justice system. Decriminalization of illicit drugs is not what the public wants to hear nor does the legislature. The public wants a cure, not legalization. When defense counsel and prosecutors speak out on the subject, they are seen as lobbyists and, of course, judges are prohibited from speaking out by judicial ethics. As members of the organized Bar, we cannot relegate our responsibility of involvement to the criminal law section, but rather, we must make it a Bar project. Individual lawyers, working hand in hand with the organized Bar, can make a difference.

The general public is becoming extremely frustrated with our inability to cope with the drug problems. A recent poll indicated that over 50 percent of those polled were willing to allow a search of their home without a search warrant if it would help win the Drug War. As lawyers, we have a duty to explain to the public what giving up that type of a right means in the long run.

As individuals and as an organized Bar, we can also change what people believe, i.e., the Drug War can be won. Look what we accomplished in the area of segregation and, most recently, the harmful effects of smoking. We must get angry for the right reasons and push the right buttons. If we educate the public by pushing their button, public outcry will soon evidence itself in the legislative process.

As difficult as it may be to swallow, we must rearrange some of our priorities on how public funds are spent. Nationwide, we are seeing budget deficits in healthy economies because of the need to build more prisons to control drug users. In addition to more prisons, we need to build rehabilitation centers because statistics tell us that prisons seldom rehabilitate, legitimizing the charge of "revolving door justice." In dealing with this issue, however, we must never leave the impression that we should be soft on crime of any type. The message of strict enforcement of the law must always be the rule.

In conclusion, we must recognize that recourse to traditional solutions may not have any significant impact in the years ahead. The Drug War demands a new and invigorated will to speak out at public gatherings, in schools, at service clubs and to our legislators. The public wants this problem solved, and the solution is up to not only our elected and appointed leaders, but all members of the legal profession.



Litigation Trends for the '90s: "Rambo Tactics or a Kinder, Gentler" Approach

By Paul T. Moxley

There is an emerging debate, in the pages of legal periodicals, in ABA committee reports, and elsewhere, over the conduct of lawyers. On one side of this debate are the many highly respected trial lawyers who believe that lawyers should play "hardball"; they contend that a lawyer has a duty to go "right to the limits of zealous advocacy" in representing their clients, and if he/she does not, he/she is somehow doing them a disservice. The views of many of the adherents of this position can be found in "Playing Hardball," *ABA Journal*, July 1987. Proponents of this view tend to describe their tactics in colorful, often militaristic, terminology: "When I go into the courtroom, I come in to do battle. I am not there to do a minuet. . . ." Another lawyer made the point that "you're really not in this to be liked," and added that although she generally cared about what people thought of her, in the context of litigation, she really did not care. A prominent law professor took the view that civility in litigation can be "a euphemism for the old boy network, or covering up for one another."

The opposing view was expressed in "Rambo Litigation—Why Hardball Tactics Don't Work," *ABA Journal*, March 1988. The author, also a prominent trial lawyer, argued that "hardball" litigation was bad advocacy: bad for a client's position, and bad for a lawyer's longevity and their standing at the Bar. He also argued that "hardball" litigation was ineffective, and that lawyers who resorted to such tactics harmed their clients' cause more often than they helped.

I support the views of those who oppose "hardball" litigation tactics, I believe that there is more to be said in opposition. However, it is simply not true that "hardball" litigation always constitutes bad or ineffective lawyering. Many clients do crumble in the face of an opposing counsel's campaign of harassment, and those lawyers who set out to make life unremittingly unpleasant for their adversaries often do succeed in wearing those adversaries down. I doubt that there could ever be any meaningful statistical evidence on whether "hardball" litigation tactics are ultimately effective or ineffective. Moreover, the argument against such tactics should not merely be utilitarian; that argument is too easily met by those who can demonstrate that "hardball" tactics often work.

The purpose of this article is to address the way lawyers treat one another. This is not simply an issue of interpersonal relations at the Bar; the way lawyers treat each other inevitably affects how they treat each other's clients as well. Hence, clients, and thus the public at large, have a clear stake in how lawyers behave. The profession's own stake in this issue is too obvious to require extended discussion.

During my years of practice in Salt Lake City, I have not encountered a great deal of "hardball" litigation tactics. I believe that there is more to be said in opposition. less, because of a variety of factors it seems that such tactics are on the rise. Accordingly, this article will start with the premise that the level of civility among lawyers is not what it was in the past and that the status of things is declining. I do not propose to explore the causes, but rather to make some suggestions about tactics.

The kind of conduct that is the subject of this article is not the sort that is proscribed, for the most part, by the canons of ethics or even by judicial interpretations of Rule 11. I am interested more in conduct that is legal, ethical and usually beyond the reach of sanctions, but is nevertheless, in my view, improper. Such conduct, although both legal and ethical, tends to violate the appropriate relationships among lawyers. It is the kind of conduct that makes life at the Bar more difficult for lawyers and clients, and unnecessarily so.

Here are some suggestions about areas that are presently subject to abuse. The list is by no means exhaustive.

ADJOURNMENTS AND EXTENSIONS OF TIME

This is an area in which there is much haggling among counsel, but there should be none. Judges do not want to be bothered with such disputes, and lawyers should rarely be bothered with them either. All counsel share the obligation to conduct litigation in an expeditious manner and to act within the time limits provided by the rules when no extension is needed. Expedition, however, is often best achieved by cooperation among counsel with respect to scheduling matters. In this regard, the granting of requests for extensions and adjournments of reasonable length beyond the minimum time period provided by the rules is a courtesy that both lawyers and clients should observe and be able to rely on.

AMBUSH SERVICE OF PAPERS

The ambush service of papers should never, under any circumstances, be used as a litigation tactic. Stratagems involving service too often take advantage of disparities in the size and resources of lawyers and litigants. Courts are entitled to hear from counsel fully prepared to address an opponent's arguments, not disadvantaged by tricks of service.

WRITTEN SUBMISSIONS TO A COURT, INCLUDING, BUT NOT LIMITED TO, BRIEFS, MEMORANDA AND AFFIDAVITS

Ad hominem arguments do not belong in briefs. Courts are not interested in seeing lawyers exchange insults, and are rarely, if ever, persuaded by this type of argumentation. The principal effects of *ad hominem* arguments are: (a) eliciting a comparable response; (b) poisoning, sometimes permanently, relationships among counsel; and (c) as a consequence of (a) and (b), increasing the expense of litigation for the clients.

SUR-REPLY PAPERS

Too many lawyers are unable to resist the last word. They will keep submitting briefs, letters, affidavits, until the last word is theirs, no matter how long it takes. Lawyers should follow the rules, and that if sur-reply briefs are not explicitly authorized by the applicable rules, they should not be served without leave of court.

COMMUNICATIONS WITH ADVERSARIES

Some lawyers believe it acceptable—and, indeed, regarded as a sign of the requisite "toughness"—to be uncivil or abusive to one's adversaries, either orally or in writing. Such conduct is not now, and never has been, appropriate behavior for members of the Bar.

Acrimonious letter writing is one manifestation of this incivility. Such letters largely serve to make the writer feel good, and let the client think that something is being accomplished where nothing really is. They are a major contributing factor of the disintegration of relationships among counsel.

DEPOSITIONS

The principal problems in the conduct of lawyers at depositions are symmetrical: abusive and unnecessarily intrusive or prolonged questioning on the one hand, and excessive interference with questioning by way of objection or instructions not to answer on the other. Among the causes of such behavior are inexperience; the desire to appear tough to one's client; the desire to use the deposition as an instrument of harassment rather than as a discovery tool; attempts to take advantage of a less experienced adversary through intimidation. Most such antics would not take place in the presence of a judicial officer, and any conduct in which a lawyer would not engage in the presence of a judge is equally inappropriate in the judge's absence.

DOCUMENT DEMANDS

The abuses in document discovery are too well known to require detailed elaboration here. Here, too, excesses exist on both sides—overly broad document demands, and unduly narrow responses to such demands. It is the responsibility of counsel to see to it that document production becomes more than a game in which the proponent seeks to discover the universe, and the recipient hides behind unacceptably narrow interpretations of terms whose plain meaning is all too obvious.

SETTLEMENT PRACTICES

Attorneys have an affirmative obligation to encourage settlement of litigation, except where (a) the litigation involves a question of principle that cannot be readily resolved by a financial settlement or (b) the position of the other side is totally lacking in merit. Attorneys should recognize the strength of the litigant's settlement posture as independent of who initiates settlement discussions or when such discussions are initiated.

Other areas of *abuse* include: Interrogatories, Motion Practice, Dealing with Non-Party Witnesses and *Ex Parte* Communications with the Court, but space limitations prohibit discussing them, although the same sorts of comments are pertinent, in my view.

I recognize that "a kinder, gentler" profession is an elusive goal but urge a less confrontational approach in handling our cases.

Bankruptcy Law Update, 1989

By Elizabeth A. Dalton

During the past year, several significant decisions have come down from the United States Supreme Court, Tenth Circuit Court of Appeals and the Utah Bankruptcy Court on the following issues of bankruptcy law.

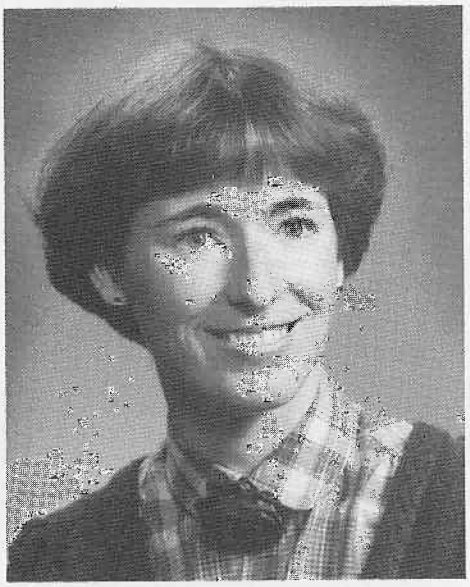
POST-PETITION INTEREST ON NON-CONSENSUAL LIENS

In a narrowly decided decision, the Supreme Court in *United States v. Ron Pair Enterprises, Inc.*, 109 S.Ct. 1026, 103 L.Ed.2d 26 (1989), held that §506(b) of the Bankruptcy Code entitles a creditor to receive post-petition interest on a non-consensual, oversecured, allowed claim.

The debtor, Ron Pair Enterprises, Inc., filed a Chapter 11 petition in the Bankruptcy Court for the Eastern District of Michigan. The Government filed a timely proof of claim of $52,277.93, comprised of assessments for unpaid withholding and Social Security taxes, penalties and prepetition interest. The claim was perfected by a tax lien on property owned by the debtor. *Ron Pair*, 109 S.Ct. at 1028.

The debtor filed a plan of reorganization which provided for full payment of the prepetition claim but did not provide for post-petition interest on the claim. The Government filed an objection to its treatment under the plan, claiming that §506(b) allowed recovery of post-petition interest since the property securing the claim had a value greater than the amount of the principal debt. *Id.*

The Supreme Court observed that pre-Code law made a distinction between consensual and non-consensual oversecured claims in relation to the allowance of post-petition interest. *Id.* 109 S.Ct. at 1033-34. The Supreme Court questioned whether the 1978 Code recognized this distinction or whether Congress intended that all oversecured claims be treated the same way for purposes of post-petition interest. *Id.* 109 S.Ct. at 1030. In reaching an answer, the Supreme Court focused upon the plain language of §506(b) which states that "there shall be allowed to the holder of [an oversecured] claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose." *Id.* 109 S.Ct. at 1030-31. The Supreme Court also observed that allowing post-petition interest on non-consensual oversecured liens does not contravene the intent of the Code's framers nor conflict with other Code provisions or policy interests. Consequently, the Court concluded that there was no significant reason that consensual and non-consensual liens be treated differently in allowing post-petition interest. *Id.* 109 S.Ct. at 1031.



ELIZABETH A. DALTON received a B.A. from the University of California at Los Angeles in 1982 and a J.D. from the University of Utah in 1987. She served as an extern with the Utah Bankruptcy Court and as a judicial law clerk for the Honorable David K. Winder, U.S. District Court for the District of Utah. She practices with the law firm of Kimball, Parr, Crockett & Waddoups and specializes in the areas of bankruptcy law and divorce mediation.

Justice O'Connor drafted the dissenting opinion which was joined by Justice Brennan, Justice Marshall and Justice Stevens. Justice O'Connor writes that the pre-Code denial of post-petition interest on non-consensual liens was based on the distinction between types of liens as well as equitable considerations. *Id.* 109 S.Ct. at 1037. In the consensual lien context, the creditor extends credit relying on certain collateral to secure both the principal of the debt and interest until payment. In the non-consensual lien context, the lien is based upon legislative fiat. *Id.* The allowance of interest on non-consensual liens is akin to a penalty on the debtor for the non-payment of taxes or other monetary obligations imposed by law. Permitting post-petition interest on such liens drains the pool of assets to the detriment of lower priority creditors who are not responsible for the debtor's inability to pay but who must necessarily pay for the debtor's wrongdoing. *Id.*

SALES AND USE TAXES ON LIQUIDATION SALES

In *California State Board of Equalization v. Sierra Summit*, 109 S.Ct. 2228, 104 L.Ed.2d 910 (1989), the Supreme Court held that neither the doctrine of intergovernmental tax immunity nor §960 of Title 28 of the United States Code prevents the imposition of a sales or use tax on the proceeds of a bankruptcy liquidation sale. Consequently, this decision clarifies the responsibility of trustees of bankruptcy estates to file appropriate tax returns for sales and use taxes.

The Supreme Court noted that whatever immunity the bankrupt estate once enjoyed from a tax on its operations has long since eroded. *Sierra Summit*, 109 S.Ct. at 2232. The Court observed that the trustee is the representative of the debtor's estate and acts not as an arm of the Government. Thus, sales or use taxes are an administrative expense of the debtor and not of the Government. *Id.* 109 S.Ct. at 2233.

RIGHT TO JURY TRIAL

In *Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989), the Supreme Court held that the Seventh Amendment entitles a person who has not submitted a claim against a bankruptcy estate

to a jury trial when sued by the bankruptcy trustee to recover an allegedly fraudulent transfer. Although the Court's holding appears narrow, the implications of this decision are far-reaching.

This decision demonstrates that the confusion over the scope of the bankruptcy court's jurisdiction appears never ending. Prior to the 1978 Bankruptcy Reform Act, the district court referred all bankruptcy matters to special referees in bankruptcy. Over time, the referees developed a full-time federal judicial status and became judges. The bankruptcy judge was said to exercise "summary jurisdiction" in contrast to "plenary jurisdiction" exercised by the district court, a court of traditional general jurisdiction. The usual grounds for summary jurisdiction were the holding of estate property in actual or constructive possession and the consent of the adversary to the exercise of summary jurisdiction by the bankruptcy court. As a practical matter, the bankruptcy court heard all bankruptcy proceedings unless a party promptly objected to the exercise of summary jurisdiction. An obvious defect of the division between summary and plenary jurisdiction was the opportunity for delay. A party sued in bankruptcy court could litigate the issue of jurisdiction for years through appeals.

The 1978 Bankruptcy Reform Act (the "1978 Act") attempted to cure the bifurcated jurisdictional scheme of the former Act. What failed to gain political consensus was the creation of an Article III bankruptcy court to accomplish that purpose. Instead, a compromise was struck in Congress and the 1978 Act established the bankruptcy court as an adjunct of the district court. The district court became a conduit through which bankruptcy jurisdiction passed to bankruptcy judges.

The compromise structure of the 1978 Act was rejected by the Supreme Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* Justice Brennan found that the conduit notion was an obvious sham which resulted in the exercise of essential judicial power by a non-Article III court. Justice Brennan concluded that the 1978 Act granted more power to a non-Article III judge than was constitutionally permissible.

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (the "1984 Amendments") attempted to cure the constitutional concerns raised by Justice Brennan's opinion in *Marathon*. Rather than taking the obvious approach of giving Article III status to bankruptcy judges, the 1984 Amendments revised and elaborated upon the previous patchwork jurisdictional scheme of the 1978 Act. The constitutionally offensive mandatory referral of bankruptcy matters codified by 28 U.S.C. §1471(c) was repealed and replaced by a permissive referral in the 1984 Amendments. Nevertheless, all district courts immediately entered general orders of referral for all bankruptcy cases and proceedings to the bankruptcy court.

The 1984 Amendments attempted to correct constitutional problems by permitting bankruptcy judges to enter final orders only in "core proceedings." An exemplary list of core matters is provided in 28 U.S.C. §157(b)(2). In contrast, a bankruptcy judge cannot enter a final order in a non-core proceeding unless the parties consent. If an adversary fails to consent, the bankruptcy court must enter a report and recommendation and request the district court to enter a final order.

Just when bankruptcy attorneys thought that they had figured out the jurisdictional structure of the 1984 Amendments, the Supreme Court in *Granfinanciera* has implied that the 1984 Amendments did not cure the constitutional concerns raised by the *Marathon* decision.

In *Granfinanciera*, the Court held that there exists a right to a jury trial in actions to recover fraudulent transfers brought pursuant to 11 U.S.C. §548 notwithstanding §157(b)(2)(H)'s designation of fraudulent conveyance actions as "core proceedings," which non-Article III bankruptcy judges can adjudicate. *Granfinanciera*, 109 S.Ct. at 2794-2802. In light of *Granfinanciera*, all actions that are "legal" in nature, which include all actions that seek a money judgment, entitle a party to a jury trial unless the party consents to the bankruptcy court acting as the fact-finder. As a result of this decision, preference actions, turnover actions and non-dischargeability actions may entitle the parties to a jury trial.

"Congress will be forced to address again whether bankruptcy judges should be given Article III status."

Granfinanciera leaves many questions unanswered. Bankruptcy courts across the country must now decide whether bankruptcy judges can preside over jury trials. The decision also raises the issue of whether filing a proof of claim demonstrates a party's consent to adjudication of a "legal" action by a bankruptcy judge. In addition, parties may seek to withdraw the reference more frequently and request the district court to preside over jury trials of fraudulent transfer, preference, turnover and non-dischargeability actions. Ultimately, Congress will be forced to address again whether bankruptcy judges should be given Article III status. Of course, if bankruptcy judges gain this status, the jurisdictional quagmire of the Bankruptcy Code would be solved.

ELEVENTH AMENDMENT IMMUNITY

In *Hoffman v. Connecticut Dept. of Income Maintenance*, 109 S.Ct. 2818, 106 L.Ed.2d 76 (1989), the Supreme Court held that in enacting §106 of the Bankruptcy Code, Congress did not abrogate the Eleventh Amendment immunity of the States. As a result, the Court held that the Eleventh Amendment barred a bankruptcy trustee from pursuing turnover and preference actions under §§542(b) and 547(b) of the Bankruptcy Code against a state agency which had not filed a proof of claim.

GROUNDS FOR APPOINTMENT OF A TRUSTEE

In *In re Oklahoma Refining Company*, 838 F.2d 1133 (10th Cir. 1988), the Tenth Circuit held that it is sufficient for a bankruptcy court to order the appointment of a trustee based upon a finding that such an appointment is in the best interest of creditors. The court clarified that it is not necessary for the bankruptcy court to also find any of the enumerated wrongs of §1104(a)(1) of the Bankruptcy Code, such as fraud, dishonesty, incompetence or gross mismanagement by the debtor. *Oklahoma Refining*, 838 F.2d at 1136.

In *Oklahoma Refining*, certain lenders of the debtor requested that the court appoint a trustee in the debtor's Chapter 11 proceeding based upon certain questionable transactions between the debtor and affiliate companies. *Id.* at 1135. The Tenth Circuit applied a "clearly erroneous" standard of review and held that the bankruptcy court's finding that the appointment of a trustee was in the best interest of creditors was well-grounded in fact and not clearly erroneous. *Id.* at 1136. The court noted that a history of transactions with companies affiliated with the debtor company is sufficient cause for the appointment of a trustee where the best interests of creditors require. *Id.* (citations omitted). In addition, the failure to keep adequate records and make prompt and complete reports justifies the appointment of a trustee. *Id.* (citations omitted).

COLLATERAL ESTOPPEL EFFECT OF STATE COURT JUDGMENT IN §525(a)(4) NON-DISCHARGEABILITY ACTION

In *In re Wallace*, 840 F.2d 762 (10th Cir. 1988), the Tenth Circuit held that a New Mexico state court judgment, finding that a debtor intentionally embezzled funds lawfully entrusted to him and awarding actual damages with prejudgment interest and punitive damages, was entitled to collateral estoppel effect in determining the dischargeability of a debt represented by the judgment under §523(a)(4) of the Bankruptcy Code.

The Tenth Circuit noted that collateral estoppel is binding on the bankruptcy court and precludes relitigation of factual issues if "(1) the issue to be precluded is the same as that involved in the prior state action, (2) the issue was actually litigated by the parties in the prior action, and (3) the state court's determination of the issue was necessary to the resulting final and valid judgment." *Wallace*, 840 F.2d at 765 (citations omitted). The Tenth Circuit found that the debtor was given a full and fair opportunity to present his case and litigate the relevant issues. *Id.* After finding that the requirements for applying collateral estoppel were met, the Tenth Circuit held that the bankruptcy court was correct in according collateral estoppel effect to the state court findings and judgment in determining the debt was non-dischargeable under §523(a)(4).

SECTION 523(a)(6)

In *In re Posta*, 866 F.2d 364 (10th Cir. 1989), the Tenth Circuit held that a debtor's sale of property without knowledge that the sale was in violation of a security agreement is not a "willful" or "malicious" act within the meaning of Code §523(a)(6) and, thus, is not sufficient grounds to determine a debt based upon the security agreement as non-dischargeable.

In *Posta*, Mr. and Mrs. Posta purchased a travel trailer from a dealer, financing most of the purchase price through C.I.T. Financial Services, Inc. ("CIT"). The Postas executed a security agreement but failed to read the agreement which provided that the Postas could not sell, rent or transfer the trailer, or move the trailer without the written consent of CIT. The bankruptcy court found that the Postas' sale of the trailer to a third party, who defaulted and vanished with the trailer, was a technical conversion of the property. *Posta*, 866 F.2d at 366.

Although the Tenth Circuit noted that conduct of debtors which violates the rights of creditors is wrongful, the court refused to infer that such conduct is "malicious." *Id.* at 367. Rather, deciding conduct is malicious depends on the debtor's actual knowledge or the reasonable foreseeability that his conduct will result in injury to the creditor and not on moralistic notions of "wrongfulness" of the debtor's actions. *Id.* The court further stated that under §523(a)(6), a debtor's malicious intent can be shown by evidence of specific intent to harm the creditor or by evidence that the debtor had knowledge of the creditor's rights, and with that knowledge, proceeded to take action to violate those rights. *Id.*

APPOINTMENT OF REPRESENTATIVE OF THE ESTATE PURSUANT TO §1123(b)(3)(B)

In *In re Sweetwater (Citicorp Acceptance Company v. Robison)*, 884 F.2d 1323 (10th Cir. 1989), the Tenth Circuit held that pursuant to §1123(b)(3)(B) of the Bankruptcy Code, a Chapter 11 plan could provide the retention of avoidance claims by the debtor and appoint a representative of the estate to enforce those claims. Moreover, the court held that the bankruptcy court could retain jurisdiction of those actions.

> "The court. . .has rejected a per se bad faith standard in favor of judging bad faith based upon the totality of the circumstances on a case-by-case basis."

In *Sweetwater*, the debtor could not pay the allowed administrative expense claims in cash on the effective date of the plan as the Code requires. However, the administrative claimants agreed to a different treatment of their claims as permitted by §1129(a)(9). This agreement was included in the plan which the bankruptcy court confirmed. Instead of cash, the administrative claimants accepted an interest, equal to the allowed amount of their claims, in a special fund of cash and assets, including potential proceeds from litigation or settlement with First Financial and Citicorp. Moreover, the plan provided that the bankruptcy court would retain jurisdiction to hear and determine that litigation. The trustee, W. LaMonte Robison, was named trustee of the fund and was assigned responsibility for pursuing the litigation which included pursuing avoidance claims against Citicorp. *Sweetwater*, 884 F.2d at 1324-25.

The Tenth Circuit held that Robison was effectively appointed by the confirmed plan as a representative of the estate to pursue claims of the debtor as permitted under §1123(b)(3)(B) of the Bankruptcy Code. *Id.* at 1326. The court emphasized that the appointment of a representative of the estate under §1123(b)(3)(B) must be approved by the court, and may not be done by a unilateral declaration of the debtor-in-possession. *Id.* The court pointed out that the debtor had not assigned the avoidance actions outright to Robison. Rather, the debtor had retained the actions but given Robison the responsibility to enforce the claims. *Id.* at 1327.

GOOD FAITH REQUIREMENT UNDER CHAPTER 13

In *In re Rasmussen*, 888 F.2d 703 (10th Cir. 1989), the Tenth Circuit addressed the issue of what constitutes bad faith sufficient to deny confirmation of a Chapter 13 plan. In the case, the debtor had filed a Chapter 7 bankruptcy proceeding wherein all his unsecured debts were discharged with the exception of a debt to Pioneer Bank which was determined to be non-dischargeable under §523(a)(2) of the Bankruptcy Code. Within two weeks of the conclusion of the debtor's Chapter 7 proceeding, the debtor filed a Chapter 13 petition and plan of reorganization. The only debt listed under the plan was that of Pioneer Bank. The plan proposed a return to Pioneer of approximately 1.5 percent of the amount due, over a three-year period. *Rasmussen*, 888 F.2d at 703.

Although the court noted that Chapter 13 is a liberal provision for discharging claims, a Chapter 13 plan may only be confirmed if it is proposed in good faith. *Id.* at 704. The court reiterated that it has rejected a per se bad faith standard in favor of judging bad faith based upon the totality of the circumstances on a case-by-case basis. *Id.* (citing *Flygare v. Boulden*, 709 F.2d 1344 (10th Cir. 1983)).

Although the bankruptcy court and district court had failed to find bad faith based upon the totality of the circumstances and in view of the stated liberal purpose of Chapter 13 of the Bankruptcy Code, the Tenth Circuit disagreed with the lower court's findings. Using the same totality of the circumstances approach, the court ruled that the debtor's Chapter 13 case was filed in bad faith. *Id.* at 706. The court concluded that confirmation of the debtor's Chapter 13 plan proposing to pay only approximately 1.5 percent of Pioneer Bank's claim was tantamount to a discharge of that debt. *Id.* at 705-06. The court quoted a portion of the Fourth Circuit's decision in *Neufeld v. Freeman*, 794 F.2d 149 (4th Cir. 1986), wherein the Fourth Circuit explained the purpose for the good faith requirement in a Chapter 13 context. *Id.*

Based upon that court's reasoning, the court concluded that the debtor was attempting to avoid at minimal cost a non-dischargeable debt through a Chapter 13 filing. *Id.* at 706.

TRIANGULAR PREFERENCES

In *In re Robinson Brothers Drilling, Inc.*, 97 Bankr. 77 (W.D. Okla. 1988), *aff'd*, 892 F.2d 850 (10th Cir. 1989), the Tenth Circuit affirmed and adopted the district court opinion of the Western District of Oklahoma. In this case, the district court ruled that a debtor's prepetition payments to a non-insider creditor is subject to the one-year insider preference recovery period of Code §547(b)(4)(B) when the payments benefit an insider guarantor.

In *Robinson Drilling*, the debtor made payments to certain lenders during the period between 90 days and one year before the debtor filed its bankruptcy petition. An insider of the debtor had guaranteed payment of the underlying debt. *Robinson Drilling*, 97 Bankr. at 78. The trustee sought to recover the payments to the lenders as preferences.

The court ruled that a transfer to a non-insider creditor that benefits an insider guarantor can be avoided and the value of the transfer recovered. *Id.* at 82. In determining the issue presented, the court followed the minority view which advocates a strict construction of the plain meaning of the statutes in question. *Id.* at 82. *See also, Levit v. Ingersoll Rand Financial Corp.*, 874 F.2d 1186 (7th Cir. 1989).

Under the Code, a guarantor of a debt of the debtor is a creditor because the guarantor has a contingent claim against the debtor for recovery of any amounts it is required to pay under the guaranty. *See* 11 U.S.C. §101(9) and (4). Thus, the payments made by the debtor to the lenders satisfy the first statutory preference element as a "transfer. . . to or for the benefit of a creditor." 11 U.S.C. §547(b)(1). Such payments can be recovered if the transfer was made between 90 days and one year before the date of the filing of the petition if such creditor at the time of such transfer was an insider. 11 U.S.C. §547(b)(4)(B). Furthermore, §550(a)(1) permits a trustee to recover a preferential transfer from the initial transferee of such transfer or the entity for whose benefit such transfer was made. Based upon a strict construction of these statutes, the court permitted the trustee to recover the payments made by the debtor to the lenders during the one-year insider preference period as a preferential transfer. *Id.* at 79-82.

In following the minority view, the court rejected the creation of a "two-transfer" theory to overcome the express language of the statutes by an equity argument. Under this theory, the first transfer is represented by the direct payment from the debtor to the lender. The second transfer is represented by the indirect transfer to the guarantor by virtue of the satisfaction of the guarantor's contingent liability. Using this theory, the lenders argued that under §547(b)(4)(B), only the second transfer to the guarantor was within the preferential period and therefore avoidable. Nevertheless, the court found this argument unpersuasive. *Id.* at 79.

DENIAL OF DISCHARGE UNDER §727(a)(4)(A)

In *In re Calder*, 93 Bankr. 734 (Bankr. D. Utah 1988), the bankruptcy court denied the debtor a discharge pursuant to §727(a)(4)(A) because of the debtor's deliberate omissions in his schedules and statement of affairs of his ownership interest in mineral rights, certain bank accounts and partnership income.

After a trial of the matter pursuant to a complaint objecting to discharge, the bankruptcy court entered a memorandum decision and order which contains a thorough discussion of the court's application of §727(a)(4)(A). The court noted that once the plaintiff shows by a preponderance of the evidence that the acts or omissions complained of have occurred, the burden shifts to the debtor to explain his conduct in a credible manner. *Calder*, 93 Bankr. at 735. The court observed that an inference of irregularity may arise from a series of assets or potential assets omitted from a debtor's schedules. The cumulative effect of such evidence will satisfy the creditor's burden of proof. *Id.* (citations omitted).

> "[A] debtor's prepetition payments to a non-insider creditor [are] subject to the one-year insider preference recovery period of Code 3547(b)(4)(B) when the payments benefit an insider guarantor."

The court was not persuaded by the debtor's argument that his omissions were rectified when he revealed the ownership of the mineral rights and the additional bank accounts to the trustee at the meeting of creditors. *Id.* at 737. The court suggested that subsequent amendments to a debtor's schedules may not excuse a debtor's original false oath. The court stated that the primary purpose of §727(a)(4)(A) is to ensure that dependable information is supplied to those interested in the administration of the estate and to avoid the necessity of the trustee or interested parties from having to dig out true facts. *Id.*

The court stated that a false statement in a debtor's schedules or statement of affairs caused by mere mistake or inadvertence is not sufficient to require denial of a discharge. Nevertheless, it is sufficient to deny a discharge to a debtor if the court finds a reckless disregard of the serious nature of the information sought and the necessary attention to detail and accuracy in answering questions. Such reckless disregard may give rise to the level of fraudulent intent necessary to bar a discharge. *Id.* at 737.

GROUNDS FOR CONVERSION IN CHAPTER 12

In re Caldwell, 101 Bankr. 728 (Bankr. D. Utah 1989), is a case of first impression in interpreting §1208(d) of the Bankruptcy Code. Section 1208(d) allows the court to dismiss or convert a Chapter 12 case upon "a showing that the debtor has committed fraud in connection with the case." 11 U.S.C. §1208(d). In *Caldwell*, the court found that the debtor had materially misstated assets and liabilities of the estate and failed to promptly and accurately amend his schedules once the omissions were discovered. Based upon these findings of fraud and in light of the magnitude of the assets and liabilities omitted, the court converted the Chapter 12 case to a Chapter 7 case. *Caldwell*, 101 Bankr. at 740.

In determining the proper standard of review, the court concluded that clear and convincing evidence must be shown before a court will convert or dismiss a case under §1208(d). The court applied this standard of review in light of the broad language of §1208(d); the unnecessary confusion which may result in applying a different standard of proof; the substantial modification of the historical protection for farmers; the expedited nature of a contested hearing; and, because fraud has traditionally required a higher standard of proof. *Id.* at 735.

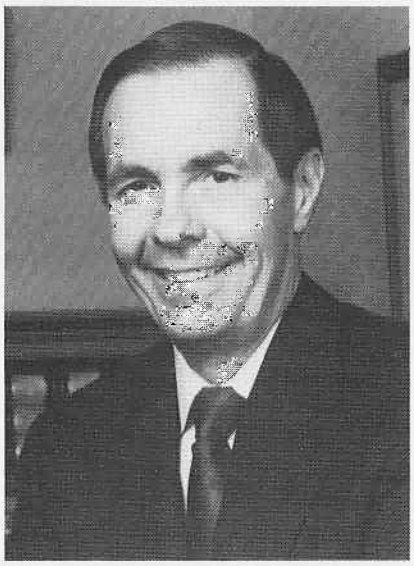
Remarks Given Before the United States Supreme Court During the Court's Bicentennial Commemoration

By Rex. E. Lee

Mr. Chief Justice, and may it please the Court, I am honored to participate in this bicentennial commemoration, and specifically to make some comments concerning the work of the Supreme Court bar over the 200 years of the Court's history.

The clerk's familiar incantation, swearing new members of the bar as "attorneys and counselors," is rooted in some interesting history. Originally, there was a distinction between the two. The first rules of the Court, adopted on Thursday, February 5, 1790, provided that "counsellors shall not practice as attornies nor attornies as counsellors in this court." Historians tell us the difference was that attorneys could file motions and do other paperwork, but only counselors could "plead a case before the Court."[1] The distinction lasted for 11½ years, until by rule adopted on August 12, 1801, the Court ordered "that Counsellors may be admitted as Attornies in this Court, on taking the usual oath."[2]

Over the two centuries of this Court's existence, there have stood before this podium—or its equivalent in other parts of this town, in Philadelphia and New York—some very able and prominent "attorneys and counselors." It is not surprising that appearances before this Court during its early years were dominated by Attorneys General of the United States; until the creation of the office of Solicitor General in 1870, it was the Attorney General who was responsible for representing the United States before this Court. What is surprising is that the most notable and most frequent appearances of those early Attorneys General were not on behalf of the government but in representation of private clients. This was true of the first Attorney General, Edmund Randolph, the second, William Bradford, the seventh, William Pinkney, and the ninth, William Wirt. Indeed, William Wirt, one of the greatest Supreme Court advocates of all time and the man who holds the record for years of service as Attorney General, confessed that



REX E. LEE, a member of the Utah State Bar Association, is a former Solicitor General of the United States, Dean of the J. Reuben Clark Law School and Assistant United States Attorney General. He is currently President of Brigham Young University. His law practice is limited to appeals before the United States Supreme Court.

"my single motive for accepting the office was the calculation of being able to [obtain] more money for less work."[3] Things were a little different then.

Edmund Randolph, our first Attorney General, was the most active of this Court's early practitioners. He appeared as counsel in the very first case (which came up during the February 1791 term), *Van Staphorst and Van Staphorst v. Maryland.* He also argued the first landmark case, *Chisholm v. Georgia.* Indeed, he was the only person who argued in that case. The state of Georgia refused to appear, and at the conclusion of Randolph's argument, which lasted two and one-half hours, the Court's minutes reflect that "the Court, after remarking on the importance of the subject now before them . . . expressed the wish to hear any gentlemen of the bar who might be disposed to take up the gauntlet in opposition to the Attorney General. As no gentlemen, however, were so disposed, the Court held the matter under advisement . . . ."[4] It would appear that the rules governing oral argument by amici were a bit more liberal in those days.

The same is true of divided arguments, time limits and questions from the bench. Representing the two sides in the oral argument in *McCulloch v. Maryland* was perhaps the greatest collection of prominent advocates in the history of this Court's bar. Arguing for the bank were William Pinkney, William Wirt and Daniel Webster. And representing Maryland were Luther Martin, Joseph Hopkinson and Walter Jones. The entire argument, by all six counsel, lasted nine days; Thomas Edison's birth was still 28 years away, and there were no red nor white lights. Those were the days when there were no questions; both the commentators and the advocates themselves referred to their arguments as speeches, which they would rehearse for days. Charles Warren relates that "the social season of Washington began with the opening of the Supreme Court term,"[5] and some of those early lawyers, particularly Webster and Pinkney, apparently responded by paying as much attention to the gallery as to the justices.

Pinkney's argument alone in *McCulloch* lasted for three full days. It was a performance which Professor Warren has said "was to prove the greatest effort of his life . . . ." Pinkney was described by Chief Justice Marshall as "the greatest man [he] had ever seen in a court of justice"; by Chief Justice Taney as one to whom there was "none equal"; by Justice Story as having "great superiority over every other man [he had] ever known"; and by Francis Wheaton as the "brightest and meanest of mankind."[6]

Pinkney had the distinction of serving as Attorney General of both the United States and also the state of Maryland, as a member of both Houses of Congress, and minister to Great Britain and Russia. But whichever of these was paramount, it was in Pinkney's

view a distant second to his one consuming passion: advocate before this Court. It was an endeavor to which he gave his life, both figuratively and literally. Following the completion of the last of his 84 arguments, in *Ricard v. Williams*—in 1822 with Daniel Webster on the other side—he suffered a collapse. He was carried to his home, where he died a few days later.[7] Incidentally, he lost *Ricard v. Williams*, an unpleasant experience for any lawyer, but one that is well-known to those who are seasoned.

Walter Jones holds the record number of oral arguments with 317. It is a record which, given today's realities, is surely safe for all time. For Mr. Jones, there will be no Roger Maris or Hank Aaron. Daniel Webster is in second place, and it would appear that John W. Davis is third and Erwin Griswold fourth. But the record number of landmarks, in my opinion, belongs to William Wirt, whose biographer has accurately observed that "he appeared in virtually all of the landmark cases of the first third of the 19th century."[8] These included *Dartmouth College v. Woodward, McCulloch v. Maryland, Cohens v. Virginia, Gibbons v. Ogden, Brown v. Maryland, Ogden v. Saunders, Worcester v. Georgia, Cherokee Nation v. Georgia* and *Charles River Bridge v. Warren Bridge*. Wirt was described by Chief Justice Chase as "one of the purest and noblest of men" and by another contemporary as "the most beloved of American advocates."[9]

In four of these landmarks, *Dartmouth College, McCulloch, Cohens v. Virginia* and *Gibbons v. Ogden*, Wirt appeared with Daniel Webster. They argued *Dartmouth College* and *McCulloch* just three weeks apart. He was the Attorney General at that time, and though in *McCulloch* he was arguing to sustain the power of the federal government, he received a substantial fee from the Bank of the United States.[10]

Daniel Webster, though he won slightly less than half of his cases, probably had the greatest influence on the Court and its work of any 19th century advocate—perhaps the greatest influence of any advocate in the Court's history. S.W. Finley has observed that "Webster and Chief Justice Marshall shared the same basic constitutional philosophy, and together with Justice Joseph Story they constitute a fortuitous triumvirate in establishing the fundamentals of American federalism in the first four decades of the 19th century."[11]

The 20th century, of course, is not yet complete, but it is already clear that during the Court's second hundred years, advocates to match the stature of Pinkney, Wirt and Webster have stood at this podium. Comparisons are difficult because of changes in circumstances and rules, but quite clearly the Court's jurisprudence during this century has been influenced by people such as John W. Davis, Robert Jackson, Thurgood Marshall and Erwin Griswold, just as it was during earlier times by Pinkney, Wirt and Webster. And our century also has had its equivalent of *McCulloch*'s battle of the giants when, for example, *Briggs v. Elliot*, a companion case to *Brown v. Board of Education*, pitted John W. Davis against Thurgood Marshall.

Mr. Chief Justice, we the members of the bar of this Court are proud of the institution whose 200th birthday we celebrate, proud of what it has meant and what it has done for our country and its people, and proud of the contribution that the members of the bar have made to the Court and its accomplishments over its 200-year history. We recognize that we are more than attorneys and counselors. As officers of the Court, we are charged not only with the responsibility of vigorously representing our clients but also assuring that our representation is objective, fair, evenhanded and contributory to the Court's performance of its duties. We are mindful of the institution before which we practice, and the role that it has played from 1790 to 1990 in securing individual rights and providing stable government. We are pleased to offer our continuing services as we enter the Court's third century.

[1] 2 U.S. (2 Dall.) 399 (1790); 1 *The Documentary History of the Supreme Court of the United States, 1789-1800* 177, n. 18 (M. Marens & J. Perry eds. 1985).
[2] *Documentary History, supra*, at 177, n. 18.
[3] J. Robert, *The Hon. William Wirt: The Many-Sided Attorney General*, Sup. Ct. Hist. Soc'y Y.B. 1976, at 55.
[4] 1 C. Warren, *The Supreme Court in United States History* 95 (1924) (quoting Dunlap's *American Daily Advertiser*, Feb. 21, 1793).
[5] 1 C. Warren, *The Supreme Court in United States History*, 471 (1924).
[6] S. Shapiro, *William Pinkney: The Supreme Court's Greatest Advocate*, Sup. Ct. Hist. Soc'y Y.B. 1988, at 40, 44.
[7] *Id.* at 45.
[8] J. Robert, *supra*, at 52.
[9] *Id.*
[10] *Id.* at 56.
[11] S.W. Finley, *Daniel Webster Packed 'Em In*, Sup. Ct. Hist. Soc'y Y.B. 1979, at 70.

BAR COMMISSION HIGHLIGHTS

At the regularly scheduled meeting of the Board of Bar Commissioners held at the Utah Law and Justice Center on February 16, 1990, the following reports were received and actions taken:

1. Approved the minutes of the January 26 meeting.

2. President Chamberlain reported on a presentation about the Utah Law and Justice Center and the Tuesday Night Bar featured at the first ABA Outreach Conference.

3. Reviewed a draft Joint Occupancy and Services Agreement between the Bar and Utah Law and Justice Center. Referred the draft to a committee for final review and recommendation.

4. Received the Budget and Finance Committee report. Approved the termination of the WATS line, acknowledged the need for further amendments to the current budget and reviewed Law and Justice Center finances.

5. Received the Legislative Affairs Committee report and acted on various recommendations of the committee which will be reported in detail in the following issue of the *Bar Journal.*

6. Received the Client Security Fund Committee report and acted on numerous claims which had been processed by the committee. The current claims activity will be reported in more detail in the following issue of the *Bar Journal.* Received the proposed Rules of Procedure for the Client Security Fund and took the same under advisement.

7. Received the Admissions Report and approved final changes to the proposed admissions rules for submission to the Supreme Court. Approved special test accommodations for certain handicapped applicants.

8. Reviewed, revised and approved the Petition for Increase in Bar Fees and Amended Petition for Change in the Licensing Cycle. Authorized mailing of the petitions and exhibits to each Bar member.

9. Reviewed and approved renewal of the officers and directors insurance policy.

10. Reviewed and approved proposed changes in admissions fees for submission to the Supreme Court.

11. Received a report of the Executive Director which featured extensive participation in various meetings incident to the ABA Mid-Year meeting.

12. Received a report on Internal Operations/Management including information on grant proposals submitted to the Bar Foundation, arrangements for the 1990 Bar Commission elections, notice of certain personnel changes and arrangements for the Bar Leader Training Conference.

13. Reviewed the applications for appointment to the Bar Commission to fill the unexpired term created by the resignation of Commissioner Holbrook. Dennis Haslam was elected to fill the vacancy by secret ballot.

14. Received the monthly report of the Office of Bar Counsel on discipline matters reported elsewhere in the *Bar Journal.* Report also included information on unauthorized practice of law litigation and information concerning the Mid-Year of the National Organization of Bar Counsel.

15. Received and discussed the Litigation Committee report.

16. Received the report of the liaison to the Judicial Council noting the final work being done on the Gender and Justice Task Force report.

The official minutes of this and other meetings of the Bar Commission are on file in the office of the Executive Director and are available for inspection by Bar members or members of the public.

Bar WATS Line Eliminated

One of the more expensive of the administrative costs for the Bar has been the toll-free WATS line which carries primarily Lawyer Referral Service inquiries. Due to severe budget restraints, the Board of Bar Commissioners determined that the WATS line should be cancelled. The line has been discontinued, and all calls should be directed to the following (Salt Lake City) numbers:

—Bar Office General Number 531-9077
—Executive Offices 531-9095
—Office of Bar Counsel 531-9110
—Lawyer Referral Service 531-9075
—FAX 531-0660

Law Day Luncheon

The Law Day Luncheon will be held May 1, 1990, at 12:00 noon at the Utah Law and Justice Center, 645 S. 200 E., Salt Lake City, Utah.

Michael J. Bennett will give a dramatic presentation at the luncheon. Mr. Bennett is a professional actor from Utah. He has performed widely and is well known for his dramatic presentation of Patrick Henry.

Cost of the luncheon is $10.00 per person. Reservations may be made by calling the Utah State Bar reservation desk, 531-9095, by April 26, 1990.

Corporate Counsel Section Sponsors Half-Day Seminar

The "Professional Liability of In-House Counsel" will be the lead topic of a half-day seminar presented by the Utah State Bar Corporate Counsel Section, scheduled for May 16, 1990. The seminar will focus on three different topics addressing the ethical and practical concerns of malpractice for in-house counsel. The program is recommended for all attorneys working for or representing corporations. The Section has applied for CLE credit.

Discipline Corner

ADMONITIONS

1. An attorney was admonished for violating Canon 6, DR 6-101(A)(2) and Rule 1.1 by failing to correspond in writing to his client regarding the trial strategy and court dates to enable the client to participate fully in his defense and for failing to prepare a witness for a trial.

2. Two attorneys were admonished for violations of Rule 7.5(a)(d) by representing to the public their status as partners when in fact no partnership existed.

PRIVATE REPRIMAND

1. For violating Rule 8.4(c), an attorney was privately reprimanded for ignoring two requests from the Tenth Circuit Court of Appeals regarding the filing of briefs and ultimately failing to timely file the briefs or request an extension of time. In addition, the attorney failed to respond to an Order to Show Cause regarding his failure to abide by the rules of the Court. The sanction was mitigated by the attorney's emotional turmoil due to the disappearance of a close friend, a lack of prior disciplinary history and that a private reprimand is consistent with the discipline in prior cases with similar circumstances.

PUBLIC REPRIMANDS

1. On February 6, 1990, Phillip A. Harding was publicly reprimanded for violating Canon 6, DR 6-101(a)(3), DR 7-101(A)(2) and DR 7-101(A)(3) by accepting a retainer in a divorce action and subsequently failing to make an appearance, contact opposing counsel or file an Answer to the Complaint resulting in entry of default against his client. Subsequent to the entry of default, Mr. Harding assured his client that he would take remedial action but failed to do so.

2. On February 6, 1990, Peter M. Ennenga was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) by neglecting his representation of his client by failing to respond to discovery resulting in sanctions against his client and failing to inspect the court file allowing judgment in favor of his client to lay undetected for 16 months. The sanction was mitigated by Mr. Ennenga's offer to reimburse his client for the civil sanction prior to the filing of the complaint in the Office of Bar Counsel, that other than the financial sanction the client was not injured and that the conduct was not intentional. The sanction was aggravated in that Mr. Ennenga had established a pattern of indifference to his client and disregarded the potential harm to his client. The sanction was also aggravated in that the civil sanction imposed against his client was $3,264.13.

3. On January 10, 1990, M. Shane Smith was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) and Rule 1.4(a) by accepting a retainer in 1984 and agreeing to file a complaint in the matter and subsequently misrepresenting to the client in 1987 that the action was ongoing and misrepresenting to the client again in 1988 that a trial had been set and misrepresenting to the client again in 1988 that the trial had been re-scheduled when in fact the case had been dismissed in March 1986 for failure to prosecute. The sanction was mitigated by Mr. Smith's recent divorce and lack of significant disciplinary history and his admission of neglect and attempt at restitution.

SUSPENSION

1. On January 12, 1990, William L. Schultz was suspended for violating Canon 6, DR 6-101(A)(3), Canon 2, DR 2-110(A)(2) and Rules 1.3, 1.4(b) and 1.14(d). Mr. Schultz was suspended from all practice of law in Utah for two months which suspension was stayed pending successful completion of a one-year probationary period. Mr. Schultz was also suspended from the practice of law not associated with his position as Deputy Grand County Attorney for a period of ninety (90) days. Mr. Schultz was retained in a collection action and failed to respond to his client for a period exceeding four years, Mr. Schultz failed to perform work on the collection matter, moved his practice during the representation and failed to inform the client and failed to return the client's file upon request to do so. The sanction was aggravated by Mr. Schultz's failure to respond for a period exceeding four years, Mr. Schultz's knowledge of his client's need for immediate legal action, particularly after the client suffered injuries in an accident which left him a paraplegic, Mr. Schultz's failure to comply with a previous disciplinary Order and Mr. Schultz's indifference to the disciplinary procedure.

REINSTATEMENT

On December 29, 1989, the Utah Supreme Court entered an Order vacating an Order previously entered on October 3, 1988, disbarring Richard K. Crandall.

Supreme Court Adopts New Rules of Procedure

On December 18, 1989, the Supreme Court approved amendments to Rules 3, 4, 10, 12 and 64D of the Utah Rules of Civil Procedure and approved the repeal of the remaining provisions of Rule 73. In addition, the Court approved the repeal of the rules of the Utah Supreme Court and the Rules of the Utah Court of Appeals and adopted in their place the consolidated Rules of Appellate Procedure.

The new rules are effective on April 1, 1990, and will be included in the 1990 Michie publication entitled *Utah Court Rules*. That publication will be distributed to all subscribers by Michie prior to the April 1 effective date.

Questions concerning the new rules may be directed to Carlie Christensen, Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, UT 84102.

Tenth Circuit Judicial Conference

The 1990 Judicial Conference of the Tenth Circuit will be held on July 25-27 in the mountains at Keystone Resort, Colo., 75 miles west of Denver Stapleton Airport. The theme will be the First Amendment in its various aspects. Guest speakers will include judges, lawyers, scholars, jounalists and broadcasters of national stature. The program has assumed such prominence that it will be videotaped for broadcast on C-Span, and many regard it as a potentially memorable occasion for the Conference. With the importance that First Amendment issues are assuming for lawyers and judges alike, this is a conference not to be missed. Sessions will include a Socratic dialogue on the First Amendment by a panel of local and national experts; a panel on libel and freedom of speech; a panel of scholars on press access to the courts, and another on religion and on privacy; a panel of lawyers on recent opinions of the Tenth Circuit; remarks of Justice Byron White on the recent term of the Supreme Court, followed by questions from a panel.

Please mark your calendars and make plans to attend this important event. If you are not a member of the Judicial Conference, you may join by sending a simple letter to: Eugene J. Murret, Circuit Executive, U.S. Courthouse, Denver, CO 80294, telephone (303) 844-4118. A prerequisite to membership in the Conference is membership in the Bar of the Tenth Circuit Court of Appeals. If you are not a member of that Bar, you may obtain an application from: Robert L. Hoecker, Clerk of Court, U.S. Court of Appeals for the Tenth Circuit, U.S. Courthouse, Denver, CO 80294, telephone (303) 844-3157.

Claim of the Month

ALLEGED ERROR AND OMMISSION

Alleged failure to file complaint before expiration of statute of limitations.

RESUME OF CLAIM

Insured was retained by client to represent her in a claim for injuries sustained in an automobile accident which had occurred in 1981. Another attorney had previously represented the client. The file was incorrectly marked to reflect an accident date of 1982, rather than 1981. Responsibility for drafting the complaint was delegated to law clerks employed by the insured law firm. No complaint was filed prior to the expiration of the statute of limitations.

HOW CLAIM MIGHT HAVE BEEN AVOIDED

Closer supervision of clerical staff as well as law clerks might have avoided this claim. Had an experienced attorney reviewed this claim in a timely manner, the incorrect accident date on the file would have been apparent. While it is frequently advisable, if not necessary, for experienced attorneys to delegate responsibility to other people in a law firm, it is essential that less experienced personnel be supervised closely to ensure that required action be taken on behalf of clients before deadlines pass by unnoticed.

Claim of the Month is furnished by Rollins Burdick Hunter of Utah, Inc., administrator for the Utah State Bar sponsored professional liability program.

Notice
Amended Calendar Tenth Circuit Court

The following is an amended calendar for the 1990 sessions of court for the United States Court of Appeals for the Tenth Circuit and the Judical Conference.

January Session (Denver)	Jan. 16-19
March Session (Denver)	March 5-9
May Session (Denver)	April 30-May 4
Judicial Conference of Tenth Circuit (Keystone, Colo.)	July 25-27
September Session (Cheyenne, Casper and Laramie, Wy.)	Sept. 24-28
November Session (Denver)	Nov. 5-9

Special Institute on the Oil and Gas Joint Operating Agreement

The American Association of Petroleum Landmen Form 610 Operating Agreement is among the most widely used oil and gas forms of all time. Originally introduced in 1956 and subsequently revised in 1977, 1982 and 1989, this form provides a comprehensive system governing oil and gas operations on behalf of multiple working interest owners. Unfortunately, however, this comprehensive system is too often studied in piecemeal fashion, examining only isolated articles or changed provisions.

The Rocky Mountain Mineral Law Foundation will consider the Form 610 and its exhibits as a single, integrated agreement at a two-day Special Institute on the Oil and Gas Joint Operating Agreement to be held on May 3 and 4, 1990, at the Houston Marriott West Loop Hotel by the Galleria, in Houston, Texas. The first day will focus principally on the printed form agreement, concentrating on drilling and operating provisions, non-payment remedies and the relationship of the operator and non-operators among themselves and with third parties. The second day will highlight the exhibits commonly attached to the agreement, paying special attention to gas balancing and tax partnership issues.

This Institute includes a mixture of presentations, each directed toward a practical understanding of the agreement and designed for both new and experienced oil and gas lawyers, landmen and contract personnel. While the presentations will generally be based upon the new Form 610-1989, speakers will consider earlier versions of various articles and the problems which led to their change. Consideration of the agreement as a single, integrated document is very important since not even the Form 610-1989 can be expected to remain unchanged when dealing with the wide variety of property and participant variations experienced in the industry. Deletions and special provisions in the printed form likely will continue to be necessary to reflect the size and financial condition of the operator, the nature of the underlying business deal and the particular lands involved. This Institute will allow producers to make such changes and enter into operating agreements with greater confidence, while at the same time reducing the likelihood of operational and other problems after the initial well is drilled.

For additional information, contact the Foundation at (303) 321-8100.

The Utah Volunteer Lawyers Project of Utah Legal Services, Inc.

The Utah Volunteer Lawyers Project was started in 1981 as a joint effort of the Young Lawyers Section of the Utah State Bar, the Legal Aid Society and Utah Legal Services, Inc. to provide no-cost legal assistance to low-income people through the use of volunteer attorneys. These are people who cannot be served either by ULS or the Legal Aid Society. We have solicited participation with the crucial and excellent support of the Utah State Bar and the Supreme Court. To date, more than 16 percent of the Bar members have volunteered their services. We hope that through improving our operation and support of the program and the continued support of the Bar Commission, we can increase both the number of clients served and attorneys who participate.

In 1980, Utah had more than 212,000 persons with incomes less than 125 percent of poverty. Many of these poor families live great distances from the Wasatch Front. Throughout the state, the highest priorities center on those areas crucial to the survival needs of clients, namely shelter, safety net income maintenance programs and health care. Additional priorities include domestic relations and consumer issues.

The UVLP receives support and assistance from the American Bar Association and this year's ABA Pro Bono Conference will be held at Snowbird, May 10-12. State and local Bar leaders are encouraged to attend as well as law firm representatives.

For more information about the project, please contact Mary Nielsen, Project Coordinator, Utah Legal Services, 328-8891 or 1-800-662-4245.

The work done by the UVLP is exceptional and deserves recognition. The following is a partial list of UVLP members. Because there are so many members, the remainder of the membership will be published in a future article.

Linda Zwick
Carolyn D. Zeuthen
Michael P. Zaccheo
Sherman C. Young
Scott F. Young
Gaylen S. Young Jr.
Brent D. Young
Lisa A. Yerkovich
Kenneth W. Yeates
Richard D. Wyss
John M. Wunderli
Michael H. Wray
Noall T. Wootton
R. Glen Woods
Steven D. Woodland
Jay Woodall
Ronald C. Wolthuis
David J. Winterton
John B. Wilson
Dennis C. Wilson
Kent O. Willis
H. Mifflin Williams III
Scott R. Williams
Kellie F. Williams
Lance T. Wilkerson
Francis M. Wikstrom
Gerald S. Wight
Larry R. White
Douglas F. White
Constance B. White
Dawn Wheeler
David A. Westerby
Orson B. West Jr.
Suzanne West
Robert D. West
David C. West
Craig V. Wentz
Frank M. Wells
Della M. Welch
Darci Wehrli
David L. Watson
Alonzo W. Watson
R. Scott Waterfall
Lee Warthen
Bob W. Warnick
Gregory M. Warner
Frank S. Warner
James L. Warlaumont
Lynn D. Wardle
Chris P. Wangsgard
Shauna S. Walton
David A. Walton
F. Kim Walpole
Gregory B. Wall
Richard M. Walker
Lee Anne Walker
Peter Waldo
Ruth H. Wagner
Pete N. Vlahos
James D. Vilos
Harold C. Verhaaren
Peter Van Orman
Stephen A. Van Dyke
Pamela C. Urry
Roland F. Uresk
Jerry W. Ungricht
Filia H. Uipi
Mary S. Tucker
Roger K. Tschanz
Jose L. Trujillo
Jory L. Trease
Penny Trask
David V. Trask
Timothy J. Trager
A. Robert Thurman
Arthur M. Thurber
Allen S. Thorpe
Rollin Thorley
W. Paul Thompson
Roger H. Thompson
Alan K. Thompson
Douglas D. Terry
Thomas S. Taylor
Margret S. Taylor
James R. Taylor
Earl Taylor
Reid Tateoka
Earl Tanner Jr.
Robert B. Sykes
James C. Swindler
Kevin J. Sutterfield
E. Kent Sundberg
Harriet Styler
Jo Anne B. Stringham
Erik Strindberg
Gordon Strachan
Philip C. Story Jr.
Andrew H. Stone
Dennis C. Stickley
James W. Stewart Jr.
Harold R. Stephens
Brian W. Steffensen
D. Aron Stanton
Michael Stagg
John N. Spikes
Larry V. Spendlove
Victor A. Spencer
David Sonnenreich
John B. Solan
Donovan C. Snyder
Vernon L. Snow
V. Lowry Snow
Steven E. Snow
Harry Snow
Clark L. Snelson
Susan F. Smith
M. Shane Smith
Kristine K. Smith
Frank Smith
David K. Smith
D. Richard Smith
Stanley M. Smedley
James J. Smedley
James E. Slemboski
Leslie W. Slaugh
Caroline Skuzeski
Randall N. Skanchy
Greg N. Skabelund
Teresa Silcox
Lora C. Siegler
Phillip B. Shell
Stephen N. Sheffield
E. Jay Sheen
H. Don Sharp
Thomas W. Seiler
David H. Schwobe
William P. Schwartz
William L. Schultz
Stuart H. Schultz
Don R. Schow

Hans Scheffler
Roy M. Schank
James Scarth
J. Bruce Savage
Sidney Sandberg
Wally A. Sandack
Cindy M. Sadler
Steve Russell
Cheryl Russell
James P. Rupper
Steve Rupp
Jonathan Ruga
David E. Ross II
Robert D. Rose
Rick Rose
D. Williams Ronnow
Vernon F. Romney
Thomas F. Rogan
John Robson
Mark Robinson
Thomas D. Roberts
Glen W. Roberts
A.J. Ritter
Glen M. Richman
Arnold Richer
L.E. Richardson
James M. Richards
Lisa Remal
Don S. Redd
J. Bruce Reading
Scott Rawlings
Anita F. Ratcliffe
Richard A. Rappaport
Sherry Ragan
Danny Quintana
Anthony B. Quinn
Solveig Quass
Robert D. Pusey
Philip C. Pugsley
Harry D. Pugsley
Robert G. Pruitt
Paul H. Proctor
William Prince
Paul Price
George W. Pratt
Brett Poulsen
Stephen Plowman
Frank R. Pignanelli
H. Dennis Piercy
Scott Pierce
David P. Phippen Sr.
Wayne G. Petty
Ralph Petty
P. Knute Peterson
Don R. Petersen
Karl G. Perry
Margaret Paydar
Brett F. Paulsen
C. Gerald Parker
John D. Parken
Michael W. Park

Law Day Fair Art Show

Last April, the Utah State Bar Committee on Law Related Education and Law Day and Utah Lawyers for the Arts co-sponsored the first Law Day Fair Art Show. The one-day show was presented in conjunction with the Utah State Bar Young Lawyers Section Law Day Fair held in the center court of the ZCMI Center Mall in downtown Salt Lake City. The Law Day Fair Art Show subcommittee solicited amateur and professional artwork from lawyers, judges, paralegals and legal secretaries. Several attorneys and one legal secretary contributed their artwork to the show. The work displayed included a video, a collection of hand-woven baskets, black and white and color photographs, watercolors and oil paintings, pen and ink drawings and poetry.

Plans are under way for another one-day show in April 1990. The Art Show subcommittee would like to exhibit more artwork created by Utah attorneys, judges, paralegals and legal secretaries. It is seeking artwork of all kinds and all levels of professionalism for display or performance, including drawings, paintings, sculpture, photography, graphic art, music, dance, poetry, readings and performance art. The show will probably be held on Saturday, April 28, 1990, in the Salt Lake Valley. Please contact Dawn Hales at 322-2516 for further information.

Bob Miller Memorial Law Day Run

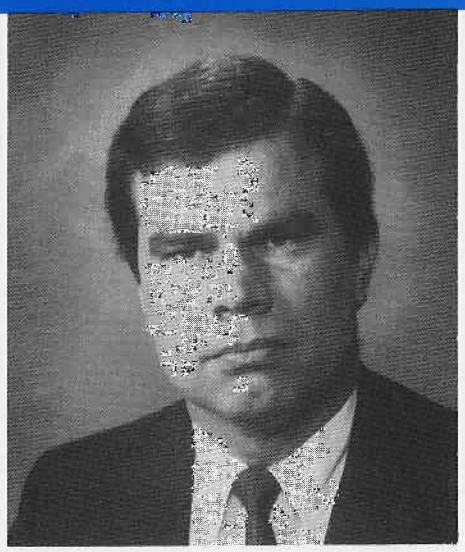
The 1990 Bob Miller Memorial Law Day Run is scheduled to commence at 9:00 a.m. on Saturday, April 28, 1990. As always, the race will begin at the Pioneer Trail State Park "This is the Place" Monument. The 5-kilometer race will conclude at the University of Utah Law School parking lot. All law firms are encouraged to field teams and to enjoy the camaraderie of the race. Information concerning the race can be obtained from Charles Loyd at Salt Lake Legal Defenders Association, 532-5444.

U.S. Court of Appeals Seeks Information

The United States Court of Appeals for the Tenth Circuit is in the process of compiling its official history. The editor is seeking information about Judge John Hazelton Cotteral, who was the first judge from Oklahoma to serve on the Tenth Circuit.

Anyone having any information about or reminiscences of Judge Cotteral should contact: Kevin C. Leitch, Sneed, Lang, Adams, Hamilton and Barnett, 2300 Williams Center Tower II, 2 W. Second Street, Tulsa, OK 74103.

CASE SUMMARIES



By Clark Nielsen

RULES OF APPELLATE PROCEDURE

The Utah Supreme Court has approved the new, consolidated appellate courts' rules, the Utah Rules of Appellate Procedure, effective April 1, 1990. These rules supercede and replace the rules of the Utah Supreme Court and the rules of the Utah Court of Appeals.

The new Utah Rules of Appellate Procedure ("Utah R. App. P.") are essentially the same as the Court of Appeals and Supreme Court rules, except for a few significant changes or clarifications:

1. The rules governing certiorari, transfers and discretionary jurisdiction are renumbered as Rules 41-51.

2. The designation of parties is changed to "Appellant" and "Appellee" (not "respondent"). [Rule 3(c)]

3. A "cross-appeal" also requires the payment of appeal and docketing fees. [Rule 3(f)]

4. Docketing statements *and* briefs must state the applicable standard for appellate review. [Rules 9 and 24]

5. A request for an extension of time *must* be filed before the applicable original time expires.

6. The courts' priority list for oral argument calendaring is memorialized in Rule 27(c). Upon calendaring, oral argument is presumed requested unless waived by the parties. [Rule 29]

7. Criminal cases are no longer excluded from Rule 31 calendaring. [Rule 31]

8. Rule 33 is substantially changed regarding penalties for delay and frivolous appeals. Clarification is added that attorneys' fees are not costs on appeal.

9. Counsel *must* keep the court apprised of her or his current address and telephone. [Rule 40]

STATUTORY CONSTRUCTION—PREJUDICIAL DEFECTS IN FAILURE TO FILE

Plaintiffs challenged Manti City's creation of a special improvement district under U.C.A. §10-16-7(5). The district court invalidated the creation of the special district because the City failed to file with the county recorder its notice of intent as required by statute. Discussing the various statutory notice and filing requirements to create a special improvement district, the Utah Supreme Court noted that the city gave proper notice by publication except for filing its intent with the recorder. The court recognized two lines of authority: (1) such a procedural defect voids the formation of a district or assessment levy; and (2) procedural defects do not necessarily void a special district creation. The issue is whether the procedural irregularity has affected the property owner's ability to know of or to protest the city's intended creation, or has not unfairly affected an owner's right of protest. The failure to file in this case was purely technical and did not adversely impact any notice to land owners or disadvantage potential protesters.

Henretty v. Manti City Corp., 127 U.A.R. 8, No. 880434 (February 1990) (J. Zimmerman).

DUE PROCESS—STATUTE CONSTITUTIONALITY

Reinforcing a view that justices of the Utah Supreme Court are currently attracted to "economic legislation" issues, the court refused to invalidate on its face the Motor Fuel Marketing Act (U.C.A. §13-16-1 to 9 (1986 and Supp. 1989)). Because the act may be construed in a constitutional manner, the district court improperly held that defendant's federal and state due process rights were violated by the law. Statutes are endowed with a strong presumption of constitu-

tionality. The burden of proving economic legislation unconstitutional is upon the party challenging the legislation and not upon the state or party defending the statutes. The burden would fall on the state only if some fundamental right was impinged by the law.

Here the proclaimed constitutional infirmities were premised upon an inaccurate trial court interpretation of the statutory language of exceptions to the prohibition against below-cost sales of petroleum products. The court observed that it gave no deference to the trial court's legal conclusions which were improperly masqueraded as "findings of fact." "We disregard labels and look to the substance" in following the proper standard of review, Justice Zimmerman said.

State of Utah v. Rio Vista Oil, Ltd., 127 U.A.R. 4 (February 1990) (J. Zimmerman). *See also Little America Hotel Corp. v. S.L.C.*, 124 U.A.R. 29 (December 1989) (J. Howe) (upholding Salt Lake's Innkeeper License Tax under the equal protection, due process and uniformity clauses).

REAL PROPERTY—EQUITABLE CONVERSION—SALE CONTRACT

Under the Utah doctrine of "equitable conversion" of title, once parties have entered into an enforceable real estate sale contract, the buyer's interest in the contract is considered to be a real property interest. The seller's retained interest is only a contractual interest, e.g. personal property. The equitable interest in the real property vests in the buyer, although the seller retains a pure legal title as a "security" for payment. In this case, the recorded interest of the real estate contract buyer was not subject to a subsequent judgment lien against the contract seller. The quiet title judgment by Judge Brian was reversed.

Cannefax v. Clement, 127 U.A.R. 28 (Ct. App., February 1990) (J. Billings).

REAL PROPERTY—BOUNDARY BY ACQUIESCENCE

The Utah Supreme Court reversed its 1984 decision in *Halladay v. Cluff*, 685 P.2d 500 (Utah 1984) and progeny, rejecting the showing of "objective uncertainty" as a requisite factor in boundary by acquiescence cases. Boundary by acquiescence now requires proof of occupation up to a visible line marked by physical landmarks and mutual acquiescence in that visible line as the boundary over a long time; and by adjoining owners. The element of "objective uncertainty" introduced in *Halladay* was universally criticized by legal commentators.

Staker v. Ainsworth, 125 U.A.R. 25 (January 1990) (J. Durham).

STANDARD OF REVIEW—RULE 52(a)—CLEARLY ERRONEOUS

The Utah Supreme Court criticized an unpublished Court of Appeals decision in an adverse possession dispute between cotenants of Park City property. Justice Durham wrote that although the appellate court panel gave lip service to Rule 52(a), it had failed to properly apply the "clearly erroneous" standard and substituted its view of the facts for the trial court's findings. The trial court's ruling, which had been reversed by the court of appeals, was reinstated.

Sweeney Land Co. v. Kimball, 127 U.A.R. 13 (February 1990) (J. Durham).

PLAIN ERROR—*RIMMASCH* ISSUES

The court of appeals upheld the conviction of a father convicted of child rape. He claimed on appeal that the state's expert had, under *Rimmasch*, 775 P.2d 388 (Utah 1989), improperly testified on the credibility of the child's abuse story and that the child had been sexually abused. After summarizing *Rimmasch* (and company), Judge Billings wrote that inadequate objections to the expert's testimony had been made by defendant at trial. Applying the 1989 Utah Supreme Court decision in *State v. Eldredge*, 773 P.2d 29 (Utah 1989), she opined that the "plain error" doctrine was inapplicable to avoid the failure to object. The alleged errors, if errors, were not so obvious to the trial court because *Rimmasch* issues are still "new and controversial." Also, considering other corroborative evidence of defendant's abuse, there was no "obvious injustice" here that would compel application of the plain error doctrine.

State v. Braun, No. 890150-CA (Ut. Ct. App. February 20, 1990) (J. Billings).

DRUG STAMP TAX ACT

The Utah Drug Stamp Tax Act (U.C.A. §59-19-105) was constitutionally upheld by the Court of Appeals. The statute is not void for vagueness and does not violate defendant's due process right or privilege against self-incrimination. The appellate court also applied the test for taxation of illegal conduct, as set forth in *Marchetti v. U.S.*, 390 U.S. 39 (1968).

State v. Davis, 890009-CA (Utah Ct. App., February 12, 1990) (J. Billings).

ATTORNEY DISCIPLINE—PAYMENT OF FEES

The State Bar may not suspend an attorney for non-payment of fees, and then, after fee payment, summarily continue that suspension for unrelated disciplinary reasons. Procedure of Discipline Rule XX was substantially modified by the Supreme Court, rejecting

that portion of the rule stating that the Board may refuse re-enrollment upon payment of fees for "justifiable cause" in the best interests of the Bar and public.

In Re Crandall, 125 U.A.R. 9 (January 1990) (J. Durham).

HABEAS CORPUS—SUBSTANTIAL CONSTITUTIONAL ISSUE

Where no significant health hazard at the Utah State Prison was proved, no violation of petitioner's constitutional rights was shown that justified habeas corpus relief under Rule 65B(i).

Turmunde v. Cook, 127 U.A.R. 3 (February 1990) (Per Curiam).

EVIDENCE—PRIOR BAD ACTS, RULE 404(b)

Defendant's rape conviction was improperly tainted by evidence of his past sexual misconduct. When evidence of prior bad acts "establishes a constitutive element" of the crime and is directly probative of a disputed issue, it *may* be admissible even if it tends to prove that defendant has committed other crimes, assuming that its probative value does not outweigh its unfair prejudice. The prior conduct here was too remote in time and place from the events charged and had no direct bearing on defendant's intent or conduct on the date of the alleged rape. Defendant's conviction was reversed and the case remanded for a new trial.

State v. Cox, 127 U.A.R. 19 (Ct. App., January 1990) (J. Davidson).

APPEAL—TIMELINESS

Under the Utah Administrative Procedures Act (U.C.A. §63-46b-14(3)(a)), a petition for judicial review of an administrative agency decision must be *filed*, and not just mailed, within 30 days after the agency's decision is issued.

Silva v. Dept. of Empl. Security, 126 U.A.R. 4 (Ct. App., January 1990) (Per Curiam).

APPEALS—SUMMARY DISPOSITION

Summary disposition by an appellate court under Rule 10, whether on respondent's motion or on the court's own motion, does not deprive an appellant of its constitutional right of appeal. This case describes some of the procedures employed by the law and motion panel of the court of appeals in considering summary disposition motions.

State v. Palmer, 126 U.A.R. 5 (Ct. App. January 1990). (Per Curiam).

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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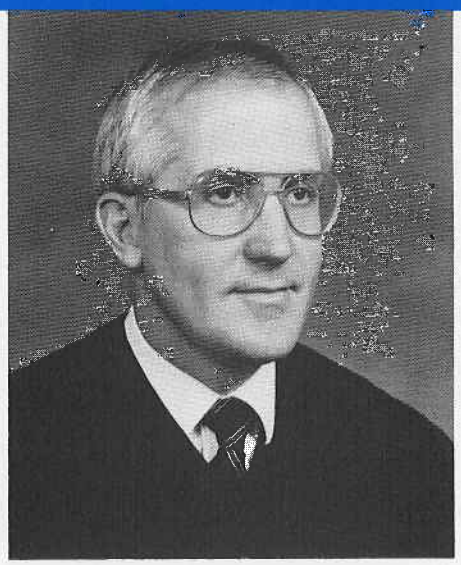
Mail the completed form and your check payable to the Utah Bar Foundation to: Judicial History, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. Please allow at least three weeks for delivery.



Applying the Rules of Evidence at Trial

By Judge A. Lynn Payne, Jr.

One of the great challenges of our profession is to keep up with the law as it develops. Sometimes, in our struggle to keep up with the development of the law, we lose track of areas of the law which are not involved in rapid change. An area of the law that we do not give enough attention to is the Rules of Evidence (hereinafter referred to as the Rules). My experience as an attorney and judge has convinced me that many lawyers are knowledgeable concerning the Rules and are effective in their use. However, I am equally convinced that some of us need to be reminded about their importance. If you are one of the many who have mastered the Rules, stop here. If you need a reminder, read on.

Evidence is one of the most difficult areas of the law to understand and apply. Part of the reason is that we are asked to demonstrate our knowledge of the Rules under the pressures of trial. At trial, a lawyer must focus on many things at once. Given the pace at which a trial proceeds, it is very difficult to concentrate on the content of the evidence being presented, while evaluating opposing counsel's questions, and while making sure that the witness' response does not contain inadmissible information. Under these conditions, even rules which seem clear become difficult to apply. Also, many of the Rules are not crystal clear. The final straw is that all of this happens in front of people you want to impress—the jury and your client.

JUDGE A. LYNN PAYNE, JR. was appointed to the Eighth Circuit Court in 1987 by Gov. Norman H. Bangerter. He serves Daggett, Duchesne and Uintah counties. He received his law degree from the University of Utah College of Law in 1975 and was a Salt Lake City prosecutor from 1975 to 1978 and an attorney in the Salt Lake County Attorney's Office from 1978 to 1981. He was in private practice in Vernal, Utah, from 1982 until his appointment to the bench.

A knowledge of the Rules is important for all practicing attorneys. From a lawyer's first contact with a case, he or she is constantly gathering and evaluating evidence. In most cases, the nature and weight of the evidence will have a greater bearing upon the outcome of a case than a lawyer's knowledge of the law or ability to communicate. When evaluating evidence, it is important to identify information which will not be admissible at trial so that such information is not relied upon in filing a lawsuit. An understanding of the Rules will often save clients the expense of bringing an unsuccessful action.

Knowledge of the Rules is so fundamental to being a lawyer that many of us assume that we possess such knowledge merely because we are licensed to engage in the practice of law. Contributing to this sense of security is the fact that, at one time or another in our careers, most of us have possessed a working knowledge of the Rules. However, time and changes in the law inevitably diminish our skills. Most of the problems that counsel experience at trial with evidence could be avoided by periodically reviewing the Rules. You will be surprised at how often you will use something that you have learned during your periodic reviews. In addition, you will begin to feel more comfortable and confident at trial and will become a more effective advocate.

It is also advisable, as an important part of trial preparation, that you review your evidence and the anticipated evidence of the opposing party to make sure that all necessary foundational requirements can be met and that all necessary witnesses will be present at trial. The level of your preparation will discourage opposing counsel from interrupting the flow of your evidence. This will allow you to present your evidence in a logical and orderly manner and enable you to get the maximum impact from your evidence. Most importantly, proper preparation will ensure that all admissible evidence is actually admitted. Attorneys who follow this practice are not often surprised or embarrassed at trial.

The effect of Rule 103 is that, barring plain

error which affects a substantial right, objections to evidence are waived unless timely made. The rule further requires that the specific grounds for the objection be stated for the record. General objections and inappropriate objections do not preserve an issue for appeal. While it is recognized that it is often difficult to immediately identify a specific objection, counsel who are able to do so will be rewarded at trial and on appeal. At trial, a specific objection gives the trial judge an opportunity to properly evaluate the objection. Under our rules, evidence is often admissible in some situations and not others, or for some purposes, but not others. An objection which does not focus on the specific concerns of counsel leaves the trial judge guessing about the possible grounds underlying the objection. Because a specific objection allows the trial judge to focus on the specific concerns of counsel, counsel is also more likely to be sustained. Moreover, a timely specific objection, which correctly identifies the grounds for excluding the evidence, will preserve the issue for appeal.

Attorneys who object to the introduction of evidence at trial should refer to the rule by its number or common name and, unless it is obvious, state how the rule is to be applied. If the objection is to foundation, the specific foundational requirements which have not been met should be stated. Every attorney should be familiar with common trial objections such as: lack of foundation, competency or qualification of a witness, personal knowledge, relevancy, best evidence and objections to the form of the question (i.e., where the question: assumes facts not in evidence, misstates the evidence, is argumentative, is leading, calls for a narrative, is compound, calls for speculation, or is ambiguous). Every attorney should know when each objection applies.

Lawyers who do not know how to apply the Rules sometimes put their clients at a tremendous disadvantage. When opposing counsel realizes that counsel does not know how to properly present evidence, every possible objection is made in the hope that counsel will turn to another subject rather than continue in his or her futile efforts. This is unfortunate because, even when an objection is sustained, knowledgeable counsel can often cure an objection by laying additional foundation, or by calling an additional witness, or by changing the form of the question, or by pointing out an appropriate exception which would allow the evidence, or by offering the evidence for a limited purpose. In addition, counsel who do not know how to make an appropriate objection often saddle their client's case with inadmissible evidence which the jury may use in deciding the matter against the client.

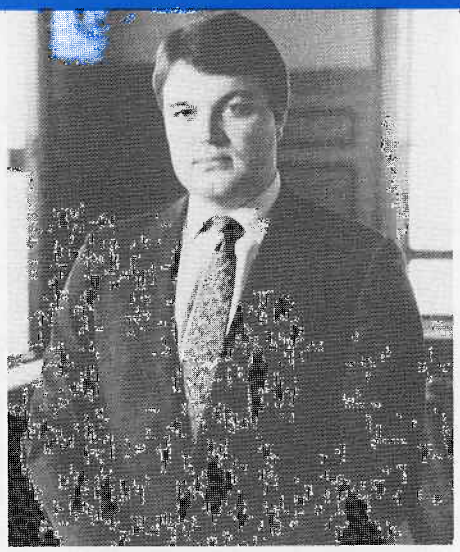
The orderly flow of a trial is often facilitated when counsel does not object to every possible evidentiary problem. Most attorneys take the approach that they will not object if the objection can be easily cured or if the evidence is not damaging. However, when it is necessary to prevent inadmissible evidence from being placed into evidence, it is important that action be taken at an early point. After the question is answered is certainly too late. In order to prevent objectionable evidence from being placed before the judge or jury, experienced counsel will generally require opposing counsel to proceed by question and answer and by non-leading questions when the testimony concerns a matter in dispute or an issue that is important to the determination of the case.

Since the Rules do not provide an effective remedy to a leading question, it is important for counsel to require opposing counsel to proceed by non-leading questions before the witness addresses an important issue. If the leading question is asked and objected to, you are winning the battle but losing the war. By its nature, a leading question suggests the answer, i.e., the very asking of the question puts the witness on notice of the desired response. Almost inevitably, after the question is rephrased, the answer will be expressed in language similar to the prior leading question.

Perhaps the most used and least understood Rule is the hearsay rule. The hearsay rule contains so many definitions, exceptions and exclusions that it is almost swallowed by its exceptions. Nevertheless, whenever a witness repeats a statement made outside the presence of the Court, hearsay is an issue. When a hearsay objection is made, and the statement on its face appears to be hearsay, the proponent should be ready to qualify or limit the scope of consideration, or give an appropriate specific exception to the rule. Proponents of hearsay need to remember that even if the hearsay hurdle has been cleared, the statement itself must meet all other requirements for admissibility, i.e., relevancy, personal knowledge, etc.

Statements of a non-witness, assertive in form, which are not offered for the truth of the assertion must have independent legal significance. In other words, the very fact that the words were spoken, whether they are true or not, must be relevant. Opposing counsel can often prevent the introduction of such evidence on the grounds that, if the evidence is not intended to prove the truth of the matter stated, the evidence is not relevant. Even if the statement is relevant, further inquiry should be made as to the relative probative value of the evidence. This is particularly true when the statement goes to a key issue or is prejudicial to your client. If the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, it may be excluded under Rule 403.

The truth is: clients expect counsel to be skilled in dealing with evidentiary issues. This is an area of the law in which we all should be proficient and, with a little effort, proficiency is possible. If you properly apply the Rules at trial and prepare your cases with them in mind, your efforts will bless your clients with success.



Officer's Message "The Whole Truth"

By Larry R. Laycock

In a recent Gallup Report, attorneys ranked below funeral directors in the public's esteem. *The Gallup Report* (No. 238; August 1985). Much of this disapproval of attorneys is unjustified. The prevailing public opinion results from a misunderstanding and a lack of knowledge of "truth" about the role of attorneys.

Often, the public knows little "truth" about the nature of attorneys and the legal profession because of complex legal processes, intimidating judicial robes, formal courtrooms and incomprehensible legal jargon. An effective attorney recognizes and acts upon his duty to demonstrate the highest ethical and professional standards. As society witnesses this demonstration and comes to a better understanding of the "truth," it should be less inclined to hold a negative opinion.

In Carl Sandburg's 1936 novel, *The People, Yes,* a trial witness expresses his reluctance to swear an oath that the testimony he is to give will be "the whole truth and nothing but the truth" in the following terms:

> "Do you solemnly swear before the ever-living God that the testimony you are about to give in this cause shall be the truth, the whole truth, and nothing but the truth?"
>
> "No, I don't. I can tell you what I saw and what I heard and I'll swear to that by the everlasting God, but the more I study about it, the more sure I am that nobody but the ever-living God knows the whole truth and if you summoned Christ as a witness in this case, what He would tell you would burn your insides with the pity and the mystery of it."

Under normal circumstances the layman confronts the legal system, for the first time, unwillingly and with fear because of a lack of understanding of the process. At the same time, the layman knows that it is through this legal process that his or her rights can be protected and preserved. Unfamiliarity with and lack of confidence in attorneys and their motives often leaves the public with mistaken perceptions of the attorney's calling.

In his January 1989 message, former State Bar President Kent Kasting stated that it is the duty of the members of the Bar to inform the public that "lawyers and judges are honest, hardworking, caring individuals committed to the high ethical standards of their profession."

During my short legal career, I have had the good fortune to work with people who reflect the highest standards of ethics, professionalism and Bar service. Accordingly, I am saddened to see misinformed public attitude attempt to diminish the contributions of attorneys to individuals and communities. In the words of Lewis Land, it is the attorney who:

> displaced brute force with mercy, justice and equity. [Who] taught mankind to respect the rights of others to their property, to their personal liberty, to freedom of conscience, to free speech and free assembly. [Who is] the spokesman of the righteous causes. [Who] plead[s] for the poor, the prosecuted, the widows and orphans. [Who] maintain[s] honor in the marketplace. [Who is] the champion of unpopular cases. [Who is] the foe of tyranny, oppression and bureaucracy.

I do not pretend to know the whole truth and nothing but the truth about the legal profession, but I do know that there are ways to communicate to the public what I believe to be the true nature of our profession. For example, each year Utah celebrates its annual "Law Week." This celebration gives attorneys an opportunity to inform the public of the service and contributions the profession provides.

More specifically, the Young Lawyers Section of the Utah State Bar will host its sixth annual Law Day activity, which will provide the general public an opportunity to access lawyers for advice and counsel. During Law Week, lawyers will be present at shopping malls throughout the state, working in booths, suggesting alternatives for providing legal services and providing brochures and handouts with general information about the law and legal services in Utah.

In addition, the Young Lawyers Section, through the Law Related Education, Law Day and Special Activities Committees, will assist in the state's annual Mock Trial Competition, Judge for a Day Program and the Law Day Fair, and will present the Liberty Bell Award.

I encourage all young lawyers to help eliminate negative public opinion of attorneys through active participation in Law Week and Law Day activities and through continued activity in public service through the Bar. Our example of professionalism and our commitment to public service can and will educate those around us in the "truth" of our noble profession.

Reprinted below is a corrected version of the salary survey chart which originally appeared in the *Barrister* section of the February 1990 issue of the *Bar Journal*.

FORMAT

First Line: **1989 Salary**
Second Line: **1989 Bonus**
Second Line: **[Overhead Expenses for Self-Employed] (Already Deducted from Income)**
Third Line: **—Yearly Hours Billed—**

TYPE OF PRACTICE	YEARS IN PRACTICE						
	Under 3	**3 to 5**	**6 to 8**	**9 to 11**	**12 to 15**	**16 to 20**	**Over 20**
SELF-EMPLOYED	$15,500 [$7,500] —1,500—	$48,500 [$33,500] —1,790—	$51,800 [$39,200] —1,640—	$55,600 [$41,300] —1,670—	$60,800 [$46,900] —1,660—	$61,500 [$39,900] —1,670—	$73,100 [$49,000] —1,320—
SMALL FIRM Under 15	$25,900 $1,100 —1,560—	$38,400 $5,700 —1,770—	$54,800 $10,700 —1,680—	$67,600 $17,400 —1,650—	$91,000 $5,900 —1,630—	$105,400 $18,200 —1,640—	$65,700 $23,600 —1,430—
MEDIUM FIRM 15 to 30	$31,500 $1,300 —1,700—	$40,800 $2,400 —1,600—	$66,200 $16,400 —1,900—	$74,200 $20,700 —1,830—	$90,800 $18,800 —1,850—	$109,700 $22,700 —1,660—	$104,300 $6,700 —1,660—
LARGE FIRM Over 30	$42,700 $2,300 —1,890—	$48,100 $3,800 —1,940—	$65,200 $7,000 —1,830—	$91,600 $25,600 —1,850—	$104,400 $13,100 —1,870—	$111,200 $22,900 —1,830—	$106,900 $11,300 —1,650—
CORPORATE COUNSEL	$26,500 $100	$43,200 $5,800	$52,700 $6,500	$62,500 $15,400	$77,900 $5,900	$94,000 $7,900	$86,800 $15,900
GOVERNMENT	$22,500	$30,400	$38,300	$43,200	$52,400	$57,000	$58,200

Bar Membership Directory
CHANGE FORM

Please notify the Bar using this form to change your address, telephone and facsimile number.

❑ Mr. ❑ Mrs. ❑ Miss ❑ Ms. ❑ Hon.

Name: _____

Bar Number: _____

Firm or Company Name (if any): _____

_____

Business Address: _____

City: _____ State: _____ ZIP: _____

Telephone: ( ) _____ Fax: ( ) _____

Check all applicable boxes

❑ This is a new address, effective: _____(date)

❑ This is a new telephone number, effective: _____(date)

❑ This is a new FAX number, effective: _____(date)

Return this form to the Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. Thank you.

Notice of Election of Trustees

Notice is hereby given in accordance with the bylaws of the Utah Bar Foundation that an election of three trustees to the Board of Trustees of the Foundation will be held at the annual meeting of the Foundation to be held in conjunction with the 1990 Annual Meeting of the Utah State Bar.

The three trustee positions which are up for election are currently held by Richard C. Cahoon, Hon. Norman H. Jackson and H. Michael Keller. The term of the office is three years.

Nomination may be made by the general membership of the Foundation by submission of a written nominating petition identifying the nominee, who must be an attorney duly licensed to practice in Utah, and signed by not less than 25 attorneys who are also duly licensed to practice law in Utah. Petitions should be mailed to the Utah Bar Foundation, 645 S. 200 E., Salt Lake City, UT 84111, so as to be received on or before April 15, 1990. Copies of the form of nominating petition may be obtained by contacting Kay Krivanec at the above address.

The election will be conducted by secret ballot which will be mailed to all members of the Foundation on or before May 28, 1990.

Law Day Fairs, 1990
Sponsored by the Young Lawyers Section of the Utah State Bar

The Young Lawyers Section of the Utah State Bar is sponsoring the Law Day Fairs for 1990. The Law Day Fairs are designed to offer advice and general information to the public about personal legal concerns. Young lawyers will be offering free information at booths which are set up in shopping malls throughout the state—from as far as St. George to Logan. If you would like to volunteer to spend one to two hours at a booth, please contact the person identified below for the location, time and date you prefer. You will also receive information about the sort of questions you might face and the degree of counseling you should give. Your help is needed in making the Law Day Fairs successful.

Date of Fair	Location	Contact
April 27, 1990 Friday	Crossroads Mall Salt Lake City	Jim Hyde 532-1234
April 28, 1990 Saturday	Cottonwood Mall Salt Lake City	Kevin Anderson 531-8400
April 28, 1990 Saturday	University Mall Provo	Wayne Riches 374-6766
April 28, 1990 Saturday	Ogden City Mall Ogden	Ted Godfrey 394-5526
April 28, 1990 Saturday	Cache Valley Mall Logan	Greg Skabelund 752-9437
April 28, 1990 Saturday	Phoenix Plaza St. George	Mike Shaw 628-1627

Notice of Acceptance of Grant Applications

The Utah Bar Foundation is now accepting applications for grants. Grants are made for the following purposes:

1. To promote legal education and increase knowledge and awareness of the law in the community.
2. To assist in providing legal services to the disadvantaged.
3. To improve the administration of justice.
4. To serve other worthwhile law-related public purposes.

For grant application forms or additional information, contact Kay Krivanec at 531-9077. All grant applications must be received by the Foundation before 5:00 p.m., May 31, 1990, at the Foundations's office at 645 S. 200 E., Salt Lake City, UT 84111.

Participants of the Big Brothers/Big Sisters Program to Tour Juvenile Courthouse and Detention Center

Young lawyers and little sisters and little brothers who participate in the Big Brothers/Big Sisters of Greater Salt Lake program are encouraged to attend a tour and seminar at the Conference Room of the Juvenile Courthouse, located at 3522 S. 700 W., Salt Lake City, on Wednesday, April 18, at 7:00 p.m. The tour and seminar is sponsored by the Needs of the Children Committee of the Young Lawyers Section of the Utah State Bar for the benefit of the Big Brothers/Big Sisters program.

Mr. Dan Maldonado, Project Manager of Special Probation, will conduct a tour of the courthouse and provide an introductory lecture about Utah's juvenile system. Mr. Garn Woodall, Program Manager of the Detention Center, will conduct a tour of the Detention Center and also speak to the group. The tours and lectures will begin at 7:00 p.m. and continue until approximately 9:00 p.m.

There was a sign-up sheet for this event at the Bowl-A-Thon held on February 24, 1990. Only 20 pairs of big and little sisters and brothers will be permitted to tour the facility, according to Maldonado and Woodall. If you are interested to see if there are any tour spaces available, please contact Sandra Sjogren, Assistant Attorney General, at 538-1021 or Masuda Medcalf, Richards, Brandt, Miller & Nelson, at 531-1777.

Masuda Medcalf, a member of the Needs of the Children Committee, is also a big sister to a little sister. She said, "I think this tour will be really interesting to my little sister. She doesn't know much about the judicial system, and this event should be a good introduction."

Refreshments will be served at the conclusion of the tour.

DEADLINE EXTENDED TO APRIL 15

1990 Membership Directory Deadline, April 15

Address Changes

The deadline for address changes for the 1990 Membership Directory is April 15, 1990. Check your *Bar Journal* address label to confirm that your current address is correct. If it is not, or if you will be moving between now and April, please fill out a copy of the form below and send it to the Bar office before the April 15, 1990, deadline.

FAX Numbers

FAX numbers can be included in the individual listings in the 1990 Membership Directory. If you want to list your FAX number, please fill out a copy of this form and send it to the Bar office prior to the April 15, 1990 deadline.

1990 Membership Directory Information

Name	Bar Number
FAX Number	Phone Number
Firm or Company Name (if any)	
Business Address	
City, State, Zip	

Check **all** applicable boxes

- ❑ This is a new address, effective on _____ (date)
- ❑ This is a new telephone number, effective on _____ (date)
- ❑ Add FAX number to Membership Directory listing
- ❑ Apply this change or addition to all USB members in the firm or company named above (list attached, including names and bar numbers)

Return this form to Utah State Bar, 645 So. 200 E. Salt Lake City, Utah 84111 or FAX to (801) 531-0660, by **April 15, 1990.**

Bar-Related Title Insurance and the Young Utah Lawyer

By Charles Timothy Critchlow

Bar-related title insurance is available to help all members of the Bar. This article focuses on how bar-related title insurance can help young lawyers expand and enhance their areas of practice while generating additional revenues associated with closing real estate transactions.

WHY BAR-RELATED TITLE INSURANCE?

The purchase or sale of real estate is one of the largest transactions a consumer makes. In addition to the quality of title received, such transactions affect many aspects of an individual's legal rights, including estate planning, tax matters and income and investment management. In many areas of the country the general public recognizes the need to consult a lawyer when purchasing or selling real estate, thereby protecting legal rights regarding the quality of title and other related matters. However, in Utah, commercial title companies and other lay services dominate the real estate transfer process, and the need and importance of legal counseling to the public concerning real estate transactions are generally not recognized, either by the real estate industry or the consumer. One of the major goals of the bar-related title movement is to maintain the lawyer's role in real estate transactions. To a large extent, this is accomplished by giving lawyers, young and old alike, the ability to provide title insurance services as a part of a complete package of legal services available to the public.

Title insurance is a crucial aspect of any real estate transaction. In contrast to the attorney's earlier role of reviewing abstracts and issuing title opinions, title insurance has now become universally accepted as the standard method of assuring title to real property, largely due to the demands for uniform coverage and protection by large institutional lenders and governmental agencies whose loans are secured by trust deeds and mortgages. If proper title insurance coverage is obtained, the security of these loans is greatly enhanced.

BACKGROUND OF BAR-RELATED TITLE INSURANCE

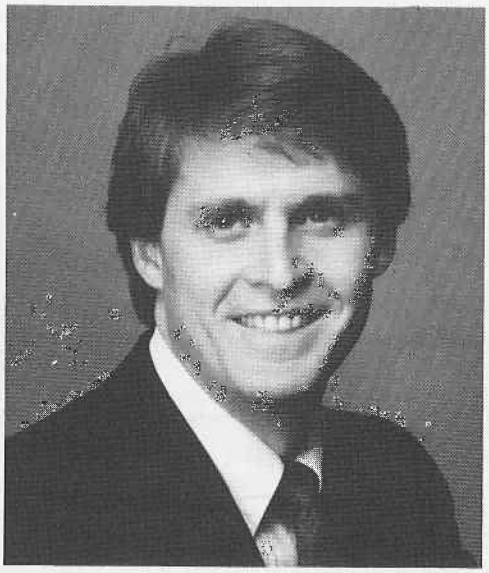
Since the founding of Lawyers' Title Guaranty Fund in Florida in 1947, bar-related title insurance companies have come into operation in several states and are steadily growing in importance and usage. The term "Bar-Related" is a registered service mark of the National Association of Bar-Related Title Insurers and signifies that the title insurance company is owned and controlled by attorneys and operates primarily through lawyers who issue title insurance policies. There are presently nine such companies operating in approximately 30 states and Puerto Rico. Attorneys' Title Guaranty Fund, Inc. (The Fund) is the bar-related title insurance company which services the states of Colorado, Minnesota and Utah.

The Fund was organized in 1961 under Colorado statutes as a domestic title insurance company. Soon after the organization of the Colorado company, interested members of the Utah State Bar Association began the initial stages of organizing an affiliated company to benefit Utah lawyers. After a great cooperative effort on the part of many Utah lawyers, the Utah operation of Attorneys' Title Guaranty Fund, Inc. opened its doors for business in 1966. Throughout its history, The Fund has continued to grow and increase in strength. In 1989, Fund members issued 30,569 title policies and generated $3,199,922 in premium remittance.

The Fund is similar to commercial title companies in that The Fund is a licensed title insurance company in the states in which it operates and it reinsures large risks with other title insurers. The Fund's policy language and coverages contain the standard American Land Title Association (ALTA) coverages which conform to requirements of lenders and buyers of real estate and are freely accepted on the national secondary market.

The principal difference from commercial title companies is that The Fund's title commitments and policies are issued by or through member lawyers or law firms. This provides attorneys the opportunity to write title insurance for their clients at the lowest possible rates. Title searches are performed either by the lawyer, the lawyer's staff or by independent search companies. After search information is obtained, it is examined by the lawyer member prior to issuance of a title commitment or policy. If there are any underwriting questions or title defects which must be cleared prior to issuance, the issuing lawyer contacts The Fund's staff for clearance.

The managing executives of The Fund and other bar-related companies are lawyers with title experience who assist Fund members with underwriting and other title matters. Bar-related title companies maintain a high standard of underwriting excellence and expertise in conducting their operations. This is demonstrated by the low claims rate of bar-related companies. One additional factor behind the low claims rate is that the issuing lawyer is typically involved in the transaction representing the buyer, seller or lender and has a thorough understanding of the facts surrounding the transaction. Thus, many



CHARLES TIMOTHY CRITCHLOW is Vice President and Utah Managing Attorney for Attorneys' Title Guaranty Fund, Inc. He graduated with a B.A. (magna cum laude) from Weber State College in 1984. He received his J.D. from J. Reuben Clark Law School, Brigham Young University, in 1987. The Barrister is pleased to have Mr. Critchlow, a member of the Young Lawyers Section, contribute this article. Any questions regarding The Fund can be addressed to Mr. Critchlow at the Utah Law and Justice Center. Phone: 328-8229.

possible title problems are eliminated because the member lawyer is aware of them and is able to resolve them before they become problems.

HOW THE FUND BENEFITS YOUNG LAWYERS AND THEIR CLIENTS

One significant benefit which fund membership provides the young Utah attorney is the additional revenue generated by the title insurance premium and other fees associated with closing real estate transactions. The Utah title insurance industry is governed by the Insurance Code and rules and regulations as promulgated by the Utah State Insurance Department. Pursuant to Title 31A-19-209 Utah Code Annotated, every title insurance company must adopt and file with the department premium rates, fees and charges for title insurance policies and other services. The total premium charged by The Fund to the public includes the collective costs of a search, examination, preparation and issuance charges as reflected by the filed rates. Attorneys who become appointed and authorized agents of The Fund receive the title insurance premium for services rendered. The Fund collects an underwriting premium from the issuing lawyer for each policy based upon the dollar amount of coverage of the policy. This is the amount remitted to The Fund. In no cases are unearned fees or kickbacks paid to lawyers.

An attorney-agent of a bar-related title company is not required to take the state title insurance exam and is not required to issue a certain number of policies. The attorney remains free to negotiate for the removal of required exceptions to a policy or to counsel the client to obtain title insurance from another source.

ARE THERE POTENTIAL CONFLICTS OF INTEREST?

Since the evaluation of the status of real estate titles involves many constantly changing laws, lawyers are well-suited to be involved in title insurance issuance. However, the possibility of potential or perceived conflicts of interest prevents many attorneys from further investigation into the benefits of bar-related title insurance. In providing title insurance services to a client, the attorney who is a member of a bar-related title company must remember that his primary duty is to the client and that the attorney has an ethical obligation to serve the client and to resolve any possible conflicts in the client's favor. Keeping this in mind, attorneys who issue title insurance should have no difficulty in serving their clients.

Historically, every title opinion issued by a lawyer has involved a potential conflict of interest. Motivated by the possibility of future liability, the lawyer's self-interest has always been in finding every possible exception, while the client's interest has been in receiving a good title and a clear opinion. In the modern day arena of title insurance, the issue remains the same; however, as with attorney's opinions before, no ethical issue is created by this potential conflict. The ethical problem arises only if the lawyer issuing the title policy fails to explain the exceptions to the policy or his relationship with the company.

The lawyer who examines abstracts and issues title opinions has a fiduciary duty to explain the exceptions in his title opinion to the client. The lawyer who issues a title insurance policy has the same duty. The difference between a lawyer's title opinion and a title insurance policy is that if there is a hidden defect in the title, the client is indemnified by title insurance, even though there is no negligence on the part of the lawyer. In case of subsequent loss, the client has more to rely on than just the attorney's professional expertise or personal assets and insurance. With a title insurance policy issued by a member of a bar-related title insurance company, the client can rest assured knowing that the title company's financial strength and reputation stand ready to protect against potential loss or error.

THE LAWYERS'S ORGANIZATION FOR TITLE INSURANCE

The Fund is known as the lawyer's organization for title insurance because it is owned and operated by lawyers. A client who receives a lawyer-issued title insurance policy at the closing of a real estate transaction benefits from an attorney's professionalism and understanding of related legal issues surrounding real property ownership. On the other hand, when a client who is a buyer or seller of real property deals directly with a commercial title insurance company, he does not receive the protection of his personal lawyer and the client may not understand that there is no duty on the part of a provider of title insurance to explain the exceptions contained in the policy. Though lawyers may often be involved in these types of transactions, they are generally lawyers representing the lending institutions, title companies and other lay services. The buyer or seller directly or indirectly pay the fees for these lawyers through fees charged in the transaction, but may end up with no independent counseling from a lawyer with a fiduciary duty owing to them. As a result, the buyer or seller is involved in a large financial transaction affecting many legal rights without the benefit of legal counseling or advice to protect their interests.

As one reviews the current status of real estate conveyancing in Utah, it appears that Utah lawyers have stood by and watched while important areas of real estate law practice, traditionally the lawyer's domain, have been all but lost to lay business individuals and organizations which are very sensitive to the demands of the marketplace. If the young Utah lawyer desires to develop or retain a law practice which deals in real estate conveyancing, he must be able to compete with or work within the entities which currently provide such services. Bar-related title insurance organizations enable lawyers to maintain their place in the practice of real estate law. The bar-related title movement will continue to grow in Utah as young lawyers gain an understanding of the importance of lawyer-related legal services as they relate to buying and selling real property. In turn, this understanding will benefit the young lawyer's practice by generating additional revenues and by expanding and enhancing services to clients who purchase or sell real estate.

"Where Do I Stand?" Booklet Receives Great Response

The booklet "Where Do I Stand?", a child's legal guide to separation and divorce, is the joint venture of Utah Children and the Utah State Bar's Needs of Children Committee with the Utah Bar Foundation underwriting the cost of printing. It has received great response since its release in January. The booklet is 32 pages and is written for children in a question/answer format. The text is interspersed with cartoons depicting puzzled, frustrated, angry and sometimes happy mothers, fathers and children.

A similar publication produced in Ontario is the model for the booklet. The text has been developed by family law attorneys and parents. The booklet has been distributed through school districts, family crisis centers, family support centers, private attorneys and directly to the public.

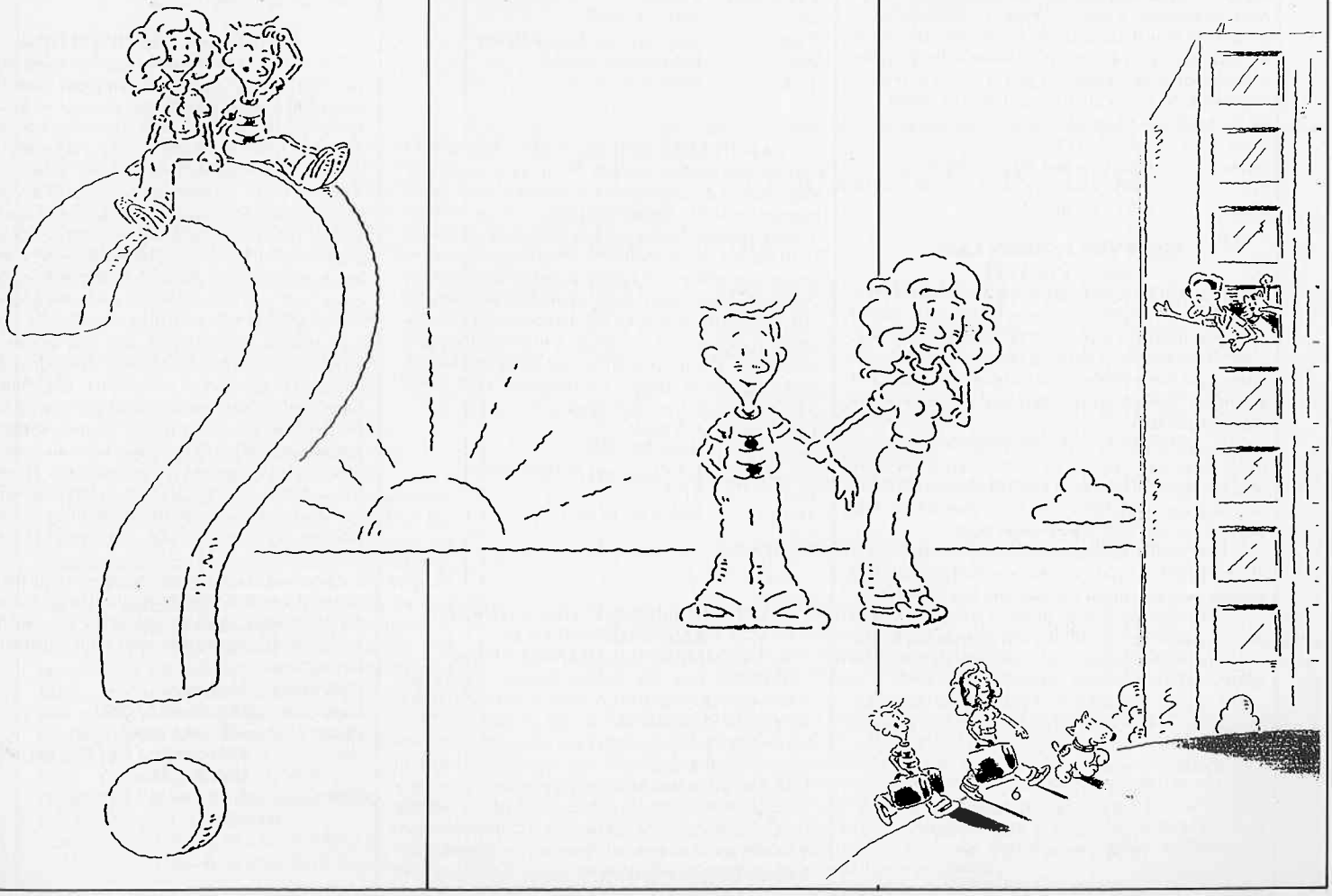
Utah Children has received numerous letters expressing appreciation for this booklet. An attorney wrote: "It sounds like a wonderful project that will be of great benefit to children of our clients."

A schoolteacher from Price wrote: "Would you send me two copies of the booklet. One to give to a friend's family and the other to be made available to the kids at school. I am a second grade teacher and notice many families are affected by divorce."

A grandmother wrote: "I am the loving grandmother of five beautiful grandchildren who are experiencing the heartbreak of the divorce of their parents. I am sure that the booklet will help them and me."

And a man from Salina wrote: "I'm the father of 11 children who are very much in need of some factual information about how divorce will affect them. Thank you very much for taking the time to provide such a valuable service."

The booklet is designed to answer questions children are afraid to ask and questions which are not easily answered. The booklet is available from Utah Children, the State Bar or from the Bar Foundation.



CLE CALENDAR

ESTATE PLANNING OPPORTUNITIES FOR THE 1990s

A live via satellite seminar. Over the last 13 years we have had tax acts of every form, all of which have impacted dramatically on the rules and options regarding the availability of estate planning. This program will focus on the myriad of estate, gift and generation skipping transfer tax changes enacted in recent years. The speakers will explore the remaining tax planning options and techniques available as we start the 1990s.

CLE Credit: 6.5 hours
Date: April 3, 1990
Place: Utah Law and Justice Center
Fee: $175
Time: 8:00 a.m. to 3:00 p.m.

C CORPORATE TAXATION

A live via satellite seminar. This program will provide a thorough discussion and analysis of the considerations involved in operating a business as a corporation. The initial part of the program is devoted to an analysis of the issues concerning choice of entity, i.e., whether to operate as a partnership or a corporation and if the decision is made to operate as a corporation, whether to elect Subchapter S status. Further, consideration is given to the capitalization of a new corporation as well as the various means of transferring assets to the corporation without the recognition of gain or loss. The session will conclude with a question and answer period.

CLE Credit: 6.5 hours
Date: April 4, 1990
Place: Utah Law and Justice Center
Fee: $175
Time: 8:00 a.m. to 3:00 p.m.

SELECTED PENSION LAW ISSUES IN DEPTH

This annual spring telecast on pension law and practice offers an in-depth study of selected key topics and an update on Internal Revenue Service compliance procedures. The program is intended for experienced practitioners and other professionals who design, draft and administer pension plans. There will be four primary areas for discussion:

1. It is anticipated that the new proposed regulations under §401(a)(4) antidiscrimination rules will have been published in time for a detailed discussion during the program, particularly on how they tie in with §401(a)(26) and §410(b) coverage rules.
2. One of the most pervasive types of retirement plans, the §401(k) plan, will be examined in depth with emphasis on its critical features and implementation.
3. Attention also will be given to present IRS compliance procedures and timing and amendment issues.
4. The major changes made in the 1989 legislation for ESOPs will be discussed in depth.

The faculty is composed of practitioners nationally recognized in the pension law field and key IRS personnel.

CLE Credit: 4 hours
Date: April 5, 1990
Place: Utah Law and Justice Center
Fee: $135 (plus $12 MCLE Fee)
Time: 10:00 a.m. to 2:00 p.m.

FINANCIAL INSTITUTIONS LAW UPDATE

This half-day seminar is cosponsored by the Utah State Bar and the Banking and Finance Section of the Utah State Bar. Speakers will include Phillip Jeffrey North, Deputy Regional Counsel, Resolution Trust Corporation; Ralph R. Mabey, former U.S. Bankruptcy Judge for the District of Utah; and Scott H. Clark of the firm of Ray, Quinney & Nebeker. The tentative program will include four one-hour sessions, including current regulation of financial institutions, bankruptcy issues relating to financial institutions and an overview of current legal developments both legislative and judicial.

CLE Credit: 4 hours
Date: April 9, 1990
Place: Stein Erikson Lodge at Deer Valley
Fee: $55
Time: 8:00 a.m. to 12:00 p.m.

BANKRUPTCY SECTION LUNCHEON

Barbara Richmond, the standing Chapter 13 Trustee for Utah, will be presenting on "Chapter 13 Administration from a Debtor's Point of View."

CLE Credit: 2 hours
Date: April 19, 1990
Place: Utah Law and Justice Center
Fee: $30 (includes lunch)
Time: 12:00 to 2:00 p.m.

CARGO LOSS AND DAMAGE CLAIMS

A live via satellite seminar. What law governs your cargo loss or damage case? The advent of multimodal transportation has blurred the edges of what was previously discrete bodies of law governing maritime, overland and air transportation. Practitioners must now be ready to advise their clients in each of these areas of American law as well as the applicable international law. This course will teach you the latest legal developments in each area of law and how to determine which law applies. If you represent any one who ships, carries, packs, handles or arranges for transportation of goods, you will benefit from this program.

CLE Credit: 6.5 hours
Date: April 24, 1990
Place: Utah Law and Justice Center
Fee: $175
Time: 8:00 a.m. to 3:00 p.m.

ENVIRONMENTAL AND NATURAL RESOURCE ISSUES IN COMMERCIAL TRANSACTIONS

The Utah State Bar and the Energy, Natural Resources and Environmental Section of the Utah State Bar are pleased to announce a one-day seminar examining the important environmental and natural resource law issues facing business and real estate practitioners in Utah. Environmental laws and regulations increasingly influence the negotiation of real estate sales, corporate mergers and acquisitions, asset sales, corporate reorganizations and dissolutions, financing development and leasing. Practitioners must be sensitive to the serious risks and potential liabilities posed by these laws and also recognize the important natural resource law issues, involving water rights, severed mineral interests and public land rights, that uniquely affect commercial and real property transactions in Utah and other western states.

The seminar will be geared toward non-natural resource and environmental law practitioners. It will provide an overview of the important state and federal environmental laws, and the important transactional aspects of natural resource laws. The seminar will stress transactional problems and dilemmas posed by these laws, including identification and allocation of environmental risks and liabilities, transfer of water, mineral and public land rights and interests, creating and perfecting security interests in these property rights, and the procedures for transferring environmental and natural resource permits and approvals.

CLE Credit: 8 hours
Date: April 25, 1990
Place: Utah Law and Justice Center
Fee: $95
Time: 8:30 a.m. to 5:00 p.m.

DISCIPLINE AND DISCHARGE

The American Arbitration Association and the Labor and Employment Section of the Utah State Bar are pleased to announce a two-day seminar on Discipline and Discharge. The seminar will provide an overview of discipline issues in the office, shop and factory, a legal update and the current arbitral view on such critical issues as drugs, alcohol and harassment and provide skills training by allowing participants to dissect and analyze several discipline cases in small groups with the guidance of an experienced labor arbitrator. Instructors and participants will also analyze and evaluate the "just cause" and "due process" standards in discipline cases.

The seminar will be led by experienced labor and management practitioners who will examine fundamental concepts of equitable discipline, explore alternative approaches to common discipline problimes, and discuss how to use the grievance procedure for resolving discipline issues. Keynote speakers and instructors for Day One include labor attorney Arthur Sandack and National Semi-Conductor Human Resource Manager John J. Campbell. Day Two will be led by well-known labor arbritrators William E. Renfro of Boulder, Colo., and David A. Concepcion of Berkeley, Calif.

Labor and Management advocates in both the private and public sectors who are involved in the negotiation, policy setting, handling, advocacy or resolution of employee discipline issues will want to participate in this seminar.

CLE Credit: 16.5 hours
Date: May 3 and 4, 1990
Place: Salt Lake Hilton Hotel
Fee: $395 standard fee, $295 for Utah Bar Members
Time: 8:30 a.m. to 5:00 p.m.

CRIMINAL LAW ISSUES AND TRIAL PRACTICE

The Criminal Law Section of the Utah State Bar will be sponsoring a seminar May 4 and 5, 1990. On May 4, the program will involve three hours of criminal law issues. There will be presentations relating to search and seizure, confessions and sentencing. The focus will be to update criminal tactics and procedures. On May 5, there will be a six-hour trial practice program. Subjects will include: developing a theory of the case, new developments in evidence, using demonstrative evidence, preparation of and cross-examination for expert witnesses, opening and closing arguments, and creative ways to present your case to a jury.

The trial practice seminar is intended to be applicable to both civil and criminal litigation. Registrants may enroll in the criminal law or trial practice programs separately. Discounted registration fees will be available to public defenders, attorneys who have local public defender contracts and prosecutors including city attorneys, deputy county attorneys, assistant attorney generals and assistant United States attorneys. Discounted room rates at the Cliff Lodge are available for all registrants.

CLE Credit: 9 hours
Date: May 4 and 5, 1990
Place: Cliff Lodge at Snowbird
Fee: Standard full package: $155
Fri. $70, Sat. $120
Discount full package: $140
Fri. $60, Sat. $110
Friday evening meal $20
Time: May 4, 1:30 to 4:30 p.m.
May 5, 9:00 a.m. to 4:30 p.m.

MILITARY LAW SECTION LUNCHEON

This course consists of a discussion of the Federal Ethics program with specific guidance on the application of that program to members of the Bar. The program will discuss existing statutory and regulatory law with emphasis on recent changes in those laws. There will be a discussion of recent case law as it applies to the topic.

CLE Credit: 1 hour (Ethics)
Date: May 8, 1990
Place: Utah Law and Justice Center
Fee: None (cost of lunch)
Time: 12:00 to 1:00 p.m.

FAMILY LAW SEMINAR ON TRIAL AND EVIDENCE

This day and a half seminar presented by the Family Law Section will include a presentation of direct and cross examination of experts in areas of custody and visitation, estate and business valuation, and real property valuation. The format of the program will be direct and cross examination of the same experts by four attorneys in each of these areas to give participants an overview of the different approaches available. The examinations will be followed by a panel discussion of Judges, experts and attorneys. There will also be a one hour overview of current developments in case law affecting Family Law to conclude the seminar.

CLE Credit: 12 hours
Date: May 10 and 11, 1990
Place: Utah Law and Justice Center
Fee: To be announced
Time: 10th—8:00 a.m. to 5:00 p.m.,
11th—8:00 a.m. to 12:00 p.m.

CORPORATE COUNSEL SECTION SEMINAR

CLE Credit: 4 hours
Date: May 16, 1990
Place: Utah Law and Justice Center
Fee: To be announced
Time: 8:30 a.m. to 12:00 noon

ENERGY, NATURAL RESOURCES AND ENVIRONMENTAL LAW SECTION'S ANNUAL UPDATE LUNCHEON

CLE Credit: 1 hour
Date: May 16, 1990
Place: Utah Law and Justice Center
Fee: None (only cost of lunch)
Register by RSVP to Bar Reservations 531-9095
Time: 12:00 to 1:30 p.m.

RECENT DEVELOPMENTS IN REAL PROPERTY LAW

This half-day seminar will include presentations covering a review of recent case law and legislation relating to real property issues, a discussion of the liability of guarantors and zoning issues from the perspective of real estate developer and the minicipality.

CLE Credit: 4 hours
Date: May 18, 1990
Place: Utah Law and Justice Center
Fee: To be announced
Time: 9:00 a.m. to 12:30 p.m.

THE TRANSFER OF TECHNOLOGY FROM UNIVERSITIES TO THE PRIVATE SECTOR

This seminar will focus on the transfer of technology from universities to the private sector for commercialization of the transferred technology. Speakers will include representatives of the technology transfer offices of Brigham Young University, University of Utah and Utah State University. Panelists will include lawyers experienced in technology licensing and representatives of private sector companies who have licensed technology from universities. A lunch and luncheon speaker are included.

CLE Credit: To be announced
Date: June 1990
Place: Utah Law and Justice Center
Fee: To be announced
Time: 9:00 a.m. to 1:30 p.m.

CLE REGISTRATION FORM

DATE	TITLE	LOCATION	FEE
April 3	Estate Planning Opportunities for the 1990s	L & J Center	$175
April 4	C Corporate Taxation	L & J Center	$175
April 5	Selected Pension Law Issues in Depth	L & J Center	$147
April 9	Banking and Finance Seminar	Stein Erikson Lodge	TBA
April 19	Bankruptcy Section Luncheon	L & J Center	$30
April 24	Cargo Loss and Damage Claims	L & J Center	$175
April 25	Environmental and Natural Resources Issues in Commercial Transactions	L & J Center	TBA
May 3-4	Discipline and Discharge	S.L. Hilton (for Bar members)	$395 $295
May 4-5	Criminal Law Issues and Trial Practice	Cliff Lodge	$155 (see above)
May 10-11	Family Law Seminar	L & J Center	TBA
May 16	Corporate Counsel Seminar	L & J Center	TBA
May 16	Energy and Natural Resources Lunch	L & J Center	TBA
May 18	Recent Developments in Real Property Law	L & J Center	TBA

The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars in 1990. Watch for future mailings.

Registration and Cancellation Policies: Please register in advance. Those who register at the door are always welcome but cannot always be guaranteed complete materials on seminar day. If you cannot attend a seminar for which you have registered, please contact the Bar as far in advance as possible. For most seminars, refunds can be arranged if you cancel at least 24 hours in advance. No refunds can be made for live programs unless notification of cancellation is received at least 48 hours in advance.

CLASSIFIED ADS

For information regarding classified ads, contact Kelli Suitter or Paige Stevens at the Utah State Bar Offices, 531-9095.

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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 (801) 269-0200.

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OFFICE SHARE ASSOCIATE: Established firm overlooking Sugarhouse Park. Excellent freeway access. Attractive suite, large individual office with fine view. Call 486-3751.

POSITIONS AVAILABLE

The Attorney General's office has several openings, beginning July 1, 1990, in various divisions of the office for lawyers with zero to five years' experience in natural resources and environmental law, education law, criminal law, securities law, anti-trust law, consumer protection law, criminal appeals and child abuse prosecution. Other areas of expertise will be considered. Strong academic credentials and background required. Salary commensurate with experience and the attorney general's compensation plan. Send resumes to: Molly Bronicel, Utah Attorney General's Office, 236 State Capitol, Salt Lake City, UT 84114.

SALT LAKE CITY intellectual property firm seeks patent attorney associate(s) in electronic and/or mechanical arts. Send resume to Trask, Britt & Rossa, P.O. Box 2550, Salt Lake City, UT 84110.

ASSOCIATE POSITION AVAILABLE: Robert J. DeBry & Associates is looking for an attorney with four or more years' experience with an emphasis on litigation. Salary negotiable. Applicants should send a resume to Steven Sullivan at: Robert J. DeBry & Associates, 4252 S. 700 E., Salt Lake City, UT 84107.

POSITION SOUGHT

Member of Utah Bar with 10 years' experience and excellent legal writing and editing skills seeks affiliation with litigation firm.

Affiliation can be flexible and can be adapted to accommodate firm's needs. Would be willing to associate with respect to individual projects and would be willing to accept work on hourly or per diem basis.

Have strong background in civil litigation as well as oil, gas and mining law. Have experience with exceptionally large projects, involving organization and management of extensive documentation. Excellent typist with access to word processor; able to prepare pleadings in final form without secretarial assistance. Please reply to Utah State Bar, Box J, Salt Lake City, UT 84111.

Experienced Attorney/Corporate Executive resuming full-time practice. Experienced in medical malpractice, personal injury, corporate and business practice. Seeks full-time position with law firm in Provo-Orem or St. George areas. Will consider office sharing. Licensed to practice in Utah and Washington state. Contact Darwin Fisher, 4943 Ocean Avenue, Everett, WA 98203.

SERVICES AVAILABLE

LEGAL RESEARCH, WRITTEN ADVOCACY. Briefs, pleadings, memoranda, discovery. By attorney, top third of class with MBA and two years of general litigation experience, and prospective May 1990 law school graduate, law review editor, with clerking and judicial internship experience. Call (801) 467-3125.

BOOKS FOR SALE

CCH Federal Carriers Cases, 1936-1982: $50; CCH U.S. Tax Cases, V. 1969-1 through 1978-2 through 1987-1: $50; CCH Ultrafiche Tax Library, V.1 through V.5 and 35-1 through 89-1 (cases), V.1 through V.91 (reports), 1 through 88-2 (bulletins), 1 through 57 pt. 2 (to memo), and Canon Canorama Microfiche machine/printer model 370: $100.

The following books are current through December 1989/January 1990: Collier on Bankruptcy, 15th ed.: $400; Collier Bankruptcy Cases, 2d ed.: $400; Utah Code Ann.: $200.

The following books are current to the present date: RIA Federal Tax Coordinator 2d, vol. 1-28, and Estate and Taxation Coordinator, vol. 1-7: $400; UCC Reporting Service: $400; CCH Blue Sky Law Reporter, vol. 1-3, and Decisions, 1971-1988: $50; CCH Federal Securities Law Reporter, vol. 1-6, and Cases, 1974-75 through Current, and NASAA Reports: $400. Contact Arla at (801) 531-9865.

Up-to-date codes for sale, excellent condition: *United States Code Annotated*—$650; *United States Code*—$150. Call or write, BYU Law Library, 358D JRCB, Provo, UT 84602, (801) 378-7474.

The following services current through December 1989; please make offer: Rice Family Tax Planning; Rabkin and Johnson Current Legal Forms; Lawyers' Guide to Medical Proof, Attorneys' Dictionary of Medicine. Contact David Schwobe at (801) 521-0177.

OFFICE EQUIPMENT FOR SALE

For sale: Lexis Stand-Alone Printer, one month old, for $800. Maintenance contract covering repair, ink and paper is $330 a year. Interested persons call Margo Markowski, (801) 521-3200.

Canon NP-7550 copier, three years old, excellent condition, reconditioned in December 1989, 2,500 sheet capacity, 25-bin sorter, feeder, stapler, dual side, dual page, etc. $3,000 or best offer. Contact Arla at (801) 531-9865.

NOTICE: JUDICIAL VACANCY

Gordon R. Hall, Chief Justice of the Utah Supreme Court, has announced the opening of the application period for a judicial vacancy in the Second District Juvenile Court. This position results from a new judicial position established by the 1990 legislature. The Second District includes Weber, Davis and Morgan counties. **Applications must be received no later than 5:00 p.m., May 31, 1990,** at the Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, UT 84102.

Questions concerning the judicial appointment process, schedule of meetings or other inquiries can be directed to Juan J. Benavidez, Personnel Manager, Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, UT 84102, (801) 533-6371.

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