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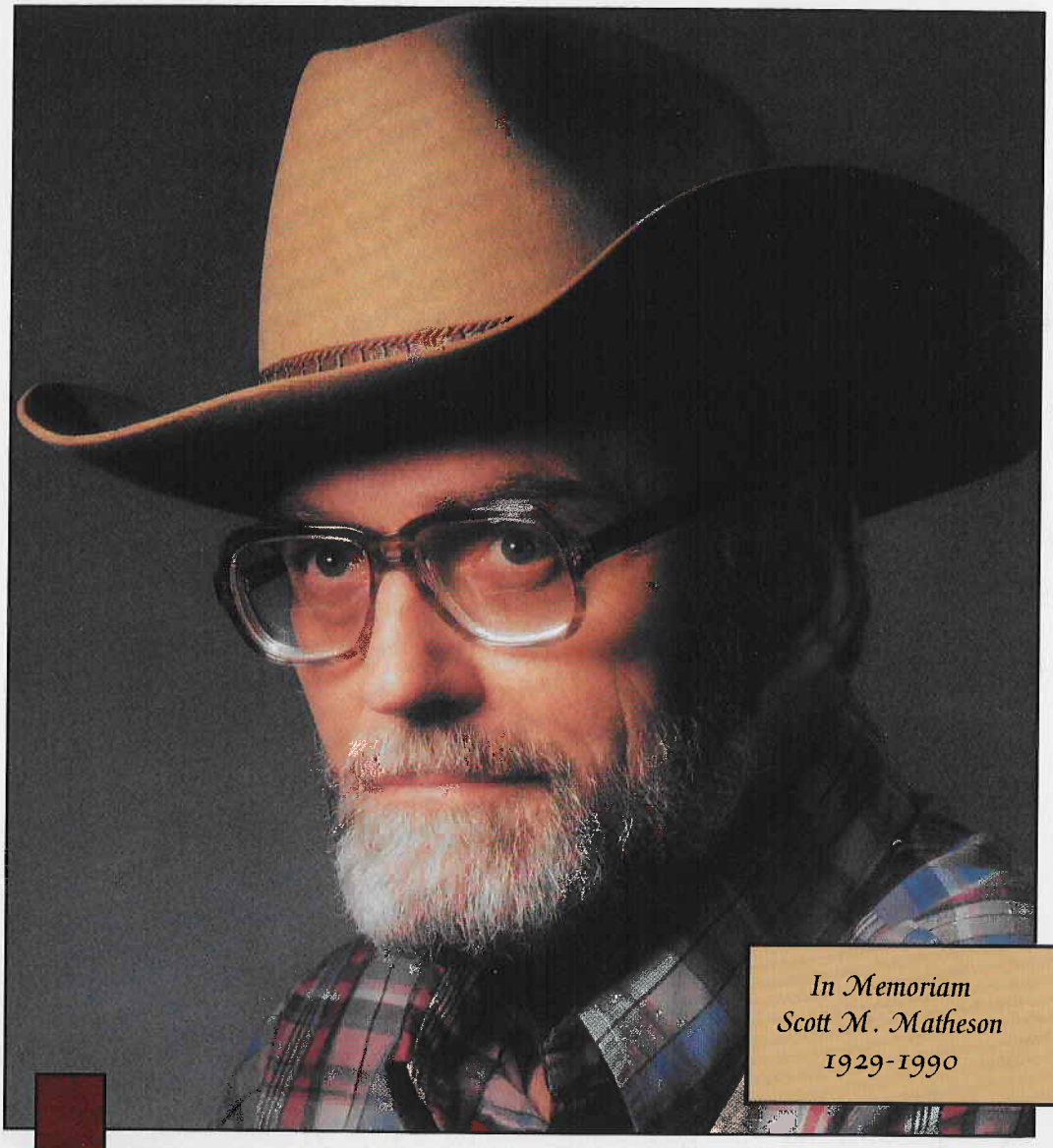

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COVER: In memoriam—Former Governor and Utah State Bar President, Scott M. Matheson.

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PRESIDENT'S MESSAGE

By Hon. Pamela T. Greenwood

During the meetings held about the dues increase petitions, questions were asked about Bar expenditures for travel and related expenses incurred by Bar commissioners, officers and staff. I thought I would use this issue of the *Bar Journal* to try to answer those questions. Policies and Procedures adopted by the Bar Commission most recently in April 1990, with a few subsequent changes, set the parameters of reimbursement for travel expenses. Within those parameters, the Commission recommends budget line items which include some or all of the travel authorized in the Policies and Procedures, and reviews requests for travel authorization during the course of the budget year.

The Policies and Procedures provide that travel expenses for all Bar personnel, when on official Bar business, may be reimbursed on the basis of coach class airfare or $.30 per mile, depending on the mode of transportation, as well as accommodation costs, meals and incidentals. The Bar President is authorized to attend the ABA annual and mid-year meetings, the Western States Bar Conference, annual meetings of neighboring western state bars, and our own mid-year and annual meetings. Expenses of the president's spouse are covered for some of those meetings, although generally accommodations, registration fees and most meals are provided by our neighboring state bars for their conventions, and at our meetings we usually receive complimentary accommodations for at least the Bar President from the host resort. The President-elect is reimbursed for travel to the ABA mid-year meeting, the Western States Bar Conference, the ABA Bar Leadership Institute, and our own mid-year meeting. Spouse expenses are authorized for the ABA mid-year and the Western States Bar Conference.

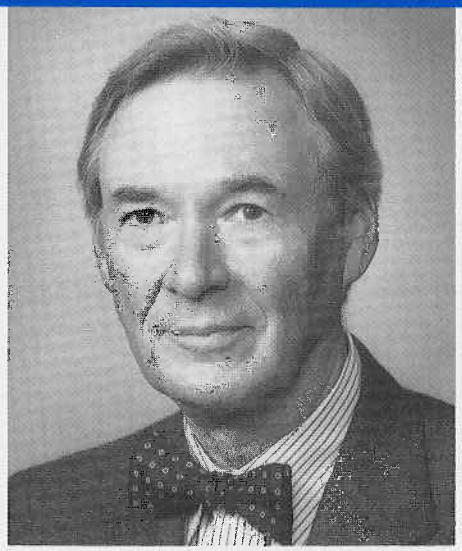
The Policies and Procedures generally provide that Bar Commissioners may be reimbursed for actual expenses incurred in connection with attending meetings, but only if they live far enough out of Salt Lake that overnight accommodations are required. When meetings are held out of Salt Lake, commissioners are allowed reasonable expense reimbursement for overnight accommodations. In the past, commission meetings include two or three held out of Salt Lake. We discontinued most of those last year to save money, but are trying to include at least a few this year, with us each bearing our own costs. We also instituted a practice last year of paying for our own lunches at commission meetings, to cut expenses. Bar Commissioners other than the President and/or President-elect do not receive Bar funds to attend any ABA meetings, the Western States Bar Conference, or Utah Bar mid-year and annual meetings.

The Policies and Procedures authorize the Executive Director to attend the ABA annual and mid-year meetings (the National Association of Bar Executives meetings), the Bar Leadership Institute, and the Western States Bar Conference. Travel expenses for the Bar Director's spouse are reimbursed for the Western States Bar Conference only. The Associate Director may attend the ABA mid-year and annual meetings and the Bar Leadership Institute. Bar Counsel is authorized to attend meetings of the National Organization of Bar Counsel twice a year at Bar expense and the ABA Annual Conference on Professionalism and Professional Responsibility. Administrators of the admissions department and the continuing legal education department are also expected to attend annual meetings of their respective professional organizations.

During fiscal year 1989 (July 1, 1989, through June 30, 1990), the budget and Bar Commission decisions during the course of the year resulted in substantially less travel than anticipated under the Policies and Procedures. We had fewer people attending the Western States Bar Conference and ABA mid-year meeting than authorized, and the Bar President travel was curtailed. There were also reductions in staff travel.

For 1990, the proposed budget also anticipates travel expenditures significantly less than as set forth in the Policies and Procedures. We believe those reductions are appropriate until we eliminate the short-term debt, as mandated by the Supreme Court's order. However, for the long run, I believe we should not lose sight of the benefits to the Bar from participation in national Bar activities and education. Instead of becoming parochial in our thinking, we all can learn from the experiences of others. Therefore, it is my view that a reasonable level of travel should continue to be authorized for legitimate Bar purposes.

COMMISSIONER'S REPORT



By Jackson B. Howard

As I write what is likely to be my last Commissioner's Report, I am struck by the significant events that the Commission has had to wrestle with during the past five years. In retrospect, we may have done some things differently, but all in all I can tell you that we have all been totally dedicated to the welfare of the Bar and have acted in good faith and with circumspection in the things we did. The problems that have developed to a great extent were unforeseen and will be solved.

I am, however, grievously distressed at the public image that we present. While lawyers have always been the brunt of jokes, I don't believe there has ever been a time when our reputation has been so tarnished.

The *Wall Street Journal* recently likened our Bar Association as being placed into receivership by the Supreme Court. This, of course, was in the area of journalistic license, but it does reflect an image, and to some extent, creates an unflattering impression of Bar leadership and lawyers in general.

There have been radio and television programs in the last month which have had as their theme problems in the legal profession. While participant lawyers conducted themselves with skill, their performance was primarily defensive and apologetic. The position of presenters was hostile.

In a Dan Jones poll conducted by interviews with lawyers and judges, our own concept of ourselves demonstrates an underlying malaise among lawyers and judges. In these studies, the primary difficulties in the profession were categorized as 1) too many lawyers, 2) high cost of legal service, and 3) lack of public confidence. There were other categories of complaints, including the effect of advertising.

In another recent article based on another survey of 75 judges questioned, they saw lawyers this way: 30 percent were very well prepared, 30 percent were fairly prepared, 22 percent not very well prepared and 14 percent appeared with virtually no preparation. Those responses would indicate 36 percent of the lawyers who appear before those judges commit malpractice, and in my opinion, the 30 percent who were only fairly well prepared are not practicing to acceptable standards. But regardless of whether the statistics are reliable, the publication of these articles clearly portrays the major affliction sapping the vitality of our profession and challenging whether we still remain a profession or are simply a guild of tradesman.

What are we to do? In the professional groups to which I belong, like Minerver Cheevy, talk and talk and talk about it but keep on drinking. It is time for action, not talk. There is no way that one person can in a simple letter solve or even discuss the problems, but in simplistic terms, one could say these procedures would help:

1. Law schools could reduce the size of their first year class and raise the requirements for admission.

2. The Bar could be reorganized to make it more democratic and more responsive to the needs of its members.

3. Judges could refuse to tolerate substandard practice and impose sanctions or report imcompetence to the Bar for discipline.

4. Judges could improve their own performance by being prepared, by being scholars in respect to the law, by ruling promptly on matters submitted, by recusing themselves if the case is beyond their dimensions for any reason, by avoiding even the appearance of conflict of interest or favoritism, and by thinking of the problems of the lawyers and litigants as superior to their own convenience when scheduling or continuing litigation.

5. Courts could impose limits on paper wars which skyrocket the cost of litigation.

6. The Bar could devise standards relating to truth in advertising that would limit the crass and extravagant claims of some of our members that make us look like hucksters.

7. We as lawyers could again recognize that being a lawyer requires that we adhere to high standards, that we represent our clients to secure justice, that we quit gamesmanship even if it is tolerated by the rules and is effective in undermining the opposition in terms of delay and money, that we quit dividing up into clubs or cliques for the purpose of combinations against other segments of our profession.

8. That we cease to tolerate jokes and inferences against us or our profession, but rather be prepared to respond with effective comment as to the amount of public good and public service which we as lawyers perform.

9. That we think more of the things that caused us to want to be lawyers in the first place, rather than money.

I have confidence that we as lawyers and judges can rise to the challenge and find the solutions; however, it will take the labor of every one of us.

illustration by
TJ Powell
design artist with Meridian Press in Ogden, Utah

Hofmann, Hypnosis, and the Polygraph

by David C. Raskin, University of Utah

Mark Hofmann's guilty plea to the bombings of Steven Christensen and Kathleen Sheets put an end to speculation about the identity of the bomber. Many months had passed since the results of Hofmann's favorable polygraph test had been publicly disclosed, and the subsequent revelation of Hofmann's guilt provided a showcase for opponents of polygraph tests to denounce such tests as useless and counterproductive in the search for truth. Many members of the law enforcement and legal communities questioned the use of polygraphs by defense attorneys to bolster the credibility of their clients, and some polygraph examiners criticized the administration and interpretation of Hofmann's examination.

The Hofmann polygraph examination provided an occasion for public reexamination of some general questions about applications of polygraphs in legal contexts. Are polygraphs any better for determining the truth than the mere flip of a coin or the hunch of an investigator or prosecutor? When a test is conducted confidentially at the request of a defense attorney, can a guilty client pass the test because there is no fear that adverse results will ever be made known to the prosecution? Can a psychopath, who feels no remorse about criminal acts, lie successfully during a polygraph test? Can hypnosis and other countermeasures be used to beat the polygraph? These questions go to the heart of the debate about the use of polygraphs by law enforcement agencies and attorneys. Since public and legal debates over such issues usually generate more heat than light, this article examines these issues in the light of current scientific knowledge and specific information about the Hofmann polygraph test.

Historically, polygraph techniques developed as a law enforcement tool in the United States, with minimal input from the scientific community (see *Barland & Raskin,* 1973). During the period from 1920 to 1970, law enforcement and federal agencies greatly expanded their use of polygraphs for criminal investigation and national security programs. Beginning around 1950, private business rapidly embraced polygraphers' promotion of large-scale programs of employee screening and periodic testing as an effective means to reduce internal theft. It was estimated that by 1986 more than 2 million Americans per year were being given polygraph tests, mainly in the private sector (*Hearings,* 1986).

DR. DAVID C. RASKIN, received his Ph.D. degree in Experimental Psychology from the University of California at Los Angeles in 1963. He has held faculty appointments at UCLA, Michigan State University, and the University of British Columbia. Since 1968 he has served on the faculty of the University of Utah, where he is currently professor of psychology.

Dr. Raskin specializes in research on human psychophysiology and credibility assessment, and he has published more than 100 scientific articles, books, reports, and monographs, including Psychological Methods in Criminal Investigation and Evidence *to be published by Springer Publishing Company in 1989 and* Child Sexual Abuse: Forensic Interviews and Assessments *to be published by Springer-Verlag.*

Meanwhile, strong opposition to polygraph tests had been growing among labor unions, civil libertarians, and some members of the academic community (*Hearings,* 1986). This opposition culminated in the 1988 passage of the Employee Polygraph Protection Act, co-sponsored by Senators Hatch of Utah and Kennedy of Massachusetts. This law resulted in the elimination of more than 80 percent of polygraph use by private employers, leaving the vast majority of polygraph testing to law enforcement, government, and attorneys. Although the scientific evidence had led me to support the latter applications, I provided assistance to the Senators in the drafting and passage of the bill that curtailed the uses of polygraphs by private employers. With the problem of commercial polygraph misuses and abuses generally under control, the major remaining question concerns the accuracy and desirability of using polygraphs in criminal investigation and legal proceedings.

When I first became acquainted with the use of polygraphs in court (at the request of a member of the Utah Bar in 1970), not even one scientific study had been conducted on the control question polygraph test, the method most widely applied in criminal investigation. The basic principle of the control question test is that a subject who is lying on the relevant (crime-related) questions will show relatively large involuntary physiological responses when answering them untruthfully. However, the test also includes control questions that are expected to produce relatively large reactions from innocent subjects who answer the relevant questions truthfully. If the reactions to the relevant questions are stronger than those evoked by the control questions, the subject is diagnosed as deceptive. However, if the control questions produce stronger reactions than the relevant questions, the test is interpreted as indicating that the subject was truthful to the relevant questions.

The probable accuracy of such tests presented a fascinating research problem from

a psychological perspective, but academics had little specific knowledge and strong opinions about their accuracy. I was initially predisposed against accepting the claims of polygraph examiners concerning the high accuracy of polygraph tests, but extensive data subsequently collected in my psychophysiology laboratory at the University of Utah soon convinced my colleagues and me of their potential usefulness for investigative and legal purposes. Since that early research, we have conducted numerous scientific studies with grants from the U.S. Department of Justice (National Institute of Justice), the U.S. Department of the Treasury (U.S. Secret Service), the U.S. Department of Defense (U.S. Army Research and Development Command), National Institutes of Health, and other federal agencies and the University of Utah.

During the 20-year period, extensive scientific data have clearly demonstrated that polygraph examinations that are properly conducted in appropriate situations have an accuracy rate that exceeds 90 percent (see *Raskin,* 1989). Major advances in instrumentation, improvements in examination procedures, and our development of computerized methods for interpreting the outcome of polygraph tests (*Kircher & Raskin,* 1988) have produced accuracy rates of approximately 95 percent in federal criminal investigations (*Raskin, Horowitz, & Kircher,* 1989; *Raskin, Kircher, Honts, & Horowitz,* 1988).

In spite of these advances, serious deficiencies remain in the training of polygraph examiners and the techniques employed by a large number of them. Furthermore, there are substantial doubts about the competence and integrity of many "experts" who are called upon to administer, interpret, and testify about their results (see *Raskin,* 1986). Clearly, the polygraph technique is capable of higher accuracy than is achieved by the average polygraph examiner. Although the blame for this unfortunate state of affairs falls mainly on the polygraph practitioners themselves, responsibility must also be shared by the academic-scientific and legal professions. Myths and misconceptions concerning polygraphs abound, and only complete and accurate information can rectify these problems. Since the Hofmann case embodied many of these misconceptions and controversies, it provides a concrete instance in which to explore and explode some of the most cherished myths.

The first issue raised by the Hofmann case concerns the circumstances of the examination conducted on Hofmann by psychologist Charles Honts. The test was arranged by Hofmann's attorney Ronald Yengich and was conducted confidentially at his offices. Some critics claim that such circumstances may have made it possible for Hofmann to beat the test because he know that an adverse result would not be disclosed to the police. This is known as the "friendly polygrapher hypothesis" (*Raskin,* 1986), which is often used by prosecutors to discount exculpatory polygraph results offered by defense counsel. However, the friendly polygrapher hypothesis is based on a fundamental lack of understanding of the control question polygraph test. All polygraph subjects are stongly motivated to obtain truthful outcomes on their tests, which cannot be passed simply because the subject does not fear disclosure of an adverse result. Furthermore, there are potentially great losses for guilty subjects if they fail the test. They would lose an important opportunity to obtain exculpatory evidence that they believe could assist in obtaining a dismissal or an acquittal at trial. In addition, many clients fear that if their attorney learns they have lied, the attorney will refuse to continue representing them. Finally, they would forfeit the cost of the examination.

Polygraph examinations can have an accuracy rate that exceeds 90 percent.

The stakes for a criminal defendant who takes a polygraph test under the attorney-client privilege are far higher than those for guilty laboratory subjects who forfeit only a small amount of money if they fail tests in crime simulations. Under laboratory conditions, the detection rate typically exceeds 90 percent, and the stakes are much higher for actual criminal suspects. In addition, there is no plausible way to explain why a guilty defendant would show stronger reactions to control questions when lying to the relevant questions during a confidential polygraph test. Data from polygraph examinations conducted in criminal cases clearly demonstrate that suspects tested under the attorney-client privilege have a much higher rate of failing polygraph tests than suspects who have no expectation of confidentiality (*Raskin,* 1986). Obviously, the friendly polygrapher hypothesis is wrong.

Some have claimed that Hofmann was able to pass the polygraph test because he is a psychopath and has no conscience or feelings of remorse about his acts. This belief is simply incorrect. Detection of deception by means of a polygraph test does not depend on normal socialization or feelings of guilt about one's criminal acts (*Honts, Raskin, & Kircher,* 1985). Detection depends on a concern about the outcome of the test and the adverse consequences of failing, e.g., going to prison. Psychopaths are as readily detected by polygraph methods as people who have normal social values and concern for others. Scientific research from several laboratories, including ours, has clearly demonstrated that psychopaths present no special problems for physiological methods for detection of deception (*Raskin,* 1986, 1989). Even the lies of psychopathic murderers such as Theodore Bundy can be detected using polygraph methods, and Mark Hofmann is no exception on the grounds of poor socialization.

For many years, we have been concerned that individuals may use special procedures known as countermeasures to beat the polygraph test. There had been no scientific evidence to support claims of the effectiveness of methods such as hypnosis, biofeedback, relaxation, mental dissociation, and stepping on a tack hidden in the shoe (*Barland & Raskin,* 1973). However, research begun by Charles Honts at Virginia Polytechnic University and continued in our laboratory at the University of Utah has produced evidence that individuals given special training in physical and mental countermeasures by polygraph experts may be able to beat control question polygraph tests.

In a series of studies with college students and a cross-section of people recruited from the general community, we have shown that subjects without special training in countermeasures are unable to beat the polygraph test, even if they have been provided with extensive information and suggestions on how they might succeed (*Honts,* 1987). However, when subjects are given relatively simple training in physical and mental countermeasures by a knowledgeable expert, approximately one-third of the guilty subjects are able to pass their polygraph tests (*Honts,* 1987; *Raskin,* 1989). The training consists of teaching subjects that when a control question is asked, they should tense their muscles unobtrusively and engage in the attention-demanding mental task of performing implicit mental arithmetic. These procedures are designed to enhance their reactions to control questions so that they are larger than their reac-

tions to relevant questions, even when they are lying to the relevant questions.

Mark Hofmann was administered a control question polygraph examination on November 13, 1985, less than a month after the bombings. The examination was conducted by Charles Honts, who is a trained and licensed polygraph examiner and had earned his doctoral degree in psychophysiology under my direction at the University of Utah. Honts was asked by Hofmann's defense counsel Ronald Yengich to test the veracity of his client concerning his denials of having been involved in the Christensen and Sheets bombings. This test was conducted confidentially at Yengich's offices. I did not learn about the test until I was asked to provide an independent, blind analysis of the test. I had previously tested Hofmann's associate Shannon Flynn on his possible knowledge and involvement in the bombings, and he had clearly shown that he was truthful in denying any knowledge or involvement.

I blindly scored the polygraph charts obtained by Honts, and my findings were the same as those of Honts, who had concluded that his test results indicated Hofmann was truthful in denying any involvement in the bombings. In order to be sure of the analysis of the charts, they were sent to another four polygraph experts in the United States and Canada for their interpretations. They were law enforcement and private examiners, none of whom was given any information about the identity of the subject or the contents of the relevant questions on the test. Every one of them concluded that the test results clearly indicated truthfulness. Since then, more than 100 federal, military, and law enforcement polygraph examiners have blindly scored those charts, and the vast majority have concluded that they indicate truthfulness.

When Charles Honts and I first learned of Hofmann's guilt, we were quite surprised. This proved that the polygraph results were wrong and that Hofmann had managed to fool many well-trained and experienced polygraph experts, in addition to virtually every major documents expert in the United States, the FBI laboratory, the library of Congress, his business associates, and high officials of the Mormon Church. We wondered how he had managed to beat the polygraph test. Several months after Hofmann was incarcerated at the Utah State Prison, I asked his attorney Ronald Yengich to arrange an interview with Hofmann. I wanted to interview Hofmann to determine how he had managed to beat the polygraph.

On June 11, 1987, Yengich, Honts and I traveled to the Utah State Prison to meet with Hofmann. In a conference room at the prison, I met Hofmann for the first time. He appeared to be a quiet, well-mannered person who was very eager to cooperate with our request. When I asked Hofmann to tell me how he had done it, I fully expected him to relate with great delight that he had read our published scientific articles on how to train a person to beat the polygraph and that he had used our own methods to beat the test. Given his psychological makeup, he would have been very pleased and self-satisfied to tell us that he was clever enough to search out the scientific publications, learn the techniques developed by Honts and me, and use them successfully to fool us.

Hofmann's description of how he beat the test violated my expectations. He related that around age 13 he had become interested in biofeedback and learning to control his galvanic skin response, the sweat gland activity on the palms of the hands that provides the most important and useful measure obtained with the standard polygraph instrument. Hofmann indicated that he had bought some electronic parts and constructed a simple device to measure his galvanic skin response, and he began to practice relaxation methods to reduce his sweat gland activity.

> Individuals given special training in countermeasures may be able to beat polygraph tests.

Hofmann soon became interested in hypnosis, and he and a teenage friend practiced hypnotizing each other. Hofmann told us that he read several books on hypnosis and for a few years he hypnotized himself every night. He discovered that when he was in a hypnotic state, he was better able to relax and control his sweat gland activity using his biofeedback device. He also related that he had frequently used self-hypnosis to reduce stress and to control pain, such as during visits to the dentist. Hofmann described the experience of being in a hypnotic state wherein he had an intellectual awareness of the pain but did not experience the emotional component of the physical sensation of pain. This is consistent with reports of subjects who have been hypnotized by professionals for research and for anesthetic purposes during surgery. [Since this interview of Hofmann, I have obtained independant confirmation of Hofmann's use of biofeedback from a former neighbor whom Hofmann had allowed to use the biofeedback device many years before.]

Hofmann then described how he used his extensive prior experience with hypnosis to prepare for the polygraph test. He said that he anticipated the type of questions he would be asked about the bombings, and the night before the scheduled test he hypnotized himself and repeatedly told himself that he had not done the bombings. He repeated the same procedures just prior to the polygraph test. He said, "I convinced my subconscious that I was not involved. I knew consciously that I was involved, but during the test I was answering at a subconscious level. Just like dental work without anesthetic, I can tell myself that I don't feel pain and I don't feel it. I didn't try to create responses to any questions, although I can do it, but didn't."

I asked Hofmann a number of other questions. He said that he took no medication at the time of the test and experienced no pain. He indicated that the test was done at the time when he was experiencing a great deal of stress and his strongest feelings of guilt because of heightened sensitivity about the case, all of which worked in favor of his being detected. I then inquired about his use of specific countermeasures. He said that he did not do anything to affect his reactions to the control questions, and his answers left the distinct impression that he was unaware of the function of control questions and relatively unsophisticated about how the polygraph test is structured and interpreted. He said that he simply used hypnosis to reduce his reactivity to the questions about the bombings and was aware that he answered the control questions untruthfully, such as, "Before 1984, did you ever do anything immoral or illegal?" His description was consistent with the polygraph recordings, which showed that his reactions to the control questions were stronger than his reactions to the relevant questions about the bombings. Therefore, when Dr. Honts and the other experts blindly interpreted the polygraph charts, it is not surprising that all of us concluded that Hofmann was truthful in his denials of the bombings.

Hofmann has been described by some professionals as a psychopath or narcissistic personality, and it might be argued that his representations to me about his use of hypnosis to beat the polygraph were just another successful misrepresentation and manipulation. However, this hypothesis encounters

major difficulties. Hofmann showed no sophistication or specific knowledge about polygraph techniques. He indicated little familiarity with the polygraph literature, and he specifically denied using physical or mental countermeasures such as those described in many of our publications. Not only would a brilliant and knowledgeable criminal choose techniques that had been scientifically demonstrated to have potential utility in beating the polygraph, but nobody with Hofmann's personality and demonstrated pride in his skills at deception would miss the marvelous opportunity to boast of having used Dr. Hont's own research to fool him! Theodore Bundy attracted international attention (and probably experienced great delight) when he duped the anti-pornography establishment into believing that his propensity to murder women was caused by his exposure to pornography.

Hofmann could have gained national attention by claiming to have used research conducted in our laboratory at the University of Utah to beat a polygraph test administered by a scientist directly involved in that research. Hofmann did not make such claims because he simply did not know enough about polygraph techniques and our research on countermeasures. He had already practiced hypnosis and biofeedback for more than 15 years as a general method for reducing stress and pain, and his prior experiences with these methods enabled him to fortuitously hit upon a means to produce a truthful diagnosis on the polygraph test. The probability of that occurring in other criminal cases is minuscule. Mark Hofmann prossessed a combination of intellect, curiosity, knowledge, skills, personality, and prior experience that is very rarely found in criminal suspects, but might occur more frequently in trained and sophisticated spies. It is the latter group that presents the greatest potential threat to over-reliance on polygraph techniques. However, the use of polygraphs in criminal investigation should not be diminished by this highly unusual and fascinating demonstration by a master deceiver.

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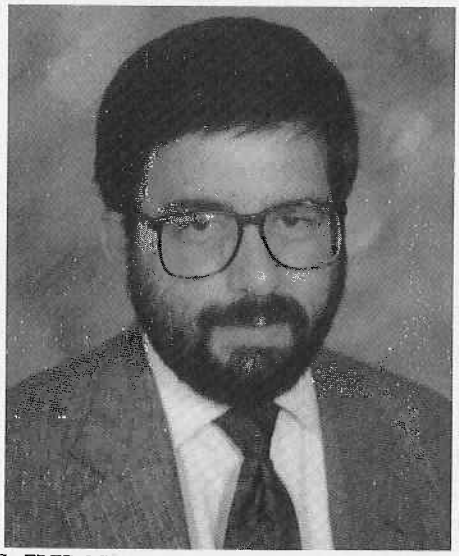
Cross-Examination: Methods and Preparations

By G. Fred Metos

Both Professor Wigmore and the television courtroom dramas share similar misconceptions about cross-examination. In an often-quoted passage, Professor Wigmore stated, "Cross-examination is the greatest legal engine ever invented for the discovery of truth." Wigmore, *Evidence* §1367 p. 32 (1974). To the inexperienced lawyer or the layman, Wigmore's statement is taken to its logical conclusion in courtroom television dramas where Perry Mason or Ben Matlock do justice by getting the witness to confess to committing a homicide during a probing and dramatic cross-examination. Wigmore's concept of cross-examination is more realistic than that offered on television. However, even Wigmore was off base. Cross-examination is not a truth-seeking process. Cross-examination is part of a lawyer's presentation of a case.

Another misconception about cross-examination is the notion that it is an art. As will be shown, cross-examination does involve a certain level of skill. However, it is a skill that can be learned with practice. Cross-examination involves a great deal of work and even more concentration. The principles and techniques discussed in this article are not solely applicable to criminal trials. They may be used in any type of trial or hearing.

However, in the criminal defense context cross-examination is required by the Confrontation Clauses of the Sixth Amendment to the United States Constitution and Article I, §12 of the Constitution of Utah. Quite often for the criminal defendant, cross-examination becomes the only means of presenting a defense. The criminal defendant may not be able to testify because of prior statements or prior convictions. Furthermore, all of the citizen witnesses to an alleged offense will likely be called by the prosecution to testify and the only way to elicit favorable information is through cross-examination. Finally, the most effective means of impeaching a witness is through his own testimony on cross-examination.



G. FRED METOS received Bachelor of Science degrees from the University of Utah in Philosophy and Anthropology. We received his Juris Doctor degree from the University of Utah College of Law. Mr. Metos is a partner in the law firm of Yengich, Rich, Xaiz & Metos. He was previously a staff attorney for the Salt Lake Legal Defender Association. Mr. Metos is a member of the National Association of Criminal Defense Lawyers and serves on the Continuing Legal Education Committee for that organization. He is an organizer of the Utah Association of Criminal Defense Lawyers. He is a past president of the Criminal Law Section of the Utah State Bar and is currently an officer and CLE chairman of that section. Mr. Metos' law practice is almost exclusively criminal defense work at the trial and appellate levels.

There are two major components to any cross-examination: First, the method of the questioning. Second, the prupose in the questioning. The method of questioning relates to the manner in which questions are put to the witnesses. The prupose of a cross-examination in every trial is to either further one's case or point out weaknesses in the opponent's case. The purpose of cross-examination of a particular witness hinges on the theory of the case.

METHODS OF EXAMINATION

There are two major aspects to the method of conducting cross-examination. The first is the substance and nature of the questions. The second is the attitude and demanor of the questioner. Questions asked during cross-examination are not traditional questions. A cross-examiner is not a reporter. Questions that begin with the words "who," "what," "when," "why" or "how" are necessary for a reporter to ask to write a good story. However, such questions asked during a cross-examination may devastate the best of any cases. The following partial transcript, taken from a homicide case, is an example of the damage that can be caused by asking a "why" question. Prior to this series of questions, there was no evidence that this lawyer's client had fired a rifle:

Q: I thought you just told us you didn't know what caliber caused those bullet holes?

A. I didn't say that a .30 caliber carbine caused them. I believe they did.

Q. Well, *why do you believe they did?* [emphasis added]

A. Because the curtains were in place on January 28, and because of [the ballistics expert's] trajectory analysis, and because of the FBI observations of [the defendant], of the weapon he was carrying, and because of the brass we recovered.

Q. So that—

A. The holes in those curtains were in the right location.

Q. That causes you to conclude that [the defendant] fired a .30 caliber projectile through those curtains on January 28.

A. We recovered two .30 caliber projectiles from the Bates house and garage, which line up with those holes right through that house there.

Q. All right. No further questions.

As will be seen, the error in this line of questioning is not just in asking the "why"

question but also in requesting the witness' opinion.

Questions put to a witness on cross-examination should really be statements. The examiner uses voice inflections to make these statements into questions. By changing the emphasis from word to word, the examiner can make the question reflect different emotions. An exercise to demonstrate this principle may be done with the statement, "You entered the house." Emphasize a different word in each reading. By doing so, the question can be made accusatory, or sequential. Different readings can also express derision, confusion, incredulity or concern. Using this technique, the examiner can avoid ending phrases such as "isn't it true" or "isn't it correct" and introductory phrases such as "let me ask you this." Those types of phrases are surplusage. The use of those phrases becomes repetitive or monotonous and may cause jurors to lose interest in the cross-examination.

Another critical aspect of the form of cross-examination questions is that each question should involve only a single fact. Questions asked during cross-examination must be precisely worded. The only appropriate response to such a question must be either "yes" or "no." A question that involves multiple facts is unacceptable because it allows the witness to avoid acknowledging a critical fact. A hypothetical example of that problem is the following:

Q. The robber grabbed you after approaching you from behind and you could not see his face?
A. That's not correct.

Such a question raises several unanswered questions about what the witness is denying: Did the robber grab the victim? Did the robber approach the victim from behind? Could the victim see the robber's face? Jurors will likely assume that it is the critical fact in the question (not seeing the robber's face) that the witness denied. To avoid this problem, the following hypothetical sequence of questions should be asked:

Q. You were standing on the street?
A. Yes.
Q. A man approached you?
A. Yes.
Q. That person approached you from behind?
A. No.
Q. Excuse me, that person approached your right side?
A. Yes.
Q. That person grabbed you?
A. Yes.
Q. That person told you to not turn your head?
A. Yes.
Q. You did not turn your head?
A. That's correct.
Q. You never saw his face?
A. Correct.

Although this series of questions takes longer to ask, there is no confusion as to what the witness is denying. This series of questions explains to the jury why the assailant's face was not seen. It also has a greater dramatic impact on the jury as it builds to the critical conclusion. Finally, it puts the witness in a position where the critical fact cannot be denied.

Another problem arises when the cross-examiner asks for a conclusion rather than facts. Conclusions involve subjective assessments by the witness. A witness who feels any loyalty to the opposing party will use such a question against the cross-examiner. This hypothetical exchange demonstrates the problem:

Q. It was too dark for you to see the robber's face?
A. No, it was not.

Cross-examination is not a truth-seeking process, but is part of a lawyer's presentation of a case.

The following sequence of hypothetical questions makes the same point, but does so without the danger of asking the witness for a subjective conclusion:

Q. You were robbed at about 3:00 a.m.?
A. Yes.
Q. Obviously, it was nighttime?
A. Yes.
Q. It had rained several hours earlier?
A. Yes.
Q. It was still cloudy?
A. Yes.
Q. There was no illumination from the moon?
A. Correct.
Q. You were standing in the street?
A. Yes.
Q. No cars drove by during the encounter with the robber?
A. Correct.
Q. There were no house lights on?
A. Correct.
Q. The nearest streetlight was about 40 yards away?
A. Yes.
Q. You were facing that light?
A. Yes.
Q. The robber had his back to the light?
A. Yes.
Q. There was a tree between you and the streetlight?
A. Yes.
Q. That tree stands higher than the streetlight?
A. Yes.
Q. The tree cast a shadow on the street?
A. Yes.
Q. You were standing in that shadow?
A. Yes.
Q. The robber was also standing in that shadow?
A. Yes.

Any number of other factual questions could be asked about this scenario. Those questions can be asked without requesting an opinion or conclusion from the witness. Such a series of questions provides facts for the jury to conclude that the witness could not have seen the robber's face.

A final aspect of the method of cross-examination relates to the words used in the questions. Use of multisyllabic words or legal terms should be avoided. Although the use of such words or terms makes the examiner appear to be knowledgeable, oftentimes the witness will not understand them. If that happens, the witness will respond that he does not understand the question. That will break up the pace of the questioning. Likewise, if the witness does not understand the question, it is unlikely that the jury will either. Simple words that are easily understood should be used. However, the words used should be the type of descriptive words that leave an impression with the jurors.

The second area relating to the method of cross-examination is the demeanor of the questioner. Generally, a cross-examiner should be controlled and polite to the witness. There will be some variation in this area based on the case, the experience and the abilities of the examiner and, most importantly, the witness' responses. Such a cross-examination allows the jury to view the attorney as a professional who is knowledgeable about his case. Through controlled questioning, the attorney projects a credible image. A hostile or arrogant attitude may offend jurors, causing the examiner to lose that credibility. The other advantage to conducting a controlled examination is that even the most hostile witness may be lulled into a false sense of security. The witness' answers may then be more responsive. This is not to say that emotions are inappropriate

during cross-examination. Emotions may be expressed through the pace of the questions, voice level and physical actions of the examiner. Through these methods, the cross-examiner is able to communicate to the jury the reactions to witnesses.

A controlled examination also allows the questioner to listen to the witness' answers and react to those answers with follow-up questions. The examiner cannot fully react to a witness without maintaining eye contact with that witness. Eye contact allows the examiner to observe the witness' physical reactions to the questions. Those reactions will aid the examiner in determining how to change his demeanor. Based on the witness' reactions, the examiner may then change the pace of the questioning, the timbre of his voice, or his physical actions in the courtroom. By increasing the pace of the examination and raising his voice level, the examiner exhibits confidence in his position and emotional control over the testimony of the witness.

Analyzing a witness' behavior and reacting to that behavior involves an application of both common sense and the behavioral sciences. For example, the action of crossing one's arms is generally regarded as a defensive posture. If the examiner's questions are about a subject where the witness reacts that way, the examiner may want to quicken the pace and raise his voice. However, if the examiner is attempting to elicit favorable testimony or the witness is sympathetic to the jury, the examiner may slow the questioning and take a more conciliatory approach. Similarly, a person who does not look at the questioner may be regarded as being untruthful. If that happens, the examiner may choose to increase the pressure on the witness. It may also be appropriate to request the judge to have the record reflect that the witness has been staring at the floor or looking away from the examiner as the questions were answered. These are only meant to be examples of how a lawyer may react to a witness' behavior. The types of behaviors that may be exhibited by a witness are numerous. The examiner's reactions must be consistent with the goal to be accomplished with the particular witness.

The physical position of the attorney in the courtroom is also important. An examiner should never turn his back to the witness or to the jury. That action is a signal for the jurors not to listen. It also allows the witness to react without the examiner being aware of what the witness is doing. Furthermore, it may be difficult for either the witness or the jury to hear the questions. An examiner may approach the witness to make the witness feel uncomfortable or more anxious. An action that may be particularly unnerving to a witness is to stand close to or behind the witness while testifying off the stand. It is common sense that people do not like to have their space invaded by having others stand too close, nor do they like to have others stand behind them.

There are a number of things that the cross-examiner should avoid. First, never use tactics that are devious or deceitful. Such actions will cause the questioner to lose credibility with the jury or judge. The next is badgering, brow beating or humiliating a witness. This may cause the jury to sympathize with the witness and dislike the questioner. Likewise, a sanctimonious attitude may be offensive to many jurors. The problem with boring or repetitive questions is obvious. Further, an examiner should never lose his temper. Usually, a loss of temper is accompanied by a loss of concentration and a loss of control of the witness. A lawyer who loses his temper also runs the risk of looking foolish in the eyes of the jury.

By using these techniques, a number of problems that confront cross-examiners may be avoided. Asking simple questions involving a single fact per question requires the witness to answer "yes" or "no." The witness will not be able to qualify and explain answers. The witness will not be able to respond to a question with a question. Finally, the witness will not be able to argue with the examiner. All of these situations indicate that the examiner has lost control of the witness. Through proper questions and demeanor, the cross-examiner is able to control the witness, the information and the emotions presented in the courtroom.

Never use tactics in cross-examination that are devious or deceitful.

THE PURPOSE OF CROSS-EXAMINATION

The general purposes of cross-examination have previously been discussed. To achieve these purposes, the cross-examination must be prepared as one component of the overall trial plan. Preparation of cross-examination for trial presupposes a number of factors. First, discovery has been completed. Second, the case has been properly investigated. Finally, the motion practice has been completed. Thus, counsel will know what evidence will be both admissible and available for trial. A theory of the case must then be developed. That requires the attorney to understand the opponent's legal and factual theory. From that understanding, the attorney can determine which facts will not be the subject of dispute. Likewise, the weak points of the opponent's case may be determined. Finally, it can be determined what facts the opponent's witnesses may establish that support the cross-examiner's case.

The factual and legal theory of the case is explained to the jury in the summation. Therefore, the next step in preparing cross-examination is to outline the factual arguments for summation. From that outline, the attorney can determine what facts must be established on cross-examination. The cross-examination of each witness can then be outlined. This outline should consist of a list of the facts that will form the basis for the groups of questions. Having a list of prepared questions rarely does any good. Such a list does not allow the cross-examiner to react to the answers or demeanor of witnesses. Likewise, the use of a list of questions may cause jurors to lose interest. If the jurors are not listening, the cross-examination will be ineffective.

In outlining thue cross-examination, the areas of examination of each witness should be put into a logical sequence. Ideally, the examination of any witness should conclude on a critical or important point that will leave an impact on the jury. In organizing a cross-examination, some lawyers believe that by bouncing from one area to another the witness can become confused and easily impeached. However, if the witness is confused, the jury may also become confused or the jurors will be sympathetic to a witness who cannot follow the questioner's bizarre organization. To avoid such confusion, the questioning in one area should be completed before moving to another area. To move to a second area, the examiner may use transition phrases such as, "Let's talk about your testimony regarding..." or "I would now like to move to [the date, the incident or the observation]." The outline of a cross-examination beyond the critical fact taken from the summation requires the examiner to work back, outlining the known testimony from the witness that leads up to the fact to be argued in summation. The prior testimony should be cross-referenced on the outline. Using this technique, the cross-examiner can avoid delving into the

unknown. If the witness gives an answer that is not consistent with his prior statements or testimony, the examiner has the material readily available to either correct or impeach the inconsistent answer.

As previously discussed, the real purpose of cross-examination is to present a case. That means that a cross-examination must either further one's own case or discredit the opponent's case. There are five basic goals of cross-examination: (1) Establishing facts that contribute to the case; (2) Corroborating testimony that is favorable to the case; (3) Discrediting the opposition's case; (4) Showing that a witness is mistaken; and (5) Impeaching the credibility of a witness or testimony. Asking questions that simply review the witness' testimony from direct examination does not fall within any of these goals. Likewise, asking questions because counsel feels a compunction to examine every witness who testifies does not fall within any of these types of cross-examination. In other words, if there is nothing that will be gained by cross-examining a witness, do not ask any questions. In meeting any of these goals, the methods of questioning described above should be applied.

ELICITING EVIDENCE TO CONTRIBUTE TO THE CASE

To elicit evidence to contribute to the case, the cross-examiner must know how the witness will respond to a particular question. It also requires that the lawyer know what evidence needs to be elicited to support the case. There are essentially three methods of eliciting such evidence: (1) Stressing favorable testimony from the direct examination; (2) Obtaining concessions of favorable evidence not raised in the direct examination; and (3) Exploring favorable inferences from the direct examination. These types of questions allow counsel to establish favorable evidence without subjecting his witnesses to cross-examination. This technique can be useful when examining detectives or other investigators about information discovered at a crime scene. Also, if the defendant has made a statement that is partially incriminating and partially exculpatory, this technique can be used to elicit the exculpatory statements.

CORROBORATION OF FAVORABLE TESTIMONY

Using a cross-examination to corroborate favorable testimony is particularly helpful when physical evidence can be pointed out that corroborates the favorable testimony. Physical evidence generally is not subject to challenge, and consequently provides strong corroboration of other favorable evidence. Another area where this technique is useful is to establish facts that support an expert's opinion. Again, this technique may be fruitless without prior knowledge of what evidence will be admitted. The effect of this goal is to plant seeds in the jurors' minds so that when the cross-examiner's witness testifies, that testimony will have immediate credibility. If the favorable evidence has previously been admitted, raising corroborative evidence on cross-examination reminds the jury of the favorable evidence.

DISCREDITING UNFAVORABLE EVIDENCE

The technique of discrediting unfavorable evidence is very similar to using cross-examination to corroborate favorable evidence. However, its primary purpose is to point out the weaknesses in an opponent's case. This technique is effective when the testimony of an apparently believable witness is inconsistent with the physical evidence. It may also be effective when used in a case where two or more witnesses describe their observations of the same event, object or person differently. If the witness whose testimony is to be contradicted has not yet testified, the prior cross-examination has served to plant seeds of doubt regarding the credibility of the subsequent witness. The critical factor with this goal is that the contradictory evidence must involve a significant fact. Trying to discredit a witness based on insignificant facts may cause the lawyer to lose credibility with the jury.

> If nothing will be gained by cross-examining witness, do not ask any questions.

DISCREDITING A WITNESS' TESTIMONY IS A MISTAKE

Discrediting evidence as a mistake by the witness involves impeaching a witness' means of knowing, remembering and relating facts. The claim that the witness is mistaken rather than lying should be reflected in the attitude and demeanor of the examiner. To successfully expose mistaken testimony, the cross-examiner must identify the error that the witness made and also point out the source of the error. There are three general sources of mistakes in a witness' testimony: (1) The perception of the event that is the subject of the testimony; (2) The witness' recollection of the event; and (3) The witness' articulation or description of the event in court.

There are a number of factors that affect the witness' perception of an event. Such factors may include the significance, duration, nature and location of the event. Likewise, the witness' ability or capacity to perceive and the state of mind during the event may also provide reasons for the witness' mistaken testimony. If the witness is an expert or other professional, the failure to follow required procedures may also indicate that the information-gathering process was inadequate. The factors that affect a witness' ability to perceive are generally objective in nature. Investigation and discovery will reveal those facts. The examiner need only properly question the witness about those objective facts.

Factors that affect recollection, on the other hand, are generally subjective in nature. A cross-examination that addresses the witness' recollection should show that the witness has failed to recall the event or that the witness' recollection is inaccurate. There are a number of factors related to recollection that may be demonstrated to the jury though cross-examination: the significance and duration of the event; the passage of time since the event; the age of the witness; the witness' ability to recall details; and the trauma of the event. Such factors may be critical when the witness is a child victim of a crime of violence.

Prior inconsistent statements may also demonstrate the frailty of the witness' memory. If the prior statement is more beneficial to the case than the trial testimony, such statements should be the subject of the cross-examination. In cross-examining a witness about the prior statement for the purpose of showing a mistake, the examiner first ought to have the witness acknowledge the truthfulness of the prior statement. The examiner then ought to have the witness acknowledge that the reason for the discrepancy is a failure of his memory. If the witness refuses to acknowledge such facts, the prior statement may still be used to impeach the witness' credibility. Another area for cross-examination relative to memory is the witness' susceptibility to suggestion. It is unlikely that the witness will admit that his memory of the event has been affected by contact with another. However, questions about meetings with opposing counsel, investigators, other witnesses and the contents of those meetings will leave

that implication with the jury. Quite often prosecutors make a practice of "pre-trying" witnesses and going over their testimony. The substance of those discussions may provide impeachment material.

The final area that may provide a source of mistaken testimony is the witness' description of the event. Cross-examination relative to this area requires the attorney to listen carefully to the words used by the witness during direct examination. The testimony may indicate that the witness is guessing about what occurred. Similarly, the witness may be describing inferences from the observations rather than limiting testimony to the observations that were made. If the witness uses imprecise language, such as estimates and equivocations, it may be best to make specific notes and argue the witness' exact words in summation rather than allowing the witness to become more positive on cross- and redirect examination. It is also important to consider if the words the witness uses are inconsistent with the witness' education and background. A final area for cross-examination is whether the testimony appears to rehearsed or memorized.

IMPEACHING CREDIBILITY

The decision to impeach a witness' credibility involves several considerations. First, the need to impeach must fit within the theory of the case. Second, jurors generally want to believe that a witness is being truthful. Consequently, the examiner is going to have to bear the burden of proving that the witness is untruthful. Finally, the nature of perjury is important. Generally, when a witness lies under oath it is not done on the spur of the moment. It involves preplanning and some motive or purpose. The most effective impeachment exposes not just the lie, but also the purpose of the lie.

The areas of impeachment on truthfulness fall into two general categories: (1) a showing of defects in the witness; and (2) a showing of defects in the testimony of the witness. The types of defects may either be inherent in or external to the witness or the testimony. Inherent defects in the witness may involve a showing that because of the background and character of that witness he is not worthy of belief. Likewise, a prior conviction for a crime is an inherent defect in the witness. An external defect in the witness may involve a showing that the witness has a bias favoring a party or prejudice against a party to the lawsuit. Similarly, a direct or indirect interest in the outcome of the lawsuit would constitute an external defect in the witness. One of the major considerations in employing this type of impeachment is how far the judge will let the examiner go in questioning the witness. Some of the areas such as character and prior convictions are governed by the rules of evidence. However, counsel should be alert during the direct examination to determine if potential areas of cross-examination that would generally be beyond that allowed by the rules have been "opened up." Quite often it is the criminal defendant who will be primarily affected by this type of impeachment. The potential for such impeachment should play a major role in deciding whether the defendant should testify.

Internal defects in the testimony of a witness involve showing that the testimony conflicts with common sense, or conflicts with the facts of the particular case. An external conflict in the testimony may involve proof that the testimony is not consistent with the other testimony or evidence offered at trial. The other method of showing an external conflict in testimony is by proof of prior inconsistent statements of a witness.

It is critical to ask simple questions containing a single fact and to properly plan and prepare the examination.

Before undertaking such cross-examination, the questioner needs to consider several factors. First, the prior statement must truly be inconsistent. Trying to impeach a witness with a partial statement of inconsequential detail may backfire and cause the examiner to lose credibility with the jury. Second, if the witness' story has gone from one that is very detrimental to one that is not quite so bad, very little may be gained by introducing the prior statement. Finally, the witness' explanation for the prior statement must be considered. F.R.Ev. 613 allows the witness to have the opportunity to explain the prior statement before extrinsic evidence of the statement is admissible. If the explanation is that the client threatened or bribed the witness, it may be best to avoid the prior statement. However, if the prior inconsistency is related to a defect in the witness, the prior statement makes very strong impeachment material.

The procedure to apply in impeaching a witness on a prior inconsistent statement involves meeting the requirements of F.R.Ev. 613 and incorporating several practical considerations. Before getting into the prior statement, the witness should be questioned about a motive to lie. This will either prevent the witness from trying to explain the inconsistency or substantially weaken any explanation. The witness then ought to be reminded of his testimony on direct examination and be asked to acknowledge that he was under oath. The examiner must, under the rule, establish the circumstances of the prior statement (the date, time and place of the statement and the people who were present when it was given). It should also be established that the prior statement was given under circumstances where the witness was expected to be truthful. Finally, the witness should be confronted with the exact words of the prior statement. F.R. Ev. 613 does not require that the contents of the statement be disclosed to the witness prior to the confrontation. To do so lessens the dramatic effect of the impeachment. However, if the witness denies making the prior statement, providing a written copy of the statement and then having him acknowledge that the statement was made points out another lie (the denial) to the jury.

CONCLUSION

It is critical, during cross-examination, to ask simple questions containing a single fact per question and to properly plan and prepare the examination. The use of the proper method of cross-examination, with adequate preparation, will not guarantee a favorable result at trial. However, the use of such techniques will certainly prevent counsel from assisting the opposition's case by a bungled cross-examination. Likewise, the use of these techniques will leave counsel something to argue in summation. Through proper cross-examination, trial counsel can control the witnesses, the evidence and effectively present a case.

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Bar Commission Highlights

During its regularly scheduled meeting of August 24, 1990, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. The review of the minutes of the July 27, 1990, Bar Commission meeting was tabled because President Greenwood indicated that some corrections were necessary.

2. Commissioner Haslam reported on the Character and Fitness Committee's actions.

3. Admissions Administrator, Michele Roberts, reported on the outcome of the July Bar Exam, and that with 225 applicants, the space in the Law and Justice Center was filled to capacity during examinations.

4. Ms. Roberts also reported on the results of the July Attorney Bar Exam. There were 18 attorneys sitting for the Exam: 15 passed, 3 failed, with a passing rate of 83 percent. (Note: These results were later altered to reflect 100 percent passage based on Commission action relative to Question 7—Business Entities approval.)

5. The Commission went into Executive Session to discuss the selection of the Executive Director.

6. Randon Wilson and Jim Swenson of the Member Benefits Committee reported on the AutoNet program and recommended to the Commission that the Bar sponsor this program. After discussing the program, the Commission determined that the AutoNet program would benefit the Bar as well as the firms who use the service.

7. President Greenwood announced that Steve Crockett has agreed to serve as the 1991 Annual Meeting Chair.

8. President Greenwood reported that she would like to appoint a Committee to evaluate the Peat Marwick report on the Law and Justice Center. Commissioner Hansen agreed to chair the Committee.

9. A motion was accepted that new members who were admitted in May through September should not have to pay the full Bar dues again only three months later, and should only pay the difference between what they paid in May and the increase in Bar dues. They would then accordingly be licensed through June 30, 1991.

10. Interim Executive Director Florence reported on the receipt of Bar dues payments.

11. Interim Executive Director Florence reported on the newly created chart of accounts.

12. Commissioner Moxley presented a discipline report, and the Commission acted on public and private discipline matters.

13. The Commission voted to form a new Standing Committee to supervise other attorneys who have been placed on probation by the Office of Bar Counsel.

A full text of the minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

Beless Named Lawyer of the Year

Rosemary J. Beless has been named Lawyer of the Year by the Energy, Natural Resources, and Environmental Law Section of the Utah State Bar.

Beless is a partner in the Salt Lake City law firm of Fabian & Clendenin. She has practiced natural resources and environmental law for the past 10 years, focusing on water, real property, environmental, oil, gas, and mining law.

The Lawyer of the Year honor is based on excellence in the practice of law and service to the Energy, Natural Resources and Environmental Law Section of the Utah State Bar.

Beless holds Ph.D. and J.D. degrees from the University of Utah, where she served as senior editor of the *Utah Law Review*. She has served as chairman of two Utah State Bar committees, is a director of the Utah Wildlife Federation, and is active in committees of the Utah Mining Association.

East High Graduate Receives Scholarship

University of Utah freshman Sian Jones, a graduate of East High School, is the recipient of a $500 scholarship from IHC Blood Services and the Young Lawyer Section of the Utah State Bar.

The award was presented after a year long contest between area high schools to increase blood donations among students and establish them as long-term donors. East High School donated the most blood, and in turn, presented the scholarship.

Funds from the Young Lawyer Section have established an endowment for the annual scholarship presented as part of the IHC Salt Lake County High School Blood Drive.

Additional information about the program is available by calling IHC Blood Services at LDS Hospital, 321-1150.

Discipline Corner

ADMONITIONS

1. An attorney was admonished for violating Rule 8.4(d) by representing a client in a divorce action and subsequently, while acting as Deputy County Attorney, prosecuting this client for child sexual abuse. Of concern was that the defendant had originally been charged with a first degree felony, which charge was then reduced to a second degree felony prior to prosecution.

2. An attorney was admonished for violating Rule 3.7(a) and Ethics Opinion #45 by acting as legal representative for a collection agency of which he was the owner.

PRIVATE REPRIMANDS

For violating Rules 1.3 and 1.4(a), an attorney was privately reprimanded for accepting a retainer regarding a custody dispute and subsequently failing to appear and file pleadings and failing to return the client's telephone calls and written requests for information.

SUSPENSIONS

On August 9, 1990, Harold R. Stephens was suspended for one month for violating Canon 6, DR 6-101(A)(3), Canon 7, DR 7-101(A)(2) and Canon 1, DR 1-102(A)(4) of the Revised Rules of Professional Conduct of the Utah State Bar and Rule 1.3 and Rule 1.4(a) of the Rules of Professional Conduct of the Utah State Bar. Respondent was also ordered to pay restitution in the amounts of $75 and $600 and reimburse the Office of Bar Counsel for costs for prosecution of the matter, as conditions of reinstatement. Mr. Stephens' suspension was based on complaints by two separate clients. Mr. Stephens agreed to represent one client in a divorce matter and subsequently failed to contact his client or respond to her request for information for approximately one year. After the divorce was finally granted, Mr. Stephens failed to prepare the Findings of Fact and Conclusions of Law and the Decree of Divorce. Regarding the second complaint, Mr. Stephens agreed to represent a client in an attempt to increase child support. The opposing party was willing to stipulate to the increase in child support. Mr. Stephens failed to prepare the stipulation or contact his client or return the client's numerous requests for information. The sanction was aggravated in that the clients were unsophisticated legal consumers and that Mr. Stephens' conduct exhibited a pattern of misconduct.

DISBARMENTS

On July 11, 1990, Richard J. Calder was disbarred from the practice of law in the state of Utah. This disbarment was based on two separate disciplinary complaints. In an attempt to resolve one of the Bar complaints, Mr. Calder agreed to amend the bankruptcy schedules for his client and file a motion to reopen the client's case. Mr. Calder failed to follow through with his agreement. In a subsequent malpractice action in the Third District Court brought by the client, Mr. Calder knowingly and intentionally made several misrepresentations and false statements to the court. Mr. Calder subsequently filed for bankruptcy protection and failed to list the client as a creditor or to notify the client of the bankruptcy for a period of approximately two years after the original filing. Regarding the second complaint, a client filed a malpractice lawsuit against Mr. Calder who failed to amend his personal bankruptcy to include this client as a creditor. Mr. Calder reopened the client's bankruptcy solely for the purpose of harassing the client and made several false and misleading statements in his motion to reopen. Mr. Calder also made several misstatements to the Court in the malpractice action. After the Judge rendered his oral opinion in the malpractice action and prior to the formal entry of the judgment, Mr. Calder transferred a substantial portion of his property to his wife and brother. Mr. Calder subsequently filed for protection under the bankruptcy laws in bad faith for the purpose of frustrating the claims of his clients.

Teaching the Bill of Rights to Elementary Students

Looking for another way to have fun practicing law? Need to lift your spirits? Want to be a hero?

Phi Alpha Delta Law Fraternity International (PAD), to which more than 400 distinguished Utah judges and attorneys belong, will conduct a three-hour training session on Teaching the Bill of Rights to Elementary and Junior High Students on Friday, November 9, 1990, from 2:00 to 5:00 p.m. at the University of Utah College of Law Sutherland Moot Courtroom. Roger L. Goldman, constitutional law professor at Saint Louis University School of Law, will lead participants through the newly published PAD Bicentennial Guide. Professor Goldman will be assisted by attorneys affiliated with the Utah State Bar's nationally recognized Law-Related Education Committee and the Law-Related Education & Citizenship Project of the Utah State Office of Education. Elementary students from Lowell School in Salt Lake City will volunteer as guinea pigs.

Participating attorneys and law students will be matched with one (or more) K through 8 school classrooms in their locale to teach those students about the Bill of Rights. Participants will work out the time(s) and date(s) with the classroom teacher with whom they are matched.

Participation will be limited to 150 attorneys and law students. If you would like to participate, please call or return the form below to: Virginia C. Lee, Marsden, Orton, Cahoon & Gottfredson, 68 S. Main Street, Fifth Floor, Salt Lake City, UT 84101, (801) 521-3800.

TEACHING THE BILL OF RIGHTS—REGISTRATION FORM

Name _____

Firm _____

Address _____

_____

Phone _____

I am ☐ am not ☐ a member of Phi Alpha Delta

New Criminal Defense Lawyer Organization

A state organization of criminal defense lawyers is being organized by members of the local Bar. Membership is open to lawyers who are involved in any criminal defense practice in the state or federal courts. The organization has a number of purposes. The first is to provide lawyers with continuing legal education programs that specialize in criminal defense. The second is to create a vehicle where criminal defense lawyers may provide input to the state legislature on bills that are under consideration. The final purpose is to provide criminal defense lawyers with a network to share information about changes in the law, judges and prosecutors across the state.

The organization will be named the Utah Association of Criminal Defense Lawyers (UACDL). It will be independent of the State Bar Association but will seek affiliation with the National Association of Criminal Defense Lawyers. Similar state organizations in about 30 other states are currently affiliated with the national organization.

The UACDL is currently planning to hold a two-day CLE seminar at Snowbird resort on April 5 and 6, 1991. It is expected that the seminar will carry 12 CLE credit hours. The program will focus on trial techniques and legal issues applicable to a criminal defense practice. Several nationally prominent criminal defense lawyers as well as local lawyers will be on the faculty for the seminar.

A barbecue and fund-raiser was held for the association on August 29. Approximately 25 lawyers attended from seven different counties across the state. Nominations and elections for officers and trustees of the organization will be held in October and November. Others interested in joining the organization should contact Fred Metos, Gilbert Athay or Larry Weiss.

Claim of the Month

ALLEGED ERROR AND OMISSION

Plaintiff alleged that the Insured failed to inform her of a $75,000 settlement offer in a FELA claim. Plaintiff alleged that she would have accepted the said settlement offer had it been communicated to her.

RESUME OF CLAIM

Insured attorney represented the plaintiff for survivor's benefits under FELA claim. Respondent employer made an offer at $75,000 in settlement of the plaintiff's claim. Insured stated that the settlement offer was communicated to the plaintiff and that the plaintiff rejected the offer. The claim was subsequently disallowed on jurisdictional grounds, thus barring any recovery by the plaintiff. The plaintiff then sued the Insured for malpractice.

HOW CLAIM MAY HAVE BEEN AVOIDED

The Insured should have documented the communication of the settlement offer and its subsequent rejection by the plaintiff. Communications should have been "blind" carbon copied to firm's management committee. Defense of the claim was further complicated by the death of the Insured while the plaintiff's suit was pending.

"Claim of the Month" is furnished by Rollins Burdick Hunter of Utah, Administrator of the Bar-sponsored Lawyers Professional Liability Insurance Program.

Notice to All Bar Section Members

Effective November 1, 1990, all reservations and cancellations for section luncheons must be made at least 48 hours in advance. Reservations must be made 48 hours in advance, in order to guarantee space for luncheons. Without a reservation, entrance may not be available.

If a reservation is made and you find you are unable to attend, please cancel immediately. Cancellations not made at least 48 hours in advance will be treated as "no-shows" and you will be billed for the cost of the luncheon.

Please remember this policy when making reservations for any section luncheon. Thank you.

New Address or Phone?

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

Please use this coupon and mail.

Name _____

Bar Number _____

Old Telephone _____

New Telephone _____

Old Address _____

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New Address _____

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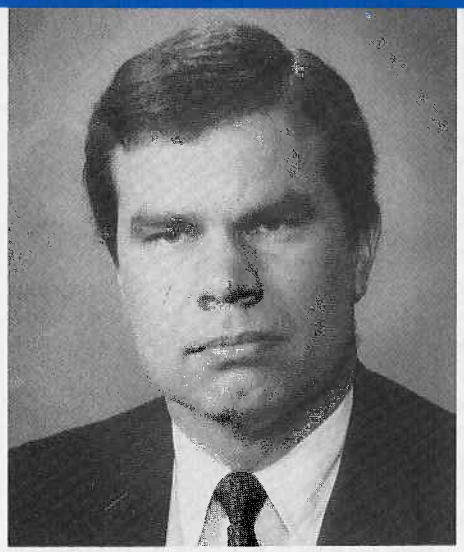
_____

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

CASE SUMMARIES



By Clark R. Nielsen

PARENTAL SUPPORT AND EMANCIPATED CHILDREN

The common-law rule on emancipation of a minor by his or her conduct is applicable in an action by the state to recover child support expenses from the parents of the minor child. In determining whether a minor youth has become emancipated, the trial court must first determine for itself, "what factors are relevant to the determination" based on a review of cases from other states.

In an action by the state for reimbursement of support paid for the minor youth, the parent bears the burden of proof that the child is emancipated and that the parental obligation of support terminated. However, the court expressed no view whether the common-law child emancipation doctrine has been superceded by U.C.A. §§78-3a-49, 78-45-3, -4, and 4.3 (1987) regarding the statutory duties of parents to support their children—presumably because the issue was not adequately raised on appeal.

State v. C.R., 142 Utah Adv. Rep. 39, (Utah Ct. App. August 30, 1990) (J. Jackson).

HEARSAY EVIDENCE; U.R.E. 608(a)

A conviction of forcible sexual abuse was reversed because it was, in part, based upon hearsay testimony. Under U.C.A. 76-5-411, the trial court may admit expert testimony of the hearsay statement of a child *under 10 years* of age. Because the victim was not under 10 years of age but was an 18-year-old, mentally retarded adult, her hearsay statements were improperly admitted and defendant's counsel was ineffective in not objecting to the testimony.

The appellate court also held that the prosecution improperly bolstered the victim's account of her abuse by the testimony of a schoolteacher attesting to the victim's character. Although refusing to consider *State v. Rimasch*, 775 P.2d 388 (Utah 1989) because the teacher was not considered an "expert," the evidence of character was clearly improper under Utah Rule of Evidence 608(a). However, that error was considered harmless.

State v. Hallet, 140 U.A.R. 6 (Utah Ct. App., July 13, 1990) (J. Orme).

MEDICAL MALPRACTICE—SCREENING PANEL REVIEW

Dismissal of plaintiff's malpractice complain was reversed even though plaintiff's complaint had been filed before the prelitigation screening panel review under U.C.A. §§78-14-4, 12 (1987). The dismissal of plaintiff's claim by the trial court resulted from the medical defendants' inaction by not properly raising the issues. Plaintiff's reasonable reliance upon that inaction prevented plaintiff from taking advantage of an opportunity to cure the defect.

Avila v. Winn, 136 U.A.R. 3 (Utah, June 1, 1990) (C.J. Hall).

ATTORNEY AND CLIENT, SETTLEMENT

Injured plaintiffs are not entitled to set aside their settlement with the defendant hospital or to claim malpractice against an attorney retained by the hospital's adjuster in the settlement process. Plaintiffs negotiated a settlement with the hospital and its adjuster for damages suffered by plaintiffs' minor child. The adjuster retained an attorney to draft the settlement documents and to obtain probate court approval for the settlement for the minor child. Later, plaintiffs attempted to set aside the settlement. Plaintiffs claim that they "understood" the attorney to be their attorney, even though they did not retain him and he was never part of the settlement negotiations. Plaintiffs could not set aside the $1,200,000-plus settlement as inadequate. The Supreme Court affirmed the summary judgment that, under the indisputed *material* facts there was no "implied," third-party or "limited" attorney-client relationship. Nor was the attorney liable for "volunteer legal advice." The record also failed to support a claim of fraudulent misrepresentation by defendants in the settlement. Although there may be "disputed" facts, the alleged dispute must be relevant to the legal issues.

Atkinson v. IHC Hospitals, Inc., 138 U.A.R. 3 (Utah, July 3, 1990) (C.J. Hall).

TAXATION, PROPERTY VALUATION AND ASSESSMENT

A statutory property value reduction of 20 percent in county-assessed valuations in unconstitutional when the methods of assessment are the same as state-assessed property taxed at 100 percent of its assessed value. Utah Code Ann. §59-5-4.5 violates uniform and equal taxation clauses (article XIII, §2, 3 of the Utah Constitution), as well as equal protection (art. 1, §24) restraints as a distinct classification not reasonably related to a valid statutory purpose. The objectives of §59-5-4.5 are not met when the same valuation method is used for both state and county assessments but one classification is allowed a valuation reduction. A state constitutional analysis is employed by the court.

Amax Magnesium Corp. v. Utah State Tax Commission, 139 U.A.R. 5 (Utah, July 13, 1990) (C.J. Hall).

APPELLATE JURISDICTION AND RULE 60(b) MOTION

Although an appeal divests the trial court of jurisdiction and vests jurisdiction in the appellate court, the trial court does retain jurisdiction to determine a motion under U.R. Civ. P. 60(b). A temporary remand for the purpose of considering the 60(b) motion only causes unnecessary delay in the appellate process. When adjudication of the motion by the trial court will not affect the issue on appeal, the trial court should hear the motion without permission or interference from the appellate court. See also *Baker v. Western Surety,* 757 P.2d 878 (Utah Ct. App. 1988). [Note that this Rule 60(b) exception to appellate jurisdiction does not apply to tolling post judgment motions under Rules 50, 52 or 59.]

White v. State, 137 U.A.R. (Utah, June 20, 1990) (Per Curiam).

GUILTY PLEA, RULE 11(5)

State v. Gibbons, 740 P.2d 1309 (Utah 1987), requires strict compliance with Utah R. Crim. P. 11(5) when the trial court receives a guilty plea. The court of appeals rejected the state's arguments that strict compliance with *Gibbons* and Rule 11(5) was not required. An argument that *State v. Vasilacopulos* had been overruled and disregarded was also rejected. The trial court has the burden of ensuring that Rule 11(5) requirements are complied with when the plea is entered. [Note: prosecutors must share a larger portion of that "burden" and should be more vigilant to make certain that the trial judge complete all Rule 11 requirements on the record, including all the necessary findings. Effective prosecutor participation in the process can reduce the likelihood of judicial error and later invalidation of a plea.]

State v. Gentry, 141 U.A.R. 26 (Utah Ct. App., August 24, 1990).

CUSTODIAL INTERROGATION— RIGHT TO COUNSEL

Defendant's murder conviction was set aside and remanded for a new trial because of custodial questioning without a clear waiver of defendant's constitutional right to an attorney. An "equivocal reference" to the assistance of an attorney may be sufficient invocation of the right to counsel so as to preclude further interrogation following a *Miranda* warning. When commencing a polygraph interrogation at the police station, defendant's mild inquiry whether he should have a lawyer present was sufficient to require further clarification as to whether defendant waived counsel before flunking the lie detector test. The court of appeals discussed in some detail the pre-interrogation waiver of the right to counsel under the Sixth Amendment. The court also discussed the criteria for deciding whether defendant was subjected to "custodial interrogation" so as to first require a *Miranda* warning and waiver.

State v. Sampson (Utah Court of Appeals), 890327-CA September 11, 1990. (J. Orme).

NOTICE OF MECHANIC'S LIEN

Insubstantial, technical defects in a notice of mechanic's lien will not defeat the validity of the lien when the deficiency does not prejudice the parties. Sworn verification of a lien is required by statute and is essential, not a "hypertechnicality." However, insignificant defects (such as omitting the notary's address or commission expiration date) in the form of the jurat will not necessarily defeat the verification. Nor is a lien notice void because it contains an overly broad property description or aggregates lien amounts in different parcels of land that are described together, when no prejudice or damage to the parties is shown. A lien notice may also include work performed under separate contracts. Finally, a non-party to the lien foreclosure has notice of the lien and foreclosure proceedings when a lis pendens is timely recorded.

Projects Unlimited, Inc. v. Copper State Thrift & Loan Co., 142 Utah Adv. Rep. 7 (Utah, September 6, 1990) (J. Orme, Court of Appeals, sitting by appointment).

Legislating the Criminal Law

By John T. Nielsen

Like a stranger in a foreign country, most civil practitioners find criminal law and procedure confusing and foreign territory and many avoid the practice like the plague. Nonetheless, Title 76 and 77 of the Utah Code are the Bible for the criminal lawyer and an essential component of the total fabric of Utah statutory law.

Enacted in the 1970s to modernize Utah's archaic criminal code, both titles are continuously the subject of legislative action during every General Session. The Interim Judiciary Committee is almost always considering some aspect of criminal law. In short, there are few bodies of statutory law that undergo as frequent revision as do those concerning the criminal law. Because of its dynamic nature, there is little wonder that those not familiar with criminal practice approach the subject with trepidation.

Typical of most general sessions, the 1990 General Session had before it scores of bills designed to supplement or amend Titles 76 and 77 of the Code. In fact, the Legislature considered and passed 31 bills that amend or enact provisions in both the substantive criminal code and the Code of Criminal Procedure. Subjects as diverse as the free distribution of tobacco products to the interjurisdictional transfer of prisoners were considered and passed by the 1990 General Session of the Legislature.

The following represent some of the diverse enactments by the last session of the Legislature relating to criminal law:

HB 81—Impersonating a Peace Officer. Expands the offense of impersonating a peace officer or public servant to include intent to deceive another, induce another to submit to his pretended official authority, or rely upon his pretended official act. It also applies to a person who displays without authority any badge, identification card or other form of identification, or uniform of any state or local government entity or a reasonable facsimile of these items.

HB 183—Concealed Weapons Amendments. Allows the Department of Public Safety to issue a temporary permit to carry a concealed weapon.

HB 124—Second Degree Murder Amendment. Amends second degree homicide statute to include killing of a peace officer during the commission or attempted commission of an assault against a peace officer or in the course of interfering with a peace officer who is making a lawful arrest.

HB 233—Archaeological, Paleontological, and Historic Site Vandalism Protection Act. Enacts a new statute to provide criminal penalties for activities involving cultural site protection.

SB 52—Group Criminal Activity Penalties (Gangs Statute). Enhances penalties if a defendant and two or more other persons would be criminally liable for the offense even if the other parties are not also apprehended, charged or convicted.

SB 90—Solicitation of Criminal Act. Enacts the offense of criminal solicitation and differentiates solicitation from conspiracy and attempt. The circumstances of solicitation must be strongly corroborative of an earnest intent on the part of the actor that the crime solicited actually be committed.

SB 133—Sex Offender Treatment. Allows sexually explicit materials to be used for assessment and treatment of criminal offenders.

SB 147—Unlawful Use of Firearms. Clarifies the law that the person may not carry a loaded firearm in or on a vehicle or on any public street or in a posted prohibited area. A person may not discharge any kind of a firearm from an automobile or other vehicle or from, upon, or across a highway.

HB 52, 54—Domestic Violence Amendments. These laws were reviewed in a previous issue of the *Bar Journal* and essentially provide that law enforcement officers stress protection of victims and give them information regarding community resources. The bills also direct perpetrators to have no contact with alleged victims.

HB 163—Arraignment Jurisdiction. Provides alternative procedures allowing arraignment, setting bail, or issuing a warrant on a criminal charge to be conducted by transporting a jailed defendant to magistrate nearest the jail where he is held.

SB 27—Grand Jury Reform. Provides for a statewide grand jury. The existing grand jury statutes are eliminated and this large body of statutory amendments after the concept, management and use of the grand jury

process in Utah.

SB 143—Pardons and Paroles Amendment. Increases the full-time Board of Pardons members from three to five. Those five members may sit together or in panels appointed by the chairperson, but the entire Board must sit to hear a commutation or pardon hearings.

SB 215—Subpoena Powers Act Amendment. Permits the court to authorize a witness not to disclose the substance of testimony or evidence when disclosure by the witness would cause the tainting or destruction of evidence, the threat of harm to a person or a reputation, or the target of the investigation to avoid prosecution by flight or other conduct. Such an order of secrecy may not infringe on the attorney/client relationship between the witness and his attorney or on any other legally recognized privilege relationship.

During the Interim Session of the Legislature, the Judiciary Committee has considered several proposed amendments to the criminal code and a number of them have been adopted as committee bills. This means they will be drafted, numbered and have the benefit of the approval of a legislative committee when they are further considered during the General Session. This is usually considered a likely assurance that the bill will pass. Those bills which have been adopted as committee bills as are follows:

Criminal Appeals Amendments. This bill was actually presented in the 1990 General Session, but was not passed because of certain problems with the language. It has been rewritten and will be presented in the 1991 General Session and provides additional rights of appeal for the prosecution.

Criminal Sentencing Amendments. Also presented in the 1990 General Session, this bill has been amended to clarify current law regarding the sentencing of felonies as misdemeanors in certain circumstances.

Aggravated Assault Amendments. Amends certain provisions and penalties concerning aggravated assault.

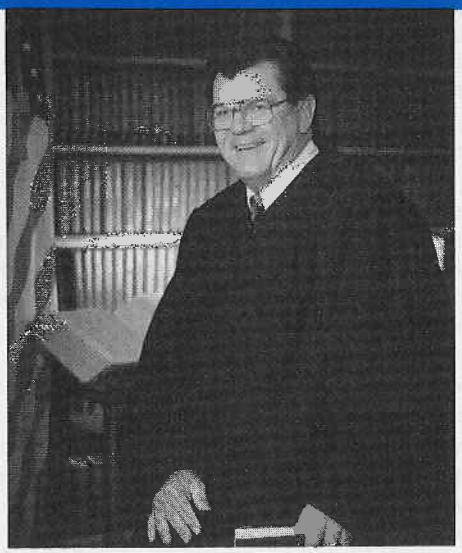
Standards for Imposition of Death Penalty. Introduced in the 1990 General Session, this proposed legislation was intended to remedy the court imposed standards for granting a death sentence. It is generally recognized that Utah has a more restrictive death penalty requirement that is mandated by the U.S. Constitution and the U.S. Supreme Court. According to criminal law experts, Utah's standard is the most stringent and restrictive in the nation and this bill would enable a jury to use their common judgment in weighing existing mitigating and aggravating factors rather than imposing a "beyond a reasonable doubt" standard in weighing aggravating against mitigating circumstances.

Statutory Homicide Reference. This bill redesignates first degree murder as aggravated murder and second degree murder as murder. It is intended to clarify the confusion that exists generally within the criminal justice system and among the public at large as to the distinction between the various categories of murder offenses in the criminal code.

Homicide by Assault. This proposal is in response to the unfortunate death of a young man who was killed as a result of a fight. The victim was the son of a prominent Hollywood personality and the case generated considerable discussion as to the deficiencies in Utah law with respect to serious assaultive conduct that results in death. As a result, a bill has been suggested to remedy this deficiency and the language provides that if a person knowingly and intentionally attempts to cause bodily injury and that injury results in death, that the crime is punishable as a third degree felony rather than as a misdemeanor by previous statutory provision.

An interesting dispute has developed regarding the enforcement of the State's domestic violence laws. These enactments, referred to in this article, and passed by the 1990 General Session of the Legislature have been challenged as likely unconstitutional by the State Attorney General's Office. In a rather rare confrontation between the Attorney General and Legislative General Counsel, the latter office has filed an extraordinary writ demanding that the law be enforced. The writ comes about as a result of certain law enforcement agencies' refusal to enforce the law relying upon the Attorney General's opinion as to its constitutionality. The case raises fundamental constitutional questions about separation of powers and the primacy of legislative policy making versus executive branch declarations with respect to the enforceability of lawfully passed legislation. This issue will be followed carefully by those affected as well as constitutional scholars.

There will no doubt be other issues involving criminal law and procedure that will come to the fore within the next few months as the session draws near in January. Those bills and issues discussed herein will likely receive rather immediate attention by the Legislature, but it is premature to predict with certainty the outcome.



Report on the Condition of the United States District Court, District of Utah

By Bruce S. Jenkins, Chief Judge, United States District Court, District of Utah
Talk Given Before The Utah State Bar Convention, June 28, 1990, Beaver Creek, Colo.

I have been asked to give a short report on the condition of the United States District Court for the District of Utah. I will try to tell you where we are and where we are going. Because of time constraints, I will only touch on workload, personnel, physical plant, technology, local rules, you—court officers—and court aspirations.

As you know, the United States District Court, District of Utah, is one of 94 United States District Courts. We have four active judges, two senior district judges, one full-time magistrate, four part-time magistrates, three bankruptcy judges, a district court clerk's office, a bankruptcy court clerk's office, and a probation department. Counting judges, current court personnel number 125 persons. We are still growing.

The number of district court civil cases filed for each of the past three years has been relatively flat. This year we terminated slightly fewer cases than received. Criminal filings have been increasing. We have terminated slightly fewer criminal cases than received.

The increased time demands, paper demands, and lag-time for processing criminal cases (all resulting from the application of sentencing guidelines) has slowed considerably the processing of criminal cases with no appreciable improvement in the end result. Like other courts, our court has gone unanimously on record asking Congress to revisit minimum-mandatory sentencing and sentencing guidelines to try to correct the inequities that exist in this badly flawed social experiment.

In practical terms, as to all cases, we are holding our own—due in large part to my diligent and gifted colleagues and a devoted and capable staff. The case mix has been changing. We have a number of cases with multiple parties, one with some 1,800 plaintiffs, and some with trial time demands of six to 12 weeks. You should understand that most cases are resolved short of actual trial. Our court is unusually good at settling cases short of trial. Settlement conferences and intensive pretrial work assist in achieving that result.

Although we have asked for no new judges, and the judicial conference has recommended none, legislation now pending in Congress provides for a fifth judge for the district of Utah.

The bankruptcy court, while awash in a maze of statistics, is experiencing a change in case mix and is beginning to see the light of day. Chapter 11 filings and related proceedings which require in-court judge time are subsiding.

Figures, while interesting, tell nothing of the quality of judicial services rendered. I am happy to report high quality work by all of our judges and judicial officers.

I am happy, as well, to report that our building program is moving apace. The contractor is on-site on floors one and three. When construction is completed, our clerk's office will be located on floor one, the main street floor, as will our ever-expanding probation department. There will also be a third courtroom on the main floor, and a new bankruptcy courtroom on floor three. That

BRUCE S. JENKINS is Chief Judge, United States District Court, District of Utah.

Prior to assuming the bench, Judge Jenkins practiced law and was active in civic affairs.

He was a State Senator, Minority Leader of the Senate and at the age of 36 became President of the Utah State Senate.

He is the author of published opinions, speeches and essays on a variety of legal subjects. He is best known in legal circles for his opinion in Allen, et al. v. United States, *588 F. Supp. 247 (1984), wherein he found the United States was liable to certain plaintiffs for the negligent conduct by the United States of open air atomic testing. He has lectured before Bar Associations, Judges, Civic, Professional and Academic Groups. He has lectured to Law Schools, Law Faculties, Judges and Bar Associations in Third World Countries in Africa. He keynoted the Fourth Annual Airlie House Conference on the Environment, sponsored by the Standing Committee on Environmental Law of the American Bar Association. He also keynoted a nationwide conference on Trying Mass Toxic Torts in San Francisco, sponsored by the American Bar Association.*

Judge Jenkins holds B.A. (1949) and Juris Doctor (1952) degrees from the University of Utah. He is a member of Phi Beta Kappa, Phi Kappa Phi and Phi Eta Sigma. In 1985, he was named Alumnus of the Year by the University of Utah College of Law.

Judge Jenkins was born in Salt Lake City, Utah. He is married to Peggy Watkins. They have four children and six grandchildren.

will give us a total of six district courtrooms, three bankruptcy courtrooms, and a court facility as nice as any in the country. When construction is complete, for the first time in the history of court we will have a permanent grand jury facility devoted exclusively to grand jury work. We are making space available for the expansion of the court's library. The library is maintained by the 10th Circuit and is available to court practitioners and others with research needs.

In September, our building will be given a new name, the Frank E. Moss Federal Courthouse, in honor of a distinguished United States Senator.

Our adventure in technology is moving forward as well. As you recall, we started the computerization of our clerk's office last year. All pending civil cases are now on computer. We are fine-tuning the program to realize its potential as an information management tool. As you may remember, we are one of five small federal courts in the country designated as pilot courts in the use of small computers. Our experience will be used by others if things go well. So far, so good.

I am pleased to announce that, on July 17, we will make available to those of you who are equipped with terminal, computer, and modem, a service called "PACER" to enable you to dial into our computer by telephone and obtain docket information on pending civil cases. This system uses the acronym "PACER," which stands for public access to court electronic records. Access, not input. Some records, not all records.

The district of Utah is only the fifth United States District Court to receive "PACER." It is being tested in our court as I speak. "PACER" will be made available to the Bar, the press, and the public. Briefings will be held by the court July 17, in room 140, at 10:00 a.m. and 2:00 p.m. for system information and explanation.

We have had a distinguished rules committee, chaired by Robert Campbell, revising all of our local, civil and criminal rules of procedure. The committee has been working diligently for almost a year and anticipates reporting to the court in the next month or two. After review, the court will provide opportunity for public hearing and comment. Our effort is to simplify and regularize the local rules and meld them with national rules and the emerging judicial world of electronics.

We have an additional subject on the drawing board. Sometime in the next year, the court will announce the formation of a District Court Historic Foundation to preserve and perpetuate the history of the court. One area of supreme neglect in the area of history is court history. While we have a plethora of cases, time removes much. The color, the personality, the tone, and the setting of cases are lost forever. We are a young court. We have existed only since 1896. We have had but nine judges. Six are still alive. The effort of the Foundation will be primarily educational—to preserve and perpetuate court history. This, we hope, will be in keeping with our continuing celebration of the federal courts and their contribution to society, and in keeping with the current ongoing bicentennial celebration of the Constitution and the Bill of Rights.

Improved physical plant, improved technology, improved rules of procedure, and history preservation are high on our list of court objectives. They have taken an inordinate amount of my time. I hope to have them all in place before I complete my tenure as chief judge.

I wish I had time to list the honors and distinctions achieved by members of this court nationwide, among colleagues and associates, within the court structure, and in the academic world. I cannot list them all, but let me mention a few. Twice, court personnel have been called upon to instruct other chief judges at two national seminars. Judges serve on national committees. Our senior senior (Judge Christensen) will soon be signally honored by the American Bar

Association. Our judges are called upon to speak from California to Maryland on the cutting edge of legal theory. Some speeches are slated for publication in prestigious journals.

I can't talk about the court without talking about court officers. Namely, you! Let me turn to that now.

A few months ago, I was asked to speak to the Davis County Bar Association. I was seated at a table between two very attractive young women—dates for two young men sitting at the same table. One young woman was on my right. One was on my left. The president of the Bar went to the one on my right and gave her a rose and a sustained and enthusiastic kiss. He then went to the one on my left and gave her a rose and a sustained and enthusiastic kiss. He then gave me a rose. He then bent down and said, "Give this to your wife." Only then did Title Seven slip from my brain. No need for fight or flight. I was relieved, but I had jumped to a conclusion. We all do. You did just now. And we all did so from an inadequate evidentiary base. Lawyers should know better. Judges, too.

It has been fashionable recently, as it has been fashionable from time immemorial, to talk of the rotten reputation of lawyers. From the Old Testament to yesterday's newspaper, examples abound. We become obsessed with "image." From an inadequate evidentiary base, people jump to conclusions about lawyers. It is substance, not image, that is important.

Most lawyers, officers of the court, do a good job. The history of dispute resolution from the beginning of this country—from *Marbury* to *Brown v. Board of Education*, from the Bill of Rights to the Fourteenth Amendment—tells us what lawyers have done, do, and will do. I know of no profession with a prouder substantive history—a history often ignored by those who jump to conclusions.

Imagine this country without courts and without lawyers, and I guarantee that disputes now peacefully channeled through orderly process, the legal process, would be settled in the street or at the point of a gun. How about that for alternative dispute resolution?

As this country grows, we don't need fewer courts—we need more courts. Congress and state legislatures should understand that. We need ready access to the courts for resolution of problems people are unable to resolve for themselves.

I get a little impatient with lawyers who join the chorus of the uninformed and denigrate their own profession—lawyers who are obsessed with image rather than substance, with mythology rather than history, with jumping to conclusions rather than examining the overwhelming historic evidence.

Let me fortify what I have said with a few observations by others. These come from jurors who have participated in actual cases in the United States District Court. For the past 14 months, we have been conducting an exit poll of jurors as a device for improving court operations. That's right, even judges are interested in improving court administration. Let me give you a few comments by citizens who sat as jurors through a trial from beginning to end.

One of the questions asked is: "What did you especially enjoy about your jury service?" Another is: "What recommendations, if any, do you have for improving jury service?"

Let me give you some typical comments given in response to such questions.

"It really works..."

"It gave me an appreciation for the law and our legal system. Very professionally conducted throughout..."

"The highly skilled attorneys and judge. To all, well done."

"I enjoyed serving my country."

"It was a tremendous learning experience."

"The trial was an exceptionally good experience."

"It is really interesting and [I] would do it again..."

"Seeing how much effort goes into fair jury selection."

"I enjoyed that 12 strangers can pull together and make good rational choices..."

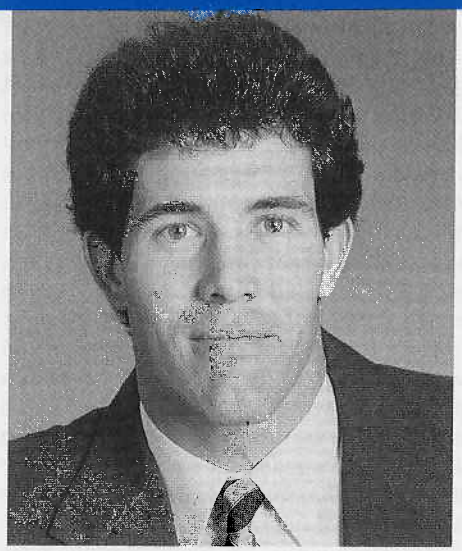
"The judge made the jury feel as though we were judges and treated us with much respect. We took the case very seriously."

When that one juror with a total case experience says, "It really works, it really works," she is far more persuasive than those without such experience who say otherwise. This is not image. This is reality. This is substance.

As lawyers, look at the evidence, all of the evidence, and appreciate the genuine contributions lawyers have made—and continue to make—to problem resolution in an atmosphere of peace.

When you or others mistake image for substance, symbol for reality, mythology for history, palaver for competent work, you do the legal system and society a distinct disservice. You have a professional responsibility to help keep this fragile country together. You fulfill it each day by what you do in the office—in the courtroom—in the community. I know of no profession with a prouder history of fulfilling that responsibility.

Gee, I am just getting started, but that, Mr. President, is my brief report.



Voluntarism: The Most Important Ingredient

By James C. Hyde
Young Lawyers Section Treasurer

The Utah Young Lawyers Section has earned a reputation of being one of the most active and dynamic young lawyers section affiliates in the country. For example, two years ago the Section received the ABA's first place award for the best overall program in the country for similar-sized young lawyer section affiliates. Last year the Section received the ABA's award for the single best project for the Salt Lake County/Young Lawyers Section pro bono project to provide domestic relations legal advice to low-income participants. The most remarkable aspect of the Section's success is that it has realized these achievements in the face of extreme financial difficulty.

For the past three years, the Young Lawyers Section of the Utah State Bar has had to deal with drastically declining funding. The Section's budget, which is an allocation from the Bar, has declined from $21,000 for fiscal year 1987-1988 to approximately $13,000 for last year. The Section's budget is only about one percent of the total budget of the Bar.

The Section, however, is more active and successful than ever. Even though its budget has been cut by nearly 40 percent, the Section currently has more young lawyers involved in more public service and member support projects than ever before. Even though the Section has had to seek alternate funding from private law firms, ABA and Utah Bar Foundation grants to meet its minimum financial needs, the Section received national recognition awards for two consecutive years. Why? How is it that the Section, with seemingly inadequate financial ability, has been so prosperous? The reason is the spirit of voluntarism among the young lawyers of Utah. Young lawyers throughout the state have been willing to participate in Section programs such as Meals for the Homeless, Law Day Fairs, Tuesday Night Bar, Peoples Law Education Program, drug abuse preventions programs for high school students and more than 50 other programs and projects which benefit the public, the members of the Section and the Bar. I wish to thank all who have participated in the Young Lawyers Section. Individual voluntarism has made the Section successful.

This year the Section faces the possibility that all funding from the Bar will be eliminated. In early August of this year every member of the Bar received a copy of the Utah Supreme Court's Minute Entry, dated August 10, 1990, which discussed the financial dilemma of the Bar and addressed the Bar's petition for a dues increase. The Court authorized the dues increase and identified other steps to be taken by the Bar to begin to deal with its fiscal problems. The Court ordered that all Bar programs that are not self-supporting will be discontinued unless specifically authorized by the Court. Continued funding of the Young Lawyers Section is threatened by the Court's order because the Section collects no dues from its members and is not otherwise self-supporting.

Although the Section has been successful on a shoestring budget, only a few of the Section's programs could continue without the financial support of the Bar. The Section now must demonstrate its worth to the Supreme Court to receive any funding at all. The voluntarism of the members of the Section will again be the most important ingredient in demonstrating to the Court that the Section should receive continued funding.

Without discounting the importance of the Bar's other functions, its most important objectives are to provide pro bono legal services to the public and to educate the public about its legal rights and responsibilities. The Young Lawyers Section is the arm of the Bar that is most visible and active in achieving these objectives. For that reason alone the Young Lawyers Section deserves continued funding.

Last year members of the Section devoted thousands of hours to volunteer time to educate the public about the law and the legal system. The Section's projects benefited hundreds of persons and were specifically designed to benefit target groups, including the elderly, the homeless and indigent, school children and victims of child abuse. Because of the voluntarism of the

Section members, the Section's projects have been successful. Because of the members' voluntarism and the Section's success, the Bar's most laudable objectives are achieved at a very low cost relative to the Bar's total budget. The public benefit provided by the Section is too important to lose because of a lack of funding.

I am honored this year to have the opportunity to serve as treasurer of the Young Lawyers Section of the Utah State Bar. I look forward to working with the many dedicated young lawyers throughout Utah. I encourage each young lawyer in the state to become involved with the projects of the Section. The objectives and goals of the Section are only realized by individual volunteer efforts, and the Section needs everyone's support and help now, more than ever before. I also encourage each young lawyer in the state to join with the Young Lawyers Section to petition the Supreme Court to allow the Bar to continue its financial support of the Section.

The Young Lawyers Section Has Legal Briefs

The Young Lawyers Section of the Utah State Bar is participating in the Legal Briefs program on KSL Radio. Legal Briefs is a live radio program that discusses various legal matters that affect the public. Legal Briefs begins with a discussion between attorneys and other participants, following which the public is able to call and ask questions. The program airs approximately every other Monday at 11:00 a.m. until 12:00 p.m. and has already discussed a variety of topics, including the Huntsman kidnapping, life after prison and the safety of pension and retirement plans in a bankruptcy.

The following is a list of programs scheduled to air on KSL:

Date: September 24
Topic: Prayer in Schools

Date: October 15
Topic: Criminal Appeal Process

Date: October 29
Topic: When You Can Be Fired

Date: November 12
Topic: White Collar Crime

Date: November 26
Topic: Spouse Abuse, What Are Your Legal Remedies and Rights

Date: December 3
Topic: How the Juvenile System Works

Pro Bono Committee AIDS Project

The Pro Bono Committee of the Young Lawyers Section is soliciting attorneys to enlist to work on AIDS-related legal issues such as living wills, wills, employment matters, wrongful discharge and discrimination. The list of names will be turned over to the Utah AIDS Foundation.

If you are interested in being a volunteer attorney in this area, please contact the Pro Bono Committee members: Betsy Ross at 532-7840, Kristin Brewer at 532-1036 or Scott Monson at 534-1576.

Pro Bono Committees Second Annual Miniature Golf-a-Thon

The date of the fund-raiser for Utah Legal Services, the Second Annual Miniature Golf-a-Thon, will be Wednesday, February 20, 1991, at the 49th Street Galleria. More information will be published in coming months.

Utah Bar Foundation Elects New Officers

Richard C. Cahoon, Hon. Norman H. Jackson and Ellen M. Maycock are the newly elected officers of the Bar Foundation. Mr. Cahoon was elected President, Judge Jackson Vice President and Ms. Maycock was elected Secretary/Treasurer.

This marks Cahoon's fourth consecutive re-election to the Foundation's seven-member Board of Trustees, and continues a 10-year history of his presidency. As a tax and estate planning specialist, Cahoon is an alumnus of the University of Utah Law School. He earned his LL.M. (in taxation) from New York University in 1966, and was admitted to the Utah Bar in 1965. He has served as law clerk to the Chief Justice of the Utah Supreme Court and as a city councilman in Centerville.

Hon. Norman H. Jackson was also re-elected to his fourth consecutive term as a trustee of the Utah Bar Foundation and has been elected to continue his reign as vice president. Judge Jackson is one of the founding judges of the Utah Court of Appeals and is a member of the Board of Appellate Judges. Judge Jackson is president-elect of the American Inns of Court and has previously served on the Utah State Bar Commission and the Utah Legal Services Board of Directors.

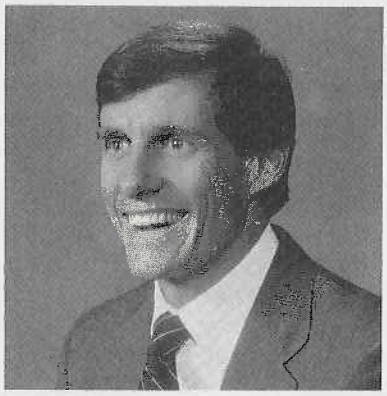
Ellen Maycock begins her first term as secretary/treasurer. Ms. Maycock was first elected as trustee for the Foundation in 1987. Ms. Maycock is a partner at the Salt Lake firm of Kruse, Landa & Maycock. She graduated from the University of Utah Law School in 1975 as member of the Order of the Coif. Ms. Maycock also served as editor-in-chief of the Utah Law Review from 1974-1975.

Ellen Maycock, Secretary/Treasurer

Richard C. Cahoon, President

Judge Norman H. Jackson, Vice President

Foundation Says Goodbye to H. Michael Keller and Welcomes James B. Lee



H. Michael Keller

After a very successful term as a trustee and secretary/treasurer of the Foundation, H. Michael Keller has stepped down as a trustee of the Utah Bar Foundation. During the past nine years of service to the Foundations, Mr. Keeler has been active in the introduction of the Interest On Lawyers Trust Account Program (IOLTA) coming to the fruition in Utah. Mr. Keller has also been an invaluable contact to many grant applicants. The Foundation thanks Mike Keller for his loyal and dedicated service to the Foundation.

James B. Lee

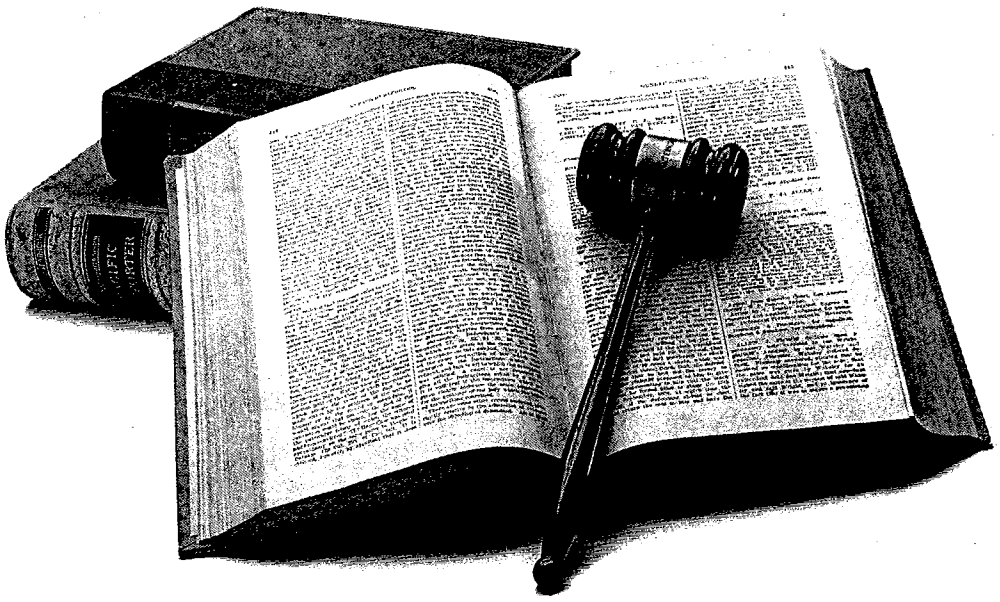
The Foundation would also like to welcome James B. Lee as its newest trustee. Mr. Lee is a partner and President of the law firm of Parsons, Behle & Latimer and a graduate of the United States Military Academy at West Point and George Washington Law School. Mr. Lee is active in many community and Bar activities and is a Master of the Bench of the Sutherland American Inn of Court. Mr. Lee has already become a very active member of the Board of Trustees. Welcome.

Foundation Searches for New Executive Director

The Utah Bar Foundation has begun its search for a new executive director. The Foundation first opened an official office in October 1988 and has been operating under the direction of Kay Krivanec. Ms. Krivanec will be leaving the Foundation at the end of December to join the firm of Jones, Waldo, Holbrook and McDonough.

The Foundation welcomes all interested persons to contact Ms. Krivanec at the Foundation's office at the Law and Justice Center where detailed information and interviews can be arranged.

You Be The Judge!



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CLE CALENDAR

THE HEAD INJURY CASE

The Utah Head Injury Association, in conjunction with the Utah State Bar, is pleased to announce the second annual seminar entitled "The Head Injury Case." This is a two-day course designed to increase the knowledge and competency of attorneys who litigate brain injury cases. The program is structured to provide significant help for the "novice," who may have only had one case, as well as more experienced counsel who have litigated many cases. The conference faculty includes some of the nation's foremost medical experts and many other local physicians and psychologists with considerable expertise in brain injury cases. Attorneys on the faculty include well-known plaintiff and defense attorneys from Massachusetts, Colorado and Utah.

CLE Credit: 16 hours
Date: November 1 and 2, 1990
Place: Little America Hotel, Salt Lake
Fee: $345
Time: 8:30 a.m. to 5:30 p.m.

16TH ANNUAL TAX SYMPOSIUM

In the ever-changing avenue of taxation, you need to stay informed of all events which impact you and your clients. Be aware of the most current and effective tax applications and solutions available to you from experts in the field. This seminar, presented by the UACPA and the Tax Section of the Utah State Bar, provides the latest information on tax law changes with technical updates and practical information for tax planners and preparers. Please note that *no* registrations will be accepted at the door.

CLE Credit: 16 hours
Date: November 1 and 2, 1990
Place: Salt Lake Hilton
Fee: $220
Time: 8:00 a.m. to 5:00 p.m. each day

RULE-BASED DOCUMENT PREPARATION IN THE LAW OFFICE

A live via satellite program. Document assembly systems incorporate several technologies: expert systems, database retrieval, hypertext, word processing and decision analysis. Properly implemented, document assembly software can help lawyers attract clients, bond existing clients to the firm, and allow you to focus on the intellectual challenges of law practice. The program will give you: live demonstrations and critiques of leading document assembly packages, sophisticated advice on where and how these programs should be introduced to law firms and departments, and insight into the long-term implications of this important class of substantive legal software.

CLE Credit: 6.5 hours
Date: November 6, 1990
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

ETHICS AND PROFESSIONAL RESPONSIBILITY

This program will cover the following topics: Business Relationships with Clients; Soliciting Business—The Theory and the Reality; Conflicts of Interest—New, Possible, Current and Former Clients; Waivers of Conflict; and Disqualification. The program is of a general nature and should appeal to all practitioners. This is an excellent opportunity to meet your entire three hours of ethics credit.

CLE Credit: 3 hours—ETHICS
Date: November 7, 1990
Place: Moot Court Room, U of U College of Law
Fee: $45
Time: 5:30 to 9:00 p.m.

COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

A live via satellite seminar. This program will examine which employers are covered, and how and on what grounds exemptions and exceptions will be permitted, while concentrating on the actions employers must take to be in compliance with the ADA in the hiring of new employees and the "accommodation" of persons already employed. This program will be of interest to attorneys, in-house counsel, human resource personnel, corporate planners and all those who advise employers in their hiring, employment, benefits and workplace practices.

CLE Credit: 4 hours
Date: November 8, 1990
Place: Utah Law and Justice Center
Fee: $150 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

TEAMWORK: LITIGATION, LAWYERS AND LEGAL ASSISTANTS

This seminar, co-sponsored with the Legal Assistants Association of Utah, focuses on the newest techniques for managing an effective litigation. The program takes an in-depth look at trial practice and the relationship and function of the attorney/legal assistant team. The seminar will be geared toward individuals already familiar with the litigation process and will provide practical information on cost effectiveness, efficiency and the duties which can be assigned, legally, logically and ethically to legal assistants.

CLE Credit: 4 hours—ETHICS
Date: November 9, 1990
Place: Utah Law and Justice Center
Fee: $80
Time: 8:00 a.m. to 1:00 p.m.

NEGOTIATING MAJOR COMMERCIAL LEASES IN A DIFFICULT REAL ESTATE MARKET

A live via satellite program. This seminar is designed for the active real estate practitioner who engages in lease negotiations and is interested in seeing how a major transaction is negotiated by a panel of experts. Although the lease to be negotiated covers office space, the program will include many topics that are of concern on other types of leases as well, such as retail and commercial. Among the matters to be discusses in this program are: rents and escalations; landlord's services; options to renew and take additional space; construction of tenant's space; assignment and subletting; subordination and non-disturbance; particular concerns of a headquarters tenant; lease takeovers; and dealing with highly leveraged tenants and hard-pressed landlords.

CLE Credit: 4 hours
Date: November 15, 1990
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

ENVIRONMENTAL IMPLICATIONS OF REAL ESTATE TRANSACTIONS

A live via satellite program. Environmental law is the growth industry for the 1990s where new regulations have led to new liabilities. This seminar will teach you: The latest legislative and judicial developments. Sources of professional liability. How to favorably resolve the environmental issues unique to each party to the transaction. How to minimize your client's risk of liability through smart drafting. What to advise your client about environmental assessments and audits. And how to enhance your practice through increased awareness of environmental issues. If you represent buyers or sellers of real estate, lenders or lessees, transporters, brokers or exchange accommodators, this seminar could be critical to your practice.

CLE Credit: 6.5 hours
Date: November 27, 1990
Place: Utah Law and Justice Center
Fee: $175 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

ESTATE PLANNING IN LATE 1990

A live via satellite seminar. This program will explain and comment on any new legislation enacted to replace §2036(c), including a discussion of effective dates. It is intended that such legislation will be the centerpiece of the program. If no enactment has taken place, however, the program will deal with the originally (and currently effective) enacted legislation, Revenue Notice 89-99 relating to that legislation, and the various proposed replacements for §2036(c), focusing on the most likely replacement. Guidance will be provided on how to plan in light of the uncertain state of the law.

CLE Credit: 4 hours
Date: November 29, 1990
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

ADVANCED EVIDENCE TECHNIQUES

A live via satellite program. This seminar is being presented by the Association of Trial Lawyers of America, National College of Advocacy.

Use of demonstrative evidence in the courtroom has changed dramatically in recent years. It has become an increasingly effective tool for the trial lawyer, limited only by one's imagination, creativity and basic rules for admissibility of evidence. This program will provide a comprehensive look at the state-of-the-art technology available to produce effective demonstrative evidence as well as methods for planning and using it.

CLE Credit: 6.5 hours
Date: December 4, 1990
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

DEPOSITION, PROCEDURE, TECHNIQUE AND STRATEGY

A live via satellite program. The key to successful depositions lies in proper preparation by the attorney and of the deponent. Proper questioning technique for both lay and expert witnesses are essential components explored in the program. The deposition function is clarified through a unique storytelling framework which provides an important and rarely considered approach to discovery and trial preparation. This program teaches NOT only through lecture, but through simulations of a witness preparation and a deposition. A professional actor serves as the deponent, which provides a realistic setting for the viewers to see enacted the concepts discussed by the expert faculty.

CLE Credit: 6.5 hours
Date: December 5, 1990
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

BANKRUPTCY SEMINAR

CLE Credit: 2 hours
Date: December 6, 1990
Place: Utah Law and Justice Center
Fee: $30 (includes lunch)
Time: 12:00 to 2:00 p.m.

TAKING CONTROL AND TURNING AROUND CHAPTER 11 COMPANIES

A live via satellite program. This seminar is designed for corporate, litigation and bankruptcy lawyers and for bankers, accountants, investment bankers and workout and turnaround specialists who are involved in Chapter 11 business cases of all sizes. This carefully structured program will provide the current state of the law in the hot areas of Chapter 11 and emerging trends in practice and procedure. The expert panelists will provide practice points and strategy for the persons representing the many parties in interest in a Chapter 11 case.

CLE Credit: 6.5 hours
Date: December 11, 1990
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

THE S&L CRISIS— HOW LAWYERS CAN HELP

CLE Credit: 6.5 hours
Date: January 22, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

BASIC ESTATE AND GIFT TAXATION

This program is the annual presentation prepared by ALI-ABA. Park City was chosen as this year's site and the Utah State Bar will be co-sponsoring this seminar. Further details on this program will be published as they are available.

Date: February 13-15, 1991
Place: Park City, Olympia Hotel

CORPORATE MERGERS AND ACQUISITIONS

This is another ALI-ABA annual program. It was held in Park City last year and was such a success that it is being held here again in '91. Again, further details on this program will be published as they are available.

Date: March 14 and 15, 1991
Place: Park City, Olympia Hotel

SECTIONS' CLE LUNCHEONS

Listed below are luncheons put on by Bar Sections which will qualify for CLE credit. Not all sections plan their meetings far enough in advance to make this calendar, so watch for section mailings on those and other programs. Typically these meetings qualify for ONE HOUR of CLE credit and attendance is for cost of lunch only (lunch need not be purchased). To register for these luncheons CLEs, call the Utah State Bar Reservations desk at 531-9095 at least one week prior to the date of the program. Dates and topics listed are subject to change.

DATE	TITLE	CREDIT
	BANKING AND FINANCE SECTION	
Nov. 15	1991 Utah Legislative Session—Preparation	1 hour
Jan. 1	FDIC, RTC and OTS after FIRREA	2 hours
Feb. 21	Sex, Fraud and Data Processing Tapes	1 hour
	EDUCATION LAW SECTION	
Dec. 7	Review of Pending Legislation Affecting Education	1 hour
Feb. 8	The Americans With Disabilities Act	1 hour
	FAMILY LAW SECTION	
	UPCOMING TOPICS:	1 hour
	O.R.S.—Rules and Procedures	1 hour
	Health Insurance—COBRA	1 hour
	Custody Valuations—Confidentiality and Privilege	1 hour
	Rule 4-501—"The Domestic Stepchild" Ethical Considerations	1 hour
	PATENT, TRADEMARK AND COPYRIGHT SECTION	
Nov.	Ethical Issues in Patent, Etc., Work	1 hour
	REAL PROPERTY SECTION	
Nov.	Real Estate Closings	1 hour
Dec.	Personal Computer Applications in Real Estate Transactions	1 hour
	TAX SECTION	
Nov. 28	Business Valuation Techniques	1 hour
Jan. 30	Divorce Taxation	1 hour
Feb. 27	Creative Charitable Gifting Strategies	1 hour
March 27	How to Succeed in Dealing With the IRS	1 hour
April 24	Utah Legislative Update	1 hour
May 29	Utah State Tax Issues	1 hour

CLE REGISTRATION FORM

TITLE OF PROGRAM **FEE**

1. _____ _____

2. _____ _____

Make all checks payable to the Utah State Bar/CLE. _____
Total Due

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Signature

Please send in your registration with payment to: Utah State Bar, CLE, 645 S. 200 E., Salt Lake City, UT 84111.

The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars in 1990 and '91. Watch for future mailings.

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

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The firm of Cohne, Rappaport & Segal, P.C. is seeking three attorneys in the following areas of practice: (1) A family law practitioner with at least eight years of experience; (2) an established business (transactional) attorney with at least five years of experience; and (3) a litigator with three to six years of experience in commercial and/or real estate litigation and a strong academic record. Send resumes to: Recruiting Committee, Cohne, Rappaport & Segal, P.C., 525 E. 100 S., Suite 500, P.O. Box 11008, Salt Lake City, UT 84147-0008.

SPECIAL NOTICE

APPLICANTS FOR CRIMINAL CONFLICT OF INTEREST CONTRACT. The Salt Lake Legal Defender Association is currently accepting applications for three conflict of interest contracts to be awarded for the fiscal year 1991. To qualify, each application must consist of two or more individuals. Should you and your associate have extensive experience in criminal law and wish to submit an application, please contact F. JOHN HILL, Director of Salt Lake Legal Defender Association, (801) 532-5444.

For information concerning classified advertising, contact Kelli Suitter at (801) 531-9077.

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JAMES E. ELLSWORTH
former Law Clerk for the U.S. Claims Court
Washington, D.C.

and

DANIEL V. GOODSELL

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UTAH STATE BAR 1990-1991
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Hon. Pamela T. Greenwood
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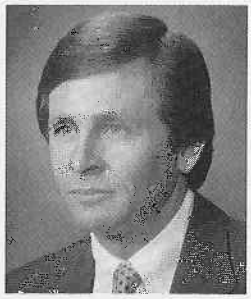

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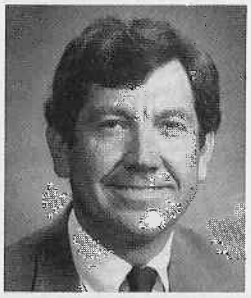

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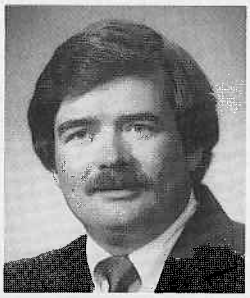

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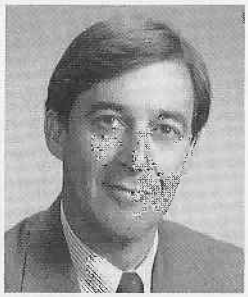

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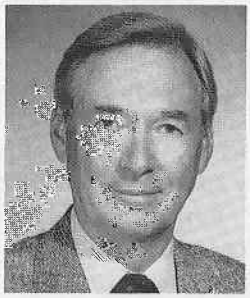

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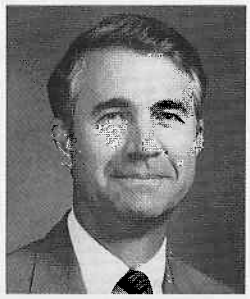

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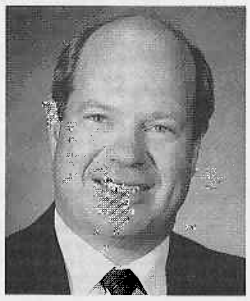

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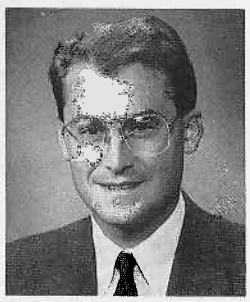

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