# UTAH BAR JOURNAL

Vol. 4, No. 2 February 1991


**THE BONNEVILLE PACIFIC CORPORATION**
**Employee Stock Ownership Plan**

*purchased common shares of*

**BONNEVILLE PACIFIC CORPORATION**

*in a leveraged ESOP transaction*

---

We rendered a fairness opinion to the Board of Directors of Bonneville Pacific Corporation as to the value of common shares purchased by The Bonneville Pacific Corporation Employee Stock Ownership Plan.

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# Fairness Opinions

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Members of the Utah Bar who are interested in having their color slide or other art form published on the cover of the ***Utah Bar Journal*** should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, UT 84111, 532-5200.

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# LETTERS

**Editor's Note:**
**NOTICE AND SOLICITATION OF CONTRIBUTIONS**

The *Utah Bar Journal* will begin publication of a regular feature this coming year covering humorous stories from members of the Bar. We have all had experiences from time to time in the courtroom, in depositions, or in dealing with opposing counsel that would make stories worth retelling. Anyone interested in contributing to this new feature should send their contribution to the *Utah Bar Journal*, attention Denver C. Snuffer, Jr., Law and Justice Center, 645 S. 200 E., Salt Lake City, UT 84111.

**Dear Editor:**

I read with great interest the December 1990 *ABA Journal* article on the Utah Bar's problems. I am a member of the Utah Bar practicing in Minnesota, where the justice system functions quite well without an integrated bar.

The decision to build the Law and Justice Center despite considerable opposition from members of the Bar sent a clear message to the state's lawyers that the association was by, of and for Salt Lake City's large, established law firms. A decision a few years ago to hold the Bar's annual meeting in San Diego, Calif. confirmed this and further alienated sole practitioners and public service lawyers alike.

The entire situation is indicative of what happens when an organization intended to serve its members loses sight of its purpose and takes on a life of its own.

Sincerely,
SCHNEIDER, JOHNSON & BANNON
William F. Bannon

**Editor's Note:**

The January issue of the ***Utah Bar Journal*** was the first one printed on a new, lighter weight which permits us to keep the ***Journal*** its regular length but saves several hundred dollars in printing, paper, and postage costs each issue. We may look leaner but we're not lesser!

# PRESIDENT'S MESSAGE

*By Hon. Pamela T. Greenwood*

## BAR PERSONNEL COSTS

The Utah Supreme Court recently issued an opinion reversing a decision of the Third District Court, holding that the Bar is not a state agency as encompass under the Archives and Records Services and Information Act or the Public and Private Writings Act, and thus not required to reveal details of staff salaries and benefits. In response to an inquiry by Brian Barnard, plaintiff in this action, Stephen Hutchinson, prior executive director of the Bar, had informed Barnard of salary ranges of Bar personnel, but had declined to provide detailed information of individual compensation. At that time, 1987, Hutchinson disclosed salary ranges of $13,000 to $17,500 for support staff; $19,000 to $17,500 for administrative staff; and $32,000 to $62,000 for executive positions. That was not satisfactory, however, and litigation followed seeking detailed information for all Bar staff salaries and benefits.

Since the matter is now resolved by the Supreme Court's decision, I believe it appropriate to provide some detail on personnel costs in our 1990-91 budget, as follows:

| | Salaries | Benefits |
|---|---|---|
| Departmental* | $ 94,200 | $ 24,830 |
| Bar Counsel | 155,200 | 38,300 |
| Admin. & Acctg. | 208,985 | 66,850 |
| Law and Justice** | 26,500 | 6,618 |
| **Totals** | **$484,885** | **$135,598** |

*Departmental includes lawyer referral, continuing legal education, admissions and licensing departments.

**We pay only a portion of the Law and Justice Center administrator's salary, based on actual services to the Bar. Also, benefits include some training costs.

We have fewer employees than previously, and have substantially reduced expenditures for salaries and benefits as compared with prior years. As a result, our staff has been required to make extra efforts to keep operations running smoothly and efficiently. I appreciate all of their efforts and hope you will all be supportive and patient when appropriate.

I would like to have a policy in place addressing disclosure of Bar staff salaries and other related information and plan on having it on our agenda at a future Bar Commission meeting. If you have thoughts on the matter, please convey them to me or another member of the Bar Commission. Personally, I tend to think that Bar employees are entitled to privacy about their financial status, with the possible exception of executive personnel. Disclosure of salary ranges for types of positions and total personnel costs for the Bar would seem to satisfy most reasonable questions.

## CHILD SUPPORT GUIDELINES ADVISORY COMMITTEE

Pursuant to Utah Code Ann. 78-45-7.13, the Governor is to appoint an advisory committee consisting of two persons recommended by the Office of Recovery Services, two persons recommended by the Judicial Council, two persons recommended by the Bar, and up to five persons in an uneven number, non-lawyers, to be appointed by the Governor. A new committee is to be appointed on or before May 1, 1991. This committee has the important assignment of reporting to the Legislature next October regarding application of the child support guidelines.

If you are interested in serving on the committee, please advise John Baldwin at the Bar not later than March 1991.

# COMMISSIONER'S REPORT

## The Complaint Window is Closed, the Suggestion Box Empty

*By James E. Morton*

*It was the **worst** of times.*
*It was the worst of times.*[1]

Lawyers, perhaps more than any other cross-section of humanity, love to complain. Why, they even get *paid* to complain. Unfortunately, our most vocal critics often contribute very little to resolving the problems they so artfully define.

I was recently invited to attend a meeting involving members of our State Legislature who are also members of the Bar. I had grandiose expectations of meeting dozens of politically astute attorneys who draw from their legal background and experience to create the laws which govern the citizens of our good state. Much to my surprise, these legislators, while personally impressive, would all fit into a good-sized American sedan. Of the 104 seats in the Senate and the House, there are only three senators and six representatives who are attorneys.

In the course of this meeting, concerns were expressed by these individuals that the members of our profession are seldom involved in the law-making process, whether on the inside as elected officials or as interested outside parties. Yet laws pass and we complain. In the past several years, bills have passed effecting dramatic reforms in tort law. There have been several attempts to tax legal services. A familiar variation of this "revenue enhancement" bill is again being contemplated for the next session. In addition, there has been a great deal of discussion about a judicial reform bill which would, among other things, abolish the circuit courts and promote existing circuit judges to the district bench. There is a bill which will seek to have attorney's fees taxed as costs to the non-prevailing party in all civil actions where a statute or contract does not otherwise provide a basis for an award of attorney's fees. Without commenting on the wisdom of any of this proposed legislation, it certainly cries out for the input of the many interested members of the Bar who will be directly impacted by these bills if they become law.

Attorneys similarly love to complain about their relationship, or lack thereof, with the Bar Association. Attorneys complain that the Bar's programs frequently exclude lawyers in geographic regions beyond the Wasatch Front. Lawyers in the public sector perceive that the Bar caters to those in private practice. Another critical observation often expressed is that the Bar Association has very little to offer sole practitioners or small firms. Attorneys are extremely vocal about the cost of membership in the Bar and what are perceived to be excesses indulged in by the Bar. These are all valid concerns which require more than mere identification.

When the Bar recently petitioned the Supreme Court for a dues increase, there was a burst of activity from lawyers on both sides of the issue. I was impressed with the efforts of lawyers who obviously spent a great deal of uncompensated time to bring the critical issues into focus. Following the Court's approval of the dues increase, the proposed budget for the forthcoming fiscal year was circulated to every member of the Bar Association. It is no secret that finances have been the chicken bone which has been lodged in the collective throat of the individuals charged with running the Bar. Yet following the circulation of the proposed budget, only *four* attorneys elected to offer some constructive thoughts on how their dues should be allocated.

Obviously, a major step in addressing the problems which confront the members of our profession, whether in the Legislature, the Bar Association, or elsewhere, is to become a part of the solution. This process requires all of us to be better informed about the issues which impact us, as well as our willingness to share our insight with those responsible for effecting change. The Legislative Affairs Committee of the Bar is a resource available to lawyers to receive information concerning pending legislation. The Bar Commission is also anxious to receive information to make our organization useful and accessible to all of its members.

Constructive commentary is not only welcome, it is essential if we hope to end up with more than mere negative reflections on what are perceived to be ill-conceived laws, policies or programs.

[1] C. Dickens, *A Tale of Two Cities* (Penguin Eng. Lib., 1975).

# The Evolution in Utah of A "Somewhat Arcane Rule of Property Law"

*By Jerrold S. Jensen*

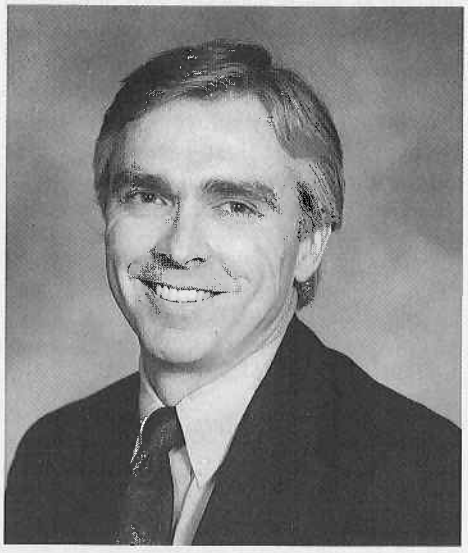
Other than it overruled three 1984 Utah Supreme Court opinions, the case was really rather ho-hum. It reaffirmed hornbook law, stated what any property owner would have told you was the law, and followed a centuries-old principle of common law. But this doctrine has had a long and tortured history in Utah.

The confusion all started in 1928. Got sorted out in 1951. Had a brush with disaster in 1981, and went to hell in 1984. But because of a pristine case, the Utah Supreme Court saw the wisdom of what it termed a "somewhat arcane rule of property law," and set the matter straight once again.

The case is *Staker v. Ainsworth.*[1] The doctrine is boundary by acquiescence. And the issue is whether attorneys and judges in this state can tell the difference between boundary by acquiescence and boundary by agreement.

Adverse possession, easement by prescription, boundary by agreement and boundary by acquiescence are all of the same genre in the law, having common traits and subtle differences, with the doctrine of adverse possession having its origins in 13th century England. The common law, the doctrine of boundary by acquiescence and boundary by agreement have since become highly developed in American law, as rules of repose, to leave at rest those things which have been at rest. The theory being that the peace and good order of society require that there be stability in the occupation of lands. Boundary lines which have been long established and accepted by those who should be concerned, should be left undisturbed in order to leave at rest matters which may have resulted in controversy and litigation.[2]

For a multiplicity of reasons, usually having to do with inexact surveying techniques—or more accurately inexact surveying techniques employed by some surveyors—property lines of the last century were often something less than precise. Vast acreage and cheap land usually obliterated the problem, but as these vast tracts have become subdivided into small and smaller plots, and as the land has become more valuable, precise boundaries have become of more and more concern. And Utah, as much as any state, has had a plethora of lawsuits dealing with these boundary discrepancies, often issuing right from the U.S. land patent grants of the 1870s and '80s.



*JERROLD S. JENSEN received a B.S. from the University of Utah in 1972 and a J.D. from George Mason University School of Law in 1975. He was the only counsel to argue for the overturning of Halladay v. Cluff in the Staker v. Ainsworth case. He practices with the law firm of Thompson, Hatch, Morton & Skeen, where his practice concentrates in real estate and construction law. He is a member of the Utah State Legislature, where he serves as Chairman of the House Judiciary Committee.*

Now *Staker* was of this sort, and darned if anyone in 1986 could remember exactly what transpired between adjoining landowners in 1886. But *Halladay v. Cluff*[3] said they should, so we all went to court.

## *HALLADAY V. CLUFF* AND "OBJECTIVE UNCERTAINTY"

The rule of boundary by acquiescence, as set forth by the American courts, essentially is: where the owners of adjoining land occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in as the boundary line for a long period of time—usually 20 years—they and their grantees are precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one, although such line may not be in fact the true line according to the calls of their deeds.[4]

Utah Supreme Court decisions, beginning in 1887,[5] have generally followed this rule, and over the years succinctly boiled the doctrine down to four basic criteria: (1) occupation up to a visible line marked definitely by monuments, fences or buildings, (2) mutual acquiescence in the line as a boundary, (3) for a long period of time, (4) by adjoining landowners.[6]

To these criteria, in 1984, was added a fifth element by the Utah Supreme Court in *Halladay v. Cluff*, namely "the presence or absence of dispute and/or uncertainty." "Dispute or uncertainty," as stated by the court, was to be measured against "an objective test of reasonableness," hence the term "objective uncertainty." As defined, the "objective uncertainty" test meant that a property line shown on the record title could not be displaced by an arbitrary boundary, even though of long standing, unless something applied against "an objective test of reasonableness," prevented a property owner from realizing that the legal description of his title did not correspond to the property he possessed.

The opinion listed what might be exam-

ples of "objectively measurable uncertainties," such as: inability to locate monuments established in an original survey, internal inconsistencies in plat, no official or original plat or survey by which the boundary line can be located, etc. Then, into the fray, just to make sure the matter was not ease of comprehension, were thrown additional factors for consideration: (a) whether there was reasonable availability of surveys at the time of the original description, (b) the relationship of the value of the land to the cost of the survey, and (c) whether the land was urban or rural.

The facts of *Halladay* indicate that in 1946, Defendant Bigelow purchased a residential lot in Provo, Utah. The following year, Defendant Cluff purchased an adjoining lot. Since 1930, a fence had surrounded these two lots on three sides. As it turned out, the fence extended in the rear 52 feet beyond the titled boundary. This extension apparently resulted from the assumption that the depth of the lot measured from the edge of the street (logical), instead of points from across the street (illogical).

The two lots behind the Bigelow's and Cluff's lots were purchased by Halladay; one in 1950 and the other in 1961. However, in 1958, Halladay acquired a landlocked parcel between the rear of his property and the rear of Defendants'—which included the 52-foot parcel enclosed in the Bigelow's and Cluff's fence. This orphan lot had been purchased at a tax sale in 1950 by the mayor of Provo for $26.34 (who never set foot on the property), and who subsequently sold it to Halladay in 1958 for an undisclosed sum.

Both Bigelow and Cluff assumed they owned the property encompassed by the fence and accordingly planted gardens and maintained chicken coops on it. In 1956, Bigelow had a survey made that showed the 52-foot discrepancy, but both he and Cluff believed the survey to be in error. Though Halladay made no use of the 52-foot strip, he did tell Bigelow of the discrepancy once shortly after he bought the property and told him not to use the disputed parcel again in the 1970s.

(There is no record in the opinion or the briefs that evidence was presented to the court as to the treatment of the disputed property by Defendant's predecessors in interest prior to the purchase by Bigelow and Cluff. The fatal flaw!)

To these facts, the court applied the traditional criteria of boundary by acquiescence, plus the newly found element of "objective uncertainty," found that Bigelow and Cluff did not meet the objective uncertainty test, and ordered the disputed parcel to be delivered to Halladay. It was a 4-1 decision, authored by Justice Dallin Oaks.

Justice Richard Howe concurred in the result, but fired off a blistering dissent. He attacked the majority opinion on all points. "The doctrine of boundary by acquiescence," he said, "cannot continue to exist as a workable and viable doctrine" in Utah. Rather than acting as a rule of repose, Howe postured, the doctrine of boundary by acquiescence would now stir up litigation, causing every landowner to have his property surveyed (or resurveyed), to see if he could gain additional ground according to his recorded title. Property lines may have been established by surveys made years ago, but who is to determine today whether a survey was made, he asked. "Just because a recent survey shows the marked boundary to be incorrectly placed does not prove that the then owners, many years ago, did not have a survey made on which they relied in establishing the marked boundary." Secondly, "the boundary dispute is here and now. It does little good to reflect as to what the then owners 30, 40 or 50 years ago might have done and disregard entirely the conduct of the owners and successors since that time in acquiescing in the markers on the ground." Thirdly, Howe stated, it was ludicrous for the court to now determine what costs of survey and value of land would have been many years before. And, finally, determining whether the boundary dispute arises "in city and platted areas" or whether it arises in "rural or wilderness areas" will be impossible.[7]

*"Justice Richard Howe . . . fired off a blistering dissent . . . Justice Howe was unrelenting in his dissents . . . Justice Howe is now writing for the majority. . ."*

**OBJECTIVE UNCERTAINTY —AFFIRMED**

To drive the final nail in the coffin of the traditional doctrine of boundary by acquiescence, three months after *Halladay*, the Utah Supreme Court reaffirmed the requirement for "objective uncertainty" in *Stratford v. Morgan*[8] and *Parsons v. Anderson*.[9] Both were 3-1 decisions. (Justice Oaks had resigned from the court, Justice Michael Zimmerman did not participate.) Chief Justice Gordon Hall penned both opinions and Justice Howe penned the dissents. Both cases reversed lower court rulings applying the traditional criteria of boundary by acquiescence.

The facts in *Stratford* and *Parsons* are relatively insignificant. Needless to say, the defendants in both cases failed to carry the burden of proof establishing "objective uncertainty." (*Parsons*, however, also failed to meet the "long period of time" criteria.[10])

Justice Howe was unrelenting in his dissents. In *Stratford*, he stated that the holding of the majority opinion today, coupled with *Halladay v. Cluff*, "effectively sounds the death knell of boundary by acquiescence in this state. * * * All boundaries are now 'fair game.'"[11]

**WHY SUCH AN IMBROGLIO?**

Though maybe a slight exaggeration to justify its rationale, the *Halladay* opinion does note "the doctrine of boundary by acquiescence has been the source of considerable confusion and controversy among judges, lawyers and landowners in this state." While that is certainly more true after *Halladay* than before, it was correctly observed that "much of the confusion has resulted from intermingling of the rules governing boundary by acquiescence and boundary by parole agreement."[12]

Though boundary by agreement and boundary by acquiescence are indeed twins, they are not identical twins. Under boundary by agreement, there must have been a dispute or uncertainty between the adjoining landowners as to what the actual property boundary was, and a resolution of that dispute by parole agreement. Under boundary by acquiescence, there is no agreement, no dispute, no uncertainty, just acquiescence to a boundary over a long period of time. Critical elements of the doctrine of boundary by agreement are: (1) an agreement (2) between adjoining landowners (3) settling a boundary that was uncertain or in dispute, and (4) executed by actual location of a boundary line.[13]

The source of much of the confusion between the doctrines of boundary by acquiescence and boundary by agreement occurred in 1928 in a Utah Supreme Court opinion entitled *Tripp v. Bagley*.[14] Legal treatises dealing with the doctrines of

boundary by acquiescence and boundary by agreement note that in "some instances" the doctrine of boundary by acquiescence has included the requisites of "dispute and/or uncertainty." They cite as their reference *Tripp v. Bagley*.[15] It has become a frequently cited case and was the subject of a lengthy article in American Law Reports; the first such ALR article to treat the doctrines of boundary by agreement and boundary by acquiescence.[16]

*Tripp v. Bagley* was a boundary by parole agreement case, but the court refused to confine itself to agreement situations, and held that to avoid conflicting with the Statute of Frauds in designating a boundary line, there must be dispute or uncertainty concerning the division line. Many of the acquiescence cases in Utah after 1928 clearly followed *Tripp* by requiring the element of "dispute or uncertainty" to prove boundary by acquiescence. But in 1951, in *Brown v. Milliner*, the Utah Supreme Court sought to clarify *Tripp*, by declaring that the *Tripp* opinion "does not require a party relying upon a boundary which has been acquiesced in for a long period of time to produce evidence that the location of the true boundary was ever unknown, uncertain or in dispute."[17]

The court set forth the four main criteria of the doctrine of boundary by acquiescence, and for 30 years subsequent Utah cases tended to keep the doctrines of boundary by agreement and boundary by acquiescence distinct. Then in 1981, in an opinion written by Chief Justice Hall, is language which again implies that evidence of uncertainty may be a requirement of the doctrine of boundary by acquiescence. Citing *Tripp v. Bagley*, among others, the court noted, "The doctrine of boundary by acquiescence has long been recognized, and when the location of the true boundary between adjoining tracts of land is unknown, uncertain or in dispute, the owners thereof may, by parole agreement, establish the boundary line and thereby irrevocably bind themselves and their grantees."[18] It was clearly an instance of again blurring the distinction between the doctrines of boundary by agreement and boundary by acquiescence. The opinion was concurred in by Justice Stewart and Justice Oaks, with Justice Howe concurring only in the result. It clearly set the stage for *Halladay v. Cluff* three years later.

## *STAKER V. AINSWORTH* AND THE UNDOING OF "OBJECTIVE UNCERTAINTY"

The magic of *Staker v. Ainsworth* was that it was so lily white. No ancillary issues, no quirks, no funny stuff that had to be waltzed around—just a clean case—and the three principle defendants had all owned the property long enough to qualify by themselves for the requirement of a "long period of time."

Though titled *Staker v. Ainsworth*, the case more appropriately should be styled *Maxfield v. Ainsworth v. Staker v. Holmes and Jensen.* Maxfield owned a 20-acre tract, Ainsworth owned 10 acres to the south of Maxfield, Staker owned 10 acres to the south of Ainsworth, and Holmes and Jensen owned 20 acres south of Staker. All four tracts were essentially rectangular in shape, having parallel north and south boundaries, with the north side of the Maxfield property and the south side of the Holmes and Jensen property being bordered by state roads. (94th S. and 100th S., respectively, in Salt Lake County, just west of I-15.)

Rather than just being a sliver of property in dispute, as is usually involved with most acquiescence lawsuits, this case involved strips of land approximately 80 to 90 feet wide and 900 feet long, comprising one and a half acres each of the Ainsworth, Staker, and Holmes and Jensen properties.

Maxfield purchased his property in 1972, had a survey performed, and realized at that time that the legal description to his property extended some 85 feet south of the existing fence line on to the Ainsworth property. In 1980, Staker had his property surveyed, preparatory to selling the same, and also found a similar discrepancy. Holmes and Jensen had a survey performed in 1956 which did not show the discrepancy, but a subsequent survey performed for them after the lawsuit was filed did. The parties initially discussed resolving the problem by signing quit-claim deeds resolving property lines along existing fence lines. But Ainsworth did not want to sign with Staker unless Maxfield signed, and once *Halladay v. Cluff* was decided, Maxfield refused to sign. So Staker initiated the suit.

Ainsworth and Staker both took the position that they wanted to retain existing fences and irrigation ditches, but if Maxfield were to prevail, what ground they lost on the north side of their properties should just be picked up from their neighbor on the south. Because of the road, however, that was not true for Holmes and Jensen; what Maxfield gained, Holmes and Jensen lost.

The other consequence of shifting the boundary lines was that it would run a property line through the middle of a house on the Holmes and Jensen property which had been built in 1892, and would have completely displaced a house from its legal description on a plot which had been carved out of the Staker property.

Just how a discrepancy of this magnitude had happened was never authoritatively resolved, though a couple of theories were offered. What was certain was that the discrepancy existed and the facts were not otherwise in dispute. As a result, the case was heard at the trial court on cross-motions for summary judgment.

Prior owners were searched out and affidavits filed stating that present fence lines were in the same place as they had existed for over 60 years and were regarded as property lines. One affidavit was filed by a prior owner, who was born in 1910 in the house that was built in 1892. He testified he could remember as a child fence lines being in existence where they presently stood.

However, the one thing no one could do was prove whether or not there had ever been a "dispute or uncertainty" relative to the original placing of the property lines. To do so would have required raising the dead. The original owner of the Holmes and Jensen property, for example, who had purchased his property in 1888 and built his house in 1892, had been born in 1856 and died in 1942. The other properties had similar histories.

The trial court ruled in favor of the Staker/Ainsworth/Holmes and Jensen position that fences should be property lines, without further comment.

On appeal, only Holmes and Jensen argued for the overturning of the fifth element, that of "objective uncertainty," contained in *Halladay v. Cluff*. In so holding, the Supreme Court, per Justice Christine Durham, stated "it is unclear, and apparently impossible to establish, whether an actual erroneous survey occurred or what the results were. That is not unexpected or unusual in a case involving boundary lines and surveys as old as these. This problem illustrates some of the difficulties associated with imposing a requirement of objective uncertainty in boundary by acquiescence." The opinion then quoted from Justice Howe's dissent in *Halladay* and showed the similarity between the *Halladay* and the 1928 *Tripp* opinion.

In noting that the four legal commentaries analyzing the *Halladay* opinion had all severely criticized it,[19] the court, said that the "requirement of objective uncertainty makes boundary by acquiescence less practical, further restricts what was already a restricted doctrine, and 'effectively

eliminates boundary by acquiescence as a viable doctrine for settling property disputes in Utah.'"[20] The court also noted that in contrast to the purpose of the objective uncertainty requirement, it would now appear to the court that such a requirement may increase litigation over boundaries, rather than decrease it.

The Chief Justice dissented—essentially on the basis of stare decisis and judicial self-restraint. However, nowhere in the dissent does he attempt to defend the blurring of the doctrines of boundary by acquiescence and boundary by agreement. Rather, he stated:

> Certainly "unfortunate problems" may appear to exist in cases which come before us, but "problematic cases" persuaded us in the first instance to apply the established criteria. And "solving" perceived problems in this case may only serve to create other concerns in cases pending or in situations where other parties have replied upon the established precedent. There will always exist cases which might be labeled "unfair" where justices may individually wish that the law were otherwise. However, to allow such a case to precipitate premature decision-making will only result in bad law and is to turn the court's process into nothing more than emotional reflexing.[21]

## CONCLUSION

Abandoning the traditional criteria for boundary by acquiescence is really doubly difficult in Utah, because we have no common law adverse possession remedy. When the Utah Territorial Legislature required the payment of property taxes as a condition of adverse possession, it essentially removed the long-term concept of adverse possession from our jurisprudence, and the statute has remained on the books ever since.[22]

And while it has to be admitted, as the opinion in *Staker* did, the acquiescence doctrine is "not some fundamental principle of constitutional law or social policy," one would hope that it is not to be one of those ephemeral edicts that is here today, gone tomorrow, the result of a change in the composition of the court. However, it is difficult to conceive of a fact situation in which Chief Justice Hall would ever find that a fence line could be acquiesced to as a boundary line. In a 3-2 decision, handed down eight months after *Staker*, with Justice Howe now writing for the majority and Justice Hall for the dissent, the Chief Justice again refused to recognize a fence, which had been in place for 40 years, as a boundary line.[23]

Nonetheless, for the present, property owners who suddenly realize that after many years the property they occupy is not the same as the calls in their legal description, can take solace in the fact that Utah law on the subject is once again in conformity with common law principles, other state courts, and what a typical American property owner calls the "fence line rule."

[1] 785 P.2d 417 (1990).
[2] *Olsen v. Park Daughters Investment Co.*, 29 Utah2d 421, 425; 511 P.2d 145,147 (1973).
[3] 685 P.2d 500.
[4] See "Boundary-Oral Agreement or Acquiescence," 69 ALR at 1491.
[5] *Switzgable v. Worseldine*, 5 Utah 315, 15 P.144; The most oft- cited early Utah case, which set the basis for Utah's boundary by acquiescence doctrine, is *Holmes v. Judge*, 31 Utah 269, 87 P. 1009 (1906).
[6] *Goodman v. Wilkinson*, 629 P.2d 447, 448 (1981).
[7] 685 P.2d at 508-14.
[8] 689 P.2d 360.
[9] 690 P.2d 535.
[10] A "long period of time" has generally been defined in acquiescence cases in Utah, as elsewhere, as 20 years. See *Hobson v. Panquitch Lake Corp.}*, 530 P.2d 792, 795 (1975).
[11] 689 P.2d at 366.
[12] See 7 ALR 4th, Fence as Factor in Fixing Boundary Line, 53, 59. See also, "Boundary by Acquiescence," 3 Utah L.Rev. 504; "Boundaries by Agreement and Acquiescence in Utah," 1975 Utah L.Rev. 221.
[13] See J.H. Backman, "The Law of Practical Location of Boundaries," 1986 BYU Law R. 957, 963.
[14] 74 Utah 57, 276 P. 912.
[15] See, for example, 12 Am.Jur.2d, Boundaries, 85.
[16] 69 ALR 1417.
[17] 120 Utah 16, 232 P.2d 202.
[18] *Madsen v. Clegg*, 639 P.2d 726 (1981).
[19] "Objective Uncertainty in Boundary by Acquiescence: *Halladay v. Cluff*," 1984 BYU L.Rev. 711; "Recent Developments," 1985 Utah L.Rev. 193; *"Halladay v. Cluff,"* 'Objective Utah L.Rev. 193; *"Halladay v. Cluff,"* 'Objective Uncertainty' in Deed!" J.Contemp. Law 567 (1985); "The Law of Practical Location of Boundaries and the Need of an Adverse Possession Remedy," 1986 BYU L.Rev. 956.
[20] Quoting from 1985 Utah L.Rev. at 194.
[21] 785 P.2d at 427.
[22] 78-12-7.1 Utah Code Annotated 1953.
[23] *Judd Family Limited Partnership v. Hutchings*, 141 UAR 8 (August 1990).

# The Essential Quest

*Address given by Bruce S. Jenkins, Chief Judge of U.S. District Court, District of Utah, on United Nations Day, October 24, 1990, at Highland High School in Salt Lake City.*

We join our hands, our minds, our hearts, our words, our voices, to commemorate the 45th year of the United Nations, and more importantly, to celebrate and to honor the bedrock human values that it symbolizes.

The bedrock values have evolved inch-by-inch through the eons of our existence. It is the quest for the peaceful enjoyment of such values in full measure by all humanity which continues to be the essential, never-ending quest of people of the world—people whose kinship of species and kinship of good will transcend the artificial political boundaries of nations.

Back in 1917, Woodrow Wilson, in a message to Congress, observed again what James Madison similarly observed back in 1812. Wilson said, "We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states."

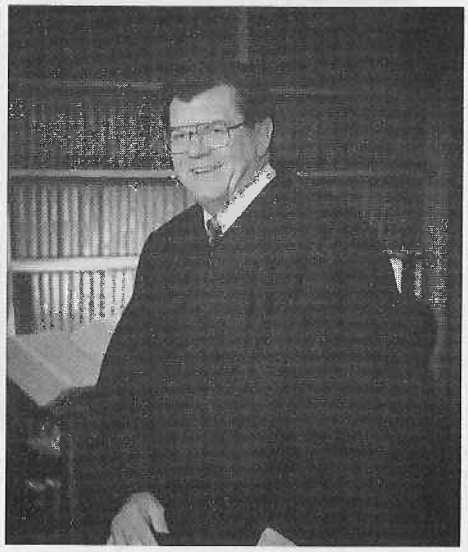
The League of Nations, without the United States, was always anemic in enforcing standards. It was moribund at age 19 and buried at age 26. However, its essential spirit as to expected norms of international conduct lives on.

The United Nations is a newly robust 45.

We are all familiar with its beginning. It had its genesis during World War II. The allied powers of the world were united by a common enemy. We were focused in our hate. Cordell Hull, Roosevelt, Churchill, looked beyond hate with a long-term vision of peace through international cooperation.

The organization conference took place between April and June 1945 in San Francisco.

At that time, demobilization was in the planning stage, the bomb had yet to be dropped on Japan, jets and satellites were not yet populating the skies. Missiles were very small, and by no means nuclear or intercontinental.



*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.*

The United Nations started with 50 members and good intentions. It now has 159.

In 1945, even the words, **"United Nations"** said so much more than league or association or concert of convention. They say and mean so much more today.

United then *in* what? United *now* in what?

United then *for* what? United *now* for what?

In 1945, 50 nations of the world, including Iraq, Nicaragua, The United States and the USSR, solemnly stated to the world (and they did so in five languages):

**"We the peoples of the United Nations determined** to save succeeding generations from the scourge of war,. . .and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and, to ensure, by the acceptance of principles and the institution of methods, that armed forces shall not be used save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims. Accordingly, our respective governments. . .have agreed to the present charter of the United Nations and do hereby establish an international organization to be known as the United Nations."

In abbreviated form, the stated purposes of the United Nations are specific:

1. To maintain international peace and security. . .

2. To develop friendly relations among

nations. . .to strengthen universal peace. . .

3. To achieve international cooperation in solving international problems. . .

4. To be a center of harmonizing the actions of nations in the attainment of these common ends.

In 1990, the United Nations is newly united, refreshingly united, uncommonly united after decades of disputation. This, in large part, is not just because of a revolution which has taken place in Eastern Europe, but because of a more important revolution which occurred in the minds and hearts of the leaders of the Soviet Union. In the lifetime of the United Nations, the leaders of the Soviet Union appear to have finally gained a new perspective—indeed, have simply and fundamentally changed their minds.

The Constitution of UNESCO—the United Nations Educational, Scientific and Cultural Organization—back in 1946, with unusual prescience, stated, "Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed."

The United Nations Charter is also the United Nations Treaty. It was ratified 89 to 2 by the United States Senate and went into effect 45 years ago today after two-thirds of the signator nations had ratified it.

In 1945, the United States made promises; Iraq made promises; the Soviet Union made promises. Those who joined later also made promises, and in 1990, many of the nations of the world have found the strength to take those promises seriously. And that, my friends—taking those promises seriously—is a giant step. It is a giant step because enforcement of the promises of others, including Iraq, is dependent on the willingness of the major powers to live up to the promises of their own.

This 1990 spirit of cooperation has not always been present. Our own conduct in Grenada, Nicaragua and Panama belies our own promises. The prior conduct of other nations belies theirs as well. Yet hope ever flickers. This new cooperation may well be a giant step for mankind far more important than Neil Armstrong's historic step on the moon.

Would that machinery were in place and ever-ready, and rules of law were in place, plain, simple and understood, and institutions were in place, and most of all that attitudes and habits and confidence were in place with leaders of nations which would direct disputes to court and not to conflict, to mediation and not to mercenaries, to arbitration and not to armies, to conference and not to confron-

tation.

Unlike the San Francisco world of 1945, the bomb is a fact of life in 1990—fission or fusion, take your choice.

Unlike the San Francisco world of 1945, the jet is a fact of life in 1990, the nuclear intercontinental missile is a fact of life, the missile-carrying submarine is a fact of life, the satellite (communication or spy) is a fact of life. 1990 is a year for abject realism.

Sidney Harris, one of the truly great modern-day essayists, postulated a depopulated world after the big bang. He stated: "If the world is still inhabitable, which is unlikely. . .they will then, and only then, begin to educate themselves and their children, mutations permitting, in the lessons nobody paid attention to before the big bang.

"They will point out that nationalism is impossible, that the remnant of mankind must forever unite or perish. They will see clearly (and how painfully) that war against our own kind is the supreme act of treason toward God and man.

"They will comprehend the piercing truth—as ancient and ignored as Isaiah and Jesus and Buddha—that our species is indissolubly one; that not color, nor national origin, nor religious belief, nor political conviction, can divide man from man in any essential way.

"These distinctions will, after the big bang, seem as trivial and irrelevant as the differences in height or weight or color of eye or the pattern of fingerprint.

"And they will teach their children—if there are still children who are teachable—that it is not the Communists who 'started' the last war, not the Fascists who 'started' the one before that, nor the Kaiser, nor Napoleon, nor Caesar, nor Hannibal.

"It was rather, *the absence of law for all men*, the wild anarchy of nations, each pursuing its own selfish ends, each blaming the other for greedy motives and evil ways."

In spite of that specter, perhaps because of it, the opportunity exists for a fortified rule of international law in 1990 if the people of the world are today united [in] and today remain united [for] keeping our own promises and expecting—indeed, *demanding*—that others keep theirs.

Just as we have learned on the state and national level to go to court, to go to Congress, to go to the executive branch, and not to go to the streets, so must we learn on the international level to create courts, and congresses, executives and institutions, that grow in methods and process and credibility. Then, having channeled disputes into those institutions, we must ourselves have the maturity to accept the results.

For most civilized peoples, the web of law, everywhere present, has meaning on a domestic level, not just because of the threat of ultimate force (even though for a few that is the only language they can understand). For most people, the law imples obedience and acquiescence because of faith and trust in the process and respect for a method of rational dispute resolution built up over a period of generations.

I am glad the charter starts out *"We the peoples* of the United Nations. . ." because it recognizes that law, absent acceptance by people, is a charade.

Distilled to its essence, law is concerned with how we ought to treat one another, as persons, as groups, as nations.

Now don't be confused. There is law and there is *law*. It is important to understand that people can be made free through law. People can also be enslaved through law. Law is forever bound up with values.

In Hitler's Germany, in Stalin's Russia, law was used to suppress, to terrorize, to enslave.

Let me be blunt. Roosevelt, haunted by the ghost of Wilson stated, "Peace, like war, can succeed only where there is a will to enforce it, and where there is available power to enforce it. The. . .United Nations must have the power to act quickly and decisively to keep the peace by force, if necessary. . ."

But law, as well, needs structure. In civilized countries, disputes are channeled and oiled by agreement, habit, direction and the availability of dispute resolution machinery in place and available 24 hours a day. If our own Bill of Rights to which we pay homage dangled in mid-air without the machinery of enforcement found in the structure of government itself, these rights would likewise be a charade. Permanent, international enforcement machinery is absolutely essential to make meaningful those bedrock values we set forth so earnestly in the United Nations preamble and the statement of purposes.

A birthday is noted in many ways. We offer best wishes. We bake cakes. We burn candles. We send cards. We sing songs.

When I was small, a traditional ritual in my family on birthdays was for my mother to tap me with the palm of her hand on the back or on the bottom, one tap for each year, in commemoration of each of the passing years. (You undoubtedly had a similar experience.) Then at the end, she would strike me with more force and say as a wish for the future, "And one to grow on—and one to grow on." As I grew in size and outgrew her by twice, she changed taps to touches and then was content with just the words, "And one to grow on."

When we celebrate the birthday of a great personage, man or woman, the birthday of a country or an organization, it is not just the event of the birth which is significant. Birth is not significant. Birth is only essential.

A person, a country, an organization, newly born is but a congregation of possibilities, good and evil, affirmative and negative, life-affirming, life-detracting.

We celebrate a Washington, a Ghandi, a Truman, because of what, once born, each did with life.

We celebrate this organization and what it stands for because of what it has done since birth, and more importantly—with our help united with others—what it may yet do.

Happy 45th. And one to grow on.

# Hospitals Care About Your Vital Signs.


# Shouldn't You Care About Theirs?

Nobody likes to ask for money. But the fact is, without your support, it's becoming increasingly difficult for hospitals to upgrade their equipment, services and innovative programs. And, sadly, that means that some much-needed medical care may never reach the people who need it most. So do your part, and take care of your hospital. After all, they do the same for you.

Give To Your Local Hospital. Give To Life.®

National Association for Hospital Development

# Proposed Enactment of New Utah Business Corporation Act

*By Roderic W. Lewis*

In its continuing efforts to review and assist in the modernization of Utah's business laws, the Business Law Section of the Utah State Bar recently completed the review of a proposed new business corporation act for the State of Utah patterned after the Revised Model Business Act drafted and approved by the American Bar Association (the "Revised Model Act"). This proposed new act was reviewed for the Business Law Section by the Utah Business Corporation Act Revision Committee (the "Committee") which was formed by the Section approximately 18 months ago specifically for the purpose of (i) studying the Revised Model Act and proposing revisions as appropriate to tailor the Act to Utah's specific situation, needs and objectives; and (ii) distributing the proposed new act to representatives of the local business and legal community for comment. The Committee is made up of private attorneys specializing in the business law area, in-house attorneys for several large Utah corporations, a law professor, a member of the Utah State House of Representatives, a representative from the Utah Legislative Research and General Counsel's office, and the Director of the Division of Corporations and Commercial Code.

The proposed new act follows generally the Revised Model Act adopted in 1984 by the Committee on Corporate Laws of the Section of Corporation, Banking and Business Law of the American Bar Association. The Revised Model Act was designed for use by states in revising and updating their corporate statutes and was drafted to reflect current views regarding the needs of modern business corporations. Each section and provision of the Revised Model Act has been reviewed and analyzed by the American Bar Association in light of experience with similar provisions in important commercial states and each has been restated in a standard legislative format with improved organization and a more consistent style and use of terms throughout. The Revised Model Act has already formed the basis of statutory revisions in the corporate laws of at least nine states, and it is reported that at least 23 other states have made changes or are considering changes to their corporation statutes based on Revised Model Act revisions.

The current Utah Business Corporation Act is based on a 1960 predecessor to the Revised Model Act. Although numerous modifications have been made over the years to the current act, since its adoption, developments in corporate thinking have rendered the current act outmoded in may significant respects, including the areas of formation, corporate management and governance, capitalization and distribution policy.

Close alignment with the Revised Model Act should enhance legal interpretation and facilitate a more universal understanding of Utah's business laws. The drafters of the Revised Model Act have made available an extensive commentary interpreting and clarifying the provisions of the Revised Model Act. This commentary will be made available to members of the Bar and to the business community. In the event the new act is adopted, it is anticipated that this commentary would be published as a companion to the new act to aid corporate law practitioners and Utah businessmen in interpreting and understanding the rights and responsibilities of directors, officers and shareholders of Utah corporations.

The Legislative Research and General Counsel's office has prepared a copy of the proposed new act in bill form for presentation to the Utah State Legislature in the current session. The Committee is continuing to seek comments regarding the proposed new act from members of the Bar and the business community. Persons wishing to obtain additional information regarding the new act or otherwise to comment upon the act may contact one of the following persons at the telephone numbers listed: Nancy Lyon, Utah State House of Representatives, (801) 538-1282; Mark Egan, Chairman of the Business Law Section, (801) 530-7300; Chris Anderson, Chairman of the Utah Business Corporation Act Revision Committee, (801) 575-5000; Roderic W. Lewis, Vice Chairman of the Utah Business Corporation Act Revision Committee, (801) 575-5000.

*RODERIC W. LEWIS received his bachelor of arts degree from Brigham Young University and his Juris Doctorate degree from Columbia University. Mr. Lewis is an attorney with the law firm of Rogers, Mackey, Price & Anderson. He served as the Chairman of the Business Law Section of the Utah State Bar from 1988-1989. Mr. Lewis is currently serving as the Vice Chairman of the Utah Business Corporation Act Revision Committee.*

# Isn't It A Shame?

You had no idea, did you, that a seemingly harmless piece of plastic could become an implement of death to an innocent sea creature? Yet it happens, unfortunately, on a grand scale.

Tons of plastic material are lost or dumped into the oceans each year, imperiling the lives of hundreds of thousands of aquatic animals.

Plastic bags, six-pack yokes, fishing nets and other materials can trap fish, mammals, turtles and birds, causing death by drowning or strangulation. Sometimes animals get sick or starve when they eat plastic that they mistake for food.

But plastics pollution is preventable.

The National Wildlife Federation is dedicated to protecting America's precious resources – our land, our waters, our people, our wildlife.

You can be a part of the effort. Join the National Wildlife Federation, 1412 16th Street, NW, Washington, DC 20036-2266.

Working for the Nature of Tomorrow™

NATIONAL WILDLIFE FEDERATION

## Commission Highlights

During its regularly scheduled meeting of December 14, 1990, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The minutes of the November 16, 1990, meeting were approved. The minutes of the November 21, 1990, meeting were amended and approved.
2. President Greenwood reported on the December 7, 1990, Task Force meeting. She indicated that the proposed amendments report to the Rules of Integration had been prepared for the Task Force report and were reported on by Commissioners Dryer and Howard.
3. Barbara Polich was appointed to fill the District Court Nominating Commission position vacated by Jan Smith. President Greenwood indicated that the vacancy required immediate attention because of a pending vacancy on the Third District bench, and notice could not be sent out to members because of time constraints.
4. The Commission decided to re-open the vacant positions on the Appellate Court Nominating Commission to all interested members. Those members who had previously applied will automatically be reconsidered.
5. Bar Counsel Trost reported that there are nine civil cases currently pending against the Bar. The Commission reviewed the litigation report prepared by Bar Counsel and asked that Bar Counsel provide the Executive Committee the report that is to be published in the *Bar Journal*.
6. Mr. Trost reported on his research regarding the legality of prepaid legal services plans.
7. Mr. Trost also reported that he had received an inquiry from a Bar member regarding the legality of municipalities assessing lawyers for business licenses. Mr. Trost outlined his research of case law, and concluded that a license to practice law granted by the judicial branch of government does not act as a grant of immunity from being charged for a business license.
8. Mr. Trost referred to the Ethics Opinion that was distributed. The Commission requested that consideration of the opinion be deferred until next meeting when Leslie Francis or her designee, from the Ethics Advisory Opinion Committee, could appear to discuss the opinion.
9. Executive Director Baldwin reviewed past and current staff benefits with the Commission. He reported on dues and collections and distributed a list of late fee receipts.
10. Kaesi Johansen, Annual Meeting Coordinator, reported on hotel room rates and meeting dates. The Commission voted to leave the Annual Meeting date for 1992 the same as planned, as that time will be more convenient for Bar members and their families, despite a small discount offered if the dates were changed.
11. Curtis C. Nesset was appointed Chair of the Bar Examiners Committee. The Commission established a Standing Admissions Committee and the extended release dates of the Bar examination results to May 1 for the February exam and October 1 for the July exam. The Commission also approved the Bar Examiners Grading Handbook for use in the 1991 February Bar Examination.
12. The Commission voted to allow applicants who had transferred his or her MBE scaled score to choose to retake the MBE with the highest scaled score achieved used in calculating the combined scaled score, and to allow applicant to be instructed to respond to the MEE and state-prepared essay questions by applying general legal principles and Utah law where applicable.
13. The Commission approved paying for two additional examiners to a training workshop and appointed Jo Carol Nesset-Sale, Craig Adamson, David Castleton and Kent Walgren to the Bar Examiners Review Committee.
14. The Commission approved proposed Law and Justice Center rental rates.
15. The Commission moved into Executive Session. The meeting adjourned at 4:00 p.m.

## Judicial Nominating Commission Applicants Sought

The Board of Bar Commissioners is seeking applications from Bar members for the Bar appointments to the Appellate Courts Nominating Commission. Bar appointees must be of different political parties. This nominating commission is for the Supreme Court and the Court of Appeals.

Bar members who wish to be considered for this appointment must submit a letter of application, including resume and designation of political affiliation. Applications are to be mailed to John C. Baldwin, Executive Director, Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111, and must be received no later than 5:00 p.m. on March 1, 1991. (Note: Applicants who previously applied will be automatically reconsidered.)

## -NOTICE-
## Tenth Circuit Conference
*Sedona, Ariz.*
*July 17-19, 1991*

Mark your calendar for July 17-19, 1991. Relax at 4,500 feet in picturesque Sedona, Ariz., at the Judicial Conference of the United States Tenth Circuit. Earn CLE credits (includes ethics) while Justice Sandra Day O'Connor, Justice Byron White, Clarence Darrow and other prominent judges, practitioners and scholars focus on the Bill of Rights, professionalism and recent decisions. Learn about area art and meet the artists at a special evening exhibit. Plan your family vacation with stops at nearby scenic wonders, such as Grand Canyon, Lake Powell, Mesa Verde, Canyon de Chelly, Bryce Canyon, Zion National Park. Even continue farther west to Las Vegas, Disneyland or San Diego's Seaworld and Zoo. For more information, contact: Circuit Executive, C-529 U.S. Courthouse, Denver, CO 80294, (303) 844-4118.

# Discipline Corner

**PRIVATE REPRIMANDS**

An attorney was privately reprimanded for violating Rule 1.4(a) and Rule 8.1(b) of the Rules of Professional Conduct of the Utah State Bar, by failing to return his client's numerous telephone calls regarding the collection matter for which the attorney had been hired to defend the client, for failing to acknowledge that the client had delivered the documents the attorney had requested, for failing to return the client's file to the client within 10 days as requested by the client after being terminated as counsel, and for failing to respond to inquiries from the Office of Bar Counsel regarding the matter.

**PUBLIC REPRIMAND**

On December 4, 1990, Thomas P. Vuyk was publicly reprimanded for violating Canon 1, DR 1-102(A)(6) and Canon 6, DR 6-101(A)(3) Canon 7, DR7-101 (A)(2) and Canon 7, DR7-101(A)(3) of the Revised Rules of Professional Conduct of the Utah State Bar, with respect to two client matters. Both matters pertain to Mr. Vuyk's private practice, and occurred between 1978 and 1984. In the first matter, Mr. Vuyk was retained to represent a couple in taking whatever action necessary to prevent a foreclosure of their home. After a year and a half, the home was foreclosed, and Mr. Vuyk informed the clients that he would be unable to assist them further. Mr. Vuyk alleged that the checks the clients had paid to him for payment on the home had been returned for insufficient funds. Subsequently, the clients filed a malpractice action against Mr. Vuyk, which Mr. Vuyk settled. With respect to the second client, Mr. Vuyk was retained to represent a couple in an action against a contractor for certain defects in the construction of their summer home. Mr. Vuyk prepared but did not file a complaint on behalf of the clients, ultimately resulting in the action being barred by the statute of limitations. Subsequently, Mr. Vuyk executed a promissory note in favor of his clients in the amount that Mr. Vuyk believed they would have been awarded in the underlying lawsuit. Checks issued by Mr. Vuyk in payment on the promissory note were presented for payment by the clients and were returned for insufficient funds, although Mr. Vuyk had requested that the clients refrain from cashing the checks until notified that funds had been deposited to cover them. Mr. Vuyk subsequently settled with the clients for an amount less than the face value of the promissory note.

**SUSPENSION**

Based upon a stipulation between counsel, on December, 4, 1990, C. DeMont Judd Jr. was suspended from the practice of law for two years, which suspension is stayed for three years pending successful completion of probation, for violation of Canon 1, DR 1-102(A)(4), Canon 6, DR 6-101(A)(3), Canon 6, DR 6-101(A)(2), Canon 5, DR 5-105(B), Canon 2, DR 2-106(A), and Canon 7, DR 7-101(A)(2) of the Revised Rules of Professional Conduct of the Utah State Bar and Rule 1.3, Rule 1.4(a) and Rule 8.4(d) of the Rules of Professional Conduct of the Utah State Bar, for matters involving four separate clients. In the first matter, Mr. Judd represented a corporation as well as the president of the corporation in plea bargaining a criminal matter, accepting a plea bargain for his individual client to the detriment of his corporate client, without obtaining the appropriate consent from all parties. In a second matter, Mr. Judd was retained to represent a couple in quieting title to a parcel of property, and subsequently was able to obtain possession for the clients, but never completed the quiet title matter. On a third matter, Mr. Judd was retained to pursue a claim on behalf of a woman against her deceased husband's estate, but failed to make progress on the matter, failed to communicate with the client, and failed to respond to inquiries from the Office of Bar Counsel. On the fourth matter, Mr. Judd was hired to initiate and pursue a post-divorce child custody modification proceeding, subsequently neglecting the matter and neglecting to communicate properly with his client for approximately two years. The sanction was mitigated by the fact that Mr. Judd, during the relevant time periods, was suffering from major depression and dysthymia, and has sought the services of the Lawyers Helping Lawyers Committee of the Utah State Bar, and is currently in treatment.

**REINSTATEMENTS**

On December 4, 1990, Douglas M. Brady was reinstated to the practice of law in the State of Utah, subject to serving a two- year probation under the direct supervision of an attorney licensed to practice in the State of Utah.

## Lawyers Needed to Volunteer for Environment

The LAW (Land and Water) Fund is a new regional environmental law center headquartered in Boulder, Colo. The Utah Steering Committee for the LAW Fund has recently been established and we need volunteer lawyers to assist in varied legal matters. The LAW Fund was established specifically to provide legal services to grassroots environmental and community groups. The LAW Fund provides pro bono legal assistance on issues ranging from hazardous waste incinerators to unlawful construction activities in wilderness areas.

The LAW Fund is able to meet the needs of client groups only because of the dedicated help of volunteer lawyers. To assist in recruiting these volunteers and referring requests for legal services, pro bono steering committees have been set up in Colorado, Idaho, New Mexico, Utah and Arizona. Committees will soon be formed in Wyoming and Montana.

Please join our efforts by becoming a volunteer. Lawyers, experts in a variety of fields, and others are needed. It is not necessary for you to be an expert in environmental law to be of assistance. The legal services we provide our clients are broad and varied, including corporation work, administrative appeals and advice on general contract law and on a variety of other issues. If you are interested or would like further information, please contact one of the interim co-chairs for the Utah Steering Committee: Cherie Shanteau, Suitter, Axland, Armstrong & Hanson, 532-7300; or Robert G. Pruitt III, Jones, Waldo, Holbrook & McDonough, 521-3200.

## CLAIM OF THE MONTH
## Lawyers Professional Liability

Plaintiff investors allege that the promoters and insured attorney made misrepresentations relative to their investment into a corporation involved in the development of an oil detection device.

RESUME OF CLAIM

Four plaintiffs invested $40,000 in a corporation which was formed to develop an oil detection device. The investors were friends or family members of the promoters. The company did not succeed and plaintiffs lost their investment. Plaintiffs sued the promoters, other investors and the Insured. The Insured, on behalf of the company, prepared the partnership agreement and expressly told investors they could not represent both simultaneously. During this time, however, the Insured, in response to a collections demand by a separate company, wrote a letter stating they represented entities including the failed company investors.

HOW CLAIM MAY HAVE BEEN AVOIDED

All potential/actual conflicts should be considered and disclosed to investors in writing and preferably signed by the parties involved. Any other representations, in writing, should clearly and carefully identify the clients.

Further, if an attorney/client relationship did exist between the Insured and investors, certain things could have been done to protect their investments, i.e., personal guarantees by the promoters, etc.

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

## ANNOUNCEMENT
## Fordham Debate

The Seventh Annual Jefferson B. Fordham Debate sponsored by the Journal Alumni Association in conjunction with the University of Utah College of Law will be held on the evening of March 6, 1991, at 6:30 p.m. in the University of Utah Fine Arts Auditorium. The resolution for this year's debate is "Resolved: that hate speech directed at a person's race, sex or religion should be illegal." The moderator of the debate will be Scott Matheson Jr., and panelists will include the Honorable Christine M. Durham, Associate Justice, Utah State Supreme Court, a representative from the American Civil Liberties Union, the National Association for the Advancement of Colored People and the Jewish Anti-Defamation League. The debate is open to the public and free of charge.

# Professionalism— The Permissible and the Desirable

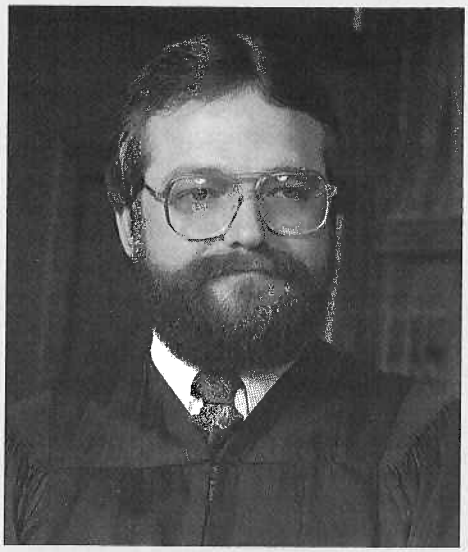
*Luncheon remarks of Judge Gregory K. Orme at CLE Seminar Sponsored by the Utah Trial Lawyers Association, November 9, 1990, Park City, Utah*

I need to tell you first off that I am here to speak to you about professionalism with no particular sense of *expertise*. And I stand here with what I feel are personal shortcomings. I can't claim I practiced law in full or even substantial compliance with what I will be preaching today. As but one example, while I am proud of two significant pro bono matters I handled, I am frankly embarrassed that I didn't do more pro bono work with the talents I was fortunate to have, which talents were, of course, largely acquired through the charity of others.

What I do have to offer is the **perspective** of someone far enough removed from the practice of law to view it more objectively and more critically, but not so far removed in time as to have forgotten what it's really like to juggle the competing needs of clients and the many demands placed on lawyers. I also have had, while on the appellate bench, the advantage of time to read and reflect—almost as a part of my job description—which I never seemed to find the time for while in practice.

Let me start off by saying the title of this speech, "Professionalism—The Permissible and the Desirable," is not a title I chose. It was foisted upon me. Any my initial reaction was one of puzzlement at this dichotomy. Why should we start with apparent recognition that the standard by which our profession does its important work is a standard below that which is actually desirable? Stated the other way, why permit behavior of a quality lower than that which is desirable?

An article in the September *ABA Journal* reminds me that it was not always so with our profession. *See* W. Braithwaite, *Hearts and Minds*, 76 A.B.A. J. 70 (September 1990). The 1908 Canons of Professional Ethics occupy eight pages in a text on legal ethics. They were couched in terms of what a lawyer "should" and "should not" do. No comments were added because the principles were deemed straightforward. The Canons quite clearly contemplated that there should not be two standards. On the contrary, they contemplated that lawyers would do nothing less than what they should do.



*GREGORY K. ORME received his law degree in 1978 from George Washington University in Washington, D.C. Following a judicial clerkship with Judge Monroe G. McKay of the Tenth Circuit Court of Appeals, he joined VanCott, Bagley, Cornwall & McCarthy. His practice concentrated primarily in commercial and real estate litigation. He was named Utah's "Outstanding Young Lawyer of the Year" in 1986. He has been a judge of the Utah Court of Appeals since the court's inception in 1987. He serves on the Utah Judicial Council and recently completed a term as the Council's Vice Chair.*

In contrast, according to the article, the ABA's 1983 Model Rules of Professional Conduct fill 53 pages in the same text, inclusive of comments. The rules are couched in terms of what lawyers "shall" and "shall not" do to avoid discipline. They leave open the question of what lawyers *should* do. The rules establish only a floor, not a ceiling.

I think this change in the emphasis of our official ethics statement largely explains the growing attention given to what is known as "professionalism." Many lawyers feel the need to go above and beyond mere compliance with the Rules of Conduct. Professionalism is, in a sense, nothing more than an effort to move the standard of our performance from the floor toward the ceiling.

So if I had to give a simple answer to the question implicit in my topic, it is this: The permissible is that which can be done consistent with the Rules of Conduct; the desirable is that which is done consistent with the requirements of professionalism.

After the dust settled, I determined that our profession's acceptance of this dichotomy did not really trouble me as much as I first thought. Such a dichotomy merely mirrors other aspects of life.

Under the major religious schools of thought, it is desirable to never commit adultery or to steal or to lie. But it is, in effect, permissible to do those things if the error is recognized; confession, penance, and/or repentance made; divine forgiveness sought; and better behavior follows.

It is desirable that everyone drive 55 mph on urban freeways; it is permissible to drive 61 (or is it 63?).

It is desirable that people ride the bus; it is permissible to drive a car even if a bus can be caught nearby and take you exactly where you need to go.

While it is desirable that we feed and clothe the needy, our obligation to feed and clothe is deemed fully satisfied, at least temporally, so long as we adequately provide for our own children.

All of these dichotomies, including the one implicit in my topic, are acceptable because of this principle: While men and women are not perfect and will only be held to a standard of less than perfection, they should nonetheless aspire to be ulti-

mately perfect and, in the meanwhile, to endeavor to be as perfect as they can.

That having been said, I want to let you know that I don't intend to talk about the Rules of Conduct—of that which lawyers are merely permitted to do. I want to talk about professionalism, about what lawyers should do and what they should desire to do.

And let me conclude these introductory remarks by sharing with you two thoughts about professionalism:

> The Canons of Ethics and the Rules of Conduct with which you must be familiar are helpful rules of conduct to abide by, but I have always believed that they are the lesser law. An attorney's own careful conscience and his own standards of high integrity ultimately ought to govern his conduct.

J. Faust, *The Laws of Men in Light of the Laws of God*, Fall 1988 Clark Memorandum, 15, 18 (remarks to students of J. Reuben Clark Law School, November 22, 1987).

> Professionalism seems to be the fashionable word for what used to be called character. . . .Everybody (knows) who "Honest Abe" (is) and why he (is) called that. But who is "Professional Abe" and what does he stand for?"
>
> However defined, professionalism is a kind of excellence or, a word no longer fashionable, virtue.

W. Braithwaite, *Hearts and Minds*, 76 A.B.A. J. 70, 70 (September 1990).

My specific comments to you about doing more of what is desirable will seem much more mundane, perhaps trivial, alongside the grand concepts I have just been discussing. But I am not persuaded that professionalism is something one can simply achieve, as though through a "born again" transformation, if one merely accepts the lessons of grand concepts. Rather, it is something that, while ultimately elusive, can be achieved in degrees—step by step, little by little. Our quest must be for ongoing improvement in specific, practical ways that will bring to the practice more of the hallmarks of professionalism, even if no one of us ever qualifies as the perfect professional.

My suggestions fall into three categories: 1) service to existing clients, 2) service to those who can't afford to pay to be anyone's clients, and 3) a more civilized approach to practice.

## SERVICE TO EXISTING CLIENTS

While written fee agreements are appropriate and necessary, there is more to keeping a client satisfied than having the particulars of your fee spelled out. A lack of communication and the resulting sense of being kept in the dark are perhaps the most common—and most unnecessary—source of client dissatisfaction. You should reach an agreement with your client at the very outset of your representation about how you will handle her matter. And you should scrupulously honor it. Couple your fee agreement with a Litigation Management Agreement, in which you make specific commitments, and include at least these subjects:

1)**When can you start?** If your existing trial and discovery schedule will keep you from getting seriously started on this matter for some months, say so. Identify a date you will be able to get actively under way. Stick to it. If your client prefers to find an attorney who can start immediately, that is her right. But no client should first learn that your existing commitments preclude action on her behalf some months into your representation of her.

2)**What kinds of things does she need to leave to your discretion?** Spell out in some detail the kinds of things you regard as "lawyer business," to be entrusted to your judgment without specific consultation with your client. In my view, at least, such matters include continuances, extensions and the use of associates and paralegals.

3)**What kinds of things will you do only in consultation with her?** Among other things, your client is entitled to know that making or responding to settlement offers, decisions on the retention of expert witnesses and the course of discovery, and whether to waive or demand a jury are matters you will handle only in consultation with her.

4) **What will you do to keep her informed?**One of these approaches should be followed, depending on such factors as the magnitude of the case and the sophistication of the client: 1) I will send you copies of all correspondence and pleadings sent or received. Call me if you have any questions. 2) I will give you monthly (or quarterly) written reports of what I have done, what I intend to do next, and how my assessment of your case has changed. 3) I will report to you by telephone at regular intervals. (Consider committing to a specific 10-minute block on, say, the first business day of each month when you and that client will routinely confer.)

5) **If travel is required, what will she pay for?** (This could perhaps best be covered in a separate "form" letter as the need arises. But this is one area where it's easier to get permission than to ask forgiveness.) This might be the general drift:

You will be charged for all of my non-productive travel time—to and from the airport; between the airport and hotel; standing around the baggage carousel. You will be charged for my productive travel time, like sitting on the plane, only if I am doing your necessary work. Otherwise, the client whose work I have done will be charged for that time. (As an aside, while I'm not sure I know what a professional is in every sense, I am confident that a lawyer who charges client A for his time in traveling to Los Angeles on that client's business but who also charges client B for the time he spent on that flight reading client B's deposition, is not a professional.)

I have a comfortable home and I eat well. I would rather be home than away on your business. I will call my home daily. You will pay for that call. You will not, however, pay for my calls to the office unless specifically related to your business. I will make myself as comfortable as I can while I am gone—within reason. I will not stay at the Motel 6 and eat at Denny's. I will stay at a Hilton, Sheraton or Hyatt-quality hotel. But I will use a standard room and will seek a corporate or other discounted rate. I will have a nice dinner. You will pay for that. You will not, however, pay for meals I don't eat, or that my traveling companion eats, or that opposing counsel eats.

## PRO BONO WORK

Pro bono work is work you go into expecting not to be paid. It is not contingent fee cases that ultimately prove to be losers. "Pro bono" is a subject frequently discussed, so I will make only a few observations to help put pro bono work in its proper context.

First, remember that pro bono doesn't just mean free. "Pro bono publico" means for the good of the public. But it is really more properly viewed as "Pro bono proprio atque publico," for the good of the public and of ourselves. Pro bono work provides a multitude of benefits to you and the profession and need not be viewed as a one-sided sacrifice. It generates good will for the profession and for you personally. It often provides you a chance to meet different lawyers than who you usually confront and thus can provide new contacts. It can provide opportunities for training associates as well as broadening the horizons of your own practice. All of this, in addition to leaving you with a feeling of

personal satisfaction not available in cases where you have simply been paid for doing your job, even if you did it very well.

Second, pro bono is a concept larger than high-profile "liberal" causes. The impoverished tenant staving off a Christmas eve eviction or the pensioner whose benefits have mistakenly been cut off is every bit as worthy a cause as protecting the spotted owl or defending a teacher's right to free speech.

Finally, firms *really* need to promote it. It is not enough to officially encourage it but secretly resent the "lost" billable time. A budget should be set for it and compliance with one's pro bono budget should be monitored as closely as one's billable budget.

**PRACTICE**

You don't even have to be basically nice to see your way clear to be more gracious in practice—all you have to do is remember that what goes around comes around, and that your courtesies will be repaid in kind. Professionalism is, if nothing else, infectious. Adjust your personal style to do at least these things.

Consult your opponent in advance regarding convenient hearing and deposition dates. A high percentage of unilaterally set dates have to be changed anyway. Why not pick a mutually convenient date in the first place?

Having already covered with your client that extensions are "lawyer business," be easy on a first extension that is timely sought for a plausible reason, even if you feel you need to foreclose the possibility of further ones not required by true emergencies. And in this regard, long-standing vacation plans, especially in the age of the non-refundable fare, should be regarded as a *good* excuse for moving hearings and depositions. Most lawyers do not take enough time off as is and you don't need to become part of the problem. In reviewing continuance requests at the Court of Appeals, I am much more sympathetic to the plea of a lawyer with long-standing plans to take the family to Disneyland than of the lawyer who is only "busy." Aren't we all?

Concede on motions you can't defeat without needlessly wasting everyone's time. Three months into an action, the court is just plain going to permit an answer to be amended to add affirmative defenses that have suggested themselves since the initial answer. Zealous advocacy does not require pro forma opposition to everything emanating from the other side. Save your breath and paper to oppose motions that are not well-taken.

Be a good host at depositions. A whole culture has grown around the deposition and with it a whole set of expectations. Other attorneys expect access to a copy machine, soft drinks and coffee, the use of a phone in a private room, knowing when they can expect breaks. If you have a spartan office lacking these amenities, swallow your pride and ask opposing counsel about the use of his office or else use a conference room at the Law and Justice Center. Make efficient use of everyone's time. Pre-mark exhibits and have ample copies available. Save intimidation and brow-beating for the rare witness who actually deserves it. If you seem to find such witnesses coming along more often than once every three or four years, odds are good the problem is with your style rather than a necessary result of the kind of cases you seem to find yourself involved in.

Be prompt and advise in advance of your potential problems. Calling the day before with, "Sarah, I may be a few minutes late tomorrow depending on how my early morning hearing goes," is more professional than just showing up late with "Sorry I'm late. I had a hearing this morning."

The telephone is the bane of all lawyers' existence, if not of modern society. But whether or not you are "in" does not depend on who is calling and what the call is regarding. So don't have your calls screened in a manner suggestive of that absurdity. Ideally, don't have your calls screened at all. Be accessible. But if you simply must, given the demands of your practice, have it done tactfully and helpfully: "Mr. Brown's office. I'm sorry, Mr. Brown is in the process of completing a brief that needs to be filed today and prefers not to be disturbed. If it's truly urgent, I can track him down." Have your secretary avoid "he's in conference." As a recognized euphemism for "he don't wanna talk," it comes across as a lame excuse. "He's with a client and will likely be quite a while longer" is much better.

And return calls promptly. If you simply can't, have your secretary or an associate do so. "Promptly" means "today," not "this week sometime." If you are never around, get a recording machine. They're more helpful than tacky and more reliable than the average receptionist for taking complicated messages.

Rarely does one find the perfect quote with which to close a presentation of this sort. But I did in this case and leave you with this admonition:

> "Let actions and everyday practices speak louder than after-dinner speeches."

W. Braithwaite, 76 A.B.A. J. 70, 71 (September 1990) (quoting Wolfram, *Modern Legal Ethics*.

Thank you for the invitation and your kind attention.

# UTAH BAR FOUNDATION

### THIRD ANNUAL FOUNDERS LUNCHEON HELD

December 13, 1990, the Trustees and former Trustees of the Utah Bar Foundation gathered to receive an update on the Foundation's activities and to celebrate the 27th anniversary of the Utah Bar Foundation. The luncheon was held at the Alta Club and was attended by Hon. J. Thomas Greene, Hon. Norman H. Jackson, Harold G. Christensen, Joseph Novak, John Lowe, Earl Tanner, James B. Lee, Mrs. George Latimer, LaVar E. Stark, Stephen B. Nebeker, Bert L. Dart, Ellen Maycock, Richard C. Cahoon, David S. Kunz and Kay Krivanec. President Cahoon gave a report on the activities of the Foundation and the IOLTA earned in 1990.

### ACHIEVEMENT AWARDS

Achievement Awards were presented to Harold G. Christensen, LaVar Stark, Joe Novak and John Lowe by Judge Jackson. Each of these men were presented with the award for their outstanding work as past Trustees of the Utah Bar Foundation. Judge Jackson acknowledged the many hours and contributions to the Foundation made by each of these men. Awards were also given to Elder James E. Faust, who was one of the founding members of the Foundation, and H. Michael Keller, who has just completed his service as a Trustee in 1990 and served as the Foundation's Secretary/Treasurer, but who were unable to attend the luncheon.

### REMEMBERING GEORGE LATIMER

James Lee then presented a tribute to George Latimer, who had been a past president and longtime Trustee of the Foundation. Mr. Lee reflected on the various careers that Mr. Latimer had explored throughout his lifetime and how each enhanced his abilities. After Mr. Lee's tribute, many of the Trustees took the opportunity to express their appreciation of Mr. Latimer and the ways in which they remember him most. Mr. Latimer's wife, Rhoda C. Latimer, was in attendance and was presented with a dozen red roses in appreciation for her support of George and his contributions to the Foundation.

# CLE CALENDAR

**NOTICE**—The CLE Department of the Utah State Bar encourages ideas for CLE seminars from all Bar members. Bar members who have topic ideas that have not been covered or made available to them should contact Toby Brown at the Bar Offices, (801) 531-9095. The Bar and the CLE Department endeavor to provide useful and up-to-date programs for all Bar members and encourage their participation in these seminars. Attorneys in rural areas are especially encouraged to give their input on seminars suited to their practice.

### ENVIRONMENTAL SCIENCES FOR LAWYERS SEMINAR SERIES

Lawyers practicing in the field of environmental law face an increasingly complex array of technical and scientific issues. In order to advise clients and interface with technical consultants, lawyers need to be educated about these issues. The State Bar is sponsoring this seminar series of seven sessions to be presented by experts from the scientific community. The seven sessions will focus on the basics of seven different environmental sciences. With emphasis on scientific principles, rather than environmental law, scientific and technical information will be presented in the context of legal issues related to contaminated sites and regulatory compliance. This seminar series is intended for all environmental, real estate, corporate, trial and other lawyers and environmental professionals.

CLE Credit: 14 hours
Dates: Feb. 12, 19, 28; March 5, 12, 19 and April 2, 1991
Place: Utah Law and Justice Center
Fee: $140 ($130 for Energy . . . Section members)
Time: 4:00 p.m. to 6:00 p.m. each evening

### BASIC ESTATE AND GIFT TAXATION AND PLANNING

This program is the annual presentation prepared by ALI-ABA. This basic three-day program will set forth the law and planning as conceived in the Tax Reform Act of 1976 and modified by subsequent legislation. It will appeal to lawyers with no background in this subject as well as to those who feel the need to relearn the law from the ground up. A small faculty of active practitioners will concentrate on setting forth the basic law and presenting the working concepts and planning suggestions that permit the registrant to move forward at his or her own pace to more sophisticated estate planning.

CLE Credit: 20 hours (1 in ethics)
Date: Feb. 13-15, 1991
Place: Park City, Olympia Hotel
Fee: $485 (plus $15 MCLE fee)
Time: 9:00 a.m. to 5:00 p.m. on 13th and 14th, 8:00 a.m. to 4:00 p.m. on 15th.

### FUNDAMENTALS OF REAL ESTATE TAXATION

A live via satellite program. This seminar examines four topics of great interest to practitioners in the real estate industry: Choice of Entity, Limitations on Losses, Like-Kind Exchanges, and Troubled Real Estate. The goal of the program is to alert practitioners to the opportunities and pitfalls confronting the real estate investor or developer. The program will also review current and important developments in real estate taxation.

CLE Credit: 4 hours
Date: Feb. 14, 1991
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

### BANKRUPTCY SEMINAR

M. John Straley, Assistant United States Trustee for the District of Utah, will present on, "U.S. Federal Bankruptcy Court Requirements and Enforcement by the U.S. Trustee on How to Avoid U.S. Trustee Objections."

CLE Credit: 2 hours
Date: Feb. 21, 1991
Place: Utah Law and Justice Center
Fee: $30
Time: 12:00 to 2:00 p.m.

### IMPLEMENTING THE 1990 CLEAN AIR ACT

A live via satellite program. This seminar will feature EPA, state government, industry, and environmental group perspectives on the impact that the new far-reaching Clean Air Act changes will have on EPA and state air quality control programs. The panelists will provide insight on EPA's plans for implementation of the new amendments and address effects on the existing State Implementation Plan process and discuss and explain other intricacies of the new Act.

CLE Credit: 4 hours
Date: Feb. 21, 1991
Place: Utah Law and Justice Center
Fee: $140 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

### INSURANCE LITIGATION DEFENSE STRATEGIES AND INNOVATIONS

A live via satellite program. Call for more information on this seminar.

CLE Credit: 6.5 hours
Date: Feb. 26, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

### THE USE, OVERUSE, AND ABUSE OF EXPERT WITNESSES

A live via satellite program. Call for more information on this seminar.

CLE Credit: 6.5 hours
Date: Feb. 27, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

### HEALTH CARE AND FINANCIAL PLANNING ISSUES FOR THE ELDERLY

A live via satellite program. Call for more information on this seminar.

CLE Credit: 4 hours
Date: Feb. 28, 1991
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

### ATTORNEYS AND PARALEGALS— A TEAM APPROACH TO BANKRUPTCY, REORGANIZATION AND COMMERCIAL LITIGATION

A live via satellite program. This seminar will provide an informative discussion of substantive and procedural matters incorporating specific techniques for developing and improving the efficiency and effectiveness of the attorney/paralegal team in commercial litigation and bankruptcy practice.

CLE Credit: 6.5 hours
Date: March 5, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

### UNDERSTANDING FINANCIAL STATEMENTS: ACCOUNTING FOR LAWYERS

A live via satellite seminar. This program will supply attorneys with the tools and structure to understand such documents as a balance sheet, operating statement, statement of changes, statement of cash flows, and the statement of retained earnings. This program is intended for attorneys who represent corporations and others who need to understand financial statements.

CLE Credit: 4 hours
Date: March 7, 1991
Place: Utah Law and Justice Center
Fee: $150 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

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

CLE Credit: 12.5 hours
Date: March 14 and 15, 1991
Place: Park City, Olympia Hotel
Fee: $485 (plus $15 MCLE fee)
Time: 14th—8:00 a.m. to 4:30 p.m.; 15th—8:30 a.m. to 4:00 p.m.

### THE CONTAMINATED PROPERTY TRANSACTION

Date: March 21, 1991
Place: Utah Law and Justice Center

### COMPLYING WITH THE FAIR LABOR STANDARDS ACT

Date: April 9, 1991
Place: Utah Law and Justice Center

### BANKRUPTCY SEMINAR

Date: April 18, 1991
Place: Utah Law and Justice Center

### TRUSTS AND ESTATES

Date: April 23, 1991
Place: Utah Law and Justice Center

### WHAT TO WORRY ABOUT IN FORMING AND DISSOLVING A LAW PRACTICE PARTNERSHIP

Date: April 24, 1991
Place: Utah Law and Justice Center

### UNDERSTANDING BUSINESS BANKRUPTCY

Date: April 25, 1991
Place: Utah Law and Justice Center

### WINNING AT TRIAL—FEATURING JAMES McELHANEY

Date: May 3, 1991
Place: Marriott Hotel in Salt Lake

# SECTIONS' CLE LUNCHEONS

### 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 luncheon 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** | | |
| 2/21 | Sex, Fraud and Data Processing Tapes | 1 hour |
| **Education Law Section** | | |
| 2/8 | The Americans With Disabilities Act | 1 hour |
| **Family Law Section** | | |
| Upcoming Topics: | | |
| | Rule 4-501—"The Domestic Stepchild" | 1 hour |
| | Ethical Considerations | 1 hour |
| **Tax Section** | | |
| 2/27 | Creative Charitable Gifting Strategies | 1 hour |
| 3/27 | How to Succeed in Dealing With the IRS | 1 hour |
| 4/24 | Utah Legislative Update | 1 hour |
| 5/29 | Utah State Tax Issues | 1 hour |

# CLE REGISTRATION FORM

TITLE OF PROGRAM — FEE

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Signature

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

The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars through 1991. 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.

**NOTE:** It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2-year CLE reporting period required by the Utah Mandatory CLE Board.

# CLASSIFIED ADS

For information regarding classified advertising, please contact Kelli Suitter at (801) 531-9095.

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## POSITIONS AVAILABLE

SMALL SALT LAKE CITY FIRM with strong corporate and general commercial practice seeking one or two attorneys with experience in the areas of litigation, estate planning, tax, or commercial law with which to associate in office sharing or more formal arrangement. Located in quality downtown office space; office equipment, reception and secretarial services available. Excellent opportunity to develop practice in association with other attorneys. Send inquiries and resumes to Utah State Bar, Box E, 645 S. 200 E., Salt Lake City, UT 84111.

RAPIDLY GROWING Utah corporation looking to hire in-house counsel. May develop into corporate counsel. Would prefer three years' minimum experience. Patent experience a plus. Salary range $30,000 to $40,000. Please send resume to Utah State Bar, Box F, 645 S. 200 E., Salt Lake City, UT 84111.

ENVIRONMENTAL INSURANCE COVERAGE LITIGATION. Well-respected and fast-growing Los Angeles civil litigation firm seeks a new associate to join our rapidly expanding environmental insurance coverage practice. We are looking for an attorney with two to four years' insurance coverage litigation experience and top-notch academic credentials (at least top third from ABA school) who is capable of the complex legal analysis and thoughtful, cogent writing which is the trademark of our firm. Send resume to Recruiting Coordinator, MORRIS, POLICH & PURDY, 801 S. Grand Avenue, 17th Floor, Los Angeles, CA 90017.

## POSITIONS SOUGHT

ATTORNEY with eight years' corporate and large firm experience currently practicing in-house with major corporation seeking opportunity to join or purchase practice in smaller, rural community. Admitted in Colorado and Utah. Please reply to Utah State Bar, Box G, 645 S. 200 E., Salt Lake City, UT 84111.

## PROPOSALS SOUGHT

THE UTAH ASSOCIATION of REALTORS is considering the establishment of a statewide legal hot line to provide "on-the-spot" answers to members' questions which arise relating to transactions in the course of their brokerage activity. The Association is therefore soliciting proposals from law firms and individual attorneys throughout the state who may be interested in being engaged to provide such a service. Among the considerations which should be addressed are: (1) length of engagement; (2) commencement date; (3) mechanics of communication; (4) hours of availability; (5) staffing and qualifications; (6) reporting and accountability; and (7) cost. Please submit all proposals in writing for receipt no later than 5:00 p.m. May 1, 1991, Utah Association of REALTORS, Attention: Risk Reduction Committee, 5710 S. Green Street, Murray, UT 84123.

## SPECIAL NOTICE

Notice is given that the Judicial Council of the Tenth Circuit proposes to amend the Rules Governing Complaints of Judicial Misconduct or Disability which became effective June 1, 1987. The effective date for the proposed amendments is March 1, 1991.

Copies of the proposed amendments and the present rules are available for inspection at the following locations:
Office of the Clerk
United States District Court
District of Utah
Room 204, U.S. Courthouse
350 S. Main Street
Salt Lake City, UT

Utah State Bar Association
645 S. 200 E.
Salt Lake City, UT

Written comments regarding the proposed amendments should be sent promptly to:
Eugene J. Murret
Circuit Executive
United States Court of Appeals—Tenth Circuit
C-529 U.S. Courthouse
1929 Stout Street
Denver, CO 80294

To be considered, written comments must reach the Circuit Executive no later than March 1, 1991.

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