UTAH BAR JOURNAL

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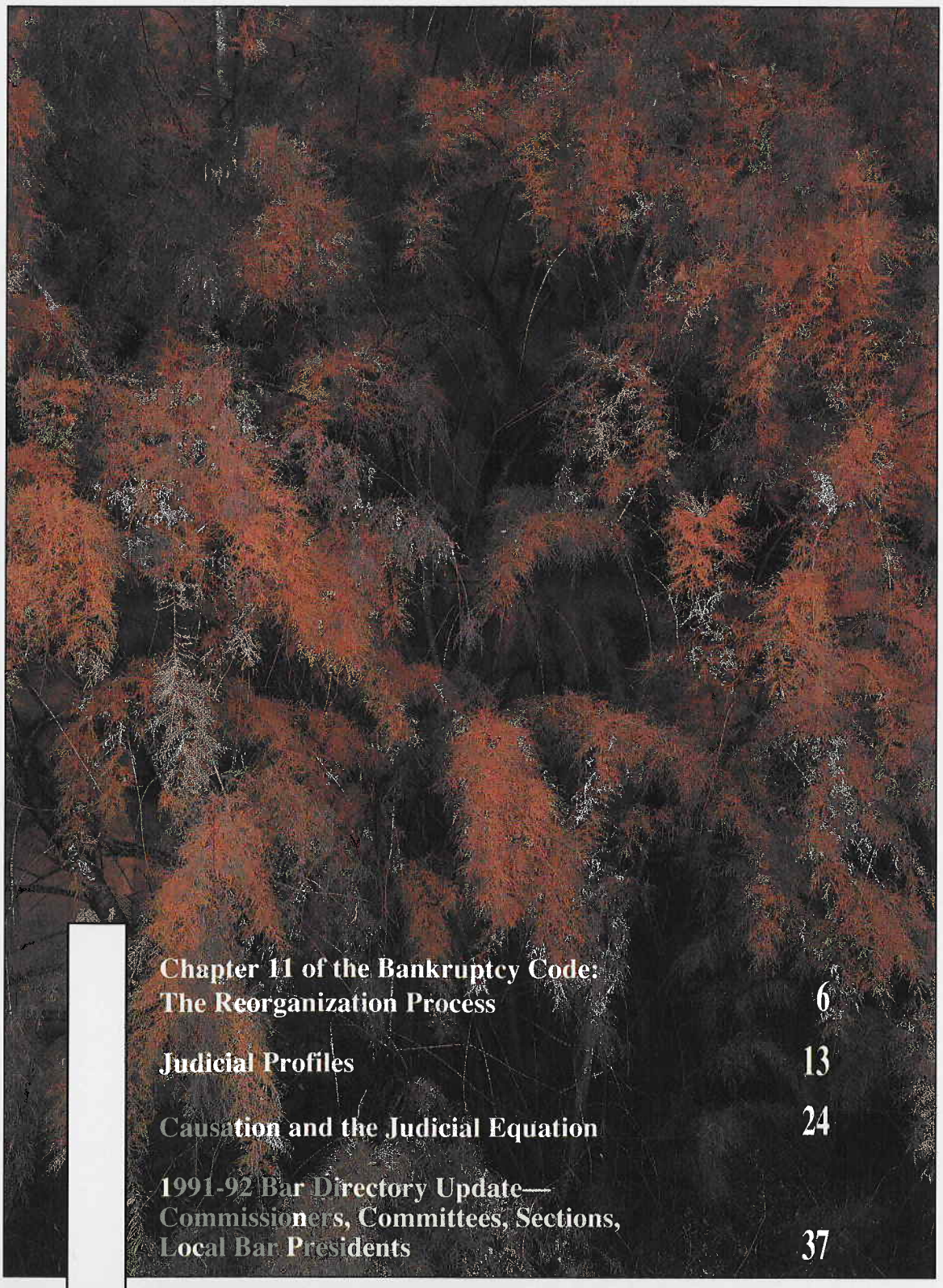

HOULIHAN VALUATION ADVISORS

Salt Lake City • Las Vegas • Orange County • Los Angeles • San Francisco • San Carlos

Specialists in providing valuation opinions ...

BONNEVILLE PACIFIC CORPORATION

has acquired 80% of the common stock of

RECOMP, INC.

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

HOULIHAN VALUATION ADVISORS

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.

HOULIHAN VALUATION ADVISORS

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

has purchased common shares of

QUESTAR CORPORATION

in a leveraged ESOP transaction

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

HOULIHAN VALUATION ADVISORS

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

has merged with

PACIFIC SILVER CORPORATION

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

HOULIHAN VALUATION ADVISORS

NRS ASSOCIATES and SMG INCORPORATED

the general partners in several limited partnerships containing franchised restaurant operations including:
Sizzler — 11 Restaurants
Tony Roma's — 2 Restaurants
Viva La Pasta — 1 Restaurant

have completed

PARTNERSHIP VALUATIONS

We rendered a valuation opinion to Ronald J. Ockey, Attorney at Law with the firm of Jones, Waldo, Holbrook & McDonough, counsel to NRS Associates and SMG Incorporated, as to the cumulative fair market value of the above listed entities.

HOULIHAN VALUATION ADVISORS

BRIAN HEAD ENTERPRISES, INC.

the owner and operator of a Southern Utah ski resort, has received confirmation of its

REORGANIZATION PLAN

and has been dismissed from its

CHAPTER 11 BANKRUPTCY CASE

We rendered a valuation opinion to the Trustee of Brian Head Enterprises, Inc. as to the value of the ski resort assets.

HOULIHAN VALUATION ADVISORS

HENDSUB DOD, INC.

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

DOD ELECTRONICS

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

HOULIHAN VALUATION ADVISORS

TL ENTERPRISES, INC.

has acquired through a merger

GCI INDUSTRIES, INC.

and its wholly-owned subsidiary

GOLF CARD INTERNATIONAL CORP.

We rendered a fairness opinion to the Board of Directors of GCI Industries, Inc. as to the value of the common stock of GCI Industries, Inc.

HOULIHAN VALUATION ADVISORS

TERRA TEK, INC.
Employee Stock Ownership Plan
("ESOP")

has completed its annual ESOP valuation of

TERRA TEK, INC.

We rendered an independent opinion as to the fair market value of the Terra Tek, Inc. common stock.

HOULIHAN VALUATION ADVISORS

The Shareholders/Managers of
HILLSIDE VILLA HEALTH CARE CENTER

has completed a valuation of their Covenant not to Compete in connection with the acquisition of the center

by

MISSION HEALTH SERVICES

We rendered an independent opinion as to the value of the Covenant not to Compete.

HOULIHAN VALUATION ADVISORS

THE MONROC, INC.
Employee Stock Ownership Plan
("ESOP")

has completed its annual ESOP valuation of

MONROC, INC.

We rendered an independent opinion as to the fair market value of Monroc Inc.common stock.

HOULIHAN VALUATION ADVISORS

ALLIED CLINICAL LABORATORIES, INC.

issued

INCENTIVE STOCK OPTIONS (ISOs)

to certain key employees.

We rendered an independent opinion as to the fair market value of the optioned common stock of Allied Clinical Laboratories, Inc. on a minority interest basis.

HOULIHAN VALUATION ADVISORS

Contact: Fred Jones or Dave Dorton • (801) 322-3300

SALT LAKE CITY OFFICE: 136 East South Temple • Suite 1530 • Salt Lake City, UT 84111

UTAH BAR JOURNAL

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COVER: Autumn Tamarisk, Capital Reef National Park, by Chris Wangsgard, Shareholder in Parsons Behle & Latimer.

Members of the Utah Bar who are interested in having their photographs 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. Send both the transparency and a print of each photograph you want to be considered. Artists who are interested in doing illustrations are also invited to make themselves known.

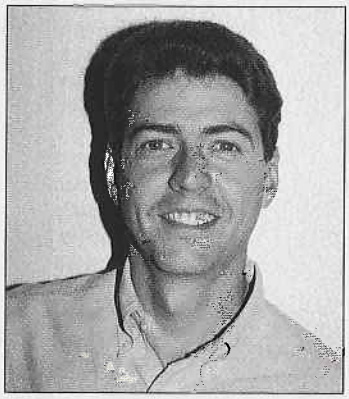
The *Utah Bar Journal* is published monthly, except July and August, by the Utah State Bar. One copy of each issue is furnished to members as part of their State Bar dues. Subscription price to others, $25; single copies, $2.50; second-class postage paid at Salt Lake City, Utah. For information on advertising rates and space reservation, call or write Utah State Bar offices.

EDITORIAL NOTE

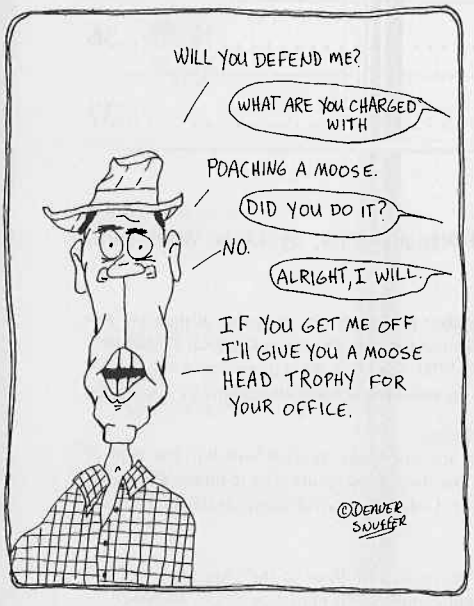
Very little information is available in print on Utah judges. In this issue of the *Utah Bar Journal*, we begin a series of articles, entitled "Judicial Profiles," spotlighting judges in Utah state and federal courts. The articles will recognize the contributions judges have made to the legal community, and apprise lawyers of the background, interests, views, and procedural preferences of each judge. These articles, when collected by firms and individual practitioners, should be a valuable reference source for attorneys preparing to practice before a judge for the first time, as well as for experienced lawyers who can gain new insights about familiar judges.

Elizabeth Dolan Winter and Terry E. Welch will write the articles.

Elizabeth Dolan Winter received her bachelor's degree from the University of Utah College of Nursing in 1986. Winter practiced as a registered nurse at Holy Cross Hospital from 1986 until 1989. She attended the University of Utah College of Law, where she was a staff member and Note Editor of the *Utah Law Review*. After graduating Order of the Coif from the University of Utah, Winter completed a one-year judicial clerkship with the honorable Christine M. Durham on the Utah Supreme Court. Winter is an associate with the law firm of VanCott, Bagley, Cornwall & McCarthy, and serves on the board of directors of the University of Utah College of Nursing Alumni Association. Publications include: Development, *Terminating Parental Rights Based on Abandonment: No State Duty to Notify or Assist Parent*, 1989 Utah L. Rev. 270; *State Board of Nursing's Proposed Revisions to Nurse Practice Act*, vol. 8 Nursing Excellence (Fall 1991).



Terry Welch graduated from the University of Utah with a B.A. in Business Finance in 1987. Welch graduated Order of the Coif from the University of Utah College of Law in 1990. He served as a member of the *Utah Law Review* from 1988 to 1990. From August, 1990 to August, 1991, Welch clerked on the Utah Supreme Court for Justice Michael D. Zimmerman. Welch is currently associated with Kimball, Parr, Waddoups, Brown & Gee in Salt Lake City. Previous publications include the following: *Handicapped Children Education: Is Legislature Above Law?*, The Neo-Analyst, Jan.-Feb. 1991; Comment, *Of Bankruptcy Judges and Jury Trials: The Past, The Present . . . and The Future?*, 1990 Utah L. Rev. 347; Development, *Appearance of a Child Adoptee at Adoption Proceedings*, 1989 Utah L. Rev. 295.



PRESIDENT'S MESSAGE

By James Z. Davis

As many of you are aware, Bar leadership and staff, with the able assistance of other Bar members, began studying such things as the financial and computer needs of the Bar well prior to the involvement and assistance of Grant Thornton.

It is with great satisfaction that I am able to report to you that, by the time you read this, many if not all of the recommendations of Grant Thornton, together with recommendations of Deloitte & Touche, the Bar's auditors, have been or are in the process of full implementation.

The Deloitte & Touche audit of the Bar for FY 1990-91 was completed on or about August 16, 1991, and approved by the Commission at its meeting in Provo on September 26, 1991. Any of you who might be interested in obtaining a copy of the audit may do so from the Bar Office.

Elsewhere in this issue, the Bar is publishing a summary of the results of the 1991 audit, comparison figures for 1990, and a summary of the 1992 budget. In order to assist you in understanding the numbers, a graphic and explanation sheet are included. To my knowledge, this is the Bar's first effort to provide its members and others this sort of information in this format. As a result, I would appreciate each and every one of you carefully going over the material and sharing with either John Baldwin, Arnold Birrell or myself your responses to the following questions or any other comments:

1. Was the format understandable?
2. Were the graphics helpful?
3. Were the narrative comments helpful?
4. Would you like to see more detail?
5. Would you like to see less detail?
6. Would you prefer more explanation?
7. Would you prefer less explanation?

Over the past several years, it has become apparent to me that lawyers and accountants frequently think they are speaking the same language, while not communicating at all. In addition, certain kinds of accounting information may appear on one document, such as a balance sheet, while different kinds of information may appear on another document, such as a statement of revenues and expenses.

The Supreme Court Task Force has identified what it has characterized as a "communication problem" between members of the Bar and the Bar, and suggested that the problem goes both ways. Historically, member input has been scant, at best.

It is the intention of the Bar to publish financial and other information at least annually. The purpose of publishing that information is to communicate with Bar members so that they can assist the Bar in making informed decisions. If the information is not achieving that purpose for some reason, it is essential that the Bar have your input.

Please keep those cards and letters coming.

Utah B.J.

CHAPTER 11 OF THE BANKRUPTCY CODE: An Overview for the General Practitioner

PART II: THE REORGANIZATION PROCESS

By Ronald W. Goss

I. Operations in Chapter 11

A Chapter 11 debtor, though left in possession of its business, is not allowed to operate as it did before filing the bankruptcy petition. After filing, the debtor is known as a debtor in possession and has many of the powers and duties of a trustee.[1] Its board of directors and executive officers are responsible for carrying out these duties and must act as a fiduciary for the creditors, as would a trustee.[2] The debtor in possession will decide what causes of action to pursue or settle, what claims to contest or not to contest, what assets to utilize and what assets to liquidate or abandon, and what contracts to assume or reject. In short, the debtor in possession must conserve, protect and maximize the value of its business.

Section 1108 of the Bankruptcy Code authorizes the debtor in possession to operate its business without any order from the court. Thus, the bankruptcy court does not supervise the operation of the business during the reorganization case. Section 363(c)(1) authorizes the debtor to use, sell or lease property, and enter into transactions in the ordinary course of business without notice to creditors and a hearing in the bankruptcy court. The purpose of the ordinary course of business rule is to allow a business to continue its daily operations without the burden of obtaining court approval or notifying creditors for minor transactions, while at the same time protecting creditors from dissipation of the estate's assets by requiring notice and a hearing to approve actions outside the ordinary course of business.[3]

In determining whether notice to creditors and a hearing are required before the debtor can use property of its bankruptcy estate, the phrase "ordinary course of business" is critical. Generally, courts will consider the debtor's pre-petition practices and conduct, as well as the general practice in the relevant industry.[4] Where the debtor in possession merely exercises its business judgment with respect to ordinary business matters, its actions are not subject to creditor scrutiny or judicial control.[5]

RONALD W. GOSS received his J.D. in 1982 from the University of Utah where he was Articles Editor of the Journal of Contemporary Law. Since graduation from law school, his practice has been exclusively devoted to bankruptcy, creditors' rights and insolvency matters. From 1984-86 he served as a judicial clerk to the Honorable Glen E. Clark, Chief United States Bankruptcy Judge for the district of Utah. Mr. Goss formerly was a shareholder with Van Cott, Bagley, Cornwall & McCarthy, P.C., in Salt Lake City. He currently is a member of the law firm of Hacker Matthews, P.S. in Seattle, Washington.

The importance of notice in Chapter 11 proceedings cannot be overemphasized, for notice is the due process component that gives all parties in interest an opportunity to be heard. In most instances, proposed actions involving the use of property outside of the ordinary course of business may be taken without an actual hearing and an order of the court, if proper notice is given and no creditor objects.[6] Actions not in the ordinary course of business that require notice to creditors and a hearing if objections are raised include obtaining secured credit or incurring secured debt, abandoning burdensome property, assuming or rejecting executory contracts or unexpired leases, selling property outside of the ordinary course of business, and compromising or settling disputed claims.

II. Post-Petition Financing

During the Chapter 11 case most debtors require some form of financing to maintain business operations, make payroll, pay rent, utilities, insurance premiums and other crucial operating expenses, and to otherwise preserve the assets of the estate. Often the only cash available to the debtor in possession is cash collateral, which may not be used without the consent of the secured creditor or authorization from the bankruptcy court.[7] Cash collateral is defined in the Bankruptcy Code as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents" in which a creditor holds a security interest.[8] Generally, cash collateral will include rents, accounts receivable and proceeds from the sale of collateral, to the extent they are subject to a perfected lien. The debtor in possession must segregate and is prohibited from us-

ing cash collateral unless the secured creditor consents or the bankruptcy court, after notice and a hearing, authorizes its use.[9] Upon a finding by the bankruptcy court that the secured creditor is adequately protected, cash collateral may be used to pay rent, wages and other operating expenses during the case.

It is common for the debtor to file an "emergency" motion to use cash collateral simultaneously with its bankruptcy petition and request a hearing on abbreviated notice. The court will schedule a hearing "in accordance with the needs of the debtor," but may treat it as a preliminary hearing and authorize limited use of cash collateral only "to the extent necessary to avoid immediate and irreparable harm" pending the final hearing.[10]

The court's inquiry regarding the use of cash collateral focuses on whether the secured creditor is adequately protected and whether the debtor should be allowed to use the proceeds. Typically, as adequate protection for the use of its cash collateral, the secured creditor will be granted a replacement lien against the debtor's post-petition accounts receivable. Although the secured creditor's property rights is the primary concern, the interests of all other creditors and the benefit to them from a successful reorganization also have a bearing on whether cash collateral should be used.[11]

A cash collateral order permits the debtor in possession to use existing proceeds, such as accounts receivable, but does not provide for new advances by the lender. Often a Chapter 11 debtor will need additional working capital financing during its reorganization. Such post-petition financing may come from a pre-petition lender. An existing lender may seek to reduce its exposure and improve its collateral position by providing new financing. The post-petition secured lender can insist, as a condition to extending new credit, that the financing order provide that its pre-petition liens and security interests are valid, properly perfected and enforceable. This will protect the lender from subsequent challenges to the validity of its liens. Debtor in possession loans typically are several points above the prime rate and are among the most secure available.[12] Some courts have made post-petition financing even more attractive by allowing the lender to "cross-collateralize", i.e., receive additional, post-petition collateral as security for both the new post-petition debt and the existing pre-petition debt. Such arrangements often are approved even though the debtor must make significant concessions that affect the interests of other creditors.[13]

Section 364 of the Bankruptcy Code encourages lenders to extend post-petition financing to the debtor in possession through an escalating series of inducements.[14] First, under 364(a) creditors who are willing to extend unsecured credit in the ordinary course of business are entitled to an administrative priority allowable under 503(b). If a creditor is willing to extend unsecured credit outside of the ordinary course of business, such credit may be authorized by the court, after notice and a hearing, pursuant to 364(b). Under rare circumstances, if a lender has made a post-petition loan without first obtaining court approval, the bankruptcy court may grant retroactive approval of the unauthorized loan.[15] However, only the most foolhardy lender would take a chance on such approval being granted.

If lenders are unwilling to extend unsecured credit to the debtor in possession, other inducements are available.[16] The court may, after notice and a hearing, grant a "super-priority" over any and all administrative claims under 364(c)(1).[17] To warrant approval of a super-priority financing arrangement, the court must make clear findings that the debtor cannot obtain unsecured credit, the funds are necessary to preserve the estate, and the arrangement is in the best interest of the estate. As an alternative financing arrangement, the court may also grant the post-petition lender a lien on any unencumbered property of the debtor pursuant to 364(c)(2), or a junior lien on encumbered property in accordance with 364(c)(3). Finally, 364(d) permits the bankruptcy court to grant the post-petition lender a senior, or "priming" lien on property already subject to an existing lien, provided the debtor is otherwise unable to obtain credit and the holder of the existing lien is adequately protected.

III. Executory Contracts and Unexpired Leases

In most reorganization cases, the debtor will be a party to various executory contracts, such as an option, purchase agreement, license, right of first refusal, franchise, or settlement agreement, and may also be a party to unexpired leases, such as equipment and vehicle leases or a commercial lease covering its business premises. Section 365 of the Bankruptcy Code provides that the debtor in possession, subject to court approval, may assume or reject any executory contract or unexpired lease. Rejection of an executory contract or unexpired lease is designed to make the debtor's rehabilitation more likely by relieving it of burdensome obligations while it attempts to recover financially and develop a plan to repay creditors.

The Bankruptcy Code does not define "executory contract", but the term generally is taken to mean any agreement in which substantial performance obligations remain on each party.[18] There must be a contract in existence at the time of filing, otherwise there is nothing left to assume or reject. A contract is not executory within the meaning of 365 unless it is executory as to both parties. If a material breach occurred before the bankruptcy, the contract may not be executory and subject to assumption or rejection because the debtor has no further duty to perform.[19]

The 1984 amendments to the Bankruptcy Code introduced several provisions designed to protect lessors of nonresidential real property from nonpayment of rent during a tenant's bankruptcy. First, under 365(d)(4) the debtor is limited to a 60-day period, unless extended by the court, within which to decide whether to assume or reject the lease. Failure to assume within that time results in automatic rejection of the lease and an obligation to surrender the premises to the landlord.[20] Second, 365(d)(3) requires debtors to pay rent and other charges in accordance with the terms of the lease pending the decision to assume or reject.[21] Third, the rent falling due during the 60-day period is an allowable administrative expense which may be paid by the debtor without the necessity of notice and a hearing. Finally, 365(d)(3) codifies the obvious point that a terminated lease cannot be assumed or assigned.

Leases of personal property, such as equipment, are not subject to automatic rejection if not assumed within 60 days, nor is the statutory duty to pay post-petition rent applicable. Moreover, a lessor under an unexpired lease of personal property may not demand adequate protection or seek relief from the automatic stay based upon a lack of such protection. In such circumstances the lessor's exclusive remedy is to move the court to compel the debtor to assume or reject such a lease within a specified period of time.[22]

IV. Trustees and Examiners

A debtor is entitled, unless ousted, to remain in possession and operation of its business. There is a presumption in Chapter 11 that the debtor should continue to control its business without the intervention of a trustee unless a party in interest

brings to the attention of the court an abnormality in the administration of the case.

The court's willingness to allow a debtor's management to remain in possession "is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee."[23] If the court finds that the debtor's management is unable to discharge its fiduciary duty to creditors, the court may appoint a trustee to run the business.

Under 1104(a)(1) of the Bankruptcy Code, the court must order the appointment of a trustee for "cause" found. The term "cause" is defined to include "fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case." Section 1104(a)(2) embodies an alternative standard under which the bankruptcy court must engage in a cost-benefit analysis, and order the appointment of a trustee only if such appointment is in the best interest of creditors and the delay and cost involved is justified under all of the circumstances.[24]

The appointment of a trustee may be warranted under subsection (a)(2) if there is a deadlock among the board of directors or a conflict of interest in the management of the debtor, where the debtor in possession fails to commence actions to avoid insider transfers or other preferences and fraudulent conveyances, or where there has been no meaningful progress towards reorganization.

If the appointment of a Chapter 11 trustee is ordered by the bankruptcy court, the U.S. Trustee will appoint a disinterested person, subject to the court's approval, to serve as trustee. The U.S. Trustee is required to consult with parties in interest and consider their suggestions for a suitable trustee. The U.S. Trustee will consider members of the local panel of Chapter 7 trustees as well as other qualified persons in making the appointment.

Section 1106(a) specifies 11 statutory duties of a trustee. A trustee in a reorganization case is a fiduciary and must exercise due care, diligence and skill in the administration of the estate.[25] In addition to the duty to identify and where necessary compel turnover of property of the estate, the power to use or sell such property, and to avoid preferences and fraudulent conveyances of the debtor, the trustee has the power to operate the debtor's business, the duty to investigate the debtor, and the right to formulate and propose a plan of reorganization or recommend conversion of the case to Chapter 7.

Courts give considerable deference to actions taken by Chapter 11 trustees. The standard governing bankruptcy court review of a trustee's actions is explained in the leading case of In re Curlew Valley Associates, 14 Bankr. 506 (Bankr. D. Utah 1981). Absent fraud or mismanagement on the part of the trustee, the court will not attempt to second guess the trustee's business judgment made in good faith, upon a reasonable basis, and within the scope of the trustee's authority.

The appointment of a trustee in a Chapter 11 case is an extraordinary remedy and one which seldom leads to the successful rehabilitation of the debtor. Trustees, like individual creditors or creditors' committees, rarely file operating plans of reorganization. With some notable exceptions, Chapter 11 trustees usually will not operate a business for long, but will merely preserve the property, collect the assets, and liquidate the estate.

A less drastic alternative to the appointment of a trustee is the appointment of an examiner. Section 1104(a) permits the appointment of an examiner if the court does not order the appointment of a trustee and if such appointment is in the best interest of creditors. Generally, courts will apply a lesser evidentiary burden in considering the appointment of an examiner.[26] Where sufficient evidence is offered to show that allegations of misconduct or incompetence have a sound factual basis, the bankruptcy court should appoint an examiner rather than a trustee wherever the protection afforded by a trustee could equally be provided by an examiner.[27]

An examiner's role in the affairs of a Chapter 11 debtor is less intrusive than a trustee's. An examiner will not displace the debtor's management or operate its business. Instead, the examiner's primary duty is to investigate and report on the financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuation of such business.[28] The order directing the appointment of an examiner generally specifies certain areas the court wants the examiner to investigate, and may also limit the scope of the investigation and set a ceiling for expenses to be incurred.[29] CPAs, rather than lawyers, are often appointed to serve as examiners for their investigative skills in financial matters.

V. The Disclosure Statement and Plan

After a bankruptcy petition is filed only the debtor in possession may file a plan of reorganization during the first 120 days.[30] This statutory exclusivity period may be reduced or extended by the court for cause.[31] Absent extraordinary circumstances the exclusivity period should not be extended because it disturbs the balance of power between the debtor and its creditors. The right to file a creditor's plan after 120 days is an important creditors' protection provision of the Code and a strong showing is usually required before this right will be curtailed. However, in an unusually large or complex case the bankruptcy court often will extend the exclusivity period.[32] The Code also gives the debtor a 180-day exclusivity period for gaining acceptances of its plan, which also may be extended for cause. An extension for gaining acceptances of a plan which has already been filed does not have the same potential for disturbing the creditor's bargaining position as an extention of the exclusive plan filing period. Therefore, courts may apply a less stringent standard in granting an extension.[33]

The plan confirmation process begins with bankruptcy court approval of the disclosure statement. A disclosure statement must contain "adequate information" to "enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan."[34] What constitutes adequate information is determined on a case-by-case basis under a flexible standard, taking into account the size and complexity of the case, the kind of plan proposed, the kind of claims involved, and creditors' access to outside sources of information.

In the leading case of In re Jeppson, 66 Bankr. 269 (Bankr. D. Utah 1986), the court offered the following checklist of information which generally should be included in a disclosure statement:

1. The circumstances that gave rise to the filing of the bankruptcy petition;
2. A complete description of the abailable assets and their value;
3. The anticipated future of the debtor;
4. The source of the information provided in the disclosure statement;
5. A disclaimer;
6. The condition and performance of the debtor while in Chapter 11;
7. Information on claims against the estate;
8. The estimated return that creditors would receive under Chapter 7;
9. The accounting and valuation methods used in the disclosure statement;
10. Information regarding the future management of the debtor;
11. A summary of the plan of reorganization;
12. An estimate of all administrative

expenses, including attorneys' fees and accountants' fees;

13. The collectibility of any accounts receivable;
14. Any financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
15. Information relevant to the risks being taken by the creditors and interest holders;
16. The actual or projected value that can be obtained from voidable transfers;
17. The existence, likelihood and possible success of non-bankruptcy litigation;
18. Any tax consequence of the plan; and
19. The relationship of the debtor with affiliates.

The hearing on the disclosure statement should not be turned into a mini-confirmation hearing, and only objections as to the adequacy of the information are proper. However, if the bankruptcy court can determine from a reading of the plan and disclosure statement that the plan on its face does not comply with 1129(a) of the Code, it may decline approval of the disclosure statement and spare the estate the unnecessary expense of a confirmation hearing.

The mandatory provisions for a plan of reorganization are contained in 1123(a). Under 1123(a)(1), the plan must designate classes of claims other than certain priority claims, which remain unclassified. Section 1123(a)(2) provides that the plan must specify any class of claims or interests that is not "impaired." Section 1123(a)(3) requires that a plan specify the treatment of impaired classes. The concept of impairment is of vital importance in Chapter 11 because a class that is not impaired is deemed to have accepted the plan.[35] Courts have consistently interpreted the term "impaired" very broadly such that if a plan alters any of the creditor's rights in any respect, that plan does not leave the claim unimpaired.[36] An important exception to the expansive definition of impairment is found in 1124(2) of the Code, which permits the debtor to cure the default of an accelerated loan, reinstate the original maturity date as it existed before default, and thereby reverse the acceleration.

Section 1123(a)(4) provides that each creditor within a particular class must receive the same treatment under the plan unless a creditor agrees to less favorable treatment. Section 1123(a)(5) broadly states that a plan must provide adequate means for the plan's implementation. These means may include the transfer of the debtor's property to a new entity, merger or consolidation of the debtor with another entity, curing or waiving any default, and issuance of new securities in exchange for claims against the debtor. Finally, 1123(a)(6) requires that the plan provide for the inclusion in the charter of the debtor or a successor corporation of a provision prohibiting the issuance of non-voting securities and providing an appropriate distribution of voting power. The purpose of this provision is to assure that creditors who are forced to take stock in a reorganized company will be entitled to exercise full voting control and have a voice in the selection of management that will protect their interests.

Section 1122(a) of the Code allows a plan proponent to place particular creditors' claims together in a class only if such claims are "substantially similar." The Bankruptcy Code allows some flexibility in the classification of creditors' claims but the plan may not create separate classes so as to manipulate the voting requirements. Classification of secured claims ordinarily will be based upon priority, nature of collateral, and agreements between creditors with respect to subordination. Secured creditors may not be classified together when they have liens against different property or possess liens of different priority against the same property, since their respective legal rights are not substantially similar.[37] Classification abuse may occur when the plan contains multiple classes of unsecured claims for the purpose of creating an impaired accepting class in order to cramdown the plan.

"The chief purpose of Chapter 11 is to secure the prompt, effective settlement of all claims against the debtor, restructure its business and financial affairs, and to return the company to the mainstream of commerce."

Liquidating plans are allowed in Chapter 11.[38] Systematic liquidation in Chapter 11 may be preferable to a Chapter 7 liquidation because the disposition of assets may be conducted in a less expensive, more orderly manner by a debtor in possession, as opposed to a trustee who is a stranger to the business and unfamiliar with the property of the estate.[39]

VI. Confirmation and Cramdown

The bankruptcy court must hold an evidentiary hearing in ruling on the confirmation of a proposed plan of reorganization.[40] Regardless of whether any objections are filed, the court must determine whether the statutory requirements for confirmation have been met. All creditors are entitled to notice of the confirmation hearing and have an opportunity to object. In Reliable Electric Co. v. Olson Const. Co., 726 F.2d 620 (1984), the Tenth Circuit held that a creditor who knew of the pendency of the Chapter 11 case but did not receive formal notice of the confirmation hearing was not bound by the plan of reorganization and its claim was not discharged pursuant to the plan.

In order to be confirmed, a plan of reorganization must satisfy all thirteen requirements of 1129(a) of the Code, except that if a plan meets all of the requirements except for acceptance by all impaired classes of claims, that plan may nevertheless be confirmed if at least one impaired class votes to accept the plan and it also satisfies the requirements of 1129(b). The bankruptcy court may not rewrite the plan or confirm parts of the plan and reject others; the plan must be confirmed or rejected in its entirety.[41]

The plan must comply with the provisions of title 11.[42] This mandates that claims be properly classified and the plan contain the provisions specified in 1123 of the Code.[43] The plan proponent must also comply with the applicable provisions of title 11.[44] Objections to confirmation under this requirement usually involve failure to comply with the adequate disclosure and the limitations on solicitation provisions of 1125, and with 1126 regarding acceptances of the plan.[45]

A plan must be proposed "in good faith and not by any means forbidden by law."[46] For purposes of determining good faith, the court's concern is whether the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.[47] The Tenth Circuit has defined the good faith standard in terms of whether "the debtor intended to abuse the judicial process and purposes of the reorganization provisions."[48]

All payments made or promised by the debtor for services in connection with the case must be disclosed and approved by, or be subject to approval by, the bank-

ruptcy court.[49] In the rare case where a plan provides for a change in rates that are subject to governmental regulation, the agency with jurisdiction over such rates must approve the change.[50]

The plan proponent is required to disclose the identity and affiliations of all individuals proposed to serve as officers and directors of the reorganized company. The appointment to or continuance of someone in one of these positions must be consistent with the interests of creditors.[51] Generally, the debtor's choice of management will not be disturbed by the court except for compelling reasons such as incompetence, inexperience, or affiliations with groups inimical to creditors' interests.[52]

Non-accepting creditors whose claims are impaired under the plan must receive not less than they would receive in a Chapter 7 liquidation.[53] To satisfy this requirement the debtor must present valuation evidence and show what distribution creditors would receive in a hypothetical liquidation. In partnership cases this liquidation analysis should take into account what could be recovered from general partners, since their assets can be reached in Chapter 7 to satisfy any deficiency in payment of the partnership's creditors.[54]

Section 1129(a)(8) provides that each class of creditors must either accept the plan or be unimpaired. Subsection (a)(8) does **not** require that each individual creditor accept the plan.[55] Rather, it requires only that each class accept the plan. This provision must also be read in conjunction with 1129(b), which permits "cramdown" of the plan even though 1129(a)(8) is not complied with. If all classes of claims and interests vote by the requisite majorities to accept the plan, no consideration need be given to whether the plan also satisfies the requirements for "cramdown" under 1129(b).

Section 1129(a)(9) provides for the treatment of various priority claims which arise under 507 of the Bankruptcy Code, including the claim of the debtor's attorney for fees and claims for taxes. Administrative expense claims, including professional compensation, must be paid in full on the effective date of the plan unless the holder of the claim agrees to a different treatment.[56] If taxes are to be paid over time, the plan must provide for their payment with interest within six years from the date of assessment.[57]

At least one impaired class must affirmatively vote to accept the plan.[58] Once an impaired class has accepted the plan, it may be "crammed down" over the objections of every other class of creditors.[59] The plan must also provide for payment of U.S. Trustee fees[60] and for continuation of benefits for retired employees.[61]

Most importantly, the plan proponent must demonstrate that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, unless provided for in the plan.[62] This feasibility requirement is to ensure that the plan offers a reasonable prospect of success.[63] Otherwise, creditors are entitled to have the business liquidated and avoid wasting its assets in a speculative venture. In making the feasibility determination, the following factors are pertinent:

1. The projected future earnings of the business;
2. The soundness and adequacy of the debtor's capital structure;
3. The prospective availability of credit;
4. Economic and market conditions; and
5. The skill and ability of management, and the likelihood that the same management will continue.[64]

If the plan provides for the payment of creditors' claims from future earnings of the business, the debtor must present evidence of its future budget, and projected revenues and expenses during the life of the plan. The debtor's past and present financial records are probative of its future performance, and the debtor should explain significant discrepancies between historical earnings and its prediction of improved performance following confirmation. The critical question is whether the business has sufficient prospects of future earnings and profits to pay its creditors pursuant to the plan. If the debtor's income and expense projections are unrealistic, the court will deny confirmation.[65]

The bankruptcy court may confirm a plan of reorganization over the dissent of one or more classes of creditors under the "cramdown" provisions of 1129(b) if certain requirements are met.[66] For cramdown to apply, it is necessary that the dissenting class be "impaired". If the proponent requests cramdown of the plan over the dissent of an impaired class, the bankruptcy court must confirm a plan "if the plan does not discriminate unfairly, and is fair and equitable," with respect to such class.[67]

The so-called "absolute priority rule" is preserved in the "fair and equitable" standard for cramdown. The rule requires that any dissenting unsecured creditor be paid in full if the shareholders (or partners as the case may be) are to retain their equity interests, unless the junior interest holder makes a new cash infusion which is both necessary under the circumstances and substantial.[68]

If the plan proposes to pay a secured creditor in installments, the present value of the future payments must equal the amount of the creditor's claim. In order to provide the creditor with the present value of its claim, interest at an appropriate rate must be added to the installment payments.

VI. Post-Confirmation Matters

The chief purpose of Chapter 11 is to secure the prompt, effective settlement of all claims against the debtor, restructure its business and financial affairs, and to return the company to the mainstream of commerce. A plan of reorganization is a court-approved contract between the debtor and its creditors and binds all of the parties.[69] The order confirming the plan is res judicata as to any issues that were or could have been raised in the confirmation proceedings.[70]

Upon confirmation the bankruptcy "estate" ceases to exist and the property of that estate revests in the debtor.[71] The automatic stay also terminates at the time of confirmation.[72] Thereafter, the terms of the plan itself control the extent to which the debtor's property is subject to creditors' claims. The reorganized debtor has the right to encumber or dispose of its property without notice to creditors or bankruptcy court control, unless this right is specifically restricted by the plan.

The vast majority of Chapter 11 cases do not end at confirmation. Following confirmation, the bankruptcy court generally retains jurisdiction to determine pending disputes, interpret and enforce the provisions of the plan, and enter such orders that are necessary to carry out the plan.[73] Jurisdiction often is retained to decide objections to creditors' proofs of claim, adversary proceedings retained pursuant to 1121(b)(3)(B) of the Code, and allowances of professional fees and other administrative expenses. However, pervasive jurisdiction over any controversy involving the reorganized debtor would defeat the purpose of reorganization, namely, to restructure a business so that it is able to go forward in the marketplace under its own power without judicial interference. Thus, post-confirmation jurisdiction is limited to what is necessary to effectuate the plan.[74]

After confirmation, the plan proponent or the reorganized debtor may modify the plan if the circumstances warrant such

modification and the plan as modified satisfies the other requirements of Chapter 11. A creditor may not propose a modification of the confirmed plan unless that creditor was the plan proponent.[76] If the plan has been "substantially consummated" it cannot be modified. There are three requirements for "substantial consummation."[77] First, the debtor must have transferred all or substantially all of the property proposed in the plan to be transferred. Second, the debtor must have assumed management of the property dealt with by the plan. Third, distributions under the plan must have commenced.

The first requirement has been the source of the most confusion in this area. Where a plan proposes to pay creditors over many years and the debtor makes an initial distribution at or near the time of confirmation, it is obvious that distributions have "commenced". But when does the transfer of "substantially all" of the debtor's property occur? One court permitted post-confirmation modification after looking to the percentage of the payments to be made to creditors over the life of the plan, holding that 56% did not constitute "substantially all" of such payments.[78] The better view rejects this analysis and holds that distributions to creditors over time are not the type of transfers of property contemplated by the statute, and only those transfers made at or near the time the plan is confirmed, which shape the new financial structure of the reorganized company, should be considered.[79]

VII. Conclusion

Chapter 11 of the Bankruptcy Code performs a valuable role in preserving financially distressed but viable businesses. The great virtue of the reorganization chapter has been its flexibility. It has proved effective in the financial rehabilitation of individuals and small businesses, as well as giant corporations.

The Bankruptcy Code shifts the emphasis in reorganization from judicial supervision to creditor control. While the bankruptcy court has a degree of leeway in deciding where the case will move, the role of the court is to adjudicate disputes, not manage debtors' estates. The system is premised on active participation by debtors and their creditors. As a practical matter, this means that attorneys are the driving force in Chapter 11. If the vitality of the reorganization process is to be affirmed, all business lawyers must acquire and maintain a working knowledge of the substantive and procedural mechanisms of Chapter 11.

[1] 11 U.S.C. § 1107(A). *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 105 S. Ct. 1986 (1985); *In re Devers*, 759 F. 2d 751, 754, (9th Cir. 1985).
[2] *See generally*, M. Bienenstock, *Bankruptcy Reorganization* 72-76 (1987).
[3] *In re Selgar Realty Corp.*, 85 Bankr. 235, 240 (Bankr. E.D.N.Y. 1988).
[4] *See In re Johns-Manville Corp.*, 60 Bankr. 612, 616-19 (Bankr. S.D.N.Y. 1986).
[5] *See In re James A. Phillips, Inc.*, 29 Bankr. 391, 394 (S.D.N.Y. 1983); *In re Simasko Production Co.*, 47 Bankr. 444, 449 (Bankr. D. Colo. 1985).
[6] *See* 11 U.S.C. § 109(1); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 315 (1977).
[7] 11 U.S.C. § 363(c) (2).
[8] 11 U.S.C. §363(a).
[9] 11 U.S.C. §363(c) (2).
[10] 11 U.S.C. §363(c) (3); Bankruptcy Rule 4001(b) (2).
[11] *In re O'Connor*, 808 F.2d 1393, 1397-98 (10th Cir. 1987).
[12] N. Alquist & L. Rosenbloom, *Bankruptcy Law for Lenders* 3-5 (1989).
[13] *See generally, In re Saybrook Mfg. Co., Inc.*, 127 Bankr. 494 (M.D. Ga. 1991).
[14] *See In re Photo Promotion Associates, Inc.*, 87 Bankr. 835, 839 (Bankr. S.D.N.Y. 1988), *aff'd*, 881 F.2d 6 (2d Cir. 1989).
[15] *See In re C.E.N., Inc.*, 86 Bankr. 303, 306 (Bankr. D. Me. 1988) (collecting cases). *Cf. In re Executive Air Services, 62 Bankr. 474 (D. Utah 1986) (district court affirmed bankruptcy court order refusing to grant a retroactive super-priority for post-petition advances).*
[16] *See generally*, Prager, "Financing the Chapter 11 Debtor: The Lenders' Perspective," 45 Bus. Law. 2127-50 (Aug. 1990).
[17] *See Executive Air Services*, 62 Bankr. at 474; *In re American Resources Mgmt. Corp., 51 Bankr. 713 (Bankr. D. Utah 1985).*
[18] *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 522 n.6 (1984); *In re Booth*, 19 Bankr. 53 (Bankr. D. Utah 1982); Countryman, *Executory Contracts in Bankruptcy: Part 1, 57 Minn. L. Rev 439, 460 (1973).*
[19] *In re Lopez*, 93 Bankr. 155, 158-59 (Bankr. N.D. Ill. 1988); *In re Feyline Presents, Inc.*, 81 Bankr. 623, 627 (Bankr. D. Colo. 1988); Countryman, *Executory Contracts in Bankruptcy: Part II*, 58 Minn. L. Rev. 479, 506 (1974).
[20] *See In re By-Rite Distributing, Inc.*, 55 Bankr. 740 (D. Utah 1985).
[21] *See In re Granada, Inc.*, 88 Bankr. 369 (Bankr. D. Utah 1988).
[22] *In re Sweetwater*, 40 Bankr. 733 (Bankr. D. Utah 1984).
[23] *Commodities Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355, 105 S.Ct. 1986, 1994 (1985), quoting *Waff v. Weinstein*, 372 U.S. 633, 651, 83 S.Ct. 969, 980 (1963).
[24] *See In re Oklahoma Refining Co.*, 838 F.2d 1133, 1136 (10th Cir. 1988).
[25] *Sherr v. Winkler*, 552 F.2d 1367, 1374 (10th Cir. 1977).
[26] *Snider, "The Examiner in the Reorganization Process: A Need to Modify," 45 Bus. Law. 35, 37-38 (Nov. 1989).*
[27] *See* H. R. Rep. No. 95-595, 95th Cong., 1st Sess. 402 (1977).
[28] 11 U.S.C. §1106(b).
[29] See Acconcia, "The Role of Examiners in the Bankruptcy Proceeding," Bankr. L. Rev. 31, 32 (Summ. 1989).
[30] 11 U.S.C. §1121(b).
[31] 11 U.S.C. §1121(d).
[32] *See, e.g., In re Texas Extrusion Corp.*, 68 Bankr. 712, 725 (N.D. Tex. 1986); *In re United Press International, Inc.*, 60 Bankr. 265, 269 (Bankr. D.D.C. 1986).
[33] *See In re Perkins* 71 Bankr. 294, 299 (W.D. Tenn. 1987).
[34] 11 U.S.C. §1125(a) (1).
[35] 11 U.S.C. §1126(f).
[36] *In re Jones*, 32 Bankr. 951, 957 (Bankr. D. Utah 1983); *In re Barrington Oaks General Partnership*, 15 Bankr. 952, 955-67 (Bankr. D. Utah 1982).
[37] *In re Jersey City Medical Center*, 817 F.2d 1055, 1060 (3d Cir. 1987); *In re Commercial Western Finance Corp.*, 761 F.2d 1329, 1338 (9th Cir. 1985).
[38] *In re Coastal Equities, Inc.*, 33 Bankr. 898, 904 (Bankr. S.D. Cal. 1983); *In re Koopmans*, 22 Bankr. 395, 40 2-03 (Bankr. D. Utah 1982); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 407 (1977). *See* 11 U.S.C. §§1123(b) (4), 1129(a) (11).
[39] *See* 11 U.S.C. §1123(b) (4); *In re Naron & Wager*, 88 Bankr. 85, 88 (Bankr. D. Md. 1988).
[40] 11 U.S.C. §1128(a); Bankruptcy Rule 3020(b); *In re Acequia, Inc.*, 787 F.2d 1352, 1358 (9th Cir. 1986).
[41] *See In re Spanish Lake Associates*, 92 Bankr. 875, 877-78 (Bankr. E.D. Mo. 1988); *In re Janssen Charolais Ranch, Inc.*, 73 Bankr. 125, 128 (Bankr. D. Mont. 1987).
[42] 11 U.S.C. §1129(a) (1).
[43] *Matter of Johns-Manville Corp.*, 68 Bankr. 618, 629 (Bankr. S.D.N.Y. 1986).
[44] 11 U.S.C. §1129(a) (2).
[45] *Johns-Manville*, 68 Bankr. at 630.
[46] 11 U.S.C. §1129(a) (3).
[47] *In re Madison Hotel Associates*, 749 F.2d 410, 424-25 (7th Cir. 1984).
[48] *In re Pikes Peak Water Co.*, 779 F.2d 1456, 1460 (10th Cir. 1986).
[49] 11 U.S.C. §1129(a) (4).
[50] 11 U.S.C. §1129(a) (6). *See In re Auto-Train Corp.*, 6 Bankr. 510, 517-18 (Bankr. D.D.C. 1980).
[51] 11 U.S.C. §1129(a) (5).
[52] *See In re Polytherm Industries, Inc.*, 33 Bankr. 823 (W.D. Wis. 1983).
[53] 11 U.S.C. §1129(a) (7).
[54] *See* 11 U.S.C. §723(a); *In re Diversified Investors Fund XVII*, 91 Bankr. 559, 562-63 (Bankr. C.D. Cal. 1988); *In re I-37 Gulf Ltd. Partnership*, 48 Bankr. 647, 650 (Bankr. S.D. Tex. 1985).
[55] *See In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1267 (10th Cir. 1988) (a non-voting, non-objecting judgment lien creditor, who was the only member of a class, was deemed to have accepted the plan).
[56] 11 U.S.C. §1129(a) (9) (A).
[57] 11 U.S.C. §1129(a) (9) (C).
[58] 11 U.S.C. §1129(a) (10). *See Barrington Oaks General Partnership*, 15 Bankr. at 952.
[59] *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988).
[60] 11 U.S.C. §1129(a) (12).
[61] 11 U.S.C. §1129(a) (13).
[62] 11 U.S.C. §1129(a) (11).
[63] *See Dietrich Corp. v. King Resources Co.*, 583 F.2d 1143 (10th Cir. 1978).
[64] *In re Polytherm Industries, Inc.*, 33 Bankr. 823, 831 (W.D. Wis. 1983); *In re Prudential Energy Co.*, 58 Bankr. 857, 863 (Bankr. S.D.N.Y. 1986).
[65] *In re Stuart Motel, Inc., 8 Bankr. 48, 49-50 (Bankr. S.D. Fla. 1980).*
[66] *See generally*, Klee, "All You Ever Wanted to Know About Cram Down Under the New Bankruptcy Code," 53 Am. Bankr. L.J. 133 (1979).
[67] U.S.C. §1129(b).
[68] *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 108 S.Ct. 963 (1988); *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106, 121, 60 S.Ct. 1 (1939); *In re Landau Boat Co.*, 8 Bankr. 436, 438-39 (Bankr. W.D. Mo. 1981).
[69] 11 U.S.C. §1141(a). *See Paul v. Monts*, 906 F.2d 1468, 1471 (10th Cir. 1990); *In re Stratford of Texas, Inc.*, 635 F.2d 365, 368 (5th Cir. 1981); *Bankruptcy Reorganization, supra*, note 2 at 702.
[70] *See generally, Stoll v. Gottlieb*, 305 U.S. 165, 59 S. Ct. 134 (1938); *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir. 1991); *In re Justice Oaks II. Ltd.*, 898 F.2d 1544, 1552 (11th Cir. 1990); *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1051-54 (5th Cir. 1987).
[71] 11 U.S.C. §1141(b). *See In re Tri-L Corp.*, 65 Bankr. 774 (Bankr. D. Utah 1986).
[72] 11 U.S.C. §362(c) (1).
[73] *See* 11 U.S.C. §1142(b); Bankruptcy Rule 3020(d). *See generally, In re Terracor*, 86 Bankr. 671 (D. Utah 1988); *In re Tri-L Corp., 65 Bankr. at 774; In re J. M. Fields, Inc.*, 26 Bankr. 852, 854 (Bankr. S.D.N.Y. 1982).
[74] In re Tri-L Corp., 65 Bankr. at 778. *See Claybrook Drilling Co. v. Divanco, Inc.*, 336 F.2d 697, 700-01 (10th Cir. 1964); *In re Cascade Energy & Metals Corp.*, No. 90C-908W, slip op. at 5 (D. Utah. Apr. 23, 1991) (per Winder, J.).
[75] 11 U.S.C. §1127(b).
[76] *In re Horne, 99 Bankr. 132, 134 (Bankr. M.D. Ga. 1989).*
[77] *See* 11 U.S.C. §1101(a) (2) (A)-(C).
[78] *In re Heatron, Inc.*, 34 Bankr. 526 (Bankr. W.D. Mo. 1983).
[79] *See U.S. v. Novak*, 86 Bankr. 625 (D.S.D. 1988); *In re Burlingame*, 123 Bankr. 409 (Bankr. N.D. Okla. 1991); *In re Hayball Trucking, Inc.*, 67 Bankr. 681 (Bankr. E.D. Mich. 1986).

Utah B.J.

Views on Legal System

Judge Winder sees advocacy on both sides of an issue as one of the major strengths of our legal system. Such an approach enables the court to "get at the truth." He notes that often a case seems clear after hearing one side's argument, but the issues become much closer and better defined after hearing both sides. "If money and time were no object," he states, "the system would be just great."

The greatest weakness of our system, Judge Winder states, is how harmful the process is to the litigants. Too often even the so-called winners turn out to be losers. Very few, if any, litigants about to go through contested proceedings have any idea what they are going to face. The overwhelming harm to litigants is caused largely by a system that encourages each side to portray the other side in the worst possible light. Even in an average negligence case, the defendant will attempt to make the plaintiff look like a malingerer—like she did nothing to mitigate her injuries. Similarly, the claimant will portray defendant as calloused and uncaring—much worse than reality, perhaps in an attempt for punitive damages.

As an illustration, Judge Winder cites a recent age discrimination case in which the plaintiff failed to receive a promotion from his employer and quit. His employer held a banquet at which the plaintiff received awards and was told he was highly valued. At trial, however, defendant attempted to show through various means that plaintiff was incompetent and did not deserve the promotion. Thus, what had otherwise been a pleasant work experience, turned sour. Winder recognizes that discrimination statutes legitimately deter discrimination. Unfortunately, litigants simply don't understand the often brutal reality of the suit, he states.

The system's second weakness, Judge Winder believes, is the expense necessary to accommodate average claims. He cites a recent study which showed that only 43 percent of every award goes to compensation of the claimant. The discovery system as it now stands is one cause of the exorbitant cost of litigation.

Judge David K. Winder
United States District Judge
District of Utah

Appointed:	1979 by President Carter
Law Degree:	1958, Stanford
Practice:	Litigation partner, Assistant U.S. Attorney, Deputy County Attorney, Utah District Court Judge, Chief Deputy District Attorney, Law Clerk to Chief Justice Crockett—Utah Supreme Court
Law Related Activites	American College of Trial Lawyers (nominated and approved, not inducted because appointed to bench); Advocate, American Board of Trial Advocate; Examiner and Chairman, Bar Examiners, Utah

Judge Winder is not really sure what motivated him to become a lawyer. After majoring in English at the University of Utah, he attended Stanford Law School "because I was admitted." While he wanted to further his education, he says frankly that his choice of law school was almost "by default."

While a practicing attorney, Judge Winder specialized in insurance defense litigation, and was also involved in domestic relations law. Although completely satisfied with his practice and particularly with his colleagues, Winder lists the ability to make decisions that he feels are right as a major motivation in becoming a judge. Practice sometimes requires representing causes or issues in which one has no particular interest. This can ultimately lead to feeling "burned-out." Comparing life in practice to life on the court, Winder remarks that he has never wished to return to practice—not because practice was not fulfilling, but because he finds the ability to rule as he sees fit more satisfying and rewarding.

Interaction with his staff and clerks is the aspect Judge Winder enjoys most about being on the bench—particularly during jury trials. On the other hand, making decisions in difficult civil, non-jury cases is perhaps the least enjoyable aspect of his job.

If Judge Winder could make one change in our system, he would revamp the civil torts system. He sees a large discrepancy between awards for similar injuries. Additionally, he finds it outrageous that less than half of all compensation money goes to the claimant; the remainder going to lawyers, experts, claims people of insurance companies and so on. Winder doesn't argue that such people don't earn their money, but rather believes that the system needs some reconsideration. The worker's compensation system, for example, compensates the injured person regardless of fault. Much less of the money goes to administration and more goes to the injured person *for* the injury.

As for whether our system is heading in the right direction, Judge Winder sees little change in the system itself since he began practicing law. Rather, what has changed is the cost of litigating. Much litigation has become a battle of experts as lawsuits have become more and more complicated.

STRATEGY FOR SUCCESS BEFORE JUDGE WINDER

Judge Winder never enters the court except totally prepared and expects the same from attorneys. Judge Winder's advice to attorneys is as follows:

- BE ON TIME. Judge Winder is absolutely punctual.
- Learn the extent of a judge's preparation beforehand. If the judge is prepared, get to the point. Deal with the merits.
- Treat the other side civilly. Avoid attacks on opposing clients and counsel.
- Avoid becoming emotional.
- Avoid repetition.
- Accept rulings graciously.
- Take time to re-read briefs and other written material. Oral arguments are helpful, but written material is more important. Avoid misstatement of law or fact and exaggeration. Such misstatements will harm your credibility.
- Learn the Rules of Evidence. There is a real art in objecting to what is harmful and inadmissible, while not simply being an obstructionist.

Judge Winder advises new attorneys to develop a set of goals right from the beginning and follow through on them. He encourages all lawyers to develop an attitude of getting along with fellow lawyers without sacrificing the client's interest. Maintaining such a balance is crucial, he feels, in developing a sound reputation as not only a good lawyer, but one who is professional and pleasant to work with. Such a reputation will be invaluable. Winder encourages attorneys with particular questions regarding procedure in his courtroom, to call his staff.

OUTSIDE ACTIVITIES

Judge Winder arrives each morning at 4:15 a.m., after which he runs two miles and does 100 sit ups to begin the day. He normally works seven days a week. Winder reads all United States Supreme Court and Tenth Circuit decisions, and keeps up with other areas of the law.

In what little spare time remains, Judge Winder enjoys drives with his wife and spending time with his three children and his grandchildren. He plays golf ("very bad golf," he says) and likes to read biographies, historical books and magazines.

Since coming on the bench in 1974, Judge Roth notes three significant changes in the legal climate—an increased hostility among lawyers; a greater number of cases with questionable merit; and a need for greater judicial intervention to work out simple, previously easily accommodated matters. The root of these problems, according to Roth, is that "too many lawyers are competing for roughly the same amount of good work—so some lawyers settle for second rate work" and bring those cases to court. The competitive atmosphere promotes inflexibility among lawyers. Inflexible lawyers, says Roth, means judges must become more involved with routine matters that could be easily worked out between the parties. In the past, lawyers simply called each other for an extension of time to respond to discovery or to answer a motion. Today, lawyers refuse to accommodate each other, relying instead on some form of judicial intervention.

Another problem Judge Roth sees in the current legal climate is the growing trend for lawyers to seek "high-tech" ways to litigate. Roth sees lawyers relying on word processors to produce overwhelming numbers of interrogatories; deposing any one with any conceivable knowledge of facts surrounding the case; and attempting to dazzle the jury with impressive experts. Roth says this push for extensive discovery contributes significantly to the overwhelming costs of litigation. Because most individuals cannot afford upward of one-hundred dollars an hour for an attorney to pursue endless discovery, lawyers again compete for the clients who can pay.

"PET PEEVES"

Judge Roth detests: "lawyers who treat witnesses as villains and liars when the witness' response is simply unfavorable to the lawyer's position;" receiving a brief at the same time the lawyer wants to argue the issue; judicial decisions that are legally correct but morally or emotionally difficult because of the decision's devastating effect; and endless, and often needless, proliferation of discovery due to the capability of word processors.

Judge David E. Roth
Utah State District Judge
Second District Court

Appointed:	1974 to Ogden City Court, 1978 to Second Circuit Court, appointed to District Court in 1984 by Gov. Scott M. Matheson
Law Degree:	1969, University of Utah
Legal Practice	Tax lawyer, IRS; Prosecutor, Weber County
Law Related Activities:	Utah Judicial Council; Chair, Judicial Resources Committee; Chair, Rules of Practice Committee.

Judge Roth grew up in Holladay, Utah. Although his first "real job" was picking strawberries when he was 11, his first job out of law school was for the Internal Revenue Service in Ogden. Initially, Roth envisioned himself developing a niche as a tax expert, but after just one year at the IRS, he switched to prosecuting juveniles for Weber County. In 1973 Roth became Deputy County Attorney for Weber County. Roth enjoyed the exposure to different judges and lawyers from his frequent court appearances all over the county. Roth says he learned a great deal from watching different judges and lawyers in practice, and developed his own style by incorporating different aspects of the styles of those around him. As a judge, Roth misses the perspective one gains from watching peers in action.

STRATEGY FOR SUCCESS BEFORE JUDGE ROTH

Roth rules from the bench, so don't surprise him with a big memoir minutes before you want to argue your position. Limit discovery. Decide the two or three main claims upon which your case is based, then stick to what is relevant to those claims. At a bench trial, Roth literally forces lawyers to reevaluate the merit of pursuing multiple, related causes of action. Roth, who readily admits he is a "type A" personality "with limited patience, at best," acknowledges that at times he may try to oversimplify a case. He finds it much more productive, however, to pursue only the "bottom-line" issues in a case rather than allowing "insecure" lawyers to pursue numerous, attenuated causes of action.

In jury trials, "don't underestimate the intelligence of the jury." Roth says juries are sophisticated enough to know when a plaintiff is really injured, so "don't try to sell a bad case through experts." Roth sees "very few trials where experts make much of a difference." Roth also encourages lawyers to recognize that "juries have enough common sense to figure out how a car accident happened," and says experts such as "accident reconstructionists" are a needless expense in many cases.

Finally, Judge Roth says lawyers should feel free to call to ask questions relating to the procedure in his court. Be prepared, however, Roth answers his own line.

OUTSIDE INTERESTS

Judge Roth's Schwinn Sierra mountain bike leans against the wall of his office from his morning ride to work. He says mountain biking is a new sport for him, but claims already to have endured Moab's "Slickrock Trail" at least a half-dozen times. Quite an accomplishment for a "beginner." Roth also buys, sells, and collects motorcycles. He currently owns four road bikes and one dirt bike. Every year Roth participates in a cross-country motorcycle ride with a group of local lawyers and others—pseudo biker-types no doubt. Roth says he would *like* to ride with gnarly Harley-Davidson types, but muses, "I don't think they'd have me."

Commission Highlights

During its regularly scheduled meeting of August 30, 1991, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The minutes of the August 2, 1991, meeting were reviewed and approved with minor changes.
2. The Board requested that staff research the dues structure in other jurisdictions and ascertain the number of members at the local law schools that are currently active and inactive.
3. Jim Davis assigned Bar Commissioners to be liaisons with Bar Sections and Committees.
4. The Board decided to defer any appointments of Alternates to the various Trial Court Judicial Nominating Commissions until it receives clarification of the statute.
5. Supreme Court Chief Justice Hall was reported as the permanent liaison for the Bar.
6. John Baldwin reported that the audit was completed and the auditors would like to present their report at the September meeting of the Board.
7. Baldwin reviewed the July financials.
8. Baldwin reported that the Bar has set up two concentration or "sweep" accounts with First Security Bank which are backed by U.S. Government securities.
9. The Proposed FY92 Budget for the Young Lawyers Section was presented by Charlotte Miller and approved by the Board.
10. Denise Dragoo presented the findings and suggestions of the ad hoc committee on Improving Bar Communications.
11. Staff Counsel, Wendell Smith, reviewed the pending litigation.
12. The Board adopted a hearing panel's recommendation to deny a Bar Examination appeal.
13. The Board refused to reconsider their previous decision on an applicant who had been denied admission after a Character & Fitness hearing and decision.
14. The Board reviewed Lawyer Referral Service sign-ups and voted to petition the Supreme Court to allow continuation of the LRS by using the existing budget and to review ways to improve the service.
15. Baldwin distributed a report of the August 1991 Bar department activities and a summary of the Utah Dispute Resolution Mediation Program for the Board's review.
16. Member Benefits Committee Chairman, Randon Wilson, appeared and reviewed the programs endorsed by the Bar including (1) Health & Accident—Blue Cross/Blue Shield; (2) Professional Liability Insurance—Home Insurance Co.; (3) Disability Insurance—Currently with Standard; (4) Life Insurance—Blue Cross/Blue Shield; (5) Collections Program—IC Systems; and (6) MasterCard.
17. The Board voted to change the disability endorsement to Union Mutual instead of Standard.
18. A motion was defeated to endorse Transworld for the collection program instead of IC Systems. No collection program was, therefore, endorsed.

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

MCLE Reminder 61 Days Remain

On November 1, 1991, there will remain 61 days to meet your Mandatory Continuing Legal Education requirements for the first reporting period. In general the MCLE requirements are as follows: 24 hours of CLE credit per two-year period *plus* three hours in ETHICS, for a 27-hour total. Be advised that attorneys are required to maintain their *own* records as to the number of hours accumulated. The first reporting period ends December 31, 1991 at which time *each* attorney *must* file a Certificate of Compliance with the Utah State Board of CLE. Your Certificate of Compliance should list programs you have attended to meet the requirements, unless you are exempt from MCLE requirements. On page 17 is a Certificate of Compliance form for your use. If you have questions concerning the MCLE requirements please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

Discipline Corner

PRIVATE REPRIMAND

1. An attorney was privately reprimanded for violating Rule 1.14 of the Rules of Professional Conduct for misrepresenting to the client, on two separate occasions, that his claim was pending before the Industrial Commission and scheduled for a hearing to determine liability in June of 1990 when in fact the liability determination had been made in October of 1989. Further, the attorney failed to submit a medical evaluation to the Industrial Commission which he received in May 1990. The client, subsequent to the termination of the attorney in August 1990, submitted the same medical evaluation to the Industrial Commission and settled the claim.

2. An attorney was privately reprimanded for violating Rule 1.4(a) of the Rules of Professional Conduct for failure to respond to the client's repeated request for information regarding the status of the case during the period March through September 1990. The attorney was also privately reprimanded for violating Rule 1.3 of the Rules of Professional Conduct for failure to exercise reasonable diligence in moving the case forward resulting in the medical bills being assigned for collection causing the client unnecessary stress. Subsequent to the client's filing of the Complaint with the Office of Bar Counsel, the attorney engaged in active negotiation with the insurance provider.

SUSPENSION

On June 30, 1991, John M. Bybee was suspended from practice of law for a period of six (6) months for failure to exercise reasonable diligence in representing his client in a guardianship action. Mr. Bybee accepted representation and prepared the guardianship petition, obtained his clients' signatures and the filing fee in March 1990 but failed to file the petition. Further, Mr. Bybee refused to refund the filing fee. Mr. Bybee's conduct violated Rules 1.3, (diligence); 1.13(c), (safekeeping property); and 8.4(c), (misconduct); of the Rules of Professional Conduct.

Mr. Bybee's six (6) month suspension was stayed pending his successful completion of a one (1) year period of probation. Mr. Bybee's sanction was aggravated by a prior two (2) year suspension from the practice of law in the State of Idaho before his move to Utah. As a mitigating factor, the Court took into consideration Idaho Code of Professional DR-9-102(A) which states that "in the appropriate circumstances, lawyer's personal monies and client trust monies may be commingled." Mr. Bybee assumed, incorrectly, that the same rule applied in Utah.

CORRECTION

The Office of Bar Counsel previously reported that an attorney was admonished for violating Rule 3.5(a) (decorum) by taping a telephone conversation between himself and a judge without the judges knowledge or consent (August/September 1991). The reason for the admonishment was that the judge objected to the taping of the conversation. We trust this will eliminate any confusion that this inadvertent error may have caused our readers.

RULE CHANGES

(Lawyer Helping Lawyers)

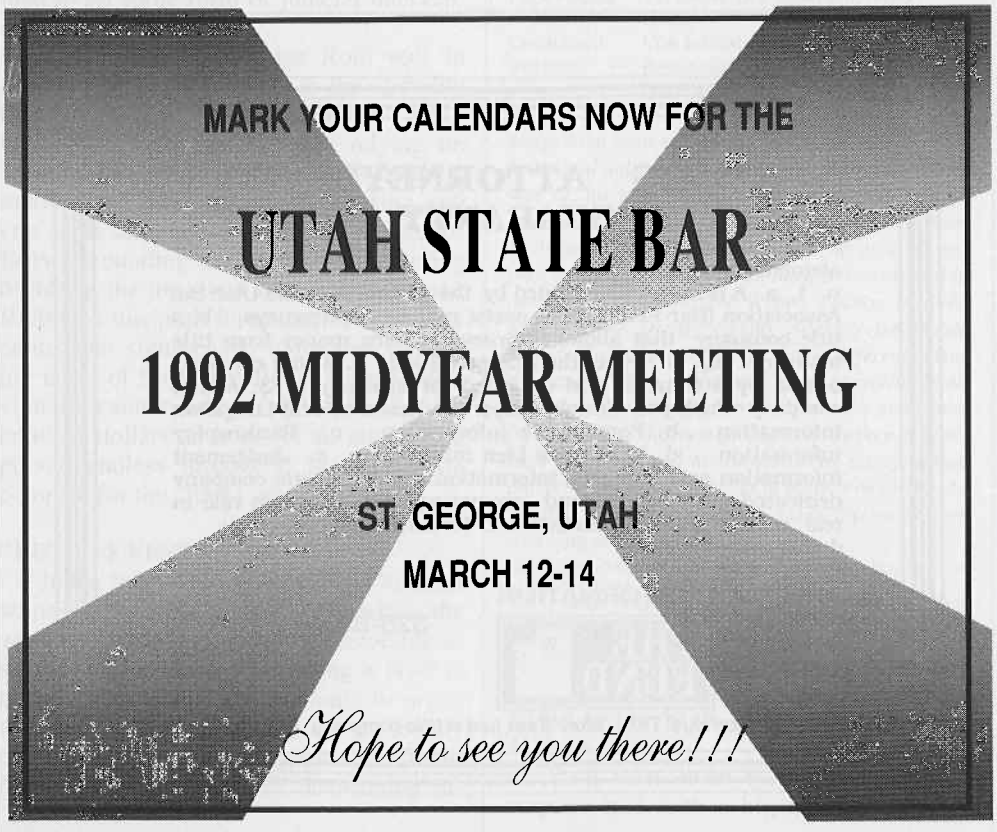
The following amendments to the Rules of Professional Conduct should be noted:

1. Rule 1.6 (Confidentiality of Information) is amended by the addition of the following,

(c) Representation of a client includes counseling a lawyer(s) about the need for or availability of treatment for substance abuse or psychological or emotional problems by members of the Utah State Bar serving on the Lawyers Helping Lawyers Committee.

2. Rule 8.3 (Professional Misconduct) is amended by the addition of the following,

(d) This rule does not require disclosure of information provided to or discovered by members of the Utah State Bar during the course of their work on the Lawyers Helping Lawyers Committee, a committee which has as its purpose the counseling of other bar members about substance abuse or psychological or emotional problems.



Government Law Section

CLE Luncheon on the 1992 Election

Pollster Dan Jones of Dan Jones & Associates will speak at a luncheon sponsored by the Government Law Section. He will discuss the 1992 general election: what he sees will likely be the issues, how redistricting will affect the election results, and what trends were revealed by 1991 municipal elections. Fee includes lunch.

CLE Credit:	1 hour will be requested
Date:	November 19, 1991
Place:	Utah Law & Justice Center
Fee:	$8.00 ($5.00 for Section Members)
Time:	Noon to 1:30 p.m.

Upcoming Events

(more details next month)

- December 10, 11 or 12 (tentative): Senator Orrin Hatch on "The Process of Confirming Federal Judges." Luncheon with 1 hour of CLE.
- January 25 (tentative): One-half day seminar on topics of interest for government attorneys and other attorneys. 4 Hours CLE plus lunch.

CONTINUING LEGAL EDUCATION

Utah Law and Justice Center

645 South 200 East • Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX (801) 531-0660

NAME: _____ UTAH STATE BAR NO.: _____
ADDRESS: _____ TELEPHONE: _____

Professional Responsibility and Ethics* **(Required: 3 hours)**

1. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

Continuing Legal Education* **(Required: 24 hours)** **(See Reverse)**

1. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

4. _____
Program Name

Provider/Sponsor Date of Activity CLE Credit Hours Type**

*Attach additional sheets if needed.
**(A) audio/video tapes; (B) writing and publishing an article; (C) lecturing; (D) law school faculty teaching or lecturing outside your school at an approved CLE program; (E) CLE program—list each course, workshop or seminar separately. NOTE: No credit is allowed for self-study programs.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the state of Utah including Regulation 5-103(1) and the other information set forth on the reverse.

Date: _____ _____
(signature)

T E A R O U T S E C T I O N

Regulation 5-103(1). Each attorney shall keep and maintain proof to substantiate the claims made on any statement of compliance filed with the board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders or materials claimed to provide credit. This proof shall be retained by the attorney for a period of four years from the end of the period for which the statement of compliance is filed, and shall be submitted to the board upon written request.

EXPLANATION OF TYPE OF ACTIVITY

A. **Audio/Video Tapes.** No more than one-half of the credit hour requirement may be obtained through study with audio and video tapes. **See Regulation 4(d)-101(a)**

B. **Writing and Publishing an Article.** Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least 60 days prior to reporting the activity for credit. No more than one-half of the credit hour requirement may be obtained through the writing and publication of an article or articles. **See Regulation 4(d)-101(b)**

C. **Lecturing.** Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive 3 hours of credit for each hour spent in lecturing or teaching. No more than one-half of the credit hour requirement may be obtained through lecturing and part-time teaching. No lecturing or teaching credit is available for participation in a panel discussion. **See Regulation 4(d)-101(c)**

D. **CLE Program.** There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at an accredited legal education program. However, a minimum of one-third of the credit hour requirement must be obtained through attendance at live continuing legal education programs.

THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

TEAR OUT SECTION

Applicants for Criminal Conflict of Interest Contract

The Salt Lake Legal Defender Association is currently accepting applications for three conflict of interest contracts to be awarded for the fiscal year 1992. To qualify each application must consist of two or more individuals. Should you and your associate have extensive experience in criminal law and wish to submit an application, please contact F. JOHN HILL, Director of Salt Lake Legal Defender Association, 532-5444.

American Bar Adopts Organ Donation Resolution

Recently, the American Bar Association's Section of Real Property, Probate and Trust Law adopted a resolution encouraging attorneys to counsel clients about organ and tissue donation.

The leadership of the section, which represents over 34,000 attorneys nationwide, accepted the resolution at the annual meeting of the American Bar Association in August. The resolution states:

WHEREAS, there are over 23,000 people waiting in the United States for life-saving organ transplants; and

WHEREAS, trust and estate lawyers are uniquely positioned to have the most enduring influence in raising awareness on the topic of organ and tissue donation;

IT IS THEREFORE RESOLVED that all members of the Section of Real Property, Probate and Trust Law should, when practicable, counsel their clients on the subject of organ and tissue donation.

Intermountain Organ Recovery System (IORS), a non-profit, federally designated organization dedicated to the recovery of organs and tissue within the Intermountain region, would like to thank the leadership for their immediate acceptance of this resolution. This is an incredible opportunity to make a strong impact on donation for transplantation. IORS encourages local trust and estate attorneys to become organ and tissue donors and to counsel their clients when preparing wills.

Our staff is eager to supply printed information or address any questions relating to donation issues. Please call us toll free at 1-800-833-6667.

CLAIM OF THE MONTH

Lawyers Professional Liability

Alleged Error or Omission

The Insured allegedly provided improper advice to a decedent in connection with the tax planning of his estate.

Resume of Claim

The Insured did not utilize, either partially or fully, the marital deduction and therefore may have accelerated the tax obligation to the detriment of the estate. The Insured advised that the tax planning was done after substantial discussions with the decedent concerning the tax planning issue. The decedent, according to the Insured, was an attorney and was also well versed in matters of estate planning. Further, the plan described in the will was the decedent's plan.

How Claim May Have Been Avoided

The matter could have been avoided by full documentation by the Insured in the form of a letter or a memorandum to his client. This letter should have outlined the consequences of the estate plan adopted and further outlined the alternative consequences had a different plan been adopted, including the use of the marital deduction. An attorney's law firm may also consider purchasing computerized practice assistance. In most cases, the software provides the practitioners with checklists and suggested forms.

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

"Cameras in the Courtroom"

Further to Utah Supreme Court decision on petition of KSL TV et al for Modification of Canon 3(a)(7) and (8) of the Utah Code of Judicial Conduct.

Minute Entry

September 16, 1991

That part of the petition requesting authorization of electronic media coverage in the Utah Court of Appeals is hereby granted, subject to the following conditions.

Installation of all necessary wiring and associated facilities needed to permit the use of television cameras shall be at the petitioners' expense and shall be to the court's satisfaction.

Furthermore, the notice provisions and general guidelines published in the Appendix to the Petition of Society of Professional Journalists, for Modification of Canon 3 A (7) etc., published at 727 P2d 200, shall apply equally to the Utah Supreme Court and the Utah Court of Appeals with one amendment. Appendix A subsection (5) is hereby amended to read: "At least two working days' written notice requesting media access shall be given to the court, unless good cause exists to justify shorter notice . . . "

UTAH STATE BAR

Management's Comments Regarding Financial Statements
Year Ended June 30, 1991

To All Bar Members:

The following pages summarize the financial results for the Utah State Bar (the Bar), the Client Security Fund, and the Bar Sections for the year ended June 30, 1991. The Bar's financial statements were audited by the national accounting firm, Deloitte and Touche, and a complete copy of the audit report is available upon written request. Please direct these to the attention of Arnold Birrell. The 1990 results and 1992 budget figures are provided for informational and comparison purposes only.

The statements provided include a Balance Sheet and Statement of Revenue and Expenses. To help you better understand the information being reported, included below are notes of explanation on certain items within the reports. Should you have other questions, please feel free to contact Arnold Birrell or John Baldwin.

CASH AND OTHER CURRENT ASSETS

The Bar's cash position is much stronger than one year ago. The bottom portion of the Statement of Revenues and Expenses provides an explanation of how this money is to be used. After allowing for payment of Current Liabilities and providing certain reserves, the Bar's unrestricted cash balance is $108,524 at June 30, 1991 and projected to be $88,649 at June 30, 1992.

NET RECEIVABLE FROM THE LAW AND JUSTICE CENTER

During the year ended June 30, 1991, the additions and deductions to the receivable from the Utah Law and Justice Center were as follows:

Receivable at July 1, 1990	$314,409
Additions:	
Overhead fee	114,000
Other direct operating expenses paid by the Bar	71,711
Payments for room rental and catering	122,702
Deductions:	
Fees charged for room rental and catering	(68,134)
Cash received	(223,238)
Receivable at June 30, 1991	$331,450

Because the Bar does not expect to collect the receivable from the Center during the 1992 fiscal year, the receivable has been classified as long-term. The collectibility of this receivable is not presently determinable, and no provision has been made in the financial statements for any loss that may result if the receivable is ultimately determined to be uncollectible.

PAYMENT OF DEBT

As of June 30, 1991, with the exception of the mortgage on the Utah Law and Justice Center, all of the Bar's debt was paid off. Monies belonging to the Client Security Fund and Bar Sections have been physically segregated to separate restricted bank accounts which are unavailable for Bar operations. In August, 1991, the Bar made a prepayment equal to twelve monthly payments on the mortgage. As a result, the mortgage balance was reduced by $178,269. Additional payments will be made as funds permit and upon approval of the Bar's Board of Commissioners.

DEFERRED INCOME

As of June 30, 1991, the Bar had collected $315,405 in 1992 Licensing Fees and Section Membership Fees. These fees have been classified as Deferred Income since they pertain to the 1992 fiscal year.

REVENUE OVER EXPENSES

The Revenue Over Expenses in the actual amount of $384,516 for 1991 and the budgeted amount of $471,000 for 1992 are due to increased revenues and cost cutting measures instituted by the Bar's Board of Commissioners and current management. Current plans are to continue the present policies to provide the funds necessary for debt retirement, to make necessary capital expenditures, provide replacement and contingency reserves, which were previously not budgeted for, and to maintain a reasonable fund balance.

SUMMARY

In summary, the Bar has made substantial progress financially during 1991. The new computer system is on line and being used to produce accurate and timely monthly financial information. The new membership portion of the system is planned to be on line in November. When all proposed new software systems are on line, we should be able to provide you with information on a consistently timely basis.

UTAH STATE BAR

BALANCE SHEET

As of June 30, 1991 (with 1990 totals for comparison only)

ASSETS	1990	1991
CURRENT ASSETS:		
Cash and short term investments	$ 118,113	$ 854,663
Receivables	76,864	58,238
Prepaid expenses	27,112	15,383
Total current assets	222,089	928,284
NET RECEIVABLE FROM LAW AND JUSTICE CENTER	314,409	331,450
PROPERTY:		
Land	316,571	316,571
Building and improvements	1,320,777	1,320,777
Office furniture and fixtures	308,763	318,419
Computer and computer software	233,841	256,092
Total property	2,179,952	2,211,859
Less accumulated depreciation	(539,564)	(710,836)
Net property	1,640,388	1,501,023
TOTAL ASSETS	$ 2,176,886	$ 2,760,757
LIABILITIES AND FUND BALANCES		
CURRENT LIABILITIES:		
Line of credit	$ 170,200	
Accounts payable and accrued liabilities	111,901	$ 240,933
Deferred income		315,205
Note and installment contracts payable—short-term portion	14,701	
Payable to L&J Center—current portion	126,341	
Long-term debt—current portion		40,496
Total current liabilities	$423,143	$596,634
NOTE AND INSTALLMENT CONTRACTS PAYABLE—long-term portion	17,087	
LONG-TERM PAYABLE TO LAW AND JUSTICE CENTER	1,347,237	
LONG-TERM DEBT		1,390,188
Total liabilities	1,787,467	1,986,822
FUND BALANCES:		
Unrestricted	129,864	573,172
Restricted:		
Client security	96,908	77,576
Other	162,647	123,187
Total fund balances	389,419	773,935
TOTAL LIABILITIES AND FUND BALANCES	$ 2,176,886	$ 2,760,757

STATEMENT OF REVENUES AND EXPENSES

For the year ended June 30, 1991 (1990 actual and 1992 budgeted for comparison only)

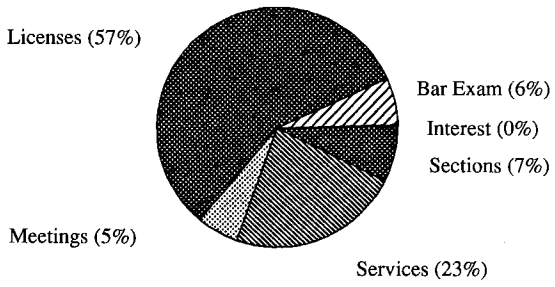
	1990	1991	1992 Budget
REVENUE:			
Bar examination fees	$ 106,993	$ 121,915	$ 114,000
License fees	943,223	1,351,288	1,426,200
Meetings	90,798	210,861	151,000
Services and programs	380,896	360,784	338,600
Section fees	123,919	75,933	30,000
Interest income	6,354	19,778	12,500
Other		4,481	
Total revenue	$1,652,183	$2,145,040	$2,072,300
EXPENSES:			
Bar examination	$ 72,591	$ 113,220	107,400
Licensing	29,329	54,558	52,300
Meetings	129,471	174,669	194,500
Services and programs	447,473	453,590	489,400
Sections		133,498	19,300
Office of Bar Counsel	205,032	298,364	393,600
Commission	39,003	145,173	132,400
General and administrative	595,131	362,181	212,400
Other	40,788	25,271	
Total expenses	$1,558,818	$1,760,524	$1,601,300
REVENUE OVER EXPENSES	$ 93,365	$ 384,516	$ 471,000
Add Non-Cash Expenses	90,321	171,272	157,336
Depreciation			
1992 licensing fees		315,205	
Other		(16,330)	
Increase in debt	293,182		
Cash carried forward from 1991			$108,524
	$476,778	$854,663	$736,918
ACTUAL AND PLANNED USES OF CASH			
Mortgage Payment			(178,269)
Capital Expenditures			(60,000)
1992 Licensing Fees		(315,205)	
Real Property Tax Reserve		(81,000)	
Client Security Fund Cash		(208,095)	
Accounts Payable	(80,972)	(159,933)	
Accounts Receivable	(206,143)	58,283	
Non-Mandatory revenues		(40,189)	
Bar's support of L & J Center			(110,000)
Reserves			(300,000)
UNRESTRICTED CASH AT JUNE 30	$ 23,317	$ 108,524	$ 88,649

UTAH STATE BAR

Financial Results and Projections

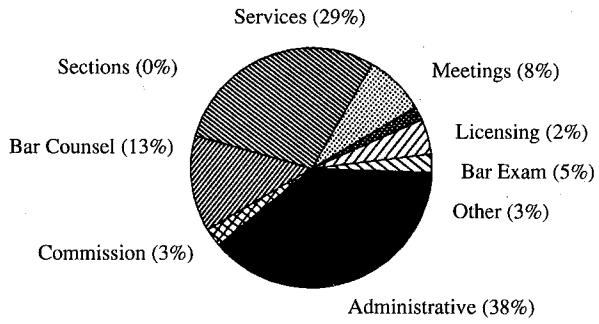
REVENUES BY SOURCE

For the Year Ended June 30, 1990



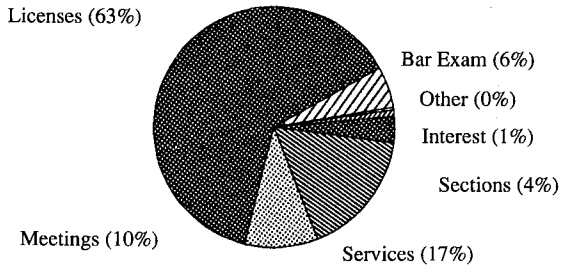
EXPENSES BY CATEGORY

For the Year Ended June 30, 1990



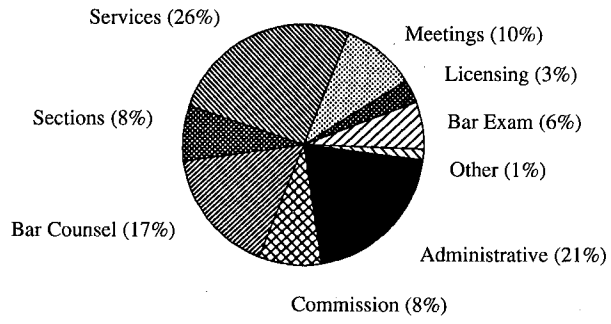
REVENUES BY SOURCE

For the Year Ended June 30, 1991



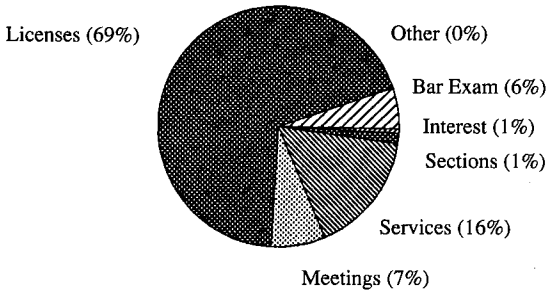
EXPENSES BY CATEGORY

For the Year Ended June 30, 1991



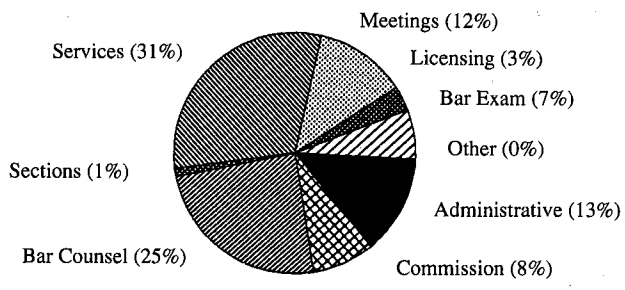
REVENUES BY SOURCE

Estimated for 1992



EXPENSES BY CATEGORY

Estimated for 1992



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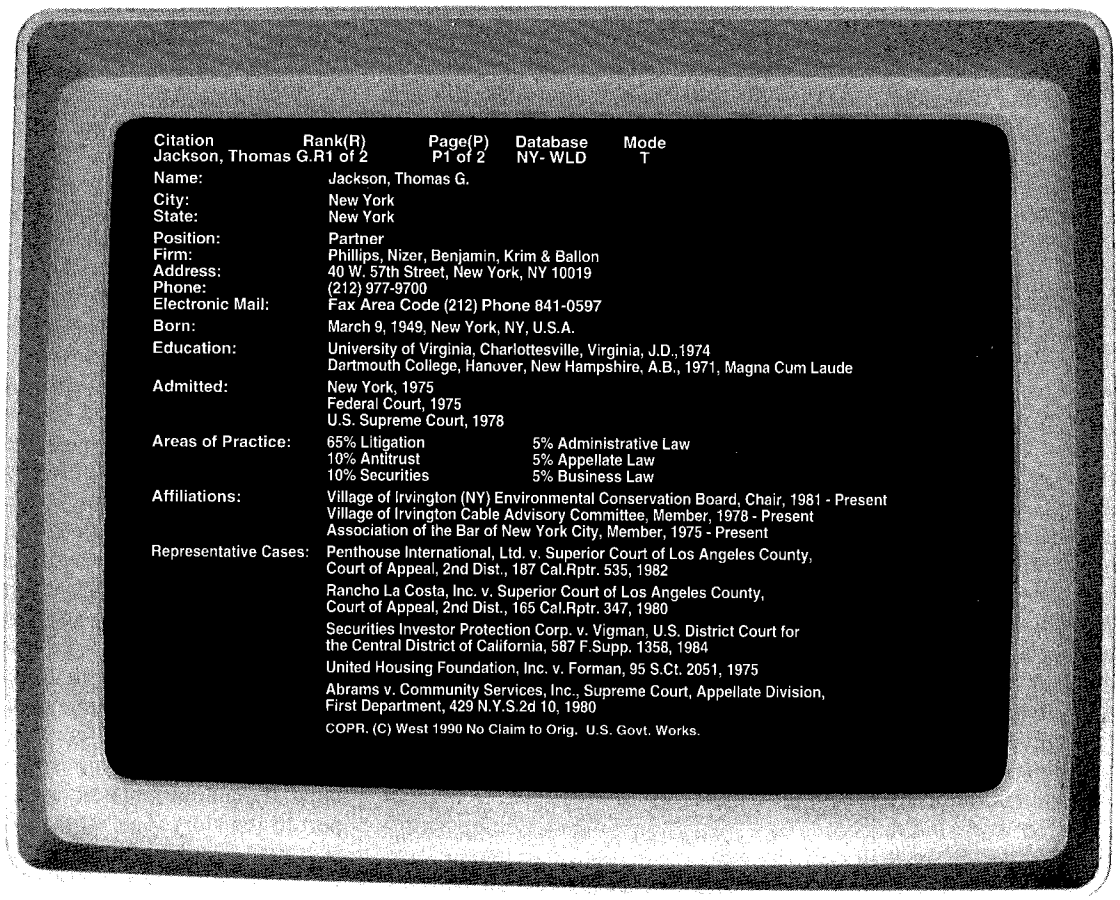

Note: Many Professional Profile listings contain multiple screens of information.

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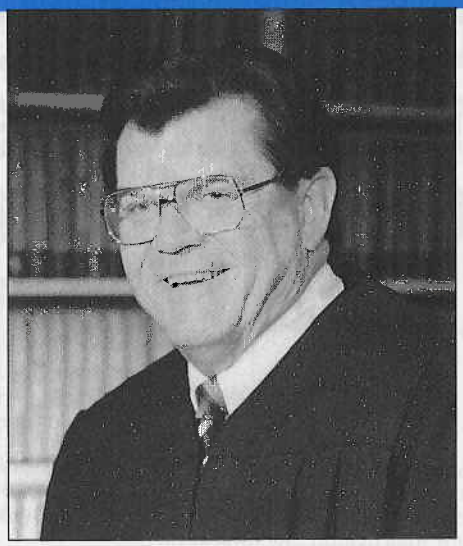

Causation and the Judicial Equation

By Honorable Bruce S. Jenkins

I have been asked to think, talk, and write about the subject of "causation" from the point of view of a trial judge. Within my allotment of time and space, I will express only the point of view of this trial judge. I make no pretense to speak for anyone but myself.

Benjamin Franklin, a person of scientific bent, in his early best seller, *Poor Richard's Almanac*, offers the following:
For want of a nail the shoe was lost, for want of the shoe the horse was lost, for want of a horse the rider was lost, for want of a rider the battle was lost—and all for the want of a nail.

As far as I know, no one ever inquired as to why the nail was not in the shoe. We can speculate together that the blacksmith deliberately left it out; that he carelessly left it out; that it was poorly seated and worked its way out through use; that it was carefully and appropriately seated and worked its way out through misuse; that the blacksmith, against his better judgment, merely followed the direction of his employer to use seven and not eight nails, thus effecting a projected materials cost savings of 12 ½%, as well as the labor cost from time and motion unspent; or that it was removed by some unseen person or force.

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.

Whatever the "cause," the battle was lost.

According to Franklin, our early American scientist, the "cause" was the absence of the nail. In a later version, as a preface to the maxim, he does say: "A little neglect may breed mischief . . . . "

Years ago, at a meeting of prosecutors in Las Vegas, a comedian told the following story. A young man was being tried in a paternity action. Plaintiff through counsel opened. The "facts" were essentially undisputed. During a party at plaintiff's home, the plaintiff and defendant had gone into the unlighted garden and found a comfortable spot to give vent to their youthful passion. They had an explicit understanding that through the exercise of discipline on his part, seed would never reach egg. But alas, seed and egg conjoined. Plaintiff asked that the court find paternity and require support of the child.

Defendant through counsel countered. He acknowledged the essential facts related by plaintiff. There is an additional part to the story. Her mother saw them repair to the garden. She followed them. Her eyes did not adjust quickly to the darkness. At the very moment when defendant was fulfilling his obligation to ensure that seed did not meet egg, concerned mother

stumbled into well-intentioned defendant.

The defense was: Plaintiff's mother is the father of that child. These illustrations raise wonderful questions concerning causation: Cause-in-fact, i.e., scientific cause? Cause-in-law? But-for? Substantial factor? Proximate? Foreseeable? Intervening?

All such variations on the theme of cause concern all of us in our quest to make sense out of what we do in the pursuit of "truth" or in the pursuit of "dispute resolution"—indeed, in our common pursuit of "dispute resolution"—indeed, in our common pursuit of both.

I am to talk about causation from my location, my perspective. Others are to talk about causation from theirs. We are having a cross-discipline conversation in the hope that we will each learn something.

Each of us is too old for indirection, so let me be direct right from the beginning.

Causation in court is not the same as causation in the world of physics, the world of chemistry, or the world of biology.

The science of law and the law of science are very different. They are different in subject. They are different in nature. They are different in purpose. They are different in process.

While it is elementary that lawyer and judge and scientist each use the word "law," Law 1, positive law made by man, is not the same as Law 2, natural law, the observed or discovered regularities of physics or chemistry or biology. While this is indeed elementary, the two should not be confused.

They are often confused by judges and scientists alike. (In deference to my stricture of time, I have deliberately omitted reference to such disciplines as economics, political science, psychology, and sociology, which are labeled science by some enthusiasts, but which lack compelling precision of description or prediction. I have omitted, as well, mathematics on the theory that it is not science, but simply one of the languages of science.)

A judge or a jury who "finds" a "fact" is differently engaged with a different purpose than a scientist who "discovers" a "fact" or "observes" a "fact" or formulates a "scientific law" describing relationships between "facts" that thereafter may be verified and accepted by others.

Can we define science? At its broadest, it is simply knowledge. Modern usage narrows the meaning to knowledge of a particular kind. But the kinds are almost infinitely diverse from viruses to Venus, from radiation to Rorschach, from pygmies to PCB. Some say science, then, is a method which makes knowledge. One finds some content in its ancient characterization as "knowledge making."

The prestige accorded scientific knowledge is derived from the fact that scientific knowledge can usually be demonstrated again and again and again. Science seeks universals.

Distilled even further, I suggest that scientific law is descriptive of what is. It is assumed to be universal and capable of observation again and again. Scientific descriptions and formulations have evolved as scientists have learned more. In contrast, the laws of nature have not changed. Our knowledge has changed. It has been sharpened, focused, refined. Scientific law is mechanical, regular, and value-neutral. If "A" goes in, "B" comes out. The sequence is fixed. A body in motion tends to stay in motion. Hydrogen and oxygen in given proportions produce a compound called water which, at given temperatures and pressures, becomes solid, liquid, or vapor—a process or sequence which is inevitable, neat, regular, and capable of endless replication whether in Moscow, USSR, or Moscow, Idaho.

Such will occur whether Congress, the President, a trial judge, or a legislature decrees or orders otherwise. King Knute can order the waves to turn back. The waves won't listen.

Civil law, law enforced by group power, at its most basic is concerned with how we should treat one another. It is prescriptive, not descriptive. It is prescriptive of conduct—not descriptive of what is. It is not found, discovered, observed. It is made. It is made by men. It is made by men for men. (My use of the word "men" is generic and all-inclusive.)

Civil law is concerned with standards of conduct by which men, or at least most of them, are willing to live. Civil law is not value-neutral. It is fraught with values of what is right and wrong and good and bad and life-affirming and life-detracting. For example, in various forms, we are told by the group—state or nation—to avoid conduct dangerous to the lives of others. In the eyes of some, the ultimate value—what is important—is life itself, and conduct which preserves and enhances life is thought to be important and an appropriate subject of civil law.

The standards found in civil law are prescribed by legislatures, administrative agencies, courts, and judges, *not by nature*. These standards are enforced by the power of the group—the use or threatened use of the power of the state and, more importantly, the willingness of most men to abide by such standards.

The consequence to a person of not living up to the prescribed standard is by no means inevitable. It is not universal. It is not mechanical, it is parochial, not only in space but in time as well. It makes a great deal of difference whether one is in Moscow, Idaho, or Moscow, USSR, or 18th-century or 20th-century America, as to how we are expected to treat one another and the consequences of not living up to such group-prescribed expectations.

My point is this: Atoms are not concerned with how we treat each other. Men are. Molecules are not concerned with right and wrong. Men are. A rod of plutonium is not concerned with the rod of Moses. Men are.

Let me try to summarize the major differences between civil and scientific law as I see them (Table 1). I do so with the caveat that all summaries are inexact. I do so, as well, with the caveat that my summary as to the law of science is more deterministic than modern thought would suggest.

TABLE 1

Law of Science	Science of Law
Descriptive of what is	Prescriptive of human conduct
Universal (at least assumed so)	Parochial—time and location
Value-neutral	Value-rich
Found	Made
Used by men for good or ill	Used to prevent or resolve problems of human conduct

As a trial judge, the causation issue with which I am confronted is human causation—what a human being did or did not do, or should have done or should not have done. I must determine whether human conduct in some identifiable fashion contributed to a damaging consequence to another human being, his relationships, or his property.

Such human "cause" obviously may relate to the manner in which a human being deals with materials or products or forces about which scientists have a great deal of knowledge and a great deal to say.

The function of a trial judge is to resolve conflict as to the appropriateness of conduct which the parties have been unable to

resolve for themselves. The trial judge thus provides a peaceful resolution to an existing dispute about conduct. He ordinarily has a duty of decision. Civilized parties come to the courts to resolve important disputes about conduct. Others take to the streets.

Litigants in a specific dispute come to court because the court is a steward of power, and power is needed to vindicate their position. Each wants the court to stand with him. As to appropriate human conduct, the judge has the duty of decision without the luxury of perfect knowledge, i.e., he has the *duty to exercise judgment.*

In deciding questions of human causation, before a judge may appropriately say, "in my opinion," or "in my judgment," he must first be able to say, "I understand." Understanding in a trial setting usually involves both fact and law.

Every case, bar none, starts with a story. Every story is unique. Thus, every case starts with a piece of history—a microcosm. The court is concerned with "what happened." Witnesses to what happened don't view what happened with the same eyes. Churchill and Hitler, for example, viewed what happened during World War II with different eyes. President Bush and Noriega view what happened in Panama with different eyes. In any case, a court may well be asked to decide what happened and to resolve factual disputes as to what happened, and thus "find" facts essential to decision. Such "finding" is not discovery but resolution, a choice between Hitler's and Churchill's "truths," a choice between competing sciences—between Ptolemy and Copernicus, for example, as part of the process of resolving disputes among those who seek the court's help.

Disciplined by a record made by others, the court is usually limited to the materials presented in the case or material readily at hand to assist him in dispute resolution.

For a court, just as for litigants, it is not enough to treat facts and law in isolation from each other. A case comes about when facts and civil law converge, touch, come together, collide. The facts, "what happened," and the law must have a relationship with each other, just as the parties in dispute must have a legally recognized relationship with each other.

In the civil law trial process, in a very real and important sense, one cannot understand "the facts"— really know them— until one understands the law relating to conduct, and, paradoxical as it may sound, one cannot really understand the law relating to conduct until he understands the facts. They are interdependent. In a sense, each defines the other. Each gives the other shape and context. It is how they come together that makes a case—much like light and shadow on a Rembrandt painting make a portrait. The river and the river bank define each other.

Scientists must understand the nature of a court. Courts are passive. They don't seek business. They are available.

Courts are disinterested. Not *un*interested. *Dis*interested. They have no axe to grind. They stand apart.

Their purpose is dispute resolution.

In the dispute resolution process, there are useful questions that can be asked in any case by parties, by attorneys, and ultimately by the court, which can assist in identifying what really is at issue for court determination.

Is there a problem?
What is the problem?
Is it a problem which can be resolved by the court? (Whose problem is it?)
What should the court do about the problem?
How should the court do it?
Why should the court do it?

If court help is suitable, the parties, through counsel, have to give exacting thought as to what and how and why.

While I have talked about "the problem," in reality there may be many related subordinate problems awaiting court resolution within the canopy of "the problem." For example, there may well be questions of substantive law, its scope, existence, or availability because of the passage of time.

There may be questions of disputed fact—a need to find "what happened"—the Churchill-Hitler problem. Indeed, there may be the problem of witnesses who claim to know something but see and relate the factual sequence differently. Because of their differing points of view and the difficulty of reproducing World War II or percolating groundwater with PCB's under controlled conditions in the courtroom, the tools of dispute resolution often come from persons—"experts"—who claim to know something about World War II or the characteristics of toxic-infused percolating groundwater. A witness tells a court what he knows. He tells what he knows through testimony—words. A court is ever concerned with *how* he knows what he knows, how he learned it, how he records, stores, recalls, and relates his truth. Every case is an adventure in truth saying and truth finding. Such is part, but only part, of dispute resolution in the courtroom. Such is part of the judicial equation. With technological advance, scientific knowledge more and more becomes part of the judicial equation concerned with "human causation." A good illustration of the kinds of elements which go into a judicial equation finding "human causation" is a case I tried called *Allen v. United States.* It is found at 588 F.Supp. 247. That case, at least in part, is the reason for my being here. It was an effort on the part of a trial judge to meld the methods of science with principles of law and public policy and underlying social values.

The complaint alleged that each of 1,192 plaintiffs had suffered loss through injury or death resulting from exposure to radioactive fallout that drifted away from the Nevada atomic test site and settled upon communities and isolated populations in southern Utah, northern Arizona, and southeastern Nevada. Each claimed loss due to radiation-caused cancer or leukemia. Each claimed injury resulting from the negligence of the United States in conducting open-air nuclear testing, in monitoring testing results, in failing to inform persons at risk of attendant dangers from such testing, and in failing to inform such persons how to avoid or minimize such damage.

There were 1,192 plaintiffs, 98 witnesses, 1,692 documentary exhibits, 7,000 pages of testimony, 13 weeks of trial, and 17 months spent in writing an opinion which in typescript ran slightly under 500 pages.

Let me read from the introductory remarks in the case to show you generally the variety of the factors which went into that judicial equation and which can be illustrative of the factors that can enter into a legal dispute of any complexity.

> In a sense this case began in the mind of a thoughtful resident of Greece named Democritus some twenty-five hundred years ago. In response to a question put two centuries earlier by a compatriot, Thales, concerning the fundamental nature of matter, Democritus suggested the idea of atoms. This case is concerned with atoms, with government, with people, with legal relationships, and with social values.
>
> This case is concerned with what reasonable men in positions of decision-making in the United States Government between 1951 and 1963 knew or should have known about the fundamental nature of matter.
>
> It is concerned with the duty, if any, that the United States Government had to tell its people, particularly those in proximity to the experi-

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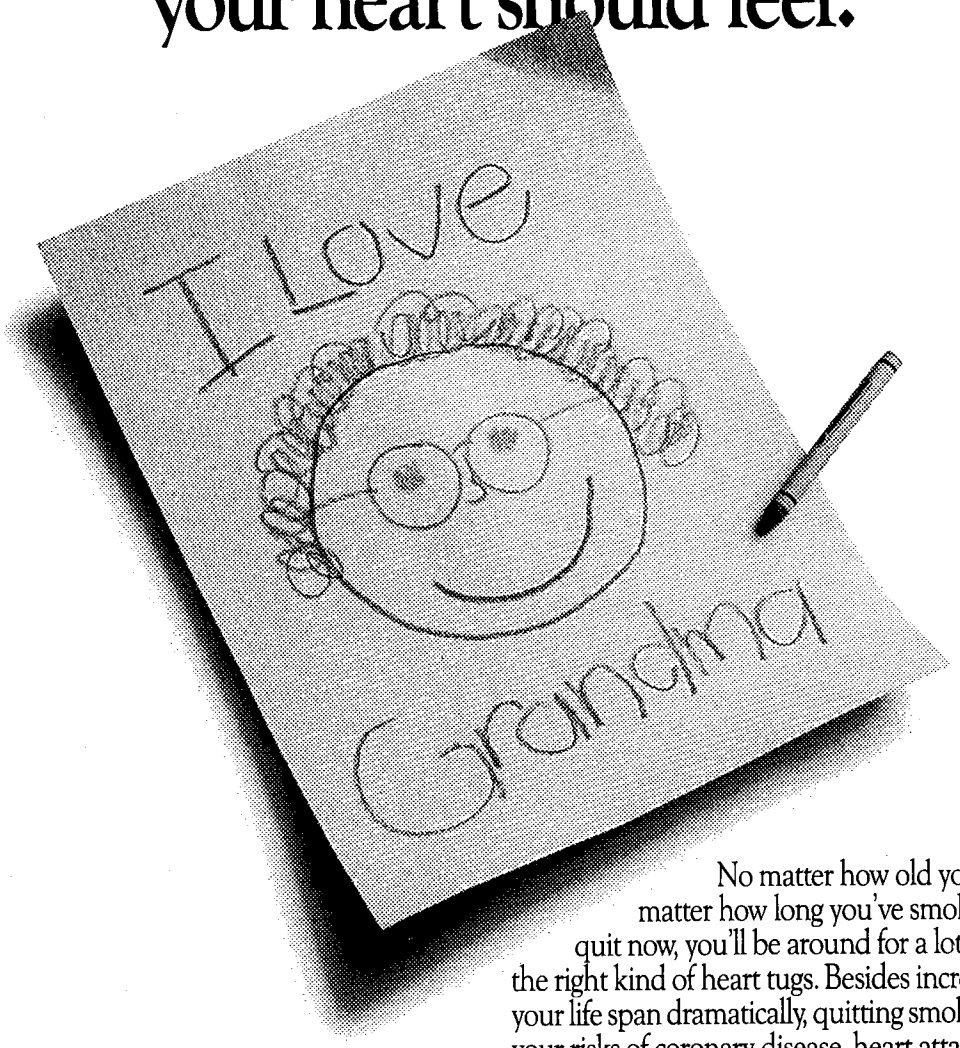

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ment site, what it knew or should have known about the dangers to them from the government's experiments with nuclear fission conducted above ground in the brushlands of Nevada during those critical years.

This case is concerned with the perception and the apprehension of its political leaders of international dangers threatening the United States from 1951 to 1963. It is concerned with high level determinations as to what to do about them and whether such determinations legally excuse the United States from being answerable to a comparatively few members of its population for injuries allegedly resulting from open-air nuclear experiments conducted in response to such perceived dangers.

It is concerned with the method and quantum of proof of the cause in fact of claimed biological injuries. It is concerned with the passage of time, the attendant diminishment of memory, and availability of contemporary information about open-air testing, and the application of a statute of repose.

It is concerned with what plaintiffs—laymen, not experts—knew or should have known about the biological consequences that could result from open-air nuclear tests and when each plaintiff knew or should have known of such consequences.

It is ultimately concerned with who, in fairness, should bear the costs in dollars of injury to those persons whose injury is demonstrated to have been caused more likely than not by nation-state conducted open-air nuclear events.

The record contained historic documents, newly declassified internal agency memoranda, agency directives, correspondence, epidemiological studies, scientific texts, public information pamphlets, and testimony of witnesses, ranging from those who participated in the testing program to highly trained and gifted "experts" to the surviving claimants themselves.

My point is that scientific evidence, technological evidence, is merely an evidentiary element in the judicial equation as to legal causation. While often a necessary part, and sometimes even a controlling part, it is seldom, if ever, the only part.

This is particularly true in courts of law where the social purpose is dispute resolution and where the judge or jury is faced with a discrete dispute with live parties and a necessity for decision—disciplined by a record and the application of rules of civil law. All should recognize that a court's findings of evidentiary fact—"what happened"—are not fixed in absolute terms. Factual determination by judge or jury in cases of scientific complexity is really no different from fact finding in any other case, no matter how "complex" the facts might be.

In law, as in science, a decision-maker always faces a degree of uncertainty. Uncertainty is the very condition which demands judgment. If knowledge were complete, then description alone would suffice. Dispute would be nonexistent and judgment redundant.

Thus, in the fallout case I noted:

> This opinion speaks in terms of "natural and probable" consequences. Substantial "factors" and "things more likely than not."
>
> In the pragmatic world of "fact" the court passes judgment on the probable. Dispute resolution demands rational decision, not perfect knowledge.

Scientists, particularly physical scientists, try to accurately describe the world and how it works and verify their descriptions through demonstration, or at least that part of the world to which they devote their energies. It is in the realm of "what is" and "what happened" and the probabilities of it happening again—prediction—and explanation—that a physical scientist can be a useful source of knowledge in dispute resolution.

Because of the scientist's concentration of energy and attention, he or she can assist the court in looking deeper than the surface of things.

All I am saying is what was said by Thoreau many years ago:

> We . . . live this mean life we do because our vision does not penetrate the surface of things . . . . Let us settle ourselves, and work and wedge our feet downward through the mud and slush of opinion, and prejudice, and tradition till we come to a hard bottom and rocks in place which we call reality. Most have not delved six feet beneath the surface . . . yet we esteem ourselves wise, and have established order on the surface . . . .

The scientist can assist in revealing reality beneath the surface of the apparent. He or she can sum up years of experience, capsulize experience, observation, and replication in a few pithy abstractions. That can be of great benefit when such is part of the broader judicial equation.

Yet many a scientist, because of his concentration of effort in a narrow and limited area, can be helpful only in a narrow and limited way. He is sometimes characterized by the adage that he knows more and more about less and less until he knows everything about nothing.

In truth, some "scientists" who appear as "witnesses" do not exemplify the stereotype of the "objective scientist" interested only in truth and always willing to change his point of view. One of the shocks of growing up—whether at 15 or 50—is to discover how human the scientist can be, how opinionated, and what a vested interest he may have in protecting what he claims to know.

What a rough awakening it is for a trial judge when a highly credentialed scientist says the world is structured in one way and another equally credentialed scientist says the world is structured in another way. Surely such could happen during the age of Copernicus and Galileo, but not in today's enlightened scientific world.

I had that problem in the fallout cases when one group of scientists said that below a certain level of exposure to radiation, no body damages occur. I had another group say that at any level of radiation, damage always occurs—a vitriolic debate carried on without resolution for more than half a century. It remains in dispute to this day at Hanford, Chernobyl, and Rocky Flats.

A witness is called a witness because he knows something. He tells the court or the jury what he knows. There is nothing wrong with testing what he knows, how he knows it, and whether it is descriptive, observable, reproducible fact, or his own synthesis, school of thought, or educated guess. The scientist, like the court, often deals with probabilities, things more likely than not.

Orwell talked in *Animal Farm* of some pigs that were more equal than others. Some scientists are more scientific than others, and some subjects of study are more amenable to verification and replication than others—the so-called hard sciences.

Obviously, we must use both descriptive science and prescriptive law in preventing and resolving human problems involving human conduct—how we treat one another.

Dispute resolution in court, at its best, is an educational process involving parties, lawyers, judge, and jury. In litigation involving subtle and perhaps contested phe-

nomena of nature, the advocate and the judge must transcend the traditional jargon of the law and acquire at least a modest fluency in the language of modern science, physics, chemistry, physiology, epidemiology, and statistics, particularly when dealing with matters of sophistication or matters on a grand scale.

To resolve a question of duty—the expected or prescribed level of conduct—a court must at least be in a position to speak the language of risk or have access to someone who can translate such language for him.

It should be recognized that complex modern-day litigation, of necessity, becomes more and more a cooperative affair, a common search for the truth of what happened. To accomplish that, all involved should retreat from the metaphor of a lawsuit as a battle, a war, or a game.

Litigants, lawyers, and scientists should recognize that a good exposition of what happened and a good explanation as to why enables a legal fact finder to "find" with understanding.

Beneath the surface of the fallout case, as in most cases involving bodily hurt, there is a fundamental principle, a time-honored rule of law, an ethical rule, a moral tenet:

> The law imposes a duty on everyone to avoid acts in their nature dangerous to the lives of others.

As I said in the *Allen* case:

> The more particularized rules of negligence and proximate cause as a basis for liability which are applied in the body of this opinion are rooted in this principle of duty. In this case, as in any other case in tort law, the answer to the ultimate question: "Who should bear the burden of the risks created by the defendant's conduct?" It is ultimately a question of policy and of public values.

For example, the unspoken policy in our Las Vegas illustration of ascribing paternity to the actual but unintended father.

Now in science, the chain of sequence, the chain of correctness of observed events may be as long as or longer than the chain of Franklin's nail to Franklin's battle. In the realm of scientific experience, we have observed—experienced—a progression from Fact One through Fact Ten, and each time One appears, Ten follows. Our experience may be built upon the experience of others as well, encapsulating hundreds of thousands or millions of instances of priority in time, and ever-present connection, and we treat such with the credibility which comes from demonstration over a period of centuries.

Such is a different sequence than the sequence from nail to battle lost. The first sequence is capable of replication. Nail to battle lost is not. Indeed, the sequence seems tenuous at best. Perhaps it merely expresses Franklin as a poet, a moralizer, or a poor observer.

John Stuart Mill said "causation" is uniform antecedence. It appears to me that when we speak of a scientific "cause" we are describing a stage in a sequence of experience which stage and sequence has become routinized for the person describing it and is expected to be routine for others. For example, when C, D, E, F, G are always, or almost always, preceded by Condition B or when B, C, D, E, F, G always occur in that order the grouping forms a routine of experience where we can say that B is a "cause" of C, D, E, F, G, or they are described as its effects. There is an invariable connection, or at least a high probability thereof. Science assists the court by identifying connections between Event A and Event B, and the level of connection, such as "certain," "probable," "possible," or even "extremely remote."

Legal causation—in short, "human cause," where a human actor did not live up to required conduct in relation to other human beings, breaching his law-imposed duty—is appropriately vague and elastic. It is given specific meaning by a specific factual context in time and in space and by the exercise of our own best judgment.

There are infinite human situations from the rudimentary "He hit me; I hurt; make him stop; make him pay"; to "The good doctor took out my right ovary—it was my left ovary which was bad; make him pay"; to "My child died of leukemia in my arms bleeding from eyes and ears; he was exposed to fallout; make them pay"; to "I have cancer of the stomach; I have drawn water from my well for 25 years; up on the hill a milling operator dumped waste for the first 15 years I lived here; it seeped into the aquifer which feeds my well, and I am now a dead woman; make him stop; make him pay." Each situation may require a court to make a judgment about human conduct in light of the routine of experience involving Event A and Event B.

The word "cause" even in its scientific sense can be equally elastic. From whence came Franklin's nail? One can find precedent, ancestry, connecting the whole sequence of history—worlds without end. The concept of cause, if traced back too far, becomes circular and unmanageable. Who indeed created God?

In law, we deal with only a part of history. We view history by the slice. In law, we look back only so far, and we limit ourselves by what we call proximate cause, itself a word with the virtue of vagueness—or the vice of imprecision—by which we give fact finders room to move and exercise judgment as to human cause.

We also provide boundaries as to how far ahead the blacksmith who fixed the shoe need look to be responsible for future consequences of present actions. Responsibility for the battle lost, we say, is a consequence no reasonable man could ever foresee, and thus, the blacksmith is without responsibility even though in that peculiar circumstance the lost battle was an actual consequence flowing from the missing nail.

The court, in resolving questions of risk, of duty, of cause, and of responsibility, must take advantage of the intellectual resume of past experience and prediction provided by science, but must always remember that such resume is only *part* of the judicial equation. The purpose of the court is to resolve disputes between persons or groups of persons as to how they should treat one another.

It is in that context that the rod of plutonium and the rod of Moses have a unique fusion all their own.

In the judicial mix of expected conduct, duty, risk, human values, hurt, in the finite context of time and space, the ingredients may have variable weights and values in no way amenable to precise measurement. "A little neglect" in how we treat one another, as observed by Franklin, may breed "mischief." Unlike some subjects of science, in dealing with classes of human conduct, we must always remember we have likenesses, but never identity.

We strain for certainty, simplicity, and order in an infinitely complex and dynamic universe. In doing so, we often fail to distinguish between those things which we directly experience, see, feel, hear, taste, smell, measure—"facts" we experience—from those "facts" we infer. Each is a form of knowledge we say we know. We must stay constantly aware of the nature of that which we say we "know."

For example, we "know" of the existence of the atom. We "know" of the existence of gamma rays. We have never seen an atom or a gamma ray. We infer that atoms exist. It is a convenient abstract model which provides a convenient, co-

herent, and consistent explanation of an immense collection of perceived effects, including belatedly observed effects to the soft tissues of human beings by unstable atomic offspring.

It is in such a problematic setting that the judge, conscious of the need for decision, may find "cause" or instruct a jury as to "cause," human cause—a little mischief—not a declaration of eternal truth, but of what appears reasonable and rational under all of the circumstances in the record on the imprecise scale of more likely than not. When a fact finder delivers a "ver-dict"—says the "truth"—such is done as part of the process of resolving a dispute as to human conduct, helping people understand how they should treat one another—a vindication of *duty*—and with full recognition that such "ver-dict" may be as transient as Ptolemy's geocentric universe or the medically prescribed bleeding of George Washington for a bout with the flu.

We remain uncertain still of our scientific certainties. Organized experience put to the test is ever enlarging and ever being refined. Yesterday's science may be confirmed or modified by today's experience. That is, of course, the method of science. Probability theory, induction, and statistical inference are as readily welcome in the courtroom, perhaps more so, than in other social institutions.

Human conduct, and thus human responsibility for conduct, is the concern. Dispute resolution is the mission. A peaceful and just society is the goal. A pragmatic rationalism is the process, all in search of the ideal.

Franklin's nail and Oppenheimer's fission-produced isotopes have much in common. They are things. They are artifacts of science.

How men use things in reference to other men is the subject of law—duty, conduct, human values, public policy, responsibility. The nature and characteristics of the things used are the subject of science, at least hard science.

Intentionally using a thing to harm another, knowingly using a thing to harm another, using a thing in conscious disregard of risk of harm to another, using a thing without taking care which harms another, are all ways of stating human action said in appropriate context to "cause" the harm. The *emphasis* is on a breached *duty* of conduct designed to minimize harm to others. It is *duty* which looms large in the judicial equation. A *little* mischief may be enough to find legal cause and thus to impose responsibility.

The ancient sage Hillel, when asked about human conduct, said there is but one rule. He called it the whole law. He said: "What is hurtful to thee, do not unto another." "The rest," he said, "is commentary."

Indeed, it is.

References

The literature of causation is endless. Much of it is formless. As a trial judge, I have found the following to be helpful to me in my work and in the preparation of this essay.

Books

• American Bar Association. (1984). *Toward a jurisprudence of injury: the continuing creation of a system of substantive justice in the American tort law.*

• Barzun, J. (1964). *Science: the glorious entertainment.* New York: Harper & Row.

• Green, L. (1977). *The litigation process in tort law (2nd ed.).* Indianapolis, New York: Bobbs-Merrill.

• Hart, H.L.A., & Honore, T. (1985). *Causation in the law.* (2nd ed.). New York: Clarendon Press.

• Hutchings, E., Jr. (1959). *Frontiers in science.* New York: Basic Books.

• Korzybski. (1958). *Science and sanity—an introduction to nonAristotelian systems and general semantics (4th ed.).* Lakeville, CT: International Non-Aristotelian Library Publishing Co.

• *Mackie. (1980). The cement of the universe: the study of causation. New York: Oxford University Press.*

• *Shapley, Rapport, & Wright. (1958). The treasury of science. New York: Harper & Brothers.*

Law Review Articles

• *Calabresi, G. (1975). Concerning cause and the law of torts. University of Chicago Law Review, 43, 69.*

• *Schwartzman & Christoffel. (1985). Allen v. The United States of America: The "substantial" connection between nuclear fallout and cancer. TOURO Law Review, 1, 29.*

• *Weinrib, E. J. (1987). Causation and Wrongdoing. Chicago-Kent Law Review, 63, 407.*

Treatise

• *Restatement (second) of torts. (1965).*

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These are only a few examples of the many community service and legal education programs that the YLS successfully organizes and operates on a modest budget which is only a fraction (1.06%) of the entire budget of the Utah State Bar. With thousands of volunteer hours from young lawyers throughout the State as its stimulus, the YLS will convert its funds into approximately 25 different community service, legal education and membership support projects. Over the years and through the hard work of past officers and members, the YLS has earned a reputation of being one of the most efficient and productive sections of the Bar. Indeed, for several consecutive years the YLS has received national recognition for excellence from the Young Lawyers Division of the ABA. That reputation will continue this year under the direction of the YLS executive council and with the support of its members.

On June 24, 1991, the Utah Supreme Court handed down a Minute Entry which stated that the Utah State Bar could not allocate funds from mandatory bar dues for the YLS. Fortunately, after further review, the Court amended its position under an Amended Minute Entry dated July 23, 1991, stating that the Bar could fund the YLS with mandatory bar dues. Without the funds from the Bar the YLS would certainly be substantially disabled; its projects would be drastically decreased and the number of active young lawyers who make the programs successful would dwindle. The Supreme Court's authorization for funding the YLS and its recognition that the YLS is a necessary and productive organization will benefit the community, the Bar and all young lawyers in the State.

The major source of funding for the YLS is from the Utah State Bar. For fiscal year 1992, the YLS' budgeted funds from the State Bar are approximately $15,000. Additionally, several program committees of the YLS (specifically the committees for Needs of the Elderly, Needs of the Children, Bill of Rights, and Diversity in the Legal Profession) have applied for and received grants for their programs from the ABA and IOLTA. The grants for fiscal year 1992 total approximately $19,400, of which $12,000 is a grant given jointly to the Women Lawyers of Utah and the YLS committee for Diversity in the Legal Profession from IOLTA for the production of a videotape about domestic violence. Also, YLS has received some contributions and has earned income through CLE seminars.

Combined, the budgeted funds from the State Bar, the grant monies, other contributions and income from CLE seminars provide the YLS with a budget of approximately $36,400 for fiscal year 1992. Of that total budget, about $29,400 will be expended for the community service, legal education and membership support programs of the YLS; the balance of the funds will be used for administrative expenses and travel expenses to ABA sponsored leadership training and program idea workshops.

This year a new funding source is on the horizon for the YLS. In cooperation with the Utah MCLE Board, the YLS will sponsor the mandatory CLE classes that all new admitees to the Bar are required to attend. Starting in November of 1991, the new admitees are required to attend 12 of 18 different CLE courses that are designed to give the new lawyers the basic skills and knowledge to practice in various areas. For its participation in the program, the YLS will receive a portion of the proceeds. These funds will be added to the YLS budget for use by program committees of the YLS.

On behalf of the YLS, I would like to thank the Utah State Bar and the Supreme Court for their support of the YLS and its purposes. Without it the YLS would at least be ineffective and perhaps nonexistent. Most important, however, I would like to thank, in advance of their good works, the young lawyers of the State who will enable the YLS to successfully carry out its community service, legal education and membership support objectives.

Upcoming Bill of Rights Events

The Bill of Rights committee of the Young Lawyers Section of the Utah State Bar has recently produced 350 Teacher's Resource Manuals on the Bill of Rights. The manuals will be made available to high school and elementary schoolteachers throughout the state to coincide with the bicentennial of the Bill of Rights on December 15. The manuals include high school social studies materials, teaching plans, and role play materials for such events as mock trials and mock school board hearings. Michelle Mitchell and Nancy Matthews will be making the manuals available to teachers.

Members of the Young Lawyers section can participate in the Bill of Rights celebration by volunteering to speak at schools across the state. Anyone interested should contact Gordon K. Jensen at 964-8228.

As part of a plan to generate interest among educators in both programs, the Young Lawyers will have a booth at the Utah Education Association (UEA) convention on October 10 and 11.

The Bill of Rights will also be commemorated in a special concert by the Utah Symphony on the 6th and 7th of December. The Symphony will perform a specially commissioned piece by Morris Rosenzweig entitled "Concord" as well as Aaron Copeland's "Lincoln Portrait." The cost of the concert is being underwritten by the George S. and Dolores Dore Eccles Foundation.

For further information on Bill of Rights activities contact Keith A. Kelly at 532-1500 or Lorrie Lima at 265-5520.

AOP Conference Set for April 3-5, 1992

The Yarrow Hotel will be the setting for the Rocky Mountain Affiliate Outreach Project of the Young Lawyers Section of the American Bar Association on April 3-5, 1992. Participants in Young Lawyers Sections from the Rocky Mountain states will be attending the conference which will consist of both seminars and social events. All members of the Young Lawyers Section are invited to attend. For more information contact Richard A. Van Wagoner at 521-9000 or Larry R. Laycock at 533-9800.

Young Lawyer Gives Talk on Child Credibility

On August 27, Deputy County Attorney Kimberly K. Hornak appeared on KUED television to discuss the reliability and credibility of children as witnesses. The show dealt with questions ranging from whether children make believable witnesses to the tendency of child witnesses to change their story. Hornak is a member of the Special Victim Team of the Salt Lake County Attorney's office which handles prosecution of all sexual abuse and rape cases as well as all cases involving child physical abuse and child homicide.

Young Lawyers Needed for Domestic Relations Program

The Salt Lake County Bar and the Utah State Bar Young Lawyers Division invites all young lawyers to participate in the Joint Domestic Relations Program. This program is set up so that private attorneys can assist Legal Aid and Legal Services with their domestic relations case load. Cases are screened by the volunteer attorney at Legal Aid or Legal Services. All attorneys who sign up for the program will be given a copy of the Domestic Relations Training Manual which will be of great assistance in handling a domestic relations case. This manual includes forms, information about the statutes and is a basic guide to handling a domestic relations case. This manual is also available from Legal Aid and Legal Services for $25.00. Any attorney who is interested in volunteering to assist with a case or who would like a copy of the Domestic Relations Training Manual may call Rex W. Olsen at Legal Aid Society of Utah, 328-8849 or Anne Milne at Legal Services, 328-8891.

People's Law Seminar

The Law-Related Education Committee of the Young Lawyer's Section is again sponsoring the People's Law Seminar. The program consists of six weekly lawyer-conducted seminars. The seminars began at Bryant Intermediate School on Tuesday, October 8, 1991 and will be held every Tuesday night through November 12, 1991. The weekly sessions run from 7:00 p.m. until 8:30 p.m. The seminars are designed to educate the public on their rights and duties in specific areas of the law including the judicial system, consumer credit, wills and estates, business organizations, landlord tenant law, and domestic relations. Mark R. Gaylord coordinates the program. Kim M. Luhn, Michael Drake, Bret Jenkins, Gary Henrie, Mark Webber, and Shannon Clark are seminar presenters.

Utah B.J.

Utah Bar Foundation Elects New Officers

Hon. Norman H. Jackson, Ellen M. Maycock and James B. Lee are the newly elected officers of the Utah Bar Foundation.

Hon. Norman H. Jackson

Hon. Norman H. Jackson begins his first term as President. He has served on the Board of Trustees since 1982 and as Vice President since 1984. He is one of the founding judges of the Utah Court of Appeals, a member of the Board of Appellate Judges and Chair of the Appellate Courts User Group. Currently, he serves as President of American Inn of Court I (BYU).

He received Bachelor's and Master's Degrees from B.Y.U. and a Juris Doctor Degree from the University of Utah. At the time of his judicial appointment, Judge Jackson was senior partner in the Richfield law firm of Jackson, McIff and Mower.

Previously, Judge Jackson served on the Utah State Bar Commission, Board of Visitors at J. Reuben Clark College of Law, Board of Directors of Utah Legal Services and the Utah Air Travel Commission.

A former U.S. Air Force officer, travel agency owner and cowboy, Judge Jackson remains active in Jackson Cattle Company headquartered in Kanab. After court and meetings, he and his wife, Ruth, like to retreat to their mountain home at Sundance. They are the parents of five children and grandparents to a dozen grandchildren.

Ellen M. Maycock

Ellen M. Maycock begins her first term as Vice President. Ms. Maycock has been a Trustee of the Bar Foundation since 1987 and has served as Secretary/Treasurer since 1990. Ms. Maycock is a partner at the Salt Lake City law firm of Kruse, Landa & Maycock. She received her Juris Doctor Degree from the University of Utah Law School in 1975 as a member of the Order of the Coif, and served as editor-in-chief of the Utah Law Review in 1974-75.

Among her many activities for the Utah State Bar, she is currently Chair of a Disciplinary Screening Panel, a member of the Supreme Court Advisory Committee on Rules of Evidence and is a Master of the Bench of the A. Sherman Christensen American Inn of Court I. She has served on the Executive Committee of Women Lawyers and in 1988 received the Distinguished Lawyer for Service to the Bar Award. She also serves as a member of the Board of Directors of the Alumni Association for the University of Utah and the College of Law Alumni Association.

Ms. Maycock and her husband enjoy outdoor activities and traveling with their 4 year old daughter.

James B Lee

James B. Lee begins his first term as Secretary/Treasurer. Mr. Lee was elected as Trustee to the Utah Bar Foundation in 1990. He has been President at the Salt Lake City firm of Parsons, Behle & Latimer since 1979. Among his many Bar activities, he served as President of the Utah State Bar 1977-78, President of the Salt Lake County Bar Association 1968-69 and on the Utah State Bar Commission from 1971 to 1978.

Mr. Lee graduated from the U.S. Military Academy at West Point in 1952 and received his Juris Doctor Degree (with honors) from George Washington University Law School in 1960.

He is currently President of the Utah Foundation and a member of the Fellows of the American Bar Association. Among his many Bar and community accomplishments and contributions, he received the Utah State Bar Distinguished Lawyer of the Year Award in 1988 and the Distinguished Service Award from the Energy and Natural Resources Section for the Utah State Bar for 1989-90.

Mr. Lee and his wife and four children have been avid river runners for the past eleven years. *Utah B.J.*

CLE CALENDAR

PLEASE NOTE: As of November 1, you only have 61 days (44 business days) LEFT to meet your Mandatory CLE requirements. We thought you might want to know this.

RICO A PRACTICAL SEMINAR

A live via satellite seminar. This seminar explains the fundamentals of RICO, both civil and criminal, and explores how this statute, designed for a specific law enforcement purpose, has altered the legal landscape and changed the practice of law. The speakers will provide a general overview and a more in-depth explanation of how RICO has impacted specific practice areas.

CLE Credit: 6.5 hours
DATE: November 5, 1991
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

THE MILD TO MODERATE BRAIN INJURY CASE: WHAT THE ATTORNEY NEEDS TO KNOW

This seminar is designed to provide basic, but critically important, medical and psychological information necessary to understand and prepare a mild to moderate brain injury case. Plaintiff's attorneys sometimes fail to recognize the seriousness of the minor to mild brain injury case, but do not have the tools to adequately evaluate it. Defense counsel, on the other hand, may be unable to differentiate the legitimate case from the exaggerated one. The information presented in this seminar will help attorneys better prepare their cases so that the legitimate needs of the head-injured will be advanced.

CLE Credit: 16 hours
DATE: November 7-8, 1991
PLACE: Utah Law & Justice Center
FEE: $345
TIME: 8:00 a.m. to 5:00 p.m. each day

17TH ANNUAL TAX SYMPOSIUM

This seminar has confirmed some outstanding, nationally known speakers again this year covering a wide range of topics. There will be general session each morning with concurrent sessions in the afternoons. This allows participants to select the subjects that appeal to them and will be most useful in their particular area of practice. All sessions are designed to provide updates on tax planning ideas and the latest information on tax law changes.

CLE Credit: 15.5 hours
DATE: November 7-8, 1991
PLACE: Salt Lake Hilton
FEE: Call
TIME: 8:00 a.m. to 5:30 p.m. November 7
8:00 a.m. to 4:30 p.m. November 8

PROFESSIONAL RESPONSIBILITY: REFORMS— ESTATE PLANNING & FAMILY COUNSELING

A Probate and Estate Planning Section Luncheon.

CLE Credit: 3 hours—ETHICS
DATE: November 12, 1991
PLACE: Utah Law & Justice Center
FEE: $35
TIME: 12:00 noon to 3:00 p.m.

SECTION 401(a)(4), 401 (K) AND 401 (M) FINAL REGULATIONS

A live via satellite seminar. This seminar anticipates the release of the final regulations package under Internal Revenue Code Section 401(a)(4). If released, they will be the focus of this program, featuring a discussion on qualified pension and profit-sharing plans.

CLE Credit: 4 hours
DATE: November 12, 1991
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

ETHICS: CRIMINAL INVESTIGATIONS AND THE CIVIL PRACTITIONER

This seminar, cosponsored by the Utah Association of Criminal Defense Lawyers, will involve a panel discussion of issues related to criminal investigations of corporate clients and clients involved in civil litigation. Some of the issues to be addressed include assertions of privileges and conflicts of interest. Panelists will include state and federal prosecutors, criminal defense attorneys and civil practitioners.

CLE Credit: 3 hours—ETHICS
DATE: November 13, 1991
PLACE: University Park Hotel
FEE: $50/$65
TIME: 6:00 p.m. to 9:00 p.m.

EMPLOYMENT LAW I

This is a New Lawyer CLE workshop and is open to general registrations on a space available basis. This workshop will cover basic employment law issues.

CLE Credit: 3 hours
DATE: November 18, 1991
PLACE Utah Law & Justice Center
FEE: $30
TIME: 5:30 p.m. to 8:30 p.m.

PRACTICING ADMINISTRATIVE LAW IN UTAH— Five Years Since UAPA

This seminar is being co-sponsored with the Western Conference on Administrative Law and the Administrative Practice Section of the Bar. This conference deals with five years of agency, private practice and judicial experience in Utah dealing with the Utah Administrative Procedures Act and applying the new law to practicing administrative law in Utah. This is a practical "nuts and bolts" conference useful to every lawyer and state agency in Utah.

CLE Credit: 7 hours
DATE: November 21, 1991
PLACE: Utah Law & Justice Center
FEE: $120
TIME: 8:00 a.m. to 5:00 p.m.

LEGAL ASSISTANTS ASSOCIATION OF UTAH/UTAH STATE BAR ANNUAL SEMINAR

This is the annual presentation cosponsored by LAAU and the Utah State Bar each year. More information will be available on this seminar at a later date.

DATE: November 22, 1991
PLACE: Utah Law & Justice Center

APPELLATE PRACTICE ISSUES

A Family Law Section luncheon.

CLE Credit: 1 hour
DATE: November 22, 1991
PLACE: Utah Law & Justice Center
FEE: Call for reservations
TIME: 12:00 noon to 1:00 p.m.

TITLE INSURANCE BEYOND THE BASICS

A live via satellite seminar. This program is designed to build on the attorney's basic knowledge of title insurance in order to allow him to effectively represent his or her client at a more advanced level in commercial transactions as well as specialty situations.

CLE Credit: 6.5 hours
DATE: December 3, 1991
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

HOW TO TRY A FAMILY LAW CASE

A live via satellite seminar. This course will teach you how to strengthen the skills that are the keys to success in trying cases well. It will teach you how to try a family law case from preparation to final submissions.

CLE Credit: 6.5 hours
DATE: December 4, 1991

PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

LITIGATION TECHNIQUES FOR LEGAL ASSISTANTS

A live via satellite seminar.
CLE Credit: 4 hours
DATE: December 5, 1991
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

CLE FOR THE GENERAL PRACTITIONER

A one and one-half day CLE Institute geared to the needs of sole practitioners and attorneys in small offices will be co-sponsored by Westminster College and the Utah State Bar. The Institute offers 12 CLE credits (3 of these in ETHICS) in one Friday afternoon and all day Saturday session. Other topics include appellate procedures; attorney's title guaranty fund; limited liability companies; juvenile, employment, family and collections law; and, implementing computers in the law office. Call 488-4159 for registration information.
CLE Credit: 12 hours (3 in ETHICS)
DATE: December 6-7, 1991
PLACE: Westminster College
1840 S. 1300 E.
Salt Lake City
FEE: $190 (up to 11-22-91)
TIME: 1:00 p.m. to 5:00 p.m.December 6
9:00 a.m. to 5:00 p.m., December 7

HOW TO ATTACK AND DEFEND THE DEBT DEAL GONE WRONG

A live via satellite seminar.
CLE Credit: 6.5 hours
DATE: December 10, 1991
PLACE: Utah Law & Justice Center
FEE: $185
(plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

MAKING THE SYSTEM WORK - BANKRUPTCY SEMINAR

This seminar is part of the continuing series offered by the Bankruptcy Section. Barbara Richman, Chapter 13 Trustee, is the presenter for this program. We expect a strong turnout for the program so register early.
CLE CREDIT: 2 hours
DATE: December 12, 1991
PLACE: Utah Law & Justice Center
FEE: $25
TIME: 12:00 to 2:00 p.m.

RAINMAKING: FROM PROSPECTS TO CLIENTS

This course is designed for attorneys, in sole, small and large firm practices, who want the most powerful strategies and techniques available in order to maximize their ability to attract clients and keep them. If the development and maintenance of your practice in this changing legal marketplace is a priority, this program is for you.
CLE Credit: 8 hours
DATE: December 16, 1991
PLACE: Utah Law & Justice Center
FEE: $115
TIME: 8:00 a.m. to 5:30 p.m.

EMPLOYMENT LAW II

This is a New Lawyer CLE workshop and is open to general registrations on a space available basis. This workshop, a continuation of November's will cover basic employment law issues.
CLE Credit: 3 hours
DATE: December 18, 1991
PLACE: Utah Law & Justice Center
FEE: $30
TIME: 5:30 p.m. to 8:30 p.m.

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE
1. _____ _____
2. _____ _____
_____

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

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Name Phone

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Bar Number American Express/MasterCard/VISA Exp. Date

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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, UT 84111.

The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars in 1991. Watch for future mailings.

Registration and Cancellation Policies: Please register in advance, as registrations are taken on a space-available basis. 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 two-year CLE reporting period required by the Utah Mandatory CLE Board.

CLASSIFIED ADS

For information regarding classified advertising, please contact Mary Munzert at 531-9095.

BOOKS SOUGHT

Utah and Pacific Digest first edition set which includes all cases reported in Utah Reports 1850-1931 and Pacific Reporter Volumes 1-300. Call Gwen at (801) 532-1500.

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Attorney (5 years), Admitted to Utah Bar. Seeks appropriate position. Experienced in several areas of personal injury and commercial litigation, including products liability, motor vehicle, premises liability, assault and battery, wrongful termination, and civil rights. Willing to develop expertise in other areas. Reply to: David James, 476-7643.

SERVICES AVAILABLE

European Defendant? We assist all phases of trial preparation, tracing assets, execution of judgments against European defendants. Dennis Campbell, Member Iowa and New York Bars, 15 years' practice Europe, active 16 European jurisdictions. Salzburg, Austria. Facsimile 43 (662) 432628. Available consultation Salt Lake City, 5-6 November 1991, Marriott Hotel (801) 531-0800.

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Discontent?? Non-practicing attorney and ex-algebra teacher have found refreshing way to financial independence without the stress, politics or hassles. Seeking 2-3 burned-out or bored attorneys to diversify into our business on a part-time basis. Send resume to: The Paradigm Group, 9390 Research Blvd., Suite 400, Austin, TX 78759.

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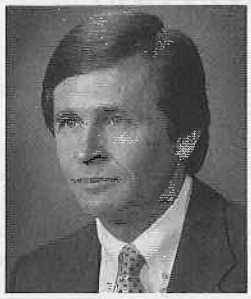

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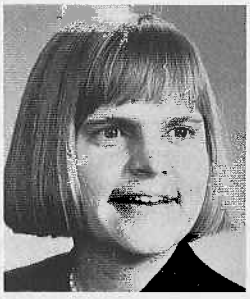

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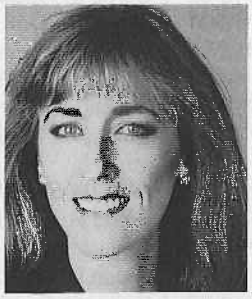

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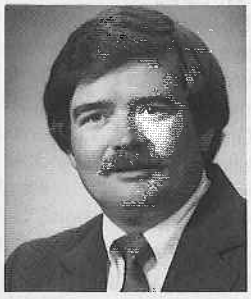

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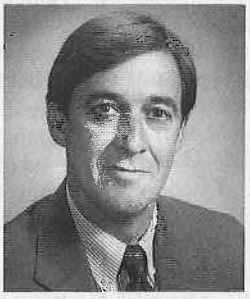

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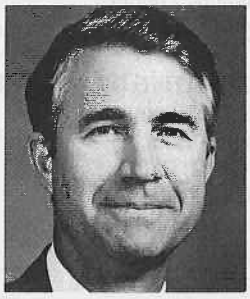

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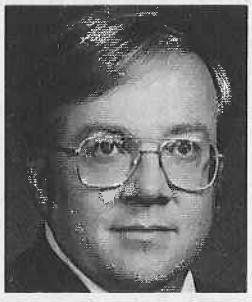

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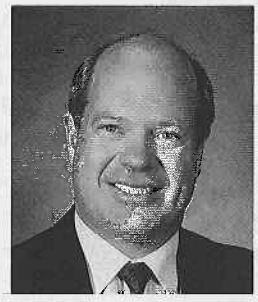

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