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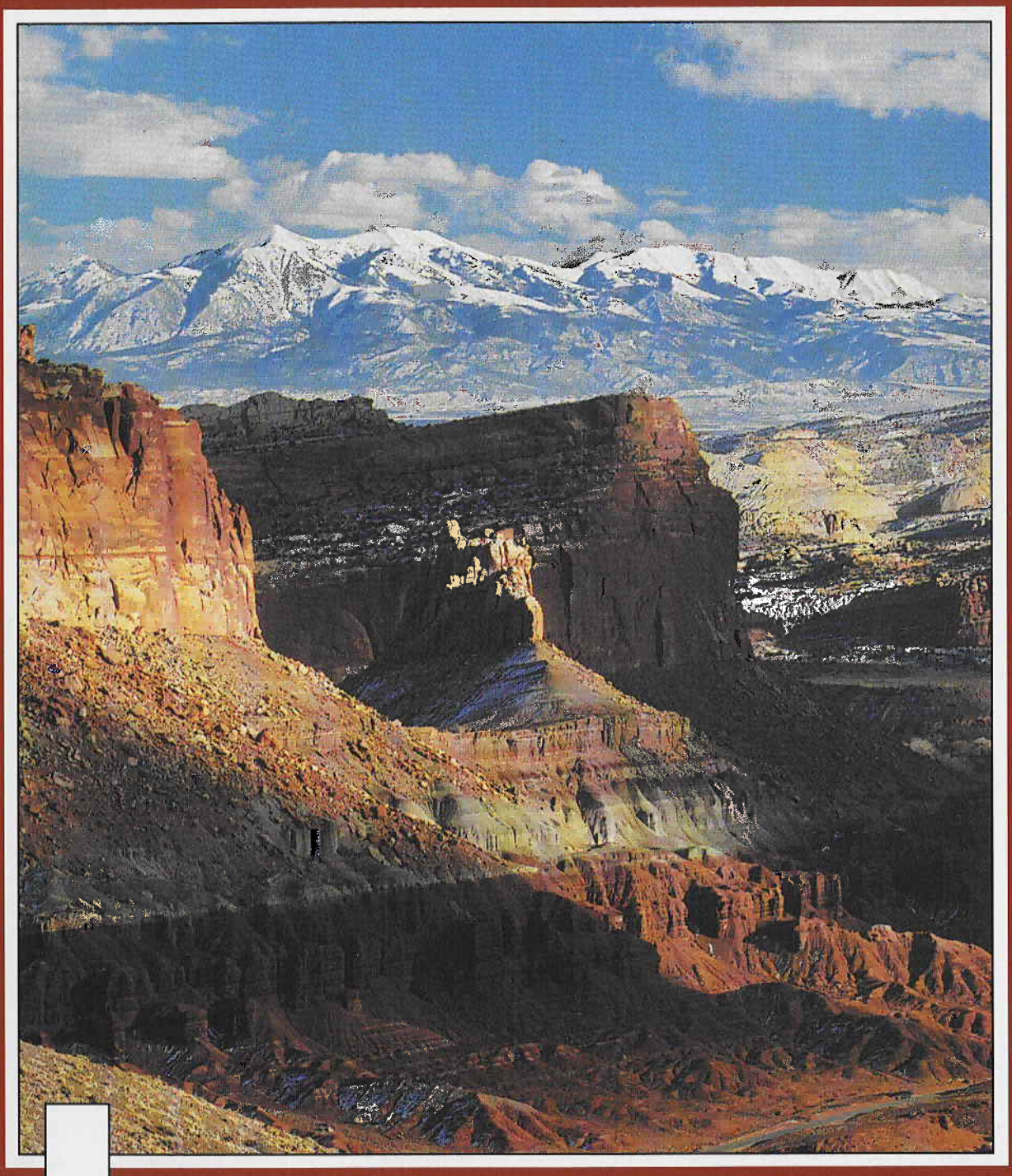

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COVER: Winter in Capitol Reef National Park, by Kent M. Barry, Esq., Assistant Attorney General, Education Division.

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, Utah 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.

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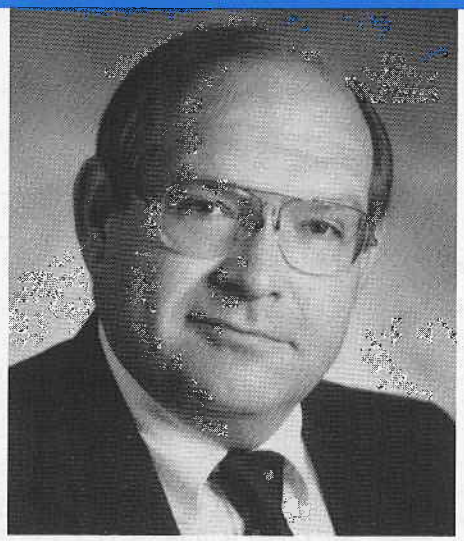


The Correctness of Political Correctness

By James Z. Davis

In the September 1991 edition of the ABA Journal, there appeared an article entitled, "The Politically Correct Law School".

At the risk of beating the issue to death, I believe that certain excerpts from that article are helpful, not only in defining the notion of political correctness, but divergent views about the correctness of political correctness.

The article begins by quoting the Webster's Dictionary definition as "marked by or adhering to a typically progressive orthodoxy on issues involving especially race, gender, sexual affinity or ecology." Beyond that, however, the article suggests that certain groups with respect to certain issues have seized the "moral highground" and that "Anyone who disagrees or raises doubts runs the risk of being thought of as a racist or sexist or homophobic."

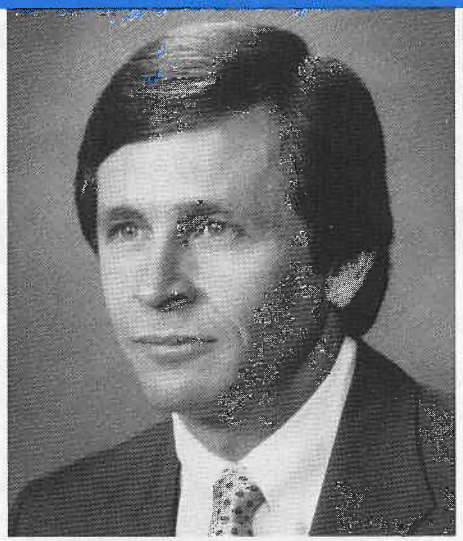
Perhaps the most troubling thing about the article is its suggestion that, to the extent taking a position on an issue which is not politically correct, more and more students and others are intimidated into not expressing their views. This phenomenon is not limited to the observations set out in the article, but extends to the media, the Bar, the courts, and lawyers generally. Fundamental notions of free debate and argument stand little chance of prevailing against political correctness. Indeed, the preferred methodology for individuals and groups who are politically correct to deal with thoughts and ideas inconsistent with theirs is to intimidate those who may share other views or, preferably, to prevent those other views from being expressed at all.

One of the individuals identified in the article suggests that political correctness is "in part a cover for a political power grab by the left," and suggests that very few politically correct people or groups are demanding "an increase in the number of Evangelical Christians, National Rifle Association members and right to life advocates." (The letter, together with such things as serious discussion of population control, being among the politically correct issues of the "right").

While it does not appear to me that the impact of political correctness has made itself felt in Utah to the degree it has in other areas, it seems to me that we should all maintain an awareness of the impact of political correctness on freedom of expression, especially of those individuals or groups who or issues which may not currently be politically correct, and especially on this anniversary of our Bill of Rights.

While, most assuredly, the spector of political correctness has not been raised in connection with burning bankruptcy issues, water law and the rule against perpetuities, Bar programs may provide a forum for those whose views may or may not be shared by all of our members. It is my sense of current Bar leadership that universal acceptance of one's views should not be a condition precedent to giving our members and others an opportunity to be exposed to those views. I have been advised by some of our members, however, that there are individuals and issues whose views and subject matters should not be a part of Bar programs however timely and relevant.

As always, I would very much appreciate your sharing your thoughts with me or any other member of the Bar Commission or staff. For example, if there are issues or individuals who should be considered "out of bounds" where Bar programs are concerned, perhaps guidelines should be developed. On the other hand, perhaps decisions such as these should be left to the sound judgment of our committees, sections and the Bar Commission. Please be in touch.



Judicial Performance Evaluation – Utah is a Recognized Leader

By Randy L. Dryer

Four things belong to a judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially.

— Socrates

So begins the just completed report of the Judicial Performance Evaluation Committee summarizing the findings of the recently completed bar survey evaluating Utah's judiciary. Judging by the survey results, Utah's judiciary scores high marks on all four of Socrates' necessary attributes of a good judge.

94 judges were evaluated, 18 of whom will stand for retention election this November. The Judicial Council, by statute, must evaluate each judge standing for retention election and determine whether the judge will or will not be "certified" by the Council. Certification is a determination by the Judicial Council that a judge has satisfactorily met five evaluation criteria established by the Judicial Council. These criteria are:

1. A satisfactory score on the certification portion of the bar survey;
2. No formal sanctions by the Judicial Conduct Commission during the judge's current term;
3. Compliance with the case processing standards adopted by the Council — presently no more than 6 cases under advisement over 60 days during the past two years and no single case over 180 days under advisement;
4. Completion of 30 hours of approved judicial education each year; and
5. Self certification that a judge is physically able to serve and has complied with the Codes of Judicial Conduct and Administration.

The Council will make public its certification decisions in August of this year, just prior to the November elections. The Council's decision will appear in the voter information packet published by the state. Whether a judge has or has not been certified by the Council will appear on the ballot next to the judge's name.

The bar survey, developed by the Judicial Performance Evaluation Committee under the able leadership of attorney Joseph Novak and administered by Dan Jones & Associates, an independent public opinion research firm, is the cornerstone of the Utah Judicial Council's program to assess judicial performance.

The survey is the two year work product of the Judicial Performance Evaluation Committee, which is a standing committee of the Judicial Council consisting of a representative from each court level, 3 citizen representatives, a bar commissioner and an attorney chairman. I have had the pleasure of serving as the commission's representative for the past two years.

THE 1991 BAR SURVEY

10,200 survey questionnaires were sent to over 2,000 attorneys statewide. Many of us received more than one survey. The attorney survey pool was drawn from the entire 5,000 statewide members of the bar and was distilled down to those attorneys who had appeared before the particular judge being surveyed with sufficient frequency within the last year to be considered personally familiar with the professional behavior of the judge. Approximately 3,000 attorneys regularly practice in Utah's courts of record and approximately 68% of those 3,000 were surveyed. Of the 10,200 surveys mailed

out, an impressive 67% were completed and returned.

For those of you who received a survey question, you may recall the survey instrument was divided into two parts — one part asking a series of questions designed for the individual self improvement of the judge and the other part asking a series of questions which would be used by the Judicial Council in making its certification decision. Under rules recently adopted by the Judicial Council, a judge must receive a satisfactory score of 70% on 75% of the certification questions and an overall 70% satisfactory response on all certification questions.

In addition to the certification questions, a "catch all" question asked whether, taking everything into account, the responding attorney would recommend the Council certify the particular judge.

SURVEY RESULTS

Utah's judiciary scored very high on the survey as shown by the three charts below. Space restrictions preclude publication here of the survey results for the juvenile, circuit courts and the commissioners, but such information is available at the State Court Administrators office.

Trial Court Certification Question Responses For District Courts Statewide

Certification Questions	Pass 70%+	Almost Always #	%	Usually #	%	Rarely #	%	Never #	%	Total K. Resp. #	%	No Personal K. #	%
1. The judge's professional behavior is free from impropriety and the appearance of impropriety.	97.0%	1571	75%	468	22%	56	3%	4	0%	2101	100%	261	11%
2. The Judge fairly and impartially weighs all the evidence and arguments of counsel before rendering a decision.	91.1%	1213	58%	702	33%	173	8%	15	1%	2103	100%	259	11%
3. The judge's behaviour is free from bias.	90.9%	1221	59%	664	32%	167	8%	22	1%	2074	100%	288	12%
4. The judge discourages inappropriate ex parte approaches from attorneys or participants in a case.	93.7%	1035	62%	529	32%	92	6%	14	1%	1670	100%	1035	38%
5. The judge demonstrates knowledge of the rules of PROCEDURE.	95.7%	1272	61%	737	35%	77	4%	14	1%	2100	100%	262	11%
6. The Judge demonstrates knowledge of the rules of EVIDENCE.	95.1%	1201	60%	711	35%	85	4%	14	1%	2011	100%	351	15%
7. The judge properly applies the law to the facts of the case.	90.4%	1027	49%	866	41%	183	9%	18	1%	2094	100%	268	11%
8. The judge gives a clear explanation of the basis of his or her oral decisions.	89.6%	1094	53%	769	37%	187	9%	29	1%	2079	100%	283	12%
9. The judge's written decisions clearly explain the basis for his or her rulings.	89.1%	859	51%	633	38%	161	10%	21	1%	1674	100%	688	29%
10. The judge maintains order in the court room.	99.3%	1631	78%	451	22%	12	1%	2	0%	2096	100%	266	11%
11. The judge demonstrates appropriate preparation through familiarity with the pleadings, record, memoranda and/or briefs.	90.9%	1209	58%	698	33%	167	8%	24	1%	2098	100%	264	11%
12. The judge issues orders, judgments, decrees or opinions without unnecessary delay.	93.9%	1179	57%	769	37%	110	5%	15	1%	2064	100%	298	13%
Totals	93.1%	14512	60%	7988	33%	1472	6%	192	1%	24164	100%	4523	16%

	Yes #	%	No #	%	Total Resp. #	%
13. Taking everything into account, would you recommend the Judicial Council certify this judge for retention?	1893	89%	232	11%	2125	100%

Appellate Ct. Certification Question Responses For All Appellate Court Judges

Certification Questions	Pass 70% +	Almost Always #	%	Usually #	%	Rarely #	%	Never #	%	Total K. Resp. #	%	No Personal K. #	%
1. The judge's professional behavior is free from impropriety or the appearance of impropriety.	98.5%	324	81%	70	18%	4	1%	2	1%	400	100%	114	22.2%
2. The judge behavior is free from bias.	94.3%	262	68%	100	26%	19	5%	3	1%	384	100%	130	25.3%
3. The judge discourages inappropriate ex parte approaches from attorneys or participants in a case.	97.2%	174	80%	37	17%	2	1%	4	2%	217	100%	297	57.8%
4. The judge demonstrates knowledge of the substantive law.	91.4%	232	55%	152	36%	32	8%	4	1%	420	100%	94	18.3%
5. The Judge demonstrates knowledge of the rules of evidence and procedure.	91.8%	239	59%	131	33%	28	7%	5	1%	403	100%	111	21.6%
6. The judge demonstrates an ability to perceive factual and legal issues.	89.6%	239	56%	141	33%	36	8%	8	2%	424	100%	90	17.5%
7. The judge properly applies the law to the facts of the case.	88.9%	196	46%	181	43%	41	10%	6	1%	424	100%	90	17.5%
8. The judge demonstrates an awareness of recent legal developments.	92.3%	238	59%	132	33%	27	7%	4	1%	401	100%	113	22.0%
9. The judge's opinions demonstrate scholarly legal analysis.	85.0%	194	46%	163	39%	55	13%	8	2%	420	100%	94	18.3%
10. The judge's opinions are clear and well written.	87.9%	214	51%	155	37%	44	10%	7	2%	420	100%	94	18.3%
11. The judge is adequately prepared for oral arguements	93.1%	247	61%	130	32%	24	6%	4	1%	405	100%	109	21.2%
Totals	91.5%	2559	59%	1392	32%	312	7%	55	1%	4318	100%	1336	23.6%

	Yes #	%	No #	%	Total Resp.	No Response #	%
12. Taking everything into account, would you recommend the Judicial Council certify this judge for retention?	374	88%	53	12%	427	0	0

Appellate Court Certification Question Responses For The Supreme Court

Certification Questions	Pass 70% +	Almost Always #	%	Usually #	%	Rarely #	%	Never #	%	Total K. Resp. #	%	No Personal K. #	%
1. The judge's professional behavior is free from impropriety or the appearance of impropriety.	98.1%	355	82%	69	16%	8	2%	0	0%	432	100%	30	6.5%
2. The judge behavior is free from bias.	93.6%	280	67%	113	27%	27	6%	0	0%	420	100%	42	9.1%
3. The judge discourages inappropriate ex parte approaches from attorneys or participants in a case.	99.5%	175	83%	35	17%	1	0%	0	0%	211	100%	251	54.3%
4. The judge demonstrates knowledge of the substantive law.	98.4%	263	60%	162	37%	16	4%	0	0%	441	100%	21	4.5%
5. The Judge demonstrates knowledge of the rules of evidence and procedure.	96.7%	275	65%	133	32%	14	3%	0	0%	422	100%	40	8.7%
6. The judge demonstrates an ability to perceive factual and legal issues.	94.8%	272	62%	145	33%	23	5%	0	0%	440	100%	22	4.8%
7. The judge properly applies the law to the facts of the case.	92.3%	197	45%	209	48%	33	8%	1	0%	440	100%	22	4.8%
8. The judge demonstrates an awareness of recent legal developments.	96.1%	268	65%	130	31%	16	4%	0	0%	414	100%	48	10.4%
9. The judge's opinions demonstrate scholarly legal analysis.	90.6%	224	51%	170	39%	39	9%	2	0%	435	100%	27	5.8%
10. The judge's opinions are clear and well written.	90.6%	225	51%	171	39%	37	8%	4	1%	437	100%	25	5.4%
11. The judge is adequately prepared for oral arguements	93.9%	275	65%	124	29%	22	5%	4	1%	425	100%	37	8.0%
Totals	94.5%	2809	62%	1461	32%	236	5%	11	0%	4517	100%	585	11.1%

	Yes #	%	No #	%	Total Resp.	No Response #	%
12. Taking everything into account, would you recommend the Judicial Council certify this judge for retention?	407	92%	37	8%	444	0	0

Judicial performance evaluations, particularly through surveys of attorneys provide meaningful information to the Judicial Council, the Bar as a whole, the Legislature and to the votes who must vote whether or not to retain a particular judge. Utah's judiciary is an innovative leader in this area. Socrates would be proud.

Checklist For Reviewing or Drafting Commercial Leases

by Gregory S. Bell

In Section I, this article discusses important issues in negotiating and drafting a typical commercial occupancy lease. Section II discusses issues which will concern a lender in a project developed on ground subject to an unsubordinated ground lease.

Section I – Commercial Leases

1. LEASE DATE. The date of the lease can become very important in determining the commencement of the term, commencement of rent, the commencement of occupancy, the timing of rights to extend, and the date of expiration of the lease. It is good practice to list an execution date and a date on which the Lease will become effective, if different from the execution date. Consider carefully the interrelationship of the various effective dates in the lease: for example, a tenant will usually be distressed to find that its rent commences before its right of occupancy.

2. PARTIES TO THE LEASE. Non-lawyers often brush over the actual identity of the parties, and sometimes, in form leases, even omit the name of the parties. Some corporate officers have signed leases without a clear recitation of their capacity and have been held personally liable for the performance of the lease.This is such a basic part of any lease that false assumptions are sometimes made and this most essential element of the lease is not specified.

It should go without saying that those involved with a credit lease must be certain that the tenant is actually the party whose credit is being relied upon, and not a subsidiary or sister corporation with lesser credit.

A common problem which is discovered in connection with a sale or financing of a property is that the lessor under the occupancy leases will differ from the owner of the property. Of course, this raises a question as to the validity of the lease if the landlord did not own the leased premises at the date of the lease.

In connection with a sale of the property, all leases should be assigned to the buyer. The tenants should be notified of the assignment of their leases to the new landlord, and it is recommended that the tenants acknowledge the assignment and recognize the new landlord as the holder of the landlord's interest under their lease.

GREGORY S. BELL is a native of Ogden, Utah, having graduated in 1972 from Weber State College and in 1975 from the University of Utah College of Law. He was formerly Vice-President/ General Counsel for Western Mortgage Loan Corporation. He is a shareholder/ director in Kirton, McConkie & Poelman, where he chairs the Commercial Real Estate/Financial Section. He also serves as Vice-Chairman of the Real Estate Section of the Utah State Bar. He and his wife JoLynn spend their time raising six children.

3. GUARANTY. If a lease is guaranteed, care should be taken to see that the guaranty is broad enough to allow for future amendments to the lease to avoid the guarantor's approval of future amendments, although most lenders require such approval anyway. Lenders often require corporate resolutions evidencing the corporate authorization for the guarantor to enter into the guaranty. The guarantor should acknowledge subsequent amendments or assignments of the lease and should re-affirm the effectiveness of the guaranty in light of the amendment or assignment of the lease.

4. EXECUTION. It also should go without saying that a lease should be executed; however, unsigned copies of leases are often used for review purposes, and actual execution of the lease if not later verified. Insist on working with originals or copies of original signed leases.

5. DEFINITION OF PREMISES PROPER. The leased premises must be carefully defined. A metes and bounds legal description is best. For an existing building, a cross-hatched depiction of the premises on a site plan or building floor plan is acceptable within limits. However, if the lease or a lease memorandum is to be recorded, a legal description must be attached. The cross-hatching or outline may be insufficient if the building in which the premises are located is not existing; rather it is suggested that a site plan be used which is prepared by a surveyor showing the surveyed metes and bounds description of the demised premises together with the proposed building limit outlines describing the premises to be built.

6. APPURTENANCES TO PREMISES. There are many rights and benefits which make up part of the tenant's leasehold estate which may not be

literally included in the description of the demised premises.

(a) Access and Amenities. Every tenant obviously needs access to and from the leased premises to public streets and parking lots. In multi-tenant properties, this is most typically handled by the lease granting the tenant a non-exclusive easement or license to the use of common drives, parking, walks, lobbies, corridors, elevators, hallways and rest rooms. Such easements or licenses will be part of the leasehold estate and terminate upon termination of the lease. If the tenant expects access to other amenities on landlord's property which are not included in the leased premises, such as lunch rooms, equipment rooms, roof equipment, etc., these rights must be described in the lease. Moreover, the lease should specify to whom and for whose benefit these easements or licenses are extended: tenant, tenant's employees, tenant's invitees (suppliers, etc.) and tenant's customers.

(b) Common Areas. The lease should specify the common areas to which tenant, its employees and invitees will have access. If there are to be restrictions on employee parking locations or if there are to be reserved, assigned or restricted parking stalls, the lease should so state.

(c) Signs. The location, maintenance and appearance of signs should be a carefully detailed element of any lease where the tenant will want to have one or more signs. Landlords will want the right to approve the design, lighting, height and location of all exterior signs.

7. MEASUREMENT OF RENTABLE FOOTAGE. Obviously, the square footage on which the rent is calculated is an important fact. Thus the method of measurement is critical. Merely leaving the measurement to an architect may postpone the problem. By far the best solution is to set forth the agreed square footage in the lease. However, in to-be-built situations, this may sometimes be impossible. It is the more critical, therefore, to describe the method by which the square footage will be calculated when the premises are completed.

8. RIGHT OF EXPANSION. Many tenants will seek to have a right of expansion of their premises, and landlords will want to keep a long-term tenant happy and committed to the premises. However, this can be very difficult for the landlord to accommodate. First, the right to expand into existing space restricts the leasability of the expansion space. For instance, if the tenant has the right to expand at any time, the expansion space can only be leased on a month to month term. Second, if the expansion space is not yet constructed, the problem of determining rents vis-a-vis construction costs must be confronted. Moreover, the landlord will most likely need to finance the cost of the expansion construction. It is nearly impossible to have the permanent lender make a subsequent construction disbursement. It is also problematic to have a second mortgage lender finance the expansion construction, because of the close involvement which the first mortgage lender will want to have. Third, the expansion right may limit the interest of purchasers of the property because many passive property owners, such as pension funds, are not suited to deal with the development of property. Similarly, long-term lenders also don't want to have the obligation to expand if a foreclosure should occur. Because construction of expansion improvements raises so many difficulties, lenders will likely require that a default by landlord in carrying out an expansion will not constitute a lease default for which the lease may be terminated.

9. TERM. By far the preferable thing is for the commencement date and the expiration date of the lease to be specified in day, month and year. However, there are many situations where this is not possible. Great care should be exercised to specify the trigger for the commencement of the lease term. For example, the completion of construction is insufficient because it may never occur. Thus most leases have a fail-safe date by which the term must have begun or the lease will automatically terminate or either party may terminate. Great care should be taken in analyzing the conditions to commencement of the lease term so that tenant's obligation to pay rent is not inadvertently delayed or excused from its obligation to occupy and pay rent by a condition outside of landlord's control, for example, a requirement that the adjacent shop space be occupied to a certain percentage.

10. EXTENSION TERMS. Extension terms are commonly included in leases and usually require notice to be given some number of months or days prior to expiration of the current lease term. This is a source of litigation and the details of the notice and time of notice must be addressed with great care in the lease. Many major tenants have reversed the typical extension notice provision to the effect that the lease *will be deemed automatically extended* unless the tenant notifies the landlord to the contrary.

11. RENT. Rent should be identified as to a specific amount wherever possible. When the rent must be calculated at a later time, the elements of the formula should be laid out in clarity, and examples are very helpful but must be carefully drafted to reflect the lease terms without raising ambiguities.

12. ESCALATOR PROVISIONS. Be very careful in describing formulas by which the rent will be adjusted at a later time. Increasing the rent in amount equal to the percentage of increase in the consumer price index is a commonly-used formula. For tenants' protection an upward limit of the adjustment should be negotiated. One must also consider to what degree the CPI is reflective of the expenses which will increase for the landlord. In gross lease situations (in which landlord bears some expenses), landlord's costs usually relate to janitorial, utility and tax costs, and increases in these costs may or may not be accurately reflected in a CPI index.

13. INSURANCE. (a) Most leases will require the tenant to acquire a comprehensive public liability insurance policy. It is important to state the minimum limits of such policy. Such limits will either contain a single limit or limits per occurrence, for property damage, personal injury and maximum limit.

(b) Casualty insurance can either be obtained by the landlord or the tenant, and in either case should name the other as an additional insured. The Landlord will require that its mortgagee be named as an additional insured and that the policy cannot be cancelled without prior notice to landlord and the mortgagee. A careful tenant will check the provisions of the mortgage to see if the mortgagee will allow the proceeds of the insurance policy to be applied to the reconstruction of the premises, otherwise the landlord may have the obligation to rebuild the premises after a casualty, but the lender will have applied the insurance proceeds

to its loan, leaving the landlord without funds to rebuild.

(c) A tenant will also want to obtain separate coverage for its personal property such as inventory and furnishings.

14. TAXES. The lease will assign responsibility for the actual payment of taxes and the allocation of the expense of taxes. Sometimes the landlord will actually remit the taxes, but the cost thereof will be passed on to the tenant. Tenants occupying larger parcels or spaces will want the right to contest taxes as to their space.

One must take care in allocating taxes between several tenant spaces. For instance, if the landlord has the right to allocate the taxes on an entire shopping center using a fraction the numerator of which is the tenant's square footage and the denominator of which is the total square feet occupied, then the existing tenants are paying the taxes on the entire shopping center, not just their space. Similarly, some major tenants limit their participation in taxes, thus the landlord or the smaller tenants will be responsible to pick up the difference. Tenants must determine whether the landlord's tax allocation formula passes on the difference to the other tenants.

15. REPAIRS. The lease should be very detailed in terms of the responsibility of tenant and landlord for future repairs and maintenance. Mere statements that this is a "net" lease are not sufficient to allocate responsibility. For instance, a triple net lease generally means that taxes, insurance and maintenance are the responsibility of the tenant. While experience dictates in "net lease" situations that the landlord retains the responsibility to maintain the foundation, structural elements and roof of the premises, there is certainly no standard. Real estate professionals tend to classify leases according to well-defined terms of art. However, courts will obviously follow the wording of the lease, if clear, irrespective of the catch phrase by which the brokers may have referred to the lease.

If a tenant expects landlord to repaint and recarpet the leased premises, the lease should specify the timing, minimum and maximum cost and quality of such matters as well as who chooses them.

In a similar vein, the party not primarily liable to perform maintenance and repairs will want to keep the right to do so if the other party defaults. This can be very important to a landlord with other tenants in the property, or to a tenant in a run-down shopping center or office building, for instance.

16. ALTERATIONS. The landlord will not want the tenant to make unapproved modifications to the premises, but the tenant will feel the need to improve and update its premises from time to time. Typically, a dollar limit will be set forth in the lease, above which tenant must obtain landlord's approval, provided, any modification to the structural and load-bearing elements of the premises must be approved by landlord in any event. Some major tenants insist on full control over remodelling, especially where the tenant built the improvements in the first instance.

17. ASSIGNMENT AND SUBLETTING. This is a provision which usually receives much attention in lease negotiations. Tenants want to assign or sublease the premises without further interference from the landlord. Some tenants wish to control a site even though they may not occupy it for the sake of limiting the options of their competition. They may wish to assign the premises to a non-competitive tenant. They may also wish to enjoy the higher rent available from the site through a sublease.

On the other hand the landlord may wish to protect the tenant mix in its shopping center. The landlord will not want to have a new tenant who may bring legal problems through eviction, bankruptcy, etc. And the landlord will receive percentage rentals when the premises are occupied whereas a vacant store brings no percentage rentals.

Tenants are reluctant to give the landlord a right to approve a sublease or assignment, even if it cannot be unreasonably withheld. The trend of the courts, however, imposes upon landlords the duty to be reasonable in making such determinations. The better method is to include as specific criteria as possible for the landlord to review such requests for approval.

18. GOING DARK. Because some tenants have been deemed to have promised to operate on a continuing basis as inferred from percentage rental clauses, etc., most major tenant leases now expressly provide the tenant the right to "go dark" after an initial operating period, sometimes as short as one day. In other words, sophisticated tenants have found that it can be economically advantageous to close an under-performing store and pay base rent to avoid the other costs incurred in operating the store.

19. USE PREMISES; EXCLUSIVES. Retail tenants will want no restriction in their use of the premises. However, a shopping center landlord will likely have made promises for certain exclusive marketing rights to some tenants such as grocery, drug/pharmacy, major discounter, etc. A landlord should give any exclusives reluctantly and advisedly. The exclusives should be included in the center-wide covenants and restrictions, which should be recorded against the shopping center prior to the execution of any leases.

A lender will want to make certain the violation of an exclusive will not give rise to a right of cancellation in the tenant, but that the tenant's remedies will be limited to injunctive relief. The exclusive marketing provision should relate only to the property for which the lender is granting a mortgage. For instance, the landlord's promise not to have a discount shoe tenant within two miles of the premises cannot be enforced by the lender and renders the lender subject to conditions beyond its control.

20. SUBORDINATION. Most form leases provide that the lease will be subordinate to first mortgages. Sophisticated tenants will want a non-disturbance provision which obligates the foreclosing mortgagee or other purchaser at foreclosure sale to honor the terms of the lease. A recent California case, *Dover Mobile Estates v. Fiber Form Products, Inc.,* 270 Cal.Rptr. 183, 220 Cal.App.3d 1494, held that it is well-settled law that the foreclosure of a deed of trust (or mortgage) having priority by the recording acts over a lease of the property being foreclosed is absolutely terminated. Here the purchaser of property at the foreclosure sale pursuant to a deed of trust which had priority over the lease of the tenant had relied upon the rental payments of this tenant in purchasing the property. However, the court ruled the tenant had only a month to month lease after foreclosure and the lease was terminated.

Dover teaches us that subordinate leases can be protected from foreclosure: (i) by a non-disturbance agreement

between landlord, tenant and lender wherein the tenant agrees to be bound by its lease in favor of the purchaser of the property at foreclosure sale; and (ii) before the foreclosure, the landlord could have elected to utilize the provision of the lease giving landlord the option to render the lease superior to the lien of the deed of trust. This latter approach bears some risks as well because tenants with priority over the foreclosing deed of trust have argued that they are released upon foreclosure of a junior deed of trust because as between holders of estates in land a superior lienor may relinquish its estate, thus only the contract (the lease) will bind the tenant to its lease, and having no privity of contract with the purchaser at foreclosure sale, the tenant is thus released from its lease obligation.

In foreclosing deeds of trust against properties as to which there are valuable leases in place and as to which there are no non-disturbance agreements, in order to preserve such leases counsel may consider foreclosing judicially but state that the estate of the tenants is not being foreclosed. This procedure may not provide absolute protection, but it can be argued that the foreclosure sale terminates only those interests which are found to be junior in the decree of foreclosure and will be foreclosed at sale.

Tenants also must beware of having a favorable lease terminated by a foreclosure and should insist on a non-disturbance agreement with all (especially) superior lenders.

21. CASUALTY PROVISIONS. Typically, long-term leases will require the landlord to rebuild the premises in the event of a casualty loss. The landlord must take care that this applies only in the event of an insured loss. Loss by earthquake or hazardous substance contamination will generally not be insured, and the landlord will want no liability to the tenant to do so without insurance proceeds. Lenders will require that important tenants not have the right to terminate their leases upon a casualty so long as the premises can be rebuilt in a short amount of time and at reasonable expense. As long as the landlord, and thus the lender, have control of whether the lease is terminated, the lender will be happy.

On the other hand the landlord will not want the obligation to rebuild improvements if only a short time remains on the lease, unless the tenant elects to exercise its extension options. Thus a lease should provide that in the last few years of the lease, the choice of rebuilding or terminating the lease upon a casualty loss will be the landlord's.

If the premises are to be rebuilt, the lender will either want to receive the proceeds of insurance and redisburse them or will want a construction lender-type trustee to redisburse proceeds as they are reconstructed.

22. CONDEMNATION. The scenario which most commonly concerns lenders involves the condemnation of parking area in connection with a street widening, which may give rise to the tenant's right to cancel the lease. Lenders are most satisfied with specific arrangements providing for replacement parking or providing that up to X stalls or X% of the parking may be condemned before the tenant has the right to terminate.

Scant attention is often paid to the division of condemnation awards. Landlords' leases provide that all condemnation proceeds will be paid to the landlord except for personal property. Tenant should legitimately seek compensation for its moving expenses and the unamortized cost of its capital investment in tenant improvements. The tenant might also seek to participate in any award given for the going concern value of the premises and for lost profits. Also if the lease contains favorable rent as compared to market rents, the tenant will want to make a claim for the difference between the lease rate and the market rate.

23. CO-TENANCY PROVISIONS. Major tenants of retail facilities will often require the occupancy of other major tenants as a pre-condition to their own occupancy. This can become a vicious circle if these provisions are not carefully drafted. Extreme care is urged in these situations.

24. ESTOPPELS. The lease should require the tenant to give an estoppel certificate from time to time as requested by landlord in connection with financing, refinancing or sale of the property including the demised premises, setting forth the term, rent, premises and other terms of the lease and whether the lease is in force or not, whether rent has been prepaid or whether a rental concession has been made and such other matters as landlord may reasonably require. While it is common practice that tenants will sign estoppels without a specific covenant to do so, tenants regularly refuse to do more than absolutely required by their leases.

25. OPTIONS TO PURCHASE. Options to purchase are very troublesome to lenders, and generally must be specifically subordinated to any mortgages. My experience tells me that these options are not worth the trouble they cause. If a tenant insists on an option to purchase, the landlord must be advised of the confusion and obstacles to financing it may cause. If granted, such an option should state that it will not pertain to the sale of the premises pursuant to a foreclosure of a deed of trust or mortgage against the premises.

26. MORTGAGEE PROTECTION CLAUSE. Lenders will generally require some sort of mortgage protection in the lease to the effect that a notice of default must be given to the lender and the lender will have a right to cure any such default subsequent to the expiration of the tenant's cure period.

27. RENT PREPAYMENTS; AMENDMENTS TO LEASES. Generally the assignment of rents and lease accompanying a mortgage will prohibit the amendment or assignment of a lease without the consent of the lender. The leases being the essential collateral for the loan, their integrity is of utmost concern to the lender. Moreover, the lender will want to prevent the prepayment of rent and the buying out of any lease or the release of any lessee because the lender does not want to find upon foreclosure that the tenants have either the right to occupy without payment of rent for some period of time owing to prepayment of rent, or that the tenant has been released from its lease by paying consideration, which was not remitted to the lender but was retained by the landlord.

28. DEFAULT BY TENANT. Lenders will want to assure themselves that the landlord has all legal remedies upon the default of a tenant. The Utah Supreme Court has modified Utah law somewhat with respect to landlord's remedies. See *Reid v Mutual of Omaha Insurance Company*, 776 P.2d 896 (Utah 1989). In *Reid* the Court held that a tenant in an office building could not claim constructive eviction based on the very disruptive behavior of a co-tenant.

The Court also announced a new doctrine: Upon the removal or eviction of a tenant during the lease term, it has been unknown whether landlords were required to mitigate the accruing damages. Under classic real property concepts, the leasehold was an estate in the tenant, and landlord was not required to mitigate. However, the tenant could use the releasing of the space as evidence that the landlord had accepted a surrender of the tenant's leasehold thus terminating the lease. In *Reid* the Court requires landlords to mitigate their damages, and failure to mitigate in a commercially reasonable manner becomes a defense for the tenant in an action to collect rents. Thus landlords must make and document conscientious efforts to release vacated space.

Utah landlords are now subject to risk from two opposing doctrines: first, little or no effort by the landlord to mitigate damages is a defense to collection of rent (in fact the landlord has the burden of proof in this regard); and second, in the process of releasing the space, a landlord may by its words, documents or conduct be inferred to have had an intent to cancel the lease, thereby releasing the tenant from the lease.

The Court states that the costs of releasing the space (presumably including real estate commissions), including repairs and alterations which are "reasonably necessary", are chargeable to the former tenant.

The real bad news for landlords is that the Court will not permit prospective relief for subsequently due rents. However, the Court wishes to avoid the inconvenience to landlords of suing repetitively for later-accruing rent. Consequently, the Court provides that the trial court hearing the original case for eviction or damages will retain jurisdiction of the matter, and in supplemental proceedings in the same case, the landlord may obtain one or more additional awards for later accrued rents. The Court rejected an anticipatory breach theory under which the landlord would be awarded the difference between the fair market lease value of the premises, if less than the lease rate, and the lease rate. Many leases in effect in Utah contain this anticipatory breach approach. This approach is expressly rejected by the Court and will not be enforced. The "retained-jurisdiction" approach is now Utah law.

29. ATTORNMENT. This merely means that the lender will want the tenant to attorn to or accept the lender or its purchaser at foreclosure sale as the landlord under the lease and continue to abide by the terms of the lease after foreclosure. See the discussion of subordination and non-disturbance agreements at number 20 above.

30. EXHIBITS. See that the exhibits to leases are attached. The exhibits are often vital parts of the lease. At the time the lease is being drafted, the exhibits are oftentimes also in the process of being prepared or will be done at a later time; thus the exhibits often pass out of the control of counsel, and leases are executed without the exhibits being attached.

31. FIXTURES AND TRADE FIXTURES; PERSONAL PROPERTY FINANCING. It is impossible to define in general terms what a fixture or a trade fixture is. Legal principles are helpful, but definitely not comprehensive or conclusive. Counsel is advised to make specific provision in any lease concerning the ownership during the lease term and upon termination of the lease of property other than brick and mortar. One cannot assume that because a piece of equipment is fastened to the building in an apparently permanent manner, or that it cannot be removed without structural damage, that the equipment becomes a fixture. Cases are all over the map on this one. The only safe harbor is in specific lease language assigning ownership and rights of reversion.

32. PROVISIONS REGARDING CONSTRUCTION AND RELATED DEVELOPMENT COSTS. One of the most complex element one can face in negotiating a lease concerns building the leased premises. Sometimes leases will be signed without completed plans and specifications being agreed upon. Thus the lease must set out a procedure for the hiring of an architect and engineer, development of plans, hiring a general contractor, selection of bids, timing of construction, timing of tenant improvements and how agreement as to design of the leased premises will be reached. It is essential that the clients address the economic issues in these regards by anticipating and allocating responsibility for all of these elements. This process involves much forethought and careful drafting.

Section II – Financing Checklist for Unsubordinated Ground Leases

Unsubordinated ground leases present an additional obstacle to obtaining financing. A ground lease MUST contain appropriate provisions protecting the lender's interests or it will render the project unfinanceable. In light of today's scarce financing, it is imperative that every part of the proposed security for the loan comply with the requirements of today's sophisticated lenders.

1. Notice of default under the lease must be given to lender, and no notice of default under the lease will be valid unless given to the lender. Moreover, a lender will seek to reduce the grounds for default to payment of rent and other monetary payments so that the lender can cure a default for a certain amount of money and not be subject to defaults over which the lender has little or no control.

2. Lender must have the right, but not the obligation, to cure any default of the borrower as the lessee under the lease. Lenders want *an additional* time after the expiration of the borrower's cure period to cure as well. Lenders don't begin to cure until they know their borrower won't cure, and they don't want to interpose their own cure efforts while the borrower may be effecting a cure.

3. Lenders want the ground lessor to commit to entering into a new ground lease if the lease is terminated by operation of law or otherwise, such as by bankruptcy.

4. The ground lease should permit, and certainly not prohibit, the mortgaging of the leasehold estate. For instance, a prohibition against assignment of the leasehold interest may be construed to prohibit mortgaging. If the lessor's consent is required for an assignment, this may give the lessor leverage over the terms of the mortgaging. Moreover, if the lender comes into ownership of the leasehold by foreclosure or deed in lieu of foreclosure, the lender will want to assign the leasehold without the consent of the lessor. Lenders are pretty sticky on these provisions.

5. A lender will want to be released from liability under the lease once the lender has assigned it after foreclosure sale.

6. The lender will want to be an additional or co-insured on the casualty policy, and proceeds of any loss payment

must be made to or under the direction of the lender.

7. Likewise, the lender will require condemnation proceeds for the improvements to be paid to the lender.

8. It is imperative that there be no interest in the ground prior to the leasehold estate other than the lessor's. For instance, a prior mortgage on the fee would, if foreclosed, terminate the ground lease as a junior interest.

9. Any right of cancellation held by lessee may not be exercised without the consent of the lender, e.g. termination upon casualty.

10. The Lease or an agreement binding the lessor should provide that no merger of the fee and the leasehold estate may occur if, for instance, the lessee should acquire the fee interest.

11. The leasehold estate should not be segmented so that a lender is expected to have as security only part of the ground in the lease-hold estate. This is an untenable situation for a lender because defaults in the ground lease can occur on ground over which the lender has no control and no ability to cure. Similarly, to cure a default in payment of rent, the lender might be required to pay rent relating to the entire ground lease parcel, even though its mortgage relates to only part of the ground.

12. Of course, the ground lease, or a memorandum thereof, must be recorded to allow the leasehold estate and the mortgages against the estate to qualify for title insurance.

Second Annual Health Law Coalition Lecture

Co-Sponsored by
Division of Medical Ethics

Legal and Ethical Issues – In Vitro Fertilization

JOHN A. ROBERTSON

Thomas Watt Gregory Professor of Law
University of Texas School of Law

Thursday, February 20, 1992
6:30 p.m. Moot Court Room
Reception 5:45 p.m. College of Law

Profile of Judge John H. Allen

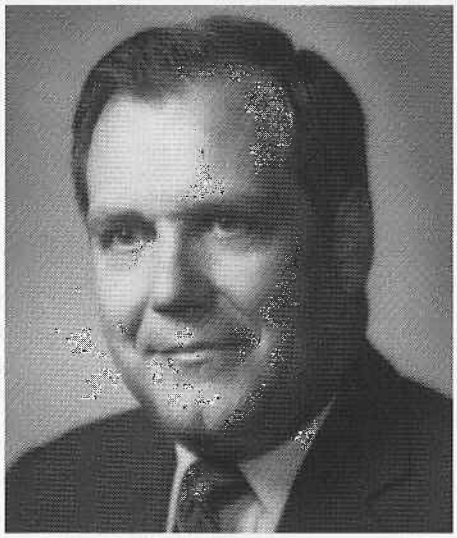
By Terry Welch

BACKGROUND

Prior to going to law school, Judge Allen served as an officer in the Army. During the time that Allen was in the Army, all military cases except general courts marshall were tried by non-lawyer officers, including special courts marshall and minor offenses. While on active duty for two years, Allen regularly served both as "trial counsel" (prosecutor) and as defense counsel in particular cases. Occasionally, Allen even served as a member of the court, which consisted of five officers. Allen recounts his experience in the military as very "hands on." Indeed, Allen recalls, he gained a very practical and working knowledge of basic rules of evidence as well as an understanding of the concepts behind such rules. This knowledge and understanding would later prove extremely valuable. When he retired as a colonel in the JAG CORPS, Allen had already tried perhaps more cases than many attorneys try in a lifetime. He attributes his interest in law and the legal profession largely to his experience in the military, and states frankly that the practical legal training that he gained there was unattainable in law school.

VIEWS ON LEGAL SYSTEM

Judge Allen lists the inability of attorneys to present evidence in a proper manner and their lack of knowledge of basic rules of evidence as perhaps the greatest weakness in our current legal system. Unfortunately, he states, far too many attorneys cannot present even the simplest of issues in the courtroom in accordance with the rules of evidence. Even seemingly basic rules such as laying a proper foundation are regularly overlooked or followed only sloppily. Such poor performance by counsel is unfair to the client and makes the judge's role more difficult.



Judge John H. Allen
Bankruptcy Judge, United States District of Utah

Appointed:	1983 by Judge Aldon J. Anderson
Law Degree:	1957, University of Utah
Practice:	Twenty-six years experience in commercial law and bankruptcy, served as trustee on several occasions.

Judge Allen believes that the current system makes a sincere attempt to be fair to all parties, big or small, and to protect their rights. In most cases, Allen feels that the system is able to accomplish this basic objective. Allen states that such fundamental fairness and its procurement in most cases is probably our system's greatest strength. On the other hand, Allen finds that increasingly attorneys are either unable or unwilling to invest the time necessary to become sufficiently familiar with their client's situation and the facts of the case such that fundamental fairness is jeopardized. The ever-increasing barrier of miscommunication — or the complete lack of communication — between attorney and client if the one frailty of the system that threatens to destroy its greatest strength. Continually rising costs and the need to "earn a living" are partially to blame. Many attorneys, under our system's current structure, simply cannot consistently spend the time required to become intimately familiar with each client's situation and still remain within the client's affordability level.

If Judge Allen could make one change in the entire system, he would make legal services more affordable to the public, most of whom are presently priced right out of court. By curing the problem of excessive cost, Allen explains, the problem of communication would disintegrate because attorneys presumably could spend more time with each client and perhaps would be better prepared, both legally and factually to represent the client's interest. Allen states that perhaps the discovery process is partially to blame for excessive cost to litigants. Often, much of the discovery essentially is meaningless. While judges can help alleviate discovery abuses by becoming more active in the discovery process, they seldom are aware of any problems until a motion to compel or some other motion is filed. At that point, costs may already be seriously inflated.

VIEWS ON CAREER

Judge Allen enjoys his role as a bankruptcy judge. Although his job certainly is not without pressure, Allen states that the pressures are different than those encountered in private practice. After 26 years in practice, he finds his ability to leave work "at work," at least in most cases, especially rewarding. Allen's basic views of the legal system, and its valiant efforts to achieve fairness, have not changed significantly since taking the bench.

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Profile of Judge J. Dennis Frederick

By Elizabeth Dolan Winter

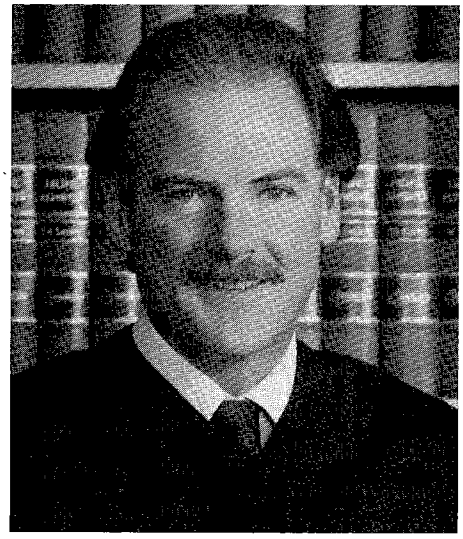
BACKGROUND

In his former life, Judge Frederick quit college (can you take a "leave of absence" from college?) for two years to play bass guitar in a rock and roll band called the "5 MC's." Really. He says he always wanted to play the banjo while hanging out in Greenwich Village watching bluegrass festivals. Hanging out in Greenwich Village in the 60's? Part of a large learning experience, no doubt. Maybe somehow he knew that in twenty years or so he would still need a musical outlet but that he'd be forced to express himself in a manner more dignified than as a member of a rock and roll band. He still plays in a band — now it's a bluegrass band — made up of fairly respectable members of the community (Judge Frederick's son, and Paul Van Dam, for example).

Judge Frederick obviously did finish college, and law school. He practiced as a trial lawyer for sixteen years before he was appointed to the bench. Early in his career he practiced with the law firm of Kipp and Christian litigating mostly insurance defense claims, and at the same time prosecuted felonies as a Deputy District Attorney. Frederick says the trial experience was both very challenging and very helpful to his practice. "A trial is a trial," he says, "and while certainly they have different elements, you learn how to deal with juries and judges — a very valuable experience." Judge Frederick likes "being where the action is." A trial, he says, is "where the rubber meets the road." He enjoyed litigating cases, and says being a trial judge allows him to participate daily in the "humor, tragedy, and sorrow" present in the court room.

VIEWS ON LEGAL SYSTEM

Judge Frederick notes a distinct "lack of civility" among members of the bar that was not a problem when he began his career. This attitude, it seems, has resulted from the present size of the bar and from lawyers' heightened focus on "making money and putting in hours." A lawyer's word just isn't good enough anymore, says Frederick. Now, everything between parties must be in writing. When the bar was smaller and you actually knew who you were dealing with, he says, you didn't always have to formalize everything.



Judge J. Dennis Frederick
Third District Court

Appointed:	1982 by Gov. Scott Matheson
Law Degree:	1966, University of Utah
Legal Practice:	Director and officer of Kipp and Christian 1966-1982; Deputy District Attorney from 1968-1971
Law-Related Activities:	Vice Chair, Judicial Council; Member of the Executive Committee of Judicial Council; Member of Board of Trustees of the University of Utah College of Law Alumni Association; first recipient of the Utah Bar Foundation Achievement Award in 1987; named District Court Judge of the Year in 1988 by the Utah State Bar

Judge Frederick says that the problem with the present practice in Utah stems from the growing size of the bar. Lawyers, especially young lawyers, don't know everybody. Because it's easier to trust someone you know, Frederick encourages lawyers to participate in any program that creates camaraderie among bar members. If lawyers can become familiar with more of their colleagues, Frederick says, some of the "civility" lacking in our present practice may return.

One of the most difficult aspects of being a judge, says Frederick, is deciding issues "that really shouldn't be the subject of advocacy." Especially in domestic relations cases, for example, "there is more emotional trauma netted by the trial than is warranted by the circumstances." Judge Frederick says he wishes there was another type of dispute resolution that could be successful in these cases. Unfortunately, he says, the parties often are so emotionally charged that they are unable to change their behavior or resolve their differences unless they are ordered to do so by the court. Judge Frederick's frustration with these cases, he says, results from wanting to counsel the parties and encourage an amiable settlement, but being unable to do so because of the sheer number of cases he must decide.

STRATEGY FOR SUCCESS BEFORE JUDGE FREDERICK

BE ON TIME. Judge Frederick demands professional conduct by the lawyers appearing before him. He expects lawyers to be punctual, prepared, and considerate of the opposing counsel. He says if you are not well prepared when you appear before him, it shows. Judge Frederick is amazed by certain members of the Bar who do not conduct themselves courteously; or who do not know the rules of evidence and trial preparation "and do not endeavor to find out." Judge Frederick notes that most of the time people win or lose on the basis of the facts — and no matter how much you prepare, you can't rewrite the facts. He stresses, however, that poor performance jeopardizes your own credibility and can unnecessarily lose the case for your client.

Judge Frederick prefers jury trials. He says the opportunity to see the jury in action, these individuals "participating in the system by compulsion, not voluntarily," keeps the judicial system in touch with the view of the citizens. Watching how attentively the jury listens to evidence that goes to a life or death issue, or to matters of great social or economic significance maintains his faith in the jury system. Frederick acknowledges that some people criticize the jury system, yet says

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LIFE IN JUDGE ALLEN'S COURT

As attorneys who regularly practice in bankruptcy court well know, bankruptcy court operates under its own unique rules and procedures. Judge Allen strongly recommends that any attorney who appears in his court become familiar with the Bankruptcy Code and the Bankruptcy Rules. An attorney should never, Allen states emphatically, open her oral argument by explaining that she is not familiar with procedures or rules applicable to bankruptcy court. Instead, Allen suggests, one should take the time to educate himself concerning the Bankruptcy Code and Rules at least as they pertain to the particular proceeding in which he is involved. Finally, Allen encourages all attorneys who appear in court to learn not only basic rules of evidence, but to learn how to use them properly.

BANKRUPTCY COURT IN THE DISTRICT OF UTAH

Over 8,000 bankruptcy cases are filed annually in the District of Utah. These cases are assigned to one of the three bankruptcy judges in the district. Every six months each judge is assigned to handle all Chapter 7, Chapter 12, or Chapter 13 cases filed during the next six-month period. Thus, at any given time it is easy to determine which judge will handle any such case. All Chapter 11 cases, on the other hand, are assigned randomly to particular judges. Judge Allen explains that over time, this process ensures that each bankruptcy judge has a near equal caseload.

While Judge Allen believes that the current bankruptcy system is a significant improvement over the pre-Bankruptcy Code days, he readily opines that the system is not without significant problems. Perhaps the most apparent problem concerns the jurisdiction of bankruptcy judges, who are not Article III judges. As any bankruptcy attorney knows, determining whether a particular issue can be settled in bankruptcy court involves a sometimes complicated determination between so called core and noncore issues under the Code, and often a determination of whether the issue is equitable or legal as it relates to the right to a jury trial. Such jurisdictional problems often result in huge delays in particular cases, because jurisdiction must bounce between bankruptcy and district court and back again, often several times during the course of one bankruptcy proceeding. The United States Supreme Court has thus far been unable to definitively settle these jurisdictional problems, as was most recently demonstrated in *Granfinanciera v. Nordberg*, 429 U.S. 33 (1989). Judge Allen maintains, as have many scholars, that the jurisdictional problems could be solved by granting to bankruptcy judges the constitutional protections necessary to under Article III to allow them to exercise full judicial authority.

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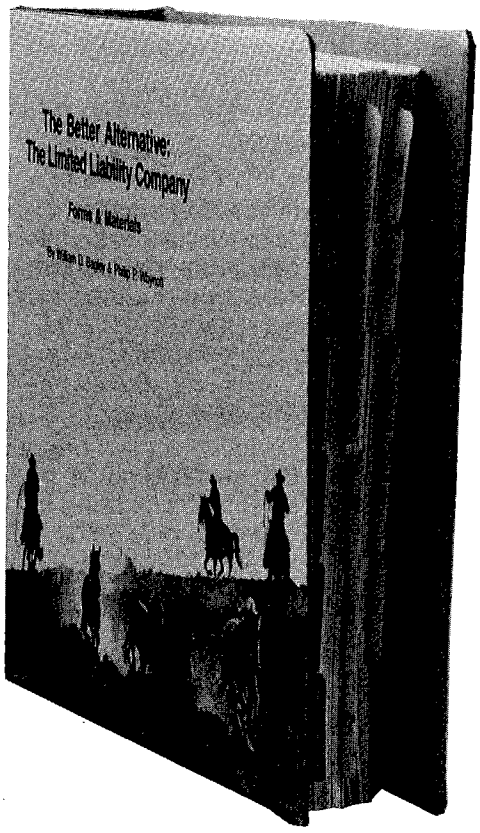
he can "count on one hand" the number of juries in his court room that he thinks have gone astray in making a decision.

OUTSIDE INTERESTS

Judge Frederick likes to ski at Alta and Snowbird. He coaches his kids' basketball, baseball and soccer teams, although he admits with soccer he had to start coaching when the kids were very young — so they wouldn't know that he didn't know how to play either. Judge Frederick says he went to Moab last summer with the judicial council and didn't ride the slickrock trail, (Judge Roth did), but Judge Frederick did float the wild daily down the Colorado River just outside of Moab with the other judges on the council. Okay so it wasn't wild, he says it was still fun. He didn't say how it compares to rock and roll.



THE LIMITED LIABILITY COMPANY: THE BETTER ALTERNATIVE
(FORMS AND MATERIALS)

SUMMARY TABLE OF CONTENTS

1.400

Utah, in 1991 (Utah Code Ann. §§ 48-2b-101 to 156), along with Wyoming, in 1977, and seven other states have adopted the Limited Liability Company Act. This new statutory entity is a better alternative to limited partnerships, partnerships, close corporations and "S" corporations.

This book contains all state regulations; forms, including all state mandatory and example forms; all internal revenue service rulings; relevant opinions; and practice information designed to help the busy Utah attorney.

Please complete and return the following to Limited Liability Company Law & Practice, P.O. Box 1436, Cheyenne, Wyoming 82003-1436.

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_____Book—$115.00 enclosed (includes sales tax, shipping and handling)

_____Optional (with book) computer disk containing all forms, including the mandatory and example forms from the Secretary of State—$40.00 enclosed

_____5¼ disk _____3½ disk _____Word Perfect _____ASCII _____Microsoft Word

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THE LIMITED LIABILITY COMPANY

Commission Highlights

During its regularly scheduled meeting of November 21, 1991, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The minutes of the Commission meeting of October 24, 1991, were reviewed and approved.
2. The Board voted to schedule a special meeting for January 24, 1992, to review the entire Supreme Court Task Force final report and to prepare a response to all of the recommendations.
3. Davis reported on meetings that he, Randy Dryer, John Baldwin, and John Becker had enjoyed with the editorial board of the *Salt Lake Tribune* and *The Deseret News* and that they had been added to the *Bar Journal* mailing list. Davis also reported that the Executive Committee had agreed to be a resource to the media to refer lawyers with special expertise.
4. The Board recommended the appointment of a sub-committee of Courts & Judges Committee Chair, Bill Bohling, and member Paul Veasy; Commissioners, Craig Snyder and Gayle McKeachnie; and Legislative Affairs Committee Chair, David Bird to study proposed court reorganization.
5. Steve Trost reported that he and Mike Hansen met with representatives of the Legal Assistants Association of Utah (LAAU).
6. John Baldwin reviewed the Bar Programs Monthly Activity Report and the Executive Director's written report. The Board requested a listing of the Utah State Bar staff and their respective responsibilities to be published in the next available *Bar Journal* to assist members in calling for information.
7. Baldwin distributed a Budget & Finance Committee report highlighting financial activity during October. Arnold Birrell explained the monthly financial reports and cashflow and answered questions. Birrell noted that the Bar has not had to advance any funds to the Law & Justice Center to date.
8. The Board voted to adopt recommendations of the Budget & Finance Committee to transfer funds from the contingency line to the Lawyer Referral Service Division to continue the LRS program pursuant to the Supreme Court's approval.
9. The Board voted to initiate a lawsuit against Legal Access Group.
10. The Board voted to petition the Supreme Court to allow attorney resignation with discipline pending.
11. John Baldwin was designated the Bar's representative for the Public Adjusters litigation.
12. The Board voted to appoint Harold Lee Peterson, Glen A. Cook, Noall T. Wootton, and Gary G. Sackett and to reappoint J. Randall Call, Michael F. Olmstead, Duane Gillman, Doug Monson, Milo S. Marsden Spencer E. Austin, Gregory G. Skordas, Charles W. Dahlquist, Charles H. Thronson, Ray E. Gammon, Robert L. Moody, Carolyn B. McHugh and Charles Bennett to the Bar Examiner Committee.
13. Charlotte Miller reported on the New Lawyer Continuing Legal Education seminars.

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.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CLAIMS BAR DATE – CHAPTER 11

Standing Order #1

Unless otherwise ordered by the court, the bar date for the filing of claims in a Chapter shall be 90 days from first scheduled 11 U.S.C. Section 341 hearing date. The clerk's office shall place the bar date for filing of claims on the Section 341 notice issued in Chapter 11 cases unless otherwise ordered by the court. The standing order is to be effective immediately.

Dated: 12/09/91

BY THE COURT
Glen E. Clark,
Chief U.S. Bankruptcy Judge
John H. Allen,
U.S. Bankruptcy Judge
Judith A. Boulden,
U.S. Bankruptcy Judge

MARK YOUR CALENDARS NOW FOR THE

UTAH STATE BAR 1992 ANNUAL MEETING

SUN VALLEY, IDAHO
JULY 1-4

Hope to see you there!

Discipline Corner

ADMONITIONS

1. An attorney was admonished pursuant to Rule 3.3(a) (4) (Candor Toward the Tribunal) for having garnished a debtor's wages in excess of the judgment. The attorney secured the first writ of garnishment on December 19, 1990. He subsequently obtained a second writ of garnishment on January 4, 1991 by proffering an Affidavit which failed to account for that part of the judgment that had been satisfied by the prior garnishment.

PRIVATE REPRIMAND

1. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a Chapter 7 bankruptcy action filed on May 26, 1989. After the initial filing, the client needed to include additional creditors and on June 19, 1989 paid a fifty ($50.00) change fee and submitted to the attorney the list of the creditors to be added. However the attorney misplaced the list. He was provided a second list but failed to amend the petition resulting in the garnishment of the client's wages and bank accounts in February of 1990. The attorney filed a motion to reopen the matter in March of 1990 but failed to appear at the hearing. His subsequent motion was heard and denied on July 2, 1990. The attorney was also reprimanded for violating Rule 1.4(b) (Communication) for failure to explain to the client that the subsequent filing of a Chapter 13 would provide the discharged creditors in the Chapter 7 a second opportunity to file a claim for payment under Chapter 13. In mitigation, the Board of Commissioners of the Utah State Bar considered the attorney's admission and the fact that he has personally paid some of the debts omitted in the Chapter 13 and has further offered to pay any outstanding debts that should have been included in the Chapter 13.

2. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a civil action involving the wrongful conversion of property. The attorney was retained in 1986 but failed to commence an action prior to the expiration of the statute of limitations. The attorney was further reprimanded for violating Rule 1.4(a) (Communication) for failure to keep the client informed as to the status of the case. In mitigation, the Board of Commissioners of the Utah State Bar considered the $7,000.00 restitution paid by the attorney. In aggravation, the Board considered the attorney's prior disciplinary history involving sanctions for matters of neglect.

SUSPENSIONS

1. On December 30, 1991, Elizabeth Joseph was suspended from the practice of law for a period of one (1) year for having commingled the $20,000.00 wrongful death settlement of Ramona Denham Crandall with her personal funds in violation of Disciplinary Rule 9-102(A) (prohibiting commingling), Rule 9-102(A) (1) (notification of receipt of funds), Rule 9-102(B) (3) (maintain records and provide accounting), Rule 9-102(B) (4) (promptly paying clients). In mitigation, the Hearing Panel and the Board of Commissioners of the Utah State Bar considered the fact that Ms. Joseph has made restitution and her conduct was reflective of her loyalty to an extended polygamous family in a polygamous community which conflicted with her loyalty to her client. In aggravation, the Board considered that Ms. Joseph made restitution only after being ordered by the Sixth District Court. The Bar was awarded its costs in litigating the matter.

RULE CHANGE ALERT DISCIPLINE AND SANCTIONS

Rule VII of the Procedures of Discipline of the Utah State Bar was recently amended by adding the following subparagraph:

(K) Resignation with Discipline Pending.

1. An attorney who is the subject of an investigation for allegations of professional misconduct may resign from the bar of the State of Utah with the consent of the Supreme Court and upon such terms as the Court may impose for the protection of the public prior to an adjudication of the charges.

2. The attorney wishing to resign under the provisions of this rule shall submit to the Court a sworn "Petition for Resignation with Discipline Pending" substantially similar to Appendix A of the Procedures of Discipline of the Utah State Bar, wherein the attorney:

(a) Admits the facts upon which all charge(s) are based;

(b) Admits the charge(s) constitute professional misconduct;

(c) States the resignation is freely and voluntarily tendered and that it is being submitted without coercion or duress;

(d) Verifies he or she is fully aware of the implications of submitting the resignation;

(e) Acknowledges the disciplinary matter, including the contents of the resignation, shall become part of the court record available to the public and that notice of the Resignation with Discipline Pending shall be published in the Utah Bar Journal;

(f) Acknowledges and agrees to comply with all provisions of Rule XVIII(a), (b) and (d) of the Procedures of Discipline of the Utah State Bar including notification to clients, disposition of client files and client funds.

(g) A copy of the petition shall be served upon Bar Counsel unless Bar Counsel's consent is indicated by his signature affixed thereto.

3. Upon receipt of the Petition without the consent of Bar Counsel indicated thereon, the court shall notify Bar Counsel of the petition and Bar Counsel may proffer in writing such matters of fact or argument as he may desire within twenty (20) days. The Court shall then enter its order accepting or rejecting the tendered resignation or taking such other action as it deems necessary.

4. The Court, upon accepting the Resignation, shall enter an Order of Discipline specifying the effective date of the resignation and containing any additional or alternative terms and conditions deemed appropriate including conditions precedent to readmission to the bar.

5. Any attorney whose resignation under this Rule is accepted may not apply for readmission to the bar of the State of Utah until 5 years after the effective date of the resignation unless the Supreme Court has specified a shorter period of time in the Order of Discipline. An attorney seeking readmission must comply with any conditions and qualifications set by the Supreme Court in the Order of Discipline and the requirements of Rule XXI, READMISSION AND REINSTATEMENT, of the Procedures of Discipline of the Utah State Bar.

Eighth Annual Jefferson B. Fordham Debate

The Eighth Annual Jefferson B. Fordham Debate sponsored by the Journal Alumni Association in conjunction with the University of Utah College of Law will be held on the evening of March 5, 1992, at 6:30 p.m., in the University of Utah Marriott Center for Dance. The resolution for this year's debate is "Resolved: that tax dollars shall be the sole source of funding for election campaigns." The moderator of the debate will be University of Utah Law Professor Edwin Firmage, and panelists will include Professor Lawrence Sabato of the University of Virginia, AFL-CIO of Utah President Ed Main, Utah League of Women Voters President Sandy Peck, National Public Radio Political Editor Ken Rudin and local Utah Politicians. The debate is open to the public and free of charge. Two hours CLE credit is available.

Court Commissioner Position in Tenth Circuit Court Announced

Position Announcement:

U.S. Court of Appeals, 10th Circuit, seeks Staff Counsel. Must be a U.S. citizen, graduate of accredited law school (upper one-third), admitted to practice before the highest court of a state/territory, have strong academic background with demonstrated research and writing ability, and at least one year experience in the practice of law (may be waived). Current Starting Salary Range: $38,861 – $50,516 (with significant potential for promotion). Send resume, unedited writing sample, law school transcript showing class rank at graduation, and a statement of good standing to practice before the highest court of a state/territory or copy of bar registration to: John K. Kleinheksel, Chief Staff Counsel, 1929 Stout Street, Drawer 3588, Denver, CO 80294, (303) 844-5306. Closing date: March 20, 1992. The court is an active equal opportunity employer.

The University of Utah College of Law's Public Interest Law Organization to Sponsor CLE Program on "The Nuts and Bolts of the Criminal Justice System: What Civil Practitioners Should Know"

To raise money for the College of Law's Public Interest Loan Repayment Assistance Program, the Public Interest Law Organization, a student organization at the University of Utah College of Law, is sponsoring a CLE program entitled: "The Nuts and Bolts of the Criminal Justice System: What Civil Practitioners Should Know." The two-credit CLE program will be held on Wednesday, March 11, 1992, at the University of Utah Law School, from 6:00 to 8:00 p.m.

The program — presented by Gregory G. Skordas (Deputy Salt Lake County Attorney), Brooke C. Wells (Public Defender) and Ronald N. Boyce (Criminal Law Professor and U.S. Magistrate) — will be geared to civil practitioners who periodically are called upon to advise or represent individuals involved in the criminal justice system. The presenters will explain how "the system" works and provide practical advice on issues which attorneys commonly encounter in the criminal justice context.

The cost of the two-credit program is $38 (which includes a box lunch). The proceeds will go to the law school's Public Interest Loan Repayment Assistance Program, which is designed to assist law school graduates make their monthly student loan payments while they are engaged in a public interest practice.

For more information about the CLE program, contact Holly Summers (581-6571) or Jon Harper (581-4032).

POSITION RECRUITMENT

COURT COMMISSIONER

DUTIES: The court commissioner is a quasi-judicial officer as provided by the Utah Code and the rules of the Judicial Council. Initially, this position will assist primarily the circuit court under the direction of the Presiding Judge and will perform duties as permitted by statute and rule of the Judicial Council.

This commissioner will also assist the district court with domestic matters and mental competency examination hearings. May be required to assist the Juvenile Court as permitted by rule of the Judicial Council.

Some travel may be required to various court locations. Duties may vary as outlined by the Judicial Council.

REQUIRED QUALIFICATIONS

A court commissioner must be at least 25 years of age, a citizen of the United States, a resident of Utah for three years preceeding appointment and resident of Utah while serving as commissioner, and a member of the Utah State Bar. Preference will be given those applicants demonstrating broad experience with district and circuit court matters.

CONDITIONS OF EMPLOYMENT

The position requires adherence to the Code of Judicial Conduct.

SALARY, BENEFITS AND OTHER INFORMATION

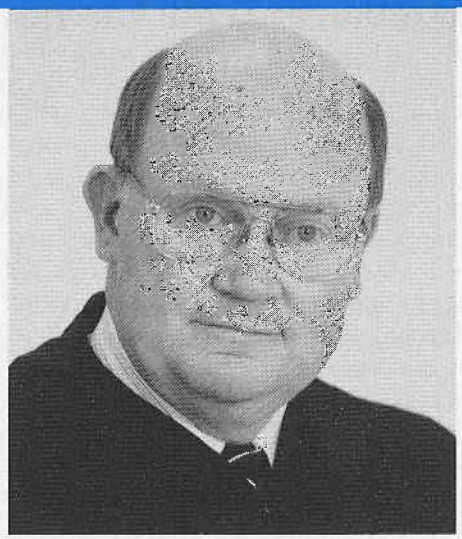
Salary: $61,000 per year
Location: Third Judicial District
Merit status: This is an exempt position.

APPLICATION PROCEDURE

Applications may be obtained at the Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, UT 84102; Phone 533-6371. Applications should include the courts application form and a resume, and be submitted to Juan Benavidez, Director of Personnel, Administrative Office of the Courts.

Closing Date for Applications:
March 9, 1992 at 5:00 PM.
Anticipated Selection Date:
March 31, 1992
Estimated Starting Date: May 1, 1992

The Utah State Courts is an Equal Opportunity Employer. Appointments are made without regard to sex, age, race, creed, religion, national origin, ancestry, handicap or other non-job related criteria.



Views on the National Conference of Bankruptcy Judges

By Judge Glen E. Clark

In 1701 work began on a "Publick Gaol" in Williamsburg, Virginia. The first floor housed debtors. Not just delinquent renters, but delinquent debtors of all sorts. The quarters were somewhat better than that of other criminals, but nothing that a person would wish to occupy. After 1772, as a result of an act making creditors wholly responsible for the maintenance of debtors and trebling the fees for their board, the imprisonment of debtors was practically eliminated.[1] Today's creditors, seeing the statements from their own professionals and knowing that they usually pay the costs of the debtor's professionals, can sympathize with the plight of these early creditors.

I have been asked to write this article because I have been elected as Vice President and President-elect of the National Conference of Bankruptcy Judges ("NCBJ"). It is a worthwhile task. In the twelve-month period ending June 30, 1991, civil filings in federal district courts declined five percent while new bankruptcy cases increased by more than twenty-one percent. So little is known about bankruptcy that a former mayor of Salt Lake City who is a teacher at the University of Utah has insisted to one of our deputy clerks, his student, that the bankruptcy court is a state and not a federal court.

The NCBJ is composed of nearly all bankruptcy judges of the United States and many retired judges. Its "main event" is its annual meeting, held in the fall of each year. There are 291 bankruptcy judges in the United States. In 1991 annual meeting in San Francisco hosted over 2,700 registrants consisting of judges and bankruptcy professionals. The American Bar Association, the American Bankruptcy Institute, the Commercial Law League of America, and other professional organizations conduct educational programs in conjunction with the NCBJ. Truly more bankruptcy education than any one enthusiast can absorb. Future annual meetings will be in San Antonio, October 15-18, 1992, and in Orlando, October 17-20, 1993.

The NCBJ is governed by governors from each judicial circuit. I have just completed a three-year term as the Tenth Circuit Governor. The Executive

JUDGE GLEN E. CLARK received his J.D. Degree from the University of Utah in 1971 where he was Articles Editor of the Utah Law Review and was awarded membership in the Order of the Coif. From 1971 to July 1982, he practiced law with a Salt Lake City law firm where, prior to leaving practice, he was a Director and Chairman of the Banking and Commercial Law Section. His law practice included substantial commercial law and bankruptcy work. In 1982 he was appointed as a United States Bankruptcy Judge. Judge Clark has been a Visiting Associate Professor of Law at the University of Utah, College of Law, and an Instructor of Advanced Business Law at the University of Utah, Graduate School of Business. He has authored articles on the subjects of bankruptcy and commercial law which have appeared in state and national publications. He is the Vice President and President-elect of the National Conference of Bankruptcy Judges. Judge Clark chairs the Board of Trustees of the National Conference of Bankruptcy Judges Endowment for Education. He is a member of the Bankruptcy Education Committee of the Federal Judicial Center and is a Fellow of the American College of Bankruptcy.

[1]See, 7th Edition, Official Guidebook and Map, The Colonial Williamsburg Foundation, Williamsburg, Virginia.

Committee is composed of the President, Immediate Past President, Vice President, Secretary, and Treasurer. The NCBJ adopts policies for the good of the bankruptcy system and is careful to avoid positions on issues on which bankruptcy system and is careful to avoid positions on issues on which bankruptcy judges may need to rule.

Frequently the NCBJ is asked by Congress to provide testimony on substantive issues. The NCBJ tries to respond by recommending judges and others who can fully present all positions on every side of the proposed legislation or problem being investigated. We take positions on issues that affect delivery of court services. Our most important legislative goal at this time is to persuade the House to pass a Senate bill which would create thirty-two additional judgeships. Courts in the northeast, Atlanta, and the middle districts of Florida and Texas are suffering from a severe shortage of judges.

I was privileged to meet last fall with Chief Justice Rehnquist and the other officers of the NCBJ. I am pleased to report that the Chief Justice understands the importance of bankruptcy and the needs of bankruptcy judges. Our major emphasis was the need to have bankruptcy judges on committees of the Judicial Conference. We seek to have our perspective heard. The Chief Justice has responded positively.

I think the greatest achievement of the NCBJ, aside from legislation, has been the establishment of its Endowment for Education. Being the first chair of its Board of Trustees is my proudest professional achievement. The NCBJ has experienced many years of poverty, but the last eight years have reversed the trend. Having 2,700 registrants at an annual conference makes it difficult not to make money. The trustees of the Endowment decided that this prosperity should be used to benefit all involved with the bankruptcy system. Thus far we have presented an Excellence in Education award to an outstanding bankruptcy professor and an award for the best submission to *The American Bankruptcy Law Journal.* The Endowment has aggressively sought proposals seeking its support of original research studies and investigations of topics material to bankruptcy practice, the bankruptcy courts, and the administration of the bankruptcy system. The Endowment has given grants for a follow-up study on research for the book *As We Forgive Our Debtors* and for a study on the historical and contemporary effects of bankruptcy on women. It has also funded scholarships for six students in the Council on Legal Education Opportunity program ("CLEO"). CLEO provides educationally and economically disadvantaged students an opportunity to attend an ABA-accredited law school.

Finally, and importantly, I thank my colleagues, Judge John H. Allen and Judge Judith A. Boulden, for taking up the slack to allow me to undertake past and future NCBJ endeavors. I hope it is worthwhile to all and that I can do the same for them in the future.

Contracts, Evidence, Due Process, Landlord/Tenant

By Clark R. Nielsen

CONTRACT AMBIGUITY AND INTERPRETATION

Defendant CRS, an engineer & designer, crossclaimed against its co-defendant, Skyline, the contractor, in an action for personal injuries caused by a negligently designed and constructed storm drain. CRS claimed that under the contract documents CRS was to be indemnified by Skyline.

Contractual terms are accorded their commonly accepted meanings and the entire contract is considered to determine intent. The interpretation of a contract provision is a legal issue, as is the question of whether or not the contract is ambiguous. If the contract is not ambiguous, appellate review gives no deference to the trial court's interpretations.

In reviewing a claim of indemnity, the agreement is strictly construed against an intent to indemnify. Such an intent must be clear and unequivocal.

The Court's review of the engineering contract between CRS and the owner, and of the construction contract between the owner and Skyline would not be construed to imply an indemnity relationship between Skyline and CRS. CRS is clearly an independent contractor and not an agent of the owner.

Gordon v. CRS Consulting Engineers, Inc., 173 Ut. Adv. Rep. 12 (Ct. App., Nov. 1, 1991) (J. Greenwood).

EVIDENCE, CIRCUMSTANTIAL — FINGERPRINTS

The Supreme Court affirmed the second degree murder conviction of George Wesley Hamilton and rejected his contentions that finger print evidence found at the scene of the crime should be treated with skepticism. Fingerprint evidence, like any other circumstantial evidence, is for the trier of fact to weigh whether or not there is additional evidence. The court has always treated fingerprint evidence like any other evidence, and rejects the view that fingerprint evidence is subject to any reliability problems similar to eye witness identification evidence. Evidence of defendant's fingerprints at the scene presents no such accuracy problems.

State v. Hamilton, 174 Ut. Adv. Rep. 7 (Nov. 22, 1991) (J. Zimmerman)

CRIMINAL, SELECTIVE ENFORCEMENT, EQUAL PROTECTION, DUE PROCESS.

In the prosecution of sex offenders, equal protection and due process of law under the federal and state constitutions, and the right to uniform operation of the law under the Utah Constitution, are not violated by selective enforcement of child sex abuse laws against the petitioners. At best, their argument shows a laxity of enforcement. Laxity in enforcement of the law with respect to others is not a defense to enforcement of the law against petitioners. Their sentences are within the allowable statutory limits. The fact that others might have received a sentence contrary to the statute does not entitle these petitioners to a similarly illegal sentence or punishment.

Herman v. State, 174 Ut. Adv. Rep. 13 (Nov. 26, 1991) (per curiam).

LANDLORD — TENANT, LEASE GUARANTEE

The Utah Supreme Court affirmed an unpaid rent and damage judgment against defendant and for the plaintiff lessor, for defendant's guarantee of his company's rent. When the lessor served a three-day notice on the tenant, Bagel Nosh, to pay the rent or vacate, the notice did not automatically terminate the lease. Non-compliance with the rental payment terminated the tenant's right to continued possession, but did not terminate all contractual rights between the lessor and the lessee under the lease. Olympus Hills continued to recognize the lease and hold the defendant liable as a guarantor of the rent until such time as a replacement tenant was secured. The continuation of the lease is underscored by Bagel Nosh's continuing payment to pay rent for one year after the notice under a later bankruptcy agreement. (see U.C.A. §78-36-10).

By executing an amended lease document, defendant guaranteed the continued payment of rent. Even though defendant did not sign the attached "Guarantee of Lease Agreement", the court found that both parties waived his non-compliance with the condition of signing the guarantee. The amended lease contained a specific provision whereby defendant personally guaranteed the terms of the amended lease. Consequently, there was no error when the court refused to allow defendant to assert these defenses and entered a partial summary judgment against him on these issues.

The Supreme Court also rejected defendant's claim of excessive rental damage because Olympus Hills did not re-let the premises. The trial court apparently found that Olympus Hills did not use its best efforts to re-let the premises, based upon evidence of Olympus Hills' attempts and prospective tenants who were refused because of the financial inadequacy or the desire of a short-term lease. The trial court held that although the efforts were not found to be "best efforts", Olympus Hills made "significant effort" to mitigate its damages. The court restricted defendant's liability to that period of time at which Olympus Hills could have re-let the premises. Although a landlord must take "commercially reasonable" steps to mitigate its rental losses and seek to re-let the premises, the court viewed the trial court's ruling as applying a higher standard than the traditional "best efforts" approach. The court suggested that the trial court's limitation on damages was improper and was to defendant's benefit and not his detriment. Therefore, any error was harmless.

Olympus Hills Shopping Center v. Landes, 174 Ut. Adv. Rep. 3 (Nov. 22, 1991) (J. Howe).

JURISDICTION, PERSONAL — GENERAL APPEARANCE

A motion to dismiss a complaint on the grounds of inconvenient forum constitutes a general appearance which gives the court personal jurisdiction over the defendant.

Defendant conceded jurisdiction when he requested the court to defer to another court of concurrent jurisdiction. Such a motion constitutes a general appearance and not a special appearance. Having submitted to the jurisdiction of the court, defendant could not thereafter interpose a "special appearance". He waived any potential defect in the court's personal jurisdiction over him.

Barlow v. Cappo, 174 Utah Adv. Rep. 18 (App. Ct., Nov. 21, 1991) (J. Garff).

PRESERVING ISSUES FOR APPEAL

A judgment for computer equipment supplied by manufacturer NEC to its dealer Rebel was affirmed by the Utah Court of Appeals. Rebel's president ordered $63,941 of equipment from NEC and a Rebel's employee asked for an expedited shipment to its Orem store. Upon arrival of the shipment, a Rebel employee directed a portion of the goods to Rebel's Idaho franchisee. The computer goods then became embroiled in bankruptcy and in Rebel's dispute with its franchisee, and were never recovered by Rebel or by NEC. In response to NEC's claim for the unpaid goods, Rebel alleged NEC's failure to mitigate damages because it did not perfect a security interest in the goods and secure their return from Idaho.

The appellate panel held that Rebel did not adequately articulate at trial the theory of NEC's contractual duty to mitigate damages. The mere mention of an issue in the pleadings without any evidence or legal argument at trial is insufficient to preserve the issue for appeal. The issue must be raised, even if indirectly, to a level of consciousness such that the trial judge can consider it. Even considering the argument, Rebel failed to introduce any evidence which the Court could have used in calculating a reduction of damages due to NEC's failure to mitigate.

LeBaron & Assoc., Inc. v. Rebel Enterprises, Utah Ct. App. 910120-CA, (December 18, 1991) (J. Billings, w/J. Jackson and J. Orme concurring).

UNEMPLOYMENT COMPENSATION AND DRUGS IN THE WORKPLACE

An Air Force employee's conduct was not "culpable" and, therefore, his dismissal was not for "just cause" to foreclose him from unemployment benefits. Although the Air Force has a legitimate interest, and right to maintain a drug-free environment and a "zero tolerance" drug policy, "just cause" for dismissal was absent here when, among other things, the employee had voluntarily reported and sought assistance for his drug abuse. The employee had worked for almost twenty years with consistent commendation for his performance and dependability without discipline. Evidence supported the Board's finding that with an isolated incident of marijuana use over two years earlier, the employee had worked drug free. The Board could reasonably find that drug use would not have been repeated given the exemplary work history, the employee's demonstrated desire to distance himself from drugs and the isolated nature of past use, the Board's finding of termination without just cause was reasonable and rational.

Dept. of Air Force v. Swindler, 175 Utah Adv. Rep. 63, (Utah Ct. App., Dec. 6, 1991) (J. Orme, with J. Jackson and J. Russon concurring).

DRAM SHOP ACT, LIABILITY TO INTOXICANT

The Dramshop Act (Utah Code Ann. § 32A-14-101 (1991) creates a cause of action for damages to those injured by a person's intoxicated conduct but does not provide the same relief to the intoxicant. Plaintiff Horton consumed numerous drinks at the defendant clubs, even though obviously and extremely intoxicated. Horton was permanently disabled when he fell and struck his head while intoxicated. Although a minority of states have allowed the intoxicant a right of recovery, the majority of states do not. The plan language of Utah's statute does not provide any basis to conclude that the alcohol provider should also be held strictly liable to the intoxicated consumer.

Horton v. Royal Order of the Sun, 175 Utah Adv. Rep. 4 (Dec. 4, 1991) (J. Zimmerman).

DRAM SHOP ACT, PRIVATE, SOCIAL GATHERINGS

According to the Utah Court of Appeals, strict liability under the Dram Shop Act (Utah Code Ann. § 32A-1-1, et seq.) does not apply to alcohol furnished by a social host in a noncommercial, social setting. Defendants purchased and consumed two six-packs of beer at Graham's home, Wenkel drinking at least 8 of the cans. The next morning, while leaving Graham's home Wenkel struck plaintiff's vehicle while it was parked in plaintiff's driveway. In her damage action, plaintiff alleged that Graham was liable for her injuries under the Dram Shop Act. When her Dram Shop claim against Graham was rejected by the trial court, plaintiff also attempted to amend her Complaint to allege Graham's common law negligence. The trial court denied her motion to amend.

The Court agreed that the language and history of the Act extends liability only to the commercial setting notwithstanding the Act's broad provisions and stated public policy. Specific statutory definitions limit liability to persons who provide alcohol at an alcohol-related business.

Also, the refusal of the plaintiff's motion to amend her complaint was not prejudicial when over 2 years had passed since the initial complaint was filed and in light of *Beach v. U. of U.*, 726 P.2d 413 (Ut. 1986).

Sneddon v. Graham, 175 Utah Adv. Rep. 13 (Ut. App. Nov. 25, 1991) (J. Jackson, with J. Billings and J. Orme concurring).

WAIVER OF ISSUES IN THE TRIAL COURT PRECLUDES THEIR CONSIDERATION ON APPEAL

The Court of Appeals affirmed a jury's determination that the deceased made lifetime gifts of certain certificates of corporate stock to his long time friend who also served as the decedent's trustee and personal representation. The beneficiaries of the estate asserted errors in the admission of parol evidence, the refusal to admit other evidence, and a refusal to apply estoppel to set aside the intervivos gifts. The beneficiaries did not appeal from the jury's verdict or the judgment thereon but, instead, from the denial of a motion for new trial.

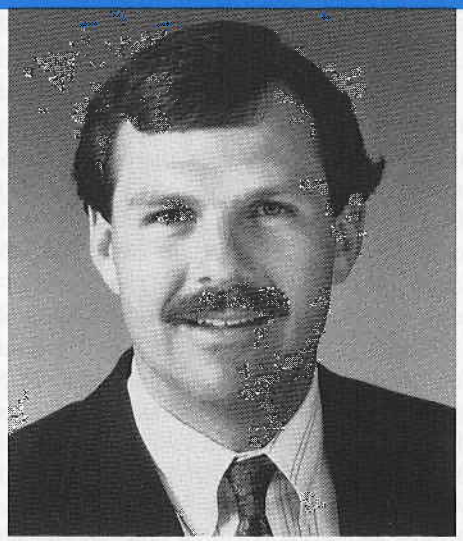
The Appellate Court held that (1) the

issues had not been adequately raised or preserved in the trial and, therefore, were not preserved for appeal, (2) the failure to object to evidence at trial waived any objection and (3) the failure to plead estoppel waived that defense.

The court also held that appellants had not preserved on appeal their claim that they were precluded at trial from showing appellees' confidential relationship to the decedent and breach of fiduciary duty. Appellants did not argue this point in their appellants' brief but were allowed to add the argument after appellee had filed his brief. The Court held the issue was waived at trial by failure to object to a Motion in Limine, and waived on appeal because the issue had not been mentioned in appellants' docketing statement.

NOTE: This decision suggests a stricter interpretation of docketing statement in the Court of Appeals. Generally, an appellant has not been precluded from raising issues not raised in the docketing statement. Under Utah R. App. P. 9, the docketing statement has been used by the courts as a tool to verify jurisdiction and generally evaluate the appeal for calendaring purposes. Counsel on appeal may now need to be more specific in identifying the issues at the early stages of the appeal before briefing. This may present a problem for new counsel who, as yet, is unfamiliar with the record and legitimate issues to be raised. Here, the failure to identify the issue in the docketing statement was aggravated when appellant waited until after briefing to present the issue. However, the court does not discuss whether the appellee was at all prejudiced by the late joint briefing.

In re the Matter of the Estate of Justheim, Knight v. Ebert, Utah Ct. App., 910244-CA (Nov. 29, 1991) (J. Jackson, with J. Billings and J. Orme concurring).



Young Lawyers Section Just Around the Corner

By Mark S. Webber
Secretary, Young Lawyers Section

The Young Lawyers Section will be holding its elections for the 1992-93 year during March and April. Nominations for the offices of President-Elect, Secretary and Treasurer open on March 18, 1992. These officers meet on a regular basis to organize and carry out the activities of the Section. The duties of these officers include:

President-Elect:

The President-Elect position requires a three-year commitment: one year as President-Elect, one year as President of the Section, and one year as Past President of the Section. The President-Elect is a member of the Executive Council and chairs the Long-Range Planning Committee, as well as acting as president in the absence of the President and attending Bar Commission meetings when the President is unable to attend. The President-Elect automatically succeeds to the office of President of the Section during the 1993-1994 year. The President-Elect also performs such other duties as may be delegated by the President.

Secretary:

The Secretary of the Section serves a one-year term of office and is responsible for keeping minutes of all meetings, sending out notices of meetings, preparing agendas and serving as an administrative assistant to the President. The Secretary also is a member of the Executive Council and supervises and serves as a liaison to two or more committees of the Section. The Secretary may also perform such other duties as may be delegated by the President.

Treasurer:

The Treasurer chairs the Finance Committee of the Section, prepares an annual budget, submits quarterly financial reports to the Executive Council and handles all financial matters of the Section under the direction of the President. The Treasurer is a member of the Executive Council and also supervises and serves as a liaison to two or more committees of the Section. The Treasurer may also perform such other duties as may be delegated by the President.

Below is a summary of the election rules.

1. The President-Elect, Secretary and Treasurer shall be elected by the general membership of the Section.
2. A nominee for any office must be a member in good standing of the Utah State Bar.
3. To be eligible for the office of President-Elect, the candidate shall not reach the age of 36 prior to July 1, 1994. To be eligible for the office of Secretary or Treasurer, a candidate must not turn 36 prior to July 1, 1992. If a candidate will turn 36 prior to the above applicable date, but has not been admitted to a state Bar for more than five years during the term of office, he or she is still eligible to run for that office.
4. Nominations for these offices are being accepted from March 18, 1992 through March 25, 1992. Any qualified person wishing to be elected may be nominated by a petition bearing the signatures of three members of the Section who are in good standing. Nominations must be received by the current President of the Section, Charlotte L. Miller, Watkiss & Saperstein, 310 South Main Street, 12th Floor, Salt Lake City, UT 84101, by 5:00 p.m. on March 25, 1992, who will also serve as the election judge. Nominations should be hand-delivered or mailed to be received by March 25, 1992.
5. Each nominee must submit a written

statement which contains the candidate's biography, qualifications and platform ("Platform Statement"). The Platform Statement should be submitted to the President in final form, ready to be photocopied, by 5:00 p.m. on March 26, 1992. The Platform Statement will not be retyped by the election judge if it is not in final form. The contents of any Platform Statement submitted will not be disclosed to other candidates by the election judge prior to 5:00 p.m. on March 26, 1992. The Platform Statement should not exceed a one-sided single page of 8-1/2 x 11 inch paper. No changes to the Platform Statement will be allowed after 5:00 p.m. on March 26, 1992.

6. Officers shall be elected by secret mail ballot by all members of the Section. Ballots will be counted on April 19, 1992, and election results announced by April 20, 1992.

7. Each candidate may obtain one mailing list of the Section's membership at the cost of the Section.

8. The new officers of the Section will take office at the 1992 Annual Meeting of the Utah State Bar.

9. A copy of the complete Election Rules can be obtained from Charlotte L. Miller, Watkiss & Saperstein, 310 South Main Street, 12th Floor, Salt Lake City, Utah 84101.

The Executive Council is currently considering amending these eligibility requirements to correspond with the new ABA eligibility requirements set forth in its Bylaws. According to the ABA Bylaws, since President-Elect is a three year commitment, eligibility for that office would terminate at the adjournment of the ABA Annual Meeting following the candidate's thirty-fourth birthday. Eligibility for Secretary or Treasurer would terminate at the adjournment of the ABA Annual Meeting following the candidate's thirty-sixth birthday. If a candidate is over the applicable ages but has been admitted to practice for less than three years, that candidate is still eligible to run for that office.

ELECTION TIMETABLE

Nominations Open	March 18, 1992
Nominations Close	March 25, 1992
Platform Statements Filed	March 26, 1992
Platform Statements and Ballots Mailed	March 30, 1992
Balloting	March 31–April 16, 1992
Election Results Announced	April 20, 1992

This year the Section also will be appointing a District Representative. Utah and Nevada are both in the district, so every other year Utah has the opportunity to elect the representative. The representative acts as the conduit between the ABA and the Utah and Nevada affiliates. The representative will serve on the Executive Council Committee for the ABA and will attend four ABA meetings during the year. Two years ago Kimberly K. Hornak of Utah was the representative, and last year Bonnie Bulla of Nevada was the representative. If you would like to talk to either Kim or Bonnie about this position, you can contact Kim at 363-7900 and Bonnie at (701) 386-0000. Anyone interested in this position should contact one of the Section officers by March 15, 1992.

Charlotte L Miller President 363-3300	Keith A. Kelly President-Elect 532-1500
Mark S. Webber Secretary 532-1234	James C. Hyde Treasurer 532-1234

Richard A. Van Wagoner
Past-President
521-9000

We encourage all young lawyers to actively participate in the upcoming elections.

YOUNG LAWYERS ENTER THE VIDEO AGE

A significant amount of the time and energy output of the Young Lawyers Section of the Bar is spent educating the public on the impact of law on their daily lives. That education has often taken the form of pamphlets, seminars, public forums and more individually directed activities like the Tuesday night bar. The newest tool being used by YLS committees is video.

The Pro Bono Committee of the Young Lawyers Section is currently seeking funds to produce three video tapes to supplement the Tuesday Night Bar program. Pro Bono committee chair Kristin Brewer says the tapes are intended to reach people who might be unable to attend the Tuesday night sessions at the Law and Justice Center. The tapes will cover some of the areas most often asked about including domestic relations and small claims court. Brewer says the committee is considering including an entire mock small claims proceeding on one of the tapes. Video, she says, may prove to be a better way to convey the small claims process than a more traditional brochure. Brewer intends to keep the budget low by using real attorneys rather than actors and by using members of the bar to script the video. In order to assure quality and the graphics necessary to keep the public's attention, Brewer does plan on hiring a production company to create the final product.

The Young Lawyers Section has also participated in the preparation of two video tapes on domestic violence. The Section has contributed money and several young lawyers, including Joy Douglas, Linda Barclay and Stephen Hale, have participated in the process of preparing to produce the tapes. The tapes are a product of the Domestic Violence Outreach Project which is a joint project of the Diversity Committee of the Utah Bar Association and Women Lawyers of Utah.

The first video tape will be approximately ten minutes long and will explain the procedure for obtaining a civil protective order. The second video will explain the criminal proceedings and treatment alternatives under the Cohabitant Abuse Procedures Act as well as treatment programs available to abuse victims. Unlike the videos proposed by the Pro Bono committee, the domestic violence videos will include some budget expenditures for actors, music, and locations. The cost to the committee after in-kind contributions is approximately $18,000. Donations have been provided by the Young Lawyers Section, the Utah Bar Foundation and the Salt Lake County Bar. The Project is seeking donations from members of the Bar and law firms to cover the remaining $2,500. For more information call Joy Douglas at 532-2666.

APPLY NOW FOR DISTRICT REPRESENTATIVE OPENING

ABA/Young Lawyers Division District Representative will be appointed by the Young Lawyer Section Executive Committee by March 7. If you are interested in this position, contact a Young Lawyers Section Officer or executive committee member. See Mark Webber's officer's message in this issue for more information.

UPCOMING BROWN BAG SEMINARS

The Young Lawyer's Section of the Utah State Bar is sponsoring the following Brown Bag luncheons at the Law and Justice Center:

February 20, 1992 — 12:00 noon
"Trial Preparation: Common Pitfalls to Avoid"
Approved for 1 hour general credit

April 29, 1992 — 12:00 noon
"Lawyers and Non-Lawyers in Business"
Speaker: Leslie Francis, Professor, University of Utah College of Law
Approved for 1 hour ethics credit

YLS EXECUTIVE COMMITTEE MEMBERSHIP ROSTER

In addition to the officers listed in Mark Webber's article in this edition of the Barrister, the Young Lawyers Section Executive Committee also includes:

Mark M. Bettilyon – 532-1234
Kristen Brewer – 532-1036
Harry Caston – 521-4135
David J. Crapo – 521-5800
Leshia Lee Dixon – 532-5125
M. Joy Douglas – 532-2666
Kimberly K. Hornak – 363-7900
Gordon K. Jensen – 964-8228
Glinda Ware Langston – 963-1456
Larry R. Laycock – 533-9800
Lorrie Lima – 265-5520
Steven T. McMaster – 532-3200
Scott C. Monson – 534-1576
Joann Shields – 537-5555
David W. Steffensen – 521-9000
Lisa J. Watts – 538-1032
Mary J. Woodhead – 363-3300
Brent D. Wride – 532-1500
David W. Zimmerman – 532-1234
Gregory N. Skabelund – 752-9437
Kathryn Dean Kendell – 394-5783
Linda Barclay – 373-6345
Micheal A. Day – 637-4892

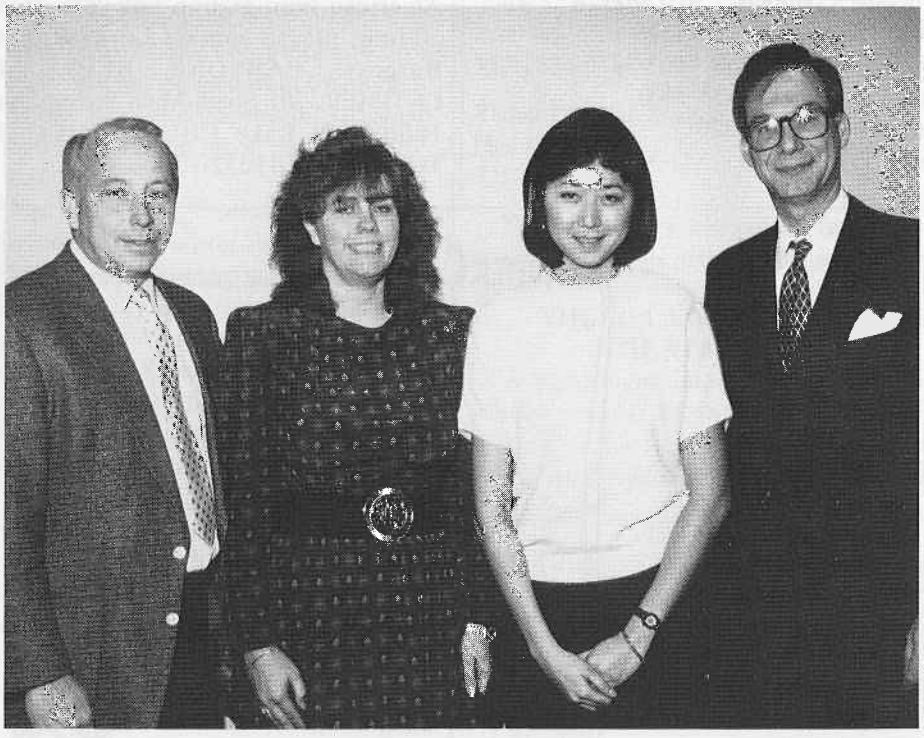
The American Immigration Lawyers Association is a voluntary Bar Association of over 3,000 members, lawyers and law professors practicing and teaching in the field of immigration and nationality law. The Utah Chapter of the American Immigration Lawyers Association has been chartered since June, 1990. the Utah chapter meets on a monthly basis and many of its monthly meetings are accredited by the Utah State Bar for continuing legal education accreditation. If you are interested in attending an AILA Utah chapter meeting or in obtaining additional information concerning the American Immigration Lawyers Association, please contact Lorna Rogers Burgess, PARSONS BEHLE & LATIMER, 201 South Main Street, Suite 1800, Salt Lake City, Utah 84111. Telephone: (801) 532-1234.

Community Service Scholarships

The Utah Bar Foundation will award its second annual Community Service Scholarships in the spring of 1992 — one to a Brigham Young University law student and one to a University of Utah College of Law student. Students applying for these scholarships must have participated in and made a significant contribution to the community by performing pro bono services in such organizations and agencies as: Legal Aid, Legal Services, Travelers Aid Salt Lake Community Shelter and Resource Center, United Way, The Children's Center, The Family Support Center, Guadalupe School, Salt Lake Detention Center, Odyssey, Bennion Center, Law Related Education, and similar organizations.

Applicants must provide a resume to the Utah Bar Foundation and set forth the service performed. Identify the organization or agency that was the beneficiary of such services and set forth the names (at least two) of those individuals who can be contacted concerning that service. Each scholarship will be $3,000. The application deadline is April 1, 1992.

Submit resumes to: Utah Bar Foundation, 645 South 200 East, #204, Salt Lake City, Utah 84111, Attention: Zoe Brown.



Pictured above are Rosemond V. Blakelock (BYU) and Hong Thi Tran (U of U), recipients of 1991 Bar Foundation scholarships with H. Reese Hansen (left), Dean BYU Law School, and Lee E. Teitelbaum (right) Dean U. of U. College of Law.

The Grant Application Process

In 1991 the Utah Bar Foundation received over $200,000 through the IOLTA (Interest On Lawyers Trust Accounts) Program. Those funds will be distributed later this year to various organizations as grants for the following purposes:

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

No single purpose is intended to be fostered to the total exclusion of any other purpose.

The Bar Foundation Trustees decide which organizations seeking grants receive funds and determine the amount to be disbursed. The current trustees are Hon. Norman H. Jackson, President, Ellen M. Maycock, Vice-President, James B. Lee, Secretary-Treasurer, Richard C. Cahoon, Stephen B. Nebeker, B. L. Dart, and Carman E. Kipp. The Trustees review and consider grant applications in June of each year. The deadline for submitting grant applications is May 31.

The Trustees may consider grant requests that are not made as part of the yearly grant cycle, but only in the most urgent circumstances. However, the Trustees prefer to consider all grant applications together in June of each year so that the funds available may be equitably allocated among the many deserving organizations.

Organizations seeking grants may obtain application forms from Ms. Zoe Brown, Executive Director, at the Utah Bar Foundation office in the Utah Law and Justice Center, 645 South 200 East, #204, Salt Lake City, Utah 84111 (531-9077).

The application is simple, consisting of a cover sheet and a financial budget form, supported by a narrative proposal not to exceed ten pages. The Trustees prefer grant applications which are specific about the purpose of the grant and how the funds will be used if the grant is approved. The

Trustees require grant recipients to report on the use of the grant funds.

Recipients of large grants in recent years include Legal Aid Society, Utah Legal Services, Law Related Education Project, and Legal Center for People with Disabilities.

CLE CALENDAR

DISCOUNT VIDEO MONTH

All during the month of February Utah State Bar CLE videos will rent for the low price of $10.00 per week. This is $20.00 off of the regular price. Take advantage of this offer to get ahead on your CLE credit at low prices. Tapes must be taken out during the month of February to receive this discount and regular deposits and late fees apply. Also remember that at least three Bar members must view video-tapes together to claim CLE credit for the viewing. Call Monica or Teri at 531-9077 to reserve your tapes.

HOW TO DIAGNOSE AND TREAT YOUR BANK OR THRIFT CLIENT

A live via satellite seminar. This program will detail proven methods on how to perform a due diligence assessment of your client and how to design an action plan to address specific problems. The program is designed for attorneys, accountants, and other consultants to financial institutions, bank directors and officers, as well as the regulators. The issues explored are important for all financial institutions, large or small, public or closely held.

CLE Credit: 6.5 hours
Date: February 11, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

THE CIVIL RIGHTS ACT OF 1991

A live via satellite seminar. The Civil Rights Act of 1991, in addition to overruling or limiting a number of U.S. Supreme Court decisions, has significantly amended the nation's equal opportunity law and created far-reaching new rights and remedies. This seminar will examine these important changes and issues emerging under the Act.

CLE Credit: 4 hours
Date: February 13, 1992
Place: Utah Law & Justice Center
Fee: $150 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

CONSUMER BANKRUPTCY

This course, co-sponsored with ALI-ABA, is designed to assist counsel who are not specialists in representing consumer debtors or their creditors. The course is structured around the question of whether a client will be better served by filing a chapter 7 liquidation case or a 13 case and plan. The advantages and disadvantages of each chapter, as well as the opportunity for creditors to challenge or have an effect on the debtor's choice of chapters, will be fully explored by the faculty.

CLE Credit: 14 hours
Date: February 13-14, 1992
Place: Olympia Hotel, Park City
Fee: $505
Time: 9:00 a.m. to 5:00 p.m.

PROBATE AND ESTATE PLANNING WORKSHOP

This New Lawyer CLE workshop will examine the basics of dealing with estate planning and probate issues. The seminar offers a nuts and bolts approach to attorneys with limited practice experience in this area and serves as a basic review course for those attorneys looking to update their skills in probate and estate planning.

CLE Credit: 3 hours
Date: February 19, 1992
Place: Utah Law & Justice Center
Fee: $30
Time: 5:30 p.m. to 8:30 p.m.

UPDATE: IMPLEMENTATION OF THE 1990 CLEAN AIR ACT AMENDMENTS

A live via satellite seminar.

CLE Credit: 4 hours
Date: February 27, 1992
Place: Utah Law & Justice Center
Fee: $150 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

CORPORATE MERGERS & ACQUISITIONS

Cosponsored with ALI-ABA, this two-day advanced course is designed to offer the experienced corporate lawyer an overview of some of the more sophisticated strategies and techniques, as well as the latest developments, in the field of corporate mergers and acquisitions. The program covers (i) tax considerations in structuring the acquisition; (ii) methods of formulating the purchase price; (iii) issues that should be considered by both purchaser's and seller's counsel in negotiating the acquisition of a closely held

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE

1. _____ _____

2. _____ _____

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

_____
Name Phone

_____
Address City, State, ZIP

_____ _____
Bar Number American Express/MasterCard/VISA Exp. Date

_____
Signature

Please send in your registration with payment to: **Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111.** The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

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 lease 48 hours in advance.

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

company; and (iv) special problems that should be considered when acquiring divisions and subsidiaries. This seminar is an excellent opportunity to hear some national experts, with the latest information on mergers and acquisitions, here in Utah.

CLE Credit: 12 hours
Date: March 5-6, 1992
Place: Olympia Hotel, Park City
Fee: $505
Time: 8:00 to 5:00

ISSUES IN BANKRUPTCY DISCHARGEABILITY LITIGATION

A live via satellite seminar. The recessionary economy of the 1990's has created a proliferation of litigation of dischargeability issues. This seminar will guide you through the legal entanglements surrounding these issues.

CLE Credit: 6.5 hours
Date: March 10, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

UTAH STATE BAR 1992 MID-YEAR MEETING

Come down to St. George for this excellent CLE convention. Enjoy the warmth of southern Utah while getting a jump on your CLE requirements for the next reporting period. Watch for mailings on this program and sign up early to insure your registration.

CLE Credit: 8 hours (2 in ethics)
Date: March 12-15, 1992
Place: Holiday Inn, St. George

SUCCESSFUL TEAMWORK IN A PRODUCTS LIABILITY CASE USING SUPPORT STAFF

A live via satellite seminar.

CLE Credit: 6.5 hours
Date: March 17, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

CRIMINAL PROCEDURE WORKSHOP

A New Lawyer CLE Workshop, this program will concentrate on the basics of criminal law practice. It is an excellent course for those looking to refresh their practice skills or for those looking to expand their practice into this area of law.

CLE Credit: 3 hours
Date: March 18, 1992
Place: Utah Law & Justice Center
Fee: $30
Time: 5:30 p.m. to 8:30 p.m.

COUNSELING COMPANIES ON EEO

A live via satellite seminar. This program assembles a nation-wide panel of experienced employment relations lawyers who will address how they counsel companies on emerging EEO issues. This includes coverage of the Civil Rights Act of 1991, the A.D.A., the A.D.E.A., and other employment discrimination law.

CLE Credit: 6.5 hours
Date: March 24, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

CLIP & SAVE

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Bar Counsel	Steve Trost
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Bar Journal Information	Leslee Ron
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Continuing Legal Education	Tobin Brown, Monica Jergensen
Client Security Fund	Leslee Ron
Convention & Meeting Space	Kristen Barlow
Fee Arbitration	Leslee Ron
Financial Information	Arnold Birrell
Group Health Insurance	Teri Ekstrom
Lawyer Referral Service	Diane Clark
Letters of Good Standing	Leslee Ron
LEXIS	Teri Ekstrom
Licensing, Membership	Darla Murphy, Amy Wilkerson
Mailing List/Label Orders	Leslee Ron
Tuesday Night Bar Information	Kristen Barlow

A LAWYER'S GUIDE TO WHAT'S HAPPENING IN FRANCHISING

A live via satellite seminar. A distinguished panel of federal and state franchise regulators and franchise law practitioners will address an array of introductory and intermediate concerns. This program is intended for attorneys representing franchisors and franchisees; for attorneys whose clients may or must turn to franchising; and attorneys whose clients need to be conversant with franchising techniques.

CLE Credit: 6.5 hours
Date: April 7, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

EVIDENTIARY FOUNDATIONS

A live via satellite seminar.

CLE Credit: 6.5 hours
Date: April 8, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

COMPUTER LAW UPDATE

A live via satellite seminar.

CLE Credit: 6.5 hours
Date: April 28, 1992
Place: Utah Law & Justice Center
Fee: $185 (plus $9.75 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

LAWYERS AND NON-LAWYERS IN BUSINESS

This is a Young Lawyers Section brown-bag CLE.

CLE Credit: 1 hour in ETHICS
Date: April 29, 1992
Place: Utah Law & Justice Center
Fee: Brown Bag
Time: 12:00 noon to 1:00 p.m.

UNDERSTANDING FINANCIAL STATEMENTS: ACCOUNTING FOR LAWYERS

A live via satellite seminar.

CLE Credit: 4 hours
Date: April 30, 1992
Place: Utah Law & Justice Center
Fee: $150 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

FAMILY LAW SECTION ANNUAL SEMINAR

CLE Credit: 7 hours
Date: May 15, 1992
Place: Utah Law & Justice Center

CLASSIFIED ADS

For information regarding classified advertising, please contact Leslee Ron at 531-9077.

BOOKS FOR SALE

FOR SALE: MOORE'S FEDERAL PRACTICE AND U.S. CODE ANNOTATED, both current with all Supps and Updates. Call 531-9865.

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ATTRACTIVE OFFICE SPACE AVAILABLE in Union Park area (1200 E. 7000 S.) next to the Holiday Spa. Office sharing with five other attorneys. Window and/or interior office is complete with secretarial and word processing services or space for your own secretary, reception area, copier, telephone, FAX machine and conference room. Close freeway access to all parts of the valley. Please contact Wynn at (801) 566-3688 or David at (801) 268-9868.

Deluxe office space for one attorney and secretary. 4212 Highland Drive. Office share with two other attorneys. Space includes two private offices, reception area, conference room/library, file storage, and much more. Convenient parking immediately adjacent to building for both clients and staff. Call 272-1013.

Newly finished deluxe, professional office space for two attorneys and staff. Approximately 1,300 sq. ft. 7281 South 7th East. Space includes two private offices, reception area, conference room, library, file storage, and much more. Convenient parking immediately adjacent to building for both clients and staff. Call 272-1013.

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POSITIONS AVAILABLE

Major southwestern law firm headquartered in Phoenix, Arizona seeks 2 to 4 year lawyer with experience in mining, water, and public lands law. General transactional experience helpful. Superior academic credentials required. Candidates must be in good standing with their present employer. Salary and benefits are competitive with major, regional law firms. Excellent opportunity for advancement. Please contact Nancy Philippi, Streich Lang, 2100 First Interstate Bank Plaza, Phoenix, Arizona 84003.

Small Salt Lake City firm with corporate, commercial, estate planning, bankruptcy, and civil litigation practice seeking at least one experienced attorney in these or related areas of practice with which to associate in office sharing or more formal arrangement. Call (801) 532-7858 for information.

STAFF ATTORNEY specializing in services to clients identified as mentally ill; prefer experience in public interest law, or mental disabilities law; Utah State Bar membership required; demonstrated ability to effectively communicate both orally and in writing; federal court experience desirable. Submit resume and a brief narrative of personal motivation for seeking the position to: Legal Center for People with Disabilities, 455 East 400 South, Suite 201, Salt Lake City, Utah 84111. Equal Opportunity Employer.

Ten lawyer SLC firm seeking hard working attorney with three-plus years experience. Good academic record and references are important. Firm has broad civil practice ranging from general corporate and real estate to a variety of litigation. All replies will be kept confidential. Respond to Box A-2, Utah State Bar, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111.

Salt Lake Firm seeking full time Tax Attorney, LLM preferred but not required. Send resume to Box M-2, Utah State Bar, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111.

POSITIONS SOUGHT

Ex-Utah resident practicing in Denver seeks position in Salt Lake City. Seven and a half years commercial litigations experience, including securities, commodities, broker/dealer. Licensed in Utah and Colorado. Inquiries must be confidential. For copy of resume or interview: (303) 866-9412 work or (303) 423-2518 home.

MISCELLANEOUS

TIRED OF LAW? Are you seriously interested in an alternative that pays much more and doesn't have the headaches and hassles? Would you like to know of a way within the next 3 to 9 months to at least replace and probably exceed your current income and earn money while you sleep? Please call RANDY KLIMT (801) 582-1728.

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INTERNATIONAL CULTURAL ENRICHMENT OPPORTUNITY for your child and family. Students with two years study in French, German or Spanish can live for 3-4 weeks during the summer with a family in France, the Ivory Coast, Germany or Spain. Excellent opportunity to really learn a foreign language and experience a foreign culture. Total cost, exclusive of spending money, is $1600-$1800. Program to Russia also available. No study of Russian is required. AND/OR be a host family to a foreign student for 3-4 weeks during the summer for a great experience. Arrangements through NACEL, a non-profit foreign exchange program. Contact David at 268-9868 or Karma at 261-4121.

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