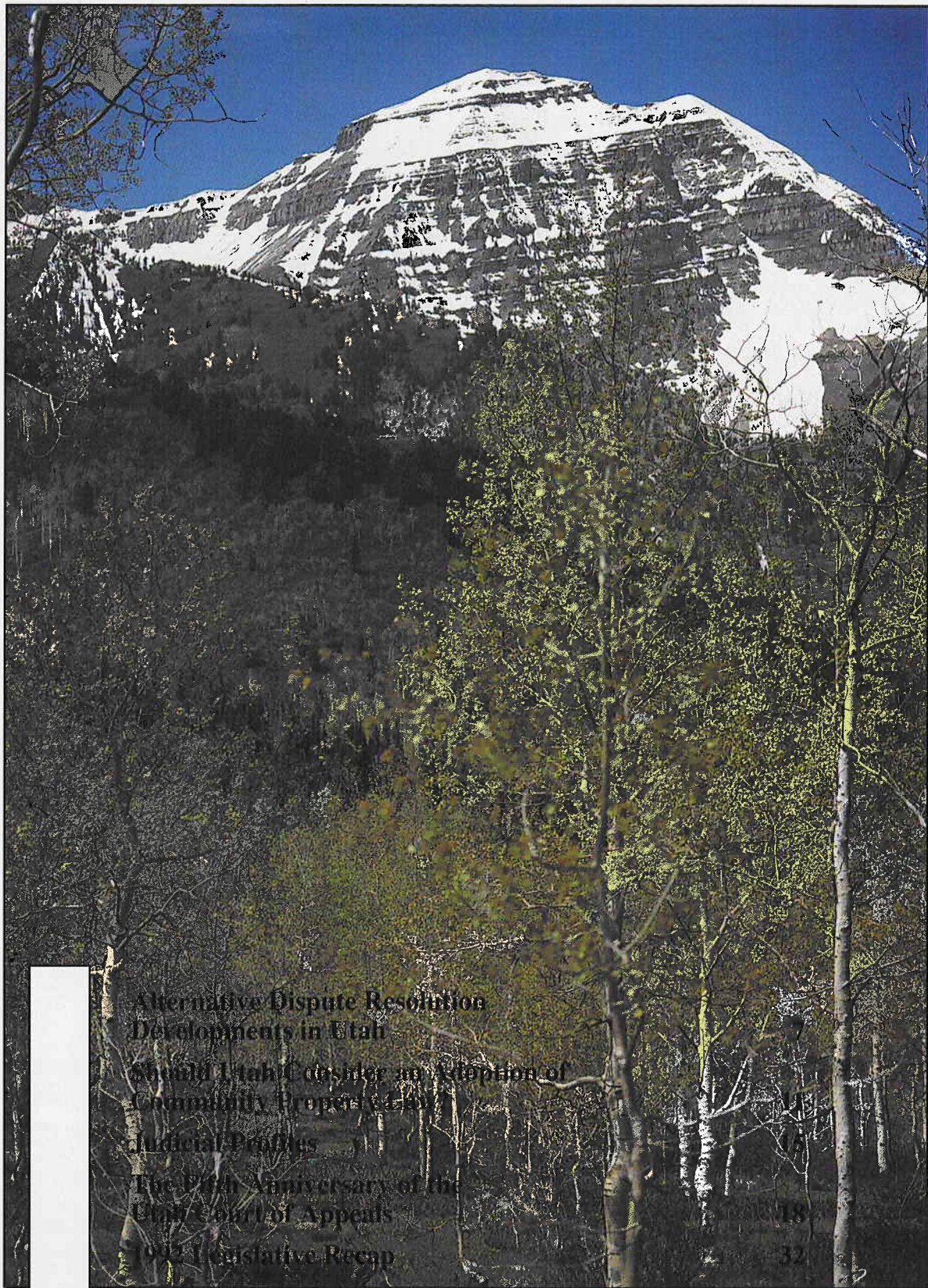


UTAH BAR JOURNAL

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April 1992



Alternative Dispute Resolution
Developments in Utah

Should Utah Consider an Adoption of
Community Property?

Judicial Profiles

The Fifth Anniversary of the
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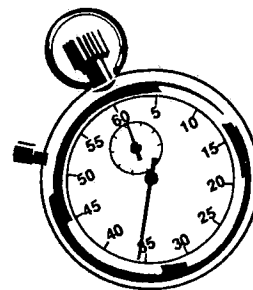
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Vol. 5 No. 4

April 1992

Letters	4
Commissioner's Report	5
<i>by J. Michael Hansen</i>	
Alternative Dispute Resolution Developments in Utah.....	7
<i>by Peter W. Billings, Sr.</i>	
Should Utah Consider Adoption of Community Property Law?.....	11
<i>by Timothy Lewis</i>	
Judicial Profiles	
Judge Regnal W. Garff.....	15
<i>by Terry E. Welch</i>	
Judge Anne M. Stirba	16
<i>by Elizabeth Dolan Winter</i>	
Views from the Bench	
The Fifth Anniversary of the Utah Court of Appeals	18
<i>by Judge Norman H. Jackson</i>	
State Bar News.....	22
Case Summaries.....	30
Legislative Report.....	32
The Barrister	34
Classified Ads	35
Utah Bar Foundation.....	36
CLE Calendar.....	37

COVER: Mount Timpanogos in Springtime, by Harry Caston, Esq., Shareholder, McKay, Burton & Thurman, P.C.

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

Dear Editor:

I would like to correct some misinformation which led Bar Commissioner Snyder, in his report published in the *Bar Journal*, (January, 1992) to question the qualifications and background of the Court Commissioner from the Fifth District.

First, let me address the issue of background. I am a native of Utah with roots which reach past the pioneers. My degrees in Sociology and Law were earned with some distinction at the University of Utah. My children were raised in Utah where I practiced law for fourteen years.

In 1988, I was hired and met all of the qualifications of R.J.A. 3-201 in effect at

that time. The many officials involved in the hiring process were aware of my intention to live in Nevada. It should be noted that even as a resident of Nevada I was physically closer to the St. George Court than was either the District Court or the Juvenile Court Judges whom I served. In addition, I paid Utah State taxes while a resident of Nevada.

In 1990, U.C.A. § 78-3-21 was passed which added a residency requirement to the commissioner rule and allowed two years to comply.

In November, 1991, in anticipation of full-time employment, I moved to St. George at considerable personal expense. In

addition, I have met all of the necessary requirements of residency. A little research, or at the least a phone call, could have avoided the dissemination of false information to my colleagues.

I would like to invite anyone interested in observing a fully consolidated court, which includes a court commissioner, to visit the Fifth District. We welcome informed constructive criticism.

Sincerely,

Marlynn B. Lema
Fifth District Court Commissioner

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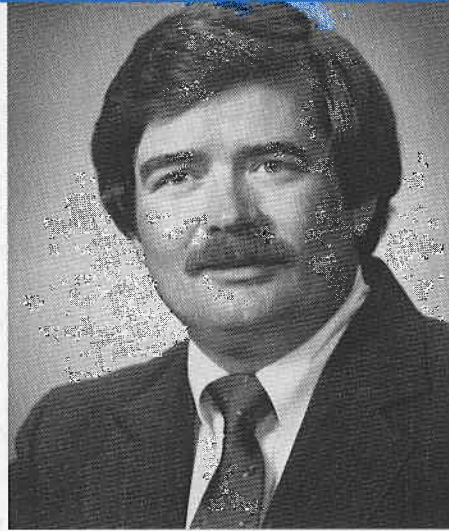
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Too Many Lawyers?

By J. Michael Hansen

In early winter of 1976, during my first year of law school, in the midst of putting in eighteen hour days, *TIME* magazine ran a cover story the substance of which was that America was drowning in a sea of lawyers and taking American business down with it. That was just what I needed on the eve of my civil procedure final. The *TIME* magazine story was not the first, nor was it the last, criticism of the number of lawyers. From Shakespeare's comment in *Richard III* to the effect that "first, let's kill all the lawyers," through Brigham Young counseling members of the L.D.S. Church to avoid lawyers and the legal profession, through *TIME* magazine and other popular mass media, the legal profession has taken its hits. It is popular to lambaste lawyers. Politicians of all stripes have intermittently taken a swipe at the legal profession, including the recent jabs from "great house, nobody home" Quayle. Like the rising and falling of the tides, or as surely as day follows night, we can expect lawyer jokes and periodic attacks on the legal profession.

On February 6, 1992, on what must have been a very slow news day or an attempt to boost circulation, the *Salt Lake Tribune* ran a front page story (which would have been more appropriate on the editorial page), under the headline "More

Lawyers Becoming Utah's Law of the Land." The *Tribune*, noted that "last year the University of Utah cranked out 130 new graduates. The J. Reuben Clark Law School at Brigham Law University unleashed 152 graduates" (emphasis added). The *Tribune* quoted "statistics", source unknown, which stated that "in 1980 there were 2,938 practicing attorneys in Utah — one for every 502 Utahns. Now there are about 5,600 — one for every 299 Utah residents."

John Baldwin, our ever "Johnny-on-the-Spot" Executive Director, after reading the *Tribune* article, reviewed the records of the Bar and compiled the following statistics:

Active Licensed Resident Lawyers	3,857
Active Licensed Non-Resident Lawyers	371
Total Active Licensed Lawyers	4,228
Inactive Licensed Lawyers	345
Inactive Licensed Non-Resident Lawyers	780
Total Inactive Licensed Lawyers	1,125
Total Active and Inactive Lawyers	5,353

In short, there were 3,857 active licensed resident lawyers in the State of Utah for a population of approximately 1,750,000 people, or 1 attorney for every 454 residents. In 1989 the national average was 360 residents per attorney.

In contrast to the *Salt Lake Tribune* article, on February 4, 1992, The *Wall Street Journal* published a chart showing the ratios of attorneys in private practice to the potential "client base." The *Wall Street Journal* ranked Utah 37th out of 50 states in the number of lawyers in private practice in relation to the potential client base, basing that calculation on an American Bar Foundation report showing 1 Utah lawyer for every 621 "potential clients." The national average was 1 lawyer for every 473 people. While some undoubtedly think that even one lawyer is one too many, the statistics do not support a conclusion that Utah has more than its share of lawyers.

There is, however, no doubt that the legal community in Utah is growing. The increase in the number of attorneys puts added pressure on the Bar with respect to both admissions and discipline. While no formal study has been undertaken by the Bar, it is the general consensus that the "hungry" lawyer is more prone to skirt the edge when it comes to complying with the profession's ethical standards.

Are there too many lawyers in Utah? To the recent law school graduate who is finding it difficult to be hired by a large law firm, the answer may well be "Yes." The lawyer who finds himself without a

job in one of the intermittent law firm shake-ups may well answer "Yes." Undoubtedly, the unsuccessful litigant in civil action would resoundingly answer "Yes." On the other hand, the average wage earner seeking a lawyer and can find no one to take his case for less than \$50.00 to \$60.00 an hour may feel that if there were more lawyers in the marketplace, there would be more price competition resulting in more readily affordable legal services. Furthermore, not every law school graduate must land a job in private practice. Historically, a law degree has proven invaluable to individuals who, rather than wishing to practice law, desire to go into business.

Even if it were determined that there were too many lawyers, what could the Bar do about it? Artificially limit the number of applicants able to take the Bar examination? Put pressure on the University of Utah or Brigham Young University to close down their law schools? Tell the young people of the State of Utah that if they desire to go into the legal profession, they need not apply? Clearly none of these alternatives is acceptable. The marketplace itself must regulate the number of attorneys who practice. All that the Bar can do is to insure that attorneys who practice in Utah have a certain minimal competency and, if ethical violations are found, vigorously prosecute the unethical lawyer.

The canard that there are too many lawyers will, from time to time, reappear. When it does, I remember what my torts professor, Wayne Thode, said in response to the *TIME* magazine article. He told of a meeting he had attended in which the participants were doctors and lawyers. After listening to one physician speaker bemoan the legal profession, Professor Thode stood and reminded those in attendance that at the same time a collection of people had gathered, the great majority of whom were lawyers, to draft the Constitution of the United States, one of the greatest and most enlightened documents in the history of man, the medical profession was curing disease by the methodical and conscientious application of leeches.

Enough said.

The Law-Related Education and Law Day Committee of the Utah State Bar extends to you a special invitation to attend the second annual Law Day Awards Ceremony. This year's theme is "Struggle for Justice" in celebration of the Bicentennial of the Bill of Rights. There will be various presentations, displays, and awards recognizing participants and winners in the various Law Day activities. Please join us in celebrating Law Day 1992.

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