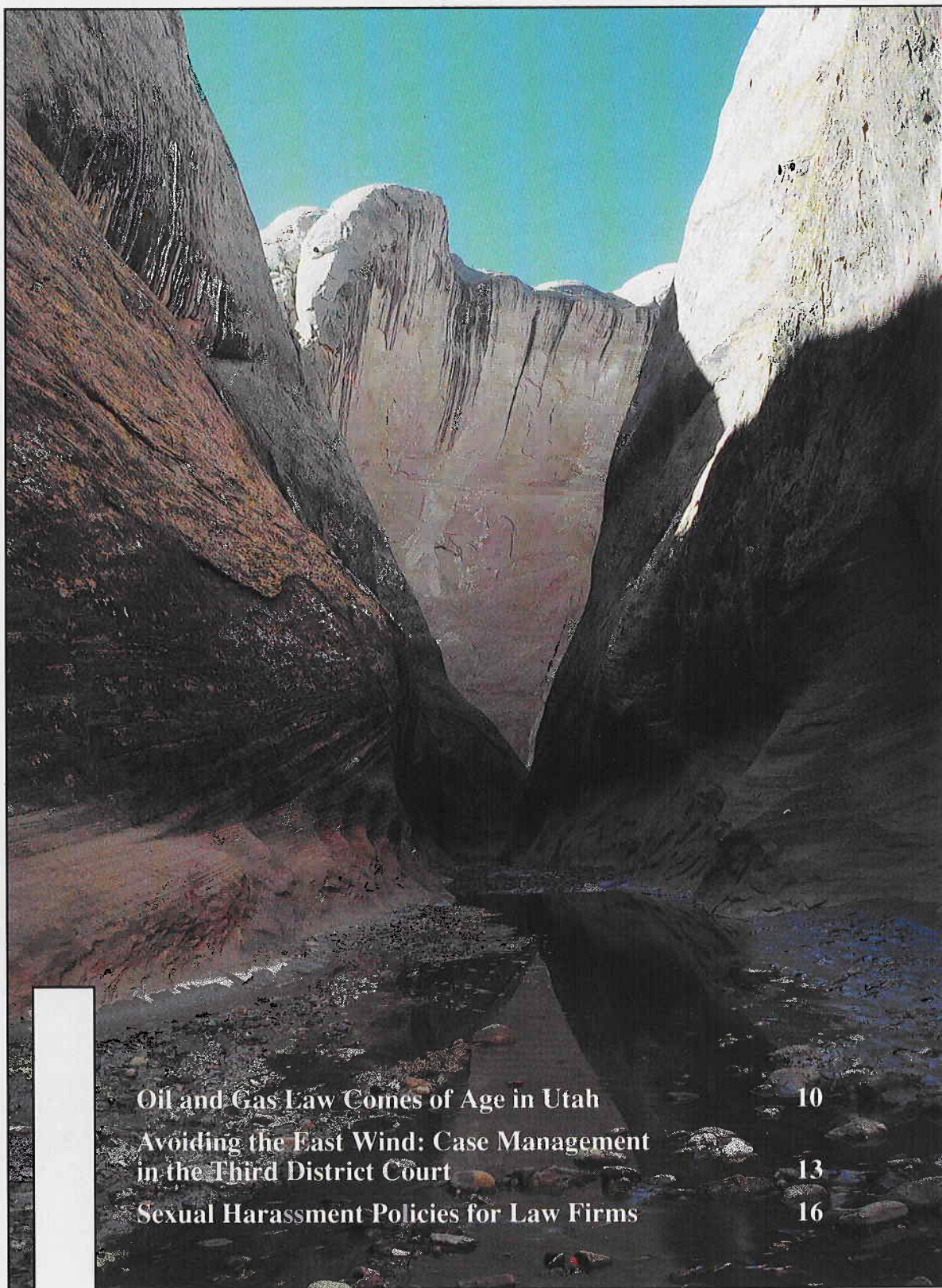


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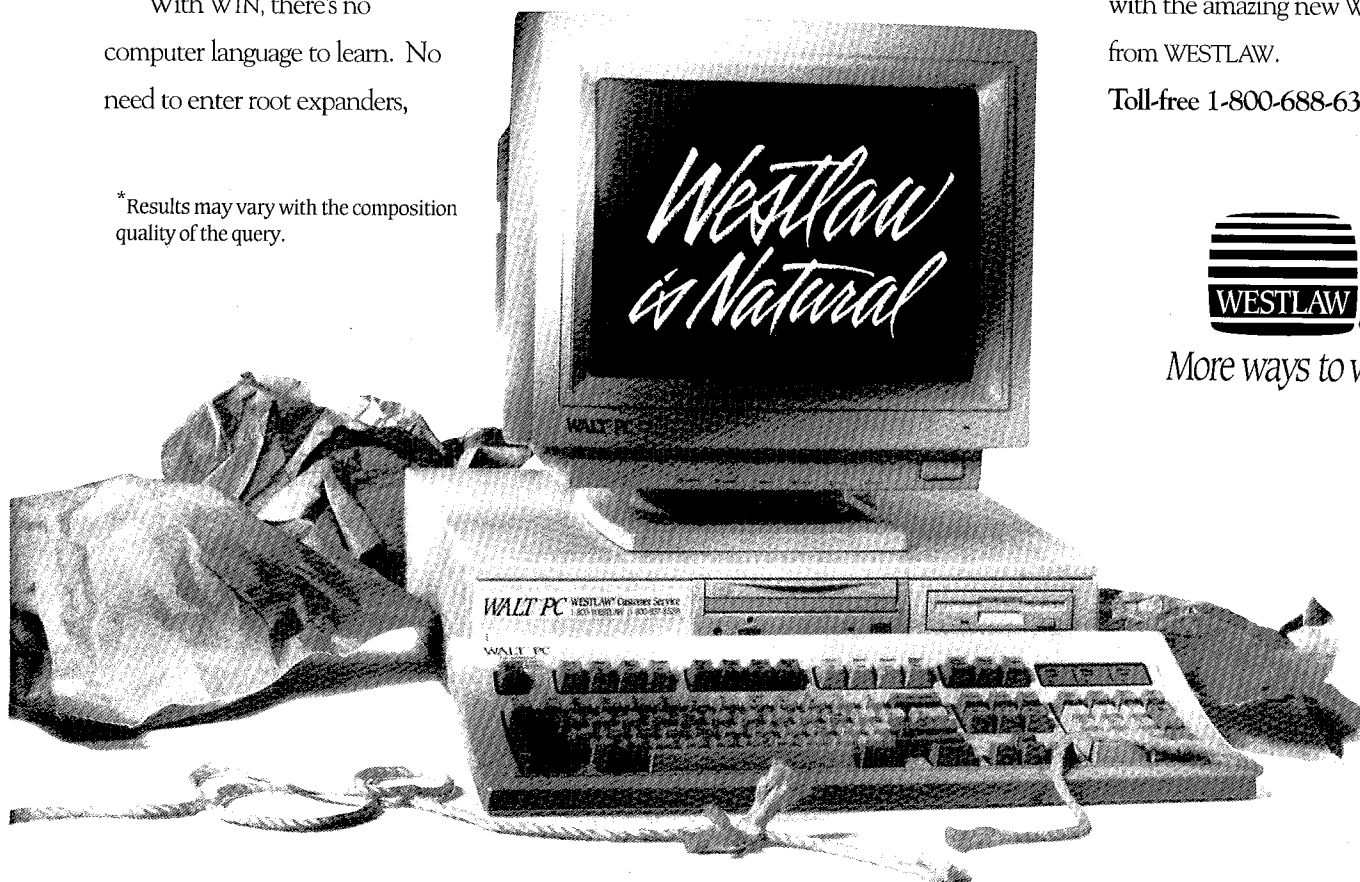
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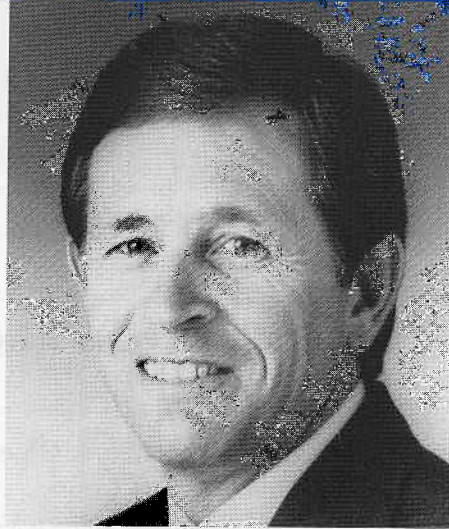
COVER: Capitol Reef National Park, taken by Kent M. Barry, Esq., Assistant Attorney General, Education Division.

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Utah's Legal Flashpoints of the 90's – ADR, Legal Services to the Poor, Increasing Attorney Population and the Unethical Lawyer

By Randy L. Dryer

As I have immersed myself in the first three months of my term as President and as I have discussed the issues facing our profession with Bar leaders from other states, I have reached two conclusions:

First, the problems which have faced practitioners and the organized bar in Utah in recent years have not been as serious and pervasive as those faced in other states; and

Second, our turn is coming!

As we prepare to meet the challenges which have plagued other more populous and less economically prosperous states, I hope we can be proactive, and not reactionary, and make informed and deliberate decisions rather than be overrun by circumstances or outside pressures. As a profession, we need to control our own destiny and not be dictated to by others, be they legislators, members of the executive branch, or even judges.

Controlling our own destiny means anticipating and responding to problems before they become of crisis proportions. In no particular order of importance or

timing, I believe there are four flashpoints which the Bar must and will confront, either by our own volition or by outside forces, within the next three to five years. These flashpoints have become conflagrations in several states and have prompted drastic action in response. We can learn from those who have preceded us. I express no viewpoint on how these flashpoints will or should be dealt with. I merely raise them to alert us to the fact that we need to begin thinking about them now and not wait until someone else frames the issues for us which may predetermine the outcome.

FLASHPOINT ONE — THE EMERGENCE OF ALTERNATIVE DISPUTE RESOLUTION.

The skyrocketing cost of litigation has fueled the search for less expensive ways of resolving legal disputes. Various forms of ADR, primarily from private providers, have flourished in many areas of the country. ADR is in its infancy in Utah and primarily has been left to private market forces for its development. The Bar has no formal policy on the subject and Utah practitioners, to the extent they utilize ADR, do

so in a limited fashion. ADR is undoubtedly the wave of the future and the move to better and more frequently invoke the various forms of ADR in an institutional manner is and will be driven by client and legislative pressures. Businesses throughout the country are signing pledges to turn first to ADR techniques before filing lawsuits against other businesses. Over 60% of the Fortune 500 companies have already subscribed to such pledges.

Each year, ADR legislation has been introduced in the legislature and each new bill is more and more comprehensive and sweeping in its intrusion into the traditional litigation arena.

The legal profession is just beginning to react to this grassroots movement toward ADR. In some states, firms have established arbitration or mediation sections or departments and actively marketed this service to the public. The organized bars generally are behind the curve on ADR, but soon will be forced to catch up.

Colorado, for example, has recently jumped into the arena with both feet. The

