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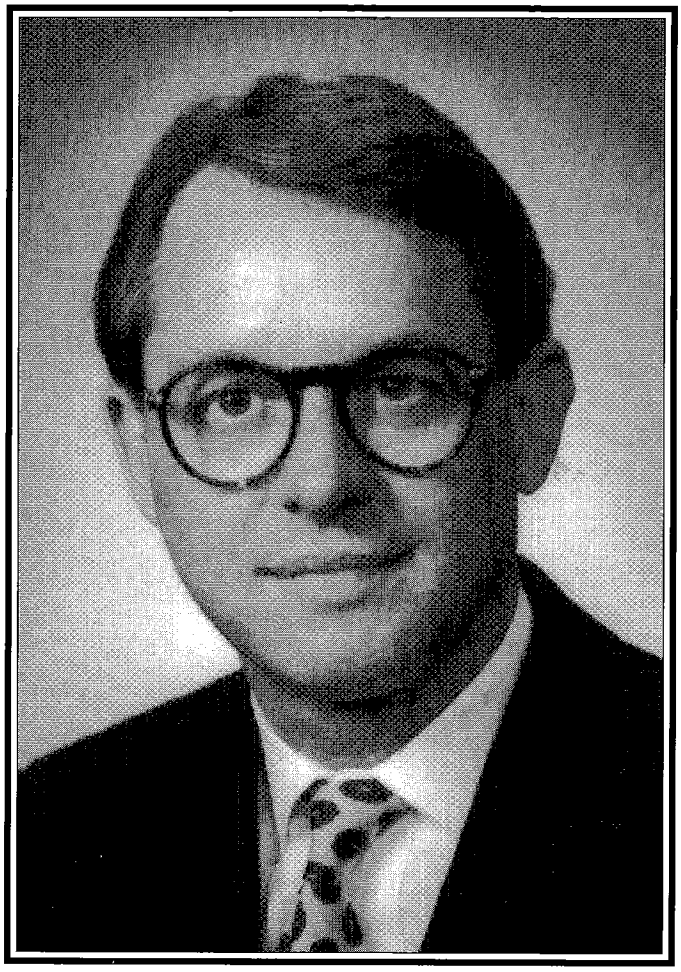

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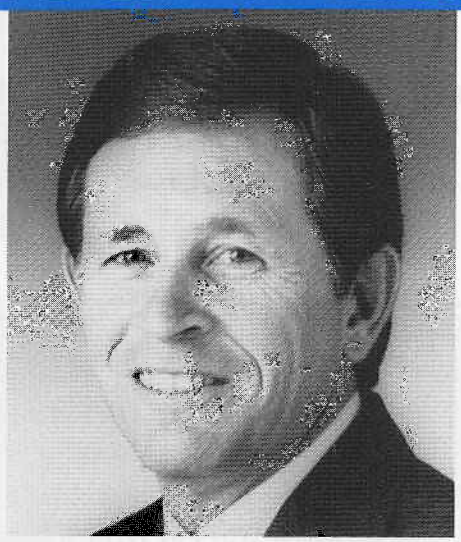

The State of Attorney Discipline in Utah — Too Harsh, Too Lenient or Just Right?

By Randy L. Dryer

The propriety of attorneys policing themselves will always be the subject of heated debate, as will the concomitant issue of whether attorneys are too harsh or too soft in disciplining one another. Members of the public who have been victimized by unethical lawyers often feel the system is too lenient, too time consuming and overly protective. Conversely, many lawyers have commented to me that our disciplinary system is too respectful of citizen complaints (many of which are groundless) and requires the accused lawyer to spend inordinate time and energy responding to even frivolous complaints which are nothing more than a client's sour grapes over an unwanted legal result. Moreover, many bar members wonder whether the Office of Bar Counsel ("OBC") is more interested in putting another notch on the prosecutorial belt than disciplining the truly errant lawyer. In short, we have a classic "lose-lose" system where the likelihood of dissatisfaction by all participants is high. Where is the reality in Utah? Like so many things, I suppose it depends on one's perspective. From my viewpoint, however, having been on the inside of the process for several years as a bar commissioner hearing appeals, I believe the current OBC has struck the appropriate balance between zealous protection of the public and compassion for the membership. This enlightened view, with an emphasis on prevention and rehabilitation rather than punishment, when coupled with adoption of the structural changes being recommended by the Supreme Court's Advisory Committee on Discipline, will significantly improve Utah's disciplinary system.

THE OFFICE OF BAR COUNSEL — ITS APPROACH TO DISCIPLINE

For the first time since 1989, there was no staff turnover in the office. Moreover, the current Chief Bar Counsel, Steve Trost, has been in that position since February of 1990. This continuity has enabled a consistent prosecutorial tone to be developed.

Since the OBC operates independently of the Commission, the tone and attitude is set by the Chief Bar Counsel. From my perspective, Steve Trost has not fostered an overly zealous, "hang'em high" attitude in the office. Rather, Steve has emphasized appropriate deferral of disciplinary matters into alternative rehabilitative programs, such as drug counseling, stress management programs, mentoring etc., whenever possible. These programs are a less restrictive alternative to "yanking someone's ticket" and yet still serve to protect the public. Steve has implemented a number of new programs, including the establishment of a supervising attorney's panel where less serious offenders are placed on supervised probation and receive the benefit of a mentoring relationship with a more experienced member of the bar. Steve has recently proposed an "ethics school," modeled after a program in California which offers yet another preventative and less restrictive alternative to suspension or disbarment. The California ethics school has enjoyed great success. In the three years of its existence, 300 persons have been required to attend the school. Only one "graduate" has been charged with a subsequent ethical violation. The school is the most appropriate in complaints involving neglect, failure to communicate and other practice management areas. The OBC has also conducted a series of half-day ethics seminars throughout the state this year which are designed to identify those areas of most frequent concern for

ethical violations and to provide preventative information to attorneys.

1992 — ETHICAL COMPLAINTS CONTINUED THEIR UPWARD TREND

Despite the prophylactic efforts of the Office of Bar Counsel, ethical complaints by the public against attorneys continue to increase each year. In 1992, the OBC experienced a 45% increase over 1991 in written complaints received. Just over 1,000 formal written complaints were filed with the OBC. This number compares with 692 complaints received in 1991 and 641 complaints received in 1990. All told, the OBC received 3,495 contacts by members of the public, most of which were referred to another agency, committee or office as not constituting a claimed ethical violation.

The OBC issued 189 "notice of complaints" in 1992 which is a 43% increase over 1991.

Perhaps more encouraging, however, is the fact that the number of formal complaints voted by the screening panels (comprised of four attorneys and one lay citizen) decreased by 19% in 1992 from the prior year.

1992 saw 30 formal sanctions being ordered, which resolved a total of 101 formal complaints. This compared with 18 sanctions being ordered in 1991 which resolved 39 cases. This increase was due primarily to the reduction of the case backlog which reduction was made possible by the hiring of a third disciplinary attorney in mid-1992.

ETHICAL HOT SPOTS

If you are male between the age of 40 and 49, are a solo practitioner, reside in the Third District and practice in the domestic relations area, you fall in the high risk category for an ethical complaint being made against you. The vast majority of complaints received involve alleged violations of Rule 1.3 (neglect) and Rule 1.4 (failure to communicate). Proportionately, women attorneys have fewer complaints against them than their male counterparts. In fact, the OBC only issued 4 notices of complaint against women attorneys in 1992.

In 1992, 21 attorneys were privately reprimanded, 6 were publicly reprimanded, 13 were suspended for varying periods of time, 6 were disbarred and 4 resigned with discipline pending. The 10 lawyers who either resigned or were disbarred accounted for the resolution of 69 formal complaints.

THE PROPOSED STRUCTURAL CHANGES

The disciplinary landscape in Utah will most likely dramatically change in the near future. The Utah Supreme Court's Advisory Committee on Discipline, after two years of study, significantly revised the Rules of Discipline to both improve fairness to the accused and upgrade the professionalism of the process. The Committee has also recommended that trial of all disciplinary matters be handled by the District Courts and that the Bar Commission be eliminated from any appellate review. The lawyer/lay citizen screening panels would be retained. The Bar Commission has recommended that an accused attorney may exercise a right of recusal for any reason and may request the matter be heard by a judge outside the district in which he or she primarily practices. This

proposal has been endorsed by the Commission and the Supreme Court currently has the matter under consideration. If adopted, district court involvement in the disciplinary process should have three salutary effects. First, the appearance of cronyism associated with bar commission involvement in the process will be eliminated. Second, the average length of time to process a matter from complaint to disposition should be reduced, thus giving the public a speedy response to a complaint and reducing the time period a matter is hanging over an attorney's head, and third, the public should gain greater confidence in the system since any trial of a matter will be before a judge.

WHAT WILL THE FUTURE BRING?

Complaints against lawyers will continue to rise for the foreseeable future, if for no other reason than the growing attorney population in our state. The efficacy and propriety of the attorney discipline system likewise will continue to be a subject of debate among bar members, legislators, and the public as a whole. No doubt, depending on one's perspective, the system will be viewed as more or less effective and more or less punitive in nature. I am convinced, however, that with the confluence of the current enlightened approach in the OBC and the adoption of needed structural changes by the Supreme Court, Utah is on the verge of having a disciplinary system which will be a model for the entire country.

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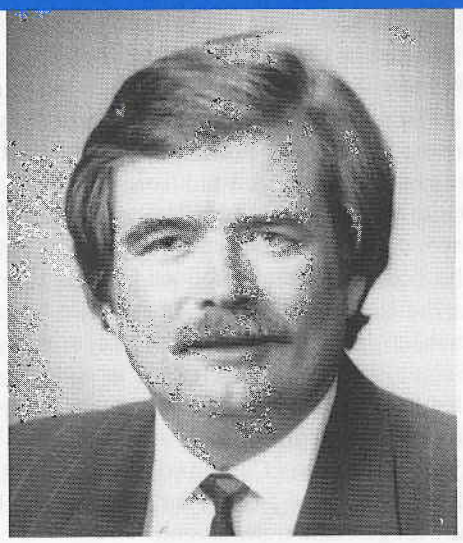


Heroes

By J. Michael Hansen

I'm a baseball fan. I live and die with the St. Louis Cardinals. Unfortunately, as of late I have been dying more than living. One of my prize possessions is a baseball autographed by Bob Gibson, Lou Brock, Steve Carlton (in his rookie year as a Cardinal), Red Schoendienst, Joe Torre and Ted Sizemore. For my fortieth birthday my wife gave me a four game home stand in St. Louis. After seventeen years of marriage, she knows me very well.

I do, however, have autographs of players other than Cardinals. Four years ago I got Tony LaRussa's autograph by yelling, "How about an autograph for a fellow lawyer?" Two years ago, during Spring Training, I watched Reggie Jackson give batting tips to Wally Joyner while Dave Parker towered above them both. I've glued myself to the fence behind the dugout at more than one major league ball park clamoring for an autograph, by my actions indistinguishable from the twelve year olds surrounding me.

Saturday night, however, I met a *real* hero. He's never batted over .300 or pitched a no-hitter. For all I know, he's never even picked up a baseball. But Fred is a hero — not only for what he did, but as a symbol of the actions of 122,000 others.

Fred was born across the Bay from San Francisco. On May 31, 1942, while in his early twenties, Fred was arrested. Fred had not held up a bank, embezzled money, or even illegally parked his car. The crime, for which Fred was eventually tried and convicted in the United States District Court for the Northern District of California, was very simple. Fred had continued to live and work in the area where he had always lived and worked in violation of orders directing him to report to an "assembly center" to be thereafter moved to a "relocation center."

Fred Toyosaburo Korematsu's real crime, you see, was being a Japanese American. Fred wasn't a spy or a saboteur. Indeed, he was a loyal United States citizen who had registered for the draft. But in the hysteria that gripped this country after December 7, 1941, being a Japanese American on the West Coast of the United States was crime enough.

The official reason for the removal of seventy thousand American citizens of Japanese ancestry and fifty-two thousand resident Japanese aliens from the West Coast was the prevention of espionage and sabotage. While *not one* person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free, these people, without even rudimentary hearings for the purpose of testing their loyalty, were uprooted from their homes and businesses and moved hundreds of miles inland to what can only be called concentration camps.

Lt. General DeWitt, on February 20, 1942, had been designated military commander of the Western Defense Command, embracing approximately one-fourth of the total area of the United States including California, Oregon and Washington. It was General DeWitt who issued the Civilian Exclusion Orders. DeWitt's attitude towards Japanese Americans was revealed in his voluntary testimony before the House Naval Affairs Subcommittee to Investigate Congested Areas:

> I don't want any of them (persons of Japanese ancestry) here. They are a dangerous element. There is no way to determine their loyalty. The west coast contains too many vital installations essential to the defense of the country to allow any Japanese on this coast . . . The danger of the Japanese was, and is now — if they are permitted to come back — espionage and sabotage. It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty . . . . But we must worry about the Japanese all the time until he is wiped off the map. Sabotage and espionage will

> make problems as long as he is allowed in this area . . . .

House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, pp. 739-40 (78th Cong., 1st Sess.).

General DeWitt justified his action by asserting that Japanese Americans were engaged in extensive radio signalling and shore-to-ship signalling. These allegations were categorically denied by the FBI and by the Federal Communications Commission. In the words of the Assistant Attorney General for the War Division in a memo dated September 11, 1944, "[t]here is no doubt that these statements were intentional falsehoods, inasmuch as the Federal Communications Commission reported in detail to General DeWitt on the absence of any illegal radio transmission."

The Exclusion Orders were popular with many. Austin E. Anson, Managing Secretary of the Salinas Vegetable Grower-Shipper Association admitted:

> We're charged with wanting to get rid of the Japs for selfish reasons. We do. It's a question of whether the white man lives on the Pacific Coast or the brown men. They came into this valley to work, and they stayed to take over . . . . They undersell the white man in the markets . . . they work their women and children while the white farmer has to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.

Quoted by Taylor, "The People Nobody Wants," 214 Sat. Eve. Post 24, 66 (May 9, 1942).

The Justice Department *knew*, when arguing for the Government in Fred's appeal before the United States Supreme Court, that the justification for the orders was false — and yet never pointed that material fact out to the Court. Fred and his lawyers must have known what the decision of the Supreme Court would be. The very name of the case, as it appears in the Reporters, *"Toyosaburo Korematsu v. United States"* must have been a dead giveaway. What happened to "Fred?" Justice Black, in writing for the six member majority of the Court which upheld the constitutionality of the Exclusion Orders, stated:

> [W]e cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it.

323 U.S. at 218, 65 Sup. Ct. 195 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 99, 63 Sup. Ct. 1375, 1385 (1943)).

Three members of the Supreme Court dissented. Justice Murphy stated that "[t]his exclusion of 'all persons of Japanese ancestry, both alien and non-alien,' from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism." 323 U.S. at 233, 65 Sup. Ct. at 201-02. Justice Roberts called it a "case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence of inquiry concerning his loyalty and good disposition towards the United States." 323 U.S. at 226, 65 Sup. Ct. at 198. Justice Jackson sounded a warning for all time when he wrote:

> Much is said of the danger to liberty from the Army program for deporting and detaining the citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the

principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition embeds that principle more deeply in our law and thinking and expands it to new purposes . . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image . . . .

323 U.S. at 245-46, 65 Sup. Ct. at 207.

In 1984, Fred's conviction was reversed on the grounds that "there is substantial support in the record that the government deliberately omitted relevant information and provided misleading information in papers" presented to the court. *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984).

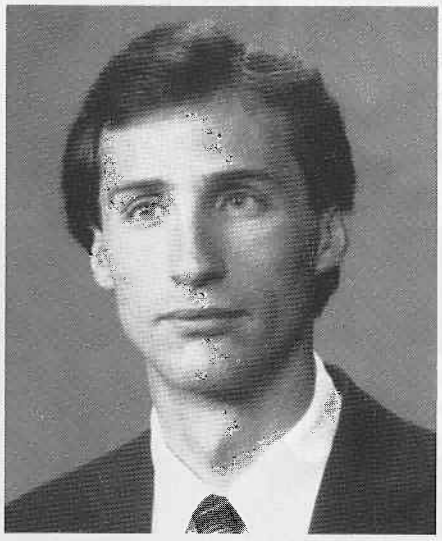
Incredible as it seems, Fred appears to be without rancor. His grin is infectious as he tells how two Mormon men got him out of the camp at Topaz, Utah to take him deer hunting.

Yesterday, while eating lunch at the Crossroads Mall, I saw Shaquille O'Neal, beset by fans while trying to order lunch at the A&W. Breathless parents, with children in tow, set upon Shaq, depriving him of the solitude necessary to really enjoy a flame-broiled double cheeseburger, fries and chocolate malt. They treated Shaq as a hero. Mr. O'Neal is undeniably a very talented young man. He may, in time, be as great in his sport as Bob Gibson and Lou Brock were in theirs. But in the final analysis Shaquille, Bob and Lou are not heroes. Fred Korematsu and 122,000 others are.

I got Fred's autograph.

Utah Limited Liability Companies — Tax Classification and Related Tax Considerations

By McKay Marsden and Steven W. Bennett



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A. INTRODUCTION

A Utah limited liability company ("LLC") is a hybrid entity intended to combine the operational flexibility and tax status of a general partnership with the limited liability protection traditionally associated with limited partnerships and corporations. An LLC generally operates in the same fashion as a partnership. Management may be provided either by an appointed manager or managers (the "Managers") or by the owners of the LLC (the "Members"). Most corporate formalities, such as annual meetings and corporate minutes, are not required of an LLC. Articles of Organization are similar to Articles of Incorporation and are filed with the Utah Department of Commerce, Division of Corporations and Commercial Code in order to form an LLC. An Operating Agreement is similar to a Partnership Agreement and controls the formation, organization and governance of the LLC.

The LLC has proven to be a very popular entity in Utah since the enactment of The Utah Limited Liability Act (the "Utah LLC Act") in 1991. As of February 8, 1993, 1,348 LLCs have been organized in Utah. The LLC appears to now be even more popular than the limited partnership. By way of comparison, in November 1992, 54 limited partnerships were formed in Utah while 121 LLCs were formed. In December 1992, 79 limited partnerships were formed and 144 LLCs were formed. While the LLC has begun to out-pace the limited partnership in becoming an entity of choice in Utah, it still trails behind the corporation. In November 1992, 121 LLCs were organized, while 310 corporations were formed during the same month. In December 1992, 144 LLCs were formed

while 386 corporations were organized.

Although the LLC is not the best entity for all business purposes, it should be carefully considered as an option in most business formations or organizations. Generally, an LLC has much more operational flexibility than a C Corporation, an S Corporation, or a limited partnership. Moreover, an LLC differs from a general partnership in that no Member is personally liable for the obligations of the LLC. *See, e.g.*, Utah Code Ann. ("U.C.A.") §48-2b-109. In this regard, an LLC is similar to a limited partnership with no requirement of a general partner with unlimited liability.

LLCs may be used as an alternative to the family limited partnership and for real estate ownership or development, small and medium size businesses located and doing business in Utah, and professional practices. An LLC is not, however, well suited for certain types of businesses. A business with extensive capital-raising requirements, or one that is likely to require public issuance of securities, should probably not be organized as an LLC. Similarly, because of the uncertainty relating to the treatment of LLCs in states that do not have or recognize LLCs, an LLC should not be used for a business that will conduct its business affairs in states which do not have LLC acts. Currently, the following states have LLC acts: Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Nevada, Oklahoma, Rhode Island, Texas, Utah, Virginia, West Virginia and Wyoming. Additionally, Georgia and Indiana recognize limited liability companies formed in other states. Ten other states currently have LLC legislation pending.

Given the immense popularity and new nature of the LLC, it is important for practitioners to understand the tax classification issues relevant to an LLC.

B. TAX CLASSIFICATION ISSUES

Pass-through tax treatment and limited liability are the primary advantages of an LLC. To receive this favorable tax treatment, an LLC must be classified as a partnership for tax purposes. In most cases, LLCs are only viable if they are treated as partnerships for federal income tax purposes.

"Although the LLC is not the best entity for all business purposes, it should be carefully considered as an option in most business formations or organizations."

Although the first LLC legislation was enacted in Wyoming in 1977, it was not until 1988 that the Internal Revenue Service (the "Service") determined that Wyoming LLCs would be classified as partnerships for federal income tax purposes. Rev. Rule. 88-76, 1988-2 C.B. 360. Similarly, in January 1993, the Service determined that Virginia LLCs (Rev. Rule. 93-5) and Colorado LLCs (Rev. Rule. 93-6) would be classified as partnerships for federal income tax purposes. The Utah LLC Act was drafted to allow Utah LLCs to be taxed as partnerships, while providing greater operational flexibility than the Wyoming, Colorado or Virginia LLC acts.

The corporate attributes, which are used in determining whether an entity is to be classified as a corporation or as a partnership, are set forth in Treasury Regulation § 301.7701-2 (as amended in 1983):

> (i) associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability of corporate debts limited to corporate property, and (vi) free transferability of interests.

The first two attributes, associates and an objective to carry on business and divide the gains therefrom, are typically common to both corporations and partnerships. Because these attributes are typically common to both corporations and partnerships, they are ignored for purposes of determining whether an organization is classified as a corporation or a partnership. Treas. Reg. § 301.7701-2(a) (ii). The remaining four characteristics, continuity of life, centralization of management, limited liability, and free transferability of interests, are critical to

the determination of whether an organization is classified for tax purposes as a corporation or a partnership. *Id.* The Treasury Regulations indicate that an entity may have any two of these four corporate characteristics and still be taxed as a partnership. Treas. Reg. § 301.7701-2 (a) (iii).

1. Limited Liability.

U.C.A. § 48-2b-109 provides that no member, manager or employee of an LLC is personally liable for its obligations or liabilities. Accordingly, the corporate characteristics of limited liability is designed to be present in every Utah LLC.

2. Free Transferability of Interests.

The corporate characteristic of free transferability of interests exists if each partner in the partnership, or the partners holding substantially all of the interest in the partnership, may, without the consent of other partners, substitute for themselves a person who is not a member of the partnership. Treas. Reg. § 301.7701-2(e) (i). The Utah LLC Act requires the consent of the nontransferring members entitled to receive a majority of the nontransferred profits of the LLC before the transferee will be entitled to become a Member and participate in the management of the business and the affairs of the LLC. U.C.A. § 48-2b-131.

The requirement of majority consent to transfer under the Utah LLC Act differs from other LLC acts, most of which require unanimous consent to transfer an interest in an LLC. Nevertheless, the Service has indicated in a private letter ruling that companies organized under the Utah LLC Act should not have free transferability of interests. On February 6, 1992, the Service issued a Private Letter Ruling ("PLR 9219022") on the classification of an LLC under the Utah LLC Act. With respect to the characteristic of free transferability of interests, the Operating Agreement of the LLC in question provides that no transferee, designee or legal representative of a Member shall become a substitute Member without the consent of a majority, by sharing ratios, of the nontransferring Members. Based on these facts, the Service ruled that the LLC in PLR 9219022 lacked free transferability of interests.

PLR 9219022 was the first time the Service ruled that an LLC requiring only the majority consent of its Members to transfer interests in the LLC lacked the corporate characteristic of free transferability of interests. In light of the fact that a Utah LLC will have limited liability but should lack free transferability of interests, one of the two remaining corporate attributes must be avoided for Utah LLCs to achieve partnership tax status.

3. Centralized Management.

A Utah LLC may elect to have centralized management. Centralized management exists if a person or group has a concentration of continuing authority to make independent business decisions on behalf of the LLC without the ratification of the Members. *See* Treas. Reg. § 301.7701(2) (c) (3). The Utah LLC Act provides that Members of an LLC may designate Managers to operate the business and affairs of the company. U.C.A. § 48-2b-125. If no Managers are chosen, management will be vested in the Members of the LLC in proportion to their interests in the profits of the LLC.

Accordingly, a Utah LLC may have

designated Managers or be managed by all of the Members. If an LLC is managed by Managers, any Manager may bind the LLC, unless otherwise provided in the LLC's Articles of Organization. If the LLC is managed by Members, any Member may bind the LLC unless otherwise provided in the LLC's Articles of Organization. Therefore, the corporate characteristic of centralized management may be present if the LLC is managed by Managers; or, it may be avoided if the LLC is managed by Members.

4. Continuity of Life.

If centralized management is necessary to the business structure of the LLC, a Utah LLC should be organized so as to lack the corporate characteristic of continuity of life. The Utah LLC Act does not provide for a maximum period of duration but merely provides that a maximum period of existence must be stated in the Articles of Organization. U.C.A. § 48-2b-116(1) (b). The Treasury Regulations provide that continuity of life is lacking if the death, insanity, bankruptcy, retirement, resignation or expulsion of any member (referred to individually as an "event of dissolution") will cause the dissolution of the organization. Treas. Reg. § 301.7701-2(b) (i). Most LLC acts, including the Utah LLC Act, provide that an LLC will dissolve upon the occurrence of one of the above-described events of dissolution. The Regulations further provide that if the remaining Members may agree to continue the business, then the entity still lacks continuity of life.

The Utah LLC Act allows a Utah LLC to avoid dissolution upon the occurrence of an event of dissolution by the unanimous consent of its remaining Members, unless otherwise provided in the Operating Agreement. U.C.A. § 48-2b-137(3). A requirement of unanimous consent to continue the business of an LLC subsequent to an event of dissolution clearly defeats continuity of life, and the Service has so ruled in a public ruling. Rev. Rule. 88-76, 1988-2 C.B. 360. Thus, a Utah LLC will lack the corporate characteristic of continuity of life unless the LLC and its Members contractually override the Utah LLC Act's unanimous consent provision.

The flexibility of the Utah LLC Act allows the formation of a Utah LLC which, with respect to continuity of life, could be patterned after a Missouri Business Trust. In 1988, the Service issued Revenue Ruling 88-79, which classified a Missouri Business Trust as a partnership. Rev. Rule. 88-79, 1988-2 C.B. 361. A Missouri Business Trust may continue after the occurrence of an event of dissolution upon the consent of a majority in interest of the beneficiaries, or owners, and the unanimous consent of the Managers. The Missouri requirement of unanimity among the Managers with a majority consent of the Members was deemed by the Service to negate continuity of life.

"If centralized management is necessary to the business structure of the LLC, a Utah LLC should be organized so as to lack the corporate characteristic of continuity of life."

On March 26, 1992, the Service issued another Private Letter Ruling ("PLR 9226035") on the classification of an LLC under the Utah LLC Act. This LLC was structured in a manner similar to the structure of a Missouri Business Trust with respect to the characteristic of continuity of life. As in PLR 9219022, the Service ruled that the LLC in PLR 9226035 lacked the corporate characteristics of continuity of life and free transferability of interests. Accordingly, the LLC was classified as a partnership for tax purposes.

The most significant portion of PLR 9226035 related to the characteristic of continuity of life. Because the Operating Agreement of the LLC in PLR 9226035 provides that the LLC may continue after an event of dissolution upon the unanimous consent of all of the remaining Managers and the affirmative consent of a majority of the remaining Members, the Service ruled that the LLC lacked continuity of life.

In organizing LLCs, practitioners must analyze the business requirements of the proposed entity. In many cases, centralized management will be important for business reasons; if so, continuity of life must be negated. In other cases, centralized management will not be a requirement of the business, and the practitioner could form a Utah LLC that has continuity of life and still have the LLC classified as a partnership for tax purposes.

C. OTHER TAX CONSIDERATIONS

In addition to the tax classification of an LLC, there are other tax considerations that have not yet been fully resolved, given the relative newness of LLCs. These tax considerations may or may not be applicable to the formation of any particular LLC. A brief description of some of these considerations is set forth below.

1. No Separate Interest Theory.

The practitioner should consider the relationships among the Members of the LLC in analyzing the classification issue. For example, if all of the Members and Managers of the LLC are family members, and it is clear from the outset that transfers of interests and continuation subsequent to an event of dissolution will always be approved, the Service could argue that the corporation characteristics of free transferability of interests and continuity of life exist in fact even though the governing documents provide otherwise. *See MCA v. United States*, 502 F. Supp. 838 (C.D. Cal. 1980), *rev'd*, 685 F.2d 1099 (9th Cir. 1982). However, the Service has only applied such a theory in cases involving foreign entities. It is unlikely that the Service would use this doctrine in the context of classifying a domestic LLC. See, e.g., PLR 9034058 (favorable classification ruling regarding limited partnership comprised of two corporations where shareholders of the two corporations were apparently the same; ruling based on lack of continuity of life and net worth of general partner). We are not aware of any suggestion by the Service that it will attempt to use this theory with respect to classifying a domestic LLC.

2. Subchapter K.

The treatment of an LLC as a partnership for tax purposes will result in the application of Subchapter K of the Internal Revenue Code (the "Code") to the operations of an LLC. I.R.C. §§ 701-761. This partnership treatment raises some issues that are not yet resolved. Many of these issues are addressed in a paper prepared by the American Bar Association Subcommittee on Limited Liability Companies of the Committee on Partnership (the "ABA Position Paper") dated February 27, 1992. The ABA Position Paper includes com-

ments that are a composite of the individual views of members of the Subcommittee on Limited Liability Companies and should not be construed as representing the position of the American Bar Association, the Section of Taxation or the Committee on Partnerships.

3. Treatment of Liabilities.

As mentioned, one of the key attributes of an LLC is that Members are not personally liable for the entity's debts. Thus, for tax purposes, LLC debt is considered to be non-recourse. *See* Treas. Reg. § 1.752-1T(a) (1) (iv) (as amended in 1989). This will affect a Member's ability to acquire basis in his LLC interest through debt. Of course, debts could be personally guaranteed by a Member, but this would divest that Member of part of the limited liability that an LLC offers, one of the primary reasons for organizing as an LLC. The ABA Position Paper indicates that absent a guarantee or a loan by a member or a related party, all debts of an LLC should be treated as non-recourse for purposes of Section 752 of the Code, even debt to which the general assets of the LLC are subject.

4. Passive Loss Rules.

Another unresolved issue involves the application of passive loss rules to LLC Members. One feature of an LLC is that its Members can actively participate in the management of the LLC. The unresolved issue is the determination of the circumstances under which the Service will deem a Member to be "materially participating" so that active, rather than passive, losses can be taken. *See* I.R.C. § 469 (h).

The ABA Position Paper states that it is inappropriate to apply the limited partnership tests to LLC members because LLCs are designed to permit active involvement by Members in the management of the business; therefore any assumption that LLC members are likely to be merely passive investors would be incorrect. The ABA Position Paper suggests that either the regulations dealing with passive losses be amended or a notice should be issued to clarify these rules.

5. Tax Matters Partner.

Because the LLC will be treated as a partnership for tax purposes, a tax matters partner should be designated to handle partnership-level audits. In a partnership, if no tax matters partner is designated, the general partner with the largest interest or a partner selected by the Service will serve as the tax matters partner. Because these rules do not technically apply to LLCs and because LLCs are a recently created form of business organization, it is uncertain how the Service will designate a tax matters partner if one is not designated in the Operating Agreement. The ABA Position Paper suggests that I.R.C. Section 6231(a) (7) should be amended to add language that provides that in the case of an LLC, the tax matters partner is the member designated as provided in the regulations, or the member having the largest profits interest in the LLC.

"Because the LLC will be treated as a partnership for tax purposes, a tax matters partner should be designated to handle partnership-level audits."

6. Cash Method of Accounting.

Many commentators have questioned whether LLCs would be entitled to use the cash method of accounting. This position is based on I.R.C. Section 448(a), which provides that taxable income shall not be computed under the cash method in the case of a "tax shelter" as defined in I.R.C. Section 461(i) (3). Tax shelter is defined in I.R.C. Section 461(i) (3) to include (1) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any federal or state agency having the authority to regulate the offering of securities for sale; (2) any "syndicate" within the meaning of I.R.C. Section 1256(e) (3) (B); and (3) any tax shelter as defined in I.R.C. Section 6662(d) (2) (C) (ii).

On December 21, 1992, the Service issued a Private Letter Ruling regarding a Utah LLC organized to perform professional services ("PLR 12/21/92"). This LLC is managed by a committee and is comprised of members who are licensed to perform professional services. PLR 12/21/92 provides that the LLC in question would not be prohibited from using the cash method of accounting. The Service's analysis in reaching this conclusion is set forth below.

a. Enterprise. In PLR 12/21/92, the Service ruled that an LLC will not be an "enterprise" so long as it does not offer interests in itself for sale in any offering required to be registered with any federal or state agency having the authority to regulate the offering of securities for sale. Because the subject LLC has not and will not offer interests in itself for sale, the Service ruled it is not an "enterprise."

b. Syndicate. A syndicate under I.R.C. Section 1256(e) (3) (B) means any "partnership or other entity . . . if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs" (within the meaning of I.R.C. Section 464(e) (2)). I.R.C. Section 464(e) (2) defines "limited entrepreneur" as a person who has an interest in an enterprise other than as a limited partner and does not actively participate in the enterprise's management. I.R.C. Section 1256(e) (3) (C) provides that such an interest is not

held by a limited partner or limited entrepreneur if such interest is held by an individual who actively participates at all times during such period in the management of such entity. In PLR 12/21/92, the Service ruled that because the members of the LLC will continue to engage in the business of rendering professional services and will participate in the management of their own practices and related activities, the LLC meets the active participation requirements of I.R.C. Sections 464(e) (2) and 1256(e) (3) (C) and therefore is not a syndicate.

c. Tax Shelter. Similarly, the Service ruled that the LLC is not a "tax shelter" as defined in I.R.C. Section 6662(d) (2) (ii) because it is not an arrangement whose principal purpose is the avoidance or evasion of federal income tax.

Because the LLC in PLR 12/21/92 was not a "tax shelter" as defined in I.R.C. Section 461(i) (3), the Service concluded that the LLC is not prohibited from using the cash method of accounting.

7. State Taxation. State and local tax treatment of LLCs may vary. Some states tax LLCs as separate entities. Utah, however, treats LLCs as partnerships. In a letter ruling dated June 23, 1992, the Utah State Tax Commission stated that "[i]t is the position of the Utah State Tax Commission that companies organized pursuant to the provisions of Utah Code Ann. 48-2b-101 *et seq.*, the 'Utah Limited Liability Company Act,' are to be accorded the same income tax treatment as a partnership." Accordingly, in Utah an LLC will be a pass-through entity, but in other states the income tax treatment may vary.

D. CONCLUSION

Practitioners should carefully consider the tax issues relating to LLCs. The LLC must be organized to lack two of the corporate characteristics in order to ensure that it will be treated as a partnership for federal income tax purposes. Similarly, consideration must be given to some of the other tax issues that we have briefly described. As time passes, we anticipate that most of the ancillary tax considerations will be resolved by the Service. The LLC is a viable option for consideration by the practitioner anytime a new entity is formed.

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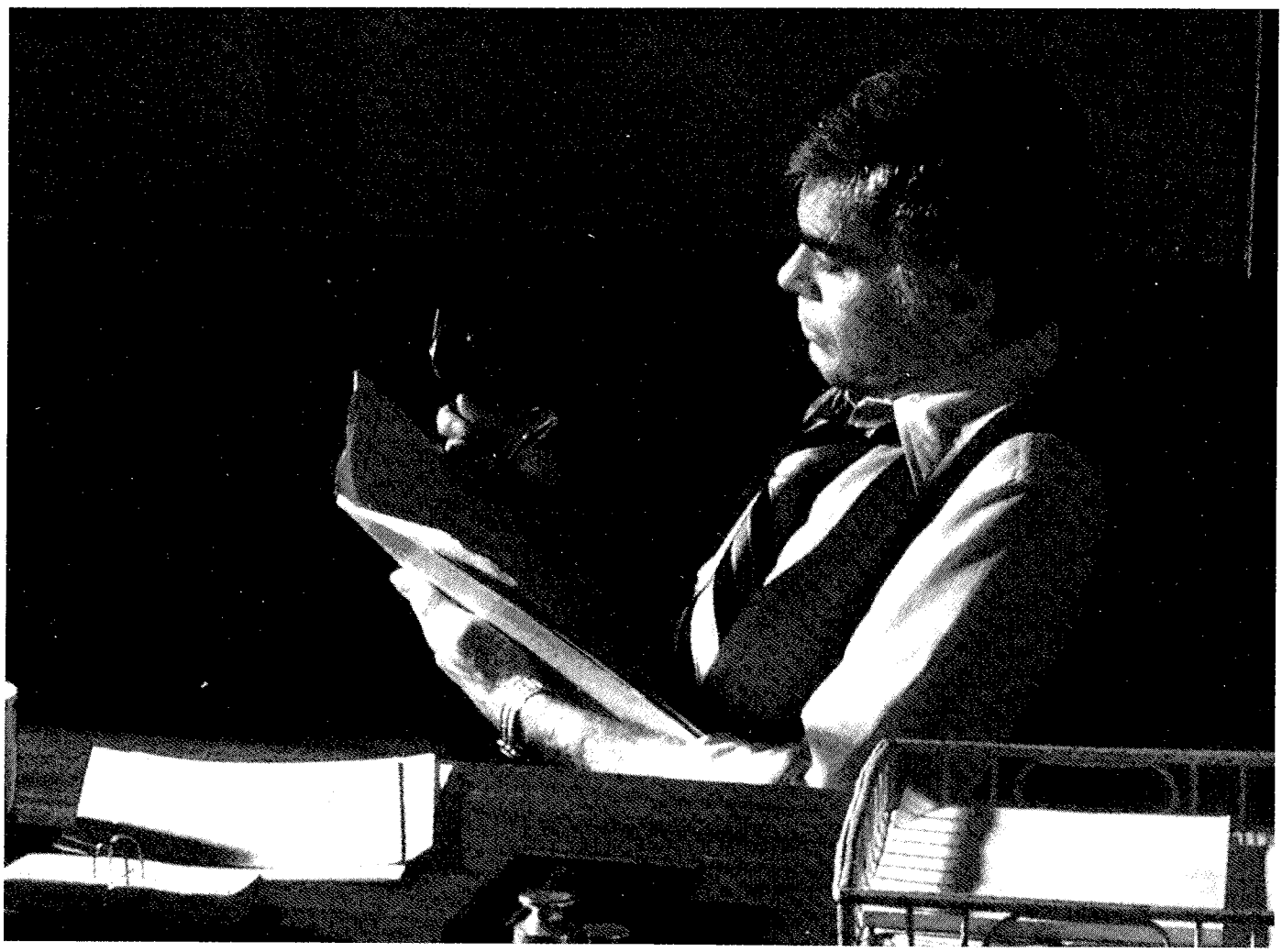

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A Dozen Ways to Write a Clearer Contract

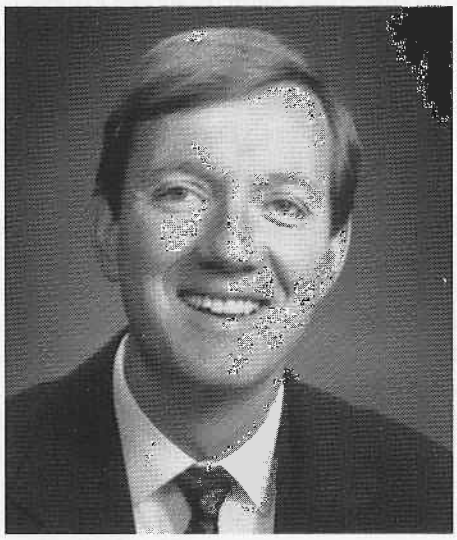
By Dan W. Egan

Lawyers have been criticized for drafting long documents that are unintelligible — both to the average layman or juror, and even to other lawyers and judges. This article outlines 12 practical ways to make contracts more readable.

1. Organize the Contract. A contract should be organized in a "reader-friendly" manner. Capitalizing or printing the party names in bold type helps the reader identify the parties. You can help the reader understand the purpose and setting of the contract by using recitals. *See* point 4 below. In longer documents, a definition section defining all significant terms and a table of contents are useful for ease of reference. *See* point 3, below. Use paragraph or section headings to serve as guides to the reader. Carefully distinguish between representations and warranties, covenants and conditions precedent. If possible, each type of provision should be segregated in separate paragraphs or sections and clearly identified as to character.

2. Provide an Appropriate Title to the Document. The question of what to name a document may appear insignificant. Courts have recognized that the character of an instrument is not determined by the name given to it, but by the legal effect of its terms.[1] However, a recorded document should have a name that provides a title searcher with a quick and clear idea of the nature of the document. For example, instead of naming a document "Notice of Interest," use a more specific title, such as "Notice of Interest in Lease." If a deed of trust contains the requisite information and is intended to serve as a fixture filing, you could name the instrument "Deed of Trust, Security Agreement and Fixture Filing."

Complex transactions involving multiple documents demand extra care in assigning names to the documents. For example, in documenting a construction loan, there may be an "Assignment of Construction Contract," an "Assignment of Plans and Specifications and Rights under Architectural Contract," and an "Assignment of Engineering Contract." Attention to the name of each document assists the parties in differentiating between the various documents to the transaction. In addition, the use of specific names helps you in referring to particular documents in other loan documents.



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3. Define Party Names to Eliminate Confusion. The defined party names should eliminate rather than create confusion. As a general rule, it is helpful to define the parties by reference to the obligations they assume in the contract rather than a mere abbreviation of their actual names, for example, "Seller" and "Buyer." When drafting a document that has a statutory basis, it is preferable to use the words given in the statute. For example, "grantor" and "grantee" in a deed[2] and "trustor" and "beneficiary" in a deed of trust.[3] In transactions involving multiple documents, such as a loan transaction, it may be helpful to refer to the parties by the same name in all of the documents, for example "Lender" and "Borrower."

4. Use Recitals to Set the Stage for the Agreement. As a general rule, the recitals to a document should provide sufficient information about the background and intention of the parties to enable a reader to understand the purpose and need for the document. Deciding what to leave out of the recitals may be as difficult as deciding what to include. In a complex transaction, particularly, drafting the recitals requires creativity. Thoughtful preparation of the recitals will help you organize the document as well as determine its substantive provisions. A helpful hint is to treat chronologically the events leading up to the parties' understanding and agreement.

If the statement of facts and understandings contained in the recitals is an integral part of the agreement or contains definitions of terms used repeatedly throughout the document, you may want to incorporate the recitals by reference into the body of the document since recitals alone are not, strictly speaking, a part of the agreement.[4]

5. Define Terms Used Repeatedly in the Contract.[5] Definitions make the meaning of words and terms used repeatedly in the document precise. They also provide a shorthand means of reference to parties, places, property and concepts.

a. Writing Definitions. There are four ways to write a definition.

(1) Define a term by a simpler or more precise term. For example: "'Business Day' means any day other than a Saturday, Sunday, or other day on which commercial banks in Utah are authorized or required to close under Utah law."

(2) Define a term by analyzing its components. For example: "'Magazine'

means any publication appearing no more than 52 times per year, its pages affixed by one or more staples between a front and back cover."

(3) Define a term by naming the object of which it is a part. For example: "'Capital Leases' means all leases which have been or should be capitalized on the books of the lessee in accordance with generally accepted accounting principles."

(4) Define a term by setting forth an inventory of everything encompassed by the term. For example: "'Loan Documents' means the following documents executed in conjunction with and supporting this Agreement: the Note, the Security Agreement, the Guaranty and the Financing Statements."

b. Functions of Definitions. Defined terms can help you write clearly and economically in the following ways:

(1) A definition can restrict the ordinary meaning of a word. For example: "'Person' means any human being above the page of 17 years."

(2) A definition can expand a word to more than its ordinary meaning. For example: "'Real Property' includes all fixtures, furniture and equipment owned by Borrower and used in connection with the Trust Estate."

(3) A definition can give a term an arbitrary meaning. For example: "'Income' includes any realized or unrealized increase in the value of a capital asset."

(4) A definition can avoid ambiguity by answering a question that otherwise would be left open. For example: "'Proceeds' means all cash and noncash proceeds of the Collateral."

(5) A definition can expand the scope of a defined term to include a successor person or document. For example: "'Lender' means the First National Bank, its successors, participants and assigns."

(6) A definition can permit easy reference. For example: "'Guarantor' means ABC Corporation, a Utah corporation, Borrower's general partner."

"A statement that a document is 'attached to and incorporated into this Agreement be reference' works just as well as 'attached hereto and incorporated herein by this reference' and avoids the legalisms 'hereto' and 'herein.'"

6. Avoid Unnecessary Words and Legal Jargon. Much of the vocabulary used today in drafting contracts has been used by lawyers for generations. Sometimes those words have a specific legal meaning and should be used to convey a particular understanding to the reader. However, too often the "classic" words are used thoughtlessly, out of habit, or for effect, to impress the client, and could be eliminated or replaced with simpler, more modern words. For example:

a. Unnecessary Words. The following words and phrases add little or nothing to a contract and can be eliminated without disturbing the meaning:

(1) "To wit" when introducing a description of property, as in: "The real property is located in Salt Lake County, Utah more particularly described as follows, to wit:"

(2) "Hereinafter referred to as" in a parenthetical definition of a contract term, as in: "First National Bank, a national banking association (hereinafter referred to as 'Bank')."

(3) "State of" when identifying a state in the United States, as in "Salt Lake County, State of Utah."

Synonyms are usually redundant and unnecessary. For example, an assigning clause that purports to "assign, transfer, set over, convey and deliver" title to personal property is redundant. All of the words after "assign" can be eliminated.

b. Legal Jargon. The words "here" and "there," when coupled with the endings "-in," "-inafter," "-tofore," "-inabove," "-inbelow," "-unto," and "-by," are all very lawyer-sounding words that can usually be avoided by careful drafting. For example, "heretofore" can be replaced by "previously," and a reference to "paragraph 5 hereinbelow" can be "paragraph 5 below." A statement that a document is "attached to and incorporated into this Agreement by reference" works

just as well as "attached hereto and incorporated herein by this reference" and avoids the legalisms "hereto" and "herein." Other stilted and unnecessary phrases used by habit are "that certain" and "of even date herewith."

The use of Latin phrases is another form of legal jargon that can usually be avoided. For example, the phrase "inter alia" can be replaced by its English equivalent, "among other things."

7. Avoid the Improper Use of Pronouns and Antecedents. The improper use of pronouns and antecedents confuses the meaning of a sentence. For example:

a. "No dwelling shall be erected or placed on any Lot having an area of less than 30,000 square feet." It is not clear whether the 30,000 square feet limitation applies to the lot or to the dwelling. Assuming the limitation applies to the lot, the sentence can be rewritten: "No dwelling shall be erected or placed on any Lot unless the Lot has an area of at least 30,000 square feet."

b. "If the Company impairs the Collateral, it will be repossessed and sold at public auction by Lender." Assuming it is the collateral and not the company that would be sold by the lender at public auction, the sentence can be rewritten: "If the Company impairs the Collateral, Lender may repossess and sell the Collateral at public auction."

8. Avoid Misplaced Modifiers. Modifying clauses add depth and meaning to sentences. However, if misplaced, they can also cloud the meaning. For example:

a. "Whereas, in April 1981 Guarantor acquired control of the Company, along with Borrower." Did the guarantor acquire control of both the company and the borrower, or did both the guarantor and the borrower acquire control of the company? If the modifier "along with Borrower" is placed after the word guarantor, it becomes clear that the guarantor and the borrower collectively acquired control of the Company. "Whereas, in April 1981 Guarantor along with Borrower acquired control of the Company." The recital can be improved even more by recasting the modifier as a subject so that the sentence reads: "In April 1981, Guarantor and Borrower acquired control of the Company."

b. "Seller shall retain the Firm to inspect the property due to its contaminated condition." It is not clear from the sentence whether it is the seller, the firm or the property that is contaminated. This example shows both the sloppy use of a pronoun and the misplacement of a modifier. By placing the modifier at the beginning of the sentence and replacing the pronoun, it becomes clear that the property is contaminated. "Due to the property's contaminated condition, Seller shall retain the Firm to inspect the property." The modifier can be eliminated altogether by recasting the sentence as follows: "Seller shall retain the Firm to inspect the contaminated property."

9. Avoid Using the Term "And/or." The word combination "and/or" is a shorthand expression commonly used to describe a concept that applies to all, any one of, or any combination of the listed persons or items in a sentence. For example: "It shall be an event of default under this Note if Borrower and/or any of the Guarantors files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or seeks the protection of any state or federal insolvency laws."

Courts have ridiculed use of the term "and/or."[6] Critics have also warned against its use because it leads to ambiguity or confusion.[7] However, at least one court has recognized the common use of the term and the need to interpret its meaning on a case-by-case basis.[8]

"Courts have ridiculed use of the term 'and/or.' Critics have also warned against its use because it leads to ambiguity or confusion."

In the example above, the use of the term is unnecessary because the lender would likely declare an event of default if the borrower or any guarantor took any of the listed actions. Therefore, the word "and" is surplusage, and the word "or" alone adequately conveys the desired meaning.

There are stipulations when the drafter wants to describe a concept that applies to either or both of two alternatives. For example: "Borrower shall use the proceeds of the Loan solely for family and/or household purposes." The sentence may be rewritten without the "and/or" as follows: "Borrower shall use the proceeds of the Loan solely for family or household purposes or both."

An example of an "and/or" sentence with more than two alternatives is: "The outstanding principal balance of the line of credit must at all times be supported by eligible Equipment, Inventory and/or Receivables having an aggregate value of at least 1.25 times the outstanding principal balance." The "and/or" can be eliminated as follows: "The outstanding principal balance of the line of credit must at all times be supported by eligible Equipment, Inventory and Receivables which, individually or in any combination, have an aggregate value of at least 1.25 times the outstanding principal balance."[9]

10. Avoid Using the Term "Provided That." The term "provided that" is a device that drafters use to carve out exceptions to general statements. For example: "Borrower shall not declare or pay any dividends without the prior written consent of Lender; provided, however, that if no Event of Default has occurred or is continuing, Borrower may declare and pay dividends, in any fiscal year of Borrower, in an aggregate amount not in excess of $100,000.00."

Critics of the term "provided that" complain that its use indicates that the drafter has failed to think through what is being stated, and that sentences using "provided that" can usually be rewritten with greater clarity.[10] The example above can be recast as follows: "So long as no Event or Default has occurred or is continuing, Borrower may declare and pay, in any fiscal year of Borrower, dividends in any aggregate amount not in excess of $100,000.00. Borrower may also declare and pay dividends at any time with the prior written consent of Lender."

11. Follow the Rules of Grammar When Using Parentheticals. Parenthetical expressions are routinely used in contracts to define terms. For example: "This promissory note is secured by a deed of trust (the "Deed of Trust") executed by Maker, as trustor, in favor of Payee, as beneficiary." A sentence containing an expression in parentheses should be punctuated outside the marks of parenthesis exactly as if the parenthetical

expression were absent.[11] The rule is often broken in the preamble of a contract when defining the parties. For example: "This Assignment is made and entered into between ABC Corporation, a Utah corporation, ("Assignor") and XYZ Limited Partnership, a Utah limited partnership, ("Assignee"). The comma before the first parenthetical expression should be placed after it, and the comma before the other parenthetical expression should be deleted.

As a matter of style, it is preferable not to place parenthetical expressions back-to-back in the same sentence. For example: "This Deed of Trust secures a promissory note, dated July 9, 1992, in the original principal amount of One Hundred Thousand Dollars ($1,000,000.00) (the 'Note')." The sentence is better stated as: "This Deed of Trust secures a promissory note, dated July 9, 1992 (the 'Note'), in the original principal amount of One Hundred Thousand Dollars ($100,000.00)."

12. Avoid Using Sentences Disguised as Paragraphs. Run-on sentences that double for paragraphs are often found buried in the biolerplate or lurking in hastily prepared provisions of contracts. For example:

> Borrower shall provide to Lender, at Borrower's expense, an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title insurance company acceptable to Lender and in a form, amount and content satisfactory to Lender, insuring or agreeing to insure that the Deed of Trust on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances and exceptions except those specifically accepted by Lender in writing and, if requested by Lender, Borrower shall also provide to Lender, at Borrower's expense, a foundation endorsement to the title policy upon the completion of each foundation for the Improvements, showing no encroachments.

The run-on sentence can be rewritten as a paragraph containing four sentences as follows:

> Borrower shall provide to Lender, at Borrower's expense, an ALTA Lender's extended coverage policy of title insurance. The policy shall: (1) be issued by a title insurance company acceptable to Lender; (2) be in a form, amount and content satisfactory to Lender; (3) insure that the Deed of Trust on the Property is a valid first lien on the Property free and clear of all defects, liens, encumbrances and exceptions except those specifically accepted by Lender in writing; and (4) have attached to the policy such endorsements as Lender may require. If requested by Lender, Borrower shall also provide to Lender, at Borrower's expense, a foundation endorsement to the title policy upon completion of each foundation for the Improvements. The foundation endorsement shall show that each foundation lies wholly within the boundaries of the Property.

Rewriting run-on sentences clarifies the intended meaning and allows the reader to grasp the meaning with less effort.

CONCLUSION

We should all take a critical look at our traditional approach to drafting legal documents. While time constraints may prevent a thorough rewriting and editing of our old, familiar forms, habit and laziness should not. Attention to the organization, syntax and readability of a document improves drafting skills. More importantly, a clearly written agreement is less likely to be litigated.

[1] *See, e.g., Mordka v. Mordka Enterprises, Inc.*, 693 P.2d 953, 957 (Ariz. Ct. App. 1984).

[2] *See* Utah Code Ann. § 57-1-12 (1990.)

[3] *See* Utah Code Ann. § 57-1-19 (1990).

[4] *See In re Taxes*, 380 P.2d 156, 163 (Haw. 1963).

[5] This section borrows concepts and ideas from Irving Younger, "Persuasive Writing: The Definitive Word on Definitions," *ABA Journal*, April 1986, at 98.

[6] Courts have called the term gibberish, a confusing hybrid, a linguistic abomination and a bastard sired by indolence. *See* 17A Am. Jr. 2d *Contracts* § 375 (1991), at 394 n.10.

[7] *See* William Strunk, Jr., & E.B. White, *The Elements of Style* (3d ed. 1979) at 40.

[8] *See McPherrin v. Hartford Fire Ins. Co.*, 44 F. Supp. 674, 675 (N.D. Cal. 1942).

[9] The sentence can be simplified by using the defined term "Collateral." For example, if a definition were added for "Collateral" which includes the Equipment, the Inventory and the Receivables, the sentence could be rewritten as follows: "The outstanding principal balance of the line of credit must at all times be supported by eligible Collateral having an aggregate value of at least 1.25 times the outstanding principal balance."

[10] *See e.g.*, Irving Younger, "Persuasive Writing: Symptoms of Bad Writing," *ABA Journal*, May 1986, at 113.

[11] *See* William Strunk, Jr. & E.B. White, *The Elements of Style* (3d ed. 1979) at 36.

Commission Highlights

During its regularly scheduled meeting of January 21, 1993, which was held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Randy Dryer introduced and welcomed Charles R. Brown to the Board of Bar Commissioners.
2. After concluding all discipline matters all Staff and ex-officio members joined the meeting.
3. The Minutes from the meeting of December 3, 1992, were approved as corrected.
4. The Board voted to accept the recommendation of the Family Law Section and to recommend that Utah's delegates to the ABA support federal legislation "providing incentives to encourage individuals to adopt juveniles . . ."
5. Dryer noted that results on the Judicial Survey questionnaire sent out to federal and state trial and district court judges have been received and the data is being compiled.
6. Dryer reported that the Lawyer Legislators Mini-Breakfast Seminar went very well and attracted about 50 persons. The seminar on marketing for solo and small firm practitioners was attended by about 45 persons, was successful, and positive comments were received.
7. Dryer indicated that a special mailing has been prepared for mailing to all active in-state lawyers outlining the current status of court reorganization.
8. The Board voted to ask the Fee Arbitration Committee to propose a rule for Board approval which would expand the Fee Arbitration Committee's jurisdiction to include fee arbitrations between attorneys.
9. The Hon. Pamela T. Greenwood, Board of Trustees Chair, Utah Law & Justice Center, Inc. (LJC) and Alan Andersen, tax attorney hired by the Law & Justice Center, Inc., appeared to review and discuss the proposed sale of the LJC's interest in the Law & Justice Center to the Bar.
10. On behalf of the Board of Bar Commissioners, Randy Dryer presented George L. Nelson with a Seventy Years of Service Award commemorating Mr. Nelson's seventy years as a member of the Utah State Bar. Many friends and members of Mr. Nelson's family were present.
11. Baldwin reported that the Bar's membership database upgrade now includes CLE hours tracking and the ability to print out on Bar members *Bar Journal* mailing labels CLE hours on a quarterly basis; and the inquiry screen has been updated to show if an attorney has public discipline pending.
12. The Board voted to authorize the Bar to utilize the Hotel Del Coronado in San Diego for the Utah State Bar's '95 Annual Meeting. Bar staff research and publicize (1) alternative housing in the Del Coronado area and (2) special group airfares.
13. The Board voted to accept the recommendation of the Character & Fitness Committee to approve the list of applicants to take the February '93 bar examination including those pending a favorable Character & Fitness recommendation.
14. The Board approved a policy which would be included in the Lawyer Referral Service Agreement stating that members of the LRS service would be put on temporary suspension from the referral list pending the final resolution of a formal disciplinary complaint.
15. Dryer reported on the success of the food and winter clothing drive. Over seven truckloads of food and clothing were received and distributed to various social organizations.
16. The Board voted to (1) request the Bar's delegate, Reed L. Martineau, and (2) urged Utah ABA members' delegate Norman Johnson to oppose the ABA's voting percentage proposal.
17. The Board voted to request Reed L. Martineau as the Bar's delegate to vote in support of the ABA's proposed specialization rule and to urge Norman Johnson to do the same.
18. The Board voted to accept the recommendation of Reed Martineau to support the ABA's proposal to create a Dispute Resolution Section and to urge Norman Johnson to do the same.
19. The Board voted to request the Bar's delegate to the ABA support an ABA neutrality on the abortion issue.
20. James B. Lee, Chair of the Bar's Futures Commission, and Michael E. Christiansen of the Utah Foundation appeared to request additional funding for the Futures Commission to complete the data analysis on its assigned task.
21. The Board allocated an additional $6,000 to the Futures Commission to finalize and complete its assigned analysis.
22. David R. Bird and John T. Nielsen appeared and reported on current legislation reviewed by the Legislative Affairs Committee including those requiring Bar Commission action.
23. The Board voted to accept the recommendation of the Legislative Affairs Committee to take no position on **HB 11** and **HB 70** but to authorize the Family Law Section of the Bar to formulate a position and communicate that position to the legislature.
24. The Board voted to accept the Legislative Affairs Committee's recommendation to oppose **HB 12 "The Small Claims Court Limit"** at a $10,000 limit but support the bill if the limit is reduced to $5,000.
25. The Board voted to accept the Legislative Affairs Committee's recommendation to oppose **HB 60 "Payment of Medical Malpractice Legal Fees"** because the bill limits access to the courts.
26. The Board voted to accept the recommendation of the Legislative Affairs Committee to support the Citizens Committee on Judicial Compensation and the Executive & Judicial Compensation Commission recommendation to increase judicial salaries to $88,000 for district court judges.
27. Lawyer Benefits Committee Chair Randon W. Wilson appeared.
28. The Board voted to clarify the policy that the Member Benefits Committee should review and recommend to the Board traditional association benefit programs such as health, life, disabil-

ity, dental and professional liability insurance and other programs such as discount purchasing programs which have potential benefit to bar members and which could be provided with little or no cost to the Bar, or with potential revenue to the Bar which is disclosed to Bar membership.

29. The Board approved two potential benefit programs: (1) an Airborne Express discount program; and (2) a travel program with Vantage Travel. The Board authorized the President or the Executive Director to execute the Airborne contract and review the endorsement materials for both programs.
30. Delivery of Legal Services Committee Chair Brian Namba and several members of the committee appeared before the Board to propose that the Commission instruct its ABA representatives to support the proposed changes in the ABA's Model Rule 6.1 at the ABA Midyear meeting in Boston in February.

    Brad Rich appeared and explained his personal support for pro bono but explained he had a philosophical opposition to the Bar inching forward mandating pro bono.

    The Board voted to instruct its ABA representatives to vote their conscience on the proposed changes to ABA Rule 6.1.
31. Budget & Finance Committee Chair J. Michael Hansen referred to the financial statements and highlights in the agenda package and reviewed the reports for December.
32. Young Lawyers Section President Keith A. Kelly reported on current Young Lawyer Section projects including public service messages regarding shaking children, a blood drive, a literacy program, and promoting organ donor sign-ups.

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

1993 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1993 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Kaesi Johansen, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Wednesday, April 14, 1993**. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Young Lawyer of the Year
4. Distinguished Section/Committee
5. Distinguished Non-Lawyer for Service to the Profession
6. Distinguished Pro Bono Lawyer/Law Firm of the Year

Notice of Election of Bar Commissioners First and Third Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for one member from the First Division and three members from the Third Division, each to serve three-year terms. To be eligible for the office of Commissioner from a division, the nominee's mailing address must be in that division as shown by the records of the Bar.

Applicants must be nominated by written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after March 15, and completed petitions must be received no later than April 30. Ballots will be mailed on or about May 14 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on June 18.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1) Space for up to a 200-word campaign message plus a photograph in the June/July issue of the Bar Journal (published around June 1). The space may be used for biographical information, platform or other election promotion. Campaign messages for *Bar Journal* publication are due along with completed petitions no later than April 30.

2) A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their district.

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar no later than May 7 enough letters for all attorneys in their district.

If you have any questions concerning this procedure, please contact John C. Baldwin at the Bar Office, 531-9077.

Wanted: Mock Trial Judges

The Law Day and Law-Related Education Committee of the Utah State Bar is looking for a few (200) great lawyers and judges and a few more (80) non-lawyers to judge junior and senior high school mock trials throughout Utah from March 22 through April 22. The Mock Trials are held in actual courtrooms and are judged by a panel of three (3) persons; a presiding judge (lawyer/judge), and panel judge (lawyer/judge), and a community representative.

If you'd like to have some fun and be a hero, please complete the pull-out form at the end of the magazine.

Discipline Corner

SUSPENSIONS

On December 14, 1992, the Utah Supreme Court placed Clayne I. Corey on Interim Suspension pending a final determination of pending disciplinary proceedings. The interim suspension was based upon allegations from various clients that Mr. Corey accepted fees and failed to provide any meaningful legal services.

On January 7, 1993, Gary J. Anderson was suspended from the practice of law for one year effective September 18, 1992. In addition to the period of suspension Mr. Anderson agreed to make restitution to the affected clients as a condition precedent to reinstatement to practice law. This action was taken pursuant to a Discipline by Consent wherein Mr. Anderson admitted that he had violated Rule 1.3, DILIGENCE, Rule 1.4, COMMUNICATION, Rule 1.5, FEES, Rule 5.3, SUPERVISING NON ATTORNEY ASSISTANTS, and Rule 5.5, AIDING THE UNAUTHORIZED PRACTICE OF LAW.

Mr. Anderson stipulated that he had undertaken to represent a large number of clients, that the clients were not adequately represented, that he failed to return phone calls and keep his clients informed as to the status of their cases, and that his firm accepted fees for which no meaningful legal services were provided.

Mr. Anderson further stipulated that a suspended attorney employed in his law firm was not properly supervised and that he acquiesced in this attorney's unauthorized practice of law.

Stronger sanctions were not imposed due to the evidence submitted by Mr. Anderson that he was suffering from depression following the death of his father and was unable to cope with the problems associated with the management of his law practice.

Upon completion of the conditions of his suspension, and upon being reinstated to practice law, Mr. Anderson will be placed on supervised probation for a period of two years and shall perform 200 hours per year of pro bono legal services.

Scott M. Matheson Award

The Law-Related Education and Law Day Committee of the Utah State Bar presented the first annual Scott M. Matheson Award to Greg Skordas and the law firm of Van Cott, Bagley, Cornwall & McCarthy. The second annual award went to Barry Gombert and the law firm of Fabian & Clendenan. Currently, the committee is accepting applications and nominations for the third annual Scott M. Matheson Award to be presented on Law Day, May 1, 1993.

PURPOSE: To recognize those lawyers and law firms who have made an outstanding contribution to law-related education in the State of Utah.

CRITERIA: Nominations and applications will be accepted on behalf of individuals or law firms who have:

1. Made significant contributions to law-related education in the State of Utah which are recognized at local and/or state levels.

2. Voluntarily given their time and resources in support of law-related education, such as serving on planning committees, reviewing or participating in the development of materials and programs and participating in law-related education programs such as the Mentor/Mid-Mentor Program, Mock Trial Program, Volunteer Outreach, Judge for a Day, or other court or classroom programs.

3. Participated in activities which encouraged effective law-related education programs in Utah schools and communities and which have increased communication and understanding between students, educators, and those involved professionally in the legal system.

APPLICATION PROCESS: Applications and/or nominations may be submitted to the:

Scott M. Matheson Award
Law-Related Education Committee
Utah Law and Justice Center
Box S-10
645 South 200 East
Salt Lake City, UT 84111

Included in the nomination should be a cover letter, a one page resume and a one page summary of the nominee's law-related activities. The nominee may also submit other related materials which demonstrate the nominee's contributions in the law-related education field. These materials may include a bibliography of law-related education materials written by the nominee, copies of news items, resolutions, or other citations which document the nominee's contribution or a maximum of two letters of recommendation. All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Nominations must be postmarked no later than April 15, 1993.

State and Local Government Conference

On Friday, March 26, 1993 the J. Reuben Clark Law School Government and Politics Legal Society will hold its Eleventh Annual State and Local Government Conference at the Excelsior Hotel in Provo, Utah.

You will probably receive a registration form for this conference in the mail. If you do not receive a registration form or if you have questions, please call Carolyn Stewart at 378-6384.

The conference will consist of Civil, Criminal, and Political sections, with panels and speakers addressing issues of importance in these areas of law.

CLE and Ethics credit will be available.

ATTENTION: New CLE Tracking Procedure!

Beginning January 1, 1993, the Utah State Bar modified the membership base to provide tracking of Continuing Legal Education (CLE) hours attended for all members of the Utah State Bar. The Utah State Bar and Utah State Board of CLE will track CLE hours for programs which have been previously approved and reported to the Utah State Board of CLE. Thereafter, on a quarterly basis, the Utah State Bar will be printing CLE information on the mailing labels affixed to the Bar Journals. This information will also be accessible by contacting the Utah State Board of CLE, located at the Utah Law & Justice Center.

ROCKY MOUNTAIN MINERAL LAW FOUNDATION

Porter Administration Bldg.
7039 East 18th Ave.
Denver, CO 80220
Telephone (303) 321-8100
Telecopier (303) 321-7657

PRESS RELEASE

Special Institute
on

OIL AND GAS ROYALTIES ON NON-FEDERAL LANDS

Santa Fe, New Mexico
April 19 & 20, 1993

The Rocky Mountain Mineral Law Foundation is sponsoring a two-day Special Institute on Oil and Gas Royalties on Non-Federal Lands on April 19-20, 1993, in Santa Fe, New Mexico. The Institute will provide an in-depth analysis of current legal and management issues associated with valuation and payment of royalties on private, state, and local government-owned lands.

Speakers with royalty expertise will present scholarly and practical papers; question and answer sessions will follow several papers. A panel discussion of a hypothetical royalty case will present vital issues from both producer and landowner perspectives.

This Institute will benefit royalty owners; corporate and outside counsel who represent their clients in non-federal royalty issues and litigation of fee royalty disputes, land personnel and counsel involved in negotiation and preparation of royalty instruments; accountants and royalty payment managers who are responsible for the valuation and accounting of private, state, and local government royalties; and employees of state and local government agencies who are responsible for royalty receipts and auditing royalty payors.

As a nonprofit educational organization, the Foundation would appreciate any publicity you can provide for this Institute, including notices in magazines, professional journals, newsletters, and calendars of events. A brochure is attached for your convenience. For additional information, contact the Foundation at (303) 321-8100. Thank you.

Salt Lake Legal Secretaries Association Cordially Invites You to Boss Appreciation Night

We appreciate Bosses
Despite all their tosses
Of curve balls that blow us away

March 18th they're in season
Bosses Night is the reason
To honor them just for a day

But to be really honest
We have times when we're fondest
Of the time and the tasks that we share

It's a team kind of feeling
That we find quite appealing
Which for most folks is really quite rare

So it's Bosses we honor
(Hope tomorrow we're not goners)
At the Annual dinner event

Yes we'll curry their favor
Tho' expecting more labor
And let's hope that the dough is well spent

Thursday, March 18, 1993
Olympus Hotel
161 West 600 South
Cascade Room
Salt Lake City, Utah

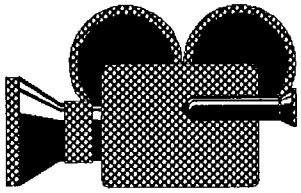
Social Hour 5:30 – 6:30 p.m.
Award Presentation
Dinner 7:00 p.m.
Buffet – Cash Bar

R.S.V.P. Joann Tsakalos: 521-3773
Alexa Baxter: 532-1234

Reservations must be paid in advance and mailed to:
Alexa Baxter
c/o Parsons Behle & Latimer
P.O. Box 11898
Salt Lake City, Utah 84147-0898

Deadline for Reservations: March 15th
$20.00 Guest Charge
No Charge for Members

MEMORANDUM



To all members of the Utah State Bar, your help is requested. The following CLE video tapes are missing from the Bar's library. Please check your offices, desks, libraries, etc. . . . to see if you have any of these missing tapes. If so, please return them to the Utah State Bar or contact Melissa Blunt, at 531-9095. Thank you in advance for your help!

Number	Video Title
14:	"Title Unknown"
28:	"Title Unknown"
35:	Ch. 11 Bankruptcy: Dealing with the Reorganizing Debtor
36:	Emerging Theories of Lender Liability
38:	Farm Bankruptcies
40:	Bankruptcy Practice and Litigation
49:	Negotiations: Winning Tactics and Techniques
64:	Mergers and Acquisitions
74:	What Every Lawyer Needs to Know About Drafting Documents for a Closely Held Corporation
78:	Criminal Law
90:	Accounting for Lawyers
122:	Southern California Tax and Estate Plan Forum
144:	Video Law Review
150:	Will Drafting: Avoiding Pitfalls and Problems
163:	Closing Argument in a Criminal Case III
167:	Direct and Cross Comparative of a Witness
180:	Introduction to Evidence
184:	Cross Exam and Imp II
232:	Ethical Issue in Estate Planning
234:	The Generation Skipping Transfer Tax: A Synopsis
250:	Retirement Exemption, Concealment of Assets
251:	Nuts and Bolts of Guardianship
269:	The Ethics of Getting, Keeping and Caring for Clients
291:	Environmental Science Series: Chemistry Analysis
295:	Understanding Financial Statements–Accounting for Lawyers
297:	"Title Unknown"
312:	Tax and Estate Planning for Life Styles
315:	Family Law Practice into the 21st Century
328:	Section 401(a)(4) — Tax Qualified Deferred Compensation Plans
329:	Succession Planning for the Family Business
352:	Employment and the Work Place II
363:	"Title Unknown"
380:	NCLE – Civil Ligation III
381:	The Utah Revised Business Corporation Act

Amendments to Code of Judicial Administration

Attorneys or others wishing to submit proposed amendments to the Code of Judicial Administration should forward the same, in writing, to General Counsel, Administrative Office of the Courts, 230 South 500 East, Suite #300, Salt Lake City, Utah 84102, no later than April 1, 1993.

Westminster College CLE Institute

Friday, April 23, 12:30 to 5:30
Saturday, April 24, 9:00 to 4:30

This institute is geared to the needs of the general practitioner and offers 12 continuing legal education credits in a single one and one-half day session.

TOPICS

- Employment Law Update: Ada, Civil Rights, Wrongful Discharge
- Billing Practices: What's Fair and What's Profitable?
- Ethics: Professionalism in the Courtroom
- Computers: Networks and Legal Software
- Personal Injury Suits Against the Feds and More

For information call 488-4159

Cost: $190 for registrations received by April 9. $200 for registrations received after April 9.

LITIGATION REPORT AND UPDATE

January 19, 1993

PLAINTIFF & COUNSEL DATE OF FILING	CAUSE OF ACTION (▲ = defendant) (π = plaintiff)	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
1. Brian Barnard (pro se) 02-19-91	Action for injunctive and declaratory relief to prevent the π from being disciplined for "aiding the unauthorized practice of law", alleging the "practice of law" is unconstitutionally vague.	Third Dist. Ct. J. Moffat C-910901201CV	R. Burbidge	6/21/91 ▲ 's Motion to Dismiss and for Rule 11 Sanctions granted. Appealed to Ut. S. Ct. All briefs filed. Awaiting Oral Argument.
2. Ernest & Sharon Bailey (S. Rowe) 12-16-87	USB's alleged breach of fiduciary duty for failure to discipline Richard Calder; seeking Writ of Mandamus and $800,000 in damages, a "state agency" declaration, attorney's fees and costs.	Third Dist. Ct. J. Wilkinson C-87-8124	C. Kipp R. Rees	Oral argument heard by Ut. S. Ct. on 7-15-91. Awaiting decision.
3. L.R.T. (real name not disclosed) (B. Barnard) 12-08-88	A 1983 civil rights action alleging deprivation of substantive and procedural due process in USB's 1986 denial of admission to practice law resulting from π's felony conviction.	U.S. Dist. Ct. J. Jenkins 88-C-1141W	C. Kipp R. Rees S. Trost	5-1-92 Order of Dismissal w. Prejudice. Reserving issue of π's attny fees on appropriate motion. CASE CLOSED
4. Brian Barnard (pro se) 08-02-89	Action for injunctive relief against Toni M. Sutliff, Assoc. Bar Counsel, to enjoin disciplinary process for failure to provide π with certain requested information prior to the time such information was available to Assoc. Bar Counsel for release to π.	Third Dist. Ct. J. Hansen 890904670	C. Kipp R. Rees S. Trost	▲'s award of Rule 11 Sanctions vacated by Ut. S. Ct. on 12-18-92 and remanded to district court CASE CLOSED
5. Legal Access adv. USB, Trost, Davis (pro se) 05-20-91	Counter claim filed on 4-9-92 after Legal Access was sued by USB for the unauthorized practice of law. Counter claim alleges USB unlawfully restrains trade, i.e. legal services.	Third Dist. Ct. J. Sawaya 92-0901597 CV	B. Manning R. Malmgren	USB Motion to Dismiss Counterclaim granted 7-31-92. Permanent injunction issued against ▲s on 10-21-92. CASE CLOSED
6. Calder I (pro se) 08-26-91	A voluminous 1983 Civil Rights Action alleging a conspiracy among the Bar Commissioners & multiple individuals involved in his disbarment proceedings.	U.S. Dist. Ct. J. Brimmer 91-C-895	C. Kipp R. Rees	9-13-91 ▲'s Motion to Dismiss based on Rule 8(short & plain statement of claim). On 11-29-91 π filed his Notice of Dismissal. CASE CLOSED

PLAINTIFF & COUNSEL DATE OF FILING	CAUSE OF ACTION (▲ = defendant) (π = plaintiff)	COURT/JUDGE	COUNSEL FOR BAR	CURRENT STATUS
7. Calder II (pro se) 11-29-91	A condensed version (242 pgs.) of Calder I asserting essentially the same claims filed simultaneously with Calder's Notice of Dismissal in Calder I.	U.S. Dist. Ct. J. Brimmer 91-C-1244	C. Kipp R. Rees	12-24-91 Motion to Dismiss based on Rule 8; denied on 2-11-92. On 2-14-92 ▲s filed Second Motion to Dismiss for failure to state a claim, statue of limitations and immunity. On 3-10-92 ▲s filed Answer and a Motion for Judgment on the Pleadings. Awaiting decision on pending motions.
8. Calder III (pro se) 6-19-92	A complaint alleging 1) the Ut. S. Ct. to be incompetent in ruling on π's disbarment due to bankruptcy issues 2) an independent action for fraud perpetrated by the ▲'s on the Ut. S. Ct. and U.S. Dist. Ct.	U.S. Dist. Ct. J. Brimmer 92-C-546W	C. Kipp R. Rees	7-31-92 ▲'s argued Motion to Dismiss and for Judgment on the Pleadings asserting that relief requested (vacating disbarment) cannot be granted by the ▲'s. Under advisement.
9. Calder IV (pro se) 10-20-92	An independent action in equity (following π's unsuccessful Rule 60(b) Motion to Vacate his disbarment filed in the Ut. S. Ct.) alleging fraud was committed by the ▲s during the course of his disbarment.	Third Dist. Ct. J. Iwasaki 92-0905804CV	C. Kipp G. Sanders S. Trost	12-21-92 ▲s filed Motion for Judgment on the Pleadings. ▲ filed Memorandum in Opposition. Awaiting hearing.
10. Calder V (pro se) 12-10-92	A complaint alleging that the USB failed to commence timely disciplinary actions against various attnys involved with π's disbarment proceedings.	Third Dist. Ct. J. Moffat 92-0906769CV	C. Kipp G. Sanders S. Trost	12-31-92 ▲s filed a Motion to Dismiss alleging lack of subject matter jurisdiction, immunity and failure to state a claim. π filed his Memorandum in Opposition on 1-11-93. Awaiting hearing.

Law Day Approaching

The Law Related Education and Law Day Committee will present its Law Day Fair on Friday, April 30, 1993, between 11:00 a.m. and 2:00 p.m. at Washington Square City and County Building. Law Day is an annual nationwide celebration of the rule of law. There will be information booths set up by community organizations, law-related games and presentations, music, and food. Around noon, an awards presentation will take place in the auditorium at the Salt Lake City Public Library. Participants in the judge for a day and mentor partnership programs will be recognized. Winners of the state wide mock trial competition will be announced. The 1993 Liberty Bell Award and Scott M. Matheson Award will be presented. Everyone is invited.

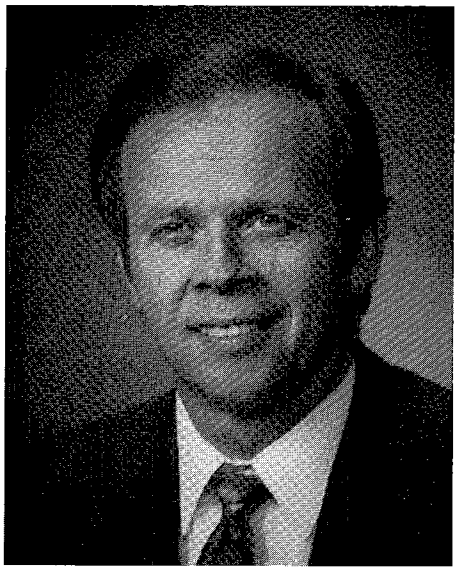
HEART AT WORK

WIN-WIN opportunities in the law are infrequent. Legal matters usually result in both a winner and a loser. As members of the Utah Bar we have a unique opportunity to be beneficiaries of a WIN-WIN situation.

Note the benefits:
— more recreation time
— lower medical bills
— reduced insurance rates
— increased family time
— better productivity
— enhanced staff morale
— longer life!

At the heart of this opportunity is a challenge to improve your health. Consider the impact of poor health on your ability to enjoy your work and family. Are your activities with your children and grandchildren limited because of weight, heart problems, tiredness, irritability and stress? Are you aware that Blue Cross/Blue Shield premiums are rising because of increased health care costs of our members? Have you considered that an improvement in your health equates to money in your pocket and more time under your control.

We are inviting you to become more aware of your heart. Heart disease is everyone's problem — directly or indirectly. It's America's number one killer, claiming a million lives a year. In economic terms, the annual cost of cardiovascular disease is $101.3 billion. Consider good men and women you have known who have been subject to the disabling effects of stroke, heart attack, cardiovascular disease, etc. What does your future hold in this area?



By Vaughn W. North
Thorpe, North & Western

The solution to much of this problem is prevention. We simply need to be more aware of things we do on a daily basis that affect our health. Although the value of exercise, good diet, and rest are well known, they are also easily procrastinated. By raising our awareness of daily health habits, we can make a significant contribution toward better health.

With the discovery in the 1800s by Louis Pasteur that bacteria caused disease, mankind took a major step forward in improved health. The prevention of bacterial disease merely required an awareness of sanitary habits. Cardiovascular disease offers a similar solution. By implementing better eating habits, exercise, cessation of smoking, and stress control, we have the power to improve this area of health in a manner similar to prevention of bacterial disease. We simply need to increase awareness and commitment to apply good judgment.

The American Heart Association is offering its assistance. Without incurring any significant expense, the American Heart Association can bring in volunteers who will monitor blood pressure, teach better diet and exercise and provide other information and motivation that will provide immediate and long term benefit. I would be happy to bring a representative of the Heart Association to your firm and introduce a program referred to as HEART AT WORK. Participants in this project implement training based on materials supplied by the Heart Association. You design your own program with your points of emphasis. You may choose to work on better diet, blood pressure and cholesterol monitoring, exercise programs or any combination.

You will be invited to designate one of your staff as a coordinator to work with the Heart Association representative. Two hours a month for the coordinator will implement the full program. The support activity will be provided by volunteers who conduct the testing and training. This seems like a small price to pay for improved health in your firm. Even from an economic viewpoint, the savings ultimately realized in lower health insurance costs, lower absenteeism and higher morale far offsets the effort required. If every firm joins or participates, we will all contribute to a WIN-WIN situation that can also set an example for other professions. Feel free to contact me at Thorpe, North and Western, Sandy, Utah, 566-6633.

1993 Utah State Bar
Mid-Year Meeting Program
St. George, Utah

THURSDAY, MARCH 11, 1993

6:00 - 8:00 p.m. **Registration and Opening Reception**
Hotel Lobby/Sabra Rooms
SPONSORED BY: Jones, Waldo, Holbrook & McDonough

FRIDAY, MARCH 12, 1993

7:30 a.m. **Registration/Continental Breakfast**
Hotel Lobby
SPONSORED BY: Michie Company

8:00 a.m. **Opening General Session** – *Sabra Rooms*
Welcome and Opening Remarks
Randy L. Dryer, President
Earl Jay Peck, Chair, 1993 Mid-Year Meeting

8:20 a.m. **KEYNOTE SPEAKER: The Legal Profession in the 21st Century**
Sabra Rooms
J. Phil Carlton, State Capital Law Firm Group

9:10 a.m. **The Utah Bar in the 21st Century: Who, What and Why?** – *Sabra Rooms*
Jim B. Butler, Parsons, Behle & Latimer; J. Phil Carlton, State Capital Law Firm Group; Michael Christensen, Utah Foundation; Mary C. Corporon, Corporon & Williams; Keith A. Kelly, Ray Quinney & Nebeker; Moderator - James B. Lee, Chair, Utah State Bar Futures Commission.

10:00 - 10:30 a.m. **Break** – *Hotel Lobby*

10:30 - 11:20 a.m. **Breakout Sessions: (1 each)**

I **The SOB Litigator** – *Cinema 6 Theaters*
Elizabeth S. Conley, Parsons Behle & Latimer; M. David Eckersly, Prince, Yeates & Geldzahler; Hon. J. Philip Eves, 5th District Court; Robert P. Faust, Nielsen & Senior; Gary B. Ferguson, Williams & Hunt; Hon. Dennis M. Fuchs, 3rd Circuit Court; Michael L. Larsen, Parsons Behle & Latimer; David W. Slagle, Snow Christensen & Martineau

II **Changes in Water Transfer Policy in the West: A New Age** – *Cinema 6 Theaters*
Lee E. Kapaloski, Parsons Behle & Latimer

III **Surviving in the 90's: Managing Your Law Practice** – *Sabra A-B*
Gayle F. McKeachnie, Mckeachnie & Allred

IV-A **Asset Protection Planning: Advantages and Pitfalls** – *Sabra F-G*
Michael D. Blackburn, Snow, Christensen & Martineau; Anna W. Drake, Fabian & Clendenin; Leland S. McCullough, Jr., Callister, Duncan & Nebeker; Alan F. Mecham, VanCott, Bagley, Cornwall & McCarthy; Moderator - David K. Lauritzen, Richards, Brandt, Miller & Nelson

11:00 a.m. **Golf Clinic** – *Sunbrook Golf Course*

11:20 - 11:30 a.m. **Break**

11:30 a.m. - 12:20 p.m. **Breakout Sessions (1 each)**

IV-B **Asset Protection - Continued** – *Sabra F-G*

V **How to get the Court to Buy into Your Argument : Legal Writing Workshop**
Cinema 6 Theaters
Readers & Presenters: Hon. Judith M. Billings, Utah Court of Appeals; Hon. Christine M. Durham, Utah Supreme Court; Hon. I. Daniel Stewart, Utah Supreme Court; Hon. Anne M. Stirba, 3rd District Court; Hon. William A. Thorne, Jr., 3rd Circuit Court; *Readers:* Hon. Monroe G. McKay, Chief Judge, 10th Judicial Circuit Court of Appeals; Paul M. Simmons, Suiter, Axland, Armstrong & Hanson; Jeannette F. Swent, Parsons Behle & Latimer

VI **Financial Institution Liability - Who's Next: Officer/Director/*Lawyer* and Bystander** – *Sabra C*
Vic Simon, Editor, Bank Thrift Litigation News

VII **Is There Really a Need for Tort Reform In Utah?** – *Cinema 6 Theaters*
Ralph L. Dewsnup, Wilcox, Dewsnup & King; Mark J. Taylor, Strong & Hanni; Brent Wilcox, Wilcox, Dewsnup & King.

VII **Recent Developments in the U.S. District Court Rules of Practice**
Sabra A-B
(to be announced)

12:20 p.m. **Meetings Adjourn for the Day**

1:15 p.m. **Golf Tournament** – *Sunbrook Golf Course*

2:00 p.m. **Tennis Tournament** – *Green Valley*
Trapshoot Tournament – *Green Valley*

6:30 - 7:30 p.m. **BYU Law School Reception**
Holiday Inn
RSVP to Kathy Pullins at 378-5576

University of Utah Law School Reception
Holiday Inn

SATURDAY, MARCH 13, 1993

7:30 a.m. **Fun Run**

8:00 a.m. **Registration/Continental Breakfast**
Hotel Lobby
SPONSORED BY: First Interstate Trust Division

8:30 a.m. **A New Approach to Advocacy**
Sabra Rooms
Keith Evans, England Barrister & California Attorney
SPONSORED BY: The Litigation Section

9:00 a.m. **Tennis Clinic** – *Vic Braden Tennis College*

10:00 - 10:30 a.m. **Break** – *Hotel Lobby*
SPONSORED BY: Rollins Hudig Hall of Utah, Inc.

10:30 - 11:20 a.m. **Breakout Sessions: (1 each)**

IX **Domestic Violence: It's Not Just Another Assault** – *Cinema 6 Theaters*

X **State Tax Adjudication & Update**
Cinema 6 Theaters
Maxwell A. Miller, Parsons Behle & Latimer

XI **Doing Business with the Defense Department** – *Sabra F-G*
Kevan F. Smith, Deputy Salt Lake County Attorney

XII-A **Insights From the Federal Bench**
Sabra A-B
Hon. Samuel Alba, United States District Court; Hon. Dee V. Benson, United States District Court; Hon. Bruce S. Jenkins, Chief Judge, United States District Court

11:20 - 11:30 a.m. **Snack Break** – *Hotel Lobby*
SPONSORED BY: Parsons Behle & Latimer

11:30 - 12:20 p.m. **Breakout Sessions: (1 each)**

XII-B **Federal Bench - Continued** – *Sabra A-B*

XIII **Search & Seizure and the Utah Constitution: Has the Utah Supreme Court Gone Too Far In Creating a State Exclusionary Rule?** – *Cinema 6 Theaters*
Prof. Paul Cassell, University of Utah; Ronald J. Yengich, Yengich, Rich & Xaiz

XIV **Employer Beware: Attorney Fees as Consequential Damages in Wrongful Termination Cases** – *Sabra F-G*
Ronald E. Griffin, Solo Practitioner

XV **Developments in Real Estate for the General Practitioner** – *Cinema 6 Theaters*
Gregory S. Bell, Kirton, McConkie & Poelman

12:20 - 12:30 p.m. **Snack Break** – *Hotel Lobby*
SPONSORED BY: Accessibility, Inc.

12:30 - 1:20 p.m. **ETHICS Breakouts: (1 each)**

A **Mines, Missiles and Mystery: Lawyer Discipline** – *Sabra A-B*
Edward K. Brass, Defense Attorney; L.A. Dever, Screening Panel Member; P. Gary Ferrero, Office of Bar Counsel; Moderator - Toni Marie Sutliff, Former Associate Bar Counsel

B **Attacking & Defending Work Product and the Attorney/Client Privilege**
Cinema 6 Theaters
J. Michael Bailey, Parsons Behle & Latimer

1:20 p.m. **Meetings Adjourn**

2:30 p.m. **Mountain Biking Tour** – *Snow Canyon*

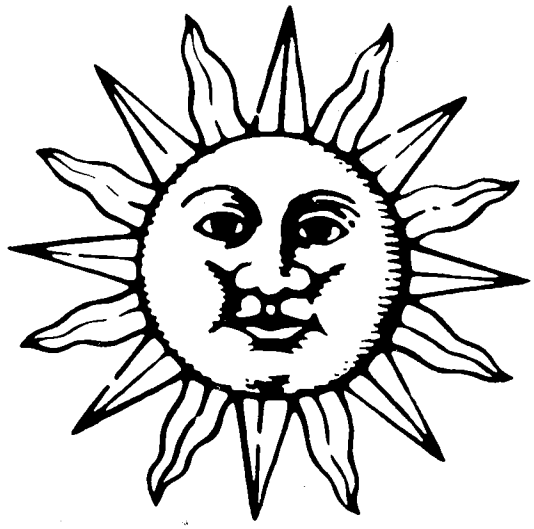
( ) **Indicate Number of CLE Hours per Program**

Mark Your Calendars Now for the

UTAH STATE BAR
1993 Annual Meeting

SUN VALLEY, IDAHO
June 30-July 3

Hope to see you in Sun Valley!



1993 State of the Judiciary

Address by Chief Justice Gordon R. Hall

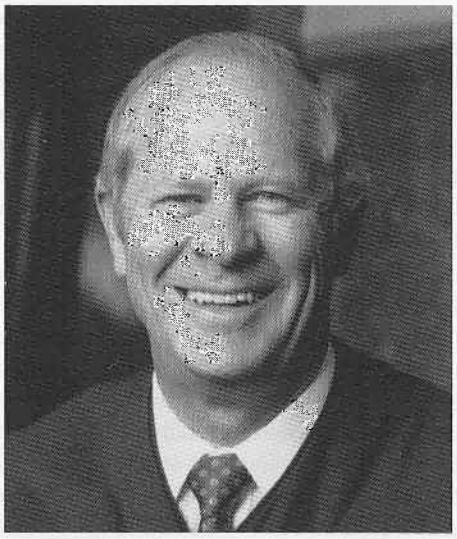
Governor Leavitt, President Christensen, Speaker Bishop, distinguished legislators, and special guests: I am happy to join you at the start of a new administration, and a new legislature, when many of us are taking a fresh look at where we are today, and where we want to go. We are also re-examining Utah's relationship to the country as a whole and to the world around us. The crisis in Somalia reminds us of the disastrous results of a total breakdown in civil order, where daily life becomes a war of all against all.

The Somalis have no one to turn to for final, binding decisions when disputes arise. Providing this final arbiter is one of the most important functions of a court system. In the Utah State Court System, we are pledged to provide these dispute resolution services in a manner that maintains public trust, and conserves public resources.

In a democratic society, our judicial decision makers must meet high standards. They must have high professional qualifications; they must show total independence and impartiality; and they must be scrupulous in respecting the constitutional and legal rights that ensure fairness for all. Our rigorous processes for selecting Utah judges, and for constantly evaluating their performance, are designed to produce a judiciary that meets these high standards.

No one entering a Utah courtroom has to worry about judges pressured by special interest groups, or swayed by concern about who will run against them in the next election. Since 1986, state trial judges have run in *uncontested* retention elections every six years. In 1992, having gained the necessary legislative sanction, we were able to publish information about judges' backgrounds, and performance evaluation results, in the official state *Voter Information Pamphlet* and in the media, to better inform citizens when they cast their votes.

We have worked hard to organize our judiciary for maximum productivity.



CHIEF JUSTICE GORDON R. HALL was appointed to the Supreme Court in January 1977 by Gov. Scott M. Matheson. He was a judge in the Third District Court from 1969 until his appointment to the Supreme Court. Prior to his appointment to the bench, Chief Justice Hall was town attorney for Wendover and Stockton, city attorney for Grantsville and Tooele County Attorney. He served as a attorney-advisor for the Tooele Army Depot from 1953 to 1958, and maintained a private law practice in Tooele from 1952 to 1969. He is the chairman of the Utah Judicial Council, past president of the Conference of Chief Justices, and former chairman of the Board of Directors of the National Center for State Courts. He graduated from the University of Utah College of Law in 1951. He received the Judicial Council's Distinguished Jurist Award in 1988.

Unlike most other states, where the judicial branch is broken up into many local and regional court networks, our Utah courts are part of a single administrative system. We don't suffer the inefficiencies of having scores of semi-independent court systems, each with its own facilities, support staff, rules, and policies, vying with each other for limited resources. In our unified system, judges from each court level elect delegates to our Judicial Council, which I chair. The Council determines the programs and priorities that will best meet our obligation to provide quality judicial services in the most efficient and effective manner. Staff work for this challenging job is provided by the Administrative Office of the Courts.

During this decade, we have pursued initiatives on many fronts to improve the quality of the court system. But three major programs overshadow all of the others in their scope, their degree of difficulty, and their positive impact when completed.

I. COURT CONSOLIDATION

The first major program is the consolidation of the Circuit Courts with the District Courts, the trial courts of general jurisdiction. We are merging these two court levels to make judges, and justice, more accessible to the people we serve. The old jurisdictional boundaries of each court level created a situation where some judges and staff people were overloaded, while others were underutilized. The consolidation will allow us to use every person and every facility in the system to full potential. This will cut down on the number of judges and staff support needed now, and on the number of additional judges we'll need as population and caseloads continue to grow.

Starting in January of 1992, we took the first big consolidation step — combining the District and Circuit Courts in the four non-Wasatch Front Districts. The process has been neither easy nor painless. We had no rulebook to turn to. The enabling legislation outlined the result to be accomplished, but did not tell us how to get there.

With a lot of effort and resourcefulness from judges, staff, and the court executives and bar members on the district transition teams, we found the answers we needed. The effort is already bearing fruit.

Attorneys and other court patrons are telling us that now that additional District judges are available in each district, it's easier to obtain judge's signatures on legal documents, or to get scheduled on the court calendar. Many lawyers and clients can now accomplish their legal business closer to home, saving everyone time and money.

Our next big consolidation step, combining District and Circuit Court operations in the Wasatch Front counties, will take longer to complete. The scale of what has to be done in the high population districts is magnified. The training, logistics, and record keeping tasks necessary to consolidate the court levels in these counties are massive. We don't anticipate completing them in every district until 1996 at the earliest. With the extra lead time, we are trying to use the lessons from the consolidation process in the low population districts, and make this transition as smooth and efficient as possible. We appreciate the support of the bar, and of other community groups with an interest in the justice system, as we try to cope with the challenges involved in accomplishing such a big change.

The consolidation process, and normal attrition have occasioned a number of departures from the bench. By the end of 1993, we will have replaced nearly 20 percent of our trial bench. We welcome this highly qualified and committed group of new jurists.

We know how valuable new people with new perspectives can be. When asked why he set to work on organizational reform so quickly after being appointed Chief Justice of the US Supreme Court, Justice Warren Burger quoted a phrase his mother had often used. Mrs. Burger had told her son, "Whenever you move into a new house, fix the cracks in the plaster before you get used to them." These new folks can point out the "cracks" in the system that some of us might have gotten used to.

II. COURT TECHNOLOGY

In his inaugural address, Governor Leavitt said the world of the 21st Century would be dominated by what he called an "electronic highway." He described a vast world-wide network using telephones, televisions, satellites, and computers linked by fiber optics and invisible waves, with unlimited amounts of information accessible by a few keystrokes. He warned that those who were bypassed by this grand highway would find themselves in a situation of *"real isolation and economic devastation."*

A number of the firms building this new world highway are right here in Utah. Virtually all the other companies which hope to succeed in the demanding international marketplace must rely on these high technology information and communication systems. To effectively serve these firms, and the other citizens of the state, the courts must employ the technological systems which are the only access ramps onto the electronic highway.

We are currently engaged in several technology-based pilot programs aimed at overcoming barriers such as time, space, and language to efficiently deliver court services. For example, we now have video arraignment systems installed in four court locations throughout the state. Other locations are testing new video and computer aided systems for efficiently keeping court records. Murray Circuit Court is piloting the "touchscreen" system that greatly simplifies the filing of a small claim.

"The Utah judiciary is faced with urgent problems, but only our juvenile courts are currently in a state of crisis."

But the centerpiece of the courts technology effort is unquestionably our new, state-wide "open systems" computer information network. With support from the legislature, we are replacing our old mainframe based information system with a new personal computer based system that promises greatly increased speed and capacity at lower cost. Nearly three quarters of the new computers are installed and operating.

With information from the new system, our strategic planners will be able to make their plans based on a wider and more accurate range of data. The new system also lays the foundation for a network of accurate and instantly accessible information for all justice system agencies. The new system will eventually allow lawyers, reporters, and others needing courts information to bring the material up on their computer screens, rather than sending someone to the courthouse to get it. The system has enough capacity and flexibility to serve us well for many years, and to meet a host of unexpected contingencies.

III. SALT LAKE COURTS COMPLEX

We have worked hard in recent years not only to improve technology, but also to upgrade our antiquated court facilities. With legislative and executive support, we have replaced a number of the old, single judge courthouses with efficient new facilities that co-locate two or more court levels. This consolidation of court locations is saving many thousands in rent and staffing costs.

We believe that the same principle on a larger scale will apply to the proposed new Salt Lake Court Complex, our third major court system project. A programming and planning report submitted this year by architectural and planning consultants concluded that co-locating the appellate courts, state law library, Administrative Office, and the Salt Lake District and Juvenile Court in a single center on block 39 west of Washington Square, would save millions in long-term leasing and staff costs, and provide a multi-purpose public facility that would greatly improve justice services to citizens of Salt Lake and the state as a whole. Acquisition of the property is nearly complete, and we are eager to proceed with the architectural design phase.

IV. PROGRAMS FOR FAMILIES IN CRISIS

Programs for a few other vital areas need mentioning. It has been pointed out by the Commission on Justice in the 21st Century, and by other court reform groups, that formal court procedures often work badly in dealing with family problems, and that less formal ways of settling family disputes, which try to foster cooperation instead of polarization, usually lead to more permanent solutions that are less painful to those involved, especially to the children. Mandatory classes for divorcing parents to help them meet the special needs of their children are being held in Third and Fourth districts. Initial evaluations from parents attending these

classes look very positive.

Early this year, a pilot project in which divorcing parents contesting custody or visitation are required to meet with a mediator before going to court was launched in Fourth District, and might soon be expanded to Third District as well.

We will keep you apprised on the effectiveness of these efforts to help families. This year, the Judicial Council is proposing bills to help spouses with lesser earning power gain access to the court system to protect their rights. One such bill would frame simplified procedures for victims of domestic violence to bring their cases to court.

IV. JUVENILE COURT CHALLENGES

We are all well aware that our state has the biggest families, and the highest percentage of young people of any state in the country. Most of us are proud of the "bumper crop" of children. But we cannot escape the fact that about a third of these young people will have an encounter with the Juvenile Court at some time during their teen years, and that increasing numbers of them are developing serious patterns of criminal activity and drug dependency.

An increasing number of studies have shown that when young offenders get the proper treatment and supervision at an early stage, the chances are very great that patterns of criminal behavior can be broken. For example, a group of dedicated people from youth service agencies, including the Juvenile court, has been developing a coordinated program for dealing with young sex offenders. Early evaluations of the program indicate a recidivism rate of only five percent. It is clear that these early intervention programs are vastly more effective than treatment programs for adult sex offenders, with their discouragingly high recidivism rates.

The Juvenile Court's problem is that since the caseload of young offenders has grown must faster than the number of Juvenile Judges and staff, only those young people with long offense records are receiving formal intervention services. We just don't have the staffing to deal with these young offenders early, when the prospects for turning their behavior around are the greatest. Delays of six months between the time a crime is committed and the date the case comes before a judge are not unusual in Salt Lake Juvenile Courts. That's half a lifetime to a thirteen year old.

Juvenile Court staff has developed many innovative responses to the burgeoning caseloads, like using more volunteers and interns for processing first-time, minor offenses, and increasing the use of electronic monitoring of the more serious probation cases. They have also increased probation officer caseloads, and decreased average probation time. But in the large urban districts, the system is still literally swamped with cases. A remedy must be found for this urgent problem.

For a fuller listing of major court system projects in the last year, and a description of our legislative priorities, as well as basic statistical information and an outline of court structure and operations, please refer to the 1993 Annual Report, delivered to you this morning. Court Administrator Ron Gibson and the other members of our legislative liaison staff will be available throughout the session to discuss court system issues with you.

"[T]he key to maintaining and improving the way of life that we treasure in this state is to never lose sight of the value of what we have built so far, and at the same time never to be satisfied with the status quo."

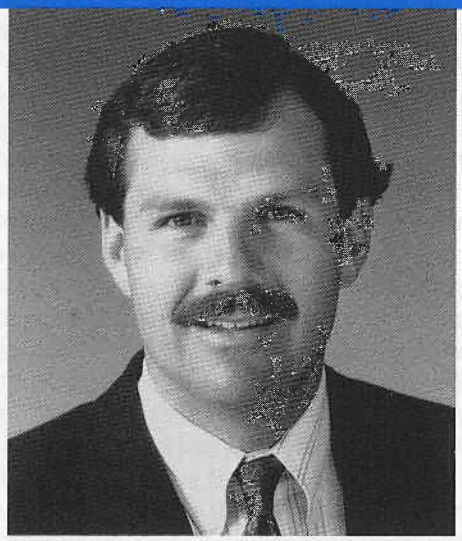
The Utah judiciary is faced with urgent problems, but only our juvenile courts are currently in a state of crisis. From the number of references our system receives in the national legal press, and the number of inquiries we receive from other states who want to replicate our programs, it appears that we continue to perform very well.

The same could be said for the Executive and Legislative Branches. Utah is cited in national publications as the most efficiently run state in the country, and several front page stories in top national newspapers have praised our effective partnerships between government and business that improve the quality of life for all.

Why, with all this good news, does the governor demand "a whole new level of performance"? Why does the legislature launch its fourth year of developing the *Utah Tomorrow Project*, one of the most advanced legislative strategic planning projects in the country? Why does the court system undergo the trauma and dislocation of combining two levels of court, when the system seemed to be operating adequately before?

The reason, I believe, is that we all realize that the standards of the eighties, high as they were, will not be sufficient to see us successfully through the 90's and beyond. We know that the key to maintaining and improving the way of life that we treasure in this state is to never lose sight of the value of what we have built so far, and at the same time never to be satisfied with the status quo.

During the past year, the term "reinventing government" has become a watch cry for American government at every level. Some states have made sweeping attempts to achieve these transformations virtually overnight. Many of these efforts to reinvent everything at once are stumbling. We believe that a steady, relentless effort to make small but significant improvements on a variety of fronts will serve us better in the long run. We look forward to sustaining our government partnership aimed at providing the people of Utah with the quality of government they deserve. All best wishes as you embark upon this year's legislative session.



Elections Open for Offices in the Young Lawyers' Section

By Mark S. Webber
President-Elect

March marks the opening of elections for the Young Lawyers' Section for the 1993-94 year. Nominations for the offices of President-Elect, Secretary and Treasurer open on March 19, 1993. These officers carry out the activities of the Section. Their duties 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. The President-Elect acts as President in the absence of the President. The President-Elect attends 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 1994-95 year. The President-Elect also performs other duties as may be delegated by the President.

Secretary:

The Secretary of the Section serves a one-year term of office. The Secretary keeps minutes of all meetings, sends out notices of meetings, prepares agendas and serves 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 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 other duties as may be delegated by the President.

Below is a summary of the election rules.

1. The President-Elect, Secretary and Treasurer are 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. Eligibility for the office of President-Elect terminates at the adjournment of the ABA Annual meeting following the candidate's 34th birthday. Eligibility for the office of Secretary or Treasurer terminates at the adjournment of the ABA Annual meeting following the candidate's 36th birthday. If a candidate is over the applicable ages but admitted to a state Bar for less than three years, that candidate is still eligible to run for office.

4. Nominations for the offices are being accepted from March 19, 1993 through March 26, 1993. 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, Keith A. Kelly, of Ray, Quinney & Nebeker, 79 South Main Street, P.O. Box 45385, Salt Lake City, Utah 84145-0385, by 5:00 p.m. on March 26, 1993. The current President, Keith A. Kelly, also serves as the election judge. Nominations should be hand-delivered or mailed to be

received by March 26, 1993.

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 29, 1993. 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 29, 1993. 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 29, 1993.

6. Officers are elected by secret mail ballot by all members of the Section. Ballots will be counted and election results announced on April 21, 1993.

7. Each candidate may obtain one mailing list of the Section's membership, which will be provided by the Section.

8. The new officers of the Section will take office at the 1993 Annual Meeting of the Utah State Bar.

9. A copy of the complete Election Rules can be obtained from Keith A. Kelly, Ray, Quinney & Nebeker, 79 South Main Street, P.O. Box 45385, Salt Lake City, Utah 84145-0385.

ELECTION TIMETABLE

Nominations Open	March 19, 1993
Nominations Close	March 26, 1993
Platform Statements Filed	March 29, 1993
Platform Statements and Ballots Mailed	April 1, 1993
Balloting Begins	April 1, 1993
Balloting Ends	April 19, 1993
Election Results Announced	April 21, 1993

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

Nominations for the Young Lawyer of the Year and Liberty Bell Awards

Nominations are currently being accepted for the Young Lawyer of the Year Award and the Liberty Bell Award.

The Young Lawyer of the Year Award honors an attorney who has contributed to the legal and/or non-legal communities. All members of the Utah Bar who qualify as young lawyers are eligible for the award. This award is given at the Annual Meeting of the Utah Bar June 30-July 3, 1993.

The Liberty Bell Award honors a non-lawyer who has made substantial law-related contribution to the community such as in the form of education or community service. This award is given on Law Day, May 1, 1993.

Nominations can be mailed to Lorrie Lima, Utah Attorney General's Office, 330 South 300 East, Salt Lake City, Utah 84111. For further information contact Lorrie Lima at 575-1628.

Wartime Lies and *The Man Who Was Late*

Both by Louis Begley

Reviewed by Betsy L. Ross

Sincerity is a state that has plagued and eluded me for as long as I can remember. Lionel Trilling's *Sincerity and Authenticity* became a well-worn not-quite-friend-but-more-impish-fellow-traveller throughout my college years. It is with some nostalgia that I read Louis Begley's novels, as he explores in them the themes of sincerity, authenticity and alienation.

In 1991, Louis Begley published *Wartime Lies*; in 1993, he published *The Man Who Was Late*. Mr. Begley, for all this literary production, is a practicing attorney, a partner in the New York law firm of Debevoise & Plimpton. Unlike some other attorney-writers, Mr. Begley does not write about law (note the absence of titles like "Death by Harmless Error," or "The Shifting Burden of Proof"). His books are not, heretofore, evocations of legal imbroglio or exposes of legal culture. He writes about what other non-attorney writers have written about. In fact, he has been compared to such accomplished writers as Proust and Balzac.

In an article in the August 16, 1992, New York Times Book Review, Begley explored the phenomenon of being both a writer and lawyer:

> Being a full-time lawyer has only one distinct disadvantage from my point of view as a writer: lawyers like me have to work long hours. In my own case, that disadvantage is significant if my work as a lawyer spills over into the weekend.

And on the effect of writing on his lawyering, Begley stated that "[e]xercising one's cognitive and imaginative faculties cannot be wholly bad in a profession that calls on its members to use their brains."

Begley's first novel, *Wartime Lies*, is a story of identity and disguise. The context for exploration of this theme is World War II Poland. The story is most centrally of a Jewish boy (Maciek) and his aunt, and how they survive the war by disguising themselves as Christians. (Quite a feat if you think about it, when a simple drop of Maciek's pants would reveal more than any artfully crafted identification card could hope to hide.) *Wartime Lies* is also a story of survival, but the question one is left with is . . . at what cost? Maciek, for example, in order to perfect his disguise, must do as other Christian boys his age would do — including making his first communion. Contemplating his communion, Maciek reveals the confusion of identity caused by the pretense he must practice to live. Probing Maciek's thoughts, Begley writes:

> I was a liar and a hypocrite every day; I was mired in mortal sin on that account alone, even if all other evil in me was disregarded. It was, of course, possible for me to be baptized. I now knew that this was a sacrament that could not ordinarily be repeated, so that it would be necessary to find a priest to whom we could reveal that I was a Jew and had not been baptized before. Baptism would wash away the Original Sin I was born with and, I thought,

my other accumulated sins as well, but how could I go on lying and not fall again into mortal sin that would put me on the road to damnation? On the other hand, even if Father P. was wrong about virtuous persons who had not received baptism being damned . . . even if my lying could be forgiven without confession, true repentance and absolution, was I good? I was impure in my thoughts, that was a mortal sin, and I was going to commit blasphemy, the gravest sin of all, when I took Communion without baptism and after a false confession.

As another work in the genre of Holocaust literature, *Wartime Lies* harbors some of the same faults as many of the others. Primo Levi, Auschwitz survivor and author, observed that Holocaust literature tends to be painted in black and white, whereas the reality was always much more complex. As a historical novel of sorts, *Wartime Lies* may simplify its subject. As an allegory, however, it is much more complex than I have been able to portray here. *Wartime Lies* raises the questions of who I am, who I present myself to be, who I experience myself as and what pretenses I learn to adopt for survival. These are questions Begley continues to explore in a much different setting in *The Man Who Was Late*.

In Begley's second novel, we can see even more clearly the participation of the individual in the process of his own alienation and eventual destruction. *The Man Who Was Late* answers the question left in *Wartime Lies* of what ultimately happens to one who, in the process of living, confuses the acting with the actor. The story is of Ben, told by Ben's friend Jack with the aid of extant notes of Ben that we learn were left to Jack for the telling of this story. Referring to one of these notes, Jack describes Ben's confusion:

> Most important to me, I cannot dismiss the possibility that, whenever the text was written, he was striking a pose, as he did in so many circumstances, not because he was a poseur but out of discouragement. Ben liked to joke that he was his own invention and therefore never could be certain how he really felt about anything or anybody.

Ben pursues and is extremely successful at investment banking. Success, however, does not seem to vaccinate against alienation; in fact it seems to accelerate it.

In both novels, the success of the protagonists at their posing results in a sense of inexorability — it is as though they are being drawn from authenticity to alienation, all in the name of survival. Survival, however, becomes hollow, and indeed, in *The Man Who Was Late*, the hollowness degenerates to lassitude and eventual resignation. Ben's physical death was long preceded in time by what one might call the death of his self. Even in death, Ben was the man who was late.

CASE SUMMARIES

By Clark R. Nielsen and Scott Hagen

CHILD SUPPORT REDUCTION, CHILD SUPPORT GUIDELINES

The trial court reversibly erred when it failed to apply the presumptive child support guidelines (Utah Ann. §§ 78-45-7 to 7.19) (1992), and reduced child support outside of the guidelines without finding any special circumstances that justified deviation. The trial court clearly had acted without reference to the guidelines in reducing child support. Had the guidelines been followed, child support would have been reduced even further in light of the parties' monthly combined gross income.

Hill v. Hill, 199 Utah Adv. Rep. 26 (Ct. App. 1992) (J. Jackson, with Js. Billings and Russon).

ALIMONY, REDUCTION, MATERIAL CHANGES OF CIRCUMSTANCE

The Court of Appeals reversed and remanded the trial court's reduction of alimony on the basis of the husband's testimony regarding his closely held professional corporation. The trial court must do more than just rely upon the spouse's stated income. Reviewing the findings of fact entered by the trial court to support its conclusion that there had been a substantial change in material circumstances, the Court of Appeals required a finding whether the circumstances of the parties was substantially changed in a way not contemplated by the original decree. In this case, the husband's personal and business finances were intertwined. The findings entered were too general and did not include enough subsidiary facts to disclose the step by which the ultimate conclusion was reached. The trial court made no factual findings why the husband's income decreased even though his business ownership increased, the company had substantially reduced its liabilities, and in light of husband's net worth statements and business expenses.

The appellate court also criticized the trial court's order that the husband pay only $3,000.00 of the wife's $15,000.00 legal bill without any finding regarding the husband's ability or the wife's ability to pay or the reasonableness of the requested fee.

Muir v. Muir, 200 Utah Adv. Rep. 41 (Ct. App. 1992) (J. Garff, with Js. Jackson and Russon).

ADMINISTRATIVE APPEALS (A.P.A.) TIMELINESS

In a per curiam decision, the Court of Appeals recognized that its decision in *Wiggins v. Board of Review*, 824 P.2d 1199 (Utah App. 1992) was overruled by *Dusty's, Inc. v. Utah State Tax Comm'n*, 199 Utah Adv. Rep. 7, 9 (Utah 1992) (per curiam). The time to appeal an administrative decision commences on the date the final agency action "issues." That date is the date the face of the order bears, not the date it is mailed, as in *Wiggins v. Board of Review*. (Neither court has commented on the problem created by administrative agencies that mail decisions several days after the date thereof or petitioners who do not receive the mailed decision.)

Bonded Bicycle Couriers v. Department of Employment Security, 201 Utah Adv. Rep. 79 (Ct. App. 1992) (Dec. 4, 1992) (per curiam).

ADMINISTRATIVE AGENCY, RES JUDICATA

This action in circuit court was not barred by *res judicata* by an adjudication from the Industrial Commission arising out of the employment relationship between plaintiff and defendant. *Res judicata* may be invoked when an administrative adjudication has acted in a judicial capacity in an adverse proceeding to resolve a controversy over legal rights. However, defendant was unable to prevail on his claim of *res judicata* because he could not show that the Industrial Commission adjudicated the same claim that was later raised in the circuit court. The claim was a claim for damages suffered by the plaintiff employer when defendant breached his employment contract by refusing to return a load of freight from California to Utah. Instead of waiting for the freight, defendant returned to Utah without the load and terminated his employment.

A finding by an administrative tribunal that is entitled to res judicata also requires subject matter jurisdiction over the claim. "Since agencies typically have limited jurisdiction, parties would be wise to fully brief an agency's statutory grant of adjudicated jurisdiction and authority before attempting to apply *res judicata* to its decisions. In this case the Industrial Commission was clearly without statutory authority to adjudicate the employer's claim brought in the trial court, even though the agency did adjudicate defendant's claim against his employer for withholding his pay checks."

S.M.P., Inc. v. Kirkman, 201 Utah Adv. Rep. 53 (Ct. App. Dec. 1, 1992) (J. Bench, with J. Orme concurring, J. Billings concurring in the result).

STANDARD OF REVIEW; INVENTORY SEARCH

The appellate panel affirmed the denial of a motion to suppress evidence obtained in a stop of the defendant and an ensuing inventory search of his vehicle. When defendant and his friends were seen late at night in a University of Utah neighborhood, defendant's car was impounded for a registration violation. An inventory search discovered stolen stereo equipment.

The stop, viewed in the totality of the circumstances, was justified. The officers' initial search was reasonably related in scope to the circumstances which justified it. Also, the officer took reasonable precautions for his own safety and reasonably feared that the occupants of the vehicle might have or produce a weapon. As such, the officer acted in a reasonably prudent manner.

The inventory search also was not flawed because there was reasonable justification for the impoundment and no evidence that the stop and later impoundment was a pretext to conduct a search. The ensuing search was not merely a fishing expedition for evidence. The court did not clearly err in finding that the officer conducted the search according to department procedure. Written procedures of the search are not a prerequisite to a valid inventory search. Judge Orme leaves open the possibility that a written policy may be required as an evidentiary matter to sup-

port a hearsay objection to an officer's testimony concerning the essence of unwritten policies.

The concurring opinions of Judges Garff and Jackson differ as to the applicable review standards, as previously discussed in *State v. Vigil*, 815 P.2d 1296 (Utah App. 1991) and *State v. Carter* and *State v. Mendoza*, 748 P.2d 181 (Utah 1987). For example, Judge Garff states that "in a mixed question of law and fact the final conclusion as to whether there is a reasonable suspicion is a conclusion of law and therefore the standard is correction of error."

State v. Strickling, 201 Utah Adv. Rep. 69 (Ct. App. Dec. 3, 1992) (J. Orme, with J. Garff concurring, J. Jackson concurring in the result).

HOLOGRAPHIC WILL, REVOCATION

In a handwritten note by the decedent containing the date, her full name, and a style containing her signature, the decedent revoked her 1976 will and an accompanying trust agreement. The trial court determined that, based upon this and other evidence, the handwritten document constituted a holographic will which revoked the 1976 will and trust. Under Utah Code Ann. §§ 75-2-502 and 503, a document may be a holographic "will," even though no dispositive provision is included therein, because the document purports to revoke a prior testamentary document (Section 75-1-201(48)). The trial court relied upon extrinsic evidence to construe the ambiguous document. Its interpretation was factual, and the court of appeals would not disturb the findings unless clearly erroneous.

In re Estate of Vida Custick, 201 Utah Adv. Rep. 77 (Ct. App. Dec. 4, 1992) (J. Orme, with Js. Bench and Billings).

TRAFFIC STOP, SEARCH AND SEIZURE

A police officer also acts in a community caretaker status and may stop a citizen prompted by reasonable and legitimate concerns for the citizen's safety or the safety of others. An officer's action in a "community caretaking function" balances a legitimate governmental interest in assisting a motorist or other individual with the right to be free from arbitrary interference and unreasonable search and seizure.

The Court of Appeals adopted a "three tiered test," modeled after Wisconsin, to determine if a stop is reasonable and lawful under the Fourth Amendment based upon an objective analysis was the stop and seizure made in pursuit of a bona fide community caretaker function? In other words, would a reasonable officer have stopped a person or vehicle for a purpose consistent with a caretaking function? Did the circumstances demonstrate an imminent danger to life or limb?

The Court of Appeals requires circumstances threatening life or safety rather than merely applying "exigent situations." When an insignificant article of personal property is endangered or a motorist appears to be lost in less than life threatening circumstances, a police officer is not justified in conducting a search and seizure under the Fourth Amendment. Although a stop may be a legitimate exercise of "community care-taker responsibility," any resulting search must also be reasonable under the Fourth Amendment while still achieving the objectives of community care function.

In this case, the defendant was stopped after he had asked a citizen informant where he could buy cocaine so that he could "drive himself into a wall." The denial of defendant's motion to suppress was affirmed.

Provo City v. Warden, Case No. 910634, Utah Court of Appeals (Dec. 9, 1992).

SLIP AND FALL, NEGLIGENCE

Plaintiff slipped and fell on a lettuce leaf while walking through Albertson's produce department. Albertson's customers would often remove and discard outer lettuce leaves from heads of lettuce they intended to purchase. Albertson's claimed that it patrolled and cleaned up its produce area on a regular basis. The trial court granted Albertson's motion for summary judgment on the basis that the plaintiff failed to show that Albertson's had notice of the particular lettuce leaf upon which the plaintiff slipped and fell. In reviewing the summary judgment and applying the legal standard of correctness, the appeals court agreed that the plaintiff was not required to show that Albertson's had notice of the specific lettuce leaf upon which plaintiff slipped and fell. In general, there are two legal theories upon which a store owner may be found negligent where patrons slip and fall. This theory involves situations where there is a temporary or transient hazard within the store that was not created by the store owner but of which the store owner knew or should have known and had a reasonable opportunity to remedy the situation.

Under a second theory, the store owner creates or is responsible for creating a condition. The plaintiff need not establish notice, since the store owner is deemed to have notice of the dangerous condition it has created. The trial court failed to apply this second theory to the alleged facts of the case.

In this case, the store owner chose a method of operation to display the lettuce in a manner that was reasonably foreseeable the lettuce would end up on the floor, creating a dangerous condition for patrons. The plaintiff was not required to prove either actual or constructive knowledge of the condition. Having chosen this marketing method of operation, the question of whether Albertson's had notice or not of the lettuce is not relevant. Rather, the critical question is whether Albertson's took reasonable precautions to protect its customers against a dangerous condition that it had created. Despite Albertson's efforts it was still common for lettuce leaves to accumulate on the floor. The appeals court determined that reasonable minds could differ on whether Albertson's took reasonable precautions to protect its customers and reversed the summary judgment.

Canfield v. Albertson's, Inc., 200 Utah Adv. Rep. 61 (Ct. App. Nov. 13, 1992) (J. Bench, with Js. Jackson and Orme).

PUBLIC EASEMENT

An easement that permits a public highway also permits certain future transportation uses. A subterranean sewage line installed along and within the boundaries of the highway easement is far less intrusive than the above ground power lines permitted in *Picket v. California Pac. Utilities*, 619 P.2d 325 (Utah 1980). The installation of the sewer line along the highway easement did not entitle the landowner to additional compensation for an additional servitude.

Broadbent Land Co. v. Town of Manila, 201 Utah Adv. Rep. 4 (Sup. Ct. Nov. 25, 1992) (J. Zimmerman).

PLAIN ERROR, PRESERVATION OF ISSUE ON APPEAL

The Utah Supreme Court disavowed any suggestion that the 1983 case of *State v. Breckenridge*, 688 P.2d 440 (Utah 1983) created a "liberty interest" exception to the requirement to preserve issues below.

Under Utah Rules of Evidence 103(d), the appellate court may take notice of a "plain error" that affects the "substantial rights" of a party, even though the error was not brought to the attention of the trial court. Plain error requires that it should have been obvious to a trial court the error was made, and that the error must be harmful and affect the substantial rights of the accused. The court disavowed its statement in *Breckenridge* that "constitutional issues" not raised at trial can be raised on appeal. No separate exception to the general rule is created and in such cases the constitutional issues must also meet the plain error standard as articulated in *State v. Eldredge*, 773 P.2d 29 (Utah 1989).

Applying the plain error standard, the court reviewed the search and seizure issue raised by the defendant and concluded that the trial court properly ruled that authorities had consent to search the premises of the defendant's employer. The court also rejected other contentions regarding admissibility of evidence, sufficiency of evidence, improper closing argument, and a "dynamite" or *Allen* type jury instruction.

However, the Supreme Court did find that the defense attorney's status as a part-time city prosecutor jeopardized the defendant's right to the undivided loyalty of counsel because a concrete showing of prejudice would be very difficult. The court held it unnecessary to find actual prejudice and announced a per se rule of reversible error whenever such dual representation is undertaken. Defendant's trial counsel was also a part-time prosecutor for the city of Tremonton in the same county as where defendant was tried. The court did not decide as a matter of constitutional law, but rather on the basis that vital interests of the criminal justice system would be jeopardized and that as a matter of public policy and under the court's inherent supervisory power counsel with concurrent prosecutorial obligations may not be appointed to defend indigent accused. Defendant's conviction was reversed and the matter remanded for a new trial.

State v. Brown, 201 Utah Adv. Rep. 4 (Sup. Ct. Nov. 30, 1992) (J. Durham; Chief J. Hall dissenting).

EMPLOYMENT, WRONGFUL DISCHARGE, GOOD FAITH AND FAIR DEALING

The plaintiff appealed a summary judgment in favor of his employer on plaintiff's claims that his discharge violated implied terms of his employment and implied covenant of good faith and fair dealing.

In reviewing the summary judgment, the court reviewed the history of employment at will doctrines since its decision in *Berube* in 1989.

The defendant's policies manual granted it "unbounded discretion" to discharge employees without following the procedures and guidelines set forth in the employment manual, "in situations where employee behavior warrants immediate termination." Summary judgment was

appropriate on this issue.

However, factual issues remained as to plaintiff's claim that the defendant had promised to keep his job open during his illness. Whether or not the promise that plaintiff's "job would be waiting for him" created an oral agreement for a period of time was not an issue resolvable on summary judgment. Factual questions remained as to the making of such statements by the defendant and the reasons for the plaintiff's termination based upon the alleged oral assurances.

The court also reaffirmed its prior holdings that an implied covenant of good faith and fair dealing does not create a "for cause standard" for dismissal.

Sanderson v. First Security Leasing Co., 201 Utah Adv. Rep. 18 (Sup. Ct. Dec. 8, 1992) (J. Zimmerman).

EMPLOYMENT, EMPLOYMENT AT WILL, RETALIATORY DISCHARGE

The Supreme Court reversed a summary judgment and in a lengthy opinion held that the plaintiff employee's sexual harassment by her co-employees could rise to the level of a claim or intentional infliction of emotional distress. The court rejected several theories of liability proposed by the plaintiff but did accept the plaintiff's argument on the intentional infliction claim and reversed the summary judgment, remanding.

As a phone operator for the defendant telephone company, the plaintiff alleged that she was subjected to specific harassment of a sexual nature contrary to the union collective bargaining agreement and defendant's code of conduct. To cope with the stress associated with her working environment, harassment, and retaliations the plaintiff took medical disability and received psychiatric care. Retherford was then transferred to the Boise office and was fired when she failed to report to Boise within ten days.

Because the statute of limitations may have run on any claims for relief under federal and state antidiscrimination laws, the plaintiff alleged only common law tort and contractual claims against her employer.

The existence of contractual provisions protecting an employee from all but a just cause dismissal does not necessarily adequately vindicate the public policy underlying that possible tort claim, as in *Peterson v. Browning*, 832 P.2d 1280 (Utah 1992) discharge in violation of public policy is tortious conduct which differs in scope and sanction from an employee's contractual rights under the employment contract. The primary purpose behind giving an employee a right to sue for discharge in violation of public policy is to protect the vital state interest embodied in that policy. The purpose is not served if the employee is limited to contractual remedies. The tort of discharge in violation of public policy is a limitation on all discharges and not merely an exception to the at will doctrine.

The court held that the Utah Antidiscrimination Act is the exclusive remedy for a claim of employer retaliation for complaints of employment discrimination and pre-empts common law causes of action for discharge in retaliation for discrimination complaints. The court applied an "indispensable element test" as a correct analytical model in determining whether the plaintiff's claim is encompassed by the statutory cause of action under the Utah Antidiscrimination Act. The Utah Antidiscrimination Act pre-empts the plaintiff's claim for retaliatory discharge in violation of public policy. However, the act does not pre-empt her other claims, because discrimination is not an indispensable element of these claims. For example, Retherford also made a claim for breach of an implied contract and defendant's failure to comply with the contract terms. Retherford also claimed intentional infliction of emotional distress, requiring that she prove her co-workers intentionally or recklessly engaged in intolerable and outrageous conduct that caused her severe emotional distress. She also made claim for malicious interference with contractual relations and negligent employment. In none of these other claims is there an injury that was intended to be redressed by the UADA. While other claims may arise out of the defendant's retaliatory conduct, whether or not those claims are pre-empted depends upon the nature of the injury, not upon the harm of the conduct allegedly responsible for the harm. Therefore, the UADA pre-empts only Retherford's claim for discharge in violation of public policy. Retherford's claims stemming from her implied contract, although not barred by the UADA, are pre-empted by the Labor Management Relations Act (Taft-Hartley).

The allegations remaining are Retherford's claim for intentional infliction of emotional distress and negligent employment. The defendant is liable only if its acting employees are liable for such intentional infliction. In reviewing the fact in a light most favorable to the plaintiff, the court concluded that the plaintiff had alleged at least a prima facie case.

Plaintiff's complaint also stated a claim for negligent employment. To prevail on this claim the plaintiff must show that the defendant employer knew or should have known that its employees posed a foreseeable risk of retaliatory harassment to the employee; the employees did indeed inflict such harm; and the employer's negligence in its hiring, supervising and retaining the employees proximately causing the injury. AT&T's obligation to supervise and control its employees does not arise from the collective bargaining agreement or from its private employment contract. It is a duty imposed by the common law of the state as public policy. Such duties are not avoidable by contract. A collective bargaining agreement may be relevant to discover whether the employer is limited in its power to deal with the employees and precludes it from taking steps to prevent harm. However, such does not appear to be the cause here.

The court also discussed the theoretical question of the application of the four-year statute of limitations, but the issue was not raised on appeal.

Associate Chief Judge Howe concurred with reservations but indicates he would not breach the question of whether the plaintiff can pursue a tort action for discharge in violation of public policy. Assuming that such a tort action exists, it would have been pre-empted by the UADA. Therefore, he reserved judgment on the question of whether the plaintiff had both a tort action and a contractual claim. Justice Stewart concurred in the result.

Retherford v. AT&T Communications, 201 Utah Adv. Rep. 21 (Dec. 9, 1992) (J. Zimmerman; J. Howe concurring with reservation; and J. Stewart concurring in the result).

FELA; NEGLIGENCE

A railroad dispatcher's claim for negligent infliction of emotional distress, brought under the Federal Employers Liability Act ("FELA"), was properly

dismissed at the close of the plaintiff's case because the plaintiff failed to show that her employer breached its duty to provide a safe work place and failed to show that her employer could have foreseen her injuries. Plaintiff's claim for negligent failure to provide prompt medical care also was properly dismissed because plaintiff was able to arrange on her own for medical care.

The plaintiff had suffered a severe emotional and physical collapse brought on by a combination of prior medical problems and work related stress. The Court of Appeals concluded that plaintiff's evidence showed that her work duties were quite stressful, but that the stress was not so severe to amount to an unsafe work place. Other dispatchers with similar duties never became mentally or physically ill from work related stress.

In addition, the Court reaffirmed the necessity of proving foreseeability in negligence actions under FELA, and held that plaintiff failed to establish foreseeability because, while she had requested breaks, she never complained that work related stress was causing her to be physically ill.

Plaintiff's claim for negligent failure to provide prompt care was properly dismissed because an employer is not ordinarily bound to render medical assistance to an employee who becomes ill or suffers injury on the job without the employer's fault. Plaintiff's evidence failed to establish either of the exceptions to the general rule: where the employee became so ill that she is unable to obtain medical aid for herself, and where the employer actually undertakes to furnish medical care and does so in an unreasonable manner. In this case, plaintiff was able to arrange herself for appropriate medical care and thus was unable to make out a prima facie case of negligent failure to provide prompt care.

Handy v. Union Pacific Railroad, 200 Utah Adv. Rep. 45 (Ct. Appeals, Nov. 12, 1992) (Judge Orme).

SEARCH AND SEIZURE

A police officer's detention of a suspect based on the suspect's apparent violation of a statute or ordinance is valid, notwithstanding the fact that the statute or ordinance may actually be unconstitutional. The defendant in this case was arrested for violating a Salt Lake County ordinance against loitering on public school grounds. A search incident to the arrest turned up a stolen weapon and lead to the the defendant's admission of involvement in a residential burglary. The defendant's motion to suppress was denied by the trial court.

On appeal, the defendant claimed that the arrest and subsequent seizure of evidence was unconstitutional because the Salt Lake County ordinance was unconstitutional. The court declined to decide whether the ordinance was unconstitutional because it held that even if it were, the police officer's good faith reliance on the ordinance, so long as it had not been declared unconstitutional before the arrest, validated the arrest and subsequent search.

State v. Chapman, 200 Utah Adv. Rep. 54 (Ct. App. Nov. 12, 1992) (Judge Jackson).

TRUST BENEFICIARY; REAL PARTY IN INTEREST

The beneficiary of a trust has standing to sue a third party for breach of the trust agreement where the beneficiary's interests are adverse to those of the trustee. In this case, the beneficiary had standing to sue the third party because the trustee itself had improperly neglected to bring an action against the third party for over ten years after an improper transfer in breach of the trust agreement. The Court of Appeals reversed the trial court's decision dismissing the trust beneficiary's complaint, and remanded for further proceedings.

Anderson v. Dean Witter Reynolds, Inc., 200 Utah Adv. Rep. 65 (Ct. App. Nov. 13, 1992) (Judge Jackson).

GUILTY PLEA; WITHDRAWAL

Citing several Utah cases, the Court of Appeals affirmed the trial court's rejection of the defendant's motion to withdraw his guilty plea to several theft offenses. The defendant had entered his guilty pleas in the presence of his counsel, had executed and then reviewed with the trial court an affidavit showing his understanding, pursuant to Rule 11, Utah Rules of Criminal Procedure, of the consequences of his pleas, and had denied that the plea was a result of threats, promises or coercion.

State v. Thorup, 200 Utah Adv. Rep. 67 (Ct. App. Nov. 13, 1992) (Judge Billings).

SEARCH AND SEIZURE

A criminal defendant has standing to move to suppress the fruits of a search of an automobile even though he is not the owner, so long as the defendant has the owner's permission to drive the automobile and has personal belongings in the automobile. These factors satisfy the two-step standard set forth in *State v. Taylor*, 818 P.2d 561 (Utåh App. 1991), for establishing standing: the defendant must (1) establish a subjective expectation of privacy, (2) which society is willing to recognize as legitimate. The Court of Appeals rejected the defendant's challenge to a consent search of the automobile, however, because the defendant failed to show that his inability to speak English fluently showed that his consent was not "voluntary in fact."

State v. Sepulveda, 200 Utah Adv. Rep. 72 (Ct. App. Nov. 19, 1992) (Judge Billings).

ENTRAPMENT

The government's violation of its own rules for using parolees as informants does not amount to entrapment, at least in the absence of any evidence that the conduct of the government created "a substantial risk that an average person would be induced to commit the crime the defendant committed."

State v. Richardson, 201 Utah Adv.

Rep. 40 (Ct. App. Nov. 25, 1992) (per curiam).

SALES TAX

The Utah State Tax Commission is not entitled to assess a sales tax on the sale of water softeners because the water softener is not tangible personal property for purposes of the Utah Sales and Use Tax Act. Rather, a water softener is an improvement to real estate, whether or not the water softener was leased prior to being purchased by the homeowner.

The Utah Sales and Use Tax Act provides that sales taxes shall be assessed against retail sales of tangible personal property, but not against real estate. Utah Code Ann. §59-12-103(1) (a) and (k) (1987); §59-12-102(13) (b) (i) (1987). Water softeners can be sold pursuant to sales and installation contracts whereby the water softener is purchased and installed contemporaneously. However, homeowners often purchase water softeners after leasing the softener for a trial period. The Tax Commission had distinguished between the two types of sales, determining that a purchase at the time of installation constituted a non-taxable improvement to real estate, while a purchase after first leasing the softener constituted a taxable sale of tangible personal property. The Court of Appeals held that there was no rational distinction, for tax purposes, between the two methods of purchasing water softeners and held that the lease and installation method of purchasing water softeners was not a taxable event.

Superior Softwater v. State Tax Commission, 201 Utah Adv. Rep. 49 (Ct. App. Nov. 30, 1992) (Judge Jackson).

CRIMINAL LAW; RESTITUTION

The prosecution of a criminal defendant is abated entirely when the defendant dies during the pendency of the appeal from his conviction. Furthermore, a restitution order issued against the convicted defendant is also totally abated by the defendant's death and may not be enforced against the defendant's estate.

State v. Christensen, 201 Utah Adv. Rep. 68 (Ct. App. Dec. 3, 1992) (Judge Greenwood).

RESTITUTION FOR CRIME, JURISDICTION

A trial court retains jurisdiction over a criminal defendant to enforce an order of restitution even after the defendant's probation has expired. An order of restitution has a statutory basis separate from probation that grants the court independent jurisdiction to compel its payment. Utah Code Ann. §§76-3-201.1(1), 77-3-201.1(5), 77-18-1(13).

Although the Court of Appeals affirmed the lower court judgment, it rejected the lower court's reasoning that it retained jurisdiction because the defendant impliedly agreed to extend the period of his probation. Citing *State v. Green*, 757 P.2d 462 (Utah 1988), the Court held that defendant's probation expired as a matter of law on the final day of the original period of probation.

State v. Dickey, 199 Utah Adv. Rep. 21 (Ct. App. Nov. 3, 1992) (Judge Greenwood).

ADMINISTRATIVE LAW

The Court of Appeals reversed an Industrial Commission denial of Worker's Compensation benefits because the decision was made so long after the hearing that the hearing transcript had been destroyed. The court held that the claimant was prejudiced by the 5-year delay and lack of transcript because it was impossible for the court to fairly evaluate the claimant's assertion that the evidence did not support the ALJ's original decision.

Gregerson v. Board of Review, 199 Utah Adv. Rep. 20 (App. October 28, 1992) (Judge Russon).

OCCUPATIONAL DISEASE DISABILITY ACT

Rodney Luckau died in 1990 from mesothelioma, a cancer usually associated with asbestos exposure. Two of the many jobs he held during his lifetime potentially exposed him to asbestos. The first potential exposure occurred during the early 1960's when Luckau worked for 15-16 months in Colorado installing asbestos pipe lining. The second occurred in 1964, when he worked 6-9 months at Broadway Shoe Rebuilders in Salt Lake City. Experts tested Broadway's premises after Luckau's death and detected traces of asbestos on a pipe and in the basement.

Citing the "Last Injurious Exposure Rule," Utah Code Ann. §35-2-14 (1988), Luckau's widow filed a claim with the industrial Commission seeking occupational disease death benefits under the Occupational Disease Disability Act. The Last Injurious Exposure Rule provides that the only employer liable to pay benefits under the Act is "the employer on whose employment the employee was last injuriously exposed to the hazards of [the] disease." Utah Code Ann. §35-2-14 (1988). The ALJ found that Luckau's death was due to asbestos exposure, and that his exposure in Colorado and at Broadway was consistent with the ordinary latency period for mesothelioma. However, he also found that an "injurious exposure" required a "substantial dosage of exposure and/or duration of exposure." Applying this interpretation of the rule, the ALJ denied benefits because the widow failed to prove decedent's exposure to injurious amounts while working at Broadway.

The Court of Appeals reversed the Industrial Commission decision and remanded for further consideration, holding that the ALJ's interpretation of the Last Injurious Exposure Rule was too narrow. The court held that the exposure need only be "in an amount sufficient to have caused or contributed to any degree" to the occupational disease. 198 Utah Adv. Rep. at 32. "Therefore, any exposure which did or could have contributed to the condition is sufficient." *Id.*

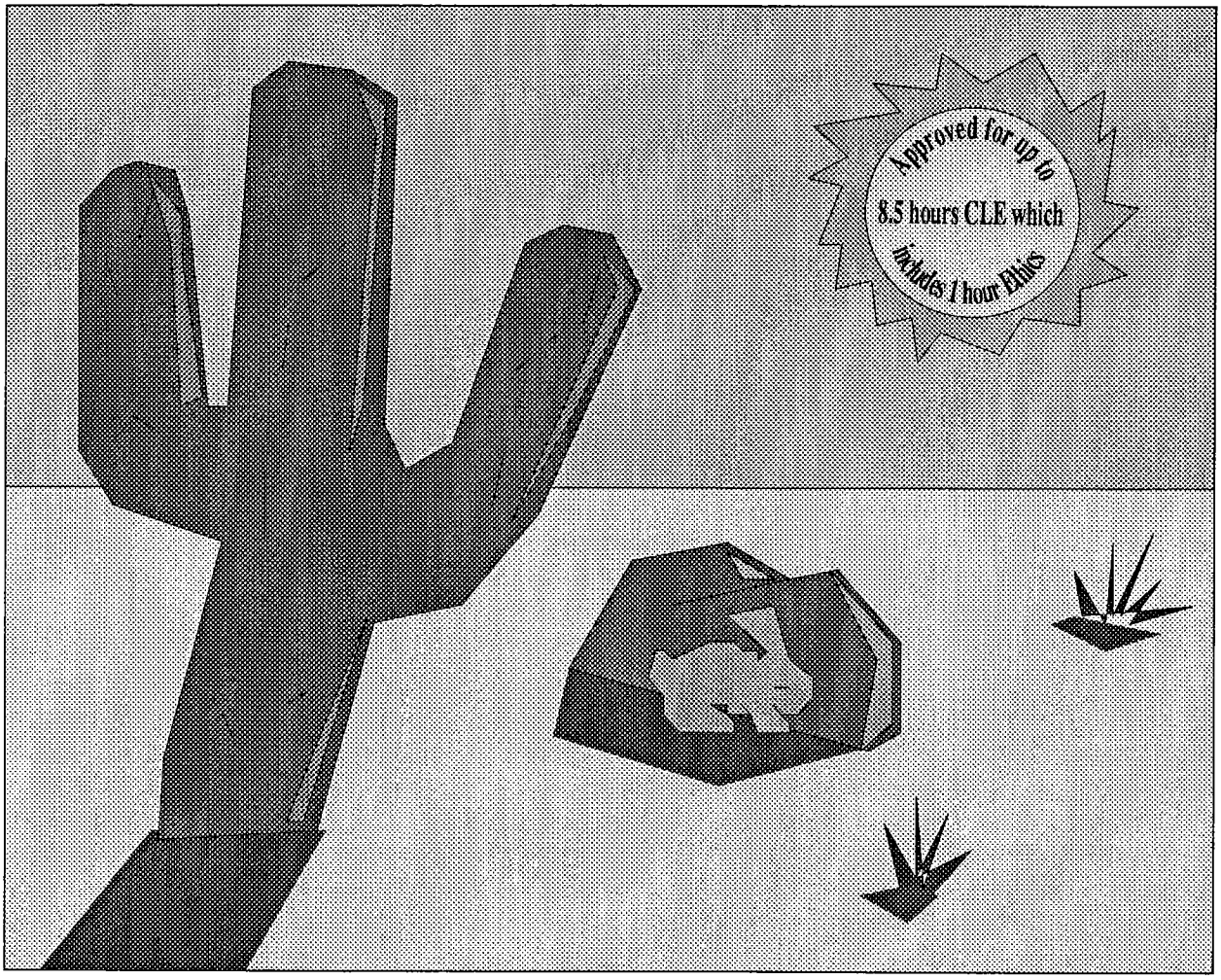
Luckau v. Board of Review, 198 Utah Adv. Rep. 30 (App. October 16, 1992) (Judge Greenwood).

JURISDICTION, INDIANS

Citing *State v. Perank*, 191 Utah Adv. Rep. 5 (Utah 1992) and *State v. Coando*, 191 Utah Adv. Rep. 25 (Utah 1992), the court of appeals held that Roosevelt, Utah is not within Indian country and consequently that crimes committed by Indians in Roosevelt need not be tried in federal courts.

Roosevelt City v. Gardner, 199 Utah Adv. Rep. 28 (App. November 9, 1992) (Judge Billings).

Plan Now To Attend!



Utah State Bar Mid-Year Meeting

March 11 to 13, 1993
Holiday Inn
St. George, Utah

UTAH BAR FOUNDATION

Pictured are the present members of the Utah Bar Foundation Board of Trustees. Standing (l-r) are Carman E. Kipp, Richard C. Cahoon, James B. Lee, Stephen B. Nebeker, and sitting (l-r) are Ellen M. Maycock, Hon. Norman H. Jackson, and Jane A. Marquardt.

Photo credit: Robert L. Schmid

The past year the Foundation's Board of Trustees has been engaged in an exciting publishing project. A year ago, the Foundation joined with the Utah State Historical Society in the publication of one of the Society's future quarterly publications. One issue will be dedicated to the history of Utah's courts and legal profession. Previously, the Foundation published The Federal Judiciary in Utah by Clifford L. Ashton (1988). The only previous history of the profession in Utah was published in 1913, titled "History of the Bench and Bar of Utah."

The Foundation launched this project with a contest to encourage written entries and photographs from members and friends of the Utah State Bar. Numerous excellent submissions have been received. This will be a publication lawyers, judges and students of law and history will want to read.

The Historical Society's review board will make a decision very soon as to the submissions which will be published. When that is accomplished, the Foundation's Board of Trustees will announce the winners of the contest cash prizes. The expected date for publication is the summer of 1993. The Foundation's Publications Committee is Ellen M. Maycock, Carman E. Kipp and Hon. Norman H. Jackson.

Notice of Election of Trustees

NOTICE IS HEREBY GIVEN in accordance with the bylaws of the Utah Bar Foundation that an election of three trustees to the Board of Trustees of the Foundation will be finalized at the annual meeting of the Foundation held in conjunction with the 1993 Annual Meeting of the Utah State Bar in Sun Valley, Idaho. The three trustee positions which are up for election are now held by Hon. Norman H. Jackson, Richard C. Cahoon and James B. Lee. The term of office is three years.

Nominations may be made by the general membership of the Foundation (every lawyer licensed to practice law in the State of Utah is a member of the Foundation) by submission of a written nominating petition identifying the nominee, who must be an active attorney duly licensed to practice Law in Utah, and signed by not less than 25 attorneys who are also duly licensed to practice law in Utah.

Petitions should be mailed to the Utah Bar Foundation, 645 South 200 East #204, Salt Lake City, Utah 84111, so as to be received on or before April 30, 1993. Nominating petition forms may be obtained at the above address or requested by phone (531-9077).

The election will be conducted by secret ballot which will be mailed to all active members of the Foundation on or before May 31, 1993.

Notice of Acceptance of Grant Applications

The Utah Bar Foundation is now accepting applications for grants for the following purposes:

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

For grant application forms or additional information, contact Zoe Brown (531-9077) at the Foundation office. All grant applications must be received by the Foundation before 5:00 p.m. May 31, 1993 at the Foundation office, 645 South 200 East #204, Salt Lake City, Utah 84111.

CLE CALENDAR

UTAH STATE BAR
1993 MID-YEAR MEETING

CLE Credit: 8.5 hours (Includes 1 hour of ETHICS).
Date: March 11-13, 1993
Place: Holiday Inn, St. George, Utah
Fee: $150.00 for CLE sessions & materials, additional recreational costs not included.
Time: Activities begin March 11 at 6:00 p.m., continue through March 13, at 1:30 p.m.

VIOLENCE & THE OUTLAW: The Creation & Treatment of the "Outlaw" in Contemporary Legal Culture

CLE Credit: 3 hours
Date: March 12, 1993
Place: University of Utah, College of Law
Fee: $35 plus MCLE Fee
Time: 8:30 a.m. to 3:30 p.m.
Information: For further information, contact James Wood of the Utah Law Review, (801) 581-7337.

1993 UTAH LEGISLATIVE CHANGES AFFECTING ESTATE PLANNING ATTORNEYS — ESTATE SECTION LUNCHEON

CLE Credit: 1 hour
Date: March 16, 1993
Place: Utah Law & Justice Center
Fee: $11 — Call to RSVP
Time: 12:00 noon to 1:00 p.m.

HOW TO TAKE EFFECTIVE DEPOSITIONS

CLE Credit: 4 hours
Date: March 16, 1993
Place: Utah Law & Justice Center
Fee: $160 plus $6 MCLE Fee
Time: 10:00 a.m. to 2:00 p.m.

REAL PROPERTY PRACTICE — NLCLE WORKSHOP

This is another basics seminar designed for those new to the practice and those looking to refresh their practice skills. No prior notice will be provided to early registrants, please call the Bar if you have any questions about your registration. Please provide the Bar 24 hour cancellation notice if unable to attend.

CLE Credit: 3 hours
Date: March 18, 1993
Place: Utah Law & Justice Center
Fee: $30
Time: 5:30 p.m. to 8:30 p.m.

INNOVATIVE THERMAL TREATMENT TECHNOLOGIES IN HAZARDOUS WASTE REMEDIATION OPERATIONS: PART 2, CHANGING MOLECULAR STRUCTURE/PHYSICAL STATES

CLE Credit: 4 hours
Date: March 18, 1993
Place: Utah Law & Justice Center
Fee: Preregistration – $150 plus $6 MCLE Fee
Day of telecast – $185 plus $6 MCLE Fee
Time: 10:00 a.m. to 2:00 p.m.

LIMITED LIABILITY COMPANIES: ORGANIZATION, TAXATION & DEVELOPMENT

CLE Credit: 4 hours
Date: March 25, 1993
Place: Utah Law & Justice Center
Fee: $150 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

INSURER SOLVENCY REGULATION: "A LOOK AT THE ISSUES"

CLE Credit: 4 hours
Date: March 30, 1993
Place: Utah Law & Justice Center
Fee: $165 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

BANKRUPTCY PRACTICE — NLCLE WORKSHOP

This is another seminar designed for those new to the practice and those looking to refresh their practice skills. No prior notice will be provided to early registrants, please call the Bar if you have any questions about your registration. Please provide the Bar 24 hour cancellation notice if unable to attend.

CLE Credit: 3 hours
Date: April 14, 1993
Place: Utah Law & Justice Center
Fee: $30
Time: 5:30 p.m. to 8:30 p.m.

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE

1. _____ _____

2. _____ _____

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

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. Returned checks will be charged a $15.00 service charge

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.

ETHICS & PROFESSIONALISM FOR THE PRACTICING LAWYER

CLE Credit: 6 CLE hours of Ethics credit
Date: April 15, 1993
Place: Utah Law & Justice Center
Fee: $190 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

1993 PENSION PRACTICE UPDATE & REVIEW OF CURRENT REGULATIONS

CLE Credit: 4 hours
Date: April 29, 1993
Place: Utah Law & Justice Center
Fee: $145 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

DIRECTORS' AND OFFICERS' LIABILITY

CLE Credit: 4 hours
Date: May 6, 1993
Place: Utah Law & Justice Center
Fee: $160 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

HAZARDOUS WASTE AND SUPERFUND 1993: THE LATEST DIRECTIONS FROM A NEW ADMINISTRATION

CLE Credit: 4 hours
Date: May 13, 1993
Place: Utah Law & Justice Center
Fee: $150 plus $6 MCLE Fee
Time: 9:30 a.m. to 2:00 p.m.

PROBATE — NLCLE WORKSHOP

This is another seminar designed for those new to the practice and those looking to refresh their practice skills. No prior notice will be provided to early registrants, please call the Bar if you have any questions about your registration. Please provide the Bar 24 hour cancellation notice if unable to attend.

CLE Credit: 3 hours
Date: May 20, 1993
Place: Utah Law & Justice Center
Fee: $30
Time: 5:30 p.m. to 8:30 p.m.

JOINT TRUSTS VS. SEPARATE TRUSTS

CLE Credit: 1 hour
Date: May 11, 1993
Place: Utah Law & Justice Center
Fee: $7 – Call to RSVP
Time: 12:00 noon to 1:00 p.m.

CLASSIFIED ADS

For information regarding classified advertising, please contact (801) 531-9077. Rates for advertising are as follows: 1-50 words — $10.00; 51-100 words — $20.00; confidential box numbers for positions available $10.00 in addition to advertisement.

CAVEAT — The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment which is not received with the advertisement will not be published. No exceptions!

BOOKS FOR SALE

USED LAW BOOKS — Bought, sold and appraised. Save on all your law book and library needs. Complete Law Library acquisition and liquidation service. John C. Teskey, Law Books/Library Services. Portland (503) 644-8481, Denver (303) 825-0826 or Seattle (206) 325-1331.

CORPUS JURIS SECUNDUM — Complete current set with all Supps and Updates. For more information please call (801) 531-8300.

USED LAW BOOKS FOR SALE-ALR 2d through 5th; AmJur 2d; Proof of Facts 2d and 3d; AmJur Legal Forms 2d. All are complete sets up to date. Call Jolene at (801) 637-1245.

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ATTRACTIVE OFFICE SPACE — Union Park area (1200 East 7000 South), next to Holiday Spa. Office sharing with five other attorneys. Secretarial or word-processing services available, or space for your own secretary. Copier, telephone, fax and conference room. Close freeway access to entire valley. Contact Wynn at (801) 566-3688.

Attractive office space is available at prime downtown location, in the McIntyre Building at 68 South Main Street. Single offices complete with reception service, conference room, telephone, parking, fax machine, copier, library and word processing available. For more information please call (801) 531-8300.

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OGDEN office space available. Openings for one or two attorneys in historic John M. Browning Mansion located at 505-27th Street, Ogden. Secretarial services or space for your own secretary, reception area, copier, telephone, fax machine and conference room. Contact Sue at (801) 621-6540.

Prestigious office space in Brickyard Tower available for one attorney, with small, expanding law firm. Secretary, receptionist, copier, and fax also available. For more information call (801) 484-3017.

POSITIONS AVAILABLE

KNOBBE, MARTENS, OLSON & BEAR, a Newport Beach, California Intellectual Property Law Firm with 54 attorneys specializing in all aspects of patent, trademark, copyright and unfair competition law, seeks a highly motivated attorney with superior academic credentials and ability to assume responsibility in all phases of the practice including patent and trademark litigation, patent prosecution, and licensing. Candidate must reside in Las Vegas, Nevada but be willing to travel frequently to Newport Beach and San Diego, California. Candidate should have a technical background, at least 2 years patent prosecution experience and be able to independently counsel clients. Please send resumes to: Recruiting Coordinator, Knobbe, Martens, Olson & Bear, 620 Newport Center Drive, 16th Floor, Newport Beach, California 92606. EOE/AA.

POSITIONS SOUGHT

Management side labor lawyer, upper 13% of class, published author, 13 years experience (NLRB, EEOC, federal and state courts) relocating to Salt Lake area, seeks association with established firm. Contact: Lee Caruso, 400 W. Maple, Birmingham, MI 48009 or call (313) 646-0380.

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1993 Mock Trial Schedule

Name: _____ Firm: _____

Position: _____ Address: _____

Phone: _____ _____ Zip: _____

I have judged before and will act as a presiding judge _____

I will judge_____ (number) of mock trial(s)

Please indicate the specific date(s) and location(s) that you *will commit* to judge mock trial(s) during the months of March and April. This is the final schedule. The dates and locations listed are *fixed*; you *will be* a judge on the date(s) and the time(s) and location(s) you indicate, unless several persons sign up to judge the same slot and we call you to advise you of a change. You will receive confirmation by mail as to the time(s) and place(s) for your trial(s) when we send you a copy of the *1993 Mock Trial Handbook*. Please remember — all trials run approximately 2 1/2 to 3 hours and you will need to be at the trial 15 minutes early. We will call one or two days before your trial(s) to remind you of your commitment.

Please be aware that Saturday sessions will be held on *March 27th* and *April 3rd*. Multiple trials will be conducted. Please give these dates special consideration.

Ogden Area means Layton, Roy, Clearfield, Ogden. SLC means downtown SLC (3rd Circuit, Court of Appeals, Public Service Commission). Specific addresses for all courtrooms will be mailed with the confirmation letter.

Date	Time	Place	Preside	Panel	Comm. Rep.
Monday, March 22	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	5:00–8:00	Logan	( )	( )	( )
Tuesday, March 23	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Logan	( )	( )	( )
Wednesday, March 24	1:00–4:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
Thursday, March 25	1:00–4:00	Tooele	( )	( )	( )
	2:00–5:00	Coalville	( )	( )	( )
Friday, March 26	2:00–5:00	Cedar City	( )	( )	( )
Saturday, March 27	9:00–12:00	SLC	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	9:30–12:30	SLC	( )	( )	( )
	9:30–12:30	SLC	( )	( )	( )
	10:00–1:00	SLC	( )	( )	( )
	10:00–1:00	SLC	( )	( )	( )
	10:45–1:45	SLC	( )	( )	( )
	10:45–1:45	SLC	( )	( )	( )
	11:15–2:15	SLC	( )	( )	( )
	12:30–3:30	SLC	( )	( )	( )
	12:30–3:30	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:30–4:30	SLC	( )	( )	( )
	1:30–4:30	SLC	( )	( )	( )
	2:00–5:00	SLC	( )	( )	( )
	2:00–5:00	SLC	( )	( )	( )
Monday, March 29	1:00–4:00	Ogden Area	( )	( )	( )
	2:00–4:00	Ogden Area	( )	( )	( )
Tuesday, March 30	1:00–4:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )

Date	Time	Place	Preside	Panel	Comm. Rep.
	2:00–5:00	Coalville	( )	( )	( )
Wednesday, March 31	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
Thursday, April 1	1:00–4:00	Tooele	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	2:00–5:00	Ogden Area	( )	( )	( )
	5:00–8:00	Logan	( )	( )	( )
Friday, April 2	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	1:00–4:00	Brigham City	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:30–4:30	Price	( )	( )	( )
	2:00–5:00	Spanish Fork	( )	( )	( )
	2:00–5:00	Price	( )	( )	( )
Saturday, April 3	9:00–12:00	SLC	( )	( )	( )
	9:30–12:30	SLC	( )	( )	( )
	10:00–1:00	SLC	( )	( )	( )
	10:30–1:30	SLC	( )	( )	( )
	12:30–3:30	SLC	( )	( )	( )
	12:30–3:30	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:30–4:30	SLC	( )	( )	( )
	1:30–4:30	SLC	( )	( )	( )
	2:00–5:00	SLC	( )	( )	( )
Monday, April 5	9:00–12:00	SLC	( )	( )	( )
	9:30–12:30	SLC	( )	( )	( )
	5:00–8:00	Logan	( )	( )	( )
Tuesday, April 6	9:00–12:00	SLC	( )	( )	( )
	9:30–12:30	SLC	( )	( )	( )
	1:00–4:00	Vernal	( )	( )	( )
Wednesday, April 7	9:00–12:00	SLC	( )	( )	( )
	2:00–5:00	Ogden Area	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Coalville	( )	( )	( )
Thursday, April 8	1:00–4:00	Orem	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	2:00–5:00	Ogden Area	( )	( )	( )
Semi-Final Rounds (If you will have judged a previous mock trial)					
Monday, April 19	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Ogden Area	( )	( )	( )
Tuesday, April 20	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Ogden Area	( )	( )	( )
Wednesday, April 21	1:00–4:00	SLC	( )	( )	( )
	2:00–5:00	Logan	( )	( )	( )
	2:00–5:00	SLC	( )	( )	( )
Thursday, April 22	1:00–5:00	SLC	( )	( )	( )
	1:00–5:00	Ogden Area	( )	( )	( )
	2:00–5:00	Logan	( )	( )	( )

Final exhibition rounds will be held the week of April 26th.

Please mail this form to: Mock Trial Coordinator • Utah Law-Related Education Project
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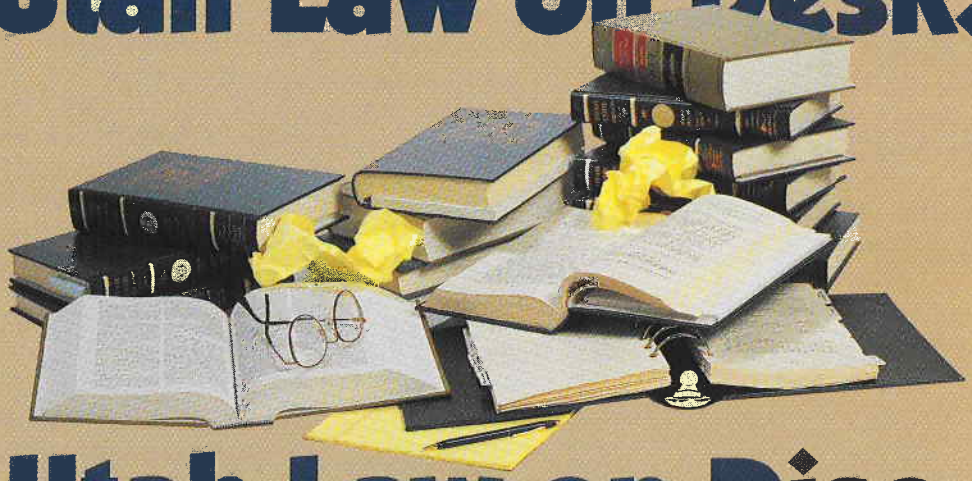

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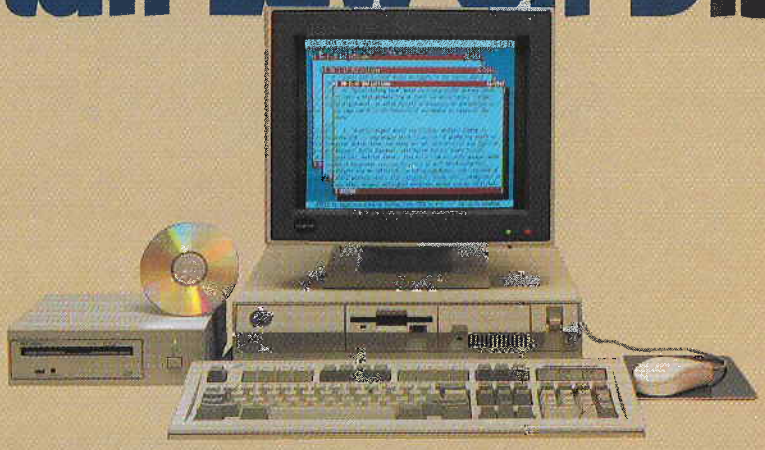

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