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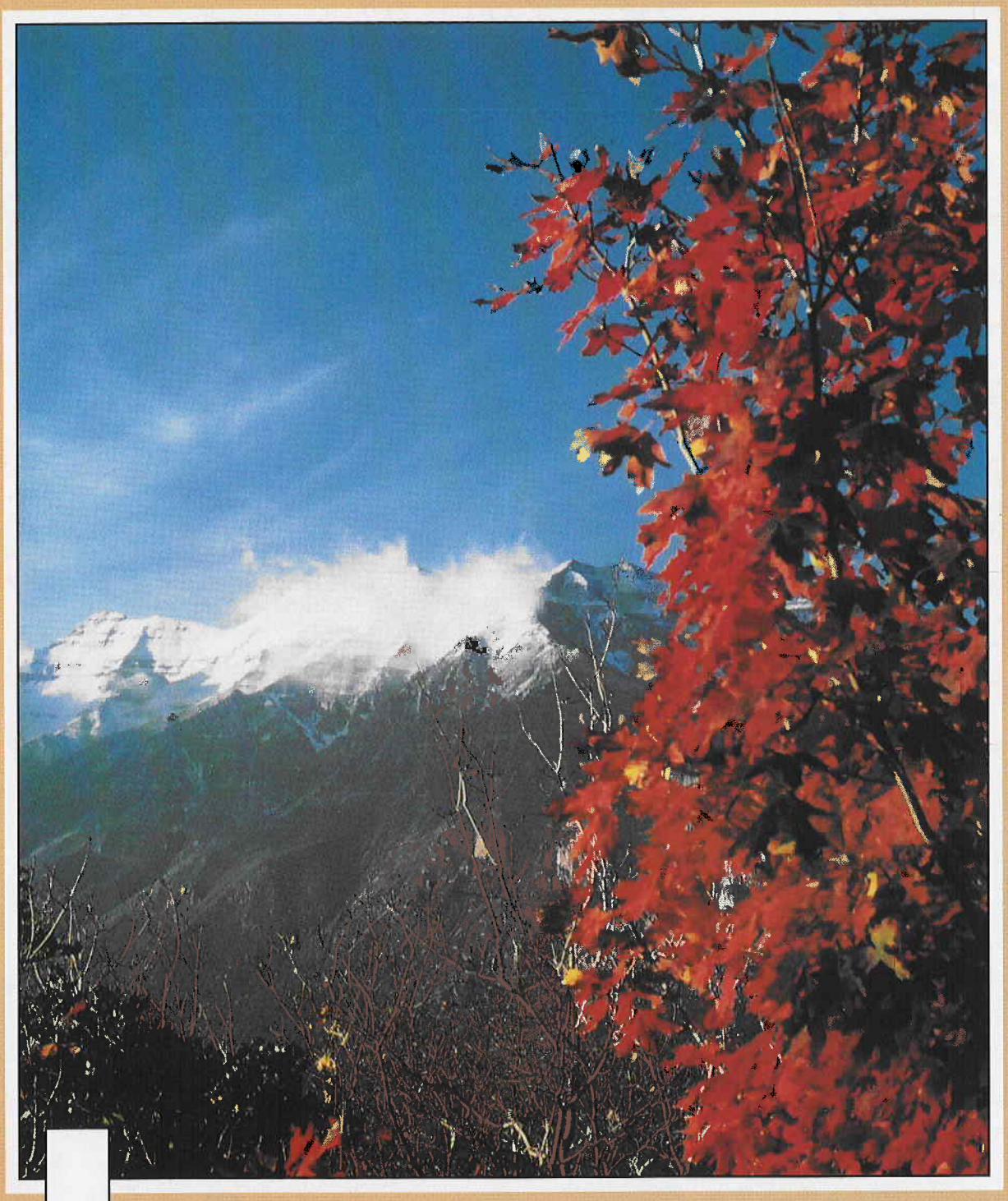

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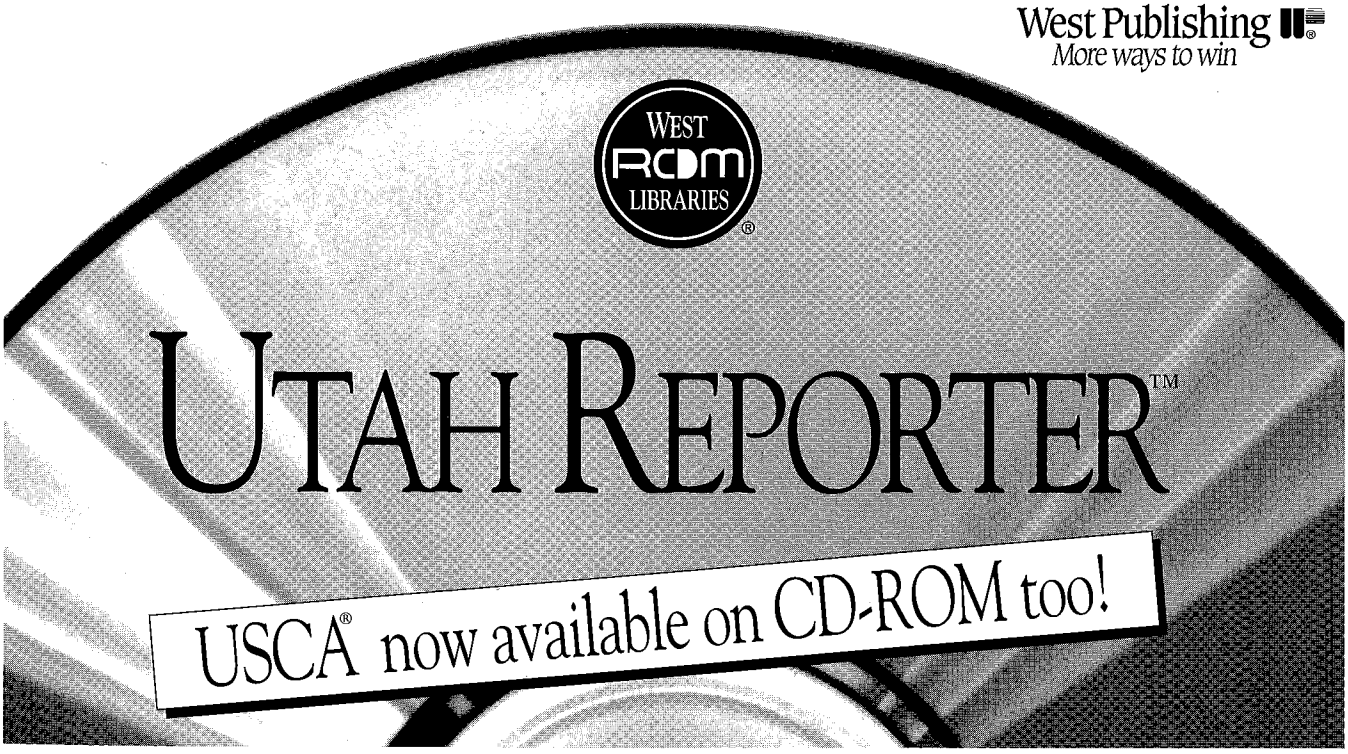

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COVER: Back of Mt. Timponogos, taken by E. Craig McAllister, Esq. of the firm of McAllister and Chuntz.

Members of the Utah Bar who are interested in having photographs published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, Utah, 84111, 532-5200. Send both the slide (or the transparency) and a print of each photograph you want to be considered. Artists who are interested in doing illustrations are also invited to make themselves known.

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LETTERS

Dear Editor:

The August-September 1993 issue of the *Utah Bar Journal* featured an article written by Mr. Peter Billings, Sr., of counsel to the law firm of Fabian and Clendenin. In that article Mr. Billings made some strong accusations and allegations regarding the passage of H.B. 137, Director and Officer Liability legislation, in the 1993 session of the Utah Legislature. Mr. Billings has conveniently chosen to ignore some of the compelling background information that served as a catalyst for the Utah Bankers Association to sponsor and "lobby" the legislation into law.

In his article, Mr. Billings does not make clear that in passing H.B. 137, Utah law, with respect to duties and obligations of the directors of financial institutions, was only being aligned with the standard set forth by Congress for directors of federally insured financial institutions in the Financial Institutions Reform Recovery and Enforcement Act of 1989.

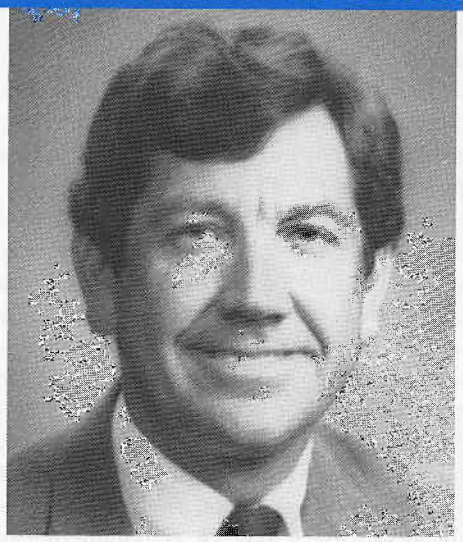
By 1992, it was clear that the FDIC and RTC were on a witch hunt of unprecedented proportions. The FDIC's motive in pursuing these actions often seemed more grounded in the availability of directors and officers insurance proceeds as opposed to the actual merits of the case. Mr. Alfred J.T. Byrne, the FDIC's general counsel, indicated in early 1993 that the dwindling availability of D & O insurance proceeds would mean that fewer of these law suits would be filed.[1]

Finally, it is perhaps instructive to note the reason for Judge Brorby's dissent with the respect to the Tenth Circuit Appellate Court decision. His thinking actually parallels in large part the concerns expressed by the Utah Supreme Court in the 1899 *Warren v. Robinson* decision cited in Mr. Billings' article. Judge Brorby stated, "[the majority's] interpretation . . . contravenes the long recognized need to attract bright, ambitious leaders to serve as officers and director. Under the majority's interpretation, the personal risk is just too great . . . . Given the benefit of hindsight and a simple negligence or fiduciary standard, the FDIC is a formidable opponent. Under the circumstances *no reasonable attorney would advise his client to accept and no reasonable person would accept an offer to become a bank officer or director*" [emphasis added].[2]

In short, the adoption of the gross negligence standard in H.B. 137 by the Utah Legislature serves to conform the Utah standard with federal law with respect to financial institutions and to create an environment in which community leaders can render valuable service without the type of exposure to which the Tracy Collins' directors were subjected.

Lawrence W. Alder
President
Utah Bankers Association

[1] *Wall Street Journal*, Friday, November 13, 1992.
[2] *FDIC v. Canfield*, No. 91-4143.



Should Utah Adopt Legal Specialist Certification?

By H. James Clegg

While at the Annual Meeting of the New Mexico State Bar, I made it a point to learn all I could about the specialist-certification program which has been underway in New Mexico for two years. I was able to wrangle an invitation to sit through the Specialization Board's executive-session meeting Thursday morning and then attended the open session on specialization that afternoon.

Gary McNeil, Executive Director of the Texas Board of Legal Specialization, was prominent in both meetings as New Mexico looks to the Texas experience in designing and administering its program. Gary is a real expert, having directed the Texas program since 1985 and holding two national offices on the subject. Texas began board certification by Supreme Court Rule in 1975 as a pilot program which became permanent in 1979. It presently certifies in the following areas:

Administrative Law	1989
Bankruptcy	
Business	1988
Consumer	1984
Civil Appellate	1987
Civil Trial	1978
Consumer Law	1993
Criminal Law	1975
Estate Planning/Probate	1977
Family Law	1975
Immigration and Naturality Law	1979
Labor Law	1975
Oil, Gas and Mineral Law	1986
Personal Injury Trial Law	1978
Real Estate Law	
Commercial	1983
Farm and Ranch	1983
Residential	1983
Tax Law	1983

The New Mexico program was also created by Supreme Court Rule. Its Board is quite autonomous and the Supreme Court is not involved in major decisions, such as defining fields of specialization. Not nearly so many fields have been opened for certification as the program is in its infancy. Just recently, the committee designing civil trial practice certification divided to create two specialties with different objective criteria, such as number of jury trials required, number of bench trials permitted, number of criminal trials given credit, etc. These two specialties will be equivalent to the Texas specialties of Civil Trial Law and Personal Injury Trial Law.

The Texas program appears less autonomous; its nine board members decide which are proper areas of specialization and qualifications and make recommendations to the Supreme Court. A typical question would be: is there a separate field of "Construction Law" or is it really just Real Estate Law (Commercial)? The latter, in Texas at least.

Texas certifies by both peer approval and written testing; New Mexico has only the former; with its smaller, more intimate bar and input from the judiciary, it feels this is sufficient. However, the civil trial lawyers disagree and believe testing is essential. While there are problems with testing (hard graders/easy graders, topics which are hard to objectively evaluate, cost of hiring third-party testers, difficulty of writing as sophisticated questions as might be prepared by a national testing service), requiring testing is certainly the nationwide trend, and is part of the ABA model released only this year.

As pointed out in New Mexico, many types of lawyers (such as estate planning/probate) do not interface with peers and judges very much; if they are doing their job well, only the client sees the work product. Further, there can be some favoritism or "old boy network syndrome" in peer review, along with the human tendency for a person who has obtained status to want to pull up the ladder.

It was reported that testing is required by California, Florida, Texas, New Jersey,

South Carolina (some fields), North Carolina, Arizona (in newly approved fields) and Minnesota. The ABA model requires testing and the ABA proposes to certify third-party testers which meet its requirements.

The impetus toward board certification comes from two directions, both of them within the bar: (1) it is a way to market legal wares, appealing to those who wish to establish or expand a practice and (2) misleading and deceptive advertising may be somewhat curtailed as "certification" may not be thenceforth be implied as, for instance, "Member, American Trial Lawyers Association". The only permissibly advertised affiliation is, for instance, "Board Certified, Civil Trial Law." This last appeals to those in the bar who are offended by misleading advertising, which includes most of us.

Further, a certified lawyer has an additional ethical requirement: he or she cannot retain a client who was referred because of his/her certification beyond the termination of the referred matter nor may the certified lawyer broaden the scope of representation beyond his/her specialty field. This policy assists in promoting referrals and lawyer-networking as marketing approaches.

The Texas experience indicates that about 10% of the membership seek certification. Of these, about 75% make it on the first try. No statistics have been kept as to the success rate of repeat applicants. The 10% figure is somewhat misleading, as very young lawyers are not eligible; typically five years of practice is minimum and individual specialties can require more. Further, older lawyers are probably established and less likely to wish to take another bar exam. If you disregard lawyers in those categories, 18% is a better number for the proportion who become certified. Most members of a specialty certify the first year a topic is available; after that, membership in that certification program plateaus.

While you can generalize that financially successful, established lawyers would have no need for certification, that doesn't seem quite true. There are those who are simply achievers, who climb a mountain because it is there. I am familiar with perhaps fifty of the outstanding trial lawyers of Texas and, in scanning the directory of specialists, find little rhyme or reason to the decisions to seek specialty recognition. Of the names I recognized, both plaintiff and defense lawyers are represented, all are established, prominent and, to my observation, successful financially. One partner may be certified and another not, etc. There are some lawyers certified in two (perhaps more) fields.

In both states, and apparently universally, there is no certification by firm, only by individual. Recertification problems haven't been significant yet because of the youth of the programs; neither state contemplates anything beyond peer approval for recertification.

Grandfathering is not popular. In Texas, only labor lawyers tried grandfathering; it was not a pretty experience and was discontinued shortly. A type of grandfathering is evident in the New Mexico model since it requires only peer approval.

Obviously, it takes more than just lawyer enthusiasm and volunteerism to start up a program; staffing and money are necessary at the get-go. The Texas program started as a Bar project, with the Bar providing seed money of $30,000. This was repaid within a few years and the effort has been self-supporting ever since. Direction of the program is now "outside" the Bar, in a Supreme Court committee. However, payroll, auditing, health insurance, retirement programs, etc., are handled by or contracted to the Bar, just as we do for the MCLE staff.

The New Mexico program is not yet self-sufficient. Its Bar Foundation, contrary to Texas, has not been helpful, feeling that this cause does not fit its guidelines. Further, New Mexico has only 10% of the Texas numbers, 4,000 compared to 40,000 prospective specialists, so the economies of scale and distribution of start-up efforts aren't as favorable.

Perhaps third-party certifiers will help with a solution, although it may be an expensive one. They exist now in some practice areas, such as the National Board of Trial Advocates. With the ABA on board, it may help certify.

Whether or not there should be reciprocity between states seems subject-sensitive. For example, there seems little reason to resist it for bankruptcy practitioners. Other fields involve state laws and procedures which differ significantly from one to another.

I inquired what might be done to avoid the pitfalls Texas and New Mexico experienced. The most significant suggestion was to tie certification to MCLE; there is considerable overlap of subject matter and MCLE staff will have developed the background and expertise to handle the administration of the program. Further, it is an efficient use of the MCLE director's time and ability as he or she can administer and direct both programs, allowing lower-paid staff members to carry out the directions, without hiring two directors. South Carolina is reportedly using this model successfully and New Mexico combines both functions in its program.

An independent survey of the Texas Bar showed the program is approved by 68% of practitioners. Similarly, polls of consumers show acceptance and approval.

Institutional advertising is a hot topic: should a specialty group be permitted to advertise. Texas and New Mexico haven't done it; Florida has been quite aggressive, in print (including regionally distributed Time and Newsweek), as well as TV. A backlash: some uncertified lawyers now advertise: "Not certified by choice."

Yellow Page advertising will not police the content of submitted ads, so the bars' advertising committees must be active and vigilant. In Florida, the Board of Specialization buys a Yellow Page ad explaining the significance of board certification.

This was my introduction to board certification, although I was familiar with the medical model which differs slightly. My response to all this was, "We're not ready for it." However, if there is a groundswell of support in the bar for certification, and folks are willing to volunteer their time and talent to setting up a program in Utah, it is certainly a good time to start studying and planning, especially since the ABA has just now come out with a model and will undoubtedly provide a considerable resource not available even last year.

Give it some thought and respond if you are interested or concerned, either way.

Lawyers – You Can't Live With Them, You Can't Live Without Them

By James C. Jenkins

Most of us as we joined the ranks of the legal profession had lofty expectations of service to clients and the public, with the resulting reward of recognition and remuneration. Many have since been discouraged by the realization that being a lawyer isn't always glamorous or rewarding. Blaming lawyers for life's ills and misfortunes has, I suppose, been popular as long as there have been lawyers to blame. Former Vice-President Dan Quayle, a lawyer himself, actively criticized the profession. Whether his criticisms were accurate or not, they did little to improve the public's image of attorneys.

Journalist, George F. Will, wrote an essay on the subject in the July 26, 1993, issue of *Newsweek*. In part he said:

> As traditional sources of social norms — families, schools, churches — weaken, law seeps into the vacuum. As laws, regulations, rules, contracts, mediations, arbitrations and negotiations multiply, so do lawyers. Antipathy towards lawyers expresses resentment of the need to rely on people without whose arcane skills (and vocabularies) we frequently cannot function. Doctors, too, are like this, but most patients still feel doctors generally are on their side in providing something they need, whereas lawyers seem increasingly parasitic.
>
> Disdain for Congress is related to Congress' reputation as a nest of lawyers displaying their professions skills at making work for itself. Modern government, indisciriminately meddlesome, invites — indeed incites — people to hire lawyers to bend public power for private advantages. Potential losers from this process defensively hire countervailing lawyers.

Recently Marianne Funk of the *Deseret News* suggested that "lawyer-bashing" is the national past time of the nineties. Reporting a speech by nationally recognized expert on lawyers, Marc Gallanter, she quoted him as saying in defense of the profession:

> Lawyer-bashing doesn't reflect a hatred towards attorneys as much as it reflects a frustration about our complex and confusing society. People yearn for the days when they didn't need attorneys to explain society's laws.

Despite the continuing criticism, there are some things which we as attorneys should continue to do. Firstly, we should maintain a healthy, optimistic philosophy. The misconduct of a few attorneys is not representative of all or even the majority of the profession; nor have the vast majority of lawyers complicated the regimen of life. Indeed most of us share the same frustrations of excessive governmental regulation and humanity's inablility to peacefully co-exist. Secondly, even though laws, rules, regulations and disputes have and may continue to multiply, dishonesty, immorality, abuse and malice need not. As lawyers we need not resort to base and unethical methods of regulation or dispute resolution.

My partner, Jeff Burbank, displays in his office a gift he received after being admitted to the Bar. On it is the following inscription: "Attorneys do good "Deeds", spread good "Will", have "Appeal", say "Pleas", and always "Try" their best!" Puns aside, it's a good philosophy.

I submit that individually and collectively we can do much to not only improve the public's image of the profession, but also our own character and reputation. It is this effort which largely

justifies our association as members of the Bar. And as a Bar Association we have in the past and continue to engage in many good causes such as organized professional discipline, alternative dispute resolution, and promotion of pro bono services.

A notable example of individual services was the judicial career of Judge VeNoy Christofferson. Never, in the nearly fifteen years of my practice before Judge Christofferson, did I hear him express an unkindness or insensitive comment about any person (whether witness, party, court personnel or attorney) appearing in his court. All were respected before the law, even those who were not entirely deserving of it. As a result, Judge Christofferson was often complimented for the treatment he showed to others. Many times those compliments came in the form of letters of men serving a prison sentence under his judgment. What made the difference, was the genuine service and personal concern that he was able to give to others. He cared about those around him. For many years, every young man in our community who received the rank of Eagle Scout received a personal letter of praise and recognition from the Judge. Writing those letters was not an explicit part of his statutory duties, nor can one find it required in the Judicial Code of Ethics, but the courtesies of VeNoy Christofferson as he served on the bench of the First District Court, contributed largely to the honor and privilege of being an attorney.

In addition to individual service, we can also serve as a Bar Association or as committees or sections of the Bar. Consider the recent report of the U.S. Department of Education warning that 90 million adults, or 47% of the U.S. adult population, suffer literacy deficiencies. Functional illiteracy affects employability, participation in the political processes, social awareness, and self-esteem. A significant number of individuals who commit crimes show low levels of reading and writing skills. How can we as members of the legal profession contribute to the solution of this problem?

One prospect is a joint effort involving prosecutors and defense attorneys, the Division of Adult Parole and Probation, the courts, the State Department of Education, and local libararies and volunteers. When a presentence investigation is ordered, the defendant could be provided a literacy test. The results of the test would suggest adoption of a program of a variety of services and training as a condition of probation or parole. The program could be anything from self-instruction for the enhancement of existing skills, to a comprehensive schooling. The Bar could be involved not only in the designing of such programs, but also as volunteers to teach literacy skills. The results would not only promote a better society and reduce criminal recidivism, but would also improve the public image of lawyers.

There are probably hundreds of other efforts in which we can be involved. When we, as lawyers, undertake to serve others, or in any way to do good, we promote respect and honor for the profession. Ours is a profession of service. We serve as lawyers when we:

- Make sure that our work product is a true service to our client and in some way to the public;
- Strive to be and remain competent and skilled in the profession;
- Regularly provide a meaningful amount of pro bono or charitable service, and contribute our skills and time to community programs and projects;
- Support fellow members of the Bar and others who give of their time and effort for the public good; and
- Show sensitivity to the less fortunate and tolerance of the critical.

I congratulate all our members who despite criticism and misunderstanding persist in doing good, not only in their professional practices, but in their daily interaction with others. Many of the blessings of life which we enjoy continue to exist today because of the service of lawyers. It is a privilege and honor to be a lawyer. I am grateful for the service provided by our profession.

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A Brief Overview of the Endangered Species Act

By Jody L. Williams

Conflicts over land use and activities on public and private land arising through implementation of the Endangered Species Act of 1973 are becoming more commonplace nationally and in Utah. This article describes the basic statutory framework in which agency decisions regarding threatened and endangered species are made and developers must function.

Two federal agencies have jurisdiction under the Endangered Species Act (ESA)[1]: the National Marine Fisheries Service (NMFS), acting under the Department of Commerce, and the US Fish and Wildlife Service (FWS), acting under the Department of Interior.[2] The NMFS is authorized to designate the threatened or endangered status of marine fish and certain marine mammals, while the FWS has this authorization with respect to all other wildlife and plants.

A species may be listed as threatened or endangered by the FWS or the NMFS after undergoing a 2-year regulatory review process initiated by the FWS or the NMFS or pursuant to a petition from a private party, or either agency may issue an emergency listing,[3] as occurred in Washington County, Utah for the Mojave Desert Tortoise. Decisions to list are based on consideration of five factors: the status of the population, disease or predation, regulatory mechanisms, over utilization, and other biological factors.[4] Economic impacts are not considered in listing decisions. Species listed as "threatened" are those likely to become endangered in the foreseeable future,[5] while those listed as "endangered" are in danger of becoming extinct throughout all or a significant portion of their range.[6] Certain "Pest Insects" are exempted from listing.[7]

ENDANGERED SPECIES ACT — OVERVIEW

After receiving a petition or recommendation to add a species to the list or revise a critical habitat designation of a listed species, the FWS or the NMFS has 90 days to make a finding as to whether the petition or recommendation contains sufficient information that a listing may be warranted.[8] The FWS or the NMFS decision is then published in the Federal Register, and the listing agency must undertake a species status review.[9] Within 12 months after receiving the petition or recommendation, the agency must make a determination whether listing is or is not warranted and publish that decision in the Federal Register.[10] In the intervening period, notice and an opportunity to comment is given to the States where the endangered species exists and to the public and to professional and scientific societies.[11] If listing is the chosen option, the Federal Register notice will also contain the text of the proposed implementing regulation.[12] One year after publication in the Federal Register, the deciding agency must issue a final regulation, give notice that it is extending its one year period, or withdraw its previous finding requiring listing or revision of critical habitat.[13] If a species is listed, the regulation may include a designation of critical habitat,[14] or critical habitat may be designated at a later date.[15]

Critical habitat consists of specific areas within the geographical area occupied by the species on which are found those physical or biological features essential to conservation of the species and which may require special management or protection.[16] Areas outside those occupied by the species at the time it is listed also may be determined to be critical habitat.[17] "Conservation" of the species in the definition of critical habitat does not mean maintenance of the species at the status quo; it means the return of the species to a biological status of being neither threatened nor endangered.[18] In designating critical habitat, the listing agency may take into consideration "the economic impact, and any other relevant impact, of specifying any particular area as critical habitat."[19] This is the only statutory authorization allowing consideration of economic factors in the ESA process. Areas may be excluded from critical habitat designation if "the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless . . . the failure to designate such area as critical habitat will result in the extinction of the species concerned."[20]

Once a species is listed as either threatened or endangered, the FWS or the NMFS is required to develop and implement a recovery plan, unless the agency determines that a recovery plan will not promote the conservation of the species.[21] An interagency Recovery Team is desig-

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nated to implement the Recovery Plan in a stepdown fashion.[22] Plans must incorporate site-specific management actions; objective, measurable criteria to determine when the species is recovered and may be delisted; and time and cost estimates to carry out the measures of the plan and to achieve intermediate steps toward the recovery.[23] If recovery plans are adopted through regulations, they can affect private property owners if the recommendations include limitations on the right of such property owners to modify the habitat of listed species located on private land. The listing agency must take public comment on proposed recovery plans and consider all information presented to it during the comment period.[24] The law and regulations do not discuss the extent to which the listing agency must consider "non-biological" comments and concerns, such as economic considerations.

After a species is listed, Section 7[25] and Section 9[26] of the ESA become operative. Section 7 requires conferencing and consultation, and Section 9 prohibits takings, unless specially authorized. No federal agency may authorize, fund or carry out any action, such as permitting a transmission line, a road or mine, unless that action is not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of that species' critical habitat.[27] This applies to private persons seeking a permit from an agency.[28]

"A species may be listed as threatened or endangered . . . after undergoing a 2-year regulatory review process . . . . Economic impacts are not considered in listing decisions."

An exception to Section 7's requirement of consultation to ensure that federal action does not jeopardize the continued existence of a species is provided by the process of submission of an application to the Endangered Species Committee, sometimes referred to as the "God Squad."[29] The Committee also can hear pleas to permit economic considerations in the Section 7 process. The Committee is composed of the Secretaries of Agriculture, Army, and Interior, the Chairman of the Council of Economic Advisors, the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration, in consultation with an appointed individual, generally the governor, from each of the affected states.[30] Very few applications to the Committee have been made, and because of the complicated and expensive process of applying, this is not an effective method of relief from Section 7's consultation process. Generally, relief from the Committee could be expected, if at all, only in a case on which debate has been elevated to the national level, such as the spotted owl in the Northwest.

Section 9 of the ESA prohibits the importation, exportation, possession, sale, transportation, or taking by anyone,

including a private person, of an endangered species.[31] While the law only applies to an endangered species, the NMFS and the FWS have promulgated regulations which extend the prohibition to those species listed as threatened as well.[32]

"Taking" is very broadly defined to include "harrass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct."[33] By regulation, "harm" has been further defined to include "significantly impairing essential behavior patterns, including breeding, feeding or sheltering."[34] "Harass" has been further defined to include an "intentional or negligent act or omission" that creates "the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns."[35] These prohibitions in Section 9 can be enforced either by the listing federal agency or by a private citizen suit.[36] The listing federal agency may bring criminal prosecutions under this section.[37]

The strict prohibitions against taking may be vitiated somewhat by the incidental take statement and incidental take permit sections of the ESA.[38] Taking individual members of endangered species pursuant to one of these provisions is not a violation of the Act.[39] Incidental take statements may be issued to the agency proposing the action in the biological assessment rendered by the listing agency as part of the Section 7 consultation process.[40] These allow the agency proposing action or its applicant for federal authorization or funding to take members of the threatened or endangered species if the taking is not the purpose of the action sought to be permitted,[41] and if the action sought to be permitted is not likely to jeopardize the continued existence of the species.[42]

An incidental take permit may be issued to non-federal parties for actions not requiring consultation under Section 7 that would otherwise violate Section 9, if the incidental taking "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild."[43] The applicant must submit a conservation plan with its application, which must include a description of the impact that will likely result from the taking, the steps the applicant will take to minimize and mitigate the impact, the funding source available to the applicant for mitigation, the alternatives the applicant has considered and why they are not being used, and any other information the NMFS or the FWS may request.[44]

The National Environmental Policy Act (NEPA)[45] applies to the issuance of incidental take permits, so an opportunity for public comment is provided, and, depending on the scale of the proposed project, an Environmental Assessment or Environmental Impact Statement may be required.[46] The listing federal agency may require reporting requirements as part of the permit. A permit may have a term of up to 30 years. Permits are issued very infrequently, probably due to the onerous task of acquiring one and the growing political sensitivity to the Act.

State laws which conflict with the ESA's provisions prohibiting importation or exportation of, or interstate or foreign commerce in, threatened or endangered species are void. States may enact laws or regulations which are more restrictive than provided for in the ESA.[47]

There is no specific procedure set forth in the statute for delisting a species. Sec-

tion 4,[48] which details how a species may be listed, also applies to delisting. Within 90 days after receipt by the NMFS or the FWS of a petition to delist, the agency must make a finding as to whether the petition presents substantial commercial or scientific evidence that the petition should be granted. If the petition is found to present such information, the agency then must undertake a status review of the species.[49] The agency's finding is made in the Federal Register.[50]

The agency then has 12 months to find that the delisting is or is not warranted, or that the petition to delist is warranted but that immediate action is precluded by pending proposals to determine whether the species is threatened or endangered and that progress is being made to add to or delete it from the threatened or endangered list.[51] That decision is also published in the Federal Register, along with a proposed regulation to implement the decision.[52] Notice is given to the State in which the endangered species occurs and to the public and to professional scientific organizations. Public hearings may be scheduled.[53]

At the end of the 12-month period, the agency must publish its final regulation to implement the delisting, deny the delisting, or extend the time to make its decision. If the agency finds "substantial disagreement regarding the sufficiency or accuracy of the available data," it may give itself an extension of time to solicit additional data.[54] In theory, the agency ultimately must promulgate a final regulation to implement the determination or revision concerned, deny delisting, or withdraw the proposed regulation, giving reasons for its final decision.[55] Intervening political pressure or litigation substantially lengthens this process.

Violations of the ESA can result in severe criminal and civil penalties. Criminal penalties of up to $50,000 in fines and a year in prison are provided for each violation. Civil penalties may reach $25,000 if the violation was performed with knowledge.[56] No civil penalty may be imposed if the violator can show that he or she acted to protect him or herself or his or her family from bodily harm from the threatened or endangered species. Injunctive relief is available and usually sought in a federal action. Intent and knowledge are required for criminal prosecution. Private citizens can bring suit for enforcement of the ESA.[57] Private suits may seek only injunctive relief, but attorneys' fees may be awarded by the court. A violator's license or permit to import or export fish, wildlife or plants, or a violator's federal grazing privileges, may be revoked by the NMFS or the FWS.[58] Those agencies may also cancel federal hunting or fishing stamps or permits issued to a proven criminal violator. Guns, nets, vehicles, boats or other equipment used by proven criminal violators are subject to forfeiture.

[1] 16 U.S.C. § 1531.
[2] 16 U.S.C. § 1533.
[3] 16 U.S.C. § 1533(b)(3)(A).
[4] 16 U.S.C. § 1533(b)(1)(A).
[5] 16 U.S.C. § 1532(20).
[6] 16 U.S.C. § 1532(6).
[7] *Id.*
[8] 16 U.S.C. § 1533(b)(3)(A).
[9] *Id.*
[10] 16 U.S.C. § 1533(b)(3)(B).
[11] 16 U.S.C. § 1533(b)(5)(A)(ii).
[12] *Id.*
[13] 16 U.S.C. § 1533(b)(6)(A).
[14] 16 U.S.C. § 1533(b)(6)(A)(i).
[15] *Id.*
[16] 16 U.S.C. § 1532(5)(A).
[17] *Id.*
[18] 16 U.S.C. § 1532(3)
[19] 16 U.S.C. § 1533(b)(2).
[20] *Id.*
[21] 16 U.S.C. § 1533(f)(1).
[22] 16 U.S.C. § 1533(f)(2).
[23] 16 U.S.C. § 1533(f)(1)(B).
[24] 16 U.S.C. § 1533(f)(4).
[25] 16 U.S.C. § 1536.
[26] 16 U.S.C. § 1538.
[27] 16 U.S.C. § 1536(a)(2).
[28] *Id.*
[29] 16 U.S.C. § 1536(e).
[30] 16 U.S.C. § 1536(e)(3).
[31] 16 U.S.C. § 1538(a)(1).
[32] 50 C.F.R. § 17.31 (1984).
[33] 16 U.S.C. § 1532(19).
[34] 50 C.F.R. § 17.3.
[35] *Id.*
[36] 16 U.S.C. § 1540.
[37] 16 U.S.C. § 1540(b).
[38] 16 U.S.C. § 1539(d)(1)(B).
[39] 16 U.S.C. § 1536(o).
[40] 16 U.S.C. § 1536(b)(4)(B)(i).
[41] 16 U.S.C. § 1539(a)(1)(B).
[42] 16 U.S.C. § 1539(a)(2)(B)(iv).
[43] *Id.*
[44] 16 U.S.C. § 1539(a)(2)(B)
[45] 42 U.S.C. § 4321, et. seq.
[46] *Id.*
[47] 16 U.S.C. § 1535(f).
[48] 16 U.S.C. § 1533.
[49] 16 U.S.C. § 1533(b)(3)(A).
[50] *Id.*
[51] 16 U.S.C. § 1533(b)(3)(B).
[52] 16 U.S.C. § 1533(b)(5).
[53] *Id.*
[54] 16 U.S.C. § 1533(b)(6)
[55] *Id.*
[56] 16 U.S.C. § 1540.
[57] 16 U.S.C. § 1540(g)(1).
[58] 16 U.S.C. § 1540(b)(2).

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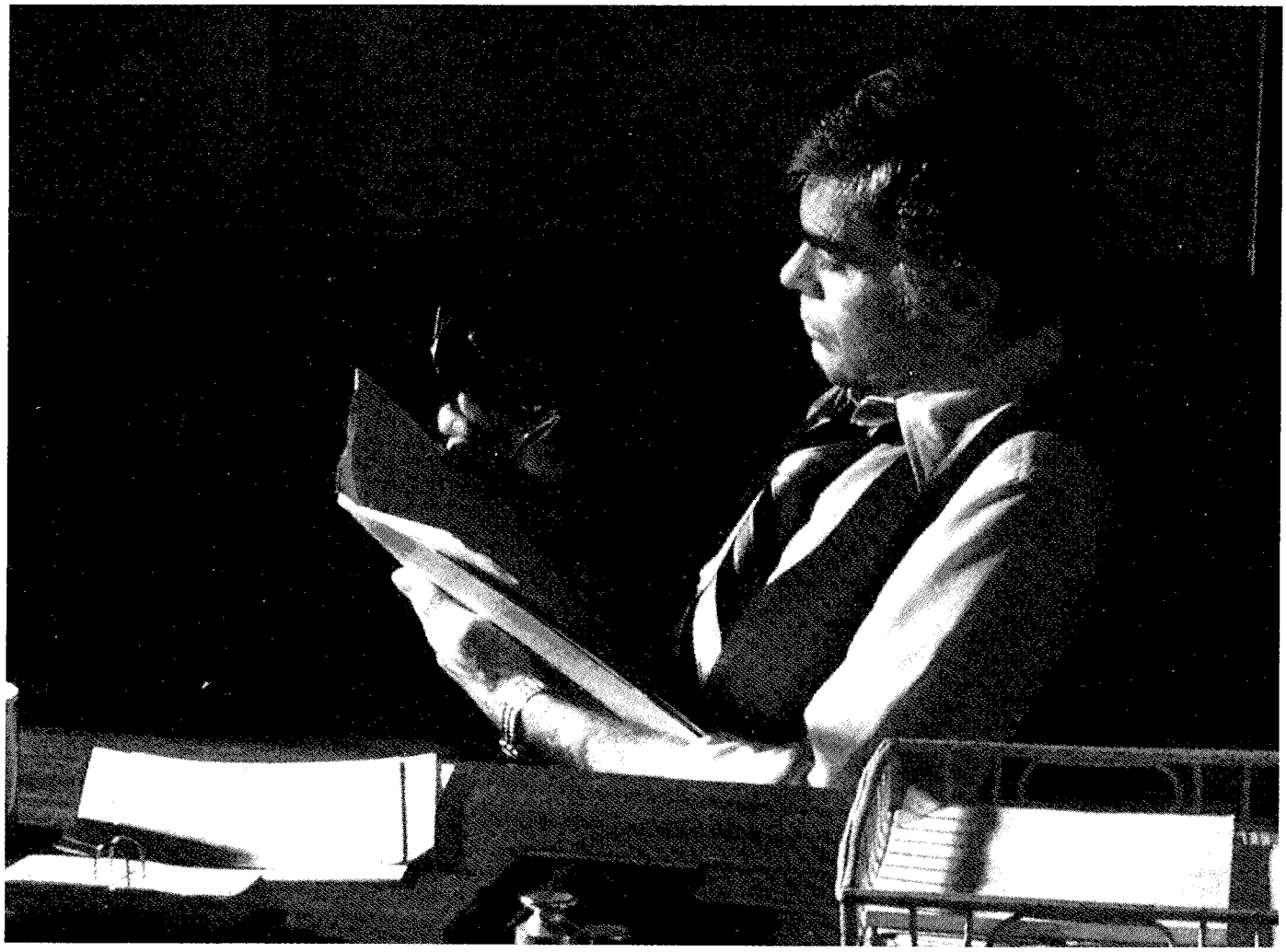

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Asset Protection – Another Tool

By Paul J. Barton, Esq.

"Protection is not a principle, but an expedient."
— Disraeli, Speech, 17 March, 1845.

"It is folly to bolt a door with a boiled carrot."
— ENGLISH PROVERB.

It is the purpose of this article to explore a potentially effective tool in "Asset Protection" which may be unknown to some of its readers. While erosion of asset protective devices seems to be the trend, it is the role of the counselor to use his or her imagination and dream up a better mouse trap which can bring to the client utility, not futility. Erosion of protective devices takes many forms. Piercing the corporate veil makes corporate assets available to creditors. The judicial setting aside of an irrevocable trust places the beneficiary's future lifestyle in jeopardy. Titling property in the name of another can be reached by the Fraudulent Conveyances Act. Assets in the spouse's name can be impacted by the Medicaid "spend down". It had generally been thought that IRA's and retirement plans were beyond the reach of creditors. Now IRA's are reachable by creditors. The divorce courts dealt a blow to the sovereignty of the IRA and the retirement plan by forcing the plan's payout to be shared with the spouse. The national hallmark of security was to be found in the Pension Plan; it appeared that the U.S. Supreme Court had decided only last year that all pension assets were protected in bankruptcy and were not reachable by creditors. *Patterson v. Shumate*, 112 S.Ct. 2242 (1992). But even the safety of the sacred Pension Plan has come under attack. Three recent cases have again eroded the walls of protection. *See In re Hall*, No.GK91-81542 (Bankr. W.D. Mich. 1993); *In re Lane*, 149 Bankr. 760 (Bankr. E.D.N.Y. 1993); *In re Witer*, 148 Bankr. 930 (Bankr. C.D. Cal. 1992). These cases indicate that retirement plans of the professional, the solely owned corporation, the closely held corporation, and professional partnerships are now reachable by creditors.

The Supreme Court of Utah has held that property conveyed into an irrevocable trust for the use of the person creating or making the same, (i.e., the settler, trustor or creator thereof) shall be void against existing or subsequent creditors. *Leach v. Anderson*, 535 P.2d 1241 (Utah 1975). Presumably the case had many facts favoring a beneficiary. The trust was irrevocable. There was a neutral and independent trustee, Valley Bank. There was no fraudulent intent in the creation of the trust. When the grantor created the trust she was solvent and had no eminent or reasonable expectation of being threatened by creditors, either present or future. In creating the trust the grantor did not intend to use the trust as a protective shield to hinder, delay or defraud her creditors. The purpose of the trust was to protect the grantor and her children from the improvident requests of her son. The trust contained a spendthrift clause. However, and notwithstanding the facts wherein there was no intent to defraud, the Court relied heavily on the Fraudulent Conveyances Act, Utah Code Ann. § 25-1-11 (1953) as it held for the creditors stating: "The intent and the effect of the statute is to prevent a person from using a trust as a device by which he can retain for himself and enjoy substantially all of the advantages of ownership and at the same time place it beyond the legitimate claims of his creditors." *Leach*, at 1243. The statute the Court relied so heavily upon has since been repealed and replaced with the Uniform Fraudulent Transfer Act. Utah Code Ann. §§ 25-6-1 — 25-6-13 (1988). The new statute requires more than a finding that the creator of the trust has use or benefit of said properties. However, it is doubtful that the new statute would alter the Court's decision in that the court stated: "The statute is but a codification of the common law . . ." *Leach*, at 1244. In view of the *Leach* case, a grantor could have a reasonable expectation of having an irrevocable trust set aside in favor of grantor's creditors if grantor has any use of benefit of the assets of the trust which grantor created. This applies to both real and personal properties. *See McGoldrick v. Walker*, 838 P.2d 1139, 1141 (Utah 1992). The Utah Supreme Court, being consistent with the bulk of authority on the subject, avowed the purpose of the statute and declared it as being the better-reasoned approach: "to prevent a person from using a trust as a device by which she can continue to use and enjoy her property to the detriment of her creditors." *Id.*

An irrevocable trust with a spendthrift clause can still be used as an effective asset protection device. The trust can contain provisions which safeguard the corpus against improvident dissipation. While Utah has never directly approved a spendthrift trust, the Tenth Circuit has stated: "we are satisfied that Utah would follow the vast majority of courts which recognize traditional state law spendthrift trusts . . ." *In Re Harline*, 950 F.2d 669, 671 (10th Cir. 1991). To avoid the impact of the *Leach* case, the grantor cannot create a trust for the use and benefit of himself or herself. One possibility would be to create the trust for the use and benefit of the grantor's spouse. While the grantor may not receive benefits of the trust corpus directly, the grantor may have a possibility of receiving indirect spillover benefits of the trust while grantor remains married and in good favor of the grantor's spouse. For example, if the trust provided support and maintenance for the grantor's spouse to maintain the spouse's lifestyle in the manner to which the spouse is accustomed, the grantor may have the assurance of a roof over the grantor's head and the benefit of paid utilities while grantor is living with the spouse. It may be ill-advised for spouses to set up similar

trusts for one another because the Internal Revenue Service or another party could invoke the reciprocal trust doctrine.

The transfer of the assets into the trust would usually not qualify for the $10,000 annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code. I.R.C. § 2503(b) (1986). It would, therefore, require the grantor to use his or her unified credit pursuant to §§ 2010 and 2505. I.R.C. §§ 2010, 2505 (1986). The credit currently shields $600,000 of assets. It may be a very good idea to use up this credit prior to death. In the fall of 1992 there was a movement to drop the $600,000 level to $200,000. H.R.4848. Many people wanted to use up their $600,000 before it was reduced or taken away. Milton L. Schultz, national director of estate planning for accountants KPMG Peat Marwick, stated: "If you're leaning toward making a gift to use up your $600,000 exemption . . . and you don't need the money to live on, it might be good to do it before the end of the year." "Money & Investing", *Wall St. J.*, Nov. 5, 1992. Now the reduction of the $600,000 is not as likely to occur in that President Clinton has announced that he is not in favor of eliminating the $600,000; rather, President Clinton favors raising revenue by invoking a capital gains tax on the inherited property. *See* "Clinton May Raise Age for Collecting Social Security", *The Salt Lake Tribune*, Dec. 19, 1992, at A2 and "Clinton's Options", *Wall St. J.*, Jan. 22, 1993. Whether the unified credit is reduced or not, the biggest advantage of using the credit prior to death is that it not only removes the assets from the grantor's estate, but it also removes the future growth on those assets from the estate and effects of the transfer tax. The expected future growth on the assets is likely to far exceed the value of the original assets. For example, over the 30 year life expectancy of a female age 50, $600,000 compounded at a rate of 8% would turn into $6,037,594.13.

While the future estate tax savings of prematurely using the unified credit can be phenomenal, it may be that protection rather than tax savings is the motivation. A number of the author's clients who created such trusts in 1992 informed the author months later that the motivating factor in creating such a trust was not tax savings and not the ability to use the $600,000 before it was reduced, but the simple notion of "FAMILY PROTECTION". The idea of a "pot trust" to be held simply for the family had a lot of appeal. Even if one made ample provisions for a child, a future divorce, accident, creditor or catastrophic event could devastate the child. An emergency pot to provide sustenance for such a loved one would not only provide comfort to the grantor, it could mean survival for the loved one based on his or her unforeseen future needs.

For maximum protection, a trust must be properly drafted. Whether a trust is properly drafted is entirely relevant to the integration of the desires of the grantor, the needs of the beneficiaries and the impact of tax law and laws affecting creditors rights.

"Effective and efficient planning for family wealth transfers encompasses all or most of the following goals.

1. Control — Preserving control for the senior family members.

2. Management — Providing for effective management.

3. Tax Savings — Saving (and/or deferring) taxes, including income, gift, estate and generation-skipping transfer taxes at all governmental levels.

4. Flexibility — Maintaining maximum flexibility to react to changing family needs, economic situations and tax and other law changes.

5. Creditor Protection — Protect family wealth from unnecessary evaporation resulting from divorce and other creditor problems.

6. Leveraging — Taking advantage of leveraging and valuation concepts."

Oshins and Blattmachr, "The Megatrust: An Ideal Family Wealth Preservation Tool", *Trusts & Estates*, November 1991, at 20.

"An irrevocable trust with a spendthrift clause can still be used as an effective asset protection device."

Generally, the trust will lean towards accumulation rather than distribution and consumption. The trustee might be encouraged to invest in assets with a significant

appreciation potential and directed to acquire these assets for the **use** of the beneficiary rather than for distribution. The trust could be designed to pass its significant benefits through multiple generations. The trustee may be given mandatory directives to maintain a beneficiary's lifestyle as governed by an ascertainable standard. Distributions may be allowed to meet the basic needs of the beneficiaries after taking into account their needs and other available sources of assets, income and means of support. The beneficiary may be required to use such sources of assets, income and means of support until they are exhausted and then receive distributions from the trust only as necessary to supplement said sources so as to bring said beneficiary up to a lifestyle as directed by the grantor.

Because the trust may exist for a long time, and in view of the changing circumstances of our society, the grantor should consider giving broad discretion to the trustee so as to adjust for unforeseen changes in beneficiary's circumstances. "In drafting the document, attorneys should resist the temptation to draft too 'tightly,' as flexibility is extremely important." *Id.* at 24.

Powers of appointment to the grantor's spouse or third parties may be an important method to deal with changing family circumstances or modifying the discretion of the trustee. A special power of appointment is recommended in which the class of potential beneficiaries is limited to grantor's issue and possibly the spouses of said issue. This class of beneficiaries may be expanded, based on the desires of the grantor. Flexibility is enhanced by expanding the special power of appointment with a sprinkling or spraying power.

"A properly prepared trust can be extremely helpful in ways that no other document can be."

If a beneficiary has the right to a distribution from a trust to meet an ascertainable need, the creditor or provider of the need may have the ability to require payment of the same from the trust. The more discretionary the trustee's power, the more creditor-proof the trust will become. Giving an independent trustee the "sole" and "absolute" discretion may be "the ultimate in creditor and divorce claims protection even in a state that restricts so-called 'spendthrift trusts' — since the beneficiary himself has no enforceable rights against the trust." Keydel, *Trustee Selection and Removal: Way to Blend Expertise with Family Control*, 23 U.Miami Inst. on Est. Plan. ¶409.1 (1989). It would be a good idea to affirmatively state that the trust corpus is not a resource of the beneficiary. The following sample language which the author has used in a trust document may be of some assistance to a drafter:

Statement of Intent. Grantor desires to protect (spouse's name) and her descendants. A beneficiary hereof may have needs for support and maintenance and also needs other than support and maintenance which are basic to a dignified life which may be unavailable to a beneficiary except through this trust. It is Grantor's intention that the trustee shall have sole and absolute discretion in the disbursement of funds from this trust to satisfy those potential support and non-support needs. Grantor realizes that sometimes the best way to help a beneficiary is to not render any help or assistance to said beneficiary whatsoever. Such a decision places great importance on the trustee's discretion and judgment. Grantor has confidence in the trustees of this trust and believes they have good judgment. Grantor believes that for the judgment of the trustee to be exercised appropriately, that the trustee needs full and absolute discretion.

Grantor does not intend to displace any source of income otherwise available to a beneficiary for his or her basic support (such as food and shelter), including any governmental assistance program to which a beneficiary is or may be entitled.

This trust is not intended to be a resource of a beneficiary. It is not available to him or her. It is intended to be a discretionary spendthrift trust created for *potential* support and non-support purposes. The trustee is encouraged to acquire assets for the 'use' of beneficiaries rather than make distributions to them. The trustee may take into account both immediate and future income and transfer tax consequences. The trustee has absolute discretion to make or withhold distributions and shall have the power to withhold a distribution to a beneficiary even though said beneficiary demonstrates a need or is in fact in need.

The clause in the trust setting forth the dispositive provisions may contain the following language:

During the lifetime of (beneficiary's

name), the trustee *may*, in its 'sole' and 'absolute' discretion, make distributions to or for the benefit of (beneficiary) for any purpose and at any time. The decision of the trustee shall be absolute, final and binding. The trustee shall have total and absolute discretion. The trustee may also withhold distributions to or for the benefit of (beneficiary) at the trustee's sole discretion, for any purpose or reason whatsoever. The trustee may, at its discretion, withhold any such distribution to or for the benefit of (beneficiary) even though (beneficiary) may demonstrate and show a strong and sufficient need therefor.

Distributions of income to the spouse of grantor can create income tax problems. Under Section 677(a)(1) of the Internal Revenue Code, even the possibility of distributions of income to spouse of grantor without the consent of an adverse party will cause the grantor to be treated as the owner of the trust and will include all income of the trust into grantor's income tax bracket; realize that this may occur even though there was, in fact, no distribution of income. I.R.C. § 677(a)(1) (1986). Merely the ability to make such a distribution without the consent of an adverse party creates the tax consequence. The drafter may choose to create a "defective" trust in which the income is included into the grantor's income tax bracket; this would allow the trust to accumulate faster since it would be the grantor who would have to pay the tax and not the trust. However, this could lead to the IRS finding that there were additional contributions to the trust to the extent of the income tax paid with the ensuing transfer and generation skipping tax consequences. To avoid adverse income tax consequences, the trust should either not allow the spouse to receive income, or only allow the spouse to receive income after the consent of an adverse party. Another possibility of making distributions to the spouse without triggering adverse income tax consequences may be to have the trust make distributions of "principal only" unless the consent of an adverse party is obtained. This would allow the trustee to be able to make appropriate distributions to benefit the spouse even though an adverse party may not give its consent. Possible drafting language which might be considered is as follows:

"Any such distribution to or for the benefit of (spouse), if any, may be made out of principal or income, at the trustee's discretion; provided, however, there shall be no distributions of income to or for the benefit of (spouse) without the Trustee first having obtained the written consent of an adverse party to said distribution of income."

In summary, property which is transmitted into a properly drafted trust can confer significantly greater benefits than can be derived from property owned outright. A properly prepared trust can be extremely helpful in ways that no other document can be. For the person who prefers **"protection"** over taking chances, a well drafted trust may offer adequate protection from both improvidence and unforeseen catastrophic events.

The Expendable Professionals

By Sue Vogel Flores-Sahagun

SUE VOGEL FLORES-SAHAGUN is of counsel to an Oakland, California litigation firm.

With the demise of the '80s, the heyday of yuppieism also is over. In its wake are empty offices, repossessed cars and the emergence of a new class of lawyers, a new class of professionals, the post-yuppie professionals proletariat class.

Over the last 15 or so years, law firms have been transformed from personal services providers to huge, largely indistinguishable production facilities that, like Kinko's, churn out documents 24 hours a day. It used to be that a law school graduate could join a firm and expect to be trained and rewarded with partnership if he or she worked hard and did a good job. Now, partnership is often an illusory carrot held out to extract the hard work; rarely is it an IOU.

The associate works in an assembly-line capacity — reviewing documents as one might sort peaches for bruises, checking off the most obvious boxes on form interrogatories, using *Alt-F2* ("replace") to change the names on firm-form-committee-mandated standard leases. The associate is a member of the professional proletariat class, no more immune from exploitation as the counter worker at McDonald's, and no less deserving of the protections of the labor laws.

Karl Marx and Frederick Engels may have blown it on eliminating the private ownership of property, but they clearly identified the roles of management and workers in the workplace and the role of the profit motive in shaping behavior. Under their definition of the "proletariat," the new professional proletariat class is one that at a minimum is deserving of protections, and at the extreme could become a formidable part of organized labor.

Engels, in *Credos* (1847), described the proletariat as a "class of society whose means of livelihood entirely depend on the sale of its labor and not on the profit derived from capital; whose weal and woe, whose life and death, whose whole existence depend on the demand for labor, hence on the alternation of good times and bad, on the vagaries of unbridled competition."

According to Marx, the proletariat consists of the workers who "live only as long as they find work, and who find work only as long as their labor increases capital . . . [They] must sell themselves piecemeal, are a commodity, like every other article of commerce, and are consequently exposed to all the vicissitudes of competition, to all the fluctuations of the market."

EARNING ABUSE

The associate attorney, the staff attorney, as well as the staff physician, engineer and architect, are wage laborers who are paid to work a certain number of hours per month or per year, and who are subject to being laid off as soon as they are not profitable to their employers. They are workers, just like the street sweeper and bus driver, only they pay for their own dark blue and gray uniforms, and they ride home to somewhere other than outer Third Street. The professional proletariat may make slightly to a lot more money than the nonprofessional proletariat, but is subject to the same kind of abuses.

"'The associate works in an assembly-line capacity . . . checking off the most obvious boxes on form interrogatories, using Alt-F2 ('replace') to change the names on firm - form - committee-mandated standard leases."

Abuse ("exploitation" in the Marxist lexicon) is especially easy in the professions because long hours and hard work are seen as a rite of passage, an initiation into an exclusive club, and a badge of honor in an honorable profession. This may have been valid when the professions were exclusive clubs and the work was honorable. Now, though, higher degrees, especially law degrees, are easily attained by nearly everyone.

Tarnished by the greed factor, the power factor and the ego factor, the legal profession is one of the most despised professions in the eyes of the American public. The greed factor has perhaps corrupted it most. Friction seems inevitable when the duty to act in the best interest of the client is forced to cohabit with the profit motive.

Marx anticipated this tension when he wrote, "The bourgeois has stripped of its halo every occupation hitherto honored and looked up to with reverent awe. It has converted the physician, the lawyer, the priest, the poet, the man of science, into its paid wage laborer."

DRIVING ECONOMICS

So a physician performs unnecessary surgeries, a seemingly independent scientist's conclusions are prescribed by the tobacco company that has him on retainer, a lawyer recommends the most costly alternative. Even personal relationships may be guided by the profit motive. The head of one law firm used to say, "As long as you can choose your friends, you might as well choose friends who could become good clients." As Marx observed, the profit motive leaves "no other nexus between man and man than naked self-interest, than callow cash payment."

Law firms used to pretend they were in the business of helping people solve their problems; now they are beyond illusions. As a senior partner of a large Bay Area law firm told a lawyer during a job interview, "Let's face it, we're all in this for the money."

Money is one of the few things the

practice of law can offer any more. No small thing — it pays the rent and the food bills. But admitting, to oneself or to others, that this is the ultimate goal of the private practice of law results in a megalomania that cheapens any real value of the work.

What is the real value of work, besides making money? If one considers value to be making things better (solving problems, giving a good haircut, patching a pothole, carrying away noxious garbage), law perhaps has none. Many would argue that what lawyers do best is make things worse (but hopefully for somebody else).

Workers who are deprived of meaningful work, who are in the middle of an officially condoned frenzy of megalomania, may seek succor in material possessions. The tension, exhaustion and frustration of endless employer demands (to meet the monetary goals of the partners) are made a little more bearable with a full body massage, a drop into the virtual reality of a big-screen television, or a drive in a turbo-powered car. This feeds the employer's profit motive in that it provides another basic requirement of capitalism: the replenishable existence of workers who are highly driven by the acquisition of material things.

FALSE HONORS

Since the acquisition of things often results in indebtedness, and since few people have Marx's personal tolerance for poverty and starvation, most debt slaves can easily be converted to wage and profit slaves. An employee who is financially desperate may be more willing to tolerate mistreatment. Professionals are often loath to complain about their situation. They fear they will sound ungrateful and ridiculous since it is an honor to be a professional, and since they believe they make more money than do people entitled to complain.

Moreover, they may feel they are privileged to have had the opportunity to go to college and graduate school, to take a grueling bar exam, and to be sworn in by a Supreme Court justice. If they were to complain, they would receive little sympathy from the federal government. The Fair Labor Standards Act, the federal law that shelters mere workers from burdensome demands on their time by mandating a 40-hour work week, exempts employees in the "professions."

Thus, the secretary who checks off boxes on form interrogatories, whose time may be billed to the client, and who makes $40,000 a year, is guaranteed two breaks for every four hours of work, a half-hour for lunch, and the ability to bolt at 5:00 or get paid for overtime. The associate who checks off boxes on form interrogatories and makes $40,000 a year has no protections from being required to work 60-hour weeks with no overtime pay.

The Fair Labor Standards Act was enacted in 1938 with the goal of curing the horrible work conditions and reducing the unemployment caused by the Depression. In light of the current economic crisis in this country and the emergence of this new class of powerless yet degree-wielding workers, it may be time to extend the protections of the law to "mere" professionals.

The two or three individuals who may be concerned what Marx would think about a solution not involving the complete overthrow of capitalism need not fret. Marx, in his later years, backed off from his position that the evils of capitalism could be eliminated only through the complete overthrow of the system and recognized a middle ground of making capitalism more humane. "Humane capitalism" may be a system that can satisfy not only our material needs but our needs to be treated with dignity and respect.

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has completed a clerkship with the United States Court of Appeals for the Ninth Circuit

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Commission Highlights

During its regularly scheduled meeting of August 26, 1993, which was held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the July 29, 1993 meeting.
2. Jim Clegg and Jim Davis highlighted discussions of a recent meeting of a legislative committee dealing with court reorganization.
3. Jim Clegg indicated that all committee chair assignments had been made and indicated that Jerry Fenn would be chairing a special committee to study if and how the Bar should integrate paralegal groups.
4. The Board discussed its position on the issue of the appropriate role of court commissioners.
5. The Board requested Baldwin to determine the cost and review the possibility of publishing a lawyer directory again.
6. The Board voted to designate the Bar's representative on the Judicial Council, James Z. Davis, to be an ex-officio member of the Bar Commission.
7. Jim Clegg presented Elliott Williams with a Board resolution of appreciation for his service to the Bar and thanked him for all his effort. Clegg also presented Jan Graham with a plaque commemorating and expressing appreciation for her past service on the Bar Commission.
8. Reed Martineau, ABA State Bar Delegate, reported on the outcome of issues voted on during the ABA '93 Annual Meeting.
9. Hal Clyde, Chair of the Downtown Alliance Court Complex Committee, appeared and answered questions regarding the background and current status of the proposed court complex building project.
10. Gary Sackett, Ethics Advisory Committee Chair, appeared to present three ethics opinions for Bar Commission approval. The Board voted to approve Ethics Opinions #121 and #132 as proposed by the Ethics Advisory Committee. The Board voted to defer taking action on Ethics Opinion #124 for about 60 days pending receipt of a related ruling.
11. Ralph L. Dewsnup, Brent Wilcox and Lillian Garrett, Utah Trial Lawyers reported on medical malpractice legislation in Utah and various proposals for tort reform.
12. J. Michael Hansen, Budget & Finance Committee Chair, reviewed June and July financial statements. Hansen indicated that the Bar's auditors, Deloitte & Touche, have finished auditing the Bar and the Law & Justice Center and that the Budget & Finance committee would be meeting with the auditors on September 14 to review the report.
13. The Board voted to approve a $100,000 payment on the mortgage principal.
14. Mark Webber, Young Lawyers Division President, reported on current Division activities including the recent planning meeting of the Executive Council and the upcoming October 7th social for new lawyers who have passed the Bar examination.
15. The Board voted to approve the Client Security Fund Committee recommendations outlined in Chair David R. Hamilton's July 21st letter for a total fund payout of $14,745.00.
16. James Z. Davis reported that at the recent Judicial Council meeting the council approved the concept of user fees for court usage in order to raise funds for the proposed court complex.
17. Jim Clegg added that he had attended a meeting with the governor addressing the court complex issue and the governor is aware that the Bar is not in favor of increasing court user fees because the fees would put a limitation on access to the court.
18. Executive Director, John C. Baldwin, referred to the Bar Programs Monthly Summary Report, distributed copies of a New York Times article regarding bar exam passage rates across the country, and pointed out Annual Meeting statistics.

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

MCLE Reminder 61 Days Remain

For attorneys who are required to comply with the odd year Compliance cycle.

On November 1, 1993, there will remain 61 days to meet your Mandatory Continuing Legal Education requirements for the third reporting period. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. The second reporting period ends December 31, 1993, at which time each attorney must file a Certificate of Compliance with the Utah State Board of Continuing Legal Education. Your Certificate of Compliance should list programs you have attended to meet the requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance form for your use is included in this issue. If you have any questions, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

Notice of Intent to Dispose of Exhibits

Pursuant to Rule 4-206(10) U.C.A. the Morgan County District Court Clerk does hereby publish a Notice of Intent to dispose of exhibits received in cases concluded prior to January 1, 1987.

Any objection to this proposal must be filed or the exhibits must be withdrawn by November 15, 1993. Any exhibit which is not timely withdrawn or for which an objection is not timely filed shall be disposed of pursuant to subparagraphs (9)(A) through (9)(D).

The list of evidence due to be disposed is available in the clerk's office at the Morgan County Courthouse 48 West Young Street, Morgan Utah 84050.

Discipline Corner

ADMONITIONS:
(formerly known as
"PRIVATE REPRIMANDS")

On September 30, 1993, an attorney entered into a Discipline by Consent and received an Admonition for violating Rule 1.3, DILIGENCE, of the Rules of Professional Conduct of the Utah State Bar. The attorney was retained in April of 1990 to represent a client in a divorce action. On March 26, 1991, the divorce was granted effective upon entry. The attorney was ordered to prepare the Findings of Fact, Conclusions of Law and the Decree of Divorce. The attorney failed to submit the final pleadings until September 24, 1992. In Mitigation the Ethics and Discipline Committee considered the fact that the delay, at least in part, may have been attributable to the client's request that the attorney withhold the filing of the pleadings pending the satisfactory resolution of the division of the personal property.

SUSPENSION:

On September 17, 1993, attorney Grant G. Orton was placed on a one (1) year suspension effective immediately for violating Rules 1.13(b) SAFEKEEPING PROPERTY; and 8.4(c), MISREPRESENTATION. The suspension stemmed from Mr. Orton's failure to disclose in a "Commitment" letter to his principal, Attorney Title Guaranty Fund, certain judgment liens of record encumbering title to certain real estate prior to the Fidelity National Title Insurance Company's issuance of a title insurance policy on the property on behalf of Attorney Title Guaranty Fund. In the same transaction, Mr. Orton collected a premium of $1,012.50 for the title insurance policy but failed to remit the required thirty percent (30%) or any portion thereof to Attorney Title Guaranty Fund. Upon recording of the transaction, Cottonwood Mall, one of the judgment creditors that Mr. Orton failed to list in the Commitment, executed on the new owner's interest in the property. Security Pacific National Bank, the Successor-in-interest to ICA Mortgage Co., the original mortgagee, sued Attorney Title and Fidelity National based on their issuance of a title insurance policy. The law suit was ultimately settled for $14,000.00 to be paid to Cottonwood Mall. The attorney's fees and costs of litigation were $28,006.91. The Attorney Title Guarantee Fund paid $25,430.00 of these costs and fees. As a condition precedent to his reinstatement, Mr. Orton is required to pay restitution to both the Attorney Title Guarantee Fund in the amount of $25,430.00 and to Fidelity National Title Insurance Company in the amount of $16,576.91, which includes the $14,000.00 settlement amount. Further, as a condition precedent to his reinstatement, Mr. Orton is ordered to attend and successfully complete the six (6) hour Utah State Bar Ethics School.

RECIPROCAL DISCIPLINE:

On September 21, 1993, the Supreme Court of Utah entered an order of reciprocal discipline pursuant to discipline imposed by the California Supreme Court, placing attorney Donald R. Sherer on a two (2) year suspension, effective upon entry, for trust account violations. Upon reinstatement, Mr. Sherer will be placed on supervised probation for a period of four (4) years. As a condition precedent to his reinstatement, Mr. Sherer is ordered to take and pass the Utah Professional Responsibility Examination and pay restitution in the amount of $500.00 to his former clients Lloyd and Anne Lessenger.

RESIGNATION WITH DISCIPLINE PENDING:

On September 17, 1993, the Utah Supreme Court entered an order of Resignation with Discipline Pending under Rule VII(k), Procedures of Discipline, in the matter of discipline of attorney Scott W. Clark for violating Rules 1.3, DILIGENCE; and 1.4, COMMUNICATION, of the Rules of Professional Conduct. Mr. Clark's resignation stems from the fact that in November of 1989 he was retained to collect on an out of state judgment in the amount of $24,075.25 against a property located in the state of Utah. Mr. Clark had not been involved in the proceedings which resulted in the judgment in favor of his client. Mr. Clark failed to promptly record the judgment in Utah. Thereafter, in January of 1990, another creditor obtained judgment against the same debtor for $468,000.00 and immediately recorded it, thereby subordinating his client's priority and effectively making the judgment uncollectible.

ANNOUNCEMENT
From U.S. Court of Appeals, Tenth Circuit

The United States Court of Appeals for the Tenth Circuit has implemented an electronic bulletin board, EDOS (Electronic Dissemination of Opinions). Court opinions, as well as orders and judgments, will be put on EDOS at the close of business on the day filed and will be retained thereon for 90 days. Other Court records available on EDOS include dockets, calendar and panel information, and rules of practice.

EDOS operates on a 386 PC running under the SCO Unix operating system and xbbs bulletin board software, which provides a logical menu-driven interface for locating, viewing and retrieving information. EDOS is accessible by anyone with a personal computer or terminal, a modem (9600, 2400, or 1200 baud), and communications or terminal emulation software, configured for full duplex, 8 data bits, no parity, and 1 stop bit. EDOS may be accessed 24 hours a day, 7 days a week by calling (303) 844-3222.

Instructions for using EDOS may be viewed on-line and downloaded or printed copies of instructions may be obtained by calling the clerk of court, (303) 844-3157.

MCLE Reminder

Attorneys who are required to comply with the odd year compliance cycle, will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1993. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

UTAH STATE BAR

Management's Comments Regarding Financial Statements
Year Ended June 30, 1993

To All Bar Members:

The following pages summarize the financial results for the Utah State Bar (the Bar), the Client Security Fund, and the Bar Sections for the year ended June 30, 1993. The Bar's financial statements were audited by the national accounting firm, Deloitte and Touche, and a complete copy of the audit report is available upon written request. Please direct these to the attention of Arnold Birrell. The 1992 results and 1994 budget figures are provided for informational and comparison purposes only.

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

CASH AND OTHER CURRENT ASSETS

The Bar's cash position is about the same as one year ago. The bottom portion of the Statement of Revenues and Expenses provides an explanation of how this money is to be used. After allowing for payment of Current Liabilities and providing certain reserves, the Bar's unrestricted cash balance is $138,417 at June 30, 1993 and projected to be $127,844 at June 30, 1994.

NET RECEIVABLE FROM THE LAW AND JUSTICE CENTER

The receivable balance at June 30, 1993 was $379,534. The Bar has entered into a preliminary aggreement with the Utah Law and Justice Center to purchase the Center's 50% interest in the land and building and improvements, and the Center's furniture and equipment. When the sale is complete, the Bar will apply the receivable balance as the down payment toward the purchase price. The balance will be carried in a note payable to the Center with an interest rate of 10%. Principal and interest payments on the note payable will equal amounts paid by the Bar to subsidize the Center's future operating losses.

PAYMENT OF DEBT

During the year ended June 30, 1993 the Bar made several principal pre-payments on the mortgage. As a result, the mortgage balance was reduced by $424,954. Additional payments will be made as funds permit and upon approval of the Bar's Board of Commissioners.

DEFERRED INCOME

As of June 30, 1993, the Bar had collected $447,142 in 1994 Licensing Fees and Section Membership Fees. These fees have been classified as Deferred Income since they pertain to the 1994 fiscal year.

REVENUE OVER EXPENSES

The Revenue Over Expenses in the actual amount of $340,553 for 1993 and the budgeted amount of $227,047 for 1994 reflect the Board of Commissioners' and current management's commitment to exercising sound fiscal policies in the management of the Bar's funds. Current plans are to continue the present policies to provide the funds necessary for debt retirement, to make necessary capital expenditures, provide replacement and contingency reserves, and to maintain a reasonable fund balance.

SUMMARY

In summary, the Bar continues to be financially sound. The computer system that came on line during the 1992 fiscal year enables the Bar's staff to provide information to callers immediately in most cases. Since January, 1993 we have been tracking CLE hours which are printed the Bar Journal labels.

UTAH STATE BAR

BALANCE SHEET

As of June 30, 1993 (with 1992 totals for comparison only)

ASSETS	1992	1993
CURRENT ASSETS:		
Cash and short term investments	$ 1,166,406	$ 1,164,213
Receivables	43,669	41,551
Prepaid expenses	16,707	7,411
Total current assets	1,226,782	1,164,213
NET RECEIVABLE FROM LAW AND JUSTICE CENTER	345,104	379,534
PROPERTY:		
Land	316,571	316,571
Building and improvements	1,321,620	1,324,574
Office furniture and fixtures	330,211	355,796
Computer and computer software	146,249	161,711
Total property	2,114,651	2,158,652
Less accumulated depreciation	(595,848)	(706.632)
Net property	1,518,803	1,452,020
TOTAL ASSETS	$ 3,090,689	$ 2,995,767
LIABILITIES AND FUND BALANCES		
CURRENT LIABILITIES:		
Accounts payable and accrued liabilities	180.307	$ 266,426
Deferred income	543,782	447,142
Long-term debt--current portion	90,681	136,929
Total current liabilities	$814,950	$850,497
LONG-TERM DEBT	908,636	437,614
Total liabilities	1,723,586	1,288,111
FUND BALANCES:		
Unrestricted	1,126,336	1,474,470
Restricted:		
Client Security	88,785	55,476
Other	151,982	177,710
Total fund balances	1,367,103	1,707,656
TOTAL LIABILITIES AND FUND BALANCES	$ 3,090,689	$ 2,995,767

STATEMENT OF REVENUES AND EXPENSES

For the year ended June 30, 1993 (1992 actual and 1994 budgeted for comparison only)

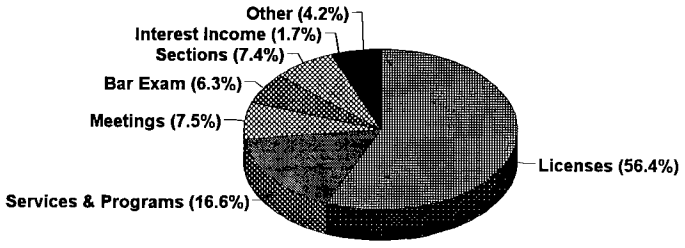
	1992	1993	1994 Budget
REVENUE:			
Bar examination fees	$ 159,288	$ 188,008	$ 118,355
License fees	1,435,832	1,466,220	1,488,229
Meetings	190,314	238,835	176,405
Services and programs	423,215	313,469	340,383
Section fees	187,820	205,313	13,000
Interest income	43,329	38,213	39,709
Other	106,259	103,029	89,515
Total revenue	$ 2,546,057	$ 2,546,057	$ 2,265,596
EXPENSES:			
Bar examination	$ 92,743	$ 97,624	115,447
Licensing	61,029	41,798	35,175
Meetings	150,510	207,549	187,955
Services and programs	487,165	448,492	519,127
Sections	139,233	201,669	42,002
Office of Bar Counsel	408,794	494,420	541,973
General and administrative	560,461	651,473	596,870
Other	52,954	69,509	
Total Expenses	1,952,889	2,212,534	2,038,549
REVENUE OVER EXPENSES	$ 593,168	$ 340,553	$ 227,047
Add Non-Cash Expenses Depreciation	102,194	110,784	110,663
Cash from operations	695,362	451,337	337,710
ACTUAL AND PLANNED USES OF CASH			
Mortgage Payments	$ (431,187)	$ (424,954)	$ (242,175)
Capital Expenditures	(119,974)	(44,001)	(35,700)
Change in A/P	(60,626)	86,119	
Change in A/R	915	(32,313)	
Change in PPD Expenses	(1.324)	9,296	
Change in Deferred Income	228,577	(96,640)	
Bar's Support of LJC			(63,952)
INC. (DEC.) IN CASH	311,743	(51,156)	(4,117)
BEGINNING CASH	854,663	1,166,406	1,115,250
ENDING CASH - TOTAL	1,166,406	1,115,250	1,111,113
DEDUCT:			
Deferred Income	(543,782)	(447,142)	(450,000)
Restricted Fund Cash	(238,803)	(233,291)	(235,000)
Reserves	(300,000)	(300,000)	(300,000)
UNRESTRICTED CASH AT JUNE 30	$ 83,821	$ 138,417	$ 126,133

UTAH STATE BAR

Financial Results and Projections

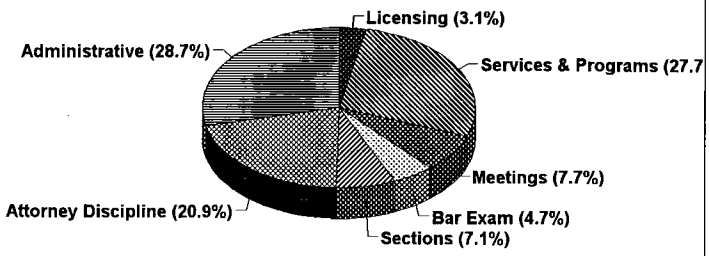
REVENUES BY SOURCE

For the Year Ended June 30, 1992



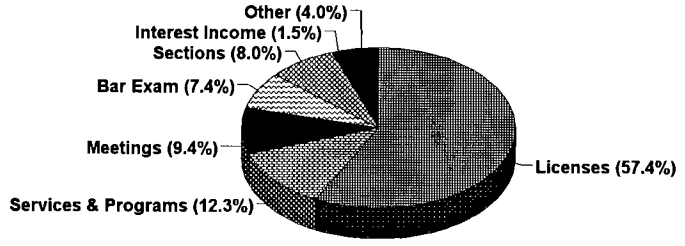
EXPENSES BY CATEGORY

For the Year Ended June 30, 1992



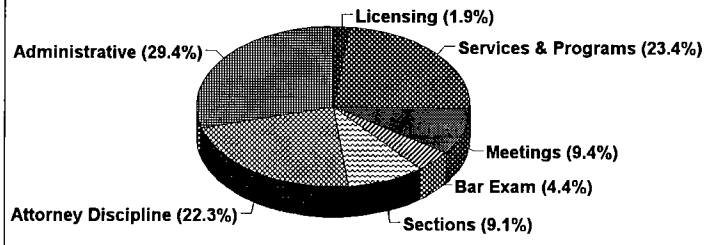
REVENUES BY SOURCE

For the Year Ended June 30, 1993



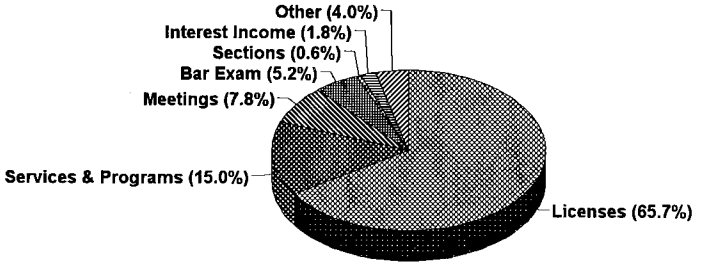
EXPENSES BY CATEGORY

For the Year Ended June 30, 1993



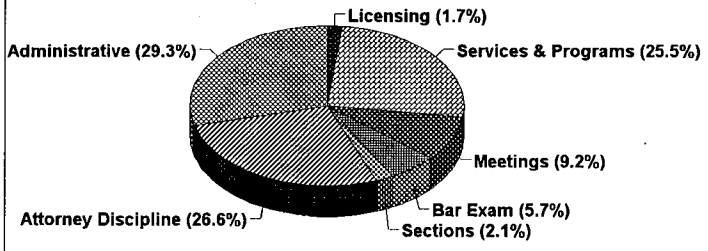
REVENUES BY SOURCE

Estimated for 1994



EXPENSES BY CATEGORY

Estimated for 1994



Anne M. Stirba Receives University of Utah Young Alumni Association Par Excellence Award for 1993

Judge Anne M. Stirba is one of two individuals to be awarded the University of Utah Young Alumni Association Par Excellence Award for 1993. She will be honored at a dinner to be held on November 15, 1993. The Par Excellence Award is presented to individuals who have attended the University of Utah during the past 15 years and have given superior service to their profession, the community and the University.

Judge Stirba graduated from the University of Utah College of Law in 1978. Since her graduation, Judge Stirba has held positions as Assistant Attorney General for the Utah Attorney General's Office, Administrative Law Judge for the Utah State Public Service Commission, and Assistant United States Attorney for the United States Department of Justice, District of Utah. In 1991, she was appointed as a judge in the Third Judicial District Court of the State of Utah.

Judge Stirba has devoted much of her time and talent to providing significant contributions to her profession and the community. From 1984-1990, Judge Stirba served as a Bar Commissioner for the Utah State Bar. Prior to her appointment to the bench, she also served on Governor Bangerter's Commission on Law and Citizenship and on the Judicial Conduct Commission. In 1987, she was recognized as the Outstanding Young Lawyer of the Year. Judge Stirba currently serves on the United States Constitution and Bill of Rights Council and the Supreme Court Advisory Committee on Civil Procedure and is the Chair of the Court Technology and the District Court Planning Committees.

Judge Stirba's community contributions have included service on the Board of Trustees for the Community Foundation for the Mentally Retarded and Physically Handicapped and the Board of Directors for the American Cancer Society.

Judge Stirba is married to Peter Stirba and has two children.

Appellate Lawyers Seek New Appellate Practice Section of Utah State Bar

During the last five years, appellate practice has become an increasingly important area of specialization within the Utah legal profession. Appellate case law in this state has burgeoned since the creation of the Utah Court of Appeals in 1987, as has the role of both Utah appellate courts in making important legal and public policy determinations. Unfortunately, the Utah State Bar still has no formalized group for appellate lawyers, which would provide a valuable forum for identifying, analyzing, and taking action on issues of particular concern to appellate practitioners like us.

We propose to help fill this void by forming a new section of the Utah State Bar. The Appellate Practice Section would have several important goals, including:

First, to educate and train ourselves and other members of the Bar with an eye toward improving the quality of written and oral appellate advocacy. This could be done through CLE seminars, which currently do not often cover appellate practice, written articles and manuals, or other means.

Second, to provide a gathering point for those who practice appellate law to meet and discuss current developments in appellate practice, the latest appellate decisions, and trends in the appellate courts.

Third, to create an organization of interested and energetic appellate lawyers who can together provide practical, expert input to the judicial system, the judicial nominating commissions, the legislature, the media, and the Utah Supreme Court's Advisory Committees on court rules when actions are proposed that will affect appellate practice and the appellate courts.

If you agree that an Appellate Practice section of the Utah State Bar is needed and if you are excited about the prospects of being an active participant, please promptly contact Annina Mitchell at the Utah Attorney General's Office, 124 State Capitol, Salt Lake City, Utah 84114 Telephone (538-1021). If we can gather 25-30 names of potential members, we will immediately petition the Utah State Bar for recognition of this new section.

David L. Arrington
VanCott, Bagley, Cornwall & McCarthy

Annina M. Mitchell
Director of Civil Appeals
Assistant Attorney General

David B. Thompson
Solo Practitioner, Park City

Approved By Utah State Bar Commission

Opinion No. 135 Approved September 23, 1993

Issue: In a contingent-fee case, what are the ethical considerations for a judgment-creditor's attorney where the judgment-debtor agrees to name the judgment-creditor as the beneficiary of an insurance policy on the life of the judgment-debtor in order to satisfy the judgment?

Opinion: With proper written disclosure by the attorney of the terms, conditions and obligations of the participants, there is no ethical proscription of this type of arrangement.

Hold the Dates December 3 & 4

Utah Section of The American Academy of Matrimonial Lawyers will host the second annual conference on "Dealing with Special Problems in Divorce" at the Utah Law & Justice Center December 3 & 4, 1993. This conference will provide 11 CLE credits, including 3 hours of ethics. For more information call Anne at 582-6311.

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D. Richard Smith 7-94
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M. David Eckersley 10-95
Lonnie Eliason 10-95
L. Mark Ferre 10-94

* denotes public member

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Duane Gillman	10-95
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Royal Hansen	10-94
Randy Johnson	10-94
Cary Jones	10-94
D. David Lambert	10-95
Derek Langton	10-94
Paul Liapis	10-93
Mona Lyman	10-94
Milo Marsden	10-93
Harold Mitchell	10-95
Doutlas Monson	10-93
Robert Moody	10-95
George Naegle	10-93
Michael Olmstead	10-95
Harold Petersen	10-94
Robert Rees	10-94
Gary Sackett	10-95
Jeffrey Shields	10-95
Gregory Skordas	10-95
James Soper	10-93
Craig Storey	10-94
David Thomas	10-94
Charles Thronson	10-95
Mark Vincent	10-93
Robert Wilde	10-95
Noall Wootton	10-95
Dennis V. Haslam, Commission Liaison	

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Scott A. Hagen	7-96
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M. Karlynn Hinman	7-96
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Clark R. Nielsen	7-95
John T. Nielsen	7-95
D. Kendall Perkins	7-96
Derek Pullan	7-96
Randall L. Romrell	7-94
Betsy L. Ross	7-95
J. Craig Smith	7-95
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A Tribute to Judge Regnal W. Garff, Jr.

By Judge Pamela T. Greenwood

After serving since 1987 on the Utah Court of Appeals, Judge Regnal W. Garff, Jr., recently retired from the bench. Judge Garff's tenure on the Appeals Court followed 23 years of service as a juvenile court judge in the Third District, where he developed a well-earned reputation as an outstanding jurist in the field of juvenile law. During his years on the juvenile court, Judge Garff did much more than simply attend to the matters on his daily calendar. In addition, Judge Garff worked within the community both locally and nationally, to develop resources and programs to assist youths. For example, he chaired a committee established by the Utah State Division of Mental Health which resulted in the establishment of a residential treatment center for emotionally disturbed adolescents. He also chaired a Community Mental Health Study Committee which established the Granite Comprehensive Mental Health Center. His philosophy, as I understand it, was that a juvenile court judge has a responsibility beyond his or her statutorily defined duties, to both prevent situations which bring youths before the juvenile courts, and to provide meaningful treatment or rehabilitation for those young people who nevertheless interact with the juvenile courts of this state.

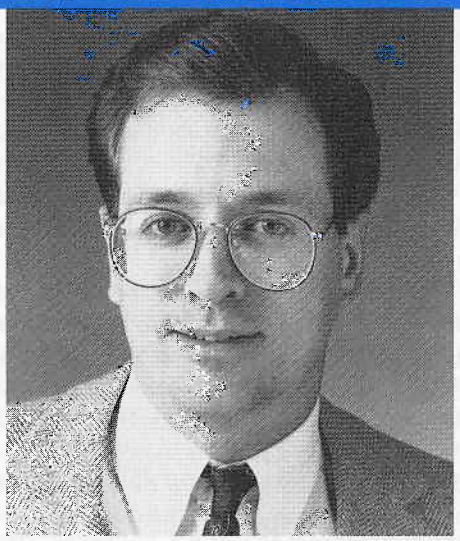
Fortunately, Judge Garff brought this commitment to the community and society at large to the Court of Appeals. He had served on the Judicial Article Revision Task Force which led to the creation of the Court of Appeals, and therefore understood the intended functions of this court. Judge Garff's new colleagues elected him to serve as our first presiding judge. In retrospect, that decision was a stroke of genius on our part. Judge Garff led us in developing a group culture that fosters innovation, communication and cooperation. He was ever mindful of the impact of our decisions on others — both members of the Bar and parties to litigation. He was especially helpful in educating us about the operations of the juvenile court system. His influence, however, went far beyond matters exclusive to juvenile court. He helped us in developing a cooperative relationship with the Supreme Court, so as to better the appellate process as a whole in Utah; he facilitated in establishing internal rules for timeliness of opinion drafting and case processing; and he helped in defining our staff needs for the present and future.

Judge Garff also garnered the respect of his colleagues and members of the Bar because of his intelligent and scholarly written work. His written opinions are thoughtful and carefully crafted. Participating with him on a panel, even where we disagreed on the issues, was always enjoyable, with freely exchanged thoughts about the issues before us.

Judge Garff's interest in systemic needs is exemplified by his work as chair of the Standing Committee on Judicial Branch Education. This committee, in cooperation with Dr. Diane Tallman, director of education in the Court Administrator's Office, is developing a comprehensive educational program for all members of the judicial branch. Fortunately, Judge Garff has agreed to continue with that responsibility. He also will continue to be an important player in the third branch of government as a senior judge and with responsibilities on the Task Force considering the formation of a family court and the committee overseeing the building of a courts complex in Salt Lake County.

On a more personal note, let me share a few other observations about Judge Garff. First, he tells some of the worst puns I have ever heard. His wife, Margaret, has tried to quell this impulse of Judge Garff's, but to no avail. After almost seven years, I think I can tell when one is coming. There appears a twinkle in Reg's eyes, a lift of an eyebrow, and a half grin — then the inevitable joke. Usually followed from his audience by, "Oh, no!"

On a more serious note, I have tried to define to myself why it is that I simply like Reg Garff so much, and others feel similarly. Part of it is all the times I have gone to his office or he has come to mine, and we've talked about everything from the opinions we're currently struggling with, to our personal problems, to our perceptions of problems in this community or this world. Of such things are friendships made. But there is more to Reg Garff. He is an unusual man with a desire to always learn more, he does not make snap judgments about issues or people, he is willing to experiment and to try to see the world from another's point of view. He has an ever active curiosity about almost everything and an eagerness to make things better. He is humble without the emperical necessity for being so. He is an honest and open communicator who can facilitate communication without jeopardizing important relationships. I and everyone else at the Court of Appeals will deeply miss his full time participation on the court. We are nevertheless counting on his continued presence from time to time and perpetual influence on all of us.



Young Lawyers/Needs of Children Committee — Advocating for Children's Rights

By David W. Zimmerman
Treasurer, Young Lawyers Division

Under the leadership of Chairperson Colleen Larkin Bell and Vice-Chairs Dena C. Sarandos and Michael J. Tomko, the Needs of Children Committee is advocating children's rights by drafting pamphlets concerning Utah laws regarding the duty to report child abuse; co-sponsoring shaken baby syndrome public service announcements; hosting dinners at Ronald McDonald House; training attorneys to be effective guardian ad-litem in civil cases; and sponsoring Big Brother/Big Sister group activity programs.

Clergy — Child Abuse Pamphlets. The Committee is currently drafting a pamphlet to inform clergy of the duty to report child abuse. The pamphlet explains the narrow context of the exception which relieves clergy of the duty to report in some circumstances. The pamphlet further explains the circumstances under which a cleric exemption may be lost and other particularlized circumstances which renew the cleric's obligation to report child abuse. The pamphlet describes symptoms of child abuse, where to report child abuse, and what happens when a child abuse report is made.

Shaken Baby Syndrome — Public Service Announcements. In conjunction with the Child Abuse Prevention Council of Ogden, the Committee has co-sponsored public service announcements for radio and television stations informing the public to "never shake a baby!" The announcements explain the potential injuries from shaking a baby, and informs parents and childcare providers of ways to avoid shaking babies.

Ronald McDonald House Dinners. The Committee recently sponsored a spaghetti dinner for approximately 50 parents and children staying at the Ronald McDonald House in Salt Lake City. The Ronald McDonald House provides low-cost housing for families who accompany children while they are receiving critical medical care at local hospitals.

Guardian Ad-Litem Program. A guardian at-litem is an attorney appointed to represent a child. The Needs of Children Committee is soliciting and organizing members of the Utah State Bar willing to serve as pro bono guardians ad litem in District Court divorce cases where custody and visitation are at issue. These cases will not involve instances where there are allegations of abuse and neglect. (There is a separate contract that provides funding for appointment of guardians ad litem in cases involving allegations of abuse or neglect.) The Needs of Children Committee, in conjunction with the guardian ad-litem administrator, will provide training for volunteers.

Big Brothers/Big Sisters. The Committee has sponsored two group activity programs with the Big Brothers/Big Sisters organization. The first group activity program was attending a Golden Eagles Hockey game where attorneys were matched with children. The second activity that the Committee sponsored was a hike through the Red Butte Gardens.

CONCLUSION

The Committee welcomes young lawyers interested in assisting with its efforts to advocate for the rights of Utah's children. If you would like to join the Needs of Children Committee, please contact Colleen Larkin Bell at 534-5556, Dena C. Sarandos at 355-3839 or Michael J. Tomko at 532-1234.

Working as a Team: The Attorney/Secretary Relationship

By David J. Crapo, President-Elect, Utah Young Lawyers Division
and Toni A. Davies, Secretary/Assistant

One of your most valuable resources as a lawyer is your legal secretary. Sadly, it is a resource that many lawyers squander.

Regional and national periodicals frequently report that the average job life of a legal secretary is about one year. While there are many reasons for such turnover, the most common reason is job dissatisfaction. Secretaries frequently give the following reasons for such dissatisfaction: (1) they are not extended common courtesies, (2) they are treated like second-class citizens, (3) they are not allowed to prove they can do more complex tasks than just type, answer phones or file, and (4) they are not informed about the cases they are asked to work on.

Unfortunately, few law schools, let alone law firms, teach lawyers how to effectively work with a legal secretary. Consequently, many new attorneys don't understand how to interact with their secretaries to create a pleasant and productive work relationship.

Most of the above complaints could be remedied by following these simple guidelines:

A. Organize Your Day. You both want to accomplish as much work as possible in a given time. Plan to meet with your secretary first thing in the morning to discuss the day's calendar and appointments. If you can compile the day's projects in order of priority and dictate the day's events at this meeting, your secretary is then able to organize his or her work, knowing basically what is in store for the day. The pace is less chaotic and the emergencies that inevitably arise can be accommodated more easily.

Most attorneys today share a secretary. This creates a stressful situation for the secretary at the on-set. Attorneys need to recognize the secretary has to prioritize work loads for more than one person and still achieve top production levels. Be candid in giving true deadlines for your work and be willing to talk with the other attorney if a conflict of work priority exists. Requiring your secretary to produce a full-day's work in a couple of hours to accommodate your golf date or hair appointment is an unrealistic waste of time and creates a poor relationship.

B. Extend Common Courtesies. Secretaries are real people. Not only are they working for you, given the proper respect, they will work with you. If you greet your secretary pleasantly in the morning, you set the mood. Five minutes of personal conversation will show that you think your secretary is a person worthy of normal conversation. You should know (and remember) your secretary's spouse's and/or significant other's name and the children's names and approximate ages. (How can you intelligently converse on a

personal level without this information?) Your secretary will probably know these things about you the first day.

Legal secretaries are not machines, nor are they inferior in their intelligence. This profession requires a secretary be highly skilled, not only in the usual computer, typing, spelling, language, punctuation, proofing, telephone, filing, organizational, bookkeeping/accounting and people skills, but further in court procedure, format, document production, docketing, statute requirements and understanding of legalese. Legal secretaries are expected to adapt to oversized egos, mind reading, incomplete instructions, poor handwriting, false deadlines, ignored lunch hours and extended work hours without regard to their personal lives and often without the courtesy of a "thank you" or added compensation.

Say "please" and "thank you" like Mom taught you. Your secretary deserves to hear these words often. The respect you show your secretary will return to you many times over. Avoid demanding and try asking for extra effort or time from your secretary. You will be surprised at the results. A secretary trying to please you will perform miracles compared to the one who is plagued with constant demands.

"God knows where you are, does your secretary?" Nothing rings as incompetency louder than a secretary who has to say he or she doesn't know where you are or when you will return. Do yourself a favor, inform your secretary of your whereabouts (out of office or in conference) and approximate time of return.

Your secretary is not a slave. Slavery went out a long time ago. You should not expect your secretary to bring your coffee, collect your laundry, pay your personal bills, make your haircut or manicure appointments, buy birthday cards for your relatives, pick up your children from day care, etc.

C. Involve Your Secretary In Your Work. Let your clients know that you trust your secretary and that he or she is an extension of your service to them. Introduce your secretary to your clients when they come to your office and let them know that they can often get fast responses to many of their routine questions and concerns by working directly with your secretary. Meet with your secretary periodically and explain the nature of the cases you will be working on. This will allow your secretary to better understand and appreciate how his or her assignments fit into the service provided to the client. When appropriate, invite your secretary to attend oral arguments or meet people at closings. Not only does this allow a diversion from the routine, but it helps your secretary understand the full measure of the work you perform and how his or her assignments were helpful.

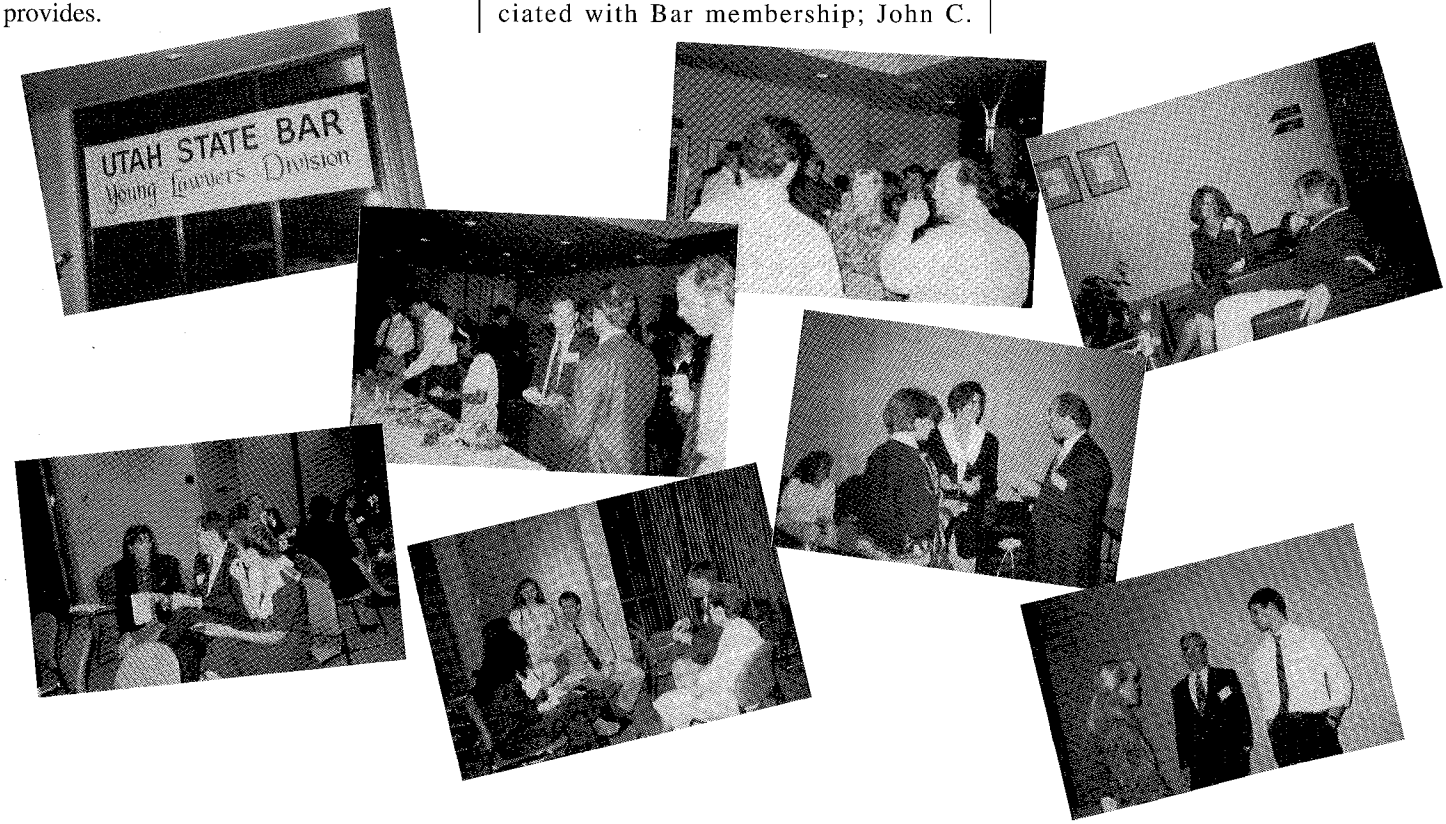
D. Learn to Allocate Work and Act as a Team. Learn the abilities of your secretary and give assignments that will help him or her develop and improve work and professional skills. Teach your secretary to draft correspondence, handle billings, summarize reports or articles, prepare fee estimates, prepare drafts of basic motions, even do preliminary research, always with appropriate review. In this process, provide constructive criticism and generous praise. Be open to suggestions from your secretary as to how your working relationship can be improved.

Effective and thoughtful use of a secretary enhances your secretary's job satisfaction, improves client service, promotes your own happiness and makes you a better lawyer.

Young Lawyers Division Sponsors Open House For New Bar Candidates

On October 7, 1993, the Young Lawyers Division sponsored an open house for the 233 individuals who recently passed the Utah State Bar Exam. The open house was held at the Law and Justice Center and about 115 people were in attendance. The purpose of the open house was to congratulate the new Bar candidates on having passed the Bar exam, to explain some of the obligations the new candidates will assume as attorneys and to introduce them to the services the Bar provides.

A short orientation was given to the new candidates and after the orientation, a light buffet dinner was served and the new candidates were allowed to tour the Law and Justice Center. Mark Webber (President of the Young Lawyers Division) spoke to the new candidates during the orientation portion of the program and explained the organization and membership in the Division. Other speakers included: Paul T. Moxley (President-Elect of the Bar) who addressed the benefits and obligations associated with Bar membership; John C. Baldwin (Executive Director of the Bar) who explained the services that are available to new Bar members at the Law and Justice Center; Stephen A. Trost (Chief Disciplinary Counsel) who briefly explained the functions of the Office of Attorney Discipline and how new practitioners could avoid ethical pitfalls; and David R. Brickey (Bar CLE Administrator) who explained the mandatory CLE requirements and announced the dates for CLE seminars.



CASE SUMMARIES

By Scott A. Hagen

SEARCH AND SEIZURE; STARE DECISIS

A consent search of an automobile violates the Fourth Amendment where the consent was obtained shortly after the automobile was stopped in the course of an unconstitutional roadblock and there were no events that occurred between the stop and the consent that might have dissipated the taint of the illegal roadblock.

The principal of stare decisis applies where one panel of the court of appeals faces a prior decision of another panel.

State v. Shoulderblade, 220 Utah Adv. Rep. 27 (August 20, 1993) (Judge Russon).

IMPEACHMENT; PRIOR CONVICTION

The fact that a witness is awaiting sentencing for a felony conviction is not admissible as a prior conviction under Utah Rule of Evidence 609(a). However, the admission of such evidence is harmless error "if there is convincing, properly admitted evidence of all essential elements of the case."

A "rap sheet " is inadmissible as evidence of a prior conviction. Rather, a prior conviction may be shown only by "(1) the oral testimony of the witness himself, (2) the court record of such conviction, or (3) a properly certified copy thereof."

State v. Diaz, 220 Utah Adv. Rep. 29 (August 24, 1993) (Judge Russon).

MEDICAID

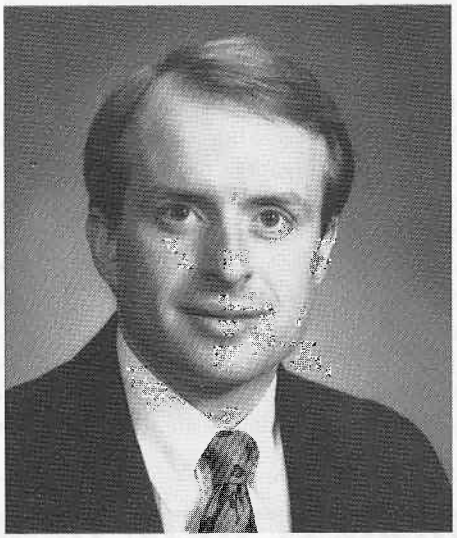
In determining whether an unemancipated minor is "medically needy" for purposes of medicaid eligibility, the income and resources of the parents must be deemed available to the minor.

A minor who ordinarily resides with her family is not a "resident" of a medical institution if the period of institutionalization is brief.

Bleazard v. Utah Dep't of Health, 220 Utah Adv. Rep. 33 (August 25, 1993) (Judge Greenwood).

MIRANDA; INEFFECTIVE ASSISTANCE OF COUNSEL

A person subjected to custodial interrogation by the police is always entitled to a



Miranda warning, even where the person is himself a police officer who acknowledges that he understands his "rights."

A defense counsel's failure to meet a motion filing deadline is objectively deficient conduct. Prejudice, and therefore constitutionally ineffective assistance, is shown if the failure to meet the deadline results in the admission of evidence which otherwise would not have been admitted, and without which there is a reasonable probability that the result would have been different.

State v. Snyder, 220 Utah Adv. Rep. 36 (August 27, 1993) (Judge Orme).

SEARCH AND SEIZURE

A police officer's stop of an automobile based only on an "attempt to locate" issued more than two months earlier and since deleted from the computer, constituted an unreasonable seizure under the Fourth Amendment.

State v. Hubbard, 220 Utah Adv. Rep. 42 (August 27, 1993) (Judge Garff).

PRIVILEGE AGAINST SELF-INCRIMINATION

It is plain error for a court to allow testimony that the defendant asked for an attorney after being given his Miranda rights. The determination of prejudice is based on four factors: "(1) whether the jury would 'naturally and necessarily construe' the comment as referring to defendant's silence; (2) whether there was overwhelming evidence of defendant's guilt; (3) whether the reference was isolated; and (4) whether the trial court instructed the jury not to draw any adverse presumption from defendant's [silence]."

State v. Reyes, 220 Utah Adv. Rep. 44 (September 1, 1993) (Judge Garff).

SALES TAX

Oxygen concentrators, devices which concentrate oxygen from ordinary air and deliver it to patients at a prescribed rate, fall within the statutory definition of "medicine," and are therefore exempt from sales tax.

Miller Welding Supply, Inc. v. Utah State Tax Commission, 221 Utah Adv. Rep. 8 (September 2, 1993) (Judge Jackson).

PAROL EVIDENCE

Parol evidence is admissible to prove that a mutual mistake resulted in a document that does not accurately reflect the intent of the parties, even where the document appears to be integrated and unambiguous.

West One Trust Co. v. Morrison, 221 Utah Adv. Rep. 12 (September 2, 1993) (Judge Greenwood).

WORKER'S COMPENSATION; RETROACTIVITY

Ordinarily, the law applied in workers' compensation cases is the law in effect at the time of the injury. A subsequent amendment to the statute is applied where the amendment is procedural only, or where it is a clarification of the earlier law.

Abel v. Industrial Commission, 221 Utah Adv. Rep. 15 (September 3, 1993) (Judge Russon).

ADMINISTRATIVE LAW; APPEAL

In an anti-discrimination case, a party may not obtain judicial review of an order of an Administrative Law Judge until the order has been subject to administrative review. If the party fails to seek administrative review, the right to judicial review is waived.

Maverik Country Stores, Inc. v. Industrial Commission, 221 Utah Adv. Rep. 17

(September 7, 1993) (Judge Billings) (Amended Opinion.)

PARENTAL RIGHTS

A juvenile court's order finding that a child is "neglected," and depriving the parents of the custody and guardianship of the child, is a final order for purposes of the right to petition for a restoration of custody pursuant to Utah Code Ann. § 78-3a-47, even if the deprivation of custody is expressly stated to be "temporary."

State v. R.H., 221 Utah Adv. Rep. 22 (September 7, 1993) (Judge Billings).

DEFENSES; AGRICULTURAL CREDIT ACT

A borrower may allege as an equitable defense to a foreclosure action the bank's failure to comply with the Agricultural Credit Act.

Western Farm Credit Bank v. Pratt, 221 Utah Adv. Rep. 26 (September 8, 1993) (Judge Bench).

SEARCH AND SEIZURE

An application for a search warrant for the search of a trailer based on (1) the fact that the owner was the subject of an ongoing drug investigation, (2) the presence of a convicted drug user, (3) the police officers' observation that the trailer's occupants looked outside repeatedly and appeared to be nervous, and (4) an informant's tip that several people inside were smoking marijuana, was insufficient to show probable cause where the informant supplied the information to obtain leniency on his own DUI charge, and the officers' own observations after looking inside the trailer contradicted the informant's information.

The search also was not justified by any good faith exception to the requirement of a warrant because the officer should have deleted the informant's tip from the application when he realized that the tip was contradicted by his observations of the inside of the trailer.

State v. Potter, 221 Utah Adv. Rep. 29 (September 8, 1993) (Judge Russon).

UTAH LEGAL SERVICES, INC. PRESENTS MONDAY BROWNBAG LUNCHEONS

Utah Legal Services, Inc. announces that each Monday it will conduct free brownbag luncheons on various legal topics. These topics will be published each month in the *Utah Bar Journal*. The luncheons will begin promptly at noon and end at 1:00 p.m. The Utah State Bar has donated the space in the Utah Law and Justice Center (645 South 200 East) so seating is limited. All those who desire to attend must contact Mary Nielsen at 328-8891 or 1-800-662-4245 one week in advance. One hour CLE credit.

The topics for November and December are:

NOVEMBER

November 1 – Taxes
November 8 — Credit Card Scams
November 15 – Adult Protective Services
November 22 – Ethics

DECEMBER

December 6 – Child & Co-Habitant Protective Orders
December 13 – Product Liabilities
December 20 – Consumer Problems Affecting Senior Citizens
December 27 – Mediation & Arbitration

Dead Man Walking

By Helen Prejean, C.S.J.

Reviewed by Betsy Ross

Were we to have the direct contact with death row inmates that Sister Helen Prejean did, would our feelings toward the death penalty change? Prejean hopes the answer is yes, and offers her contribution to changing our minds in *Dead Man Walking*.

Named after the warning yell of guards at San Quentin when a death-row inmate is let out of his cell, *Dead Man Walking* is the story of one woman's confrontation with and lamentation of the death penalty. It is a confrontation more intimate than most of us could ever want to experience. It is a lamentation more powerful — though not powerful enough to shake the many ardent proponents of the death penalty.

Sister Prejean, a nun from Baton Rouge, Louisiana, became involved as a death penalty opponent when she was first asked to act as a "spiritual advisor" to then death-row inmate, now deceased Patrick Sonnier, killed in the electric chair by the state of Louisiana in 1980. She entered the arena reluctantly, feeling at first that a nun should not be "political." At some point, however, she realized that shielding oneself from social problems was as much a "political" stance as was involvement. Once she had come to terms with the idea that being a nun did not require her to turn a blind eye to society's problems, she discovered her opposition to the death penalty: "For me, the unnegotiable moral bedrock on which a society must be built is that killing by anyone, under any conditions, cannot be tolerated. And that includes the government."

Dead Man Walking is replete with facts and figures concerning the death penalty. It includes an account of the case law, as she discusses *Furman v. Georgia*, in which the death penalty was found to be unconstitutional because of arbitrary and capricious application, and *Gregg v. Georgia*, in which the death penalty was subsequently held to be constitutional where capital sentencing laws were reformed and "meaningful appellate review" was provided. It also includes such information as the fact that 76% of the American population (in 1991) favored the death penalty.

In addition to the facts and figures, Sister Prejean offers the usual arguments against the death penalty, supported by a wealth of research and a good bibliography. She argues that the execution of a prisoner costs more than life imprisonment. (Each death sentence in Florida cost approximately $3.18 million compared to the cost of life imprisonment of about $516,000.) She argues that the death penalty is racially biased, and that it is too selective and capricious to serve as a deterrent. These reasons for opposition to the death penalty, however, we have all heard before. The real force of Sister Prejean's argument lies elsewhere.

The convincing force of Prejean's argument lay for me in her description of emotions surrounding the executions she witnessed — her emotions, the emotions of relatives of the prisoner, relatives of the victims, and opponents and proponents of the death penalty meeting outside the prison walls. I flashed to my emotions at the time of William Andrews' execution. I wrote in my journal at the time:

> What is the torment I feel over Andrews' impending murder? There is something very heavy inside me. How can we treat each other the way we do? That is not to say Andrews' acts were justified. But I could do nothing about those at the time. But there is something I and others can do about another killing. How can we consciously participate in murder? What does it do to my own soul to be a participant? Is that the heavi-

ness I feel? Though others would say I should feel no guilt — is it not indeed guilt and horror and hate and divisiveness that I feel? My tears are probably less for Andrews and more for all of the darkness I feel within me. Those are the feelings that murder elicits . . . .

Recognizing the legal and moral complexity of the death penalty, Prejean does not treat it superficially. The death penalty is obviously something she has agonized over. In addition to working with death row inmates, Sister Prejean has also reached out to the victims' families, and has created a support program for victims' families, the emotional and practical evolution of which she details. Some of the more poignant scenes in her exposition are of her meetings with the families of the victims whose killer she is advising.

Prejean does not oversimplify. Yet she does appeal to our emotions and to our humanity; to this extent some of us might call her arguments trite and naive. So be it, I believe Prejean says. Her aim is not 100% conversion, but perhaps simply to sway the 76% ever-so-slightly. Only those of you members of the 76% can speak to how well she has done.

CLAIM OF THE MONTH

ALLEGED ERROR OR OMISSION:

The Insured represented two client couples in a real estate investment and allegedly and unfairly assisted one couple to retain the entire proceedings from the sale.

SYNOPSIS OF CLAIM:

The Insured drew up an equity sharing agreement for a couple who, together with another couple, had invested in subject property. The terms for the agreement provided that, upon sale, each couple would recoup its $8,000 investment and divide remaining profits 50/50. Please note, the Insured never met the second couple. The Insured nonetheless relied upon them to record the equity sharing agreement. The second couple did not record the agreement in a timely manner. The first couple sold the investment property and kept the proceeds of sale. The second couple now claims that the Insured had permitted the first couple to convey (or assign) the investment property and retain the entire proceeds of sale.

HOW CLAIM MIGHT HAVE BEEN AVOIDED:

The Insured made two principle errors. His first error was in failing to make it perfectly clear to the second couple that he was not acting as second couple's attorney and that second couple should, therefore, seek independent counsel to review and approve the equity sharing agreement. Such explanation should always be in writing. The Insured's second mistake was in leaving it to the second couple to see to it that the equity sharing agreement was duly recorded. There is little doubt that a jury would consider the Insured's presumptions as unprofessional.

NOTICE

It is the attorney's responsibility to notify the Bar, in writing, as soon as an address has changed. Send all changes to:

Utah State Bar
ATTN: Arnold Birrell
645 South 200 East #310
Salt Lake City, Utah 84111

The Family, The Lawyer and The Therapist
Mental Health Issues in the Courtroom
November 19, 1993
10:30 a.m. - 5:15 p.m.
Skaggs Hall College of Pharmacy
University of Utah

Presented by the Norman S. Anderson, M.D. Award Fund
in cooperation with the
Utah Minority Bar Association
Utah Legal Services, Inc., Legal Aid Society
Criminal and Family Sections, Utah State Bar

An eight hour CLE seminar to enable Utah practitioners in the field of family law to understand the dynamics of child custody litigation. The seminar will explain the following information.

-- Custody Litigation, the Parental Alienation Syndrome, and Child Sex Abuse
-- Family Evaluation in Child Custody Mediation, Arbitration, and Litigation
-- Dealing with Anger: Humanity's Central Problem
-- Dangerous Intersections: Law and Mental Health in the Courtroom (Justice Durham)

Instructor: Richard A. Gardner, M.D. Clinical Professor of Child Psychiatry, Columbia University, College of Physicians and Surgeons, and practicing child psychiatrist and adult psychoanalyst

Continuing Legal Education Credit: 8 hours, non-ethics. **Note** that one of the hours is for a keynote address that will be given by Justice Christine Durham on November 18, 1993 at 6:00 p.m. University Park Hotel

Fee: $125.00. If attending the Dinner and keynote address on November 18th the cost will be an additional $30.00.

Registration: To register send (1) the following form or a letter with the information contained on the form, and (2) a check payable to the Norman S. Anderson, M.D. Award Fund

Greg B. Smith, Treasurer
Norman S. Anderson, M.D. Award Fund
649-A East Capitol Blvd.
Salt Lake City, UT 84103
Phone 363-3130

Name:_____
Address:_____
_____
Bar Number_____ Phone_____

UTAH BAR FOUNDATION

Independent Auditor's Report

Board of Directors
Utah Bar Foundation
Salt Lake City, Utah

We have audited the balance sheet of Utah Bar Foundation (a non-profit organization) as of December 31, 1992, and the related statements of revenue and support, expenditures and changes in fund balances, and changes in financial position for the year then ended. These financial statements are the responsibility of the Utah Bar Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audits. The financial statements of Utah Bar Foundation as of December 31, 1991, were audited by other auditors whose report dated April 24, 1992, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly in all material respects, the financial position of Utah Bar Foundation (a non-profit organization) as of December 31, 1992, and the results of its operations and changes in financial position for the year then ended in conformity with generally accepted accounting principles. The supplementary information in the accompanying Schedules 1 and 2 has been subjected to the same auditing procedures and, in our opinion, is stated fairly in all material respects when considered in conjunction with the financial statements as a whole.

Wisan, Smith, Racker & Prescott
Salt Lake City, Utah
May 14, 1993

Utah Bar Foundation
(A Non-Profit Organization)
BALANCE SHEETS
December 31, 1992 and 1991

ASSETS	**1992**	**1991**
CURRENT ASSETS		
Cash	$ 131,023	$ 126,611
Receivables:		
IOLTA	6,215	5,073
Accrued interest	—	3,006
Total Receivables	6,215	8,079
Investments (Note 2)	503,762	451,390
TOTAL CURRENT ASSETS	631,000	586,080
PROPERTY AND EQUPMENT (Note 3)	2,108	4,063
LAND HELD FOR RESALE	2,770	2,770
TOTAL ASSETS	$ 645,878	$ 592,913
LIABILITIES AND FUND BALANCE		
CURRENT LIABILITIES		
Accounts payable	$ 1,578	$ 578
TOTAL CURRENT LIABILITIES	1,578	578
COMMITMENTS (Note 4)	—	—
FUND BALANCE — UNRESTRICTED	644,300	592,335
TOTAL LIABILITIES AND FUND BALANCES	$ 645,878	$ 592,913

Certain 1991 items have been reclassified to conform to the 1992 presentation.
*The accompanying notes are an integral part of the financial statements.**

Utah Bar Foundation
(A Non-Profit Organization)
STATEMENTS OF REVENUE AND SUPPORT, EXPENDITURES, AND CHANGES IN FUND BALANCES
Years ended December 31, 1992 and 1991

	1992	**1991**
REVENUE AND SUPPORT		
Interest on lawyers' trust accounts	$ 231,432	$ 225,369
Interest and dividend income	41,878	33,983
Member contributions	604	—
TOTAL REVENUE AND SUPPORT	273,914	259,352
EXPENDITURES		
Grants of funds (Note 5)	185,080	208,575
Wages	15,806	12,922
Office and administrative	6,608	9,671
Rent	4,755	4,755
Depreciation	2,160	2,139
Travel	1,535	445
Membership dues	300	300
Public relations	894	250
History writing project	1,711	—
Meetings	3,100	—
TOTAL EXPENDITURES	221,949	239,057
Excess of revenue and support over expenditures	51,965	20,295
Unrestricted fund balances at beginning of year	592,335	572,040
Unrestricted fund balances at end of year	$ 644,300	$ 592,335

Certain 1991 items have been reclassified to conform to the 1992 presentation.
The accompanying notes are an integral part of the financial statements.

Utah Bar Foundation
(A Non-Profit Organization)
STATEMENTS OF CHANGES IN FINANCIAL POSITION
Years ended December 31, 1992 and 1991

	1992	1991
SOURCES OF CASH:		
Operations:		
Excess of revenue and support over expenditures	$ 51,965	$ 20,295
Items not affecting cash:		
Depreciation	2,160	2,139
Cash provided by operations	54,125	22,434
Decrease in IOLTA receivable—	1,404	
Decrease in accrued interest receivable	3,006	1,496
Increase in accounts payable	1,001	332
TOTAL SOURCES OF CASH	$ 58,132	$ 25,666
USES OF CASH:		
Increase in IOLTA receivable	(1,142)	—
Increase in investments	(52,373)	(448,359)
Increase in property and equipment	(205)	—
TOTAL USES OF CASH	$ (53,720)	$ (448,359)
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	4,412	(422,693)
CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR	126,611	549,304
CASH AND CASH EQUIVALENTS AT END OF YEAR	$ 131,023	$ 126,611

Certain 1991 items have been reclassified to conform to the 1992 presentation.
The accompanying notes are an integral part of the financial statements.

Utah Bar Foundation
(A Non-Profit Organization)
NOTES TO FINANCIAL STATEMENTS
December 31, 1992 and 1991

NOTE 1 — SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of Utah Bar Foundation conform to generally accepted accounting principles. The following policies are considered to be significant:

Company Organization

Utah Bar Foundation was incorporated in 1963 as a non-profit organization. As such, it is exempt from federal income tax under Internal Revenue Code Section 501(c)(3).

Income Recognition

The financial statements are prepared using the accrual basis of accounting. Revenues are recognized and reported when they are earned and when the amount and timing of the revenue can be reasonably estimated.

Utah Bar Foundation was organized to advance the science of jurisprudence, to promote improvements in the administration of justice and uniformity of judicial proceedings and decisions, to provide training courses for lawyers, to elevate judicial standards, to advance professional ethics, to improve relations between members of the Utah State Bar Association, the judiciary and the public, and the preservation of the American constitutional form of government, exclusively through education, research, and publicity.

Under the Interest On Lawyers' Trust Accounts (IOLTA) Program, implemented in 1984, the Foundation receives interest on member lawyers' trust accounts from the deposit of client funds that are nominal in amount or that are expected to be held for only a short period of time. The Foundation awards grants of these funds to promote legal education and increase knowledge and awareness of the law in the community, to assist in providing legal services to the disadvantaged, to improve the administration of justice, and to serve other worthwhile, law-related public purposes.

Depreciation

Depreciation expense is computed principally on the straight-line method in amounts sufficient to write off the cost of depreciable assets over their estimated useful lives.

Normal maintenance and repair items are charged to expenditures as incurred. The cost and accumulated depreciation of property and equipment sold or otherwise retired are removed from the accounts and gain or loss on disposition is reflected in net revenue and the period of disposition.

Cash and cash equivalents

Cash equivalents are generally comprised of certain highly liquid investments with maturities of less than three months.

Fund accounting

The accounts of Utah Bar Foundation are maintained in six self-balancing funds according to their nature and purpose. The six funds are all unrestricted, which means that revenue and support for the funds is not restricted to a specific use by the contributors of such revenue and support. The funds are as follows:

IOLTA Fund — The IOLTA Fund is used to account for interest received on member lawyers' trust accounts and the awarding of grants of these funds.

Judicial History Fund — The Judicial History Fund is used to account for donations and expenses relating to the judicial history of the State of Utah.

Office Furniture and Equipment Fund — The Office Furniture and Equipment Fund is used to account for fixed assets owned by the Foundation.

Administrative Fund — The Administrative Fund is used to receive 5% of the annual IOLTA funds, the interest on the IOLTA funds prior to allocation, and to pay the general and administrative expenditures.

Perpetual Endowment Fund - IOLTA — The Perpetual Endowment Fund is used to receive 10% of the annual IOLTA funds in order to accumulate a reserve to be held for future projects consistent with the purposes specified in the IOLTA program.

Perpetual Endowment Fund - Non IOLTA — This fund is used to receive all non IOLTA contributions and interest earned on those funds to be held for future projects consistent with the purposes specified in the Articles of Incorporation.

NOTE 2 — INVESTMENTS

Investments as of December 31, 1992 and 1991 are reflected at the aggreage lower of cost or market value and are summarized below:

	Cost	Market
IOLTA	$ 200,147	$ 201,774
Judicial History Fund	3,031	5,558
Perpetual Endowment Fund — IOLTA	133,499	$142,141
Perpetual Endowment Fund — Non IOLTA	167,085	180,433
	$ 503,762	$ 529,906

	Cost	Market Value	Excess of Market Over Cost
Balance – December 31, 1992	$ 503,762	$ 529,906	$ 26,144
Balance – December 31, 1991	$ 451,390	$ 480,700	$29,310

NOTE 3 — PROPERTY AND EQUIPMENT

Property and equipment as of December 31, 1992 and 1991 are detailed in the following summary:

	Cost	Accumulated Depreciation	Net Book Value 1992	Net Book Value 1991
Furniture and equipment	$ 10,901	$ 8,793	$ 2,108	$ 4,063

NOTE 4 — COMMITMENTS

As of December 31, 1992, the Board of Trustees has approved a grant of $12,000 to the Women Lawyers of Utah which has not been disbursed.

NOTE 5 — GRANTS OF FUNDS

Grants of funds during the years ended December 31, 1992 and 1991 are listed below:

	1992	1991
Legal Aid Society	$ 50,000	$ 50,000
Utah Legal Services, Inc.	35,000	35,000
Law-Related Education	30,000	30,000
Utah Law and Justice Center (Alternative Dispute Resolution)	—	20,245
Law-Related Education (building improvements)	—	20,000
Catholic Services	20,000	15,000
Legal Center for People with Disabilities	10,000	10,000
Young Lawyers Bill of Rights	—	10,000
Administrative Offices of the Court	—	7,500
West High School	—	2,500
American Inns of Court	1,500	1,800
American Fork Jr. High — National History Fair	—	250
Ethics Awards	359	280
Community Service Scholarships	6,000	6,000
USB Young Lawyers — Victim Assistance	2,500	—
University of Utah — Loan Assistance	25,000	—
Utah Children — Publication	1,950	—
S.L. County Bar — Domestic Services	1,021	—
Utah Bankers Association Annual Meeting	250	—
Utah State Bar MidYear & Annual Meetings	1,500	—
	$ 185,080	$ 208,575

UTAH BAR FOUNDATION
(A Non-Profit Organization)
SUMMARY BALANCE SHEET BY FUND
Year ended December 31, 1992

	IOLTA Fund	Judicial History Fund	Furniture & Equipment Fund	Administrative Fund	Perpetual Endowment Fund-IOLTA	Perpetual Endowment Fund-Non IOLTA	Total Funds
ASSETS							
Cash	$ 80,589	$ 12,475	$ —	$ 937	$ 15,655	$ 21,367	$ 131,023
IOLTA receivable	6,215	—	—	—	—	—	6,215
Investments	200,147	3,031	—	—	133,499	167,085	503,762
Property and equipment	—	—	2,108	—	—	—	2,108
Land held for resale	—	—	—	—	—	2,770	2,770
TOTAL ASSETS	$ 286,951	$ 15,506	$ 2,108	$ 937	$ 149,154	$ 191,222	$ 645,878
LIABILITIES & FUND BALANCES							
Accounts payable	$ —	$ —	$ —	$ 1,578	$ —	$ —	$ 1,578
Unrestricted fund balance	286,951	15,506	2,108	(641)	149,154	191,222	644,300
TOTAL LIABILITIES AND FUND BALANCE	$ 286,951	$ 15,506	$ 2,108	$ 937	$ 149,154	$ 191,222	$ 645,878

UTAH BAR FOUNDATION
(A Non-Profit Organization)
SUMMARY OF STATEMENT OF REVENUEAND SUPPORT, EXPENDITURES, AND CHANGES IN FUND BALANCES BY FUND
Year ended December 31, 1992

	IOLTA Fund	Judicial History Fund	Furniture & Equipment Fund	Administrative Fund	Perpetual Endowment Fund-IOLTA	Endowment Fund-Non IOLTA	Total Funds
REVENUE AND SUPPORT							
Interest on lawyers' trust accounts	$ 211,577	$ —	$ —	$ 19,855	$ —	$ —	$ 231,432
Interest and divided income	16,746	530	—	34	10,519	14,049	41,878
Member contributions	265	—	—	—	—	339	604
TOTAL REVENUE AND SUPPORT	228,588	530	—	19,889	10,519	14,388	273,914
EXPENDITURES							
Grants of funds	184,772	—	—	308	—	—	185,080
Wages	—	—	—	15,806	—	—	15,806
Office and administrative	—	15	—	6,593	—	—	6,608
Rent	—	—	—	4,755	—	—	4,755
Depreciation	—	—	2,160	—	—	—	2,160
Travel	—	—	—	1,535	—	—	1,535
Membership dues	—	—	—	300	—	—	300
Public Relations	—	—	—	894	—	—	894
History writing projects	—	1,711	—	—	—	—	1,711
Meetings	—	—	—	3,100	—	—	3,100
TOTAL EXPENDITURES	184,772	1,726	2,160	33,291	—	—	221,949
Excess (deficiency) of revenue and support over expenditures	43,816	(1,196)	(2,160)	(13,402)	10,519	14,388	51,965
Fund balance at beginning of year	255,212	14,697	4,063	1,189	138,635	178,539	592,335
Add transfers in	248	2,253	205	11,572	23,143	120	37,541
Deduct transfers out	(12,325)	(248)	—	—	(23,143)	(1,825)	(37,541)
FUND BALANCE AT END OF YEAR	$ 286,951	$ 15,506	$ 2,108	$ (641)	$ 149,154	$ 191,222	$ 644,300

CLE CALENDAR

EMPLOYMENT LAW: HARASSMENT, ADA, UPDATE ON TITLE 7

The fourth program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenters include J. Steve Mikita, Esq., and Mary Ann Q. Wood, Esq.

CLE Credit: 3 hours
Date: November 3, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

INTELLECTUAL PROPERTY SYMPOSIUM FOR CORPORATE COUNSEL

A special symposium providing an overview of intellectual property concerns faced by corporate counsel and practitioners who work for corporate clients. Attendees will receive a framework within which a company can evaluate and protect its creative work product. Each presentation will offer the basics of a specific type of protection and then suggest various approaches from which a company may fashion a prudent, custom-fit innovation maintenance program.

CLE Credit: 4.5 hours
Date: November 9, 1993
Place: Utah Law & Justice Center
Fee: Corporate Counsel section members pay $25.00; Non-section members pay $40.00. Cost **includes** the handbook entitled: *Protecting Your Intellectual Property: From Start-Up to Success.*
Time: 8:00 a.m. to 12:00 noon

ENVIRONMENTAL LAW

The fifth program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenter — Craig Anderson, Esq.

CLE Credit: 3 hours
Date: November 10, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

SECURITIES LAW: WHAT IS SECURITY? FEDERAL & STATE SECURITIES LAW, ISSUING STOCK, LIMITED STOCK, LIMITED PARTNERSHIPS, DEBT VENTURES

The sixth program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenter — Mark Griffen, Esq.

CLE Credit: 3 hours
Date: November 17, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

CIVIL LITIGATION III: ENFORCEMENT & COLLECTION OF JUDGEMENTS — 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: November 18, 1993
Place: Utah Law & Justice Center
Fee: $20.00 for Young Lawyer Section members.
$30.00 for non-members.
Time: 5:30 p.m. to 8:30 p.m.

THE BIG E'S — ECONOMICS, EVIDENCE & ETHICS

This seminar will cover the following substantive legal issues and topics while examining practical and ethical information concerning the attorney/legal assistant relationship: What is billable; Saving time and making money; Team management of cases; Litigation, Negotiation & Mediation. The final portion of the day will center around a three hour ethics forum that is designed specifically to incorporate the participation of the audience.

CLE Credit: 8 hours CLE credit, including 3 hours of ETHICS.
Date: November 19, 1993
Place: Utah Law & Justice Center
Fee: $100.00 for Attorneys.
$85 for Legal Assistants.
$175.00 for an Attorney/

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.

Legal Assistant Team. Registration received after November 12, 1993, please add $20.00 to above prices.
Time: 8:00 a.m. to 5:00 p.m.

FINANCIALLY TROUBLED BUSINESS: WORKING WITH CREDITORS, ALTERNATIVES TO BANKRUPTCY, AND BANKRUPTCY

The seventh program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenters include — Anna W. Drake, Esq., and Steven J. McCardell, Esq.
CLE Credit: 3 hours
Date: December 1, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

1994 UTAH LEGISLATIVE PREVIEW

Get a unique preview of issueselevant to attorneys and their practices that will come before the 1994 Utah State Legislature. Proposed changes in the law may impact environmental issues, employment law contracts, criminal procedure, real property, family law & taxes. This program vides an excelent opportunity to gt a step ahead of the upcoming session and to prepareour practice for possible changes in Utah Law.
CLE Credit: 3 hours
Date: December 3, 1993
Place: Utah State Capitol, Rooms 303-305
Fee: $50.00 early registration, $60.00 door registration
Time: 9:00 a.m. to 12:00 noon

LITIGATION: AVOIDING, PREPARING, ALTERNATIVES, PRE-TRIAL PREP

The eighth program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenter — Judge William B. Bohling, Esq.
CLE Credit: 3 hours
Date: December 8, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

PROFESSIONAL LIABILITY SEMINAR

Postponed until February 25, 1994.
CLE Credit: 3.5 CLE hours in ETHICS
Date: December 10, 1993 (**Please note:** change of date – February 25, 1994.)
Place: Utah Law & Justice Center
Fee: Pre-registration $60.00, registration at the door, $75.00.
Time: 9:00 a.m. to 12:30 p.m.

ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

The final program offered in the 2nd Annual Business Development Workshop dealing with "Issues in Organizing and Operating a Business." Scheduled presenter — James R. Holbrook, Esq.
CLE Credit: 3 hours
Date: December 15, 1993
Place: Utah Law & Justice Center
Fee: $60.00
Time: 6:00 p.m. to 9:00 p.m.

BUSINESS VALUATION/ DISCOVERING HIDDEN ASSETS & INCOME

This program is designed to provide legal professional with a basic understanding of business valuations and how to focus on the variables that can make a significant difference in business value. Additionally, helpful tips will be provided in identifying hidden assets and income. Actual case examples and courtroom exhibits will be utilized to demonstrate how business valuations can be effectively presented and countered.
CLE Credit: 7 hours CLE credit, including 1 hour of ETHICS.
Date: December 17, 1993
Place: Utah Law & Justice Center
Fee: Registration cost $100.00. Registration received after December 10, 1993, $125.00.
Time: 9:00 a.m. to 4:45 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.

FOR SALE — Pacific Reporter, leather bound Volumes 1-154; Pacific Reporter Volumes 172-300; Pacific Reporter 2d Volumes 1-835; ALR 4th Volumes 1-45; AMJUR Trials Volumes 1-32; Proof of Facts Volumes 1-30; Proof of Facts 2d Volumes 1-44; Numerous other publications available. Make offer. Call (801) 968-3501.

Two sets of current Utah Code Annotated; current set of the Utah Reporter, Current Wyoming Statutes Annotated, Attorneys Textbook of Medicine, Wharton's Criminal Evidence, AmJur Legal Forms 2d, New Microcassette Transcriber; almost new AT&T Merlin Plus BIS-22D phone system, other miscellaneous books-lists available upon request. Inquiries should call (801) 789-1666.

OFFICE SHARING/SPACE AVAILABLE

Deluxe office space. 7026 South 900 East. Included 2 spacious offices, large reception area, convenient parking adjacent to building. Call (801) 272-1013.

EXCELLENT OFFICE SPACE is available in the Triad Center. Office sharing with two other attorneys. Copier, parking, telephone, fax, and conference room included. Secretarial services are available. Space for your own secretary is also available. For more information, call Brad at (801) 521-2121.

Wanted: Office space in exchange for legal services. Admitted in Utah and Arizona. Business, environmental, and administrative law; 8 years experience. Would also consider ret with sizeable overflow work. Please contact Richard Russell at (714) 556-3607 or fax to (714) 241-1319.

BV rated attorney, 11 years experience with well-established practice and outside business interest seeks office sharing or other arrangement with other like-minded and established attorneys. Reply to Utah State Bar Journal, Box A-9, 645 South 200 East #310, Salt Lake City, Utah 84111.

POSITIONS SOUGHT

EXPERIENCED ATTORNEY WITH EXCELLENT RESEARCH AND WRITING SKILLS SEEKS PROJECT/CONTRACT WORK OR FULL-TIME POSITION. Experienced in litigation and appeals, architectural, construction, condominium, personal injury, insurance, and contract law, oil, gas and mineral leasing, title examination, and organization of large projects. Word processing skills; extremely low overhead. Call (801) 521-8026.

SERVICES

ATTENTION ATTORNEYS! Do you need help with voluminous medical records? Would you like the most current standards of care on your case? Do you have immediate access to Expert Witnesses in all fields? A Legal Nurse Consultant can help you save time and money. Call SHOAF AND ASSOCIATES at (801) 944-4232.

TWO EXPERIENCED ATTORNEYS SEEK CONTRACT WORK. Former law review editor and federal judicial clerk. Eight years of federal and state trial and appellate practice. From family and criminal matters to commercial and environmental law. Court appearances, discovery, pleadings, motions, research and briefs. Reasonable rates. Call (801) 575-1954.

Are you certain confidential computer files are actually deleted? One simple command UNDELETE, could restore sensitive files you thought were gone! Try it for yourself. Enter at the c:> prompt **undelete**. See what happens. When destroying files is critical, rely on File Shredder 1.0. Introductory offer $19.95. Call 1-800-657-0514.

AT HOME LEGAL SERVICES. I am ready, willing and able to provide all legal services for you and your firm. Equipment available to do your projects include: Two PC's with various software packages, including WordPerfect 5.1 with a 6.0 upgrade, telephone modem, laser printer, dot matrix printer, fax machine, copy machine, transcribers (both regular and microcassette), notarial services. Experienced legal secretary (30+ years). Interaction with state, local, and federal government during employment history. Call Ramona Vance at (801) 966-5664.

The Legal Assistants Association of Utah (LAAU) has an employment referral service which without charge provides the metro legal community with a source for posting employment needs and opportunities. Contact LAAU's Job Bank whenever you need a full or part-time temporary or permanent legal assistant in your office. Complimentary copies of resumes of legal assistants currently seeking employment will be forwarded to you. Contact LAAU Job Bank, P.O. Box 112001, Salt Lake City, Utah 84111 or call (801) 531-0331.

CONTINUING LEGAL EDUCATION
Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX (801) 531-0660

CERTIFICATE OF COMPLIANCE
For Years 19 _____ and 19 _____

NAME: _____ UTAH STATE BAR NO. _____

ADDRESS: _____ TELEPHONE: _____

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

1. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

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

1. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

4. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

* Attach additional sheets if needed.

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

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

Date: _____ _____
(signature)

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

EXPLANATION OF TYPE OF ACTIVITY

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

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

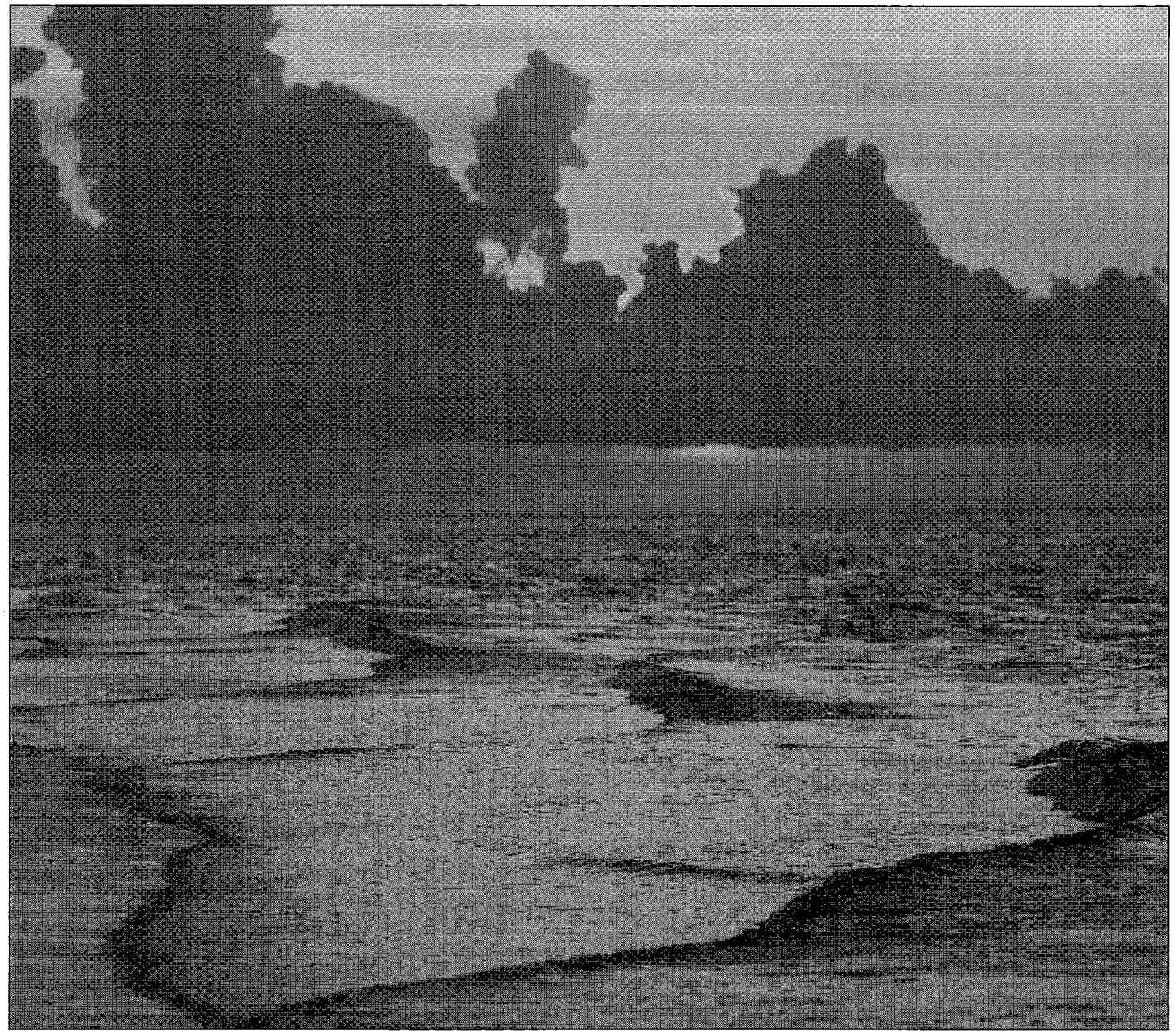
C. Lecturing. Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive 3 hours of credit for each hour spent in lecturing or teaching. No more than one-half of the credit hour requirement may be obtained through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

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

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

Regulation 8-101 — Each attorney required to file a statement of compliance pursuant to these regulations shall pay a filing fee of $5 at the time of filing the statement with the Board.

Time and tide wait for no one.



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Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111

0.0 *

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Salt Lake City UT 84147-0898