

# UTAH BAR JOURNAL

Vol. 6 No. 10

December 1993



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Couzins and Cora Georgiana Snow**

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## PRESS RELEASE

Special Institute  
on

## LAND and PERMITTING

Denver, Colorado  
January 27 & 28, 1994

The Rocky Mountain Mineral Law Foundation is sponsoring a two-day institute in Denver on "Land and Permitting" on January 27 & 28, 1994. Co-sponsoring organizations are American Association of Professional Landmen, Denver Association of Petroleum Landmen, Nevada Landmen's Association, and Rocky Mountain Association of Mineral Landmen.

This practical "nuts and bolts" Institute will update attendees on the increasingly complex statutory and regulatory requirements for natural resources development of western lands. The Institute will be beneficial to landmen, attorneys, corporate managers, environmental consultants, government employees, and representatives of Indian tribes interested in land and permitting problems encountered by the oil, gas, coal, and hardrock mineral industries.

Substantially reduced registration fees are offered for this Institute due to participation by various landmen's organizations.

---

As a nonprofit educational organization, the Foundation would appreciate any publicity you can provide for this Institute, including notices in magazines, professional journals, newsletters, and calendars of events.



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COVER: Strawberry Ridge near Strawberry Reservoir, 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 sole purported purpose of Mandatory CLE as stated in the Utah Supreme Court's Rules and Regulations Governing Mandatory CLE is to help attorneys "... better fulfill their obligation *competently* to serve their clients." (emphasis added).

Recently I have received Bar publicity for seminars on such topics as "Managing Stress" and "Networking," each approved for no fewer than 7.5 hours of Mandatory CLE credit. The programs for these seminars describe positively no procedural or substantive legal material which would enhance *competency*. I suppose, however, these seminars could assist a private practitioner in generating new business or any practitioner in enhancing many facets of his or her health.

Given these apparently implied broader purposes of Mandatory CLE, I would like to suggest that the Bar sponsor Mandatory CLE programming on the following or

related topics:

1. Milking Mice – A Guide For Small Client Development.
2. Kick Boxing – Conditioning for High Impact Law Practice.
3. Power Nutrition For Endurance Litigation.
4. Personality Disorders – How to Suppress Them When Your Client is Watching.
5. Rainmaking – A Primer For Would Be Schmoozers.
6. Theatrical Drama – A Mini-Course in Jury "Persuasion."
7. The Financial Implications of Halitosis – Hygienic Tips For Achieving Brevity of IRS Tax Audits of Your Client.
8. Yacht Racing, Golfing and Other Preferred Contexts for Professional Consultation.
9. Personal Finance – Strategies for Student Loan Amortization.
10. Weight Control for Those Few Sedentary Among Us.
11. Vitamin A: Voodoo Medicine or Good

Eyesight for a Lifetime of Case Law Statute and Treatise Enjoyment?

12. Esquire Natural – Hair Restoration Therapy For Law School Graduates.
13. The U.S. Congress School of Finesse: How To "Earn" BeauCoup CLE Credits By Sponsoring a CLE Seminar Questionably Approved By Buds on the Board With Marginally Relevant Subject Matter Without Raising Any Actionable Questions of Propriety Among the General Bar Membership Who Don't Have a Vote on the Issue Anyway.

More to the point, perhaps CLE should not be mandatory (my preference) or should at least be administered in a manner consistent with the expressed purpose of its design.

Very truly yours,  
**REED F. WINTERTON**  
 Associate Counsel for  
 Sorenson Development, Inc.

## MEDICAL MALPRACTICE CASE EVALUATION • EXPERT TESTIMONY

- |                          |                                 |                            |                                    |                                |
|--------------------------|---------------------------------|----------------------------|------------------------------------|--------------------------------|
| • Addiction Medicine     | • Family Practice               | • Neuropsychology          | • Pediatric Emergency Medicine     | • Psychopharmacology           |
| • Adolescent Medicine    | • Forensic Odontology           | • Neuroradiology           | • Pediatric Endocrinology          | • Public Health                |
| • Allergy                | • Gastroenterology              | • Neurosurgery             | • Pediatric Gastroenterology       | • Pulmonary Medicine           |
| • Anesthesiology         | • General Surgery               | • Neurotology              | • Pediatric Hematology             | • Quality Assurance            |
| • Blood Banking          | • Geriatric Medicine            | • Nursing                  | • Pediatric Infectious Diseases    | • Radiation Oncology           |
| • Cardiology             | • Gynecologic Oncology          | • Obstetrics               | • Pediatric Immunology             | • Radiology                    |
| • Cardiovascular Surgery | • Gynecology                    | • Occupational Medicine    | • Pediatric Intensive Care         | • Reconstructive Surgery       |
| • Clinical Nutrition     | • Hand Surgery                  | • Oncology                 | • Pediatric Nephrology             | • Rheumatology                 |
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| • Critical Care          | • Immunology                    | • Orthodontics             | • Pediatric Nutrition              | • Thoracic Surgery             |
| • Cytology               | • Infectious Diseases           | • Orthopaedic Surgery      | • Pediatric Oncology               | • Toxicology                   |
| • Dentistry              | • Internal Medicine             | • Otolaryngology           | • Pediatric Otolaryngology         | • Trauma and Stress Management |
| • Dermatology            | • Interventional Neuroradiology | • Otology                  | • Pediatric Rheumatology           | • Trauma Surgery               |
| • Dermatological Surgery | • Interventional Radiology      | • Pain Management          | • Pediatric Urology                | • Ultrasound                   |
| • Dermatopathology       | • Mammography                   | • Pathology                | • Pharmacy                         | • Urology                      |
| • Dysmorphology          | • Medical Genetics              | • Pediatrics               | • Pharmacology                     | • Vascular Surgery             |
| • Electrophysiology      | • Medical Licensure             | • Pediatric Allergy        | • Physical Medicine/Rehabilitation | • Weight Management            |
| • Emergency Medicine     | • Neonatology                   | • Pediatric Anesthesiology | • Plastic Surgery                  |                                |
| • Endocrinology          | • Nephrology                    | • Pediatric Cardiology     | • Podiatric Surgery                |                                |
| • Epidemiology           | • Neurology                     | • Pediatric Critical Care  | • Psychiatry                       |                                |

*All physician specialists are board-certified medical school faculty members or are of medical school faculty caliber. Experience in over 6,000 medical and hospital malpractice, personal injury and product liability cases for plaintiff and defendant. Specialist's curriculum vitae and complete fee schedule based on an hourly rate provided upon initial inquiry. Approximately three weeks after receipt of records specialist will contact attorney with oral opinion. If requested the specialist will then prepare and sign a written report and be available for testimony.*

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# PRESIDENT'S MESSAGE



## Activating NRA Members

By H. James Clegg

Current membership figures, with division breakdowns, are as follows:

Geographic Divisions*	Active	Inactive	Total
1	69	8	77
2	296	46	342
3	2,971	333	3,303
4	346	61	407
5	183	15	198
Utah Totals	3,865	463	4,328
Out of State	337	880	1,217
New Admittees	175	61	326
TOTAL	4,377	1,404	5,781

\*Divisions are synonymous with Judicial Districts except that Judicial Districts 5-8 are combined in Division 5.

As you can see, 337 out of state or "non-resident active" members (NRA's) constitute a significant proportion of our bar membership.

About five years ago, Jackson Howard chaired a committee appointed by the Bar Commission to study the organization of the Bar. Miles Jensen, Paul Durham, Keith Chiara, John Palmer and I served as members. A report duly issued and some of the recommendations were accepted, others were accepted in modified form and others were rejected.

There was an item which was simply not acted upon because no one could figure out what to do with it.

There were and are a considerable number of active bar members who reside out-of-state and do not vote for a bar commissioner. While they probably are not overly concerned with many of our local issues, such as state court consolidation, there are many issues of mutual concern.

As a committee, we considered ways of providing representation. Among those considered were proposals to allow each non-resident active (NRA, what a unique acronym!) to designate one of the present divisions for voting purposes. This was unacceptable because, with a little organization, the NRA's could all designate the same division and overwhelm any division except the Third and perhaps the Fourth. We discussed creating a new seat on the Commission for NRA's; however, we were so broke that even making payroll was iffy and no one wanted to increase the Commission's expenses.

So the matter languished, perhaps died, out-of sight and out-of-mind. . . . until last month when I attended the Colorado Bar's Annual Meeting at Colorado Springs. One of the social items was an evening reception sponsored by the Wisconsin Bar for its local members. Out of curiosity, I dropped by and

met several folks including the Wisconsin Bar's president, Pam Barker, and a commissioner, Bob Hansen, who resides in Vail.

The Wisconsin NRA's have their own division, similar to our geographic divisions, which is largely self-governed. They have a "chairs" system whereby one is elected secretary-treasurer and moves to vice-president and then division president. The members also elect three commissioners who serve on the 43-person bar commission. Presently, the three are from Colorado, Ohio and Washington D.C. All three regularly attend commission meetings with travel and lodging costs paid by the bar. However, Wisconsin has only four commission meetings per year with the interim work performed by the Executive Committee, rather than meeting each month.

Local chapters have been organized where there are concentrations, such as Denver.

Wisconsin's division of NRA's provides its members with bar services beyond the expected, such as:

- A newsletter "Back Home" through which information is spread which would be common knowledge in Wisconsin but not in California or Timbuktu.
- A directory showing geographic location of all NRA members together with areas of practice to encourage referrals

# Silent & Suffering

## Elder Abuse In America

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and other networking advantages.

- Assistance with complying with Wisconsin's mandatory CLE requirements; this can be a problem in states which do not have MCLE as there may be few programs available.

While travel-lodging for a commissioner to attend monthly commission meetings could still be daunting, in an age of telephone conferencing and faxes one could be a pretty effective commissioner without personally attending every meeting.

As with practically every bar project, it must begin with grass-roots support, activity and WORK by those affected. Do you NRA's have any interest?

## Claim of the Month

### ALLEGED ERROR OR OMISSION:

It is alleged that the Insured committed legal malpractice by failing to prosecute a lawsuit within the applicable five year period.

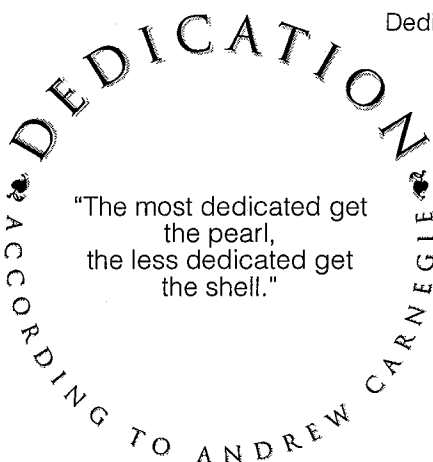
### SYNOPSIS OF CLAIM:

The Insureds represented the plaintiffs with respect to the loss of plaintiff's bee-keeping and ranching operation. Also, Insured represented same plaintiff in a personal injury suit associated with the poisoning of a substantial part of the operation livestock. Insured allegedly allowed matter regarding loss of business operations to be dismissed. Dismissal was based upon alleged lack of discovery and failure to secure witnesses. The Insureds compounded injury by allegedly losing the entire contents of the plaintiffs' file. Personal injury complaint was never filed and suit was barred use to statute of limitations.

### HOW THE CLAIM MIGHT HAVE BEEN AVOIDED:

Had the Insureds been more diligent in bringing the case to trial during the applicable statutory time period, perhaps by means of a more effective diary or tickler system, the suit could have been competently managed. The Insured also should not have been careless as to losing the entire contents of the plaintiffs' file. Tips for file storage and maintenance may be available via local and/or state bar practice management committees.

"Claim of the Month" is furnished by Rollins Hudig Hall of Utah, Administrator of the Bar Sponsored Lawyers' Professional Liability Insurance Program.



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## Court Consolidation: It's Not Too Late To Stop the Train

*By Craig M. Snyder*

When last I had the opportunity to express my opinions in this forum on court consolidation, I raised a number of issues which I felt were important for the Bar to consider. Court reorganization (consolidation) has the potential to impact the practice of law in ways that are significant, substantial, and in my opinion, detrimental, not only to the practice, but to the service that is provided to the public. Yet, most lawyers continue to be disinterested and to sleep through the impact of the consolidation upon our court system. The comment is often expressed: "What can we do? The court consolidation train has already left the station and is rumbling at a high speed down the tracks."

Sometimes I feel like a voice crying alone in the wilderness. Maybe no one else really gives a damn. Maybe these issues are not as important as I perceive them. Maybe I am just a nay sayer, and not a very intelligent one at that.

In an effort to determine whether anyone else is as interested in these problems as I am, I have created a small questionnaire. I invite those of you who are interested to respond to the following questions and to send your responses to

me: Craig M. Snyder, P.O. Box 778, Provo, Utah 84603.

1. Do you understand the implications of court consolidation?
2. Name any advantage that you perceive to court consolidation.
3. Name any disadvantage that you perceive to court consolidation.
4. Do you want the consolidation to go forward in Districts 1, 2, 3 and 4;
  - a. In July of 1996?
  - b. In July of 1994?
  - c. Ever?
5. Do you believe that circuit judges should become district court judges without going through the screening, nominating and appointment process that applies to district court vacancies?
6. Do you want a tier of commissioners to become the court of limited jurisdiction in our judicial system?
7. Do you believe that the use of the commissioner system increases or decreases the cost of litigation to your clients? (Give some thought to that question, particularly in the domestic relations area.)
8. Do you think we ought to hire "judges" as opposed to nominating and appointing judges, and staff our court of

limited jurisdiction with quasi-judicial employees (commissioners)?

9. Do you think the authority of court commissioners should be limited to those matters which are expressly defined by existing statute?

10. Should court commissioners be able to render final decisions? If so, in what areas?

11. Do you favor court reorganization in its present form, if the result of that court reorganization in the Wasatch front counties is to recreate and establish municipal justice courts in the communities presently being served by satellite circuit court sites and in other communities statewide?

12. Do you want justice courts to have significant and exclusive jurisdiction to hear certain civil and criminal matters, including with few exceptions, approximately the same jurisdiction as the present circuit courts?

13. Do you want our district court judges to have certain *status and turf* based upon whether they are "grandfathered" district court judges; "House Bill No. 188" district court judges; or "elevated former circuit court" district court judges?



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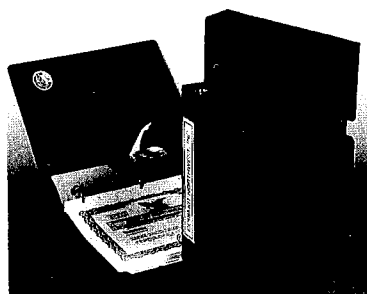
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14. Do you have any desire to revert back to the use of master calendars in our district courts?

For those of you who are interested in court reorganization, you should be aware that the State Court Administrator's Office and the Judicial Council intend to offer legislation which will move up the effective date of House Bill 436 from July of 1996 to July of 1994 in Districts 1, 2, 3 and 4. I believe that the Utah State Bar should take a public stance against changing the effective date of court consolidation.

One of the purposes for making court consolidation effective in July of 1996 was so that we could analyze the experience of court consolidation in Districts 5, 6, 7, and 8 and develop plans of implementation and transition in Districts 1, 2, 3, and 4 so that in theory, the bugs could be worked out of any consolidation. At this point, few, if any, of the problems have been resolved and the major difficulties still remain. In addition, difficulties that were never anticipated remain unresolved. Let me briefly address the most significant of the remaining problems in no particular order:

1. The local transition teams in Districts 1, 2, 3 and 4 continue to go their own separate ways. The state transition team, which is supposed to coordinate the activities of the local transition teams, does little or nothing to ensure the uniformity of rules and the uniform implementation of standards effecting court reorganization in each of the districts. We may well end up with different local rules of practice in Salt Lake, Logan, Provo, Moab, and St. George.

2. The districts have begun to implement their own separate plans which involve the creation of "status" and the protection of "turf" within the district courts and by the district court judges. The Third District has created a plan whereby the existing district court judges acquire a "grandfathered" status and do not have to hear the high-volume traffic, misdemeanor and small claims cases that are generated in the circuit court. Furthermore, newly appointed district court judges, such as Judges Bohling and Medley, have a separate status, all be it the same paycheck and are required to hear a well-defined and restricted array of matters. Soon to be elevated circuit court judges will only hear those matters that are presently heard by the circuit courts. Other districts, including the Fourth District, are well on their way to

implementing similar plans which create "status" and protect "turf" amongst our district court judges.

3. Perhaps the greatest remaining difficulty with court consolidation lies in the increased emphasis and increased jurisdiction that is given to the justice courts as a result of House Bill 436 and the subsequent legislation. I believe that the justice court problem was never anticipated by the State Court Administrator's office, the Judicial Council, or the legislature at the time that House Bill 436 was enacted.

In the early history of our state, justice courts played an important role in the administration of justice. They continue to do so in the heavily populated Wasatch Front counties. Proposals have been made by the Board of Justice Court Judges to give justice courts exclusive jurisdiction over almost the same matters currently being handled by the circuit courts. Such proposals would constitute several giant leaps backward in our judicial system.

Even the State Court Administrator's office has proposed legislation to be presented to the 1994 general session of the legislature. That legislation specifically provides: "The district court has jurisdiction over Class B and C misdemeanors, infractions, and violations of ordinances *only if there is no justice court* with territorial jurisdiction." In other words, all B and C misdemeanors and violations of city ordinances will be filed exclusively in the justice court, if one exists in the territorial jurisdiction where the offense arises.

As existing satellite circuit court sites are closed, I expect municipal governments to reconstitute and reestablish their municipal justice courts. The municipalities will do so in order to benefit from the revenue generated by those justice courts and in order to ensure that their police officers and city attorneys are able to provide services to the communities they serve and are not spending their days sitting in courtrooms in county seats that are several miles distant.

I was a young practicing lawyer in 1974 when proposals first originated to establish a circuit court system. The most constant and persuasive argument that was advanced at that time was that it was important to remove revenue considerations from the administration of justice and to have justice based upon fact and law as it should be. Giving justice courts

exclusive jurisdiction over the vast majority of those items presently being handled by the circuit court and allowing municipalities with or without circuit courts to reconstitute their municipal justice courts, borders on sheer folly. To date, nine local governments have announced and notified the State Court Administrator's office that they will be creating new justice courts. They include Richfield, Tooele, Logan, Sandy, Bountiful, Clearfield, Provo, Vernal and Springdale, which has entered into an interlocal cooperative agreement with Hurricane. I believe that other communities with satellite circuit courts, and perhaps other communities within the state, will establish municipal justice courts in the near future.

4. Since the circuit courts were created in 1976, the legislature has created a class of almost "super" Class B misdemeanors. These offenses (primarily alcohol related) involve mandatory jail time and fines and fees of up to \$2,500.00. The issue of justice based upon revenue considerations and the need for law-trained justice court judges which had previously been resolved by the creation of the circuit court, will again become a problem as we step backward into time.

5. We have always had in this state an inferior court of limited jurisdiction. That inferior court of limited jurisdiction is presently the circuit court which handles those high-volume, more mundane types of cases which consist primarily of traffic, misdemeanor offenses, and civil small claims cases. One of my original concerns about court consolidation was that it would be contrary to the original intent of the legislation to replace a working circuit court with a tier of commissioners who are quasi-judicial employees at will. These commissioners are not subject to the same selection, appointment or confirmation process as judges and yet have acquired significantly similar authority and jurisdiction.

Even though questions have arisen concerning the constitutional authority of commissioners, the idea of advancing the importance and jurisdiction of commissioners and creating more commissioner positions continues to be raised. Furthermore, the authority and assignments made to commissioners vary significantly from district to district. For example, commissioners in the Third District have far

greater authority and more significant assignments than do commissioners in the Fourth District. Many have complained that commissioners have been assigned far too many tasks and that some of our brightest legal minds in commissioner posts are being effectively overworked and overused.

I believe that most lawyers are opposed to any kind of two-tiered decision-making process. As lawyers, we do not want to charge our clients to argue the same matter twice, first before a commissioner, and secondly before a judge. Most of our clients' important matters should be decided by judges and not commissioners. Although I do not purport to offer a definition of "important matters," I believe that hearings on temporary custody of minor children fall into the "important matter" category.

I am opposed to having our inferior court of limited jurisdiction (currently the circuit court) replaced either by a tier of commissioners, who have substantially the same authority as circuit court judges, or by municipal justice courts, who have substantially the same jurisdiction as the circuit courts.

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*"[A]llowing municipalities . . .  
to reconstitute their municipal  
justice courts borders  
on sheer folly."*

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6. It has always been my understanding that House Bill 436 was sold to the legislature as a cost-saving device. Nothing could be further from the truth. I have recently been provided with a copy of the original fiscal note to House Bill 436, which was prepared on February 20, 1991. Seldom have I seen a more superficial analysis of fiscal impact. There is nothing in that fiscal note that indicates that there will be any cost savings. In fact, it indicates that court expenses for commissioners, judges' salaries, early retirement, and staff and court expense increased will increase by just under \$200,000.00 in fiscal year 1992 when Districts 5, 6, 7 and 8 were consolidated. The original fiscal note makes no projections for cost increases for those same items when court consolidation takes place

in Districts 1, 2, 3 and 4 in July, 1996. Furthermore, the fiscal note does not make any reference to the lost revenue from the circuit courts or the impact that new justice courts will have on existing revenue sources. Some estimates have speculated that such revenue loss could be as high as several million dollars.

I do not believe that anyone from the State Court Administrator's office or the Legislature Analyst's office ever prepared an adequate fiscal note on the impact of House Bill 436. It is my belief that House Bill 436 will be one of the most expensive pieces of legislation that our statewide judiciary has ever seen.

I believe that we need to get back to the original goal of consolidation, which was to provide high quality, efficient and timely administration of justice to the general public. Neither the Bar nor the Judiciary, nor the State Court Administrator's office, should ever lose sight of the fact that we are here to provide access to the courts and service to the public. Court consolidation should be initiated if it is reasonable, necessary and if it will promote the effective, timely and efficient administration of justice throughout the State of Utah. If it does not achieve those goals, it should be discarded and the legislature *should simply enact a four-line bill* that would repeal consolidation in Districts 1, 2, 3 and 4, leaving the consolidation in place in Districts 5, 6, 7 and 8. The present circuit court system should be left in place in Districts 1, 2, 3 and 4 until we can devise something that will resolve the problems outlined herein and meet the basic needs and goals of a unified court system. Maybe then we can stop this train.

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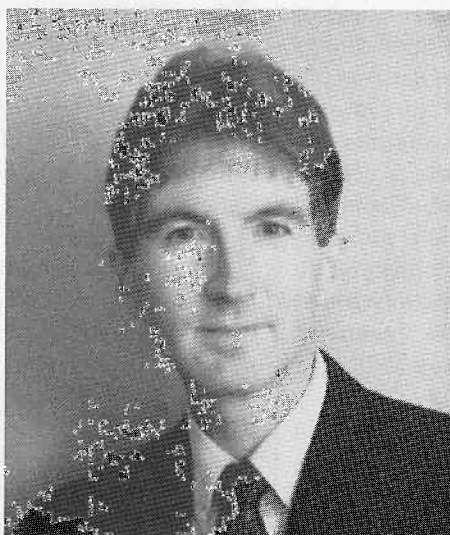


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# Utah's First Women Lawyers: Phoebe Wilson Couzins and Cora Georgiana Snow

By Steven L. Staker and Colleen Y. Staker<sup>1</sup>

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*COLLEEN YOUNG STAKER is Steven's mother. She graduated with a B.A. in English from Brigham Young University and is an emeritus member of the Relief Society General Board, The Church of Jesus Christ of Latter-day Saints.*

On a September morning in 1872, a Salt Lake City courtroom agenda was changed from a mundane day of motions and arguments to a history-making day -- the welcoming, testing and swearing in of Utah's first lady lawyers.<sup>2</sup>

The exciting change of focus took place on Saturday, September 21, when the chief political executive of the Territory, Governor Wood, marched into the courtroom, escorted by a delegation of

attractive women clad in dresses with sweeping trains.

The unlikely group was invited to sit in the section customarily reserved for attorneys, and Governor Wood was given the floor. He rose to his feet and moved that one of the young ladies in his group, Phoebe Wilson Couzins of St. Louis, Missouri, be admitted to the Bar. The court was informed that she had graduated from the St. Louis Law School<sup>3</sup> and that she had been

admitted to practice law in her home state, as well as in the state of Arkansas. After showing proper credentials the motion was granted. She signed the roll of attorneys, was welcomed and sworn in as an attorney.

Immediately after the court administered the oath to Ms. Couzins, Major Charles H. Hempstead rose to his feet with a similar proposition. He introduced Ms. Cora Georgiana Snow to the court as "the first of Utah's daughters" to be prepared

for admission to the bar.<sup>4</sup>

In moving the admission of Ms. Snow, Major Hempstead suggested she had more than an "industrious mind." He credited her with having a "brilliant intellect." He informed the court that he had known Georgia for a number of years, and had watched her progress as she "read law" in her father's office. He noted that her father was Utah's Attorney General, Zerubbabel Snow.<sup>5</sup> Hempstead also spoke of the difficult task Georgia had undertaken to become proficient in the law and referred to her as "a most estimable young lady," noting that her timidity had prevented her from coming forward sooner in spite of her full competence in speaking and reasoning.

Acting upon Hempstead's motion to admit Snow to the Bar, a committee of two was appointed to give Ms. Snow an oral examination.<sup>6</sup> Ms. Snow then followed the two appointed bar examiners to another room for the oral examination. They returned later to the courtroom and the examiners reported that she was found to be "fully qualified for admission to the bar." Judge McKean noted some possible advantages of the recommendation: "Miss Snow will find in Utah an ample field for the exercise of her professional talent. Perhaps in no part of the country can she find a better . . . the fact that she has long resided here and . . . is the daughter of a lawyer, will be of great service to her." The report of the committee was accepted, the motion was granted and Georgia Snow was admitted and received the oath.

Utah was one of several jurisdictions to take the lead in admitting female lawyers. Iowa was the first, in 1869. Missouri and Illinois followed the next year.<sup>7</sup> Michigan was soon behind in 1871. Utah, Maine and the District of Columbia took this step in 1872.<sup>8</sup>

### PHOEBE COUZINS

Phoebe seems to have sought opportunities to be in the "lime light." Apparently her "search for a cure for her 'rheumatism' and her extravagance for clothing and 'the good life' drained her financially."<sup>9</sup> Although admitted to the bar in several states, she lived most of her life in Missouri. She was the first woman appointed to a federal executive office.<sup>10</sup>

She enjoyed public speaking and was "well received by her audiences which sometimes numbered in the thousands."<sup>11</sup>

In fact, the evening after her admission to the bar in Utah, she was scheduled to give a lecture in Salt Lake. The admission price was 50 cents.<sup>12</sup> She "was renowned as a . . . stirring orator on the issues of suffrage, temperance and woman's rights"<sup>13</sup> The famous suffragist, Elizabeth Cady Stanton, once stated: "Phoebe Couzins on 'Women as Lawyers' was ably written and well delivered. It was rich in illustration, logical, keen, witty, pathetic, moving her audience alike to laughter and tears. Fine-looking, well-dressed, straight as an Indian girl, head erect, her whole appearance was pleasing."<sup>14</sup>

In 1992, President Chester Arthur considered appointing Phoebe to the Utah Territory Governing Commission.<sup>15</sup> Though the appointment did not materialize, Couzins wielded her influence in other ways throughout Utah. Phoebe lived up to her reputation as an impassioned speaker for women's rights and the temperance movement. Phoebe was still in the Utah public eye as late as twenty-three years after she was admitted to the bar. In 1894-95, she delivered lectures in both Salt Lake and Ogden.<sup>16</sup>

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*"The women of Utah owe her  
some gratitude for speaking  
publicly against their  
disfranchisement . . ."*

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The same year that Phoebe's expected appointment to the Utah Commission fell through, U.S. Senator John T. Morgan offered a resolution to ban Utah women from voting. Phoebe delivered "an impassioned argument" against his resolution. On two issues of that era where women's voices were raised, Phoebe gave Utah women the credit for the absence of "liquor saloons" and "poison tobacco smoke" in Salt Lake City. She assured legislators that Utah women were "emphatic in condemnation of wrong" and that they had high morals.<sup>17</sup> In advocating support for Phoebe's Utah lectures, the *Woman's Exponent* later editorialized: "The women of Utah owe her some gratitude for speaking publicly against their disfranchisement and at a time when our people were most unpopular."<sup>18</sup>

### GEORGIA SNOW

Unlike Phoebe, Georgia was raised in a large Mormon family.<sup>19</sup> Although given the name Cora Georgiana, she seems to have used the name Georgia informally. She was the eldest in a family with seven children. When she was between the ages of 13 and 15 she was much in demand to help her mother, Mary Augusta Hawkins Snow, while her father served a two-and-a-half-year LDS mission in Australia. The family also raised an Indian boy who had been abandoned.<sup>20</sup>

Georgia was largely self-taught, with a great deal of assistance from her parents. Her father was a school teacher before entering the legal profession, and later became one of the initial regents of the University of Utah.<sup>21</sup> Her mother was also interested in educational pursuits. Georgia said that the women's organization that became the Ladies Literary club was organized in her mother's home. Georgia was a charter member.<sup>22</sup> She referred to her father as her "chum" and was as concerned about helping him in his law practice as she was about making a name for herself.<sup>23</sup> When she was 16, her father was probate judge of Iron County and when she was 19, he was probate judge of Utah County.<sup>24</sup> He was elected Attorney General on January 19, 1869, three years and eight months before Georgia passed the bar.<sup>25</sup>

Exhibiting a keen interest in education, Georgia helped start the Intermountain Library in Utah.<sup>26</sup> She was nominated as Territorial Librarian in 1874.<sup>27</sup> That same year she became a notary public.<sup>28</sup> On October 16, 1887, fifteen years after admission to the bar, she married George Wiley Carleton, a Wyoming State Senator.<sup>29</sup> The couple then moved to Wyoming.<sup>30</sup> In 1892, Georgia attended the National Republican convention in Minneapolis as an alternate delegate, one of the first women to be a delegate to a presidential nominating convention.<sup>31</sup> Georgia is quoted as saying: "The men of Wyoming were as desirous for us to attend the convention as the women. It is the funniest thing in the world to come east and notice the classification of sex. We should never know in public life that there was such a difference."<sup>32</sup>

In 1906, she moved with her husband to San Diego, California because of his failing health.<sup>33</sup> Although Georgia cer-



tainly helped raise the large family of her father's household, she never had children of her own. However, she still maintained an interest in the education of children. After her husband passed away in 1911, Georgia continued in community service and politics, and in 1915 she ran successfully for office as a member of the San Diego City Board of Education. She was the first woman elected to public office in San Diego.<sup>34</sup> In December of 1915, Georgia died of Bright's disease. Her obituary in the *Deseret News* reported that she was "widely known" in Salt Lake City and was reputed to be Utah's first woman attorney.<sup>35</sup>

### LEGACY TO UTAH'S WOMEN

After Phoebe and Georgia were admitted to the bar in Utah, the Salt Lake Daily Tribune described Georgia's admission to the practice of law as a boon to the Territory: "Miss Snow doubtless will render invaluable service to her sex in the future as counsel in cases where delicacy is a fundamental element of consultation."<sup>36</sup> She and her companion, Phoebe Couzins, rendered invaluable service as they blazed the trail for Utah's many women lawyers practicing today. More than this, they joined the ranks of the great army of brave women who have made and continue to make contributions to this and future generations.

<sup>1</sup>©1993, Steven L. Staker and Colleen Young Staker. The authors wish to express their appreciation to the staff of the Utah State Archives and to the staff of the LDS Church Historical Department for valuable research suggestions and assistance.

<sup>2</sup>Except where otherwise noted, the following narrative of that historic day is derived from 21 *Deseret News* 512 (weekly ed. Sept. 25, 1872). A much shorter description appeared in *History of the Bench and Bar of Utah*, 52 (1913).

<sup>3</sup>The St. Louis Law School later became the Washington University Law School. Tokarz, *Commencement: A Tribute to the Nation's First Women Law Students*, 68 Wash. U.L.Q. 89 (1990). Professor Tokarz gives a much more extensive biographical interpretation of Phoebe Wilson Couzins than can be attempted here.

<sup>4</sup>21 *Deseret News* 512. Snow was not actually a native of Utah, having been born in Canton, Ohio. Early Church Information File, Card #607, LDS Family History Library. She came to Utah at about eight years of age. *Id.*

<sup>5</sup>The following year an interesting legal dispute was decided between Attorney General Snow and U.S. Attorney Hempstead over who had authority to prosecute violations of Territorial law. The U.S. Supreme Court's opinion was reported as *Snow v. United States*, 85 U.S. 317 (1873). See also E. Tullidge, *History of Salt Lake City and Its Founders*, 517-18 (1886); and E. Firmage and R. Mangrum, *Zion in the Courts*, 144-45 (1988).

<sup>6</sup>Judge McKean commented that he could not simply admit Georgia Snow on the recommendation of Hempstead, without an examination, because Georgia had not been admitted to the bar in any other jurisdiction as Couzins had. However, the committee McKean appointed evidenced perhaps a

favorable disposition to the motion. Hempstead had already moved for Snow's admission and Hoge was the law partner of Zerubbabel Snow, Georgia's father. In that era it appears the Attorney General was not necessarily a full-time position, because Snow and Hoge maintained a law office at Snow's Corner on First East (now State Street) in Salt Lake. See, e.g., *The Salt Lake Daily Herald*, Saturday, September 21, 1872, at 1.

<sup>7</sup>At almost the same time Illinois became a battleground for the right of women to practice law when it denied admission to Myra Bradwell because she was married. See Adelman, *A History of Women Lawyers in Illinois*, 74 Ill. B.J. 424 (1986).

<sup>8</sup>Berkson, *Women on the Bench: A Brief History*, 63 *Judicature* 287, 290 (1982).

<sup>9</sup>Tokarz, *supra*, at 98 n.73.

<sup>10</sup>23 *Woman's Exponent* 28 (semimonthly ed. Jan. 1 and 15, 1895). Her appointments included U.S. Marshal for the Eastern District of Missouri, Commissioner for the State of Missouri on the National Board of Charities and Corrections and an appointment from the Superintendent of the Census as manager of the division of mortgage indebtedness of the city of St. Louis. *Id.*

<sup>11</sup>Tokarz, *supra*, at 97.

<sup>12</sup>*The Salt Lake Daily Herald*, Sept. 21, 1872, at 3, col. 3.

<sup>13</sup>*Id.*

<sup>14</sup>As cited in K. Morello, *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present*, 47-48 (1986).

<sup>15</sup>Tokarz, *supra*, at 98; see also, K. Morello, *supra*, at 48.

<sup>16</sup>23 *Woman's Exponent* 228 (semimonthly ed. Jan. 1 and 15, 1895).

<sup>17</sup>G. Bunker and C. Bunker, *Woman Suffrage, Popular Art, and Utah*, 59 *Utah Hist.Q.* 32, 37 (1991).

<sup>18</sup>23 *Woman's Exponent* 220 (semimonthly ed. Dec. 15, 1894).

<sup>19</sup>In 1915, she reminisced about the severity of her first winter in "the Valley" and the beauty of the "unbroken snow and to me wonderful enchanting pictures in the ice-bordered streams." Their family was very poor and would present little

dramatizations at home by firelight as a source of entertainment. Letter of Mar. 2, 1915, Mary H. Snow Collection, LDS Church Archives.

<sup>20</sup>E. Beckstrom, *Snow: History of Levi and Lucina Streeter Snow*, 86 (1949).

<sup>21</sup>H. Bancroft, *History of Utah: 1540-1886*, 709 n.76 (1982); but see, S. Pugsley, *The Board of Regents of the University of Utah, 1850-1920: Historical Development and Prosopography*, 171 (1984).

<sup>22</sup>Dennen, *San Diego Woman Is One of the First Two Admitted to Bar: She Has Done a Lot Here*, undated newspaper article from the file of Mrs. Cora E. [sic] Carleton, San Diego Historical Society.

<sup>23</sup>Cannon, *The Women of Utah*, 17 *Woman's Exponent* 49, 50 (semimonthly ed. Sept. 1, 1888).

<sup>24</sup>E. Beckstrom, *supra*.

<sup>25</sup>85 U.S. at 318-19; see also A. Jensen, 4 *Latter-day Saint Biographical Encyclopedia*, 691 (1951) where the date is given as February 19.

<sup>26</sup>Dennen, *supra*.

<sup>27</sup>1 *Woman's Exponent* 140 (semimonthly ed. Feb. 18, 1874).

<sup>28</sup>*Id.*, at 149 (semimonthly ed. Mar. 1, 1874).

<sup>29</sup>Salt Lake County Probate Court, Records of Marriage Certificates and Licenses, Book A, 1887-1888, at 197.

<sup>30</sup>Dennen, *supra*.

<sup>31</sup>*Id.* See also 20 *Woman's Exponent* 181 (semimonthly ed. June 15, 1892). Mrs. Theresa Jenkins also went to the convention as a delegate from Wyoming.

<sup>32</sup>21 *Woman's Exponent* 7 (semimonthly ed. July 1, 1892).

<sup>33</sup>*Id.*

<sup>34</sup>C. McGrew, 1 *City of San Diego and San Diego County*, 228 (1922).

<sup>35</sup>*Deseret Evening News*, Dec. 16, 1915, at 12, col. 3.

<sup>36</sup>3 *Salt Lake Daily Tribune* 283 (daily ed. Sept. 23, 1872).



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# Insurance Bad Faith in Utah

By L. Rich Humpherys

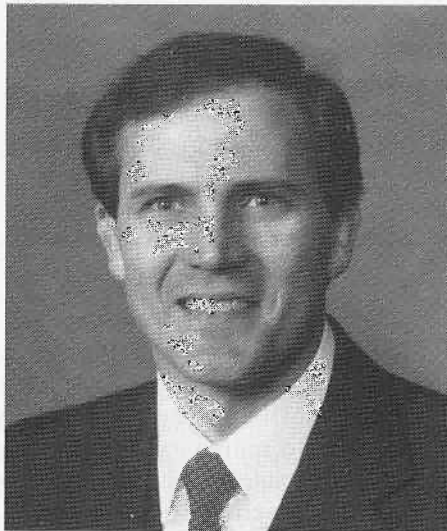
"Bad faith"<sup>1</sup> is typically asserted in insurance claims pursued by lawyers. Its overuse often leads to insurance adjusters' complacent lack of respect for the potential liability for breaching the covenant of good faith and fair dealing. A basic understanding of the law in this area will hopefully enhance the fair claims practices of both claimants and insurers, and facilitate the recovery of damages in the event the good faith duties are legitimately breached.

There are numerous treatises written on the subject of insurance bad faith, but the law in Utah is largely undeveloped. This article primarily focuses on the general status of bad faith law in Utah and some unresolved issues facing Utah litigants.

When addressing issues of bad faith, it is important to distinguish between "first party" and "third party" bad faith. The nature of the legal claims, the defenses and the remedies may differ significantly depending upon this distinction. A "first party" claim refers to the claim of an insured for benefits under his or her policy, such as the payment of medical expenses under medical coverage. A "third party" claim arises out of liability coverage where the insurer has agreed to defend the insured against claims made by third parties and to pay any resulting liability, up to a specified dollar amount.

## FIRST PARTY BAD FAITH

The leading case in first party bad faith is *Beck v. Farmers Ins. Exch.*, 701 P.2d 795 (Utah 1985), which should be reviewed by any attorney or adjuster involved in insurance claims. The duties to act in good faith and deal fairly are implied by law regardless of the policy language and cannot be waived by either party.<sup>2</sup> These duties apply equally to the insured as well as the insurer and each have parallel obligations to act in good faith.<sup>3</sup> A breach of the implied or express duties in a first party situation gives rise to



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a cause of action in contract, not tort. The relationship between the insured and insurer is largely adversarial.

## PRIVITY OF CONTRACT

"Privity of contract" between the claimant and insurer is generally a necessary element of a bad faith claim.<sup>4</sup> It is doubtful, however, that this requirement will relieve an insurer of its good faith duties toward an unnamed insured who is not typically in privity of contract. An unnamed insured would include, for example, an injured pedestrian who is entitled to first party benefits under the car owner's policy, or a subcontractor covered under a general contractor's policy. Though the

Utah courts have not clarified this issue, it would be dangerous for an insurer to disregard its good faith duties to an unnamed insured.<sup>5</sup> There is little rational basis and it would appear contrary to public policy to relieve an insurer of its good faith duties in such cases.

## DUTIES OF INSURED

The law imposes on the insured duties to comply with the general conditions of the policy, including timely notice, reasonable proof of loss and reasonable cooperation in the insurer's investigation. The insured's duties may also include providing recorded statements and submitting to independent medical examinations. The Utah courts have not yet fully defined the parameters of the insured's duties nor the effects of the breach of those duties.

Before pursuing a bad faith claim, a plaintiff's attorney should carefully consider whether the client has complied with these duties. An attorney who makes demand for insurance benefits when little verification has been provided and who then refuses to reasonably cooperate with the insurer, may jeopardize not only the client's bad faith claim, but also the client's claim for insurance benefits. The insured, however, is not necessarily bound to comply with all technical requirements, such as signing a particular proof of loss form. An insurer's undue reliance upon strict compliance with all policy conditions may in itself constitute a breach of its own good faith duties.

## DUTIES OF INSURER

The Utah Supreme Court has outlined five good faith duties of an insurer.

1. An insurer must diligently investigate to determine the validity of a claim.<sup>6</sup> It cannot sit back and wait for the insured to provide all of the verification. It must fairly investigate all areas, not just those favorable to the insurer's position. An insurer is held responsible for



the information that it would have obtained had it reasonably performed this duty.

2. An insurer must fairly evaluate the insured's claim.<sup>7</sup> To properly fulfill this duty, an insurer must first comply with its duty to investigate. A fair evaluation includes the evaluation of adverse as well as supporting facts. It may include legal questions, in which event the insurer should consider the general rules of construction applicable to insurance policies, i.e. if ambiguous or uncertain, the policy will be construed strictly against the insurer.<sup>8</sup>
3. The insurer should take prompt and reasonable action to reject or settle the insured's claim for fair value.<sup>9</sup> Under certain circumstances, unreasonable delays in payment can have catastrophic results, such as foreclosure or loss of necessary medical treatment. Fair value for the claim must be promptly offered. An insurer that first offers less than fair value, hoping to save money, may violate this duty.
4. An insurer must deal with lay persons

as lay persons and not as experts in the subtleties of law and underwriting.<sup>10</sup> Most insureds understand very little about policy provisions and legal principles. The insurer should fairly explain coverages, conditions and exclusions, including time limitations or other traps for the unwary insured.

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*"An insurer must deal with  
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5. The insurer must refrain from actions that would injure the insured's ability to obtain the "benefits of the contract."<sup>11</sup> These benefits are not necessarily restricted to monetary benefits but include intangible benefits such as peace of mind, protection against creditors,

avoidance of litigation, or freedom from personal intrusions.

#### **PRIMA FACIE CASE**

An insurer's rejection of a claim, absent any explanation, may constitute a prima facie case of bad faith.<sup>12</sup> Likewise, a refusal to bargain or settle, standing alone and without reasonable justification, may also present a prima facie showing of the insurer's breach of its good faith duties.<sup>13</sup>

#### **FIRST PARTY DEFENSES**

An insurer has many defenses to bad faith claims, including the following.

1. A breach of the insured's good faith duties may be the proximate cause of some or all of the claimed damages. If an insured refuses to cooperate or delays in responding to the insurer's reasonable requests, the insurer may not be responsible for the resulting damages. An insurer, however, must be cautious with this defense. The insured's duties, though somewhat interrelated, do not replace the insurer's duties to investigate and evaluate.<sup>14</sup> One

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Probate

Construction  
Litigation  
Collections  
Real Estate  
Estate Planning

of the "benefits of the contract" for the insured is having the insurer's superior resources, experience and knowledge regarding investigation and evaluation of claims. Instead of supporting this defense, requests by the insurer for more information may constitute evidence of the insurer's breach of its own duty to diligently investigate. Likewise, an insurer's denial based on the insured's non-compliance with a technical provision such as filing a formal proof of loss form, may instead support the insured's claim of bad faith. Strict compliance may not be required by law<sup>15</sup> and a denial based thereon may constitute an unfair claim practice.<sup>16</sup>

2. Policy and statutory limitations are enforced by the courts. The statutory limitation for an action on a policy is three years from the "inception of the loss."<sup>17</sup> An unresolved issue is whether the limitation period on a bad faith claim begins to run from the initial casualty loss, from the loss resulting from the bad faith actions, or from the breach of the good faith duties. It is common for complex claims to be resolved years after the casualty loss, particularly in a third party context. It would be unjust to start the limitation period on bad faith claims from the date of the casualty loss when the cause of action may not have even accrued until shortly before or after the running of the statute. In any event, such a limitation would not apply to related tort claims.<sup>18</sup>
3. If the underlying claim for insurance benefits falls within the application of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C.A. § 1001 *et seq.*, federal law preempts state law and the insured is limited to the remedies under the act.<sup>19</sup> Insurance offered through employment is generally subject to ERISA and bad faith law would therefore not apply.
4. The Utah Court of Appeals has recognized the "fairly debatable" defense, which means that if the law or facts of the case create a reasonable likelihood that the insurer's position would be upheld in court, the insurer has acted in good faith. In deciding this issue, the trier of fact considers all law and facts upon which a reasonable insurance company would have relied, including

opposing law and facts that should have been discovered through diligent investigation. This defense may justify the insurer's denial even if the court later determines the claim is valid.

An insurer may argue that if it believed the court would uphold its denial, this belief creates a fairly debatable issue. This subjective, self-serving interpretation is not the determining basis for the defense. The issue of "fairly debatable" must be decided upon objective standards in the industry. An expert's opinion that the issue was not fairly debatable, should be sufficient to create a factual issue for trial.<sup>20</sup> Likewise, an expert's report supporting the insurer's position may form the basis for a finding favorable to the insurer.<sup>21</sup>

#### **"FAIRLY DEBATABLE" DEFENSE QUESTIONABLE**

The Utah Supreme Court has not yet addressed the validity of the "fairly debatable" defense, and it is this author's opinion that the Court may not fully adopt the defense as pronounced by the Court of Appeals. This defense, though consistent with tort theories, appears to be inconsistent with contract law. The Utah Supreme Court has chosen contract law as the legal theory to address first party bad faith. In doing so, tort remedies (such as punitive damages) are restricted. In the same light, tort defenses such as "fairly debatable" should be restricted.

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*"[B]ecause of the unique  
circumstances in a third party  
setting, the law imposes  
additional tort duties on the  
insurer which are unavailable  
in the first party context."*

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A party's liability for breach of contract does not depend on whether the party had a "fairly debatable issue" as a basis for non-performance.<sup>22</sup> The intention underlying the breach, whether well meaning, malicious or inadvertent, is immaterial.

[B]reach of the covenant of good faith and fair dealing is an objective ques-

tion. As is true of virtually all other contractual breaches, the intention of the breaching party is immaterial.<sup>23</sup>

This concept was also recognized in Beck, "[T]he state of mind of the insurer is irrelevant."<sup>24</sup>

#### **FIRST PARTY DAMAGES**

Damages recoverable under breach of contract include "both general damages, i.e., those flowing naturally from the breach, and consequential damages, i.e., those reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made."<sup>25</sup> The following are examples of recoverable damages:

1. Loss of home, business, property or other assets;<sup>26</sup>
2. Loss of profits, however, these damages may be subject to the higher standard of proof by reasonable certainty;<sup>27</sup>
3. Loss of interest from the date the insurer should have paid;
4. Enhanced disability, impairment and other health problems caused by the denial of benefits and inability to obtain necessary treatment;
5. Mental anguish and suffering;<sup>28</sup>
6. Attorneys fees, court costs and other litigation expenses resulting not only from the underlying coverage disputes but also the bad faith action.<sup>29</sup> The attorneys fees are based upon the actual loss to the insured. Thus the actual contingency fee may be awarded.<sup>30</sup>

#### **ADVANTAGES OF CONTRACT THEORY**

Some commentators have suggested that Utah's contract approach to first party bad faith is more restrictive than the tort approach. Contract theory, however, offers the insured some advantages over tort theories, particularly in establishing liability. The Utah Supreme Court acknowledged the difficulty in determining the degree of bad faith necessary to sustain a tort claim and then stated in support of the contract theory:

From a practical standpoint, the state of mind of the insurer is irrelevant; even an inadvertent breach of the covenant of good faith implied in an insurance contract can substantially harm the insured and warrants a remedy.<sup>31</sup>

Evidence such as the intention or sin-



cerity of an adjustor's mistaken belief is therefore irrelevant and should be inadmissible. Likewise, whether the insurer's denial was "fairly debatable" should be inadmissible in a contract claim and should have no bearing on the consequential and foreseeable damages caused by its failure to pay.

### THIRD PARTY BAD FAITH

In a third party situation, the relationship between the insured and insurer is still contractual. The same duties of good faith and fair dealing therefore apply. However, because of the unique circumstances in a third party setting, the law imposes additional tort duties on the insurer which are unavailable in the first party context. The leading case on third party bad faith is *Campbell v. State Farm Mutual Auto Ins. Co.*, 840 P.2d 130 (Utah App.), cert. denied, 853 P.2d 897 (Utah, Dec. 23, 1992).

In this situation, the insurer controls the defense and settlement of third party claims against its insured. The insured is wholly dependent upon the insurer and relinquishes the right to negotiate in his or her own behalf. The insurer acts as the agent for the insured. Thus, the law imposes on the insurer a fiduciary obligation.<sup>32</sup> These fiduciary and other tort duties run directly to the insured, including an unnamed insured as discussed above. Typically, the third party plaintiff does not have standing to bring a direct action against the insured's insurance company.<sup>33</sup>

Where an excess judgment has been entered against the insured defendant, it is common in other jurisdictions to have the insured assign all bad faith claims to the injured party plaintiff in turn for some protection against execution on the judgment. It is unclear whether Utah law permits an assignment of all tort claims, such as a claim for general damages.<sup>34</sup> Until the courts clarify this area, the safest route for a plaintiff and exposed defendant is an agreement that the defendant will pursue the bad faith claims at plaintiff's expense and each will share in the recovery, in turn for a covenant not to execute.<sup>35</sup>

A co-insured who has been damaged by the insurer's bad faith, even though not directly sued by the third party, is also entitled to recover. For example, the wife of the defendant who is exposed to an excess verdict may also maintain a bad

faith action for her resulting damages.<sup>36</sup>

### THIRD PARTY DUTIES

The insurer in a third party situation has duties in addition to the first party duties.

1. The insurer must defend the insured against the third party claim. This duty is broader than the duty to indemnify and arises when any allegation in the third party claim, if proved, would result in coverage, even if such allegation is groundless, false or fraudulent. The insurer must make a good faith determination whether the allegations are covered by the policy.<sup>37</sup>
2. The insurer must indemnify the insured for a covered claim up to the amount of the applicable policy limit.

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*"The wise plaintiff's lawyer pursues bad faith claims with prudence.  
The wise defense lawyer respects the potential of bad faith liability."*

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3. The insurer must zealously protect the interests of the insured and treat the insured's interest as it would its own. It must accept a settlement offer within the policy limits when there is a "substantial likelihood of a judgment being rendered against the insured in excess of those limits."<sup>38</sup> Though not yet addressed by Utah courts, if there is an excess judgment, the law should impose a presumption that the insurer has breached its good faith duties. The burden should then shift to the insurer to prove otherwise.

The payment of an excess verdict does not necessarily protect the insurer. "An insurer's belated payment of a claim after intentionally refusing to pay it does not negate the insurer's liability for bad faith."<sup>39</sup>

### THIRD PARTY DEFENSES

In addition to first party defenses, the insurer may assert that the insured agreed to reject plaintiff's settlement offer. This defense is stronger if the insured was fully informed of the risks, understood them and expressly requested that the settlement offer be rejected. This may not necessarily absolve the insurer from all liability, since

the insurer may still be liable for its breach of other duties.

Unlike first party bad faith, which is contractual, third party bad faith is founded in tort and the insurer may claim comparative fault on the part of the insured pursuant to Section 78-27-37. Utah Code Ann. § 78-27-38 *et seq.*

### THIRD PARTY DAMAGES

The damages recoverable in first party claims apply in third party claims. An insured may also recover any excess verdict, together with interest and costs. If the insurer failed to properly defend, the insured may claim all defense fees, costs and related damages. Excess verdicts often injure the insured's reputation and credit rating, for which the insurer would also be liable.

### PUNITIVE DAMAGES

Punitive damages are not available in contract actions, including first party bad faith claims.<sup>40</sup> Thus, an insured in a first party claim must allege an independent tort before claiming punitive damages.<sup>41</sup> Third party bad faith, on the other hand, is a tort and can be the basis for punitive damages.<sup>42</sup>

### INDEPENDENT TORTS

The Utah Supreme Court has expressly held that an insurer's conduct, even in a first party context, may also constitute an independent tort, such as intentional infliction of emotional distress, fraud, negligent misrepresentation or a violation of state statutes.<sup>43</sup> Generally, a mere denial of first party benefits, without more, is insufficient to constitute a tort. If an insurer, however, is aware of devastating consequences to its insured and in bad faith maintains its denial thereafter, public policy should justify the imposition of tort remedies. The Utah court has not yet classified the kinds of actions that may or may not constitute such independent torts.

### NEW LEGISLATION

The legislature has passed a Claims Practice Act, wherein numerous duties of an insurer are prescribed. See 31A-26-301 *et seq.* However, trial courts rarely recognize claims under this statute due to 31A-26-303(5), which states: "This section does not create any private cause of action." The Insurance Department has likewise promulgated an Unfair Claims

Settlement Practices Rule, R590-89-1 *et seq.* However, these rules also provide a similar exculpatory provision in R590-89-3.

Bad faith litigation is very costly to all involved. A comprehensive statutory scheme is needed to reduce bad faith claims, provide adequate remedies for injured insureds and diminish the costly litigation necessary to judicially develop bad faith law on a case by case basis.

### TAX CONSEQUENCES

Lawyers involved in bad faith claims should be aware of lurking tax issues regarding the recovery. Generally, damages for bodily injury under tort theories are non-taxable; however, this favorable treatment may not apply to a recovery under first party bad faith claims because such claims are based on breach of contract.

Structured settlements of first party claims, especially those involving an assignment, create additional risks that the plaintiff will be deemed to have constructive receipt of the deferred payments, in which case the plaintiff may face immediate tax obligations. Plaintiff and defense counsel should familiarize themselves with the tax consequences and risks in this area. There are ways to reduce adverse tax consequences through creative settlements, which both parties can use to their advantage.

### CONCLUSION

The bad faith arena provides many opportunities and challenges for creative development of the law. Significant bad faith cases are vigorously defended and appeals are commonplace. The wise plaintiff's lawyer pursues bad faith claims with prudence. The wise defense lawyer respects the potential of bad faith liability.

<sup>1</sup>"Bad faith" is a label generically used in this article to mean the breach of the covenant of good faith and fair dealing. "Bad faith" is often used to describe a state of mind or intention, however it is not used this way here.

<sup>2</sup>*Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 798, 801 n. 4 (Utah 1985).

<sup>3</sup>*Beck*, 701 P.2d at 801.

<sup>4</sup>*Amica Mutual Ins. Co. v. Schettler*, 768 P.2d 950, 958 (Utah App. 1989); *Broadwater v. Old Republic Surety*, 854 P.2d 527, 535 (Utah 1993).

<sup>5</sup>*See, e.g., Utah Code Ann. § 31A-22-305(1)(c)* (Supp. 1993); or *§ 31A-22-308(3)*.

<sup>6</sup>*Beck*, 701 P.2d at 801.

<sup>7</sup>*Id.*

<sup>8</sup>*USF&G v. Sandt*, 854 P.2d 519, 523 (Utah 1993); *Zions First Nat'l Bank v. Nat'l Am. Title Ins. Co.*, 749 P.2d 651, 653, (Utah 1988); *Jorgensen v. Hartford Fire Ins. Co.*, 373 P.2d 580, 581 (Utah 1962).

<sup>9</sup>*Beck*, 701 P.2d at 801.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*Id.* at 798; *Canyon Country Store v. Bracey*, 781 P.2d 414, 421 (Utah 1989).

<sup>14</sup>*Zions First Nat'l Bank v. Nat'l Am. Title Ins. Co.*, 749 P.2d 651, 653 (Utah 1988).

<sup>15</sup>*Canyon Country Store*, 781 P.2d at 418; *Zions*, 749 P.2d at 655.

<sup>16</sup>*See, e.g., Utah Code Ann. § 31A-26-303(3)(g)* (It may be an unfair claims settlement practice for an insurer to delay "the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms which contain substantially the same information.") *See also Utah Code Ann. § 31A-21-312*, and R590-89-6 Rules of the Utah State Insurance Department ("Proof of loss to an insurer, if required, shall be considered timely if made according to the definitions and provision of this rule." Section R590-89-4.L. defines "proof of loss" as "reasonable documentation by the insured as to the facts of the loss and the amount of the claim.")

<sup>17</sup>*Utah Code Ann. § 31A-21-313(1)*. The limitation period cannot be reduced by a policy provision. *Utah Code Ann. § 31A-21-313(3)(a)*.

<sup>18</sup>*Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 798 n. 7-8 (Utah 1991).

<sup>19</sup>*Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed. 2d 39 (1987).

<sup>20</sup>*American Concept Ins. Co. v. Lochhead*, 751 P.2d 271, 273 (Utah App. 1988).

<sup>21</sup>*Callioux v. Progressive Ins. Co.*, 745 P.2d 838, 842 (Utah App. 1987).

<sup>22</sup>Perhaps one could argue that "fairly debatable" applies only to implied duties such as the covenant of good faith and fair dealing and not express duties. This appears to be a meaningless distinction. Whether express or implied, a breach of a contract duty is still governed by contract law. If tort defenses are mixed into contract law, what justifies the exclusion of tort remedies?

Apparently some of the confusion on this issue is caused by the labels "good faith" or "bad faith" which connote a state of mind. In Utah insurance law, these words do not mean a state of mind, but refer to a contract duty such as investigation, evaluation and prompt payment. The finding of "bad faith" as a state of mind is not an element of the breach of a good faith duty.

<sup>23</sup>*Canyon Country Store*, 781 P.2d at 421, n.6.

<sup>24</sup>*Beck*, 701 P.2d at 800.

<sup>25</sup>*Id.* at 801. This language regarding recoverable damages is not limited to the breach of only the implied good faith duties, but includes a breach of any express term such as the agreement to pay benefits. Theoretically, an insured need not even prove a breach of a good faith duty before being entitled to general and consequential damages, if a breach of the express terms has been established.

<sup>26</sup>*Id.* at 802.

<sup>27</sup>*Canyon Country Store*, 781 P.2d at 418.

<sup>28</sup>*Beck*, 701 P.2d at 802, n.6.

<sup>29</sup>*Id.* at 801-02; *Canyon Country Store*, 781 P.2d at 419-20; *Gagon v. State Farm Mutual Auto Ins. Co.*, 746 P.2d 1194, 1197 (Utah App. 1987); *Crookston v. Fire Ins. Exch.*, 817 P.2d 789 (Utah 1991). (The court in *Crookston* affirmed the attorneys fees and litigation expenses without comment, even though Fire Insurance contested *Crookston's* right to recover attorneys fees. Appellants Brief at 84-88.)

<sup>30</sup>*Canyon Country Store*, 781 P.2d at 420.

<sup>31</sup>*Beck*, 701 P.2d at 800.

<sup>32</sup>*See also Beck* at 799 and *Ammerman v. Farmers Ins. Exch.*, 430 P.2d 576, 578 (Utah 1967) (hereinafter referred to as "Ammerman I.")

<sup>33</sup>*Broadwater*, 854 P.2d 527, 535-36; *Pixton v. State Farm Mutual Auto Ins. Co.*, 809 P.2d 746, 749 (Utah App. 1991); *Auerbach Co. v. Key Sec. Police, Inc.*, 680 P.2d 740, 743 (Utah 1984); however, compare the concurring opinions of Justice Zimmerman and Durham in the case of *Republic Ins. Group v. Doman*, 774 P.2d 1130, 1132 (Utah 1989), where it is suggested that the injured party may need to be joined in an action

resolving coverage disputes.

<sup>34</sup>*Ammerman I.*, 430 P.2d at 578.

<sup>35</sup>This kind of "covenant not to execute" agreement was used in *Campbell v. State Farm*, 840 P.2d 130 (Utah App.), cert. denied, 853 P.2d 897 (Utah, Dec. 23, 1992).

<sup>36</sup>*Id.* at 143, n.27.

<sup>37</sup>*Deseret Fed. Sav. & Loan v. U.S. Fidelity & Guar. Co.*, 714 P.2d 1143, 1146-7 (Utah 1986).

<sup>38</sup>*Campbell*, 840 P.2d at 138; *Ammerman I.*, 430 P.2d at 579.

<sup>39</sup>*Campbell* at 140.

<sup>40</sup>*See, e.g., Gagon v. State Farm Mutual Auto Ins. Co.*, 771 P.2d 325 (Utah 1988); *Hal Taylor Associates v. Union America, Inc.*, 657 P.2d 743, 750 (Utah 1982).

<sup>41</sup>*Crookston*, 817 P.2d at 798. *Crookston v. Fire Ins. Exch.*, no. 920172, Utah Slip Op. October 7, 1993; *Hal Taylor Associates*, 657 P.2d at 750.

<sup>42</sup>*Campbell*, 840 P.2d at 142, n.24.

<sup>43</sup>*Beck*, 701 P.2d at 800, n.3.; *Culp Const. Co. v. BuildMart Mall*, 795 P.2d 650, 654 (Utah 1990); and *Crookston*, 817 P.2d 789.

## Fourth Annual Lawyers & Court Personnel Food & Winter Clothing Drive for the Homeless

Please mark your calendars for this annual drive to assist the homeless. Once again local shelters have indicated shortages in many food and clothing items. Your donations will be very much appreciated in alleviating these conditions.

Drop Date: December 17, 1993  
7:30 a.m. to 6:30 p.m.

Place: Utah Law & Justice Center  
645 South 200 East  
Salt Lake City, Utah

Selected Shelters: Traveler's Aid  
Shelter School  
Utahns Against Hunger  
St. Vincent de Paul Center  
Community Services  
Council (Food Bank)

For more information and details on this drive, watch for the flier or you can call Leonard Burningham at 363-7411 or Toby Brown at 237-1977.

*Please share your good fortune  
with those who are less fortunate!*



## Commission Highlights

During its regularly scheduled meeting of September 23, 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 August 26, 1993 meeting.
2. Jim Clegg welcomed Minority Bar Association representative, Robert Archuleta, to his first meeting and expressed appreciation for having him represent the Minority Bar at Commission meetings.
3. Jim Clegg presented James B. Lee with a resolution of appreciation and thanked him for his leadership and wisdom in directing the efforts of the Futures Commission and for his constant support of the Bar.
4. Jim Clegg also presented a resolution of appreciation to Hardin A. Whitney for sharing his time and talents to help pave the way for the involvement of the Bar in the emerging areas of alternative dispute resolution.
5. Jim Clegg reported on the Wyoming Bar Annual meeting which he recently attended.
6. The Board voted to suspend questions #15 and #21 on the bar examination application until receipt of a report from the expanded Character & Fitness Committee.
7. Clegg brought up for discussion the Bar's policy of reimbursing some expenses of visiting Bar Presidents to our Annual Meetings.
8. The Board agreed to have someone who is already planning to attend the ABA convention also attend the state caucus and represent the Bar Commission's interest.
9. The Board voted to reappoint Frederick N. Green to the Court Commissioners Conduct Committee.
10. The Board voted to authorize modification of the First Security Bank mortgage.
11. Jim Clegg referred to a recent article in *The Deseret News* regarding Judge

Noel and reviewed his response to the reporter.

12. The Board voted to approve the Law & Technology Committee Charges as proposed by Chair Jeff Walker.
13. John Baldwin reported on current Bar administrative activities. He indicated that licensing statistics currently show that there are 5,617 licensed attorneys.
14. Baldwin referred to the Bar Programs Monthly Activity Summary and the Utah Dispute Resolution project monthly report.
15. Baldwin distributed the July 1993 Bar examination results and statistics noting that the passage rate was 87%. The Board voted to approve the July 1993 Bar Exam candidates to be sworn in.
16. Collection Section Chair, Kirk Cullimore, appeared to discuss a committee proposal for a rule change to permit continuous garnishment proceedings. The Board voted to support the Collection Law Section proposal for a rule change which would allow continuous garnishment, and to have the section propose the rule to the appropriate body.
17. Budget & Finance Committee Chair Mike Hansen reviewed the August financial statements and answered questions.
18. Hansen noted that the Budget & Finance Committee met with the Deloitte & Touche auditors on September 14th and discussed the audit results.
19. The Board voted to authorize \$5,000 be moved from the contingency fund for the Ethics School.
20. Hansen reported that he attended the last Courts & Judges Committee meeting.
21. Jim Clegg welcomed Chief Justice Hall to the meeting. Chief Justice Hall addressed, generally, the Bar's concerns and issues regarding court consolidation. Judge Michael Murphy appeared and Jim Clegg asked him to share his views on the court consolidation issue. The Board voted to accept the recommendation of the Courts & Judges Committee to oppose legislation which would allow consolidation in Districts 1, 2, 3 and 4 prior to July, 1996. The Board asked Paul Moxley to have his special committee draft a posi-

tion paper outlining the reasons for the Board's opposition to consolidation.

22. The Board had a leadership luncheon meeting with all Section and Committee chairs.
23. Gary Sackett, Ethics Advisory Committee Chair, appeared to present Opinion No. 135 for Bar Commission approval. He indicated that the opinion addresses the ethical considerations of a judgment-creditor's attorney in a contingent fee case, 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. The proposed opinion concluded that 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. The Board voted to approve Opinion #135 with the addition of text stating "provided it does not violate the applicable state law."
24. G. Steven Sullivan reported on current activities of the Unauthorized Practice of Law Committee. Sullivan indicated that the committee has been very active and currently has 50 open files. He indicated that proposed UPL legislation has been drafted with sponsors' names in hand. The Board voted to hire counsel to attend to the UPL problem and work with Bar Counsel Steve Trost for six months.
25. The Board voted to authorize Steve Trost to communicate the Bar's position on criminalization of the practice of law by non-lawyers to the Legislative Affairs Committee.
26. Mark Webber, Young Lawyers Division President, reported on current Division activities.
27. The Board voted to authorize the Executive Committee to proceed with appropriate legal proceedings to stop an unauthorized practice of law.
28. Dennis Haslam reported that he and Mike Hansen had represented the Bar at the recent meeting to resolve the court user fee issue related to the Salt Lake Courts Complex. Haslam and Hansen recommended that as a result

of scant available choices the Bar Commission should support the committee's recommendation. The Board voted that they should be on record as being opposed to any court user fees because they are contrary to general public access and interest, but that this study represents the best current alternative available until other funding be in place, and we should concur with it.

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

## MCLE Reminder 31 Days Remain

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

On December 1, 1993, there remains 31 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.

## 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.

## Former ATLA President Visits Utah Blasts Legal Myths



Radio and television audiences in Utah came face-to-face and voice-to-voice with one of the nation's most vocal supporters of the civil jury system. Roxanne Conlin, immediate past president of the American Trial Lawyers Association, was featured on numerous radio and television shows during her visit to Salt Lake City, September 16-17. Ms. Conlin was the guest of the Utah Trial Lawyers Association (UTLA) and participated in their annual meeting.

Saying that "lawyer bashing has always been kind of a national indoor sport," Ms. Conlin addressed the myth that a litigation explosion is affecting competitiveness in the United States. "The problem that we face is

that every time we debunk one of the myths, they come up with new ones," she observed. She told UTLA members that she was concerned that big business was beginning to believe his own propaganda and was in danger of creating a self-fulfilling prophecy.

Ms. Conlin is an enthusiastic advocate for injured people. At a reception hosted by the Women Lawyers of Utah, she recalled being sexually harassed as a new lawyer. That experience shaped her desire to be an advocate for the underdog and disadvantaged. She encouraged all lawyers to represent victims of violence and injustice without regard for earning a fee.

Ms. Conlin also spoke to law students at the University of Utah and took calls from numerous radio listeners. Copies of Ms. Conlin's remarks are available through the UTLA office.

## Tax Seminar Held For "Non-Tax" Attorneys

*By Gretchen C. Lee*

A tax seminar for "non-tax lawyers" was held on October 28 at the Joseph Smith Memorial Building. Sponsored by the Utah State Bar and the Western Conference of Administrative Law, the seminar was intended to provide a practitioner with a basic background of the tax laws. Approximately 50 attorneys attended. Practitioners in the tax area gave presentations on various tax issues. The presentations included a brief overview of federal taxation, state corporate and income taxation, tax liens, bankruptcy issues, and state tax procedures.

Among the presenters was Mr. Leslie F. Paskett, Senior Vice President and Tax Manager of First Security Corporation, who reviewed the state corporate and income tax

laws. He explained that state corporate and income tax laws piggyback the federal law with various state modifications. Mr. Paskett discussed the major differences between state and federal individual and corporate income taxation, including several issues which arise in state taxation which do not exist in the federal arena such as unitary taxation and apportionment of income between states. He also pointed out that the Utah individual return form does not exactly follow the statutory framework of the Utah tax law because the starting place in state law is federal taxable income while the starting place on the state tax return form is federal adjusted gross income.



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## Discipline Corner

### ADMONITIONS:

(formerly known as  
"PRIVATE REPRIMAND")

On September 14, 1993, an attorney received an Admonition for violating Rules 1.3, DILIGENCE, 1.4(a), COMMUNICATION, and 1.5(a), FEES, of the Rules of Professional Conduct of the Utah State Bar. The Attorney was retained in May 1992, to represent a client in a divorce action in which, after the filing of the complaint, paternity became a contested issue. From June 1992, through January 1993, the client made twenty-four (24) attempts to contact the attorney but was able to speak to the attorney on only two or three occasions. During the entire period of representation, June 1992 through March 1993, the attorney sent only one letter to the client concerning the status of the case. The attorney failed to provide any meaningful legal service to address the paternity issue. The client, who has since moved out of state and is on public assistance, had to be placed on a waiting list for free legal assistance to start her divorce anew. In addition to the Admonition, the Ethics and Discipline Committee recommended that the attorney make \$200.00 restitution payment to the client. In mitigation, the Ethics and Discipline Committee considered the fact that the attorney had no prior discipline history and has since implemented office procedures to prevent similar problems in the future.

On September 14, 1993, an attorney received an Admonition for violating Rules 1.1, COMPETENCE, 3.3(a), CANDOR TOWARD THE TRIBUNAL, 3.4(c), FAIRNESS TO OPPOSING PARTY, and 8.4(c & d), of the Rules of Professional Conduct of the Utah State Bar. The attorney was retained in July 1992, to represent a client in a divorce modification action. In October 1992, the attorney, without service, sought an entry of default in the Petition to Modify Decree of Divorce. The clerk of the court notified the attorney of the Court's inability to enter a default. In aggravation, the Ethics & Discipline Committee considered the attorney's prior discipline history which includes a Private Reprimand in December 1992, for failure to communicate with the opposing counsel and communication with

person represented by counsel. The attorney acknowledges the error and, to some extent, attributes it to unclear instruction from the Court.

### PUBLIC REPRIMAND & SUPERVISED PROBATION:

On October 26, 1993, Attorney Steven Lee Payton was publicly reprimanded and placed on a one (1) year supervised probation, effective upon entry of the order, for violating Rule 1.3, DILIGENCE, of the Rules of Professional Conduct. Mr. Payton received \$1,500.00 in fees and was retained on August 2, 1988 to represent a client in a divorce action. Mr. Payton failed to file his client's Answer in the divorce action in a timely manner and consequently his client's default was entered. Thereafter, he moved to set aside the default and represented to the court that within five days he would file a memorandum in support of his motion. He failed to do so. Consequently, the court denied his motion and Mr. Payton's client was assessed \$350.00 in attorney's fees for the opposing party's expense of having responded to the motion. Mr. Payton then filed a Notice of Appeal. The Court of Appeal requested that the parties submit memoranda in support of their respective positions in response to the Court's notice to summarily dispose of the case. Mr. Payton failed to comply. The Court of Appeals

then affirmed the lower court's ruling. In addition to the public reprimand and one (1) year supervised probation, Mr. Payton was also ordered to pay restitution in the amount of \$5,000.00 for unearned legal fees and to compensate for the adjustment to the property settlement for the legal fees incurred by the appellee in responding to the appeal and pay costs in the amount of \$526.65.

### INTERIM SUSPENSION:

On September 24, 1993, James M. Barber was suspended from the practice of law pending the appeal of his conviction on March 9, 1993 in the United States District Court of the District of Utah of violating 18 U.S.C. 505, Seals of Courts, and 18 U.S.C. 1503, Obstruction of Justice, by knowingly forging and counterfeiting the signature of a judge of the United States Court of Claims. Mr. Barber's sentence included confinement for a term of ten months on each count, to run concurrently, fined \$1,000.00 and ordered to make restitution in the amount of \$5,000.00. This conviction resulted when Mr. Barber signed the name of a judge of the Court of Claims to a document entitled Findings of Fact, Conclusions of Law and Order of Dismissal dated April 16, 1991, and gave the document to his client representing it to be genuine.

## Utah Appellate Courts Discontinue "Brief Lodging" Policy

The Utah Supreme Court and Court of Appeals have announced that, effective January 1, 1994, the courts will discontinue the policy allowing a party to lodge an appellate brief.

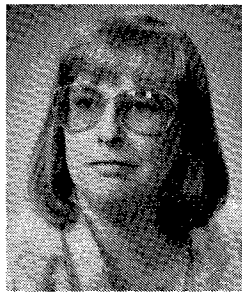
The lodging policy was designed to allow a party to submit a brief on the due date, although the brief did not meet all of the technical requirements of the Utah Rules of Appellate Procedure (e.g. improper spacing, inappropriate binding, single rather than double-sided print). The court considered the brief timely filed if the party corrected the errors within five days and submitted the corrected brief.

The courts have discontinued the policy because it resulted in confusion regarding the calculation of time to file a brief.

## 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.

## Delivery of Legal Services Selects Advisory Board to Oversee Legal Needs in Utah



By Leslee A. Ron  
*Delivery of Legal Services Committee Liaison*

On October 12, 1993, the Delivery of Legal Services and the Advisory Board met at the Law and Justice Center to discuss the legal needs within the state of Utah. The Advisory Board is comprised of members of the community and judiciary. Working together, the Delivery of Legal Services and the Advisory Board will address problems which currently exist, solutions explored and suggestions made to remedy the lack of legal services during the next year. The Delivery of Legal Services Committee of the Utah State Bar, chaired by Keith Kelly, past president of the Young Lawyers Division, addressed the Board and outlined the Committee's objectives and goals. The project before the Board is to develop a pro bono plan of action and oversee a statewide legal needs assessment to determine the best way to deliver legal services in Utah.

Laura Gray and Michael Zody, of the Delivery of Legal Services Committee, addressed the national assessment portion of the luncheon. The Board was told that the legal needs which go unmet throughout the nation vary between 57% and 86%, and averages 80% for all states. The major legal substantive areas which have the greatest needs are housing, consumer issues, health and medical benefits, public assistance benefits, domestic and employment issues.

Anne Milne, Executive Director for Utah Legal Services, and Russell Minas, Executive Director for Legal Aid, explained to the Board that based upon the 1990 Census Data there are 192,415 Utahns with incomes below 100% of the poverty level, 275,013 with incomes

below 125%, and 586,721 with incomes below 200% of the poverty level. Many of the clients which are currently served by these two agencies have incomes which are only a fraction of the Census guidelines. Approximately 41% of the persons below the poverty level had incomes less than 50% of the poverty threshold and another 25% had incomes between 50% and 75% and the remaining had incomes between 75% and 100% of the poverty threshold. Currently, there exists a six to nine month waiting period for services from these agencies. Legal Services has offices in Salt Lake, Tooele, Ogden, Provo, Price and Cedar City and takes cases which include housing, public benefits, consumer problems, elderly and some domestic issues. Legal Aid has an office in Salt Lake and takes domestic cases including, divorce, custodial and domestic violence.

Keith Kelly addressed the Board and stated that there needs to be an evaluation of unmet legal needs within Utah. Upon the completion of the evaluation, a plan of action would be submitted to the Board of Bar Commissioners in April 1994. The Board was asked to provide input as to whether or not an assessment needed to be done and if the Committee's objectives should be defined differently. Mr. Kelly suggested that the study consist of a division in the geographic regions, substantive legal areas and target populations. The Board discussed these issues and determined that the assessment had been done based upon current studies from the national data collected. Since the members of the Board come from all areas of the community, each had a specific comment

addressing their organization's needs. The Board determined that other meetings were needed to expand the current issues. It will meet again in January.

Members of the Advisory Board are: Chief Justice Gordon R. Hall, Judge Judith Billings, Judge Michael R. Murphy, Judge J. Thomas Green, Judge Glen Clark, Commissioner Michael Evans, H. James Clegg, President of the Utah State Bar, Charlotte Miller, Bar Commissioner, John C. Baldwin, Executive Director of the Utah State Bar, Debra Daniels of the YWCA, Karen Denton of Traveler's Aid, Teresa Hensley of the Catholic Community Services, Michael H. Keller of Van Cott, Bagley, Cornwall & McCarthy, Barbara K. Polich of Parsons, Behle & Latimer, Lee Martinez of Congressman Bill Orton's office, Mary Lou McMullen of Congresswoman Karen Shepard's office, Rosalind McGee of Utah Children, William Mortimer, President and Publisher of the Deseret News, Jay Shelledy, Editor of the Salt Lake Tribune, Linda F. Smith of the University of Utah Law School, Irene Sweeney and Sharon Walkington of the League of Women Voters, Bill Walsh, Executive Director of Utah Issues, Jeanetta Williams of the NAACP and Lou Tong.

The Delivery of Legal Services Committee is grateful to have these individuals assist us in this very important and worthwhile project. If any members would like to join in this worthwhile endeavor, please contact Keith Kelly, Chair of the Delivery of Legal Service Committee, at 532-1500 or call Leslee A. Ron, Delivery of Legal Services Committee Liaison, at 531-9095.



# Pro Bono Attorney of the Month

By Mary Jane Ciccarello

Pro Bono Co-ordinator, Legal Aid Society of Salt Lake



When the offices of the Legal Aid Society of Salt Lake were destroyed by arson fire in October, the law firm of Parsons, Behle & Latimer responded quickly. In no time at all, Barbara Polich — a senior partner at Parsons who also serves on Legal Aid's board of trustees — convinced her colleagues to underwrite a fundraiser cocktail party for the devastated agency. Organization of the party was willingly assumed by Helen Peters, an administrative secretary at Parsons, Behle & Latimer and an experienced and dedicated fundraiser.

This type of generous response and support is not unusual for Parsons, Behle & Latimer. The firm has long supported the Legal Aid Society and other non-profit organizations and activities. Several partners have served on Legal Aid's board of trustees (Francis Wikstrom and Barbara Polich have also served as presidents of the board), and their attorneys have traditionally provided pro bono representation for Legal Aid's indigent clients.

Approximately one fourth of the 228 pro bono attorneys associated with Legal Aid in 1992 were from Parsons, Behle & Latimer. Legal Aid deeply appreciates the attorneys who accept domestic relations cases from its waiting list. Although Legal Aid's staff attorneys opened 1,628 domestic relations cases in 1992, there remain over 750 income-eligible clients on the six to nine month waiting list for an initial appointment.

Why is Parsons, Behle & Latimer so dedicated to providing pro bono service to such groups as Legal Aid? According to Ms. Polich, the firm has a long tradition of public service and encourages all its employees to maintain a commitment to community involvement. The tradition has been an integral aspect of the firm's identity for over a hundred years, established by the examples of such public servants as George Latimer and Scott Matheson.

Parsons, Behle & Latimer does not

have any established pro bono policy, nor does it define pro bono service in any set manner. Rather, as Ms. Polich stresses, the firm is particularly interested in recognizing the individual talents of its people and letting each person find the type of community service that best utilizes those talents. Attorneys and staff members alike are involved in such activities as the annual Sub for Santa program, the representation of indigent clients, and serving on the boards of non-profit organizations. Anyone who engages in community service knows that he or she has the solid support and appreciation of the firm.

In 1992, Legal Aid singled out Michael Zody, a young associate at Parsons, Behle & Latimer, for special thanks. Mike came to Utah three years ago from Indiana. He is currently involved with employment and labor litigation. He had no previous exposure to public interest law or pro bono publico service. Yet when Fran Wikstrom encouraged him to consider community service, Mike seized upon the idea and has continued to run with it.

Last year Mike assumed four pro bono cases: a prisoner case as well as three

divorce cases for Legal Aid. He has been involved with the Tuesday Night Bar for the past two years. He also presently serves on the Utah State Bar's Delivery of Legal Services Committee which is investigating the possible development of a state-wide pro bono plan.

Mike believes that his pro bono work has been useful not only to his clients and the community but to himself as well. He has gained experience in areas of law new to him, and has had valuable exposure to local judges and the court system. He particularly appreciates the sense of closure involved with his pro bono cases: he can see a divorce case from start to finish, while cases in his usual practice often stretch on for years. Mike says he looks forward to continuing with his pro bono work and is grateful for the opportunity to provide quality legal services to those in need.

If you want more information about volunteer opportunities at Legal Aid, please contact Mary Jane Ciccarello at 328-8849. For general information regarding pro bono opportunities throughout Utah, contact Leslee Ron, Delivery of Legal Services Committee Liaison, at 531-9095.

## Meeting and Conference Rooms Designed For You

Members of the Utah State Bar, Law Firms, and Law-Related Organizations are invited to use the meeting and conference rooms at the Law and Justice Center. They are available daytime and evenings, and are ideal for

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For information and reservations contact the Utah Law and Justice Center Coordinator, 531-9077.

# Legal Aid Recovers From Fire

By Mary Jane Ciccarello  
Pro Bono Co-ordinator, Legal Aid Society of Salt Lake

On Saturday, October 16, 1993, the downtown office of the Legal Aid Society of Salt Lake was destroyed by arson fire. Two men suspected of starting the fire have been arrested. Police and investigators from the Bureau of Alcohol, Tobacco, and Firearms say the men were committing a burglary and set the fire to cover their tracks. They stole the office VCR, as well as a "boom box" and CD player that belonged to staff members. Even though no one was hurt, two birds and several plants died in the fire. Thus far, according to Russell Minas, Legal Aid's Executive Director, there is no evidence to believe the break-in and fire are linked to any Legal Aid cases or clients.

The damage resulting from the fire included the destruction of computers,



cable for the new computer system. Desks and other office furniture were donated by West One Bank; Parsons, Behle & Latimer; Spafford & Spafford; Callister, Duncan & Nebeker; Commercial Contract Group; Codale Electrical Supplies; Bryon Mock; and Cecilee Wilson. Several local attorneys gave plants. Mike Keller of Van Cott, Bagley, Cornwall & McCarthy and president of Legal Aid's Board of Trustees, donated copies of the Utah Code. He also gave the society valuable time and guidance during those difficult days following the fire. Van Cott graciously invited the staff of Legal Aid to meet at the firm before the new office space was found.

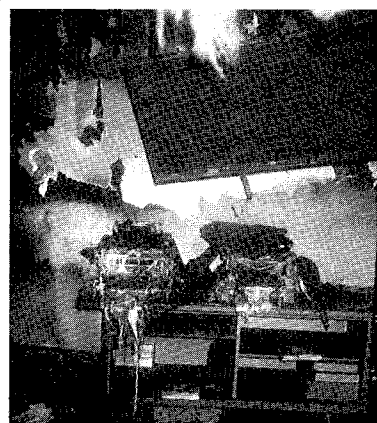
The Legal Aid staff has continued to represent clients at court hearings set before the fire. Because of the lack of computers and access to any data base, the office had to temporarily stop accepting new cases. At the time of this writing, Mr. Minas expected that the office would be accepting new domestic relations cases again by the middle of November.

The impact of the fire has been tremendous not only on Legal Aid, but on its clients and the legal community as well. Legal Aid is a non-profit agency that provides assistance to low-income people involved in domestic relations problems. Last year it served over 3,000 people, including over 1,000 victims of domestic violence who received legal assistance through Legal Aid's Domestic Violence Victim Assistance (DVVA) program. Despite the efforts of Legal Aid's staff and the attorneys serving in the agency's Pro Bono program, before the fire there remained approximately 750 income-eligible clients on the six to nine month waiting list for an initial appointment. The help of

pro bono attorneys will be needed more than ever to help relieve this staggering waiting list.

The DVVA program also should be back to normal functioning by the middle of November, according to its director, Stewart Ralphs. DVVA typically provides emergency legal representation to both adult and child victims of domestic violence by obtaining civil protective orders under the Utah Cohabitant Abuse Act. The orders direct the abuser to vacate the victim's residence and restrain the abuser from causing further harm under penalty of criminal sanctions.

Since the fire, DVVA has referred clients to the Third District Court to file pro se actions. DVVA was not able to represent clients because of the inability to do conflicts checks without access to its data base. The result has been to pack the court's calendar with pro se cohabitant abuse actions. The sheer number of these pro se actions has put a tremendous strain on the normal calendars of the Domestic Relations Commissioners. Legal Aid attorneys have been informally available at hearings for pro se parties and have provided voluntary consultation, but no representation. To get an idea of the number of clients affected, here's a quick run-down of DVVA's September statistics: 122 clients were seen by DVVA staff; DVVA filed 68 cohabitant abuse actions;



printers, copiers, telephone systems, office supplies, books, and furniture. The office space will have to be entirely gutted and rebuilt. Despite the severity of the fire, back-up copies of office records are safe although they've received significant smoke damage. Legal Aid has found temporary office space across the street at 220 South 200 East and moved in a few days after the fire.

The Salt Lake community has responded quickly and generously to the agency's desperate need for furniture and equipment. The LDS Church loaned table and chairs for immediate use in the new office. Office supplies were donated by Strategy Corporation and Office Supply Distributors. Kimball Electronics gave





15 of these filings were on behalf of abused children.

Even under the strain of all these pro se actions on the court's calendar, the Third District Court Clerk's office provided DVVA with substantial support in the days following the fire, including office space and access to all the court's office equipment, facilities, and resources.

The Utah State Bar also generously offered DVVA space and resources at the Law and Justice Center, but DVVA decided to accept the court's offer because of the convenience of its location.

Legal Aid staff members say the fire and its aftermath have been a nightmare.



But Legal Aid has managed remarkably well to establish a new office while continuing to provide necessary legal services to its clients. Legal Aid thanks all those who have been so generous with their time and donations. Anyone interested in making donations should call 328-8849. Still needed are typewriters, bookcases, computer tables, chairs, a VCR (used in training volunteers), a tv, and — the staff would love — a small refrigerator and microwave. Any attorney interested in providing pro bono legal assistance should contact Mary Jane Ciccarello, tpro bono co-ordinator, at 328-8849.

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## Utah Judge Elected President of The National Association of Women Judges



The Honorable Judith M. Billings, Presiding Judge of the Utah Court of Appeals was elected the 15th President of the National Association of Women Judges on October 11, 1993 at the

Association's annual meeting in Philadelphia. The 1,100 member association is composed of state and federal judges including Justice Sandra Day O'Connor and Justice Ruth Bader Ginsberg.

Established in 1979, the National Association of Women Judges is a non-partisan, non-profit, association dedicated to assuring diversity on the bench and in the profession. The Association is committed to securing gender fairness in the courts. Headquartered in Washington, D.C., NAWJ maintains 14 districts throughout the United States, and actively participates with The International Association of Women Judges. NAWJ funds judicial educational programs on domestic violence, and bioethics

through its tax-exempt foundation, The Women Judges' Fund for Justice.

The Association, following its 1993 annual meeting in Philadelphia, presented its papers to the Scheslinger Library in Women's Studies at Radcliff University. A reception honoring the occasion was held at the Supreme Court where both Justices O'Connor and Ginsberg spoke. Adding a bit of fun to the occasion, Judge Billings and the other officers presented the Justices with T-shirts. On the front they read "the Supremes". On the back "I'm Sandra not Ruth"; and "I'm Ruth not Sandra".

Judge Billings was a partner in the law firm of Ray, Quinney and Nebeker when Governor Scott Matheson appointed her to the district court bench. She served five years as a trial judge before Governor Bangerter appointed her as a founding member of the Utah Court of Appeals in 1987. Judge Billings also serves as an adjunct professor at the University of Utah Law School and is a member of the faculty of the National Judicial College. She has been President of the Salt Lake County Bar Association, the District Judges Associa-

tion, and the American Inns of Court. She is a Fellow of the American Bar Foundation and a member of the American Law Institute. Judge Billings received her juris doctorate degree from the University of Utah Law School, graduating Order of the Coif, with highest honors. She received a post graduate L.L.M. from the University of Virginia Law School in 1990 in judicial process.

When Judge Billings joined the National Association of Women Judges in 1982 only she and Justice Durham, also a past President of the Association, were members. In Philadelphia, at this year's annual meeting, eight women judges from Utah were present: Justice Christine Durham from the Supreme Court; Judge Pamela Greenwood from the Court of Appeals; Judge Leslie Lewis and Judge Ann Stirba from the District Court, Commissioners Sandra Pueler and Judith Atherton, and Judge Sharon McCully from the Juvenile Court.

Judge Billings' son Nick, who lives in Washington, D.C., also joined the celebration in Philadelphia.

## 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 December and January are:

### DECEMBER

- Dec. 6 - Credit Card Scams - Telemarketing
- Dec. 13 - Ethics
- Dec. 20 - Product Liabilities/An Overview
- Dec. 27 - Mediation & Arbitration

### JANUARY

- Jan. 3 - Federal Rules of Discovery
- Jan. 10 - Notary Case Law Update
- Jan. 24 - Unemployment Compensation
- Jan. 31 - Food Stamps & Other Food Assistance



# **UTAH STATE BAR**

## **Mid-Year Meeting**

MARCH						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
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## Profile of Judge Michael J. Hutchings

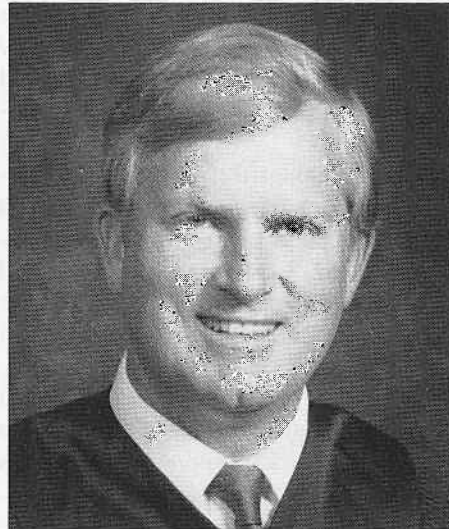
By Clay W. Stucki

### BACKGROUND

Judge Hutchings was appointed to the Third Circuit in 1983, only four years after receiving his J.D. from the J. Reuben Clark Law School. Upon graduation from law school, Hutchings went to work for Senior & Senior in Salt Lake City as a litigator. He later became City Attorney/Prosecutor for West Valley City prior to his appointment to the bench. At the age of thirty, Hutchings was the youngest of a group of capable, young (thirty-something) judges who were appointed by Governors Matheson and Bangerter during the 1980's. Governor Matheson's confidence in Hutchings was well justified. In 1988, Hutchings was named Circuit Court Judge of the Year, and in his 1990 Judicial Performance Evaluation, he was rated in the highest category in twelve areas, including knowledge of law, courtroom demeanor, case preparedness, impartiality, and clarity of decisions.

Judge Hutchings was motivated to become a judge by the same desires that drove him to become a lawyer — the desire for fairness and justice in both society and the lives of its individuals. Hutchings left the practice of law to become a judge so he could "call 'em the way he seems 'em" instead of being constrained to advocate particular positions. As a judge, the law is his client. Hutchings says his role as a judge has generally met his expectations. He enjoys the challenge of trying to reach a just decision in each case, and he looks forward to coming to work each day. He also enjoys the control he has over his schedule and is grateful that he no longer has to keep track of billable hours and collect fees from clients. On the down side, Hutchings finds his job trying when he must come down hard in sentencing a criminal defendant or render other decisions that have a severe impact in the lives of litigants.

During his career, Judge Hutchings believes he has become more "street wise." At the same time, however, he



*Judge Michael L. Hutchings  
Third Circuit Court*

Appointed:	1983, by Governor Scott M. Matheson
Law Degree:	1979, Brigham Young University
Practice:	Associate with Senior & Senior 1979-1980; City Attorney/Prosecutor for West Valley City 1980-1983
Honors:	Circuit Court Judge of the Year 1988; BYU Law School Alumnus of the Year 1989; Zion's Bank Up and Comer Finalist in Law 1991
Activities:	Statewide Transition Committee for Consolidation of the Courts; Vice Chair of the Utah Tomorrow Justice Committee; Utah State Bar Fee Arbitration Committee; Ensign Peak Foundation Board of Trustees; BYU Law School Alumni Board; <i>Utah Bar Journal</i> Board of Editors; Master of the Bench for the A. Sherman Christensen American Inn of Court

observes that he probably has become more understanding and compassionate. Hutchings opinions on most subjects are more dynamic than static; he finds that his views change as he obtains new information.

Judge Hutchings is a family man raising six children with his wife Terry. He loves to travel with his wife and family, meet different people and experience different cultures. Each year, the Hutchings family makes at least one trip together in their motor home, and in addition, the Judge and his wife take a separate trip by themselves. Hutchings also coaches Little League Baseball teams

and is a leader for a local group of Boy Scouts.

### VIEWS ON OUR LEGAL SYSTEM

The protection and vindication of individual rights and the prominence of the Rule of Law in resolving disputes stand out in Judge Hutchings' mind as two of the greatest assets of our legal system. He appreciates that our system is designed for and values the individual and allows justice to be based on the particular facts in each case. Hutchings is always more concerned with doing justice in the individual case before him than with making broad-based policy decisions.

In the area of criminal sentencing, Hutchings appreciates his judicial discretion to allow for differences in crimes and defendants. Although the sheer volume of cases puts pressure on him to engage in assembly line justice and simply give standard sentences, Hutchings sincerely tries to analyze each situation and determine what will motivate a defendant to change his behavior. In the Judge's experience, each defendant responds differently to various sentencing options and has distinct sentencing needs. Hutchings believes both society and individual defendants are ill-served if sentences are not crafted to fit the individual. He has serious misgivings about the federal sentencing guidelines and the trend it may set for states.

In his ten years on the bench, Judge Hutchings has seen numerous changes in the legal system and judiciary in Utah and emphatically states that the Utah legal system is headed in the right direction. A decade of experience as a judge, service on the Statewide Transition Committee for Consolidation of the Courts, working as Vice-Chair of the Utah Tomorrow Justice Committee, and serving on the Judicial Council have provided Hutchings with valuable insight into our legal system. Hutchings cites increased victims' rights, improvements in technology (e.g., computers), continuing advancements in the



quality of advocacy, better judicial education and compensation, individual calendaring, and increased court security as examples of positive changes in our system. (For a more detailed discussion of these changes, see Michael L. Hutchings, *A Decade of Change in Utah's Judiciary*, Utah Bar Journal, June/July 1993, at 39.)

Judge Hutchings wishes, however, that more litigants told the truth. Hutchings believes that they often burden the finder of fact with an extremely difficult job by often telling only ninety-five percent of the story and omitting key information. They leave the judge or jury to reconstruct the complete story from a disorganized and confusing set of facts. Despite this problem, Judge Hutchings is a true believer in the jury system and generally is impressed with the wisdom of the jury. Although he does not always agree with the jury in every case, he respects its abilities.

#### **PRACTICE STEPS FOR JUDGE HUTCHINGS' COURTROOM**

Any attorney appearing before Judge Hutchings (or any other judge for that matter) should take the time to review Judge Hutchings' *Twenty Tips for Successful Courtroom Advocacy* as published in the January 1992, *Utah Bar Journal*. Particularly annoying to Judge Hutchings is the habit of coming to court without a calendar or planner for scheduling. An attorney appearing in Hutchings' court should always be prepared to set a date for a future hearing or trial and never assume that there will be no future proceedings. After lecturing and writing on this pet peeve for several years, Hutchings is considering imposing sanctions against attorneys who show up without their calendars.

Another common mistake observed by Judge Hutchings is the admission and detailed examination of documentary evidence without providing the judge with a courtesy copy, an especially serious mistake if the judge is the finder of fact. Obviously, it is much easier for triers of fact to understand the important points about a document if they have the document at hand. Hutchings is amazed that attorneys would miss this opportunity when a witness is explaining the document's meaning.

Although not a stickler, Judge Hutchings does try to enforce the rules of

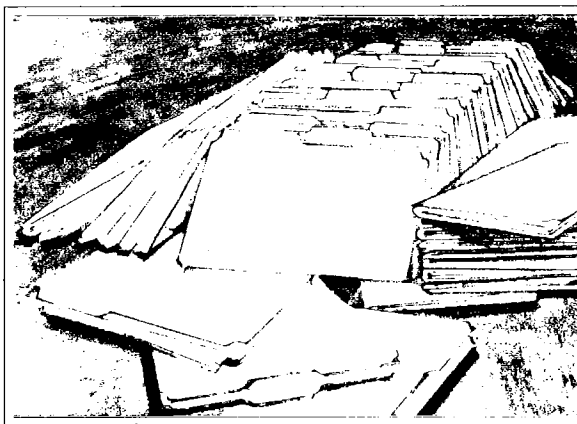
evidence in his court. He will rule on every objection according to the rules, but he admits feeling irritated when an attorney objects for no meaningful purpose. Even though an objection may be technically correct, Hutchings admonishes attorneys to forego objections unless they affect the case. For example, if a leading question is relatively harmless, Judge Hutchings prefers that an attorney save his objections. He feels that an attorney who makes too many objections shows poor judgment and "waters down" the objections that are actually important.

Judge Hutchings truly appreciates attorneys who have prepared their cases well and have narrowed the issues which must be litigated. He thinks that thoughtfully framed issues or questions presented are just as important in the trial court as they are in appellate briefs or legal memoranda. According to Hutchings, a rifle shot approach at trial is more effective than a shotgun blast. He also appreciates attorneys

who help educate him on the law relevant to the case, and suggests that attorneys provide him and opposing counsel with highlighted cases supporting their view of the law. He says that attorneys sometimes forget that judges are broad generalists who, despite their best efforts, cannot keep current on every development in the law.

Perhaps because he became a judge in the early stages of his career, Judge Hutchings has a special appreciation of what it is like to be a young trial lawyer. He advises new attorneys to try misdemeanor cases to gain trial experience, and suggests DUI cases because they are largely fact-specific and involve opinion testimony from experts as well as technical or scientific evidence. Hutchings also counsels young attorneys not to be intimidated by the court or opposing counsel or afraid to ask questions. He tells new attorneys, "Don't worry; I won't bite," unless, of course, they forget to bring their scheduling calendars.

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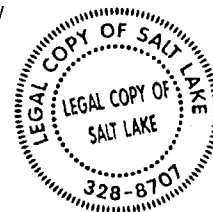
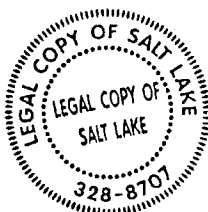


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## Juvenile Court: A Future Or An End In A Family Court

By Judge L. Kent Bachman

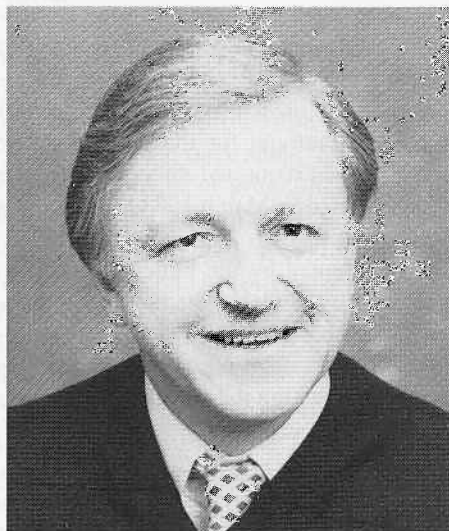
### HISTORY

As early as 1852, legislation in Utah was enacted to govern the handling of children's cases. In the years following, laws were enacted concerning the processing of children's cases. In 1903, in Cook County Illinois, the first known juvenile court was established.

In Utah in 1905, juvenile court proceedings were established in each of the counties, presided over by the district court judges. These proceedings in 1907 were changed, when Utah established a separate, statewide juvenile court, presided over by judges who were not required to be law trained. In 1917, all juvenile judges and probation officers were terminated, with the exception of those sitting in Weber, Morgan, Davis, Salt Lake, Tooele and Summit Counties, and all school superintendents in the balance of the state were appointed juvenile judges. By 1956, all juvenile court judges in their respective counties were required to be members of the Utah State Bar.

The juvenile court was initially under the direction of the executive branch of government, entitled, the Juvenile Court Commission, which commission consisted of the governor, attorney general and the state superintendent of public instruction. Then in 1941, the power to appoint and supervise was transferred to another executive department, the Public Welfare Commission. In 1963, 56 years after the creation of the juvenile court, the control by the executive department was declared unconstitutional as a violation of the separation of powers provision of the Utah Constitution.

Finally, the Juvenile Court Act of 1965 was enacted, creating a separate and independent state juvenile court within the judicial branch of government. This court was a *court of law* with a board of juvenile court judges who were responsible to draft rules of practice, procedures and general policies for the administration of the court.



*JUDGE L. KENT BACHMAN, graduated from the University of Utah in 1965, with B.S. degree in Economics. He received his juris doctor from the College of Law at the University of Utah in 1968. He practiced law in Ogden, Utah in both a private law practice and public law as a Deputy Weber County Attorney and Chief Assistant Corporation Counsel for Ogden City. He commenced his judicial career as a referee in the 1st District Juvenile Court and was appointed as a judge in the 1st District Juvenile Court in 1977. He is presently a juvenile court judge in the 2nd District Juvenile Court, a member of the Board of Juvenile Court Judges, and a member of the Family Court Task Force.*

From time to time as the court has evolved, through both criticism from outsiders and benefits from the legislature, its jurisdiction has been lessened and expanded. The court has jurisdiction over all violations by juveniles of federal, state or local laws including certification to adult courts, recall jurisdiction over most felony cases for children where direct filing procedures were utilized; and jurisdiction over certain serious traffic offenses, fish and game and boating violations. The court has jurisdiction over abuse, neglect and dependency of children cases, termination of parental rights cases, protective orders for

children in abusive circumstances, concurrent jurisdiction over contributing to the delinquency of minor cases, and now for the past several years, adoption jurisdiction where the rights of the parent have been terminated.

In furtherance of the purposes of the juvenile court in the area of family problems, the juvenile court has jurisdiction to decide as a final judgment issues relating to custody, support and visitation, where the juvenile court for any reason has jurisdiction over the child.

The jurisdiction of the juvenile court is now under study as to how it should be used or developed as a family court. A family court task force has been created for this purpose and the balance of this article shall address past studies and the present study.

### FAMILY COURT STUDY REVISITED

The Utah Family Court Task Force is not the first to study the issue of the family court in Utah. In 1966, the Board of Juvenile Court Judges published a position statement suggesting the creation of a family court. The Board recommended: 1) an integrated court system rather than a multiplicity of courts; 2) the protection of children and preservation of family life; 3) continuity of service and treatment; 4) effective use of facilities and personnel and the reduction of administrative costs; and 5) the development of uniform procedures.

In 1969, the legislature passed the Family Court Act which act empowered the individual counties to establish a family court division. The act provided to the court the opportunity to establish a counseling program in an attempt to help parties reach a reconciliation. This act was not well received and was only implemented in Salt Lake County from July of 1969 to December, 1973.

The legislature, in 1971, created a "family court commission to study and



prepare the necessary legislation to integrate the district and juvenile courts of the state of Utah . . ." A unified courts advisory committee was then created and subsequently recommended that a family division of the district court be established. In further studies in 1971, it was recommended by the U.S. Department of Health, Education, and Welfare that there should be established a statewide family court in Utah. Nothing resulted from the recommendations from these two sources.

The Utah State Bar in 1972, recommended that the juvenile court be abolished and that a family division of the district court be created for juvenile and family related matters. This recommendation was based on the following perceived problems: 1) confusion and conflicts in the jurisdiction of the courts; 2) the perception that the juvenile court was inferior to the district; 3) the juvenile court was burdened by an overload of behavioral problems of children which responsibility could be better left to counseling through public and private agencies; and 4) duplication of travel and administrative costs.

In 1975 and 1977, the legislature directed studies on the effectiveness of the juvenile court and a study on the adoption of a family court, which studies were not completed or could not reach a conclusion on certain issues. Then in 1978 the office of legislative research recommended in the alternative the creation of either a family court in the district court, a separate family court, or a separate family court in the urban judicial districts.

In 1980, the Board of Juvenile Court Judges once again recommended the creation of a family court. A "families in court" task force in 1984 and 1985, recommended statutory changes within the existing court structure. The juvenile court responded by suggesting a delay in the consideration of a family court until the statutory changes could be evaluated. If evaluations were completed or if conclusions were made, nothing has resulted in any substantial legislation.

Therefore, we are at the same position again in 1993, and raise the question, where do we go from here after what our predecessors have done?

#### **FAMILY COURT TASK FORCE: 1993**

In the spring of 1992, the judicial coun-

cil created a task force of judges, attorneys, and guardians ad litem, entitled "**The Juvenile Court Organization and Jurisdiction Task Force**" to study of the possible integration of the juvenile court and the district court, in light of the consolidation of the circuit and district courts. The task force chairperson is attorney James B. Lee with Judge Judith M. Billings as Vice-Chairperson. The study started and concluded, after numerous meetings, that there were insufficient reasons to suggest that a restructuring of the juvenile court as a separate department or division within the district court would be beneficial for the judiciary. The task force then requested direction from the judicial council in March 1993 to consider a study of the merits of a family court. Consent was granted by the judicial council to proceed with a study on the merits of family court. The study is open without any preconceived placement of the court, either as a department within the district court or as a free standing court.

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*"Therefore, we are at the same position again in 1993. . . where do we go from here after what our predecessors have done?"*

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On April 9, 1993, the newly named task force, **The Family Court Task Force** met for the first time to establish an agenda of meetings and to set topics for discussion of what the purpose of a family court would be and what jurisdictions should be included. It was the direction of the newly formed task force to expand the number of members on the task force to include a domestic relations commissioner, citizens, additional members of the bar, and a juvenile court administrator.

Major areas of concern which I will address in this article are being studied during a full day session on alternating months and include discussions and study in the following areas:

1. Jurisdiction
2. Services associated with a family court
3. Procedures of a family court
4. Organization and administration of a

family court

5. Transition issues

6. Distribution of the interim report to the judicial council, boards of judges and bar.

7. Task force consideration of public comments and amendments and legislation and rules as necessary

8. Final report and possible legislation and rules

Jurisdiction, services associated with the court, procedures and organization are now being considered and nothing has been finalized or completed as of this time for any definite proposal. The following have been studied and debated and accepted in interim form for acceptance or further consideration and debate by the task force.

#### **PURPOSE OF A FAMILY COURT:**

No purposes clause has been finalized and accepted by the task force which would include the objectives of such a court, but the overview of the court should include a statement that "proceedings relating to children and families are unique among legal proceedings. The purpose of the family court is to improve the manner in which the justice system handles these proceedings through an appropriately coordinated family court model." The objectives of a family court are to include: 1) improve accessibility to the court; 2) maintain continuity within the court in the resolution of family law issues; and 3) dispose of family law disputes in a just, equitable and prompt manner." The task force will be concluding a specific purpose in the future discussions.

#### **JURISDICTION:**

It is essential that the court, the practitioner and all potential participants of the court understand what the jurisdiction of the court is. The jurisdiction of the proposed family court shall include those areas which are found both in a domestic relations court and a juvenile court. The jurisdiction as considered under study by the task force may include the following:

- 1) divorce and annulment
- 2) separate maintenance
- 3) cohabitant abuse protective orders
- 4) uniform reciprocal enforcement of support act (URESAs)
- 5) uniform child custody jurisdiction act (UCCJA)



- 6) child custody habeas corpus
- 7) paternity
- 8) non-dissolution property distribution — common law marriage, "palimony"
- 9) adoption
- 10) guardianship
- 11) name change
- 12) consent to marry
- 13) modify birth certificate
- 14) petition to modify or enforce domestic order of custody, visitation, support, alimony, or property distribution, including grandparent visitation.
- 15) status offenses: truancy, ungovernable, including runaway, curfew, and possession of alcohol or tobacco.
- 16) juvenile delinquency
- 17) legal/medical issues, except issues of a criminal nature
- 18) conservatorships involving children
- 19) adult conservatorships and adult guardianships

The family court study is directed toward the acceptance of the foregoing areas in a family court by granting to that court exclusive jurisdiction over them. The foregoing shall exclude all criminal issues except those issues arising out of acts by children under the age of 18. This discussion did not include consideration of acts by juveniles, over the age of 16, who commit capital offenses or 1st degree felony offenses when the same are directly filed by the respective county attorneys.

#### **SERVICES AND PROGRAMS ASSOCIATED WITH A FAMILY COURT**

A variety of services are both suggested and required for placement in a family court. The following are being discussed and suggested for consideration either attached to the court or available to the court from both the public and private sectors.

##### **A) Current programs administered within the courts:**

- 1) court data base
- 2) juvenile court probation, intake and supervision
- 3) community service/work restitution (juvenile court)
- 4) judicial education
- 5) guardian ad litem training
- 6) court commissioners
- 7) collection of fines
- 8) case management procedures

##### **B) Current programs administered**

##### **by contract with the court:**

- 1) guardian ad litem
- 2) divorce education (pilot)
- 3) divorce mediation (pilot)
- 4) child support enforcement program (pilot)
- 5) court interpreters
- 6) traffic school

##### **C) Current programs external to courts:**

- 1) Marital property evaluations; 2) child custody evaluation; 3) mental commitment evaluations; 4) interagency coordinating council; 5) adult protective services; 6) executive branch data bank; 7) ORS child support enforcement program; 8) indigent defense fund; 9) department of mental health; 10) psychological evaluations; 11) crisis intervention; 12) pretrial services; 13) foster care reviews; 14) medical services: immunization, prenatal, and dental; 15) department of human services: case management services, in home services, transportation, division of family services and division of youth corrections; 16) children's justice center; 17) domestic violence shelters; 18) domestic violence counseling; 19) job counseling; 20) truancy counseling; 21) shoplifting classes; 22) alcohol and drug evaluation and counseling; 23) private probation; 24) victim restitution; 25) shelter care (emergency); 26) detention; 29) work farms, etc.

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*"Many issues of importance lay ahead in the study of the family court philosophy to determine if it is possible and practical."*

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##### **D) Programs for potential development:**

- 1) domestic intake.
  - 2) community law program.
  - 3) domestic violence victim.
  - 4) private collection of child support.
  - 5) uniform forms for simple proceedings.
  - 6) alternative dispute resolution.
  - 7) non-adversarial procedures.
  - 8) divorce education programs in non-divorce cases.
- The task force has just begun to study and have hearings on the foregoing services

and to discuss where such services should be placed or continued within a family court system. The primary course and direction of this study is to spell out the necessity of such services and programs for the best interest of the child and parents within a family court.

#### **PROCEDURES OF A FAMILY COURT**

Procedures are important for the user of the court whether that user is an attorney, a participant, an agency, a resource or a judge. The development of appropriate procedures is not simply to continue to do what has been done forever in domestic relations or in the juvenile court in the past. The important thing is to take the best from both courts and then to develop new, easier, and more efficient ways of doing this important work. The following procedures have been and continue to be debated without any ultimate conclusion.

1) Trial of juveniles with adult responsibility. Direct filing into the adult criminal court or a hearing in the family court to determine whether the child should be certified to the adult court for trial.

2) Trial of juvenile cases in accordance with the rules of criminal procedure.

3) Intake probation services for possible non-judicial adjustment of delinquency.

4) Confidential or public trials of family law disputes.

5) Appeals from the family court.

6) Calendaring options, master calendar, an individual calendar, or a direct calendar (one family — one judge — one staff).

7) Role of court commissioners.

8) Case management.

9) Hours of operation.

10) Non-adversarial procedures.

Further study and input are necessary in the above areas for consideration before a recommendation will be able to be formulated. The responsibility of the task force is not taken lightly and only after a full study with input from the experts in these many and varied areas will the task force be able to conclude its work.

#### **SUMMARY**

Many issues of importance lay ahead in the study of the family court philosophy to determine if it is possible and practical. These same issues, if in the best interest of the child and the family, must then be put into a sculpture as near to perfect as possi-

ble, with an eye single to that goal – the creation of a court in the best interest of all of the parts of the family.

Transition issues, distribution of an interim report to the judicial council, the boards of judges, all judges, and the bar, and public comment time lie ahead in the study by the task force. It is essential that all who are impacted or will be impacted have an open mind to do something positive for this difficult project. The task force is contributing time and the staff is considering all pertinent issues with adequate statistical and informational resources.

My thanks goes to all of the staff of the office of the court administrator, and Timothy M. Shea, the chief administrator assigned to the task force, who has summarized the work and interim conclusions which I have identified in this article.

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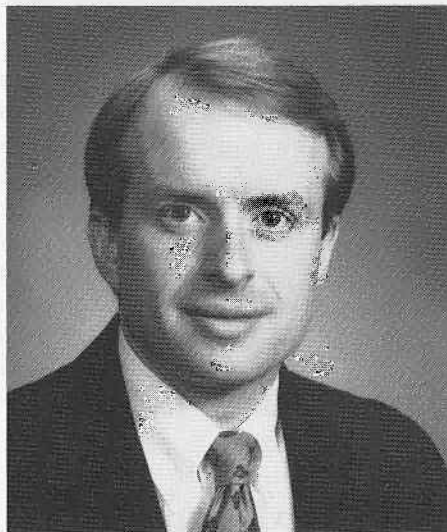
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*have become associated with the firm.*

# CASE SUMMARIES

By Scott A. Hagen



## RESTITUTION

It is a violation of due process rights under the Utah Constitution to order restitution for a traffic offense that involves only negligence, not criminal intent, at least where the defendant's civil liability is not clear as a matter of law and where commission of the crime does not clearly establish causality of the injury or damages.

*State v. Robinson*, 222 Utah Adv. Rep. 73 (September 29, 1993) (Judge Russon).

## CONTRACTS

A notice of termination that purports to be retroactive, in violation of a contract requirement that such notice be given 90 days in advance, is not completely ineffective. Rather, it merely constitutes notice that is effective after the lapse of the 90 days.

*Promark Group, Inc. v. Harris Corp.*, 222 Utah Adv. Rep. 29 (September 17, 1993) (Judge Jackson).

## FIFTH AMENDMENT

A defendant's Fifth Amendment rights were not violated when he made an unsolicited confession during the execution of a valid search warrant. The officer executing the search warrant told the defendant that defendant was being arrested for a robbery, and that the officer was looking for the weapon and clothing that had been used during the offense. The defendant then made admissions prior to being

advised of his Miranda rights. The admissions were properly admitted because the officer's statements to the defendant were not the "functional equivalent" of custodial interrogation.

*State v. Hayes*, 222 Utah Adv. Rep. 31 (September 17, 1993) (Judge Greenwood).

## HABEAS CORPUS

The 90-day statute of limitations applicable to state court writs of habeas corpus violates the Utah Constitution because the statute does not achieve a legitimate statutory objective by a reasonable means. The court did not indicate a permissible period of limitations.

*Currier v. Holden*, 222 Utah Adv. Rep. 35 (September 17, 1993) (Judge Greenwood).

## REAL PROPERTY

A court errs by conditioning one party's quiet title on that party's paying another party for improvements that had been made to the property. This court should quiet title and then allow a counterclaim for the value of the improvements.

The Public Service Commission has jurisdiction to determine the value of a water system if that determination would invoke the public interest and serve the PSC's objectives, which are to assure a utility's continuing ability to serve its customers and to balance the interest of having financially sound utilities against the

interest in having essential services provided at a reasonable cost.

Additionally, the PSC has jurisdiction to determine the value of the property of every public utility. Thus, in this case, the PSC had jurisdiction to determine the value of a well lease that encumbered a water system.

*Hi-Country Estates v. Bagley & Co.*, 222 Utah Adv. Rep. 50 (September 22, 1993) (Judge Garff).

## CIVIL PROCEDURE

A court order naming an individual as beneficiary of an account, and further describing the individual as "the spouse of the protected person," did not require that the individual remain married to the protected person in order to retain his status as a beneficiary.

An order may not be made nunc pro tunc for the purpose of avoiding the expiration of a time limit. A nunc pro tunc order, rather, is to clarify or correct the record so that the record reflects what actually took place.

*In re Leone*, 222 Utah Adv. Rep. 60 (September 21, 1993) (Judge Billings).





## Beloved and Jazz

By Toni Morrison

Reviewed by Betsy Ross

**T**oni Morrison, a writer to whom the descriptors American, female, and black apply, was recently named the winner of the 1993 Nobel Prize for literature. She joins such international names as Thomas Mann (*Magic Mountain*, *Dr. Faustus*), Naguib Mahfouz (*Midaq Alley*), and Gabriel Garcia Marquez (*One Hundred Years of Solitude*, *Love in the Time of Cholera*).

It was not "political correctness" that engineered this choice, although I suppose she carries not one, but two "pc" signatures, being both female and black. She is one of the better writers I have read in the past five years (of course, much of the past five years has been spent reading such things as Ronald Dworkin's "Law's Empire," so the praise may be somewhat muted).

Reviewed here are *Beloved*, for which Morrison received the Pulitzer Prize, and *Jazz*, her most recent novel, published in 1992. They are both stories of suffering, of presences and absences, of confinement and freedom, of acceptance and resistance.

*Beloved* begins as a tale of slavery in the 1860s. The novel is haunted from the beginning by an occurrence that is not fully revealed until the middle of the book. Sethe, the mother of *Beloved*, has slit baby *Beloved's* throat in order to save her from a life of slavery. Who can imagine having been forced to such an act? Yet, in the context of the story Morrison tells, it is neither a gruesome nor wholly unexpected act. In fact, our sympathies are drawn toward the mother for the life she lived that led her to kill her own baby.

*Beloved* appears in the novel as a live baby, as a ghost, and later as a disguised (and "resurrected") young adult come to live with Sethe on an ambiguous quest. She seems to seek the love she was stripped of so young — a purpose tinged with both revenge and desire, capturing as Morrison does so well, the complexity and irony of human emotions.

*Jazz* is a further testimony to Morrison's insights into the black, and ultimately, human psyche. *Jazz* is a story of black life in the early twentieth century (something

like a black *Great Gatsby*). It is also based on what we would normally consider a bizarre event: The wife of a man who has killed his young lover attends her funeral in order to, well, kill her. And so she slits the throat of the corpse lying in the open coffin. It is perhaps Morrison's gift of irony that allows the reader some distance from these extraordinary events so that they may be ingested without real horror, but with a desire to understand the motivations behind such acts.

Morrison's real gift is in exploring and describing the motivations of her characters. Morrison writes lyrically and evocatively, her insights into emotions pointed. She is able to zero in on our propensity to embrace guilt ("It was as though Sethe didn't really want forgiveness given; she wanted it refused."); to protect ourselves from pain ("When he was drifting, thinking only about the next meal and night's sleep, when everything was packed tight in his chest, he had no sense of failure, of things not working out."); and to cling to hope ("She told

them that the only grace they could have was the grace they could imagine. That if they could not see it, they would not have it.”). Some passages give voice to moments normally hidden, yet shared by us all, like the shedding of tears that burst from our souls without warning:

A neighbor returns a spool of thread she borrowed, and not just the thread, but the extra-long needle too, and both of them stand in the door frame a moment while the borrower repeats for the lender a funny conversation she had with the woman on the floor below; it is funny and they laugh — one loudly while holding her forehead, the other hard enough to hurt her stomach. The

lender closes the door, and later, still smiling, touches the lapel of her sweater to her eye to wipe traces of laughter away then drips to the arm of the sofa the tears coming so fast she needs two hands to catch them.

Although her issues are of black America, the novels transcend their subjects and allow those of us without that shared history to identify where we otherwise could not. In this way, her novels are bridge-builders, inviting all into the black experience, to taste its bitterness, its strength, and its humanness. For all her bridge-building, however, for all the universality of her appeal, one cannot ultimately bleach her message, starkly portrayed in the following passage from *Beloved*:

“Tell me something, Stamp.” Paul D’s eyes were rheumy. “Tell me this one thing. How much is a nigger supposed to take? Tell me. How much?”

“All he can,” said Stamp Paid. “All he can.”

“Why? Why? Why? Why? Why?”

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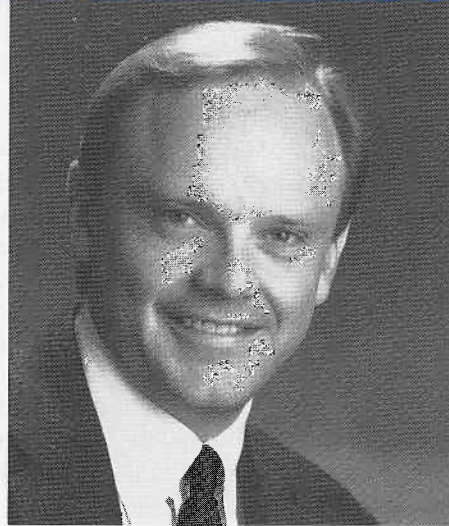
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## Some Practical Advice for New Lawyers

*By Robert G. Wright  
Secretary, Young Lawyer's Division*

**O**n behalf of the Young Lawyers Division of the Utah State Bar, I would like to take this opportunity to congratulate all the new admittees to the Utah State Bar. You have recently completed three tough years of law school and a grueling bar examination. However, you are about to embark upon a career which can be very trying. I was recently questioned by a new associate regarding some practical pointers which could help make the practice of law a little easier. These pointers were given to me when I first started in the legal profession and I would like to share them with all new admittees.

### **ETHICS**

I first explained to the associate that lawyers should constantly keep aware of the ethical constraints under which all lawyers are bound to practice. The Utah Code of Professional Conduct is something that many lawyers read only during law school or preparation for the bar exam, but I advised the new associate that he should read the Code of Ethics on a regular basis. As a member of the Utah State Bar Ethics and Discipline Screening Panel, I see many violations of our Code of Ethics; many of which could have been avoided by little effort. For example, Rule 1.4 of the Utah Code of Professional Con-

duct requires lawyers to communicate with their clients to ensure that the client remain informed about the status of the case, and be able to make informed decisions. Simply returning phone calls and requests for other communication, which take little time out of each day, can avoid such problems. Another example, Rule 1.3 of the Utah Code of Professional Conduct requires lawyers to diligently represent their clients. Again, many lawyers put cases on the "back burner" because the particular case does not fit into their current schedule. It will require effort for any given point of any case to "diligently" represent your client. However, lawyers can maintain that diligence by completing their cases thoroughly, consistently and being on top of each case. If you get too busy, please search for other help to ease the burden. It is always great to "kill more than you can eat", but try not to get yourself into a situation where you cannot handle the cases for which you are responsible.

As new lawyers, you should try to set a new trend where these rules and other ethical rules are no longer being violated and you are taking pride in representing each and every one of your clients. If you have any questions about your ethical constraints or other such issues, do not hesitate to contact the Office of Attorney Discipline who will be happy to advise you in these areas.

### **TREATMENT OF OTHER LAWYERS**

I also informed the new associate that courtesy, respect, and professionalism go hand-in-hand with each lawyer's adherence to the Utah Rules of Professional Conduct. I informed the lawyer that even with the number of attorneys currently practicing in the State of Utah, "what goes around will come around" in your daily practice. Each new lawyer should begin their practice by establishing a common ground work which includes respect, professionalism and courtesy with each lawyer you encounter. Treat each lawyer as you would expect that lawyer to treat you. Any senior member of the Bar will tell any new lawyer that the Bar has not reached a size where you will only run into a particular lawyer on one or two given occasions. A consistent practice of professionalism will make your job much easier because you will gain the respect of other lawyers with whom you work. It is vital that you begin your career by establishing this fundamental part of your practice.

### **TREATMENT OF CO-WORKERS**

Finally, I informed the new associate that the common courtesy, respect and professionalism should not only engage



once you have gone beyond the bounds of your office. Professionalism, courtesy and respect should be utilized with each of the staff members and other individuals with whom you work. It is very important to remember that the staff members with whom you work are not working for you; these individuals are working with you. A lawyer cannot maintain a successful practice without the diligent effort of the staff which helps the lawyer put each and every case together. Your law degree does not make you a better individual that everyone

will automatically admire and respect. Utilize your legal education to argue the legal technicalities of a case, not to boost your ego or power. Again, treat the people with whom you work on a daily basis as you would expect them to treat you.

Engaging in a legal career can be a very challenging time of your life. Make it as easy as possible by not forgetting the foundation upon which we, as individuals, must operate. Professionalism, courtesy and respect are items not necessarily taught in law school, but can come through you as an

individual and how you perceive yourself in this society.

This year, the Young Lawyers Division of the Utah State Bar is making a concentrated effort to help the young lawyers in this state become better practitioners and lawyers. These practical pointers will hopefully enhance this endeavor. Again, congratulations to all new admittees and more importantly, good luck in your career.

## Women Lawyers of Utah 1993 Fall Retreat

On October 15-16, 1993, Women Lawyers of Utah hosted the largest group ever at its 1993 Fall Retreat at the Cliff Lodge at Snowbird. WLU's biennial retreat gives Utah's women lawyers an opportunity to gather in a relaxed atmosphere and discuss issues affecting women's practices and the profession generally.

WLU kicked off the 1993 Fall Retreat with a social hour and dinner that facilitated the integration of new members and gave participants an opportunity to renew relationships with friends and colleagues. After dinner, Robin Malouf, Ph.D. led Friday night's program entitled "Accept Yourself/Be Yourself". Dr. Malouf discussed how individuals incorporate the specific strengths and capacities of their real selves by developing patterns of thinking and feeling that guide them in coping with problems and difficult situations. She closed Friday night's program by leading the group through several specific techniques for coping with problems that arise in the practice of law, particu-

larly those associated with communicating and interacting with demanding or difficult clients. Following Dr. Malouf's program, participants had more time to relax and socialize with friends and colleagues.

Lorna Rogers Burgess helped early risers observe Saturday's dawn by leading a snowy early morning meditative walk around the resort. Following breakfast, Professor Cheryl Preston (BYU) officially opened Saturday morning's program with "Women & The Law: A Matter of Perspective". In her remarks, Professor Preston addressed existing and current trends in feminist scholarship concerning the nature of "The Law" and whether it represents a "male" model based upon what may be termed essentially "male" life experiences and cognitive processes. Professor Preston also reviewed new studies that indicate that not only may women approach problem solving differently than men, but that they may process information concerning the problem differently as well. Throughout her presentation, Professor Preston emphasized that the purpose of new scholarship regarding feminism and the law is not to ascertain whether a particular approach is right or wrong, but to define the differences, if any, in the ways men and women approach legal problems in order to help courts and legal scholars one day devise a more balanced legal system that better reflects the strengths or "male" and "female" approaches.

Participants then attended one of two panel discussions offered during the second hour of the Saturday morning program. One panel addressed the practicality and consequences of practicing law part-time or on a flex-time schedule within or outside a tradi-



*Saturday morning Networking Panel of experts: Jan Smith, Elizabeth Haslam, Charlotte Miller and Mary Ann Wood.*

tional firm. Panel members Maureen Mundt-Larsh, Mary Shea Tucker, Kate Lahey and Lisa Michelle Church discussed their various experiences with and suggestions relating to their part-time/flex-time practices. Members of the second panel, Mary Ann Q. Wood, Charlotte L. Miller, Elizabeth M. Haslam and Jan Smith, discussed ways in which women can develop business through specific networking and rainmaking techniques. Dr. Malouf led the final session, supplementing her earlier remarks. The 1993 Fall Retreat concluded at noon Saturday.

WLU gratefully acknowledges the following supporters without whose generous contributions the 1993 Fall Retreat would not have been possible: Jones, Waldo, Holbrook & McDonough; Kimball, Parr, Waddoups, Brown & Gee; Ellen Maycock; Parsons, Behle & Latimer; Ray, Quinney & Nebeker; Sinclair Oil Corporation; Van Cott, Bagley, Cornwall & McCarthy; Watkiss, Dunning & Watkiss; Winder & Haslam; and Wood, Spendlove & Quinn. WLU welcomes comments from women who attended the 1993 Fall Retreat.



*Martha Pierce, Anne Milne, Mary Kienitz, Mary Ellen Sloan (WLU President) mingle during Friday night social hour.*

# Dan Colangelo — Attorney Turned Bagel-Maker

By Gretchen C. Lee



Dan Colangelo is not your typical attorney. Mr. Colangelo, a 1985 graduate of Cornell University School of Law, is the founder and CEO of Brackman's Bagels.

In 1989, Dan opened his first store on the corner of 900 East and 900 South in Salt Lake and since then, has opened six additional stores along the Wasatch Front. His story of lawyer to bagel-maker is both fascinating and inspiring.

After receiving his law degree from Cornell University, Dan headed to Manhattan, as do many of the east coast law graduates, to work for a large firm. After working two years for the firm in Manhattan and spending an additional two years in another firm in Syracuse, Dan recognized that "firm life" was not for him. Recalling the endless outdoor recreational activities available to him while working on his undergraduate degree at the University of Utah, Dan headed west to Utah.

Upon returning to the area, he recognized a real need for a bagel store. Although bagels had long been a breakfast staple in the Northeast, the popularity of

the bagel did not spread throughout the country until the mid-1980's when it was marketed as a no-fat (of course without the cream cheese) healthy snack food. Not having any "bagel-making" experience, Dan recruited a bagel-maker from New York to show him the ropes. A few of his buddies from law school pooled their money to start the business. And the rest, you might say, is history.

Dan is cautious to label the business a success (even though Brackman's is currently making more than 40,000 bagels each day), but to the extent that the business has been a success, Dan points to the employees. There is limited employee turn-over in the business and he attributes this to treating the employees well and paying them more than they would receive at a comparable job. Brackman's currently employs over 200 people.

Unlike his days in law practice, there is no "typical day" for Dan. His days range from dealing with employee problems, negotiating with vendors, and may even include fixing a dough machine or two. Unfortunately, as the business has grown, Dan has been forced to spend more time in the front offices and less time in the actual business. As he puts it: "My days are getting to be more like a lawyer's days."

Although he is not practicing law in the traditional sense, Dan feels that his legal background has been extremely helpful to him in his business endeavors as it alerts him to where the "land mines are buried." While he doesn't have the technical background to know the legal outcome on many issues, his background enables him to recognize potential problems and then he will hire legal counsel.

Dan recognizes that our culture requires a business to do a good job if it is to survive and therefore thinks that it is imperative for Brackman's to have friendly employees, clean stores, and consistent products — in his words, "old fashioned values." When asked of his goal for his business, he states: "To be here in ten years." He speaks of many companies that open and close their doors within a few years. He hopes to avoid this by making sound fundamental decisions, emphasizing that decisions are not always based solely on financial considerations.

Does Dan regret leaving the fast-paced life of an attorney in a large firm in New York? Apparently not. When asked if he will ever practice law again, he responded with a quick "No."

## Law Day Fair — Young Lawyers Inform Law Students of Career Options

By Gretchen C. Lee

On November 6, the Membership Network Committee of the Young Lawyers Division, in conjunction with the Offices of Legal Career Services from the University of Utah and Brigham Young University, sponsored a "Law Day Fair" at the Third District Court. The primary purposes of the fair were to inform current law students of the many ways they can use their legal education upon graduation and how to best prepare themselves for

their specific areas of interest in the law.

Sixteen attorneys from varying types of legal practices spoke to the approximately 160 law students in attendance. The broad spectrum of legal practices represented included small, medium, and large firms, in-

house counsel, judicial and other governmental work, public interest work, and nontraditional types of legal practices. The speakers included Kathryn Kendell, American Civil Liberties Union, and Judge Valdez, Juvenile Court.

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## Brown Bag Lunch Series: Updates on Recent State Legislative Action

By Gretchen C. Lee

The Membership Support Network Committee of the Young Lawyers Division sponsors a monthly brown bag lunch series at the Law and Justice Center. This fall the series has been focusing on recent state legislative action.

On October 13, Scott Reed, Attorney General's Office, presented a criminal law update. The update emphasized recent legislative action undertaken to combat the ever-increasing drug problem in the state. On November 8, Helen Christian, well-known domestic law attorney, presented a domestic law update to those in attendance.

The December 8 brown bag will focus on new state appellate court procedures. The speaker will be Mary Noonan, chief clerk for the state court of appeals.

There is no charge for the seminars but reservations are requested. RSVP to the USB Reservation Desk at 531-9095. In addition, participants earn one CLE credit. The dates and subjects of 1994 meetings will be published once they are scheduled.

## Young Lawyer Division Utah State Bar Annual "Sub-For-Santa" Project

For the 16th consecutive year, the Utah State Bar Young Lawyer Division will participate in *The Salt Lake Tribune* "Sub-for-Santa" program. "We should share with those less fortunate," declares Salt Lake attorney and Project Coordinator Joseph Joyce. "Our law firm has sponsored several families over the last few years and have enjoyed the experience," he said.

Acting as a clearinghouse, *The Tribune* program matches those willing to share at Christmas time with families needing help. *The Tribune* has thus been serving needy children in the Salt Lake area at Christmas time for almost 60 years. "Salt Lake area attorneys have supported the Sub-for-Santa program for many years," explains Mr. Joyce. The Sub-for-Santa program "provides an avenue for law firms and individual attorneys to become directly involved with families in need. After all, that is really what Christmas is all about."

Interested law firms should appoint a person to coordinate the project and work with the Young Lawyer Division and *The Tribune* to select a family, purchase gifts and groceries and deliver them before Christmas.

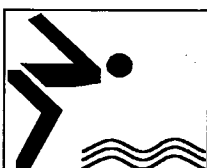
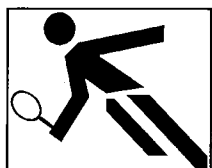
Mr. Joyce proudly notes that last year, several firms directly sponsored three or

four families. Lawyers unable to support an entire family, may still help by contributing funds payable to "Sub-for-Santa," to the Young Lawyer Division, Attn: Joseph J. Joyce, Strong & Hanni, 6th Floor, Boston Building, Salt Lake City, Utah 84111.

The Young Lawyers Division will answer questions regarding the program, and encourage those interested to call The Tribune Sub-for-Santa program (237-2830). Questions regarding the Young Lawyer Section project may be referred directly to Mr. Joyce.

"Last year, *The Tribune* helped more than two thousand children enjoy Christmas. This year, with the help and generosity of the legal community, we hope to reach even more children and families. You just can't imagine the great feeling you get from helping a neighbor at Christmas time," says Mr. Joyce.

## 1994 Mid-Year Meeting



**March 10-12, 1994  
St. George  
Holiday Inn**

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Calendars Now  
To Attend**

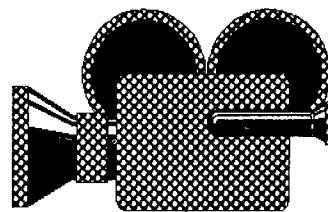


## MISSING!!!

Many video tapes from the Utah State Bar CLE Video Library are missing. Please take a few minutes to search your offices, libraries, and any other nooks and crannies that might be hiding these lost videos. The following is a list of the tapes that are missing:

- # 32 Automating the Drafting of Wills and Trust Agreements
- # 33 ESOPs - The Next Generation
- # 35 Chapter 11 Bankruptcy: Dealing with the Reorganizing Debtor
- # 36 Emerging Theories of Lender Liability
- # 38 Farm Bankruptcies
- # 40 Bankruptcy Practice and Litigation: Growth Industry of the Eighties
- # 49 Negotiations: Winning Tactics & Techniques
- # 64 Mergers and Acquisitions
- # 74 What Every Lawyer Needs to Know About Drafting Documents for a Closely Held Corporation
- # 78 Criminal Law
- # 82 Alternative Dispute Resolution Techniques
- # 90 Accounting for Lawyers
- #122 Southern California Tax & Estate Planning Forum
- #144 Video Law Review
- #150 Will Drafting: Avoiding Pitfalls and Problems
- #163 Closing Argument in a Criminal Case III
- #167 Comparative of a Witness, Criminal
- #180 Introduction of Evidence
- #184 Cross Exam and Imp II
- #199 Closing Arguments
- #205 Cross Examining the Well Prepared Witness
- #222 Examining the Economic Witness
- #232 Ethical Issues in Estate Planning
- #234 The Generation Skipping Transfer Tax: A Synopsis
- #240 Trial Advocacy in the Bankruptcy Court
- #245 Direct Examination, Demonstrative Evidence and Cross Examination
- #250 Retirement Exemption, Concealment of Assets, Who May File, Triangular Transfer, Statement of Schedules and Sale of Property
- #261 A Video Guide to Professional Conduct Part Four: Conflict of Interest
- #269 The Ethics of Getting, Keeping & Caring for Clients
- #286 Fundamentals of Real Estate Transactions
- #291 Environmental Science Series: Chemistry Analysis
- #295 Understanding Financial Statements - Accounting for Lawyers
- #312 Tax & Estate Planning for Life Styles of the 1990s
- #313 Hazardous Waste and Superfund
- #315 Family Law Practice into the 21st Century
- #328 Section 401(a)(4) - Tax Qualified Deferred Compensation Plans
- #329 Succession Planning for the Family Business
- #381 The Utah Revised Business Corporation Act
- #389 Views from the Bench
- #398 Bankruptcy Basics - NLCLE Workshop
- #402 Utah Water Law Seminar
- #404 Annual Real Property Seminar 1993

If you should happen to have any of these tapes in your possession, please contact Monica Jergensen at the Bar office, 531-9095, or return them as soon as possible to the Utah State Bar, 645 South 200 East in Salt Lake City, Utah 84111. Thank you for your assistance in locating these tapes.





## Utah Bar Foundation 1993 IOLTA Grant Recipients

**LEGAL AID SOCIETY OF SALT LAKE** received a \$50,000 grant to provide free legal counsel to the indigent in domestic relations matters and free legal counsel to victims of domestic violence regardless of income by utilization of the Utah Cohabitant Abuse Act.

The agency goal is to provide free legal counsel to low-income members of the community, define the rights, responsibilities and duties of families in transition, and prevent exploitation of families and their individual members.

**UTAH LEGAL SERVICES, INC.** received a \$35,000 grant to maintain the office in Price which services southeastern Utah, to print and distribute "The Utah Renter's Handbook" and to support a paralegal position in Tooele which is primarily locally funded.

Utah Legal Services provides civil legal services to low-income clients statewide, specializing in assisting persons who have problems with "safety net" programs which provide their only income and health care, as well as landlord/tenant, family law and domestic violence matters. During 1992 ULS provided legal services to more than 12,313 low-income clients.

The agency also received an emergency grant of \$6,582 to assist with the cost of installing a new voice-mail telephone system where interested persons can directly access information on various legal topics or Tuesday Night Bar. The new system can record 100 messages and compile data regarding usage.

**CATHOLIC COMMUNITY SERVICES IMMIGRATION PROGRAM** received a \$20,000 grant to support its outreach program, support its law-school intern studies, and to assist in general operating expenses.

Catholic Community Services serves as the sole accredited low income immigration legal service provider in the state. The program provides information, assistance, counseling, legal representation and advo-

cacy to those low-income individuals and families entitled to federal immigration benefits. It promotes legal education through its intern program and awareness and knowledge of the law throughout the state with its outreach service.

**THE LEGAL CENTER FOR PEOPLE WITH DISABILITIES** received a grant of \$10,000 to supplement the salary of a part-time attorney and intake worker, to create appropriate materials regarding the Americans with Disabilities Act (ADA), to develop training materials and for travel statewide.

The Center is Utah's designated protection and advocacy system for persons with developmental disabilities, persons with mental illness and clients and applicants of vocational rehabilitation services. The mission of the agency is to protect the legal, civil and human rights of Utahns with disabilities.

**DNA-PEOPLE'S LEGAL SERVICES, INC.** received \$3,000 to enhance their delivery of service in Utah by supplementing the salary of one lawyer who will be responsible for providing service in the expanded area in San Juan County, Utah.

This agency provides free legal services for low-income people living on or near the Navajo Nation and Hopi Reservation in Arizona, the Navajo Nation in New Mexico, all of San Juan County, New Mexico, and to members of the San Juan Southern Paiute Tribe in Utah and Arizona. It also promotes community legal education throughout its service area.

**LAW-RELATED EDUCATION PROJECT, INC.** received a grant of \$30,000 to assist with the costs of administration. The project's general mission is to give elementary and secondary students in the public schools a better understanding of their government, laws, rights and responsibilities using the following programs: (1) Statewide Mock Trial Competition, (2) "Teaching Legal Concepts in the Public

Schools" seminar, (3) Court Tour Program, (4) Conflict Mediation Program, (5) Youth Corrections Program, and (6) Mentor/Mid-Mentor Program.

**INNS OF COURT** received a total of \$1500 to assist with the general operation of the program. The three Inns of Court are The Sutherland Inn of Court, The Aldon J. Anderson Inn of Court and The A. Sherman Christensen Inn of Court.

**UNIVERSITY OF UTAH COLLEGE OF LAW** received a grant of \$25,000 to support the Jefferson B. and Rita E. Fordham Public Service Loan Repayment Assistance Program. The program's purpose is to facilitate the entrance of lawyers into public service agencies. The program accomplishes that purpose by providing recent law graduates who have extensive educational debt with assistance in repaying student loans. The source of financial assistance provided to graduates is the interest earned from the program endowment.

**UTAH FOUNDATION** received a grant of \$1,000 to assist with distributing their publication *State and Local Government in Utah* to the public schools. The book is a description of the structure, operation, function, and finances of state and local government in Utah — their departments, commissions, and agencies. The Utah Foundation is a private, non-profit public service agency established to study and to encourage the study of state and local government in Utah and the relation of taxes and public expenditures to the Utah economy.

## 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 issues relevant 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 provides an excellent opportunity to get a step ahead of the upcoming session and to prepare your 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.

## YEAR END ETHICS PROGRAM

Join Scott W. Reed, Utah Assistant Attorney General, and Greg G. Skordas, Salt Lake Deputy County Attorney for an

entertaining and educational explanation of today's ethical lawyer. This program is scheduled so that you can obtain all of your required ethics hours in one seminar at minimal cost. RSVP to Monica at 531-9095, seating is limited.

CLE Credit: 3 hours in ETHICS

Date: December 10, 1993

Place: Utah Law & Justice Center

Fee: \$50.00 early registration,  
\$75.00 at the door.

Time: 9:00 a.m. to 12:00 Noon

## 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 professionals 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

## CLE REGISTRATION FORM

TITLE OF PROGRAM

FEE

1. \_\_\_\_\_

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2. \_\_\_\_\_

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Make all checks payable to the Utah State Bar/CLE

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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 least 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.



December 10, 1993, \$125.00.  
Time: 9:00 a.m. to 4:45 p.m.

### **EFFECTIVE LAW OFFICE MANAGEMENT — NLCLE WORKSHOP**

Trust account management, ethical obligations and practical advice. 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: January 20, 1994

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.

### **CIVIL RIGHTS — NLCLE WORKSHOP**

Civil rights causes of action, including prisoner rights cases and 1983 claims.

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: February 17, 1994

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.

### **PERSONAL INJURY — NLCLE WORKSHOP**

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

CLE Credit: 3 hours

Date: March 17, 1994  
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.

### **APPELLATE PROCEDURE & JURISDICTION — NLCLE WORKSHOP**

Effective appellate advocacy, avoiding common pitfalls. 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: May 19, 1994

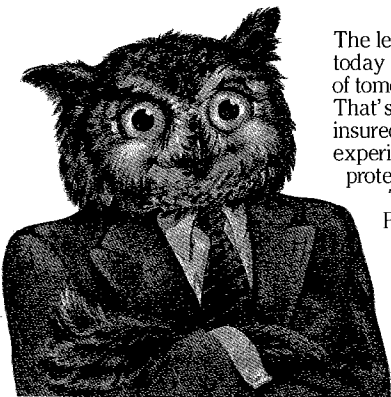
Place: Utah Law & Justice Center

Fee: \$20.00 for Young Lawyer  
Section members. \$30.00 for non members.

Time: 5:30 p.m. to 8:30 p.m.

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# **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**

## 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!

### INFORMATION SOUGHT

Yellow Page advertisers who believe they lost revenues during the 1992-1993 year by inclusion of the "Talking Pages" in the U.S. West Directory should call Doug at (801) 277-2204.

### BOOKS FOR SALE

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Moyle and Draper currently has the following publications for sale: American Law Review (Lawyers Coop) in 2nd, 3rd, 4th, 5th; American Law Review Digest (Lawyers Coop) in 2nd, Federal, Index and American Law Review 2nd Later Case Service; Corporate Practice Series (BNA); Fletcher Cyclopaedia Corporations (CBC); Legal Checklists (CB); Moore's Federal Practice (Matthew Bender); Oppression of Minority Shareholders (CB); Partnership Taxation (Shepard's McGraw-Hill); Powell on Real Property (Matthew Bender); and Tax Management Series (Foreign only) (BNA). These publications are all current as of September 30,

1993. Please contact Julie Ann Carlisle or Barbara K. Pinnick with purchase inquiries at (801) 521-0250.

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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.

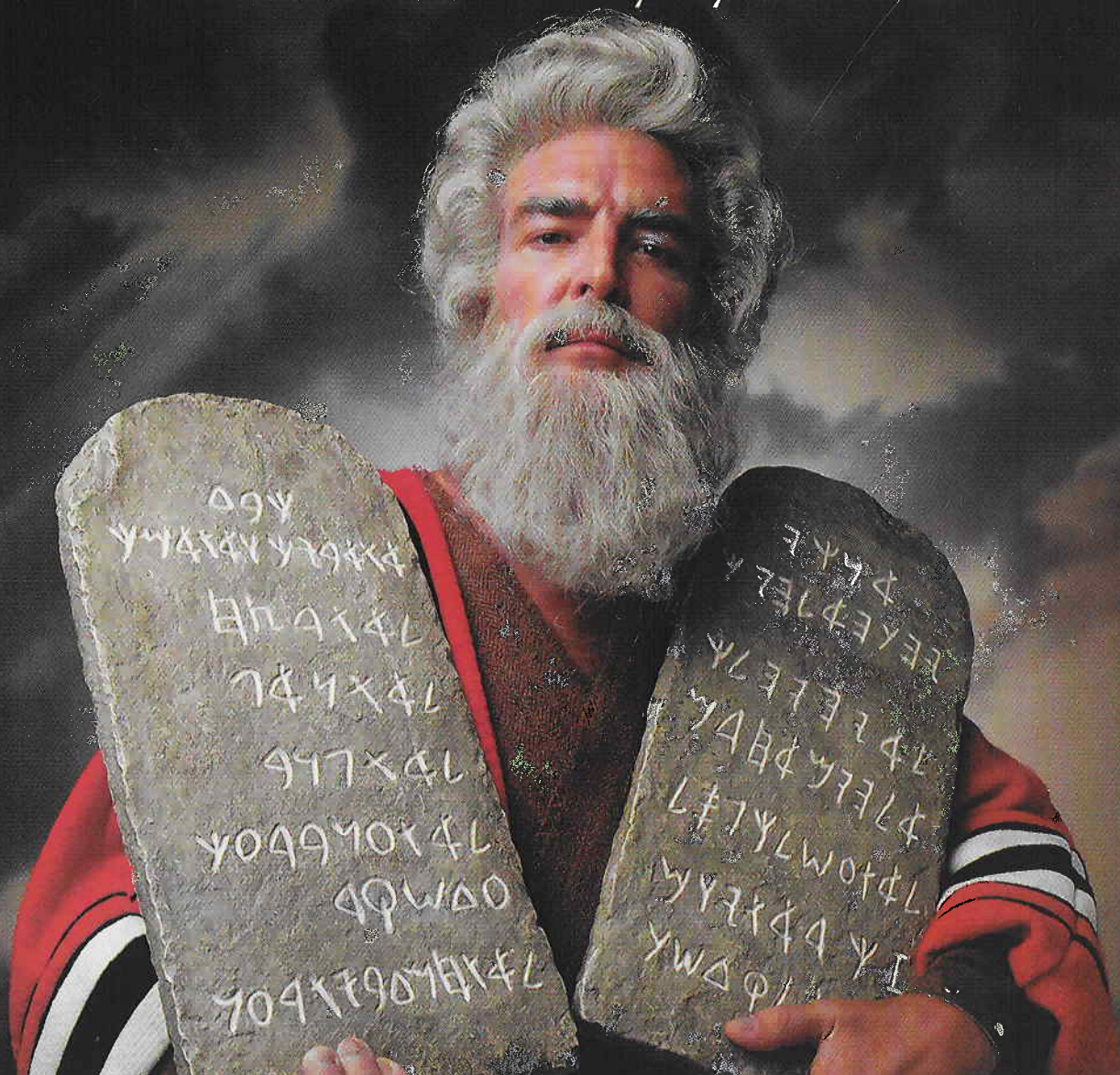
Regulation 8-101 — Each attorney required to file a statement of compliance pursuant to these regulations shall pay a filing fee of \$5 at the time of filing the statement with the Board.



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Greetings*

from the  
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