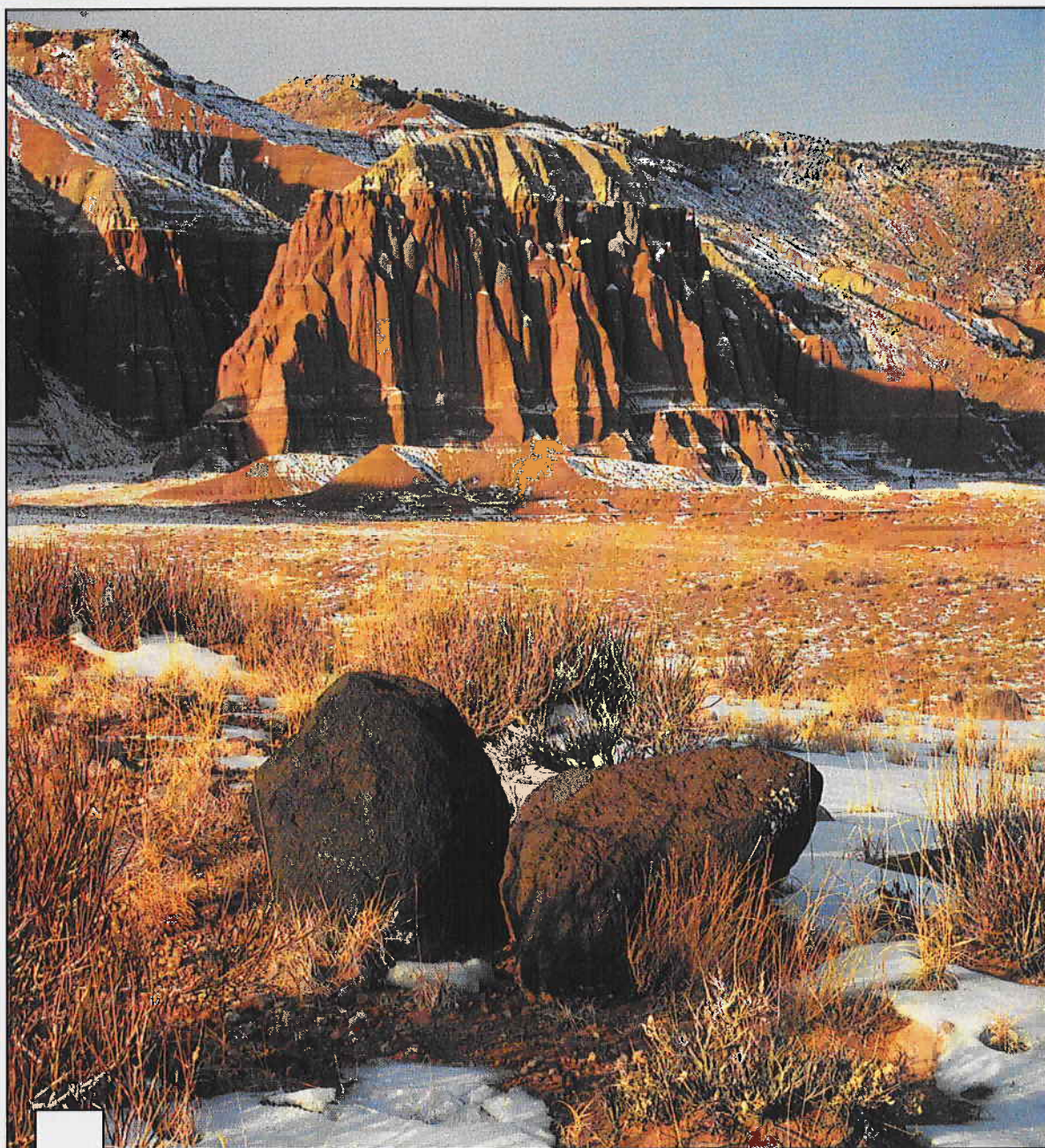


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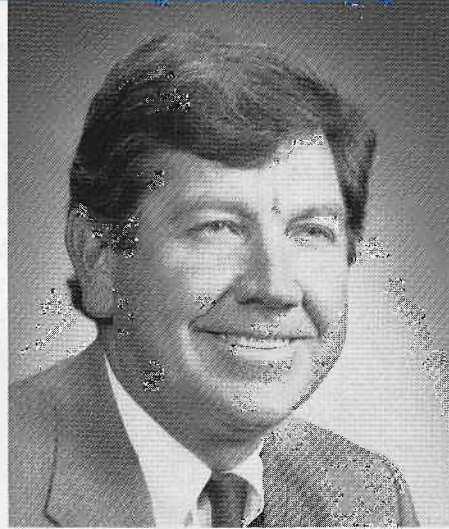
COVER: Winter in the area of Capitol Reef, Utah by Kent M. Barry, Esq., Assistant Attorney General

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The Bar and the Legislature: One Differing Opinion After Another

By H. James Clegg

This article is written in fits and starts. Numerous things are happening and few have reached conclusion yet, making reporting difficult and somewhat speculative.

Just in case you hadn't heard the legislature is in session.

The Bar Commission has been very active with two pieces of prospective legislation and, potentially, a third.

JUDICIAL NOMINATING COMMISSIONS

Within hours of writing these lines, we expect to see Senator Beattie propose Governor Leavitt's plan to "reform" the judicial nominating commission make-up. This will probably include "reformation" of both trial and appellate court nominating commissions even though we have heard no criticism of the present scheme at the trial level.

The governor and the Bar have very basic differences of opinion:

- He views the Bar as a trade association which follows the will of its membership. When it comes to judicial appointments, the Bar views itself as altruistic and acting purely and solely in the public interest in obtaining hard-working,

bright, experienced, even-tempered judges.

- He thinks no board, much less a non-governmental board, should have much say in the appointment of governmental officials. We think the judiciary is a full partner in government and that its independence is essential and must be protected from political pressures, cronyism and politicization.

- He believes that the people elected him to assemble a government reflective of the ideals he campaigned on and that he will be held accountable by the electorate if he makes mistakes. We believe that a judicial appointment so far outlasts the four, eight or even twelve years a governor serves that there is no effective check by the electorate.

- He believes that a governor's judicial appointments should mirror his own fiscal and social philosophies so as to make state government work more smoothly. We concur but with caution; perhaps our view of the spectrum of beliefs of acceptable judges is more centrist than a given governor wants.

- He believes that the Senate, not the Bar, is the appropriate check on the governor's prerogatives. We believe that serious, public criticism of a qualified prospective judge is symptomatic of a selection system which failed; what qualified candidate wants to go through slashing, party-line

food fights such as given Messrs. Bork, Ginsberg and Thomas? Just what lasting personal honor and effectiveness as a public servant can be maintained even if one survives it? And what prestige is allowed the third branch of government after such a price is extracted?

As you can see, we both have high-minded, articulable and strongly-held positions. We have appreciated the governor's willingness to sit down with us and to his credit, the governor has fulfilled his commitment to keep us involved in the process. However, at the time of this writing, and despite notable effort on both sides, we have found no mutually acceptable common ground and we have ultimately only been able to "agree to disagree" on key issues.

If the Bar is denied a meaningful role in the selection process, perhaps it should refuse any role at all and remain free to comment on, and criticize where appropriate, a governor's appointments to the nominating commissions, a commission's nominations and the governor's appointments while working toward restoration of the merit-selection system. While none of us wish that negative role, neither do we want to be part of a rubber-stamping sys-

tem which negates merit appointments; perhaps it is better to be free to criticize, challenge and campaign for further reforms when times change.

EARLY CONSOLIDATION

As you probably know, H.B. 436 was enacted in 1991 to consolidate the circuit courts into the district court system. As Hal Christensen pointed out in his article in last month's *Journal*, this is a project and goal of some considerable history. Under the 1991 statute, consolidation was to be, and was, effected immediately in Districts 5-8 and deferred until 1996-8 for Districts 1-4.

The latter districts have been urged by forces both internal and external to consolidate before 1996, perhaps as early as 1994. Each of the districts proposed its own plan for early consolidation. The Bar was invited to express its views to the Judicial Council and did so on January 7. Challenged to be creative and progressive rather than belligerent and negative, the Commission expressed general support for the consolidation plan espoused by the Fourth District. We understand this proposal is strenuously resisted by the Third District judges, perhaps others, and have seen no bills submitted to consolidate in 1994.

Alternatively, the Bar Commission offered to support legislation repealing consolidation in Districts 1-4. So far, that motion has not been seconded by an official body although individual judges have expressed support for it.

This has been a difficult, divisive process, between the bench and Bar and internal to both bench and Bar. As Gayle McKeachnie puts it, good people will make any system work. We're trying hard, as are the presiding judges, the Judicial Council and the transitions committees, to find the best way to get there.

JUDICIAL RECALL

There have been suggestions, such as those of Senator Beattie in the February *Bar Journal*, that sitting judges should be subject to legislative recall for less than malfeasance. This apparently includes issuing decisions which "unfairly" impact the state's treasury. Again, we have seen no bill as of this writing and hope one isn't filed.

Interesting times we live in. We hope to see you in St. George.

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1994 State of the Judiciary

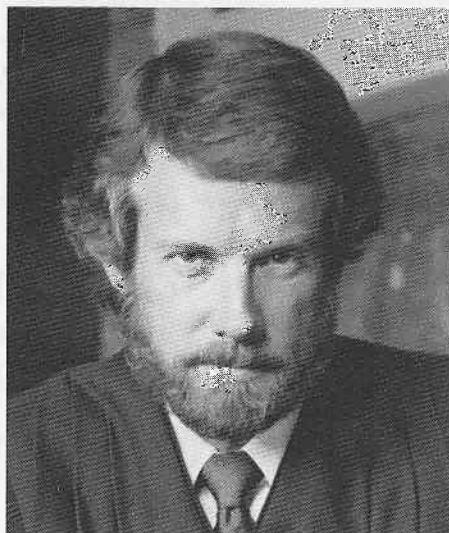
Delivered by Chief Justice Michael D. Zimmerman

Governor Leavitt, President Christensen, Speaker Bishop, legislators, and members of the public. This is my first opportunity to address you as Chief Justice. On behalf of the members of the judicial branch of government, I want to thank you for this opportunity to report on the state of the judiciary.

I know that you have much to do. I will keep my remarks short. Today, I want to use my time to paint a general picture of the current state of the administration of justice in Utah, with emphasis on those aspects of the picture to which our legislative proposals relate. And, I want to comment on the relations between the judicial branch of government and the legislative.

I am pleased to report that on the whole, justice in Utah is being dispensed effectively. As a result of initiatives undertaken by the judiciary, with the support of the legislative and executive branches, we have substantially improved the system's performance and efficiency in recent years. At the most basic level, there is no significant delay in case processing at either the trial or appellate level. The administrative support system for the judiciary is outstanding. There are occasional dark spots in this picture, most particularly the resource-starved juvenile court. But we do not consider that to represent any systemic problem with the juvenile court; rather, it is a matter that can be cured with an infusion of resources and by giving juvenile judges more tools to deal with hard core offenders. Our other legislative proposals are designed to move us to new levels of performance while making the best use of the taxpayer's dollar.

The first of our legislative proposals I want to address relates to alternative dispute resolution. In many states, the courts have rushed to implement mediation, arbitration, and other alternative dispute resolution, or ADR programs, as an alternative to trial of civil cases. They have done this because it promised to speed the



settling of civil disputes. Their action was understandable. In many major metropolitan areas, it takes five or more years to move a civil case from filing through trial. In Utah, we have never had significant trial court delays, and our case processing times have actually gotten even shorter in recent years. In 1987, the median time to complete a civil case in the Third District Court in Salt Lake County was 398 days, well below the national average. By fiscal 1992, this case processing time had been cut in half, to 182 days. And this was during a period when case filings increased 30%.

But while Utah has experienced few of the pressures that fueled the ADR movement elsewhere, we have been studying alternative dispute resolution. We have concluded that it is time for Utah's courts to move into this area. Experience has shown that even in court systems that do not have long delays, ADR offers a realistic prospect of less expensive, faster, and better solutions to citizens disputes than traditional court trials, at least in selected categories of cases. During 1993, the courts worked with interested parties on legislation that will permit the implementation of a program of court-annexed alternative dispute resolution.

We will seek passage of this legislation during this session.

Another area in which we will be presenting legislation relates to capital facilities. In recent years, when we have been confronted with the need to construct or expand court facilities, we have tried to co-locate different levels of courts within a single courthouse instead of building a separate courthouse for each level of court. By putting two or more courts in one building we can achieve significant economies. The number of square feet required for each court is reduced by sharing common facilities. The long-term flexibility of the building is enhanced by constructing courtrooms that can be used by more than one level of court. And putting several courts in one building has the potential for shared support staff and workloads, thus reducing long term growth in personnel needs.

Co-location is something that has been done in the more rural areas for some time, but recently it has been transplanted to the more urban areas. This approach has been followed in the new facilities in Provo and Sandy, and the Brigham City and Ogden courthouses now under construction. This year we will be asking for programming funds for a new Davis County regional facility. And we will be asking for design and construction funds for the Salt Lake Courts Complex.

As you know, we have been acquiring land and have done detailed programming for a co-located facility in Salt Lake that would house the Salt Lake City area courts, the Supreme Court, the Court of Appeals, the Administrative Office of the Courts, the District, Circuit and some of the functions of the Juvenile court. To date, the state has invested over \$3 million in the project, and Salt Lake City has put up an additional \$3 million.

This year, we are proposing legislation that will implement an innovative financing package for constructing the Salt Lake

Courts Complex through a combination of dedicated revenue and bonding. The co-location of these courts will produce over \$11 million in cost savings when compared to separate stand-alone buildings. There will be substantial additional savings in operating and personnel costs. And the co-location of the trial courts within the complex will coincide nicely with the consolidation of the circuit and district courts, giving us great flexibility to meet future needs.

Over the life of the revenue bond we propose, our financing package will ultimately cost the general fund well over \$100 million less than a general obligation bond because it includes significant revenue enhancements in the form of increased filing fees in non-domestic civil cases that will be dedicated to the project. We hope that you will proceed with this important project now, while interest rates are low and before construction costs escalate dramatically.

I have said that the picture of the state of the judiciary is generally good. That is true. But I also mentioned that we have a few dark spots in that picture. First and foremost among those is the juvenile justice system, where a lack of resources has left the system unable to cope with the rising tide of juvenile crime.

For several years, we have warned that the growth rate of the juvenile population has been far outstripping the rate at which we have been able to add needed personnel and facilities. We have repeatedly requested resources to meet these needs. The growing disparity between the number of young offenders and the court's resources has led to long delays between arrest of the juveniles and their processing by the court. It has made intensive intervention programs less available to those with just a few offenses and whose criminal behaviors are easier to change. The limited number of slots in these programs have had to go to the serious, multiple offenders. The squeeze on Juvenile Court resources has also meant that programs demonstrated to cut down on recidivism, like work restitution, intensive probation, and electronic monitoring have had to be severely limited.

This year's top legislative priority for the courts is our juvenile justice program. We are seeking the resources to put serious and chronic offenders on a faster

processing track, to reduce delays in intervening with troubled youth, and to expand programs proven to deter repeat offenders. We are asking for 30 new probation officers, 11 new deputy clerks, and one new juvenile judge. The juvenile court is also asking support for new programs and prerogatives to respond to the special needs raised by the gang problem.

We hope that this set of initiatives receives your early and favorable consideration.

The last topic I want to address is relations between the judicial and legislative branches. In speaking to you on what some might regard as a delicate subject, I do not mean to be presumptuous. But I take my cue from Article I, Section 27 of the Utah Constitution, the last section of our Declaration of Rights. It reads: "Frequent recurrence to fundamental principles is essential to security of individual rights and the perpetuity of free government." I understand this to mean that all of us need to regularly revisit the bedrock principles upon which our form of government is based if our day-to-day actions as public officials are to conform with those principles.

"... the state of the judiciary is generally good. . . [but] we have a few dark spots. . ."

On a formal level, our relations are governed by the separation of powers doctrine that underlies all American constitutional theory. As you well know, the basic notion is that government should have three branches; each branch should have separate and limited powers; and, to a large degree, each branch should be independent within its sphere. The idea is that while the resulting checks and balances may not produce the most efficient form of government, it will result in a government that is most likely to protect the individual from the excesses of government power, precisely because no one person or group of persons is likely to dominate all three branches.

A strong and independent judiciary, one that is free to judge cases on their legal merit rather than by the popularity of the resulting decision, is a cornerstone of the

separation of powers doctrine. The importance of an independent judiciary is illustrated by the fact that the Declaration of Independence contains two separate clauses complaining of the British Crown's refusal to permit the establishment of such a judiciary in the American colonies. In addition, the debate over adoption of the United States Constitution focused intensely on the necessity for an independent judiciary.

Over this past weekend I read some of the Federalist Papers that Alexander Hamilton wrote, papers in which he advocates the adoption of the federal constitution and defends the proposal for an independent judicial branch. I must admit that I was reading some of these for the first time, which perhaps shows how many of us take our government's fundamentals for granted. I was struck by how modern some of Hamilton's remarks, written in 1789, sounded, and how true they were to my experience over the past decade.

Hamilton wrote in the Federalist Paper No. 78 that the judicial branch is "the weakest" and the "least dangerous" branch. It lacks power over the purse or over patronage, it has no political constituency, and it cannot set its own agenda. It decides only what comes before it, and in doing so, necessarily disappoints half the parties. Hamilton said, "from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches" "[L]iberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments [of government]"

Because of the pressures of which Hamilton spoke, a truly independent judiciary does not exist in a number of states. And the quality of the courts in those states has suffered as a result. However, in the 1984 revision of the judicial article of the Utah Constitution, and the implementing legislation, have given Utah a strong and independent judicial branch. Merit, rather than partisan considerations, became the stated criteria for selecting judges. And the revised article vastly improved the internal administrative structure of the judiciary, giving it the necessary tools to act as a cohesive unit, and to plan for the future. The actions of the Utah judiciary under the revised article

have shown its willingness to unsettle old ways if necessary to make the system efficient and effective.

But no matter how capable we are at self-administration, ultimately, the judiciary remains an independent branch of government largely at your sufferance. The legislature has the power of the purse, it has the ability to strengthen or to undermine the judiciary's real independence through legislation affecting the selection and retention process, and it can propose constitutional amendments designed to weaken or destroy us as a separate branch just as easily as it proposed the 1984 amendments that strengthened our independence.

In a real sense, if the principle of an independent judiciary is to remain strong in Utah, it depends on the legislature's self-restraint. You must be willing to refrain from taking actions that are within your power, and that may seem justifiable based on political or policy concerns of the moment, when upon reflection, those actions are shown to be inconsistent with the separation of powers principle that helped to foment the American Revolution

and that has been a core value of American constitutionalism ever since.

Having stressed the importance of a strong and independent judiciary, I want to make it clear that while the separation of powers doctrine may be a superb means for protecting the people from governmental tyranny, I recognize that its checks and balances necessarily create tensions among the branches. These tensions can, in turn, be destructive of the system itself. In my opinion, they must be diffused if an effective government is to be formed from the three separate branches. And the only means I know for diffusing these tensions among the branches is open and honest communication which fosters mutual understanding and cooperation within the limits set by the constitution.

Communication is a two-way street. Because of the unique ethical code judges must adhere to in discussing cases and legal issues, that code can be used as an excuse to frustrate communication. If we are to fulfill our role as a co-equal branch of government, we cannot use the terms "independent judiciary" and "separation of powers" as

slogans behind which we hide, nor can we use them as simplistic justifications to hold ourselves aloof and remote from discussions of the need for substantive changes in the law or in the way justice is administered. We in the judiciary must work with you to establish a dialogue and to seek mutual understanding.

In recent years, both the Judicial Council and the Supreme Court have made efforts to open their rule making processes to interested legislators and to Legislative Counsel so as to facilitate communication at early stages of policy making. I intend to do more to develop additional lines of communication in the coming months and years. I hope you will do the same. Understanding is the best preventative for unnecessary clashes between branches of government.

Good luck in the coming session. You face unenviable choices. We in the judiciary look forward to working with you to help provide the people of Utah with the quality government they deserve.

Thank you.

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There Was Something Wrong In My Life: One Alcoholic's Story

By Anonymous

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I had it made. I should have been happy. I had a beautiful wife, two healthy kids and a good job in an established law firm in my hometown. My trial practice was growing, and I enjoyed all the respect accorded an up-and-coming trial lawyer.

The only problem was that I was not happy. I couldn't really say why. My wife suggested that maybe I drank too much sometimes. I told her, "Everybody loves me at parties. I tell jokes. I'm fun to be around." And besides, I said, "If you were under all the stress I'm under, you might drink a little too much once in a while yourself." This scenario repeated itself more often than I care to mention.

There was something wrong in my life. I just didn't want to put the right label on it: alcoholism.

I drank to escape. Being a trial lawyer, I believe to this day, is one of the most stressful careers there is. The pressure to produce is enormous. You must win — for the client, the partners, your family, and, of course, your ego and reputation. Alcohol became my escape.

I never wanted to drink too much. I just wanted to get that "glow." I wanted to feel like the world and I were in perfect sync. Drinking to that state of harmony with the world was sort of like roasting marshmallows. You put the marshmallow on the stick, put it into the fire, and if you pull it out at just the right moment, it's perfect. But if you leave it in just a split second too long, it's burned to a crisp and ruined. In the end that's the way my drinking became. Just one more manhattan, martini, or brandy, and I got burned.

Once in a while, in moments of clarity, I would connect my drinking habits to my

past. My father died from active alcoholism when I was 19. We never called it that, though. During my childhood we never called my dad an "alcoholic." After all, an alcoholic was skid row bum who didn't have a job, drank from a brown paper bag and didn't have the willpower to "pull himself up by the bootstraps." My father was a successful businessman and had money. Sure, he would go on drinking binges for days and caused more terror in our home than I care to think about, but he was never an "alcoholic." He simply "drank too much" sometimes.

Just as I had denied my father's illness, I later refused to see my own. The denial system of an alcoholic is overwhelmingly powerful. I had all the signs and symptoms, but I of course wouldn't admit it.

For example, when asked what an alcoholic was, I would say, "That's a person who drinks in the morning." But when I would have a Bloody Mary — or two or three or four — at an 11 a.m. brunch before a football game, that was not morning. That was different. Or I'd say, "An alcoholic is someone who can't stop drinking." I always quit drinking during January just to prove to myself and my wife that I could. I was the most miserable person in the world to be around for those 31 days and when February rolled around, I made up for lost time. I also used to tell myself, "An alcoholic is somebody who gets picked up for drunk driving." I was a prosecutor of drunk drivers, and one of my mortal fears was to get picked up for driving while intoxicated (DWI). I realize now it didn't happen to me only because I was lucky.

The hardest thing of all for me to admit was that I had a drinking problem. Whenever I would read a magazine with one of those damnable quizzes to tell whether you are an alcoholic, I would always flunk the test. I would say, "You know, if most of my

friends answered those questions honestly, they would flunk the test, too." Little did I know then how true that statement would turn out to be.

One reason I didn't believe I had a problem was that I had all the trappings of success. Surely, I thought, I couldn't be an alcoholic and be as successful as I was. I didn't realize that I didn't have to be on skid row to have an unmanageable life. I have seen this blindness to the problem in many successful lawyers who are full-blown alcoholics and have no idea why they are unhappy in their practices, their marriages and life in general.

AN HONEST LOOK

Fortunately for me, there was no loss of job, no loss of family and no DWI arrest. At age 34, I agreed to take an honest look at how my drinking was affecting my life.

I had just tried a tough rape case. I prosecuted and won. My colleagues, the victim, and I went out and celebrated. One of my favorite things to do when I was drinking was to bring people over to my house for breakfast. "My wife won't mind," I said. At 1 a.m. that night we came home. Things started getting fuzzy. I don't remember everything I said or did that night (blackouts are one of the signs of the latter stages of alcoholism).

The next morning my wife said, "Do you remember everything you said and did last night?" I said, "Of course, and don't give me any trouble. You never understand or support me when I need it. Who wouldn't drink, living with someone like you?"

I went to the office. "My God! What did I do?" I wondered. I didn't know. I sent my wife a dozen roses (a more than common occurrence), called, and said, "Let's go to dinner and a movie. It won't happen again, honey. I'm really sorry."

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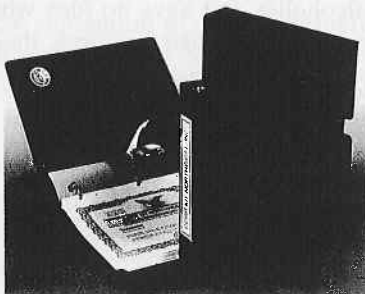
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I had no intention of having a drink that night, but I did. It was Friday, and two of my friends said one wouldn't hurt me. That night over dinner I agreed to see an addiction counselor to satisfy my wife.

I went through an outpatient treatment program and was told that I couldn't stay sober without Alcoholics Anonymous (A.A.). That was more than 15 years ago. I am still very active in A.A.

Little did I know how dramatically my life would change because of my decision to seek help. I always envisioned people who didn't drink at all as being miserable, unhappy souls. I thought drinking would open up my life — all my social activities revolved around alcohol — and stopping would certainly shut it down completely. I wondered who would want a lawyer who was an admitted alcoholic. How would I get new business? I always told my wife that I had to go to bars and socialize in order to build my practice.

None of that was true. From a professional standpoint the greatest result of quitting drinking has been the tremendous improvement in my skills as a trial lawyer. I didn't realize how alcohol had affected me for 17 years. One incident about six months after quitting made me see how I had changed.

*"The hardest thing of all for
me to admit was that I had
a drinking problem."*

REAPING THE BENEFITS

I was involved in a major trial lasting about a month. When it was over, the trial judge, one of the most respected in the state, called me into his chambers. He said, "Sit down. I want to talk to you." I didn't know what to expect. He said, "Do you know what happened in that courtroom?" I was still puzzled. I said, "Well, I know we won, and it was a tough fight with five lawyers on the case."

The judge continued, "This was not a fair fight. Every day you were bright-eyed and bushy-tailed and sharp as a tack. Those other guys came every Friday looking like whipped pups. What are you doing? You were a good trial lawyer before, but you

really have improved. Have you been sneaking off to secret seminars or what?"

By this time I was grinning from ear to ear. I decided to tell him. I said, "Judge, all I did was to stop drinking completely."

"You're kidding," he said. "Well, if that's it, then my advice to you, young man, is to stay stopped because I can tell that it's already paid off for you in this courthouse."

I will never forget that talk. I didn't fully appreciate the improvement in my abilities as a trial lawyer until that moment. My clients have reaped the benefits directly.

Since I quit drinking, I have found that most, if not all, of my preconceived notions about alcoholism were totally wrong. Alcoholism is a fatal illness, and I have seen many good friends and others die from it simply because they refused help. Lawyers, in particular, seem to think they are too smart to be alcoholics. I was one of those until I took an honest look at what alcohol was doing to me, my family and everyone around me.

For trial lawyers, heavy drinking seems to go with the territory. We have so much stress in our work because we deal with other people's problems. It is only natural to want to escape it all. Unfortunately, some people choose alcohol or other drugs as their escape route. Eventually, alcohol or drug abuse becomes the most pressing problem, but the underlying problems that led to addiction are still there. That is the reason I still go to meetings. If drinking were my real problem, I wouldn't need A.A. because I haven't had a drink in more than 15 years. My real problem is still there: living life on a daily basis without my usual escape mechanism.

I have accepted the fact that I am an alcoholic and that alcoholism is a disease. I go to A.A. meetings because I want to go. The people there are kind and loving, and simply doing what they can daily to become better human beings.

Is it easy? Absolutely not. Simply taking the first step, seeking help, is extremely difficult. Once the process is started, though, great things can happen. Awareness of alcoholism and other types of chemical dependency is perhaps at an all-time high now. There are more counselors and treatment centers than ever. Help is everywhere for those who seek it.

If you believe that you or a loved one

may be suffering from this illness, the most important thing to do is to take action. Call a treatment center and just ask some questions. The rest will happen naturally.

History was made at the Association of Trial Attorneys of America annual convention in 1989. A number of recovering alcoholics who are members of ATLA and A.A. got together and started holding A.A. meetings during conventions. We are building lasting friendships. Anyone who wants to stop drinking is welcome. The meetings are totally confidential. A number of people have been helped since we started the meetings.

I believe I owe my life to A.A. and sobriety. I am never alone in dealing with my day-to-day problems, and life has become truly living.

An alcoholic lawyer who continues to drink and refuses to even consider examining the problem is like a person who jumps out of the 20th-story window of a building and while sailing past the 18th floor says, "Everything is going great — so far!" Do yourself, your family and society a favor and take a look at your problem before you hit bottom.

THE OTHER BAR OF UTAH *a support group for lawyers in recovery*

The Other Bar of Utah is a group of lawyers, law students and judges in our community who meet regularly and share with each other in the desire to improve their own personal and professional lives which may have been affected by the

overuse of alcohol and/or drugs. The Other Bar of Utah has been meeting weekly for over four years. Since the Other Bar of Utah first established its meeting for lawyers in recovery we have had over 40 men and women attend.

The Other Bar is NOT affiliated with the Utah State Bar, Alcoholics Anonymous, or any other group. Rather, its primary purpose is providing mutual help and support in achieving sobriety and maintaining our recovery.

Among those who attend are men and women in corporate, governmental, and private practice. The diversity of our group reflects the profession as a whole with lawyers from large firms and solo practice; individuals who have sought professional treatment and those who quit on their own; newcomers to the practice or recovery to those with years of experience; those who have had Bar disciplinary problems and those who have had none. Also represented are lawyers of varied religious backgrounds; as well as lawyers working outside the profession.

The Other Bar is based on successful support groups for lawyers in other jurisdictions and the "Twelve Step" model initiated by A.A. Additionally, we informally network with other lawyers in recovery groups throughout the state and in many jurisdictions, nationally and internationally.

Within the Other Bar, each of us has our own personal level of anonymity and confidentiality which is strictly respected by others. No last names need be used, no per-

sonal questions are asked and information shared during the meetings is not repeated outside the meeting rooms.

We meet every Monday evening at 5:30 p.m., 231 East 100 South (at St. Mark's Episcopal Cathedral — Pyke Room), downtown Salt Lake City. We welcome interested judges, lawyers and law students. Plenty of parking is available. Enter through the East door from the parking lot.

If you think you may have a problem and are interested in how others have learned to handle similar circumstances then you are welcome to join us. For additional information, contact a member of the Other Bar or call Jim at (801) 272-9088.

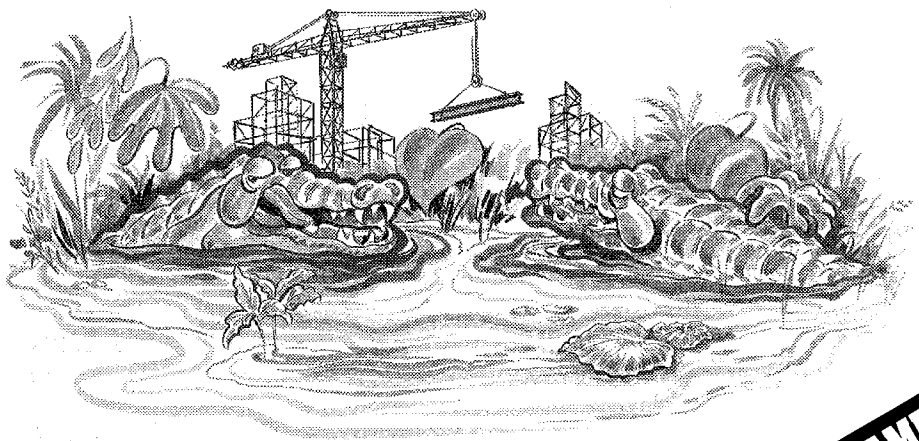
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Do you have concerns that a fellow lawyer is impaired? Unfortunately, most issues of impairment are raised for the first time when disciplinary proceedings are initiated. The Lawyers Helping Lawyers Committee seeks to identify these problems before Bar Counsel becomes involved. Referrals and inquiries to the Lawyers Helping Lawyers Committee are confidential. If you, or someone you care about, has a problem with substance abuse or any other impairment, we can help. Call in confidence, any member of the committee or: James W. Gilson, Chairman — 533-8282; Herschel Bullen, Vice Chairman, — 466-7851; W. James Denver — 272-9088; and H. Don Sharp — 621-2464.

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WE DRAIN SWAMPS

In Memoriam Charles S. Zane 1831-1915

By Retired Justice J. Allan Crockett

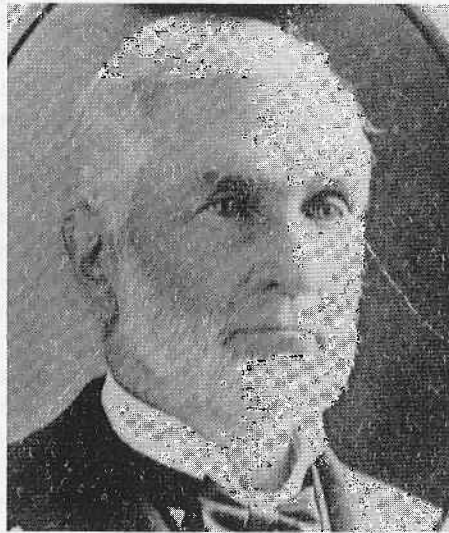
Law is that which commands us to do good and forbids us to do wrong; patience is a bitter tree, but it bears sweet fruit. Those two thoughts, from Cicero and from Confucius, are keys to the career of Charles S. Zane.

* * * * *

He was born March 3, 1831, in New Jersey. At the age of sixteen, he left home and went to Philadelphia, where he worked as a grocery clerk and later operated a livery stable. He attended McKendree College at Lebanon, Illinois, from 1852 until 1855. He then became a school teacher for a season but continued to study law, took the examination, and was admitted to the Illinois Bar in 1857. He entered into a partnership with Shelby M. Cullom, with whom he began the practice of law.

Two years after his admission to the bar, he married Margaret Maxey. They became the parents of nine children, six of whom survived him. He was appointed to and served a term as county attorney of Sangamon County. In 1875, he was elected circuit judge in the Fifth Circuit of Illinois, in which position he continued until 1883. Because he demonstrated superior qualifications as a judge, President Chester A. Arthur offered to commission him as the chief judge of the Territory of Utah. He and his wife, being of an adventurous nature, decided to accept that offer, and he did so on July 5, 1884. They arrived in Salt Lake City on August 28, 1884. On that date, he was sworn in by Governor Eli H. Murray and took office on September 1.

Judge Zane had a long and interesting life about which a book could be written. So the effort to record something of his



personality, activities, and accomplishments, in this capsule sketch, is limited to a few strokes of a wide brush.

He was fully aware that he was coming into a situation charged with hostility. As a representative of the United States government, his main objective was to bring into line the "rebellious" Mormons,¹ who had left (or been driven from) Illinois to establish an independent church colony in the Salt Lake Valley of the Rocky Mountains, which was then Mexican territory. It should be noted, however, that these were American citizens who maintained loyalty to the United States.

He entered into that hostile atmosphere with some apprehension, knowing that troubles were to be encountered. At the outset, he made known his opposition to polygamy and his firm resolve that those who practiced it must desist or suffer the consequences.

The Mormons' defiant attitude was graphically shown by the publication of a statement authored by Brigham H. Roberts

and Orson F. Whitney, both then contemporary Mormon historians: "Judge Zane will stand classed as sharing in the responsibility for the cruelties and injustices which mark . . . [that period of conflict] of Utah's history. . . . He could never divorce himself from the deep-seated prejudice against Mormons. . . . His object was the overthrow of Mormonism as a religion."²

He bore this and similar attacks with patience and made no response, but followed the dictum: A soft answer turneth away wrath. Without departing from his judicial demeanor, he showed an attitude of friendship to the Mormons, both in and out of court. He expressed commendation for their industrious efforts in planning and building their city and their churches, in beginning construction of their temple, and of their homes and businesses, and in diverting the mountain streams to irrigate the land, all in what had been a remote and arid desert.

He thought that the troubled situation he entered into was a good one in which to apply the aphorism: "A pancake cannot be fried so thin that there are not two sides to it." And there had to be two sides to this controversy. He conceived it to be his duty as a judge to try to see the point of view of those on both sides of the dispute and to persuade them to settle, or at least reduce, the tensions between them.

The major problems he confronted in Utah centered on religion. He knew enough about human nature to realize that a person can believe what he wants to believe, even to the extent of feeling and declaring sure knowledge of his belief, so he took no issue with what the Mormons wanted to believe. But for himself, he declared himself to be an agnostic. He had no doubt that there is some great power,

knowledge, and/or enlightenment that created and controls the universe, most often referred to as God or the Creator. But he did not claim to know the answer to what has been called the great mystery of life by many wise men.³ He was not in tune with those who in some manner had had "revealed" to them, or been "inspired" to know, with various degrees of certainty, where they came from, why they were here, and what would happen to them hereafter.

To the Mormons and their representatives, who argued that they were following the laws of God (citing scripture), which they contended to be superior to the laws of the land, he at times showed some impatience, but treated them with judicial courtesy and advised them that it was his duty and theirs to obey the law as established there and now and to leave conjecture as to what might happen hereafter to be dealt with then.⁴

In civil matters, he competently performed the numerous duties of a judge. His rulings gave the impression that he generally leaned toward the protection of the poor and oppressed. In numerous cases, Mormon plaintiffs were awarded substantial sums on claims they made and for injuries they suffered.

Judge Zane was also supportive of the Mormon schools. After investigation by himself and through others, he expressed satisfaction that no religion was taught in them, and he favored the school district in levying taxes for their operation.

But it is not to be assumed that Judge Zane always took the part of the poor and oppressed. He stood squarely on the principle of equal justice for all, and even the rich have rights. When the facts and the law required it, he protected corporations, institutions, and the wealthy. This justified the expression of R. N. Baskin (later a justice of this court), who wrote of him, "A more conscientious and humane judge never sat upon the bench."⁵

In his activities with the Mormons, he was not as much concerned with problems in the law as with the sociology and psychology in enforcing it. His task was to firmly but gently and discreetly bring the Mormons out of the past and into the modern world. He realized that just as each of them was a different individual to him, he was a different individual to each of them; and further, that whatever he experienced

with them became a part of his life, and what they experienced with him became part of theirs. He was sensitive to the impressions they were making on each other. His effort and desire were to seek a balance between the rights and interests of society; and the rights and interests of the defendants, for the purpose of serving both interests, with a bit more emphasis on persuading the defendants to be law-abiding citizens.

The Mormons defended their views and practices in three ways: First, with some plausibility they relied on the often-referred-to First Amendment to the United States Constitution: that Congress shall make no law respecting *religion* or prohibiting free exercise thereof. In the absence of specific legislation on the subject, the Edmunds Act had been passed. It expressly made cohabitation (polygamy) unlawful, and that enactment had been upheld.⁶ Second, they hid out. There are innumerable stories about the ingenious and sometimes devious methods they used to avoid arrest by the "Federals." And third, in whatever way guilt was ascertained, by trial or plea, they took some pride and satisfaction in accepting their prison term and serving it.

In his treatment of the large number of Mormons (about 1500) whose guilt had been determined, he took into consideration the circumstances of each defendant and treated him as he thought would best serve the above-mentioned purposes. In some cases, he imposed the statutory penalty of six months; in others, he modified the sentence as justified; and in a few cases, he extended clemency and gave suspended sentences, requiring no imprisonment at all.

"Judge Zane always stood squarely on the principle of equal justice for all. . ."

Many of those who served their terms of imprisonment felt a sense of triumph in the devotion they had shown to their religion, and they went back to their communities under the belief that they had earned the right to live in polygamy and continued to do so for the rest of their lives.

The issue of polygamy had been a thorny

one ever since the Mormons came to Utah. The Church authorities had three times (1855, 1882, and 1887) caused acts to be introduced in Congress to admit Utah to statehood. Each effort had failed, mainly because of polygamy. When the authorities became convinced that further such efforts would be futile, they decided to accept the inevitable. The difficulty which had persisted for so many years was ostensibly brought to a conclusion when on October 6, 1890, an "official declaration" commonly called "The Manifesto" was presented by Church President Wilford Woodruff in the general conference of the Church. It announced the policy of abandoning polygamy and advised all members of the Church to cease the practice and obey the law. The proposal was presented to the congregation, and in the usual manner, by the show of hands, they voted unanimously in favor of it.

The next day, Justice Zane published an article commending the action and made the following announcement in court:

The alleged revelation . . . announcing the abandonment of polygamy — I regard it as an authoritative expression of [the Church]. My confidence in my fellow men leads me to accept such a solemn declaration, and the expression of such a good purpose as being honest and sincere.

Arriving at that accord shows the nobility of character of both President Woodruff and Judge Zane and the sincerity of their desire to bring about a state of peace and harmony. However, neither of them was naive enough to believe that polygamy had been entirely stamped out. They knew that the jailing of polygamist fathers left mothers to take care of families and that this and other aspects of polygamy results in discord, problems, and hardships in numerous ways.

Judge Zane's appointment expired in 1893, and after considerable urging on both sides, Mormons generally opposed and gentiles generally in favor, President Benjamin Harrison reappointed him. When Utah was admitted to statehood January 4, 1896, he became by law the first Chief Justice of the Utah Supreme Court.

The next year, he ran (along with other state officers) and was elected to a two-year term. He ran for reelection in 1899 but had become involved in a political issue by declaring himself opposed to free

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silver and was not reelected. He and his family felt sufficient acceptance and goodwill that they continued to make their home in Salt Lake City. He resumed the practice of law under the firm name of Zane, Stringfellow and Whitaker.

In his activities with the Mormons, as with others, their experience followed the path so common in life. As they worked and associated together, the areas of difference and misunderstanding decreased while the areas of understanding increased. Judge Zane came to know that despite their feelings of resentment of intrusion into their lives and their desire to be isolated, the Mormons were really a people of love and goodwill; and they came to know that, quite apart from his judicial reserve, Judge Zane was a man of compassion and concern for his fellowmen who by steadfast devotion to duty evidenced sterling qualities of character. He had become so well thought of that the city council named Zane Avenue, just north of the Capitol, in his honor.

During the last two years of his life, his failing energy prevented him from doing very much work. On March 29, 1915, he passed away at the home of his daughter, Margaret Zane Cherdron, with whom he had been living.

Judge Zane, as the first chief justice of our state, presided over our judiciary during the most tempestuous period: the transition from territory to statehood. With undaunted courage and determination, he coped with

the difficulties of that time in such a creditable manner that we should be proud and grateful. Most of those who are familiar with the facts would agree that no one has done more than Judge Zane to reduce the long-standing conflict and bring about the degree of harmony that exists. He left an indelible mark on law and justice here, and that stands as a monument to his memory.

The author acknowledges the use of materials from *The Americanization of Utah for Statehood* by Gustine O. Larsen and from the article on Justice Zane written by Thomas G. Alexander, both Professors of History, Brigham Young University; the excellent assistance and advice from Martha Stewart, retired librarian of the University of Utah; and the gracious and efficient assistance of Sherlene Baker, a long-time assistant secretary of the Utah Supreme Court.

¹In this article, the terms "Mormons" and "the Church" refer to the Church of Jesus Christ of Latter-day Saints.

²Roberts, *Comprehensive History of Utah* VI 176-77.

³See P. A. Schlipp, *Albert Einstein, Philosopher, Scientist*; Bertrand Russell, *Mysticism and Logic*.

⁴Letters of Secretary Franklin S. Richards to Church Presidency, October 1882 Manuscript 132, Utah Historical Society Archives.

⁵*Baskin Reminisces* 52-53, Utah Historical Society Archives.

⁶In *Reynolds v. United States*, 98 U.S. Rep. 5, the United States Supreme Court reasoned that one can believe, teach, or preach anything he desires, but can be prohibited from actions which are subversive of or hazardous to the peace and good order of society (some exceptions not of concern here).

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The Rocky Mountain Mineral Law Foundation and the American Bar Association are sponsoring a two-day institute in Houston on "Oil, Gas, and Mining Development in Latin America."

The conference will feature speakers with international expertise and will present an organized and comprehensive analysis of major factors to be considered when initiating and developing Latin American oil, gas, and mining opportunities.

The general program will feature an overview of current and historical natural resources development activities in Latin America, presentations on political risk and the extraterritorial effect of U.S. laws, and a panel discussion on financing oil and gas and mining projects. **Emilio J. Cardenas**, Argentine Ambassador to the United Nations, will deliver a keynote luncheon address on treaties and other multinational agreements affecting the minerals industries.

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Basic Procedure of a Step-Parent Adoption

By Jeannine P. Timothy

The step-parent adoption decree legally validates the family unit which the parent, step-parent and child have already created together. This decree also prevents the absent biological parent from subsequently asserting parental rights over the adoptee. This article is a basic procedural guide on "How to Perform a Step-parent Adoption." It will first focus on the legal requirements of a step-parent adoption, and then explain the requisite forms and pleadings used to initiate and complete the process.

To perform a step-parent adoption, the Utah Code specifies six criteria that must be satisfied before the granting of an adoption decree. The criteria are as follows:

1) The child's biological custodial parent must consent to having his or her spouse adopt the child.¹

2) The step-parent must be an adult (21 years or older) and at least ten years older than the minor child.² This age requirement applies also in adoptions of adults.

3) The child and the step-parent must have lived together in the same home for at least one year before the decree can be entered.³ This cohabitation requirement may be unreasonable in adult adoptions, but it is not an issue that has been tested. Therefore, when drafting a petition for an

JEANNINE P. TIMOTHY received her juris doctor from the University of Utah College of Law in 1985. Since that time, she has been a solo practitioner in the areas of Family Law, Probate, and Wills and Trusts.

adult adoption, allege the amount of time the adoptee resided with the Petitioner, even if that period of time ended prior to the filing of the petition.

4) If the adoptee is older than twelve, she must consent to the adoption unless she is incapable of consenting.⁴

5) If the adoptee is married, their spouse must either receive notice of the petition to adopt or sign a written waiver of their right to receive notice.⁵

6) The issue of consent from the absent biological parent must be resolved. The resolution of this final criterion in a step-parent adoption is determined by the particular fact situation of each individual adoption matter.

For the attorney and the family involved in a step-parent adoption, the main concern is this issue of consent which may or may not be required of the absent biological parent. Since this sixth criterion is the most difficult part of the step-parent adoption process, three scenarios follow that demonstrate the different fact situations and the

procedure required for each.

In the following scenarios, it is assumed the adoptee is a minor child. If in fact the adoptee of a step-parent adoption is an adult (over the age of 18) then the procedure is significantly simplified because no consent is required from the parents of an adult adoptee.⁶ With no consent required, the matter is truly "uncontested" and proceeds to final hearing without complication.

A. SCENARIO I

FACTS: The absent parent is the child's biological father who was never married to the child's mother and was not named on the child's birth certificate.

PROCEDURE: In such cases a paternity search through the Bureau of Vital Records and Health Statistics is required by law.⁷ The Bureau is located in the Cannon Health Building at 288 North 1460 West. The mailing address is P.O. Box 16700, Salt Lake City, Utah 84116-0700. To conduct a search, the Bureau requires a \$9.00 fee plus the following information:

- Name of child
- Sex of child
- Child's date of birth or estimated date of birth (month and year)
- Place of child's birth
- Mother's name and maiden surname

Mother's residence
Father's name, if known
Father's residence, if known

The Bureau will search its records to see if the child's biological father filed a notice of paternity, called an "Acknowledgement of Paternity by Father." If such a notice was filed, the Bureau will issue a certified copy of the notice. If such a notice is not found, the Bureau will issue a "Certificate of Search" which indicates that notice of paternity was never filed. This "failure to file a timely notice of paternity shall be deemed to be a waiver and surrender of any right to notice of any hearing in any judicial proceeding for adoption of the child, and the consent of [the father] to the adoption of the child is not required."⁸ The step-parent then submits the "Certificate of Search" to the court and the matter proceeds to final hearing.

The absent biological father can dispute this waiver of consent if he can prove that 1) through no fault of his own, 2) it was not possible for him to file a notice of paternity before the petition for adoption was filed with the court, and 3) he filed the notice of paternity within 10 days after it became possible for him to do so.⁹ If the father fails to satisfy this three-prong test, then the waiver of consent stands, and the adoption proceeding progresses to final hearing.

If the search reveals that an "Acknowledgement of Paternity by Father" was filed with the Bureau of Vital Statistics, then the biological father must be given notice of the petition for adoption. Notice must be served by certified mail, return receipt requested, at the last address filed with the Bureau.¹⁰ This notice must specifically state that the father has 30 days to respond to the petition of adoption if he intends to contest the adoption.¹¹

Very often the notice mailed to the biological father is returned because he has moved. The statute does not require that the putative father actually receive the notice of adoption petition, only that the notice be mailed, by certified mail, to the last address he identified with the Bureau of Vital Statistics. Submit the returned notice so that it will become part of the court record and serve as proof that the proper procedure was followed in trying to notify the biological father of the adoption action. Many judges will nevertheless require one more step, notice by publica-

tion, if the certified mailed notice to the biological parent is returned for any reason.¹² This notice by publication must specifically name the father to whom notice of the adoption is given, but it need not name the step-parent seeking the adoption.¹³

B. SCENARIO II

FACTS: The child's custodial parent divorced the absent biological parent and, since the divorce, the absent parent has neither supported nor communicated with the child, or has made only a token effort, for a period of at least one year.¹⁴

PROCEDURE: In this case, the Petitioner should allege in the Petition to Adopt that the absent parent has abandoned the child, and therefore, consent from the absent parent is not required. However, the failure to communicate with one's minor child for one year or more is only a rebuttable presumption that the absent parent has failed to maintain a parental relationship.¹⁵ Most judges, therefore, will require either consent from the absent parent, personal service upon the absent parent of "Notice of Petition to Adopt" or, if the whereabouts of the absent parent are unknown, service by publication of the "Notice of Petition to Adopt."

"... the main concern is the issue of consent which may or may not be required of the absent biological parent."

If either personal service or service by publication is completed and the absent parent does not file an objection within 30 days, then the matter can proceed to decree. No further notice need be given the absent parent, and he or she is barred from any subsequent action to assert parental interest in the adoptee.¹⁶ If the absent parent responds to the petition for adoption, then the attorney must evaluate the circumstances to determine whether or not the absent parent will give consent to the step-parent adoption.

Occasionally, an absent parent will contact the attorney or the custodial parent about the adoption matter to ask questions, but has no serious intention of contesting

the action. If the absent parent agrees to give his or her written consent to the adoption, it is always best to have the consent signed under oath before the judge. If the absent biological parent is reluctant to appear before the judge, his or her written consent may be signed before a notary public and must be voluntary.¹⁷ A consent obtained in an unethical manner can be revoked by the signer, but a validly obtained consent is effective when signed, and is thereafter irrevocable.¹⁸

C. SCENARIO III

FACTS: The absent natural parent, whether previously married to the custodial parent or not, is involved in the minor child's life. This is demonstrated by regular communication with the child, visitation, gifts and/or financial support.

PROCEDURE: In situations such as this, the step-parent adoption will not be granted unless the absent parent gives written consent, either before the judge or before a notary public.¹⁹ This is a rare step-parent adoption scenario, but it recently occurred in a case involving a divorced couple whose child was retarded. After the child's mother remarried, the child desired her step-father to become her legal father. The child was a young teenager at the time, and her biological father could see that she needed the people with whom she lived stabilized into a whole family of mother, father and daughter. This was most certainly a difficult situation for the natural father, but he decided it would be in his daughter's best interest to allow the step-parent adoption, and he gave his written consent.

The above three scenarios should assist the practitioner in discerning whether or not consent is required from the absent parent in a step-parent adoption.

COURT DOCUMENTS:

Below is a list of documents required for step-parent adoptions and the information that must be included in each document. For those who are interested, sample documents are presented in the *Domestic Relations Manual* available from Utah Legal Services.

1. PETITION

Step-parent adoption petitions are filed in the district court in the district where the step-parent resides, or in juvenile court if there are other proceedings

concerning the adoptee already before the juvenile court.²⁰

a. As in general adoption petitions, the adoptee's identity is concealed in the caption.

b. For proper venue, petitions must be residents of the county wherein they file.

c. The subject of the adoption must be named, identified as a minor or adult, and her birth date must be given.

d. The Petitioner must be over the age of 21 and more than ten years older than the adoptee.

e. The natural parents of the adoptee must be named, if both natural parents are known.

f. Indicate whether or not the consent of the absent parent is required.

g. If the consent of the absent natural parent is not required, then explain why.

h. If the absent natural parent is unknown, explain that a paternity search revealed no information and submit the "Certificate of Search" into the record.

i. Allege Petitioner's desire to adopt the adoptee but reserve for Petitioner's spouse all legal rights as a coparent.

j. Allege that Petitioner understands all legal implications of an adoption.

k. Allege the cohabitation requirement of one year and continue with an explanation that, during the time the Petitioner and the adoptee have lived together as a family. The petitioner has assumed complete responsibility for the support of the adoptee, that he is ready to execute the necessary consent as required by law, and that they are a fit and proper person to have custody of the adoptee.

l. Request the court to preliminarily deprive the absent natural parent of any rights he or she may have in relation to the adoptee once the petition is filed until the decree is granted.

m. Allege that Petitioner's home is a suitable home in which to rear the adoptee, and that Petitioner is morally fit and financially able to support and educate the adoptee.

n. Specify that the best interest and welfare of the adoptee will be served by the adoption.

o. Indicate whether the adoptee was born out of state, and allege compliance with the requirements of the Interstate Compact on Placement of Children.²¹

p. Finally, request the court permanently deny the absent natural parent any and all rights in relation to the adoptee, grant the adoption reserving unto the Petitioner's spouse all parental rights, and allow the adoptee's surname to be changed (if applicable).

After the date and attorney's signature, the Petitioner must sign the petition before a notary, declaring that he or she has read and understands the petition.

2. Affidavit of Fees

This document is an affidavit signed by the Petitioner and the attorney itemizing each and every expense incurred by the Petitioner for the step-parent adoption action. After the itemization, include a total amount expended by the Petitioner.

3. Written consent to the step-parent adoption

A parental consent to an adoption should specifically state that the parent signs the document voluntarily and not by force or coercion. Additionally, the language in the consent should state that by signing the consent, the parent understands the following:

a. All parental rights with the adoptee are relinquished;

b. All legal rights to visit the adoptee are relinquished;

c. All legal right to contest the termination of the child-parent relationship are relinquished;

d. The Petitioner may proceed to adopt the adoptee;

e. He or she has a right to consult an attorney of his or her own choosing; and

f. The consent cannot be revoked.

4. Utah Department of Health Report of Adoption

This form, available from the probate clerk, must be completed so that a new birth certificate may be created for the adoptee.

5. Certification of Readiness for Adoption

Also available from the probate clerk, this form must be submitted before final hearing can be scheduled.

6. Agreement of Adopting Parent

This document is signed before the judge at final hearing. It must state that the adoptive parent shall adopt the child and treat her in all respects as his own lawful child.²²

7. Findings of Fact and Conclusions of Law

The information in this document parallels that contained in the Petition.

8. Decree of Adoption

The Decree permanently relieves the natural parent of any parental duties and deprives him or her of any parental rights in relation to the adoptee. Further, the document grants to the Petitioner and the adoptee all the rights, privileges and responsibilities of parent and child.

¹Utah Code Ann. § 78-30-3 (1990).

²Utah Code Ann. § 78-30-2 (1985).

³Utah Code Ann. § 78-30-14(7) (1990).

⁴Utah Code Ann. § 78-30-4.1(1) (1990).

⁵Utah Code Ann. § 78-30-4.7(1)(e) & (4) (1990).

⁶Utah Code Ann. § 78-30-1 (1990). An adoptee over the age of eighteen is considered an "adult adoptee" and, as has been stated, no consent for her adoption is required of the absent natural parent. It is important to understand that although Utah Code Annotated §78-30-16(1)(c) defines an "adult adoptee" as "an adoptee who is 21 years of age or older," this definition applies only as it is used in Sections 78-30-17 through 78-30-19. These specific sections of the code "do not apply to adoptions by a step-parent whose spouse is the adoptee's birth parent."

⁷Utah Code Ann. § 78-30-4.8(5) (1990).

⁸Utah Code Ann. § 78-30-4.8(4) (1990).

⁹Utah Code Ann. §§ 78-30-4.8(3)(a),(b) & (c) (1990).

¹⁰Utah Code Ann. § 78-30-4.7(3)(c) (1990).

¹¹Utah Code Ann. § 78-30-4.7(2) (1990).

¹²Utah Code Ann. § 78-30-4.7(3)(b) (1990).

¹³Utah Code Ann. § 78-30-4.7(6) (1990).

¹⁴Utah Code Ann. §§ 78-30-5(1)(a) & (b) (1990).

¹⁵Utah Code Ann. § 78-30-5(1)(b) (1990).

¹⁶Utah Code Ann. § 78-30-4.10(9) (1990).

¹⁷Utah Code Ann. § 78-30-4.2(3) (1992).

¹⁸Utah Code Ann. § 78-30-4.3 (1990).

¹⁹Utah Code Ann. § 78-30-4.2(3) (1992).

²⁰Utah Code Ann. § 78-30-7(1) (1990).

²¹Utah Code Ann. § 78-30-15.1 (1990).

²²Utah Code Ann. § 78-30-15.1 (1990).

WARD HARPER

Attorney at Law

is pleased to announce the opening of his new law office at 56 East Broadway, Suite 500. Mr. Harper is accepting cases in the areas of Social Security and Workers' Compensation. He is a former staff attorney at the Social Security Office of Hearings and Appeals and Utah Legal Services.

Telephone: (801) 322-2141

Facsimile: (801) 322-1717

Commission Highlights

During its regularly scheduled meeting of December 2, 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 October 28, 1993 meeting.
2. Richard Walker appeared to participate in a discussion regarding the status of the Collection Practices Study. He indicated that any proposed changes would help assure that the lawyer, not the collection agency, is in control of the file, which would aid in the reduction of abuse.
3. The Board voted to have Jim Clegg send a letter to the presiding judge in each district and the Chief Justice stating that the Bar Commission believes the small claim court limit should be reduced to \$2,000 unless a local district could justify a higher figure.
4. The Board voted to appoint Herm Olsen to the DNA Peoples Legal Services Board.
5. The Board voted to defer appointments to the Legal Services Board until the January meeting to allow publication of another notice in the *Utah Bar Journal* to solicit members interested in serving.
6. The Board reviewed the Judicial Nominating Commission Process and passed a resolution outlining its position.
7. The Board voted to reaffirm its earlier position to not only oppose moving up consolidation to July 1994 but also to oppose any legislation accelerating the process.
8. John Baldwin distributed and reviewed his written Executive Director's report.
9. Steve Trost briefly reviewed proposed legislation regarding the public adjuster bill, and Mitch Vilos of Utah Trial Lawyers appeared to discuss the bill.
10. John Baldwin referred to the financial reports and indicated that he and Arnold Birrell, Financial Administrator, are available to answer any questions.
11. Mark Webber, Young Lawyers Division President, reported that the Division's

committees have been active updating and creating pamphlets, brochures and video tapes for needs of children and elderly.

12. The Board voted to proceed with a suit against Jerry S. Gardner and Utah Dads for the unauthorized practice of law.
13. The Board voted to publish in the *Utah Bar Journal* the Standards for Utilization for Paralegals.
14. Hon. Judith Billings and Hon. James Z. Davis appeared to discuss what will happen to the civil appeals process should court consolidation take place. Judge Billings indicated that after discussion and review of past statistics and personnel, the judges voted unanimously that they would like to have all civil appeals go through the Court of Appeals.
15. The Board voted to support the legislative amendment proposed by the Board of Appellate Court Judges which provided that appeals from district court civil cases be handled through the Court of Appeals, provided this legislative amendment were packaged separately from HB436 amendment, and, if not, the Bar Commission could not support the amendment.

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.

Discipline Corner

ADMONITIONS:

An attorney was admonished for neglect and ordered to pay \$2,000 in restitution as per the terms of a Discipline by Consent approved by the district court on December 22, 1993. The attorney was retained to pursue a wrongful death action against an excavating company that owned and operated a certain dump truck that was pulling two "pup" type dump trailers on October 16, 1987, when the clients minor son apparently rode his bicycle into the path of the first pup and was fatally injured. Three accident reconstructionists concluded that the excavating company had little if any liability. The attorney was at various times between February 1989 and late 1990 retained, terminated and retained again on

March 7, 1990. On October 16, 1989, the attorney filed the complaint but did not serve the defendants until October 12, 1990. No meaningful legal services were provided between March 7, 1990 and October 12, 1990. The client had their case dismissed without prejudice for failing to serve the defendant's within 120 days but did not lose their cause of action which could have been refiled relying upon Utah Code Ann. §78-12-40, commonly referred to as the "savings statute."

On December 21, 1993, a Discipline by Consent was approved which provided for an Admonition, restitution of \$2,000.00, and attendance at ethics school. In this instance, the attorney received funds for the purchase of stock in a business with which the attorney was associated. The funds were deposited into the attorney's trust account and then disbursed to a business associate. The corporation failed, thereafter, to deliver the stock to the purchaser. This discipline was deemed appropriate since it was not a case of conversion by the attorney. The attorney paid the funds to the business as directed by the purchaser on the same day they were received. However, using a trust account to conduct personal business is improper. This conduct violated Rule 1.13(b) of the Rules of Professional Conduct.

DISBARMENT:

On January 25, 1994, the Third Judicial District Court entered an Order of Disbarment against Donald E. Elkins. Mr. Elkins was disbarred for violating Rule 1.2 SCOPE OF REPRESENTATION, Rule 1.3 DILIGENCE, Rule 1.4(a) COMMUNICATION, Rule 8.4(c) MISCONDUCT involving dishonestly, fraud, deceit or misrepresentation and Rule 8.4(d) conduct that is prejudicial to the administration of justice. The Order also requires Mr. Elkins to notify his clients and to pay the costs of the action.

Mr. Elkins filed four appeals on behalf of clients under a public defender contract and failed to timely prosecute the appeals. Even after being notified by the Court of Appeals, Mr. Elkins failed to perfect the appeals. Mr. Elkins also misrepresented the status of the appeals to his clients. A

fifth appeal was dismissed for failure to prosecute, but it was a civil matter and his client requested that he not continue. However, Mr. Elkins did not notify the Court and the Court was forced to use scarce resources to track the matter.

REINSTATEMENT:

On December 16, 1993, the District Court entered an Order reinstating John R. Bucher to the practice of law subject to supervised probation for one year.

On January 12, 1994, the District Court entered an Order reinstating Steven R. Angerbauer to the practice of law. The Order of Discipline entered by the Utah Supreme Court provides that upon reinstatement to practice law Mr. Angerbauer will be on supervised probation for a minimum of one year.

New Appellate Practice Section of Utah State Bar Seeks Members, Will Meet in Mid-March

On January 27, 1994, the Board of Commissioners of the Utah State Bar approved the formation of the Appellate Practice Section. The petition for creation of this new section was enthusiastically supported by seventy-nine local attorneys, including several appellate judges and members of other Bar sections.

The Appellate Practice Section will have several important goals, including: First, to provide needed training in appellate practice to section members and others, with an eye toward improving the quality of written and oral appellate advocacy. Second, to provide a forum for appellate law practitioners to identify and discuss the latest appellate decisions and trends in the appellate courts. Third, to create an organization of interested practitioners that can speak out on matters that affect appellate practice and the appellate courts.

If you want to be a member of the new section, promptly send your name, current address and telephone, bar number, and a check for \$10.00 (as part-year Section dues through June 30, 1994), payable to the Utah State Bar, to:

Utah State Bar
Appellate Practice Section
Attention: Arnold Birrell
645 South 200 East
Salt Lake City, Utah 84111

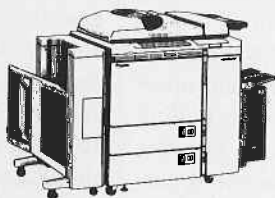
The first meeting of the Appellate Practice Section will be held at the Utah Law and Justice Center on March 16, 1994, from 12:00 noon until 1:00 pm. Please bring your sack lunch and join us. Officers will be elected and bylaws approved, but the main agenda item is discussion of plans for an all-day appellate practice seminar in late spring and another CLE program at the Bar's Annual Meeting in Sun Valley.

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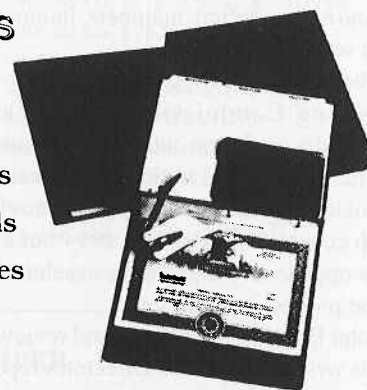
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UNITED STATES DISTRICT COURT DISTRICT OF UTAH POSITION ANNOUNCEMENT

Position:

Law Clerk to Magistrate Judge Samuel Alba

Starting Salary:

\$28,648 to \$64,218, depending on qualifications

Starting Date: May 1994 or earlier

Application Deadline: March 21, 1994

Qualifications:

- 1) One year of experience in the practice of law, legal research, legal administration, or equivalent experience received after graduation from law school. Substantial legal activities while in military service may be credited on a month-for-month basis whether before or after graduation;
OR
- 2) A recent law graduate may apply provided that the applicant has:
 - a) graduated within the upper third of his/her class from a law school on the approved list of the A.B.A. or the A.A. L. S.; or
 - b) served on the editorial board of the law review of such a school or other comparable academic achievement.

Appointment: The selection and appointment will be made by the United States Magistrate Judge.

Tenure: This is a temporary law clerk

position whose tenure is limited to a maximum of 18 months.

Applicants should send resume, transcript and any supporting materials. All applicants are required to submit a writing sample, preferably one involving legal research, and references.

Applications should be made to:

Magistrate Judge Samuel Alba
United States District Court
260 Frank E. Moss U. S. Courthouse
350 South Main Street
Salt Lake City, Utah 84101

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BENEFITS SUMMARY

Employees under the Judicial Salary Plan are entitled to:

- Scheduled grade or within-grade increases in salary, depending on performance, tenure, and job assignment.
- Choice of federal health insurance programs.
- Ten paid holidays per year.
- Credit in the computation of retirement benefits for prior civilian or military service.

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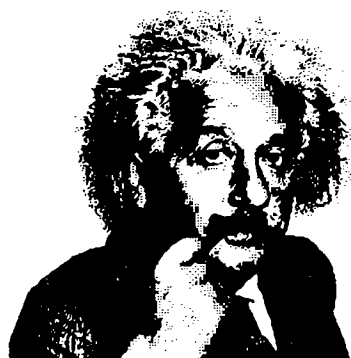
1994 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1994 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Kaesi Johansen, Convention Coordinator, 645 South 200 East, Salt Lake City, Utah 84111, no later than **Wednesday, April 13, 1994**. The award categories include:

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

Fifth Annual Intermountain Medical Ethics Conference

A conference entitled "Medical Ethics and Health Care Reform: New Issues on the Table," the Fifth Annual Intermountain Medical Ethics Conference sponsored by the Division of Medical Ethics, LDS Hospital and University of Utah, will be held March 30, 1994. The conference will help participants understand the ethical and legal implications of managed competition for individual choice, recognize and evaluate criteria that would be used for rationing health care, and learn what health care organizations and individuals can do to insure responsive and responsible medical decision-making. Speakers include Ezekiel J. Emanuel, M.D., Ph.D., Linda L. Emanuel, M.D., Ph.D. (both of Harvard University), and Michael Garland, D.Sc.Rel (Oregon Health Sciences University). Registration fee, \$75. Application for CLE credit pending. For information contact the Division of Medical Ethics (801) 321-1135.



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Local Law Firm Receives Award From Westminster College

SALT LAKE CITY — The law firm of Jardine, Linebaugh, Brown and Dunn received the Legal Community Award of the Westminster College Legal Assistant Certificate Program at the program's graduation ceremonies on December 17, 1993. The award is presented by each graduating class to a local law firm which furthers the professionalism of legal assistants. Richard H. Thornton, president of the firm, accepted the award.

"Jardine, Linebaugh was selected this year because the firm uses legal assistants extremely well," said Kelly De Hill, Esq., Director of Legal Education and General Counsel at Westminster. "Students who have worked or completed internships there report that they are not only given challenging and professional work to do, but that they are trained and supervised well. The firm appears to have an excellent understanding of the degree of professional assistance that legal assistants can provide, and we feel that firms like Jardine, Linebaugh should be recognized."

Echoing the theme of professionalism, graduation speaker James W. McConkie, Parker, McKeown & McConkie, who is on the faculty of the Westminster Legal

Assistant Certificate Program, spoke to the 17 students who were receiving certificates and their guests about the future of legal assistants. The field is growing, he said, and becoming more professional. He noted the movement in other states to create a level of legal technicians who will be licensed to practice law on a limited basis with clearly defined responsibilities as an example of the changes and pressure the paralegal field is experiencing.

Parker, McKeown & McConkie received last year's Legal Community Award from Westminster. The firm employs 6 legal assistants for 3 attorneys.

The Legal Assistant Certificate Program at Westminster College is an 11-month evening program which provides students with the basic legal knowledge and skills they need to work effectively under the supervision of an attorney. The program stresses good written and oral communication skills, computer skills, litigation support, and legal research as well as offering electives in specific areas of law. The Westminster Legal Assistant Certificate Program is certified by the American Bar Association.

Notice of Election of Bar Commissioners Third, Fourth & Fifth Divisions

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

Applicants must be nominated by written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after March 14, and completed petitions must be **received no later than April 25**. Ballots will be mailed on or about May 13 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on June 15.

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

1) Space for up to a 200-word campaign message plus a photograph in the June/July issue of the *Bar Journal* (published around June 1). The space may be used for biographical information, platform or other election promotion. Campaign messages for *Bar Journal* publication are due along with completed petitions **no later than April 25**.

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

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar **no later than May 5** enough copies of letters for all attorneys in their district. (Call Bar office for count in your respective district)

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

NOTE: According to the Rules of Integration and Management, residence is interpreted to be the mailing address according to the Bar's records.

Utah State Bar Long-Range Planning

The Board of Bar Commissioners voted that the mission of the Bar should be, "To represent lawyers in Utah and to serve the public and the profession by promoting justice, professional excellence and respect for the law." The Commission has established the following goals in furtherance of that mission.

1. To promote the administration of justice.
2. To uphold and elevate the standards of courtesy, ethics, competence, professionalism, public service and collegiality in the legal profession.
3. To provide improved access to legal services for the public.
4. To educate the public about the rule of law and their responsibilities under the law and to increase public understanding of the role of the legal profession within the system of justice.
5. To provide service to the public and to

the judicial system.

6. To provide services and benefits to lawyers.

7. To diversify participation of all lawyers in Bar activities.

President-Elect Paul T. Moxley has appointed a long-range planning committee to evaluate the Bar's effectiveness in accomplishing its goals and furthering its mission. The committee consists of Bar Commissioners: Gayle McKeachnie, Charlotte Miller, John Florez, Frank Wilkins, Paul Moxley and Executive Director, John Baldwin.

The Committee is soliciting input from members of the Bar regarding its mission and goals. Any and all comments or questions may be directed to any of the committee members personally at their offices or c/o John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111.

Utah State Bar Commission Approves Ethics Opinions & 60-Day Comment Period

The Board of Bar Commissioners has adopted a policy whereby ethics opinions will be approved, pursuant to the recommendations of the Ethics Advisory Opinion Committee, pending a 60-day comment period following publication in the *Bar Journal*.

Opinion No. 126

Approved January 27, 1994

Issue: Under what circumstances may a city attorney represent criminal defendants?

Opinion: A city attorney with prosecutorial functions may not represent a criminal defense client in any jurisdiction. A city attorney with no prosecutorial functions, who has been appointed as city attorney pursuant to statute, may not represent a criminal defense client in that city, but may represent a criminal defense client in other jurisdictions, provided that Rule 1.7(a) of the Utah Rules of Professional Conduct is satisfied. An attorney with no prosecutorial functions, who is retained by a city on a contract or retainer basis, may represent a criminal defense client in any jurisdiction, provided that Rule 1.7(a) is satisfied. An attorney who is a partner or associate of a city attorney may not represent a criminal defense client in any situation where the city attorney is so prohibited.

Opinion No. 138

Approved January 27, 1994

Issue: May a currently practicing sole practitioner who formerly had associates or junior partners continue to use the firm name that includes the sole practitioner's name followed by "& Associates"?

Opinion: A lawyer may not use "& Associates" as part of a firm name where no attorney associates are currently employed by that firm.

Opinion No. 139

Approved January 27, 1994

Issue: May a law firm's nonlawyer office administrator be compensated solely on

ANNOUNCEMENT: Recruiting Ethics Advisory Committee Members

The Utah State Bar is now accepting applications for membership on the Ethics Advisory Opinion Committee for terms beginning July 1, 1994.

In response to the increasing importance and frequency of occurrence of ethical issues that affect Utah lawyers, the Board of Bar Commissioners has modified the procedure for constituting the Ethics Advisory Opinion Committee. Beginning July 1, 1994, the Committee will comprise the Chair and 12 members, who will be appointed upon application to the Bar. Regular appointments will be for three years, although some appointments will be initially for one and two years to provide for staggered terms.

The Committee is charged with preparing written opinions concerning the ethical propriety of anticipated professional or personal conduct, when requested to do so by the Utah State Bar, and forwarding these opinions to the Board of Bar Commissioners for their consideration.

Because the written opinions of the Committee have major and enduring significance to the Bar and the general public, the Board wishes to solicit the participation of lawyers (including the judiciary) who can make a significant commitment to the goals of the Committee and the Bar.

If you are interested in serving on the Ethics Advisory Opinion Committee, please submit an application with the following information, either in resume or narrative form:

- Basic information, such as years and location of practice, type of practice (large

firm, solo, corporate, government, etc.), and substantive areas of practice.

- A brief description of your interest in the Committee, including relevant experience, interest in or ability to contribute to well-written, well-researched opinions. This should be a statement in the nature of what you can contribute to the Committee.

Appointments will be made by a panel comprising the Bar President, the Liaison Commissioner for the Ethics Advisory Opinion Committee and the Chairman of the Committee for the ensuing year. The panel's selections are intended to accomplish two general goals:

- Appointment of members who are willing to dedicate the effort necessary to carry out the responsibilities of the Committee and who are committed to the issuance of timely, well-reasoned, articulate opinions.
- Creation of a balanced Committee that incorporates as many diverse views and backgrounds as possible. The selection panel will attempt to create a Committee with balance in: substantive practice areas, type of practice (small firm, government, etc.), geographical location, and experience.

If you would like to contribute to this important function of the Bar, please submit a letter indicating your interest to:

**Ethics Advisory Opinion
Committee Selection Panel
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111**

the basis of a percentage of the gross income of the firm?

Opinion: Under Rule of Professional Conduct 5.4(a)(3), a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, which may be based upon a percentage of the net or gross income of the firm, so long as compensation is not tied to receipt of particular fees. The nonlawyer's employment, however, must still comport with Rule 5.4(d), which prevents the nonlawyer from owning an interest in or controlling the activities of a law practice.

NOTICE

The 12th Annual State and Local Government Conference, sponsored by the Government and Politics Legal Society of the J. Reuben Clark Law School, will be held at the Provo Park Hotel on Friday, March 18, 1994.

Any questions should be directed to Alex Maynex at 378-3593.

ANNOUNCEMENT of JUDICIAL VACANCY

ANNOUNCING:

The opening of the application period for a judicial vacancy, in the Utah Court of Appeals. The position results from the appointment of Judge Leonard H. Russon to the Supreme Court bench.

Complete application forms must be received by the Administrative Office of the Courts no later than 5:00 p.m., March 15, 1994.

ELIGIBILITY REQUIREMENTS:

Applicants must be 25 years of age or older, citizens of the United States, Utah residents for three years prior to selection and admitted to practice law in Utah.

SELECTION PROCESS:

Current Utah law requires the Judicial Nominating Commission to submit three nominees to the Governor within 45 days of its first meeting. The Governor has 30 days in which to make a selection. The Utah State Senate has 60 days in which to approve or reject the Governor's selection. To obtain the procedures of Judicial Nominating Commissions and the names of Commission members call Marilyn Smith (801) 578-3800.*

At its first meeting the Nominating Commission reviews written public comments. This meeting is open to the public. To comment upon the challenges facing Utah's courts in general, submit a written statement no later than March 25, 1994, to the Administrative Office of the Courts, Attn: Appellate Court Nominating Commission.

*Note: Present membership of Commission may change because of pending legislation.

continued on next page →

To obtain an application form contact:

Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
(801) 578-3800

Attorney Needed

The Office of the Attorney Discipline of the Utah State Bar is accepting applications in the form of resumes for the position of Assistant Disciplinary Counsel. The successful applicant will be responsible for the prosecution of serious cases of misconduct filed in the District Courts. Minimum of five (5) years litigation experience. Competitive salary and benefits. Applications should be submitted to the above at 645 South 200 East #205, Salt Lake City, Utah 84111.

TERMS OF EMPLOYMENT

A. BENEFITS:

Salary as of July 1, 1993, is \$85,250 annually • 20 days paid vacation per year • 11 paid holidays • \$18,000 term life insurance policy (with an option to purchase \$200,000 more at group rates) • Choice of five Medical and Dental Plans. Some plans paid 100% by the state, others requiring an employee contribution.

Retirement Program: The state contributes an amount equal to 10.32% of judge's salaries toward the retirement system. A percentage of court fees also goes toward the system. Two percent of a judge's salary is deducted as their share of the retirement system costs. Judges are able to retire at any age with 25 yrs. service; at age 62 with 10 years service; or at age 70 with 6 years service. Retirement amount is calculated on the basis of years of service and an average of the last 2 years of salary. Judges receive 5% of their final average salary for each of their first 10 years of service, 2.25% of their average salary for each year from 11 to 20 years of service, and 1% of their final average salary for each year beyond 20 years to a maximum of 75%.

B. JUDICIAL RETENTION

Each judge is subject to an unopposed, non-partisan retention election at the first general election held more than 3 years after the appointment. To be retained, a judge must receive a majority of affirmative votes cast. This means that newly appointed judges will serve at least 3, but not more than 5 years prior to standing for their first retention election. Judges appointed before November 1993 will appear for the first time on the retention election ballot in 1996.

Following the first retention election, trial court and appellate judges appear on the retention ballot every 6 years. Supreme Court Justices stand for retention every 10 years.

C. PERFORMANCE EVALUATION

All sitting judges undergo a performance review every two years. Judges not standing for retention election can use the performance review results (which are confidential) as a guide for self-improvement. Judges standing for retention election are subject to Certification Review by the Judicial Council. Prior to the election, the Council announces those judges who have and (if applicable) have not been certified as meeting the following evaluation criteria:

- *No formal sanctions (and not more than 1 informal sanction) by the Judicial Conduct Commission*
- *Completion of 30 hours of approved judicial education each year.*
- *Self Certification that a judge is physically and mentally able to serve, and complies with the Codes of Judicial Conduct and Administration.*
- *A satisfactory score on the certification portion of the Council's Survey of the Bar. (Judge's pass/fail scores on the certification section of the bar survey are released to the press with the Council's certification report).*

Those wishing to recommend possible candidates for judicial office or those wishing to be considered for such office should promptly contact the Human Resources Division in the Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102. (801) 578-3800. Application packets will be forwarded to prospective candidates.

**Administrative Office of the Courts
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Salt Lake City, Utah 84102
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Elections Open for Offices in the Young Lawyers' Division

*By David J. Crapo
President-Elect*

April marks the opening of elections for the Young Lawyers' Division for the 1994-95 year. Nominations for the offices of President-Elect, Secretary and Treasurer open on Monday, April 4, 1994. These officers carry out the activities of the Division. Their duties include:

President-Elect:

The President-Elect position requires a three-year commitment: one year as President-Elect, one year as President of the Division, and one year as Past President of the Division. The President-Elect is a member of the Executive Council and chairs the Long-Range Planning Committee. The President-Elect acts as President in the absence of the President. The President-Elect attends Bar Commission meetings when the President is unable to attend. The President-Elect automatically succeeds to the office of President of the Division during the 1995-96 year. The President-Elect also performs other duties as may be delegated by the President and serves as a liaison with the President to the National Young Lawyer's Division.

Secretary:

The Secretary of the Division serves a one-year term of office. The Secretary keeps minutes of all meetings, sends out notices of meetings, prepares agendas and serves as an administrative assistant to the President. The Secretary also is a member of the Executive Council and supervises and serves as a liaison to two or more committees of the Division. The Secretary may also perform other duties as may be delegated by the President.

Treasurer:

The Treasurer chairs the Finance Committee of the Division, prepares an annual budget, submits quarterly financial reports to the Executive Council and handles all financial matters of the Division under the direction of the President. The Treasurer is a member of the Executive Council and also supervises and serves as a liaison to two or more committees of the Division. The Treasurer may also perform other duties as may be delegated by the President.

Below is a summary of the election rules.

1. The President-Elect, Secretary and Treasurer are elected by the general membership of the Division. The Division is currently comprised of approximately 1500 young lawyers in Utah.

2. A nominee for any office must be a member in good standing of the Utah State Bar.

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

4. Nominations for the offices are being accepted from Monday, April 4, 1994 through Monday, April 11, 1994. Any qualified person wishing to be elected may be nominated by a petition bearing the signatures of three members of the Division who are in good standing. Nominations

must be received by the current President of the Division, Mark S. Webber, Parsons, Behle & Latimer, 201 South Main, Suite 1800, Salt Lake City, Utah 84111, by 5:00 p.m. on April 11, 1994. The current President, Mark S. Webber, also serves as the election judge. Nominations should be hand-delivered or mailed to be received by April 11, 1994.

5. Each nominee must submit a written statement which contains the candidate's biography, qualifications and platform ("Platform Statement"). The Platform Statement should be submitted to the President in final form, ready to be photocopied, by 5:00 p.m. on Thursday, April 14, 1994. The Platform Statement will not be retyped by the election judge if it is not in final form. The contents of any Platform Statement submitted will not be disclosed to other candidates by the election judge prior to 5:00 p.m. on April 14, 1994. The Platform Statement should not exceed a one-sided single page of 8-1/2 x 11 inch paper. No changes to the Platform Statement will be allowed after 5:00 p.m. on April 14, 1994.

6. Officers are elected by secret mail ballot by all members of the Division. Ballots will be counted and election results announced on Friday, May 6, 1994.

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

8. The new officers of the Division will take office at the 1994 Annual Meeting of the Utah State Bar.

9. A copy of the complete Election Rules can be obtained from Mark S. Webber, Parsons, Behle & Latimer, 201 South Main, Suite 1800, Salt Lake City, Utah 84111.

ELECTION TIMETABLE

| | |
|---|----------------|
| Nominations Open | April 4, 1994 |
| Nominations Close | April 11, 1994 |
| Platform Statements Filed | April 14, 1994 |
| Platform Statements and Ballots Mailed | April 18, 1994 |
| Balloting Begins | April 18, 1994 |
| Election Results Announced | May 6, 1994 |

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

Young Lawyer's Division Publishes Pamphlet on Child Abuse

The Needs of Children Committee for the Young Lawyers Division of the Utah State Bar in cooperation with the Utah Chapter of the National Committee for Prevention of Child Abuse is currently publishing 10,000 copies of a pamphlet entitled *Reporting Child Abuse: A Guide for Utah Clergy*. This pamphlet is the third in a series that discuss Utah's requirement that any person who has reason to know or suspect that a child is being abused or neglected is required to report that abuse or neglect to the proper authorities. See Utah Code Ann. § 62A-4-503 (1989). The first two pamphlets were written for educators and day care providers.

Utah's Child Abuse Reporting law has been very controversial among religious authorities who feel that it improperly encroaches upon the sanctity of the clerics' religious duty of confidentiality in confession. The law contains a narrow exception to the reporting requirement for clerics who learn of abuse while receiving the confession of a perpetrator in the course of discipline enjoined by the church to which he belongs. The pamphlet attempts to set forth the reporting requirement and its exception in plain terms that can be easily understood by Utah's reli-

gious leaders. Before a final draft of the pamphlet was prepared, leaders from many religious were given the opportunity to review the document and make comments. Many of these religious leaders were influential in the initial debate surrounding passage of the reporting law and its clergy exception; their comments were useful in understanding the history and meaning of the statutory language.

Reports of child abuse in Utah increase each year. In 1992, 15,349 reports of abuse or neglect were investigated by the Division of Family Services. This figure represents a 19% increase over 1990 statistics. Informed members of the clergy can spot the early signs of child abuse and take the first step toward helping children and families who need intervention. The publishers hope is that this pamphlet will assist the clergy in this vital function.

The Utah Chapter of the National Committee for Prevention of Child Abuse is distributing the pamphlet through direct mailings and at conferences, workshops and other events in the religious community. If you would like a copy, or additional information, please contact Scottie Davis at (801) 532-3404.

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 Mel Jones at 328-8891 or 1-800-662-4245 one week in advance. One hour CLE credit. (Topics are subject to change without notice.)

The topics for March and April are:

MARCH

March 7 - UAPA Overview -
Changing Under Consideration
March 14 - Easements/Adverse Possession/
Boundary Disputes
March 21 - Negotiations
March 28 - Housing Problems
for Migrant Workers

APRIL

April 4 - Hospital Dumping
April 11 - Commitment Proceedings
April 18 - Fair Debt Collection
Practices Act
April 25 - Overview of Public
Housing Programs

Young Lawyer Helps the Homeless

By Michael Mower and Narda Beas-Nordell

Every Sunday morning Young Lawyer Division member Jense Anderson can be found helping the homeless under the 400 South Viaduct. Anderson is the volunteer supervising attorney at this location for the Utah Legal Services' Homeless Legal Outreach Program. Anderson is responsible for assisting numerous homeless individuals with legal problems such as landlord tenant disputes and social security disability claims. In addition, she oversees the efforts of the University of Utah Bennion Center volunteers and law students who also provide counseling services to the homeless.

Anderson, an associate at Holme, Roberts & Owen, has made this Sunday morning service a habit for the past several months. "I feel an immediate sense of gratification in helping someone, and I am helping someone who often can't get legal assistance anywhere else," Anderson said. She noted that while attorneys have an ethical obligation to provide pro-bono service to those in need, she serves the homeless, "because I love it."

Utah Legal Services' Homeless Out-

reach Program is seeking other attorneys to become involved in their outreach program. The locations are the St. Vincent de Paul's daily soup kitchen, the Salvation Army's Tuesday evening meal and the Fourth South Viaduct on Sunday mornings. Attorneys are asked to contribute a voluntary time commitment ranging from one hour at the Salvation Army site to two hour increments at the St. Vincent de Paul center or the Fourth South Viaduct.

The Homeless Legal Outreach Program was developed in 1990 to provide the homeless with legal assistance in civil matters. The program was initially funded for three years by the Department of Education through the University of Utah College of Law to provide students experience in the clinical practicum under the supervision of Professor Linda Smith. The program has had many success stories as it integrates legal assistance and social work. One success story, for example, concerns Mary (name changed), who had been homeless for four years. An attorney-supervised law student successfully represented Mary at a Social Security hearing. Later a Bennion

Center volunteer went with Mary to assist her in finding housing and other emergency assistance that got her off the street.

Kay K. Fox, attorney for the Homeless Legal Outreach Program (and one of the first interns with the program), says that in 1990 the project, running on a part-time basis, represented 450 cases. In 1993 the project processed 1,060 cases. In October 1993, the Outreach Program opened a full time office at the St. Vincent de Paul soup kitchen facility. It currently interviews and assists 15 walk-ins a day. St. Vincent de Paul's has estimated that the case load will be 1,500 cases with 4,400 client interviews in 1994.

To assist and/or volunteer with the Legal outreach contact Kay K. Fox at St. Vincent de Paul Center, 427 West 200 South, Salt Lake City, Utah 84111, (801) 596-3037. The project could also use donations of office equipment and supplies such as computers, copier paper, legal pads and pens. Law books would also be appreciated.

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Utah Certified Public Accountant

Peter M. Mitirko: "Employee Benefit Plans"
Denver Office of Ernst & Young

Honorable Carl N. Byers: "State Tax Courts - Do They Work & Why?"
Judge, Oregon State Tax Court
Past Chair of the National Conference of State Tax Judges

David J. Crapo: "State & Local Tax Update"
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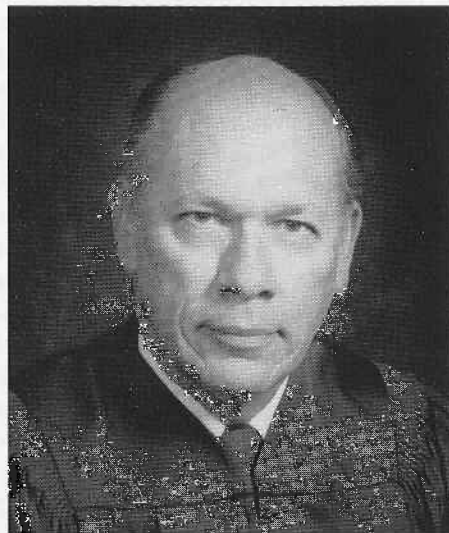
Whose Children are These? A Primer for Juvenile Court Practice

By Judge Stephen A. Van Dyke

Ralph Waldo Emerson said "It is not so much the burden we bear that breaks our back, as the way we bear it." Any discussion of practice in juvenile justice must ultimately come down to two things, a definition of the burden we bear, which will define in large measure what juvenile justice is, and a decision as to how we will go about bearing that burden.

Too often we hear the comment that the world views juvenile courts as "kiddie courts," and of little consequence. Reactively we sometimes struggle against such impressions, but the struggle ought to be against the second part of that view, not the first. Juvenile courts are indeed kiddie courts. That is precisely our purpose, to serve the needs of children. The value of such service is measured in the success of our efforts to redeem and reform to the benefit of society, the children who appear before courts. To that end the focus has historically been upon shaping and protecting the child in his or her progress toward responsible adulthood. If the future of society resides in our children, then juvenile courts play a role of profound significance; for children in courts in increasing numbers will impact by their behavior and presence the schools, businesses, neighborhoods, towns and families of tomorrow.

Unlike adults, children lack the capacity and maturity to provide for themselves and perform in society without some adult assistance. In legal context children cannot contract, operate railroad trains, drink alcohol, or work under an array of adult conditions. Children because they are children, have limited legal rights and standing. There is no child's constitutional right to jury trial, to bail, or to be free of all adult interference. A child is always in someone's custody.¹ These and other legal distinctions highlight our vision of what is and is not a child. "Children have been excluded purposely from full participation



JUDGE STEPHEN A. VAN DYKE is currently the presiding Judge in the 2nd District Juvenile Court covering Weber, Davis and Morgan counties. He graduated from the J. Reuben Clark Law School at Brigham Young University in 1980 and was a member of the Law Review. Judge Van Dyke has a Ph.D. in communications from Bowling Green State University in Ohio (1976), and has served on numerous task forces dealing with Juvenile Justice since his appointment to the bench in 1985. He served on the State Board of Juvenile Court Judges from 1985 to 1994, and chaired the board in 1990. Presently he is a member of the State Steering Committee on Children at Risk, and the Judicial Performance Committee, as well as the State Bar Journal Editorial Advisory Committee.

in democratic life because the philosophical fathers of individualism, as well as our law, have assumed that capacity is a prerequisite to the meaningful exercise of freedom."²

Some rights for children do make obvious sense. The statutory right to be protected from abuse or neglect may also exist in constitution liberty interests. The

right to be afforded care, the right to an ad litem, and counsel when accused by the state, and the right to fair trial of issues are among those rights cognizable as children's rights. Most of these are rooted in the child's need for help as well as in fundamental fairness. In that sense they are rights provided by adults to assist the child. Most due process and even some privacy rights are not incompatible with these notions.³

But adults, in contrast to children, have a more complete series of rights under law, including the right to contract, make bail, live independently and make independent life choices. Adults are not in anyone's custody so long as they behave sanely and honestly. Adults can presumably distinguish right from wrong, good from bad, and are expected to act accordingly. Children are forgiven for folly not tolerated in adult behavior. Adult corrections is thus aimed at protecting society from the criminal intentions of more hardened and responsible adult perpetrators, while juvenile justice aims at protecting and shaping the child. Children are perceived as in the act of becoming an as yet unfinished product, more responsive to rehabilitation and gentler punitive approaches. The adult system is geared to incapacitate over a longer period. We give up more on adults. We give more in terms of hope and help to children.⁴

These distinctions between adult and juvenile approaches are pronounced in the contrasting systems by which justice is delivered. Adult courts determine guilt or innocence, and hand out punitive sentences almost exclusively, with a high emphasis upon long term incarceration. There is no enforcement wing of probation attached directly to most state adult courts, and sentences are virtually without consideration as to results in changing the adult sentenced. There is little or no continuing jurisdiction after sentencing, and almost

no review or court responsibility for the corrections process once jurisdiction shifts to the executive branch.

Juvenile justice in theory and practice is different. Determinations are made on the needs of the child directly. Sentences are decidedly short term, and often include diversions, work projects, restitution and non-incarcerative options. Probation is connected to the court itself, an especially important enforcement mechanism in following and forming the progress of the child. Jurisdiction is continuing, with periodic reviews and court oversight responsibility made key factors in the delivery of services to meet needs.

The distinction between adult and juvenile corrections philosophy is perhaps nowhere more pronounced than in liberty interest differences recognized by the courts. Preventative detention of juveniles for instance has long been a concern of civil libertarians, who seem to worry that we insist upon treating children as children instead of as adults. The nexus of difference in treatment is the state's *parens patriae* interest in preserving and promoting the

well being and safety of the child, an interest that does not exist in adult criminal cases.

"The distinction between adult and juvenile corrections philosophy is perhaps nowhere more pronounced than in liberty interest differences recognized by the courts."

Children by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the state must play its part as *parens patriae*. *Schall v. Martin*, 457 U.S. 253, 81 L.Ed 2d 207, 218. *See State v. Gleason*, 404 A.2d 573, 580 (Me. 1979) (other citations omitted). In this respect, the juvenile's liberty interest may; in appropriate circumstances, be

subordinated to the state's "*parens patriae* interest in preserving and promoting the welfare of the child." *Santosky v. Kramer*, 455 U.S. 745, 766, 71 L.Ed 2d 599, 102 S.Ct 1388 (as quoted in *Schall v. Martin*, *supra*).

What "appropriate circumstances" means was clarified somewhat by the United States Supreme Court as it analyzed a New York statute the New York Court of Appeals had characterized as a statute stressing "the desirability of protecting the juvenile from his own folly." *People ex rel Wayburn v. Schupf*, 39 N.Y.2d 682, 688-89, 350 N.E.2d at 909.

Our society recognizes that juveniles in general are in the earlier stages of their emotional growth, that their intellectual development is incomplete, that they have had only limited practical experience, and that their value systems have not yet been clearly identified or firmly adopted.

For the same reasons that our society does not hold juveniles to an adult standard of responsibility for their conduct, our society may also conclude that there is

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a greater likelihood that a juvenile charged with delinquency, if released, will commit another criminal act than that an adult charged with crime will do so. To the extent that self-restraint may be expected to constrain adults, it may not be expected to operate with equal force as to juveniles . . . there will not be the deterrent for the juvenile which confronts the adult. Perhaps more significant is the fact that in consequence of lack of experience and comprehension the juvenile does not view the commission of what are criminal acts in the same perspective as an adult. . . . There is the element of gamesmanship and the excitement of "getting away" with something and the powerful inducement of peer pressures. All of these commonly acknowledged factors make the commission of criminal conduct on the part of juveniles in general more likely than in the case of adults. *People ex rel Wayburn v. Schupf*, 39 N.Y.2d, at 687-688, 350 N.E.2d, at 908-909.

Much of this same reasoning applies to non-delinquent behavior of juveniles. The same "element of gamesmanship and the excitement of 'getting away' with something and the powerful inducement of peer pressures" that lead to delinquency also lead to running away to street life, premature exposure to sex, and deeply damaging truancy. In other words, kids do stupid things that can put them in harms way without proper food, clothing shelter, or governance. All of these factors make dangerous non-criminal conduct on the part of juveniles generally more likely than in the case of adults.

The failure to distinguish between conditions safe for an adult but dangerous or damaging for a child accounts for much of the general confusion in defining procedure and direction in juvenile justice. This problem is perhaps the more confusing because we do give children progressively greater freedom as they achieve physical and mental growth. The privilege to drive at age 16, the privilege to hunt with adult supervision at age 14, and the right in some states to marry without parental consent at age 16 are but a few examples of the progressive erosion of our protective attitude toward children as they gradually age out of childhood.

There is a strange feeling of disjunctiveness in all of this desire to elevate juveniles to the rank of adults by bits and

pieces. We often talk about children's status offenses as if they were really of little or no consequence in lives. One should not, so the argument goes, hold a child even temporarily for merely being truant, or driving in a car while under age, or for getting blotto on cheap wine. Such offenses are mere status offenses, and never mind that damage can result to the child and ultimately to society. Adults, if held, could, after all bail out, and children cannot. So, in a spasm of irony, we protect the child not against his or her own dangerous folly, but from the legal system whose function it is to protect the child from the child's immature behavior. We turn the child over to an insecure social services placement, from which if he wishes he can stagger back out into the night or the mall. We also turn the system of protection inside out. This is not to say the social services shelter is inappropriate in many cases, but rather that automatic release without first reviewing the record and needs at a hearing in each case can have tragic street consequences.

"One major problem that confronts us as we consider the future of the juvenile justice concept is the serious older juvenile offender."

The desire to handle children differently than adults, more protectively in some circumstances, is really only a desire to save children who have needs. But, resources historically were often not available to

house children appropriately on a simple standard of need alone. That resulted in placing children at times inappropriately in jails simply because there seemed to be no other placement available for the short term. Such practices gave rise very properly to a jail removal movement in this country, and to laws designed in most states and at the federal level to prevent children from being taken to jails or housed with adult criminals.⁵ That in turn has led to the development, fairly advanced in Utah, of children's detention centers and in at least one county a youth services center. Children are taken to these centers when parents cannot be located or the public needs to be protected temporarily from the child's behavior.

Practitioners typically enter the juvenile justice system at this point. Section 78-3a-30 (4) U.C.A. (as amended) and Juvenile Court Rule of Procedure 11 require a detention hearing within forty-eight hours after a juvenile is admitted. The child and parents are informed of the right to have an attorney, and if low income is an issue in obtaining counsel, the court can appoint an attorney. The county pays the bill.⁶ Probation officers are at these detention hearings in urban and most rural districts, and make recommendations to hold or release the child based upon seriousness of the offense or danger to the child or society.⁷ If the child is released the parents and child may be required to sign a promise to appear.⁸ No right to bail exists unless the juvenile is charged with a citable offense designated by the Board of Juvenile Court Judges as such, or if the charge does not require detention and the child is from out-of-state.⁹ Bail is usually the amount of the minimum fine or the amount of restitution



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being claimed, if known. An intake interview with a probation officer will be scheduled for the family prior to the county attorney filing most petitions.

At arraignment the child will have received service of summons forty-eight hours before hearing¹⁰ and can admit or deny the allegations on the petition accompanying the summons. In most cases, a denial triggers a pretrial conference with the prosecutor, and if no plea bargain is reached a bench trial will shortly follow.¹¹ Dispositions occur at the arraignment if the charges are admitted, or at the conclusion of the trial if the charges are found true. Recommendations are made in writing and orally to the court by the probation department. This differs from the adult system where pretrial reports can take weeks to prepare and return. These dispositional recommendations in juvenile court are based upon the pre-petition intake interview, police reports, and a review of the child's record and/or the serious nature of the delinquency alleged. Staffings between probation and Youth Corrections or the

Division of Family Services may also have taken place on the case prior to arraignment. Attorneys who wish to impact the "pre-sentencing" process should expect to get involved in discussions with the probation-intake officer well before the arraignment date. There is almost no tradition of pre-arraignment motion practice in juvenile courts, although nothing would prevent such practice. Attorneys are frequently involved in extensive discussion with prosecutors and probation officers. Sentences are usually based upon alternatives set forth in Section 78-38-39 U.C.A.,¹² but can be very creative, especially in light of subsections (15) and (18) which grant broad power to the court to fashion dispositions to meet the needs of children and families in the least restrictive environment.

Since the court's sentencing options are primarily rehabilitative in focus, reviews may be held at intervals of from one month to one year to monitor the delivery of services and the child's progress. Disposition may be continued for further review over this time period to allow additional sentencing options if the original order does not correct

the behavior or address the need fully.

Neglect, dependency and abuse cases¹³ are handled in similar fashion, with court involvement initiated by referral, then a following petition, summons, "arraignment", pretrial, and trial. Again dispositions are immediate but based upon recommendations from the Division of Family Services which will usually include a treatment plan to reunite the family or cure the neglect. Children may be in temporary foster care with DFS or under protective supervision at home. Guardian ad litem are appointed in virtually all neglect and abuse cases¹⁴ and take an active role in making recommendations.

So long as this system is provided with resources to fully function, nearly all of those referred to the system will be turned around before age eighteen and not re-enter as adults. That translates into millions of dollars in savings and increased public safety over the long run. But population has increased 33% over the last ten years with only nominal increases in juvenile justice resources. We are paying the price with deteriorating

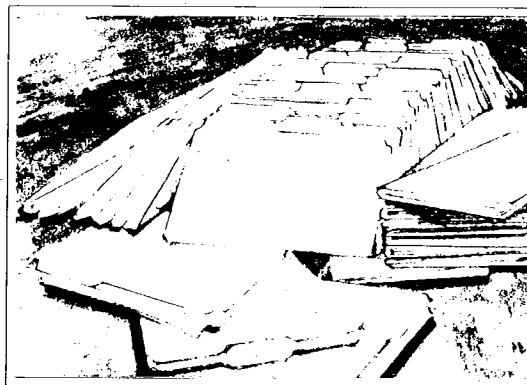


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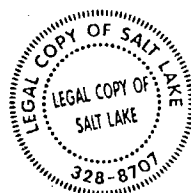
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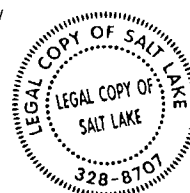
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effectiveness, resulting in a hue and cry to reorganize the system with a Youth Authority concept or some similar structure. No amount of reorganization will compensate for lack of resources, and with adequate resources no major reorganization is necessary to return to effectiveness.

One major problem that confronts us as we consider the future of the juvenile justice concept is the serious older juvenile offender. The traditional system is poorly structured to deal with serious juvenile offenders and protect the public safety. The main response as gangs and dangerous behaviors escalate in the nation's communities has been to certify or waive more and more juvenile offenders into the adult system, where they constitute a management problem due to their age and relative lack of maturity. It's a poor solution since the adult system mechanisms tend to treat youthful offenders much less seriously than their records and needs would merit. This is largely due to the management problem such young inmates pose.

The system needs a third category other than "adult" and Juvenile. Perhaps we could call it simply "serious juvenile offender," defined by the child's age (over 16) and record (say the second felony episode). Youths falling within this category would be tried as adults under the criminal code rather than the juvenile code, but in juvenile court with full due process. At sentencing the court would impose an adult-like sentence under sentencing guidelines, but have the option of keeping the juvenile in the juvenile system until age eighteen for continued rehabilitation efforts and management. At eighteen, the youth could have a hearing either before the court or a parole board to demonstrate that rehabilitation had occurred. If it had not, the youth could then be transferred to the adult system to either finish his sentence in prison or be paroled at some later date.

Such a hybridized approach would empower courts and justice systems to remove for substantial periods of time serious offenders, enhancing public safety and easing police concerns, while maintaining at least some of the juvenile justice philosophy in recognition of the youthful character of this population. In short, it would treat serious youthful offenders seriously.

Today's practitioners have a unique

role to play both in defense of juvenile client's rights and the system that supports the best interests of the child and society. Attorneys may properly recommend to the court innovative approaches to correcting behavior, even in cases where their juvenile clients do not agree with those recommendations. That is absolutely unique in legal practice, and absolutely appropriate in juvenile justice.

In the musical "1776", the youthful messenger sings across the battlefield, "Is anybody there? Does anybody care? Does anybody see what I see?" The question is one that both the courts and practitioners should ask whenever a child is before the bar.

¹In *Bellotti v. Baird (Bellotti II)*, 443 U.S. 622, 634, Justice Powell stated: "The peculiar vulnerability of children[,] their inability to make critical decisions in an informed, mature manner[,] and the importance of the parental role in child rearing" justify "the conclusion that the constitutional rights of children cannot be equated with those of adults. . . ."

²Bruce C. Hafen, "Puberty, Privacy and Protection," *ABA Journal*, October 1977, pp. 1383-84.

³Even the abortion cases involving juveniles recognize a difference between adult and juvenile interests. In *Baird v. Bellotti*, supra, at 642 Justice Powell's opinion never used the term "right to privacy." Such use might have suggested a privacy right in juveniles that was akin to that in adults. Instead he used "constitutional right to seek an abortion." Abortion was distinguished from other childhood decisions as unique. It pits the child's own inchoate parental right against the parental rights of her parents. The child's choice is to become or not become a parent herself, and allowing her to decline that responsibility may in reality be a literal extension of the doctrine that children should be protected from their own folly pending adulthood. No one seems incidentally, to have asked if parents have a constitutional right to counsel and guide (parent) their child in making such a potentially soul-shaking decision.

⁴The claim is sometimes made that juvenile courts should be done away with or subsumed into other courts because the need to realign jurisdiction to accommodate judicial resources

or agency resources has virtually robbed the juvenile court of its workload anyway. In Utah this claim would be absolutely false. Caseload in the court has been steadily climbing in spite of some general limitation of jurisdiction to delinquency and neglect/abuse cases. Keeping pace with caseloads in any court must translate into judicial support services and judges. Transfer of custody matters to the juvenile court has in some districts taken almost twenty percent of the court's available bench time, forcing the court to take longer to process its still ample juvenile business. But this is an example of workload delay caused by other parts of the system overloading onto juvenile courts, not loss of original jurisdiction. The fiction that the juvenile court has little or nothing of its own left to do is not only fiction, it is amazing fiction. Likewise the claim that because juveniles are called to answer in adult courts for some things, like traffic matters, but in juvenile court for other delinquencies, they may be whipsawed by conflicting orders is bologna. The orders of each court are specific to the elements of that court's function, and in practice kids who appear in more than one court for different matters are not whipsawed by any conflicts in the orders because as a practical matter there are no such conflicts. Adults who appear in more than one court have to answer to the specifics of the various orders. Why does no one worry over that? The answer is because the conflict if it occurs at all is simple to manage and not significant. In short, there are no real-world conceptual impediments to having a specialty court to deal with the mainstream problems of juveniles and families, except perhaps that there are many who do not have a very clear concept of juvenile justice and its effectiveness.

⁵Section 78-3a-39 (18) U.C.A. forbids committing anyone under eighteen years of age to jail or prison and this is echoed in 78-3a-30 (8), but with the caveat that children held for certification as adults may be held pursuant to 78-3a-25 in a jail. See also 78-3a-30 (10) and (8)(b) U.C.A. concerning dangerous children over sixteen years of age.

⁶See 78-3a-35(2)(b) U.C.A.

⁷Rule 8 JCRP.

⁸Rule 11 JCRP.

⁹78-3a-30 (10) U.C.A.

¹⁰Rule 15 JCRP.

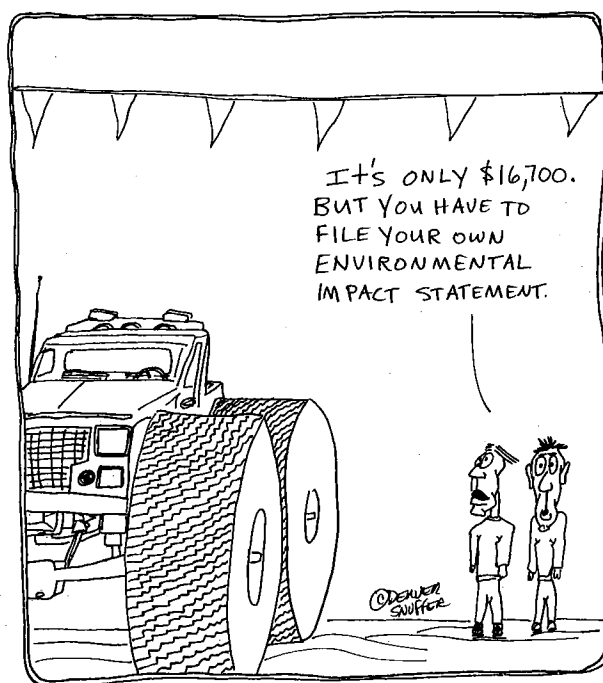
¹¹78-3a-33 U.C.A.

¹²See Van Dyke, "Utah Juvenile Justice for the '90's", *Utah Bar Journal*, Vol. 3 No.2, February 1990.

¹³78-3a-16 U.C.A. (Jurisdictional section).

¹⁴78-3a-20.5 U.C.A. (Guardian ad Litem must be appointed in certain cases).

SNUFFER COUNTY BAR



CASE SUMMARIES

By Scott A. Hagen

CONTRACTS

St. George City's acceptance of a contractor's bid "subject to negotiations" was a counter-offer, not an acceptance. Consequently, there was no contract.

Cal Wadsworth Construction v. City of St. George, 228 Utah Adv. Rep. 8 (December 14, 1993) (Judge Davis)

CRIMINAL LAW

Law enforcement authorities are "victims" who have suffered "pecuniary damages" within the meaning of Utah's restitution statute where "buy money" was used to make an undercover purchase of a controlled substance from defendant. Accordingly, the trial court could properly order the defendant to repay the "buy money" as restitution.

State v. Garcia, 228 Utah Adv. Rep. 13 (December 16, 1993) (Judge Orme).

CONTRACTS

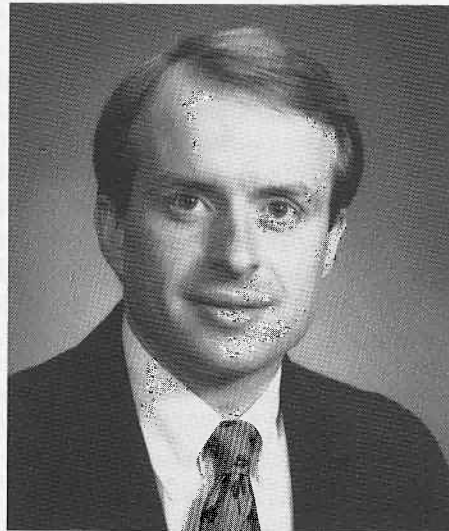
A lease contract that is signed by the lessor but not the lessee satisfies the statute of frauds even where the lease contract is not to be performed within one year.

An appellant who desires to challenge a trial court's findings of fact on appeal must marshal all of the evidence in support of the findings and then demonstrate that the findings are against the clear weight of the evidence. If the appellant fails to marshal the evidence, the appellant court will accept the trial court's findings of fact as accurate.

The failure of one party to a contract to fulfill an express condition precedent excuses the other party's performance under the contract. Whether a promise is conditional, however, depends upon the parties' intent, and where the purported "condition" was not even raised until after the contract had been executed, the promise cannot have been conditional.

Under the contractual defense of impossibility, an obligation is deemed discharged where performance of the obligation is not "practicable." Performance of an obligation is impracticable when it can only be done at "an excessive and unreasonable cost."

Commercial Union Associates v. Clayton,



223 Utah Adv. Rep. 17 (October 6, 1993) (Judge Bench)

CRIMINAL LAW; STATUTORY INTERPRETATION

Utah Code Ann. §76-5-102.6, which provides that "any prisoner which throws fecal material or any other substance or object at a peace or correctional officer is guilty of a Class A misdemeanor," does not cover the act of spitting on a correctional officer.

State v. Paul, 223 Utah Adv. Rep. 24 (October 6, 1993) (Judge Bench)

CRIMINAL LAW; LEGAL IMPOSSIBILITY

A jury instruction that theoretically allows for the possibility of a conviction of reckless attempted assault, a legally impossible crime, is nevertheless not reversible error where the defendant admitted that he intentionally shot the victim, thus making the mental state of recklessness completely irrelevant. Accordingly, there was no reasonable possibility that the defendant had been convicted of an impossible crime.

State v. Tinoco, 223 Utah Adv. Rep. 26 (October 6, 1993) (Judge Billings)

HABEAS CORPUS

A petition for a writ of habeas corpus is not rendered moot when the prisoner is paroled.

Larsen v. Jorgensen, 223 Utah Adv. Rep. 35 (October 7, 1993) (Judge Orme)

CRIMINAL LAW; DUI

The results of a DUI breathalyzer test are not necessarily inadmissible merely because the officer administering the test did not perfectly follow the rules for a certification of the test. Nevertheless, the officer's failure in this case to retain the test cards for two initial attempted tests had the effect of undercutting the reliability of the third, successful test. Accordingly, the statutory presumption of reliability did not apply. Although the test results were admissible, they were only admissible with the foundational testimony of the officer.

Salt Lake City v. Emerson, 223 Utah Adv. Rep. 42 (October 8, 1993) (Judge Orme)

SPEEDY TRIAL

The statutory speedy trial period is tolled when the delay is attributable to the defendant, such as when the defendant requests a continuance to prepare for hearing or to interview a newly discovered witness. Such continuances are reasonable and based upon good cause for purposes of Utah Code Ann. §77-29-1(3).

An issue first raised in a reply memorandum is not properly before the trial court and will not be considered for the first time on an appeal.

State v. Phathamavong, 223 Utah Adv. Rep. 28 (October 7, 1993) (Judge Bench)

CRIMINAL LAW; CORPUS DELICTI

A defendant's inculpatory statements may be introduced as evidence against him only after the prosecution proves the corpus delicti. The prosecution must "show by clear and convincing evidence that (i) a wrong was done and (ii) such wrong was the result of criminal conduct. This may be accomplished by direct or circumstantial evidence. In this case, the corpus delicti rule was satisfied because the police officer observed the defendant smoking a small rolled cigarette in a way the officer recognized from her experience was consistent with the use of marijuana, and because the officer smelled the exhaled smoke from the defendant's mouth and identified it as the odor of marijuana.

Provo City v. Spotts, 223 Utah Adv.

Rep. 31 (October 7, 1993) (Judge Orme)

PARENTAL RIGHTS

The trial court properly held that a father abandoned his child following a divorce, where the father (1) visited the child only four or five times during a two-year period, (2) wrote no letters and made no telephone calls, and (3) was "severely negligent" in making child support payments. (Citing Utah Code Ann. § 78-3a-48(1) (b) (1992).

K.F.W. v. R.C.F., 226 Utah Adv. Rep. 25 (November 16, 1993) (Judge Bench)

ALIMONY

A trial court's award of alimony was vacated because the findings in support of the award did not adequately address the financial condition and needs of the receiving spouse, or the paying spouse's ability to pay.

Baker v. Baker, 226 Utah Adv. Rep. 27 (November 19, 1993) (Judge Russon)

CRIMINAL LAW

Although the instruction "[i]ntent without a deadly weapon is not illegal" is confusing in the context of a prosecution for possession of a deadly weapon with intent to assault, the instructions as a whole made clear that the intent at issue was intent to assault, not intent to possess a deadly weapon.

Pursuant to Utah Rule of Criminal Procedure 17(m), the trial judge may respond in writing to a question of the jury, without first consulting with counsel. The judge must, however, enter the question and answer into the record, allowing counsel an opportunity to object, albeit after the fact.

State v. Lucero, 226 Utah Adv. Rep. 31 (November 23, 1993) (Judge Jackson).

DIVORCE

Addressing an issue of first impression for Utah courts, the Court of Appeals, citing Utah Code Section 78-45-4.1 (1992), held that a calculation of alimony should not include any consideration of the expenses the receiving spouse may incur in caring for her children from a previous marriage. A step-parent has duties of support during the marriage only; not afterwards.

Willey v. Willey, 227 Utah Adv. Rep. 39 (November 29, 1993) (Judge Billings)

SEARCH AND SEIZURE

Addressing an issue of first impression in Utah, the court of appeals held that in appropriately exigent circumstances, police officers may "place their hands on a suspect's throat to prevent the swallowing of evidence, so long as they do not choke him or her, i.e., prevent him or her from breathing or obstruct the blood supply to the head." (Quoting *State v. Williams*, 560 P.2d 1160, 1163 (Wash. App. 1977).

State v. Hodson, 227 Utah Adv. Rep. 45 (November 30, 1993) (Judge Greenwood)

UTAH COAL MINING AND RECLAMATION ACT

The court of appeals reversed a trial court decision upholding the issuance of a notice of violation (NOV) and vacated a penalty assessment against a mining company based on the failure of the Division of Oil, Gas & Mining ("Division") to introduce evidence showing that the mining company had incurred the NOV based on events that occurred between the date of a successful Division inspection of property being reclaimed, and a failing inspection conducted by the Division only 18 days later.

Hidden Valley Coal Company v. Utah Board of Oil, Gas & Mining, 227 Utah Adv. Rep. 49 (December 1, 1993) (Judge Bench)

REAL PROPERTY

The question of whether marketable title exists turns on whether "a reasonably prudent person, familiar with the facts and apprised of the question of law involved, would accept the title in the ordinary course of business." A lack of marketable title may be cured if it can be done "in the exercise of reasonable diligence and within a reasonable time." In this case, the sellers conveyed marketable title. The buyers' concern about lack of legal access did not preclude a finding of marketable title because the sellers obtained recorded easements providing for access and there was no evidence that the alleged lack of access affected market value.

Mostrong v. Jackson, 227 Utah Adv. Rep. 55 (December 3, 1993) (Judge Greenwood)

TORTS

The public duty doctrine foreclosed any claim against the University of Utah arising out of an auto-pedestrian accident that occurred as the plaintiffs crossed a street to attend a University basketball game. The plaintiffs failed to establish a specific duty

to them as opposed to the public at large. Their claim to be business invitees was insufficient because the street they were crossing was not University property. Furthermore, the mere fact that the plaintiffs were on their way to a basketball game did not give them a "special relationship" with the University such that the public duty doctrine should not apply.

Cannon v. University of Utah, 227 Utah Adv. Rep. 57 (December 7, 1993) (Judge Russon)

REAL PROPERTY

Under the doctrine of merger, where the seller of real property has the duty under the contract of sale only to deliver the deed, the deed actually delivered, once it is accepted by the buyer, becomes "the final agreement and all prior terms, whether written or verbal, are extinguished and unenforceable," notwithstanding the fact that the estate actually conveyed may "differ from that promised in the antecedent agreement."

Relying on this doctrine, the court quieted title in buyers who were conveyed a lot valued at \$99,000 for a purchase price of \$40,000, despite the fact that the earnest money sales agreement stated that only a portion of the lot would be conveyed. Exceptions to the doctrine were discussed but did not apply.

Embassy Group Inc. v. Hatch, 227 Utah Adv. Rep. 60 (December 7, 1993) (Judge Billings)

SETTLEMENT AGREEMENTS

The court of appeals explained that the amendment, effective April 15, 1991, to Rule 4-504(8), Utah Code of Judicial Administration, explicitly provides that a trial court may summarily enforce a settlement agreement, even though it may not have been reduced in writing.

Goodmansen v. Liberty Vending Systems, 227 Utah Adv. Rep. 64 (December 7, 1993) (Judge Billings)

PRIVILEGE AGAINST SELF-INCRIMINATION

An equivocal invocation of the right to remain silent requires the interrogating officer to cease questioning except to clarify whether or not the suspect intends to remain silent.

State v. Gutierrez, 225 Utah Adv. Rep. 9 (October 28, 1993) (Judge Greenwood)



Unto The Soul

By Aharon Appelfeld

Reviewed by Betsy L. Ross

As attorneys, we can be as much purveyors of human dignity as we can be hired guns for a cause. It was Mahatma Gandhi who wrote that "I learned the true practice of law. I learned to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder." One must understand the human condition in order to fill the Gandhian role. Books like *Unto the Soul* are like hornbooks of the human condition, and should be as much required reading as Prosser on Torts.

Unto the Soul is a book filled with the urgency of lust accompanied by the despairing shame of sibling concubinage; a book filled with melancholic loneliness set against the broadening landscape of faith. It is in fact a dialectic of despair and faith.

The background of its author places these themes in an interesting historical context. Primo Levi, a Holocaust survivor and author himself, describes Aharon Appelfeld as one of the "writer-survivors," a Jew who lived through the Holocaust and whose life and writing were irrevocably affected thereby.¹ It is from this perspective that Appelfeld explores the

themes of human dignity, faith and despair.

A brother and sister, Gad and Amalia, leave their home in the Plain to ascend to the mountaintop home of their aging Uncle Arie. Upon his death, they are to tend the Cemetery of the Martyrs that he has spent his life protecting. The cemetery has no location other than its isolation, the "Martyrs" no identity apart from their martyrdom. In fact, many of the names on the graveyard markers have been washed and worn away by extreme weather on the mountaintop over the years. Yet, it is a holy place over which "someone has to keep watch" because "without a holy place there is no prayer."

In the winter, there are no visitors to the cemetery. Long months of harsh weather and isolation face the siblings. These extremes evoke behavior and emotions that defy the simple philosophies Amalia and Gad grew up with: "According to Jewish law it's forbidden to drink too much;" According to Jewish law it's forbidden to touch dogs;" No sin goes without punishment in this world." Consumed with lust, Gad and Amalia, brother and sister, give in to the very human urges, resulting in shame, guilt and Amalia's pregnancy.

Guilt, despair and melancholy alternate with faith and innocence throughout the novel. So:

Amalia knew the faith in her heart was progressively shrinking with the passing years, and in the dark hours of the day even that little bit abandoned her, and melancholy took absolute dominion over her. She knew it, but she didn't dare say it. Where is the faith you're talking about? Where is it to be found? This mountain has destroyed me.

Yet:

For a moment [Gad] forgot the fears and oppressions and he spoke with a kind of youthful enthusiasm about the duty to guard the precious graves, because the vandals, Jew-haters, had one evil plan in mind: to destroy the Jews and expunge their memory from the face of the earth. Gad was stunned by his own voice for a moment. Amalia lowered her head, as though it were not her familiar brother speaking to her . . . But rather another brother, who had grown taller in a day and who had changed beyond recognition.

Though hardly sinless, Gad and Amalia give their lives in an analogy to Christ's sacrifice:

Were it not for us, were it not for our seven devoted years, this would not be a place to which people come to pray but just a barren mountain-top. That's no small matter. Someone has to pay.

Unto the Soul is written with a spareness of language — a stripping away of the glibness beneath which we hide our feelings, reminiscent of Chaim Potok's *I Am The Clay*. This spareness is both in the style of Appelfeld's writing, and a theme in the novel. Yet alongside this spareness is the keen recognition that simpleness is illusion. Ultimately, the soul is chiseled by the tools

of shame, unworthiness, faith, lust, melancholy, despair, innocence, sin, and loneliness. They all coexist; they all define the human condition. To ignore lust and shame is to oversimplify; to postulate a world without sin is naive. Nothing is black and white — a lesson to us lawyers who are paid to make the world seem so.

Scott M. Matheson Award

Nominations are currently being accepted by the committee for the fourth annual Scott M. Matheson Award.

PURPOSE: To recognize a lawyer and a law firm who have made an outstanding contribution to law-related education for youth in the State of Utah.

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

1. Made significant contributions to law-related education for youth in the State of Utah, such contributions having been recognized at local and/or state levels.
2. Voluntarily given their time and resources in

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

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

APPLICATION PROCESS: Nomination forms may be obtained from and nominations

may be submitted to the:

Scott M. Matheson Award
Law-Related Education and Law Day Committee
Utah Law and Justice Center
Box M-2, 645 South 200 East
Salt Lake City, Utah 84111
Phone: 322-1802

Included in the nomination should be a cover letter, a one page resume and the nomination form.

All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Nominations must be postmarked no later than **March 15, 1994**.

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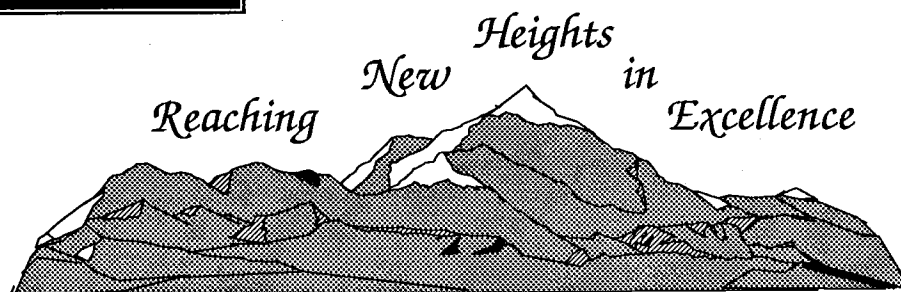
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Officers in local paralegal associations should contact Lu Hangley (816) 941-4000 for association membership information.



1994 IOLTA Grants The Application Process

Each year, the Board of Trustees of the Utah Bar Foundation awards grants to various organizations to: (1) promote legal education and increase knowledge and awareness of the law in the community; (2) assist in providing legal services of the disadvantaged; (3) improve the administration of justice; and (4) serve other worthwhile law related public purposes. The Trustees occasionally consider grant requests that are not made as part of the yearly grant cycle, but only in unusual circumstances. The Trustees prefer to review and consider grant applications together in June of each year, so that the funds available may be equitably allocated among the many deserving organizations.

Recipients of large grants in recent years include the Legal Aid Society, Utah Legal Services, the Law Related Education Project, and the Legal Center for People with Disabilities.

The funds available for grants are generated by interest on client trust accounts of attorneys in private practice who participate in the Interest On Lawyers' Trust Accounts ("IOLTA") program. Lower interest rates during the past year have resulted in a 25% decrease in funds available for 1994 grants. Attorneys who do not currently participate in the IOLTA program may obtain enrollment forms from the Bar Foundation office. Participation costs attorneys nothing, but provides a significant public benefit.

Organizations seeking grants may obtain application forms from the Utah Bar Foundation office in the Utah Law & Justice Center, 645 South 200 East, #204, Salt Lake City, Utah 84111, telephone 531-9077. The application is a simple one, consisting of a cover sheet and a financial budget supported by a narrative proposal not to exceed ten pages. The Trustees prefer grant applications which are specific about the purpose of the request, and how the funds will be used if the grant is approved. Those receiving grants will be asked to report to the Foundation on the use of the funds. The deadline for submitting applications for 1994 grants is **May 31, 1994.**

Community Service Scholarships

The Utah Bar Foundation will award two 1994 Community Service Scholarships this spring — one to a student at Brigham Young University Law School and one to a University of Utah College of Law student.

To receive a scholarship, a student must have participated in and made a significant contribution to the community by performing community service for organi-

zations such as the Legal Aid Society, Utah Legal Services, Travelers Aid Society, Salt Lake Community Shelter and Resource Center, United Way, The Children's Center, The Family Support Center, Guadalupe School, Salt Lake Detention Center, Odyssey House, Bennion Center, or Law Related Education.

Applicants should send applications and resumes to the Utah Bar Foundation

describing the service performed, identifying the beneficiary or organization receiving the service, and naming at least two individuals who can be contacted concerning that service.

The amount of each scholarship is \$3,000. Students may submit applications to the Utah Bar Foundation, 645 South 200 East, #204, Salt Lake City, Utah 84111. **Deadline: April 1, 1994.**

Utah Bar Foundation Board of Trustees Notice of Election

Notice is hereby given, in accordance with the bylaws of the Utah Bar Foundation, that an election of two trustees to the Board of Trustees of the Foundation will be finalized at the annual meeting of the Foundation held in conjunction with the 1994 Annual Meeting of the Utah State Bar in Sun Valley, Idaho. The two trustee positions which are eligible are currently held by Ellen Maycock and Carman E. Kipp. The term of office is three years.

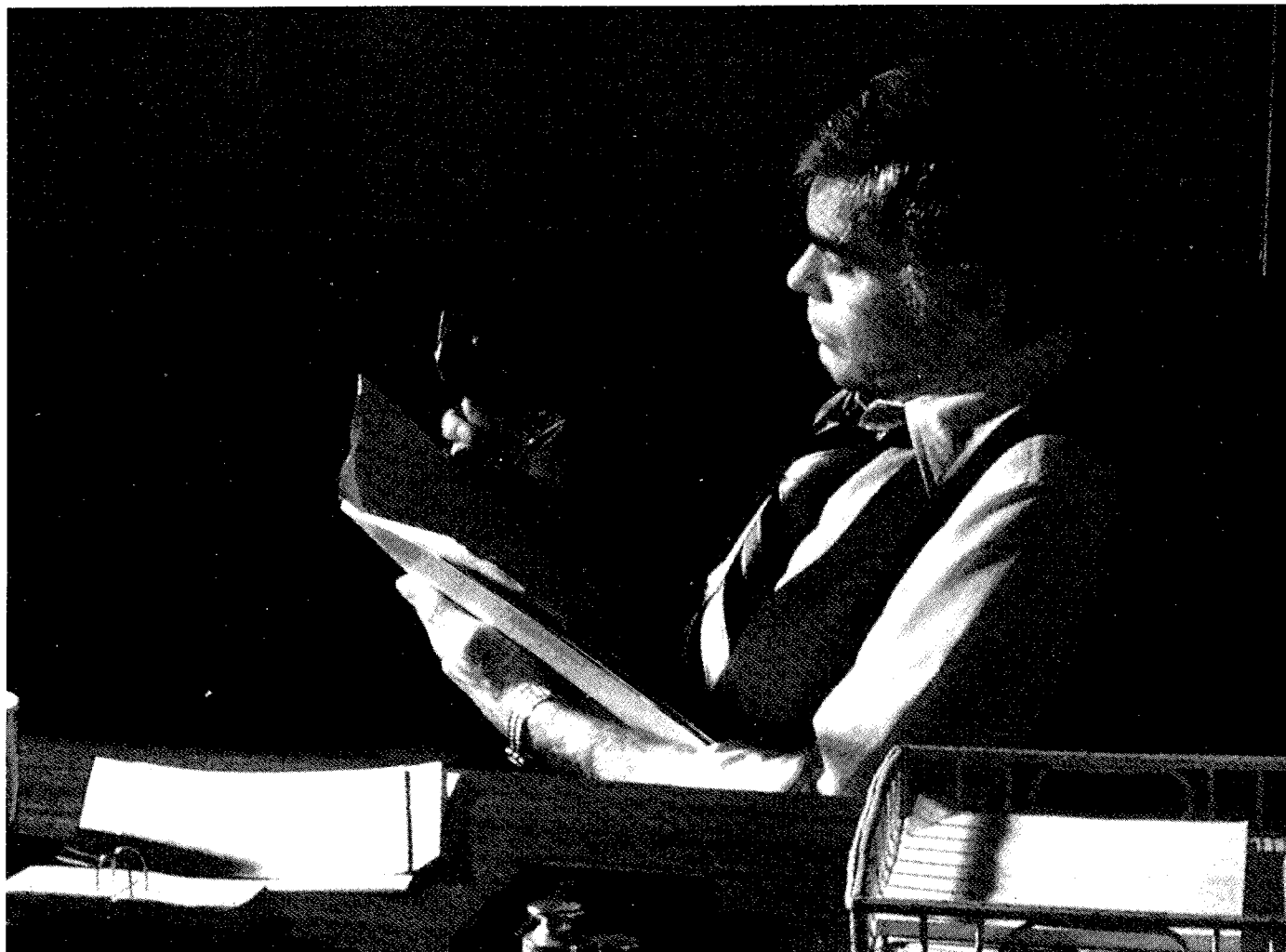
Nominations may be made by any member of the Foundation (every attorney licensed to practice law in the state of Utah is also a member of the Foundation) by submission of a written nominating petition identifying the nominee, who must be an active attorney duly licensed to practice law in Utah, and signed by not less than twenty-five attorneys who are also duly licensed to practice law in Utah.

Petitions should be mailed to the Utah

Bar Foundation, 645 South 200 East, #204, Salt Lake City, Utah 84111, so as to be received on or before **April 30, 1994.** Nominating petition forms can be obtained at the Foundation's office or requested by telephone (531-9077).

The election will be conducted by secret ballot which will be mailed to all active members of the Foundation on or before May 31, 1994.

We put our
entire corporation behind your
client's personal trust



When your client names First Security's Trust Division, they invest in the strength and stability of the First Security Corporation. Their trust is in the hands of experienced administrators, backed by First Security's resources and experience in serving customers throughout the Intermountain West.

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St. George
Trust Department
Gary Cutler
628-2831

CLE CALENDAR

UTAH STATE BAR MID-YEAR MEETING in St. George, Utah

Come hear keynote speaker, the Honorable Rosemary Barkett of the Florida Supreme Court, as well as our own, Attorney General, Jan Graham. A third speaker you will not want to miss is Salt Lake Gang Task Force Detective Izzy Tausinga at the Friday evening dinner. Please call the Utah State Bar for registration information today.

CLE Credit: 8 hours of CLE, including 1 CLE hour in ETHICS
Date: March 10-12, 1994
Place: St. George Holiday Inn, St. George, Utah
Fee: Pre-registration \$135.00, registration at the door, \$160.00.
Time: Thursday, March 10, reception from 6:00 p.m. to 8:00 p.m. Friday, March 11, CLE meetings from 8:00 a.m. to 12:15 p.m. Saturday, March 12th, CLE meetings from 8:00 a.m. to 12:30 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.

ENERGY, NATURAL RESOURCES LAW SECTION'S ENVIRONMENTAL PERMITTING

Watch for additional information coming in the mail.

CLE Credit: 7 hours of CLE
Date: March 31, 1994
Place: Utah Law & Justice Center
Fee: Pre-registration TBD,

registration at the door, TBD.
Time: 9:00 a.m. to 4:30 p.m.

1994 UTAH LEGISLATIVE REVIEW

Get a unique review of issues relevant to attorneys and their practices that came before the 1994 Utah State Legislature. 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 changes in Utah Law.

CLE Credit: 3 hours
Date: April 8, 1994
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

BUSINESS ASSOCIATIONS — NLCLE WORKSHOP

PLEASE NOTE THE DATE CHANGE TO WEDNESDAY, APRIL 20. A program designed to cover Limited Liability Companies, Corporations and Partnerships.

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: April 20, 1994 — Please note: This program had been scheduled for April 21, 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.

SEVENTH ANNUAL ROCKY MOUNTAIN TAX PLANNING INSTITUTE

Watch for additional information coming in the mail.

CLE Credit: 8 hours of CLE.
This program will also meet CPE hour requirements.
Date: May 6, 1994
Place: Utah Law & Justice Center

CLE REGISTRATION FORM

TITLE OF PROGRAM

FEE

1. _____

2. _____

Make all checks payable to the Utah State Bar/CLE

Total Due

Name

Phone

Address

City, State, ZIP

Bar Number

American Express/MasterCard/VISA

Exp. Date

Signature

Please send in your registration with payment to: Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111. The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

Registration and Cancellation Policies: Please register in advance as registrations are taken on a space available basis. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day. If you cannot attend a seminar for which you have registered, please contact the Bar as far in advance as possible. No refunds will be made for live programs unless notification of cancellation is received at least 48 hours in advance. Returned checks will be charged a \$15.00 service charge.

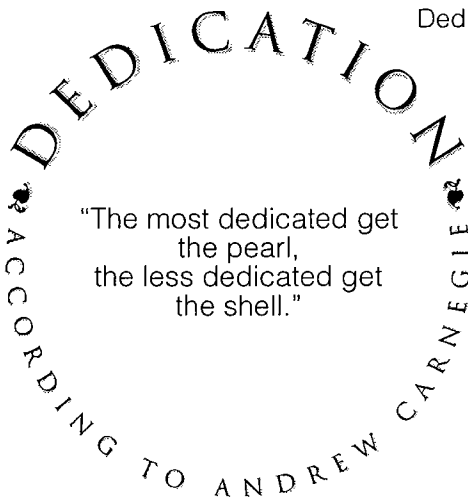
NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2 year CLE reporting period required by the Utah Mandatory CLE Board.

Fee: Pre-registration \$125.00,
registration at the door,
\$150.00.
Time: 9:00 a.m. to 5:00 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.



Dedication can mean the difference between plodding through an average job or rocketing by the rest of the pack with outstanding performance. To us it means going beyond the expected, like providing our customers with the highest quality legal malpractice information available in our Lawyers' Liability Review Quarterly Journal. Our extra efforts are matched only by our dedication to staying in the Lawyers' Professional Liability insurance market.

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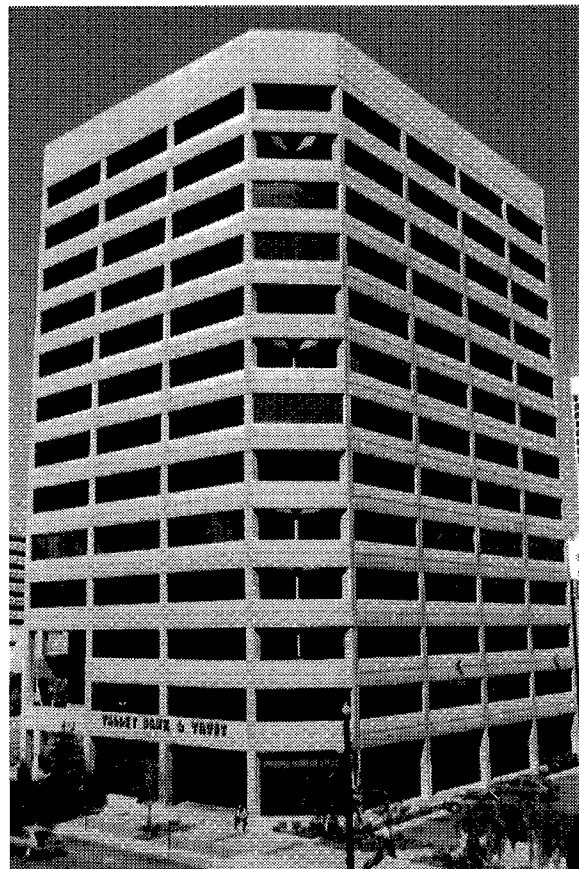
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Contact Scott Wilmarth at CB Commercial Real Estate Group, Inc., 530-3925, for more information.



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170 South Main, Suite 1200
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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 not received with the advertisement will not be published. No exceptions!

INFORMATION WANTED

Information Sought Regarding Gem Insurance and its alleged breach of contract, bad faith, fraudulent denial of claims, and related matters is wanted. Contact Roger H. Hoole, 4276 South Highland Drive, Salt Lake City, Utah 84124.

Any person having information concerning the whereabouts of a trust for **Lorna Koch Barton Lee**, deceased October 13, 1993, is asked to contact Patricia A. Nielsen at (801) 278-6360, or at 5650 Holladay Boulevard, Salt Lake City, Utah 84121. Your assistance is appreciated.

BOOKS FOR SALE

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

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Pacific Reporter 2nd Series (P.2d), Volume 1 through to date, and U.S.C.A. for sale with bookcases. Both are current and in fine condition. Call Evelyn or Lynn at (801) 355-5300.

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Fully equipped office has one opening. Low overhead. Overload work and case sharing available. Call (801) 486-3751.

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Two offices available in Springville, Utah County; ground floor, high profile main street location with conference room, copy machine, laser printer to share, parking adjacent to building \$150/month each with additional for receptionist. If desired, contact Mr. Phillips (801) 489-6925 or fax (801) 489-1116.

Beautiful office space for several attorneys with KIRTON, MCCONKIE & POELMAN, Eagle Gate Tower, 17th and 18th Floors. Complete facilities including conference room, reception area, library, kitchen, fax, copier etc. Secretarial services are available (at extra cost) or space available for your secretary. \$500/month (per office). Call (801) 328-3600 and ask for Richard Turnbow.

2350 Washington Boulevard across from Ogden City Mall, next to ZCMI. Office sharing with one other attorney, some overflow work. Six offices, large reception, conference and secretarial areas, night deposit, security system, copier, private parking, kitchen, storage, advertising space, etc. For more information, call Chad at (801) 621-6021.

Two choice office sharing spaces available with three solo attorneys. Downtown location near Federal and State Courts. Nearby parking available. Amenities include reception area, conference room, copy machine, fax, telephones, probable overflow work and amiable atmosphere. Must see to appreciate! Please call Richard at (801) 363-3334.

Prime location. Reception, conference room and law library access. One to three offices available.

Downtown location. Please contact Steve Buhler at (801) 521-4145.

ATTORNEY WANTED

The Mental Retardation Association is seeking a licensed volunteer attorney to join our Board of Directors. In an advisory capacity, the individual would review contracts, Civil Rights issues, breach of duty, conflict of interest, libel, guardianship, fiscal management, mergers, and general liability issues associated with proposed activities. No litigation or courtroom appearances are anticipated or requested. Responsibilities of this commission would not require more than six hours per month with a six to twelve month engagement. Please contact Dr. R. Dean Robinson, President at (801) 378-6985 during business hours or call (801) 255-6103 evenings or weekends for details.

SERVICES

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

LEGAL ASSISTANTS — SAVING TIME, MAKING MONEY: Reap the benefits of legal assistant profitability. LAAU Job Bank, P. O. Box 112001, Salt Lake City, Utah 84111, or call (801) 531-0331. Resumes of legal assistants seeking full or part-time temporary or permanent employment on file with LAAU Job Bank are available on request.

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

Legal Secretary/Legal Assistant with excellent skills; 22+ years experience in litigation and non-litigation areas. Looking for work nights and weekends, your place or mine. References available. Write C.L.B., P. O. Box 522156, Salt Lake City, Utah 84152-2156 or call (801) 486-1568.

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645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX (801) 531-0660

CERTIFICATE OF COMPLIANCE
For Years 19 _____ and 19 _____

NAME: _____ UTAH STATE BAR NO. _____

ADDRESS: _____ TELEPHONE: _____

Professional Responsibility and Ethics*

(Required: 3 hours)

- | | | | | |
|--------------|------------------|------------------|------------------|--------|
| 1. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |
| | | | | |
| 2. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |
| | | | | |
| 3. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |

Continuing Legal Education*

(Required 24 hours) (See Reverse)

- | | | | | |
|--------------|------------------|------------------|------------------|--------|
| 1. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |
| | | | | |
| 2. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |
| | | | | |
| 3. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |
| | | | | |
| 4. _____ | _____ | _____ | _____ | _____ |
| Program name | Provider/Sponsor | Date of Activity | CLE Credit Hours | Type** |

* Attach additional sheets if needed.

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

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

Date: _____

(signature)

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

EXPLANATION OF TYPE OF ACTIVITY

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

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

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

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

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

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

SOMETHING HAS HAPPENED TO LIFE INSURANCE YOU NEED TO KNOW ABOUT!

There is a new kind of life insurance. It can mean significant savings and more values for your client's money.

"Tax-deferred compounding and high early account values give low-load policies an advantage."

Kiplinger's - March 1993

"Low-load universal life policies can generate higher cash values than traditional whole life plans by avoiding agents' commissions entirely."

U.S. News & World Report - August 1993

"One client bought \$3 million of life coverage. The full-commission alternative would have cost \$61,000 in today's dollars for 20 years of coverage. The low-load product cost \$10,000 in today's dollars, with an insurance adviser's fee of \$6,000. Effective savings: \$45,000."

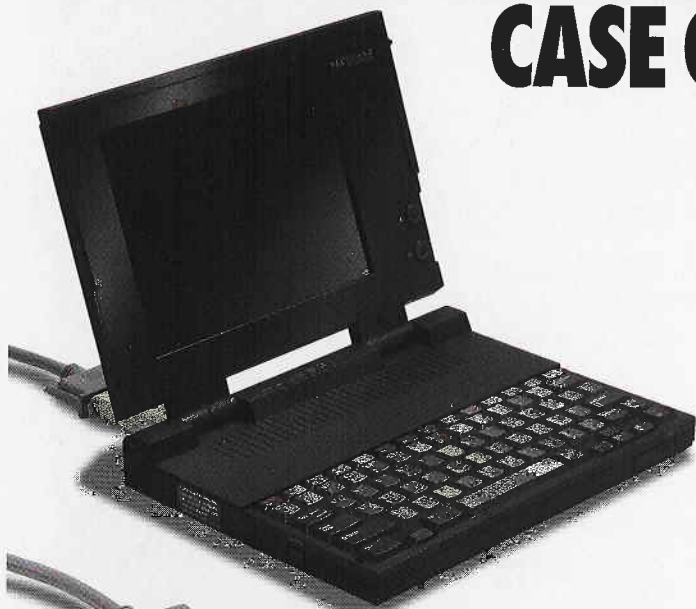
Physician's Financial News - March 30, 1993

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