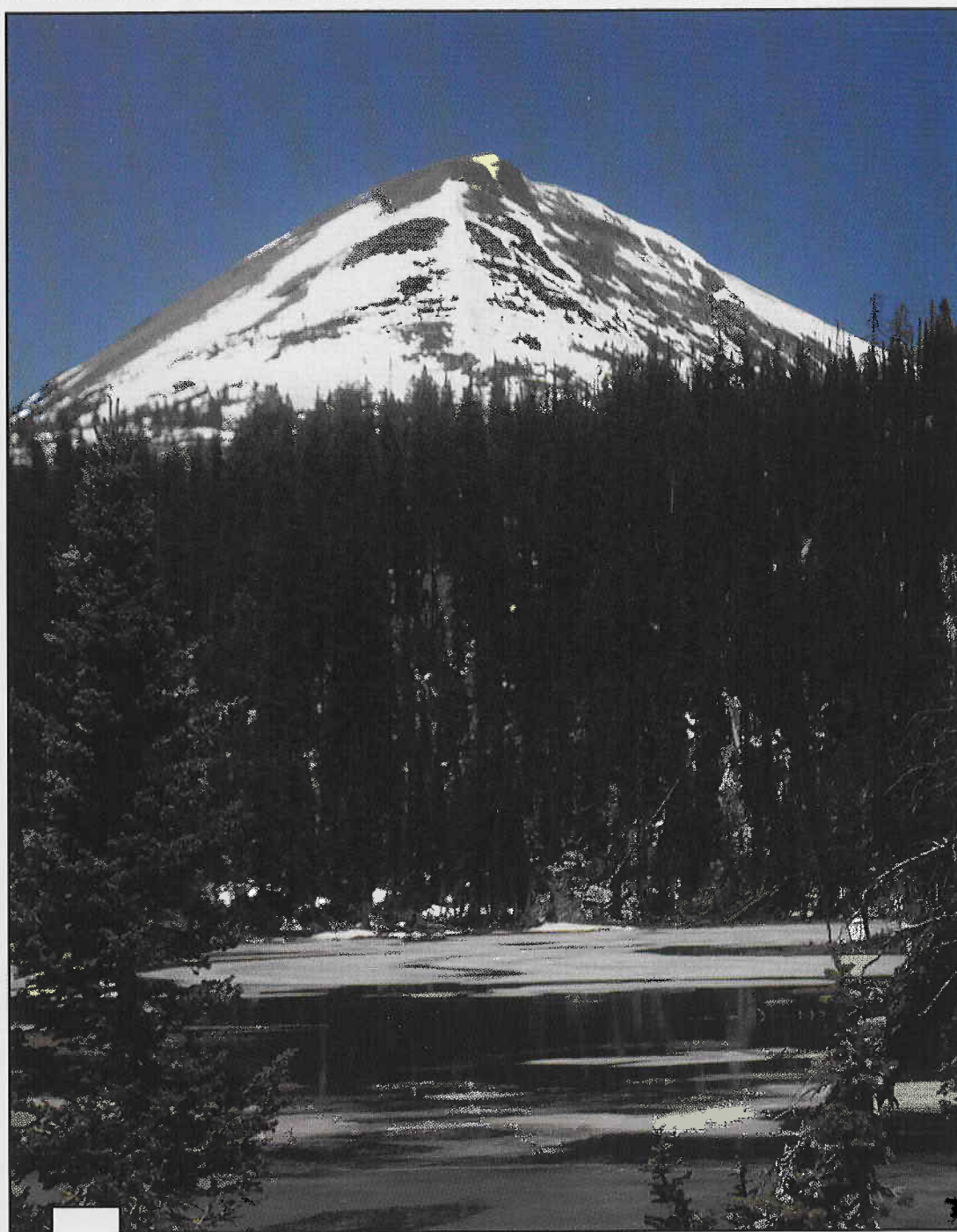


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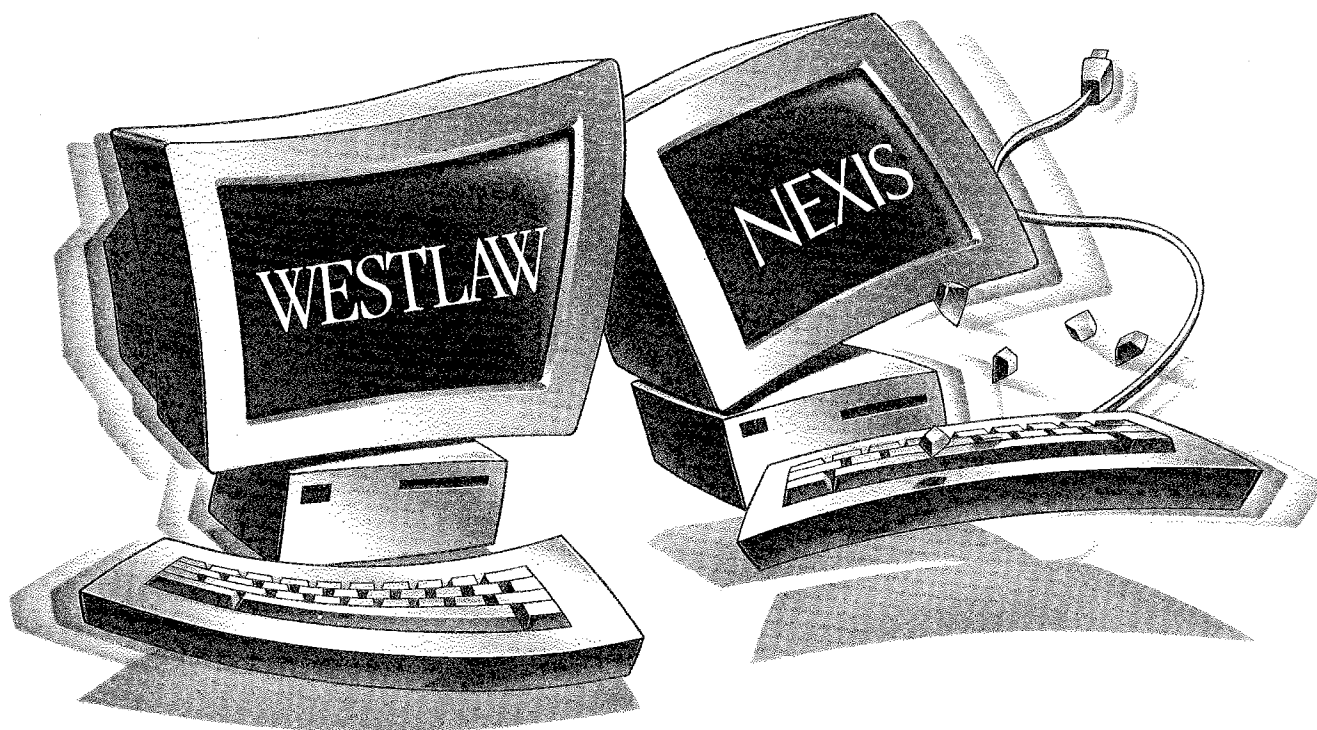
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COVER: Lily Lake, High Uintas, by Harry Caston of McKay, Burton & Thurman.

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LETTERS

Editor:

I write in response to Richard L. Tretheway's February letter concerning death row inmate James Holland and his former attorney, Elliott Levine. Mr. Tretheway attacks the Utah Supreme Court, the Utah Attorney General, and the Utah State Bar for being "quite concerned that a man could not plead guilty, waive his right to appeal but instead the State had to pay a lot of money out to do what the defendant did not want to do." Mr. Tretheway is uninformed.

The Utah Supreme Court has never held that a defendant cannot plead guilty to a capital crime. On the contrary, it has upheld a conviction and death sentence based on a guilty plea. *State v. Parsons*, 781 P.2d 1275 (Utah 1989).

When a defendant is sentenced to death and chooses not to pursue an appeal, Utah law provides that the case is automatically reviewed by the Utah Supreme Court. See Utah R. Crim. P. 26(10). "Execution of a criminal defendant may not occur, therefore, until (the Utah Supreme) Court determines at least that the sentence is in accord with lawful process." *State v. Holland*, 777 P.2d 1019, 1022 (Utah 1989). In fact, the Court vacated Mr. Holland's first death sentence due to plain error in the sentencing phase. *Id.* at 1026. In the same opinion, the Court emphasized that the "Attorney General's office has institu-

tional and professional obligations in criminal cases, irrespective of what the defendant does." *Id.* at 1022.

On Mr. Holland's second appeal, the Attorney General drew the Court's attention to Mr. Levine's apparent conflict of interest on appeal. The Court disqualified Mr. Levine, thereby ensuring that the appeal was not tainted by conflicted appellate counsel. In addition to safeguarding Mr. Holland's interest, this action insulated the appeal against state or federal collateral attack on this ground.

Mr. Holland's interest is not the only one at stake here. The execution of a man, even one who desires execution, necessarily involves the entire community. Our community has determined that no death sentence may be carried out until it is satisfied that the sentence was legally imposed. This it has every right to do. No defendant, including James Louis Holland, is entitled to use the justice system of the State of Utah as his own private suicide machine.

J. Frederic Voros, Jr.
Assistant Attorney General
Section Chief, Criminal Appeals

Dear Editor:

I read with interest the article by President Paul Moxley which appeared in the January 1995 issue of the *Utah Bar Journal*. Paul

points out to us that after years of paying high bar dues that the Utah Bar Association is now operating with a fiscal surplus. I do share his pride in this accomplishment.

Those of us who were members of the Bar several years ago, remember what a cataclysm we all went through when it was necessary to virtually double our bar dues in one year to pay for the Law and Justice Center. There was a great deal of anger and conflict. Many of us felt that we had been poorly represented by our bar commissioners at that time. A large segment of the membership felt victimized and disenfranchised by this decision.

Now, I read that Paul is already thinking of ways to spend the money that is "surplus". In his article he speaks of the need to "develop programs" to "maximize the use of the building". I, for one, would like to express a totally different suggestion for disbursing these "surplus funds". It is my suggestion that instead of using the money to create new programs that we give every bar member either a rebate on last year's bar dues, or a credit on this year's bar dues.

I am curious if anyone else feels the same way.

Mark H. Gould
Attorney at Law

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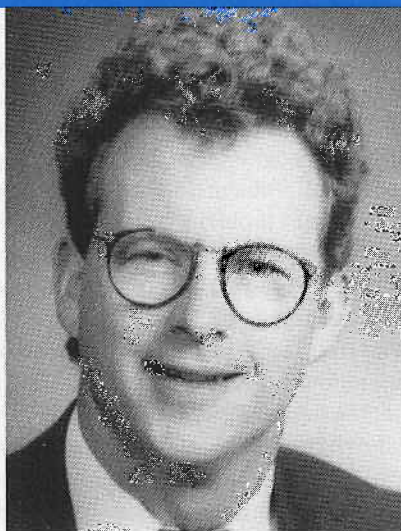
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Providing counsel to Holme Roberts & Owen clients since 1987 in the areas of state and local taxation, Mr. Crapo has been elected as a member of the firm. He focuses

his practice primarily on strategies related to sales, use and property taxes. Mr. Crapo works from our Salt Lake City office where his telephone number is 801 521-5800.

PRESIDENT'S MESSAGE



More About the Image of the Bar and More

By Paul T. Moxley

My duties and inclinations on behalf of the Utah State Bar have taken me hither and yon. I have been with lawyers at work and in meetings concerning Bar matters in a great variety of settings in the western United States and at American Bar Association functions. Most of the Bar organizations are facing challenges and issues similar to ours. Our Bar, which is small compared to many, is really quite good. We are also fortunate to have an excellent judiciary. Our cases are decided quickly compared to many jurisdictions. The Bench/Bar relationship in Utah is excellent as well. At the mid-year meeting of the ABA we examined, for example, the following issues of the profession. Perhaps a review will prod some of us to re-examine our practice.

Advertising – The public is highly critical of lawyers in general for the type of advertising used by a few members of the profession. Actually, such advertising is only the outward sign or manifestation of other ills (listed below) which the public believes to be systemic.

The Litigation Explosion – The public and many lawyers believe that there are too many lawsuits filed and that many of them are unnecessary/frivolous. Some lawyers are believed to be at fault for

encouraging and promoting (as through the undesirable type of legal advertising) the filing of such actions and for filing actions which are baseless for the purpose of punishing the defendant or for the sole purpose of obtaining a nuisance settlement.

The Adversarial Process Run Amuck – Some lawyers make necessary litigation (a) nastier than necessary and/or (b) more expensive than necessary. Cooperative efforts between lawyer adversaries to resolve differences quickly and economically are declining. More prevalent are wars of attrition. Those members of the public who have personal involvement in litigation are dismayed to find that the litigation process is not a search for truth but a test of the persuasiveness of lawyers and paid experts.

The High Cost of Litigation – Only the rich and the very poor (who qualify for legal assistance) can afford to litigate. Other persons and companies with legitimate but modest claims find it difficult to have wrongs against them redressed because it is economically unfeasible for them to pay lawyers' hourly rates to litigate such matters and because lawyers will not take such modest matters on a contingent fee basis.

Incompetence – Too many lawyers don't know what they are doing. This problem may be worsening as more and more

recent law graduates are unable to find jobs in firms and are forced into solo practice. In most locations, no mentoring is available for those beginning lawyers who practice alone. Also under the issue of **Incompetence** falls the problem of experienced lawyers who accept complex matters in areas which they have no experience.

Dishonest/Unethical Lawyers – Public perception is that a sizable segment of the lawyers population is dishonest or unethical. Unfortunately, that view has support from within the profession as a law professor on a nationally televised program recently opined that twenty-five percent of the profession is dishonest or unethical. Lawyers are also criticized for their self-administered disciplinary processes which are viewed as being overly-lenient, slow and cumbersome.

Law Now Business and Not a Profession – The most distressing news from recent surveys is that those who work with lawyers most have lost their respect for lawyers. In the main, lawyers are no longer viewed as putting clients' interests before their own. Many, if not most, clients believe that lawyers "milk" files by billing more hours than necessary at rates which cannot be justified.

Lawyers Make the Laws – The public

has an often mistaken belief that lawyers dominate the U.S. Congress and state governments and are responsible for the never ending enactment of new legislation which provides more work for lawyers.

Failure to Communicate – Lawyers often fail to communicate properly and regularly with clients. Just as physicians are criticized for their loss of “bedside manner,” lawyers fail to take the time to explain in advance the legal process and journey upon which the client is embarking . . . just what the client is in for. (This aspect of what ails the legal profession was addressed extensively during Bill Ide’s administration).

Lawyer Overpopulation – Underlying most of all of the above ailments is the perception or fact that there are too many lawyers for the legitimate (private practice — not pro bono) legal work to be done.

Who’s Judging the Judges – If the justice system is flawed at the top, it can’t function very well. Judges enjoy no immunity from physical, mental and other problems which render them incapable of performing their critical roles in the judicial system, but their involuntary removal from office is never easy. Are bar associa-

tions backing away from judicial evaluations and bar polls? Some bars report they have stopped evaluations or doubt their usefulness because of lawyers’ diminished credibility with the public.

Impaired Lawyers – Many bars have assistance programs for lawyers with drug and alcohol problems, but the profession is not so alert to problems with “lawyer paralysis” or burnout. We refer to that affliction that renders lawyers incapable of action or decision making.

As the Twig is Bent – Law schools teach ethics but do they practice what they teach? What happens to law students who falsify resumes, cheat on exams or plagiarize? A survey conducted by the National Association for Law Placement (NALP) a few years ago revealed that, at some law schools, the only discipline received by students who falsified resumes was to be deprived of the use of the placement office. The dean of a Midwestern law school recently reported that, to his consternation, a student who plagiarized a paper in its entirety was able to get the failing grade he was given initially vacated and was allowed to take the course again. How effective is the disciplinary system at our law schools

and how effective is the system for reporting dishonest, illegal or unethical conduct by law students to bar examiners?

On the basis of what I have seen, have heard and have learned, I am even more proud to be a Utah lawyer.

The decline in public confidence in the profession (see the Hart Survey, August 1993 *ABA Journal* and the article in *U.S. News*, January 30, 1995, “How Lawyers Abuse the Law, the Death of Common Sense in America”) reflects that lawyer bashing and hostility to the legal system are blamed on the media. It is blamed on a lack of public understanding about the law. It is blamed on a society that has lost the art of civil discourse. I have to believe that the O.J. Simpson trial must be having an effect on the view of the public about lawyers as well. While the nation watches on the tube lawyers constantly berate each other and second guess every tactic and event taking place in the trial. We all recognize that we are professional critics, but perhaps it is now going too far.

Ultimately, however, as Paul Newman says in the movie “Cool Hand Luke”, “what we have here is a failure to communicate.”

As a result, our Bar is endeavoring to

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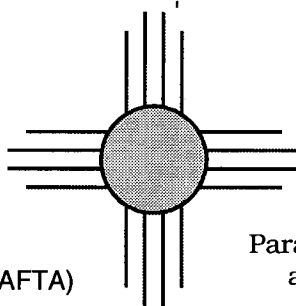
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improve our image by addressing the part of the decline in public confidence by establishing a public relations committee to publicize the many good things that Utah lawyers do for their clients, community and profession. ABA President George Bushnell has proclaimed that this is an improper approach. He believes lawyers are fixated on themselves, do little else than portray lawyers as uncaring of the public we serve, thereby compounding the image problem. Mr. Bushnell believes lawyers image pales in contrast to other complex issues facing the legal profession, the justice system and our society today.

Our Bar is working on all the fronts which is probably consistent with our energetic and zealous approach. An update on some ongoing projects is as follows:

LAWYERS IN THE LEGISLATURE

Jim Clegg, our immediate past president and self-proclaimed "consultant," has agreed to chair a committee to encourage and support, on a non-partisan basis, lawyers who wish to seek election to our legislature. This committee will study what our Bar can do to encourage our lawyers to participate in this branch of government. Scott Daniels will be organizing a CLE program educating people

on this process this fall. All expenses associated with this project shall be charged to our lobbying expense in our budget and lawyers not wishing to support these efforts can obtain a dues rebate for such expenses. Otherwise, get your comments to Jim Clegg, your commissioner or me about this project.

DUES QUESTIONS

As of January 27, 1995, the projections from the Budget and Finance Committee indicate that about \$200,000 of unreserved cash will be available at the end of the fiscal year 1995. We received something like three letters in response to our request for comments about dues issues and no one appeared at our January Board meeting at the scheduled time to discuss the topic in response to a notice to the Bar in the *Bar Journal*. The Board continues to discuss this matter and recommendations about a rebate, decrease or no change in dues will be made by year end.

As this article goes to press, I am beginning to see the light at the end of the tunnel on my year as Bar President. It continues to be a stretch in terms of keeping up with my work and having some sort of a life. As you can see, there is a lot to do by all of us.

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Review of the Office of Attorney Discipline

By Charlotte L. Miller

One of my responsibilities during the past year as a Bar Commissioner has been to serve as chair of the Committee to Review the Office of Attorney Discipline. I had very little knowledge or interaction with the OAD prior to accepting this responsibility. It took me two months to remember that the name of the office is OAD and not the Office of Bar Counsel. Fortunately, I have had the assistance of some hard working Committee members, who have more knowledge than me about the disciplinary process. Those members are:

Charles R. Brown with Hunter & Brown, a two-lawyer firm in Salt Lake City. Charles is primarily a transactional practitioner, and he served as Chair of the Small Firm Task Force.

Dale A. Kimball with Kimball Parr, Waddoups Brown & Gee in Salt Lake City. Dale served as chair over the Bar's screening panels for several years.

Jane A. Marquardt, a tax attorney in Ogden who has served as a screening panel chair.

Robert L. Stolebarger of Haley & Stolebarger, a small litigation firm in Salt Lake City that has represented respondents in the disciplinary process.

Fran M. Wikstrom of Parsons Behle & Latimer in Salt Lake City. Fran is a litiga-

tor and has had experience as a sole practitioner, in government practice and with a large firm.

I thought I would take this opportunity to report to you what the Committee has been doing.

The purpose of the Committee is to review an office that performs a core function of the Bar and utilizes about 25% of the Bar's budget. The basic questions the Committee needs to answer are: Is there a way for the Bar's OAD to perform its function better? Within that question many other questions need to be answered: Should we spend more money? Less money? Do we need a larger or smaller staff? Are we providing enough service to the public? to lawyers? Is there a way to improve efficiency? Is more training needed? What are the strengths and weaknesses of the OAD? Is everything already the best it can be? The Committee is the Bar's consultant to analyze where the OAD is now and what the goals should be for the future.

The OAD has not been formally reviewed before. Almost two years ago the formal discipline process was revised so that cases are no longer heard by the Bar Commission but instead go directly to state district court. The timing of the review hopefully will enable us to examine any changes needed in the OAD to adjust to the

new process.

Much of the Committee's work so far has been fact gathering in order to find answers to these questions. The Committee has received (and each member has read) about 200 survey responses from lawyers, judges and complainants. Members of the Committee have met (or by the time this article is published will have met with) past Bar presidents, members of the judiciary, members of the OAD, members of the Utah State Bar staff, attorneys who have been respondents in the disciplinary process, screening panel members, attorneys who have represented respondents, and attorneys who have filed complaints on behalf of themselves or their clients. By the time this article is printed, the Committee will have held meetings in Salt Lake City, Ogden and St. George to receive comments from interested attorneys. The Committee may also meet with Provo attorneys since my good friend Craig Snyder pointed out to me that I had somehow left out the City of Provo. The oversight was not intentional even though I admit to being a University of Utah alumnus (and fan). Anyone who has not provided information to us is still welcome to do so through a telephone call or letter to any of the Committee members.

The Committee has been very open to

listen to anyone who has a question, comment or opinion. Additionally, the Committee has reviewed the budgets of the OAD, the experience and salaries of the OAD staff, the policies, procedures and practices of the OAD, the general counsel projects performed by the OAD in addition to discipline and the statistics of attorney discipline. The Committee also is obtaining comparative data from other states and other professions.

The Committee plans to make a report in May to the Bar Commission. Hopefully we will be able to balance the need to finish the job with the need to get information.

I am encouraged at the response to our requests for information. Also, I am encouraged that the Bar Commission is

willing to allow a group of people to have free rein to look at the OAD. I believe we will be able to provide some constructive recommendations although I am already certain that some of our survey respondents will be disappointed with our report since the responses varied in substance from "the OAD works perfectly" to "Get rid of the whole office." Frankly, I am encouraged by that variety of responses. It tells me we have heard from a wide spectrum of people.

Since I knew little or nothing about the OAD before accepting this responsibility you may think I was a poor choice as chair. However, I think it has been advantageous having little or no preconceived ideas about the OAD. I have learned a great deal from my Committee members, the OAD staff and

members of the Bar about how the whole process works, and its impact on lawyers and the public. I feel privileged to have had this opportunity without being a respondent or complainant. During the past several months I have learned much more than the name of the office.

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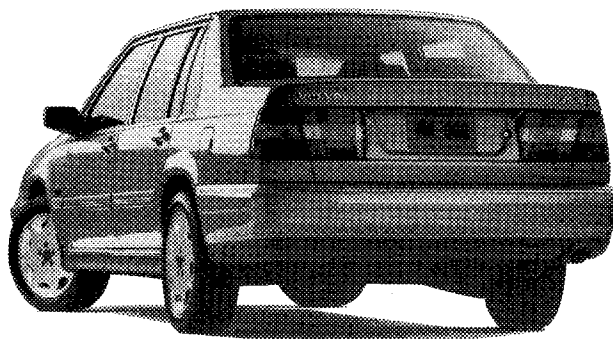
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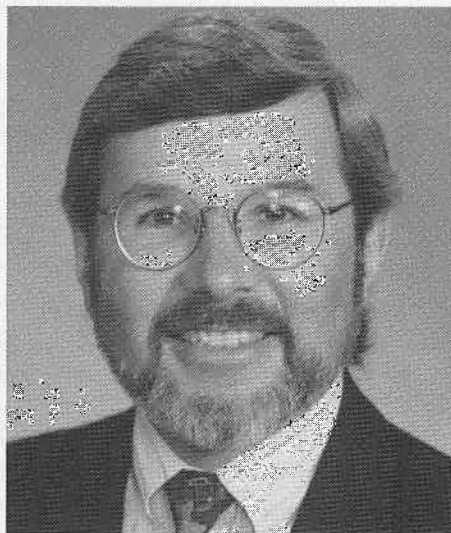
Highlights of the Bankruptcy Reform Act of 1994

Part I

By David E. Leta

On October 22, 1994, President Clinton enacted H.R. 5116, known as the Bankruptcy Reform Act of 1994 (the "Act").¹ Most commentators consider the Act to be the most comprehensive amendment to the bankruptcy laws of the United States since the Bankruptcy Code (the "Code") was enacted in 1978. With a few limited exceptions, the new amendments *only* apply to cases filed on and after October 22, 1994.² Thus, while the Act will have very little impact on the bankruptcy cases that were pending on October 21, 1994,³ it will place extra demands on lawyers and judges who now must be familiar with *both* the new and old version of the Code, and be able to switch between them based upon the filing date of the case in question. In addition, the new amendments will cause non-bankruptcy lawyers to re-think how they structure transactions and draft documents.

The purpose of this article is to highlight some of the major provisions of the Act, which has six (6) titles: Title I – Improved Bankruptcy Administration, Title II – Commercial Bankruptcy Issues, Title III – Consumer Bankruptcy Issues, Title IV – Government Bankruptcy Issues, Title V – Technical Corrections and Title VI – Bankruptcy Review Commission. This discussion will be in two parts. This first part will address some of the more significant commercial bankruptcy amendments, as well as certain administrative issues usually encountered in a commercial case.⁴ Part II will address some of the more significant consumer provisions of the Act and deal with administrative amendments more often encountered in a consumer case.



DAVID E. LETA is a partner in the firm SNELL & WILMER L.L.P. where his practice focuses on bankruptcy, business reorganizations and creditor's rights. Mr. Leta, a member of the Utah State Bar, was first chairman of the Bankruptcy Section, and initial member of the Board of Trustees for the Utah Bankruptcy Lawyer's Forum. Mr. Leta received his B.A. Degree from State University of New York (1973) and his J.D. from the University of Utah (1976).

COMMERCIAL AND RELATED ADMINISTRATIVE BANKRUPTCY ISSUES

A. Expedited Hearings on Relief From Automatic Stay.

Under Section 362(e) of the Code, a *preliminary* hearing on a motion to terminate the automatic stay must conclude within thirty (30) days, with a final hearing to *commence* within thirty (30) days thereafter. There is no specific time, however, when the final hearing must conclude.⁵ Section 101 of the Act amends Section 362(e) by providing that, unless the thirty-day period is extended "with the consent of the parties

in interest" or for a specific time which the court "finds is required by compelling circumstances," then the final hearing must be held not later than thirty (30) days after the conclusion of the preliminary hearing. These provisions will place extra demands on debtors and the court.

B. Additional Powers of the Bankruptcy Court and Creation of Appellate Panels.

1. Bankruptcy Status Conferences.

Section 104 of the Act adds a new subsection (d) to Section 105 of the Code. Now, the court, on its own motion or on request of a party in interest, may hold a status conference "regarding any case or proceeding" after notice to parties in interest. At such a conference the court may issue orders prescribing such limitations and conditions as the court deems appropriate to insure that the case is handled "expeditiously and economically." The order may include such things as dates for assumption or rejection of executory contracts, dates for filing disclosure statements and plans, and time limits for related procedural matters. The new statute also permits the court to combine the hearing on approval of a disclosure statement with the hearing on confirmation of a plan, although this provision appears to be inconsistent with Section 1125 of the Code. A request for a status conference may prove to be a very useful tool for expediting the administration of a case.

2. Establishment of Bankruptcy Appellate Panels.

Subpart (c) of Section 104 amends Section 158(b) of Title 28 by allowing the judicial council of a circuit to establish a "bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit. . . to hear and determine, *with the consent of all the parties*, appeals from bankruptcy decisions." (emphasis added) The judicial council may decline to create a bankruptcy appellate panel service if it finds that there are

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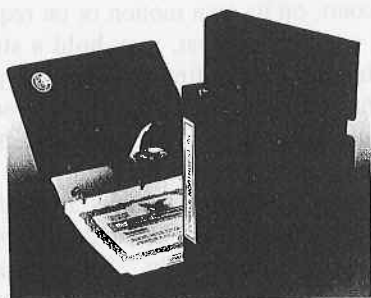
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insufficient judicial resources available or that the establishment of such a service would result in undue delay or increased cost to parties in cases under Title 11.

3. Authority of Bankruptcy Judges to Conduct Jury Trials in Civil Proceedings. Section 112 of the Act, amends Section 157 of Title 28 by adding a new subsection (e) which allows a bankruptcy judge to conduct a jury trial, if the right to a jury trial applies in the proceeding, so long as the district court "specially designates" the bankruptcy judge to exercise such jurisdiction and the jury trial is conducted with "the express consent of all the parties." In light of these limitations, it is not likely that bankruptcy judges will conduct a significant number of jury trials.⁶

*"Most commentators consider
the Act to be the most
comprehensive amendment to
the bankruptcy laws of the United
States since the Bankruptcy Code
was enacted in 1978."*

C. General Waiver of Sovereign Immunity.

Section 113 of the Act, which also applies to all cases that were pending on October 21, 1994, abrogates the sovereign immunity of governmental units, for "all purposes," with respect to most of the substantive sections in Chapters 1, 3, 5, 7, 11, 12 and 13 of the Code. New Section 106(a)(1) contains a listing of these applicable sections. Noticeably absent from the list, whether intentionally or by oversight, are Sections 541 (property of the estate) and Section 1129 (confirmation of plans). Bankruptcy courts may now issue any order, process or judgment against a governmental unit, including the award of a monetary recovery, and may enforce any such order, process or judgement against a governmental unit. The only exception is an award of punitive damages. The effect of this section is to overrule two United States Supreme Court cases holding that the states and federal government did not waive their sovereign immunity when Section 106(c) of the Code was enacted.⁷ In addition, where a

governmental unit files a proof of claim, the governmental unit is deemed to have waived its sovereign immunity with respect to a counterclaim which is property of the estate, so long as the counterclaim arises out of the same transaction or occurrence which underlies the governmental unit's claim.

D. New Service of Process Rules Respecting Insured Depository Institutions.

Rule 7004, F.R.Bk.P., has been amended by Section 114 of the Act to provide that service on an insured depository institution in a contested matter or adversary proceeding must be made by "certified mail addressed to an officer of the institution," unless the institution already has appeared in the case by its attorney (in which event the attorney may be served by first class mail), the court orders otherwise, after notice to the institution, or the institution waives its entitlement, in writing, to service by certified mail. These new service provision are a trap for the unwary in seeking any relief against a depository institution in a bankruptcy case.

E. Broader Participation on Chapter 11 Committees and Payment of Expenses Incurred by Committee Members.

Section 106 of the Act amends the definition of "person" in Section 101(41) of the Code to include a "governmental unit," (a) if the governmental unit acquires an asset from a person as a result of a loan guaranty agreement, or a receiver or liquidating agent of a person, (b) if it is a guarantor of a pension benefit payable by or on behalf of the debtor, or (c) if it is the legal or beneficial owner of an asset of an employee benefit plan or deferred compensation plan. These amendments now enable governmental units to participate as members of unsecured creditors committees formed under Section 1102 of the Code. In addition, Section 110 of the Act amends Section 503(b)(3) of the Code by defining an administrative expense as including the actual, necessary expenses incurred by a member of a committee appointed under Section 1102, if such expenses are incurred in the performance of duties for the committee.⁸ The placement of this amendment in Section 503(b)(3) is problematic and, undoubtedly, will spawn conflicting judicial interpretations. Under Section 503(b)(3) of the Code, an entity whose expenses are

allowable under subsection (3), also is entitled to seek, as an administrative expense, "reasonable compensation for professional services rendered by an attorney or an accountant of such entity." Thus, it may now be possible for members of committees to receive reimbursement for their actual out-of-pocket expenses, *and also be paid* the professional fees they incur as members of committees.

F. Post Petition Assessment of Tax Liabilities.

Section 116 of the Act creates a new exception to Section 362(b)(9) of the automatic stay by permitting governmental units to conduct audits, issue notices of tax deficiency, make demand for tax returns and make assessments for any tax that would attach to property of the estate. These amendments may create a greater administrative burden for debtors and may shorten the period of time within which a Chapter 11 debtor may pay priority tax claims under a confirmed plan.⁹

G. Elimination of Preference Liability for Non-Insider Transferees (the *Deprizio* fix).

Section 202 of the Act overrules the *Deprizio* decision¹⁰ by amending § 550 of

the Code to add a new subsection (c), which now precludes the trustee from recovering a preference made between 90 days and one year before the filing of the petition "from a transferee that is not an insider." The amendment, however, does not affect transfers made *within 90 days* prior to the petition, although, in most instances, such transfers would be recoverable directly from the transferee without the *Deprizio* rule.

"The court, on its own motion or on request of a party in interest, may hold a status conference 'regarding any case or proceeding' after notice to parties in interest."

H. Extended Grace Period For Perfection of Purchase Money Security Interests.

Section 203 of the Act amends Section 547 of the Code by permitting a twenty (20) day grace period for perfection of purchase money security interests, as provided in

most States' versions of the UCC. Prior to this amendment, only ten (10) days were allowed under Section 547(c)(3)(B) to perfect a security interest after the debtor received possession of the property. Thus, it is not a preferential transfer to create a security interest in property acquired by the debtor for new value, if the security interest is perfected on or before twenty (20) days after the debtor receives possession of the property.

I. Continued Perfection of Pre-Petition Security Interests.

Prior to enactment of § 204 of the Act, if a financing statement lapsed during the pendency of a debtor's bankruptcy case (i.e. the five year period expired *during* the debtor's case), the creditor could not file a continuation statement without violating the automatic stay. The secured creditor's interest remained perfected, however, during the case, but the creditor was required to file a continuation statement within sixty days after conclusion of the case in order to maintain a perfected security interest in the collateral.¹¹ Section 204 of the Act amends §§ 362(b)(3) and 546(b) of the Code to provide that an act "to maintain or continue the perfection of"

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a security interest is not a violation of the automatic stay and is not an unauthorized post-petition transaction. This amendment also may create a *duty* to file continuation statements during a bankruptcy case in order to maintain a properly perfected security interest, even where the filing of such a continuation statement is not required under the UCC. Unfortunately, these amendments only apply to cases which are filed after October 22, 1994. Hence, if a financing statement lapses during a case which was *filed prior to* October 22, 1994, the secured creditor will not be able to rely on the amendment as authority for the filing of a continuation statement. Instead, the creditor will have to file the continuation statement within sixty days after conclusion of the case.¹² To avoid such confusion, Congress should make Section 204 of the Act retroactive to all cases.

J. Enhanced Protection for Tenants of Unexpired Real Property Leases.

As a result of a strong lobbying effort, Section 365(h) of the Code was substantially amended by Section 205 of the Act. The purpose of this amendment was to

enhance the rights of a lessee of real property where the lessor is a debtor under the Code and rejects the lease. The new provisions better define the lessee's rights with respect to timing and payment of rent, quiet enjoyment of the premises and assignment of the lease, where the lessee elects to remain in possession of the premises after rejection. Subpart (d) of new Section 365(h)(1) defines the term "lessee" as including any "successor, assign, or mortgagee" permitted under the terms of such lease. More importantly, subpart (c) of the new section now provides that rejection of a lease of real property "in a shopping center" does *not* affect the enforceability of provisions in the lease "pertaining to radius, location, use, exclusivity, or tenant mix or balance." Undoubtedly, these provisions will impact the value and transferability of leases in bankruptcy cases, and will make it more difficult for debtors-in-possession and trustees to assign their leasehold interests to third parties.

K. Modification of "Residential Mortgages" in Chapter 11 Cases Prohibited.

Under Chapter 13, a plan may not modify the rights of a holder of a claim secured

only by a security interest in real property that is the debtor's principal residence.¹³ The entire debt is treated as secured, and a bifurcation of the debt into a secured and unsecured claim is not permitted.¹⁴ Now, under Section 206 of the Act, the same rule applies in Chapter 11. Although Congress probably intended this modification to apply only in the case of an *individual* Chapter 11 debtor¹⁵, it remains to be seen whether the courts will apply the restriction to real property owned by corporations and partnerships, especially where the real estate constitutes the headquarters or principal place of business of the entity.

L. Extension of Time To Reclaim Goods From a Debtor.

Under Section 546(c)(1) a seller who delivers goods to a debtor on open account can demand reclamation of such goods if the demand is "in writing" and is made "before ten days after receipt of such good by the debtor." Section 209 of the Act amends Section 546(c)(1) to *also* permit reclamation where the ten day period expires after commencement of the case, but where the written demand is made

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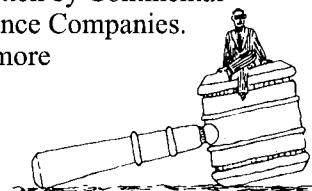
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"before twenty days after receipt of such goods by the debtor." Although this amendment provides additional time for a seller to reclaim goods, the other elements of Section 546(c) still must be satisfied. It is uncertain whether this amendment can expand state law rights if the applicable reclamation provisions of the UCC require that the notice be given within ten days.

M. Election of Chapter 11 Trustees By Creditors

Under Section 1104(c) of the Code, if the court orders appointment of a Chapter 11 trustee, the selection of the trustee is made by the office of the United States Trustee "after consultation with parties in interest." Section 211 of the Act changes the selection process by adding a new subsection to Section 1104 of the Code. Now after the Court orders appointment of a trustee, a "party in interest" may request that the United States Trustee "convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case." If such an election is requested, it must be conducted in the same manner as the election procedures set forth in Section 702 of the Code.

Under Section 702(a), however, *only certain creditors may vote* for a trustee. Such creditors must hold allowable, undisputed, fixed, liquidated *unsecured* claims; they may not have "an interest materially adverse" to the interests of like creditors entitled to a distribution; and they cannot be insiders. As a result of this change, secured creditors may find themselves having little or no role to play in the selection of a trustee in a Chapter 11 Case.

"The Act makes changes to permit an expedited and, hopefully, less expensive procedure for reorganizing a small business under Chapter 11."

N. Liability of General Partners In Chapter 7 Partnership Case Same As Under Non-Bankruptcy Law.

Under Section 723 of the Code, the

Trustee in a Chapter 7 case has a claim against each of the general partners of a Chapter 7 general partnership "for the full amount of the deficiency" (the difference between the value of the property of the estate and the amount of allowed claims against the partnership). Section 212 of the Act, changes the rule by providing that a general partner is liable only "to the extent that under applicable non-bankruptcy law such general partner is personally liable for such deficiency." As a result, limitations on the liability of general partners in limited liability partnerships will also limit the general partner's liability if the partnership is a debtor under Chapter 7.¹⁶

O. Impairment and Filing of Claims

Section 213 of the Act makes important changes to Sections 502, 726, 503, and 1124 of the Code.

1. Untimely filed claims are disallowed. Section 502(b) is amended by adding a new subsection (9) which creates an exception to allowance of a claim if "proof of such claim is not timely filed," except to the extent that a tardy filing is permitted under Section 726(a)(1), (2) or (3) of the Code. In turn, Section 726(a)(1)

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also is amended by permitting distributions in a Chapter 7 case to pay a claim "proof of which is timely filed under Section 501. . . or tardily filed before the date on which the trustee commences distribution. . . ." Since Section 726 only applies in Chapter 7 cases, tardy claims will not be allowed in Chapter 11, 12, or 13 cases.

2. Separate claim filing period for governmental entities. Under Rule 3003(c)(3), F.R.Bk.P., the court is required to fix a time for filing a proof of claim in a Chapter 11 case. Usually the time fixed is ninety (90) days after the first date set for the meeting of creditors, which is the same time fixed under Rule 3002(c) in Chapter 7, 12 and 13 cases. Under Section 213(a) of the Act, however, the claim of a "governmental unit" is timely filed "if it is filed before 180 days *after the date of the order for relief*" unless a later time is provided by the F.R.Bk.P. Under Section 101(27) of the Code, the term "governmental unit" includes a wide variety of governmental and municipal entities. This separate deadline for governmental units undoubtedly will cause problems in both proposing and confirming plans under Chapters 11, 12 and 13. In fact, this provision actually impairs the efficacy of the Chapter 11 "Small Business" amendments made by Section 217 of the Act (see discussion below).

3. Administrative Claims Must Be "Timely" Filed. Section 503(a) of the Code has been amended to require the "timely" filing of requests for payment of administrative expenses, unless a tardy filing is permitted by the court "for cause." Unfortunately, there is no section or rule which fixes a deadline for filing administrative expense claims in Chapter 11 cases, even though all such claims must be dealt with as a condition of confirmation of a plan.¹⁷ Thus, the timely filing of an administrative claim will depend upon the date, if any, which is fixed by the court for the filing of such claims, or upon the provisions of the plan.

4. Non-Impairment of Claims May Require Payment of Post-Petition Interest. Section 213(d) of the Act simply repeals, in it entirety, Section 1124(3) of the Code. This former section defined an "unimpaired claim" as one which received cash on the effective date of the plan in an amount equal to the allowed amount of the claim. If a class of claims is not impaired,

it is deemed to accept the plan and is not entitled to vote on the plan.¹⁸ The amendment seems to be designed to overrule cases like *In re New Valley Corp.*¹⁹ which held that unsecured creditors of a solvent debtor were not entitled to post-petition interest if the allowed amounts of their claims were paid in full on the effective date of the plan. Now, these same creditors would be entitled to vote against such a plan and require payment of post-petition interest on their claims or force a cram down fight under Section 1129(b) of the Code. This same amendment, however, also may make it easier to confirm plans in some single asset real estate cases — a result Congress probably did not intend.²⁰

*"In response to public outcry
about professional fees in Chapter
11 cases, Congress enacted
significant changes to the Code."*

P. Post Petition Rents and "Hotel Revenues" Secured By Pre-Petition Mortgages.

Under former Section 552 of the Code, real estate lenders were deemed to have a security interest in post-petition rents only to the extent "perfected" under applicable state law. Section 214 of the Act amends Section 552(b) of the Code to grant a post-petition interest in "amounts paid as rents of such property or the fees, charges, accounts or other payments for the *use or occupancy of rooms and other public facilities* in hotels, motels, or other lodging properties. . . ." (emphasis added). This protection only exists, however, to the extent granted or created by a valid, properly perfected pre-petition security agreement. Thus, notwithstanding a lender's failure to invoke state law mortgage remedies during the pre-petition period, a properly perfected interest in rents and hotel revenues will entitle the lender to adequate protection for the debtor's use of such "cash collateral." Undoubtedly, the bankruptcy judges will be asked to define the scope of hotel revenues under this new section.²¹ Practitioners also should note that the court continues to retain power under Section 552(b) to deny

or modify the lender's interests in the post-petition rents or hotel revenues "based on the equities of the case." Similar changes were made to the definition of "cash collateral" in Section 363(a) of the Code.

Q. New Statute of Limitations for the Filing of Avoiding Actions.

Section 546(a) of the Code creates a statute of limitations for the filing of an avoiding action. Because of the way Section 546(a) is drafted, courts disagreed on the proper application of the limitations period.²² Section 215 of the Act rewrites Section 546(a)(1) of the Code to require that avoiding actions be brought no later than "two years after entry of the order for relief" or "one year after the appointment or election of the *first* trustee appointed in a case," (emphasis added) so long as such appointment or election occurs during the initial two year period. Thus, the maximum statute of limitations is three years from the date a petition is filed, assuming a trustee is appointed on the last day of the two year period. Again, this change only affects cases that are filed on or after October 22, 1994. For other cases, the old version of Section 546(a), and the cases interpreting it, will govern.

R. New Small Business Election Under Chapter 11

Section 217 of the Act, makes changes to Sections 101, 1102(a), 1112(b), 1121 and 1125 of the Code to permit an expedited and, hopefully, less expensive procedure for reorganizing a small business under Chapter 11. A "small business" is defined in new Section 101(51C) of the Code as a person engaged in "commercial or business activities" (excluding a person whose primary activity is the business of owning or operating real property and activities incidental thereto) with aggregate, non-contingent, liquidated, secured and unsecured debts, as of the date of the petition, not exceeding \$2 million. If a Chapter 11 debtor qualifies as a "small business," then the court may order that a committee of creditors *not be appointed*. A small business may "elect" to be considered a small business under Chapter 11, in which case the exclusive periods for filing and confirming a plan under Section 1121 are altered.²³ These time periods may be reduced for cause and increased if the debtor shows adequate need. To expedite confirmation of a "small business" plan, the court may conditionally approve a dis-

closure statement without notice and hearing, the debtor may solicit acceptances of a plan based on the conditionally approved disclosure statement and the final hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan. Unfortunately, the new statute provides no guidance as to how or when a small business makes such an election. In addition, the statute is silent on many other procedural matters, including how the court will address a contested election, what circumstances justify an extension of the exclusive periods and what happens if the debtor makes an election but does not proceed with the filing and confirmation of a plan.

S. Expedited Relief from Stay for Single Asset Real Estate Cases.

Section 218 of the Act creates a new definition in Section 101(51B) of the Code for "single asset real estate," which means real property, constituting a single property or project, other than residential real property with fewer than four residential units, which "generates substantially all of

the gross income of a debtor" and on which "no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto." Such property also must have aggregate non-contingent, liquidated secured debts in an amount no more than \$4 million. In cases involving "single asset real estate," Section 362(d) is amended to terminate the automatic stay in favor of a creditor whose claim is secured by an interest in such real estate unless, within 90 days after the order for relief (or such later date as the court determines "for cause" within such 90 day period) the debtor has "filed" a plan that "has a reasonable possibility of being confirmed within a reasonable time" or the debtor has "commenced" monthly payments to the secured creditor (other than the holder of a judgment lien or unmatured statutory lien) in an amount "equal to interest at a current fair market rate on the value of the creditor's interest in the real estate." These amendments are fertile ground for litigation.

In many ways, the new law raises more questions than it answers. What is "substan-

tially all" of the gross income of the debtor? What is "a substantial business" being conducted on the property? Does unimproved real property constitute "single asset real estate?" Does property qualify if it generates no income but is the only asset owned by the debtor? If the value of the property is \$4 million, but the secured claim *exceeds* that amount, is the obligation a "liquidated secured debt" in an amount no more than \$4 million? When is the obligation "liquidated?" Is this definition read in conjunction with Section 506 which determines "secured claims?" What must a debtor show to prove that the plan has a "reasonable possibility of being confirmed within a reasonable time?" If the debtor commences monthly payments, must it "continue" making monthly payments to avoid termination of the stay? What does a creditor do if it thinks the payments are too small? Are payments applied to reduce the principal portion of the debt or the interest portion? What if the creditor is undersecured and is not entitled to interest under Section 506 of



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the Code? Until the courts answer these and many other questions associated with this new law, it is unlikely that the intent of the drafters, namely, to expedite relief from stay proceedings in single asset cases, will be accomplished. Furthermore, this amendment acknowledges "single asset real estate" as a special class of property entitled to protection under Title 11, and may create a statutory basis for the filing of *any* single asset real estate case, even in situations where courts have questioned whether such cases are good faith filings.

T. Mandatory Performance of Obligations Under Personal Property Leases.

Under the former Code, a debtor had an unspecified period of time to decide whether to assume or reject a lease of personal property. Often a debtor continued to use the personal property, without assuming or rejecting the executory contract, until the lessor obtained an order fixing a deadline for assumption or rejection. Section 219 of the Act responds to this concern by requiring that, in Chapter 11 cases, the trustee must "timely perform" all of the obligations of the debtor

arising from or after 60 days after the order for relief, with respect to an unexpired lease of personal property (other than property leased to an individual for personal, family or household purposes). The trustee also must continue such performance until the contract is assumed or rejected. The court retains authority, after notice and a hearing, to modify these obligations "based on the equities of the case." A lessor may accept such performance without waiving or relinquishing rights under the lease.

In addition to this change, Section 365(b)(2) imposes an additional test for assumption of an executory contract. Now to assume a contract the trustee or debtor-in-possession must satisfy "any penalty rate or provision relating to a default arising from any failure by the debtor to perform non-monetary obligations under the executory contract or unexpired lease." Because of the new obligations imposed by these amendments, a debtor or trustee may be encouraged to argue that an executory contract is not a "true lease" and attempt to avoid the new provisions of Section 365.

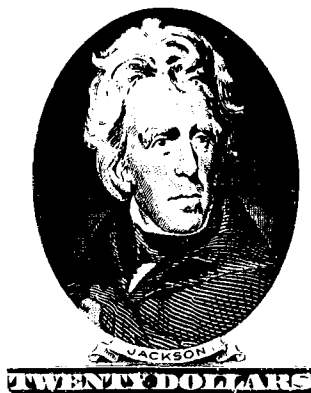
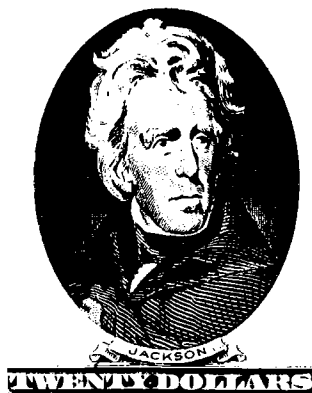
U. Debtor's Option to Return Goods.

Section 222 of the Act creates a new Section 546(g) which permits a trustee to return goods to a creditor which were shipped to the debtor before commencement of the case. It also permits the creditor to off-set the purchase price of such goods against the creditor's claim. The provision only applies in Chapter 11 cases. Any proposed return of goods must be approved by the court, after notice and a hearing, on a motion made not later than 120 days after the order of relief. As drafted, only the trustee or debtor in possession can file such a motion. The new law is silent with respect to the competing rights of other general unsecured creditors, or of a creditor with a prior, perfected security interest in the goods. Presumably, the rights of these parties will be considered by the court at the hearing.

V. New Standards For Awarding Professional Compensation.

In response to public outcry about professional fees in Chapter 11 cases, and in an effort to foster greater uniformity in the application and processing of fee applications, Congress enacted significant

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changes to Section 330 of the Code. As amended by Section 224 of the Act, new Section 330(a)(3) establishes statutory guidelines for determining the amount of reasonable compensation which can be awarded to professionals who perform services for an estate. In addition to examining the nature and extent of the services rendered, the court now must consider "the *value* of such services" (emphasis added) and must take into account "all relevant factors." Some of the factors include whether the services were "necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case," whether the services were performed "within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task" (emphasis added) and whether the compensation is reasonable based on "customary compensation charged by *comparably skilled practitioners*." (emphasis added) In addition to these standards, new Section 330(a)(4) prohibits the court from awarding compensation for "unnecessary duplication," for services that were "not reasonably likely to benefit the debtor's estate, or for services that were not necessary to the administration of the case." Section 586(a)(3)(A) of Title 28 also was amended to expand the duties of the United States Trustee. These duties now include reviewing fee applications in accordance with uniform guidelines and filing comments or objections with the court, as appropriate.

CONCLUSION

Whether you consider the Bankruptcy Reform Act of 1994 to be "a grab bag of special interest provisions"²⁴ or needed improvements in the teenage years of the bankruptcy reform process, there is little doubt that Congress has created more employment for bankruptcy and non-bankruptcy lawyers. Part II of this article will discuss some of the more significant changes in Consumer Bankruptcy practice, including new provisions on child support and alimony.

¹Public Law 103-394, 108 stat. 4106. As used in this article, references to sections of the Act refer to the sections of H.R. 5116. References to sections of the Code refer to sections in Title 11 of the United States Code, commonly known as the "Bankruptcy Code."

²Section 702(b) of the Act. The exceptions are Act sections 111 (certain plan injunctions in *Manville/UNR* type cases),

Section 113 (sovereign immunity), Section 117 (addition of trustee compensation); Section 201 (amendments to Code Section 1110 on aircraft and rolling stock leases) and Section 305 (plan cure amounts for agreements made after October 22, 1994).

³The Act applies to all "cases" that are "commenced under Title 11" on and after October 22, 1994, but does not define the phrase "cases commenced under Title 11." The word "case" also is not defined in the Bankruptcy Code. Nevertheless, in this author's opinion, the phrase only refers to voluntary or involuntary cases commenced under Section 301-304 of the Code, and does not include "adversary proceedings," "core proceedings," or "related proceedings" which are initiated in bankruptcy cases that were pending on October 21, 1994. Rule 7001 and 28 USC § 157 refer to such actions as "proceedings," not "cases."

⁴Administrative provisions affect both commercial and consumer cases.

⁵See, e.g., *In re M.L. Barge Pool*, 98 B.R. 957 (Bankr. E.D. Mo. 1989); *In re Bogosian*, 112 B.R.2 (Bankr. D. RI. 1990).

⁶It is unclear whether the district court can make a "general designation" authorizing bankruptcy judges to conduct jury trials where the parties expressly consent, or whether the designation has to be on a case-by-case basis. Moreover, all of the parties are not likely to expressly consent to a jury trial unless there is general agreement that a jury would be a better arbiter of disputed facts than the presiding bankruptcy judge in the case.

⁷*Hoffman v. Connecticut Dept. of Income Maintenance*, 492 U.S. 96 (1989); *United States vs. Nordic Village Inc.*, 112 S. Ct. 1011 (1992).

⁸Courts have been split on the question of whether committee members are entitled to reimbursement for their out-of-pocket expenses (such as for travel and lodging), but in Utah, such expenses are generally allowed in Chapter 11 cases.

⁹Section 1129(a)(9)(C) of the Code allows a Chapter 11 debtor to repay priority tax claims under a confirmed plan "within six years from the date of assessment." If the taxes were not "assessed" prior to the petition date then the debtor would have a full six years from confirmation of the plan within which to pay the obligation. Now that the taxes can be assessed post-petition the time period for repayment could be shortened significantly.

¹⁰*Levit v. Ingersoll Rand Financial Corp.*, 874 F.2d 1186 (7th Cir. 1989); See also, *In re Meridith Hoffman Partners*, 12 F.3d 1549 (10th Cir. 1994); *In re Robinson Brothers Drilling, Inc.*, 6 F.3d 701 (10th Cir. 1993).

¹¹These procedures often caused problems for creditors because the original filing typically was eliminated from the public records after five years. Thus, when the creditor prop-

erly filed a continuation statement within sixty days after conclusion of the bankruptcy case, there was no financing statement of record "to continue."

¹²The creditor could seek an order from the Court modifying the automatic stay to permit the post-petition filing.

¹³Section 1322(b)(2) of the Code.

¹⁴*Nobleman v. American Savings Bank*, 113 S.Ct. 2106 (1993).

¹⁵The amendment to Section 1123(b) is identical to Section 1322(b)(2). Only debtors who are "individuals" may seek relief under Chapter 13. See Section 109(e) of the Code.

¹⁶As amended, however, the new statute does not require that funds recovered from a partner only be used to satisfy claims on which that partner has exposure.

¹⁷See Section 1129(a)(9)(A) of the Code.

¹⁸See Section 1126(f) of the Code.

¹⁹168 B.R. 723 (Bk. D. N.J. 1994).

²⁰It may be easier to obtain the vote of an impaired class of general unsecured creditors by offering to pay their claims in full, without interest, and, by doing so, satisfy the requirements of Section 1129(a)(10) of the Code. See, *In re Hotel Associates of Tucson*, 165 B.R. 470 (9th Cir. 1994) (if a debtor has the ability to pay a class of creditors on the effective date of a plan, it cannot postpone payment for 30 days thereafter in an attempt to create an "impaired class" and satisfy Section 1129(a)(10)).

²¹As drafted, hotel revenues might not include such things as restaurant revenues, retail shop revenues, service fees unrelated to the "use or occupancy" of rooms, mini-bar revenue and revenue from similar services commonly provided by hotels, but not directly related to the use or occupancy of rooms.

²²See, e.g., *Zilkha Energy v. Leighton*, 920 F.2d 1520 (10th Cir. 1990) (limitation period applies to debtors-in-possession from date of petition); contra, *Maurice Sporting Goods, Inc. v. Maxway Corp.*, 27 F.3d 980, 982-83 (4th Cir. 1994); *Gillman v. Mark Oakes Trucking*, 171 B.R. 122 (D.Utah 1994) (limitation period begins on appointment of first trustee).

²³Only the Debtor may file a plan in the first 100 days and no other parties may file a plan until 160 days after the petition date.

²⁴Hugh Ray, Bankruptcy Commentary: *Starting From Ground Zero*, October 17, 1994 Tex.Law. 16.

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The Utah Zoning Enabling Acts: Suggestions for Change

By Richard S. Dalebout

I. INTRODUCTION

Zoning Enabling Acts

In 1991, the Utah State Legislature enacted The Municipal Land Use Development and Management Act (the "City Act"), and its county cousin, The County Land Use Development and Management Act (the "County Act"). These acts are the only comprehensive revision of Utah zoning enabling law since the adoption of the first zoning enabling law for cities in 1925, and the first zoning enabling law for counties in 1941.

Adoption of these two acts accomplished at least the following: (1) the former enabling statutes were comprehensively reorganized and placed in logical order; (2) the enabling statutes for cities and counties were placed in similar language and format; and, (3) many — but certainly not all — obsolete provisions of the previous enabling acts were eliminated.

Understanding political realities, it is something of a secular miracle that so much common ground was found, and the two acts adopted. But, those who were involved in that process freely admit what is obvious, that there are some loose pieces. They acknowledge that there are some provisions of the two acts which need refining. This article focuses on that refining process.

Thumbnail Sketch

Before proceeding, a thumbnail sketch of zoning law is in order for those not actively involved with the subject. Zoning is the process of dividing land into districts and regulating its use. This is done by cities and counties, which are controlled in the process by the provisions of the City Act and the County Act. A city or county planning commission prepares a long-range plan called a general plan, and also a proposed zoning ordinance (including text and a map) which is based on the general plan. The legislative body reviews



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and amends these documents, and then adopts the zoning ordinance into law. The zoning ordinance permits some land "uses" outright, and others are made conditional in various ways.

The zoning ordinance is administered by city or county staff and the planning commission. Disputes arising in the process of zoning administration, and requests for "variances," are decided by a board of adjustment. Dissatisfied parties may appeal to the courts.

Issues to be Resolved

The provisions of the new enabling acts which need attention range from those which are relatively minor to those which are very important. Following is a list of those matters, each cast in the form of an

issue. After the list, each of the issues is briefly discussed and a suggestion for change is given. The issues are as follows:

The Planning Commission.

- Should a planning commission be required?
- Should local government be allowed to decide the number of planning commission members and the length of their term?
- Should the chair of a planning commission be limited to a one year term?

The Zoning Ordinance.

- Should a general plan be approved before a zoning ordinance is enacted?
- Should the legal basis for refusing to allow the use of initiatives and referenda to rezone be reconsidered?
- Should a planning commission recommendation be required before a six-month "moratorium" is enacted?

Subdivisions.

- Should divisions of land for agricultural, commercial, manufacturing or industrial purposes be exempt from subdivision control?

Board of Adjustment.

- What should the number of members of a board of adjustment be, and what should their voting requirements be?
- How many days should be allowed to appeal a decision to a board of adjustment?
- Should a board of adjustment have jurisdiction to interpret a zoning map?
- What is the meaning of "special exception"?
- Should a board of adjustment have exclusive jurisdiction over special exception appeals?
- Should a board of adjustment have exclusive jurisdiction over conditional use permit appeals?

Appeals.

- Should calculation of the time to appeal to the courts from a board of adjust-

ment decision commence when the board's "decision is rendered," or when the board's "decision is final"?

II. THE ISSUES BRIEFLY DISCUSSED

Following is a brief discussion of each of the issues described above. Included with the discussion of each issue is a suggestion describing how the issue may be resolved.

Planning Commission Required?

Should a planning commission be required? The enabling acts provide that cities and counties "may" create a planning commission.¹ But, it is clear that zoning cannot be accomplished without a planning commission. Necessary functions like the creation of a general plan, recommending a zoning ordinance and amendments thereto, as well as recommending a subdivision ordinance and amendments thereto, cannot be accomplished without a planning commission.

Suggested Change. Although it is a relatively minor point, the acts should provide — as they do with board of

adjustment — that cities and counties shall create a planning commission.

Number and Term of Planning Commission Members.

Should local government be allowed to decide the number of planning commission members and the length of their term? The City Act allows the local legislative body to decide the number and terms of planning commission members.² In contrast, the County Act proscribes a planning commission of seven members serving three-year terms.³ There is no obvious reason for this difference, except that is the way it was done in the past.

Suggested Change. In the absence of a reason for being restrictive, the County Act should be amended to provide that the county legislative body may decide the number and terms of planning commission members.

Term of Planning Commission Chair.

Should the chair of a planning commission be limited to a one year term? In general, both acts provide that a planning commission may establish its own policies and procedures, but the legislative body may control those policies and procedures

by ordinance or otherwise.⁴ Silhouetted against this general policy is an old provision carried forward into the County Act, that a planning commission chair may serve only a one-year term.⁵

Suggested Change. The ability to regulate the term of the commission chair is contained in the power to control policies and procedures; the one-year provision is a duplication and unnecessarily restrictive and should be repealed.

General Plan Before Zoning Ordinance.

Should a general plan be approved before a zoning ordinance is enacted? If a zoning ordinance is the specific implementation of the long-range forecast of a general plan,⁶ it seems reasonable to require that approval of the general plan precede adoption of the zoning ordinance. However, neither act so requires, and in *Gayland v. Salt Lake County* (1961),⁷ the Utah Supreme Court held that the prior county enabling act did not so require.

Suggested Change. Both acts should be amended to require the adoption of a general plan to precede enactment of a zoning ordinance.

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Initiatives and Referenda to Rezone.

Should the legal basis for refusing to allow the use of initiatives and referenda to rezone be reconsidered? In the absence of legislative direction, the Utah Supreme Court has held — most recently in *Citizen's Awareness Now v. Marakis*⁸ — that routine rezoning amendments may not be decided by popular vote. The wisdom of that policy is beyond the scope of this article. The point here is that the policy is based on the strained reasoning that routine zoning amendments, although cast in the form of a legislative act, are in substance an administrative decision; thus, initiatives and referenda cannot be used (in a non-legislative context). This reason-

ing obviously flies in the face of other Utah decisions which uniformly hold that the process of adopting zoning regulations is a legislative function.⁹

Suggested Change. The city and county enabling acts should be amended to accept or reject the policy that routine zoning amendments may not be decided by popular vote. Whatever that decision, the result will be to place the policy on a statutory basis and thereby eliminate the need for the unsatisfactory administrative-legislative dichotomy described in *Marakis*.

Planning Commission Recommendation for a Moratorium.

Should a planning commission recommendation be required before a six-month

"moratorium" is enacted? A local legislative body may enact temporary zoning legislation (a moratorium) which prohibits land development for up to six months.¹⁰ Such a provision is often used to respond to quickly-developing problems, but the enabling acts do not waive the requirement that a planning commission recommendation precede the enactment of zoning legislation. Indeed, the acts are explicit that an amendment to the text or map of a zoning ordinance first requires referral to the planning commission.¹¹

Suggested Change. Both enabling acts should be amended to make clear that enactment of temporary zoning legislation does not require a prior referral to the planning commission.

Divisions of Land and Subdivision Control.

Should divisions of land for agricultural, commercial, manufacturing or industrial purposes be exempt from subdivision control? Under the City Act, divisions of land for these purposes may be controlled by a subdivision ordinance, but under the County Act they may not.¹² These land divisions, particularly the subdividing of land for commercial, manufacturing or industrial purposes, normally create problems in relation to transportation, sewer, water, power, and the like.

Suggested Change. The County Act should be amended to make subdivisions of land for agricultural, commercial, manufacturing or industrial purposes subject to a county subdivision ordinance.

Number of Board Adjustment Members.

What should the number of members of a board of adjustment be, and what should their voting requirements be? A city board of adjustment has five members,¹³ and operates by majority vote.¹⁴ In contrast, a county board of adjustment has "three to five" members.¹⁵ Although a literal reading of the "three to five" language allows a four-member county board, voting procedures are given only for three-member and five-member boards, implying that an odd number is intended.¹⁶ Three members is such a small number that such a board is required to act by unanimous vote.¹⁷ A three-member board with a unanimous voting requirement has great potential for unfairness, because any one person can block action by the board.

Suggested Change. The County Act

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should be amended to eliminate three-member boards of adjustment with a unanimous voting requirement.

Time to Appeal to a Board of Adjustment.

How many days should be allowed to appeal a decision to a board of adjustment? Both acts provide that local zoning ordinances shall describe "a reasonable time" within which to appeal a matter to a board of adjustment.¹⁸ But, it is a harsh reality that many local zoning ordinances are in a state of disrepair and may not describe a reasonable time to appeal. The time allowed to appeal is a procedural rule that is often in play; if it is not described, unnecessary jurisdictional problems may recur.

Suggested Change. The City Act and the County Act should be amended to provide that appeals shall be taken to the board of adjustment within ten days of the action from which an appeal is taken, unless the local zoning ordinance provides a different reasonable time period.

Board of Adjustment Interpretation of the Zoning Map.

Should a board of adjustment have jurisdiction to interpret a zoning map? In general, a board of adjustment has power to review all administrative decisions. But, in another carry-over from the past, the County Act provides that a county board of adjustment may not "interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions" unless specially authorized in the zoning ordinance.¹⁹ Interpretation of a zoning map appears to be an unremarkable thing for a board of adjustment to do, and no different in relative importance than other things a board does.

Suggested Change. The County Act should be amended to repeal the requirement that a county board of adjustment must have special authorization in the zoning ordinance to "interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions."

Meaning of "Special Exception."

What is the meaning of the term "special exception"? This term is first found in the original 1925 city enabling act, and it is used in both of the present acts,²⁰ but it is not defined in any of those places. Most authorities say that a "special exception" is the same as a "conditional use permit,"²¹ and in *Thurston v. Cache County* (1981)²² the Utah Supreme Court was willing to assume, arguendo, that some "'special exceptions' are conditional use permits." The point is of concern because the acts treat "special exception" and "conditional use permit" separately for purposes of board adjustment jurisdiction.

Suggested Change. A simple solution is to have the acts provide that a conditional use permit, and other forms of conditional land uses are types of special exception. This solution clarifies the relationship between the two terms, and also allows local governments to create other types of special exceptions as circumstances require.



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Board of Adjustment Jurisdiction over Special Exceptions.

Should a board of adjustment have exclusive jurisdiction over special exception appeals? Because the acts treat special exceptions and conditional use permits as separate concepts, the acts must have separate provisions for appeals to a board of adjustment. In cities and counties, jurisdiction of a board of adjustment over special exceptions is inconsistently described in three different ways: (1) "[t]he board of adjustment *shall* hear and decide . . . special exceptions to the terms of the zoning ordinance";²³ (2) "[i]n enacting the zoning ordinance, the legislative body may . . . grant jurisdiction to the board of adjustment to hear and decide some or all

special exceptions;"²⁴ and, (3) "[t]he board of adjustment may hear and decide special exceptions only if authorized to do so by the zoning ordinance . . ."²⁵

Suggested Change. The City Act and the County Act should be amended to give the legislative body discretion to determine the extent of the board of adjustment's jurisdiction over special exceptions.

Board of Adjustment Jurisdiction over Conditional Use Permits.

Should a board of adjustment have exclusive jurisdiction over conditional use permit appeals? Suppose a city receives an application for a conditional use permit to build a convenience store. Who gets the last word on the issuance or terms of the permit; will it be the board of adjustment, or the

city council? A discussion of which of those two bodies should have the last word is beyond the scope of this article. At first glance, one might expect that as an appeals board, the board of adjustment would have the last word. But, city councils have been persistent in demanding that right for themselves. In an effort to give city councils what they want — the right to have the last word on the issuance or terms of conditional use permits — the Utah State Legislature has enacted several provisions so providing.²⁶ The problem is that these well-intended provisions have triggered the law of unintended consequences.

A simple example will suffice. Section 10-9-704(2) provides: "(t)he board of adjustment shall hear and decide appeals

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from planning commission decisions regarding conditional use permits unless the zoning ordinance designates another body to hear conditional use permit appeals." This provision contemplates, of course, that the planning commission will make a conditional use permit decision which — as the city council decides in its zoning ordinance — will then be appealed to the board of adjustment, or to another body, which would likely be the city council. But, what if — as occurs in at least one city in Utah — the original conditional use permit decision is made by the city council, and not the planning commission? In such a case, the city council must allow the board of adjustment the last word on appeal, which is contrary to the objective of the statute.

Suggested Change. The City Act and County Act should be amended (1) to provide that a conditional use permit, and other forms of conditional uses, are types of special exceptions, as discussed above; and, (2) by clarifying the provisions that allow the zoning ordinance to route conditional use appeals to the board of adjustment or another body.

Time to Appeal to the Courts.

Should calculation of the time to appeal to the courts from a board of adjustment decision commence when the board's "decision is rendered," or when the board's "decision is final?" The City Act and the County Act inadvertently describe appeals to the courts in two different provisions. One section provides that calculation of the time to appeal commences when the board's "decision is rendered."²⁷ The other section provides that calculation of the time to appeal commences when the board's "decision is final."²⁸ Experienced practitioners will recognize that, in some cases, the time a decision is rendered may not be the time a decision is final.

Suggested Change. The City Act and the County Act should be amended to consolidate within each of those acts the provisions on appeals to the courts. Calculation of the time to appeal to the courts should commence at the time a decision is final.

III. CONCLUSION

It is important to say again that it is something like a secular miracle that the authors and sponsors of The Municipal Land Use Development and Management

Act and The County Land Use Development and Management Act were able to find the common ground on which enactment was based. Perhaps only those who practiced law under the provisions of the earlier enabling statutes understand how much is accomplished in these two acts.

"These suggestions should not be feared by cities and counties with fixed views about how a zoning system should operate."

It is nevertheless true that some refinement of the two acts remains, examples of which are the issues and suggestions above. These suggestions should not be feared by cities or counties with fixed views about how a zoning system should operate because, in nearly every situation, the suggested changes eliminate restraints and allow the local legislative body to structure a zoning according to local choice.

¹Utah Code Ann. § 10-9-201 (1) (a) and § 17-27-201 (1) (a).

²Utah Code Ann. § 10-9-201 (1) (b) and § 17-27-201 (1) (a).

³Utah Code Ann. § 10-9-201 (1) (a) and § 17-27-201 (1) (a).

⁴Utah Code Ann. § 10-9-202 and § 17-27-202.

⁵Utah Code Ann. § 17-27-202 (1) (b).

⁶See e.g., Utah Code Ann. § 10-9-301 and § 17-27-301.

⁷358 P.2d 633.

⁸873 P.2d 1117.

⁹E.g., *Chevron Oil Company v. Beaver County*, 449 P.2d 989 (Utah 1969).

¹⁰Utah Code Ann. § 10-9-404 and § 17-27-404.

¹¹Utah Code Ann. § 10-9-403 (1) (a) and § 17-27-403 (1) (a).

¹²Utah Code Ann. § 10-9-103 (q) (ii) (B) and § 17-27-103 (q) (iii).

¹³Utah Code Ann. § 10-9-701 (2).

¹⁴Utah Code Ann. § 10-9-702 (5).

¹⁵Utah Code Ann. § 10-9-201 (1) (a) and § 17-27-201 (1) (a).

¹⁶Utah Code Ann. § 17-27-702 (5).

¹⁷*Id.*

¹⁸Utah Code Ann. § 10-9-704 (1) (a) (ii) and § 17-27-704 (1) (a) (ii).

¹⁹Utah Code Ann. § 17-27-703 (3).

²⁰E.g., Utah Code Ann. § 10-9-706 (1) (a) and § 17-27-706 (1) (a).

²¹See, e.g., 6 Patrick J. Rohan, *Zoning and Land Use Controls* 44.01(1) (1992) ("Different terms have been applied to . . . special permits, special exceptions and conditional uses, but the consensus of judicial opinion is that they all refer to the same concept and are therefore interchangeable.")

²²626 P.2d 440.

²³Utah Code Ann. § 10-9-703 (1) (b) and § 17-27-703 (1) (b).

²⁴Utah Code Ann. § 10-9-706 (1) (b) and § 17-27-706 (1) (b).

²⁵Utah Code Ann. § 10-9-706 (2) and § 17-27-706 (2).

²⁶Utah Code Ann. § 10-9-407 (2), § 10-9-704 (2), § 10-9-706 (3) and § 17-27-706 (3).

²⁷Utah Code Ann. § 10-9-1001 (2) and § 17-27-1001 (2).

²⁸Utah Code Ann. § 10-9-708 (3) and § 17-27-708 (3).



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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: 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, Conflict Management Program, 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: Application forms may be obtained from and submitted to the:

Scott M. Matheson Award
Law-Related Education and
Law Day Committee
Utah Law & Justice Center
Box S-10, 645 South 200 East
Salt Lake City, Utah 84111
Phone: 322-1802

Included in the application should be a cover letter, a one page resume, and the application form. The form describes the following criteria to be used by the selection committee in evaluating the applicant:

- materials which demonstrate the applicant's contributions in the law-related youth education field;
- copies of news items, resolutions, or other documents which evidence the applicant's contribution to law-related education for youth;
- a maximum of two letters of recommendation.

All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Applications must be postmarked no later than March 15, 1995.

April 6, 1995, Roundtable Discussion of Court of Appeals Rules Changes

Members of the Bar are invited to the Utah Law & Justice Center, 645 South 200 East, Salt Lake City, for a roundtable discussion concerning recently-implemented rules of the Court of Appeals aimed at reducing back-log. The discussion, sponsored by the Appellate Practice Section, will involve judges from the Court of Appeals, members of the Appellate Operations Task Force that proposed steps to ease backlog,

and members of the Bar. Following a brief review of Task Force findings and recommendations, discussion will focus on the effect of the changes to date and questions and comments from members of the Bar. Hors d'oeuvres will be served at 6:30 p.m. The discussion will begin at 7:00 p.m.

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Law School Name, Degree, and Year
Undergraduate/Postgraduate Education
Year Joined Firm
Past Positions
Business References
Representative Cases
Representative Clients and Industries
Certified Legal Specialties
Published Works
Honors and Awards
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Nominees Sought for Thurgood Marshall Award

WASHINGTON, D.C., Jan. 5 — The American Bar Association's Section of Individual Rights and Responsibilities seeks nominations for the 1995 Thurgood Marshall Award.

Established in 1992, the award recognizes long-term contributions by members of the legal profession to the advancement of civil rights, civil liberties, and human rights in the United States. Last year, the award was presented to civil rights attorney Oliver W. Hill, of Richmond, Va. A law school classmate of Justice Marshall, Hill was part of the litigation team in the seminal school desegregation cases encompassed in the U.S. Supreme Court's landmark 1954 opinion, *Brown v. Board of Education*. The 1993 awardee was Judge Frank M. Johnson, Jr., of the U.S. Court of Appeals for the Eleventh Circuit. Justice Marshall himself received the inaugural award in 1992.

Nominees should be judges or duly licensed members of the bar in good standing, with a history of substantial and long-term contributions to furthering civil rights, civil liberties, or human rights in the United States. In exceptional circumstances, a non-lawyer may be considered.

The award will be presented at the Thurgood Marshall Award Dinner, sponsored by the Individual Rights Section, on Saturday, Aug. 5, during the 1995 ABA Annual Meeting in Chicago.

The Thurgood Marshall Award Committee for 1994-95 is chaired by James E. Coleman, Jr., and its members include Elaine R. Jones, Estelle H. Rogers, Judge Cruz Reynoso, and Philip A. Lacovara.

The submission deadline is March 15, 1995. To request a nomination package or more information about the nomination process, contact the Section office at 202/331-2279.

Attorneys Needed to Assist the Elderly Needs of the Elderly Committee Senior Center Legal Clinics

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services.

The Needs of the Elderly Committee supports the participating attorneys, by among other things, providing information on the various legal and other services available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only two hours of time during the next 12 months.

The Needs of the Elderly committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an

attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/ low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: John J. Borsos or Lisa Christensen, 370 East South Temple, Suite 500, Salt Lake City, Utah 84111, (801) 533-8883; or Joseph T. Dunbeck, Jr., Parsons, Davies, Kinghorn & Peters, 310 South Main Street, Suite 1100, Salt Lake City, Utah 84101, (801) 363-4300.

Solicitations on a Book on Judges A.H. Ellett and Willis W. Ritter

Gentlepersons:

Either alone or with one or two other lawyers I intend to have a book published concerning the deceased judges named above.

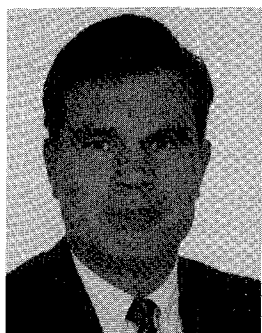
I would like the book to reflect every aspect of their judicial acts and hence would like to invite all of our members who practiced before them to send me an account of any experiences — positive or negative — they had with either or both, that they think would be appropriate for inclusion in such a book.

Yours Truly,
Robert B. Hansen
838 18th Avenue
Salt Lake City, Utah 84103
(801) 322-1796

Supreme Court Seeks Attorneys to Serve on Rules of Criminal Procedure Advisory Committee

The Utah Supreme Court is seeking applicants to fill several vacancies on the Advisory Committee on the Rules of Criminal Procedure. Each interested attorney should submit a resume and a letter indicating interest and qualifications to Brent M. Johnson, 230 South 500 East #300, Salt Lake City, Utah 84102. Applications must be received no later than March 20, 1995. Questions may be directed to Mr. Johnson at (801) 578-3800.

Local Named Member of Lawyers Conference Committee in American Bar Association Division



Chicago — William T. Session of Kansas City, Missouri has appointed Clark R. Nielsen of Salt Lake City, Utah as a member of the Lawyers Conference Appellate

Courts Committee. The charge of the committee for this year is to participate on designated committees of the Appellate Judges Conference, including the Appellate Practice Institute committee.

William T. Session is Chair of the Lawyers' Conference for 1994-95. It is

one of six conferences of the American Bar Association Judicial Administration Division (JAD). It represents the perspective of practicing lawyers, court administrators and academics on issues related to court administration.

The ABA is the largest voluntary professional association in the world. It has about 370,000 members from across the nation in all fields of legal practice and such related fields as the judiciary and legal academia. JAD's other conferences represent appellate judges, administrative law judges, federal trial judges, special court judges and state trial judges.

1995 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1995 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Kaesi Johansen, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Tuesday, April 11, 1995**. 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

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of \$5.00. Fourteen opinions were approved by the Board of Bar Commissioners between January 1, 1988 and March 11, 1993. For an additional \$2.00 (\$7.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1995.

ETHICS OPINIONS ORDER FORM

Quantity		Amount Remitted
_____	Utah State Bar Ethics Opinions	_____
		(\$5.00 each set)
_____	Ethics Opinions/Subscription list	_____
		(\$7.00)

Please make all checks payable to the Utah State Bar.
Mail to: Utah State Bar Ethics Opinions, ATTNE: Maud Thurman,
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

Notice of Petition for Reinstatement

Duane R. Smith has filed a Petition for Reinstatement to Practice Law with the Third Judicial District Court, Civil No. 950901073MI. Mr. Smith was suspended from the practice of law on or about March 31, 1994, by the Utah Supreme Court, for violating Rule 8.4(b), Misconduct, of the Rules of Professional Conduct. In accordance with Rule 25 of the Rules of Lawyer Discipline and Disability individuals desiring to support or oppose this Petition may do so within 30 days of the date of the publication of this edition of the Bar Journal by filing a Notice of Support or Opposition with the Third Judicial District Court. It is also requested that a copy be sent to the Office of Attorney Discipline 645 South 200 East, Salt Lake City, UT 84111.

BAR COMMISSION CANDIDATES

District Three Candidates

DEBRA MOORE

DEBRA MOORE has practiced law in Salt Lake City since 1983 in a variety of settings, including small firm, large firm and public sector. She currently practices in the Civil Appeals Section of the Utah Attorney General's Office and teaches legal writing at the

University of Utah College of Law. Ms. Moore was formerly a shareholder in the law firm of Watkiss & Saperstein, where she focused primarily on product liability litigation. She is Chair-Elect of the Appellate Practice Section and serves on the Editorial Board of Voir Dire, a newly-created publication of the Litigation Section. She is past Chair of the Litigation Section, has served on the Annual Meeting Committee and is a former member of the Executive Committee of the Women Lawyers of Utah.

Dear Colleagues:

I would like the opportunity to serve as your representative on the Bar Commission. I have been steadily active in the Bar during my eleven years in practice. I generally support the Bar's endeavors, but also harbor a healthy skepticism about the role of the Bar in our profession. If elected, I will listen attentively to your concerns and work hard to support and strengthen your efforts to honorably serve your clients and the public. To those ends, I would greatly appreciate your vote.

DWIGHT EPPERSON

A capable director, higher bar dues from all of us and better fiscal planning and accounting have helped our bar association become solvent again. Volunteerism on committees, pro bono efforts for indigent clients, and an effective bar disciplinary process are improving the image of attorneys in Utah. As one of your voices on the Commission, I will encourage more progress in these areas without further dues increases. I will support poli-

cies that discourage lawsuits against the Bar, and that help address our society's domestic problems.

The past few years, I have had the pleasure of getting better acquainted with many of you as a member of the American Inn of Court I, the Client Security Fund Committee, and currently as Chair of the Franchise Section. With a professional employment history that includes Franchise Counsel for Q Lube, Inc. (since 1990), solo practitioner and small law firm associate, I can bring a good mixture of experience to the Bar



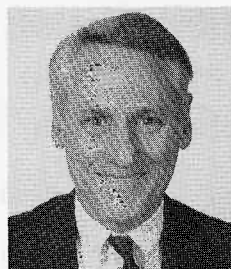
Dwight Epperson

Commission.

Thanks for taking a minute to consider myself and the other Commission candidates. I am willing to devote the time necessary to represent the Third Division in the Bar Commission, and will be grateful for your vote. Your input and suggestions will be much appreciated.

PAUL MAUGHAN

PAUL G. MAUGHAN has been practicing law in Utah since 1974. He has had experience working in private practice with a six-person firm and in the Salt Lake City Attorney's Office. He is currently working in the Salt Lake County Attorney's Office where he practices redevelopment law, environmental law, and handles government contracts and litigation. He has been a member of the Energy, Natural Resources and Environmental Law Section of the Bar, and is currently a member of the Appellate Practice Section, assists the Law and the Elderly Committee, and is involved in alternative dispute resolution.



Paul Maughan

There are many challenging and exciting issues now facing the Bar that will impact the way we will practice law in the next century. While I don't have the answers to all these issues, I will work

hard to improve our sense of pride in the practice of law, and to foster a feeling of acceptance and accessibility in each member and segment of the bar.

I would very much appreciate your vote.



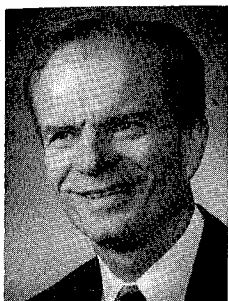
A family left homeless by fire, a heart attack victim who needs CPR, a child who needs emergency first aid. Disaster has many faces.

Strike back. Give to your Red Cross today.

American Red Cross

Dear Colleagues of the Third District:

I would like the opportunity to serve you as a member of the Bar Commission.



Dick Fox

RICHARD S. FOX

DICK FOX was admitted to the Utah Bar in 1959 and he has practiced in Utah since 1961. He has had experience as a solo practitioner, a member of a three-person law firm, one of the founding partners of the thirty attorney firm of Fox, Edwards, Gardiner & Brown and the managing partner of the Salt Lake office of Ballard Spahr Andrews & Ingersoll where he is a member of the Public

Finance Department. He has served as an assistant attorney general and as a trial attorney for the Securities and Exchange Commission. While practicing in the private sector, he was honored as the recipient of the 1993 State and Local Government Award presented by the Government and Politics Legal Society of the J. Reuben Clark Law School. His varied bar activities include service on the Legal Economics Committee, Chair of the Unauthorized Practice of Law Committee, service as a volunteer for the Tuesday Night Bar and Chair of the Government Law Section.

Dear Colleagues in the Third Division:

It would be an honor for me to represent

you on the Bar Commission. I'd like to work with you for the advancement of the legal profession. I've practiced law in many different arrangements and I'm now inclined to utilize that broad experience in Bar Association service as we face a wide variety of issues.

I genuinely would appreciate your vote.

STEVE SULLIVAN

I am Steven Sullivan. I practice with Robert J. DeBry & Associates. I have practiced here in Utah since graduating from the University of Utah College of Law in 1981.

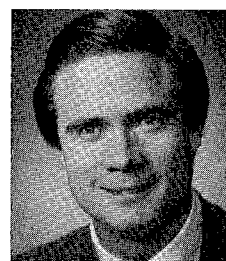
I have acted as the managing attorney of Robert J. DeBry & Associates for the last few years. My work with Robert J. DeBry & Associates has taught me valuable lessons in setting clear policies and seeing those policies through to a conclusion. The practice of law inherently requires the practice of business. The issues of managing our practice will become more important as we head toward the 21st century.

I have been actively involved in the Bar

for the last seven years. This work has included chairing the committee on the Unauthorized Practice of Law for the last three years. This assignment has included working with Bar Counsel, Bar Commissioners and other Bar committees.

I have also been heavily involved as a member of the Board of Governors for the Utah Trial Lawyers Association. This work has involved me in legislative issues pertaining to Utah lawyers. This experience has provided important insights on how the public sees our Bar and our work as lawyers.

My experiences and activities with the Bar have made me keenly aware of the challenges we face as a profession. The challenge of providing high quality legal services in a rapidly changing environment,



Steve Sullivan

and the challenge of showing our clients and the public what lawyers really do.

I would enjoy my work with the Commission. I will dedicate the time and resources to

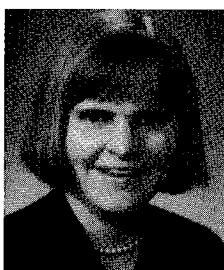
make my appointment meaningful. I would appreciate your support and vote.

DENISE A. DRAGOO

Having completed my fourth year with the Utah State Bar Commission, I am seeking your support for reelection. During my tenure on the Bar Commission, the Board has undergone significant changes:

- The Commission implemented the Task Force recommendations adopted by the Supreme Court.
- The debt on the Law and Justice Center was paid in full.
- The Commission was restructured to include two public members and nine ex officio members representing a diversity of interests.

These changes present the Commission with significant opportunities and chal-



Denise Dragoo

lenges. Repayment of the mortgage has resulted in a surplus of cash. The Commission can either increase services, reduce dues or rebate membership fees. I support a onetime rebate in dues to

attorneys who "dug deep" to pay the mortgage. There is a continuing need to promote diversity in the legal profession and in appointments to the bench. Retention of ex officio members and early notice of committee and judicial vacancies help provide opportunities for qualified women and minorities.

The unauthorized practice of law continues to be a concern. Creation of a new Legal Assistant Division and increased disciplinary action is required to address this problem.

This is truly an exciting time to be a member of the Commission and I would appreciate your vote in the upcoming election.

District Two Candidates



JANE A. MARQUARDT

Jane Marquardt

I believe I can be an effective representative for attorneys in the Second District. I have been practicing law in Ogden since 1977 and understand our profession from a variety of perspectives. I worked at Utah Legal

Services for two years and have been in private practice since 1979. My practice was primarily domestic relations for the first ten years — during that time I also prosecuted in a Justice Court and supervised the guardian ad litem program. In the last seven years, I have focused my practice on estate planning and business planning.

My service on Bar committees has given me good insight into the workings of the Bar. Those committees include the Utah Bar Foundation Board of Trustees; Chairperson, Estate Planning Section; Committee to

Review the Office of Attorney Discipline; Second District Judicial Nominating Commission; Weber County Bar President; Disciplinary Screening Panel; and the Committee to Review the Model Rules of Professional Responsibility.

I understand issues facing lawyers and understand the need to increase positive interaction between the Bar and the community. I am committed to promoting integrity in our profession and to making a difference in the community at large.

STEVEN M. KAUFMAN

I have sincerely enjoyed my involvement as your Bar Commissioner for the Second Division for the last three years. I have been Bar Commission liaison to Unauthorized Practice of Law, Collections Task Force, Advertising, Admissions, Client Security Fund, and many other committees. I am presently a member of the Executive Committee, which is comprised of the President, President-Elect, and me. We make decisions which help in

running the Bar when the full Bar Commission cannot meet, and this has given me great insight into how the Bar is managed. This allows me to have a great deal of input, which also helps our Second Division (Weber, Davis, and Morgan counties). I have been President of the Weber County Bar, and very active in both Weber and Davis County Bar activities. I have also put my hat in the ring for Utah State Bar President-Elect, which would be very good for Northern Utah, but I cannot win without being elected your Bar Commissioner first,



Steven Kaufman

with the President-Elect being nominated a few weeks later. It may be many years before someone from our Division has this opportunity again. I believe I have represented

you with vigor. Please allow me another term to continue to do so. I sincerely ask for your vote. Thank you.

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

Please change my name, address, and/or telephone and fax number on the membership records:

Name (please print) _____

Firm _____

Address _____

City/State/Zip _____

Phone _____ Fax _____

All changes of address must be made in writing and NAME changes must be verified by a legal document. Please return to: UTAH STATE BAR, 645 South 200 East Salt Lake City, Utah 84111-3834; Attention: Arnold Birrell.

Making a Difference

By Lisa M. Rischer

It was a beautiful, unusually warm Saturday in January — the first day of a three day weekend celebrating human rights and, in a sense, the human spirit. At 7:30 a.m. volunteers began arriving at the Salt Lake County Children's Shelter, ready to roll-up their sleeves to take part in a renovation project in an attempt to make life a little brighter for an ever-changing group of children who reside at the shelter — a group of children who, for the most part, in their relatively short lives, have experienced incomprehensible abuse and neglect and have finally been taken from their homes in an effort to protect their safety and their welfare.

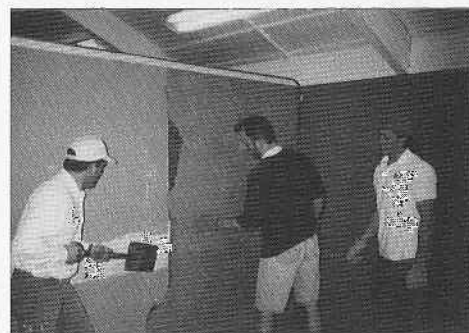


Basically, the Salt Lake County Children's Shelter provides a temporary, transitional home for children ranging in age from newborns to teenagers. This temporary arrangement, however, often lasts a number of weeks. The number of children living at the shelter at any given time varies greatly. Due to limited space and funding, the shelter is often overcrowded and understaffed. As a further result of limited funding, the shelter was in a serious state of disrepair. The walls that were not covered with burlap were a dingy shade of pale yellow-brown. The flooring and carpet were old and damaged and the cabinets grimy and worn. The kitchen sink had leaked water into the subflooring and the wallboard and the furnishings and appliances were beyond well-used. All in all, while the shelter certainly provided a much needed safe haven for the children it served, it did not offer much in the way of warm, comfortable and appealing physical

surroundings that are an important part of raising a generation of well-adjusted, contributing adults.

After participating in a similar renovation project on the east coast with the Young Lawyers Division of the American Bar Association, Marty Olsen (President-Elect for the Young Lawyers Division of the Utah State Bar) and Kristen Brewer (Office of the Guardian Ad Litem), together with Susan McNulty (CASA Director), brought the idea home to Utah. The renovation project, sponsored by the Young Lawyers Division of the Utah State Bar in conjunction with the Office of the Guardian Ad Litem, was successfully planned and organized in a relatively short period of time. Donations of materials, money, food and skilled and unskilled labor were secured and, on the appointed Saturday, a large group of volunteers (including a number of young lawyers) spent the day cleaning, moving furniture, painting, refinishing cabinets, ripping up floors, hanging drywall, hanging wallpaper and basically doing whatever else needed to be done. The project continued well into the following week, with one evening in particular spent using a shovel to tear up five rooms full of carpet that was glued securely and directly to the floor without the benefit of padding. Throughout the duration of the project, it was amazing to see the level of cohesiveness and comraderie that was continually present even amidst occasional waves of chaos.

The shelter staff was not only supportive and enthusiastic about the refurbishment, they were also very helpful in making special arrangements for the children in



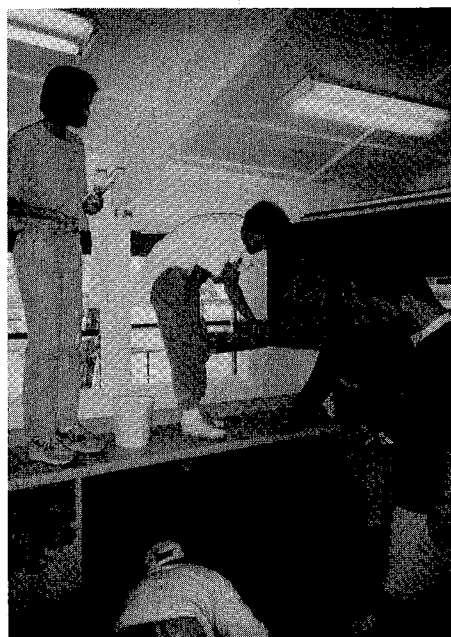
residence and in actually helping with the physical aspects of the project. On many occasions, some of the children then in residence also took part in the renovation activities, at times taking great pride in their individual contributions.

Once the dust settled upon completion of the renovation, the shelter emerged with a fresh coat of white paint; refinished kitchen cabinets; brand new kitchen appliances; brand new subflooring and linoleum; brand new carpet (with padding), new furniture including living room furniture, beds, a TV/VCR, and bookshelves; brightly colored wallpaper and borders; and a new system in place for providing each child with a plastic tote, artwork and other items to call their own during their stay at the shelter.

The project was an overwhelming success thanks to the sweat equity of the many volunteers (both skilled and unskilled) and the generous donations, both monetary and in-kind, received from the legal community and the community at large. The sponsors would like to express their sincere appreciation to the following:

- Young Lawyers Needs of Children Committee
- Young Lawyers Community Services Committee
- Utah State Bar Needs of Children Committee
- Student Bar Association (University of Utah)
- United States Bankruptcy Court Clerk's Office
- CASA

Brackman Bros. Bagel Bakery
 Country Crisp Foods
 Deseret Industries/Humanitarian Services
 FHP Utah
 Granato Foods
 Squire Coca-Cola
 R.C. Willey
 Red Rock Brewing Company
 Wallpaper Warehouse
 Representative Enid Waldholtz
 Allen Nelson Rasmussen & Christensen
 Cohne Rappaport & Segal
 Giaque Crockett Bendinger & Peterson
 Jones Waldo Holbrook & McDonough
 Olsen & Olsen
 Kimball Parr Waddoups Brown & Gee
 Parsons Behle & Latimer
 Office of the Guardian Ad Litem Staff
 Honorable Kimberly K. Hornak
 Utah State Bar Staff
 Patrice Carmody
 Dr. Gary Findlay



Dr. John Braithwaite's Staff
 John May
 Herbert McHarg
 David VanDyke
 Rick Sorenson
 American Fence Co.
 Juvenile Court Special Services Crew Salt
 Lake County Girls Group Home

In addition to perhaps making a small difference in the lives of a basically anonymous group of children who, through no fault of their own, are not so fortunate, this project also presented those involved with an invaluable opportunity to take a mental inventory of their own lives and perhaps re-align their own priorities. If nothing else, those involved in the renovation hopefully left with an increased awareness of community needs, and a glimpse at the power of the human spirit and the immeasurable value that can be realized through service.

Young Lawyers Discuss Domestic Issues

By Mike Mower



Patricia Frank

Obtaining TRO's and Protective Orders in Domestic Disputes was the topic of a recent Young Lawyer's Division Brown Bag Luncheon. Patricia F. Frank, Director of the Domestic Violence Victim

Assistance Program at the Legal Aid Society of Salt Lake was the featured speaker.

Ms. Frank said there has been a sharp rise in the number of individuals seeking protective orders. Her agency, which provides assistance in domestic relations matters for low income individuals in Salt Lake County, handled 1,307 domestic violence cases last year. In addition, due to the increasing numbers of pro se litigants seeking domestic violence assistance before the courts, the Delivery of Legal Services Committee of the Utah State Bar, the Legal Aid Society and Utah Legal Services established a "friend of the court" program in the Third District Court to provide parties involved in pro se actions brief counseling and legal advice.

Ms. Frank encouraged attorneys to gen-

erally seek protective orders instead of restraining orders whenever their clients had been subjected to physical abuse or were in fear of immediate danger of abuse. Violation of a protective order is a class A misdemeanor and will be enforced by the police. Violating a restraining order generally entails only civil penalties and often law enforcement agencies will refer victims to the courts for relief, she explained.

The Domestic Violence Assistance Director also noted a potential problem for victims after they receive a protective order: some turn around and re-establish contact with their abuser. Judicial officers who grant protective orders are understandably upset when this occurs. Frank said she stresses to her clients that no contact orders mean no contact — even on the part of the victim who obtained the ex parte protective order.

Also speaking at the Young Lawyer gathering was Michael Mower, a Legal Aid staff attorney and director of their Pro Bono Project. He briefly outlined Legal Aid's pro bono program and encouraged young lawyers, with or without domestic experience, to get involved. "We screen our cases to make certain those we assign out are as uncomplicated as possible." Mower added that Legal Aid provides extensive training,



Mike Mower

if requested, and also gives out the 600-page Domestic Relations Manual as well as a computer disk containing all needed divorce and child support forms to attorneys who

accept clients from Legal Aid.

Mower added that Legal Aid also provides ongoing support while the pro bono attorney is handling the case. He added that malpractice insurance for pro bono cases is also provided. Attorneys interested in information on the Legal Aid Pro Bono Project were invited to call Mower at 328-8849 x 307.

The Young Lawyers Division sponsors CLE approved brown bags on a monthly basis. Notices are sent out periodically to all Young Lawyer Division members informing them of upcoming meetings and topics. Those interested in learning more about the brown bag series are invited to contact the Utah Law & Justice Center at 531-9095 or Young Lawyer Brown Bag Committee members Douglas C. McDouglas at 963-1800 or Jeffrey Williams at 533-8383.

Nominations Sought for Young Lawyer of the Year and Liberty Bell Award Recipient

By Sheri A. Mower

Nominations are currently being sought by the Young Lawyer's Division of the Utah State Bar for the 1995 Liberty Bell and Young Lawyer of the Year Awards. These awards will be presented at the Annual Young Lawyers Division Law Day luncheon, scheduled for May 1, 1995 at the Red Lion Hotel.

Liberty Bell Award. As part of the National Law Day celebration, the Young Lawyer's Division presents the Liberty Bell Award each year to a non-lawyer who has provided outstanding service in promoting a better understanding of the rights of others, has encouraged greater respect for law, and has stimulated an individual sense of responsibility so that citizens can recognize their duties as well as rights.

Melvin Jones was the 1995 recipient of

the Liberty Bell Award. As a volunteer paralegal for Utah Legal Services, Mr. Jones helped to organize and facilitate an extensive brown bag CLE program for Utah Legal Services. Programs he helped organize covered topics such as an overview of the eviction process, credit card fraud, arbitration, unemployment benefits, changes in the rules of federal procedure and product liability law. Additionally, Mr. Jones devoted much time to the Senior Law project at Utah Legal Services and spent numerous hours as the intake worker at Tuesday Night Bar.

Young Lawyer of the Year Award. The Young Lawyer of the year is presented to an attorney who has excelled in the legal profession and provided extensive service to the community. Last year's recipient was

Colleen Larkin Bell, a staff attorney for Questar Corporation and past chair of the Division of Needs of Children Committee of the Young Lawyers Division. Ms. Bell was honored for her volunteer service directed towards child abuse prevention and the guardian ad litem program, as well as her extensive involvement in professional and service organizations.

To submit nominations for either the Liberty Bell Award or the Young Lawyer of the Year Award, please send a letter of nomination to David Crapo, President, Young Lawyers Division, Utah State Bar, c/o Holme Roberts & Owen, L.L.C., 111 E. Broadway, Suite 1100, Salt Lake City, Utah 84111.

Law Day Luncheon Announcement

The Young Lawyers Division of the Utah State Bar is sponsoring a Law Day Luncheon on May 1, 1995, at 12:00 p.m. at the Red Lion in downtown Salt Lake City. Gerry Spence, a nationally known trial attorney, will be the keynote speaker and will be speaking on the National Law Day topic of "E Pluribus Unum — Out of Many, One".

Please watch the upcoming issues of the *Utah Bar Journal* and your mailbox for more information.



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Young Attorney Profile

By Michael O. Zabriskie



Kristen B. Jocums is a solo practitioner, currently practicing in Salt Lake City. In 1993, Kristen received her law degree from the University of Utah College of Law. After passing the

Bar exam she was one of the first in her graduating class to "hang out her shingle". Kristen practices in the areas of family law, torts and disability rights. In addition to her solo practice she also maintains a position at Utah Legal Services.

Her new profession is a result of years of dedication and diligence towards a goal, many uneducated people would assume was unattainable. Not only does she enjoy her profession but she is delighted to disprove the nay-sayers who said it couldn't be done.

Kristen has been legally blind since she was in grade school. "I remember growing up, thinking that I could not perform as well as the sighted guys. There wasn't any extrinsic proof of this, just an attitude precipitated by people who questioned my abilities due to my blindness." Kristen's opposition to such fatalism began at an early age, and she began saying to those people, "Oh yeah? Just you watch this!" and continued her endeavors with a renewed vengeance. Growing up in Idaho, Kristen graduated from Nampa High School and Boise State University.

Kristen's own caseload and that which she maintains at Legal Services, expands her legal education, and allows her to teach others. Kristen states, "working for Legal Services teaches me to handle cases in a competent, yet efficient manner. Our caseload is so high and our clients' issues are so urgent that we have to move on matters quickly, but still maintain a high level of quality."

Kristen makes time for other volunteer activities and has helped the legal Aid Soci-

ety of Salt Lake in their Pro Bono program. She feels that all this diversity adds to her own practice. "Of course jumping right into a solo practice is a scary proposition, and it's great to talk with other knowledgeable attorneys about legal theories and strategies. The mentoring and educational benefit of working with attorneys such as those at Utah Legal Services is extremely beneficial."

Kristen herself has a deep commitment to mentoring and educating others. This commitment developed through involvement in the National Federation of the Blind, a non-profit organization made up of people who are blind.

After losing more sight in the fall of 1989, Kristen herself questioned her own physical ability to fulfill her dream of becoming an attorney. Not willing to concede defeat, she applied for a scholarship from the National Federation for the Blind. "Little did I know that that application would change my life forever." Since that time Kristen has been elected as the

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First Vice President for the Utah affiliate, the President of the Salt Lake City Chapter, and has served on other national committees, including the committee to select and mentor future scholarship winners.

At the beginning of law school, several of Kristen's law school classmates questioned her ability to meet the pressures and struggles of law school. They quickly realized that Kristen was not about to slow down or ignore the massive amounts of reading.

"She was an inspiration . . ." observed one classmate, ". . . I never recall her complaining, everyone else was complaining about all the reading they had to do, yet Kristen, who had to read with a magnifying glass just went ahead and did it."

Still another classmate observed that she went about her business with such a positive attitude that many people did not even realize she was blind. Rather than assuming that she deserved special treatment, Kristen educated those around her into realizing that diligence and dedication is what it takes to succeed, not sighted vision.

Kristen currently volunteers for the National Federation of the Blind to educate the Utah State Legislature, the United States Congress and other entities about blindness. Her projects range in subject matter from informing the transportation industry about the true travel needs of the blind, helping parents obtain braille literacy training for their blind children and numerous other activities. "The entire goal of the NFB is to ensure that the blind are integrated into society on the basis of equality. Because of the prevalent misconceptions and attitudes about blindness in society today, we have to work not only in educating the public about blindness, but also on educating ourselves about our own abilities. It's not that we're wonderful, courageous individuals, we're just average citizens, ready to work and play just as hard as the next guy. I'm so glad someone took the time to tell me, 'Don't quit your dreams just because you're blind. Here, let me show you some techniques for achieving those goals.' Now I try to pass that on to other blind people."

In addition to the hours Kristen spends in

her new career and with the NFB, she participates in several Bar committees. She is a member of the Young Lawyer's Needs of Children Committee and the Small Firm Practitioner Committee. Besides all this work and goal oriented behavior, Kristen takes the time to enjoy a few hobbies and activities. She literally forces time into her schedule, dragging herself out of bed bright and early three times a week to swim at the Deseret Gym. She also crochets and sews both clothing and crafts.

Reviewing her life, Kristen states that "There's always room for improvement." She wants to learn more German, improve her Braille skills and "Get a handle on this law thing. It's not an easy profession; but at least I still have the ability to say 'Oh yeah?' when someone questions my abilities."

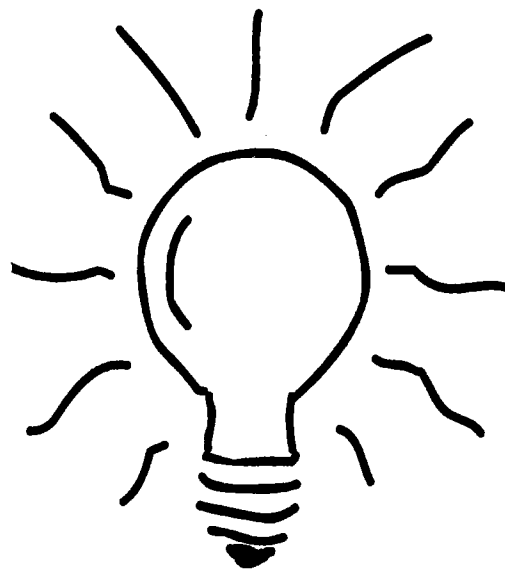
Although her physical sight might be severely impaired, Kristen B. Jocums has not lost sight of her visions. She continues to demonstrate the capabilities of a truly dedicated legal advocate.

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Please watch future Bar Journal issues for details regarding travel & accommodations.



Photo Credit: San Diego Convention & Visitors Bureau



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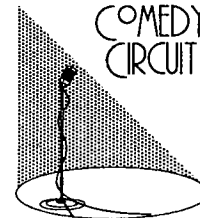
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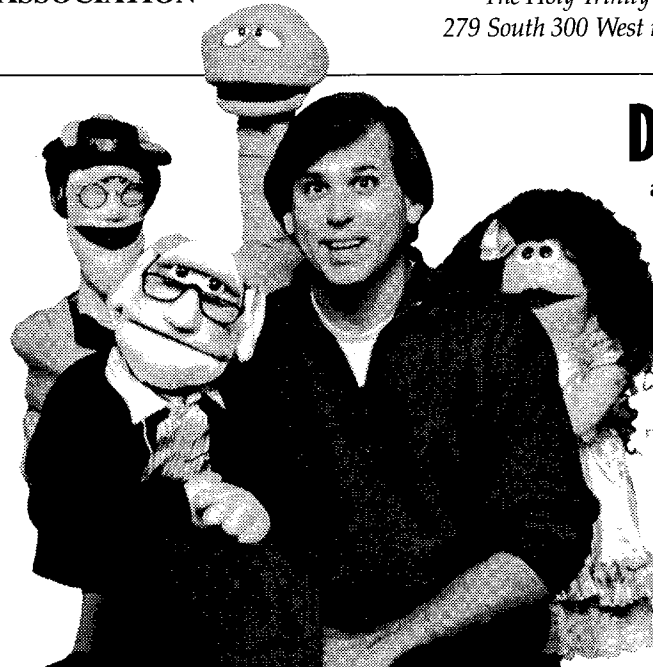
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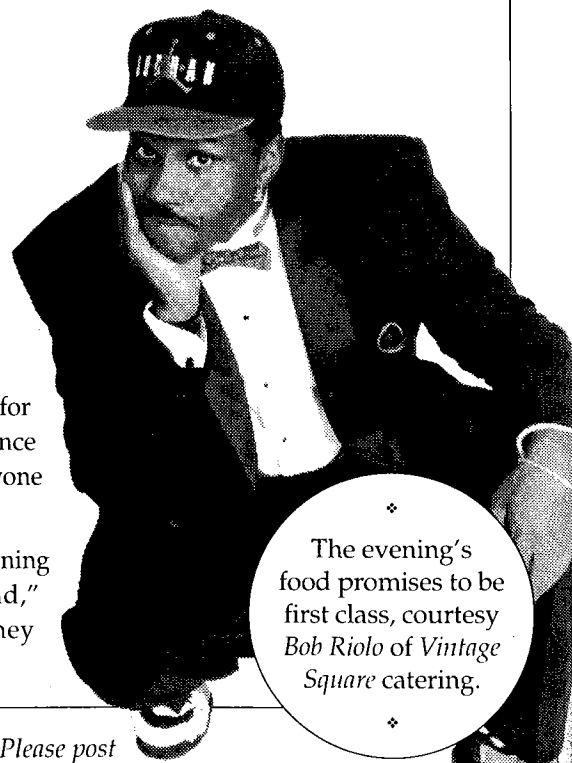
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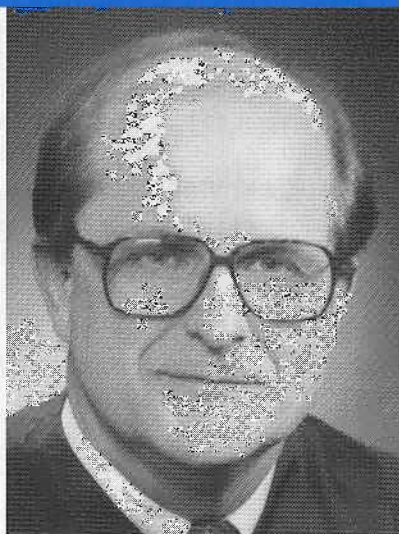
unforgettably clever and quick witted comic, working directly with the audience for his ad-lib material. A remarkably bright and funny man who keeps the audience thoroughly entertained without being crude or derisive. Seldom will you see anyone who can pull humor out of thin air with such effortless abandon.

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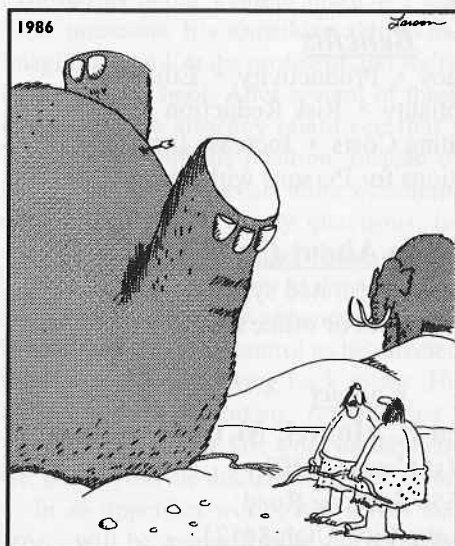
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Maybe We Should Write That Spot Down

By Judge Michael K. Burton

By now, most of you have recovered from the deep depression created by the retirement of cartoonist Gary Larson. You probably have dug out your old anthologies and collections in hopes of replacing the real thing with a memory. In his honor and because he most always hits the mark in just the right way, I've chosen the title for my contribution to *Views from the Bench* from this Larson creation:



"Maybe we should write that spot down."

JUDGE MICHAEL K. BURTON graduated from West High School in 1966 and received a BA in English from the University of Utah in 1972. After one year as a junior high school teacher, he entered law school and earned his degree from the J. Reuben Clark Law School in 1976. He spent time as the Prosecutor and City Attorney for Sandy City and worked in the Salt Lake County Attorney's Office. Originally appointed to the then Fifth Circuit Court, West Valley Department, in 1983 by Governor Matheson, he now sits in the Murray Department of the Third Circuit Court. He's been Chairman of the Board of Circuit Court Judges and currently serves on the Judicial Council.

Looking at this drawing with a serious eye, one of the messages is that if we've done it right before, let's keep track of what we did and do it that way next time. Building on that tradition of passing along helpful ideas, I've written down some examples of good lawyering that I see every day, hoping that it will give you some perspective on how a judge might view what it means to be an effective advocate.

- Blend a little humor with your important work.

Last November, the Monday after Utah had defeated BYU for the second year in a

row, we were doing misdemeanor pre-trials. The prosecutor and defense attorney, who are both serious, vocal fans of University of Utah sports and who know that when it comes to college football I am partial to BYU, reached a disposition on one of the cases. Part of the arrangement included the imposition of court costs. As is my practice, I asked them if they had discussed the amount of the costs. Not missing a beat and without so much as a hint of a snicker, they both joined in recommending that costs be assessed in the amount of \$34.31. I'm quite certain that they both look upon this case as their permanent memorial to the consecutive Utah victories over BYU, but for me it demonstrated how these two advocates didn't let the seriousness of their work hide their natural sense of good humor.

- Exercise control over the bad habits of your client.

All clients have bad habits that you, as their attorney, need to be aware of and control. They range from the indignant housewife who has been hurt and wants all the world, and most especially the judge, to hear her tale and absolve her of any wrongdoing to the indifferent criminal who would just as soon the whole justice system went to hell and is more than will-

ing to tell us all how she feels. Demonstrating any of these behaviors in open court is not in the best interests of the client and yet, without a lawyer on her side who is aware of the potential problem and willing to exert some appropriate influence, they will almost always be displayed in front of the court or the jury.

After a criminal had reluctantly entered his plea, he and his attorney exited the courtroom into the hall. The noise from the hallway leaked into the courtroom and became even more clear when the door was opened and closed in between the disposition of each case. Soon after this particular plea, the unclear but distinctive voice of the defendant's attorney and his client could be heard coming from the hall. What was apparently a disagreement over strategy about the just-entered guilty plea grew louder and reached its conclusion while the door was open. The message of the advocate to his client, evidently explaining the basic reasons for the

plea and broadcast loudly enough that all could hear, was simply: "Because you're a stupid son of a bitch, that's why!" Perhaps not all clients need such a direct explanation of the reasons behind your work, but it is important that you do what they hire you to do and direct their case to the best conclusion possible in spite of their own bad habits.

*"All clients have bad habits
that you, as their attorney, need
to be aware of and control."*

- Be prepared to offer solutions.

One of the attorneys who frequently appears in front of me has earned my respect and my attention by being prepared in every case to offer a recommendation as

to how the dispute can be solved or the sentence imposed. He seems to understand that when I put on my robe, I don't suddenly get smarter or have access to some untapped wisdom unavailable to everyone else. He's anticipated what sorts of problems we'll be facing when it comes time to hear arguments and not only does he advocate his client's best interests, but he can suggest workable solutions when he sees that I will not be awarding his client everything he's requested.

If the attorney were to approach these cases any other way, I think he would be doing his client a disservice. I understand that the adversary system is based on the concept that each side presents as strong a case as possible and then the fact finder or decision maker chooses from the two competing positions. Such a basic concept ignores the very real problems of how to deal with the judge's human frailties and the reality that most problems that find their way into court are susceptible of sev-

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eral correct solutions. So, when the lawyer ignores these real problems and focuses simply on the adversarial credo of "my way or no way", his client suffers. My experience is that the attorney who is ready to suggest what is in his client's best interest as framed against the whole picture of our formal court proceedings serves her client best.

- Learn to live with imperfect decisions.

In years past, one of the most interesting parts of the annual judicial conference was a discussion between trial judges and appellate judges. Some trial judges, who had their decisions overturned on appeal, questioned the appellate judges as to the reasons for those decisions and occasionally voiced strong disagreement. From those discussions came the trial judges' credo as regards being reversed on appeal: "They're not right because they're right, they're right because they're last." That same sort of feeling probably applies to at least fifty percent of all trial attorneys at the conclusion of a trial or other proceeding. Since it is the trial judge who has the last word (absent an appeal) and since judges are imperfect but are people of honor, it's important for a successful attorney to learn to live with imperfect decisions.

In a motion hearing on a case involving an automobile accident that had injured several people, the attorney for the defendant proposed several reasons why his client should be given the requested relief. I sometimes have the feeling that some grounds advanced by counsel can be exposed as being without merit if I ask some questions. It's something akin to me imagining that I'm the professor and we're back in law school. After several of these questions, the attorney could see that I didn't agree with his position. Instead of giving in or, as is even more common, evading the thrust of my questions, he simply said: "Well, judge, those are my arguments and now you make the decision." It wasn't rude or argumentative, but it put the attorney in control as he directed the course of the hearing back to me. He knew what I was thinking, realized that I would be having the last word on the matter, and moved the discussion to that point.

In an imperfect world, it is a fact that errors will be made. It does no good for people of good will to remonstrate endlessly with each other about decisions

once those decisions have been made. It's much better for the attorney to put those things behind and move on to working hard in order to win the next round or the next case.

- Be kind to the clerks of the court.

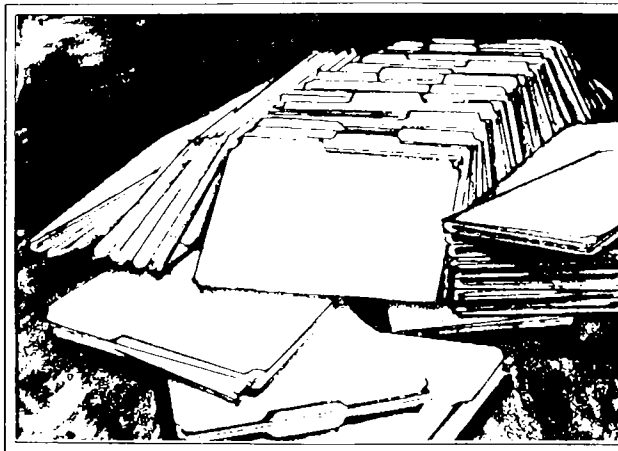
An attorney who frequently practices in our court has gone out of his way to make himself known to the clerks and has taken time to listen to their problems and offer solutions. Over the years, these civil ser-

vants have "adopted" this lawyer so that no matter what he wants or when he wants it, it will get done. It isn't that he's flattered them or courted their favor, but rather that he has treated them like they had a life and feelings of their own independent of their hours spent at the court. When he speaks, they listen. It would surprise some of you, but not if you gave it some thought and applied your basic expe-



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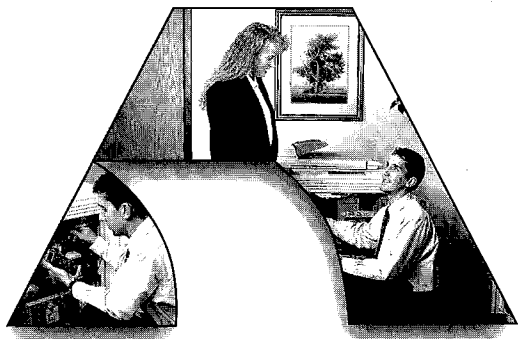
rience as to how we all react to good treatment, to know that these clerks have authority (they are very literally that gateway to the judicial system) and they also have their mental lists of most favorite attorneys. So, be kind to the clerks and you will go a long way toward earning dividends for both you and your clients.

• Be kind to your adversaries.

The Murray Department of the Third Circuit Court handles a lot of collection matters on the civil side of the docket. Twice each week I get to see how attorneys interact with each other and with clients during the Law and Commotion portion of the calendar. One attorney in particular has always impressed me with his unfailing professional demeanor. Once during questioning of a very unhappy debtor, he asked the man if he had any valuables. The man replied in a serious and threatening tone that he did own some valuable property, but that since he was terminally ill with cancer and owned several weapons he would willingly shoot anyone who came to his house to try to remove that property. The questioning attorney was, like me, con-

vinced that this man would carry out his threats, but he simply continued the dialogue in a polite manner with complete respect for the angry debtor. This attorney has been doing this sort of work for many years, has a thriving and profitable practice and is always kind to his adversaries.

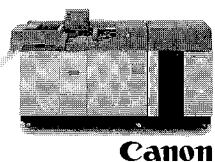
The great majority of the legal work done each day in our judicial system is excellent. Judges appreciate the efforts of attorneys who work to resolve controversies and settle disputes in the best and quickest way possible. Each of us has every reason to expect that this will continue to be the standard for Utah courts in the future.



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Potential Issues for the 1995 Annual General Session of the Utah State Legislature

By Jane Peterson and Lisa Watts Baskin

EDITOR'S NOTE: This article was prepared in advance of the 1995 legislative session. Unfortunately, unavoidable delays prevented it from being published before the start of the session. The Bar Journal believes the article still presents a useful and informative source for information concerning the 1995 legislative session. An article summarizing the session will appear in a future issue of the Bar Journal.

ADMINISTRATIVE RULES

Administrative Rules Reauthorization — During each annual legislative session, the Administrative Rules Review Committee sponsors a bill which reauthorizes all state rules except for those listed specifically on the bill. A rule is placed on the list if the agency enforcing the rule has yet to make the change requested by the committee after review with the agency. Any rule still listed in the bill at the time of its passage by the legislature is repealed.

BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT

Interstate Banking — Congress recently passed interstate banking legislation. The legislature will consider a bill addressing Utah's options in interstate banking.

Mechanic's Liens — Funding for enforcement of the Residence Lien Recovery Fund law and other amendments will be considered. The fund provides, under specific circumstances, qualified contractors and material suppliers with payment for unpaid services and supplies.

Workers' Compensation — The legislature may consider legislation in various areas of workers' compensation law, including cost containment, uninsured employers fund, definition of "permanent total disability," employee leasing companies, medical treatment guidelines, insurance carriers acting in bad faith, collective bargaining, a 24-hour coverage option, medical/compensation ratio,

safety, attorney fees, drug and alcohol use, and other items.

EDUCATION

Applied Technology Education — The legislature will probably consider legislation to expand the coordinating role of the Joint Liaison Committee for Public and Higher Education in the area of applied technology education. Public and higher education are proposing statutory expansion of the committee's membership and the establishment of an advisory committee to the liaison committee, including members of both boards and representatives from the Department of Community and Economic Development, the Department of Employment Security, Human Services, business and industry, and the Utah State Council on Vocational and Applied Technology Education.

Continuing Implementation of the State Strategic Plan for Public Education — Some additional statutory modifications may be required in the areas of centennial schools, centennial scholarships, and professional staff development.

Educational Technology Modifications — The legislature will address statutory changes in current education technology legislation to restructure the Education Technology Initiative and the Utah Education Network to better coordinate the use of educational technology in both public and higher education. The restructuring coordinates the development and use of these technologies and the expenditure of initiative monies to provide schools with the needed technology to educate students in an information age.

Protecting Students — The interim committee will be considering legislation that modifies and improves current procedures related to criminal background checks on school employees, recertification of teachers, and student discipline and conduct plans.

ENERGY, NATURAL RESOURCES AND AGRICULTURE

Conservation Easements — The interim committee approved legislation to create a task force to study ways of financing the purchase of conservation easements on agricultural land. Another bill approved by the committee exempts a landowner from paying rollback taxes under the Farmland Assessment Act when agricultural land is put under a conservation easement.

Public Utility Easements — The interim committee approved legislation that prohibits construction of structures within natural gas pipeline easements. Companion legislation requires public utility easements to be drawn on plat maps when land is subdivided.

Water Financing — The Water Development Commission and the interim committee have endorsed a bill to advance the effective date of the 1/8% sales tax allocation of water projects. Under current law, the allocation would take effect July 1, 1996. The proposed legislation also lowers the trigger when an additional 1/8% sales tax allocation would be created for transportation projects.

Water Reuse — The interim committee adopted a bill that clarifies the rights of cities to use their sewage effluent and specifies when a city must file an application with the state engineer to use its sewage effluent. The legislation authorizes a regional sewage treatment plant to act as an agent for a city in applying sewage effluent to a beneficial use.

Wildland Fire Suppression — Legislation creating a fund to assist counties in paying for the costs of wildland fires will be refiled. The state would provide the initial capitalization for the fund and match annual contributions to the fund made by counties. This bill is expected to receive more attention this year because numerous counties have sustained huge costs this year in fighting wildland fires.

Wildlife Management — A task force is developing legislation that would create regional advisory councils to solicit public comment and provide recommendations to a single wildlife policymaking board. The powers and duties of the Wildlife Board and Board of Big Game Control would be combined.

HEALTH AND ENVIRONMENT

Health Care Reform — During the 1994 General Session, the legislature established the Governor's Health Care Policy Commission. The commission is required to make recommendations regarding health care reform.

Sharon Steel Superfund — The Sharon Steel Tailings located in 43 has been designated as a federal Superfund sight. Utah has been given a choice to either cap or remove the tailings. However, the state must pay the additional cost if the removal option is chosen. EPA considers both options as protective of human health and the environment, but believes it would be considerably more expensive to remove the tailings. A deadline requires the legislature to make a decision during the 1995 General Session. EPA and the state are cooperating in a dual procurement process to determine actual costs. Firm bid costs for the two options will be available by the middle of January 1995.

Uranium Mill Tailings — The legislature passed HCR 13 and SCR 11 during the 1994 General Session. Follow up to these issues will most likely be addressed in the 1995 General Session.

- HCR 13 urges the Utah Division of Radiation Control to determine if Utah is being polluted from water flowing by the Uravan Colorado facility.
- SCR 11 urges the Utah DEQ to ensure that controls necessary to protect public health and the environment are in place at the White Mesa facility near Blanding.

HUMAN SERVICES

Adoption Reform — Major legislation will be developed by the committee to overhaul the state's adoption laws. The focus of the legislation will be on defining the rights of putative fathers in adoption matters. Limitations on rights to assert paternity may be imposed.

Domestic Violence — Initiatives will include increased funding for treatment, demonstration projects to test the viability of

home confinement and electronic monitoring to alert victims when a perpetrator is near the premises, and improved reporting systems.

Welfare Reform — Legislation will be prepared for the 1995 General Session that establishes a new demonstration program in three areas of the state. Persons who live within the demonstration areas and who are on Aid to Families with Dependent Children will participate in a new program designed to help persons move off welfare as soon as possible. Major components of the demonstration project include:

- a lifetime 24-month eligibility limit for cash assistance;
- elimination of asset accumulation limits while on AFDC;
- elimination of asset limits for an automobile while on AFDC;
- work and training requirements;
- limitations of benefits for children born while the mother is receiving AFDC; and exemption of some persons from the time limit and work requirements.

INFORMATION TECHNOLOGY

Access to Public Information — The legislature will address legislation to create an access mechanism to public information.

GIS Mapping Project — GIS recommended the appropriation of additional funds to continue the multi-year base mapping project.

Telecommunications Regulation — The Division of Public Utilities and U.S. West have expressed interest in changing the way the Public Service Commission regulates telecommunications corporations. The legislature will consider legislation that provides for alternative methods of regulating rates, including pricing flexibility. Measures to facilitate entry into the market by alternative telecommunications providers are likely to be included in proposed legislation.

JUDICIARY

Court Commissioner Authority — The Utah Supreme Court recently ruled that utilization of court commissioners for core judicial functions is unconstitutional. The impact of this ruling will require the legislature to consider options for bringing the Utah Code into conformance with the opinion. The ruling could also impact court consolidation, which is statutorily scheduled for completion by 1996-1998. In the meantime, the Supreme Court has authorized court commissioners to serve as

temporary judges for six months under its emergency rulemaking power.

Serious Youth Offenders — The governor recently announced that he will present legislation addressing serious youth offenders for the 1995 General Session. The Judiciary Interim Committee will review his proposal at its December meeting.

State Compensated Counsel for Indigent Criminal Proceedings — A task force commissioned by the Supreme Court recently reported its findings and recommendations concerning inconsistent quality of legal representation afforded indigent criminal defendants at the appellate level. The task force was proposing the creation of a statewide appellate public defender's office comprised of approximately eight attorneys, with an anticipated cost of \$750,000 annually and upon rejection by the Judiciary Interim Committee, withdrew its proposal. It appears that the Supreme Court may pursue rulemaking on this issue upon the recommendation of the task force.

RETIREMENT

Criteria for Membership in the Public Safety Retirement System — When a dispute arises between an employing unit and the Utah State Retirement Office over whether a position belongs in the public safety retirement system, the matter is referred to the Peace Officers Standards and Training Advisory Council. The Retirement Interim Committee will recommend legislation providing criteria which the council must follow in deciding whether the position should be in the public safety retirement system.

Funding of SB 182 — During the 1994 General Session, the legislature adopted legislation providing for a 25-year retirement benefit for public employees. Each employing unit may decide whether to participate in this new retirement program. The legislature, on behalf of state government, must decide how to fund the 1.35% increase in the retirement contribution rate that this new benefit will cost.

REVENUE AND TAXATION

Property Tax — The Property Tax Task Force will report by the end of the year on its recommendations for improving the property tax system. The task force was created following concerns over

the uneven reappraisal of Salt Lake County in 1993.

Sales Tax Exemptions — The legislature is completing the second of a four-year review of all sales tax exemptions. The Revenue and Taxation Interim Committee will make its recommendations for each exemption by the end of the year. Increased revenues from any modifications to exemptions are to be used for additional funding of the equalized capital outlay and critical school building programs.

STATE AND LOCAL AFFAIRS

Campaign Finance Task Force — Legislation may result from the task force placing voluntary limitations and restrictions on contributions to political campaigns.

Election Code Recodification — This year's legislation will be the last of a three-year project to reorganize the entire election code. The election code was last recodified in the mid-1950's.

Election Code Revisions — This legislation proposes minor substantive changes in campaign finance, judicial elections, and school board selections and elections.

Independent Boards and Commissions Amendments — Policy changes will be made in how the state's 180 authorized boards and commissions operate. Proposed changes include limiting the number of terms a board member may serve, compensation, and the consolidation of certain boards and commissions.

Native American Trust Fund Board Reauthorization — The Trust Fund Board will expire the spring of 1995 unless it is reauthorized. Its primary duty is to manage the Navajo Trust Fund, continue the restructuring of the trust fund holdings, and develop fund expenditure policies.

Unclaimed Property Act — The legislature will consider recodification and revision of the unclaimed property law.

STRATEGIC PLANNING

Utah Tomorrow Strategic Planning Committee — The legislature will consider:

- a resolution concerning the integration of strategic planning with other governmental processes such as budgeting, drafting and discussing legislation, and local government planning; and
- a resolution adopting the goals and objectives of the 1994 Utah Tomorrow Annual Report.

TRANSPORTATION AND PUBLIC SAFETY

Highway Funding — The Highway Funding Task Force has been working on how to fund the I-15 corridor reconstruction and respond to other transportation needs. The task force recommended an additional \$80-85 million for highway construction for the next two years, most of the funding to come from the General Fund. An eight cent per gallon motor fuel and special fuel tax increase to be approved by voter opinion poll in the 1996 General Election is also recommended.

Motor Carrier Federal Preemption — In its reauthorization of the Airport Improvement Program, Congress preempted state regulatory authority over intrastate trucking. Effective January 1, 1995, states "may not enact or enforce a law, regulation, or other provision . . . related to a price, route, or service of any motor carrier." States, however, may continue to regulate safety, truck size and weight, hazardous materials shipping, and carrier financial responsibility. Utah will have to respond to this federal preemption.

"This year's legislation will be the last of a three-year project to reorganize the entire election code, which was last recodified in the mid-1950's."

Safe Movement of Implements of Husbandry — The Transportation and Public Safety Interim Committee recently endorsed draft legislation establishing standards for moving implements of husbandry on the highway.

WEAPONS TASK FORCE

Clarification and Consolidation of Firearm Statutes — The task force found several sections in the code which have been subject to differing interpretation, i.e., how a firearm can be legally transported in a vehicle. The task force worked to clarify this and other issues. For simplicity, the task force recommended that some firearm sections in Title 23 (Wildlife Resources) be moved to Title 76 (Criminal Code) where

other weapons sections are found. The task force recommended that "under the influence" while carrying a dangerous weapon be defined as "the same level of influence or blood or breath alcohol concentration" as provided for the operation of a vehicle in Section 41-6-44, UCA

Resolution of Conflicts in State and Local Firearm Laws — The task force recommended repealing a section of the code which gives local governments the authority to issue concealed firearm permits. The state is the only entity that currently issues these permits.

State v. Local Control of Firearm Laws — A moratorium was placed on local governments by the 1994 legislature prohibiting local authorities from enacting or enforcing any new ordinance, regulation, or rule pertaining to firearms until May 1, 1995. The Weapons Task Force concluded that laws relating to purchasing, possessing, transporting, or keeping firearms at a place of residence or business, firearm safety education, and regulating concealed firearm permits belong to the state, and ordinances relating to the discharge of firearms within the corporate limits of a municipality belong to local government.



Do you have a mineral property or mining business valuation problem?

Are you involved with? • Mineral Property
• Mining Claims • Securities
• Mining Operations • Rights • Royalties
• Interests • Options • Leases

Do your minerals include? • Industrial Minerals
• Base and Precious Metals
• Construction Materials • Energy Minerals

Are you concerned about?
• Current Value of Mineral Assets • Financing
• Reserve Certification/Estimation
• Buying-Selling-Merging • Taxation
• Mining Geology and Operations
• Litigation • Validity • Patenting
• Condemnation • Due Diligence

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Five Claret Court / Reno, NV 89512

Tel/Fax: 702-322-9028



1995 IOLTA Grants The Application Process

In June 1995 the Board of Trustees of the Utah Bar Foundation will again award grants to Utah organizations that (1) promote legal education and increase knowledge and awareness of the law in the community, (2) assist in providing legal services to 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 Board prefers to consider grant applications together in June of each year so that the funds available may be equitably allocated among the many deserving organizations.

The funds available for grants are generated by interest on trust accounts of attorneys who participate in the IOLTA program. Attorneys who are not currently enrolled in the program may obtain an authorization form from the Bar Foundation office.

Organizations seeking grants may obtain

the application forms from the Bar Foundation office in the Utah Law & Justice Center, 645 South 200 East, Salt Lake City, Utah 84111 (531-9077). The application consists of a financial report with a narrative proposal not exceeding eight pages. The Trustees prefer proposals that are specific about the purpose of the request and how the funds would be used. The deadline for submitting applications for 1995 grants is **May 31, 1995**.

Annual Community Service Scholarships

At its April 1995 meeting, the Utah Bar Foundation will review applications and award a \$3,000 scholarship to a Brigham Young University Law School student and to a University of Utah College of Law student.

Those who would qualify to receive one of these scholarships must have participated in and made a significant contribution to the community by perform-

ing community service.

Applicants should send resumes to the Utah Bar Foundation listing the organizations or beneficiaries receiving their service, describing the service performed, and naming individuals who can be contacted regarding their service. The deadline for submission of resumes is **April 1, 1995**.

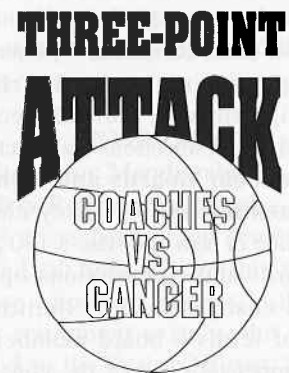
Notice of Election

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 Utah Bar Foundation will be finalized at the annual meeting of the Foundation held in conjunction with the 1995 Annual Meeting of the Utah State Bar in San Diego, California. The two trustee positions are currently held by Stephen B. Nebeker and Jane A. Marquardt. 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.)

Submission of a nominating petition identifying the nominee (who must be an active attorney duly licensed to practice law in Utah and signed by not less than 25 attorneys who are also duly licensed to practice law in Utah) should be mailed to the Utah Bar Foundation, 645 South 200 East, Salt Lake City, Utah 84111 so as to be received on or before **April 30, 1995**.

Nominating petitions can be obtained at the Foundation 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, 1995.



Coaches across Utah have teamed up with the American Cancer Society to raise funds for *cancer research, education, patient services*. Join the team by pledging a dollar amount for each 3-point shot your favorite college team makes. **Register today!**

**Put a full-court
press on cancer!**

**AMERICAN
CANCER
SOCIETY** 1-800-ACS-2345

CLE CALENDAR

UTAH STATE BAR 1995 MID-YEAR MEETING

Dates: Thursday, March 2 –
Saturday, March 4, 1995
Place: St. George Holiday Inn
Time: Meetings run from 8:00 a.m.
to 12:30 p.m. Friday and
Saturday
Fee: \$140.00 before 2/3/95
\$180.00 after 2/3/95
CLE Credit: 8 HOURS, including
ONE in ETHICS

NLCLE WORKSHOP – REAL PROPERTY AND LANDLORD TENANT LAW

Date: Thursday, March 16, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. to 8:30 p.m.
Fee: \$20.00 for members of
Young Lawyers Division
\$30.00 for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: COPYRIGHTS & TRADEMARKS LAW FOR THE NON-SPECIALIST

Date: Thursday, March 23, 1995
Place: Utah Law & Justice Center
Time: 9:00 a.m. to 4:00 p.m.
Fee: \$249.00 (To registrar call
1-800-CLE-NEWS)
CLE Credit: 7 HOURS

APPELLATE PRACTICE SECTION SEMINAR

Date: Wednesday, March 29, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. (time subject
to change)
Fee: TBD
CLE Credit: ~3 HOURS (subject
to change)

THE ROLE OF MEDIATION IN THE LEGAL PROFESSION

Date: Thursday, March 30, 1995
Place: Utah Law & Justice Center
Time: 8:00 a.m. to 4:00 p.m.
Fee: TBD
CLE Credit: ~6 HOURS

*** The above information is subject to
change. Please watch for more detailed
information in your mail.

ALI-ABA SATELLITE SEMINAR: ANNUAL SPRING PENSION LAW AND PRACTICE UPDATE

Date: Thursday, April 6, 1995
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$155.00 (To registrar call
1-800-CLE-NEWS)
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: CUSTODY VISITATION DECISION-MAKING WHEN THEY ARE ALLEGATIONS OF DOMESTIC VIOLENCE

Date: Thursday, April 13, 1995
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$100.00 (To registrar call
1-800-CLE-NEWS)
CLE Credit: 4 HOURS

ANNUAL EDUCATION LAW SECTION SEMINAR

Date: Wednesday, April 19, 1995
Time: 8:00 a.m. to 1:30 p.m.
Place: Utah Law & Justice Center
Fee: TBD
CLE Credit: ~4 HOURS

***Watch for more detailed information
to come in your mail.

ANNUAL REAL PROPERTY SECTION SEMINAR

Date: Friday, April 21, 1995
Time: 8:00 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: TBD
CLE Credit: ~4 HOURS

***Watch for more detailed information
to come in your mail.

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Friday, April 28, 1995
Time: 7:30 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: TBD
CLE Credit: ~4 HOURS

***Watch for more detailed information
to come in your mail.

Watch your mail for brochures and mail-
ings on these and other upcoming
seminars. Questions regarding any Utah
State Bar CLE seminar should be directed
to Monica Jergensen, CLE Coordinator,
at (801) 531-9095.

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 Policy: 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.

Cancellation Policy: Cancellations must be confirmed by letter at least 48 hours prior to the seminar date. Registration fees, minus a \$20 nonrefundable fee, will be returned to those registrants who cancel at least 48 hours prior to the seminar date. No refunds will be given for cancellations made after that time.

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.

CLASSIFIED ADS

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

CAVEAT — The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

BOOKS FOR SALE

Complete set of United States Supreme Court Reports, Lawyers Edition. The set is current through December 9, 1994 and in excellent condition. \$2,500.00 or best offer. Contact Marie Mecham, (801) 963-3236.

POSITIONS AVAILABLE

Attorney with 1-2 years concentrated experience in **FAMILY LAW**. Salary plus profit-sharing. Submit resume to: David Sanders, 425 South 400 East, Salt Lake City, Utah 84111.

CAREER ALTERNATIVE FOR LAWYER: We are looking for an individual with two to five years of legal experience who is interested in making a career change. The individual we are looking for will need to use their law training to market a Risk Management and Professional Liability Insurance Program to Utah law firms. We offer an initial salary plus commission incentive compensation program. A successful person has the potential to earn a six figure income within five years. Please call D. David Bradshaw at American Insurance & Investment Corp., (801) 364-3434, or send your resume to same at P.O. Box 58489, Salt Lake City, Utah 84158.

Small Salt Lake City litigation shop seeking hard-working attorney with 2 to 5 years experience in complex litigation. All applications kept confidential. Competitive salary. Send resume by March 20, 1995 to Utah State Bar Journal, Box 10, 645 South 200 East, Salt Lake City, Utah 84111.

Patent and Trademark attorney needed for medical device company located in Salt Lake County, Utah. Significant (at least 5 years) patent prosecution experience required. Salary commensurate with experience. Reply care of Utah State Bar Journal, Box 11, 645 South 200 East, Salt Lake City, Utah 84111.

POSITIONS SOUGHT

Experienced attorney with exceptional writing skills seeks position or contract work. Experience: Tort, commercial, employment, domestic and administrative litigation, and substantial civil and criminal appellate writing, both as an advocate and as a COA clerk. Reasonable rates. call L. Barclay at (801) 371-0161.

OFFICE SPACE / SHARING

PROFESSIONAL OFFICE SPACE is available at convenient downtown location. Offices are newly painted and carpeted and include furnishings, conference room, telephone and reception area. Executive assistant/secretarial services available. For more information please call (801) 359-4209.

Professional space available downtown office building. Single offices include use of conference room, law library, reception services, fax photocopier, kitchen and parking. A private suite is also available with secretarial and reception space. For more information call (801) 534-0909.

Prime office sharing space available for one attorney with established firm. Excellent downtown location, two blocks from courthouse. Complete facilities, including conference room, reception area, telephone, fax, copier. Please call Mark E. Lehman at (801) 532-7858.

New professional office space for two or three attorneys adjacent to Sports Mall. Share space and expenses with four other attorneys. Complete facilities, including large private office, secretarial services, reception area, conference room, library, fax, copier, telephones. Room for own secretary if desired. Call Jeri at (801) 263-0569.

Small downtown Salt Lake City law firm specializing in tax, PSC work and business litigation has prime office space for 1 attorney, plus secretarial, covered parking, low overhead. Call 531-0441 Steve or Mike.

Choice office sharing space available for 1 attorney with established law firm. Downtown location near courthouse with free parking. Complete facilities, including conference room, reception room, library, kitchen, telephone, fax, copier, etc. Secretarial services and word processing are available, or space for your own secretary. Please call (801) 355-2886.

Money Making Law Offices: 1, 2, 3 &/or 4 offices. \$450-\$650.00 or \$2,100.00 for 2,300 sq. feet. Reception area, conf./lib., plenty parking, big sign. Opportune location. (801) 964-6100.

Choice office space for rent in beautiful, historic building in Ogden, Utah. Several offices avail-

able. For information, please contact (801) 621-1384.

SERVICES

CERTIFIED PERSONAL PROPERTY APPRAISALS — Estate work, Fine furniture, Divorce, Antiques, Expert Witness National Instructor for the Certified Appraisers Guild of America. Sixteen years experience. Immediate service available. Robert Olson C.A.G.A. (801) 580-0418.

CHILD SEXUAL ABUSE—CASE EVALUATION: Statement Validity Assessment (SVA). An objective method for determining the validity of child statements and interviewer quality — time saving and concise — advanced graduate training. No fee for initial consultation. Bruce M. Giffen, M.S., Investigative Specialist — (801) 485-4011.

NEED RESEARCH HELP? Let me help you. I will do legal research on an hourly basis and leave you free to work on the more important aspects of your case. Member of the Utah Bar. I can also help draft pleadings or other papers. Call Todd Cannon @ (801) 567-0040.

UTAH VALLEY LEGAL ASSISTANT JOB BANK: Resumes of legal assistants for full, part-time, or intern work from our graduating classes are available upon request. Contact: Kathryn Bybee, UVSC Legal Assistant Department, 800 West 1200 South, Orem, Utah 84058 or call (801) 222-8489.

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. (801) 531-0331. Resumes of legal assistants seeking full or part-time temporary or permanent employment on file with the LAAU Job Bank are available on request.

SECURE Waste Disposal by Incineration, State & EPA Approved Facility: Confidential Documents, Microfilm, Office Paper Waste, Non-Hazardous Waste, Computer Chips & Disc, Distressed & Recalled Merchandise, Pharmaceuticals: Certificate of Disposal-Chain of Custody: For rates & information call Laury, (801) 771-5661.

MISCELLANEOUS

Anyone with knowledge of the whereabouts of a will prepared by or on behalf of **MANUEL MIRANDA LUCERO**, dob: 5/16/34, please contact Connie L. Mower, Attorney at Law, 623 East 100 South, P.O. Box 11643, Salt Lake City, Utah 84157-0643; telephone, (801) 363-9345. Mr. Lucero's address at the time of his death was 347 North 600 West, Salt Lake City, Utah.

1995 Mock Trial Schedule

Name: _____ Firm: _____

Position: _____ Address: _____

Phone: _____ Zip: _____

I have judged before. Yes _____ No _____

I will judge _____ (number) of mock trial(s).

Please indicate the specific date(s) and location(s) that you will commit to judge mock trial(s) during the months of March and April. The dates and locations are *fixed*; you *will* be a judge on the date(s) and time(s) and location(s) you indicate, unless several people sign up to judge the same slot. If that occurs, we will call you to advise you of a change. You will receive confirmation by mail as to the time(s) and place(s) for your trial(s) when we send you a copy of the 1995 Mock Trial Handbook. Please remember — **all trials run approximately 2 1/2 to 3 hours and you will need to be at the trial 15 minutes early.** We will call one or two days before your trial(s) to remind you of your commitment.

Please be aware that Saturday sessions will be held on March 25th and April 1st. Multiple trials will be conducted. Please give these dates special consideration.

Specific addresses for all courtrooms will be mailed with the confirmation letter.

Date	Time	Place	Preside	Panel	Comm. Rep.
Monday, March 20	10:00-1:00	Coalville	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:00-4:00	Vernal	()	()	()
Tuesday, March 21	1:30-4:30	Orem	()	()	()
	2:00-5:00	Spanish Fork	()	()	()
Wednesday, March 22	2:00-5:00	Spanish Fork	()	()	()
Thursday, March 23	9:30-12:30	Roy	()	()	()
	12:00-3:00	American Fork	()	()	()
	1:30-4:30	Roy	()	()	()
Friday, March 24	2:00-5:00	Clearfield	()	()	()
	9:00-12:30	Roy	()	()	()
	1:30-4:30	Roy	()	()	()
	2:00-5:00	Spanish Fork	()	()	()
Saturday, March 25	2:00-5:00	Tooele	()	()	()
	9:00-12:00	3rd C - SLC	()	()	()
	9:00-12:00	3rd C - SLC	()	()	()
	9:30-12:30	3rd C - SLC	()	()	()
	9:30-12:30	3rd C - SLC	()	()	()
	10:00-1:00	3rd C - SLC	()	()	()
	10:00-1:00	3rd C - SLC	()	()	()
	10:30-1:30	3rd C - SLC	()	()	()
	10:30-1:30	3rd C - SLC	()	()	()
	12:30-3:30	3rd C - SLC	()	()	()
	12:30-3:30	3rd C - SLC	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
Monday, March 27	1:30-4:30	3rd C - SLC	()	()	()
	10:00-1:00	American Fork	()	()	()
	2:00-5:00	American Fork	()	()	()
Thursday, March 30	9:30-12:30	Roy	()	()	()
	1:30-4:30	Roy	()	()	()
	2:00-5:00	Orem	()	()	()
	5:30-8:30	Logan	()	()	()
Friday, March 31	9:30-12:30	Roy	()	()	()
	1:00-4:00	Nephi	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:00-4:30	3rd C - SLC	()	()	()
	1:30-4:30	Roy	()	()	()
Saturday, April 1	2:00-5:00	Clearfield	()	()	()
	9:00-12:00	3rd C - SLC	()	()	()
	9:00-12:00	3rd C - SLC	()	()	()
	9:30-12:30	3rd C - SLC	()	()	()
	9:30-12:30	3rd C - SLC	()	()	()
	10:00-1:00	3rd C - SLC	()	()	()
	10:00-1:00	3rd C - SLC	()	()	()

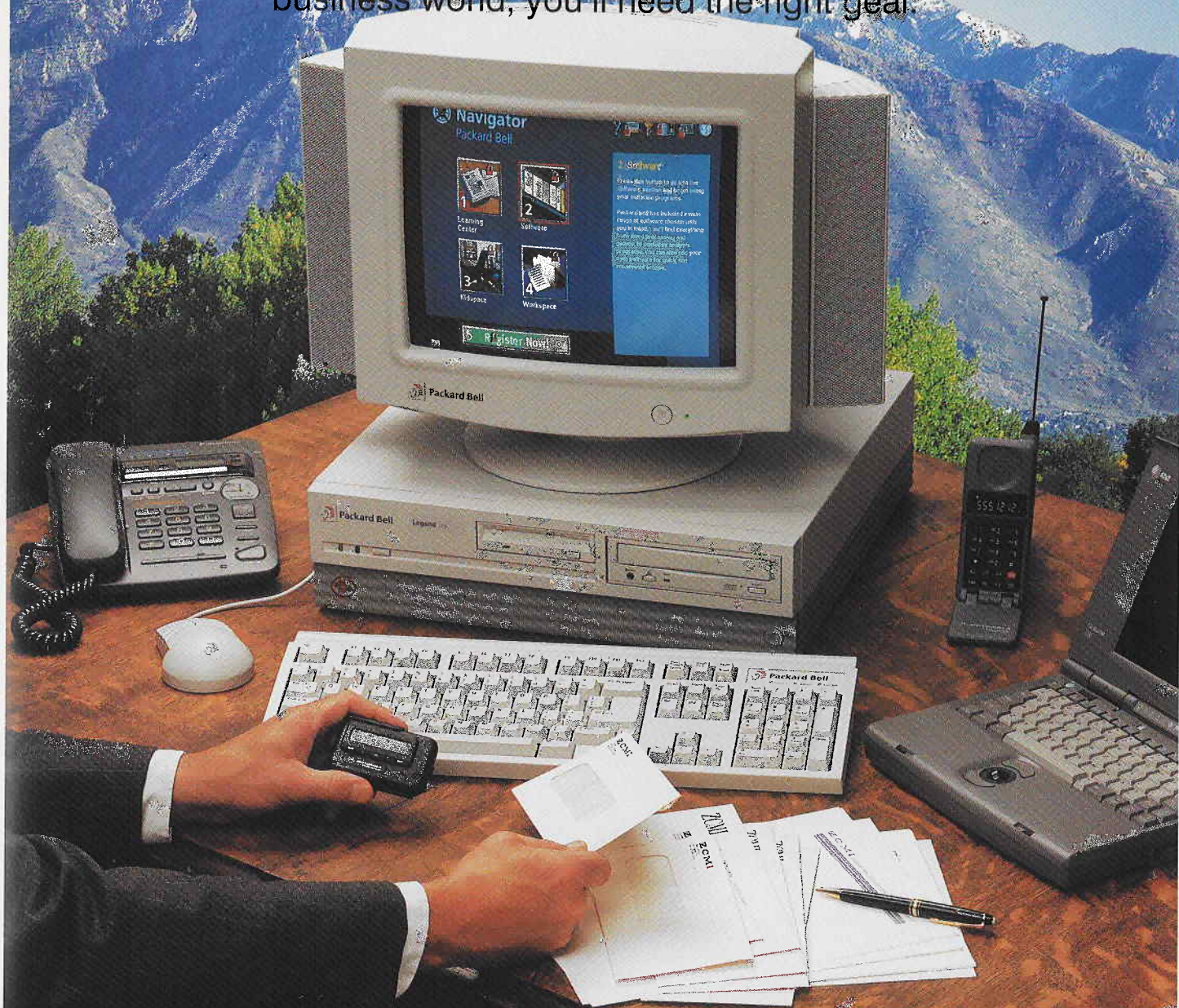
Date	Time	Place	Preside	Panel	Comm. Rep.
	10:30-1:30	3rd C - SLC	()	()	()
	10:30-1:30	3rd C - SLC	()	()	()
	12:30-3:30	3rd C - SLC	()	()	()
	12:30-3:30	3rd C - SLC	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:30-4:30	3rd C - SLC	()	()	()
	1:30-4:30	3rd C - SLC	()	()	()
	2:00-5:00	3rd C - SLC	()	()	()
Monday, April 3	9:30-12:30	American Fork	()	()	()
	1:00-4:00	American Fork	()	()	()
	1:30-4:30	Clearfield	()	()	()
Tuesday, April 4	1:00-4:00	Orem	()	()	()
	1:30-4:30	Clearfield	()	()	()
Wednesday, April 5	1:00-4:00	3rd C - SLC	()	()	()
	1:30-4:30	Richfield	()	()	()
Thursday, April 6	10:00-1:00	Roy	()	()	()
	12:00-3:00	American Fork	()	()	()
	1:30-4:30	Roy	()	()	()
	2:00-5:00	Clearfield	()	()	()
Friday, April 7	9:30-12:30	Roy	()	()	()
	1:00-4:00	3rd C - SLC	()	()	()
	1:30-4:30	Roy	()	()	()
	1:30-4:30	3rd C - SLC	()	()	()
	2:00-5:00	Clearfield	()	()	()
	2:00-5:00	Fillmore	()	()	()
	5:30-8:30	Logan	()	()	()
Monday, April 10	1:30-4:30	3rd C - SLC	()	()	()
	2:00-5:00	Clearfield	()	()	()
	5:30-8:30	Logan	()	()	()
Tuesday, April 11	1:00-4:00	3rd C - SLC	()	()	()
	1:30-4:30	3rd C - SLC	()	()	()
	1:30-4:30	Clearfield	()	()	()
	5:30-8:30	Logan	()	()	()
Wednesday, April 12	9:00-12:00	3rd C - SLC	()	()	()
	1:30-4:30	Price	()	()	()
	2:00-5:00	Orem	()	()	()
	2:00-5:00	Price	()	()	()
Thursday, April 13	1:30-4:30	Roy	()	()	()
Semi-Final Rounds (If you will have judged a previous mock trial)					
Monday, April 17	9:00-12:00	SLC	()	()	()
	1:00-4:00	SLC	()	()	()
	1:00-4:00	American Fork	()	()	()
	2:00-5:00	Clearfield	()	()	()
Tuesday, April 18	9:00-12:00	SLC	()	()	()
	1:30-4:30	Orem	()	()	()
	2:00-5:00	Clearfield	()	()	()
	5:30-8:30	Logan	()	()	()
Wednesday, April 19	9:00-12:00	SLC	()	()	()
	1:00-4:00	SLC	()	()	()
	2:00-5:00	Clearfield	()	()	()
Thursday, April 20	9:00-12:00	SLC	()	()	()
	1:00-4:00	SLC	()	()	()
	1:30-4:30	Roy	()	()	()
	2:00-5:00	Clearfield	()	()	()
Friday, April 21	9:00-12:00	SLC	()	()	()

Please mail this form to:

Mock Trial Coordinator
Utah Law-Related Education Project
645 South 200 East, Suite 101
Salt Lake City, Utah 84111

Climbing gear

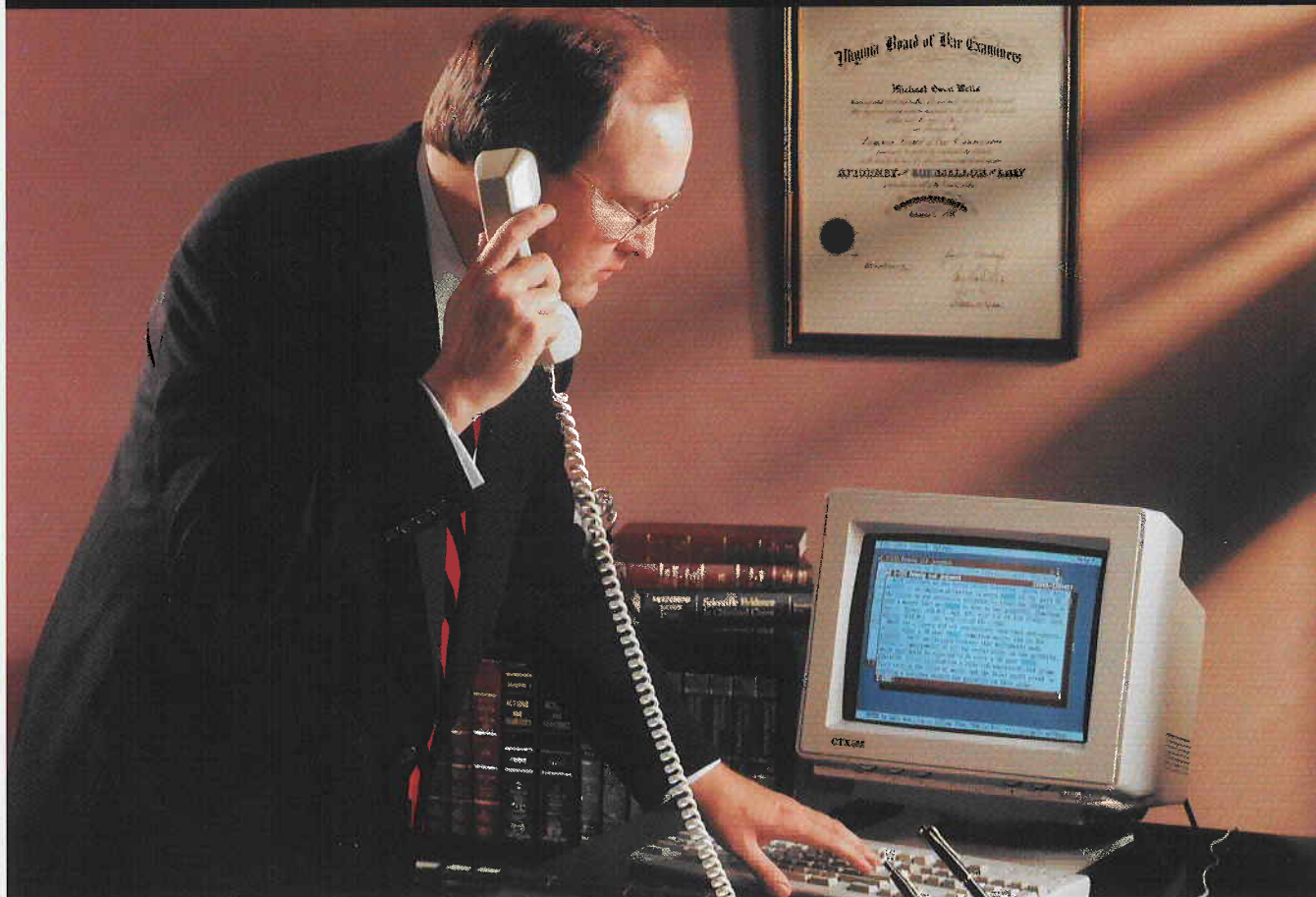
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