UTAH BAR JOURNAL

Vol. 9 No. 1 January 1996

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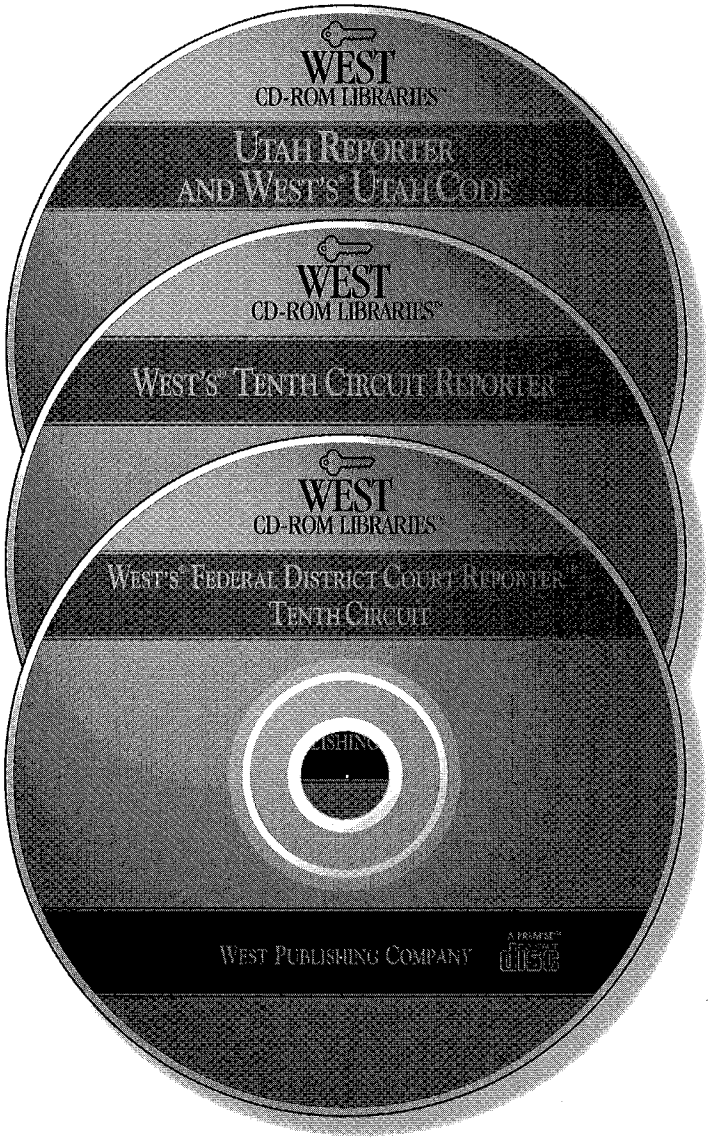

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UTAH BAR JOURNAL

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VISION OF THE BAR: To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.

MISSION OF THE BAR: To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of the law.

COVER: Winter Scene Above Mueller Park, East of Bountiful, Utah by J. Wayne Gillman, Salt Lake City, Utah.

Members of the Utah Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, Utah, 84111, 532-5200. Send both the slide, transparency or print of each photograph you want to be considered.

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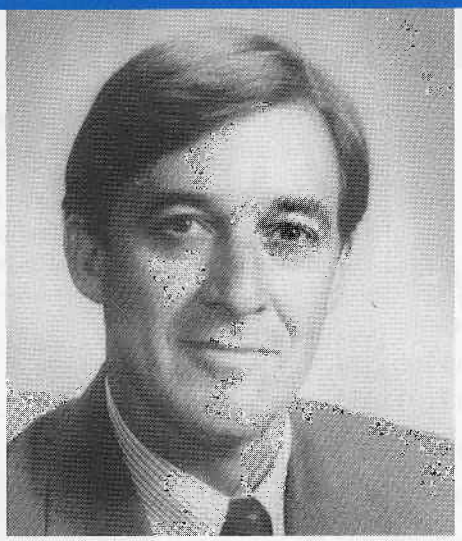

Bar President's Message

By Dennis V. Haslam

Last December, Harold G. Christensen of the firm of Snow, Christensen & Martineau, was honored by the Utah Bar Foundation for his exemplary years of service to the profession and the public. Hal has as much experience in the courtroom, counseling clients, and law firm management, as anybody I know. Carman Kipp describes him as a lawyer's lawyer.

Hal made some interesting remarks at the luncheon. He supports our existing adversarial system in criminal cases, as well as the use of juries in criminal cases, like the O.J. Simpson case. However, he expressed deep concern over the continuing use of the adversarial system in at least some kinds of civil cases.

Hal proposed that the Utah Bar Foundation undertake a study that would examine the adversarial system in the civil arena to see whether changes can be made that would better serve its users and promote the administration of justice. For example, in domestic relations cases, perhaps a commissioner should be appointed to receive simple generic form complaints for divorce. A defendant would receive notice of the complaint, along with a form of answer and a preliminary hearing would be scheduled. At the preliminary hearing, the commissioner, who acts as investigator, advocate and judge, gets the background facts of the parties' relationship, children and economic situations, makes a preliminary order and immediately grants the marital dissolution. The commissioner then instructs the parties to return for a final hearing and to bring with them specific information that will allow the commissioner to enter an order dealing with the parties' division of property, permanent custody and the like. If a party is dissatisfied with the commissioner's decision, then that party can appeal to the District Court for review. If the appealing party loses, then that party would be obligated to pay the attorney's fees and costs of the other party.

The proposal sounds pretty good to me. The existing method for dissolving a marriage and distributing the marital estate is unworkable, and has been unworkable for many years. The adversarial process puts more expense into an already difficult process. It exacerbates frayed nerves, and allows parties to get their backs bowed and pushes them into a corner.

Hal's comments on the adversarial system are timely and appropriate. We have seen changes to the system coming for quite awhile. The public had mandated alternative dispute resolution and the judicial system has responded to it. Many lawyers require arbitration clauses in all contracts they prepare for clients. Some contain a covenant requiring good faith mediation efforts. Lawyers know that getting into a lawsuit in a breach of contract dispute may not be in the interests of a client. Business disputes might best be resolved in a businesslike manner, through prompt negotiation, mediation or arbitration of the issues. Clients seek more certainty in the outcome of their matters, an outside time line on finality for the dispute, and better estimates of attorneys fees. If a business is going to take a loss on an issue, perhaps the business wants to bite the bullet and get on with doing what it does best.

Some might suggest that it is heresy for a trial lawyer to abandon the courtroom. I don't believe Hal suggests a complete abandonment. Cases involving significant sums of money, say over $50,000, can proceed in the traditional fashion. The adversarial system and the jury system work in cases where a trial is necessary.

Our legal system has historically responded to the changing needs of society. Congress will likely reduce funding for Legal Services Corporation and poor people will have less access to any system of justice, in part because the price of lawyers

Continued on page 14

Some Thoughts on the Bar's Election Procedures

By Craig Snyder

As long ago as 1979, I have written letters to the Bar Commission expressing the opinion that it was time to consider giving each of our members the right and opportunity to vote for President (or President-Elect) of the Utah State Bar. At the present time, I find it somewhat ironic that only .0025% of our membership (eleven elected Bar Commissioners) vote for our President-Elect, and yet, 15% of the actual voting electorate (two out of thirteen total Bar Commissioners) are non-members of the Utah State Bar.

My comments concerning our election processes are not limited to the office of president, and I have tried to address those concerns below.

I. I have been a member of the State Bar of Texas for approximately 23 years. During that period of time, I have been able to vote *every year* for the office of President of the State Bar of Texas, even though I have been an out-of-state resident and, for the last several years, have maintained my license only on an inactive status. I have only been able to vote for President of the Utah State Bar during the last four years when I have been a Utah State Bar Commissioner, even though I have maintained an active practice as a resident of the State of Utah for the last 22 years.

In 1979, I wrote to the Utah State Bar Commission advocating that we involve our membership in the election of the Utah State Bar President by allowing the individual members to vote for the office of president-elect. The response I received in 1979 was threefold: (1) having a popularly elected president opens the door for someone with little or no experience in Bar matters and in the operations of the Bar Association to become president-elect and thereby deprives the Bar of necessary experience and leadership; (2) having a popularly elected president would ensure that the Bar President would always come from the Third Division (Salt Lake County) which has by far the greatest number of voters, and it would further ensure that lawyers from rural counties would feel even further displaced from Bar activities because lawyers outside of Salt Lake County could never be elected president. It was always implied that there was a tacit agreement amongst Bar Commissioners that periodically commissioners from outside of Salt Lake County would be selected by the Bar Commission for the position of president-elect; and (3) the expense of holding such an election was considered to be prohibitive.

Since 1979, I have discussed the matter of the election of our Bar President with the Bar Commission on two other occasions. The responses that I have received have been similar to the response that I received in 1979. I have finally concluded that this is simply another area where we have become overly protective of our own and where we are resistant to change.

I believe that the membership of any organization feels more comfortable and more involved with that organization if it has the opportunity to vote for its officers, including its president. The issue of finding a person with Bar experience is solvable in the same manner that the State Bar of Texas chooses its candidates for the office of State Bar President. The Bar Commission would simply *slate* two of its own members or, for that matter, two lawyers experienced in Bar matters, for the office of president-elect. The membership would then vote and choose between those two *slated* candidates.

The problem of having the State Bar President always come from Salt Lake County is easily resolved. Every third or fourth year the Bar Commission could simply, by agreement, slate two candidates

Join us for the
1996 Mid-Year Convention
March 7 - 9 at the
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The Jammin' Jurist's Mid-Year Meeting Music Festival

All members of the Utah State Bar who are musicians are welcome to attend and participate in the musical jam session at the Mid-Year Meeting, March 7-9, 1996. We are trying at this time to put together several groups, representing different types of music, to head off the jam session. We are looking for categories such as classic rock-n-roll, rhythm-n-blues, jazz, and country western/blue grass. Members of the Bar who play instruments are encouraged to fill out a pre-registration form so that we can put you with the group in which you would feel most comfortable. A leader for each band will be chosen, who will coordinate five or six numbers for their group. Drums, percussion instruments, microphones, amplifiers, and a public address system will be provided. Except for drummers, the musicians should bring their own instruments. Guitar players, horn players, fiddle players, etc., should bring their own instrument. The jam session will follow Friday night's dinner on March 8, 1996, and you do not have to attend the dinner to be a part of the jam session, although we hope you will attend both. Don't worry if you are a bit rusty. This is for everyone with any musical talent at any level. Don't be sorry because you didn't sign up.

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from outside of Salt Lake County, and those two candidates would run against each other for the office of president-elect. This would ensure that areas outside of Salt Lake County would have a State Bar President perhaps more sensitive to rural issues every third or fourth year.

The fact is that the implied agreement between Bar Commissioners to ensure that each division periodically has a Bar President is non-existent. The Fourth Division (our second largest) has not had a Bar President since J. Robert Bullock in 1972. The First Division has not had a Bar President since Burton Harris in 1971. During this period of twenty-four (24) years, the Second Division has had five, the Third Division sixteen, and the Fifth Division three Bar Presidents.

We already conduct several mass mailings to our membership each year. It seems to me that it would be a simple matter to include an election ballot in one of those mass mailings. Ballots could even be accomplished in connection with the distribution of the *Bar Journal.* The candidates for the office of President-Elect would be entitled to one free two-page space in the *Bar Journal* to present their views of the Bar in general and their qualifications for the position for review by the membership. The Bar could conduct an interview of the two candidates and let them respond in writing to a series of questions about issues affecting the Bar itself. There would be no other campaigning allowed. The Commission could consider whether only active members would be allowed to vote or whether inactive members would also receive ballots. The overall cost would not be prohibitive.

II. I believe that it is time that we reapportion our eleven (11) elected commissioners to more accurately reflect the time-honored concept of one person (man) one vote. In particular, we need to address the following issues:

a. The First Division presently consists of approximately 81 voting members, The Second Division consists of 349 voting members. The Third Division (7 commissioners) consists of 3,281 voting members, (469 members per commissioner). The Fourth Division consists of 393 voting members, and the Fifth Division consists of 205 voting members. If you divide the total number of voting members (4,309) by the number of elected commissioners (11), you

get an average of 392 voting members per commissioner. Even though I have long been an advocate of encouraging our membership outside of Salt Lake County to participate in the Bar Association, I believe the time has come to recognize the fact that our membership is unequally represented. We need to realign our divisions and perhaps combine the First Division with the Fifth Division and include Tooele and Summit Counties in the new combined division, while giving an additional Bar Commissioner to Salt Lake County. This would more equally reapportion our membership.

b. The time has also come to examine how we vote for our Bar Commissioners in the various divisions. A lawyer in the Third Division presently has the right over any three-year period to vote for *seven* different Bar Commissioners on the Utah State Bar Commission. A lawyer living in any other division in the state only has the right to vote for *one* Bar Commissioner every three years. Such a voting procedure creates both an actual and an appearance of inequality. Every Third Division lawyer has seven (7) times the voting power of any lawyer in any other division.

It is my view that the Third Division should be divided into approximately eight equal (newly reapportioned) districts, and that lawyers from the districts within the Third Division should each have the opportunity to elect one Bar Commissioner every three years as is done in the rest of the state. Dividing the Third Division could be done on an alphabetical basis, or a geographical basis, or by lot, or on some other theory.

c. The place or manner in which our membership votes is determined by the address that our individual members give to the Bar offices. If I were to list my address as a post office box in Salt Lake County, I could vote in the Third Division, even though my home residence and my office location are both in the Fourth Division. There are many lawyers who live in one division, but yet office in another division. The Bar Commission should adopt a rule which defines where our members votes, i.e., voting members must vote in the division where they maintain their office, or, i.e., voting members must vote in the division where they maintain their residence.

Over the past few years, I have had several of our members ask why they did not have an opportunity to vote for the office of President-Elect. I have never been able to give them a good response other than to cite the reasons that were first expressed to me back in 1979. It is my belief that the Bar Commission should consider revising its election procedures along the lines suggested above. We should allow our membership to vote for the office of President-Elect, we should reapportion our voting divisions to more closely achieve a one-person-one vote alignment, and we should eliminate the practice of allowing our membership in the Third Division to vote for seven Bar Commissioners during a three-year period while the rest of our membership only has the opportunity to vote for one.

A Commentary on Physician-Assisted Suicide

By Catherine M. Larson

Throughout the years there have been significant advances in medical technology. These advances have been associated with both improved patient outcome and prolonged patient survival. In the early 1970s, the removal of a respirator or discontinuation of hydration or nutrition from a patient who was not brain dead was considered a deviation from accepted medical practices.[1] The view in the early 1970s was that the physician must do everything to save the patient – the physician must prevent death at all costs. That view, however, is changing substantially with the recognition that patients have a right to self-determination.

This article focuses not only on the evolution of the right to die, but more particularly, the rights of patients to choose physician-assisted suicide as a method of death.

DISCONTINUATION OF LIFE-SUSTAINING TREATMENT

In 1976, the *Quinlan* case allowed the removal of a ventilator from a patient in a persistent vegetative state.[2] Following this, other court decisions have equated artificial nutrition and hydration as forms of life sustaining treatment and have also allowed their withdrawal. The sanctions by the courts allowing the withholding and removal of life-sustaining measures illustrates the increased awareness and sensitivity of the needs and desires of the dying patient.

As time and medical technology have progressed, some of the practices which were previously controversial in the care of the dying patient have become accepted and routine. For instance, it is not unusual for a physician to write a "Do Not Resuscitate" order at the request of the patient or his or her family. Practices such as this, underscore the emotion that many patient's and their families do not want to live "at all cost."

ADVANCE DIRECTIVES

In order to provide some autonomy to a terminally ill person, the Utah Legislature established the "Personal Choice and Living Will Act."[3] Section 75-2-1101, the "Intent Statement", states, in part:

> (a) developments in medical technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of death;
>
> (b) persons should have the clear legal choice to be spared unwanted life-sustaining procedures, and be permitted to die with a maximum of dignity and a minimum of pain . . . .[4]

The Living Will Act, applicable only to those persons suffering from a terminal illness or those who are in a persistent vegetative state secondary to an illness or injury, is intended to allow conscious decision making regarding the withholding or withdrawal of life-sustaining procedures.

In drafting the Living Will Act, the Utah Legislature expressly considered the parallel relationship between it and the issue of assisted suicide. Section 75-2-1116 states:

> Neither the withholding nor the withdrawal of life-sustaining procedures in the administration of medical treatment, nor the implementation of medical treatment choices expressed in directives executed under this part constitutes suicide nor the crime of assisting suicide.

Moreover, Section 75-2-1118 states:

> Nothing in this part may be construed to condone, authorize, or approve mercy killing, euthanasia, or suicide.

COMMON LAW SUICIDE

Suicide was a felony at common law.[5] In some jurisdictions it is still considered a felony. In other jurisdictions, like Utah for instance, suicide is not a crime. Even in light of the fact that the Utah Legislature was cognizant of the issue of assisted suicide as early as 1985, it has yet to pass any subsequent law making assisted suicide a crime. In fact, unlike other states, the criminal code of Utah does not make suicide a crime.

Offenses against the person are set forth in Utah Code Ann. §§ 76-5-102 to 76-5-411. The criminal statutes for homicide are set forth in sections 76-5-201 to -207. To be in violation of any of these statutes, the criminal act performed must cause the "death of another." Because suicide is the death of one's self, these statutes are not violated – suicide is not, in and of itself, a

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She obtained a B.S. degree in Nursing, cum laude, from the University of Utah in 1982. She worked as a clinical nurse, nurse manager, and nurse researcher in the Intermountain Burn Center for over eight years.

Her prior professional involvement as a nurse has made her particularly aware of the needs of the dying patient. She is a strong advocate for advanced directives and personal choice in the area of death and dying.

criminal act.

Because suicide is not a crime, a person assisting another in suicide cannot be charged with aiding and abetting a crime when assisting another with a suicide. In order to be criminally liable under the language of Utah Code Ann. § 76-2-202, an accomplice, aider, or abettor, must solicit, request, command, encourage, or intentionally aid another person to "engage in conduct which constitutes an offense." Since suicide is currently not a criminal offense in Utah, a person assisting suicide should not be considered to be in violation of this law.

ASSISTED SUICIDE VS. EUTHANASIA

The issue of passive euthanasia[6] has been considered and accepted both legally and ethically in the United States.[7] Passive euthanasia is the removal of artificial components, allowing death to take its natural course. Conversely, active euthanasia involves specific action to effectuate death at an earlier stage. To withdraw treatment merely allows the disease to do the killing; a lethal injection is altogether different. Contrary to what many people may think, assisted suicide is not active euthanasia.

The courts have repeatedly addressed the issue of passive euthanasia. They have responded to the needs of dying patients and their families by defining a right to die under certain circumstances. The Utah legislature, like many others, has also responded by passing the "Living Will Act" which allows life support equipment to be withdrawn under certain circumstances.

Numerous courts have been willing to extend the right to refuse medical treatment to competent patients even though the exercise of this right effectively means that these patients are committing suicide. These patients are making the decision to die. Other terminally ill patients, who are not receiving life-sustaining medical treatment, have no decision-making power over their right-to-die. It is for this group of people that attention must be focused.

BRIEF HISTORY OF DR. JACK KEVORKIAN

In June of 1990, Dr. Jack Kevorkian, a retired pathologist in Oakland County, Michigan, began his quest to assist the terminally ill. The conduct of Dr. Kevorkian has raised current awareness of the desires of the dying patient and has heightened the debate over active euthanasia.

Dr. Kevorkian's assistance was in the form of the now famous "suicide machine."[8] Dr. Kevorkian developed a suicide machine that enabled individuals to take their own lives in a painless and efficient manner. His first ventures with this apparatus began in June of 1990 where he assisted with the suicide of Janet Adkins, a victim of Alzheimer's Disease.[9] Following the first three suicides, a Michigan grand jury indicted Dr. Kevorkian on two counts of murder and one count of unlawful delivery of a controlled substance.[10] These charges were later dismissed when it was determined that Dr. Kevorkian had only assisted with the suicides and "physician-assisted suicide is not a crime in Michigan, even when the person's condition is not terminal."[11] Because Michigan, at that time, had no statutory prohibition against assisted suicide, the charges were dropped.[12]

"To withdraw treatment merely allows the disease to do the killing . . . assisted suicide is not active euthanasia."

In an attempt to prevent Dr. Kevorkian from assisting in any more deaths, the Michigan Legislature passed the Criminal Assistance to Suicide Act.[13] The purpose of this act, as described by the Legislature, was to study the problem of voluntary self-termination of human life and to develop recommendations for legislation. This act made it a felony to assist or participate in another's suicide. Notwithstanding the Michigan act, Dr. Kevorkian was found not guilty by a jury in the 1993 death of a man suffering from Lou Gehrig's disease.[14]

Three Michigan judges have already ruled that the assisted suicide statute is unconstitutional – Jessica Cooper an Oakland County Circuit Court judge; and Cynthia Stephens and Richard Kaufman, Wayne County Circuit Court judges. These decisions were affirmed by the Michigan Court of Appeals. In a recent decision, the Michigan Court of Appeals ruled that the Michigan statute violated the state constitution requiring laws to have a single pur-

pose.[15] The court also ruled that the Constitution did not guarantee a right to terminate one's own life. The Michigan Supreme Court ruled last December that the act of physician-assisted suicide could be prosecuted under a "common law" felony punishable by up to five years in prison.[16] Additionally, the Supreme Court declined to hear Dr. Kevorkian's challenge to this ruling.[17]

DRIVE TO LEGALIZE EUTHANASIA

Dr. Kevorkian was not the first person to recognize the needs and desires of dying patients. Although all of the earliest attempts at permitting euthanasia were unsuccessful, there was a growing interest and recognition in the concept. The first bill proposing the legalization of active voluntary euthanasia was introduced to the Ohio legislature in 1906.[18] This bill was overwhelmingly rejected. The next attempt to obtain approval for euthanasia occurred in 1937 in the Nebraska legislature.[19] Like the first bill, this bill eventually died. Later unsuccessful attempts to introduce euthanasia legislation occurred in New York in 1939,[20] 1947[21] and 1952.[22] During the next twenty years legislators in Idaho, Montana, and Oregon independently sponsored active euthanasia bills, none of which were enacted into law.[23]

It was not until 1991, that the legalization of active voluntary euthanasia by physicians was on the brink of becoming a reality.[24] Washington State's Initiative Measure No. 119 would have permitted physicians, under a grant of legal immunity, to end the lives of certain qualified patients in "a dignified, painless, humane manner." Under this bill, two physicians would have to certify that the patient was mentally competent, terminally ill, and had less than six months to live. The patient would, in the presence of two witnesses, have to make a medical directive requesting aid-in-dying.[25] Although the bill was widely supported, it was narrowly defeated by a 54 to 46 percent margin.[26]

Like the Washington initiative, a similar outcome occurred in California in November of 1992 where the "aid-in-dying" initiative was defeated by a 54 to 46 percent vote.[27] More recently, however, Oregon voters approved last year a physician-assisted suicide law which has been subsequently blocked by a federal judge.[28] Additionally, a physician-assisted suicide bill has been recently introduced by a Connecticut senator who considers the process "an act of humanity."[29] As illustrated by recent attempts, the efforts to legalize euthanasia in this country continue.

CONTROVERSY OVER PHYSICIAN'S ROLE

Some believe that physician-assisted suicide would tarnish the integrity of the medical profession. From the time of Hippocrates, the principles of medical ethics have instructed physicians to refuse their patients requests for death-causing treatments.[30] Although once egregiously disfavored, many prominent physicians with an interest in ethics are now stating their support for physician-assisted suicide of terminally ill patients.[31]

All patients should be confident that their physician will aid them with the latest palliative care to relieve terminal suffering and will respect their right to refuse life sustaining treatment.[32] Palliative and supportive care, however, must be instituted before that patient's suffering becomes too great. Contrary to the opposition's belief, such relief may actually serve to reduce the expected number of requests for physician-assisted suicide.

SAFEGUARDS MUST BE IMPOSED

Those opposing the concept of physician-assisted suicide contend that it will create a slippery slope – that patients will not be protected from overzealous physicians, family members, or society to eliminate them as a burden. It is agreed by all that safeguards are needed to adequately protect patients. Such safeguards include the following: the patient must have an incurable condition; the physician must insure that pain is not the result of the inadequacy of comfort care; the patient must of his or her own free will request to die, rather than continue suffering; the patient's judgment must not be distorted; and there must be a meaningful doctor-patient relationship prior to fulfilling the patient's desires.[33]

Other safeguards include treatment review, mental health and competency evaluations, and protection from undue influence.[34] The necessity of mental health evaluations is another important component to the safeguards of physician-assisted suicide. Patients who are terminally ill often suffer from depression, which may be the causative factor leading the patient to

desire suicide. Once that depression is brought under control, the patient may no longer have a desire to end his or her life. Safeguards will protect these persons.

IS PHYSICIAN-ASSISTED SUICIDE A FUNDAMENTAL RIGHT?

In general, dying patients do not get the best treatment. They are often not informed of their prognosis. More importantly, a significant number of dying patients die in too much pain. When there is nothing more that medicine can offer, these patients are often abandoned. Modern advances in medical technology have only served to prolong the pain of these dying patients, not to relieve their suffering, as one would hope.

Society must return the control over dying to the patient. Like the right to refuse life-sustaining medical treatment, a person should also have a fundamental right to choose when and how to die. Agreeably, this right should be limited to those with a terminal illness. As stated by one court, "(n)o state interest is compromised by allowing (an individual) to experience a dignified death rather than an excruciatingly painful life."[35]

The difference between withholding or withdrawing life-sustaining medical treatment and euthanasia are inconsequential. Under both circumstances the patient is making a conscious decision to hasten his death. Although those opposing physician-assisted suicide make the argument that withholding life-sustaining treatment simply allows the disease to take its natural course, that argument is without merit. Terminally ill patients who do not receive life-sustaining treatment will also eventually succumb to their disease. The difference, however, is that in the meantime, these patients must endure a profound abundance of pain. Such agony serves no purpose, but to appease those who do not have the courage to allow these patients to end their lives peacefully.

CONCLUSION

It is clear that something needs to be done to address the nationwide anxiety of dying patients and their families. The dying patient suffers from the fear of pain, suffering, loss of control, and loss of dignity. These persons have a fundamental right to personal autonomy in matters of death and dying which is not being met.

Opponents will argue that legalizing physician-assisted suicide will lead to potential abuses by both the individual, their families, and physicians. However, legislation providing clear and precise guidance in administering physician-assisted suicide will alleviate this fear. By providing such guidance, patients choosing physician-assisted suicide will be able to knowingly and voluntarily choose to end their own lives – allowing these patients the personal autonomy and self-determination they deserve. The medical and legal professions must collaborate if we are to create public policy that fully acknowledges irreversible suffering and offers dying patients a broader range of options to explore with their physician.

"Like the right to refuse life-sustaining medical treatment, a person should also have a fundamental right to choose when and how to die."

Dr. Kevorkian has offered a solution to an intractable and terrifying problem: how to face the challenge of illness, suffering and death in a technological age. Although many physicians may disapprove of Dr. Kevorkian's practice, they will have to admit that he is filling a void created by society's denial, failure and neglect of the dying patient.

Notwithstanding the acquittal of Dr. Kevorkian on his alleged violation of the Michigan statute prohibiting assisted suicide, the controversy over euthanasia remains unsettled. It will take many more years, and countless court cases, before the issue is ever truly resolved. The fact that the issue of physician-assisted suicide is gaining increasing attention, however, is a pivotal step towards an eventual resolution to this problem.

[1]Sprung, *Changing Attitudes and Practices in Foregoing Life-Sustaining Treatments,* 263 JAMA 2211 (1990).

[2]*In re Quinlan,* 348 A.2d 801 (N.J. 1975).

[3]Utah Code Ann. § 75-2-1101 to -1108 (1953 as amended).

[4]Utah Code Ann. § 75-2-1102 (Supp. 1993).

[5]83 C.J.S. *Suicide* § 2 (1953).

[6]A. Meisel, *The Right To Die* (1990) (defining passive euthanasia as "permitting a patient to die by withholding that treatment necessary to sustain life").

[7]Grant, *A Line Less Reasonable: Cruzan and the Looming Debate Over Active Euthanasia,* 2 Md. J. Contemp. Legal Issues 99 (1991).

[8]This "suicide machine" consisted of a frame from which hung a bottle of saline solution and two large syringes. One syringe contained the anesthetic agent sodium pentothal. The other held a deadly solution of potassium chloride. The device housed a switch that would permit the patient to start the process. Valves controlled the sequencing of delivery of the agents.

[9]Gibbs, *Dr. Death Strikes Again: While Lawmakers Agonize Over Euthanasia, Jack Kevorkian Keeps Taking Matters Into His Own Hands,* Time, Nov. 4, 1991, at 78. Dr. Kevorkian later assisted with the suicides of Sherry Miller, who had multiple sclerosis, and Marjorie Wantz, who suffered from a painful pelvic disease.

[10]N.Y. Times, Feb. 6, 1992, at A21, col. 1.

[11]Chicago Tribune, Feb. 29, 1992, at 3. Dr. Kevorkian's only participation in assisting in the suicides of these women was accessing a vein. This act, in and of itself, did not constitute homicide.

[12]Grant, *A Line Less Reasonable: Cruzan and the Looming Debate Over Active Euthanasia,* 2 Md. J. Contemp. Legal Issues 99, note 5, at 231.

[13]Mich. St. Ann. § 28.547 et al. (1992). This statute was later determined by the Michigan Court of Appeals to violate the state constitution requiring laws to have a single purpose. See note 15 below.

[14]New York Times, May 13, 1995, at 6, col. 1.

[15]*Hobbins v. Attorney General,* 518 N.W.2d 487 (Mich. App. 1994). The court found that the law had two distinct objectives: to create a commission to study death and dying and to make a crime out of aiding euthanasia.

[16]New York Times, May 13, 1995, at 6, col. 1.

[17]*Id.*

[18]O. Russel, Freedom to Die: Moral and Legal Aspects of Euthanasia 60 (rev. ed. 1977).

[19]J. Wilson, Death by Decision: The Medical, Moral, and Legal Dilemmas of Euthanasia 32-33 (1975).

[20]O. Russel, Freedom to Die: Moral and Legal Aspects of Euthanasia n.63 at 74 (rev. ed. 1977).

[21]D. Humphrey & A. Wickett, The Right to Die n.65 at 33-34 (1986).

[22]D. Humphrey & A. Wickett, The Right to Die (1986).

[23]Marker, *Euthanasia: A Historical Overview,* 2 Md. J. Contemp. Legal Issues 257, 278 (quoting New York Academy of Medicine, Dilemmas of Euthanasia: Excerpts From Papers and Discussions at the Fourth Euthanasia Conference 42 (1972)).

[24]Marker, *Euthanasia: A Historical Overview,* 2 Md. J. Contemp. Legal Issues 257, 259, n.5.

[25]New York Times, Nov. 9, 1991, at 22, col. 1.

[26]New York Times, Nov. 7, 1991, at B16, col. 1.

[27]Toronto Star, Nov. 9, 1992, at D1.

[28]The Hartford Courant, March 25, 1995, at A8.

[29]The Hartford Courant, March 25, 1995, at A8, quoting Senator George Jepson.

[30]Orentlicher, *Physician Participation in Assisted Suicide,* 262 JAMA 1844 (1989).

[31]Wazner, Federman, Adelstein, *The Physician's Responsibility Toward Hopelessly Ill Patients,* 320 New England J. Med. 844 (1989).

[32]Brody, *Assisted Death – A Compassionate Response to a Medical Failure,* 327 New Eng. J. Med. 1383 (1992).

[33]Quill, Cassel, Meier, *Care of the Hopelessly Ill,* 327 New England J. Med. 1380 (1992).

[34]Machler, *People With Pipes: A Question of Euthanasia,* 16 U. Puget Sound L. Rev. 781 (1993).

[35]*Thor v. Superior Court,* 855 P.2d 375, 385 (Cal. 1993) (quoting *Donaldson v. Lungren,* 2 Cal. App. 4th 1614, 1622; 4 Cal. Rptr. 2d 59 (1992)).

Response to Commentary on Physician-Assisted Suicide – Killing Isn't Caring

By David B. Erickson

I received a telephone call one evening from a nursing home administrator who was troubled about a family and a physician wanting to discontinue the "life-support" of one of his residents, an elderly lady. I went through the standard analysis that some of you may have used:

"Has she signed any directives?"

"No."

"Does she have a terminal condition?"

"I'm not sure, but I don't think so."

"What is her ailment?"

"I think it's just senility."

"Really? That's it?"

"Yes, dementia. I'm not sure if you can die from that."

"Who wants to withdraw life-support, her family and physician?"

"Yes, they're both in agreement."

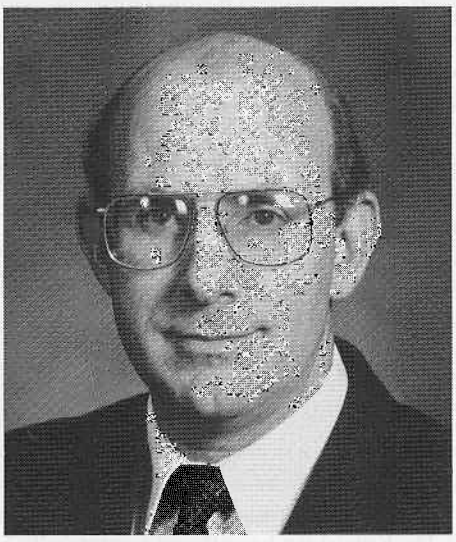
"Okay. So what kind of life-support would you be withdrawing? How is she being fed, like an NG tube, some kind of artificial nutrition and hydration?"

"Oh, no, no. She eats with a spoon in the cafeteria!"

If you analyzed that conversation the way I did, it would not be the immunized withdrawal of life-support contemplated by Utah's Personal Choice and Living Will Act, or even assisted suicide. It would be the non-consensual termination of life – homicide.

That telephone call sensitized me to the fact that there are still misunderstandings about what is appropriate under the Act, and that not enough people, families or physicians are aware of the clear, simple and flexible choices available to those facing death or dreading being on artificial, prolonged life-support.

We are fortunate in Utah to have a comprehensive, statutory framework to solve "death with dignity" and "right to die" issues. Three options allow any Utah adult with a terminal illness to be spared unwanted life-sustaining procedures, and be permitted to die naturally with a maximum of dignity and a minimum of pain.



DAVID B. ERICKSON, senior counsel at Intermountain Health Care, received a B.A. degree from Brigham Young University, an M.Ed. Degree from Utah State University, and graduated cum laude in 1982 from Gonzaga Law School (while John Stockton was playing there!), where he served as editor-in-chief of the Law Review. He also served as a clerk for Judge David K. Winder, United States District Court.

We are also fortunate that in Utah we do not permit physician assisted suicide. Allowing active euthanasia would endanger the integrity of medicine and would probably stifle continuing developments in hospice care, pain management, and depression detection and treatment. It could also result in commonplace hospital homicides.

PERSONAL CHOICE AND LIVING WILL OPTIONS

Despite storms of controversy that some states have weathered over the legal right to die naturally, Utah has been in the forefront in providing a simple, flexible system that honors a patient's desires to die without unnecessary prolongation. The considerable uncertainty as to the legality of terminating the use of life-sustaining procedures has now been answered in Utah's Personal Choice and Living Will Act.[1]

The Act provides three easy to use, approved documents that answer the request for death with dignity, while allowing a wide range of choices for patients. I believe it is vital that we continue to educate those who would be affected about their rights in this important area.

Because a significant number of people were concerned about having their life unnecessarily extended in a terminal condition or vegetative state, the Utah Legislature enacted the Personal Choice and Living Will Act in 1985. The Legislature declared that Utah recognizes the right "to make binding written directives instructing physicians and other health care providers to withhold or withdraw . . . life-sustaining and other medical procedures."[2] Three separate documents in the Act provide a method for making the wishes of a patient known: the Living Will,[3] the Special Power of Attorney[4] and the Medical Treatment Plan.[5]

The Living Will is the best known.[6] It provides for withdrawal of life-sustaining procedures and is triggered by a patient's terminal condition or a persistent vegetative state. The definition of a terminal condition under the Act can adapt to the developing state of medicine or the specific condition of a patient.[7] Two physicians use their medical judgment to make the determination. The Living Will terms are not rigid, but can be adjusted. A patient can decide exactly what life-sustaining treatment can be continued. For example, though artificial nutrition and hydration are defined as life-support procedures, they can still be continued to make the patient as comfort-

able as possible while other procedures are withdrawn.

A Special Power of Attorney[8] is essentially a durable power of attorney that is activated while the patient cannot communicate. Like other powers of attorney documents, it must be signed and notarized while the patient is still competent. Because so many health care decisions, even for the terminally ill, are not black and white, it helps to have someone available who can speak for the patient and fine-tune the decision-making process. Obviously, the patient should select someone who is available and who can be trusted to honor the wishes of the declarant. This attorney-in-fact can also prepare a Medical Treatment Plan for the patient.

The Medical Treatment Plan[9] allows the patient to work with the physician to customize the care that either will or will not be given. The Medical Treatment Plan is the directive to use after injury or illness has occurred. While it is rarely used, I think the greatest value of the Medical Treatment Plan is to allow an incapacitated patient's next of kin or an attorney-in-fact to work with a physician and tailor medical treatment to the patient's previously expressed desires and current needs.

Even if the person cannot communicate and has not signed a Living Will, the known desires of a patient can still be honored. The attending physician can terminate life-support by obtaining the concurrence of another physician that the patient's condition is terminal or a persistent vegetative state along with the concurrence of a statutorily designated guardian or next of kin.[10]

By using the documents in the Personal Choice and Living Will Act either separately or in combination, patients can be comfortable knowing their dignity and desires will be respected. The patient's choice to refuse to be touched or treated without willing consent will be recognized. Each of three documents permits flexible decision-making and allows the desires of a patient to be recognized and followed so that death can occur naturally and without artificial prolongation.

KILLING ISN'T CARING

Problems arise when a physician steps in to artificially hasten death. Active euthanasia is more than a withdrawal of support. Instead of the disease being the cause of the patient's death, the person administering the injection becomes the instrument of death.

The current interest in euthanasia underscores the obligation of physicians to practice competent analgesia, to understand why the patient requests death, and to deal with and remove those reasons. Killing by physicians seriously distorts the healing relationship and trust between physician and patient. Physicians should not kill, directly or indirectly, even out of compassion.

"The current interest in euthanasia underscores the obligation of physicians . . . to understand why the patient requests death, and to deal with and remove those reasons."

More should be done to understand why patients request suicide assistance and provide help. Recently New York State's Task Force on Life and the Law concluded that legalizing assisted suicide and euthanasia would be "profoundly dangerous" for seriously ill patients, especially those who are elderly, poor, socially disadvantaged, or without access to good medical care. The report concludes that more could be done in our health care system to treat pain and depression, two conditions that cause suffering and most often lead patients to consider suicide. The report said depression, accompanied by feelings of hopelessness, is the strongest predictor of suicide, yet physicians are not well trained to diagnose depression, especially in complex cases involving patients who are terminally ill.[11]

The chairman of the task force, New York State Health Commissioner Mark R. Chassin, agreed that more could be done: "A humane society owes its citizens something more than a prescription for a quick exit, particularly when we have the ability to control pain effectively and to successfully treat the depression that often causes patients to believe that suicide is their only option."[12]

Indeed, the depression that prompts the desire to die can often be helped by treatment or time. In a study of 200 terminally ill patients interviewed by psychiatrists from the Universities of Manitoba and Ottawa and the World Health Organization, only 17 had a severe, pervasive desire to die, according to

Continued from page 4

is too high. The great middle class is already under represented due to costs. The Utah Judicial Council has recently created the Utah QuickCourt Public Access Kiosk Project to facilitate divorces. More changes are in store for us. The year 2000 isn't really that far away. Our time-honored adversarial system needs continued fine tuning to better serve the interests of the public.

Does this mean we should all quit practicing law and find something else to do? No. Lawyers and counselors at law will provide valuable services to those who need them. We are well educated and understand the fundamental legal and societal relationships. We will continue to counsel and advise clients on legal and business matters irrespective of the way disputes are resolved.

The Board of Bar Commissioners wants to be on the cutting edge with respect to issues affecting the administration of justice in the State of Utah. If you think Hal's vision has merit, or if you think otherwise, let us know. We value your opinions.

an article in the August 1995 issue of the American Journal of Psychiatry. Over half of those patients who had strong death wishes were diagnosed with depression; in several of those cases, their desire to die diminished over time. The results indicated that a death wish may be fleeting, and that treatable psychiatric disorders may often be responsible for patients' beliefs that they cannot go on any longer.[13]

Caring, understanding and treatment, not killing, should be the response to a patient's request for physician assisted suicide.

DEVALUING LIFE

I occasionally learn about family members or relatives wanting to actively terminate a patient's life without the consent of the patient. Several incidents have involved patients who are not terminal or in a persistent vegetative state. While most requests are apparently out of concern for the suffering of the loved one, I am troubled that some may be motivated by other, selfish reasons.

Since I see the requests now, I worry that if physician assisted suicide were legalized, that nonconsensual, active euthanasia may become commonplace, such as has happened in the Netherlands.

A significant number of patient deaths in the Netherlands are reportedly nonconsensual. A 1991 report commissioned by the Dutch government found that 2,300 deaths, or 1.8 percent of all deaths in the Netherlands in 1990, were deliberately caused by doctors acting on their patients' orders. What is surprising is that the report also stated that 1,040 additional people were put to death by their doctors in 1990 without their consent, despite the Dutch courts' insistence that euthanasia be voluntary. In all the deaths cited in the study, doctors had killed patients by lethal injection or by giving them a lethal drug to drink.[14]

Euthanasia makes life the enemy and death a benefit. Political wisdom has taught us the right to life is inalienable, and that to permit the state to authorize euthanasia would give it an authority for which there is no political tradition.

I believe that legalizing physician assisted suicide would devalue life and could also lead to the abandonment of advances we have made in pain relief, hospice care, and the detection and treatment of depression. It also could destroy our societal attitude toward the sanctity of life when we decide that we or others should

die based on a diminished quality of life.

THE DUTY TO DIE

Would legalization of assisted suicide lead to abuses? Opposition to aiding the dying often flows from fear that society will lose its footing on an ethical "slippery slope." Persons holding this view, such as myself, worry that allowing any exception to a total ban will encourage the gradual development of a more permissive attitude toward assisted suicide.

One of the better constitutional law reviewers, Yale Kamisar, a University of Michigan law professor, warned of the slippery-slope hazard a quarter-century ago. If voluntary active euthanasia were made legal, he wrote in an essay published in 1969, "Will we not sweep up, in the process, some who are not really tired of life, but think others are tired of them; some who do not really want to die, but who feel they should not live on, because to do so when there looms the legal alternative of euthanasia is to do a selfish or a cowardly act? Will not some feel an obligation to have themselves 'eliminated' in order that funds allocated for their terminal care might be better used by their families or, financial worries aside, in order to relieve their families of the emotional strain involved?"[15]

Nearly twenty five years later when Kamisar revisited the physician assisted suicide issue he noted that the "distinction between letting people die and killing them by lethal injection is now an integral part of the medico-legal landscape. This is the compromise we have arrived at in the struggle to take a humane approach toward seriously ill patients while still preserving as many traditional restraints against killing as we possibly can. This may be neither the logician's or the philosopher's way to resolve the controversy, but it may nevertheless be a defensible, pragmatic way to do so."[16]

Now the question Kamisar asks is, "How many patients would opt for euthanasia because they feel obliged or pressured to do so – to relieve their relatives of financial pressures or emotional strain? And how many severely ill patients will feel that to reject euthanasia, once it is a viable alternative and others are "doing it," would be selfish or cowardly?"[17]

If we step on the slippery slope and allow assisted suicide, the "right to die" could evolve into a duty to die. Fortunately, in Utah we have in place sufficient options and safeguards to help those facing difficult end of life choices, while avoiding the problems and abuses that can accompany euthanasia.

I often reflect on the nursing home administrator's telephone call. Who knows what the elderly lady in his nursing home was thinking. Despite her family and physician's wishes, perhaps the highlight of her day was eating in the cafeteria with a spoon.

[1]Utah Code Ann. §§ 75-2-1101 to 75-2-1119.

[2]*Id.* at §75-2-1102(2).

[3]*Id.* at §75-2-1104.

[4]*Id.* at §75-2-1106.

[5]*Id.* at 75-2-1105. Since the enactment of the Patient Self Determination Act, the federal government has mandated hospitals receiving Medicare or Medicaid funds have to inform inquiring patients about their rights to refuse treatment. Consequently, these medical directive documents are readily available to patients not only in hospitals, but from senior citizen and medical associations.

[6]*Id.* at §75-2-1104.

[7]Section 75-2-1103(10) defines terminal condition as a "condition caused by injury, disease, or illness, which regardless of the application of life-sustaining procedures, would within reasonable medical judgment produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the person.

[8]*Id.* at §75-2-1106.

[9]*Id.* at §75-2-1105.

[10]*Id.* at §75-2-1107.

[11]*Health Law Reporter,* vol. 3, p. 736, June 2, 1994.

[12]*Id.* at 737.

[13]Hospitals & Health Networks, Oct. 5, 1995, p. 23.

[14]*Congressional Quarterly Researcher,* vol. 5, no. 17, p. 404, May 5, 1995.

[15]Yale Kamisar, "Euthanasia Legislation: Some Non-Religious Objections," in *Euthanasia and the Right to Die,* A.B. Downing, ed. (1969) pp. 95.96.

[16]*ABA Journal,* April 1993, p.43.

[17]*Id.*

Should a Nonlawyer Not Admitted to Practice Before the Tax Court Be Allowed to Act For or Represent Another In the Tax Court

By K. Jay Holdsworth

The author appreciates the invaluable assistance of Jack Nolan, Karen Hawkins, Jane Bergner and Robert Wellen in the preparation of this article.

At the plenary session of the 1994 Annual Meeting, the Tax Section debated aspects of nonlawyer's representation of taxpayers before the Tax Court. The occasion was a panel entitled, "Accounting Firms Practicing in the Tax Court," chaired by John S. Nolan of Washington, D.C. Other members of the panel were Henry Ferrero, Jr., Gerald A. Kafka and James P. Holden, of Washington D.C., and Gersham Goldstein of Portland, Oregon.

In light of the importance of this subject to the tax bar, this article summarizes some of the issues discussed by the panel and the author's conclusions.

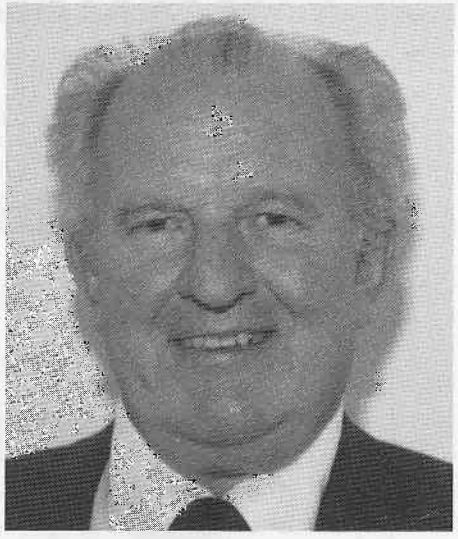
During the discussion two related fact patterns surfaced:

> An appearance for a taxpayer before the Tax Court by an employer through its common law employee who is a lawyer.
>
> An appearance, ostensibly *pro se,* where in reality a nonlawyer acts for the taxpayer.

Comments from the floor focused the issues arising out of these patterns.

As to the first – representation by an employer through an employee – Jack Nolan noted that an in-house lawyer may not, in that capacity, practice in the U.S. Supreme Court, the courts of appeal, the Court of Federal Claims or the district courts. The Tax Court admits individuals, not firms, to practice before it.[1]

In comments from the floor, the author added that a lawyer who is employed by an accounting firm or anybody else has a duty of undivided loyalty to that employer. The employer has the right to control not only the end result, but the details of how that employee/lawyer accomplishes the end result.



K. JAY HOLDSWORTH is a graduate of Stanford School of Law. He has practiced tax law during the over 4 1/2 decade deluge of federal tax law changes starting with the 1948 marital deduction rules. He is a member of the ABA Section of Taxation, Estate and Gift Tax Committee (a former Chair), the American College of Tax Counsel and the ABA Section of Taxation, Estate Planning Seminar Group. He Chaired the ABA Task Force on Transfer Tax Restructuring (report published, 1987).

Where a common law employee, in that capacity, enters an appearance before the Tax Court, the employer that is controlling the representation and that will receive the fee paid for the legal services, is the entity that is the actual representative. That is so whether or not the common law employee is admitted.

The second pattern involves an appearance ostensibly *pro se,* but actually with the assistance of an accountant or other nonlawyer acting for the taxpayer.[2]

Jane Bergner of Washington D.C. described the problem:

> Some accountants are encouraging their clients to file cases in the Tax Court nominally *pro se,* but the accountants continue to represent the clients and really exercise the legal judgment that is nominally exercised by the clients as *pro se* filers in the Tax Court. This gives me a great deal of concern.

Karen Hawkins of San Francisco added that she has been the last minute recipient of referrals from accountants who have gone all the way to calendar call with clients who have filed *pro se.* In these cases, the client had been advised that the accountant could "fix it" with Appeals:

> And then they get surprised when the judge sets a trial date two or three days after the initial calendar call. I have actually tried cases on 24 hours notice brought to me by accountants who have filed pre-trial briefs, listed witnesses, identified and stipulated facts and documents to be introduced.
>
> I have heard recently that 70% or 75% of the regular cases on the Court's calendar are *pro se* cases. Accountants behind a lot of these cases (may have been) representing to their clients that all the Tax Court petition meant was that it was going

to get flipped back to Appeals, and they would work the deal with Appeals. (There was no point in hiring an expensive lawyer to do that.) And then they get caught short when they aren't able to work a deal with Appeals because (of having) been to Appeals once.

The fact that a single "big six" firm is finally making itself public about that is really the tip of the iceberg. What you really have are a lot of smaller accounting firms who are doing it and have been doing it for a very long time.

Jack Nolan expressed his view that this process is "completely objectionable";

Pre-trial briefs have been filed without any indication of who wrote those briefs and who was behind it. They appear to be *pro se* briefs. That is really, it seems to me, abusing the judicial process.

From a broader perspective, taxpayers generally may not understand other consequences of a nonlawyer acting for them before the Court. For example, a taxpayer's communications with a lawyer, unlike communications with a nonlawyer, are privileged in most circumstances.[3] Moreover, a nonlawyer may not be able adequately to assess and explain to the taxpayer the hazards of litigation.[4]

The author's view is that taxpayers will be served far better by not allowing unadmitted representatives to practice before the Tax Court in either of the contexts discussed.[5] Each fact pattern is a form of the same conduct – an effort to circumvent or deceive. In the first situation the representative acting for the taxpayer is a common law employer that is never authorized to practice before the Court. In the second the appearance is not *pro se* but is by an unadmitted individual or entity pulling the strings behind the scenes.

Because the Tax Court's home is in the District of Columbia, with its judges riding circuit throughout the nation, it may not be practical for state bar associations to challenge such unauthorized practice. Instead the Court should consider crafting appropriate rules under its rule making power.

[1]Each admitted lawyer is required to comply with admission conditions. She becomes an officer of the Court and, along with her law firm, is subject to the Court's power to impose sanctions and other discipline.

[2]After the Board of Tax Appeals became the Article III Tax Court a lawyer could, and today can, be admitted upon application and payment of a fee. In keeping with the prior custom of the Board, a nonlawyer individual can be admitted to practice before the Tax Court by a written (and possibly oral) examination. Tax Court Rule 200(a)(3). Practice as an independent contractor by an admitted lawyer or by an admitted nonlawyer was outside the scope of the panel discussion.

[3]*United States v. Adlman,* (Docket No. 94-6143) (2d Cir. October 26, 1995) (summons to produce memorandum that had been prepared by corporation accounting firm regarding tax consequences of reorganization enforced, even though memorandum was requested by in-house counsel.)

[4]Hazards of litigation include:

- A probing examination, in discovery or in cross-examination, which may yield information far beyond that supplied by a taxpayer during the office audit.
- The judge's background or attitudes which may affect the outcome of the case.
- The inability of the taxpayer to introduce in court relevant information which was used in the audit, but is excluded under the rules of evidence, the parol evidence rule, etc.
- The danger that an issue may be a "prime" issue which the government will pursue out of policy considerations.
- The possibility that, even if the taxpayer wins, he may incur large litigation costs.

[5]Delivery of legal services by nonlawyers generally continues under study by the ABA Board of Governors (ABA Journal, October, 1995, p. 103).

Commission Highlights

During its regular meeting of August 25, 1995, held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board expressed its thanks to Gary Doctorman for his work as chair of the Fee Arbitration Committee for the last few years.
2. The Board voted to approve the minutes of the July 28, 1995 meeting.
3. David Nuffer reviewed his letter from a constituent regarding comments and concerns about the possibility of using credit cards to pay bar fees.
4. The Board voted to investigate creating a presence on the Internet and charged a special committee with pursuing the project.
5. Charles Brown reported that the MCLE Board voted unanimously at its recent meeting to allow CLE credits for law office management programs and that they will be examining the number of hours and types of programs.
6. The Board reviewed correspondence describing some perceived unfairness in the Fifth Division with regard to the judicial selection process. David Nuffer recommended that the Bar examine a disqualification rule, and Dennis Haslam volunteered to take a message to the Chief Justice.
7. The Board voted to approve a 50% discounted registration fee for attorneys with under three years of practice who wish to attend the Bar's Annual Convention.
8. Bar President Dennis Haslam reported that the Bar is looking forward to forging a relationship with the Chamber of Commerce and hopes that the Bar will be able to improve the image of lawyers by being involved with the Chamber of Commerce and its members.
9. Haslam briefly reviewed the sessions he attended during the recent National Conference of Bar Presidents.
10. Anne Milne, Ken Bresin, and Bruce Plenk of the Utah Legal Services office appeared to bring the Board up to date on the federal funding issues. The Board voted to formulate a resolution that gives strong support to Legal Services and have Dennis Haslam communicate this to Orrin Hatch and Bob Bennett.
11. Executive Director John Baldwin reviewed the Bar's Department Activity Report and answered questions. He reported that the Admissions Committee is revising the Utah Bar Examiners Committee Grading Handbook with regard to reappraisals of bar examinations for attorney applicants.
12. Baldwin distributed copies of the financial reports for the month of July and answered questions.
13. The Board voted to approve $1,500 to fund a mailing regarding a networking process for small firms.
14. Baldwin reported that the Judicial Conduct Commission is now renting space at the Law & Justice Center.
15. Steve Cochell, Chief Disciplinary Counsel, distributed the August caseload statistics and he indicated that the number of civil actions remained the same, that none were dismissed, and that there were 179 cases closed last month.
16. Baldwin reported that Norman S. Johnson would be resigning as ABA delegate and that the ABA members in Utah would elect a successor who would ultimately serve as ex-officio to the Bar Commission.
17. Lisa-Michelle Church reported that the Legislative Forum with women legislative candidates would be held jointly with the Trial Lawyers in November.

During its regular meeting of September 22, 1995, held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board voted to approve the minutes of the August 25, 1995 meeting.
2. Bar President Dennis Haslam reported that he and Jim Jenkins had an audience with Sen. Bob Bennett to discuss the Legal Services Corporation funding debate.
3. Haslam indicated that the had a meeting with Chief Justice Michael D. Zimmerman regarding unauthorized practice of law issues.
4. Dennis Haslam reported that at the recent judicial conference he gave a "state of the Bar" report and talked about statistics and the audit results.
5. The Board turned down a funding request to sponsor the Western Legislative Conference since the Bar is not authorized to spend dues money that way.
6. Dennis Haslam referred to a letter from Thomas Thompson regarding Ethics Opinion No. 90-A which discusses surreptitious recordings by lawyers. The Board voted to refer the matter to the Ethics Advisory Opinion Committee for their review and recommendation.
7. David Nuffer reported on the status of the Internet committee.
8. Budget & Finance Committee Chair, Ray Westergard, reviewed the financial reports for the month of August and compared actual expenses and receipts to the budget. He reported on the audit results for the fiscal year ended June, 1995. He indicated that the Budget & Finance Committee has reviewed the audit in detail as well as the recommendations in the management letter and was happy to report that the Bar received the highest report. The Board voted to approve the audit report for the fiscal year ended June 1995. John Florez recommended that Dennis Haslam send a letter to Bar staff thanking them for their good work.
9. Executive Director John Baldwin distributed the list of passing applicants for the July 1995 Bar examination for Bar Commission approval. He reported that on the national examination, the average mean score across the country was 143 and in Utah it was 146. The Board voted to approve the list of passing applicants for the July 1995 Bar examination as recommended by the Admissions Committee.
10. John Baldwin indicated that the Speakers Bureau data has been finalized and the listing has been sent to John Becker and Dennis Haslam.
11. Chief Disciplinary Counsel, Steve Cochell, updated the Bar Commission on pending litigation.
12. Baldwin reported that henceforth the Bar will include a question on the Bar Examination application form regarding ethnicity.
13. Ethics Advisory Opinion Committee

Chair, Gary Sackett, reviewed proposed Opinion No. 95-07. Sackett indicated that No. 95-07 involves the issue of whether or not the Attorney General, after representing a division of a state agency in an administrative action, may file and pursue an appeal in her own name or on behalf of the public at large to the head of the agency of which the division is a part. The Board voted to approve Ethics Advisory Opinion No. 95-07 as submitted by the committee.

14. The Bar Commission met with the members of the Central Utah Bar over lunch.
15. Judicial Council Liaison, J. Michael Hansen, reported on the September 19, 1995 meeting of the Judicial Council and reviewed a number of handouts. The Board asked Hansen to continue to inform the Judicial Council of the Bar Commission's concerns about the cost of appealing cases.

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

Litigation Section Announces Trial Academy 1996

The Litigation Section of the Utah State Bar announces its first annual Trial Academy. The Academy will consist of evening seminars held every other month taught by top-notch trial practitioners and will focus on basic trial skills for the trial lawyer.

The tentative schedule is as follows:

February 22, 1996:	Jury Selection
April 25, 1996:	Opening Statements
June 27, 1996:	Direct Examination
August 29, 1996:	Cross Examination
October 24, 1996:	Exhibits at Trial
December 19, 1996:	Closing Argument

This promises to be the most in-depth training program available for the Utah lawyer on the basics of trial practice in our local courts. It is designed to acquaint the new and not-so-new lawyer with the basics and some of the intricacies they will encounter in court.

On February 22, the first session will be held in Judge Pat Brian's courtroom at 6:00 to 8:00 p.m. Prominent local trial attorneys will demonstrate the jury selection process using a live jury and a federal and state judge sitting jointly on the bench.

Students will receive two CLE credit hours for each session attended. The cost is $20 per session for Litigation Section members and $30 for non-members. Students may sign up for the entire six sessions at a cost of $100 for Section members and $150 for non-members.

Enrollment for the February 22 session is limited to 40 students. To register, call Monica Jergensen at the Utah State Bar offices at 531-9077. For further information on the program, contact Francis Carney at 532-7300.

Creative Pro Bono Service:

The Snow Christensen & Martineau Arbitration Project

By Toby Brown

When Snow Christensen & Martineau ("SCM") was approached to get involved in *pro bono* service as a firm, they were very excited about the idea. As part of this excitement and commitment, they wanted to find a unique and creative way to provide *pro bono* services to the community. And they wanted to utilize the significant abilities and experiences of their attorneys.

What they developed was the Utah Legal Services / Snow Christensen & Martineau Arbitration Clinic. This clinic is run every first and third Thursday of the month from 6:00 to 8:00 p.m. at Utah Legal Services ("ULS"). This unique program provides binding arbitration services to those of limited means in our community. To date, the poor in our state have not had ready access to alternative dispute resolution ("ADR") tools. Thanks to SCM, that resource now exists.

SCM has been developing their ADR Practice group over the past few years. So it was a natural fit to direct this experience into a pro bono project. ULS has a great need for services which fall outside its priority list. Clients who met the income guidelines but have legal problems which ULS does not have the resources to meet normally have nowhere to turn. Now they can sign up for an arbitration session. This not only provides them access to justice, but access which is fast, cost effective and private. SCM meets these critical needs by providing the arbitrators who preside at these sessions.

Since the attorneys at SCM overwhelmingly supported this project, SCM now is a member of the Founders' Circle. The Founders' Circle is the group of law firms, law departments and corporate legal groups who have 90% of their attorneys signed up to provide volunteer *pro bono* services. Members of the Founders' Circle will receive continuing recognition for their commitment to *pro bono* services and the community.

A special thanks goes to Rick Hall and Dave Slagle of SCM. Their efforts and enthusiasm made the arbitration clinic possible. They set an excellent example for their firm and the legal community with their willingness and dedication.

The Utah Legal Services / Snow Christensen & Martineau Arbitration Clinic continues to grow in popularity. We expect this program will continue to meet a critical segment of the need for access to justice by the poor.

Thank you Snow Christensen & Martineau for your great support of the Pro Bono Project!

Notice of Election of Bar Commissioners First and Third Divisions

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

Applicants must be nominated by a written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 2, and **completed petitions must be received no later than February 1.** Ballots will be mailed on or about March 1 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. on March 29. Ballots will be counted on April 1.

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

1. Space for up to a 200-word campaign message plus a photograph in the March issue of the *Bar Journal.* The space may be used for biographical information, platform or other election promotion. Campaign messages for the March *Bar Journal* publications are due along with completed petitions, two photographs and a short bio sketch **no later than February 1.**

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

3. The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar **no later than February 15** enough copies of letters for all attorneys in their division. (Call Bar Office for count in your respective division.)

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

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

PUBLIC NOTICE Appointment to Panel of Chapter 7 Trustees

The Office of the United States Trustee is seeking applications from persons wishing to be considered for appointment to the panel of trustees who administer chapter 7 bankruptcy cases of the bankruptcy code. The appointment is for cases filed in the United States Bankruptcy Court for the districts of Colorado, Wyoming and Utah. Chapter 7 trustees receive compensation and reimbursement for expenses pursuant to 11 U.S.C. §326, in each case in which they serve.

The minimum qualifications for appointment are set forth in Title 28 of the Code of Federal Regulations at Part 58. The be eligible for appointment, an applicant must possess strong administrative, financial and interpersonal skills. Fiduciary experience or familiarity with the bankruptcy area is desirable but not mandatory. A successful applicant will be required to undergo an FBI background check, and must qualify to be bonded. Although chapter 7 trustees are not federal employees, appointments are made consistent with federal Equal Opportunity policies which prohibit discrimination in employment. 28 CFR §58.5.

Forward applications to the Office of the United States Trustee, 721 19th Street, Suite 408, Denver, Colorado 80202. All applications will be kept confidential and should be received on or before January 19, 1996.

UTAH SUPREME COURT NOTICE

On November 28, 1995, the Utah Supreme Court implemented a policy regarding emergency proceedings or Extraordinary Writs. The policy for processing petitions for extraordinary relief and emergency stays is as follows:

Draft of proposed internal policy to guide court's dealings with matters that fall under rule 65B(e), normally referred to as "emergency" proceedings or "extraordinary writs."

1. Before a party seeking relief may present to this court a petition for an extraordinary writ or other emergency matter, including a stay, the party must certify by signed statement that it or its counsel has notified opposing counsel or, if unrepresented, the opposing party, that it seeks a hearing before this court at a time certain, and that it has submitted to the opposing party or counsel a copy of supporting papers by delivery or facsimile transmission.

2. In all cases where a party seeks to challenge a court order, it shall also present to this court a copy of that order. Whenever possible, the order in question should be reduced to writing and signed by the judge so that this court will act only on accurate premises.

3. No petition will be heard by one or more members of this court in the absence of the opposing party or their counsel, unless the petitioning party demonstrates that it was impossible to secure their presence. A party or counsel will be considered present if they are able to participate telephonically.

4. At least three members of this court shall hear the petition. Only under extraordinary circumstances will fewer than three members of this court hear the petition, and then only if all reasonable efforts to secure the presence of three or more have failed.

5. The body of any petition that exceeds ten pages shall include a ten-page summary of the factual premises and legal arguments in support. The parties should assume that the court members acting on the petition will need to review only this ten-page summary.

6. This court will not consider an application for a stay pending a decision on a petition for an interlocutory appeal until the party seeking the stay has filed a petition for interlocutory appeal with this court.

Pro Bono Publico:
The Bar's Responsibility in Meeting the Legal Needs of our Poor

By Toby Brown, Statewide Pro Bono Coordinator

Recent Congressional actions have left the future of the Legal Services Corporation ("LSC") and therefore Utah Legal Services ("ULS") very much in doubt. LSC is a federal entity that receives federal funding and then grants this money out to local legal service agencies. In Utah, ULS is the sole recipient of these funds. Currently 80% of the ULS budget comes from LSC funds. So the future of ULS is very much dependent on the future of LSC.

Initial Congressional proposals would have totally eliminated LSC. The current proposals (being discussed at the time of this writing) leave LSC in place but with only 50 to 70% of its current funding. However, many in Congress still hope to eliminate LSC in 1996. In addition, the proposed funding package places great restrictions on the activities of LSC agencies. These restrictions include: no advocating for the poor to legislators or administrative rule makers; no class action suits; no suing the government; and many other restrictions. These restrictions will apply to non-LSC funds as well. So ULS could not accept funds from the Bar Foundation and utilize them for restricted activities. This impact on non-LSC funds may negatively impact the ability of LSC agencies to obtain such funds.

An additional factor which intensifies this situation is that other Congressional actions (in regards to the budget) will be taking away other non-legal resources from our poor as well. This reduced level of support for the poor may likely increase their needs for access to justice. And finally, the number of those living in poverty continues to grow at an alarming rate.

This situation should be of great interest to Utah State Bar members. A dramatic loss of funding and the restrictions on remaining funds will increase Bar members' responsibility to provide volunteer *pro bono* services to the poor and to insure the access to justice for the poor. The question then becomes, what will the Bar's response be to this crisis?

In October, Anne Milne, the Executive Director of ULS, convened a meeting to discuss the future of legal services for the poor in Utah. As an outcome of that meeting, a task force will likely be formed to address these issues on an on-going basis. The goals of the task force would be to review the legal needs of the poor and then make recommendations to deal with those needs. These needs would include all types of access to justice issues for the poor, well outside ULS's current set of priorities.

The recommendations from such a group will likely go to the Bar, the Courts, State Government, legal service agencies and other entities which might impact the access to justice for the poor. One purpose of this article is to begin the dialogue on what is the Bar's burden and how the Bar might best respond. Currently a general session has been proposed for the Bar's Annual Convention in July. This session will focus on these issues and provide a format for discussion. For now, any ideas or input from Bar members would be greatly appreciated.

To provide a starting point of potential discussion points I have developed a "laundry list" of potential issues this task force might address. These ideas include:

Should we implement a mandatory pro bono reporting requirement? In other states this action has greatly increased *pro bono* efforts as well as contributions to legal service/aid types of agencies (these requirements usually include a buy-out option for those attorneys unable to perform direct *pro bono* service).

Should we appoint district committees to deal with the specific pro bono needs in each area of the State? This idea is taken from a Nevada model. The intent is to push *pro bono* decisions to the local level, so decisions are made based on local needs. The committees could have a lot of latitude and some authority to implement programs.

Should we create a new and separate legal services agency for non-restricted activities? One concern is how will "restricted" services be handled. Perhaps we might separate the responsibilities, so that advocating for legal rights for the poor and other needs are being met while federal funding is maintained.

Should we implement Mandatory IOLTA? Some states require participation in IOLTA (Interest on Lawyers Trust Accounts). This increases the amount of money available for the Bar Foundation to grant to legal service type agencies.

Should ULS function only as a screening/intake/administrative entity? If representation duties were removed, ULS would become a resource agency, providing only quick service to clients and then referring them to *pro bono* attorneys. In addition ULS would function as a support unit for *pro bono* attorneys, providing the necessary resources and training for *pro bono* attorneys.

Should we create a pro bono attorney unit to lobby on behalf of the poor? If no one is helping protect the legal rights of the poor, their access to justice will continually erode. So this becomes a critical function of the private bar.

Should we focus efforts on fund-raising to maintain ULS as is? Perhaps the current ULS structure is the best approach to delivering access to justice. In that case, the Bar might lead an effort to obtain adequate funding. In some states, the private bar has accomplished this feat.

Should we charge "filing fees" on private arbitration? In some states court filing fees have been used to raise funds, however, in Utah that seems politically unfeasible. So those who obtain justice outside the court system might make contributions. Other states are considering imposing fees on arbitration to raise funds.

Should we focus on developing pro se clinics? Perhaps helping people help themselves to justice is an answer or at least a partial answer. However, a point to consider is that *pro se* clinics may create a lower tier of justice, reserved for the poor.

Should we re-prioritize services based on the type of services? This might include *pro se* clinics, brief advice and full representation. Instead of just prioritizing the type of law (landlord/tenant, divorce etc.), we might provide different levels of service for different needs.

How will we meet the legal needs of special needs groups? Currently due to the unique nature of their legal problems, special programs exist for Native Americans and migrant workers. How will these needs

fit into our new format?

All of these ideas and more should be part of the discussion, but the discussion should proceed quickly.

One in ten people in Utah live below the poverty line. Between 1980 and 1990 the poverty population grew by 30%. 80% of the legal needs of the poor in Utah are unmet. These statistics along with the funding crisis mean we need to act now. Comments, ideas and input from the membership of the Bar will prove critical in formulating a plan to deal with this overwhelming problem. Given the fact that a professional responsibility exists for *pro bono* service,[1] it is time for the Bar to take quick and thoughtful action.

Please consider these issues and be willing to provide input into the process as well as *pro bono* services into the solution. Feel free to contact me (Toby Brown at (801) 531-9095) or one of your Bar Commissioners with comments.

[1]*See* Rule 6.1, Utah Rules of Professional Conduct.

Public Reprimand

On November 27, 1995, the Third Judicial District Court entered an Order of Discipline Reprimanding John M. Bybee and placing him on unsupervised probation for one year to commence on or about December 31, 1995, which is the day following termination of his probation in a prior disciplinary matter. The Order was entered pursuant to a Discipline by Consent for violating Rules 1.3, 1.4(a), and 1.4(b) of the Rules of Professional Conduct of the Utah State Bar.

On or about November 1992, a client retained Mr. Bybee to collect back due child support. Respondent failed to serve the ex-husband with appropriate documents until approximately June, 1993 and failed to attend hearings that had been scheduled for March and May, 1993. On July 13, 1993, the court awarded the client a judgment, however, Respondent did not prepare an appropriate order to submit to the court for signature until December, 1993. During the period of time Respondent represented this client, he failed and refused to take or return her telephone calls, failed to advise her that certain hearings on her case had been postponed, that he would not attend those hearings, and he failed and refused otherwise to keep her advised of the status of her case.

Appellate Judges Help Appellate Lawyers Be the Best

With the justice system under attack from all sides, it is refreshing to learn of a special program where appellate judges take time away from their heavy caseloads to help appellate lawyers improve their professional skills. Judge Christine Durham of the Utah Supreme Court is one of a prestigious group of appellate judges who spend three intensive days training lawyers from across the nation in a program to improve appellate advocacy skills. The program is titled the 10th Appellate Practice Institute and will be held May 17-19, 1996 in Washington, D.C.

The judges receive no compensation for their efforts. They participate because they know the justice system is the ultimate beneficiary by having highly trained advocates representing litigants. When courts receive a poorly researched and written brief, judicial and professional court staff time has to be spent on redoing the work — more research and analysis must be done to clearly identify the nature of the appeal. The court feels obligated to go this extra step to insure that no litigant is penalized for inadequate representation. Judges would prefer to spend their time on case analysis. Oral argument gives well-prepared advocates an opportunity to take the judges by the hand and direct them to the desired area or objective in the forensic battle. The judges already know the issues and the game plan, because they have the written brief that has previously been submitted which is designed to educate and inform. What oral argument does is to reinforce what has been said before and focus the court on the significant issues and arguments.

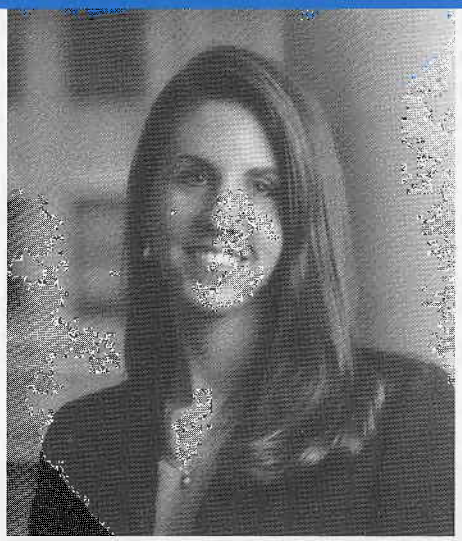
The appellate judges who participate in the 10th Institute realize that the Institute provides them with an opportunity to share with advocates what they look for in briefs and oral argument. Unlike real life where communication between judges and lawyers on specific cases is prohibited, at the 10th Institute judges meet privately with lawyers to critique a brief from the standpoint of issue identification, case analysis, writing clarity, persuasiveness and style. Each lawyer who attends the Institute presents an oral argument before a three judge panel. Immediately following the argument, the judges critique the presentation. Also unlike real life, there are no losers at the 10th Institute. It is a level playing field where each lawyer is sent a real case record and must submit a brief by a specific deadline. The oral arguments are all presented at the same time. The emphasis is not on winning but on improving. Even the most experienced advocate benefits from this educational experience.

To insure a high caliber program, the faculty is recruited from the elite ranks of appellate judges and lawyers. Among the faculty is Justice Stephen Breyer of the U.S. Supreme Court who will head up the judicial panel that will hear the model oral argument of the Institute case. Twenty-four appellate judges from state and federal courts across the nation will be in Washington. Besides the personal brief critiquing and oral argument presentations, panel discussions are presented on brief writing, oral argument and persuasive writing. Several social events are incorporated into the program to maximize the interaction between faculty and students.

Many lawyers hesitate to register because they do not want to make the time commitment required to write a brief in advance of the Institute. They reason that this time is better spent on real clients. The Institute planners' response is that the time spent on writing the brief for the Institute is the best investment a lawyer can make and one that will pay off many times over in the future.

Registration is restricted to keep a student/faculty ratio of 4 to 1. The program is supported solely from tuition revenue and the limited funds are spent on the program, not on marketing. Reliance is on "word of mouth" advertising. Even if you are not interested in participating in this special experience, you probably know someone who is. Spread the word. It is an expensive program to produce and can continue only if registration goals are met, a challenge given the limited marketing resources.

For more information about the Institute or to register, write or call Kristen Taylor at the ABA, 541 N. Fairbanks Ct., Chicago, IL 60611, 312/988-5697, fax: 312/988-5709.



Acknowledging Our Responsibility to Foster the Public Good

By Lisa M. Rischer

By the time you read this, the holiday season will have come and gone and even New Year's resolutions may already be a thing of the past. As I write this, however, the holiday season is in full swing. For many, this time of year brings an annual opportunity to reflect upon the past year – a time to take a look at life's path over the last twelve months and to chart a course for the future. As is evidenced in part by the simple fact that you have both the physical and the intellectual capacity to read this, it is clear that individually and collectively we have much for which to be grateful. Among other things, we are very fortunate to live in a relatively civil society where we have been free to pursue our own unique and individual dreams and ambitions.

As members of the Bar and officers of the court, we have been bestowed with a certain amount of the public trust. People must rely on our skills and judgment to assert, defend or protect their legal rights.

Commensurate with this public trust, which in a sense fosters the survival of our profession, comes a responsibility to ensure the public good. While it is very easy to put it off or ignore it altogether, this responsibility should not be taken lightly. There is an ever increasing public need for assistance in a wide variety of areas. While our very membership in the Bar evidences the invaluable opportunity we have all had to receive a decent education and the financial opportunities which may have thereby been opened, such is not the case for many who fight on a daily basis just to make ends meet. Unfortunately for many, the ends just don't meet and needs must go unmet. Many of those who must live with unmet needs are children – the very group which we will someday entrust to run society.

There are many ways in which we as members of the Bar can foster the public good within our own community. Clearly, there are many within our community who have legal needs which, due to financial constraints, continually go unmet. In addition to wonderful nonprofit organizations within the community which strive to ease these needs, the Bar itself has established certain programs through which attorneys can offer services on a pro bono basis. One such example is the Tuesday Night Bar program which is coordinated by the Young Lawyers Division and is now in its seventh year. While staffed in large part by members of the Young Lawyers Division, any member of the Bar is welcome and encouraged to participate. In connection with Law Day 1996, the Young Lawyers Division is also planning and looking to staff an expanded version of the popular "Call-a-Lawyer" project initiated last spring. In addition to these Young Lawyers Division programs, there are a variety of other programs coordinated by the Bar and by local organizations which are directed at providing much needed legal services to those who could otherwise not afford them. Toby Brown, Statewide Pro Bono Coordinator for the Utah State Bar, is happy to take telephone calls from members of the Bar and will gladly connect them with appropriate pro bono programs.

Providing legal services or guidance without charge is only one of many ways in which members of the Bar can give back to the community. Countless other valuable opportunities exist in areas indirectly related or completely unrelated to the practice of law. Many non-profit organizations are looking for attorneys to fill spaces on their advisory boards. Many community service organizations are looking for volunteers to assist with fund raising. Still other organizations are looking for people to

assist physically with provisions of a variety of services. We are limited only by our creativity.

The need is great and will continue. The only real variable is our willingness to acknowledge that need and accept responsibility to in some small way ease the burden. Everyone must make this decision for themselves in light of their individual circumstances. While an abundance of free time is not something typically associated with those in our profession, where there is a commitment and a desire, it's amazing how even the tightest of schedules can be rearranged to accommodate a small amount of community service.

At this time of thankfulness, recommitment and renewal, it seems only fitting to take a serious look at how we can give back to the community and how we can foster the public good. After all, in light of the trust inherently placed in our profession which enables our very survival, it seems the least we can do – and who knows, perhaps we will even take a small step toward improving the public opinion of our profession.

Young Attorney Profile: Alex Dahl, Judicial Clerk Par Excellence

By S.K. Christiansen

Alex Dahl got more out of his judicial clerkship than most law clerks. Oh, he got the usual rewards of working closely with a judge, watching attorneys in practice, learning the system.

But he also got a wife.

"I saw the word 'Court' on the building, and I thought it was an instruction," Dahl said. He courted – and then married – the beautiful docket clerk who helped him learn the computerized civil docket system, the former Charity Schofield.

Dahl, a new associate with the Salt Lake City firm of Parsons Behle & Latimer, has spent the last two years as a law clerk to the Honorable Dee Benson, United States District Judge for the District of Utah. He said the experience was worth every minute.

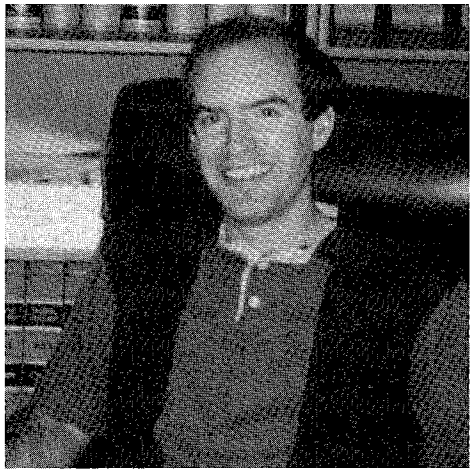
"(University of Utah law professor) Paul Cassell calls it the best job in the Utah legal community," Dahl said. "I think I would have to agree.

"It has everything. You get to work with an intelligent, personable boss. You get substantively involved in interesting issues. You don't have client pressures.

"And, best of all," he added, "you don't have to keep track of how much time you've billed."

Dahl attended Northwestern University, where he studied English and edited an independent newspaper. After working for a year in journalism in Washington, D.C., he attended the University of Utah College of Law, where he graduated in 1993. He then embarked on the clerkship that would change his life.

"I started my clerkship as a single, health-conscious marathon runner," he said, with tongue only slightly in cheek. "By the end of my clerkship, I was a married man who was addicted to Diet Coke



Alex Dahl relaxes between hearings in Judge Dee Benson's chambers

(Judge Benson's drink of choice in chambers) and had a serious aluminum can recycling problem in my office."

Those who have worked closely with Dahl, as well as those who ended up marrying him, said his sense of humor is one-of-a-kind.

"At first I didn't think he had a sense of humor," said former co-clerk John Mackay. "I was surprised to find out after a couple of months he had a *great* sense of humor."

"He's a monologue waiting to happen," said Catherine Hollstein, deputy clerk of the federal district court. "And he does a very good impression of Arnold Schwarzenegger."

"He deadpans a lot," said Charity, "so sometimes his humor goes right over people's heads." Like the time in law school a trial advocacy teacher had to ask, "I took that first comment you made as a joke. Am I right?"

It was that dry, subtle sense of humor that helped win over Charity, who was a little reluctant at first.

"Our first date didn't go that well," she said, without elaboration. Things apparently improved with time, and the ensuing courtship led to an April wedding last year.

Dahl said he was constantly humbled during his clerkship by the magnitude of brainpower of those he worked with – specifically, the judge.

"Sometimes I would work two or three days on a bench memorandum," he said. "Then I would hand it to the judge, and in an hour or two he would know a lot more about the case than I did. He would know exactly what the critical issues were, and would have a mental outline of questions to ask at the hearing.

"And most amazing of all, he could accomplish all that while riding the exercise bike in the Marshal's workout room."

Judge Benson returned the compliment.

"Alex has a very, very good analytical mind," he said. "He is very good with legal issues. I did notice early on, though, that he has the same syndrome as a lot of college students: wait-until-the-last-night-to-study-for-the-exam-itis. But I've got more important things to do than try to remedy every defect I find in my clerks. I figured I'd let the firm that hires him take care of that. And you can quote me on that because I have immunity."

Dahl said working for Judge Benson was a treat in and of itself.

"I'm mad at him for being such a likeable boss," he said. "It makes leaving there that much harder." Besides acquiring legal skills in chambers, Dahl was able to fine-tune his dart game, improve his whiffle ball swing, and learn to hold his own on the ping-pong table, though the consensus in chambers was that his golf putting never really did get any better.

"I'd say overall that's a pretty successful clerkship," said Judge Benson.

"Wouldn't you?"

Hollstein, who has seen Benson clerks come and go, sums it up this way: "Working for Judge Benson is more than just a job, it's a lifestyle."

Dahl has put his acquired knowledge – of the judicial system, that is – into practice as a pro tem small claims judge in Salt Lake City. Charity said it's obvious he learned well during his clerkship.

"He's so conscientious about doing a good job," she said. "He always explains why he made the decision. He stays calm and he's patient, which is good, because the parties sometimes tend to get a little out of hand."

Dahl was born in Chicago, but moved to Salt Lake City at an early age. He attended Highland High School. He is the career "black sheep" of the family, choosing law over medicine in a family of doctors. But that hasn't stopped him from using his inbred medical "expertise" when the situation requires it. He clerked during law school for a firm specializing in medical malpractice defense. ("That's when they let me back in the family," he said.) And he regularly counsels Hollstein about her various maladies, real and imagined. ("He constantly talks me down from my hypochondriacal ledge," she said.)

Friends said he gives good advice. "People come to him a lot," Charity said. "I think they can sense that he likes to interact with others."

Other times, he goes to them.

"He is always on the telephone," said one former co-clerk, who asked not to be identified for "fear of reprisal." "He loves to talk to people."

Perhaps the legal lesson Dahl learned best from his experience in the judicial branch is that less is more. He said he made a concerted effort to simplify his work.

"So much of what we saw in court was overwritten and basically overlitigated," he said. "As a general rule, we received far more information and exhibits than we ever needed to make a reasoned decision."

Dahl said he appreciates the value of a clerkship, especially one in the trial court.

"It was incredible to see the end result of legal problems, to watch trials, to understand how to litigate," he said. "It's so superior to reading out of a book." He sees his clerkship as helping him in everything from litigating cases to drafting documents so they won't end up being litigated.

Finally, Dahl claimed he was most amazed – "startled," really – at how seldom a case is really decided on the basis of case law.

"That needs some explanation," he said. "You just don't often find a case that is directly on point. Some people are so concerned about finding a court anywhere that has held in their direction that they miss the greater opportunity to make a convincing factual argument.

"I found over time that a focused argument could be much more convincing than a case on all fours from the Louisiana state court of appeals."

That court has nothing on Dahl, by all accounts a law clerk with an attitude, and now with a wife, ready to take on the "real world."

CASE SUMMARIES

By Clark R. Nielsen

APPELLATE REVIEW, MARSHALLING EVIDENCE

The Utah Court of Appeals affirmed the trial court's refusal to allocate profits and losses in a partnership dissolution. The sole basis for affirmance was the appellant's failure to comply with the appellate rule to marshal the evidence and support the brief's Statement of Facts with citations to the record. The appellate court will not consider any facts not properly cited to or supported by the record. Appellant's brief sets forth little legal analysis on the issue presented, does not attempt to marshal the evidence and fails to cite to the record.

Phillips v. Hatfield, 275 Utah Adv. Rep. 27 (Ct. App. 10/12/95) (Judge Greenwood, with Judges Orme and Wilkins)

EMPLOYMENT DISCRIMINATION

The failure to establish a prima facie case of employment discrimination was affirmed. Plaintiff had worked as a dispatcher with the Carbon County Sheriff's Office. Her work schedule was changed under a long-standing Sheriff's Department policy while she was on maternity leave. When she returned to work she resigned, claiming her inability to work the new shift. She claimed that she was constructively discharged because of pregnancy discrimination.

On review, the appellate court held that the agency's conclusions of law are accorded no deference and are reviewed for correctness. The court affirmed the determination that the plaintiff was not discriminated against for pregnancy or pregnancy-related conditions. An employee has the initial burden to establish a prima facie showing of an employer's discrimination. Once the prima facie case has been shown, the burden then shifts to the employer, who must articulate a legitimate, nondiscriminatory reason for its conduct. The ultimate burden of persuasion however remains with the employee.

The plaintiff must show that she was a member of a protected class, was terminated because of her pregnant condition and that the employer was motivated by an improper and discriminatory purpose. The plaintiff failed to show that her employer engaged in discriminatory conduct because of her pregnancy or that conduct created an intolerable working condition. The administrative law judge's determination was supported by substantial evidence when viewed as a whole.

Sheikh v. Department of Public Safety, 275 Utah Adv. Rep. 28 (Ct. App. 10/12/95) (Judge Davis, with Judges Billings and Wilkins)

EMPLOYMENT, WRONGFUL DISCHARGE

Without oral argument, the Court of Appeals affirmed summary judgment that plaintiff was an at-will employee and not wrongfully discharged. When employed, plaintiff received the employer's handbook which specifically stated that the handbook was not a contract of employment and that employment was voluntary and could be terminated at any time. The handbook disclaimer was clear and its text prominent and placed conspicuously in the book. The court further concluded as a matter of law that the defendant's progressive discipline policy did not modify the at-will relationship. Plaintiff failed to demonstrate any facts that supported her claim to defeat summary judgment. Also, the claim of intentional infliction of emotional distress was also properly dismissed.

Hamilton v. Parkdale Care Center, 275 Utah Adv. Rep. 32 (Ct. App. 10/12/95) (Judge Billings, with Judges Davis and Wilkins)

CONTRACT, ACCORD & SATISFACTION

The trial court improperly refused to enforce the parties' accord and satisfaction. Accord and satisfaction arise when the parties mutually agree on a substitution of performance different than that required by the original contract. The essential elements of a contract must support an accord and satisfaction: a dispute; a payment (or other performance) tendered in full settlement of the entire dispute; and an acceptance of payment. If the parties believe in good faith there is a disputed claim, settlement of the amount due and acceptance of that amount constitutes the consideration necessary to support a contract for accord and satisfaction contract.

An accord and satisfaction may be rescinded or nullified where there is a mutual mistake as to the bargain giving rise to the accord. The instant case, both parties were unsure as to the amount that remained owed on the contract. They then compromised in good faith, although mistaken as to the amount of the original claim. The accord and satisfaction accurately reflects the intent of the parties at the time and there is no mutual mistake regarding a basic assumption underlying the accord and satisfaction.

England v. Horbach, 275 Utah Adv. Rep. 34 (Ct. App. 10/19/95) (Judge Billings, with Judges Bench and Orme)

LACHES, EQUITY

The equitable doctrine of laches bars the plaintiff's 85 page complaint asserting 20 causes of action over a 35 year period.

The doctrine of laches applies in equity whether or not a statute of limitations may also apply. It also applies when a party unreasonably delays in bringing an action and the defendants are prejudiced thereby. The court cuts through a lengthy and complicated factual scenario to conclude that the plaintiff's failure to demand an account throughout a considerable period of time was unreasonable and unexcused. The court rejects plaintiff's several arguments that the delay was excused or that the defendants were not prejudiced thereby. Plaintiff was not entitled to go back to request an accounting spanning 35 years. When contract obligations are payable by installments, the statute of limitations begins to run only with respect to each installment when it comes due. The court, however, refuses to apply this principle to the instant case because the court finds that because laches bars plaintiff's action, the court need not consider the statute of limitations defenses.

Nilson-Newey & Company v. Utah Resources International, 275 Utah Adv. Rep. 37 (Ct. App. 10/19/95) (Judge Billings, with Judges Greenwood and Jackson)

CIVIL PROCEDURE, STANDING REQUIREMENTS

The plaintiff lacked standing to prevent the issuance of certain designated license plates. Standing is intended to be a flexible concept to preserve the integrity of judicial review by requiring that matters be adequately defined and crystallized so that procedures focus on specific, well defined legal and factual issues.

A plaintiff may show standing by: 1) demonstrating a distinct and palpable injury that gives rise to a personal stake in the outcome; 2) an important public issue is raised, there is no one with a greater interest in the outcome and the issue is unlikely to be raised by another plaintiff; or 3) the case raises issues that are so unique and of such great importance that they ought to be decided in furtherance of public interest.

The court reviews each of the three alternatives to grant standing and concludes that the plaintiff lacks standing in this matter. Consequently, the plaintiff's appeal of an order of the Utah State Tax Commission denying his revocation request was dismissed.

Barnard v. Motor Vehicle Division, 275 Utah Adv. Rep. 47 (Ct. App. 10/19/95) (Judge Wilkins, with Judges Davis and Jackson)

CRIMINAL PROCEDURE, WAIVER OF 5TH AMENDMENT

The trial court erred when it failed to suppress defendant's statements after he had invoked his *Miranda* rights. Defendant was hand-cuffed upon apprehension following a high-speed chase. After the officer informed defendant of his *Miranda* rights, defendant replied that he understood them. Defendant nodded affirmatively when asked if he wanted to talk. The defendant then made incriminating statements in answer to the officer's questions. The court determined that the defendant's nod was equivocal and the officer should have clarified the defendant's intentions. Under *Miranda,* the right to remain silent must be scrupulously honored and the defendant not subjected to further interrogation until after a reasonable amount of time has passed. Upon an equivocal reference to *Miranda* and invocation of rights, all questioning must cease except for those questions designed to clarify defendant's equivocal statement. Nothing more than a simple, straightforward effort to clarify the request is required.

Acknowledgment that defendant understands the rights does not serve as a clarifying statement. When asked if he intended to

waive his rights, defendant replied he didn't know. The court agreed that his equivocal answers should have been clarified before further questioning. To allow self-incrimination after the subsequent equivocal response would frustrate the purpose of *Miranda.* Analyzing *U.S. v. Davis,* 114 Sup. Ct. 2350 (1994), the appeals court concluded it was inapposite because in *Davis* the defendant had voluntarily waived, both orally and in writing.

In dissent, Judge Bench concludes that deference should be given to the trial court's factual determinations. Referring to *Pena,* the dissent argues that the trial court had a measure of discretion to make the determination that the defendant had voluntarily waived his *Miranda* rights under a "totality of the circumstances." The majority responds that even under *Pena* and after giving deference to the trial court's factual determinations that as a matter of law, there was insufficient showing of a waiver under these facts.

State vs. Leyva, 940758-CA (Ct. App. 11/9/95) (Judge Billings, with Judge Orme, Judge Bench dissenting)

CRIMINAL LAW, POSSESSION OF DANGEROUS WEAPON

Without oral argument, the conviction of Danny Rivera for illegal possession of a dangerous weapon was affirmed. The court found sufficient evidence to show probable cause. The defendant was found in constructive possession of a handgun, with sufficient evidence of a nexus between the defendant and the gun to permit an inference that he had both the power and the intent to exercise dominion and control over it.

State v. Danny Rivera, Ut. App., 930154-CA (11/9/95) (Justice Howe, with Judges Bench and Billings)

SALES TAX, ADMIN. LAW

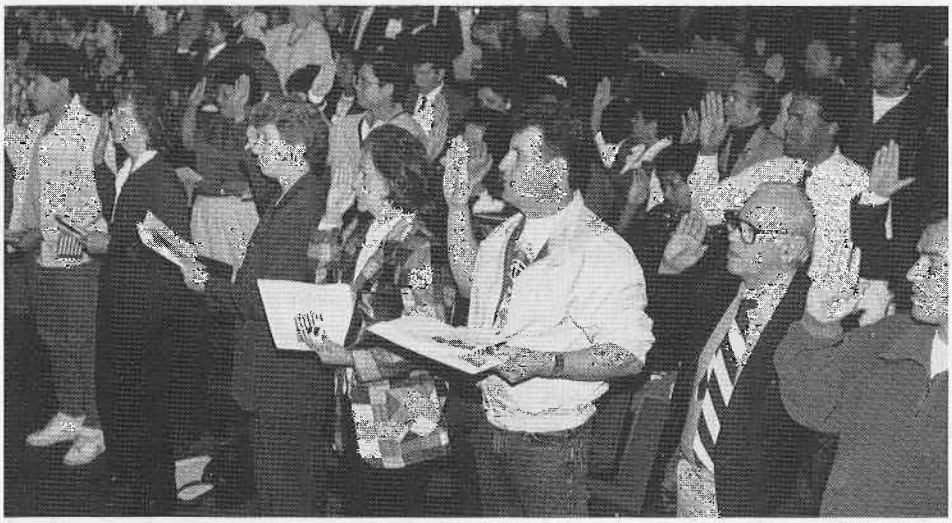
The petitioner purchased raw materials from Utah vendors, using these materials in manufacturing of bathroom products which sell to motels and other commercial ventures outside of Utah. The entire purchase and manufacturing process occurs within the state. The Tax Commission assessed a sales tax deficiency upon the plaintiff's purchase of raw materials. The plaintiff appealed.

Typically, the appellate court will defer to the Tax Commission's findings if supported by substantial evidence. However, the Tax Commission's conclusions of law are reviewed for correctness. Because the raw materials purchased by the petitioner in Utah are incorporated into its fixtures, the Tax Commission properly assessed the petitioner sales tax on the raw material purchases. The final consumer converts that personal property into real property by installation of the fixtures. Because the ultimate disposition of the raw materials is as a fixture, it is properly assessed for sales tax purposes when the raw materials are purchased. Because the products were incorporated into real property, the petitioner is liable for sales tax upon the raw materials.

The court, however, reversed the Tax Commission's assessment of a 10 percent penalty, finding that the petitioner did not act negligently or with intentional disregard of the tax rules. There was no evidence in the record that the petitioner had any knowledge of previous tax assessments.

Vermax of Florida v. Tax Commission, Ut. Ct. App., 950124-CA (11/9/95) (Judge Greenwood, with Judges Bench and Davis)

Catholic Community Services Immigration Program Naturalization Ceremony Held



An Amerasian child, Huong grew up in the frightening war-torn nation of Vietnam. Her Vietnamese mother died, and she never knew her American G.I. father. Her dreams were of finding a safe place for herself and her young brothers. After spending time in a Philippine refugee camp, they relocated to Logan, Utah. Although she spoke no English on arrival, she studied both the language and academics, and was admitted as a student to Utah State University where she is now in her final quarter of family and human development studies. In 1993, she married and two years later took four days away from classes to give birth to a son.

In the fall of 1995, Huong became eligible for U.S. citizenship. With the help of the Catholic Community Services Immigration Program, she filed for, studied for, and passed her naturalization test. On December 19th, at the naturalization ceremony hosted by the CCS Immigration Program and the Immigration and Naturalization Service, Houng joined more than 300 others who all became U.S. citizens. She spoke to the other new admittees about the fulfillment of her own hopes and her belief in the reality of the American Dream. For her, citizenship was the happy ending of a very long and difficult journey.

For the past five years, the Utah Bar Foundation has provided financial assistance to the Immigration Program at Catholic Community Services. This program offers legal assistance to low-income families seeking benefits from the Immigration and Naturalization Service. Focusing on family reunification, family-related deportation defense, and naturalization, the program handles more asylum and family-related cases than any other legal entity in the state.

With grant awards from the Utah Bar Foundation's IOLTA (Interest on Lawyers Trust Accounts) Program, CCS staff members can conduct statewide outreach, assist with intern programs for law students, and provide immigration legal assistance to the poorest of clients. With a staff of eight, four VISTA volunteers, twelve interns and numerous pro bono volunteers recruited through the Bar's Pro Bono Project, the program is able to maintain a very short waiting list and provide much-needed assistance to one of Utah's most underserved populations. Over 12,000 low-income residents received immigration counseling and legal assistance in 1995. The underserved population consists primarily of U.S. residents and U.S. Citizens attempting to find their way through the maze of immigration laws.

Through statewide outreach, the program has been able to work with VISTA (Volunteers in Service to America) to develop a naturalization initiative. The VISTA outreach networks with local schools, churches, government programs and non-profits. It provides volunteer training and workshops for immigrants ready to seek U.S. citizenship. Workshops were held this past fall in Ogden, Logan, Ephraim, Blanding, Moab, St. George, Cedar City, Provo and Tremonton.

UTAH STATE BAR CLE DEPARTMENT

Policies & Procedures for Seminar Registration & Cancellation

As a result of recent difficulties with registration and cancellation for Utah State Bar seminars, the CLE Department has implemented some new policies and procedures effective January 1, 1996. If you have any questions, please contact Monica Jergensen, CLE Administrator, at (801) 531-9095. Thank you for your cooperation and continued support of our programs.

REGISTRATION

- ☞ You may register by mail, fax, or hand-delivery up to 48 hours prior to the seminar date, by using the registration form in the Bar Journal, or the form provided for you in seminar brochures. In order for your registration to be guaranteed, you need to include your payment. Fax registrations should include a credit card number. Telephone registrations will also be accepted up to 48 hours in advance of the seminar date, but need to be guaranteed with a credit card. Unfortunately, you cannot be considered registered if we have not received your payment.

- ☞ We are unable to accept registrations the day before the seminar date. This includes telephone, fax and hand-delivered registrations. Items, such as program materials, food and beverage and room set-up must be guaranteed 48 hours prior to the seminar date.

- ☞ You may register at the door if space is available. If you have not pre-registered, you may call the day before the seminar to confirm that there have been no changes to the seminar schedule. Door registrations will be taken on a first-come, first-served basis. Please check in at the registration table to put your name on a waiting list. When it has been determined that there is space available, your name will be called in the order you arrived.

- ☞ In the event that registration is made without payment, and you do not attend the seminar or cancel, you will be billed for the amount of the registration fee.

CANCELLATION

- ☞ Cancellations must be confirmed by letter at least 48 hours prior to the seminar date. If cancellation is made within the time period, the registration fee, minus a *$20 nonrefundable fee,* will be returned to the registrant. No refunds will be given for cancellations made after that time. (The $20 nonrefundable fee goes toward expenses – printing of materials, food/beverage, room rental, etc. – that have already been incurred on your behalf.)

- ☞ Cancellations for New Lawyer CLE courses must be confirmed by letter at least 48 hours prior to the seminar date. If cancellation is made within the time period, the registration fee minus a *$10 nonrefundable fee* will be returned to the registrant. No refunds will be given for cancellations made after that time. (The $10 nonrefundable fee goes toward expenses – printing of materials, food/beverage, room rental, etc. – that have already been incurred on your behalf.)

- ☞ We understand that your schedule may unexpectedly change the day before a seminar. If so, you will be given a free rental of the seminar video tape and a set of the seminar materials. We are unable to offer refunds or transfers of the registration fee to other Utah State Bar CLE courses.

- ☞ In the event that you have paid for a seminar, but do not attend or cancel, your registration fee cannot be refunded. No transfer of registration fees will be made to other Utah State Bar CLE courses or video tape rentals.

CLE CALENDAR

NLCLE WORKSHOP: CIVIL LITIGATION – POST TRIAL AND COLLECTION OF JUDGMENTS

Date: Thursday, January 18, 1996
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division
$60.00 for all others
CLE Credit: 3 hours

ALI-ABA SATELLITE SEMINAR: THE CLEAN WATER ACT

Date: Thursday, January 18, 1996
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 hours

FINANCIAL MANAGEMENT FOR YOUR LAW OFFICE

Date: Wednesday, January 24, 1996
Time: 4:00 p.m. to 7:00 p.m.
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: 3 hours

NLCLE MANDATORY SEMINAR

For those attorneys admitted in May or October of 1995.

Date: Friday, January 26, 1996
Time: To be determined
Place: Utah Law & Justice Center
Fee: $30.00
CLE Credit: This counts as ETHICS credit for New Lawyers

ALI-ABA SATELLITE SEMINAR: A BEGINNER'S GUIDE TO SECURED TRANSACTIONS

Date: Friday, January 25, 1996
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 (To register, please call 1-800-CLE NEWS)
CLE Credit: 4 hours

LAW OFFICE TECHNOLOGY UPDATE: BASIC SYSTEMS AND PRACTICAL APPLICATIONS

Date: Thursday, February 8, 1996
Time: 4:00 p.m. to 7:00 p.m.
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: 3 hours

ALI-ABA SATELLITE SEMINAR: CLEANING UP THE URBAN ENVIRONMENT

Date: Thursday, February 8, 1996
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 hours

MEDIA AND THE LAW

Date: Friday, February 9, 1996
Time: 9:00 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: ~3 hours

NLCLE WORKSHOP: BASICS OF BANKRUPTCY

Date: Thursday, February 15, 1996
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $30 for members of the Young Lawyers Division
$60 for all others
CLE Credit: 3 hours

ALI-ABA SATELLITE SEMINAR: SECURITIES ARBITRATION – UNDERSTANDING THE BASICS

Date: Thursday, February 15, 1996
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 6 hours

Seminar fees and times are subject to change. Please watch your mail for brochures and mailings on these and other upcoming seminars for final information. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Administrator, 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

_____

Credit Card Billing 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

RATES & DEADLINES

Utah Bar Member Rates: 1-50 words — $20.00 / 51-100 words — $35.00. Confidential box is $10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please contact (801) 531-9077.

Classified Advertising Policy: No commercial advertising is allowed in the classified advertising section of the Journal. For display advertising rates and information, please call (801) 532-4949. It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification or discrimination based on color, handicap, religion, sex, national origin or age.

Utah Bar Journal and the Utah State Bar Association do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

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.

POSITIONS SOUGHT

Contract Work: General practitioner seeks contract work – reasonable rates. Call (801) 596-0529, ask for Jay.

ATTORNEY: Former Assistant Bar Counsel. Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Call Nayer H. Honarvar, **LAHERTY & ASSOCIATES,** 9 Exchange Place, Suite 400, Salt Lake City, UT 84111, Telephone (801) 583-0206 or (801) 359-8003.

Solo practitioner admitted in UT seeks **contract or project work** in the areas of: Corporate and Partnership Taxation, Partnership or Corporation to LLC conversions, Trusts, Estate Planning (including Gift, Estate, and GST Taxation), Planned Giving or Qualified Plans. **$25.00 per hour** or flat rate. Call Ken @ (801) 355-1345.

OFFICE SPACE / SHARING

Prime office sharing space available for one attorney with established firm. Excellent downtown location, close to courthouse. Complete facilities, including conference room, reception area, telephone, fax, copier. Please call (801) 532-7858.

Downtown Law Offices available for up to two attorneys. Great location near court buildings, restaurants, fed-ex office, post office. Private suite includes conference room, reception area, library. Complete office equipment available. Desks furnished. Covered and uncovered parking next to building. Receptionist and secretarial services available. (801) 364-5600.

Choice office space for rent in beautiful, historic building in Ogden, Utah. Several offices available. For information, please contact (801) 621-1384.

Share elegant, furnished downtown office. Available 4 days a week, $15.00 per day. 201 Main – Contact Barbara Taylor @ (801) 581-1687.

Private office for one attorney. Receptionist/secretary, fax, phones, copier shared, free parking. Possible overflow work. Excellent freeway access, 20 minutes to downtown. Contact (801) 278-0700.

BOOKS FOR SALE

Extensive law library of S. V. Litizzette, deceased, for sale. If interested, call or write Edith Litizzette, 26 So. Main, Helper, UT 84526. Telephone: (801) 472-5463.

SERVICES

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

WANTED: Referral Attorneys by the foremost national administrator of prepaid legal plans to participate in a statewide attorney referral network. **NO COST** to participate. All areas of law needed. Also, need bilingual Spanish/English. Call **CALDWELL LEGAL, U.S.A.,** toll-free @ 1-800-222-3035 to register for more information.

CERTIFICATE OF COMPLIANCE

For Years 19_____ and 19_____

Utah State Board of
Continuing Legal Education
Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX (801) 531-0660

Name:_____ Utah State Bar Number:_____

Address:_____ Telephone Number:_____

Professional Responsibility and Ethics **Required: a minimum of three (3) hours**

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

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

Continuing Legal Education **Required: a minimum of twenty-four (24) hours**

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

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

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

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

IF YOU HAVE MORE PROGRAM ENTRIES, COPY THIS FORM AND ATTACH AN EXTRA PAGE

**EXPLANATION OF TYPE OF ACTIVITY

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

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

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

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

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

Regulation 8-101 — Each attorney required to file a statement of compliance pursuant to these regulations shall pay a filing fee of $5.00 at the time of filing the statement with the Board.

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

DATE:_____ **SIGNATURE:** _____

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

The Park City Bar Association Presents

THE SECOND ANNUAL
CHIEF JUSTICE'S ETHICS SYMPOSIUM
Harmonizing Professional Obligations and Personal Ethics: Is It Possible?

March 15, 1996
The Bald Mountain Room at Silver Lake Lodge, Deer Valley

Chair:
HON. MICHAEL D. ZIMMERMAN
Chief Justice
Utah Supreme Court

Keynote Speaker:
LAWRENCE J. FOX, ESQ.
Chair, ABA Litigation Section
Member, ABA Standing Committee on Ethics

8:30 a.m.	**REGISTRATION**
8:45 - 11:30 a.m.	**KEYNOTE ADDRESS**
	PANEL DISCUSSION

RICHARD D. BURBIDGE, ESQ., Burbidge & Mitchell
THOMAS R. KARRENBERG, ESQ., Anderson & Karrenberg
KATHRYN H. SNEDAKER, ESQ., Van Cott, Bagley, Cornwall & McCarthy
MARY ANNE Q. WOOD, ESQ., Wood, Quinn & Crapo

11:30 a.m. - 4:00 p.m. **LUNCH AND SKIING**

4:00 P.M. APRÈS SKI SOCIAL WITH JUSTICE ZIMMERMAN, MR. FOX, AND PANEL MEMBERS

3 HOURS' ETHICS CLE CREDIT

REGISTRATION

Seating Limited to the First 200 Paid Registrants ✻✻ Breakfast, Lunch, Lift Ticket and Social Included

_____ **Park City Bar Association Members @ $100**
_____ **Non-members @ $125**

Total Registration: _____

Name _____
Address _____
_____
Telephone: _____

Others from firm who will attend:
_____
_____
_____

To reserve a space, call Jean Herndon at (801) 649-1244, Ext. 304; or fax registration form to Jean Herndon at (801) 649-9848. PAYMENT DUE WITHIN FIVE BUSINESS DAYS OF RESERVATION. Make check payable to Park City Bar Association, and mail with registration form to:

Wendy A. Faber, Esq., CLE Director
Park City Bar Association
P.O. Box 3744
Park City, Utah 84060

Cancellation:
By January 31, 80% Refund **By February 29, 50% Refund** **March 1 or after, No Refund**

If you need special accommodations, please contact Wendy Faber at (801) 649-1244, Ext. 309.

✻✻✻

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

REG CR 43 ETHICS CR 7.5
MR. WILLIAM HOLYOAK
201 SOUTH MAIN STREET
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SALT LAKE CITY UT 84145