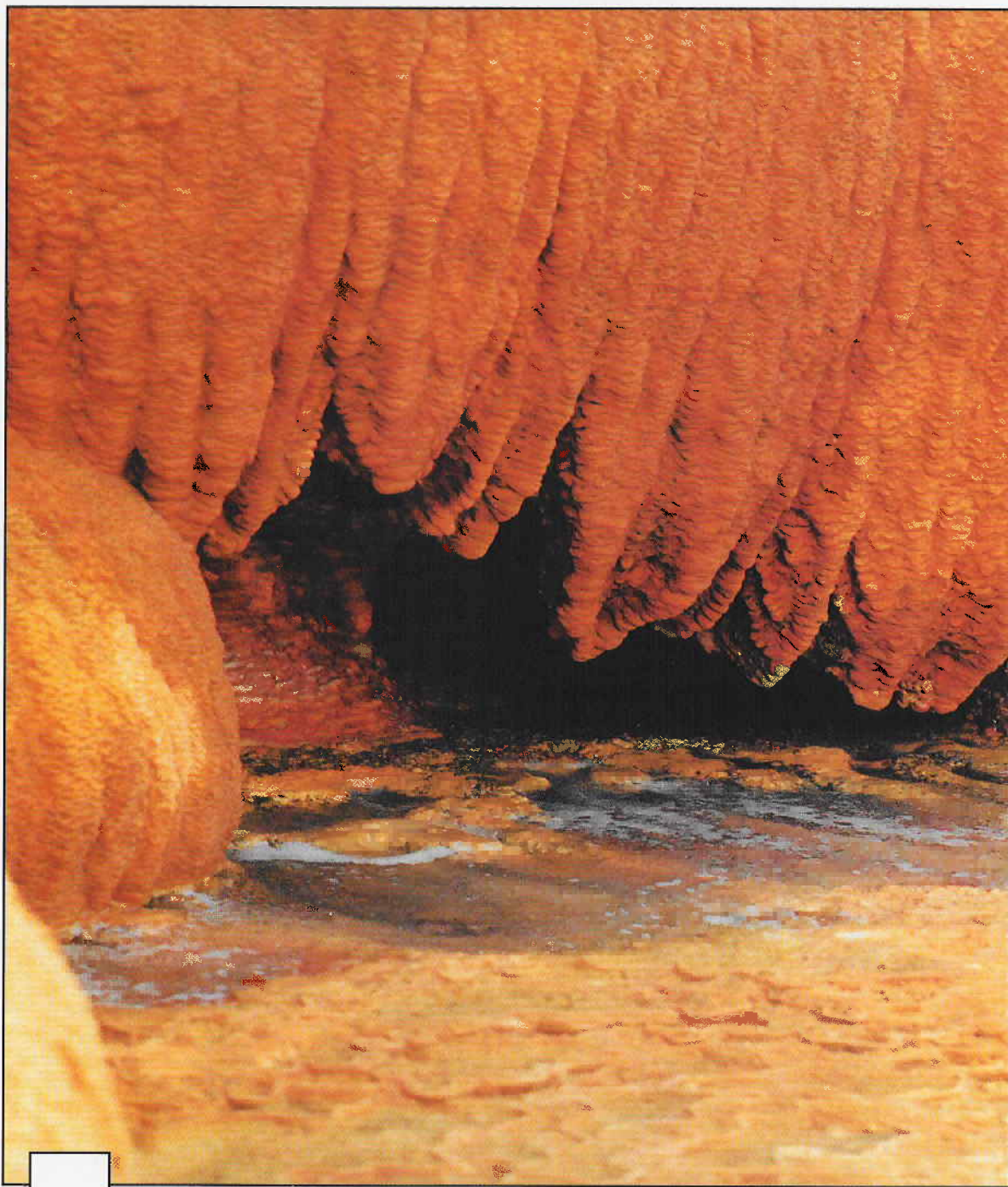


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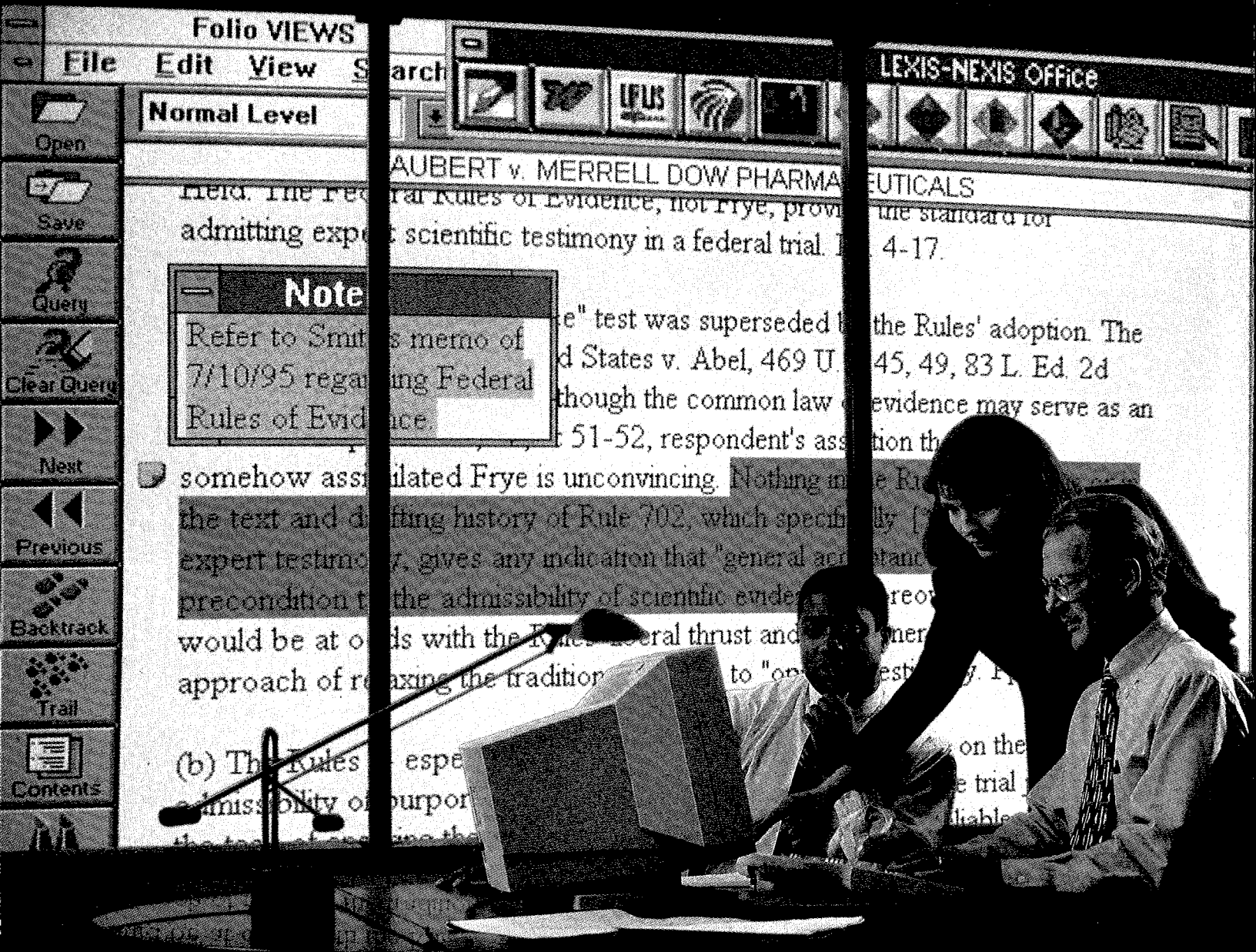
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COVER: Crystal Geyser, Green River, Utah, by Reid Tateoka, Esq., Salt Lake City, Utah

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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LETTERS

Dear Editor:

I've never written to Ann Landers and I've never written a letter to the *Utah Bar Journal*. But, I just read Charlotte L. Miller's excellent article in the February issue and felt compelled to waste your time remarking on something.

Did you happen to notice that my buddy Charlotte's (I hope I can call her my buddy

Charlotte, now that my initial reference was respectful) picture was smaller than those of the male authors? Betsy L. Ross's picture was also slightly smaller. If you don't believe me -- look!

Is there something about women not wearing ties which causes their pictures to be cut off at the neck? Think about it.

I'm glad I got this off my chest -- just another one of those innocent but slighting

occurrences we should be sensitive to.

Sincerely,
Cynthia J. Crass

P.S. For those who are fuming, it's a joke. Read the article, particularly the SENSE OF HUMOR sections.

Special Institute on Natural Resources & Environmental Litigation

Denver, Colorado
May 16-17, 1996

Numerous state and federal regulations and laws are impacting natural resources, real property development, and the environment. The evolving litigation resulting from these laws and regulations has resulted in a variety of substantive and procedural changes for many legal practitioners, for administrative agencies, and for courts.

Because of the increasing demand for knowledge and skills in this specialized area, the Rocky Mountain Mineral Law Foundation is sponsoring a two-day program at the Hyatt Regency in Denver on Natural Resources and Environmental Litigation.

The Institute comprises a mixture of presentations designed for practitioners who are not litigation specialists, new and veteran trial lawyers, government attorneys, and paralegals. The program, together with the written materials, will provide an invaluable resource for anyone working in the area of natural resources and environmental litigation. This will be an excellent opportunity to learn from and interact with a group of experts in this field.

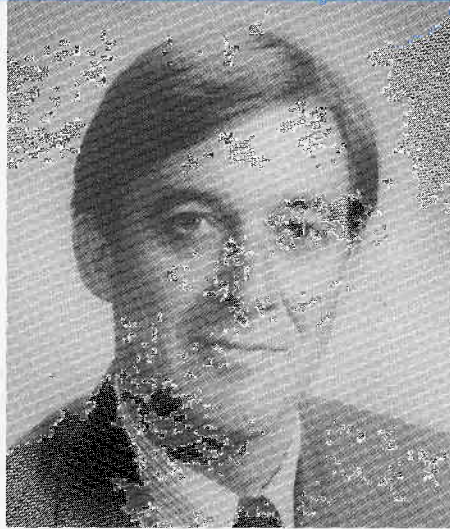
West Publishing to Join Thomson in \$3.425 Billion Transaction

Combination Uniquely Meets Lawyer's
Needs for Fully Integrated Legal Research
Products and Services

STAMFORD, CT and EGAN, MN, February 26, 1996 -- The Thomson Corporation (TSE:TOC), one of the world's foremost providers of information to professional markets, and West Publishing Company, the preeminent U.S. legal publisher, today announced an agreement for West to join Thomson. The shareholders of privately held West will receive \$3.425 billion in cash.

Founded in 1872, West is best known for its WESTLAW® on-line research service and its database of editorially enhanced "primary law," including statutes, cases, codes and regulations. West serves law firms, corporate counsel, the judiciary, the government, academia, libraries, law students, accountants and other professionals through three media formats: print, CD-ROM and on-line (through WESTLAW®). Revenues were in excess of \$825 million and operating profits were over \$200 million in the year ending July 31, 1995. West has approximately 7,000 employees.

Thomson is also a leading legal publisher, best known for its "secondary law" products which provide added editorial value by organizing and analyzing primary sources. Thomson Legal Publishing (TLP), headquartered in Rochester, New York, includes such respected names as Lawyers Cooperative, Clark Boardman Callaghan, Bancroft-Whitney, Barclays and Counterpoint Publishing. TLP has over 3,000 employees and is part of Thompson's worldwide legal and regulatory publishing activities which produce total annual revenues in excess of \$800 million.



Youth Education Project 1996

By Dennis V. Haslam

As part of our Youth Education Project for 1996, we have set a goal of having a member of the Utah State Bar give a speech, or teach a class, in every high school in the state. With the assistance of the Law-Related Education Committee we have prepared teaching materials on a variety of subjects designed to educate our youth on issues surrounding law in our society and the administration of justice.

The Bar's Needs of Children Committee, in conjunction with Utah Children, has written a book entitled *Rights Responsibilities Relationships – Your Rights as a Young Person in Utah*. We intend to deliver a copy of this book to each student who attends a classroom discussion or speech that is sponsored by the Utah State Bar. *Rights Responsibilities and Relationships* is an excellent handbook for teaching our youth about the law. It describes a student's

rights in the community and the differences between adult decision making and age-based rights, employment, handling money, drivers licenses and curfews. It discusses emancipation, medical treatment and the various forms of discrimination in our society.

It prepares our youth for discussions on parental rights and responsibilities, divorce and separation, child abuse and protection, adoption and guardianship. It explains the public policy behind compulsory education, the right to an individual educational program, school fees and waivers.

This book describes principles of free speech. It explains a student's rights in juvenile and family court settings, the importance of the Constitution and the right to an attorney. There are extensive listings of public agencies and organizations available to assist high school students in need, including The Family Support Center, Network Against Child Abuse, Salt Lake

County Youth Services Center, Utah Children, the Children's Justice Center and the Salt Lake County Commission on Youth.

We hope by Law Day (May 1) of this year to say that there was a lawyer from the Utah State Bar in each high school in the state of Utah teaching about the law of the land and the administration of justice. These types of activities will go farther to improve the image of lawyers in Utah than hiring public relations experts and spending thousands of dollars to otherwise improve the image of our profession.

If you are interested in volunteering to teach a class in your neighborhood high school or elsewhere, please send me a note at the Utah Law and Justice Center.



Praise For A Splendid Anthology

By D. Frank Wilkins

William Safire's *Lend Me Your Ears – Great Speeches in History* is not hot off the press; it was published in 1992. Still, I must commend this treasure trove to those of you not acquainted with it for wonderful, delightful, and illuminating reading.

Safire was earlier a speech writer for President Nixon and then later a political columnist and scholar of language. His comments on political matters invoke, at times, fiery response. But, that's not for our concern or reply here. Our focus is rather on this anthology where some two hundred speeches, from olden to modern days, capture our attention and provide us usually with uplift, and at times, draw us to the high ground of the beauty of words.

There are patriotic, war, trial, farewell, political, inspirational, and media speeches – as well as eulogies, debates, sermons, lectures, commencement addresses, and talks on social responsibility.

Let's look at a few of the famous, and not-so-famous, gems from these speeches:

Jefferson Davis, who became President of the Southern Confederacy during the American Civil War, bade farewell, as a Senator from Mississippi, to the U. S. Senate in 1861, by saying:

"I see now around me some with

whom I have served long; there have been many points of collision; but whatever of offense there has been to me, I leave here; I carry with me no hostile remembrance. Whatever offense I have given . . . I have, Senators, in this hour of parting, to offer you my apology for any pain . . . I have inflicted."

President Abraham Lincoln wants to heal the nation's wounds in his Second Inaugural address on March 4, 1865, just weeks before the Civil War's end, and his own assassination:

"On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it; all sought to avert it . . . Both parties deprecated war, but one of them would *make* war rather than let the nation survive, and the other would *accept* war rather than let it perish, and the war came . . ." (emphasis in original)

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his

orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

President Calvin Coolidge said, when he became a state Senator from Massachusetts in 1914:

"Do the day's work. If it be to protect the rights of the weak, whoever objects, do it. If it be to help a powerful corporation better to serve the people, whatever the opposition, do that . . . Don't expect to build up the weak by pulling down the strong."

Philosopher Ralph Waldo Emerson eulogizes, in 1859, the poetry of Scotsman Robert Burns:

". . . as he was thus the poet of the poor, anxious, cheerful, working humanity, so had he the language of the low life . . . (He used) artless words, better than art . . . Burns knew how to take from . . . the speech of the market and street, and clothe it with melody . . ."

India's Prime Minister Nehru pays tribute to Mahatma Gandhi, after his assassination, in 1948:

"He is gone, and all over India there is a feeling of having been left desolate and forlorn . . . And yet . . . there is also a feeling of proud thank-

fulness that it has been given to us . . . to be associated with this mighty person. In ages to come . . . people will think of this generation when this man of God trod on earth, and will think of us who . . . tread the holy ground where his feet had been . . ."

Writer and Holocaust Witness Elie Wiesel urges President Reagan, in 1985, not to visit the cemetery in Bitburg, Germany, as some of Hitler's Waffen SS soldiers, who had been infamously anti-semitic, were buried there:

"I am convinced . . . that you were not aware of the presence of SS graves in the Bitburg cemetery. Of course you didn't know. But . . ."

(m)ay I, Mr. President . . . implore you to find another way, another site? That place, Mr. President, is not your place. Your place is with the victims of the SS . . . The issue here is . . . (about) good and evil . . . I know . . . that you (and I) seek reconciliation with the German people. I do not believe in collective guilt . . . Only the killers were guilty. Their sons and daughters are not . . ."

The selections here are only a smattering from this precious anthology, but they show that language need not be threadbare and dull and without content. This volume would enrich the bookshelf of any lawyer.

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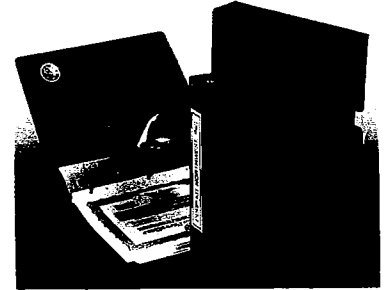
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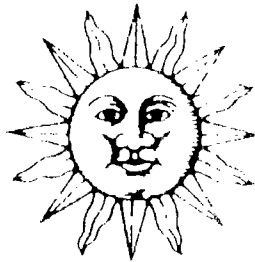
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Hope to see you there!



Sun Valley

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Call Phyllis Vetter at (801) 237-0271.

Charitable Remainder Trusts

By L. S. McCullough

I. WHY USE CHARITABLE REMAINDER TRUSTS?

In recent years charitable remainder trusts (CRT) have become very popular planning tools particularly for persons who have highly appreciated assets and who desire to sell those assets, avoid the immediate impact of a large capital gain on the sale of the assets, and still retain the income generated by the assets.

Basically, a CRT is a specialized trust governed by Internal Revenue Code (IRC) § 664 that can provide at least one, if not more, of the following seven benefits for the creator of the CRT:

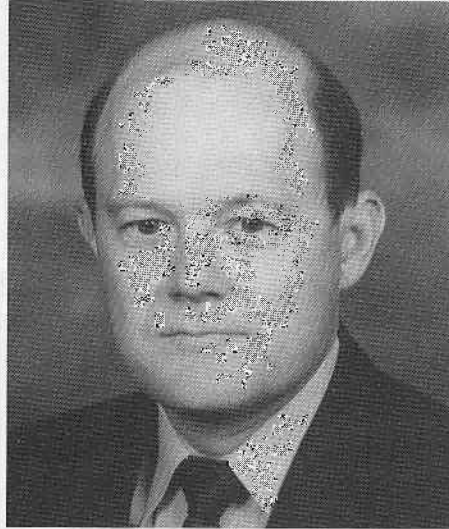
A. Charitable Income Tax Deduction.

When a person (Donor) creates a CRT and contributes assets, the Donor receives a charitable income tax deduction which can be used to offset income tax. The amount of the charitable income tax deduction depends on the age of the Donor, the total value of the assets being contributed to the CRT, and how much money is to be distributed to the Donor during his or her life versus how much will actually end up going to charity after the Donor dies.

B. Defer Payment of Tax on The Sale of Appreciated Assets. The CRT defers the payment of income tax on the sale of appreciated assets which are contributed. A CRT may not make sense for someone who wants to contribute assets which have a high tax base, since there would be little or no tax on the sale of the assets. The CRT is basically a way to get installment treatment on the sale of appreciated assets, while at the same time retaining some control over the full sales price and avoiding the immediate tax on the sale of the appreciated assets.

C. Avoid Estate Tax. Upon the death of the Donor the remaining assets in the CRT go to charity and are not included in the Donor's estate for federal estate tax purposes.

D. Asset Protection. Assuming a CRT is established for non asset protection pur-



L.S. (LEE) McCULLOUGH received his law degree from the University of Utah in 1973 and was admitted to the Utah State Bar. Lee is a Fellow in the American College of Trust and Estate Counsel, a member of the Mountain States Pension Conference, the Utah State Bar, the American Bar Association, the Utah State Bar Tax Section, the American Bar Association Tax Section. He is a past member of the Advisory Counsel on Employee Welfare and Pension Benefit Plans for the U.S. Department of Labor, having been appointed to said Board by former President Reagan. He is President of the law firm Callister Nebeker & McCullough, which law firm specializes in banking, corporate, tax and commercial law. Lee's areas of practice include tax, pension, estate and asset protection planning. He is a past Chairman of the Board of a federal savings and loan association, having been appointed to this position by the Federal Deposit Insurance Corporation (FDIC), and he is a member of the Board of Trustees of various college and hospital foundations. Lee presently serves as the Assistant Editor for the Utah Bar Journal. Lee has written many articles for publication in professional journals on the subject of tax planning, some of the articles have been published in the Utah Bar Journal, Utah college monthly magazines and trade association journals. Lee has lectured around the country on the subject of tax planning to professional and trade associations such as The American Institute of Certified Public Accountants, The Utah Association of Certified Public Accountants, The Phillip Heckerling Institute, real estate associations, and other trade associations.

poses and at a time when a fraudulent conveyance does not occur, creditors of the Donor cannot attach the assets of the CRT. Creditors may be able to attach the income stream distributed by the CRT to the Donor.

E. Increase Cash Flow on the Sale of Appreciated Assets. The advantage of using a CRT over the Donor outright selling highly appreciated assets is that the Donor's cash flow will be larger using a CRT since 100% of the appreciated assets can be reinvested after the sale and used to generate a stream of income for the Donor. Without the CRT, 35% or more of the appreciation in the assets would have gone to taxes and the Donor would be left with only 65% from which to generate an income stream.

F. Private Retirement Plan. Some clients will use a CRT as a private retirement plan. Clients contribute highly appreciated assets in the CRT and design the CRT to pay an income stream to them for their life in the form of an annuity, thus guaranteeing a life income.

G. Leveraged Gifts. CRTs can also be used as a method to make leveraged gifts. This is done by the Donor creating a CRT, taking back an income interest for himself for a pre-determined period of time, and thereafter allowing the income interest to be paid to their children for the children's lives. After the children die, the balance goes to charity. If a CRT is created carefully the Donor may be able to transfer a substantial income stream to the children at a very nominal present gift tax value. One I recently prepared permitted a 71 year old lady to transfer to her children an income stream worth \$492,000 for a gift tax value of only \$100,000 while at the same time generating to the Donor a charitable deduction of \$130,000. This is a nice way of leveraging gift values to transfer more to the children at smaller gift tax rates.

II. TAX CONSEQUENCES:

When a Donor creates a CRT, the

Donor receives a charitable income tax deduction for only a portion of the amount contributed to the CRT. IRC § 170(b).

Income earned by the CRT on investment assets held in the CRT is exempt from income tax. IRC § 664(c).

All monies distributed from a CRT to a non-charitable beneficiary are taxed based on a tier system with ordinary income coming out first; undistributed capital gains, second; tax free income, third; and basis fourth.

Whenever a Donor gives a portion of the interest of the CRT to the Donor's spouse the gift to the spouse qualifies for the unlimited marital deduction and is not subject to gift tax. IRC Code § 2056 (g).

The Internal Revenue Code allows CRTs to make payments to non-charitable beneficiaries either for a term of years not exceeding twenty years, or for the life of a beneficiary living at the time of the creation of the CRT. IRC § 664(d)(2)(A).

III. TYPES OF CRTS:

There are two main types of CRTs, an annuity trust and a uni-trust. Annuity trusts require payments from the annuity trust CRT be at least 5% of the fair market value of the property contributed at the time of contribution. In the annuity trust the payment is the same each year and is the fixed percent set forth in the CRT multiplied by the fair market value of the contributed assets as of the date of contribution. No additional contributions can be made to an annuity trust.

By way of example, if a Donor contributes \$1 million to an annuity CRT and designs the annuity trust to pay out 10% per year then the Donor would receive \$100,000 per year for his or her life or until the annuity trust became depleted.

In a CRT uni-trust, a fixed percent of the fair market value is paid out each year, but the amount paid out will change each year depending on the fair market value of the assets held in the uni-trust. Each year assets must be valued and the payout amount redetermined. Additional contributions can be made to a uni-trust.

In a uni-trust if the Donor contributes \$1 million and designs the CRT to pay out 10% per year, the Donor would take out \$100,000 the first year, but each year thereafter the amount the Donor would receive would depend on the fair market value of the assets. If the CRT is able to

invest the assets so they grow at an amount greater than 10%, then the amount the Donor receives each year would grow. And conversely, if the assets are invested so that they produce a return of less than 10% per year, then the amount the Donor would receive from the CRT will decrease.

There are two variations of a CRT uni-trust. One is the fixed payout per year, i.e. 10% per year of the fair market value. The other is what is known as the "net income only" uni-trust. In a net income only uni-trust only income earned by the uni-trust is available for distribution, and if the uni-trust earns no income then no payment is made.

On termination of the Donor's right to receive payments from the CRT, all the remaining assets in the CRT must be paid to a charity as described in IRC § 170(c), § 2055(a) and § 2522(a). This means the remaining assets in the CRT after the Donor's right to receive payments have ended, must be paid to charity, either a public charity or a foundation.

"Cash and marketable securities . . . are the most common assets contributed to a CRT."

Additional requirements for CRTs are the following:

1. The Donor may only receive the amount specified in the CRT trust document.
2. The CRT must have at least one living and ascertainable beneficiary when it is created.
3. If the Donor of the CRT wants a charitable deduction based upon fair market value of the assets contributed, the charitable beneficiary provisions must provide that the ultimate charity must be a public charity or an operating foundation; not a non-operating foundation.
4. Annuity CRTs may not receive additional contributions after they are initially funded. Uni-trust CRTs may receive continuing contributions.
5. The CRT cannot contain language that restrains the trustee from investing in a way that realizes yearly income or gain.
6. The CRT may permit distributions to be made to the ultimate charity even before the Donor's payments have terminated.

7. The CRT may never be liable for payment of estate taxes of the Donor or anyone else.

8. CRTs are subject to most of the private foundation restrictions including the self dealing rules under IRC § 4941. This means the assets in the CRT must always be invested in an arms-length manner and the Donor may not borrow money from the CRT or use the assets of the CRT for personal benefit, other than the payment of the income stream to the Donor.

9. For annuity trust CRTs, the annuity trust must have a greater than 5% probability the assets will not be fully exhausted by the annual payment. This is to ensure the charity receives a distribution on termination of the lifetime interest. If the trust fails the 5% test, the CRT will not qualify as a CRT.

10. The Donor of a CRT may retain the power to revoke or stop payments to non-charitable beneficiaries.

11. The Donor may reserve the right to amend the designation of the charitable beneficiary.

12. The Donor of a CRT can permit the interest of a spouse who remarries to cease, to continue to be paid to the spouse or to be paid directly to charity.

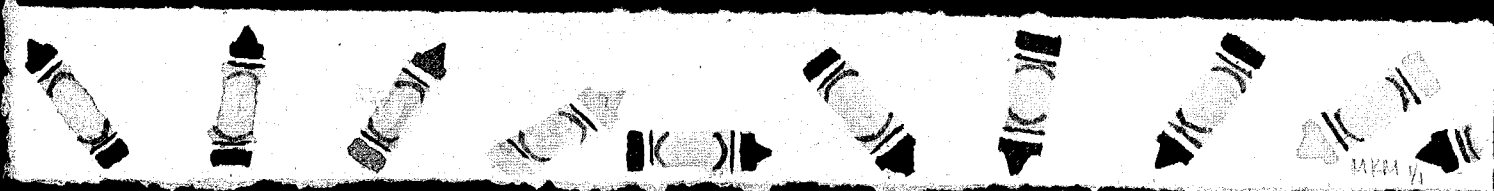
13. The Donor may be a trustee of the CRT. If a Donor desires to be the trustee, the grantor trust rules must be avoided. The grantor trust rules provide if a Donor reserves too many discretionary rights and powers over the CRT, such as determining when to pay income, the Donor may be treated as the owner of the assets in the CRT and all of the tax benefits of the CRT will fail.

14. A non individual (a partnership or a corporation) can be a beneficiary of a CRT as long as the CRT does not last longer than twenty years.

IV. TYPES OF ASSETS THAT MAY BE CONTRIBUTED TO A CRT:

Cash and marketable securities (publicly traded securities) are the most common assets contributed to a CRT. Real estate is a candidate for a CRT, particularly if it is highly appreciated real estate. However, if mortgaged real estate is contributed to a CRT, the CRT assumes the payments, and the Donor remains liable on the mortgage, the IRS takes the position the CRT is a grantor trust and no tax benefits are

continued on pg 43



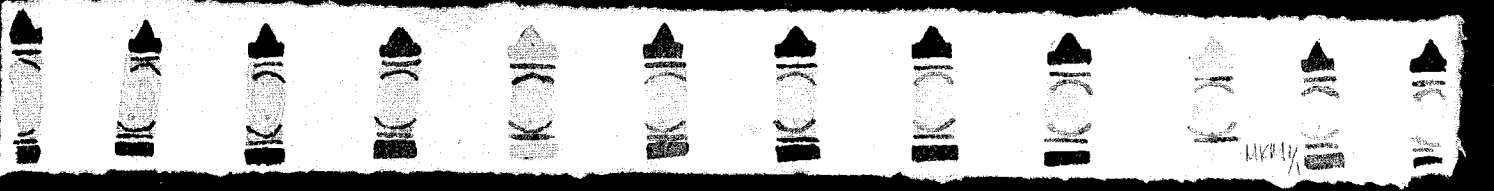
April 29, 1987

Dear Mr. Zimmerman,

Thank you for letting us come
to the Supreme Court. Why
do you argue instead of talk it
out?

Sincerely,

Jeremiah J. Perry



Alternative Dispute Resolution and the Utah Courts

By Chief Justice Zimmerman

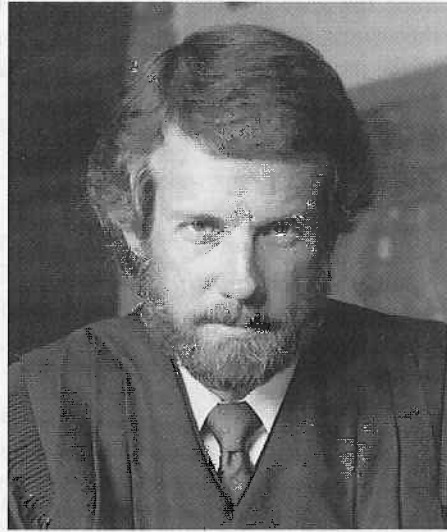
Editor's Note: The following is a speech given by Chief Justice Michael D. Zimmerman at the Court-Annexed ADR Program's annual training of mediators and arbitrators on January 25, 1996. Although not addressed to the Utah Bar at large, the speech contains the ideas about Chief Justice Zimmerman's view of alternative dispute resolution as it relates to the legal profession, and may be of interest to many lawyers.

Welcome. I am pleased to see all of you here today. As a strong supporter of alternative dispute resolution, and particularly mediation, I am glad to see so many here who are interested in our court-annexed program.

I have been asked to open today's session by giving you my thoughts about the place of alternative dispute resolution within the court system. To put it simply, I see alternative dispute resolution, particularly mediation, as a strong critique of the traditional adversary system. It is a critique of the courts' and the legal profession's narrow focus on litigation as the way to resolve conflicts. And the force of this critique is something we all should have seen coming. To make this point, let me tell you a brief story.

When I first joined the Supreme Court, I was often asked to speak to groups of school children who came through the Capitol. I would take them into the courtroom, show them the bench, and describe how we conducted the court sessions. After one of these encounters with a third grade class, I received a packet of thank you letters from the students, written in pencil on that wide-lined paper we all used when first learning to write. One of these letters so struck me that I had it framed. It still hangs in a prominent place in my office. That letter reads, in full:

"Dear Mr. Zimmerman,



Thank you for letting us come to the Supreme Court. Why do you argue instead of talk it out."

Sincerely,
Jeremiah J. Perry"

It seems to me that Jeremiah captured the essence of the question that ADR addresses – why do we have to resort to winner-take-all litigation, where others impose their solutions upon us, instead of crafting our own? To me, that is what we are all here about today.

I want you to know that the Court-Annexed ADR Program is important to the judiciary, and to me. I was a member of the Judicial Council's alternative dispute resolution task force, formed in 1986 to study the feasibility of implementing ADR in the Utah courts. That task force was chaired by Judge Douglas L. Cornaby, and included Judge Michael Murphy, Judge Franklyn B. Matheson, Judge Tyrone Medley, Professor John K. Morris, and Barbara K. Polich, Esq. We studied for two years and found much to like. We even went to the University of Arizona and spent three days in an ADR training program. In the end, we recommended selective implementation of ADR in

the courts at that time, but there was relatively little interest shown by the judiciary or the bar. Perhaps our timing wasn't right.

But perceptions changed. Even though Utah has never experienced the severe court delays that prompted some states to jump on the ADR bandwagon early, by 1994, the public interest in ADR was high enough that the Judicial Council proposed a court-annexed ADR pilot program, designed in collaboration with the Utah State Bar ADR committee. In my first state of the judiciary address, I gave top priority to legislation implementing this pilot program. I told the legislature that we were not asking to implement court-annexed ADR merely to speed up the processing of cases. Utah's case processing times were then and are now among the fastest in the nation. Rather, I said that we saw ADR as offering "a realistic prospect of less expensive, faster, and better solutions to citizens' disputes than traditional court trials." Everything that has happened since that legislation was passed has convinced me of the rightness of this proposition.

ADR is a necessary part of the array of dispute resolution mechanisms that should be offered by the state through the courts. Moreover, I think ADR is the place where the most interesting things are being done, and the area that will experience the most explosive growth in coming years. The growth in Utah's ADR culture is explainable, in large part, by the benefits it provides to the community, and to a lesser but more profound degree, to those who provide it to the community.

First, the public wants it.

- This is demonstrated by the fact that the legislation authorizing our pilot program passed unanimously in 1994, despite a \$100k price tag.
- ADR programs are proliferating statewide, both in the public and private sectors.

- Judges and lawyers are losing their traditional skepticism of ADR. In fact, many are becoming enthusiastic supporters. That fact alone removes one of the greatest obstacles to its growth.

Second, the public needs what ADR offers.

- One thing it provides is speed. Although that was not the reason court-annexed ADR was instituted in Utah, and, standing alone, it is probably an insufficient reason to use ADR, the fact remains that we project a sharp increase in filings in criminal cases in the next few years that will probably produce a slowdown in the processing times in civil cases which may give ADR a real advantage in terms of the timeliness of the solutions it offers.
- The rise in the cost of legal services continues to outstrip the rate of the average citizen's growth in income. For more and more people, the potential cost advantages of ADR are becoming increasingly important.
- Finally, and I think most importantly, there is an increasing recognition that ADR can offer qualitatively better solutions in many categories of disputes. Because the parties are deeply involved in the fashioning of a solution, in a way that is quite different from the parties' essentially passive participation in litigation, they tend to be more committed to the solution and to its implementation, and more satisfied with the process that led to it.

A third, and normally unsung advantage of ADR, is that it provides something of intangible but real benefit to those who act as mediators and arbitrators.

- There is the altruistic element. You are helping people fashion a mutually acceptable resolution of their dispute. This sort of satisfaction is not one that is commonly available in most professional settings in our culture.
- For lawyers who are used to being advocates in a litigation setting, participation as an ADR facilitator is like a breath of fresh air. It gives you a rare opportunity to behave as a disinterested neutral in a dispute. This change of role and perspective should not only be refreshing, but educational. I would even go so far as to suggest that it will make you a better lawyer. The current cry that the law profession is becoming

too uncivil, too win-at-any-cost in its approach, that lawyers are too imbued with the amorality of the hired gun. Some perceive that too many lawyers no longer have respect for the integrity of the framework within which litigation occurs. I think there is legitimacy to this criticism to a degree. Too many refuse to recognize, first, that the litigation process has its ethical standards and rules of behavior; second, that those who ignore the rules in the name of victory undermine the very institutions within which they work; and third, that the perception of the process having integrity is of great importance to the parties.

“. . . I think the ADR process can provide another form of satisfaction for those . . . who serve as the neutrals”

In the ADR setting, the lawyer who is conditioned to the role of the amoral advocate has the experience of having to look at a dispute with dispassion. He or she must be concerned with maintaining the integrity of the framework within which the dispute is to be resolved – an honest dialogue between the parties, mediated to prevent overreaching and abuse by either party. This experience should be quite valuable in returning a sense of perspective to your litigation practice, in reminding you that law school didn't train you to win at any cost, but to win only within the limits set by a fair dispute resolution system. And that the integrity of the process, the integrity of the means by which the solution is arrived at, is at least as important to the parties as is the result. It may even open you to the heretical notion that a party who wins by unfair means may be no more satisfied than one who loses but feels that the process was fair.

- Finally, I think the ADR process can provide another form of satisfaction for those of you who serve as the neutrals – the positive feedback that flows to those who do the job well and as a consequence, are increasingly asked to perform

it. As a judge, one receives one's full share of cases, no matter how satisfied, or dissatisfied, the parties are with the way you do your job. But as a mediator or arbitrator, you are chosen. If you do not do your job with objectivity, compassion, and integrity, you will not succeed. The feedback will be rather direct. No one will call. But if you do display these characteristics, you will prosper.

In conclusion, the recent rapid growth of ADR programs may be explained by the fact that they meet the public's demand for service, provide the public something it really needs, and furnish those who facilitate it with unique satisfactions and real benefits. But if ADR is to mature and become a permanent and significant part of the dispute resolution machinery to which an organized society is entitled, it will depend largely upon those like you who are willing to train and participate in these new programs.

You are in the forefront of ADR in Utah. That makes you the experts. Your comments and your ideas will be critical to the improvement of our court-annexed program, and to other programs in which you participate. We recognize that our program, like any pilot program, can be improved. We are committed to this program and want to make it as good as it can be. We need your thoughts and your suggestions. Indeed, we are eager for them. We cannot do a better job of serving the public with out your help.

I wish I could remain for your training session today. I am a bit envious. The three days of training I took almost ten years ago at the University of Arizona broadened my perspective on dispute resolution in ways that I never anticipated. I guess that is why Jeremiah's letter ended up on my wall. There is something elementary about the notions that underline ADR, something that a third grader can get, and that many of the rest of us are just too "sophisticated", or too narrowly focused, to understand without a lot of work.

Thank you for your time, and your efforts on behalf of ADR.

1996 ANNUAL MEETING PROGRAM

() Indicates Number of
CLE Hours Available

Wednesday, July 3, 1996

6:00-8:00 p.m. **President's Reception -**
Sun Valley Lodge Terrace
Registration - Sun Valley Lodge Sage Room
Sponsored by: Snow, Christensen & Martineau
Parsons Behle & Latimer
Kipp & Christian
Parry Murray Ward & Moxley
Winder & Haslam

Sponsored by:

Kent B. Scott, Member, Lien Recovery
Fund Advisory Board
The Construction Law Section

2 - More Perils of Appeals

Hon. Judith M. Billings, Utah Court of
Appeals
Justice Leonard H. Russon, Utah Supreme
Court
Chief Justice Michael D. Zimmerman,
Utah Supreme Court

Thursday, July 4, 1996

6:00 a.m. **Flag Raising Ceremony**
7:30 a.m. **Registration and Continental Breakfast -**
Inn Continental Room
Sponsored by: Sun Valley Company
8:00 a.m. **Opening General Session and Business**
Reports - Inn Limelight/Divide Rooms
Welcome and Opening Remarks
Elizabeth S. Conley, 1996 Annual
Meeting Chair
Report on the Utah State Bar
Dennis V. Haslam, President, Utah State Bar
Report on State Judiciary
Chief Justice Michael D. Zimmerman
Report on Federal Judiciary
Chief Judge David K. Winder
Report on the Utah Bar Foundation
James B. Lee, President
Report on the MCLE Board
Joy L. Clegg, Chair
Swearing in of New Commissioners

11:40 a.m.

Awards Luncheon

From Russia With Love

Nancy Hollander, Program Coordinator,
Russian Jury Trial Project, South
Eastern Institute for Law and Commerce

Sponsored by:

Key Bank of Utah

12:00-4:00 p.m.

Children's Activity Fair - Meet at Baldy Bus Loop

Sponsored by:

Dunn & Dunn

1:30 p.m.

(1)

General Session: Non-Verbal Communication - How to Convey Power, Confidence & Authority

Mary E. Ryan, Speech Communications
Specialists, Ltd.

Sponsored by:

Carol M. Welch, Miller & Welch
The Litigation Section

9:00 a.m. **Break - Inn Continental Room**
Sponsored by: MBNA
Stoel Rives Boley Jones & Grey

9:15 a.m. **Keynote Address**
(1) **Pyramids and Diamonds: The Road
to 2000**
Fred H. Bartlit, Jr., Bartlit Beck Herman
Palenchar & Scott

Sponsored by:

Break - Inn Continental Room

2:20 p.m.

Sponsored by:

Giauque, Crockett, Bendinger & Peterson
Watkiss, Dunning & Watkiss

Sponsored by: Holme Roberts & Owen
McKay, Burton & Thurman
Wood, Quinn & Crapo

2:30 p.m.

(1 each)

Breakout Sessions

5 - Tech Trac: State Court Technology & Electronic Filing

Eric Leeson, Administrative Office of the
Courts

10:05 a.m. **Break - Inn Continental Room**
Sponsored by: Haley & Stolebarger
Snell & Wilmer

6a - The Takings Issue: Point/ Counterpoint

10:20 a.m. **Breakout Sessions**
(1 each) **1 - Utah's Residential Lien Restriction
& Recovery Fund Act: Prosecuting
a Claim**
Darrel J. Bostwick, Walstad & Babcock

Jan G. Laitos, University of Denver Law
School
Richard G. Wilkins, J. Reuben Clark Law
School
Moderator - John Martinez, University of

Utah College of Law

7a - Search & Seizure Law

Hon. Sam Alba, U.S. District Court

Hon. James Z. Davis, Utah Court of Appeals

Sgt. Paul Mangelson, Utah Highway Patrol

G. Fred Metos, McCaughey & Metos

Joanne B. Stringham, Uintah County Attorney

Todd Utzinger, Utah Attorney General's Office

Joan C. Watt, Legal Defenders

Moderator - Hon. Lynn Davis, Fourth District Court

3:20 p.m.

Sponsored by:

Break - Inn Continental Room

Green & Berry

TOBIN Professional Administrative Services

3:30 p.m.

(1 each)

Breakout Sessions

6b - Property Rights Rebellion, Cont.

7b - Search & Seizure Law, Cont.

8 - Tech Trac: Connecting to the Outside World

Jeffery N. Walker, Jones, Waldo, Holbrook & McDonough

9 - School Law Issues You Need to Know

Karen McCreary, University of Utah

John E. Roson, Fabian & Clendenin

4:20 p.m.

Meetings Adjourn for the Day

6:30 p.m.

Family Picnic and Carnival - Baldy Bus Loop Soccer Field

Friday, July 5, 1996

7:00 a.m.

Fun Run - Meet at Baldy Bus Loop

7:30 a.m.

Section Breakfasts

8:00 a.m.

Registration and Continental Breakfast - Inn Continental Room

Sponsored by:

Suitter Axland & Hanson

8:30 a.m.

General Session: Mergers and Acquisitions in the 90's

Morton A. Pierce, Dewey Ballantine Prince, Yeates & Geldzahler

Sponsored by:

9:20 a.m.

Break - Inn Continental Room

Sponsored by:

Blue Cross/Blue Shield of Utah

9:30 a.m.

(1 each)

Breakout Sessions

10 - Tech Trac: Water World on the Webb - A Demonstration of Water Rights and Other ENREL Related On-Line Databases

David B. Hartvigsen, Nielsen & Senior
J. Craig Smith, Nielsen & Senior

11 - Sex, Violence and Time Off in the Workplace

Sharon E. Sonnenreich, Salt Lake Tribune
James W. Stewart, Jones, Waldo Holbrook & McDonough

Robert H. Wilde, Wilde & Associates

12 - The Application of Non-Verbal Communication to the Daily Practice of Law

Mary E. Ryan, Speech Communication Specialists, Ltd.

Carol M. Welch, Miller & Welck

The Litigation Section

Sponsored by:

13 - Choice of Entity

Charles R. Brown, Hunter & Brown

Spouse/Partner Art Gallery Tour

Break - Inn Continental Room

Parsons, Davies, Kinghorn & Peters

10:15 a.m.

10:20 a.m.

Sponsored by:

10:35 a.m.

(1 each)

Breakout Sessions

14 - Tech Trac: High Tech Demonstrative Evidence

Robert B. Sykes, Sykes & Vilos

James D. Vilos, Sykes & Vilos

15 - Who's Retrofitting and Providing Reasonable Accommodations?

ADA Compliance Obligations of Owners, Occupants and Employers

Shawn C. Ferrin, Parsons Behle & Latimer

Phyllis J. Vetter, VanCott, Bagley,

Cornwall & McCarthy

16 - ETHICS: Lawyers in Love: Or, Must an Attraction to Your Client be Fatal to Your License?

Comm. Thomas N. Arnett, Jr., Third District Court

Ellen M. Maycock, Kruse, Landa & Maycock

Frederick N. Green, Green & Berry

17 - Traps and Treasures in Financial Statements: Effectively Using Financials in Your Practice

Terry Lloyd, Peat Marwick, LLP

Break - Inn Continental Room

Kruse, Landa & Maycock

11:25 a.m.

Sponsored by:

11:40 a.m.

(1 each)

Breakout Sessions

18 - Tech Trac: Automating the Small Firm

Bradley P. Rich, Yengich, Rich & Xiaz

19 - Feminist Jurisprudence in Legal Theory and Practice

Kate Kirkham, Brigham Young University

Cheryl B. Preston, J. Reuben Clark Law School

Moderator - Hon. Judith M. Billings, Utah
Court of Appeals

Sponsored by: Women Lawyers of Utah

20 - The V-1 Bomb and Its Fallout
James W. Carter, Director, Division of
Oil, Gas & Mining
Carol Clawson, Solicitor General of the
State of Utah
Peter Stirba, Stirba & Hathaway
A. Robert Thorup, Ray, Quinney & Nebeker

**21 - Minimum Mandatory Sentencing
Guidelines**
Edward S. McConkie, Utah Sentencing
Commission Director

12:00-4:00 p.m. **Children's Activity Fair - Meet at Baldy
Bus Loop**

12:30 p.m. **Meetings Adjourn for the Day**

1:00-5:00 p.m. **Sporting Events**

1:00 p.m. **8th Annual President's Cup Golf
Tournament - Sun Valley Golf Course**

2:00 p.m. **Trapshoot Tournament - Sun Valley
Skeet and Trap Range**

2:00 p.m. **Volleyball Tournament - Baldy Bus Loop
Soccer Field**

2:00 p.m. **Tennis Tournament - Sun Valley Tennis
Courts**

2:00 p.m. **Rollerblade Clinic - Meet at Baldy Bus
Loop**

5:30 p.m. **Law School Receptions**
**J. Reuben Clark School of Law -
Kitzbuhl Lawn**
**University of Utah School of Law -
Opera House Lawn**

Saturday, July 6, 1996

8:00 a.m. **Registration and Continental Breakfast -
Inn Continental Room**

Sponsored by: VanCott, Bagley, Cornwall & McCarthy

8:30 a.m. **Concurrent Sessions**
(1 each) **A - The Really Big Case-Trial Practice
and Case Management Pointers
That Will Pay Off On Appeal**
Hon. Randall R. Rader, United States Court
of Appeals for the Federal Circuit

Sponsored by: Trask, Britt & Rossa
Thorpe, North & Western

**B - Trends in Technology Affecting the
Practice of Law**

9:20 a.m. **Break - Inn Continental Room**
Sponsored by: Kimball, Parr, Waddoups, Brown & Gee

9:30 a.m.
(2)

11:20 a.m.
Sponsored by :

11:30 a.m.

12:20 p.m.

12:30 p.m.

Sponsored by:

2:00 p.m.

3:00 p.m.

7:00 p.m.

**ETHICS General Session: Is
Mandatory Pro Bono the Answer to
Meeting Unmet Legal Needs? Or Legal
Services and the Bar - What is the
Bar's Burden?**

Alexander D. Forger, President, Legal
Services Corporation
Followed by a Distinguished Panel

Break - Inn Continental Room
Cohne, Rappaport & Segal
Thorpe, North & Western

Breakout Sessions
**22 - ETHICS: Top 10 Pro Bono
Opportunities**
Panel of Various Pro Bono Program
Providers

23 - How To Lobby the State Legislature
David R. Bird, Parsons Behle & Latimer
Joel T. Marker, McKay, Burton &
Thurman

**24 - A Lawyer's Checklist for Review of
Surveys**
Jack L. DeMass, DeMass Surveying

**25 - Controlling Costs in Intellectual
Property Matters**
Bryan Farney, General Counsel, Micron
Technology, Inc.
Ronald L. Lyons, Director of Intellectual
Property Law, Thiokol Corporation

Breakout Session Adjourn

Film Presentation: A Rumpole Drama
Hon. Timothy R. Hanson, Third District
Court
Hon. Leslie A. Lewis, Third District Court
Hon. Ronald N. Nehring, Third District
Court

Ronald J. Yengich, Yengich, Rich & Xaiz
The Salt Lake County Bar Association

Tennis Clinic - Sun Valley Tennis Courts

All Meetings Adjourn

**Ice Show, Buffet and Fireworks - Sun
Valley Lodge Terrace and Ice Rink**

Discipline Corner**DISBARMENT**

On March 13, 1996, the Hon. Michael Lyon, Second District Court Judge, entered an Order Disbarring F. Kim Walpole ("Walpole") from the practice of law in the State of Utah, effective January 12, 1996.

Commencing in September 1990, Walpole began a continuing pattern of misconduct that spanned almost five (5) years in which he misappropriated or commingled client funds with his personal money. The Court found that during that time period, Walpole commingled, misappropriated or diverted a total of \$113,000.00 on 49 occasions from his clients or his law firm.

Following a Sanctions Hearing on February 26 & 27, 1996, the Court issued a written decision which states, in pertinent part, "Because of the seriousness of the injuries caused by this type of misconduct, disbarment, in the absence of strong mitigating circumstances, is the appropriate sanction for misappropriation of client funds. The misuse of client funds is one of the most serious offenses a lawyer can commit. Respondent's misappropriations of his client's money were not only grievance breaches of professional ethics and the loyalty he owed to his clients; they were in violation of basic honesty and morality and the type of conduct that erodes holds the public confidence in the legal profession. Only the most extenuating or mitigating circumstances would allow a less serious sanction to be imposed." Walpole's period of disbarment will become effective the date of the Court's entry of the Court's Order of Interim Suspension, January 12, 1996. The Bar was also awarded its costs.

Pursuant to Rule 12(g), Rules of Lawyer Discipline and Disability, the Respondent has the right to appeal an order of public discipline pursuant to the Utah Rules of Appellate procedure.

DISCIPLINARY SUSPENSION

On February 21, 1996, the Honorable Gordon Low entered a Judgment and Order of Discipline placing Jean R. Babilis ("Babilis") on suspension from the practice of law for the period of three years effective May 1, 1996.

The disciplinary action arose out of Babilis' representation of John Kerns and

Carol Kerns for the probate of the Estate of Jane Gayle Kerns, John Kerns' stepmother. The facts of this complex disciplinary action are set out in detail in Judge Low's forty-six page Findings of Fact and Order.

A contested trial on the merits was conducted before the Court from September 13-15, 1995 and September 19-20, 1995. On January 5, 1996, the Court entered Findings of Fact concluding that;

(1) Babilis violated Rule 1.5 by advising his clients to enter into, and in fact entering into with his clients, a contingency fee agreement in an uncontested probate matter which resulted in charging and collecting an excessive fee.

(2) Babilis was guilty of misconduct in having violated Rule 1.4(b) in that he failed to provide sufficient information to the clients regarding fee arrangements to enable the clients to make an informed decision regarding contingent fee representation versus representation pursuant to an hourly fee arrangement.

(3) Babilis was guilty of misconduct by violating Rule 1.13 relative to the safekeeping of property by taking funds from the Kerns Estate trust account without authorization of the Court nor consent of the personal representative or his client in using the funds for his own personal benefit.

(4) Babilis was guilty of misconduct in that he violated Rule 8.4(c) in that he converted Estate trust funds by diverting funds received by him on behalf of the Kerns Estate and failing to account for said funds, that he converted estate funds by charging, or attempting to charge, inflated or non-existent expenses to the Estate, and that he inflated or charged non-existent costs to the client in a contingency fee case.

(5) Babilis was guilty of misrepresenting and charging time as his own time which was actually time expended by his paralegal rather than by himself in violation of Rule 7.1(a).

(6) Babilis was guilty of misconduct in having violated Rule 3.3 by making false material representations to the Second District Court regarding inventory of the Estate's assets and available assets upon distribution to the heirs and by asserting to the Court that he did not keep time records when, in fact, the same were kept.

(7) Babilis was guilty of misconduct by having violated Rule 8.4(a) and (b), by committing or attempting to commit acts of conversion by a fiduciary in which acts

reflected on Mr. Babilis' honesty, trustworthiness, and fitness as a lawyer. That misconduct included taking and converting trust funds, charging excessive fees, and charging non-existent costs and expenses to the Kerns Estate and making representations to the Kerns Estate that he performed services which he did not perform.

A Sanctions Hearing was conducted on February 13, 1996. On February 21, 1996, the Court entered its Judgment and Order of Discipline entering an Order of Suspension for a period of three years effective May 1, 1996. Pursuant to Rule 26(a), Rules of Lawyer Discipline and Disability, Babilis was ordered not to accept any new retainers or employment as a lawyer in any new case or legal matter but may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the Court's Order. Babilis was further ordered to provide notice to Courts and counsel regarding his suspension, deliver client files to clients, refund unearned fees to clients, and maintain records of his compliance with the Court's Order in accordance with Rule 26(b), Rules of Lawyer Discipline and Disability. The Court further ordered that:

(1) During his period of suspension, Babilis is not to engage in the practice of law or allow his name or his firm's name to be used in association with anyone else's practice of law;

(2) Judgment be entered in favor of the Utah State Bar for costs in the sum of \$4,358.89; and

(3) As a condition of reinstatement, Babilis shall complete at least twenty hours of professional responsibility training (ethics) with a curriculum to be approved by the Utah State Bar and the First District Court.

A copy of the Court's Findings of Fact and Order, as well as the Judgment and Order of Discipline are available through the Office of Attorney Discipline.

Pursuant to Rule 12(g), Rules of Lawyer Discipline and Disability, the parties have the right to appeal an order of public discipline pursuant to the Utah Rules of Appellate Procedure. On March 13, 1996, the Bar filed a Notice of Appeal regarding the Court's decision to impose a period of suspension, instead of disbarment and issues regarding restitution. On March 20, 1996, Babilis filed a Notice of Cross-Appeal

as to the Court's Findings of Fact and Order on the merits and the judgement imposing a sanction of three years suspension.

SUSPENSION FOR DISABILITY

On February 22, 1996, Judge Anne M. Stirba placed Mark Urry Price on indefinite suspension from the practice of law due to an ongoing mental disability. Mr. Price had been placed on Interim Suspension by Judge Stirba on February 1, 1995 pursuant to a conviction for Mail Fraud.

The Court ordered that Mark U. Price be suspended from the practice of law due to his current mental disability and would remain on disability suspension until further order of the Court. The Court also required Mr. Price to immediately cease and desist from the practice of law, comply with Rule 26 of the Rules of Lawyer Discipline and Disability regarding notice to counsel and clients, not maintain a presence or occupy an office where the practice of law is conducted, and take all actions necessary to cause the removal from offices maintained or used by him of any indicia of his practice of law as an attorney, counselor at law, or activities as a legal assistant, paralegal, law clerk or similar title and, in all other respects, refrain from acting in such a capacity.

Rule 26(c) provides that Mr. Price has the burden of proving, by clear and convincing evidence, that any and all mental disabilities have been removed prior to termination of the disability suspension. The Court ordered that the disciplinary proceedings shall be dismissed during the period of disability suspension but may be continued at such time as the Court grants a petition for Mr. Price's transfer back to active status.

RESIGNATION PENDING DISCIPLINE

On February 28, 1996, the Utah Supreme Court approved the Petition for Resignation with Discipline Pending submitted by Royal Hunt. In submitting this Petition Mr. Hunt ("Hunt") admitted to violating Rule 1.1, COMPETENCE, Rule 1.3, DILIGENCE, Rule, 1.4(a), COMMUNICATION, Rule 1.5(a)(c), FEES, 1.13(b), SAFEKEEPING OF PROPERTY, and Rule 8.4(d) MISCONDUCT, of the Rules of Professional Conduct of the Utah State Bar.

continued on p 28

Utah State Bar Ethics Advisory Opinion Committee

Opinion No. 95-05
(Approved January 26, 1996)

Issue. What is the relationship between Rule of Professional Conduct 4.2 and a 1994 U.S. Department of Justice regulation purporting to authorize certain *ex parte* contacts with persons known to be represented by counsel?

Issue No. 1: The Regulation precludes *ex parte* contacts by Department of Justice lawyers with individuals who are targets of federal investigations only when the person is a "represented party," *i.e.*, a person who has been arrested or charged or is a defendant in a civil enforcement proceeding and is represented by counsel for the matter. Does the class of such "represented parties" coincide with the definition of "party" in Rule 4.2 of the Utah Rules of Professional Conduct?

Opinion: No. The word "party" in Rule 4.2 of the Utah Rules of Professional Conduct means a "party to a matter" for which legal representation has been obtained, not the more limited "party to a legal proceeding." Subject to the exceptions stated in the rule, Rule 4.2 intends to restrict unauthorized *ex parte* contracts with any person who is represented by counsel concerning the

matter in question, whether or not the person is a party to a formal legal proceeding. Therefore, Rule 4.2 restrictions are intended to apply to "represented persons," with whom the Regulation would permit certain *ex parte* contacts.

Issue No. 2: Assuming that the Regulation does not constitute a "law" for purposes of Rule 4.2, under what conditions may a government lawyer make *ex parte* contact with persons known to be represented by counsel?

Opinion: Under certain specific factual circumstances, a government lawyer may make *ex parte* contacts with persons represented by counsel.

Opinion No. 95-02A¹
(Approved January 26, 1996)

Issue: May a law partner of a part-time justice court judge represent criminal defendants in the judicial district in which the justice of the peace sits?²

Opinion: A lawyer may represent criminal defendants in the same judicial district in which a law partner sits as a justice court judge. The lawyer may not appear before that partner, however.

Public Service Announcement

Experience the National Association of Pre-Trial Services Association Conference this year in a whole new way. Salt Lake County Criminal Justice Services is your host for the 24th annual NAPSA Conference. Come to Snowbird Resort October 5th through the 9th, 1996 and see what Utah has to offer. The first class resort lodging, fall in the Wasatch Range of the Rockies, and the charm of Salt Lake City and Park City will almost make you forget you're at work. Snowbird Resort offers many activities for your whole family or just to strengthen your professional associations, including; hiking, mountain biking, a full European spa, a golf tournament, mountain-top star gazing, and much, much, more. For more information about workshops and speakers, or any other questions, call Dennis Hunter at Criminal Justice Services in Salt Lake City at (801) 538-2149.

ATTENTION Decision Release Procedures in Utah Courts of Appeals

Except in emergencies or during weeks when there is a State holiday, the Utah Court of Appeals releases its opinions and memorandum decisions on Thursdays at 10:00 a.m. After 2:00 p.m. each Wednesday, a list is made public of those cases in which a decision will be issued the following day. The list is posted at the court counter and on the bulletin board outside the courtroom. A recorded listing of the cases is also available by calling 578-3923. At 10:00 a.m. on Thursdays, decisions in the listed cases will be deemed issued and will be available for release to the parties, counsel of record, the press, and the general public.

If you have questions regarding the foregoing procedures, please call Marilyn Branch, Clerk of the Court, at 578-3900.

United States District Court for the District of Utah

PUBLIC NOTICE

Appointment of New Magistrate Judge

The United States District Court for the District of Utah, under the authority of the Judicial Conference of the United States, seeks applicants for the position of United States magistrate judge with the duty station in Vernal. This is a part-time federal judicial officer position with an initial term of appointment for four years, subject to reappointment by the court for successive four-year terms. The appointee will be able to engage in private practice subject to the provisions of the Conflict of Interest Rules for Part-time Magistrate Judges as adopted by the Judicial Conference of the United States, copies of which are available from the Clerk of Court at the address noted below. The duties of the position anticipate a broad range of legal and judicial skills and abilities. The primary duties include administering oaths and affirmations; taking acknowledgements, affidavits, and depositions; issuing criminal complaints, warrants of arrest and summons, conduct initial appearance proceedings, arraigning defendants, accepting pleas, conducting trials, imposing sentences, and accepting forfeitures in petty offenses; and performing such other duties, not inconsistent with law, as authorized and directed by any judge of this court. The duties may entail periodic travel to nearby cities, federal installations, and reservations for the purpose of conducting court.

JURISDICTION

The jurisdiction of United States magistrate judges is set forth in *28 United States Code §636*.

GENERAL QUALIFICATIONS

To be qualified for appointment an applicant must:

- (1) Be a member at the time of appointment in good standing of the bar of the highest court of the State of Utah or the highest court of another state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least 5 years (with some substitutions authorized);
- (2) Be competent to perform all the duties of the office; be of good moral char-

acter; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

- (3) Be fewer than seventy years of age; and

- (4) Not be related by blood or marriage to any district judge of the court.

AVAILABILITY AND SALARY

As noted above, the existing vacancy is a part-time position whose duty station is Vernal. Applicants for the position should be prepared to assume the duties of it effective January 1, 1997. The current salary for the part-time position is \$5,160 per annum.

OFFICE

Part-time U.S. magistrate judges normally are not provided government-furnished chambers or office space or equipment. It is anticipated that they will operate out of their own space. They are reimbursed for actual and necessary expenses incurred in the performance of their duties.

SELECTION PROCESS

A Merit Selection Panel composed of attorneys and others in the community will review all applications and recommend to the district judges of the Court in confidence those persons whom it considers best quali-

fied for the position. The Court will review the qualifications of the candidates and make the appointment, following an FBI file investigation and IRS tax check of the finalist who is selected as the prospective appointee. The selection panel and the Court will give due consideration to all qualified candidates, including women and members of minority groups.

APPLICATION PROCESS

Application forms, copies of the Conflict of Interest Rules, and additional information on the position may be obtained from:

Markus B. Zimmer, Clerk of Court
United States District Court
150 Frank E. Moss United States Courthouse
350 South Main Street
Salt Lake City, Utah 84101

Applications prepared and submitted as nominations by a party other than the applicant will not be considered. Completed application forms and supporting documentation must be received no later than the close of business on Friday, May 31, 1996. All applications will be kept confidential and will be reviewed only by members of the Merit Selection Panel and the district judges of the Court. The panel's deliberations will remain confidential.

Law Day Run

The Fourteenth Annual Bob Miller Memorial Law Day Run is set for 10:00 on Saturday morning, April 27th. As in the past, we encourage the legal community to join us in this annual rite of spring. The course is a "friendly" one, only 5 kilometers and mostly flat and downhill, sure to generate some good early season times. It begins at Red Butte Garden, passes through Fort Douglas, heads north in front of the University of Utah and Primary Children's Hospitals, drops down to Wasatch Drive and proceeds south along the University Golf Course, heads west past the Huntsman Center on South Campus Drive, and concludes at the Law School parking lot. We will again have divisions for attorneys, paralegals,

legal personnel, law students, law faculty, and the usual age group divisions, from children 11 and under to seniors 70 and over. The typically heated team competition will again involve teams of two women and three men. Medals for the top three in each division will be awarded, as well as a trophy to the winning team. T-shirts will be provided for all registrants. Registration is \$12 prior to race day, and \$14 at the race. Registration forms are available from Bret Hanna at 531-2000.

Litigation Section Announces Part II of the Trial Academy 1996 April 25: "The Law and the Art of Opening Statements"

Part I of the Litigation Section's Trial Academy 1996 was held on February 22 in Judge Pat Brian's courtroom. The program was by all accounts a roaring success. Judge Brian was joined on the bench by Judge Dee Benson of the United States District Court for the selection of the jury in the mock wrongful death action of *O'Reilly v. Boulder Transportation*.

Plaintiff's counsel was David Jordan (Stoel, Rives, Boley, Jones & Grey) and Gordon Campbell (United States Attorney's Office). Defendant was represented by Richard Burbidge (Burbidge and Mitchell) and Scott Daniels (Snow, Christensen & Martineau). The moderator was Francis Carney (Sutiter, Axland & Hanson). All aspects of the selection of a civil jury in Utah were explored in this entertaining two-hour seminar.

Part II of the Trial Academy will be held on Thursday, April 25, at 6:00 p.m. It is *not* necessary for the registrant to have attended Part I. The faculty and location for this session of the Trial Academy will be announced. Experienced local trial attorneys will demonstrate the art of the opening statement and explore the law and

procedure governing it. As with all segments of the Trial Academy, the program is designed to acquaint the novice practitioner with the basic skills of the trial lawyer and familiarize the practitioner with the peculiarities of local practice.

The remaining segments of the Trial Academy 1996 are:

April 25, 1996: Opening Statements

June 27, 1996: Direct Examination

August 29, 1996: Cross Examination

October 24, 1996: Exhibits

December 19, 1996: Summation

The cost is \$20 per session for Litigation Section members and \$30 for non-members. (Section membership is \$35 a year and includes many other benefits and discounts.) Students may also enroll for the remaining five sessions of the Trial Academy at a cost of \$80 for Section members and \$120 for non-members. Students will receive two hours of CLE credit for each segment attended.

Enrollment for the April 25 session may be limited. Given that the February 22 session was rapidly sold out, interested lawyers should register immediately for Part II calling Monica Jergensen at the Utah State Bar at 531-9077.

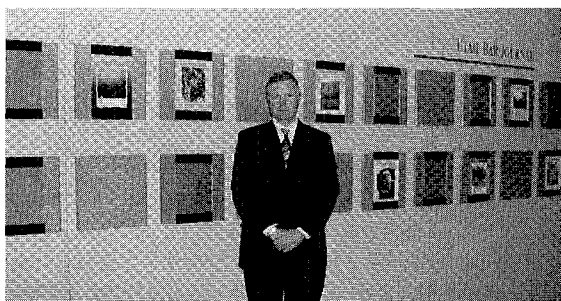
1996 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1996 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Monica Jergensen, CLE Administrator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than Tuesday April 30, 1996. The award categories include:

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

1995 Cover of the Year

The Utah Bar Journal Committee is pleased to announce that it has selected the cover of the June/July issue of the *Journal* as the "1995 Cover of the Year." The



cover photograph, entitled "Poppies Near North Mountain, Alpine, Utah" was taken by A. Dennis Norton (pictured above in front of the display of "Covers of the Year" in the Law and Justice Center).

Photographs which appear on the cover of the *Journal* are taken by attorneys who are licensed to practice in the State of Utah. Since the *Journal* introduced its new format in August 1988, photographs

appearing on the cover have been submitted by 21 different members of the Utah Bar. The covers, which have been enjoyed and appreciated by all who receive the

Journal, depict many beautiful Utah scenes. Although photographs have been selected for the balance of the calendar year, members of the Bar who would like to submit photographs to be considered for 1997 issues may do so by sending them to Randall L. Romrell, 2523 Arnett Drive, Salt Lake City, Utah, 84109. Enclose a pre-addressed, stamped envelope for the return of the photographs.

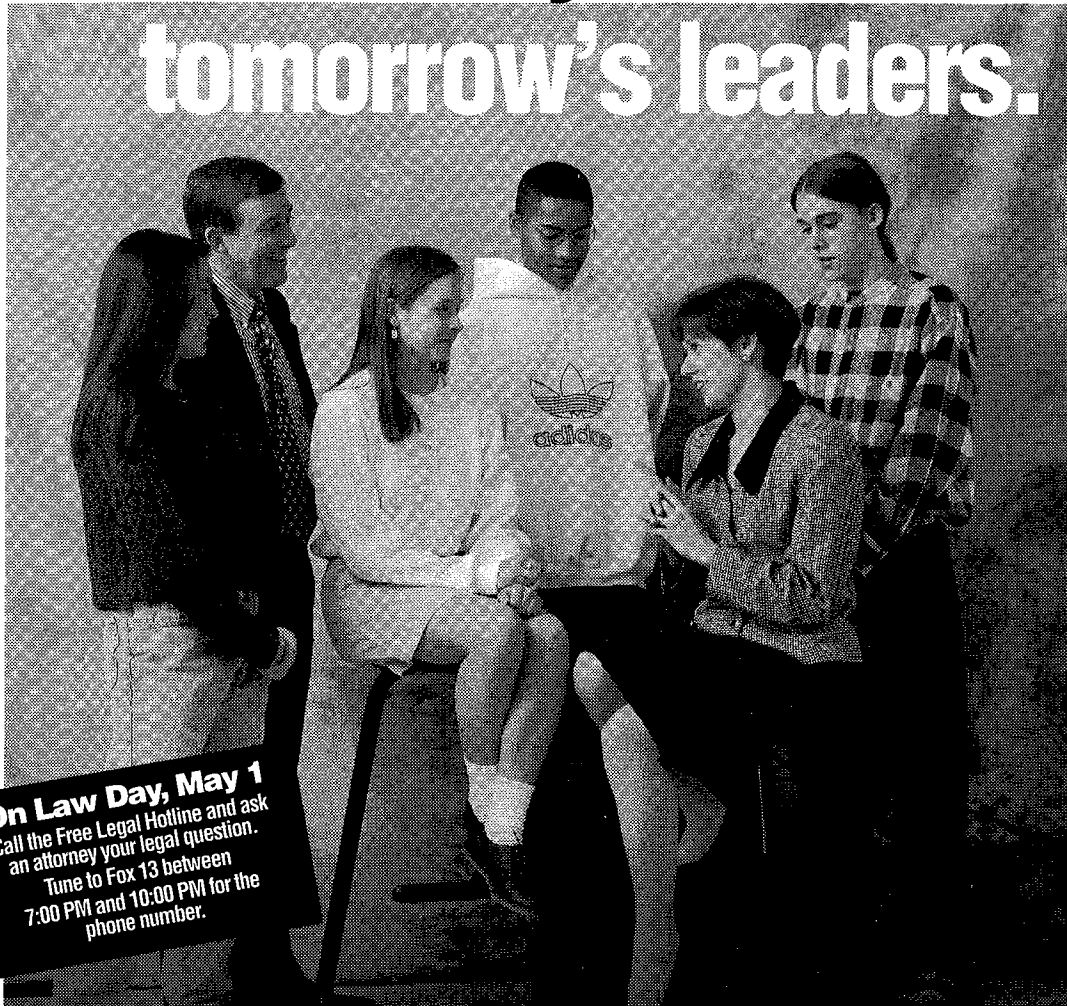
Thank You

I would like to thank all the members of the Bar Examiners Committee, Bar Examiners Review Committee and Character and Fitness Committee for a successful February Bar Examination that was given February 27th and 28th. Your voluntary time for the bar examination was very much appreciated.

Thank you again,
Darla C. Murphy,
Admissions Administrator

Today's teens...

tomorrow's leaders.



On Law Day, May 1
Call the Free Legal Hotline and ask
an attorney your legal question.
Tune to Fox 13 between
7:00 PM and 10:00 PM for the
phone number.

Students learn from attorneys that our justice system gives them specific rights and also certain responsibilities.

Today's teenagers are tomorrow's leaders, so it is important young people understand what rights and responsibilities are all about.

The Utah State Bar believes young people will become better citizens if they have an improved understanding and respect for our system of justice. That's why Utah attorneys are conducting workshops with students in junior high and senior high schools throughout the state. Attorneys are also available to talk to civic, social and educational groups on a wide variety of legal topics.

The Bar is also offering a 150-page book, "Rights Responsibilities Relationships," which is written specifically for Utah's young people, their parents, counsellors and teachers. It is available from the Bar for \$2.

To order a book or schedule a speaker, contact the Utah State Bar at (801) 297-7056.



Utah State Bar

"Rights Responsibilities Relationships," is produced by Utah Children and the Utah State Bar Needs of Children Committee.

Today's Teens . . . Tomorrow's Leaders

A Public Service Project of the Utah State Bar

The Utah State Bar is sponsoring a public service campaign which focuses on the rights and responsibilities of young people. At the center of the campaign is the book, *Rights Responsibilities Relationship – Your Rights as a Young Person in Utah*. The message will be delivered in classroom presentations by lawyers, paid public service announcements on television, in newspaper advertisements, press stories and interviews.

The primary objective of the program is to educate and inform teenagers, their parents, teachers and counselors about the rights and responsibilities of young people. The goal is to help Utah youth become better citizens with an understanding and respect for the law and our system of justice.

During the spring, Utah attorneys will make classroom presentations and provide complimentary books to students. All the secondary school principals in the state have been notified of the program, and the bar has already been invited to discuss presentations in the following schools:

Beaver High – Beaver
Benchmark School – Woods Cross
Bingham High – South Jordan
Bountiful High – Bountiful
Box Elder High – Brigham City
Cyprus High – Magna
Dixie High – St. George

East Carbon High – Sunnyside
Emery County High – Castle Dale
Farmington Bay Youth Center – Farmington
Grantsville High – Grantsville
Hunter High – West Valley City
Jordan High – Sandy
Juab High – Nephi
Kearns High – Kearns
Logan High – Logan
Manti High – Manti
Morgan High – Morgan
Mountain Crest – Hyrum
Olympus High – SLC
Parowan High – Parowan
Payson High – Payson
Pleasant Grove High – Pleasant Grove
Provo High – Provo
Salt Lake Lutheran High – SLC
Timpview High – Provo
Uintah High – Vernal
Viewmont High – Bountiful

Lawyers participating in the Bar's Speakers Bureau will be called upon to make the presentations, but there is opportunity for others to participate. The Bar would also like to expand the program into additional highschools.

To reach beyond participating schools, the Bar has produced television and newspaper messages which will run during April, leading up to Law Day and the Young Lawyers Section phone-a-thon on May 1.

Utah State Bar Honors Two Attorneys at Mid-Year Meeting in St. George

Awards were presented by the Utah State Bar to Patricia W. Christensen and John Martinez. Ms. Christensen was recognized for advancement of women in the law, and Mr. Martinez was recognized for advancement of minorities in the law.

Patricia W. Christensen is a shareholder in the Salt Lake City law firm of Parr, Waddoups, Brown and Gee. She is a former member of the Governor's Commission for Women and Families. She was president of Women Lawyers of Utah and has helped implement the Gender and Justice Task Force Report. She received her juris doctor from the University of Houston.

John Martinez is a professor of law and Associate Dean for Academic Affairs at

the University of Utah College of Law. He is Chairman of the Board of the Institute for Human Resources Development, general counsel to the Hispanic National Bar Association, and Secretary-Treasurer of the Utah Hispanic Bar Association. He received his juris doctor from Columbia University School of Law.

Tax Information Under-65 Pensioners Should File Utah Long Form

Pensioners who are younger than 65 should file a Utah long form to take advantage of a special deduction for qualifying retirement income.

The Legislature created a special deduction for the under-65 group of retirees, but they must file the Utah long form to receive it. Many file the federal short form, then mistakenly file the Utah short form and pass up this tax benefit.

On the Utah short form – the TC-40S – the taxpayers only can claim the federal standard deduction amount of \$3,900. That's the amount allowed for single filers under 65, or \$6,550 for married filing jointly.

However, if they file the Utah long form – the TC-40 – they can claim their federal standard deduction or itemized deductions, plus a deduction of up to \$4,800 against qualifying pension income.

There are some limitations. The deduction is phased out by 50 cents on the dollar after the taxpayer's income exceeds \$32,000 for marrieds filing jointly, \$16,000 for married filing separately, and \$25,000 for singles.

LIMITATIONS

This deduction is limited to qualified pension and annuity income from an employer-sponsored retirement plan or Keogh plan. Taxable social security benefits, if included in federal adjusted gross income, also qualify for the retirement deduction.

Income from 401Ks and 457Ks are not eligible. The employers' normal retirement requirements must be met, so lump-sum distributions of retirement funds do not qualify for the deduction. Additionally, the deduction may not exceed the amount of the qualified retirement income.

Also, the \$4,800 deduction is only available to the person (spouse) who earned the qualifying retirement income. If both spouses received qualifying retirement income derived from their individual employment earning, then both may claim a retirement deduction.

Pensioners who were eligible for this special deduction but did not claim it in the past may file amended returns for tax years 1992, 1993 and 1994. The 1992 amended return must be filed by April 15, 1996 to meet the statute of limitations.

ANNOUNCEMENT OF JUDICIAL VACANCY MARCH 26, 1996

ANNOUNCING:

That applications are now being accepted for the position of juvenile judge in the Eighth District. The position in Eighth District Juvenile Court is the result of a newly created judgeship.

Completed application forms must be received by the Administrative Office of the Courts no later than 5:00 p.m., Friday, April 26, 1996.

ELIGIBILITY REQUIREMENTS:

Applicants must be 25 years of age or older, citizens of the United States, Utah residents for three years prior to selection and admitted to practice law in Utah. After appointment, the judge must reside within the geographic boundaries of the judicial district for which the appointment is made.

TO OBTAIN APPLICATION FORMS AND INSTRUCTIONS:

Copies of forms required in the application process and instructions are available from the Administrative Office of the Courts. Forms and instructions also are available in the following word-processing formats:

ASCII Text; Word Perfect 5.x; Word Perfect 6.x; Microsoft Word 5.x; Microsoft Word 6.x; Word for Macintosh 5.x.

To obtain the forms and instructions in a word processing format, provide a return Internet E-Mail address or a 3.5" disk to Marilyn Smith at any of the following:

Internet E-Mail: marilysm@courlink.utcourts.gov

FAX: (801) 578-3843

Administrative Office of the Courts • Attention: Marilyn Smith
230 South 500 East, Suite 300 • Salt Lake City, Utah 84102

When requesting forms and instructions in a word processing format, indicate the requested format. The application form, waiver forms, and instructions are available in all of the above formats to subscribers of the Utah State Court Bulletin Board.

SELECTION PROCESS

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

At its first meeting the Nominating Commission reviews written public comments. This meeting is open to the public. To comment upon the challenges facing Utah's courts in general, or the Eighth District Juvenile Court, submit a written statement no later than May 15, 1996, to the Administrative Office of the Courts, Attn: Eighth Judicial District Nominating Commission.

TERMS OF EMPLOYMENT:

A. BENEFITS:

Salary as of July 1, 1996 is \$89,550 annually • 20 days paid vacation per year • 11 paid holidays • \$18,000 term life insurance policy (with an option to purchase \$200,000 more at group rates) • Choice of five Medical and Dental Plans. Some plans paid 100% by the state, others requiring a small employee contribution.

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

B. JUDICIAL RETENTION:

Each judge is subject to an unopposed, nonpartisan retention election at the first general election held more than 3 years after the appointment. To be retained, a judge must receive a majority of affirmative votes cast. This means that newly appointed judges will serve at least 3, but not more than 5 years prior to standing for their first retention election.

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

C. PERFORMANCE EVALUATION:

All sitting judges undergo a performance review after the first year in office and biennially thereafter. Judges not up for retention election can use the performance review results (which are confidential) as a guide for self-improvement. Judges up for retention election are subject to Certification Review by the Judicial Council. Prior to the election, the Council publishes in the voter information pamphlet and in a newspaper of general circulation in the judicial district whether the judge met or failed to meet the following evaluation criteria:

- *Compliance with case delay reduction standards.*
- *No formal sanctions and not more than 1 informal sanction by the Judicial Conduct Commission.*
- *Completion of 30 hours of approved judicial education each year.*
- *Self Certification that a judge is physically and mentally able to serve, and complies with the Codes of Judicial Conduct and Administration.*
- *A satisfactory score on the certification portion of the Council's Survey of the Bar.*

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

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of \$5.00. Thirty eight opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 26, 1996. For an additional \$2.00 (\$7.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1996.

ETHICS OPINIONS ORDER FORM

Quantity _____

Amount Remitted _____

Utah State Bar Ethics Opinions

(\$5.00 each set)

Ethics Opinions/Subscription list

(\$7.00)

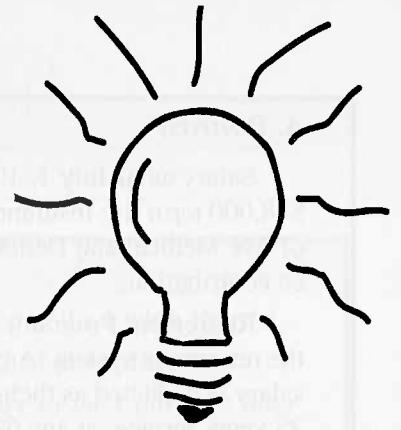
Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Maud Thurman
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.



GREAT IDEA!

Advertising in the *Utah Bar Journal* is a really great idea. Reasonable rates and a circulation of approximately 6,000! Call for more information.

Shelley Hutchinsen
(801) 532-4949

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

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

Name (please print) _____

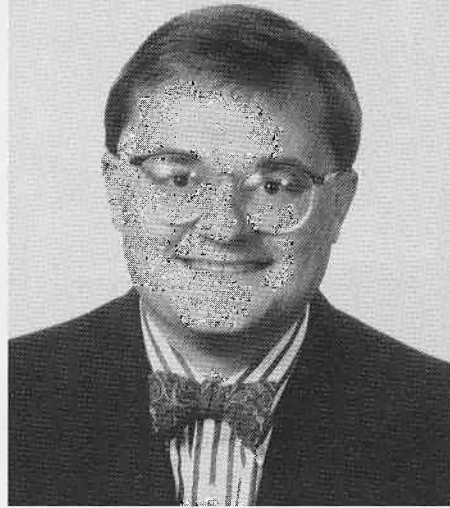
Firm _____

Address _____

City/State/Zip _____

Phone _____ Fax _____

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



God, Family and the Second Amendment: A Celebration of Law Day

By Michael L. Mower
Secretary, Young Lawyers Division

We believed in God, family and the Second Amendment in the small town of Ferron, Utah where I grew up in the 1970's. We loved Emery High football. We like the funeral potatoes the church sisters served when someone died. We loved the deer hunt. We loved America. So it was quite surprising when my conservative, school principal father ordered a subscription to *Soviet Life* magazine. His rationale was that he'd read somewhere that as a part of Henry Kissenger's Detenté, for every issue of *Soviet Life* sent to the U.S., a person behind the Iron Curtain could receive an issue of *Time* or *Newsweek*. Not a bad exchange, my father thought. Our family would do its part to spread the message of democracy abroad and we'd receive a full color magazine that was supposedly a tamer version of *National Geographic*.

At first, all went well. Our family would read an article touting a "record Soviet harvest" and see photos of "heroic" Siberian industrial workers and ebullient dancing Ukrainian women. We figured some family in Tazhikistan was perusing *Time* and learning from America's free press that Richard Nixon was on his way out and that

inflation and the energy crisis were gripping the U.S. Then came The Issue. Over a hundred pages of text and photographs proclaiming the glories of the Soviet Constitution. In the U.S.S.R. citizens were guaranteed the right to vote, speak freely, have equality between the sexes and races, we read. In this "People's Republic" comrades were guaranteed jobs, health care and the ability to worship as they pleased. An article bragging about the extremely high number of people who voted in Soviet elections was accompanied by a photo of a poll worker receiving a ballot from a shepherd from somewhere way out in the back country. What the photo didn't show was that the ballot named only one candidate. It also didn't show the Jews who were being persecuted for wanting to worship their God in their own way. It didn't show Soviets standing in line for hours for a few rubles worth of groceries, or others headed off to the gulag without the benefit of a fair trial. *Soviet Life* was really "Soviet Makebelieve Life." We knew life in the U.S. wasn't perfect. We also knew that *Soviet Life* was a crock. After reading The Issue, my father decided we'd tolerated this propaganda long

enough and canceled his subscription.

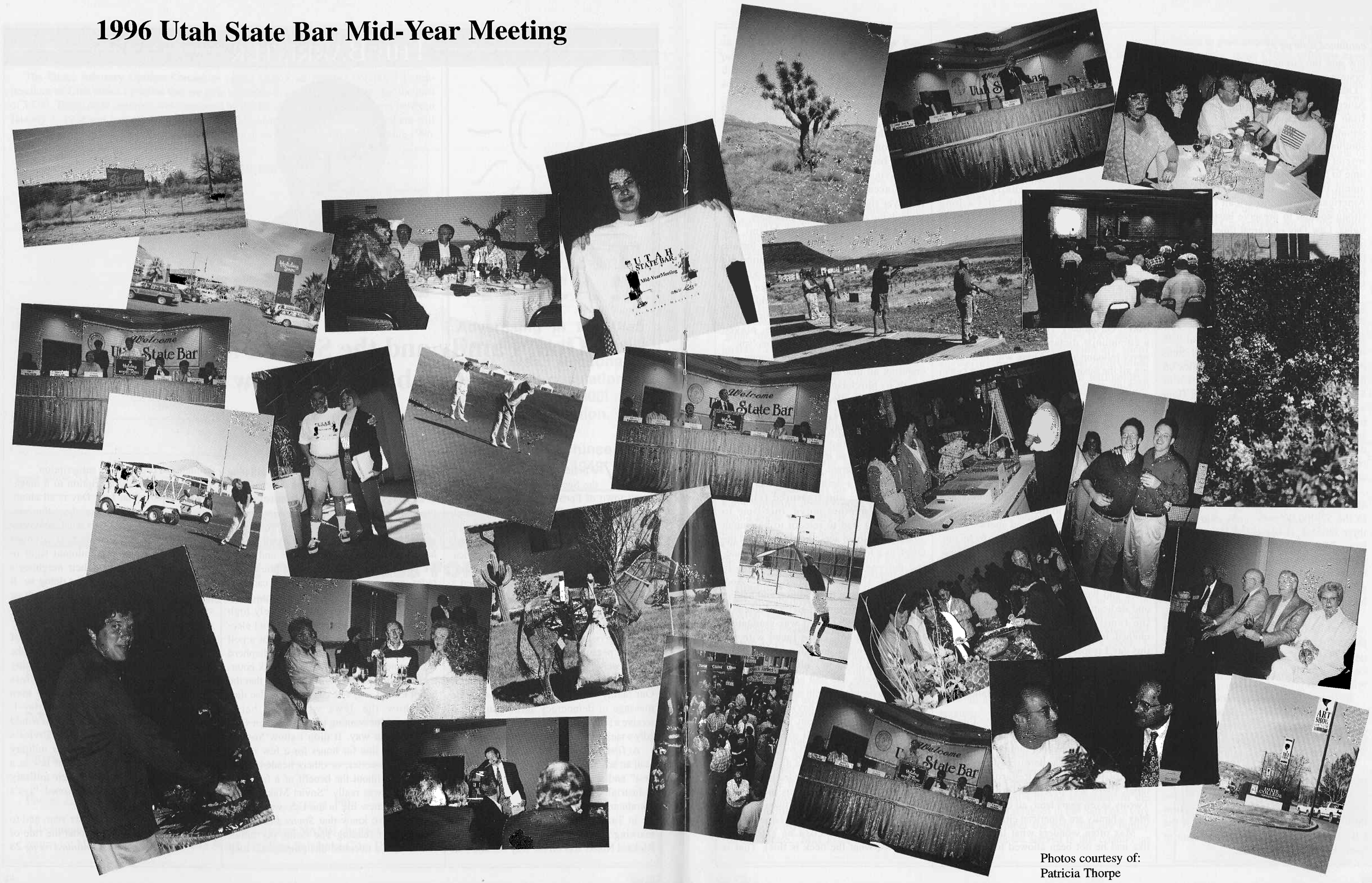
Cancelling the subscription to a magazine is in part what Law Day is all about. Law Day is a time to learn about the freedom of Americans to read what they want and ignore what they don't. It is about someone's Second Amendment right to own a pile of guns and their neighbor's right to say they are crazy for doing so. It is about the right to attend the church or synagogue of your choice or simply skip services and watch the NFL on FOX.

Law Day started during the height of the Cold War. Some far sighted folks at the American Bar Association tired of seeing thousands of goose-stepping soldiers march past a group of spooky old men perched atop Lenin's Tomb every May 1. They decided a Law Day celebration would be a great way to counter the Soviet's annual obnoxious display of their military might. "Our plow of the rule of law is a heck of a lot tougher than their military sword," someone probably reasoned. "Let's celebrate that."

And so they did. Year after year, and to this day Americans learn about the rule of

continued on pg 28

1996 Utah State Bar Mid-Year Meeting



Photos courtesy of:
Patricia Thorpe

continued from pg 25

law and the strength of America's legal system each May 1. This year's theme, "The U.S. Constitution – the Original American Dream" is being celebrated by Utah Young Lawyers through teaching seminars, hosting a luncheon on the Constitution, and providing free legal advice to several hundred people. Law Day is a great time to celebrate our Constitution – a document flexible enough to include more Americans in the American dream, yet strong enough to preserve basic, inherent rights. Law Day is a great time to educate others about a legal system, which despite its faults and weaknesses, is tough enough to outlast the military might of the former Soviet Union. Hats off to Law Day.

continued from pg 17

On or about July 27, 1985, Hunt was retained to surrender stock in an oil company and receive payment for the stock on behalf of his client. He was paid a fee of \$2,000.00 to provide these services. Hunt used stock powers which had been signed in blank to transfer some of the shares of stock into his own name. He then surrendered the stock to the corporation and received a check payable to himself in the amount of \$35,010.00.

Hunt admits taking this money but alleges it was a contingency fee in addition to the \$2,000.00 previously charged for these services. However, Mr. Hunt did not have a written contingency fee agreement with his client as required by Rule 1.5(c) of the Rules of Professional Conduct nor did he disclose in writing to his client that he was taking a large contingency fee.

On or about August 1988, Hunt was retained by this same family to close out the estate of a deceased member. He was paid a fee of \$5,000.00. Thereafter, Hunt failed to complete probate of the estate or refund any portion of the fee.

In light of compelling mitigating circumstances, and after consultation with the complainants, the Bar supported the Court's acceptance of Hunt's Petition For Resignation Pending Discipline.

Mr. Hunt may not apply for readmission to the Bar for five years. Pursuant to the terms of the Supreme Court's Order accepting Hunt's resignation, Mr. Hunt must pay restitution to all clients and the Client Security Fund as a precondition to readmission.

Maximo R. Guerra: YLD Profile

By Michael O. Zabriskie



"Cubanito," what are you doing in Utah?" Is a question often asked of Max Guerra lately. He usually answers with "it's a long story" "I'll tell you sometime" or if you have enough time Max usually starts with a list of things including Fadel Castro, his parents, "los Americanos", a law degree and a "mujer".

Max was born in Cuba. "Our last 37 years have not been very good" exclaims Max. "On January 31st, 1959, Fidel Castro, a communist dictator, ceased power and never relinquished it. Along with nationalizing all the businesses and land, Castro began hacking away at the rights of Cuban citizens." This, of course did not settle well with a lot of Cubans. As a result many of them risk their lives seeking freedom from Castro's tyranny. Because Florida is only 90 miles away, it became a natural refuge for those fleeing Cuba.

Max's parents, Mario and Iluminada Guerra, decided to uproot their family and make the journey to the U.S. In 1969 Max, his parents, four siblings, and another on the way, arrived on an amnesty flight to Miami. They left everything behind them including, family and friends. "The sacrifices were tremendous. My parents had to work and work and work." Through their hard work and dedication they somehow provided for the family. "They made sure we were clothed, fed, housed, loved and educated. To this day I respect and admire my parents for having the wisdom and vision to see what was best for the family. They courageously took on the challenge of raising a family in a foreign country."

"Los Americanos" made it possible for Max to be here today. "They opened up their borders and accepted our family members as resident aliens." The term "resident alien" was not too pleasing. Regardless of the label, there was potential for citizenship. Twenty seven years later, all the members of Max's family are American citizens.

Max often wonders what life would be like had he not been allowed to immigrate.

Cubans were accused of being CIA agents and were jailed and executed; Cubans were sent to the Angolan war; Cubans starved while tourists were treated like kings; Cubans became educated but had little hope of applying their knowledge; and Cubans were forced to make the dangerous crossing over the Atlantic in makeshift rafts, often dying or ending up as prisoners.

Shortly after arriving in Miami, the family moved to Boston, where, at the age of six, Max saw snow for the first time. He also started to learn to read and write in English: "cuchara, spoon; tenedor, fork; bano, bathroom. I think you get the idea." Max says. "In Boston I also learned about American culture, met friends, played hockey and acquired a second name, 'spic'".

After five years of saving money and enduring all that snow, the family headed south to purchase a home and warmer weather. "We settled in Belle Glade, a city located in central Florida. I went from being a hockey playing city boy in Boston to a horse riding country boy in Belle Glade. I just had to learn to adjust, a fact of life for an immigrant." Max states.

The familia's desire to be closer to the Cuban culture and treasured relatives meant yet another move, this time to Miami. Max had to relearn to be Cuban again. He learned about kissing girls on the cheek as a form of greeting them and dancing merengue and salsa. "Que viva la tradician!" (May the tradition live). "And, while I was living the tradition and having fun, time was flying by. Before I knew it, the year was 1982 and I was graduating from high school. I was faced with the decision of what to do with my life."

Max had lived in Cuba, Florida, and Massachusetts. He had adventure in his blood. He decided to join the Navy and see the world. Once in the navy, Max realized he knew very little about the world. He met Americanos from all over the United States and people from all over the world. Max admitted "There was a diverse culture out there and a lot that I needed to know."

One of Max's first lessons in the navy was realizing that there were two classes of citizens, enlisted and commissioned officers. "Chico, que cosa es esto! (My goodness, what the heck is this). That is

exactly what I said. Que paso? (What happened). The recruiter never told me about this." Max wondered about Thomas Jefferson's statement "that all men are created equal". He realized the need to add a few more things to that already lengthy list of things to learn. Before he knew it, Max was doing push-ups and replying "yes sir" to commissioned officers. "I'll tell you the truth." Max states. "I didn't like this very much. I needed a plan of action for the next four years."

While listening to the recruiter's spiel on the navy adventure, Max remembered he could also get an education. "By golly, if I have to endure four years of 'yes sirs' and salutes, I might as well get an education. Wherever I was stationed in the military, I would enroll at the local university. After four years in the military, I considered reenlistment. I said to myself, 'what, are you crazy?', and make the same mistake twice.' Didn't I learn anything after two years of higher education? Yes, I learned that freedom is very important, so I opted to move back home to Florida and leave the navy behind."

Back in Miami, Max had to make another adjustment, from military life to civilian life. It was really hard getting rid of that military uniform. His new uniform was shorts, a tee-shirt and a backpack. His new drill sergeant was his mother. "If you know anything about Cuban moms, you would know that there is very little freedom when you live at home. Anyway, my Cuban mom is another story in itself and there is no time for that in this article." Max registered for school at Miami-Dade Community College and later Florida International University.

After graduating, he decided to go to law school. Reviewing a brochure from the University of Utah, Max decided to apply. It was out west, it had mountains, it had adventure, it had skiing and it just happened to also offer a good education. What more could you ask for? "I came, I saw, I endured and I learned. Those three years, I swear, were far worse than boot camp."

After graduation from law school in 1993, it was decision time again. Max wondered what to do with his life and his degree? I've had enough of this snow in Salt Lake City. I need warmer weather, a cafesito (coffee), pastelito (Cuban pastry), my family, my music, and finally some Cuban culture." Max loaded up the u-haul

and made the trip back to Miami.

Max soon realized that he didn't belong there anymore. Miami had changed and so had he. "We were no longer the same. I needed to be where I was needed and where I could make a difference." Max also missed the "mujer" he had gotten to know while living in Salt Lake City. It was a hard decision to leave his family.

For the second time in three months, Max loaded up the u-haul and wondered whether he'd make it. "My beat-up little Honda somehow got me back to Salt Lake City." He got a job on an assembly line to pay the bills and began studying for the Utah Bar. He started working at the Utah State Tax Commission. Although he had taken a lot of business and tax courses in law school, there was much that I needed to learn. "Working at the Tax Commission has been a constant challenge; there is so much that you are expected to know. My days (two days a week) at the Tax Commission are spent answering questions on fuel, individual income, corporate, sales and withholding tax. When I don't know the answer, I must research and find it."

Shortly after arriving in Utah, Max also joined a group of other law school graduates interested in finding alternative means for resolving disputes via mediation and arbitration. After a lot of hard work, a company, Resolution Counselors Int'l., was formed.

When not working at the Tax Commission, or for Resolution Counselors, Max is a practicing solo practitioner. "Every day is a learning experience. There is so much you have to know to properly serve your clients. I find myself in a constant struggle to learn about these specialized areas of the law that I had not been formerly trained in while in law school. My father always said that hard work pays off. Therefore, I am working hard to learn the law, and business is good. A good percentage of my clientele is Hispanic. My Hispanic clients, many of which are immigrants like myself, find it soothing to have an attorney that speaks Spanish and legalese."

Whenever Max has any spare time, he is out there getting involved in Hispanic community organizations like Image de Utah and the Utah Cuban-American Association. The latter has recently been quite fulfilling. Max has assisted with the settlement of the Cuban political refugees in the Salt Lake City area. "I remember the help that my family received when we arrived in this country so

it is nice to give something back."

"In return, these Cuban refugees have made me less homesick and showed me firsthand the importance of having rights. Time spent with them provides me with the Cuban culture that I so desperately need to replenish the sole." They also share their horror stories of life back in Cuba and the lack of rights. For example, the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is virtually nonexistent in Cuba. After listening to the stories, Max is grateful for all the rights available to us in the United States. "We, Americans, however, should never take these rights for granted. If so, Americans may one day be telling stories like those of the Cuban refugees."

If you should ask Max what he is doing in Utah, he'll give you the condensed version: "aqui en la lucha," which means here in the struggle. "Life is a struggle to make a better life for yourself, your family and others. It is also meant to be fun and adventurous. So, here I am in Utah."

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Election Open for Officers in the Young Lawyers

By Michael O. Zabriskie

April marks the opening of elections for the Young Lawyers' Division for the 1996-97 year. Nominations for the offices of President-Elect, Secretary and Treasurer open on April 11, 1996. These officers carry out the activities of the Division. Their duties include:

PRESIDENT-ELECT

The President-Elect position requires a three-year commitment: one year as President-Elect, one year as President of the Division, and one year as Past President of the Division. The President-Elect is a member of the Executive Council and chairs the Long-Range Planning Committee. The President-Elect acts as President in the absence of the President. The President-Elect attends the Bar Commission meetings when the President is unable to attend. The President-Elect automatically succeeds to the office of President of the Division during the 1996-97 year. The President-Elect also performs other duties as may be delegated by the President.

SECRETARY

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

TREASURER

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

Summary of the election rules.

1. The President-Elect, Secretary and Treasurer are elected by the general membership of the Division.

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

Utah State Bar.

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

4. Nominations for the offices are being accepted from April 11, 1996, through April 16, 1996. Any qualified person wishing to be elected may be nominated by a petition bearing the signatures of three members of the Section who are in good standing. Nominations must be received by the current President of the Division, Marty Olsen, 257 East 200 South, Suite 1025, Box 35, Salt Lake City, Utah 84111, by 5:00 p.m., April 16, 1996. The current President, Marty Olsen, also serves as the election judge. Nominations should be hand-delivered or mailed to be received by April 16, 1996.

5. Each nominee must submit a written statement which contains the candidate's biography, qualifications and platform ("Platform Statement"). The Platform Statement should be submitted to the President in final form, ready to be photocopied, by 5:00 p.m., on April 18, 1996. The Platform State-

ment will not be retyped by the election judge if it is not in final form. The contents of any Platform Statement submitted will not be disclosed to other candidates by the election judge prior to 5:00 p.m., April 18, 1996. The Platform Statement should not exceed a one-sided single page of 8-1/2 x 11 inch paper. No changes to the Platform Statement will be allowed after 5:00 p.m., April 18, 1996.

6. Officers are elected by secret mail ballots by all members of the Division. Ballots will be counted and election results announced on May 6, 1996.

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

8. The new officers of the Division will take office at the 1996 Annual Meeting of the Utah State Bar.

9. A copy of the complete Election Rules can be obtained from Marty Olsen.

Nominations Open	April 11, 1996
Nominations Close	April 16, 1996
Platform Statements Filed	April 18, 1996
Platform Statements and Ballots Mailed	April 22, 1996
Balloting Begins	April 22, 1996
Balloting Ends	May 3, 1996
Election Results Announced	May 6, 1996

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

Michie Opens Site on the World Wide Web - <http://www.michie.com>

CHARLOTTESVILLE, VA, February 15, 1996 - Michie, publisher of legal materials since 1818 and the nation's leading publisher of state codes, recently established an address on the World Wide Web featuring its entire catalog of products and services. Users can visit Michie at <http://www.michie.com>.

"We are excited about the marketing possibilities of our new Web site," said Michie President David Harriman. "Our presence on the Web is in keeping with our position as an information technology leader among legal publishers."

Visitors to Michie's Web site can peruse and order from the company's extensive catalog of state codes and other statutory publications, more than 700 professional and law school books, Michie's Law on Disk™ titles, and other CD-ROM products. They can sample the full text or selected chapters of many Michie publications, communicate with Michie authors, and receive technical support for electronic products. They will also find a schedule of Law on Disc seminars approved for CLE credit, the current issue of Michie's CDiscourse newsletter, and directories of Michie sales and Law on Disc training representatives.

Law Day Luncheon

The speaker at this year's Law Day Luncheon on May 1st at the Red Lion Hotel will be Judge Lloyd D. George. To help you become more familiar with Judge George and his many accomplishments, we have prepared a short summary of his extensive professional biography.

Chief Judge Lloyd D. George first became a United States District Court Judge in May 1984. He assumed the duties of Chief Judge for the District of Nevada in July 1992. Before sitting as District Court Judge he served as a U.S. Bankruptcy Judge from 1974 to 1984. Judge George is a former board member of the Federal Judicial Center and currently a member of the National Bankruptcy Conference and a Fellow of the American College of Bankruptcy. He has served as chairman of two judicial conference committees. In 1984 he was appointed to the Advisory Committee on Bankruptcy Rules and named chairman of that committee by Chief Justice Rehnquist in 1987. In 1990 he assumed the chair of the Judicial Conference Committee on the Administration of the Bankruptcy System, serving in that capacity for three years. In 1993 he chaired the Executive Committee of the Ninth Circuit Judicial Conference.

Judge George has also been active in the international arena. Justice Rehnquist appointed him on October 1, 1994 to the International Judicial Relations Committee. As a member of that committee he has helped construct the constitutional framework of emerging judicial systems in the developing democracies of Eastern Europe and Russia. In June of 1995 he participated in a series of seminars in Dushanbe, Tajikistan, associated with the drafting of the Tajikistan Constitution.

Judge George received his B.S. degree from Brigham Young University in 1955 and his J.D. Degree from the University of California, Boalt Hall, Berkeley, in 1961. He practiced law from 1961 to 1974 with the law firm of George, Staffan & Simmons. The Judge is also a former pilot with the United States Air Force.

We are honored to have Judge George speak to us at our Law Day Luncheon on May 1st. We encourage all members of the bar to attend.

Volunteers Needed for YLD Service Project and Law Day

By Michael O. Zabriskie

The Young Lawyers Division needs help (both skilled and unskilled) for their Spring Service Project. This year we are renovating the Battered Women Shelter, a section of the Y.W.C.A. Last year this section housed 1000 children and 600 battered women. The area can house 55 women and children at a time. Because of the high demand and use of this facility it drastically needs immediate attention. Volunteers will help paint, refurbish, drywall, replace carpet, clean, move furniture, and basically everything else that needs to be done.

The Shelter staff is enthusiastic and supportive about this refurbishment. Because of the ongoing function it is difficult to arrange such an overhaul and still accommodate those individuals staying at the shelter. We will have April 13th and 14th to complete this project and then the section will shelter numerous women and children. We are also looking for any in kind donations to improve this section. Any interested persons can contact Gary Winger at 521-5800 or Brad Helesten at 363-7611.

Fox 13 television and AT&T are sponsoring Call A Lawyer again this year. Law Day, May 1st 1996, from 7:00 p.m. to 10:00 p.m. Viewers can call a toll free number and get some direction to their legal problems. This event was highly successful last year and we need even more volunteers to man the phones. For more information or to sign up to help call Steven Shapiro at 532-5444.

Nominations For the Young Lawyer of the Year and Liberty Bell Awards

Nominations are currently being accepted for the Young Lawyer of the Year Award and the Liberty Bell Award.

The Young Lawyer of the Year Award honors an attorney who has contributed to the legal and/or non-legal communities. All members of the Utah Bar who qualify as young lawyers are eligible for the award. This award is given at the Annual Meeting of the Utah Bar.

The Liberty Bell Award honors a non-lawyer who has made substantial law-related contributions to the community such as in the form of education or community service. This award is given on Law Day, May 1, 1996.

Nominations can be mailed to Michael Zabriskie, 225 South 200 East, Suite 200, Salt Lake City, Utah 84111, or to Rob Rice, 79 South Main Street, 500 Deseret Building, Salt Lake City, Utah 84111.

For further information, contact Michael Zabriskie at 328-8849, Extension 309.

Notice: Mentors Needed!

The Young Lawyers Division, Law Related Education Committee is helping to recruit mentors for the Village Project. It is a Court sponsored mentor program designed to provide youth referred to Utah's juvenile courts with a one-on-one adult mentor. Each mentor works with local schools, community centers, boys and girls clubs and other existing community services to help their assigned youth become a better functioning member of the community. Volunteers need to be at least 18 years old, commit to one hour per week during regular school hours and be willing to attend an orientation training. Lawyers and non-lawyers are welcome to participate. If you are interested, please contact Susan Hintze, Village Project, Program Coordinator at 265-5916 or e-mail her at SusanH@courtlink.utcourts.gov.



The X, Y, Z's of a Divorce, or What You Need to Submit to the Court to Finalize a Divorce

By Judge Judith S.H. Atherton

In recent years, state and federal requirements, and some appellate direction, have changed the face of divorce in this state. Those changes have most dramatically affected divorcing couples with minor children, but all divorces are affected by some of the changes, at least in some of the state's judicial districts. This article will attempt to highlight the changes and explain the documentation required by the court before a divorce can be finalized.

In all divorces involving minor children, the following documentation is required: **Findings of Fact and Conclusions of Law** and **Decree of Divorce**. These should be separate documents, both incorporating the provisions of the divorce. Decrees that do not state the provisions but merely "incorporate by reference" the findings will be returned by most judges.

Financial Information. Utah Code Ann. § 78-45-7.3 (Supp. 1995) requires a completed child support worksheet¹ and financial verification as required by section 78-45-7.5(5). That section mandates the submission of year-to-date pay stubs or employer statements and completed tax

JUDGE ATHERTON was appointed to the Third District Court in July, 1995. She received her undergraduate degree from Wellesley College and masters and law degrees from the University of Utah. She was a member of the firm of Hugh C. Garner & Associates from 1984-1986 and staff counsel for the Legal Aid Society of Salt Lake from 1986-1988. She then served in the state executive branch as Assistant Attorney General in the criminal appeals division. She was appointed a Third District Court Commissioner in 1992, and carried a criminal and domestic relations caseload. She has also served as an adjunct instructor at the University of Utah College of Law. Judge Atherton is currently assigned to the West Valley City court and the Juvenile Court permanency project.

returns from the most recent year. In addition, section 78-45-7.3 requires a written statement (certificate of compliance) indicating whether or not the child support amount is consistent with the guidelines. The guidelines must be applied as a rebuttable presumption in determining child support. To

rebut the presumption and order a lower amount of support, the court must find that application of the guidelines would be "unjust, inappropriate, or not in the best interest of a child in a particular case."² A stipulation by the parties to a lower amount may be acceptable, but judges will review such stipulations on a case by case basis. The parties should be prepared to explain the reasons for any downward deviation from the guidelines. Submission of financial information is required in all cases involving minor children, even if no child support is awarded. In those cases, a stipulation or finding explaining the reason for no support, as required in section 78-45-7.2, does not relieve the parties from submitting the financial documentation.

Mandatory Divorce Education.

The mandatory course for divorcing parents, which is designed to educate parents on their children's needs, both during and after the divorce, became effective statewide on July 1, 1994. Utah Code Ann. 30-3-11.3 (Supp. 1995). A certificate of completion for each party must be submitted to the court. The court may waive the

requirement upon a determination that attendance is not necessary, feasible or in the best interests of the parties. *See* Utah Code Ann. § 30-3-4 (Supp. 1995); Rule 4-907, Code of Judicial Administration (C.J.A.). If a party desires a waiver, the best action is to file a motion, supporting affidavit and order with the court. In the absence of a waiver or the certificate of completion, the finalization of the divorce can be delayed a very long time. This problem occurs frequently and unnecessarily. The 90-day waiting period between the filing of a divorce complaint and a hearing for the decree, mandated in section 30-3-18, does not apply to parties who have completed the divorce education requirement. *Id.*; Rule 4-907, C.J.A..

Mandatory Income Withholding.

Income withholding for child support collection is required in every child support order issued or modified after January 1, 1994. Utah Code Ann. § 62A-11-403 and 502 (Supp. 1995). An additional \$7.00 processing fee is also assessed and withheld, and all payments are processed

through the Office of Recovery Services. No delinquency is required. The court may waive the automatic withholding requirement in one of two ways. First, the court may find that a party has demonstrated "good cause" which requires an on the record determination that implementation would not be in the best interests of a child and proof of timely payment of any previously ordered support. Further, as an alternative to withholding, the court may order that the obligor obtain a bond in the amount of at least two months of child support, to be deposited in trust for the benefit of the child and that payments be deposited in a separate account in the obligee's name, or an obligor may be required to arrange a reliable manner of tracing support payments. Second, the obligor and obligee may enter a written agreement, executed by both, providing an alternative payment arrangement. Even if an oral divorce stipulation that incorporates an alternative payment plan is entered on the record, a written and signed agreement concerning the payment plan


should be submitted to the court with the final paperwork. Any alternative arrangement for the payment of support may be terminated upon delinquency, request of the obligor or subsequent court order. Universal income withholding packets are available at district court clerk's offices.

Mandatory income withholding is the result of strong public policy concerns regarding the need to assure that children of divorcing parents receive food, clothing and shelter. By making income withholding universal, no obligor can be "tainted" by the fact of withholding. An employer may not "discharge . . . , refuse . . . to employ, or take . . . disciplinary action against an obligor because of a notice to withhold." Utah Code Ann. §62A-11-406(10) (Supp. 1995). The penalty for such is the payment of the "greater of \$1000 or the amount of child support accumulated to the date of discharge which . . . (the employer) should have withheld." *Id.* §62A-11-406(11). There continues to be some resistance to mandatory withholding



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Alternative Dispute Resolution (A.D.R.)

A program of court-annexed alternative dispute resolution began in the Third and Fifth Judicial Districts on January 1, 1995. The pilot program requires that all cases subject to rule 4-510, C.J.A., be referred to the A.D.R. program upon filing of a responsive pleading. The case will proceed to mediation 30 days after the filing of the responsive pleading unless the parties submit to nonbinding or binding arbitration or unless one or both of the parties file a "statement opting out of the A.D.R. program." The statement must be signed by both the party and counsel and must state that they have reviewed a videotape concerning A.D.R. but have "determined that no good faith basis exists to believe that participation in the ADR program . . . will lead to a more just, speedy or inexpensive resolution of the disputes than proceeding to trial." Rule 4-510(6)(ii), C.J.A. (Supp. 1995). Divorce actions in which temporary orders are requested are currently exempt

from this requirement. However, as of this writing that exemption is under review.

In divorces that do not involve minor children, Findings of Fact and Conclusions of Law, the Decree of Divorce and A.D.R. statement, when applicable, are the only required documents. However, the 90-day waiting period between the filing of the divorce complaint and a hearing for the decree still exists. Utah Code Ann. § 30-3-18 (Supp. 1995). Many judges are willing to waive the 90-day period for good cause. If you wish to have the period waived, file a motion, affidavit and order. The reason must be set forth in the findings. *Id.*

"Parties, judges and commissioners and, especially, the court staff benefit from . . . compliance . . ."

The state legislature authorized a significant change in divorce procedure during its

1995 session. In a default proceeding, evidence to support the decree may now be submitted upon the affidavit of the plaintiff with the court's approval. Utah Code Ann. § 30-3-4(1)(b) (Supp. 1995). This change means that the jurisdiction and grounds do not have to be taken before a judge or commissioner. Rule 4-913, C.J.A., effective November 15, 1995, establishes the applicable criteria. The proceeding must be a default, defined here as failure to timely respond after service, waiver of notice, stipulation to withdraw an answer or stipulation to the entry of a decree or entry of default. The plaintiff³ must submit an application for default accompanied by an affidavit. The affidavit must include the following:

1. That either plaintiff or defendant was at the time of the filing of the complaint a resident of Utah and the county where the action was brought for at least three months immediately prior to the filing of the action.⁴

2. That plaintiff and defendant are currently married,

3. The grounds for the divorce. If the grounds are irreconcilable differences, the affidavit also must state the steps taken to try to resolve the differences and that, despite those attempts, the differences remain irreconcilable.

4. Whether public assistance has been or is being provided.

5. The findings of fact and decree conform with the original complaint or the stipulation, whichever is applicable. All of the required documentation must be submitted with the application. A divorce will not be awarded in the absence of an application for default and the completed affidavit.

Submission of the required documentation in divorce matters saves time and effort. Parties, judges and commissioners and, especially, the court staff benefit from the care taken to ensure compliance in the first instance.

¹Rule 4-912, Code of Judicial Administration, mandates that the worksheet contain information in Appendix G of that code. Note that the forms are dated 10/94. Forms with earlier dates are not acceptable. This rule was effective April 15, 1995.

²Utah Code Ann. 78-45-7.2(2) and (3) (Supp. 1995); *Hill v. Hill*, 841 P.2d 722 (Utah Ct. App. 1992).

³Although rule 4-913 states that a party to a divorce decree may apply for a default, section 30-3-4 authorizes only the plaintiff to proceed in that manner.

⁴Although rule 4-913 only requires a statement verifying that one of the parties was a resident of the county in which the action was filed at the time of the petition, section 30-3-1(2) (Supp. 1995) mandates that one of the parties must have resided in the county where the action was brought for three months prior to the commencement of this action. Accordingly, an affidavit should comply with the statute and attest to the three month state and county residency.



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Selected Major Legislation 1996 General Session

By Jane A. Peterson and Lisa Watts Baskin

Authors' Notes:

This summary provides basic information about introduced legislation which presumably passed during the 1996 annual General Session. Due to the time constraints of publication and because some of the final actions have not been entered in the House and Senate journals by this date, this summary may not be completely accurate regarding which bills actually passed in this session. Please contact the Office of Legislative Research and General Counsel for a final update.

BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT

HB 96: Telephone and Facsimile Solicitation Act (Hunsaker, F.)

Repeals current state regulation of automated dialing telephone solicitation and unsolicited facsimile solicitations and enacts regulations similar to federal law. The use of automated dialing systems and facsimile solicitation is prohibited, telephone solicitation by live callers is regulated, and caller identification blocking of solicitor's telephone number is prohibited.

HB 375: Department of Workforce Services (Protzman, G.)

Combines workforce and welfare related agencies into a single department with a regional structure for the delivery of services. Agencies consolidated include: Industrial Commission, Department of Employment Security, Office of Job Training, Office of Family Support, Office of Child Care, and Turning Point. The Department will consist of three divisions: 1) Division of Employment Development providing stabilization, job training, job placement delivered through regional workforce service areas; 2) Division of Labor, Safety, and Program Regulation providing business regulation functions such as workers' compensation, industrial accidents, labor, anti-discrimination, safety, occupational safety and health,

child care licensing, and quality control; and 3) Adjudication Division providing grievance process functions for all areas under the department. An appeals board and other councils will also be housed in the department. The legislation provides for the hiring of an executive director charged with assembling work groups specified in the bill to develop a detailed design of the department. Implementation legislation will be prepared for the 1997 General Session and the department will assume actual responsibility on July 1, 1997.

SB 84: Olympics Special Revenue Fund Amendments (Montgomery, R.)

Limits Utah Sports Authority expenditures of sales and use tax diversion to \$59 million unless the legislature appropriates additional funds. Any additional expenditures authorized by the legislature must be reimbursed. All funds in the Olympic Special Revenue Fund must be distributed no later than October 1, 2002.

SB 121: Oversight of Public Sports Entities (Myrin, A.)

Creates the position of State Olympic Coordinator to coordinate and oversee all state contracts and financial arrangements related to the 2002 Olympic Winter Games. The governor must review and approve all contracts. The coordinator collects financial information from the Salt Lake Olympic Organizing Committee and distributes it to several state agencies for review. The State Auditor serves as the State Olympic Coordinator until July 1, 1997, at which time the governor appoints a full time coordinator. Expenses of the position are paid out of the state's portion of the Olympic Special Revenue Fund. The position is sunsetted on July 1, 2002.

SB 135: Workers' Compensation Coverage (Poulton, L.)

Permits workers' compensation insurers to write policies that cover no specific employees. Under certain circumstances, sole proprietors and partnerships may purchase these policies to satisfy workers'

compensation insurance requirements.

CONSTITUTION

HJR 7: Resolution on Donations to the State School Fund (Brown, M.)

Amends the Utah Constitution to allow for bequests and donations to be made to the permanent State School Fund and also allows for other revenues and assets to be received by the fund under any other provision of law.

HJR 8: Resolution Amending the Revenue and Taxation Article (Bradshaw, A.)

Amends fiscal year language in the Utah Constitution and repeals the section on mining assessment in tandem with intent language that "this deletion is not intended to make a substantive change in the existing law."

SJR 1: Resolution Amending Veterans' Property Tax Exemption (Black, W.)

Amends the provisions of the Utah Constitution permitting the property tax exemption of disabled persons who were disabled or killed in the line of duty during any war, international conflict, or military training and gives direction to the Lieutenant Governor to withdraw and replace SJR 5 from the 1995 General Session.

SJR 6: Resolution on State's Authority to Guarantee the Debt of School Districts (Hillyard, L.)

Amends provisions of the Utah Constitution to permit the state to guarantee with its full faith and credit the debt of all Utah school districts, to permit the legislature to provide for reimbursement by participating school districts, and to remove the limitations on public debt and lending public credit for this purpose.

SJR 7: Jury Trial Resolution (Hillyard, L.)

Amends provisions of the Utah Constitution on trial by jury, preserves the right to trial by jury in criminal cases, and repeals the requirement of eight-person juries in general jurisdiction courts to accommodate court consolidation changes.

SJR 17: Resolution Amending the Rev-

enue and Taxation Article and Education Article for the Support of the Public Education and Higher Education Systems (Rees, S.)

Amends provisions of the revenue and taxation article and the education article of the Utah Constitution to provide for income tax allocation for the support of the public education and higher education systems and provides uniform language.

EDUCATION

HB 56: Modified Centennial Schools Program (Allen, B.)

Establishes, for at least a three-year period, a modified Centennial Schools program for ten public schools. A program applicant must have been or is now a centennial school, unless one of the applicants has a feeder school relationship to the selected school. School directors at participating schools are elected and consist of an equal number of school employees, parents or guardians, and the school principal. The directors may request the state or local board to waive any rule that prevents or inhibits the school from achieving its performance goals.

HB 65: Highly Impacted Schools (Jensen, S.)

Codifies a Highly Impacted Schools Program to provide additional sources for individual assistance to students attending public schools identified as highly impacted. The State Board of Education will determine which schools are highly impacted. Program funding is through the Minimum School Program and allocation of funds is by formula. Each school may use part or all of its allocation to lengthen the school year or extend the school day to offer individual assistance to students.

HB 76: Centennial Schools Amendments (Evans, B.)

Encourages participating public schools to provide preservice and inservice training for teachers and administrators on interacting with parents and parent advisory groups in an effort to increase parental involvement and achieve statutory goals.

HB 235: Reducing Class Size in Public Schools (Garn, K.)

Appropriates \$53,061,197 for class size reduction in grades kindergarten through sixth. The appropriation includes social security and retirement costs. The State Board of Education will distribute 20% of the appropriation based on a formula that

includes: 1) a district's ability to raise money for capital facilities, 2) need as determined by current student population and growth, and 3) the district's efforts to raise money and efforts to utilize existing facilities. If a school district student population increases by 5% or 700 students in a year, the district may use up to 50% of the allocation for classroom construction.

HB 405: Minimum School Program Act Amendments (Alexander, J.)

Provides \$1,593,958,330 for state (\$1,341,699,431) and local (\$252,258,899) funding for the minimum school program for public school programs in kindergarten, elementary, and secondary school grade levels. The value of the weighted pupil unit (\$1,672) was increased by 4% to \$1,739 and will be used to fund state educational programs by formula. The Uniform School Fund expenditure was increased by 14.4% and local funding decreased by 4.2% for a total program increase of 11% or \$158,121,690. The basic tax rate for local district participation in the State Supported Minimum School Program was adjusted to accommodate a \$30,000,000 property tax reduction.

SB 46: Capital Outlay Amendments (Taylor, C.)

Establishes a Capital Outlay Foundation and Capital Outlay Loan Program for local school districts including a \$26,358,000 appropriation. Until June 30, 2001, 20% of the foundation program can be used for emergency school building programs in school district bonding, construction, and renovation; thereafter, all program monies will be used for general purposes. The Capital Outlay Loan Program, administered through a revolving account, provides short-term assistance for construction and renovation. Funds for both programs are distributed on the basis of a minimum guarantee per average daily membership and by formulas. To qualify for participation in both programs, local school boards must levy a tax rate of .0024 per dollar of taxable value within their districts.

SCR 7: Virtual University Resolution (Steele, D.)

Endorses the creation and development of a regional virtual university by which post-secondary education becomes accessible through advanced technology to students throughout the western states.

ENERGY, NATURAL RESOURCES AND AGRICULTURE

HB 60: Dam Safety Amendments (Johnson, B.)

Provides that new safety standards for existing dams apply only to high hazard dams. The state engineer is prohibited from requiring a mutual irrigation company or water users association to comply with the safety standards unless a grant to pay for 80% of the costs is made available from the Board of Water Resources. The state is provided immunity from suit for any injury or damage resulting from the exercise or performance or failure to exercise or perform any function under Title 73, Chapter 5a, Dam Safety Act, or Title 73, Chapter 10, Board of Water Resources - Division of Water Resources.

HB 69: Forfeiture of Water Rights (Ure, D.)

Provides that judicial action to declare a forfeiture of a water right must be initiated within 15 years after the latest period of nonuse of at least five years.

HB 70: Fines For Poaching (Styler, M.)

Provides that wanton destruction of a trophy animal is punishable as a third degree felony. A person convicted of wanton destruction of a trophy animal is required to pay restitution.

HB 393: Sales Tax For Infrastructure (Gowans, J.)

Removes the sunset date on the allocation of sales and use tax for water, wastewater, and transportation projects. The revenue allocated to transportation projects is modified. The revenue is deposited in the Class B and Class C Roads Account, except \$500,000 is dedicated to the State Park Access Highways Improvement Program and \$1,000,000 is deposited to the Transportation Corridor Preservation Revolving Loan Fund.

SB 48: Land and Water Conservation Commission (Blackham, L.)

Creates the Land and Water Conservation Commission by renaming and expanding the duties and membership of the Soil Conservation Commission to include land conservation. This legislation also creates the Utah Surplus Land Trust Fund, which will contain monies generated from the sale of state surplus properties, grants, and donations to be controlled by the Land and Water Conservation Commission for land conservation projects initiated by local governments or other

local organizations.

SB 131: Personal Watercraft Requirements (Tanner, N.)

Requires any person under the age of 18 to pass a boater safety course before operating a personal watercraft.

SB 192: Wildland Fire Suppression Fund (Blackham, L.)

Creates the Wildland Fire Suppression Fund to assist counties in paying fire suppression costs. Annual contributions to the fund from participating counties and the state are specified.

HEALTH AND ENVIRONMENT

HB 158: Vehicle Emission Control Appropriation (Evans, R.)

Appropriates \$200,000 to the Utah Department of Environmental Quality to purchase vehicle emission test equipment to be used by Wasatch front counties to evaluate and determine the best approach to reducing vehicle emissions.

HB 302: Special Population Service - Health Care Provider Financial Assistance (Buffmire, J.)

Creates a scholarship and educational

loan repayment and retention program to encourage primary health care providers, including physicians, physician assistants, dentists, and mental health therapists, to practice in medically underserved urban areas. The legislation creates an oversight committee and specifies procedures for management of the loan and scholarship program, including defaults.

SB 127: Youth Alcohol Amendments (Taylor, C.)

Provides for the suspension or delay of driving privileges for violations of alcohol-related laws by juveniles.

The following bills addressed the licensing of certain professions. The emphasis in this legislation is on quality review and continuing education.

HB 166: Dental Practice Revisions (Killpack, R.)

SB 41: Massage Practice Amendments (McAllister, L.)

SB 72: Naturopathic Physicians Licensure (McAllister, L.)

SB 79: Pharmacy Practice Revision and Amendments (Holmgren, J.)

SB 97: Physician and Health Care Provider Practice and Immunity Amendments (Montgomery, R.)

SB 119: Mental Health Professional Licensure (Montgomery, R.)

HUMAN SERVICES

HB 231: Collaborative Services for Children and Youth at Risk (Evans, B.)

Amends the state's Families, Agencies, and Communities Together (FACT) program and provides that the FACT Council may make budget recommendations to the governor for collaborative programs.

HB 293: Employment Assistance for Utah Families (Haymond, J.)

Replaces the current Aid to Families with Dependent Children program with the Employment Assistance of Utah Families program to provide financial assistance, child care, case management, and other services to needy families with dependent children. The legislation also establishes a process for diversion from long term financial assistance and an employment plan that describes the steps to be taken to assist a recipient to obtain employment, includ-

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ing education for not more than 24 months. Financial assistance is available for 36 months. Single minor parents may receive financial assistance under certain conditions.

HB 294: Social Capital Formation Act (Frandsen, L.)

Directs the Office of Family Support to refer applicants and recipients of financial assistance to civic organizations, solicit requests for proposals from civic organizations for the provision of social capital, compile an inventory of civic organizations, and convene a coalition of civic organizations to assist the office in administering the act.

HB 295: Providing Affordable Housing (Haymond, J.)

Amends allotments for private activity bonding and directs local governments to amend general plans to assist in providing affordable housing. The legislation also requires the Office of Family Support to provide information to public assistance recipients regarding affordable housing.

HB 373: Child Welfare Reform Act Amendments (Haymond, J.)

Changes the name of the Division of Family Services to the Division of Child and Family Services. School districts must waive fees for certain children in the division's custody and provide special education assessments for children if school records indicate that the child may require special education services. The requirements for the division's performance monitoring system and procedures and requirements governing investigations of child abuse or neglect and the placement of children in kinship care are amended. Peace officers are required to investigate allegations of abuse of a child who is in the custody of the division. The legislation also establishes circumstances that constitute prima facie evidence of parental unfitness, directs the division to operate a pilot project to provide intensive, family based services for certain abused and neglected children and operate a pilot project for certain ungovernable minors and juvenile offenders.

SB 102: Income Tax - Adoption Expenses Deduction (Taylor, C.)

Increases the deduction amount for adoption expenses and provides for retrospective operation.

SB 120: Adoption Assistance (Taylor, C.)

Provides that a recipient of public finan-

cial assistance may receive services and support after placing a child for adoption, including reimbursement for expenses incurred by the recipient due to her care and confinement during pregnancy. The legislation also provides that public schools that operate programs for students who are parents receive information on adoption.

SB 225: Choice of Providers for Services for People with Disabilities (Stewart, C.)

Provides that family support services and associated case management services offered by the Division of Services for People with Disabilities be provided through vouchers or direct financial assistance.

JUDICIARY

HB 15: Sex Offender Notification Law (Allen, B.)

Permits a petitioner's access to information about a sex offender, including place of habitation, physical description, methodology of the sexual offense, and other identifying information.

HB 66: Civil Nuisance Amendments (Pignanelli, F.)

Expands the definitions of civil nuisance to include specific offenses such as drug houses, gambling, group criminal activity, party houses, and prostitution subject to abatement by eviction or injunction.

HB 68: Sex Offender Treatment (Jensen, S.)

Appropriates \$410,000 to the Department of Corrections for treatment of sex offenders. The legislation specifies licensing requirements for a sex offender treatment provider and requires the department to report to the Commission on Criminal and Juvenile Justice (CCJJ) and the CCJJ to report to the legislature annually. A repeal date of July 1, 1999 is also provided.

HB 95: Parole Term for First Degree Felony Sex Offender (Valentine, J.)

Removes the statutory cap of ten years for parole of first degree sex offenders and imposes lifetime parole unless the Board of Pardons and Parole grants termination. This legislation provides the parolee the right to petition the board to terminate the lifetime period of parole and requires administrative rules to govern hearings, examinations, parole conditions, and petitions for termination. The board may impose a sentence less than the minimum term upon a finding of mitigating circumstances.

HB 411: Domestic Violence Amendments (Dillree, M.)

Amends code provisions regarding

domestic violence law and clarifies procedures and content of court-related documents. The legislation also provides compliance with federal law.

SB 26: Criminal Penalty Amendments (Hillyard, L.)

Replaces mandatory minimum sentences of five, ten, or fifteen years to life with indeterminate minimum sentences of six, ten, or fifteen years to life for convicted sex offenders. This legislation also lists the circumstances which must be met before a sentence can be suspended or probation is granted and adds a requirement that this list must be considered in all non-mandatory imprisonment sex offenses. The aggravating factor of digital penetration is also provided which increases the second degree sexual abuse of a child to first degree aggravated sexual abuse of a child. Aggravated murder and murder are added to the list of mandatory incarceration offenses. The Board of Pardons and Parole may impose a sentence less than the minimum term upon the finding of mitigating circumstances. This legislation takes effect on April 29, 1996.

SB 213: Prohibition of Defendant's Profit from Criminal Conduct (Hillyard, L.)

Repeals "Son of Sam" provisions on proceeds received by criminals and enacts provisions on the court's and Board of Pardons' and Parole's authority to prohibit profit-making or benefit activity relating to the publication of facts or circumstances about the defendant's involvement in criminal conduct for which he is convicted. This legislation applies to the convicted defendant, the defendant's assignees, and representatives acting in the defendant's authority. It creates the court's option to order a condition of sentence or probation along with the boards option to create a condition of parole. Related penalties are also provided.

NATIVE AMERICANS

HB 141: Condition of State Programs for Native Americans (Jensen, S.)

Creates the State Native American Coordinating Board, an advisory board to coordinate state activities affecting Indian citizens of the state. The board will include representation from the Department of Human Services; the Department of Health; the State Office of Education; the State Board of Regents; the Department of Community and Economic Development;

the Governor's Office; and the Office of the Attorney General. The board will be chaired by the director of the Division of Indian Affairs.

HB 230: Severance Tax – Indian Tribes (Johnson, K.)

Creates the Navajo Revitalization Fund and a five-member Navajo Revitalization Fund Board. This legislation provides that a portion of severance tax monies derived from oil and gas wells on the Navajo reservation (33% on wells existing on or before June 30, 1996 and 80% on wells beginning production on or after July 1, 1996) be diverted to the fund to be used for loans and grants, leveraged with matching monies, for projects approved by the board benefitting Utah Navajos. Preference is to be given to capital project, infrastructure, or matching educational endowments. The legislation also requires an annual report on the activities of the fund and board to the Native American Legislative Liaison Committee and the governor.

SB 128: Indian Worship at Correctional Facilities (Dmitrich, J.)

Requires a state correctional facility to reasonably accommodate the practice of a Native American inmate's religion, including a Native American religion. To the extent it does not threaten security of the facility, reasonable accommodations include providing the inmate access to a Native American spiritual advisor, a site of worship on the grounds of the correctional facility, and items used in religious ceremonies, and not requiring a Native American inmate to cut the inmate's hair.

RETIREMENT

SB 96: Judges Mandatory Retirement (Peterson, C.)

Establishes a mandatory retirement age of 75 years for a justice or judge who qualifies as a member of the Utah Retirement Systems. A justice or judge who is 75 years of age or who attains 75 years of age prior to the justice's or judge's next retention election may not be a candidate in that retention election and must retire on or before December 31 of the year in which the justice or judge would have been subject to a retention election. A county justice court judge who attains 75 years of age by the first Monday in February 1999 may not be a candidate in the 1998 judicial retention elections and must retire on or before the first Monday in February 1999.

A municipal court judge who attains 75 years of age on or before the first Monday in February 2000 must retire on or before that date.

SB 130: Early Retirement – Agency Participation (Hull, J.)

Reduces from 95% to 50% the maximum agency participation in the purchase of up to 5 years retirement service credit for early retirement. The legislation requires the Department of Human Resource Management to make rules adopting a purchase policy that provides nondiscriminatory participation standards for all employees. Any costs for this purchase must be borne by the agency from agency savings resulting from the retiring employee's vacated position.

SB 172: Purchase of Retirement Service Credit (Hillyard, L.)

Authorizes a member or employer in any retirement program administered by the Utah Retirement Systems to purchase service credit for the member's nonqualifying full-time public employment in a state, federal, private school, university or public school system or forfeited public service in this state if the member does not qualify for a retirement benefit for that service. The cost

of the purchase is based on sound actuarial principles and fixed by the administrator based on age and salary. The purchase may be made through payroll deductions or lump-sum deposit, but total payment must be completed prior to retirement. This legislation also repeals service credit purchase provisions in individual systems to make the process uniform in all systems.

REVENUE AND TAXATION

HB 43: Cigarette Tax and Appropriation (Tanner, J.)

Increases the cigarette tax 4.5 cents per pack and appropriates \$4,800,000 for tobacco, health, and substance abuse programs.

HB 145: Sales Tax Exemption for Coin-operated Laundromats (Jensen, S.)

Exempts using coin-operated laundry machines from the sales tax.

HB 241: Transient Room Tax Amendments (Hatch, T.)

Expands the purposes and uses of the transient room tax to include paying for solid waste disposal operations, emergency medical services, search and rescue activi-

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On May 2-3, 1996, the Rocky Mountain Mineral Law Foundation and the University of Washington School of Law are co-sponsoring a program in Seattle on Resources Development, Environmental Land Management, and Permitting.

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This conference is designed for lawyers who work for natural resources companies (in-house and outside counsel), management, technical staff, landmen, consultants, and government personnel.

ties, and law-enforcement activities as required to mitigate the impacts of recreational, tourist, or convention activities. The legislative body of each county imposing the transient tax is required to engage an independent auditor to perform an audit.

HB 291: Sales Tax Exemption – Coin-operated Car Wash (Alexander, J.)

Exempts using coin-operated car wash machines from the sales tax.

HB 309: Sales Tax Exemption for Certain Coin-operated Amusement Devices (Short, R.)

Exempts using or renting to use certain coin-operated amusement devices from the sales tax.

HB 349: Gross Receipts Taxes – Modifications (Styler, M.)

Reduces the rates of the two gross receipts taxes by 53%.

HB 404: Income Tax – Health Care Insurance Deduction (Wright, B.)

Allows a taxpayer not eligible to participate in an employer-funded health care plan to exclude 60% of the premiums paid for health care insurance from taxable income.

HB 461: Municipal Energy Sales and Use Tax Law (Fox, C.)

Creates a municipal energy sales and use tax act, provides for the treatment of existing energy franchise taxes or fees, and modifies the treatment of energy for purposes of the sales and use tax. Except for the grant of rulemaking authority, the provisions of this bill take effect July 1, 1997.

SB 50: Sales Tax on Taxicab Amendments (Stewart, C.)

Exempts taxicab trips from the sales tax.

SB 94: Sales Tax – County Option for Public Recreation Facilities (Buhler, D.)

Modifies the purposes and uses of 1/10 of 1% county-option sales tax to include support of recreational facilities. The legislation also modifies the distribution of tax revenues and requires botanical, cultural, or zoological organizations offering discounted admission to do so for all state residents.

SB 106: Sales Tax Treatment of Schools, School Meals, and School Fundraisers (Poulton, L.)

Creates an exemption from sales tax for sales relating to schools and fundraising sales.

SB 195: Income Tax – Credit for Education Costs (Beattie, L.)

Provides an income tax credit of up to

\$100 for 25% of the costs of tutoring a disabled dependent enrolled in a public or private school, grades K through 12.

SB 237: Income Tax Reductions (Hillyard, L.)

Reduces the individual income tax approximately \$40 million in FY 1996-97 by adjusting tax rates. The top rate drops from 7.2% to 7.0%.

SB 275: Sales Tax – Ski Exemption (Stephenson, H.)

Exempts from the sales tax sales to a ski resort of snowmaking equipment, ski slope grooming equipment, passenger tramways, and electricity to operate a passenger tramway.

STATE AND LOCAL AFFAIRS

HB 120: Local Government Changes (Lockman, S.)

Provides for the exclusion of property belonging to an owner with more than 1% of the assessed value of property within the proposed incorporation area if the property is nonurban and does not require municipal-type services. The requirement that the county legislative body must proceed with the incorporation election under certain circumstances is eliminated. A county legislative body is required to commission a feasibility study concerning the incorporation petition. This legislation also provides for simultaneous consideration of petitions proposing the incorporation of overlapping areas; provides a procedure for the election of municipal officials in a newly incorporated municipality; and provides a procedure for removing a contiguous area from an area proposed for annexation. There is a procedure outlined for the creation of a township; priorities are provided among overlapping annexation, municipal incorporation, and township petitions; and a procedure is established for removing part of an area proposed for inclusion in a township.

HB 401: State Appropriations and Tax Limitations (Olsen, E.)

Modifies the definition of appropriations for the purposes of calculating the appropriations cap, requires strict compliance with the imposed limitations, expands the exemptions to vote to exceed debt limitation to include revenue bond and lease-revenue bond debt, and recodifies the state Appropriations and Tax Limitation Act.

HB 403: State Boards, Committees, Commissions, and Councils Amendments (Bradshaw, A.)

Amends the names composition, membership, appointing authority and responsibilities, and modifies certain record-keeping requirements relating to the databases for executive boards.

HB 406: State Boards and Commissions – Benefits and Terms (Bradshaw, A.)

Modifies terms and compensation requirements for certain state boards, commissions, committees, and councils to include staggered terms and compensation limited to per diem and expenses.

SB 188: Digital Signatures Act Amendment (Peterson, C.)

Establishes a method to facilitate electronic commerce through the use of public and private keys using algorithms to provide a secure key pair which creates a "digital signature" with similar legal effect as a handwritten signature on paper.

SB 232: Political Party Registration Requirement (Buhler, D.)

Modifies the provisions relating to political party organization and procedures, repeals provisions relating to recording party affiliation for voter registration purposes, and changes political party bylaw requirements to include replacing party candidates who become disqualified.

SB 264: Bonding Law Amendments (Holmgren, J.)

Modifies how water conservancy districts conduct business by changing certain election requirements, clarifies the provisions governing assessment hearings, authorizes the issuance of bonds to refund a district's contractual obligations and indebtedness, and reduces the number of days for petitioners to collect the necessary signatures to require an election to be held prior to issuing debt.

TRANSPORTATION AND PUBLIC SAFETY

HB 29: Adjustment of Freeway Speed (Waddoups, M.)

Prohibits a posted speed limit from exceeding 65 miles per hour except on limited access highways, which may not exceed 75 miles per hour. The Department of Transportation may determine reasonable and safe speed limits on state highways based on traffic engineering and safety studies. A county or municipality

for highways under their jurisdiction must set speed limits on the same basis as the department. The department must consult with county and municipal officials, the Department of Public Safety, and the Transportation Commission before establishing or setting a speed limit.

HB 53: Transportation Corridor Preservation (Dillree, M.)

Creates a nonlapsing revolving fund called the Transportation Corridor Preservation Revolving Loan Fund. The Transportation Commission must authorize monies for the program to allow the Department of Transportation to acquire property for state, county, and municipal transportation corridors. The Transportation Commission must administer and prioritize the fund based on considerations including expanding population areas and local efforts. The commission must make rules establishing procedures for the award and repayment of monies.

HB 54: Transportation Commission Membership (Bodily, S.)

Increases the number of members on the Transportation Commission from five to seven. The terms of the new members are staggered. Counties represented by the members are redistributed.

HB 318: Traffic Control Measures (Adair, G.)

Prohibits a person operating a vehicle

drawing a trailer or semitrailer or operating a vehicle with a gross vehicle weight of 12,0001 or more pounds from driving in the left most lane of a highway with three or more lanes in the same direction. Exceptions are provided for preparing to turn left, emergency conditions, avoiding merging traffic, and following direction signs. The lane designation is effective when signs are erected on the highway.

HB 458: Centennial Highway Fund (Stephens, M.)

Creates the Centennial Highway Trust Fund, defines its revenue sources, interest requirements, and authorized expenditures, appropriates \$35,000,000 to the fund for fiscal year 1995-96, appropriates \$75,000,000 to the fund for fiscal year 1996-97, and exempts the trust fund from appropriations limitations.

SB 8: Moving Violation Amendments (Rees, S.)

Restricts the use of photo radar to areas with a posted speed limit of 30 miles per hour or less and requires a photo radar citation to be accompanied by the photograph. Moving traffic violations obtained through the use of photo radar are not reportable violations and points may not be assessed against a person's driving record.

SB 42: Motor Carrier Deregulation (Myrin, A.)

Eliminates the regulation of motor carri-

ers as public utilities, the public utility regulation fee charged to motor carriers, the requirements for motor carriers to file financial information and provide copies of rates and fares, and the requirement for household goods and passenger carriers to file tariffs. The Motor Carrier Safety Act is created and it requires the Department of Transportation to adopt, administer, and enforce Federal Motor Carrier Safety Regulations including insurance requirements.

SB 52: Highway Noise Abatement Program (Beattie, L.)

Creates the Traffic Noise Abatement Program, which consists of voluntary contributions and appropriations made by the legislature. The Department of Transportation must use program monies as prioritized by the Transportation Commission and as provided by law for noise abatement measures.

The following three bills enhance penalties for driving under the influence:

HB 3: Driving Under the Influence Penalty Enhancement (Bush, D.)

HB 58: Driving Under the Influence - Repeat Offenders (Bresnahan, D.)

SB 4: DUI Amendments (Steele, D.)

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

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

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

they meet and are being asked to provide only two hours of time during the next 12 months.

The Needs of the Elderly Committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several

months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

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

By Clark R. Nielsen

JUROR VENIRE, PEREMPTORY CHALLENGES

In a jury trial involving multiple defendants, the defendants must share the total defense preemptory challenges to jurors unless there is a "substantial controversy" between the defendants. Notwithstanding personal animosity and disagreement on how to defend this case, there was no "substantial controversy" between the multiple defendants on defeating the plaintiff's claim. There were no cross claims asserted and no indication that one defendant made independent claims against the other. Hence, they were not entitled to separate sets of preemptory challenges. The court also concluded that the substantial controversy rule was not contrary to the Liability Reform Act (U.C.A. §78-27-40). Because the plaintiff was unduly prejudiced by the Defendants' multiple sets of preemptory challenges, the case was remanded for new trial.

Carrier v. Pro-Tech Restoration, 280 Utah Adv. Rep. 11 (Ct. App. 12/21/95) (Judge Orme, with Js. Davis and Jackson)

APPEAL, POST JUDGMENT MOTION

A motion for reconsideration of a court's ruling, will be reviewed for its substance and not its title. The substance and not the caption is dispositive in determining the character of the motion. Although a motion may be entitled "reconsideration," it will suspend the time for filing an appeal if it substantively fits within the criteria for post judgment motions.

Salt Lake Knee Rehabilitation v. Salt Lake Knee Medicine, 280 Utah Adv. Rep. 15 (Court of Appeals 12/21/95) (Judge Davis with Js. Bench and Billings)

WORKERS COMP., EXCLUSIVE REMEDY

Summary judgment dismissing a wrongful death action barred by the Workers Compensation remedy was affirmed. Based upon the undisputed facts in the record, the parties were co-employees of Geneva Rock. Plaintiff's action against the defendant for the wrongful death of her husband was barred by the exclusive rem-

edy provision of Utah Code Ann. §35-1-60. The defendant had accidentally backed his 10-wheel dump truck over the plaintiff's husband resulting in his death. At the time, the husband was fulfilling his responsibility to direct the activities of the regular and leased employees of the site, including the defendant. There are undisputed facts in the record that the employer, Geneva Rock, had the right to control both employees and the employees were not independent contractors. The fact that the defendant's contract with Geneva Rock required him to provide his own insurance and worker compensation coverage did not alter the court's analysis. The defendant was not an independent contractor but was rather a co-employee of the plaintiff's decedent.

Chief Justice Zimmerman and Justice Stewart filed concurring opinions. Justice Durham dissented, arguing that the majority had relied exclusively on the traditional "right to control" test. Justice Durham voices concern about the adequacy of the test and advocates an extended analysis based upon "a totality of the circumstances" surrounding the parties' relationship. In that way, the court can better accommodate the diversity of work relationships that exist in the marketplace today and that characterize modern commerce. She cites a trend in many jurisdictions towards a "relative nature of the work" test which evaluates such factors as: the nature of work being done by the worker; the skill involved in relation to the work done; the independence of the worker from the work provided; and the relative importance of the work being done in the ongoing operation to both the work provider and the worker.

In evaluating this approach, Chief Justice Zimmerman's concurs with J. Russon but suggests that Justice Durham's approach would be a fundamental shift in worker compensation coverage and the independent employment analysis and, therefore, should be left to the Legislature.

Averett v. Grange, 280 Utah Adv. Rep. 20 (12/27/95) (Justice Russon; J. Durham dissenting)

CHILD CUSTODY, PARENTAL FITNESS, MORAL AND SEXUAL CONDUCT

On certiorari from the Court of Appeals, the Supreme Court reversed the Court of Appeal's decision (881 P.2d 948) and reinstated the trial court's custody award to the father. The court found that the trial court's findings were adequate to support the custody award and that the award was not contrary to the facts or the best interests of the child. The parties and the child were evaluated by an evaluator who recommended that the father was the more stable of the two parents, although both parents were good parents. The court details the evidence supporting the trial court's findings.

The Court also discusses the moral issue presented by the wife's declared sexual preferences and amorous co-habitation with another woman. The Supreme Court affirmed the trial court's analysis that although the sexual preference of the mother was not a factor in parenting, it did involve illegal co-habitation without the benefit of marriage in the same home with the minor child. The trial court did not abuse its discretion by including moral fitness as a consideration in custody evaluation. The mother demonstrated a lack of moral example to the child and moral fitness by engaging in conduct unlawful in the state of Utah. A homosexual relationship is no different than co-habitation of a male and female in the presence of the minor child without the benefit of marriage. Finally, the Supreme Court also rejected the Court of Appeals criticism of the sexual orientation analysis, concluding that the issue was not properly presented to the court. The issue is not whether the trial court could properly question a parent's morality but rather whether the trial court could properly question the morality of a parent who would co-habit with another before the divorce and while still married. The occurrence of this conduct during the marriage, and in the presence of the minor child, demonstrated the mother's lack of moral example and was relevant to custody.

In its lengthy opinion, the Court also reminded the parties of the general rule

that a trial court need not find one parent inadequate before awarding custody to the other. A temporary custody order is temporary and does not have the effect of a fully informed final custody decision. Temporary custody is not to be treated as permanent custody and the court should not give undue significance to the temporary custody period in terms of evaluating stability of the child with the temporary custodian. Temporary award of custody should not be given a permanent status which might require a change of circumstances similar to modification proceedings.

Tucker v. Tucker, 282 Utah Adv. Rep. 5 (1/17/96) (Justice Russon)

PATERNITY, STATUTE OF LIMITATION

Utah's "catch-all" statute of limitations in §78-12-25 (3) applies to petitions to determine paternity when the petitioner has known of the alleged paternity many years, well past her minority. The "catch-all" provision applies to all actions, both legal and equitable in which affirmative relief is sought.

Dow v. Gilroy, 282 Utah Adv. Rep. 11 (1/19/96) (Judge Greenwood with Js. Billings and Jackson)

continued from pg 9

available to the Donor. Also if mortgaged property is transferred to a CRT, gain is recognized to the Donor in the amount of the mortgage, even if the mortgage is not assumed by the CRT. IRS Reg. 1.1011-2(a)(3).

If real estate is contributed to a CRT and the trustee is legally required to sell the real estate, the Donor may still be taxed on the sale and the CRT is determined to have received the proceeds of the sale. This requires the Donor to leave the decision to the trustee as to whether to sell the assets. The Donor needs to make sure there is no binding obligation on the trustee to sell the assets contributed to the CRT.

If closely held stock (which is non public) is contributed to the CRT, the Donor needs to make sure that the sale of the closely held stock by a CRT is not required. The trustee must not be legally bound to sell the stock or the sale will be treated as taxed by the Donor. If the CRT sells closely held stock to the Donor's corporation, in order to avoid the corporation from being treated as a disqualified person, the same offer of sale must be made to all shareholders of the company on similar terms as it is made to the CRT, and the CRT must only sell for a price equal to the fair market value. In addition, the purchase price must be paid in full at closing. There can be no installment sales.

Municipal bonds, tangible personal property

and zero coupon bonds can be contributed to a CRT. One problem with tangible personal property is that unless the tangible personal property has a use related to the charitable purpose of the CRT, the deduction of the tangible property will be limited to its tax basis, not its fair market value.

A CRT has been permitted to purchase life insurance on the life of the Donor. This may be useful where both the Donor and the Donor's spouse are beneficiaries of the CRT. On the death of the Donor, the CRT would receive the insurance death benefit which would increase the assets in the CRT. This would increase the greater income stream to the surviving spouse.

Deferred annuities have become a favorite investment for CRTs. Private Letter Rulings 9009047 and 9511029 have both held a CRT can purchase deferred annuities and the increase in value of the deferred annuity will not be income (in a properly drafted net income only CRT) until the cash is actually withdrawn from the deferred annuity. This allows the trustee to decide when to receive income and thus when income will be payable to the Donor. Whenever the Trustee determines, the trustee can withdraw funds from the deferred annuity. The funds withdrawn from the deferred annuity are then deemed to be income and are payable to the Donor. In years in which the Trustee does not want income to be distributed to the Donor the trustee can leave the assets in the deferred annuity to continue to appreciate. The Donor should not serve as Trustee in this form of CRT.

Risky investments such as futures, gold, silver and jewelry are characterized as jeopardy investments and under IRC § 4944 penalties assessed against the CRT and the trustee, for investing in a manner that jeopardizes the purpose of the CRT. Whether a particular investment is a jeopardy investment is often a hindsight issue and caution should always be exercised.

Qualified retirement plan assets should not be contributed to the CRT. When qualified retirement plan assets are contributed to the CRT all the income on those assets is triggered and taxed to the Donor. This same problem arises when stock options are contributed to a CRT since because when stock options are exercised, the original Donor will be taxed on the exercise of the stock option, thus no income tax advantage will have been created.

Common Ground Mediation

John Pace, JD RN, Director

(sliding scale for divorce & custody)

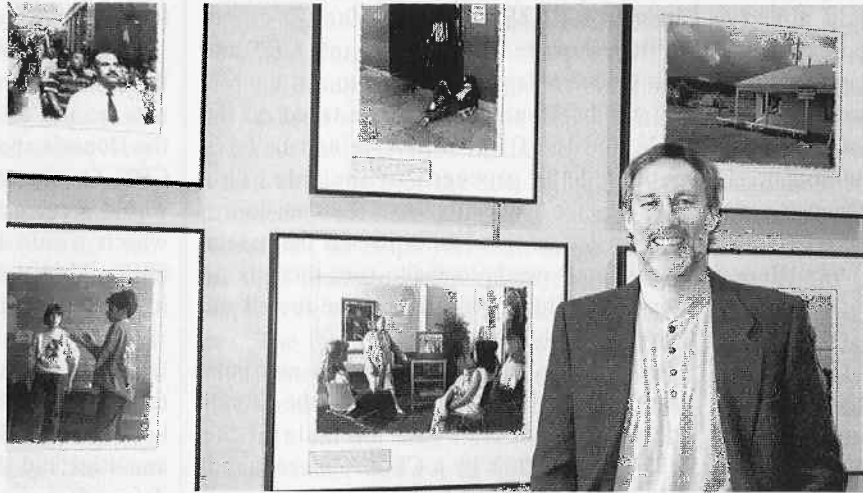
9 Exchange Place, Suite 900

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phone 801.364.4999 fax 801.534.0515



Photo Exhibit Opens at Law & Justice Center



John Schaefer — by the photographic exhibit he created

Next time you're wandering around the main lobby of the Law and Justice Center, check out the permanent new photography exhibit on the first floor north wall. It's part of the Utah Bar Foundation's goal of eliminating from every Utah lawyer's vocabulary that age-old question, "So what does the Bar Foundation do, anyway?" Assuming that pictures really do speak louder than words – an assumption perhaps not indulged in by many members of the profession – a few minutes with the photo exhibit should give you a good idea about the kind of work your interest on lawyers' trust accounts helps accomplish. In 1995 alone, the Bar Foundation distributed almost \$250,000 to the organizations represented in the exhibit, money that allowed these organizations to provide legal services to low-income people across the state, to develop outreach services, and to educate our children in the public schools.

Take a look at the photo of the DNA People's Legal Services law office outside Mexican Hat, and imagine the logistical difficulties of informing people about their legal rights and delivering effective legal services in this remote part of the state. Or think for a moment about the prevalence of family violence in our state, and note the photo of the temporary residents in a local shelter as they view a videotape on civil and criminal remedies for domestic violence, developed by Women Lawyers of Utah. Many of these victims, of course,

eventually go to court, where Utah Legal Aid Society shepherds them through the legal processes necessary to obtain protective orders and divorces.

The photos also show an uplifting side of the Foundation's work. Catholic Community Services, for example, receives a substantial grant for providing immigration legal services to low-income persons. Look at the expressions of the faces of those individuals who are about to become United States citizens. Your IOLTA money helps make these services possible. Or look at the photograph of the two angry youngsters and their mediator, all trying to solve a dispute as part of the Conflict Resolution Program created and instituted by the Law-Related Education Project. This program makes a difference by teaching kids problem-solving skills they can use not only in school, but throughout their lives as well.

If you take a few minutes to really study the photographs, you'll see some amazing things. The photos are not exactly what they first appear to be. Look closely and you'll

discover multiple layers in most of the pictures. Angry figures float above the courtroom scene, where a divorce proceeding is in progress. Hidden messages are scrawled on brick walls. This layered approach to a photograph's meaning is the work of John Schaefer, the photographer commissioned by the Bar Foundation to develop the exhibit. Using technology involving multiple images manipulated by computer, Schaefer has created images at the cutting edge of photographic art.

Shaefer's distinguished career includes serving as co-founder and director of the Children's Photographic Workshop, a non-profit organization that uses photography to teach children visual literacy. In addition, he has been the photographer for the Sundance Film Institute since 1983. His work has been exhibited throughout the country and a selection will be included in the master Photographers Collection of the Library of Congress. In 1993, Shaefer received the Salt Lake City Mayor's Artist of the Year award.

The Foundation is proud of this new exhibit and invites you to share in its message. In this era of financial cutbacks, the Foundation – and the organizations whose work is made possible by its grants – needs your support more than ever before. For further information about the painless way you or your firm can donate interest on lawyers trust accounts to the Bar Foundation, please contact Zoe Brown at 297-7046.

NOTICE

The deadline to submit grant applications has been changed.

Applications for grant awards are now due.

May 1, 1996.



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CLE CALENDAR

ALI-ABA SATELLITE SEMINAR: FACILITATING THE APPROPRIATE USE OF INTERMEDIATE SANCTIONS

Date: Thursday, April 11, 1996
 Time: 10:00 a.m. to 3:00 p.m.
 Place: Utah Law & Justice Center
 Fee: TBD (To register please call 1-800-CLE-NEWS)
 CLE Credit: 5 HOURS

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Thursday, April 18, 1996
 Time: 8:00 a.m. to 1:00 p.m.
 (Registration begins at 7:30 a.m., lunch is included)
 Place: Utah Law & Justice Center
 Fee: To be determined
 CLE Credit: 5 HOURS, which includes up to 2 HOURS in ETHICS

NLCLE WORKSHOP: FAMILY LAW BASICS

Date: Thursday, April 18, 1996
 Time: 5:30 p.m. to 8:30 p.m.
 Place: Utah Law & Justice Center
 Fee: \$30.00 for Young Lawyer
 Division Members
 \$60.00 for all others
 CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: WHAT'S NEW IN EMPLOYEE BENEFITS

Date: Thursday, April 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

TRIAL ACADEMY PART II: OPENING STATEMENTS

Date: Thursday, April 25, 1996
 Time: 6:00 p.m. to 8:00 p.m.
 Place: To be determined
 Fee: \$20.00 for Litigation
 Section Members

\$30.00 for Non-Section
 Members

CLE Credit: 2 HOURS

APPELLATE SECTION SEMINAR

Date: Friday, May 3, 1996
 Time: ~8:00 to 5:00 p.m.
 Place: University of Utah
 Moot Courtroom
 Fee: To be determined
 CLE Credit: ~6 HOURS

NLCLE WORKSHOP: LAW OFFICE MANAGEMENT

Date: May 16, 1996
 Time: 5:30 p.m. to 8:30 p.m.
 Place: Utah Law & Justice Center
 Fee: \$30.00 for Young Lawyer
 Division Members
 \$60.00 for all others
 CLE Credit: 3 HOURS

Those attorneys who need to comply with the New Lawyer CLE requirements, and who live outside the Wasatch Front, may satisfy their NLCLE requirements by videotape. Please contact the CLE Department (801) 531-9095, for further details.

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

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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.

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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.

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Dynamic downtown Salt Lake City litigation firm seeks energetic, talented association with 1-4 years of good legal training. Excellent salary and benefits. All resumes received in confidence. Send to Michael R. Roussin, 700 Bank One Tower, 50 West Broadway, Salt Lake City, UT 84101-2006.

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Mid-sized Salt Lake City law firm seeking an attorney with 2-4 years active litigation experience. Strong academic credentials, together with excellent research and writing skills will be important. Salary range is competitive and the position is fully benefited. Please send resume to: Maud C. Thurman, Utah State Bar, Box #20, 645 South 200 East, Salt Lake City, UT 84111.

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I am admitted in both CALIFORNIA AND UTAH, and based in Sacramento. I will make appearances anywhere in California, or help in any other way I can. \$60.00 per hour + travel expenses. Contact John Palley @ (916) 455-6785 or Palleyj@aol.com.

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****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.



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