

UTAH BAR JOURNAL

Vol. 10 No. 3

April 1997



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UTAH BAR JOURNAL

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April 1997

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

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LETTERS

Dear Editor:

Rule 6 of the Utah Rules of Civil Procedure, subsection (e) provides:

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him *by mail*, 3 days shall be added to the prescribed period."

But the conclusion of subsection (a) directs:

"When the period of time prescribed or allowed is *less than seven days*, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

So I puzzled: Was the proviso about 3 days being added to response time when service is by mail affected by the previous stipulation that only working days comprise periods less than 7 days? A letter I sent to the Administrative Office of the Courts got

a response dated 3/15/95 from Senior Staff Attorney Tim Shea stating that my concerns had been forwarded to chair of the Utah Supreme Court's Advisory Committee on Rules of Civil Procedure for their possible clarification.

Well, although this advisory committee of the Supreme Court regularly meets monthly, it wasn't until 6/19/96, more than a year & 3 mos. later, that a letter from them answered, "The advisory committee on rules and civil procedure considered your letter regarding rule 6, and after debating the matter the committee decided there is no need to amend the rule. It is the common experience of all committee members that courts accept without penalty papers filed late."

Too true, too true. If an attorney is a little beyond the statutory period for filing a response to a motion or such, his fellow lawyer on the bench will just reckon that he got tied up with other clients' cases and let it slide.

Clifton W. Panos

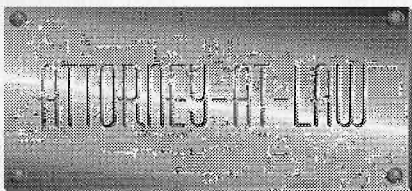
Dear Editor:

In response to Mr. Panos's letter, I have no information as to why it took the committee a year to complete consideration of this request and to respond, although the June, 1996, letter to Mr. Panos from Tim Shea, staff to the committee, speaks of his having tried several times to call Mr. Panos. In any event, after the committee communicated its action to Mr. Panos in June, Mr. Panos asked me to have the Supreme Court address his concerns.

I contacted the rules committee, obtained a written explanation of its reasons for not recommending a change, and put both Mr. Panos's statement of position and that of the committee before the full court. The court considered the matter on July 17, 1996, and unanimously declined to make Mr. Panos's requested change. The court concluded that "insufficient grounds for making and changes in Rule 6 [exist] at the present time." Mr. Panos was informed of this fact by letter dated July 26, 1996. He responded courteously, but said that he wished to write a letter in the *Bar Journal* about his issues.

On behalf of the Supreme Court, I want to say that we welcome suggestions for improvements in the rules from any quarter. The rules process is open to all members of the public, and changes are made regularly. On the other had, an effort is made to group changes together and to make them only when a real need appears. It is our experience that it takes some time for the entire Bar to assimilate changes to the procedural rules. Therefore, changes should not be made lightly, lest they cause more problems than they solve. That being said, I encourage interested persons to continue to submit proposals to the rules committee, but with the understanding that not all suggestions will be deemed to warrant a rule change.

Sincerely yours,
Michael D. Zimmerman



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table without the little red light flashing . It's a great experience and this type of get-together allows for such a positive exchange of ideas. I met new lawyers I had never met before who came up to me and took a moment to let me know how much they appreciated this opportunity to meet other lawyers and judges in a nonadversarial forum. I was gracefully surprised to hear how many people had actually been reading these messages in the *Bar Journal*. The best part about that acknowledgement is that the message appears to be rubbing off. I heard conversations affirming the necessity to promote civility and professionalism, which cannot only promote justice and fair play but also enhances our image to the public and remind it that we are the best of the best.

Sometimes we need to be reminded that these conventions serve many purposes. Of course, the education we receive makes us better lawyers. Because these meetings allow us to provide you with such diverse subject matter, this affords us an unparalleled opportunity to learn something about many things we would otherwise never study. It's fun to sit in on a jury selection even if you may never see the inside of a courtroom. It's energizing to hear a speaker who specializes in communication whether you stand up in a courtroom daily, or the written

word is your only pulpit. It is interesting to hear what is happening on the "hill" with legislation, and how that procedure works. Even if you never represent someone in a divorce situation, it has got to be an eye-opener to see how many resources one has access to and how the entire process works. You cannot get these types of learning experiences if you focus only on those CLE programs you may attend for a few hours once in a while. This type of convention allows the general practitioner to focus on some specialties, and the specialist to focus on general areas. It is a win-win situation for all of us. For many of you, the CLE hours are important and this is an opportunity to fulfill that requirement. For many of the rest of us, we may already have 50 hours and although it's nice to keep adding on, the real purpose of going to the midyear and annual conventions is to enjoy not only learning about the law, but also learning how our friends in the law are doing. We talk families, kids, business, biking, cases, etc. and we get to do it without the stress of our daily practices looming on us. The atmosphere is upbeat and attendance is well worth a few less billable hours. I hope I have wet your whistle so that the next annual convention in Sun Valley is the best attended meeting we have ever had. St. George was. Kudos to the Bar staff. This takes a great deal of effort to allow all

of us to to forget our work, and you did it.

I still have a few more of these President's messages to write. I waited to write this one until I returned from St. George. I was feeling a little overwhelmed. I spent about half of February out of town on Bar business, albeit important business. I needed to be re-energized and I was. Being Bar President is really a wonderful experience. My good friend and Bar Commissioner, Craig Snyder, recently wrote an article entitled "Swan Song" since his tenure as a commissioner was winding down. That made me think about my many years doing Bar work, which really started about 15 years ago when I was Weber County Bar President and then started getting involved in sections and committees, and sort of, unintentionally worked my way up the Bar ladder. I am still excited about what I am doing. So this is not my swan song. It is my duck song. Craig is a wonderful commissioner, as are all of our commissioners. They all care so much. It is amazing to me how much time and energy each of them puts into this job. I, though, will not focus on swans, as I still have much to do. It may take awhile for this duck to become a swan. Thanks for allowing me to keep swimming. Talk to you soon!

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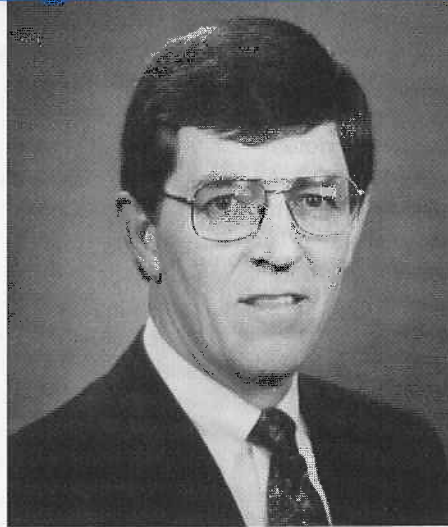
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Observations

By Ray O. Westergard

During the last few months, as I have read the local newspapers my attention has turned for short review of the pages containing the obituaries. I suppose my interest in these columns has been heightened by my father's death in January of this year and also, by the recent passing of others I have known, loved and respected, including some in the legal profession. Some who have given of themselves have now passed on. These columns have caused me to reflect some about life. Vince Lombardi once said, "The quality of a person's life is in direct proportion to their commitment to excellence."

In my last Commissioner's Report I pointed out that, "you cannot tell where a person stands on an issue until you know where they sit." It is my intent in this article to point out three observations about the Utah State Bar from where I sit. As one of two non-lawyer Supreme Court appointments to the Bar Commission, it has been interesting, challenging and also somewhat of an eye opener for me to serve as a Commissioner for the last three and a half years (I was reappointed to a second three year term in July 1996).

My first observation relates to the financial condition of the Bar (I serve as the chairman of the Bar's Finance Committee).

Revenues from all sources have increased approximately nineteen percent over the past five years (1992-1996). Expenditures during this same five year period have grown approximately forty-two percent. Despite the fact these changes show the costs of providing programs, services, administration and attorney discipline are increasing faster than revenues the Bar has been able to provide required funds for needed capital expenditures and maintain a reasonable amount of contingency and replacement reserves. The Commission is currently reviewing projections for the next ten years to determine what actions or changes, including a possible increase in dues, need to be made to ensure that the Bar continues to be financially sound. Any and all comments and suggestions are appreciated.

My second observation is that most people, including members of the Bar, seem to have heard about the negative issues relating to the legal profession and/or its members nationally, statewide or at the local level. Pointing out bad lawyers seems to be the "in thing" with the media. Lawyers seem to be an easy and favorite target if the information being reported is negative. Of the approximately 6,450 lawyers in Utah (4,950 active, 1,500 inactive) only a very small number are the subjects of the negative press. By far the

overwhelming majority are never mentioned. Not because these lawyers are not doing things out in public, but rather the good things they do, and the thousands of hours of pro bono service they give monthly go unreported. During 1996 the Bar produced and ran several public service announcements to increase the public's awareness of certain worthy legal projects and service. The Bar needs to continue its efforts to have these positive matters reported.

My last observation relates to involvement by State Bar members. The Bar currently has twenty five sections plus Young Lawyers and Legal Assistants and approximately thirty three committees. These range in membership from a few to several hundred. Some are very active and involved, others are not depending a lot on the leadership of the group. The Bar Commission encourages active participation by all members of the Bar in these sections and committees. Funds are collected and allocated to provide support. Unfortunately, many of the members are not "actively" involved, except on paper. They are listed as belonging but do not attend or if they attend, no input is provided. I am reminded of the following verse I read not long ago.

THE ONE . . . AND THE OTHER

"He was an average kind of guy," said the one.

"I agree," said the other.

"He was somewhere between a B and C while in school."

"That's not really good," said the one.

"And not really bad," said the other.

"His passions were regular."

"Didn't stray from the norm?"

"About average," said the one.

"Not dynamic in sinning," said the other.

"Politically, he was the middle of the road."

"Didn't cause any trouble?" asked the other.

"Didn't cause anything," said the other shaking his head.

"Did he help his neighbor?" asked the one.

"About average. Not hot, not cold," said the other.

"Was he religious?"

"He wasn't what you'd call unreligious, exactly," said the one.

"About average?" asked the other.

"That's right," said the one.

"That's about it," said the other.

"I don't want him," said Heaven.

"Neither do I," said the other.

Author Unknown

In summary, in regards to my three observations, the Bar is financially healthy, provides numerous opportunities for involvement to its members and is attempting to replace the negative publicity with positive information to the public. What is the level of your commitment? Are you "the one" or "the other?"

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What To Do if a Federal¹ Search Warrant Is Served on Your Corporate Client

By Steven G. Johnson

Three dark-colored vans followed by an unmarked truck pull into the main parking lot of your most valuable client, Mount Olympus Systems, Inc. Nearly 20 men and women get out of the vans, walk into the lobby, identify themselves as FBI agents, flash a search warrant to the receptionist, and spread out through the company offices. They start rummaging through files and desk drawers. They pull files and documents, place them in boxes and cart them outside to be loaded into the back of the truck.

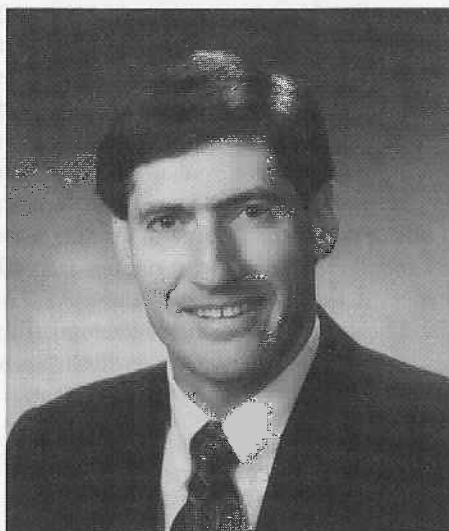
Three of the agents corner one of the company's regional salesmen and start asking questions about sales to certain customers.

Four agents proceed to disconnect the computer system and cart it out to the truck. They grab disks and backup tapes on their way out.

Just about this time a television crew pulls into the parking lot and starts filming the FBI agents as they load files onto their truck in front of your client's offices. A young reporter, followed by the camera crew which is filming as it goes, walks into the company offices, sticks a microphone in the face of the receptionist who is still in shock from the appearance of the agents, and starts asking what is going on.

A nearly hysterical company vice president calls you, frantically tells you these facts, and asks, "What can we do? We've got to stop them! They're taking all of our records. They're even taking our computer! Help!!!" What can you do in this situation?

In the past, subpoenas were used by federal investigators to obtain information and documents from corporations in criminal matters. But subpoenas could be challenged in court. Prosecutors often waited months before they could receive the documents and information needed for their investigation. They grew tired of wait-



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ing for company lawyers to produce the requested documents.

Historically, prosecutors successfully used search warrants for such crimes as homicides, drug cases and other organized crime investigations, and began to see their usefulness in economic crime cases such as antitrust matters and fraud-in-procurement-of-defense-contract cases.

The number of search warrants obtained by federal prosecutors has increased dramatically in recent years, jumping 84% from 1988 to 1994. The execution of a search

warrant can be quite dramatic. For example, in January of 1995, 60 FBI agents executed a search warrant at the headquarters of Stop & Shop, New England's largest supermarket chain. Employees waited outside in the cold as agents searched the premises. Agents seized over 200 boxes of documents in a fraud and bribery investigation. A few months later, over 50 federal agents simultaneously appeared at a half dozen Northrop Grumman Corporation facilities as part of a criminal investigation of suspected testing and billing irregularities on military aircraft.

A search warrant can be very helpful to prosecutors. It allows them to obtain the information they need immediately. There is no need to fight objections in court as is frequently the case with a subpoena. In addition, agents can obtain the records without their being filtered by the company attorney.

During the execution, agents will sometimes interview employees as they are searching for documents, not giving the employees an opportunity to consult legal counsel. Employees may be intimidated to unknowingly make damaging statements to agents. Agents can also seize additional evidence which is in plain view, even if it is beyond the scope of the search as specified in the warrant.

A search warrant can be used when the subject of the search is not a target of a criminal investigation. All the government must show is that there is probable cause to believe that a crime was or is being committed, and that there is a probability that evidence which may assist in securing the apprehension or conviction of the perpetrator will likely be found at the search site.²

There is no requirement that, without a warrant, evidence might be concealed or destroyed. There is no mandate that prosecutors first use a subpoena or some other less obtrusive method to obtain information.

A search warrant must describe with particularity the places to be searched and the items to be seized.³ But the description may be so broad as to allow the search for and seizure of "the fruits and instrumentalities" of statutory violations.⁴ The only legal basis for objecting to the warrant at the time of execution is that the warrant misidentifies the location to be searched, or that the search is being conducted at a time not authorized by the warrant.⁵ If these options are not available, the effects of a search warrant can only be mitigated by negotiating with the prosecutor or, if necessary, by appeal to the issuing magistrate or judge.

Before discussing what should be done when a search warrant is served, it would be good to review some ideas which may reduce the effects or eliminate altogether the execution of a search warrant. Following are a few suggestions:

1. COMPANY COMPLIANCE PROGRAM.

Each company should prepare and implement a company compliance program. As part of the compliance program, all officers, directors and employees commit to full compliance with applicable laws, rules and regulations. The compliance program should be effectively communicated to all employees and agents. Each part of the business should be regularly audited to assure full compliance. A discipline system should be implemented to respond to inappropriate behavior. It is hoped that through such a program, employees will be encouraged to obey laws and regulations.⁶

2. PROPER HIRING.

Check references of all potential employees to verify there is not a prior history of problems.⁷ Perform background checks by reviewing public court records or by requesting information from a criminal history record through the Law Enforcement and Technical Services Division.⁸ Keep all I-9 Forms in a separate file from other employee records. This may restrict a search of business records by the Immigration and Naturalization Service (INS) to only the files containing such forms, rather than to all personnel records in general.

3. BACKUP OF RECORDS.

All company computer disks and tapes should be regularly backed up and stored offsite. This will help the company to quickly resume day-to-day operations after a fire, natural disaster, or seizure of computers and software pursuant to a search warrant.

4. DOCUMENT RETENTION PROGRAM.

Each company should institute a document retention program through which all documents which are no longer necessary from a business standpoint and not required to be maintained by tax, environmental or other laws are regularly destroyed. Not only will a retention program significantly reduce storage problems, it will also enhance a company's ability to locate needed documents for business purposes and to better cooperate with federal investigators executing a search warrant if the need should arise. As discussed below, such cooperation can possibly help avoid many headaches which could occur upon execution of a search warrant.

*"Do NOT consent to the search
or to an expanded search
beyond the scope of the warrant."*

5. STANDARD OPERATING PROCEDURES

Develop company-wide standard operating procedures to follow if a search warrant is served. Train all employees (and particularly the receptionists) in these procedures. The procedures should cover who should be notified in case a warrant is executed, what supervisors should do and say (especially if company attorneys are not readily available), whether photographs may be taken, and who should communicate with the law enforcement officers.

6. PRIVILEGED DOCUMENTS.

All hard copies of attorney-client privileged materials and work product materials should be kept separate from the company's general files.⁹ Such copies should be maintained in a separate file and clearly marked with such notations as "Privileged Attorney-Client Communications." Copies should only be distributed to those who need to

receive them. Extra copies and drafts should be destroyed. Privileged materials in the computer system should likewise be identified as privileged, and protected by a system of passwords.

Proprietary information, such as trade secrets, is rarely sought as evidence in a criminal matter, so it is not likely to be listed in a search warrant. But if such information is on your computer system, it may be subject to seizure pursuant to a warrant. This information should also be kept on hard files separate from general company files and clearly labeled as "Confidential Proprietary Information." Use a system of passwords to block access to privileged information which is maintained on the computer system. Keep the passwords in a place where they are not likely to be seized in a random search.

If a search warrant is actually served, the following should be done:

1. Notify counsel immediately. If you are inhouse counsel and not experienced in criminal matters, notify outside counsel and request that agents delay the search until competent counsel arrives. Agents have no obligation to wait for counsel to arrive, so proper training of management and receptionists is strongly suggested. Each of the steps discussed in this article should be understood so employees can act appropriately in the absence of counsel.

2. Examine the government agents' credentials. Their identity and the identity of the agency by whom they are employed may suggest clues as to the scope of the investigation. Write down names, badge numbers, and any other information about the agents which is provided.

3. Get the name and phone number of the prosecuting attorney who is handling the case or investigation.

4. Do *NOT* consent to the search or to an expanded search beyond the scope of the warrant. You can *cooperate* without giving consent. Consent may eliminate the right to object to disclosure of privileged materials. Consent may waive the company's right to object to a search without a warrant or to a warrant which has been wrongfully issued. Specifically inform the agents that the company does *not* consent to the search. Assure the agents of the company's intention to cooperate after having an opportunity to review the search warrant.

5. Obtain and review a copy of the

search warrant. Federal Rules of Criminal Procedure, Rule 41(d) requires the agents to provide a copy to you. It must show (a) the issuing judge, (b) the specific location and areas authorized to be searched, and (c) documents or objects for which the agents are authorized to search.

6. Try to negotiate ground rules and procedures with the agents to make sure the search is confined to its proper bounds.

7. Try to obtain a copy of the affidavits supporting the search warrant at the beginning of the search. The affidavits must show that a crime has been committed and that evidence of the crime will be found at the search site. The information in the affidavits will be very helpful in preparing a defense if the company is a target of a criminal investigation.

If the agents or prosecutor indicate that the affidavits are sealed, you should consider a motion to unseal the affidavits.¹⁰ You may request an expedited hearing and request a stay of the execution of the warrant pending the hearing, subject to guarantees of non-destruction and non-moving of items listed in the search warrant.

8. Without knowing the information contained in the affidavit, you do not know whether the company, its employees, officers or directors are mere custodians of records which provide evidence against a third party (such as a customer or vendor) or whether they are the target on whom the prosecutor has substantial evidence linking them to a crime.¹¹

Ask the prosecutor or agents if the corporation or its officers or directors are under criminal investigation. A corporation has no legal right to this information. But it has a compelling reason to know, since an act or oversight of an officer or director might be imputed to the company.¹²

9. Convene a meeting of all employees. Emphasize that although the agents may ask questions in an intimidating, authoritative manner, employees are under no obligation to answer. Employees have a right to have counsel present, and should be reminded not to answer questions without counsel's presence. This is also true in situations where agents visit employee homes after business hours, when it may be difficult to contact counsel. Employees should be advised to refer all questions asked by the agents to legal counsel. Employees should be instructed not to destroy, remove or handle any documents

or things during the search so that there is no government claim that the company is destroying crucial evidence.¹³

10. Consider sending employees home until after completion of the search by the agents, if the employees are not necessary to monitor the search. They will not feel a need to talk to agents, and they will not unintentionally impede the search.

11. Monitor the search without obstructing its progress. Assign an employee to each location of the search to watch and record the scope, duration, area searched and items examined in these areas. Keep an inventory of each item and document seized, the manner and location of seizure, and the identity of the seizing agents. Employees should take care not to interfere with or object to the search,¹⁴ but you should object to the seizure of anything not specifically described in the warrant. Employees should be cautioned not to take agents to areas which are not specifically included in the areas covered by the search warrant.

*"Ask the prosecutor or agents
if the corporation or its
officers or directors are
under criminal investigation."*

Videotape the search. Agents will generally act in a reasonable manner if they know they are being videotaped. There will be less of a dispute as to how the search was conducted. Videotape the agents if they attempt to prohibit the videotaping. Agents have no legal right to prevent videotaping as long as it does not interfere with the search. If agents prohibit a monitor of the search, memorialize this refusal to permit a monitor, and keep this information for use at a suppression hearing.

12. Ask the agents if they intend to search for potentially privileged documents and, if so, whether the court was informed of this intent before the warrant was issued. A quick call to the judge or magistrate may give you an opportunity to set up guidelines for the handling of privileged documents.

13. Request the agents that no interviews of employees be conducted on corporate premises. Inform the agents that employees are agents of the company and are repre-

sented by the company's legal counsel when they are being interviewed about matters learned in their corporate capacity.

14. Inform the agents that certain files, including computer data, may contain privileged documents, and that the company does *not* waive any applicable privilege (including but not limited to the attorney-client privilege, the work product privilege, and the self-evaluation privilege). Request an opportunity for counsel to review documents first. If the agents refuse, ask that documents which are claimed to be privileged be placed in a sealed envelopes so that a magistrate can determine whether they are privileged.

15. Offer to have company employees photocopy the documents wanted by the agents so that the company can keep the originals which are necessary for the operation of the business on a day-to-day basis. If agents insist on keeping the originals, ask to make copies for the company so that it can continue in operation. Records essential to the operation of the business include personnel records, payable and receivable records, customer lists, sales information, and records necessary to bill customers.

16. Offer to help the agents find the documents they need. As a practical matter, this will speed up the search, get them out of the company offices sooner, and perhaps keep the agents from taking documents they do not need.

Offer to print a file list of computer-stored information from which the agents can select data for down loading. Most software can produce "sorts" of information that, although not used in the daily operation of the business, may be helpful to the agents. As a possible negotiating tool, you might offer to run a sort which will give agents all the information they want on one document. This may eliminate their desire to take documents, software and computer hardware out of the office. Offer to help identify privileged or irrelevant materials on the computer system.

17. Agents must prepare a receipt and inventory for all documents and property seized.¹⁵ The company should also take its own inventory to verify that the inventory prepared by the agents is accurate.

18. During the course of the seizure, ask the agents about the investigation. Ask what they were told in their meeting about the execution of the warrant. Ask what the

method of filing. The appeal of electronic filing will make it the market choice.

The advantages of retrieval will probably drive the move to electronic filing. Key work indexing, and universal access to information will be so important that the electronic file will be preferred. Users will obtain the equipment and software to access electronic court files from their offices. Since similar hardware, software and skills are used to file, browsers will become filers.

HOW WAS ELECTRONIC FILING DEVELOPED?

The courts saw four major issues as the challenge of a paperless court was set:

How will information be moved?

How will information be stored?

How will documents be signed?

How will files be accessible from any location?

The first issue – method of movement – and the last issue – method of access – were answered by the market. E-mail has become a standard method of moving electronic data. The World Wide Web has become the

standard way of accessing data. Other proprietary methods are rapidly disappearing, as the great facility of the internet becomes universal. Therefore, the Court selected e-mail as the method attorneys will use to file documents, and the World Wide Web as the way we will obtain access to files.

E-mail and the web have the advantage of being vendor neutral, and standards based. They are universal and accessible through many types of software. They are easy on resources, and do not require hardware or software that is unfamiliar or expensive. The emerging general market is making the technology accessible and affordable.

Commerce and government are discovering that information distribution and access are facilitated at lower cost by using the web as a distribution tool. Therefore, tools are becoming available to make information stored in proprietary forms available across the web. Security tools are available to protect information that is published on the web.

As electronic mail has been developing, tools have emerged for automation of mail initiated processes. These “program triggers” enable a computer to respond to an

e-mail message. This is of high interest to the courts, which must react to the papers filed. Calendaring, receipt, and forwarding to judges for review can be automatically triggered from an e-mail receipt.

The decision to publish court files on the web and make them accessible through standard web browsers aided the decision about storage method. Web documents are in a format known as HTML or Hypertext Markup Language.² HTML is a subset of a tested standard method for document storage used in publishing, known as SGML, or Standard Generalized Markup Language. SGML and HTML are ways of “tagging” parts of documents so that they are formatted when printed on paper or viewed on a screen. The tags identify the headings, indentations, font sizes, and other characteristics of a document. Most new word processing programs³ have the option of saving files in SGML format because it is an emerging standard. The user of such a program does not need to know SGML any more than the user needs to know the programming behind the word processor. It is just a method of storing data.

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LEXIS-NEXIS to Expand Offerings with Acquisition of Divested Legal Titles from Thomson Corp.

The Thomson Corp. legal publications acquired by Reed Elsevier Inc., parent company of LEXIS-NEXIS, are an excellent fit for LEXIS-NEXIS in serving its customers, according to Ira Siegel, president and chief executive officer of LEXIS-NEXIS.

Reed Elsevier Inc. purchased over 50 legal titles that Thomson was required to divest as the result of its acquisition of West Publishing Co. These legal titles, which will be managed by LEXIS-NEXIS, include statutory codes, case reports and digests, the Auto-Cite® citator service, major treatises and state reference works.

“We’ve obtained a superb collection of legal titles which are of significant value to our customers,” Siegel said. “Owning these titles will allow us to provide our customers with the best information available and package our products in a variety of ways, including print, CD-ROM and online. We will enhance our current products and develop new products with the help of these important titles.”

Titles such as United States Code Service and United States Supreme Court Reports Lawyers' Edition represent materials fundamental to a legal professional's working law library. In addition, the state-oriented reference works join the treatises, practice handbooks and state codes published by Michie, a unit of LEXIS-NEXIS.

SGML has another advantage in being able to "tag" pieces of information that can be extracted by a computer program. Just as a clerk extracts information from a civil cover sheet, a computer can extract information from a pleading stored and transmitted in SGML format, such as a court name, judge, case number, etc. This extracted information will automate the filing process. The electronic document will provide information directly to the electronic repository.

The last major issue faced by the courts was authentication of filed documents. Commerce had already dealt with the problem of authenticating mail messages. E-mail comes without any traditional signature and can be modified in transit, without a change of appearance.

The answer developed by e-mail users was two fold, including encryption with authentication. The concept of a digital signature, attached to a document, changing its content to an encoded form by a private key, and decoded by the recipient with a public key was in *ad hoc* use. But it was first legally authorized by the Utah Digital Signature Act⁴ adopted in 1995. See Utah Code Ann. § 46-3-101.

Utah's Department of Commerce is developing a legally recognized digital system which will facilitate all forms of electronic commerce, including government filings. A digitally signed document is legally pre-notarized, giving it a high level of legal recognition.

WHAT ARE THE TOOLS OF THE ELECTRONIC FILER?

If electronic filing is around the bend, and even more importantly, electronic access to court files, what is needed to participate? There are two sets of requirements: products and skills.

Hardware and software that will support web access and e-mail are readily available. However, many law firms have installed equipment that is rooted in Windows 3.x or DOS that is unable to perform like the Windows 95 Pentium class system that is the market norm today. As this equipment is replaced, current technology will serve the needs of the electronic filing future.

Standard e-mail software and web browsers will also work in the electronic filing environment. Netscape's Navigator and Microsoft's Internet Explorer will enable users to examine electronic court

files from home, office or on the road. Microsoft and Netscape have internet e-mail packages that will move documents to court, and there are innumerable other e-mail software alternatives.

After the hardware and software are in place, the skills must still be acquired. Surfing the web and e-mailing to friends and clients are great exercises to prepare for the future. It would be better to learn to use e-mail before 4:58 p.m. on the date the statute of limitations runs!

"Surfing the web and e-mailing to friends and clients are great exercises to prepare for the future."

CONCLUSION

Electronic court filing is coming, simply to enable the courts to handle the avalanche of paper. It will also facilitate the practice of law and access to the courts. By making consistent preparations and learning skills,

lawyers can be ready to take advantage of this new opportunity.

For more information contact:
Utah Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
Rolen Yoshinaga
(roleny@courtlink.utcourts.gov)

¹See "E-Mail for the Office and the World," March 1996 *Utah Bar Journal*.

²Basic information on HTML is available at http://www.utah.edu/HTML_Docs/Guides.html.

³Microsoft Word:
(<http://www.microsoft.com/word/productinfo/sgml/>);
Word Perfect:
(<http://206.116.221.5/support/docs/wp/6242.htm>) and
Ami Pro:
(<http://www.lotus.com/corpcomm/26a2.htm>)
all have SGML facilities.

⁴For information on the Utah Act, see <http://www.gvnfo.state.ut.us/ccjj/digsig/>.

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vised history class lectures. No one can reasonably deny that reliable, or at least chiefly factual, information on U.S. History meets the Regulations' requirement that an educational charity provide information useful and beneficial to the public.

Does this change because the presentation includes one political slant on proposed solutions? Probably not. The IRS has never so ruled. The problem with Mr. Gingrich's charities apparently lies in their close ties in timing and subject matter to his campaigns for office, and his repeated use of them in that context. The private benefit overshadows the public benefit.

An element of private benefit surfaces in many charities. Witness the public goodwill purchased by the family-named private foundations. The political careers of the Rockefellers and the Kennedys have not been hurt by this publicity. However, these charities do not use each dollar to buy TV time for their founders, nor do they appear and fade away coincident with families' political campaigns, as Mr. Gingrich's apparently did.

As set out in the following section, excessive private benefits flowing from certain charities not publicly supported have led to creation of a whole new area of charities law designed to restrict these private benefits. Interestingly, these private foundation rules would not apply to Mr. Gingrich's charities as described in the news articles, because their support came from a broad segment of the general public.

RESTRICTIONS ON "PRIVATE" CHARITIES – PRIVATE FOUNDATION LAW

The Tax Reform Act of 1969 added to the exempt organizations tax provisions a category of charity named a private foundation⁷ in order to curtail private benefits flowing out of some charities. Private foundations are essentially charities exempt under Code Section 501(c)(3) which are funded (and usually controlled) by a family, a business, or a close, small group. Private foundation status subjects an organization to certain excise taxes⁸ imposed on undesirable activities. The taxes apply to self-dealing, failures to distribute income, excess business holdings, jeopardy investments and taxable expenditures.

These provisions arose because of abuses in large charities controlled by a family or private groups or businesses.

Families would gift stock to a foundation in a fashion designed to preserve family control of the issuing corporation, then they would cause the foundation to hire relatives or business associates, or to deal with the family or related entities in ways to promote private interests.

Because of the excise taxes and extra returns and public disclosures required of private foundations,⁹ many practitioners now advise against families creating a charity that would be a private foundation unless a million dollars or more is available to endow the charity. Cited as a further drawback is the annual limit on one contributor's charitable deduction for contribution to a private foundation – which is 20% of the donor's adjusted gross income. Contributions to most other charities are deductible to the extent of 50% of the donor's adjusted gross income.¹⁰ However, smaller charities are successfully formed and can live with the private foundation status, when the chief purpose is indeed a charitable one. But if the client's desire to do charity is tied too closely with expectations of hiring the ne'er-do-well nephew, preserving or enhancing family fortune, etc., he/she had best look elsewhere.

"The list of organizations granted exemption from income tax reflects public policy decisions to promote certain activities."

To live with the private foundation status requirements a foundation must essentially avoid:

- any dealing with family members or substantial contributors
- holding securities of a founder-related business
- accumulating income year-to-year
- control by a substantial contributor
- expenditures for the benefit of founder and family, related entities, or substantial contributors.

These requirements are not overly harsh if active, charitable service is indeed the objective, but they do come down hard on violators – escalating rates for the excise taxes applied to these misdeeds rise to a confiscatory level, until "correction" is made.¹¹

The entire structure of the private founda-

tion law is designed to preserve the public service aspect of these charities, and prevent it being subordinated to private interests of the various kinds addressed.

HOSPITALS AND THE PUBLIC INTEREST

Due to the enormous amounts of money expended for health care, the IRS has grappled for years with questions of private enrichment in considering the charitable exempt status of hospitals and related entities. Formerly, hospitals were required to serve nonpaying patients to the full extent of their financial ability to do so. Plaques are still prominent in most charitable hospital announcing that charity patients are accepted.

However, this requirement proved so difficult to administer¹² that it was abandoned in 1969. The public interest or charitable care requirement is now met merely by a showing that a hospital's "purpose and activity is to provide hospital care for members of the community and is thereby promoting health; to meet this test hospital services must be *provided exclusively for the benefit of the public*,"¹³ whatever that means.

In 1992 the IRS addressed problems of charitable hospitals whose contracts with staff or related physicians proved excessively profitable for the other parties. An unusual amnesty was announced, whereby the hospitals could institute a closing agreement with the IRS by a certain date, indicating termination of such contracts, and retain exempt status.¹⁴ In some cases hospital physicians on staff were known to have a full-time, lucrative private practice, while at the same time being salaried as directors of a pathology lab, for instance, at the rate of some \$200,000 a year.

Under Code Section 501(e) special exemption is provided for certain cooperative hospital service organizations. These organizations achieve economies of scale by provided a particular service to more than one hospital. The list of services allowed, including warehousing, clinical, food, billing and other services, has been strictly adhered to in disallowing exemption for services not listed.¹⁵ The public interest served lies in the hospital cost savings hopefully passed on to the patients.

For years the IRS included in the requirements for exemption of a hospital that it provide emergency services. How-

ever, the rulings now recognize that the public interest is not always served by such a requirement – for example where other emergency services are readily available in the same community so that an expensive duplication would result.¹⁶

THE RELIGIOUS CHARITIES

Most of the sizable churches and other religious groups that operate in this country have charitable and public service activities that fit neatly into the category of doing public service that the government would otherwise have to do. The Salvation Army's help for the poor, the Catholic Charities and the welfare services provided by the Mormon bishop's welfare duties exemplify this.

However, religious activities in themselves, regardless of whether they directly serve a public purpose such as those just described, will support exemption as a charity. These include worship services, religious instruction, group prayers, etc.¹⁷

"RELIGION" UNDEFINED BY IRS – PUBLIC POLICY LIMIT APPLIED

In the view of the general public, defining religion is an ongoing problem under the Code, and produces some popular excuses for kicking around the IRS. As explained below, the IRS has concluded to a great extent that religion is in the eye of the beholder, so long as the practices do not "disrupt good order."

In cases of nonconventional religious practices, the question of religious exempt status relates closely to and somewhat overlaps the broader question of religious freedom under the First Amendment. In *U.S. v. Reynolds*,¹⁸ of special interest in Utah, the Supreme Court held that freedom of religion did not extend to practices (in this case polygamy) that were "disruptive of good order." Similarly, the IRS will deny exemption when a primary activity violates criminal laws.¹⁹

The IRS makes no serious attempt to limit religion to the dictionary meaning²⁰ involving the worship of deity. And having abandoned that line, it really has no identifiable list of religious activities required to qualify an organization for exempt status as a church. The case law does cite the absence of certain traditional activities in denying various applications for exemption as a church,²¹ but these are not published rulings of the IRS.

If the group conducts activities relating to its beliefs, exemption will not be denied because those beliefs are weird, unique, or outside the common sense meaning of religious. There is a certain practicality to this position. The less mainstream and less popular the group is, the less likely it will attract many followers, or contributors. Therefore the detriment, if any, to the government of allowing it exempt status will usually be small. And of course the prohibitions against private earning, political activities, and serving primarily private purposes still apply.

However, when a group couples significant detriment to the government with a lack of traditional religion, the IRS will be aroused to investigate and revoke exempt status. The best example of this is Universal Life Church, Inc., which issued contribution receipts for deposits to a bank account opened in its name without any supervision or record of what the account assets were used for.²²

"The IRS makes no serious attempt to limit religion to the dictionary meaning involving the worship of deity."

SPECIAL STATUS OF CHURCHES

Churches have a special status growing partly out of the First Amendment provision that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."²³ They cannot be audited without the concurrence of an IRS Regional Commissioner, they must have advance notice of any audit, and any IRS inquiry into issues other than tax owing or status as a church is limited.²⁴ Further, they are exempt from the requirement made of most other sizable charities that a timely notice of claimed exempt status be filed in order for exemption to be retroactive.²⁵

CHURCH ADVOCACY ON PUBLIC ISSUES

Arising in relation to abortion issues have come questions on the extent to which a church could advocate a position on a public issue being hotly contested in the courts and legislatures. It does not matter that legislation might be pending, or that particular candidates may be opposing or supporting

the public issue in question, so long as the church does not support a particular candidate. Although some have questioned exemption of the Catholic Church, based on anti-abortion advocacy, in the context of the vast and varied activities of the Catholic Church in America, or of even one of its parishes, the anti-abortion advocacy has not risen to the level of a "substantial activity."²⁶

EDUCATIONAL – EMOTIONAL APPEAL OR INFORMATIONAL?

Hot public issues frequently give rise to new debates over what is "educational" in the context of charity exempt status. The literature of numerous pro-life organizations often includes photographs of aborted fetuses.

Is this an appeal to emotions and therefore not educational, or is it simply factual information useful to the public?²⁷ Some of the organizations using the photographs are exempt, but the IRS has never published a ruling answering the basic question of whether emotional appeal defeats the factual reality of the photographs, so that they are not educational for purposes of exemption.

SCHOOLS AND SEGREGATION

In the course of the civil rights movement, many private schools were formed with the intent of preserving racial segregation. These applied for exempt status with the IRS – creating perhaps the hottest potato ever to land in a Commissioner's lap.

In *Bob Jones University v. U.S.*, 461 U.S. 574 (1983), the Supreme Court upheld the view that even a sincere religious belief that the races should be segregated in schools had to give way to the overriding government interest in integration of schools. The Court thus upheld the IRS position that segregated schools could not qualify as charities under the Code. It is notable that this result was achieved without any change in the exempt status provisions of the Code or in the Treasury Regulations under the Code. Those provisions did not then and do not now address racial segregation at all. Public policy had changed, and therefore the law of charities changed with it.

The Commissioners who handled this issue probably wished the IRS was not involved in public policy as to schools, but they certainly learned that it was inextricably involved by means of the tax

exemption provisions.

LESBIAN NEWSPAPER EXEMPT AS EDUCATIONAL?

Sometime before the 1970s an organization publishing a lesbian oriented newspaper applied for exempt status as an educational organization. The issue was raised whether it was against public policy to exempt a newspaper which published notices of gatherings and social events for lesbians, and might therefore promote homosexuality.

IRS Chief Counsel's office was consulted and wrote a GCM²⁸ addressing this question. The conclusion was the exemption should be denied because homosexuality was detrimental to society and publishing notices of gatherings, socials, and other events to the homosexual community was therefore not an educational activity as a matter of public policy. The position was tied to the Regulations' phrase describing educational as including instruction in matters "beneficial to the community."²⁹

The denial of exempt status for Big Mama Rag, Inc. eventually wound up in court -- the Federal Court of Appeals in Washington D.C., ruling that the Regulations defining educational were unconstitutionally vague.³⁰ A new GCM was written by Chief Counsel's office, concluding that the newspaper being published for lesbians, with notices of social events included, did not in any way affect its content as being useful to the individual and beneficial to the community, i.e. "educational."

LEGAL ADVOCACY IN THE PUBLIC INTEREST - AN EXEMPT ACTIVITY

In 1971 the IRS began to publish a series of Revenue Rulings and Procedures carving out a new niche in the charity law for organizations conducting litigation, called public interest law firms (hereafter PILFS). The ruling required that PILFS be publicly supported, pursue issues in the public interest for which private economic support is lacking, avoid charging fees, and accept court-awarded fees only to a limited extent.³¹

This position seems contrary to the rule embodied in the Code that lobbying (activity to change the law) can never be a substantial activity of a charity. Now efforts to change the law can be the chief activities of a charity, so long as they are

aimed at the courts rather than at Congress. Congress' concern is that those lobbying Congress not be partly government funded by the grant of charity status.

Of course, this position begs the question. What is in the public interest? This is whole new category of exemption grown up by rulings only, and the defining of what public interest may support exemption for a PILF is left to the imagination.

Once exemption is obtained, the IRS has a hard time revoking it because there is a particular political slant to the issues litigated. Witness the environmentalist PILFS, and even the ACLU -- with their well-known agendas. The Treasury department has adopted guidelines for advance rulings on exempt status of PILFS, which (in addition to the above-described rules) require submission of a list of cases litigated and their public interest, and a governing body not controlled by attorneys doing the litigation.³²

"The unrelated business income tax provisions tax the business income of the exempt organization when the business is unrelated to the purpose for which exemption is granted."

EXEMPT'S BUSINESS INCOME - TAXED AS NOT IN THE PUBLIC INTEREST

Situations where a charity's activities may compete directly with a profit business create another important question of public policy: Is it fair for government to subsidize (i.e. exempt from tax) one business so that it competes unfairly with another that is fully taxable? The Code's answer is a qualified "no." The unrelated business income tax provisions tax the business income of the exempt organization when the business is unrelated to the purpose for which exemption is granted.³³ The fact that income is used for exempt purposes does not make the activity producing it an exemption-related activity. That is, the organization cannot avoid the tax by the mere fact that the income produced is used to further exempt purposes.

Prime examples of business activities of exempts which must be categorized as

exemption-related or not include: hospital gift shops,³⁴ museum art sales, magazine ad income (National Geographic and Smithsonian for example), and university book stores.

A university's income from ski passes is related (for student passes) and unrelated and taxable (for public passes).³⁵ But a civic league's operation of a public golf course escapes tax because it promotes business and professional people joining in civic activities, gives free golf lessons, and admits youth and aged at discounts.³⁶ (These folks had a good lawyer.)

The Polynesian Cultural Center operated by the Mormon Church has become one of the most popular tourist attractions in Hawaii. Must it pay income tax on the admissions charged to view the shows, which educate the tourists on the Polynesian culture, for the preservation of which exemption was granted?

The argument that the show's income is exempt function income is difficult to refute. But where the income is substantial, the IRS tends to come down on the side of taxation. The unstated attitude being that if income is not of primary importance, then let the admission fees be adjusted so that the activity does not produce any net income. That is, let it not be "operated in a commercial manner."³⁷

CONCLUSION

In recent flat tax proposals, the question whether charitable tax deductions should be abolished has arisen. Few, if any, commentaries on the question have fully appreciated the scope and influence of the charitable deduction in our society. Any careful examination of the burdens government would have to assume to replace these benefits will likely lead to retention of the charitable deduction as it is.

One can measure the effectiveness and the strength of efforts to reform our laws in matters of broad public interest (as opposed to particular trade or business interests³⁸) by watching the development of exempt organizations law regarding what is educational and what issues Public Interest Law Firms are allowed to pursue.

Controversial trends in our laws in several areas (e.g. abortion, pornography, marijuana use) confront moral or religious values traditional to many U.S. churches, and other charities. If these trends continue, they may drive churches or charities

to support candidates for public office or conduct substantial activities to influence legislation. Will the resulting loss of exempt status create an opposing groundswell in public opinion? Will churches trim their sails to avoid lobbying or supporting candidates, even if their moral positions are threatened? Only time will tell.

One thing is certain, so long as the Code provides for exempt status and charitable deductions for contributions, no IRS Commissioner will ever arrive at the luxurious position of being able to ignore social issues and focus only on the collection of the revenue.

¹Rev. Rul. 54-134, 1954-2 C.B. 88 refers to the exemption from income tax under section 101 of the 1939 Internal Revenue Code. The list of exempt charities in that provision matches the one in section 501(c)(3) of the current Internal Revenue Code, as indicated in Rev. Rul. 540-243, 1954-2 C.B. 92, listing "religious, charitable, literary, and educational" organizations.

²See the subparagraphs of Internal Revenue Code section 501(c).

³Code section 170 re: income tax deductibility, section 642(c) re: trust and estate income tax deductions, and section 2106(a)(2) re: reductions from taxable estate.

⁴Code section 501(c)(3).

⁵See for example, *Incorporated Trustees of Gospel Worker Soc. v. U.S.*, 510 F. Supp. 374 (D.D.C. 1981), where the organization engaged in publishing activity in direct competition with profit business, had accumulated \$5.3 million in profits and abruptly increased salaries of its top personnel.

⁶See for example, *Martin S. Ackerman Foundation v. Commissioner*, 52 TCM 152 (1986). An organization placing art works with museums, libraries, and educational institutions was denied exemption because its president and trustees were controlling shareholders of a private art dealer from which most art works handled were purchased. The serving of museums, etc. was clearly an exempt activity, but the private interests served outweighed that.

⁷Section 509 of the Code defines "private foundation" essentially by defining all charities that are *not* private foundations, by reason of their status as schools, churches, etc., or as publicly supported or controlled charities.

⁸Sections 4940 through 4948 of the Code.

⁹The private foundation must file a 990 PF and a Form 4710 Excise tax return on any excise tax due, along with a 990 AR. The returns require detailed information about control, expenditures, and various facts that might expose the foundation to any of the excise taxes provided. See Code section 6033. Private foundation returns are required to be available for public inspection at a published place and times, per Code section 6104(d).

¹⁰See Code section 170(d) and Regulations section 1.170A-9 and related provisions.

¹¹See, for example, Code section 4945(d)(1) which imposes a 100% tax on any expenditure made for other than charitable purposes (a "taxable expenditure") that remains uncorrected within a [short] taxable period.

¹²For example, can a hospital count as charity service the treating of many who do not in end pay the bills sent? If so, then any hospital could meet the requirement anyway.

¹³Rev. Rul. 69-545, 1969-2 CB 117 (emphasis added).

¹⁴Announcement 92-70, 92-119 IRB.

¹⁵*HCSC - Laundry v. United States*, 450 U.S. 1 (1981).

¹⁶Rev. Rul. 83-157, 1983-2 CB 94.

¹⁷Recognition as exempt activities of these activities is set out chiefly in case law and rulings denying exemption for lack of them. For example see *W. Jeffries*, 884 F.2d 254, (7th Cir. 1988) (group having no doctrine, or religious services). See also *The Church of Eternal Life and Liberty*, 86 TC 916,

(group lacking a "necessary associational role" in the accomplishment of any religious purpose).

¹⁸*Reynolds v. U.S.*, 98 U.S. 145, 25 L.Ed. 244.

¹⁹As to the general question of conducting illegal activities, see Rev. Rul. 75-384, 1975-2 CB 204, which denies exemption to an anti-war organization because it advocates violation of local ordinances and breaches of public order in conducting its demonstrations.

²⁰"Religion: . . . A system of faith in and worship of a deity." *Webster Handy College Dictionary* p. 385 (1992 Signet, N.Y.).

²¹The Tax Court has ruled that a "church" whose founders got mail order minister credentials, but which had no members or any traditional religious activities could not be exempt as a religious organization. *Solander v. Commissioner*, Memo 1982-161, 43 TCM 934. See further footnote 17 herein, for cases denying exemption for lack of doctrine, associational roles (i.e. meetings), and religious services.

²²*Universal Life Church, Inc. v. U.S.*, 13 Cl Ct 567 (1987), 60 AFTR 2d 87-5989, later proceeding 14 Cl Ct 343 (1988).

²³The First Amendment of the U.S. Constitution.

²⁴See Section 7605(c) of the Code.

²⁵Code section 508(c)(1)(A).

²⁶Section 501(c)(3) requires that attempts to influence legislation be a "substantial part of the activities" before exemption would be affected.

²⁷Educational is defined in the Treasury regulations section 1.501(c)(3)-1(d)(3)(b) as including information useful to the individual and beneficial to the community. One court, as mentioned elsewhere here, has declared part of this definition constitutionally vague, but it still stands.

²⁸A GCM is a "General Counsel" Memorandum, issued from the office of the IRS Chief Counsel advising the IRS Commissioner on tax legal issues. Although some GCMs used to be published, the one mentioned here was not.

²⁹Regulations section 1.501(c)(3)-1(d)(3)(b).

³⁰*Big Mama Rag, Inc. v. United States*, 203 App D.C. 448, 631 F.2d 1030 (1980). The regulation declared unconstitutional was Section 1.501(c)(3)-1(d)(3)(b) defining educational.

³¹See Revenue Procedure 71-39, 197-2 CB 575; and 71-39, 1975-1 CB 662.

³²Rev. Proc. 75-13, 1975-1 CB 662.

³³See sections 511 through 515 of the Code.

³⁴Interestingly, hospitals have been influential enough to obtain a Revenue Ruling specifically exempting from the tax any income from activities conducted for the convenience of their patients - which covers on-site pharmacies, and (arguably) significant portions of what a gift shop might sell. See Rev. Rul. 68-376, 1968-2 CB 246.

³⁵Rev. Rul. 78-98, 1978-1 CB 167.

³⁶Private Letter Ruling 9149002.

³⁷This phrase appears again and again in the rulings on unrelated business income tax by the IRS. See, e.g. Rev. Ruls. 79-360, 1979-2 CB 236; and 79-361, 1979-2 CB 237. Although not clearly defined, it essentially means doing business with the public in a profitable fashion.

³⁸Trade or business efforts to change the laws are also reflected in the activities of the various exempt business associations, unions, agricultural groups, etc.

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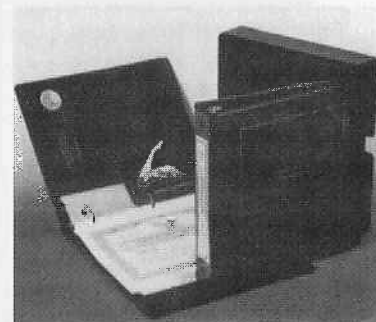
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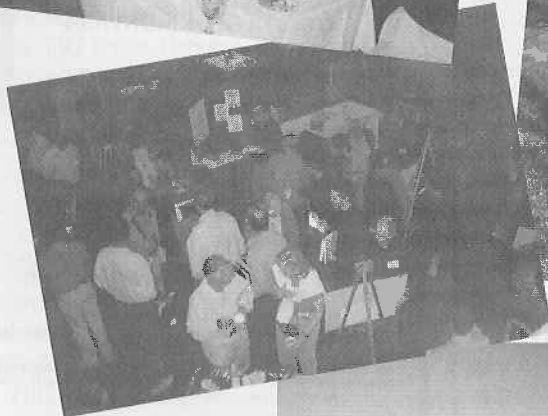
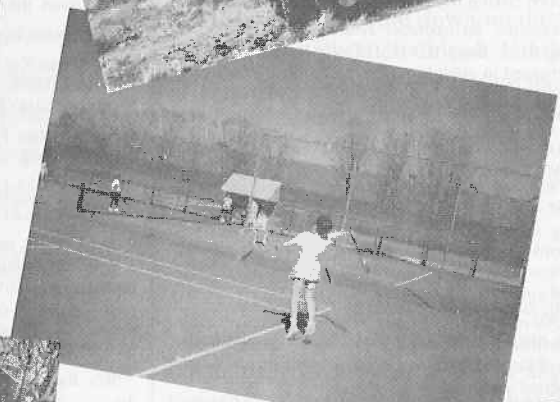
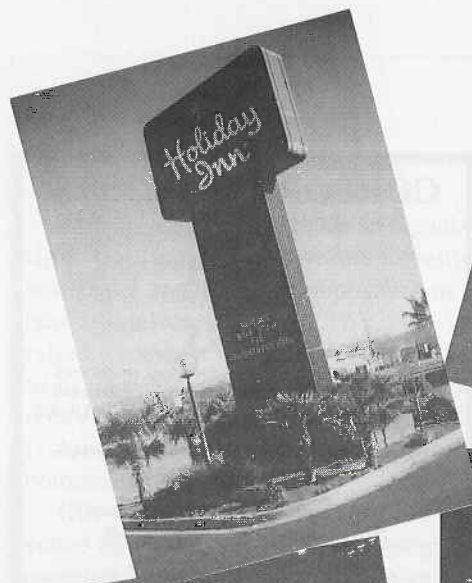
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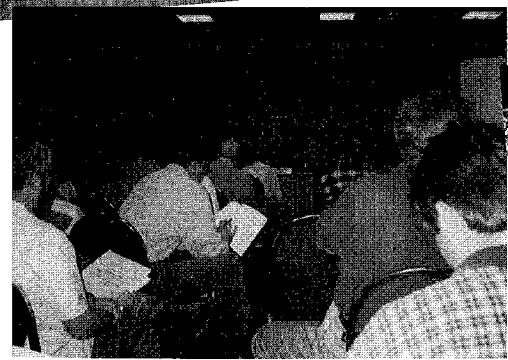
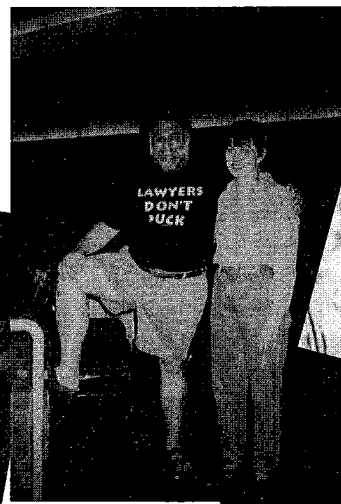
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1997 Mid-Year Meeting



Commission Highlights

During its regular meeting on December 6, 1996, held in Ogden, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the November 1, 1996 Commission meeting.
2. John Baldwin confirmed that copies of the Equal Access to Justice report were distributed to 22 various entities and associations.
3. The Board voted to approve printing 1,000 copies of a small pamphlet with a smaller version of the public service ads.
4. The Board voted to engage John T. Nielsen as the Bar's legislative representative for the upcoming legislative session.
5. The Board approved a \$55,000 capital request for computer software upgrades.
6. Norm Younker, President of Utah Trial Lawyers appeared to discuss issues related to legislation that is currently on the hill that will impact lawyers.
7. The Board voted to appoint a representative to serve on the Judicial Council and to appoint a different rep-

resentative to serve on the Judicial Conduct Commission at the same time.

8. The Board voted to appoint David O. Nuffer to the Judicial Conduct Commission.
9. Budget & Finance Committee Chair Ray O. Westergard reviewed the October financial reports.
10. The Board voted to approve Ethics Opinion No. 96-10.
11. The Board voted to approve the changes to the Rules of Procedure for the Ethics Advisory Opinion Committee.
12. Bar Commission Liaisons Charles R. Brown, Ray O. Westergard and Scott Daniels reported on their various committee and section liaison assignments.
13. Katherine Fox reported that a bar exam applicant who has filed a Petition with the Utah Supreme Court wants to transfer in Multistate scores and the Supreme Court has asked us to analyze the current rule and make a recommendation.
14. The Board voted to adopt the proposal of the Litigation section to sponsor the January publication of the *Voir Dire* and the summer issue so that there are 12 issues and the section helps with the financing.
15. General Counsel Katherine Fox

reviewed current lawsuits against the Bar and UPL case summaries.

16. Chief Disciplinary Counsel Stephen Cochell distributed a case flow report and reviewed the November statistical report.
17. ABA Delegate James B. Lee distributed handouts on the ABA's mid-winter meeting.
18. Steven Lee Payton reported on the Minority Bar association activities.
19. Young Lawyers Division President Dan Andersen reported that next year's New Admittee Social would be held in the form of a luncheon during a mandatory NLCLE seminar. Andersen reported briefly on the ongoing Young Lawyer programs including Tuesday Night Bar and the Law & Library.
20. Legal Assistants Division Representative Sanda Kirkham distributed a draft of membership requirements and indicated that character and ethical requirements are being considered.

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

Discipline Corner

DISBARMENT

On February 21, 1997, the Honorable Timothy R. Hanson, Third Judicial District Court, approved a Discipline By Consent and Settlement Agreement and entered an Order imposing disbarment for a period of five years upon Lewis R. Hansen, beginning August 1, 1996.

In July 1996, the Respondent abandoned his law practice without making reasonable arrangements to properly withdraw from his cases and without making reasonably practicable arrangements to ensure that his clients' interests were protected. Additionally, the Respondent commingled client funds, which should have been held in trust, with his own funds, and misappropriated client funds for his own use. By these actions, the Respondent violated the following Rules of Professional Conduct: Rule 1.3 (Diligence), Rule

1.4 (Communication), Rule 1.5 (Fees), Rules 1.15 (Safekeeping Property), Rule 1.16 (Declining or Terminating Representation), and Rule 8.4 (Misconduct).

In mitigation, it is noted that the Respondent had no prior record of discipline and demonstrated remorse. In aggravation, it is noted that Respondent had a dishonest or selfish motive, there was a pattern of misconduct, the Respondent committed multiple offenses, many of the Respondent's clients were vulnerable, Respondent had substantial experience in the practice of law, and the Respondent engaged in illegal conduct.

PUBLIC REPRIMAND

On February 14, 1997 the Honorable J. Dennis Frederick, Third District Court Judge, entered a Discipline by Consent and Judgment of Reprimand upon attorney David K. Smith for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct of the Utah State Bar. Smith failed to act with reasonable diligence

and keep his client reasonably informed about the status of her divorce action.

ADMONITION

On March 10, 1997, an attorney was admonished and required to attend The State Bar Ethics School by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule of Professional Conduct 1.5(a), (Fees). The attorney billed his client for time the attorney spent in responding to Bar complaints made by the opposing party and by the attorney's client. This conduct constituted an improper billing. The attorney had a duty to cooperate with the Utah State Bar pursuant to Rule 8.1(b) of the Rules of Professional Conduct. Time spent in responding to the Office of Attorney Discipline should not have been billed to the attorney's client.

Law Day Run

The Fifteenth Annual Bob Miller Memorial Law Day Run is set for 9:00 on Saturday morning, May 3, 1997. 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 or Theresa Rogers at Richards, Brandt, Miller & Nelson (531-2000).

*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 25th and 26th. Your voluntary time for the bar examination was very much appreciated.

Thank you again,
Darla C. Murphy,
Admissions Administrator

Supreme Court Seeks Attorney to Serve on Advisory Committee

Article VIII of the Utah Constitution grants the Utah Supreme Court the authority to adopt rules of procedure, rules of evidence, and rules governing the practice of law. To assist in its rulemaking responsibilities, the Court has established the following advisory committees: Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Procedure, Rules of Appellate Procedure, Rules of Evidence, and Rules of Professional Conduct.

The Court is seeking applications to fill vacancies on each of the advisory committees. Each interested attorney should submit a resume and a letter indicating interest, qualifications and the committee of choice to Brent M. Johnson, 230 South 500 East, #300, Salt Lake City, Utah 84102. Applications must be received no later than May 10, 1997. Questions may be directed to Mr. Johnson at (801) 578-3800.

1997 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1997 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, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, **no later than Friday, April 11, 1997**. 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

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 \$10.00. Fifty four opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 24, 1997. For an additional \$5.00 (\$15.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1997.

ETHICS OPINIONS ORDER FORM

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Notice of Changes in Rules

The following rules have been amended by the Supreme Court or Judicial Council with an effective date of April 1, 1997. The information is intended to alert Bar members to pending changes that may be of interest and not as an inclusive list of all changes made.

RULES OF CIVIL PROCEDURE

Rule 11. Signing of Pleadings, motions and other papers; Representations to Court; Sanctions. Follows the federal Rule 11 except the presumption that an entire firm will be sanctioned has been changed to allow sanction of the entire firm in appropriate circumstances.

RULES OF JUVENILE PROCEDURE

Rule 32. Initiation of ungovernability and runaway cases. Reflects recodification of Juvenile Court Act. Adds requirement that petition allege that minor's or others' welfare is endangered.

RULES OF EVIDENCE

Rule 615. Exclusion of witnesses. Broadens provisions concerning victims to include juvenile delinquency proceedings and victims who are minors.

RULES OF PROFESSIONAL CONDUCT

Rule 3.6. Trial Publicity. Replaces rule with new version which allows attorney to make statements to protect client from adverse publicity in certain circumstances.

Rule 8.4. Misconduct. Adds presumption that sexual relations with a client constitute professional misconduct.

CODE OF JUDICIAL ADMINISTRATION

Rule 3-104. Presiding Judge. Creates office of Associate Presiding Judge.

Rule 3-111. Performance evaluation for certification of judges and commissioners. Adds provision for juror survey.

Rule 4-114. Court Security. Designates "secure areas" in which weapons may not be carried.

Rule 4-201. Record of proceedings. Repeals and reenacts the rule. Establishes guidelines for when judges will use a court reporter, a video recording system or an audio recording system for maintaining the verbatim record of court proceedings.

Rule 4-202.02. Records classification. Classifies the record of open hearings as

public records. Classifies the record of closed hearings as protected records.

Rule 4-202.10. Dissemination of video tapes. Rule prohibiting distribution of video tape records is repealed.

Rule 4-304. Assessment and collection of filing fees in matters not commenced by the filing of a complaint or petition. Removes fee requirement.

Rule 4-401. Media in the courtroom. Amendments regulate video and still photography in the courtroom and areas adjacent to the courtroom. Consent of the subject of the still photography eliminated. Permission of judge continues to be required. Video photography generally prohibited except to create the record of the proceedings. Still photography subject to regulation by the judge. Permits video signal to be transmitted to an overflow room for observation.

Rule 4-906. Guardian ad litem program. Changes provisions for conflict guardian ad litem services and adds provision for complaints against guardians ad litem and volunteers.

Rule 6-0103. District Court Tax Judges. Establishes procedures by which parties can elect to have cases involving taxation

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

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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. Fax Number (801) 531-0660.

heard by designated tax judges in District Court.

CODE OF JUDICIAL CONDUCT

Canon 3. Repeals the regulation of video and still photography from the Code of Judicial Conduct. Substantially similar restrictions are simultaneously incorporated in CJA 4-401.

OTHER RULES CHANGED

Rules of Juvenile Procedure

Rule 5. Definitions.

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

Rule 9. Detention hearings, scheduling, hearing procedure.

Rule 11. Time limits on detention orders.

Rule 13. Shelter hearings.

Rule 14. Reception of referral, preliminary determination.

Rule 18. Summons, service of process, notice.

Rule 20. Discovery.

Rule 21. Warrant of arrest or summons in cases under Section 78-3a-602 and Section 78-3a-603.

Rule 22. Initial appearance and preliminary examination in cases under Section 78-3a-602 and Section 78-3a-603

Rule 23. Hearing to waive jurisdiction and certify under Section 78-3a-603; Bind over to district court.

Rule 23A. Hearing on conditions of Section 78-3a-602; Bind over to district court.

Rule 26. Rights of minors in delinquency proceedings.

Rule 27. Fingerprinting, photographing,

and regulating discovery; HIV testing.

Rule 30. Citations, applicable offenses and procedures, bail.

Rule 33. Preliminary orders and summary proceedings.

Rule 35. Pre-trial procedures.

Rule 36. Cases certified from district court.

Rule 46. Disposition hearing.

Rule 47. Reviews and modification of orders.

Rule 50. Presence at hearings.

Rule 51. Violation of probation and contempt by a minor.

Rule 56. Expungement.

Code of Judicial Administration

Rule 1-205. Standing and ad hoc committees.

Rule 1-305. Board of Senior Judges.

Rule 3-102. Assumption of Judicial Office.

Rule 3-108. Judicial assistance.

Rule 3-109. Ethics Advisory Committee.

Rule 3-201.6. Executive committee of court commissioners.

Rule 3-408. Inventory.

Rule 3-411. Grant management.

Rule 4-202.12. Access to electronic data elements.

Rule 4-207. Expungement and sealings of records.

Rule 4-301. Uniform fee schedule.

Rule 4-508. Unpublished opinions.

Rule 4-803. Trials de novo in small claims cases.

Rule 7-306. Collection of fines and restitution by the Office of Recovery Services.

Appendix B. Rules of Procedure for Ethics Advisory Committee.

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

Awards were presented by the Utah State Bar to Michael N. Martinez and Anne Milne. Mr. Martinez was recognized for advancement of minorities in the law and Ms. Milne was recognized for advancement of women in the law.



Michael N. Martinez

In addition to his private law practice, Mr. Martinez provides free legal services to help migrants overcome barriers to receiving education, health care, and fair employment. He received his juris doctor from the University of Utah College of Law. He is one of five Regional Fairness Board members appointed by the Small Business Administration. Among his many recognitions is the Cesar Chavez Award for Community Service.



Anne Milne

Ms. Milne is executive director of Utah Legal Services, which provides equal access to justice for low income Utahns. She has been an advocate for women lawyers who aspire to make their careers in public interest law. She received her juris doctor from the University of Utah College of Law, and serves on the board of the YWCA. She is also a member of the state's Domestic Violence Advisory Council.

New Local Rules of Practice of the Bankruptcy Court

By a court order dated February 24, 1997, the United States Bankruptcy Court for the District of Utah promulgated new Local Rules of Practice of the United States Bankruptcy Court for the District of Utah.

Copies of the new Local Rules may be obtained free of charge at the Bankruptcy Clerk's Office, Frank E. Moss U.S. Courthouse, 350 South Main Street, Room 301, Salt Lake City, Utah 84101. Written requests for copies of the Local Rules may be sent to the above address with a check or money

order made payable to Clerk, U.S. Bankruptcy Court in the amount of \$3.00 to cover postage costs. The Local Rules may also be obtained on disk through the clerk's secretary by calling 801-524-6566 ext. 2233. Parties requesting a disk copy must provide a formatted disk. In addition the new Local Rules are available on the Internet by downloading from the court's Web Page at (<http://home.utah-inter.net/pcadmin>). Internet users must have Netscape 3.0 and/or Internet Explorer 3.0 or newer.

BAR COMMISSION CANDIDATES

Third Division Candidates

IRSHAD A. AADIL (photo not submitted)
Dear Bar Members:

This is to introduce myself and share a few things about the matters which concern me about our profession as I seek to work with the Bar Commission.

I am a graduate of New York University School of Law. I moved to Utah to join Utah Issues as a VISTA (Volunteer In Service To America) and also assisted Utah Legal Services in resolving issues concerning low income citizens, minorities and landlord/tenant issues. Community service and pro bono work has been an important part of my work in Utah since 1978. In 1986, I helped eliminate the porno theaters from Salt Lake valley because of their degrading effects on women, children and the community's moral values. I have always offered my services to my colleagues and the Bar in times of need. I have also experienced

bias in employment, judicial conduct and the way we practice law. Presently I am offering pro bono assistance to children and parents seeking access to each other.

As a member of the Bar Commission, I would devote some time to correct and elevate the image of the profession. The legal profession is the only profession which as a rule sets out time for pro bono work and community service, but without public recognition. Also, I intend to seek informal exchanges and meetings of the Bar members for a more family-like and less exclusive and irrelevant Bar, so that we are able to know, understand and help our colleagues in need. Further, I intend to bring the Bar's attention to badly needed help in establishing Children's Rights. Liberty in family and Due Process are fundamental rights but in Utah we are terminating child/parent rights without evidentiary hearing. The summary recommendations are

effective right away and stay in place for months having irreparable and detrimental impact on these rights. Issues concerning our children deserve due process more than our chattel. We cannot build a better nation without the balanced and positive development of our children. We are systematically dislodging a natural parent from a child's life while seeking government help and intervention without realizing the costs and the ramifications for our free society.

I am a strong advocate for mediation and sincerely believe that there is a need to explore non-confrontational ways and an enlightened posture to achieve many goals of this noble profession.

IT IS MY INTENT TO PROVIDE YOU WITH SOME CHOICE, DIVERSITY AND NEW IDEAS. I SINCERELY REQUEST THAT YOU CONSIDER MY GOALS BEFORE YOU VOTE.

CHARLES R. BROWN

Members of the Third District Bar:

I am Charles R. Brown, a tax attorney with the two person firm of Hunter & Brown, hopefully not to be confused with any of the other Charles Browns you may know, real or fictional. However, for the record, I can fly a kite and, on occasion, kick a football. For those of you old enough to remember the Coaster's song of the 50's, I plead the 5th amendment on whether or not I was ever caught "smokin' in the auditorium."

I am completing my first full term on the Bar Commission and am a candidate for reelection to a second term. As a business attorney and small firm practitioner I believe I offer a perspective which may not have historically had a significant voice in Bar matters.

As a Commissioner and as former Chairman of the Small Firm Practice Committee it has been my goal to increase the relevance and utility of the Bar to all members. If the organized Bar can assist all of us in improving our professional efficiency and effectiveness,



Charles R. Brown

we may, as a group, improve the availability of quality legal representation to all segments of society.

I have been and continue to be willing to devote the necessary time and effort to accomplish

those goals and would very much appreciate your continued support. Thank You.

KATHLEEN H. SWITZER

Dear Colleagues:

Having participated for many years in Utah State Bar affairs – Military Law Section (past-President), Litigation Section, Employment Law Section, Legal/Health Care Committee and Young Lawyers – I welcome the opportunity to serve the legal community as Bar Commissioner.

I bring diverse experiences to the Utah State Bar's work. Presently I am filling an appointment as Administrative Law Judge for the Industrial Commission of Utah. Other work includes:

- In-house counsel at a major international corporation (GTE Health Systems) and a government agency (Utah State Department of Health)

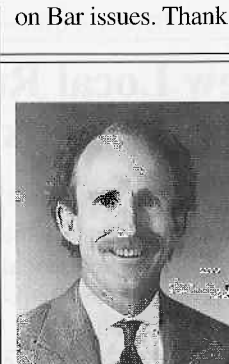


Kathleen H. Switzer

Court of Appeals)

In addition to being a lawyer, I am a nurse and military officer. I enjoy publishing and speaking, hiking and traveling. Law is my passion. Having touched the legal profession at many points – adjudication, private practice, government practice, and corporate practice, I hope to bring differing perspectives together

- Civil litigation with two private law firms (Fabian & Clendenin, Winder & Haslam) and pro bono litigation (Utah Legal Services)
- Judicial clerkships for two federal judges (U.S. District Court, U.S. Tenth Circuit



Fran Wikstrom

on Bar issues. Thank you for considering me.

FRAN WIKSTROM

Dear Colleagues:

I would like the opportunity to continue serving as your representative on the Bar Commission. I have enjoyed my first term as a Commissioner and will continue to work hard

to help meet the challenges facing the Bar and to revitalize our spirit of collegiality and sense of pride in the legal profession.

I would very much appreciate your vote.

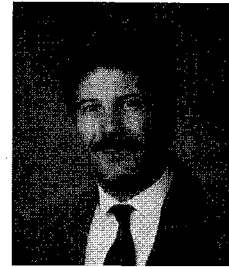
Fourth Division Candidates

RANDY S. KESTER

Dear Local Counsel:

My current practice is with Young, Kester and Petro. We have six lawyers who practice from our office including my partners Allen Young and Michael Petro. My primary areas of practice are plaintiff's personal injury, criminal defense, domestic relations and juvenile law. I am currently a member of the Utah County, State, American Bar, and Utah Trial Lawyers Associations. I serve on the Needs of the Children and Ethics and Discipline Committees. I was President of the Utah County Bar Association in 1989-1990, served the U.S. Army from 1972-1975 and have degrees from UVSC, BYU and J. Reuben Clark Law School.

I served two terms on the Provo Metropolitan Water District Executive Board. I have held a myriad of church and scouting positions, presently serving on the Executive Council for Utah National Parks Council, Boy Scouts of America, from whom I recently received the James E. West Fellowship Award. I was initial director of the Domestic Relations section of the Utah County Volunteer Lawyers Project. I continue as a volunteer in the Tuesday Night Bar program, as a guest speaker at both UVSC and BYU. At UVSC, I have spoken as a National Endowment for the Humanities Scholar, received the college's first Outstanding Alumni award in humanities and also served two three year terms on the Alumni Association Executive Board.



Randy S. Kester

I very much enjoy the practice of law and take pride in being a lawyer. If I am successful in my bid for this position, I look forward to being an effective messenger for the hearing of your concerns and views to the Bar Commission.

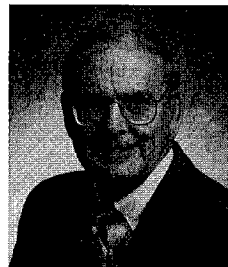
Respectfully,
Randy S. Kester
Attorney at Law

DON R. PETERSEN

Dear Colleagues:

I have been asked to apply for the position of Bar Commissioner. I realize the time commitment and the work that is involved, but I am willing to invest the time and effort to do what needs to be done to make sure that the Fourth Judicial District is properly represented.

Perhaps a word or two with respect to my background would be appropriate: Graduate of the University of Utah Law School; Two years Air Defense Officer, U.S. Army; Howard, Lewis & Petersen, 29 years; Served many years on the Utah State



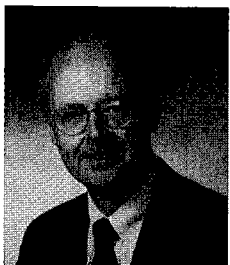
Don R. Petersen

Bar Disciplinary Screening Panel; Member, Utah State Bar Advertising Committee; Chairman of the Utah State Bar Client Security Fund; President of the Central Utah Bar; Board of Directors of the Utah Trial Lawyers; President of the Utah Trial Lawyers; Member, American Academy of Matrimonial Lawyers; Member, American College of Family Trial Lawyers; Member, American Inns of Court.

I have always been proud of the calibre of work and the attorneys who practice in the Fourth Judicial District, as well as the bench. Practicing law is not easy. There are many frustrations and a great deal of pressure. The work of the Bar Commission can help us all in this regard.

I would be pleased to serve you as Bar Commissioner.
Very truly yours,
Don R. Petersen

Fifth Division Candidate



DAVID O. NUFFER

Utah's rural lawyers face unique challenges but they can be met with solutions which appeal to the many Wasatch front solo and small firm practitioners.

Technology is a leveler that puts us all in touch, reduces the distance from the courthouse, and leverages our abilities. I am working on the commission and on the Utah Electronic Law Project to ensure that technology choices make sense for all Utah's lawyers.

The next few years will see new challenges:

- Legislative and social pressures to license non-lawyers to perform certain administrative functions must be anticipated and channeled by the Bar.
- Bar programs continued growth must be measured by some curtailing criterion or a dues increase will occur.
- The disciplinary process must be refined and administered in such a manner as to maintain public confidence, but at reasonable expense to Bar members.

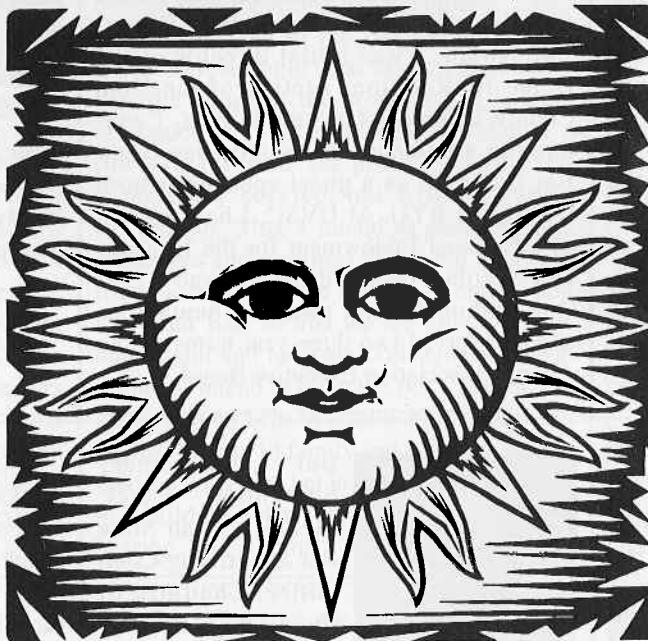
I look forward to serving and will appreciate the support of the lawyers in the Fifth, Sixth, Seventh and Eighth Judicial Districts.

Uncontested Election . . .

According to the Utah State Bar Bylaws, "In the event an insufficient number of nominating petitions are filed to require balloting in a division, the person or persons nominated shall be declared elected."

David Nuffer is running uncontested in the Fifth Division and will therefore be declared elected.

Mark your calendars now . . .



for the 1997 Utah State Bar
Annual Meeting!
July 2 - July 5, 1997
Sun Valley, Idaho

We hope to see you this summer!

And don't miss a special reception
especially for attorneys and judges -
Wednesday, July 2, 1997 at 5:30 p.m.
Offered for the first time at this year's
Annual Meeting!

1997 annual meeting program

() Indicates Number of
CLE Hours Available

Wednesday, July 2, 1997

- 9:00 a.m. to 5:00 p.m. Judicial Council Meeting
- 2:00-5:00 p.m. Bar Commission Meeting
- 5:30-6:30 p.m. Get To Know Utah's Judges: A
Reception for Attorneys and Judges
- 6:30-8:00 p.m. President's Reception
Registration

Thursday, July 3, 1997

- 7:15-10:00 a.m. Board of District Court Judges
Meeting
- 8:00 a.m. Registration and Continental
Breakfast
- 8:30 a.m. Opening General Session and
Business Reports
- Welcome and Opening Remarks
G. Steven Sullivan, 1997 Annual
Meeting Program Chair
- Report on the Utah State Bar
Steven M. Kaufman, 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
- Swearing in of New Commissioners
- 9:30 a.m. Keynote Address: Washington and
the Law
Dee Dee Myers
- 10:20 a.m. Break
- 10:30 a.m. - 3:00 p.m. Children's Activity Fair
- 10:40 a.m. Breakout Sessions
(1 each)
- 1 Recent Changes in Juvenile Court
Law
Hon. J. Mark Andrus, 2nd
District Juvenile Court
 - 2 The Grand Staircase - Escalante
National Monument: Proper
Preservation or Tyrannical
Takeover?
William Perry Pendley, Mountain
States Legal Foundation

- 3 ETHICS: Ethical Dilemmas
Comm. Thomas N. Arnett, 3rd
District Court
Helen E. Christian, Gustin &
Christian
Steven R. Cochell, Office of
Attorney Discipline
Lori W. Nelson, Dart, Adamson &
Donovan
- 4a Mediation: Friend or Foe?
Paul S. Felt, Ray, Quinney &
Nebeker
Ellen M. Maycock, Kruse, Landa &
Maycock
P. Keith Nelson, Richards,
Brandt, Miller & Nelson
Connie D. Roth, Intermountain
ADR Group
David E. Roth, II, Esq.
Chief Justice Michael D.
Zimmerman, Utah Supreme
Court
- 11:30 a.m. Break
- 11:40 a.m. Breakout Sessions
(1 each)
- 4b Mediation: Friend or Foe?, cont.
- 5 It's Cheap or Free and Available
Anytime: Legal Researching on
the Internet
Randall B. Bateman, Thorpe,
North & Western
Kenneth Chahine, Madson &
Metcalf
- 6 Writing a Winning Appellate
Brief
Hon. Christine M. Durham,
Utah Supreme Court
- 7 Discussion of Bidding Process
for the I-15 Corridor Rebuilding
Project
Kent Hansen, Director of
Community Relations, Utah
Dept. of Transportation
Nancy C. Smith, Nossaman,
Guthner, Knox & Elliott
- 12:40 p.m. Awards Luncheon
Speaker: Albert Krieger
- 2:00 p.m. Break
- 2:10 p.m. Breakout Sessions
(1 each)
- 8 Access to Justice: The New

Landscape

Presented by the Access to
Justice Task Force

Co-Chairs - Chief Justice
Michael D. Zimmerman, and
Dennis V. Haslam, Past
President, Utah State Bar

- 9 **The New and Improved Utah
Real Estate Purchase Contract**
Ted Boyer, Director, Utah
Division of Real Estate
- 10 **Leveraging with Legal
Assistants**
David O. Nuffer, Snow, Nuffer,
Engstrom, Drake, Wade &
Smart
- 11 **Anatomy of a Trial: Jury
Questionnaire and Jury
Questions to Witnesses:
Attorneys & Jurors Discuss
Perceptions in a Recent Medical
Malpractice Trial**
Francis J. Carney, Suitter Axland
Robert B. Sykes, Sykes & Vilos
Four Jurors from the Case

- 3:00 p.m. Meetings Adjourn for the Day
- 6:00 p.m. Family Picnic & Carnival
Baldy Bus Loop Soccer Field
- 8:00 p.m. Music & Dancing
Featuring live music by "Outrageous"
Dollar Mountain Bus Loop

Friday, July 4, 1997

- 7:30 a.m. Section Breakfasts
- 8:00 a.m. Registration and Continental
Breakfast
- 8:30 a.m.
(1) Trying Cases in the Aftermath of the
O.J. Simpson Trials: Coping with
Jurors' Attitudes and Beliefs
Susan E. Jones, Ph. D., Jury Research
Institute
- 9:20 a.m. Break
- 9:30 a.m. - 12:30 p.m. Children's Activity Fair
- 9:40 a.m.
(1 each) Breakout Sessions
- 12 **Designing Your Jury Selection
Strategy**
Susan E. Jones, Ph.D. Jury
Research Institute
- 13 **Gold Mine or Tar Pit: Valuing
the Employment Case**
Mary Anne Wood, Wood Quinn &

Crapo

- 14 **Utah Electronic Law Project**
Tobin J. Brown, UELP Treasurer
Brent Israelsen, UELP Co-Vice
Chair
David O. Nuffer, UELP Chair
- 15 **What Every Litigator Should
Know About the Tax & Medicaid
Consequences of Settlements &
Judgments**
Calvin R. Curtis, Ray, Quinney
& Nebeker
- 16 **Victim's Rights and the Criminal
Justice System**
Hon. William B. Bohling, 3rd
District Court
Mark R. Decaria, Washington
County Attorney's Office
G. Fred Metos, McCaughey &
Metos
Ronald J. Yengich, Yengich,
Rich & Xiaz

10:30 a.m.

Break

10:40 a.m.
(1 each)

Breakout Sessions

- 17 **Legal Aspects of Phase One
Environmental Assessments**
David Hancock, Parsons Behle
& Latimer
- 18 **Making Your Point: Courtroom
Communication Strategies**
Susan E. Jones, Ph.D., Jury
Research Institute
- 19 **Surfin' in Utah: Legal Research
on the Internet**
Suzanne Miner, University of
Utah Law Library
Marsha Thomas, Univeristy of
Utah Law Library
Rita Reusch, University of Utah
Law Library
- 20 **Not With That Debt You Don't**
Harry Caston, McKay, Burton &
Thurman
William T. Thurman, McKay,
Burton & Thurman
- 21 **Effect of Mobilization on
Creditors & Employers**
Lawrence A. Schmidt, Utah
National Guard, State
Judge Advocate

11:30 a.m.

Break

- | | | | |
|------------------------|---|--|--|
| 11:40 a.m.
(1 each) | Breakout Sessions | 8:30 a.m. | Registration and Continental Breakfast |
| | 22 ETHICS: The New NSF Rule
Carol A. Stewart, Utah State Bar, Office of Attorney Discipline | 9:00 a.m.
(1) | Straight Talk with the Bench: Judges, Lawyers & the Administration of Justice
Judges' Panel Discussion |
| | 23 Economists in Litigation
Duncan Cameron, Ph.D., Capital Economics, University of Utah
Mark A. Glick, Parsons Behle & Latimer
Richard Hoffman, CPA, Coopers & Lybrand | 9:50 a.m. | Break - Inn Continental Room |
| | 24 "Deep Pockets" Claims: Suing Lenders When Other Sources of Recovery are Exhausted
Scott H. Clark, Ray, Quinney & Nebeker
Kevin G. Glade, Ray, Quinney & Nebeker | 10:00 a.m.
(1) | ETHICS General Session: A Review of The Public Employees' Ethics Act
Ronald J. Yengich, Yengich, Rich & Xaiz |
| | 25 A Cheating Heart: Should You Need One to Get a Divorce?
Harry Caston, McKay, Burton & Thurman
Comm. Lisa A. Jones, 3rd District Court
Ellen M. Maycock, Kruse, Landa & Maycock
Clifford C. Ross, Cohne, Rappaport & Segal | 10:50 a.m. | Break |
| 12:30 p.m. | Breakout Sessions Adjourn for the Day | 11:00 a.m.
(1 each) | Breakout Sessions |
| 12:40 p.m. | Salt Lake County Bar Film Presentation | 26 ETHICS: Our New Rule - Organization as Client; What Does It Really Mean?
Toni Marie Sutliff, Franklin Quest | |
| 3:30 p.m. | All Meetings Adjourn for the Day | 27 Wills v. Trusts
Earl D. Tanner, Jr., Tanner & Tanner | |
| 1:30 - 5:00 p.m. | Sporting Events | 28 Legislative Update
John T. Nielsen, Utah State Bar Lobbyist | |
| 1:30 p.m. | 9th Annual President's Cup Golf Tournament | 29 Moving Toward the Electronic Practice of Law
Brent Israelsen, President, IntelliQuest Technologies, Inc. | |
| 1:30 p.m. | Adult Fly Fishing Clinic | 30 A Pioneering Effort in the Juvenile Justice System: Utah's Revolutionary \$20 Million Approach to Sentencing Juvenile Offenders
Edward S. McConkie, Utah Sentencing Commission Director | |
| 2:00 p.m. | Trapshoot Tournament | 11:50 a.m. | Meetings Adjourn |
| 2:00 p.m. | Volleyball Tournament | 1:00 p.m. | Tennis Clinic |
| 2:00 p.m. | Tennis Tournament | 7:00 p.m. | Ice Show, Buffet and Fireworks |
| 2:30 p.m. | Kid's Fly Fishing Clinic | | |
| 5:30 p.m. | Law School Receptions

J. Reuben Clark School of Law
University of Utah School of Law | | |

Saturday, July 5, 1997

- 7:00 a.m. **Fun Run**



Spring: A Time for Renewed Commitment

By Lisa M. Rischer

Immediately after I was "sworn in" as a member of the Utah State Bar several years ago, I was handed a thick packet of papers. It was early autumn and after weeks of preparing for and taking the Bar exam, I had recently started my first "real" post-law school job. The last thing I wanted to do was read through another stack of papers.

Unbeknownst to me, hidden in that stack of papers was information about the Young Lawyers Division of the Utah State Bar ("YLD"). While I was vaguely aware that membership in YLD was mandatory and automatic, I had no real understanding of exactly what that meant or the myriad opportunities that were available to me as a result. A year or so later, I was recruited by a law school classmate to be a part of something called "Tuesday Night Bar" which I generally understood to be tangentially connected to YLD. A year or two later still, a friend suddenly announced his intention to run for President-Elect of the YLD. After a quick, but successful campaign, my friend was elected and I found myself on the Executive Council.

At my first Executive Council meeting, I was amazed to learn that YLD actually consisted of a number of formal committees covering everything from pro bono work in the community to membership

support within the YLD. This well run organization, of which I had been a silent part for years, had been providing valuable opportunities and resources to me all along, yet I had been essentially unaware.

Each year, YLD is allocated a certain amount of money by the Bar to run its various programs. Some programs run year after year, while others are developed and implemented as the need for the idea arises. YLD leaders are limited only by their creativity within the parameters of available funding. YLD provides wonderful opportunities not only for young lawyers to serve the community and to support each other, but to hone leadership skills and meet people on a local and national level. I had no idea there was such an intricate and well-run ABA network of YLD affiliates from around the nation. The ABA/YLD network sponsors semi-annual conferences which not only foster comradery and collegiality among affiliates, but also provide a forum for the exchange of ideas and information on successful projects and programs.

While the practice of law, especially in the early years, often does not permit much in the way of spare time, YLD involvement can be adapted to fit any schedule. Involvement for some may be serving as an officer or a committee chair, while for others it may mean occasionally participating in the Tuesday Night Bar program, or in one of a

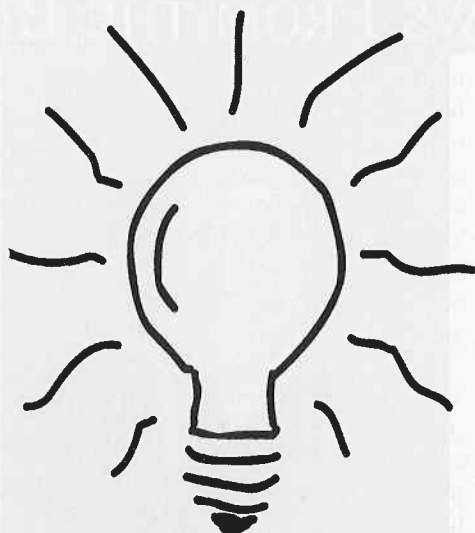
number of once-a-year projects. Many YLD programs are bounded only by the availability and commitment of volunteers.

This Spring, I strongly encourage all Young Lawyers (and other lawyers) to participate in the annual Call-a-Lawyer program. This popular, call-in legal guidance program is coordinated by the Pro Bono Committee of the YLD in connection with the annual Law Day celebration. The Utah program is among the largest of its kind in the nation and in 1996 volunteers answered over 1,500 calls. Volunteers will be grouped together at several calling locations and will be available to answer calls for a few hours on the evening of May 1, 1997. Pizza will be provided for volunteers. For more information about the 1997 Call-a-Lawyer program please call Steven Shapiro at 532-5444 or Rob Rice at 532-1500.

A second YLD service opportunity available this Spring is the annual Hands-On Community Service Project coordinated by the YLD Community Service Committee. The one-day service project this year is scheduled for Saturday, April 12, 1997 in conjunction with Salt Lake Neighborhood Housing Services. This project provides lawyers with an opportunity to serve the community by venturing outside the realm of legal services. We need Young Lawyers (and others) with or without home repair

skills to make this project a success. Plan to participate for the day or for any part thereof. For more information about the Hands-On Service Project please call Jack Morgan at 532-7840 or Adam Trupp at 578-3962.

Year after year, YLD has been providing Young Lawyers with countless opportunities for professional growth, support, leadership and service. These opportunities and benefits, however, seem to be realized by only a limited portion of the YLD membership. As Spring, a season of renewal approaches, what better time to make a renewed commitment to personal and professional growth through participation in the YLD? For more information on YLD committees, services and activities, please call Dan Andersen at 366-7471 or call the Utah State Bar at 531-9077.



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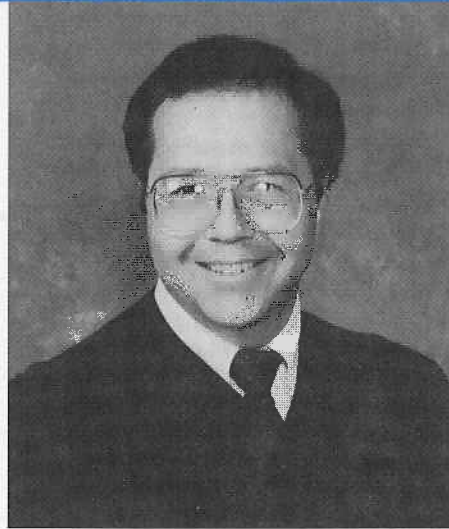
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What Are Jails For?

By Judge James L. Shumate

I am no different from any other trial judge who must impose sentence upon those who violate the laws of the State of Utah. Like my colleagues I see many types of cases and a wide variety of people. There is, however, one unifying thread running through nearly every criminal case I see. That thread, of course, is the presence of substance abuse in one form or another. The anecdotal experience of myself and other Utah judges indicates that substance abuse is present in 70% or more of all Utah criminal cases. National studies and statistics also indicate that treatment of substance abusers, whether it be voluntary, involuntary, or a combination of both, is effective in reducing substance abuse and involvement in the criminal justice system. A day-long seminar sponsored by the Utah Substance Abuse and Anti-Violence Coordinating Council in August of 1996 referred to study after study and program after program in which treatment of addicted criminal populations was effective in reducing the recidivism of those individuals.

If treatment is such a high priority, and I believe it is, then why are the resources for such treatment so limited? Inpatient facilities are filled to overflowing with lengthy waiting lists throughout the state. Sitting as a judge in the Fifth District in St. George I

JAMES L. SHUMATE is a Fifth District Court Judge. He was appointed to the Fifth Circuit Court Bench in 1991 by Governor Norman Bangert. Court consolidation in 1992 made Judge Shumate a district judge where he has served since that time. He graduated from the University of Utah College of Law in 1975, and has served as Iron County Attorney and as a member of the Bar Examination Committee. He serves as a member of the Utah Substance Abuse and Anti-Violence Coordinating Council through the Judiciary Subcommittee of that organization. He also sits on the Washington County Domestic Violence Coalition.

His wife Cherie is a registered pharmacist, practicing in St. George. They are the parents of three sons.

have the ability to call upon resources throughout the state, but the sad reality is that every single judge in Utah is calling upon those same resources and they are far too few. It has always puzzled me, as a sentencing judge, why the resources expended on inpatient and outpatient treatment cannot be used within the confines of our prisons and jails as well as outside those facilities. The Department of Corrections does its best, with its limited resources, to provide treatment within the prisons. However, treatment

programs are limited and the waiting lists were lengthy when I last inquired. It would be reasonable, either through state or local funding, to provide increased treatment opportunities to prisoners in our jails and prisons.

However, as we all know, effective treatment is expensive. Individual therapy and group session are effective, as the Alcoholics Anonymous program has shown for many, many years, but a successful therapeutic community relies upon special expertise. Many jail facilities do not have the physical capability to supply group sessions to inmates. Individual therapy is also possible in a custodial setting but the cost of such therapy is prohibitive for county sheriffs and corrections officials who bear the burden of operating the jails and prisons. Very few inmates have the resources to pay for individual therapy themselves.

However, these circumstances should not prevent us from trying new and more cost effective methods to reach those who are interested in treatment and even those who are not. In the past several years the citizens of this state have responded favorably to calls from state leaders to rely more upon technology to accomplish the missions of state government and less upon costly

new building and staff. Our existing jails have the technology available to begin offering substance abuse treatment to prisoners.

On almost a weekly basis you can pick up a newspaper and read an article about how prisoners are simply sitting in jail whiling away their hours watching television and amusing themselves with other even less productive pursuits. Why not continue the television watching but change the programming? I see absolutely nothing wrong with a jail running therapy and educationally oriented video tapes during the waking hours for inmates. Our modern commercial society has learned to sell just about anything over the television and I believe some benefit could be gained by offering therapeutic as well as educational information through televisions sets in jails. The taxpayers would certainly be more pleased to see televisions used in this fashion rather than simply to entertain or baby-sit jail inmates. Parents are counseled repeatedly to avoid using the television as baby-sitter and perhaps this advice should also be taken by our jails and prisons. Of

course there will be nay-sayers who predict that any change in the TV schedule will cause management or legal problems within the jails. These same arguments were used when Utah correctional facilities decided to go smoke free. However, the smoke free environment now in our jails is a fact, not a proposal, and there has been little if any long term disruption in the functioning of these facilities. On the contrary, the jails are now safer and more secure with smoking materials removed.

While I make no warranties regarding the all-encompassing scope of my research, there appears to be neither statutory nor case law prohibiting the use of video equipment to provide chemical abuse treatment and educational information to prison or jail inmates. A substantial caveat is required at this point. The *best* form of treatment and education will always be administered by face-to-face interaction between the therapist/teacher and the recipient. This suggestion is made in hopes that a cheaper but still relatively effective new system might be created. Those better qualified

should take this idea and create treatment or educational systems using a combination of video-taped and in-person contact. This will provide our criminal justice system with improved correctional institutions which do something more than simply warehouse and entertain inmates.

The studies of substance abuse treatment programs are uniform in their findings that education and treatment, even if coerced by court intervention, are effective and efficient under a cost-benefit analysis. In our constant search for economical and effective solutions to present day problems, I believe it would be worthwhile to bring treatment and education into our penal institutions by video and in-person means.

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Test Your Civics Knowledge

By Jane A. Marquardt

How many of the following questions can you answer correctly? Better yet, take this quiz home and answer it with your family. (Answers are at the end of this article.)

1. Where is the Bill of Rights written?
2. Can the President suspend the Bill of Rights during wartime?
3. What is the 19th Amendment and when was it ratified?
4. If both the President and the Vice President of the United States die, who acts as President?
5. What subject is addressed in the U.S. Supreme Court case *Roe v. Wade*?
6. In what year did the U.S. Supreme Court strike down laws that made it illegal for a black person to marry a white person?
 - a. 1887 b. 1949 c. 1966
7. True or false? If a citizen is sued for property damage, the court must appoint

an attorney to represent him or her if he or she can't afford one.

8. Name five present U.S. Supreme Court Judges.
9. Name five present NFL quarterbacks.

Several of these questions were part of a survey conducted by the American Bar Association. The results show that the public has a relatively low understanding of general issues of law and government. For example, only about one-third of the respondents could correctly identify the Bill of Rights as the first ten amendments to the U.S. Constitution. Two-thirds did know that the President cannot suspend the Bill of Rights during wartime.

While not a question that any of you would have missed, some 80% of the respondents thought the court had to appoint a free attorney for an indigent person in a civil suit. Additionally, only 30% of the respondents knew that *Roe v. Wade* ruled on abortion rights.

So what relevance does any of this have to you (aside from giving you the chance to impress your friends and family with all of

your correct answers)? The exercise points out the need for ongoing public education about our country's legal system. All of us are better served by living in a society where people understand how government operates. Those who understand it are much more likely to feel vested in it and become active participants.

One of the purposes of the Utah Bar Foundation is to promote legal education and to increase the community's awareness of the law. To that end, we have long been a financial supporter of the Utah Law Related Education Project. We have also assisted with funding for a variety of consumer publications, including Rights Responsibilities Relationships - Your Rights as a Young Person in Utah and the Utah Senior Citizens' Handbook - A Guide to Laws and Programs Affecting Senior Citizens.

By participating in the I.O.L.T.A. (Inter-est on Lawyers Trust Accounts) Program, you are helping the Bar Foundation in its public education efforts. Not sure if you are signed up, or want to sign up? It only takes your signature. Complete and mail the form at the bottom of this page or call Zoe Brown at (801) 297-7046 and she can assist you today.

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(Mail form to Utah Bar Foundation, 645 S. 200 East, Salt Lake City, UT 84111)

ANSWERS

1. The first ten amendments to the U.S. Constitution.
2. No.
3. Women's right to vote, 1920.
4. The Speaker of the House.
5. Abortion rights.
6. 1966 in *Loving v. Virginia*.
7. False.
8. Rehnquist, Scalia, Ginsburg, Bryer, Thomas, O'Connor, Kennedy, Stevens, Souter.
9. Consult your local sports pages.

CLE CALENDAR

ALI-ABA SATELLITE SEMINAR: THE CLEAN AIR ACT

Date: Thursday, April 10, 1997
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

ANNUAL EDUCATION LAW SECTION SEMINAR

Date: Friday, April 11, 1997
Time: 8:30 a.m. to 1:00 p.m.
(Times are subject to change)
Place: Utah Law & Justice Center
Fee: \$30.00
CLE Credit: 4.5 HOURS

ANNUAL REAL PROPERTY SECTION SEMINAR

Date: Thursday, April 17, 1997
Time: 8:30 to 12:30
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: 4 HOURS

NLCLE WORKSHOP: ADMINISTRATIVE LAW PRACTICE

Date: Thursday, April 17, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: \$30.00 for Young Lawyers
Division members
\$60.00 for all others
CLE Credit: 3 HOURS

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

Date: Thursday, April 17, 1997
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

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Friday, April 25, 1997
Time: 8:00 a.m. to 12:00 noon
(Times may change)
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: ~4 HOURS

ALI-ABA SATELLITE SEMINAR: DRAFTING LICENSING AGREEMENTS

Date: Thursday, May 1, 1997
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: \$249.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 6 HOURS

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.

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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.

**APPELLATE PRACTICE SECTION
PRESENTS: LEGAL RESEARCH
ON THE INTERNET**

Date: Thursday, May 8, 1997
Time: 2:30 p.m. to 4:30 p.m.
(Registration begins at 2:00 p.m.)
Place: Utah Law & Justice Center
Fee: No charge for Appellate Practice Section Members \$25.00 for non-section members
(Registration must be received by May 1, 1997. Space is limited to the first 60 registrants.)
CLE Credit: 2 HOURS

**ALI-ABA SATELLITE SEMINAR:
RETIREMENT PLANNING – 1997**

Date: Thursday, May 15, 1997
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

**ANNUAL FAMILY LAW
SECTION SEMINAR**

Date: Friday, May 16, 1997
Time: To be determined
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: ~6 HOURS

**ATTENTION
NEW LAWYERS!
Change of Date
for Upcoming
NLCLE Workshop**

The New Lawyer CLE Workshop entitled "**Domestic Relations**" originally scheduled for Thursday, May 15, 1997 has been postponed. Please mark your calendars for **Thursday, June 12, 1997** to attend this workshop. The workshop will be held from 5:30 p.m. to 8:30 p.m. at the Utah Law & Justice Center. If you have any questions about this program, or any other NLCLE Workshops, please contact the CLE Department at (801) 531-9095.

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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).

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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 5-102 — In accordance with Rule 8, each attorney shall pay a filing fee of \$5.00 at the time of filing the statement of compliance. Any attorney who fails to file the statement or pay the fee by December 31 of the year in which the reports are due shall be assessed a **\$50.00** late fee.

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).

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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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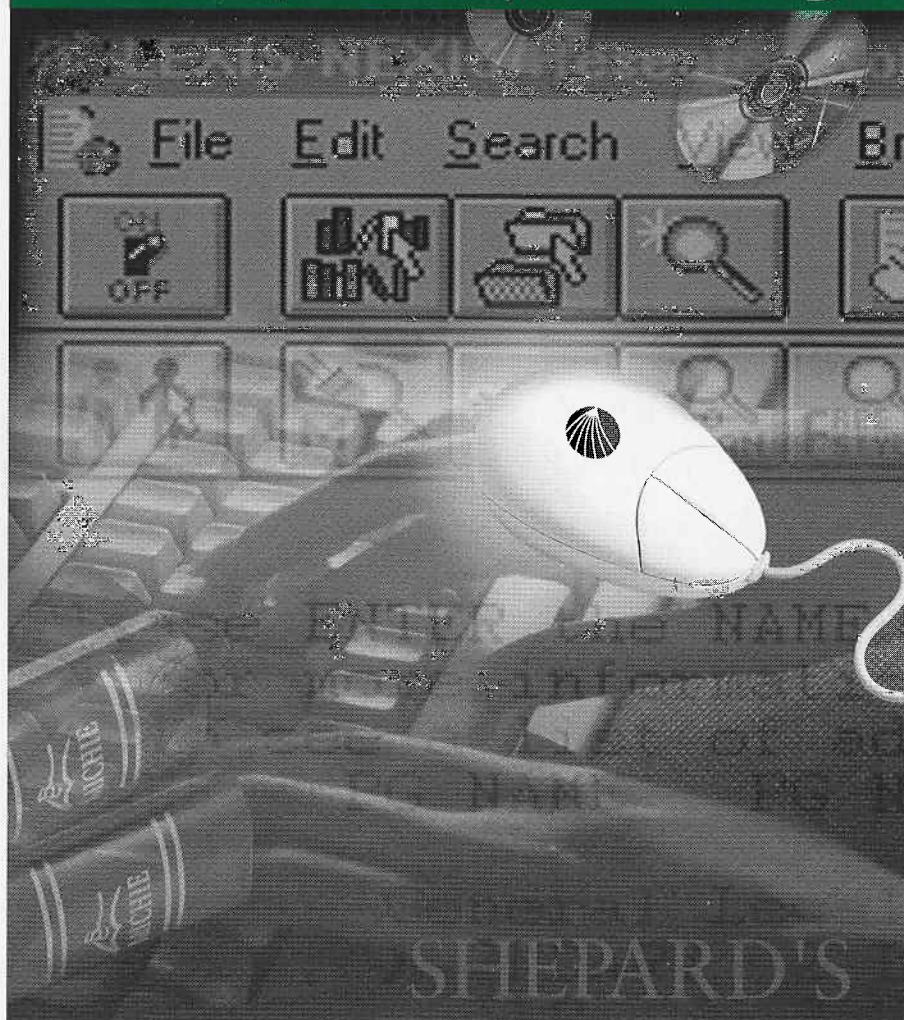
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