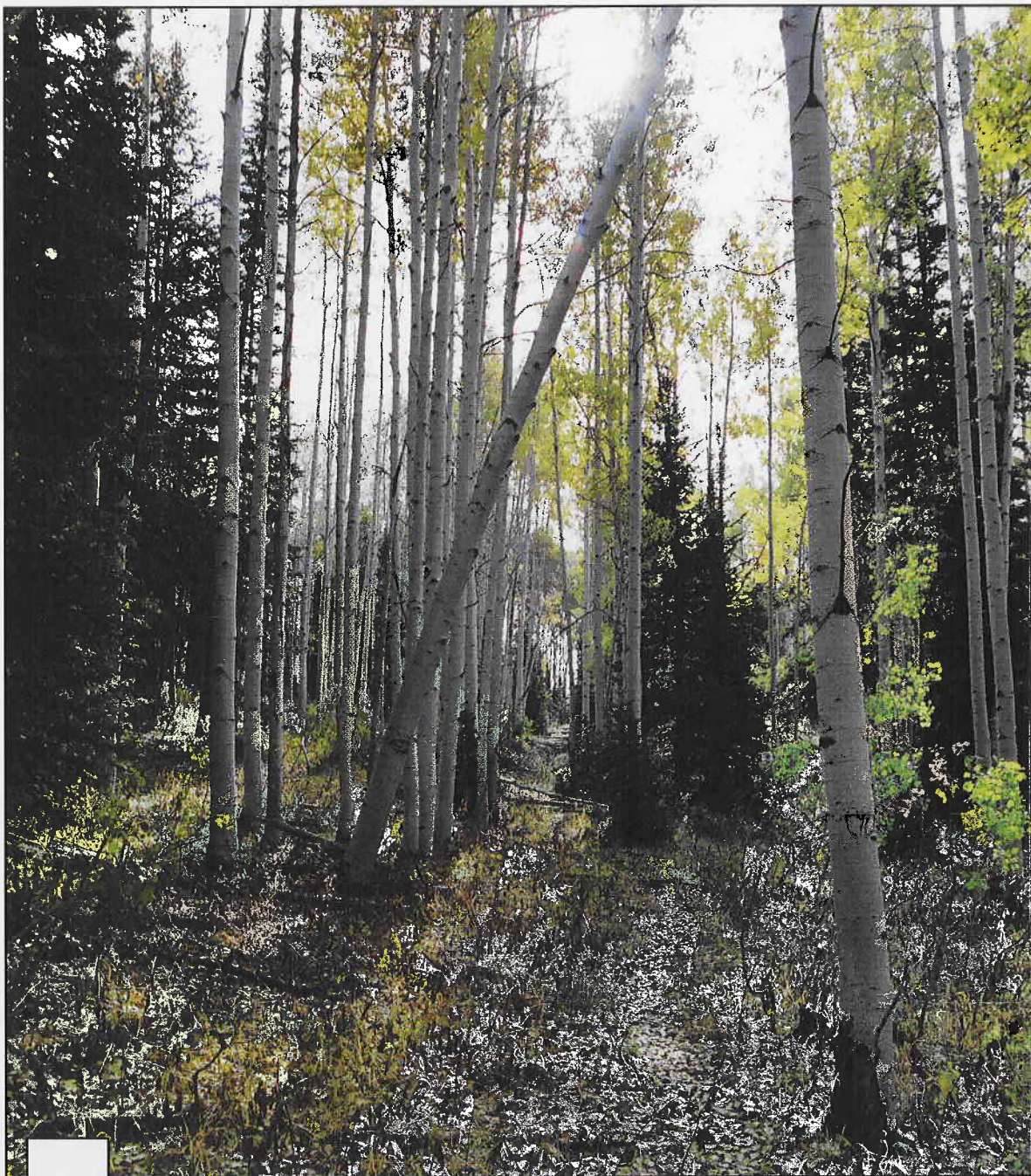


# UTAH BAR JOURNAL

Vol. 10 No. 4

May 1997



<b>Visual Communication in Court – Adopting Some Surprising Technologies</b>	<b>10</b>
<b>BYU Law School Dedicates Howard W. Hunter Law Library</b>	<b>14</b>
<b>Bar-Related Title Insurance in Utah</b>	<b>18</b>
<b>Legislative Report</b>	<b>35</b>



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President's Message .....	5
<i>by Steven M. Kaufman</i>	
Commissioner's Report .....	7
<i>by Francis M. Wikstrom</i>	
Visual Communications in Court – Adopting Some Surprising Technologies.....	10
<i>by Douglas Filter and Brent E. Johnson</i>	
BYU Law School Dedicates Howard W. Hunter Law Library .....	14
<i>by Constance K. Lundberg</i>	
Bar-Related Title Insurance in Utah.....	18
<i>by Brian A. Coleman</i>	
Common Questions About Pro Bono.....	21
<i>by Toby Brown</i>	
State Bar News .....	23
The Barrister.....	30
Views from the Bench .....	32
<i>by Judge Steven L. Hansen</i>	
Legislative Report .....	35
<i>by Jane A. Peterson and Lisa Watts Baskin</i>	
Utah Bar Foundation .....	40
CLE Calendar .....	41
Classified Ads.....	43

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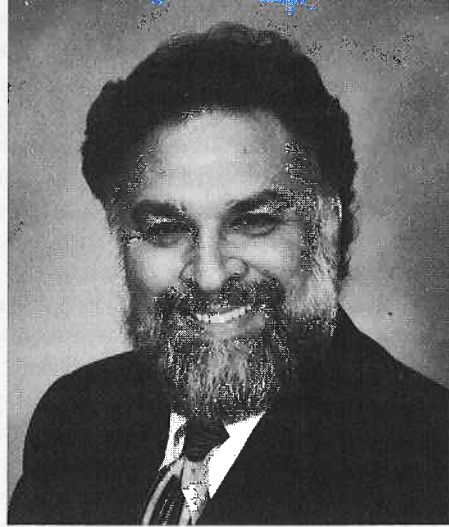
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## PRESIDENT'S MESSAGE



### Did You Hear the One About the Lawyer?

*By Steven M. Kaufman*

I just left snow in Spokane to come home to snow in Ogden. Come on, it's time for another sunny Sunday. Last week we had 100 mile winds and I was sincerely appreciative that my new home was still standing. Daylight savings time has just kicked in and I'm a little grumpy. It's an hour earlier in Spokane, and hour later here, and now I don't know what time it really is except that I keep waking up an hour earlier than I want to and can't get back to sleep because I'm not sure what time zone I'm in. Now, Washington knows what we are doing. Nevada is next.

I want you all to know that I am doing my best to represent you in a positive manner, letting anyone who will listen know that we have the best Bench and Bar in the nation. I have learned how to give a pretty good "dog and pony speech" about what we, as lawyers, are doing to make Utah a better place to work in, and when time allows, play in. Quite frankly, I barely tolerate lawyer jokes at this juncture of my Presidency because I would much rather hear about the good things we are doing than hear the stupid jokes that are no longer funny to me. I have spent this last year faithfully promoting our noble profession, and I do it with enthusiasm and a smile. This is not a difficult thing to do. Our Bar, judges and lawyers alike, has to

strut its stuff. I hear horror stories about other states' problems between the Bench and Bar, lawyers against lawyers, and the public against lawyers, and I am so thankful that we do not have their ongoing problems. Sure, we have our share of difficulties with the Bar, a misplaced moment of indiscretion or loss of integrity, but overall I can honestly convey to you that we can be proud, that our membership can hold its collective head high, as integrity and ethics are of foremost importance to us. A day does not pass that I do not have a discussion with some lawyer or judge about how the Bar is doing and how lawyers are looking, as a profession. Most of my conversations rally around a positive note of fairplay and ethical dealings, kind and appropriate interaction, and a sense of pride toward our profession. I am tired of hearing about such a select few of our membership who may not endear themselves to public or private scrutiny, when there are so many deserving of praise and positive media review. How many professions take so seriously the resolve to help others? How many professions take so much initiative to make sure their ranks follow the rules so society is best served? I know of none that go to such lengths as we do to provide the public with conscientious, diligent, educated, ethical people who can do so much good. Access to justice are catchwords which define the ulti-

mate purpose we can provide to so many. Our license to practice is something we all worked long and hard to obtain, and our intentions are noble in utilizing that license. I am always excited to tell anyone who is within earshot that I am a lawyer, and that I have the honor and privilege to act as your President. I will be proud when I am a past President, too, as it is a status I shall hold onto with wonderful memories, hopefully having done something good by trying to attend to the issue of lawyers and their cause, as a profession worth speaking out for, in a positive manner.

By the way, I am starting to sound nostalgic about my status as your Bar President, but please do not misconstrue my words. If you know me, you know I am somewhat of a sentimental type of guy, and if you do not know me, it's time you did. I really have tried to meet as many of you as possible. If you have been to any type of Bar function you hopefully know I was hoping to shake your hand and at least say hello. If you don't "do" Bar functions, well, you can't say I didn't try.

I can tell you that a day doesn't pass that I don't get some kind of personal feedback about lawyers, the Bar, judges, or some Bar related issue. People think that I am the mailbox for the Bar. I get more telephone calls and mail than I care to detail.

My trips back and forth from Ogden to Salt Lake are more like the Pony Express; I deliver the "word" for our Bar. We are an active bunch, with lots to do. Even so, we find the time to do something good for someone, often outside the confines of our daily work as lawyers and judges. I must also emphasize the wonderful work your Bar Commissioners do on a daily basis. The volunteer time they put in is without rival. I suggest you take a moment to pat "your" Commissioner on the back. It takes a great deal of time out of their already busy schedules to perform their many duties, and they too often go unsung. As some of you already know, I have had a rock band for over 30 years, and if I could put my bandmates on this message to sing those praises, I would. The work is important, and they all take the job seriously. You will never hear a Commissioner looking for that unsung praise, but since I have the bully-pulpit, and only so many messages to write, I wanted to emphasize their importance. By the way, I generally sing in tune.

As you know we promoted a media

message about lawyer volunteerism and how critical it is for all of us to provide significant charitable and pro bono work for those less fortunate. That message has now received some national recognition, and I have chosen to speak on the subject at many conferences and meetings with other Bars throughout the United States. Those Bars are now starting to catch the spirit of our work, and I have been contacted to "put out the word" for some other states. As you know I have been to many conferences this year, and the chance to promote this worthwhile cause has been something I have relished. I intend to do more of the same, even after my tenure as President drifts to the sea, because I sincerely think our profession deserves recognition for the charity it promotes. Lawyers are the leaders of our communities, and the education we have received, and continue to receive, puts us in a unique position to communicate to our neighbors about the important work we do. It also allows us to give something back to the communities that give so much to us. We are so lucky to have an opportunity to serve in such a noble

capacity.

I still love my job. I still love being a lawyer. And I cannot begin to tell you how wonderful it is being your Bar President. This is NOT my final President's message, but I'm getting close. I do take some solace in the fact, though, that I will always be a past President of the Utah State Bar. Not many can say that. I am so proud of what we do, and someone needs to carry that banner. It is important. Well, I still have one more column to prepare, at least as it pertains to this part of my Bar journey. I have a few more goodies to discuss. I really dreaded writing a message the month when I first took on this job. But, imagine having a forum all to yourself, once a month, for 12 months, where you can write anything you want; well, almost anything. I have pretty much chosen to talk about lawyers, lawyering, and the good we do. I have hoped that some of this would rub off on you. And, quite frankly, it has. Everywhere I go, lawyers have mentioned these articles with a smile and a positive "attaboy," and for that, I also thank you. This has been a grand experience, one which does not stop when I turn over the reins to Charlotte. I will still have my soap box. I just won't have this column. Oh well, maybe when I'm done with all these wonderful Bar jobs, I can run for President again. Just kidding! But, I think you can tell, and I have made my point, that I still love this job. No burn out here.

Did you hear the one about the lawyer? That has been the catchphrase we used for our message promoting what lawyers do. It was no joke and is still no joke. You are the best. It is critical that you continue to know that and that society knows it, too. Talk to you soon!



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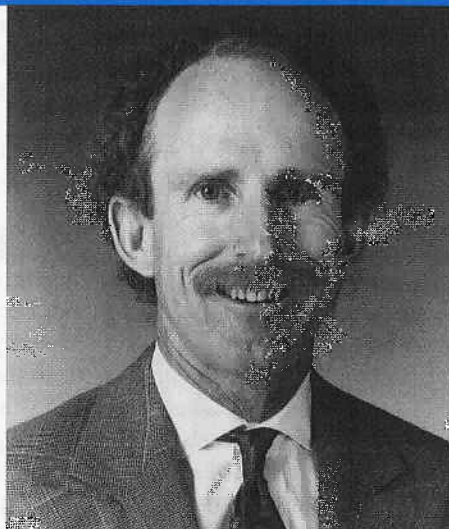
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## Resisting Cynicism While Reading Grisham

By Francis M. Wikstrom

I had given up. Creative thoughts were not forthcoming for this article which is scheduled to be published around May 1, Law Day. In frustration I picked up a paperback version of one of John Grisham's latest novels, *The Runaway Jury*. It was to be a long flight and I was dreading the hours of cramped boredom in the back of a crowded plane and wondering what happened to the glamour of air travel.

I usually resist the urge to read Grisham novels or to see the films which result from them. It's a subconscious thing; I never gave any thought to why they did not appeal to me. From time to time I would pick up a copy in a bookstore or newsstand, read the flyleaf and move on to something else. Other times I would read the videocassette box at Blockbuster. But I never had the urge to buy or rent.

But boredom is an insidious thing. On one long flight I was too tired to work and watched to movie version of *The Firm*. Later, on a trip to the beach, I picked up *The Pelican Brief*. I have to confess it was, as my wife would say, "a good beach book," i.e., a page-turner, a book captivating enough to cause you to resist the urge to fall asleep on the lounge chair. Later, I even paid good money to see the movie — however, in the interest of full disclosure, my primary motivation was to watch my

brother in his three-second cameo role as a protester in the opening scene.

I never really thought about it, but there was something disquieting about Grisham's story lines. I'm usually a junk novelist groupie. When I find an author I like, I read everything he or she writes. I've read them all: Ludlum, Clancy, LeCarre, Francis, Turow. Some I wish were more prodigious; others (like Sue Grafton) I'm afraid to read for fear that I won't be able to keep up with their output.

I also have to admit that I have a particularly soft spot for lawyer-novelists. I too dream of writing the "great American novel," or, better yet, the "financially successful American novel" in order to unshackle myself from the billable hour.

But I digress. The subject is Grisham. I finally figured out what was bothering me after reading *The Runaway Jury*. Don't get me wrong. It was a page turner *par excellence*. I couldn't put it down. I was surprised to find myself pulling for the "heroes" — the bright young couple who corrupted the jury and stuck it to the big tobacco companies by beating them at their own game.

But at the end I felt manipulated, for this book has no true heroes. The plaintiff and her lawyers are only slightly less despicable than the defense side. And despite the belated and weak attempt at moral justifica-

tion, the "heroes" are nothing more than crooks who fly off to Switzerland with their ill-gotten gains. After reading this book, I was left with a pervasive sense of cynicism.

And what of the millions of lay readers of this very popular novel? What are they to conclude from this "lawyer" author who supposedly knows the inner workings of our system of justice? Should they be faulted for concluding that our system of justice is corrupt, or at least easily corruptible by those who have the money and the inclination to do so?

Cynicism is a very dangerous thing in any society. Americans have generally believed in our institutions, and in particular, our system of justice. Perhaps there has always been an element of naiveté that bridged a sometimes substantial gap between myth and reality. But the myth has been an expression of a noble goal toward which reality has been (often) reluctantly dragged. Witness the history of the civil rights litigation.

Contrast the American "naïve" belief in its institution with the cynicism of Italy where most citizens believe that their institutions and politicians are corrupt.

John Grisham alone should not be made to bear the responsibility for the increasing cynicism in America. He didn't start it, even though he is capitalizing on it and

contributing to its growth. It is ironic that Grisham's first novel, *A Time to Kill*, was not a commercial success until after he became a best-selling author. In my opinion, it is a far better book with more interesting characters and an interesting development of the theme of jury nullification.

But you can't blame a guy for wanting to make a buck or for recognizing the financial potential of playing to the ever-developing sense of cynicism about lawyers and legal institutions. It sells. Just look at "L.A. Law" and its progeny on television.

Cynicism is not limited to the field of law. Recent history has shown a trend toward demystification of many of our institutions and leaders. The media has been instrumental in this effort and has also suffered from its effects.

Greater openness and honesty is not a bad thing. But if we are going to pry into every facet of human behavior and every aspect of our human-created institutions, we must be prepared for the inadequacies and imperfections that certainly will be found. Human beings and human institu-

tions are not perfect.

There are and have been corrupt lawyers and corrupt judges. The system often fails to achieve perfect justice. But revelations of this sort should not cause a pendulum swing from optimistic trust to cynicism.

One corrupted jury does not mean all juries are corrupt. A few crooked lawyers should not be an indictment of the profession.

In ancient Greek mythology, even the gods had their flaws. The people apparently saw no incongruity in this; perhaps they recognized a similarity to the human capacity for both good and evil. Literary heroes of the day were not perfect. They had their fatal flaws, their "Achilles' heels."

One strange aspect of modern cynicism is the concomitant desire for heroes. But today's hero must be perfect. In days past, the individual peccadilloes of public people were overlooked if they did not affect performance in office. Today, disclosure creates a response akin to a feeding frenzy in a shark tank.

Perhaps what this means is that we are experiencing only the first stages of cyni-

cism. If we were truly cynics we would not be surprised or angered to discover that our leaders have feet of clay or that our institutions may break down or be corrupted.

Perhaps there is hope for us yet. I for one refuse to surrender to cynicism – and I hope that there are budding lawyer-novelists out there who can write popular fiction that celebrates the successes of our legal system. This does not mean turning a blind eye to the failures in the system or the foibles of its practitioners. But just because we may not succeed in rendering perfect justice, we should never stop trying. The goal is not flawed nor are the fundamental institutions by which we attempt to achieve it.

John Mortimer in his wonderful Rumpole books succeeds in exposing the biases of Judge "Mad Bull" Bullingham or the pomposity of Judge Featherstone while leaving no doubt of his love and respect for the English system of common law. Surely there are American authors who could succeed with the same approach. Now that you have the public's attention, Mr. Grisham, I know that you could.

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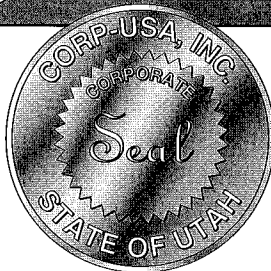
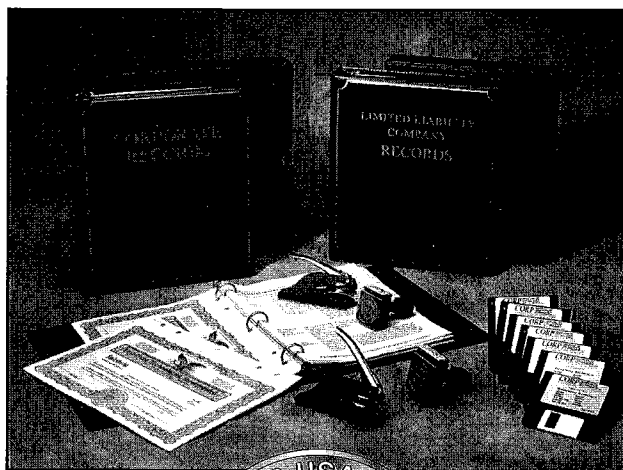
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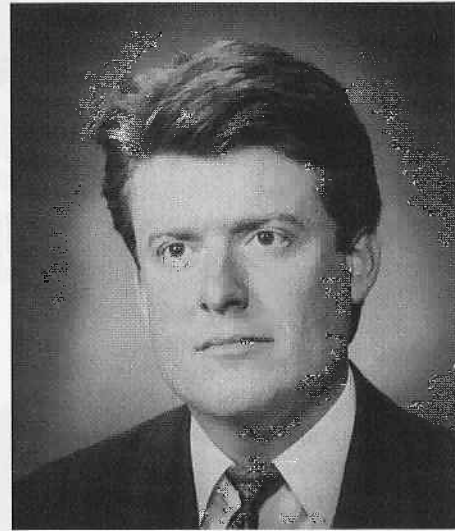
# Visual Communications in Court – Adopting Some Surprising Technologies

*By Douglas Filter and Brent E. Johnson*



*DOUGLAS FILTER is the Graphics Director and Manager of Digital Media for Holland & Hart LLP. He has applied creative solutions to the production of visual aides and demonstrative evidence since 1979 and was one of the earliest members of the Demonstrative Evidence Specialist Association which establishes high standards and ethical guidelines for artists working in the legal field. An established author and lecturer, Filter has appeared on CourtTV and MicroSoft Network.*

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*BRENT JOHNSON is a partner with Holland & Hart LLP's Salt Lake City office. As chair of the office's Commercial Litigation Department, Johnson utilizes visual communications techniques in environmental, government contract and complex commercial cases for a wide range of U.S. and international clients. Johnson is admitted to practice law in Utah and California.*

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Society thinks, communicates and learns in visual ways. When people speak to each other, mental “pictures” are created in the mind’s eye. These visualizations can differ greatly from the speaker’s intended message, unless an illustration accompanies it to clarify and coordinate the message. These illustrations make certain that each recipient of the message is thinking of the same thing.

In a courtroom setting, where property, finances, reputation and even lives are at stake, it becomes even more important that the message is clearly understood. Tradi-

tionally, attorneys depend upon oratory, carefully crafting a story to be compelling and convincing. Unfortunately, his or her opponent is often equally skilled at word constructions. Even more unfortunate, the jury pool is no longer skilled at listening to oratorical messages. The public is bombarded with messages flashed from television, billboards, magazines – attention spans have shortened, as has patience with lengthy discourses.

To reach the public, attorneys must adopt the tools that the broader society uses to communicate. When the message is so important

that it cannot be misunderstood, the successful communicator employs visual tools.

The legal industry’s search for effective presentation techniques has resulted in some remarkable new technologies. Examining how the media “teaches” the public to prefer one product over another shows those in the legal profession that there are some strong parallels between advertising and advocacy. In each instance, it is important to have an identifiable theme, to underscore it by linking it to memorable visuals and to repeat the message until it



becomes accepted knowledge. The one important element in court which is sometimes missing in advertising, however, is the absolute necessity that the theme and all corresponding visuals are supported by facts, or at least defensible opinions.

Holland & Hart LLP, a Rocky Mountain Regional Law Firm with offices in Salt Lake City, Denver and other cities, developed a Visual Communications Department to assist its attorneys with the development of visual tools to support their practices. In addition to utilizing some of the traditional technologies, such as color enlargements of charts, diagrams, maps and tables, as well as computer animations of active exhibits such as accident scenes and underground visualizations, the Visual Communications Department has investigated new techniques that effectively present important aspects of a case in court. One of these techniques is virtual reality.

One of Holland & Hart's first applications of the virtual reality technique was initiated in response to a litigation attorney's frustration with the limitations of photography and video. She turned to the Visual Communications Department for a better solution. Department specialists set out to identify or create a solution that would display a photograph without cropping-out important elements; show a piece of video without having to view each pre-shot pan and zoom; and allow a freeze frame of an image to remain on the monitor all day if necessary.

The Visual Communications Department found the necessary tools to implement this solution in Apple Computer's Developers Program's new technology, called QuickTime VR, for virtual reality (QT VR).

#### PREPARING TO USE VIRTUAL REALITY TECHNOLOGY IN COURT

Aside from the obvious "slice of time" objections to a photo, the problem with using still photographs in court is that they never show quite enough. Cropping when the photograph is composed or during printing always seems to leave something out. The viewer is left wondering about what may not be depicted, what is just out of view.

Collecting video at a scene also has some built-in limitations. From the moment the videographer pans across the

view and then zooms in on an item that was identified as important, viewers are stuck with that sequence in perpetuity. To review the scene, attorneys and viewers must sit through and rewind and play sequences over and over. If the attorney pauses on an important frame, the playback equipment will either produce a fuzzy picture, or allow only a brief opportunity to study the image before the video shuts off.

Application of QT VR technology allows viewers of the exhibit to look at the whole scene on a large computer monitor. Like standing on a street corner looking in a specific direction, then turning around, the view provided on the monitor is directional. In essence, the operator can look 360° around the site, zoom in or out on portions interesting at the moment, or look up or down. The view shown is navigated by the person operating the equipment, an operator or attorney. Navigation is performed using a standard computer mouse or tracking ball.

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*... "[I]n the digital format, the selected viewpoint can be left on the screen undistorted for as long as necessary, while a witness describes the location and physical aspects important to the case."*

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Preparing the exhibit entails creating a 360° panorama that is actually the seamless integration of 12 photographs taken at 30° intervals from a single point at the site. The photographs are not only blended into a long series, the resulting panorama is essentially rolled into a cylinder to create what is known as "virtual space." What is portrayed on the monitor is merely a rendered portion of that cylinder.

Further, in the digital format, the selected viewpoint can be left on the screen undistorted for as long as necessary, while a witness describes the location and physical aspects important to the case. The image is high resolution, so it can be seen as clearly as any easel-mounted photograph, and subsequently offers much greater detail than a video frame.

#### CREATION OF THE EXHIBIT

The exhibit is created using standard technology. Twelve photographs are taken on a commercially-available rotating mount with click-stops every 30°. A standard 35 mm camera is mounted to the device in the portrait position (vertical), using a wide angle lens to allow for views up and down in the resulting product. Light meter readings are taken to balance the exposure, and the photo series are exposed. The film is normally processed, resulting in a film negative which may later help establish foundation for the exhibit, and the negatives are "printed" to a Kodak Photo CD. This process converts all of the pictures to a digital format.

The Photo CD plate is then placed in a computer, Apple's QT VR Authoring Suite software is loaded, and in the script, a pathway is described to the location of the photograph series. The software looks at each picture, analyzes the overlaps for similarities and differences, and then "stitches" the image together, eliminating the seams and equalizing the colors.

The resulting exhibit can be played immediately to proof the image, or it can be transferred to a Windows-based computer, added to a PowerPoint presentation, or offered over the Web on the Internet. The file size is surprisingly small – while the panorama can be 11 megabytes or more, the QT VR in high resolution takes up only 500 kilobytes.

#### FINAL CONSIDERATION

If the exhibit is digitized, can it be manipulated in the computer? Well, yes. However, the risk of having altered images not match exposed film negatives precludes a litigation team from attempting such a deception.

Does shooting the scene from a wide-angle lens distort the view? Remember that a still camera photograph is an edited slice taken of a scene and frozen in time. Even if taken with a "normal" lens, the view would be as if one was looking around a scene peering through a picture frame and ignoring elements of the scene outside the picture area, not a realistic view. The distortions by the super-wide angle lens are compensated for by the QT VR software when creating the cylinder. Obvious curves toward the top and the bottom of a panorama, and curvatures of square objects such as buildings and furniture are straight-



ened by the way the view is portrayed. The resulting presentation shows correct perspective and aligned vanishing points. (See figures 1 and 2, the panorama and the presentation screen).

Consequently, the QT VR picture is more realistic than a single wide-angle shot taken from the same camera. In fact, the entire exhibit is more realistic than a photograph taken with a normal lens.

### **LEWIS & MATTHEWS V. COLORADO ROCKIES**

Holland & Hart attorneys and members of the Visual Communications Department utilized this technology in a recent First Amendment Rights case in the United States District Court. Two independent publishers had been offering their publications to Rockies baseball fans outside of the stadium in Denver. The papers were considered competitive to the Rockies' own game program. Accordingly, the Baseball Club management began chasing the vendors away from what they called their private leasehold – sidewalks and walkways around the stadium. The independent publishers decided to take the Baseball Club to court.

To accurately present the plaintiff's case, it was important that Holland & Hart depict the scene outside the stadium from many different locations. Although the vendors had already produced a video taken during a crowded game day, a more detailed exhibit was necessary to show site characteristics. Holland & Hart felt in order to draw their own conclusions, viewers must be able to look around to discover signs or indications (or lack thereof) of private property, public access or announcements prohibiting certain actions. The team kept in mind that the exhibits would be used by the Holland & Hart attorneys as well as experts in architecture and cityscapes.

To develop the virtual reality exhibit, attorneys visited the site with the visual communications specialists to identify many points of interest that were important to show the court. These included specific details like lack of signs, subtle details such as patterns on the walkways of the leased areas which were similar to walkways blocks away, and dynamic details such as the way the stadium matched and lined up with the neighborhood. A two-man crew retraced the site visit and

obtained the required photo sequences to make the exhibit.

The finished series was shown to the defense, the process was explained, and the negatives and foundation materials offered. With minimal objections, the defendant's attorney stipulated to the admission of the exhibit for demonstrative purposes.

The exhibit was used extensively in trial. Directions for navigation in virtual space were provided to the plaintiff's witnesses, both counsels as well as the judge. When, during the defense arguments, the defense's lead attorney suggested a site visit, the District Court Judge suggested that, since he was familiar with the stadium from attending games, he was only unfamiliar with the north side and that the VR exhibit had provided enough information about that part of the landscape so that he did not feel a visit was necessary.

The Court decided in favor of the plaintiffs, stating that a public sidewalk in front

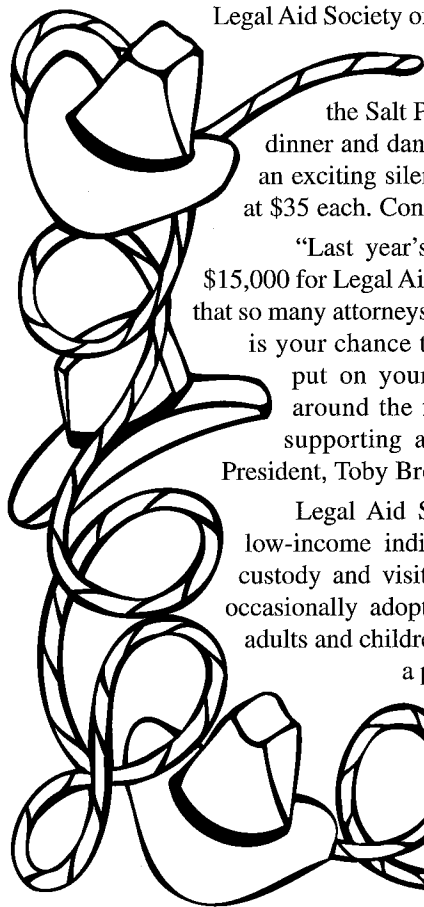
of a public building erected with public funds is a public forum, therefore allowing the publishers their first amendment rights to express their printed opinions.

### **CASE CLOSED**

The case was covered by Court TV, and has been broadcast several times. Since that time, the obvious advantage to depicting scene views in this manner, as well as the ease and economy for producing the exhibits has made use of the virtual reality technology a preferred exhibit solution in many other cases.

By experimenting with new technologies, and becoming aware of the limitations to courtroom presentations, trial practice technologies are advancing at a rate that is astounding. To go from radical concept to logical, accepted application in such a short time tells us that the future of courtroom advocacy will be interesting, indeed.

## **Legal Aid Society Holds Second Annual Fundraiser**



Legal Aid Society of Salt Lake will hold their second annual fundraising event, the Legal Aid Roundup. The spring event will be held on Friday, May 30, 1997 at the Salt Palace Convention Center. It will be an evening of dinner and dancing with a fun western theme, rounded out with an exciting silent auction. Tickets for the event will be available at \$35 each. Contact Kim at 578-1204 to purchase tickets.

"Last year's event was a great success, raising more than \$15,000 for Legal Aid Society, as well as a lot of fun. I never imagined that so many attorneys in Salt Lake knew how to Western two-step. This is your chance to dust off those cowboy boots from the closet, put on your Levi's and get ready to swing your partner around the floor. Come on out and have some fun while supporting a good cause!" states Legal Aid Society Board President, Toby Brown.

Legal Aid Society provides no-cost legal representation to low-income individual with matters concerning divorces, child custody and visitation, guardianship, modification of orders and occasionally adoption of children. Legal Aid Society also assists adults and children who are victims of domestic violence to obtain a protective order from the court, regardless of their income. Legal Aid Society does not accept criminal cases.

During 1996, Legal Aid Society assisted more than 2,500 clients with domestic relations problems and 1,457 victims of domestic violence, including 1,132 adults and 325 children.

Figure 1

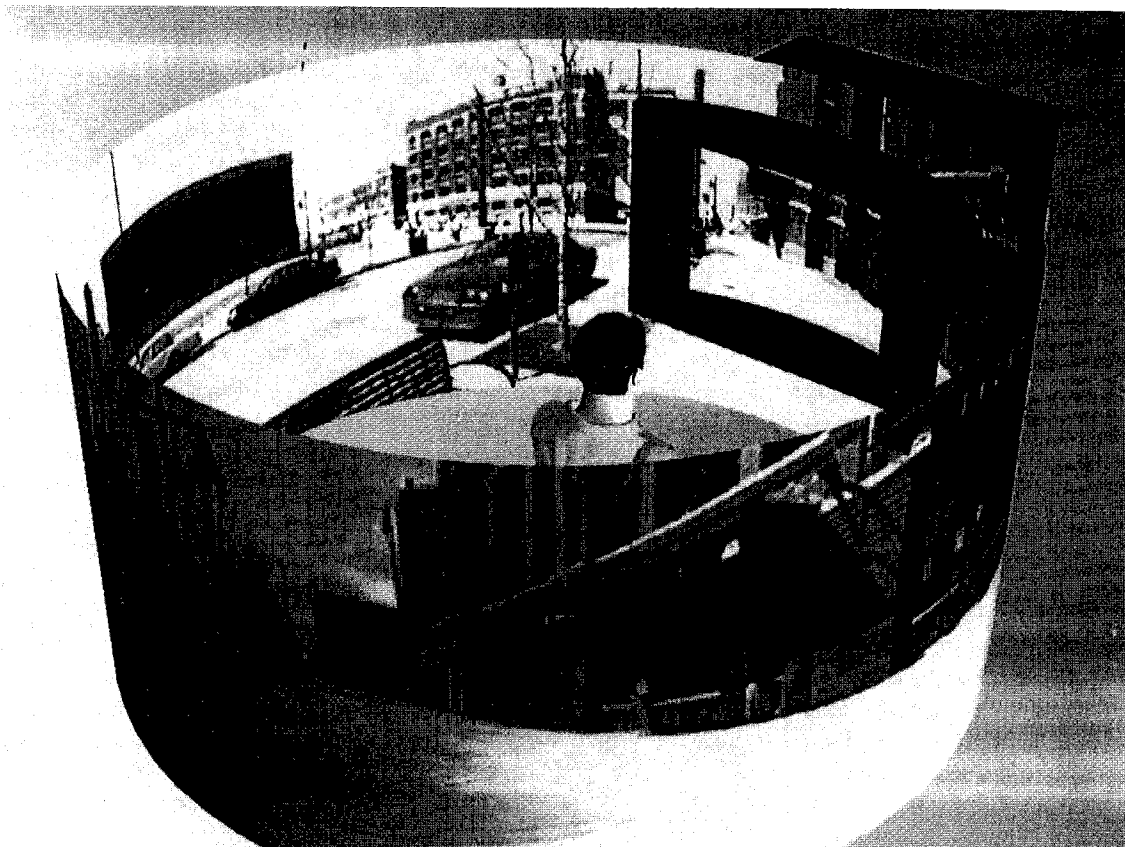
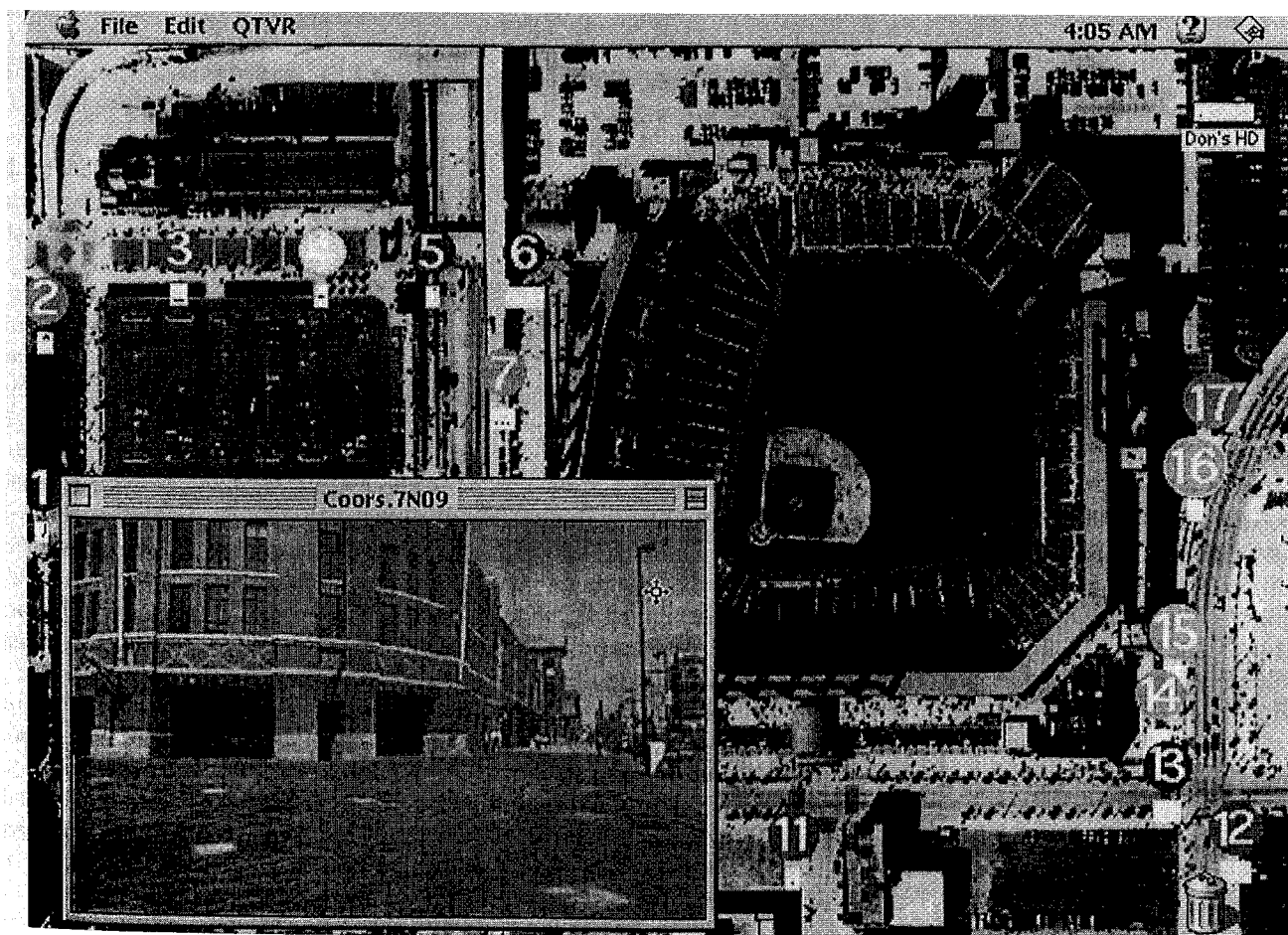


Figure 2



# BYU Law School Dedicates Howard W. Hunter Law Library

By Constance K. Lundberg

**M**arch 1997 marks the beginning of a new age for legal research in Utah, with the completion and dedication of the Howard W. Hunter Library at the J. Reuben Clark Law School, BYU. The law school has completed construction of a new 105,700 sq. ft. library that will be a great boon to students, faculty, and members of the bar. The two-story glass wall, looking out on a garden, or up to Timpanogos and Squaw Peaks, defines the aesthetic of the building – light. High ceilings, light walls and furniture, and an abundance of interior glass walls maintain the sense of openness and peace. Environmental controls protect the collection, and the growing art collection from donations to the library and loans from the BYU Museum of Art.

As beautiful as the building is, the function is more important. Included in the new building are state of the art computer research classrooms and research facilities. New carrels function as mini-offices, allowing students to develop practice skills in a more realistic environment. Abundant group study rooms encourage cooperative problem solving and provide a venue for negotiation, mediation, and other ADR exercises.

## THE HUNTER LAW LIBRARY HOUSES AN EXTENSIVE COLLECTION OF BOOKS, CD-ROMS, MICROFICHE AND MICROFILMS, AND OTHER MATERIAL SUPPORTING LEGAL RESEARCH AND LEGAL RESEARCH INSTRUCTION

Everyone thinks of library collections as books and journals. Many people now think library collections should be electronic – WESTLAW, LEXIS, and a variety of CD-ROMs. In fact, the 400,000+ items in the Hunter Collection includes books,



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manuscripts, journals (bound and unbound), microfilm, microfiche, video tapes, audio tapes, CD-ROMs, interactive video discs, maps, and any other form of information that may prove useful and helpful in a research library collection. Three types of materials predominate: bound volumes, CD-ROMs, and on-line services. They are all critical to a good library.

**Accommodations for different collections.** The Hunter Library has space for

fifteen years collection growth. With ongoing modifications we hope to accommodate twenty years growth. In addition to greatly expanded shelving we have an environmentally controlled microform room to house microfilms and microfiche. The new computer room and computer facilities on the fourth floor enable us to mount a variety of materials on our system, accessible through the Local Area Network (LAN) or the Gateway. Three computer labs, two of which double as classrooms, and a third computer classroom give students and other patrons access to all the computer resources. A growing number of public terminals allow access to catalogs, high use CD-ROMs, and other computer facilities in the public reading area. All these facilities will be heavily used because all types of collections are critical to a good library.

**Books.** It seems strange that a librarian must defend purchasing and maintaining books in a library. Originally derived from medieval Latin *libraria*, meaning book place, libraries have always existed as places for keeping and using books. Today many people ask if the book, and the traditional book place, are not approaching extinction. This in a time when publication is exploding. More books are published every year; not just Michael Crichton and John Grisham either. We purchase 10,000 books annually, ranging from *Federal Courts in the 21st Century* to the *Mexican Civil Code* to *When Biology Became Destiny: Women in Weimar and Nazi Germany*. A few, most notably the volumes of the National Reporter System, are also available on line. Most will never see electronic publication or appear on-line. The economics of electronic publication and distribution require high demand books; on-line services like LEXIS and WESTLAW require an even higher demand.



Even when materials are published in all three formats – hard copy, CD-ROM, and on-line -- there are compelling reasons to have at least one hard copy of many volumes. The first is what I call the eight-track-tape phenomenon. Do you have an eight-track tape player in your home or office? Technology changes rapidly and older forms of data storage are not adaptable to new forms of technology. I foolishly thought that storing something as simple as my Word Perfect documents on disc would provide sufficient longevity to get me to retirement. Not so. Versions older than 5.0 do not automatically convert to newer versions and many of my old documents, on disc, are now inaccessible. Law offices choosing electronic storage of older records are encountering the same problem.

Related to the aging of technology is the evolution of collections. Replacement CDs have no memory of earlier versions of regulations or statutes; neither are large tape libraries eternal. Law firm librarians are often left scurrying for old pocket parts for services that they discontinued in hard copy because the CD-ROM version is cheaper and takes less space. When an on-line service discontinues carrying a journal or service it is gone. Someone needs to keep hard copies of those materials. Increasingly, academic libraries are the only institutions that do so. The more practice libraries go electronic, the more critical it is that academic libraries acquire and keep hard copies. The average technological viability of an electronic source is five to ten years. The disc or tape itself will probably not last beyond 20 years unless it is in a hermetically sealed, environmentally controlled vault under a granite mountain (if so, it might last up to a hundred years). Now that publishers again use acid free paper and bindings, the average life of a book is nearly 1000 years. And a book is very user friendly – no user's manual is required.

Finally, legal research instruction should teach a law student to find the answer to his client's problem in a cost-efficient way, using materials available to him. This may be books, CDs, on-line, or a combination. Would you want to hire a lawyer who did all her research on-line? More to the point, would you like to pay the bills?

**CD-ROMs and other electronic publications.** Having passionately defended books, I must now show my other face and say that books alone often are insufficient.

Most lawyers, myself included, have researched problems in areas that seem never to have been contemplated by the lawyers who prepare the Decennial Digests. There are times when nothing produces results like a key word or Boolean search, where the computer checks for every occurrence of a word or phrase, and serves them up for review. The timeliness of an on-line data base is also unmatched. I will never forget my lesson, from the first week of Introduction to Law, about thorough updating. A case had been recently overruled. The lawyer on one side had checked the most recent Shephard's; the other had not, and cited an overruled case. Little did we, or our professor imagine that the day would come when we could Shepardize, on-line for all cases published up to yesterday. CD-ROMs are cheaper, and easily accessible to a small law office or a client with limited means. On-line services are quicker, less cumbersome, and usually more up-to-date. Lawyers should know how to use both.

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*"The more practice libraries go electronic, the more critical it is that academic libraries acquire and keep hard copies."*

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A brief note should be made of microfiche. No one likes researching those photographed records. However many classic collections are available in that form. The Hunter Library has, for instance, a 1500 volume collection of every title recommended for law libraries, regardless of publication date. What a treasure! The Government Printing Office is providing many materials such as Congressional Hearings on fiche. This cost-cutting measure of the government is going to become more, not less prevalent. Microfiche remains a cumbersome but essential form of library materials.

The Hunter Law Library exists primarily to serve students and scholars at BYU and in the greater academic community. Although our research collection is substantial, and we have the largest law collection in the Rocky Mountain area, we do not maintain as large a collection of practice materials as does the University of Utah Library. We have no public funding, and our mission is primarily one

of teaching and research support. We are grateful for the continuing support from alumni and the practicing bar, and hope to continue to be a resource to them. It would be unrealistic, however, to assume that the Hunter collection reduces or eliminates the need for a strong collection at the University of Utah. Library faculty at both schools have worked together to provide the greatest total service to all our users, each library specializing to some extent to use acquisition dollars most efficiently to meet all the demands placed on us.

**Different types of materials require different storage and access.** The Hunter Law Library is built to house 15-20 years growth in all types of materials. The compact shelving on the first floor remains in place to house low use materials and government documents. The second, third, and fourth floors all have book shelving. Public terminals on the second floor access the BYU on-line catalog, the Gateway leading to catalogs of the other Utah colleges and universities as well as to high use CD-ROM materials. The second and fourth floors have open computer labs for access to on-line and CD-ROM products. In addition, all carrels provide access to these materials. The second floor has a large microform room, with film and fiche cabinets, readers, printers, variable lighting to reduce eyestrain for patrons, and a separate humidity and temperature control system to protect the microforms. The fourth floor has special security systems that allow twenty-four hour access for members of the law school community. A viewing room on the second floor allows patrons to view videotapes from the collection or to use the interactive computer-video-disc skills training programs.

**THE HUNTER LAW LIBRARY IS  
THE REPOSITORY OF MATERIALS,  
BUT ALSO A COMMUNICATIONS  
HUB LINKING RELATED  
COLLECTIONS WORLD WIDE**

About ten years ago, the director of the Law Library of Congress announced that the LLC could no longer serve, if it ever had, as the complete repository for legal materials. There is no Library of Alexandria – no central repository of all the written records of civilization. Instead, research libraries work together, linking their collections through a network of interlocking databases and collection sharing agreements. The two largest networks are the

Research Libraries Group (RLG), which networks research, museum, and academic collections, and the On-line Computer Library Center (OCLC), which exists primarily as a shared cataloging resource for public and school libraries, but also supports collection sharing. A third group important in Utah is the Utah Academic Library Consortium (UALC). UALC is a consortium of the 14 academic libraries in the state plus the State Library.

The Hunter Law Library and the Harold B. Lee Library (the main library at BYU) are members of RLG, as are the Law Library of Congress, and the libraries of Harvard, Yale, Stanford, the University of Chicago, the University of Iowa, the University of Texas, and other outstanding university and law libraries in the United States and throughout the world. RLG is particularly well represented in the United Kingdom. The University of Utah Law Library is a member of RLG but the Marriott Library is not. Both Universities' libraries are members of OCLC and all academic libraries in the state are members of UALC.

The networked collections are important to library patrons for several reasons. If a student is cursed, as I was in law school, with the obligation of completing a technical edit of a law review article on the comparative marriage laws of Sudan and Nigeria, she is no longer depending on the author for bad photocopies of the original statutes from the library of the British Museum. Through the RLG electronically linked catalogs, she can determine that those laws are available at the law libraries of Columbia, Cornell, and Stanford, SUNY, Rutgers, and Florida State, as well as the British Museum. She can request copies through the Inter-Library Loan department. They will arrive, probably within 48 hours. The copies will not be bad photocopies, but will be laser printed copies of the original, scanned into a computer and digitally transmitted. The same resources can find trade laws of Argentina, cataloged papers of the Founding Fathers, superseded state regulations for New Jersey, or any other materials housed and cataloged at any of the participating libraries.

In addition to increased access to materials, accuracy of cataloging is increased, and costs to individual libraries reduced by the use of shared catalogs. A few libraries

will catalog an item, then other libraries acquiring the same item can use the first cataloging through the computer databases maintained by RLG or OCLC. This frees resources for other important activities such as collection preservation or public services. It also provides a more consistent cataloging practice (already greatly simplified by the use of the single Library of Congress system at most academic libraries) that makes research easier for the patron.

Finally, the RLG is working on collection preservation initiatives. Many nineteenth and twentieth century documents are printed on paper so acidic that the books and manuscripts are literally burning up on the shelves. Efforts of RLG and individual libraries will preserve many vital documents, including two hundred years of statutes and regulations, that will soon be lost without aggressive intervention. Other efforts, principally by the same libraries, are aimed at filming deteriorating collections.

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*"Exciting work is being done  
integrating classroom and  
computer instruction, allowing  
students more personalized  
education at a relatively low cost."*

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**THE HUNTER LAW LIBRARY  
PROVIDES "OFFICE SPACE"  
FOR ALL STUDENTS, PROMOTING  
THE EARLY DEVELOPMENT  
OF GOOD PRACTICE SKILLS  
AND PROFESSIONALISM**

Much that has been said about library collections is true to a greater or lesser extent of any academic law library. A unique characteristic of the Hunter Law Library is the student carrel – more accurately the student office. Many law schools that contemplated student carrels have rejected the idea as unworkable or too expensive. Workability is primarily a function of students' behaving professionally and using the carrels as they are intended. From the first days of the law school, we have had a charge to teach civility and professionalism.<sup>1</sup> That means treating our students as lawyers in training rather than as students to be herded or controlled. Forming a community of pro-

fessionals is part of the students' education.

There are 476 assigned student carrels in the Hunter Law Library. Each student who wishes to have one does. The Hunter carrel is unique. Designed for the library based upon specifications derived from students and library faculty, the 30"x48" carrel is, indeed, an office. Each carrel has two locked book cases, a locked drawer set that includes a file drawer and two smaller drawers, a task light, a tri-plex power outlet, and a data outlet.

Students wishing to activate personal computer accounts have access to all the on-line and networked resources of the library, including the entire Corel Office Suite, the hundred CD-ROMs we are loading on the local area network (LAN), the gateway leading to the on-line catalogs of all academic libraries in the state, Westlaw and Lexis, and Internet connections allowing access to shared databases purchased by UALC and other Internet services. The Hunter Library has the technical capacity to mount many shared data bases purchased by UALC. If staffing increases those data bases will also be accessible at the Hunter.

Each student has an e-mail account and receives many law school communications by e-mail. Some students regularly communicate with employers through e-mail as well. The calendar program in the Office Suite introduces each student to the essential art of docket control before he graduates and faces the rigors of deadlines in practice.

An increasing number of faculty are putting their overheads, and even class outlines and resource materials, on the law school home page for student access. Exciting work is being done integrating classroom and computer instruction, allowing students more personalized education at a relatively low cost. Chat rooms, bulletin boards, electronic mailboxes are all resources that may, in time, allow students to use their carrels as extensions of the classroom. We hope the facilities of the library, particularly the carrels, will also serve as a laboratory to test techniques of distance education that will serve our alumni and greater law school community in the future and be useful to the University in the next generation. With difficulty we have resisted the student pressure to allow installation of microwaves and soda dispensers.



# THE HUNTER LAW LIBRARY IS DESIGNED TO SUPPORT A RAPIDLY EXPANDING RESEARCH CURRICULUM

If you have been out of practice in researching more than a few years, or if you attended a law school with limited research instruction, you may be a bit dazed as you contemplate the complexity of legal research. The Hunter Law Library faculty has made the choice to focus its efforts on training legal researchers rather than merely providing reference assistance on a case-by-case basis. Entering students are required to complete a full week of research instruction before attending classes. After that, required research classes are held throughout the first year. The subjects for this first year training were chosen after consultation with reference faculty, legal writing faculty, and law firms that regularly hire our students. If you are uncertain about your skills, come in and take the final exam. See how you would match up to a first year law student in basic research knowledge.

After the first year, each student must take an additional 10 half-day research classes in subjects ranging from tax research to government documents in the nineteenth century. The library sets no limit on the number of classes that a student may take. It is an indication of the value of the courses that students continue to sit in even after they have completed their required 10 classes. When a specialized problem comes up – an environmental moot court competition or a federal courts symposium for instance – we sometimes get a request to schedule extra classes. A regular, two-credit hour advanced legal research class is offered each year for students wanting even more research training.

The computer classrooms will become increasingly valuable for this instruction as additional computers are installed throughout this year and as we are able to acquire master terminals, additional computer projection equipment, and other new technologies for enhancing computerized education.

# THE HUNTER LAW LIBRARY PROVIDES SUPPORT FOR CURRICULUM DEVELOPMENTS THROUGHOUT THE LAW SCHOOL

The faculty at the Hunter Library take seriously John Langdell's description of

the law library as the heart and laboratory of the law school. We work with the law school faculty and administration to be sure that the library supports the programs the law school is providing. The carrels and many study tables throughout the library support traditional case and statutory study.

Professor Larry Farmer has taught two computer applications and the law classes for many years. The first class teaches students to understand and use expert systems in practice. The second teaches students to design and implement their own systems. It is gratifying to see the number of expert systems offered nationally that are based on the computer programs designed at the BYU law school. Many of the applications were created by our faculty or graduates. These classes are taught in one of the three computer equipped classrooms in the library. Advanced computer research is also taught in those classrooms. We expect use of the classrooms to increase with changes in technology.

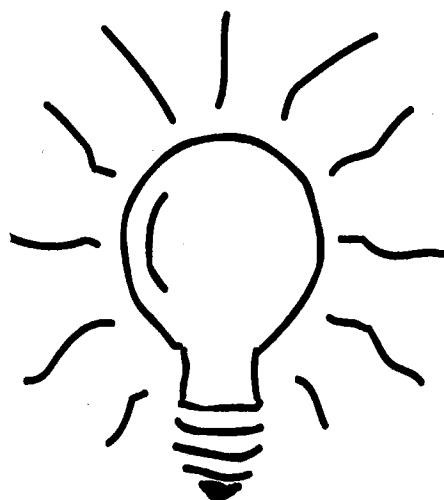
Because of changes in practice patterns and demands from the McCrate Commission and others, law school education is moving away from the traditional private adversarial model to a more complex model of teaching many forms of conflict resolution. Students at the J. Reuben Clark Law School are now being assigned to negotiate everything from pre-trial orders to contracts, draft statutes in committees, mediate disputes, interview, counsel, and advise mock clients. There is an increasing emphasis on skills training, and on cooperative work practices. The twenty-four group study and conference rooms in the library are busy around the clock and around the calendar. During finals time, they are all full every minute.

Another change in law school is the

increased emphasis on co-curricular programs. There are five credit-bearing student-run programs at BYU: The Brigham Young University Law Review, Moot Court, The BYU Journal of Public Law, the trial advocacy program, and The BYU Journal of Education and Law. In addition, there is an international moot court, an international commercial arbitration moot, a patent moot court, a negotiations competition, and other activities, such as symposia, that occur occasionally. The five year round programs are housed in an office suite with eight offices, a conference area, a desk-top publishing area, and research terminals. Other programs use group study rooms on a more extended basis as needed.

The Hunter Law Library is open 6 days a week. On weekdays it is open 6AM-1AM during the school year. Other hours vary, but it is always open during work hours. Please come in for a tour. We are excited about our new facility. The entire building has been paid for by donations, principally from large gifts from John and Karen Huntsman and Alan and Karen Ashton, law firms and Utah businesses, and from many alumni donations. We are grateful for the support we have received in building the new library and invite all to come see it, and use it, soon.

<sup>1</sup>Romney, Marion G., "Becoming J. Reuben Clark's Law School," (address given August 27, 1973 upon the founding of the law school) printed in Clark Memorandum, Fall 1993, 4; Faust, James E., "The study and practice of the laws of men in light of the laws of God," (address given November 22, 1987 to the students and faculty of the law school) printed in Clark Memorandum, Fall 1988, 16; Oaks, Dallin H., "Reenter the realm of feelings," (address given April 26, 1996 to the law school convocation), printed in Clark Memorandum, Fall 1996, 6.



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# Bar-Related Title Insurance in Utah

By Brian A. Coleman

## HISTORICAL BACKGROUND OF BAR-RELATED TITLE INSURANCE

Historically, attorneys played a significant role in all types of title-related and land transfer matters. Attorneys were searching chains of title, reviewing abstracts, and issuing title opinions far into this century. However, over time, easy access to title records became a thing of the past. It no longer was time or money efficient for the attorney to personally perform the title searches. Therefore, the need for an abstractor came into existence. The abstractor performed the title searches, and the attorney retained his or her role as advisor or counselor as to title and conveyancing matters. The attorney would examine the title search produced by the abstractor and determine the legal ramifications of the information provided.<sup>1</sup>

These abstractors later started their own commercial title companies or formed relationships with existing commercial title companies which directly competed with the attorney's role as the expert in real estate transactions and land conveyances. Attorneys continue to be pushed out of what has been their traditional role – the counselor or advisor in real estate transactions. Attorneys throughout the country seeking to preserve the role of the attorney in the real estate transaction began establishing bar-related title companies. This movement has come to be known as the "Fund Concept."

## ATTORNEY'S TITLE GUARANTY FUND, INC. (THE FUND)

Attorney's Title Guaranty Fund, Inc. is the Utah lawyer's organization for title insurance. The Fund is a Colorado corporation licensed to underwrite title insurance in Utah. The Colorado Fund was incorporated October 11, 1960 and started doing business in April, 1962. The objective of its founders was to establish an organization that would assist practicing attorneys in



*BRIAN A. COLEMAN is Vice President and Managing Attorney of the Utah Operation of Attorney's Title Guaranty Fund, Inc. Prior to joining the Fund, he was in private practice in Salt Lake City for the Law Office of Brian A. Coleman, P.C. He received his B.S. degree in International Business Finance from Brigham Young University and his J.D. degree from Golden Gate University School of Law. He has held two real estate licenses and the Series 7 Securities license. He is a member of the Real Property Section of the Utah State Bar.*

providing their clients with the added security of title insurance based upon an attorney's professional title evaluation.

In 1966, the Colorado Fund joined with representatives of the Utah State Bar to qualify to do business in Utah. On June 17, 1966, the Utah operation of the Fund began offering title insurance through its Utah attorneys. On May 12, 1979, the Fund became affiliated with Minnesota attorneys effectively creating a tri-state operation. Since that time, the Minnesota operation has expanded into North Dakota.

As a result of the initial efforts of a small contingent of Colorado, Utah, and Min-

nesota attorneys, a multi-state bar-related corporation comprised of strong statewide organizations with thousands of members throughout Colorado, Utah, Minnesota, and North Dakota has been established. From a total of 757 policies, operational income of \$16,939.00, and total coverage written in the amount of \$13,764,000.00 in its first year of operation, the Fund has grown to a point where it is currently writing tens of thousands of policies a year, has a multi-million dollar annual operational income, and writes tens of billions of dollars of coverage annually.

Attorney's Title Insurance Fund, Inc. (The Florida Fund), pursuant to a reinsurance treaty with Attorney's Title Guaranty Fund, Inc., reinsures all of the Utah and Colorado title insurance policies that have an exposure amount over \$100,000.00. The Florida Fund is the largest title insurance underwriter in Florida and the eighth largest title insurance underwriter in the United States. The Florida Fund is also the largest bar-related title insurance company in the United States.

## THE UTAH FUND AND ITS MEMBERS

The Utah Fund's office is located in the Utah Law & Justice Center which houses the offices of the Utah State Bar. The Utah Fund has a total membership of 444 attorney members and approximately 67 attorneys who are actively writing title insurance. In 1996, these 67 members produced 3,604 title insurance policies and over \$43,207,000.00 in policy coverage. In 1996, our top 10 agents put into their own pockets over \$1,500,000.00 in title insurance premiums earned. This amount does not include approximately \$350,000.00 in closing fees these 10 individuals have earned as well. By taking advantage of the ability to write title insurance through the Fund, Fund members have not only increased their real estate knowledge, better served their clients, and enhanced the

stability of their practices, they have also substantially increased their income. By their involvement with the Fund, these Fund members are also promoting the Fund Concept of preserving the role of the attorney in real estate transactions.

The Fund offers a great opportunity for Utah attorneys to build and strengthen their real estate practices, offer a great service and product to their clients and the consumer, and supplement their incomes. Most Utah attorneys do not even know that the Fund is available to them. Approximately 1.5% of the actively practicing attorneys in Utah, and approximately 15% of the attorneys who are members of the Real Property Section of the Utah State Bar are currently writing title insurance. If you are a licensed Utah attorney who is in good standing with the Utah State Bar, then you can take advantage of bar-related title insurance and the opportunities provided by the Fund.

**THE ABA ETHICS COMMITTEE HAS  
CONCLUDED THAT IT IS  
NOT A CONFLICT FOR AN  
ATTORNEY TO ISSUE TITLE INSUR-  
ANCE TO A CLIENT**

The ABA Committee on Ethics and Professional Responsibility and other state bar associations have addressed conflicts issues previously.<sup>2</sup> In addition to many Informal Opinions issued by the ABA on this issue, two ABA Formal Opinions are of the greatest importance.

On February 16, 1962, the ABA issued Formal Ethics Opinion No. 304 under the old Canons of Ethics, stating:

An attorney may not receive a commission for recommending or selling title insurance without fully disclosing to the client his financial interest in the transaction. On the other hand, there is nothing unethical in recommending title insurance to buttress a lawyer's opinion or to provide for contingencies beyond his knowledge.

More recently, on December 15, 1972,

the ABA again reaffirmed in Formal Ethics Opinion No. 331 that under the Code of Professional Responsibility it is not unethical for an attorney to issue title insurance to a client. That Opinion declared:

There is nothing necessarily unethical in an attorney recommending title insurance and acting as title examiner and agent for the title insurance company in a real estate transaction or a loan transaction so long as the attorney makes full disclosure to his client and does not violate any of the disciplinary rules of the Canons of Professional Responsibility.

The ABA has remained consistent in all of its opinions on the subject that it is not unethical per se for an attorney to issue title insurance to a client. The ABA maintains a standing committee called the Lawyer's Title Guaranty Fund Committee (LTGF) which promotes the establishment and growth of bar-related title insurance companies throughout the country. Attorneys' Title Guaranty Fund, Inc. is one of 9

# SIEGFRIED & JENSEN

A PROFESSIONAL CORPORATION

is pleased to announce that

## Michael F. Richman

formerly a shareholder of  
Van Cott, Bagley, Cornwall & McCarthy  
has become of counsel to the firm  
and will specialize in Personal Injury,  
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bar-related title insurance companies doing business in 14 states throughout the United States.<sup>3</sup> This group of bar-related title insurance companies has formed an association called the National Association of Bar-Related Title Companies (NABRTI) for the purpose of pulling the attorneys throughout the country together to promote bar-related title insurance and preserve the role of the attorney in real estate transactions.

#### **AN ATTORNEY'S INVOLVEMENT IN REAL ESTATE TRANSACTIONS BENEFITS BOTH THE CONSUMER AND THE ATTORNEY**

**Benefit to the Consumer:** The consumer is directly benefited by potentially saving thousands of dollars because an attorney was involved in the transaction. The benefits of having an attorney's involvement in the transaction are having a legally trained mind review and explain loan closing documents, prepare the conveying deed and settlement statements, answer questions and respond to concerns at the closing table, and deal with the title matters and exceptions to policy coverage.

Policies are issued by or through practicing attorneys, who many times are providing other legal advice to one of the parties in addition to the title insurance services. Many legal rights are affected by

real estate transfers besides the title itself. An attorney's involvement through a bar-related title insurer helps make the other legal services in real estate transactions more readily available and affordable.

The purchase of a home is probably the largest and most complex financial transaction of the consumer's life. Only competent counsel can provide consumers meaningful advice regarding contract negotiations, tax consequences, forms of holding title, estate ramifications, and many other critical issues. In addition, and contrary to popular belief, an attorney's involvement in the real estate transaction is likely to save the consumer money overall. A 1972 U.S. Department of Housing and Urban Development study demonstrated that in markets where attorneys are involved in real estate transactions, title and settlement-related charges were considerably lower than in states where consumers are denied access to counsel.<sup>4</sup> Also, an attorney may recognize issues and problems, that only an attorney would recognize and know how to resolve, which could potentially save the consumer thousands of dollars later on down the road.

The first and paramount objective of bar-related title companies is to provide sound and efficient title protection and services to the public. The average home buyer is interested in knowing that he or she owns the house which he or she has purchased. No

amount of financial protection can give the homeowner that assurance. The homeowner can insure the title for every dollar of its value, but the attorney who has represented the homeowners in condemnation actions knows that dollars do not take the place of ownership. There are a few members of the public who, understanding good title and title insurance, will not choose both an attorney and title insurance. A bar-related title insurance company permits the examining attorney to supply both.<sup>5</sup>

**Benefit to the Attorney:** The attorney is benefited by keeping the closing and title insurance policy portion of the real estate closing in house. The attorney does not need to farm these portions out to a third party and give up the control and income of these areas. The attorney is benefited by being able to supplement his or her real estate practice income by retaining the closing fees and a large percentage of the title premium. In addition, the legal profession is benefited as a whole by the constant effort to preserve the role of the attorney in real estate transactions. Bar-related title insurance has broadened the attorney's capacity for rendering a complete professional service to the client.

Attorneys who are not knowledgeable about bar related title insurance, or who know about bar-related title insurance, but have yet to take advantage of it are truly missing out on the many opportunities it can provide.

The Law Firm of

## **Marsden, Cahoon, Gottfredson and Bell, L.L.C.**

is pleased to announce that

### **Blaine D. Williams**

has become of counsel with the firm.

Mr. Williams recently retired from the Internal Revenue Service where he was employed as a Federal Estate Tax Attorney for 6 years, a Senior Appeals Officer for 20 years, and the Associate Chief and Chief of the Administrative Appeals Office for 10 years.

His practice will focus on the resolution of Federal tax liability and collection disputes, all areas of Federal taxation, estate planning, and asset protection.

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<sup>1</sup> See, Burke, *Law of Title Insurance*, §1.2.1, 1:2 (2nd ed 1993).

<sup>2</sup> See ABA Comm. on Ethics and Professional Responsibility, Formal Ops. 304 and 331; ABA Comm. on Ethics and Professional Responsibility, Informal Ops. 501, 563, 716, 726, 731, 883 and 1038; 22 Florida Law Journal 110 (1948); Committee on Professional Ethics of the Connecticut Bar, Formal Opinion No. 23 (undated); Comm. on Professional Ethics of the Fla. Bar, Op. 61-37 (1962), Op. 61-60 (1962), Op. 63-25 (1963), Op. 66-11 (1966), Op. 69-25 (1969), Op. 69-42 (1969), Op. 73-1 (1973), Op. 74-50 (1975); Illinois Professional Ethics Opinion No. 227 (1963), No. 415 (1974), No. 464 (1974); North Carolina State Bar 107, Opinion 224 (1958); Oklahoma Legal Ethics Opinion No. 258 (1969), No. 281 (1974).

<sup>3</sup> Attorneys' Title Guaranty Fund, Inc. (Colorado, Utah, Minnesota, North Dakota); Attorneys' Title Guaranty Fund, Inc. (Illinois, Wisconsin); Attorneys' Title Guaranty Fund, Inc. (Georgia); Attorneys' Title Insurance Fund, Inc. (Florida, South Carolina); Connecticut Attorneys' Title Insurance Company (Connecticut); National Attorneys' Title Assurance Fund, Inc. (Indiana); Penn Attorneys' Title Insurance Co. (Pennsylvania); The Bar Plan Title Insurance Company (Missouri); Vermont Attorneys Title Corp. (Vermont). See also, Burke, *Law of Title Insurance*, §1.2.1, 1:2 (2nd ed 1993) which states that there are 9 companies operating in 19 states and which gives an adequately detailed description of these bar-related title companies.

<sup>4</sup> U.S. Department of Housing and Urban Development and Veterans Administration Mortgage Settlement Costs, 99 (1972).

<sup>5</sup> ABA Special Committee on Lawyers' Title Guaranty Funds, Pamphlet No. 2, Recommended Principles For Bar-Related Title Assuring Organizations 5 (1964).



# Common Questions About Pro Bono

By Toby Brown

In recent years, federal funding for the legal services for the poor has seen dramatic reductions. For Utah, this is leading to a crisis in access to justice for the poor. To respond, the Utah State Bar and the Utah Supreme Court created the Access to Justice Task Force. The main goal of the Task Force is to design a system for providing access to justice to meet the most critical needs of the poor (i.e. food, clothing and shelter). In addition to proposals focusing on coordinated intake, screening and assigning of cases, the Task Force is considering a proposal to implement Mandatory Reporting of Pro Bono Services by Bar members. The proposed reporting requirement has generated a lot of discussion and this article addresses some of the common questions the Bar has received.

## TASK FORCE MEMBERSHIP

Chief Justice Michael D. Zimmerman,  
Co-Chair

Utah Supreme Court

Dennis V. Haslam,

Co-Chair

Winder & Haslam

Prof. James H. Backman

Brigham Young University

J. Reuben Clark Law School

Hon. Judith M. Billings

Utah Court of Appeals

Shu Cheng

Asian Association of Utah

John Florez

Utah State Bar, Commissioner

Hon. J. Thomas Greene

U.S. District Court

Hon. Pamela T. Greenwood

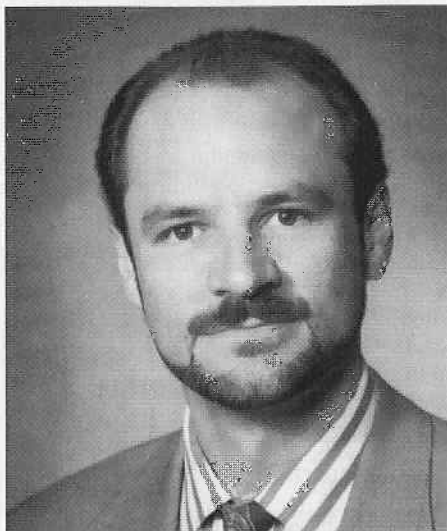
Utah Court of Appeals

James C. Jenkins

Olson & Hoggan

Hon. Lisa A. Jones

Third District Court



*TOBY BROWN is President of Tobin Professional Administrative Services, a law firm consulting and administrative services company. He also serves as the Access to Justice Coordinator for the Utah State Bar. He has an M.S. in Economics from the University of Utah. He is an associate member of the A.B.A. and serves on the Utah State Bar's Law and Technology Committee. He also serves on the Board of Trustees for the Legal Aid Society of Salt Lake.*

James B. Lee

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Rape Crisis Center

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J. Stephen Mikita

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University of Utah, College of Law

Brooke C. Wells

Assistant U.S. Attorney

Hardin A. Whitney

Moyle & Draper

Toby Brown

Utah State Bar

If any Bar member has further questions on these subjects, please feel free to contact Toby Brown (801) 297-7027 or [tbrown@utahbar.org](mailto:tbrown@utahbar.org) or Rex Olsen (801) 297-7049 or [rolsen@utahbar.org](mailto:rolsen@utahbar.org) at the Bar.

*#1 Would Mandatory Reporting of Pro Bono require me to represent pro bono clients or to donate money to legal service type agencies?*

No. It would require only that you report the number of hours of pro bono services that you completed or the donations you have made in the last year. You would report this information on your annual licensing and dues form. You would have the option of reporting zero, but you would be required to report.

*#2 If I wouldn't be required to donate legal services or money, what would be the point of mandatory reporting?*

The purpose of Mandatory Reporting would be to both quantify and increase lawyers' participation in delivery of legal services to the poor. Utah lawyers already perform a significant amount of pro bono work. By substantiating the number of hours and dollars actually contributed by lawyers to such work, the Bar would place itself in a better position to effectively argue for increased participation by the general public. In addition, a mandatory reporting system in Florida resulted in an estimated increase of 570% in pro bono hours and 150% in attorney contributions. Voluntary reporting programs in Texas and Hawaii have only marginally increased these participation numbers and resulted in unusable statistics.

*#3 Doctors aren't required to provide free medical care to the poor. As a lawyer, why am*

*I obligated to remedy what is fundamentally a social problem that I did not create?*

Lawyers do not bear sole responsibility for meeting all of the legal needs of the poor. In any event, the extent of that need is too great to be met by the efforts of lawyers alone without contribution by the general public. Nevertheless, lawyers do bear a responsibility to provide pro bono services. A forgotten premise of our adversary system is that both sides to a legal dispute have competent legal representation. In granting lawyers an exclusive privilege, or monopoly, to provide such representation, licensing rules create a corresponding obligation to ensure that the system works in a just manner. When the poor are forced to represent themselves to protect or secure their basic survival needs – or are deprived entirely of access to the system – lawyers lose the moral justification for their adversarial role of zealously representing their clients. For this reason, Rule 6.1 of the Utah Rules of Professional Conduct creates an obligation to render public interest legal service. Like all licensed Utah lawyers, you are sworn to abide by Rule 6.1. In the past, the availability of federal funding has relieved lawyers of much of the practical effect of Rule 6.1. With the withdrawal of that funding, lawyers must now reassume their obligation. On a pragmatic level, if lawyers and the Bar fail to effectively address the unmet legal needs of the poor, they risk losing the privilege of self-regulation.

*#4 How much pro bono service should I be providing each year?*

Each attorney must make that decision. However, the ABA has a standard of 50 hours of service per year. The Access to Justice Task Force is considering an aspirational goal of 36 hours per year or a \$360.00 donation (\$10.00 per hour) to a designated legal service agency or a combination of the two. (The buy-out option would be offered for those attorneys who are unable or do not want to perform direct pro bono services.)

*#5 If I contribute money to a designated legal service type agency, should I still do pro bono work?*

Yes, if you want to do so. Many attorneys may decide to balance their efforts between contributions and service. Participating in one form does not necessarily exclude the other.

*#6 What are the most pressing legal needs of indigent clients?*

The legal needs of the poor that are addressed by most agencies focus on securing food, clothing and shelter. These needs translate to: protective orders, divorce and custody, landlord-tenant, securing government assistance, housing, and other needs.

*#7 I am a transactional lawyer. How or where can I provide pro bono legal assistance.*

The Bar and the legal service agencies in Utah currently provide a variety of pro bono alternatives. A key goal of the Task Force, however, is to improve the ability of legal service agencies to effectively and efficiently use the services of pro bono attorneys. In addition to coordinated intake, screening and assignment of cases, the Task Force is focusing on providing training, support and other resources to pro bono attorneys. That support would enable attorneys to competently provide services outside of their usual practice expertise.

*#8 As a government attorney, I am restricted on the types of pro bono service I can provide. How can I comply with Rule 6.1?*

The Bar and legal service agencies understand the unique restrictions government attorneys face in regards to pro bono service. Therefore we are working to develop means for government attorneys to become more involved in pro bono. We feel the unique pro bono hurdles which government attorneys face, present unique opportunities for developing creative pro bono projects. As well, the Bar will be working with government agencies to better define the types of pro bono that government attorneys can provide.

*#9 What about malpractice coverage for my pro bono services?*

Many legal services agencies carry riders on their policies that cover their pro bono attorneys. In addition, the Bar is looking into coverage for any attorneys involved on the projects it helps coordinate. If you have a current concern, you may want to devote your pro bono efforts to an agency that extends coverage. Or, you may want to arrange for your pro bono project to become associated with such an agency.

*#10 What should I do if I receive a pro bono case I do not want or cannot accept?*

The legal service agencies in Utah try very hard to place appropriate cases with pro bono attorneys (e.g. those with fewer complications). If, however, as a pro bono attorney, you receive a case you cannot take (e.g. due to a conflict, time constraints, or a belief that the case has no merit) you may return the case to the referring agency. The

agency will then attempt to find another service option for that client.

*#11 If I charge a nominal fee or a reduced hourly rate, is that pro bono?*

Possibly. Under Mandatory Reporting, pro bono service would be defined as legal service to those of limited means. This would include those people living just above the poverty line. Reduced fee arrangements can work very well for these clients and would be considered a type of pro bono service.

*#12 Is my church and/or civic work pro bono service?*

Probably not. If you are not acting in the capacity of a lawyer, or are not providing legal services to the poor, church and civic activities would not be considered pro bono under Mandatory Reporting. As a lawyer, the Rules of Professional Conduct require you to provide pro bono service in addition to any civic responsibilities you accept. See Rule 6.1 of the Rules of Professional Conduct.

*#13 As part of increasing access to justice, will there be more pro se filings?*

Probably. Pro se representation tends to disproportionately burden the court system, which is a critical resource in providing access to justice. Because such filings are necessary to ensure access to justice, however, the Task Force is considering ways to minimize the burden on the courts by assisting pro se parties to more effectively represent themselves. Such assistance will include education on legal processes, as well as Quick Court, forms and checklists.

*#14 What is the Utah State Bar's role in pro bono and access to justice? What will it be in the future?*

In response to recent cuts in federal spending on legal services, the Bar is taking a leadership role in addressing local access to justice issues. This includes implementing the Pro Bono Project and the Access to Justice Task Force. The Bar anticipates continuing involvement in coordinating pro bono efforts statewide. At the same time, the Bar recognizes that a balance must exist between attorney contributions to the delivery of legal services to the poor and the general public's contributions. The Bar plans to use its demonstrated commitment to access to justice as an example to convince others (e.g. state government, funding sources, etc.) to increase participation. The goal is to create a partnership of community organizations focusing on improving access to justice in Utah.



## Discipline Corner

### DISBARMENT

On March 14, 1997, the Honorable Sandra Peuler entered an Order of Disbarment disbarring Edward T. Wells from the practice of law for misappropriation of client funds and funds from his law firm, which had previously paid restitution to clients.

Wells engaged in misappropriation or failed to account for client funds and funds belonging to his law firm in thirty-five personal injury matters over a period spanning two years. From February, 1994 through summer, 1996, Wells engaged in a pattern of charging the law firm directly, and thus the personal injury clients indirectly, for airfare at full price when, in fact, he canceled the full fare tickets, used frequent flyer mileage or obtained lower air fares for the same or similar travel and pocketed the difference. Upon discovery of the misappropriation of client funds, the law firm conducted a full audit and reported the matter to the Office of Attorney Discipline.

Pursuant to a Consent Discipline, Wells admitted that he violated Rule 1.5, Excessive Fees, Rule 1.15, Safeguarding Property and Rule 8.4, Misconduct and further stipulated to disbarment and had paid restitution at the time of entry of the Order of Disbarment. Mitigating factors also included Wells' lack of a prior disciplinary record, Wells' expression of remorse,

and cooperation with the Bar's investigation. The Bar acknowledged that Wells' consent to discipline was a substantial step toward rehabilitation. Wells is eligible to apply for readmission in March, 2002.

### ADMONITION

On March 20, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct of the Utah State Bar.

The respondent was hired by another attorney to work on immigration cases solicited by a non-lawyer who operated a company that purported to assist immigrants by obtaining "green-cards" or permanent residence status.

In November 1994, the complainant and her husband retained the company to file an application for immigration and naturalization on behalf of the complainant's husband. The complainant and her husband understood the respondent to be their attorney. The respondent told the complainant and her husband that he would file the application with the INS the following day. In February 1995, the complainant and her husband discovered that the respondent had not filed the application, despite his promise to do so in November 1994. The respondent failed to act with reasonable diligence and promptness in representing the complainant and her husband during the proceedings before the

INS, which are still pending more than two years after the complainant and her husband initially retained counsel.

There were no aggravating circumstances. Mitigating circumstances were that the respondent agreed to continue representing the complainant and her husband without charge, and the respondent was young and inexperienced in the practice of law at the time of the violations.

### ADMONITION

On or about March 20, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.7(a), (Conflict of Interest) of the Rules of Professional Conduct of the Utah State Bar.

The attorney was retained to represent a party in a dissolution of marriage and to pursue a paternity matter against a third party. Thereafter, the attorney undertook representation of the third party's wife in a dissolution matter at the same time he was representing the first client in the paternity action against the third party. Although respondent disclosed a potential conflict of interest to his first client, he failed to obtain her consent after consultation as required under the Rules of Professional Conduct.

## 1997-98 Licensing Forms

The 1997-98 licensing renewal forms will be mailed during the first week in June. Please note the return address on the printed form. **If you have not received your form by June 15 contact the Bar immediately.**

License fees are due regardless of whether you receive a form. Any Client Security Fund assessment must be paid with your license fees. Payments received without the Client Security Fund assessment will not be processed.

License fees are due July 1, 1997. Payments will be accepted through July 31, 1997 without a late fee. A late fee of \$50

will be assessed if your payment is not **received** by 5:00 p.m., July 31, 1997. Payments **received** without the late fee will not be processed until the late fee is paid.

If your license fees and any other assessments are not **received** by 5:00 p.m., August 29, 1997 you will be suspended for non-payment of fees. A reinstatement fee of \$100 will be assessed to those who have been suspended and wish to reinstate their license.

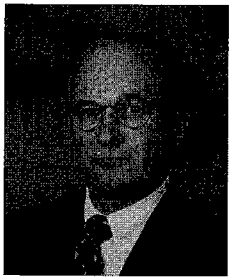
**If you are aware of an attorney who has moved and has not changed his or her address with the Bar or if you have not changed your address with the Bar,**

**please do so now. Changes must be made in writing and should be submitted to Arnold Birrell. The fact you have moved and not changed your address with the Bar or notified another department of the Bar either in writing or verbally will not relieve you from late fees and/or suspension.**



# Candidates for Utah State Bar President-Elect 1997-98

The following Bar Commissioners have announced their intention to run as President-Elect of the Utah State Bar for the 1997-98 year. At its May 30, 1997 meeting, the Board of Bar Commissioners will be voting to select the President-Elect candidate who will stand for retention election by the entire Bar membership. Please forward any comments you may have to your Bar Commissioner. A list of all Bar Commissioners is found at the front of this *Bar Journal*.



**JAMES C. JENKINS**

It is a privilege to be a candidate for the office of President-Elect of the Utah State Bar. I consider it an honor to be a lawyer. Lawyers

make a valuable and essential contribution to society. Because you will have the opportunity to ratify the selection of the future Bar President, I would like you to know something about me and why I am seeking this position.

I have been practicing law from Logan for more than 20 years. I was born here and, after graduating from law school, I returned to my home town with my wife and family. My practice has been varied. As most of you know, the practice of law in rural Utah provides many opportunities and challenges. Because of my background in business and finance, I have primarily handled transactional and litigation matters. In addition to a general practice, I also served for nearly 18 years on a part-time basis as chief prosecuting attorney in Rich and Cache Counties. I am a trial attorney and have litigated cases in every judicial district of the state and in the federal courts. It has been my privilege to work with many of you over the years and this association has reinforced my respect and admiration for the profession and the individual members of the Utah State Bar.

The Utah legal profession has expanded both in membership and diversity over the last decade. The Bar will continue to grow, and with growth comes challenges. While no one can claim to have all the solutions, I think we can meet the challenges of the future with energetic and dedicated leadership. As Bar President, I hope to:

- Improve the public image of lawyers.
- Promote professional civility and ethics.
- Help members to be better and more competent lawyers.
- Increase the opportunities for all members to actively participate and serve in the Bar.
- Provide assistance in areas such as tech-

nology advances, office management, and practice skills, and protection against unauthorized practice.

- Maintain a healthy relationship between the Bench and Bar.
- Encourage voluntary pro bono service.
- Assure financial security and responsibility of Bar operations and see that Bar members receive value for their licensing fees and assessments.

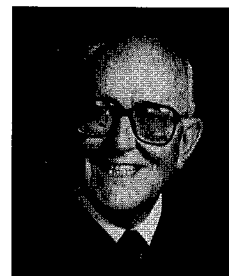
I will devote the time and energy required to provide the leadership and service the Utah Bar needs to meet our future challenges. My years of past activity in the Bar have both prepared me for this task and demonstrated my commitment to the profession. I enjoy being a lawyer and I look forward to working for you.

Some of the Bar related activities which I have undertaken include:

- Secretary/Treasurer of the Cache County Bar 1978-81
- Member, State-Wide Association of Public Attorneys (SWAP)
- Member, Law Benefit Committee
- Member, Law Day Committee
- Board Member, CACHE Industries Vocational Institute for the Handicapped
- Member, Courts and Judges Committee
- Panel Member, Ethics and Discipline Committee
- Litigation Section, Executive Committee Member
- Mock Trial Judge
- Member, Utah Bar Long-Range Planning Committee
- Member, Committee on Equal Administration of Justice
- Member, Standing Committee of the Utah Judicial Council for Judicial Performance and Evaluation
- Utah Bar Commissioner, First Division, since 1993, and liaison to numerous Bar sections and committees
- Member and immediate past Chair of the Utah Judicial Conduct Commission
- Member and Committee Co-Chair of the Utah Access to Justice Task Force, a state-wide commission established to examine and improve pro bono services
- Member of the Executive Committee of the Utah State Bar Commission

- Member, Utah Department of Public Safety Crime Laboratory Advisory Board
- American Bar Association Litigation Section, Trial Practice Committee member since 1986
- Current voting member and Bar representative of the Utah Judicial Council

Presently, I am a shareholder in the Logan firm of Olson & Hoggan, P.C. My family and my law partners support my bid to become President of the Utah Bar; this to me is my greatest endorsement. It has been 25 years since a lawyer from the First Division has been Bar President. I will make a positive and energetic effort to serve you as Bar President and I ask you to contact me or any of the members of the Bar Commission about this election.



**D. FRANK WILKINS**

What does and should the Utah State Bar Commission do? I know this is a dangerously leading question and provides fertile

ground for the wags of our bar to answer with clever, and possibly devastating, retorts. But that is for another day.

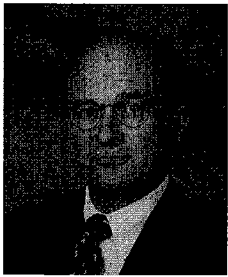
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A race for president elect  
May help us create an effect  
That imbues strength to include all  
Within justice's mighty call.

The commission, within the last year, rewrote and adopted as the vision and mission of this bar declarations that now appear prominently in each edition of the *Utah Bar Journal* at the top of the Table of Contents page. They charge us all to be leaders "in the creation of a justice system that is understood, valued, respected and accessible to all" and "to promote justice, professional excellence, civility, ethics, and respect . . . for law." A large vision and a large mission! But they are reachable. Indeed, the language here declares princi-

# Candidates for Utah State Bar President-Elect 1997-98

The following Bar Commissioners have announced their intention to run as President-Elect of the Utah State Bar for the 1997-98 year. At its May 30, 1997 meeting, the Board of Bar Commissioners will be voting to select the President-Elect candidate who will stand for retention election by the entire Bar membership. Please forward any comments you may have to your Bar Commissioner. A list of all Bar Commissioners is found at the front of this *Bar Journal*.



**JAMES C. JENKINS**

It is a privilege to be a candidate for the office of President-Elect of the Utah State Bar. I consider it an honor to be a lawyer. Lawyers

make a valuable and essential contribution to society. Because you will have the opportunity to ratify the selection of the future Bar President, I would like you to know something about me and why I am seeking this position.

I have been practicing law from Logan for more than 20 years. I was born here and, after graduating from law school, I returned to my home town with my wife and family. My practice has been varied. As most of you know, the practice of law in rural Utah provides many opportunities and challenges. Because of my background in business and finance, I have primarily handled transactional and litigation matters. In addition to a general practice, I also served for nearly 18 years on a part-time basis as chief prosecuting attorney in Rich and Cache Counties. I am a trial attorney and have litigated cases in every judicial district of the state and in the federal courts. It has been my privilege to work with many of you over the years and this association has reinforced my respect and admiration for the profession and the individual members of the Utah State Bar.

The Utah legal profession has expanded both in membership and diversity over the last decade. The Bar will continue to grow, and with growth comes challenges. While no one can claim to have all the solutions, I think we can meet the challenges of the future with energetic and dedicated leadership. As Bar President, I hope to:

- Improve the public image of lawyers.
- Promote professional civility and ethics.
- Help members to be better and more competent lawyers.
- Increase the opportunities for all members to actively participate and serve in the Bar.
- Provide assistance in areas such as tech-

nology advances, office management, and practice skills, and protection against unauthorized practice.

- Maintain a healthy relationship between the Bench and Bar.
- Encourage voluntary pro bono service.
- Assure financial security and responsibility of Bar operations and see that Bar members receive value for their licensing fees and assessments.

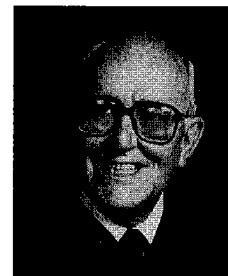
I will devote the time and energy required to provide the leadership and service the Utah Bar needs to meet our future challenges. My years of past activity in the Bar have both prepared me for this task and demonstrated my commitment to the profession. I enjoy being a lawyer and I look forward to working for you.

Some of the Bar related activities which I have undertaken include:

- Secretary/Treasurer of the Cache County Bar 1978-81
- Member, State-Wide Association of Public Attorneys (SWAP)
- Member, Law Benefit Committee
- Member, Law Day Committee
- Board Member, CACHE Industries Vocational Institute for the Handicapped
- Member, Courts and Judges Committee
- Panel Member, Ethics and Discipline Committee
- Litigation Section, Executive Committee Member
- Mock Trial Judge
- Member, Utah Bar Long-Range Planning Committee
- Member, Committee on Equal Administration of Justice
- Member, Standing Committee of the Utah Judicial Council for Judicial Performance and Evaluation
- Utah Bar Commissioner, First Division, since 1993, and liaison to numerous Bar sections and committees
- Member and immediate past Chair of the Utah Judicial Conduct Commission
- Member and Committee Co-Chair of the Utah Access to Justice Task Force, a state-wide commission established to examine and improve pro bono services
- Member of the Executive Committee of the Utah State Bar Commission

- Member, Utah Department of Public Safety Crime Laboratory Advisory Board
- American Bar Association Litigation Section, Trial Practice Committee member since 1986
- Current voting member and Bar representative of the Utah Judicial Council

Presently, I am a shareholder in the Logan firm of Olson & Hoggan, P.C. My family and my law partners support my bid to become President of the Utah Bar; this to me is my greatest endorsement. It has been 25 years since a lawyer from the First Division has been Bar President. I will make a positive and energetic effort to serve you as Bar President and I ask you to contact me or any of the members of the Bar Commission about this election.



**D. FRANK WILKINS**

What does and should the Utah State Bar Commission do? I know this is a dangerously leading question and provides fertile

ground for the wags of our bar to answer with clever, and possibly devastating, retorts. But that is for another day.

Here are a few thoughts I have as we approach president-elect time, beginning, I promise, with only one struggling verse:

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ples that should stimulate and guide us all. The commission and officers (as well as our sections and committees) perform innumerable core functions relating to admissions, discipline and regulations, education, and quality performance for bar members in order to realize the vision and mission of our profession.

I am proud, over all, of what the commission does. Most, if not all of the commissioners and officers, are. I would propose, however, that the identities and voices of all commissioners become more visible and evident at bar functions and in bar publications. They are elected to, or selected for, membership on the commission, the governing body of our bar, and it is therefore fitting that an enhanced role be performed by them. The whole commission should also be actively involved in selecting (not just approving) the yearly awards to the lawyers, judges, and other recipients. These awards are, after all, the highest honors the commission awards. I believe increased participation and recognition of individual commissioners is not only deserved but will enlarge the commission's leadership in advancing excellence, elevation, and civility of Utah attorneys.

Additionally, I urge – as do others – continuing improvements in getting valuable information to bar members through our *Utah Bar Journal* (and its new “partner” *Voir Dire* by the Litigation Section), other publications and the computer Internet.

Finally, the commission should continue to consider having *some* of its conventions on, or near, the Wasatch Front in Utah. (The annual bar convention for 1999 is now scheduled for Park City, Utah). One has not been held on the Wasatch Front area since 1988. Bar member expenses for attendance would be *greatly* reduced if some conventions were held as noted here.

Thank You,  
D. Frank Wilkins



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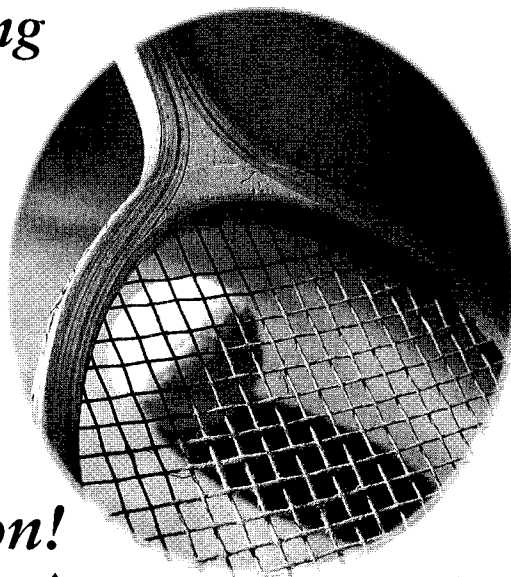
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## Notice of Membership Opening

Commencing on July 1, 1997, the Constitutional Revision Commission (CRC) will have an opening for a citizen member position.

**Position:** Citizen member  
(6-year term)

**Location:** State Capitol, Room 405  
Salt Lake City (Some  
public meetings may  
be held off-site)

**Type of position:** Membership  
Attendance at public  
monthly meetings  
Second Fridays every month  
9:00 a.m. to 12:00 p.m.

**Closing date:** Friday, May 16, 1997

**No salary:** Volunteer position

**Application Process:**

Please send your resume to: Lisa Watts  
Baskin, Executive Director, Constitutional

Revision Commission, 436 State Capitol, Salt Lake City, UT 84114. A selection committee will review your resume and set up interviews. Consideration shall be given to achieve representation from major geographical areas in the state and an equal bipartisan representation. *See Utah Code Ann. § 63-54-1.* Chair Gayle McKeachnie and Vice Chair Alan Sullivan encourage you to apply.

**Duties of Commission Members:**

Attend all commission meetings during the year, participate in commission study and discussion, make recommendations to the Governor and the Legislature regarding the Utah Constitution, including modifications to the current language in the Utah Constitution and enactment of new provisions, and assist in lobbying efforts during the legislative session.

**Information about the Constitutional Revision Commission:**

The CRC consists of 16 members, three

appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House. The remaining six members are selected by the commission members. There is an ex officio member also.

The CRC's purpose is to make a "comprehensive examination" of Utah's Constitution, make "recommendations for changes" with "specific proposed constitutional amendments" to the Governor and the Legislature, to "advise" the Governor and the Legislature on any proposed constitutional amendment or revision, and "to consider any recommendations" from the Governor, state agencies, members of the Legislature, and responsible segments of the public. *See Utah Code Ann. §§ 63-54-3 and 63-54-4.*

## 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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Ethics Opinions/ Subscription list	_____
	(\$15.00)

Please make all checks payable to the Utah State Bar  
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645 South 200 East #310, Salt Lake City, Utah 84111.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Please allow 2-3 weeks for delivery.

## Christensen Elected to International Law Firm Affiliation's Board of Directors

Patricia W. Christensen, a partner with the Salt Lake City law firm, Kimball, Parr, Waddoups, Brown & Gee, was recently elected to Commercial Law Affiliates' 18 member board of directors. Christensen is one of six new directors who will serve until March 2000.

Commercial Law Affiliates (CLA), the world's largest affiliation of independent business and commercial law firms, elects its board of directors annually for three year terms. The directors are selected to reflect the diversity of CLA's membership. The current board is made up of CLA member firm attorneys from Canada, Columbia, Korea, South Africa, Sweden, Switzerland and the U.S.

CLA is a member-run law firm association with headquarters in Minneapolis. Its more than 200 member firms provide immediate access to legal counsel in 70 countries on six continents. CLA's member firms practice independently and are not in a relationship for the joint practice of law.

## Volunteer Lawyers Needed to Participate in the Domestic Violence Victims' Clinic

Volunteer lawyers are needed to participate in the Domestic Violence Victims' Clinic ("DVVC"). DVVC, which began in Salt Lake City on August 22, 1994, is a joint effort of the Third Judicial District Court, the Delivery of Legal Services Committee of the Utah State Bar, Utah Legal Services, and the Legal Aid Society of Salt Lake. The main goal of the project is for volunteer lawyers to help pro se victims resolve domestic violence issues.

Domestic violence is a problem we cannot ignore. In the Salt Lake area, the Legal Aid Society assists over 1,000 clients a year in obtaining protective orders under the Cohabitant Abuse Act. Legal Aid provides this assistance free of charge to anyone, regardless of income. But many

more victims of domestic violence appear daily in the Third District Court attempting to obtain protective orders on a pro se basis. These pro se litigants desperately need help in getting through the legal process. DVVC provides this help.

Volunteer lawyers commit to being present at the regularly scheduled protective order hearings before the Domestic Relations Commissioners. These hearings occur four days a week, Mondays at 8:30 and 9:30 a.m., Tuesdays at 1:30 and 2:30 p.m., Wednesdays at 8:30 and 9:30 a.m., and Thursdays at 1:30 and 2:30 p.m. The volunteer lawyers represent victims appearing on their own to obtain protective orders.

Utah Legal Services provides malpractice insurance to cover volunteer lawyers when

they participate in the project. All volunteers receive training before actually participating in DVVC. The training, conducted by the Domestic Relations Commissioners and Legal Aid Society attorneys, is free and provides each volunteer with two hours of MCLE credit. Lawyers may volunteer as often as they choose; several volunteer once a month. There are currently fifty volunteer lawyers participating in the program, but more help is needed.

The next two training sessions will be held on **TUESDAY, MAY 20** and **TUESDAY, JULY 22**. Both sessions will run from 5 to 7 p.m. in room 300 of the Circuit Court Building, located at 451 South 200 East. Please reserve a place by calling Maud Thurman at 297-7022.

## Utah Legal Service's Attorney Nominated for National Award

Mike Bulson, an attorney for Utah Legal Services (ULS) in the Ogden office, has been nominated for the 1997 Kutak-Dodds Prize jointly sponsored by the Robert J. Kutak Foundation and the National Legal Aid and Defender Association (NLADA).

The Kutak-Dodds Prize is to honor a legal advocate "who through the practice of law has contributed in a significant way to the enhancement of the human dignity and quality of life of those persons unable to afford legal representation."

For almost twenty years, Mike Bulson has represented low-income clients seeking government benefits like worker's compensation, social security, food stamps, disability, or Aid to Families with Dependent Children. Bulson has taken cases from the administrative hearing level all the way to the 10th Circuit Court of Appeals.

Bulson started his legal career as a Wall Street attorney, but soon decided he could use his law degree to help low-income individuals. Looking for an opportunity to return to the west, where he grew up and went to school, Bulson attended a legal recruitment conference where he secured a job with the Ogden office of Utah Legal Services. He took up residence in Ogden where he knew no one. For the better

part of almost twenty years, Bulson's commitment has been to provide the same high quality legal representation to his ULS clients as he provided for his corporate clients in Manhattan.

In addition to his work inside the courtroom, Bulson has been a tireless participant in community organizations. He has served as a member of the State of Utah Medical Care Advisor Committee, which reviews Medicaid policies, helped organize a community health center in Ogden, served as a board member of both the Hospice of Northern Utah and Big Brothers, Big Sisters. In 1980, Bulson helped establish the St. Anne's Homeless Shelter and soup kitchen in Ogden. Bulson serves on the Peace and Justice Committee of the Catholic Diocese of Utah.

Utah Legal Services provides legal advice and representation in non-criminal matters for low-income individuals throughout the State of Utah. ULS has six offices statewide in Cedar City, Monticello, Ogden, Price, Provo, and Salt Lake.

The Kutak-Dodds Prize will be awarded during the seventh annual NLADA National Awards Dinner on May 1st.

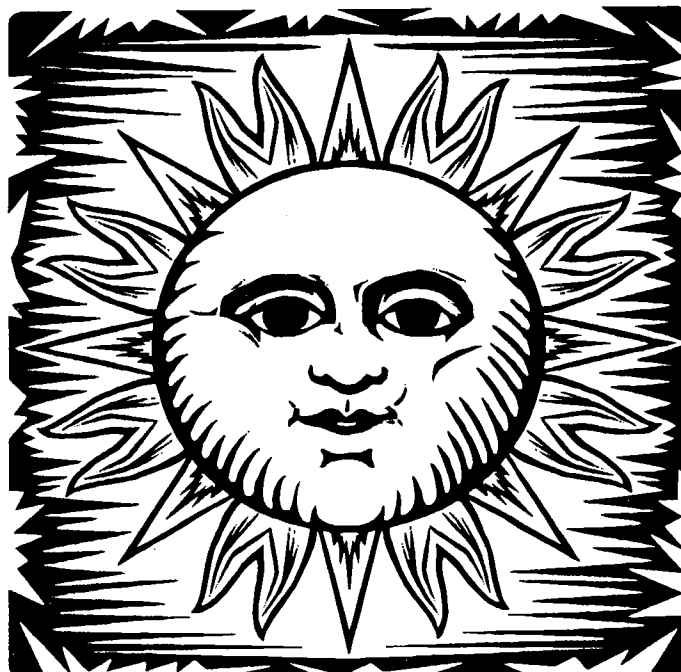
## NOTICE OF LEGISLATIVE REBATE

Bar policies and procedures provide that any member may receive a proportionate dues rebate for legislative related expenditures by notifying the Executive Director, John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111.

## Notice of Rule Change

Pursuant to Senate Joint Resolution 14, the Utah Legislature has amended Utah Rule of Evidence 508, Environmental self-evaluation privilege. The effective date of the change is May 5, 1997.

Mark your calendars now . . .



for the 1997 Utah State Bar  
Annual Meeting!  
July 2 - July 5, 1997  
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*We hope to see you this summer!*

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Annual Meeting!



UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

## NOTICE

The Fourth Revision of the Practitioners' Guide to the United States Court of Appeals for the Tenth Circuit was published in February of 1997. This Guide contains information which may assist attorneys in counseling their clients as to the advisability of commencing an appeal or review proceeding, and in prosecuting the appeal or review if commenced.

In addition to a detailed discussion of the appellate process, the Guide contains a list of the judges and other officers of the court, an overview of the court itself, a sample opening brief, the rules governing complaints of judicial misconduct or disability, and guidelines for making claims for compensation and expenses under the Criminal Justice Act.

The court offers this reference to practitioners upon request at no cost. Included with the Guide is a copy of the Tenth Circuit Rules. A request to order a copy should be sent to: Tenth Circuit Practitioners' Guide, Office of the Clerk, U.S. Court of Appeals for the Tenth Circuit, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257.

## Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 1997 and ends June 30, 1997. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 2, 1996 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law & Justice Center after May 30, 1997. You may pick up a copy from the receptionist.

Please call or write John Baldwin at the Bar office with your questions or comments.

## MEMBERSHIP CORNER

### CHANGE OF ADDRESS FORM

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

Name (please print) \_\_\_\_\_ Bar No. \_\_\_\_\_

Firm \_\_\_\_\_

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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.



## Young Lawyer Profile Marty Olsen

*By Erik Anthony Christiansen*

**M**arty Olsen is one of those rare individuals who has been able to successfully combine his legal career with his personal community service goals. Marty, who practices law with his father and two older brothers at Olsen & Olsen, spends about half of his law practice in civil litigation and half in child advocacy, including serving as a Guardian Ad Litem for abused and neglected children. Outside of his law practice, Marty gives a significant amount of his time to numerous legal, community and civic organizations, the vast majority of which further the interests of disadvantaged, abused and terminally ill children.

A 1991 graduate of the University of Utah College of Law, Marty began his legal career as a law clerk to then Judge Leonard H. Russon of the Utah State Court of Appeals (now, Justice Russon of the Utah Supreme Court), where Marty clerked for one and one-half years. Following his clerkship with Judge Russon, whom Marty credits for teaching him a great deal about the practice of law, Marty joined his family's law firm in July 1993, and started volunteering as a Guardian Ad Litem for abused and neglected children.

At about this same time, Marty was appointed to the Utah State Bar Needs of Children Committee, and as a Citizen Representative to Governor Leavitt's Commission on Criminal and Juvenile Justice Subcommittee, which is charged with evaluating the current juvenile justice system and making recommendations for possible organizational and structural changes to the State's juvenile justice system.

In 1993, after a nephew suffered serious heart problems, Marty also started volunteering at Primary Children's Hospital's Child Life Unit, where he continues to volunteer each Monday evening from 5:30 p.m. to 9:00 p.m. The Child Life Unit at any given time houses around fifty seriously ill children, many of whom are terminal. As one of five volunteers on Monday nights, Marty reads stories, plays games, delivers videos and otherwise provides terminally ill kids a break from their daily treatment regimens. When asked why he volunteers in the Child Life Unit, Marty responds that it helps him put life's problems into perspective. "I leave there a better person than when I got there. I can have a bad day at the office, and feel frustrated and stressed out from the practice of law. By the time I leave Primary

Children's Hospital, I have forgotten about my legal problems. It helps put my own problems into perspective."

In July 1995, continuing to combine his professional and community service goals, Marty left Olsen & Olsen and started working full-time as a Guardian Ad Litem Attorney in the Third District Court's Permanency Project. The Permanency Project was established to provide representation for abused and neglected children who have been in the State's custody in excess of eighteen months in permanency proceedings. "What I was handling in these cases were the cases of several abuse and neglect where termination of parental rights was warranted so that we could find these children permanent placements in homes." As a Guardian Ad Litem, Marty also represented children who were involved in domestic violence and other family conflicts.

In July 1996, Marty rejoined Olsen & Olsen, where he continues his child advocacy practice, including his representation of children in guardian ad litem proceedings.

Apart from his volunteer and professional work, Marty also has been active in the Young Lawyers Division ("YLD") of

the Utah State Bar. In April 1994, Marty was elected President-Elect of the YLD, and then served as President of the YLD from 1995 to 1996. While YLD President, Marty initiated the annual YLD Service Project.

In the Young Lawyers Division, there is active debate about whether the YLD should serve the interests of its members, the community or both. Marty believed, and continues to believe, that the YLD should serve both its members and the community. "I think young lawyers should be the public service arm of the organized bar. The Utah State Bar and its respective sections, already provide good membership services. Young lawyers are in a better position to contribute to the community. We are younger, have fewer responsibilities and have a lot of energy and enthusiasm. More importantly, societal perception of lawyers is often negative. Our community service project is a way in which the community as a whole can see that there are a lot of faces behind the suits that are willing to get their hands dirty, to pick up a bucket or a paintbrush and to contribute something to society."

The first YLD Service Project, completed while Marty was the YLD President-Elect, involved the restoration of the Salt Lake County Children's Shelter. "I would go out to see children at the Shelter as a Guardian Ad Litem, and I noticed that the Shelter was dilapidated and run down. The stoves and dishwashers did not work, the walls were covered with graffiti, the couches and carpet were soiled, and the beds were dirty and soiled." To restore the Shelter, YLD volunteers put in new carpet, convinced stores to donate new appliances and beds, and painted the entire Shelter.

Last year, while Marty was YLD President, the YLD did its Service Project for the YWCA Battered Women's and Children's Center, which the YLD painted, cleaned, and did some electrical work. The YLD Service Project this year was done for Salt Lake Neighborhood Housing Services, a nonprofit organization dedicated to revitalizing urban areas suffering the effects of blight. YLD volunteers refurbished an old home that will be sold to a low-income family, and made much-needed repairs and improvements to the homes of several senior citizens.

Perpetually suntanned and brimming with enthusiasm, Marty also has been

actively involved in the American Bar Association (the "ABA"). Marty is the Vice Chairman of the ABA Children and the Law Committee, the Utah and Nevada District Representative to the ABA Young Lawyers Division, and a member of the ABA Young Lawyers Division Executive Council.

As the District Representative to the ABA Young Lawyers Division, Marty represents Utah and Nevada and Nevada at Affiliate Outreach Project ("AOP") conferences. At AOP conferences, district representatives from around the country share and exchange ideas about other projects that Young Lawyers Divisions should sponsor. Utah YLD projects that had their genesis in AOP sponsored conferences include the YLD Call-A-Lawyer project, Law Day activities, and the Tuesday Night Bar program. A current project that recently was presented at an AOP and which Marty would like to see the Utah YLD consider is the Protect Your Child Day, which was successfully adopted and implemented by the Los Angeles County Bar Association. The Protect Your Child Day program involves a day of activities and events aimed at teaching children safety issues, including how they can protect against and report physical and sexual abuse, as well as neglect.

Apart from his many volunteer activities, Marty enjoys practicing law with his father and two brothers. "For the most part, it is a pleasure to practice with my family. You are dealing with people with whom you are comfortable. Particularly as a young attorney, I can go into my father who has been in practice forty years and brothers who have been in practice fifteen years and ask them questions. I feel like my father and brothers are looking out for me, have my best interests in mind, and have paved a way for me in the legal profession."

Whatever the benefits Marty may have gained from practicing law with his family, it is clear that the legal community, and more importantly, hundreds of abused, neglected and terminally ill children have all benefited from Marty's dedication to community service.

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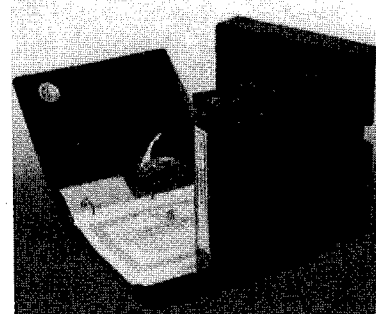
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## Finding the Facts in a Domestic Bench Trial

By Judge Steven L. Hansen

**M**y current assignment is in the civil/domestic division of the Fourth District Court where I regularly preside over domestic trials. Prior to trial, I frequently ask myself whether or not the attorneys will present facts enabling me to make my findings and conclusions. I have observed many attorneys with various skill levels present their cases with different styles and techniques, some having more success than others. Some of the more proficient lawyers use trial techniques that have impressed me, and I thought those skills should be shared with other members of the bar to assist them in presenting their cases to the court in a domestic relations bench trial.

First of all, you should set aside any preconceived myths of the simple divorce trial. At least in the trial setting, most cases are not simple to try or to decide. A domestic trial is a complex matter that should be approached with the same level of respect you would have for any trial. There are financial issues in the breakup of a marriage that are similar to those seen in commercial or business litigation and partnership dissolutions. Furthermore, unlike many trials with one claim, stagnant facts, and a remedy of a simple money award, domestic trials have multiple claims, and

*JUDGE STEVEN L. HANSEN was appointed to the Fourth District Court in August 1993 by Gov. Michael O. Leavitt. He received his law degree from the Cumberland School of Law at Samford University in 1976. He was a law clerk at the Utah Supreme Court in 1976, after which he went into private law practice. He was Wasatch County Attorney from 1986 until his appointment to the bench.*

the facts and remedies are dynamic. And, of course, the issues surrounding child custody and support can be extremely emotional for all involved. Some lawyers are aware of those and approach these trials accordingly, while others do not.

### FINAL PRE-TRIAL/ MANAGEMENT CONFERENCE

The trial management conference, or final pretrial, can be a very important hearing for both counsel and the court. I use this hearing in most domestic trials to focus on the issues and to discuss ways of facilitating the orderly presentation of the case. I encourage counsel to prepare a joint pretrial order, which enables everyone to know in advance what is expected at trial. Lists of witnesses and exhibits are exchanged and stipulations are recommended on the admissibility of documents. At this hearing the

able advocate knows the issues, what evidence is anticipated, and how the trial is going to proceed. Less time will then be spent in trial on procedural matters and evidentiary objections, and the trial can proceed much smoother than it would otherwise. The final pretrial conference is an excellent tool to educate the judge.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a trial judge, I am acutely aware that the appellate courts of this state expect specific and detailed findings of fact as the basis for my decision. Attorneys run the risk of a new trial if the judge cannot find the facts. It is the lawyer's job to present evidence to clearly support his or her position, not the judge's role to cut and paste together a decision from a trial where essential facts were confused or left out completely. If the attorney and the judge both know where they are headed at the beginning and throughout the trial, the attorney will be better able to provide the evidence the judge needs to rule in his or her favor and withstand appellate review.

Some successful attorneys have proposed findings of fact and conclusions of law prepared and filed with the court prior to trial. This technique proves helpful in a

complex case, where it serves as a road map providing direction both to you, as advocates, and the court. Naturally, the evidence does not always fit the proposed findings, and amended findings will be necessary. Since the trial is no time for discovery, there is no reason not to aid the court with proposed findings setting forth your theories and the facts you expect will come out in trial. If an attorney knows in advance that the judge will require submission of findings at the conclusion of the trial, it is to the lawyer's advantage to prepare proposed findings. By doing so, the attorney is better prepared, and assists the court in finding the facts in his or her favor.

### OPENING STATEMENTS

In most domestic bench trials an opening statement should not be waived. This opportunity should be used to state more than the issues and legal conclusions. For example, an opening statement should not be limited to stating that a client is entitled to child custody, child support, alimony, and a division of the equity in the home. A judge wants to be told why a client is entitled to that relief. State what you expect the facts will show from the particular witnesses you expect to call and the exhibits you intend to introduce. Then relate those facts to the elements of the law. All of this can be done in a statement without argument, and will provide the judge with the necessary clues to find the facts you are trying to prove. Importantly, do not forget to tell me exactly what remedy you want. In this way, the opening statement becomes a critical component of a successful bench trial.

### PRESENTING EVIDENCE

Trial attorneys should avoid the dump truck method of presenting evidence. By this, I mean unloading all the evidence on the court in an unorganized fashion with the expectation that the judge will unearth and find its meaning. Rather, attorneys should consider the case from the judge's perspective. No one relishes searching through a huge mass of evidence emptied into the courtroom. Nor is anyone thrilled to receive hundreds of pages of financial records without explanation. A domestic trial, like any other trial, should not require the judge to search in vain for lost facts in a jumbled maze of confusion. The trial should be crisp and to the point.

Start with the end result in mind. This means thinking about the final findings of fact and conclusions of law before calling your first witness. The importance of the facts cannot be emphasized enough – facts are the building blocks of a judicial decision. I have searched in vain for a fact to support one of the elements in the claim on many times. Although I might have been inclined to do so, I felt I could not order the relief requested because essential facts were missing from the record. Granted, facts cannot be produced if you have a weak case, but sometimes careful preparation, and following a well-prepared trial plan will help organize your evidence and direct attention to the important facts. In this way you may find crucial facts you initially thought were lost.

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*"Be creative in a bench trial just as you would in front of a jury. Judges are people too, and we appreciate a well-organized and artfully presented case."*

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It is important that family lawyers appreciate the impact each type of evidence may have on the judge. Testimonial evidence in a domestic bench trial covers a multitude of issues ranging from child custody, child support, visitation and alimony, to division of property and debts. This testimony, under the circumstances, is difficult to present in a chronological fashion, and requires organization into various subjects. The court needs to understand when the questions are shifting from one subject to another. A simple question to the witness in a preliminary form focusing on the claim clarifies for the court and the witness where you are headed.

In addition, real evidence is not used enough by most attorneys. Generally, real evidence is dramatic and can have a lasting impact, such as a tooth broken off in a fight, or a returned check resulting from a wrongfully closed bank account. Real evidence is often available but rarely produced by the client unless the lawyer asks for it.

Demonstrative evidence can be just as effective as real evidence. A photograph of a child's empty bedroom or pictures of the kids with the neighborhood children can

often be compelling and tell the judge why the family home should not be listed for immediate sale. A photograph of the bruised husband or wife is far more effective in demonstrating marital violence than words. An attorney should not skimp on preparing these exhibits. Be meticulous in preparing completed financial declarations and current lists of property and debts. Photos, exhibits, and graphs which are illustrative of the testimony also help to uncover the facts.

Documentary evidence, such as canceled checks, tax returns, and bank statements, is often the best way to present financial issues. However, documentary evidence is not without its pitfalls. Many times this type of evidence seems to lull attorneys into a false sense of security. There appears to be a perception that a document is enough when further clarification is actually needed. An example best illustrates this principle: A Plaintiff's attorney presented pay stubs to demonstrate the Defendant's gross income. In an attempt to rebut the Plaintiff's evidence, the Defendant's attorney submitted a general list of the Defendant's business expenses which he wanted the court to deduct from the gross income listed on the pay stubs. The evidence supported a finding that the Defendant had both reasonable and unreasonable business expenses. Normally, I would have deducted the reasonable business expenses, but because the Defendant's documentary evidence was not carefully itemized, and no further testimonial evidence was received, I could not determine a sum representing his reasonable business expenses. I knew he had legitimate business expenses, but I did not know how much. The net effect was that there was insufficient evidence to support the deduction of a sum certain representing his reasonable business expenses from his gross income to support specific and detailed findings of fact by the court.

### BE CREATIVE IN YOUR PRESENTATION

Be creative in a bench trial just as you would in front of a jury. Judges are people too, and we appreciate a well-organized and artfully presented case. Perhaps lawyers are concerned the judge has heard these issues many times before and fear the judge will be bored by such matters. Creative trial advocacy is not boring, and is as



interesting for a judge as it is for a jury. Furthermore, it serves a very important purpose; that is, it illustrates and makes clear to the judge what it is you are trying to prove, which is the very purpose of a trial. Never fall into the trap of thinking the domestic bench trial is so routine that the creative use of trial advocacy is not a valuable tool for the court to use in finding the facts.

### THE ELEMENTS

To help the judge find facts for each element in each claim, an attorney must know the law and the required elements he or she must prove. I recommend that you keep a list of each element of every claim you need to prove at counsel's table. Frequently, I bring my own list on the bench. A quick review of the elements can often jog your memory about a fact that you may have left out.

### CROSS-EXAMINATION

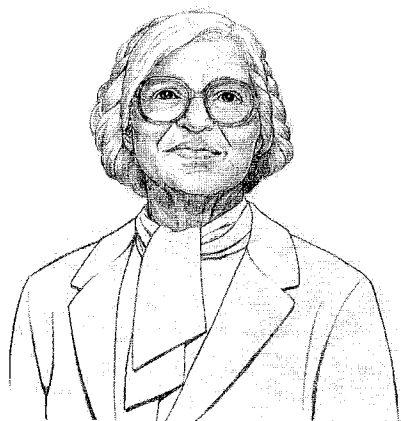
I have noticed many attorneys rushing to present their own evidence, not adequately preparing to cross-examine the opponent's witnesses. Effective cross-examination is always premised on a thorough knowledge of the facts of the case and the rules for impeachment. In cross-examining a witness it is rarely effective to attack his ultimate conclusion. A more effective method attacks the factual foundation of the opinion or the credibility of the witness. An attorney has at his or her disposal a better factual picture of the entire case than does the witness, and should be able to use this to his or her advantage in cross-examination. Clearly, casting doubt on the credibility of the witness and the facts relied upon by your opponent can have a powerful impact on the court.

### CONCLUSION

Remember, the purpose of the domestic trial, where multiple claims with complex and emotional facts come standard, is to produce a favorable result for your client by presenting a clear picture for the court. I appreciate the trial lawyer who understands the principles of clarity and simplicity in this type of a case. Taking a mass of confusion and emotion and breaking it down to present a clear picture of equity and justice for your client is an art form. The judge is asked to do this at the conclusion of the case, and it is your job, as advocate, to assist the court in performing its task in administering justice. In the end, justice and favorable rulings require findable facts.

## Attorneys Needed to Assist the Elderly

### Needs of the Elderly Committee Senior Center Legal Clinics



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

The Needs of the Elderly Committee supports the participating attorneys, by among other things, providing information on the various legal and other services

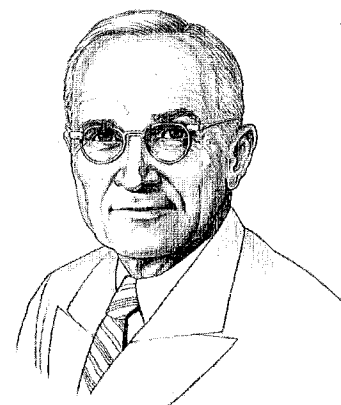
available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only two hours of time during the next 12 months.

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

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics

have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: Tom Christensen or Mary Ann Fowler @ 531-8900, Fabian and Clendenin, 215 South State, #1200, Salt Lake City, Utah 84111.





## Selected Major Legislation 1997 General Session – State of Utah

*By Jane A. Peterson and Lisa Watts Baskin*

### **I. BUSINESS, LABOR AND ECONOMIC DEVELOPMENT**

#### **HB 80: Real Property - Presumption of Title (Swallow, J.)**

Creates the presumption that a joint tenancy ownership interest exists if the interest is granted to two persons who are designated as husband and wife in the granting document unless expressly declared otherwise. It also limits the previous presumption of tenancy in common interest. This legislation has only a prospective operation to instruments executed and recorded on or after May 5, 1997.

#### **HB 96: Wrongful Lien Amendments (Swallow, J.)**

Prohibits the recording or filing of a wrongful lien or other notice document on the property of another which purports to create a lien interest or other encumbrance and which adversely affects the property title. A wrongful lien is defined as that which is not authorized by statute, court order or judgment, or the owner. This legislation permits the county recorder to reject or accept a lien within the scope of the county recorder's employment, clarifies the statutory impact on civil procedure rules, and provides civil and criminal penalties against the lien claimant.

#### **SB 112: Dramshop Liability Amendments (Buhler, D.)**

Expands liability under the Dramshop Act to individuals in a noncommercial setting who are 21 years of age or older and directly give or otherwise provide an alcoholic beverage to a person who the individual knows or should have known is under the age of 21 which results in the intoxication and subsequent injury or death of a third party. The bill also changes the liability cap from \$100,000 to \$500,000 for any person and from \$300,000 to \$1,000,000 for an aggregate of all persons injured as a result of one occurrence. This

legislation takes effect January 1, 1998 and is not retrospective.

#### **SB 166: Workforce Services Implementation and Amendments (Buhler, D.)**

Amends the structure of the Department of Workforce Services along with related provisions to comply with the statutory completion deadline of July 1, 1997. The Labor Commission is created to replace the administrative duties of the former Industrial Commission. The bill addresses the authority of the department and the commission, including their respective divisions. The bill creates the Labor Relations Board. It amends laws relating to workers' compensation, antidiscrimination, occupational safety and health, safety provisions, and employment security, as well as provisions relating to the regional structure of the Department of Workforce Services. Provisions relating to employment assistance, the Office of Child Care, apprenticeship, administrative rules, compensation for officers, and repeal dates are also amended.

#### **SB 180: Merchant or Service Provider Charge for Dishonored Checks (Holmgren, J.)**

Increases the allowable dishonored check service charge for merchants or service providers from \$15 to \$20. The bill also prohibits the service charge from being applied if the dishonored check is redeposited and subsequently honored.

### **II. CONSTITUTIONAL AMENDMENTS**

#### **HJR 8: Resolution Repealing Marital Property Provisions (Bradshaw, A.)**

Amends the Utah Constitution by repealing the provision on premarital and marital property rights of women on the basis the provision violates the Equal Protection Clause of the U.S. Constitution and the uniform operation of laws clause in the Utah Constitution. The repeal becomes effective only if approved by the electors of the state.

#### **HJR 14: Acceptance of Trust Lands Resolution (Garn, K.)**

Amends the Utah Constitution by clarifying the status of school and institutional trust lands granted or acquired by the state and accepted in trust by the state for specific purposes. The bill becomes effective only if approved by the electors of the state.

#### **SJR 1: Resolution Amending Legislator Eligibility Standards (Beattie, L.)**

Amends the Utah Constitution concerning the requirements of eligibility as a state legislator, providing that residency requirements be consecutive. This bill takes effect only if approved by the electors of the state.

### **III. ENERGY AND NATURAL RESOURCES**

#### **HB 90: Elk Farming (Johnson, B.)**

Establishes a domesticated elk farming program; creates a Domesticated Elk Advisory Council; specifies requirements for the operation of a domesticated elk facility; establishes a regulatory fee; provides for the acquisition, transportation, and possession of domesticated elk; and specifies enforcement and penalty provisions.

#### **HB 115: Cooperative Wildlife Management Units (Chard, B.)**

Renames posted hunting units "cooperative wildlife management units"; provides that cooperative wildlife management units may include public land under certain conditions; and provides that the number of permits issued through a public drawing must increase in proportion to the amount of public land included within a unit. The bill requires that hunters on a cooperative wildlife management unit be given comparable hunting opportunities and allows the Wildlife Board to specify by rule the persons eligible to draw permits in a public drawing.

**HB 127: Utility Siting Amendments (Knudson, P.)**

Places conditions on the siting of electrical facilities by local governments and requires local governments to pay for construction costs beyond standard costs, including costs to bury transmission lines, unless those costs are collected from consumers pursuant to an order or rule of the Public Service Commission or are borne by the public utility pursuant to a decision of the Electrical Facility Review Board which is created to resolve certain disputes regarding the siting of electrical facilities.

**HB 313: Electrical Deregulation and Customer Choice Task Force (Fox, C.)**

Creates the Electrical Deregulation and Customer Choice Task Force, specifies the membership and responsibilities of the task force, provides for an interim rate freeze on rates of investor-owned electric utilities, provides a reporting date, effective date, and a repeal date, and appropriates \$197,000 from the General Fund in fiscal year 1996-97.

**HB 359: Endangered Species Mitigation Fund (Hatch, T.)**

Creates the Species Protection Account and specifies contents of the account and uses of account monies. A royalty is created on unprocessed brine shrimp eggs. The State Tax Commission is authorized to make rules for the collection of the royalty. The bill provides for enforcement of payment of the royalty and penalties for nonpayment. Restrictions are placed on the types of fees that may be imposed to harvest brine shrimp eggs. Persons holding certificates of registration to harvest brine shrimp eggs in the 1996-97 season are allowed to obtain the same number of certificates of registration for the 1997-98 and 1998-99 seasons.

**SB 52: Watercraft - Liability Insurance (Tanner, N.)**

Requires owners of personal watercraft to maintain owner's or operator's security on their personal watercraft, specifies means of complying with security requirements, and provides for enforcement of security requirements and criminal penalties. The bill takes effect January 1, 1998.

**IV. HEALTH AND ENVIRONMENT**

**HB 117: Underground Storage Tank Funding (Wright, B.)**

Creates a voluntary program for qualified petroleum storage tanks, with an environmental assurance fee to be paid by program participants. The environmental surcharge on petroleum is repealed. The legislation establishes the purposes and administration of the voluntary program and provides for the administration of tanks not participating in the program, to ensure their financial responsibility.

**SB 49: Second Hand Smoke Amendments (Beattie, L.)**

Defines in the Judicial Code that, under specified circumstances, tobacco smoke drifting into a residence is a nuisance for which a cause of action may be brought. The bill also clarifies that residential unit rental and purchase agreements may prohibit generation of tobacco smoke.

**SB 60: Open Enrollment Amendments (Mantes, G.)**

Modifies eligibility requirements and premium rates for Comprehensive Health Insurance Pool; provides the issuance of certificates to individuals whose health condition does not meet insurance pool criteria; requires individual carriers to cover individuals who present a Certificate from the Insurance Pool; and amends state laws to reflect recent changes to Federal Law.

**SB 190: Voluntary Release Cleanup Program (Mansell, L.)**

Establishes a voluntary cleanup program for environmental releases and provides for specified release of liability for parties that complete the cleanup process through the program. The program requirements include application and compliance procedures and participant fees to fund the program.

**V. HUMAN SERVICES**

**HB 124: Licensing of Day Care Facilities (Jones, D.)**

Removes the exemption that if a child is in child care for less than four hours that a license is not required. Those providing continuous care and supervision of four or more children under 14 years of age, in lieu of care ordinarily provided by parents in their own home, for direct or indirect compensation, must be licensed. The Department of

Health is granted the power to make rules to implement licensing, and exemptions from licensure are granted.

**HB 178: Foster Care Citizen Review Board Amendments (Stephens, N.)**

Expands the Foster Care Citizen Review Board project, clarifies the use of Foster Care Citizen Review Board reports, and grants rulemaking authority.

**HB 269: Family Employment Program (Frandsen, L.)**

Transfers responsibility for cash and other assistance programs for persons with low incomes from the Department of Human Services to the Department of Workforce Services; describes how the state will spend federal and required state money under the Temporary Assistance for Needy Families Block Grant; provides that the Department of Workforce Services will establish eligibility requirements for cash assistance and the amount of cash assistance, within appropriations from the Legislature; allows a family to be diverted from receiving extended cash assistance if certain conditions are met; requires that a cash assistance recipient develop an employment plan that describes the steps to be taken to help the recipient eventually leave cash assistance; establishes lifetime limits for cash assistance; establishes special requirements for single minor parents who receive cash assistance; and sets goals for the number of persons who will become employed for the next three years.

**HB 307: Child Welfare Reform Act Amendments (Haymond, J.)**

Clarifies the provisions of the Child Welfare Reform Act of 1994; provides that members of the Consumer Hearing Panel may be reimbursed for each day spent in performing the duties of the panel; clarifies court recognized rights of parents and children; clarifies instances when the state has no duty to maintain a child in the child's home; amends the powers and duties of the Child Welfare Legislative Oversight Panel; clarifies the definition of "natural parent;" changes the name of "dispositional hearing" to "permanency hearing;" provides that at the permanency hearing, if the child is not returned home, the court must make certain orders to ensure the permanency of the child; clarifies that the court may order the Division of Child and Family Services

to provide protective supervision to children who are returned home; provides for proceedings for a minor's failure to attend public schools; and provides that the processes and procedures described in Part 3, Chapter 3, Title 78 do not apply to certain children who are in the custody of the Division of Child and Family Services.

**SB 64: Welfare Reform Amendments To Child Support (Tanner, N.)**

Amends the state's child support laws to comply with new federal requirements; amends distribution of support arrearages; provides safeguards for certain information; clarifies notification procedures; establishes a new hire registry within the Department of Workforce services; amends income withholding laws to limit involvement of the Office of Recovery services in certain cases; requires social security numbers on certain government documents and amends GRAMA to protect those numbers; amends and renumbers the Uniform Interstate Family Support Act; repeals the Uniform Reciprocal Enforcement of Support Act; requires location information to be updated; amends provisions on genetic testing; amends paternity acknowledgment procedures; eliminates right to a jury trial for paternity; amends procedure for modifying support orders; extends immunity to private entities for providing information to the Office of Recovery Services; amends procedures for reporting past-due support to credit reporting agencies; amends process and priority for applying tax refund to past-due child support; authorizes state courts to suspend driver licenses, professional licenses, and recreational licenses for failure to comply with a support order; amends child support lien laws and authorizes the Office of Recovery Services to establish and maintain an automated case registry, collect information and take certain enforcement actions through expedited procedures, determine compliance with cooperation requirements, request work activities for past-due support, and enter into enforcement agreements with Indian tribes and foreign countries.

**VI. JUDICIARY**

**HB 41: Restrictions on Weapons in Airports (Arrington, J.)**

Restricts a person, including a person licensed to carry a concealed firearm, from

knowingly, intentionally, or recklessly possessing a dangerous weapon, firearm, or explosive within a secure area of an airport, and provides penalties.

**HB 42: Juvenile Court Hearings and Records (Arent, P.)**

Lowers the age at which juvenile records can be accessed. The bill changes the court's discretion on who to admit to juvenile hearings and adds provisions to allow for accessing juvenile records of adults charged with felonies.

**HB 54: Dangerous Weapon Penalty Enhancement (Cox, G.)**

Provides consistency in the terminology regarding enhancement of the penalties of certain crimes when committed with a dangerous weapon.

**HB 78: Witness Immunity Amendments (Gladwell, D.)**

Sets the scope of the authority of city and county attorneys to grant immunity. The bill changes the provisions for immunity in criminal cases to use immunity, enacts the Grants of Immunity Act, and defines the scope, purpose, and application of use immunity.

**SB 9: Parolees and Probationers Education Requirements (Poulton, L.)**

Makes a high school education a condition of early parole and probation unless the parolee or probationer has a diagnosed learning disability or another justified cause.

**SB 31: Cellular Phone Fraud (Howell, S.)**

Provides criminal penalties for possession, manufacture, or sale of a cloned cellular phone or cellular phone cloning paraphernalia, and increases the penalty to a second degree felony when a cloned cellular phone is used to facilitate the commission of a felony.

**SB 74: Indigent Defense Provisions (Blackham, L.)**

Creates the Indigent Capital Defense Trust Fund and the Indigent Felony Defense Trust Fund, establishes an Indigent Defense Fund Board to administer and distribute monies from the two trust funds to participating counties, transfers the responsibilities of the Criminal Defense Costs Trust Fund from the Utah Prosecution Council to the Indigent Defense Fund Board, renames the fund to the Indigent Inmate Trust Fund, and appro-

priates \$100,000 to the Indigent Felony Trust Fund.

**VII. REVENUE AND TAXATION**

**HB 27: Cigarettes - Tax Increase and Regulation (Tanner, J.)**

Increases the tax levied on cigarettes by 25 cents per pack (from 1.325 to 2.575 cents per cigarette for cigarettes weighing not more than three pounds per thousand and from 1.925 to 3.175 cents per cigarette for cigarettes weighing in excess of three pounds per thousand) and requires the Legislature to appropriate \$250,000 from the revenue increase for a tobacco prevention and control media campaign targeted towards children.

**HB 98: Local Taxing Authority (Valentine, J.)**

Modifies the business license fee and taxing authority of a municipality; clarifies a municipality's authority to tax certain providers of telephone service; authorizes a municipality to impose a transient room tax; authorizes a municipality to impose an additional transient room tax under certain circumstances; modifies the resort communities tax; authorizes a municipality to impose an additional resort communities sales tax under certain circumstances; requires a certified tax rate decrease for municipalities imposing an additional resort communities tax; and authorizes a municipality to impose a highway tax.

**HB 129: Centrally Assessed Taxpayers Amendments (Short, R.)**

Provides for the treatment of objections to State Tax Commission assessments by property owners or counties; provides procedures for counties to hold disputed amounts in escrow, invest the disputed amounts, and distribute the amounts after a final decision; provides for the treatment of amounts released from escrow as property tax revenues; provides procedures for property owners to pay disputed amounts; provides procedures for adjudicating disputes; and modifies certain property tax notices and statements.

**HB 247: B and C Roads Formula (Stephens, M.)**

Replaces the formula for apportioning class B and class C roads account funds based on mileage, population, and land area with a formula based 50% on popula-



tion and 50% on three weighted classes of mileage.

**HB 413: Sales Tax Revenues to Transportation Funding (Fox, C.)**

Immediately following the sunset of the 1/64% Olympics sales tax earmark, January 1, 2000, this bill earmarks a portion of the state sales tax equal to the revenues generated by a 1/64% rate to be deposited in the Centennial Highway Trust Fund.

**SB 26: Sales Tax Option for Counties (Mansell, L.)**

Authorizes a county option sales and use tax; requires the county to hold public hearings and publish advertisements before levying the tax; provides for a modified referendum procedure; provides procedures for distributing revenues generated by the tax and administering the tax; modifies the property tax certified rate provisions; and provides for adjustments to the taxable value for the base year for a redevelopment agency affected by a change in the certified tax rate.

**SB 251: Uniform Fees on Tangible Personal Property (Peterson, C.)**

Decreases the uniform fee in lieu of property tax on motor vehicles, watercraft, and recreational vehicles from 1.7% to 1.5% of value and provides for an increase in the certified property tax rate and the certified revenue levy to offset the revenue loss to taxing entities.

**VIII. STATE AND LOCAL AFFAIRS**

**HB 105: Civil Relief Act (Knudson, P.)**

Creates the Utah Service Member's Civil Relief Act. The bill provides for relief from certain civil obligations while in active state military service, provides for stays and postponements by the court, creates provisions to protect a service member's dependents during active service, provides penalties, and allows for the suspension of professional liability insurance for service members called to active service.

**HB 291: Civil Defense Compact (Koehn, S.)**

Broadens the scope of the Civil Defense Compact to incidents not specifically classified as disasters. The bill also allows for search and rescues and training exercises.

**HB 363: Municipal And County Law Amendments (Brown, M.)**

Modifies the process of incorporating a city and annexing unincorporated territory to a municipality. Township provisions are repealed, but the formation of a planning district within the boundaries of a former township is allowed. For incorporation, a feasibility study is required, but for annexation a feasibility study is only required if a protest is filed. For incorporation, the county legislative body is required to hold an election. Procedures for the selection of the form of government and the election of officers are provided. Planning district provisions are modified.

**HB 385: Utah State Capitol Preservation Board (Brown, M.)**

Establishes a State Capitol Preservation Board and defines its membership, responsibilities, jurisdiction, powers, and duties for the purposes of preserving, maintaining, and restoring the State Capitol Building, the State Office Building, and the grounds.

**SB 2: 1997 Bonding and Debt Financing Authorization (Buhler, D.)**

Authorizes the issuance and sale of general obligation bonds for capital facilities, land purchases, computer software and hardware, computer system development, buildings, and related facilities; specifies the use of bond proceeds and the manner of issuance; imposes and abates a property tax; creates sinking funds; approves the issuance of certain obligations by the state building ownership authority; authorizes other capital facility expenditures; and provides for related matters.

**SB 96: City Authority Over Certain Rental Units (Buhler, D.)**

Authorizes a municipality to require an owner of more than two rental units to obtain a business license. Municipalities may impose a fee for inspections of rental units.

**SB 240: Rocky Mountain Presidential Primary Task Force Appointments (Beattie, L.)**

Creates a Rocky Mountain Presidential Primary Task Force, establishes procedures for appointing members, and defines the task force members' responsibilities to include determining a common date for a western regional presidential primary and recommending processes that will focus attention

on regional issues such as public lands, water, and the use of other natural resources.

**IX. TRANSPORTATION**

**HB 111: Transportation Corridor Funding (Dillree, M.)**

Imposes a 2.5% rental tax on motor vehicles that are leased or rented for 30 days or less. Motor vehicles more than 12,000 pounds, moving vans, and motor vehicles leased or rented to replace a vehicle being repaired are exempted from this tax. Revenues must be deposited in the Transportation Corridor Preservation Revolving Loan Fund which monies may be used for debt service.

**HB 266: Utah Department of Transportation Authority to Construct Toll Roads and Lanes (Allen, B.)**

Allows the Department of Transportation to establish and operate tollways on state highways with the approval of the Transportation Commission and the Legislature. The commission must set the amount of any toll imposed. The commission may provide funds for public or private tollway pilot projects from General Fund monies appropriated by the Legislature for that purpose. Toll revenues must be deposited in the Tollway Restricted Account to be used for tollways.

**HB 414: Registration Fee on Vehicles (Valentine, J.)**

Increases vehicle registration fees by \$10 for motorcycles, for motor vehicles 12,000 pounds or less gross laden weight, and for vintage vehicles. All other vehicle registration fee amounts are increased approximately 10%. All increases must be deposited in the Centennial Highway Trust Fund.

**SB 14: Outdoor Advertising (Mansell, L.)**

Amends the regulation of outdoor advertising. The bill limits the authority of local governments relating to outdoor advertising uses and prohibits a municipality or county from terminating a billboard and associated property rights without exercising eminent domain or receiving the consent of the billboard owner. The bill allows billboards to be relocated and closer than 500 feet apart if the billboard is replacing an existing billboard that is being removed due to highway construction. The governmental entity that causes the need

for the billboard relocation or remodeling must pay the costs or pay just compensation to the billboard owner. Government entities are required to give notice to outdoor advertisers of any proposed changes to outdoor advertising provisions. The permit period for outdoor advertising is extended from one to five years. The Department of Transportation is required to establish a landscape control program to provide clear visibility of outdoor advertising. If any provision of this act is found to be unconstitutional or in conflict with federal agreements, the provision is superseded, but other provisions of the act are not affected.

**SB 84: Public Transit District Board (Mansell, L.)**

Amends the appointment of transit district board members for transit districts that serve more than 200,000 people. A board will consist of 15 appointed members. Each county is apportioned members based on population rounded to the nearest 1/15 of the total district population. Counties with less than 1/15 of the district's population must be joined with an adjacent county. Any municipality and any county for its unincorporated population that has at least 1/15 of the district's population appoints a member for each 1/15 of a district's population. All remaining members are appointed by a simple majority of the mayors of the municipalities within the county or counties. The appointments must be made by joint written agreement of the appointing municipalities with the consent and approval of the county. If the entire county is not within the district, the remaining members are appointed by a municipality or simple majority of the mayors of the municipalities. Board members serving on the effective date of the act continue to serve until the expiration of their term. Any vacancy must be filled first by a municipality eligible to make its own appointment, then by a county eligible to make its own appointment, and finally by the mayors, with the consent and approval of the county.

**SB 161: Motor Vehicle Compliance with Insurance, Registration, and Sales Tax Requirements (Peterson, C.)**

Increases the penalty, beginning October 1, 1997, for driving a vehicle not properly registered in this state from a class C mis-

demeanor with a minimum \$200 fine to a class B misdemeanor with a minimum \$1,000 fine. A court may not reduce the fine unless the violator presents evidence that the vehicle is registered properly and the violation has not existed for more than one year. The Uninsured Motorist Identification Database Program is amended to allow database information to be used to enforce laws related to motor vehicle registration and sales tax and for audits by the state auditor or the legislative auditor general.

**SB 175: State Transportation Infrastructure Bank (Waddoups, M.)**

Creates a revolving loan fund called the Transportation Infrastructure Loan Fund to be used by the department, as prioritized by the commission to provide infrastructure loans or assistance to any public entity for transportation projects. The department may make rules and enter contracts for the purpose of administering the fund.

**SB 188 Insurance Deductible For Motor Vehicle Repair (Howell, S.)**

Requires the full amount of an insurance deductible be charged for a motor vehicle repair.

**SB 243: Bonds for Highway Funding (Hillyard, L.)**

Authorizes the issuance and sale of general obligation bonds for highways and related facilities, specifies the use of bond and note proceeds and the manner of issuance, imposes and abates a property tax, creates a sinking fund, and modifies the debt limit requirements. This bill provides a funding mechanism for the rebuilding of I-15 and other state highways.

**SB 252: Collection of Fuel Tax (Stephenson, H.)**

Shifts the point at which the special fuel tax, including diesel fuel, is collected from the retailer to the supplier. A supplier is required to be licensed by the State Tax Commission and to furnish a bond to the commission. The owner of a vehicle powered by clean fuel is required to purchase a clean special fuel certificate. The commission may coordinate with state and federal agencies for enforcement, including checking for diesel fuel dye compliance in storage facilities and tanks of vehicles. A wholesaler who receives a rack distribution of diesel fuel and a supplier may agree to allow a wholesaler to pay the fuel tax to the supplier by electronic funds transfer one business day before the tax is due from the supplier.

**SB 253: Sales Tax Reduction, Fuel Taxes, and Repeal of Environmental Surcharge on Petroleum (McAllister, L.)**

Reduces the sales and use tax rate from 4.875% to 4.75% beginning July 1, 1997. The bill repeals the 1/2 cent per gallon environmental surcharge on petroleum for the underground storage tank program, and, beginning May 5, 1997, the motor fuel tax rate and special fuel tax rate are increased from 19 cents per gallon to 19 1/2 cents per gallon. The special fuel tax exemption certificate fee is also increased proportionately. Beginning July 1, 1997, the motor fuel tax rate and special fuel tax rate is increased from 19 1/2 cents per gallon to 24 1/2 cents per gallon, and the special fuel tax exemption certificate fee is increased proportionately.

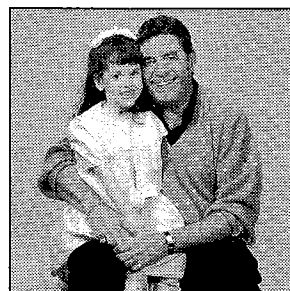
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# UTAH BAR FOUNDATION



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—Carman E. Kipp



# CLE CALENDAR

## 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: HAZARDOUS WASTE AND SUPERFUND 1997

Date: Thursday, May 8, 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

## 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

## ALI-ABA SATELLITE SEMINAR: CRITICAL LEGAL ISSUES FOR HEALTHCARE ORGANIZATIONS - IMPLEMENTING THE COMPLIANCE PROGRAM

Date: Thursday, May 22, 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

## ALI-ABA SATELLITE SEMINAR: THE CLEAN AIR ACT:

Date: Thursday, May 29, 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: Thursday, May 29, 1997  
Time: 8:00 a.m. to 1:30 p.m.  
(includes lunch)  
Place: Utah Law & Justice Center  
Fee: To be determined  
(Lunch portion - free for Corporate Counsel Section Members)  
CLE Credit: ~4.5 HOURS

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

*Seminar fees and times are subject to change. Please watch your mail for brochures and mailings on these and other upcoming seminars for final information. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Administrator, at (801) 531-9095.*

## CLE REGISTRATION FORM

TITLE OF PROGRAM

FEE

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

Make all checks payable to the Utah State Bar/CLE

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Name

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Address

City, State, Zip

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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.

**DOCUMENT GENERATION AND  
THE LLC: LEVERAGING YOUR  
PRACTICE ON TECHNOLOGY**

Date: Thursday, May 30, 1997  
Time: 8:00 a.m. to 12:00 p.m.  
Place: Utah Law & Justice Center  
Fee: To be determined  
CLE Credit: ~3 HOURS

**ALI-ABA SATELLITE SEMINAR:  
UNDERSTANDING THE NATIONAL  
SECURITIES IMPROVEMENT ACT  
AND ITS EFFECT ON THE  
INVESTMENT ADVISORY FIRM**

Date: Tuesday, June 3, 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

**ALI-ABA SATELLITE SEMINAR:  
FIDUCIARY RESPONSIBILITY  
ISSUES UNDER ERISA - 1997**

Date: Thursday, June 5, 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

**POWERFUL WITNESS PREPARATION**

Date: Friday, June 13, 1997  
Time: 9:00 a.m. to 4:00 p.m.  
(tentative)  
Place: Utah Law & Justice Center  
Fee: To be determined  
CLE Credit: 6 HOURS

**ALI-ABA SATELLITE SEMINAR:  
SECTION 1983 CIVIL RIGHTS  
LITIGATION**

Date: Thursday, June 19, 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

**ATTENTION  
NEW LAWYERS!**

**Change of Date  
for Upcoming  
NLCLE Workshop**

The New Lawyer CLE Workshop entitled "**Domes-  
tic 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.

**New Version of LEXIS®-NEXIS® Office  
for Windows® To Feature  
Microsoft® Internet Explorer**

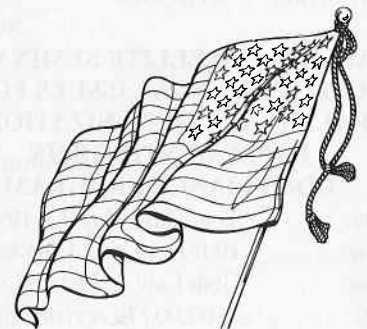
LEXIS-NEXIS and Microsoft Corp. has announced that the new version of the award-winning LEXIS®-NEXIS® Office for Windows® software suite for legal professionals will include the latest Microsoft® Internet Explorer browser technology.

Microsoft Internet Explorer will be incorporated into LEXIS-NEXIS Office 97, an integrated software suite certified for the Windows 95 and Windows NT® Workstation operating systems that allows legal professionals to integrate LEXIS®-NEXIS® online sessions, Folio Infobase Technology™, CD-ROM information and word processing documents into their own work product. Providing point-and-click access to the LEXIS-NEXIS suite of services through a customizable Windows-

based toolbar, LEXIS-NEXIS Office 97 will offer easy and reliable Internet access via LEXIS®-NEXIS® Internet Companion with Microsoft Internet Explorer version 3.0.

Customized for legal professionals, LEXIS-NEXIS Office 97 with Microsoft Internet Explorer will offer a full suite of Web browser technology tools, allowing users simultaneous access both the the LEXIS-NEXIS information service and the World Wide Web.

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May 26**





# CLASSIFIED ADS

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**Classified Advertising Policy:** No commercial advertising is allowed in the classified advertising section of the Journal. For display advertising rates and information, please call (801) 486-9095. It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification or discrimination based on color, handicap, religion, sex, national origin or age.

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

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

## BOOKS FOR SALE

For Sale: Complete set of Utah Code Annotated, Volumes 1-11, with Tables and Rules. Three-fourths price of new or best offer. Contact Barbara @ (801) 483-8373.

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**NEW YORK LAWYER** . . . also admitted in Utah. I will make appearances anywhere in New York; research and report on New York law; and in general help in any other way I can; \$75.00 per hour + travel expenses. Contact John T. Vernieu @ (518) 783-6908.

**ATTORNEY:** Former Assistant Bar Counsel. Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Call Nayer H. Honarvar, 39 Exchange Place, Suite #100, Salt Lake City, UT 84111. Call (801) 583-0206 or (801) 534-0909.

**CALIFORNIA LAWYER** . . . also admitted in Utah! I will make appearances anywhere in California; research and report on California law; and in general, help in any other way I can. \$75.00 per hour + travel expenses. Contact John Palley @ (916) 455-6785 or PalleyJ@palley.com.

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## SERVICES

### UTAH VALLEY LEGAL ASSISTANT

**JOB BANK:** Resumes of legal assistants for full, part-time, or intern work from our graduating classes are available upon request. Contact: Mikki O'Connor, UVSC Legal Studies Department, 800 West 1200 South, Orem, UT 84058 or call (801) 222-8850. Fax (801) 764-7327.

**EXPERT WITNESS:** industrial accidents, reconstruction, machine design & guarding, environmental, toxic exposures. Twenty-six+ years experience. F. David Pierce, MSPH, CIH, CSP, (801) 576-0380 or fax (801) 576-0361.

### MEDICAL EXPERT EVALUATION

**AND TESTIMONY:** Physician/lawyer, 15 years Emergency Medicine experience. Board certified and Fellow of American College Emergency Physicians. Articulate and knowledgeable. Free phone consultation and initial informal opinion. Clark Newhall, MD, JD. (801) 530-0350 any time.

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## Claim of the Month

### We're Only Human (So Admit Your Mistakes)

The client, a prominent local businessman, has been experiencing financial difficulties for some time. With the advice of his attorney he decides to file bankruptcy. The attorney and the client work together to complete a schedule of the client's assets and liabilities. While doing so, the client tells the attorney of a small transfer of funds from a friend and he states he does not know how it should be handled because he does not know if it was gift or a loan. The money that was transferred never appeared on any of the bankruptcy schedules prepared in final form by the attorney.

The bankruptcy was subsequently closed. Local authorities begin to investigate the client for various criminal matters and they discovered that the money was not listed on the bankruptcy filings. The client was indicted on charges of bankruptcy fraud. At the criminal trial, the client's defense was that he told his attorney about the transfer and his attorney prepared the schedules. The attorney was called as a fact witness and in essence, denied any fault despite the fact that there were notations throughout his file as to the transfer. The client later sued the

attorney. The attorney continued to deny any liability, however, the client received a large verdict following a jury trial.

In this instance, a jury may have been able to forgive the attorney's initial mistake, had he admitted it and awarded the client a reasonable sum to compensate him for his attorney fees incurred in defending the criminal charges. Instead, the attorney did not admit that he had made a mistake. As a result, his client was subjected to criminal proceedings with a very real threat that he would serve time in prison. In the subsequent jury trial, when the attorney still did not admit he had erred in not including the money on the bankruptcy schedules, the jury apparently became angry and awarded significantly more than the plaintiff's original settlement demand.

Although attorneys are often unjustly accused of error, it is important to take an early and objective look at any accusation, regardless of how frivolous it may originally seem. Failing to do so may well only serve to escalate any damages that may ultimately be awarded.

# CERTIFICATE OF COMPLIANCE

For Years 19\_\_\_\_ and 19\_\_\_\_

## Utah State Board of Continuing Legal Education Utah Law and Justice Center

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Salt Lake City, Utah 84111-3834

Telephone (801) 531-9077 FAX (801) 531-0660

Name: \_\_\_\_\_ Utah State Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

### Professional Responsibility and Ethics

Required: a minimum of three (3) hours

1. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*
2. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*

### Continuing Legal Education

Required: a minimum of twenty-four (24) hours

1. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*
2. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*
3. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*
4. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity      CLE Hours      Type of Activity\*\*

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

## **\*\*EXPLANATION OF TYPE OF ACTIVITY**

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

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

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

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

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

**Regulation 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).

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

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



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