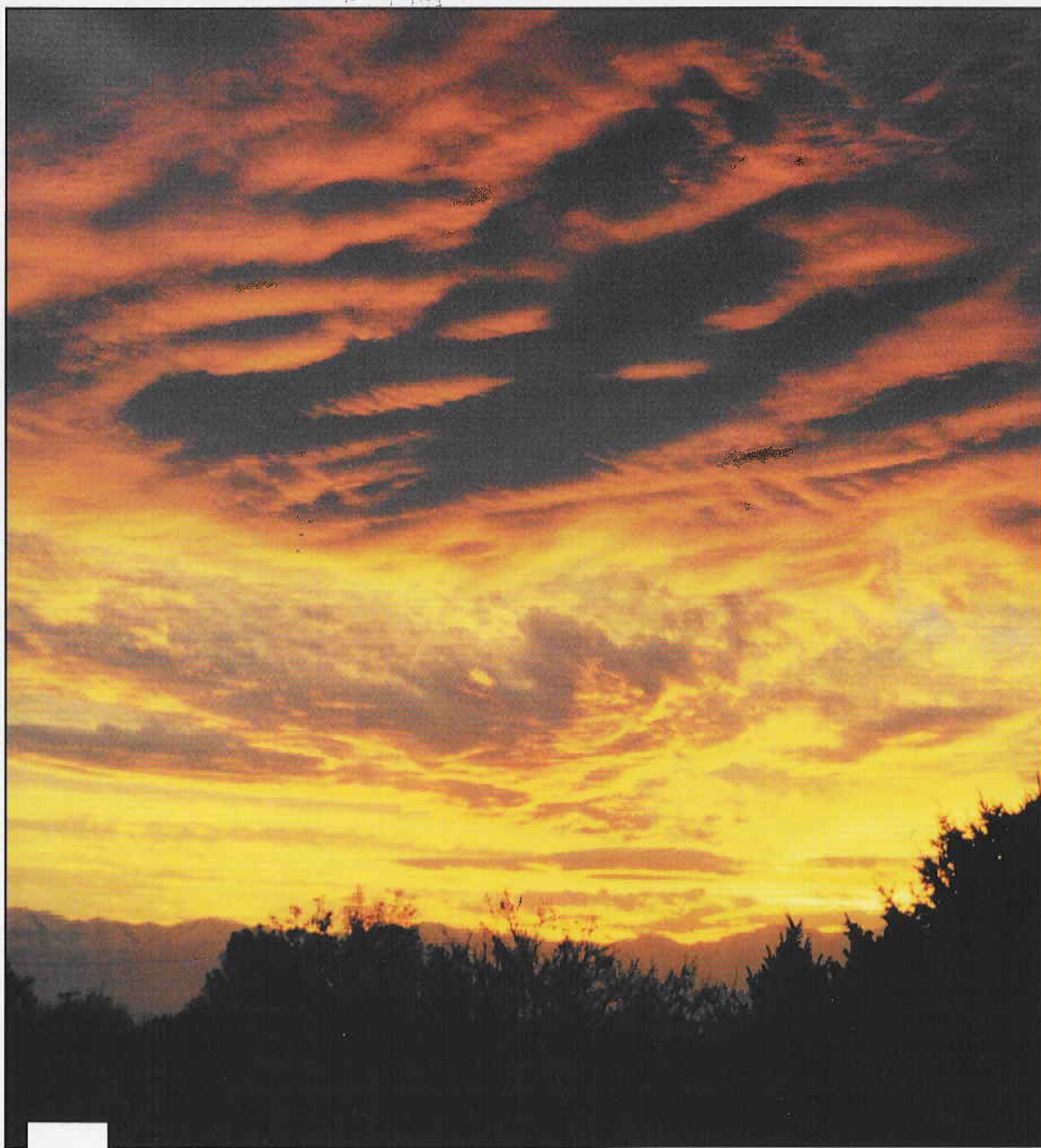


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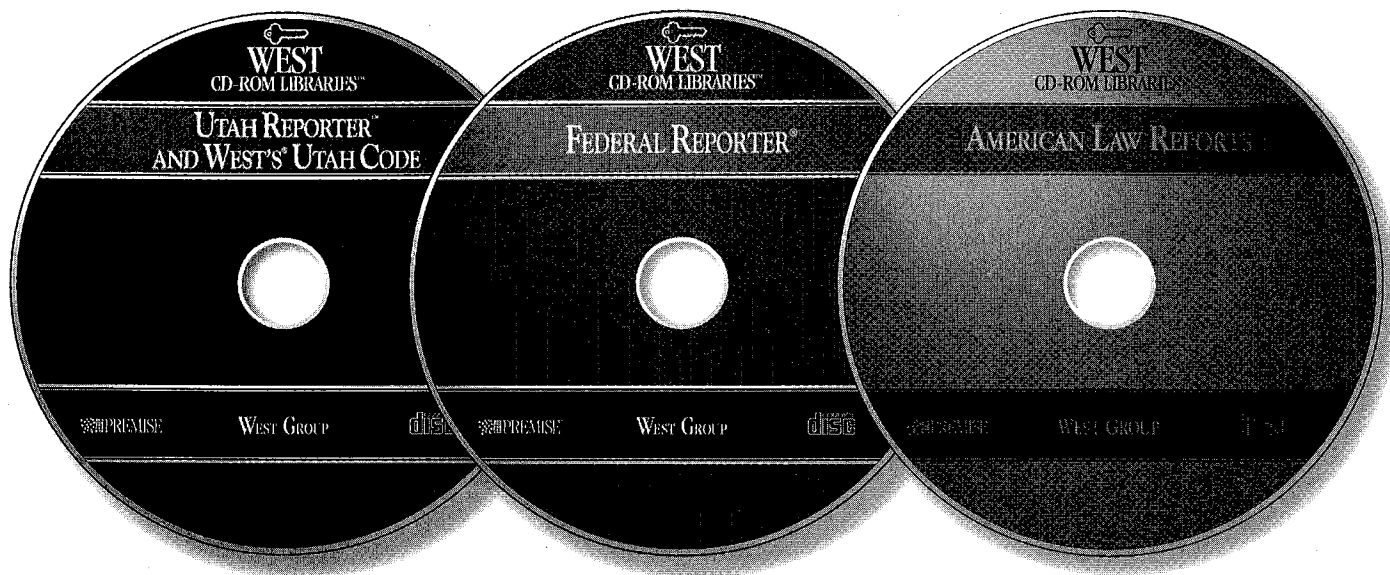
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UTAH BAR JOURNAL

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September 1997

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

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

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COVER: Sunset over Salt Lake Valley, by Glade S. Bigler.

Members of the Utah Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Randle, Deamer, Zarr, Romrell & Lee, P.C., 139 East South Temple, Suite 330, Salt Lake City, UT, 84111-1169, 531-0441. Send a slide, transparency or print of each scene you want to be considered.

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LETTERS

Letter to the Editor

I write to express my opposition to the mandatory pro bono reporting proposal now before the Bar.

The proposal is not about pro bono service, but about money. It is not intended to and will not encourage the spirit of pro bono service. Its sole purpose is to tax the Bar to fund a program which Congress has determined should no longer be publicly subsidized.

The mandatory reporting proposal gives us two choices: either make and preserve a continuous and permanent record of your pro bono service, or write the Bar a check for \$350. The reporting requirement is designed to create sufficient hassle and red tape that the average attorney will simply pay the tax.

Like most members of the Bar, I regularly devote time and energy to pro bono service. Mainly I help relatives, neighbors, friends, friends of friends who have pressing legal needs but cannot afford to pay for them. Under the proposal, I will have to keep track of my time in helping these people, so that I can report it to the Bar. I am persuaded, however, that no one at the Bar is interested in reading about my pro bono service. They will open my envelope, shake it out, and after discovering that it does not

contain a check, they will discard it.

One more thing: why does the proposal exempt judges and government attorneys from its requirements?

I hope the members of the Bar, and the Supreme Court, will reject the proposal being made by Justice Zimmerman and his committee.

Sincerely,
Chris L. Schmutz

Dear Judge Hutchings:

I'm writing to thank you for running Judge Christean's article on the Child Welfare Reform Act of 1994. It was an unusually long article, and quite opinionated, and I'm sure there are some who wish the article had not been published. However, as a juvenile prosecutor I'm always glad to see the juvenile court system get some serious attention. In this case, I'm particularly delighted to see a real problem get a serious airing. Although I don't deal with neglect and dependency cases myself, I see and hear about some of what goes on in such proceedings, and there are problems. It's good that they've been aired. Keep up that kind of good work!

Sincerely,
Paul Wake

Interested in Writing an Article for the Bar Journal?

The editor of the Utah Bar Journal wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the editor at 566-6633 or write, *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, Utah Bar Journal and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in order in which they are received for each publication period, except that priority shall be given to the publication of letters which

reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, (c) is deemed execrable, calumnious, oblique or lacking in good taste, or (d) otherwise may subject the Utah State Bar, the Board of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a

commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author or each letter if and when a letter is rejected.

PRESIDENT'S MESSAGE



Evaluating the Court System

By Charlotte L. Miller

I. JUDICIAL EVALUATIONS

This month many attorneys will receive survey forms from Valley Research, Inc., on behalf of the Utah Judicial Council. The surveys request opinions about judges in front of whom the attorneys have appeared. These surveys are part of a judicial performance evaluation program overseen by the Judicial Performance Evaluation Committee (JPE Committee), which consists of three community members, two practicing attorneys, a Bar Commissioner, five judges, and a court commissioner. I encourage Bar members to participate in the evaluation process.

The information gathered in the attorney survey is used for three general purposes: self-improvement of the judge; certification of the judge; and providing public information in the voter information pamphlet. The Judicial Council is required to certify whether each judge on the ballot has satisfied all the standards established for the judicial performance evaluation program. These standards include satisfactory performance on the attorney survey.

Each use of the survey information is crucial. Feedback from attorneys can give judges valuable insights for improvement of their performance. The judges and commissioners on the JPE Committee state that the information that they receive through

the process has been very valuable. The retention election process is the main avenue for public input into the composition of the judiciary. Both the Judicial Council and the voters rely on the attorney survey to be their observers of the performance of Utah judges. The information gathered in the attorney survey allows the Council and the electorate to fulfill their respective roles in the retention election process.

As community members who regularly come in contact with judges, attorneys have a special opportunity to exercise a civic responsibility by participating in the attorney survey process. Attorneys are well-positioned to evaluate the judges' performance, and attorneys should take the time to give the judge, the Judicial Council, and the voters their opinions.

Recently, the JPE Committee has become concerned about the drop in the response rate to the surveys. Consequently, it is looking at ways to improve the process. The Committee will consider changes to address what it perceives as the following three attitudes that impede attorney participation.

1. survey is too burdensome on attorneys who receive a large number of surveys;
2. concerns about confidentiality; and
3. information provided to the public is too limited.

To lessen the burden of numerous sur-

veys, the Committee is considering reducing the number of times a judge is subject to the survey process from the current three times per term to only twice per term. This change would decrease the number of surveys by about one-third. The Committee is also considering decreasing the number of questions on the survey questionnaire to make each form less time consuming to complete.

To address concerns about the confidentiality of responses, the Committee reviews the experience of the survey consultant. Each prospective survey consultant is required to document the steps it will take to ensure confidentiality. None of the attorney responses come through any court office. They are delivered either directly to the survey consultant or directly to the judge. The value of the survey is based on Bar members giving thoughtful and honest responses and the Committee is committed to a process that ensures the confidentiality of those responses.

Some lawyers have expressed dissatisfaction with the information made available to the public. The information provided in the voter information pamphlet is prescribed by a statute. At the Judicial Council's urging, the information reported in the 1998 voter information pamphlet will be more detailed than in prior years.

Additionally, the Committee has recommended the Council seek legislation to report exact survey scores on certification questions.

To help identify any other perceived problems with the process, the judicial performance evaluation program will be discussed at a meeting this month of the Chairs of Bar Sections, Bar Committees, and local Bars. Also, Bar members should contact me or other JPE Committee members with suggestions. Information about the work of the JPE Committee can be obtained by contacting Peggy Gentles or Tim Shea at the Administrative Office of the Courts.

Because voters' exposure to judges is minimal, the information provided in the voter information pamphlet potentially has significant influence. The integrity of that information is critical. The process depends upon thoughtful and complete information from the attorneys who have appeared in front of each judge. I encourage Bar members to take the opportunity to participate seriously.

II. COURT PERSONNEL

Although we often focus on evaluating judges, there are far more employees in the court system who are not judges. Those employees provide a valuable service to the justice system. Recently, I attended a Judicial Council meeting in which the members of the Judicial Council indicated that they recognize the court system is an employer and needs to hear from attorneys about their experiences with court employees. The Judicial Council and the Administrative Office of the Courts encourage court personnel to view themselves as public servants, and to view the public and lawyers as customers. Since the judiciary has made this step toward recognizing attorneys as customers, attorneys should take the opportunity to encourage this recognition by providing input with regard to court employees.

There are a variety of individuals who may be contacted with regard to experiences with court personnel including the appropriate judge, presiding judge, clerk of the court, trial court executive, and the state court administrator's office. Our input will let the

courts know if changes, additional training, or other actions are needed. Since the Judicial Council has invited lawyers to participate in the process in this manner, I encourage all lawyers to take advantage of this opportunity, and provide information about both positive and negative experiences with court personnel. (Praising employees for good performance can often be more effective than criticizing for poor performance.)

Most lawyers work hard to please judges in the court system, and we need to make sure that the court system understands the needs of lawyers. I believe the organized Bar can be helpful in providing information about lawyers' needs in the court system, but I also encourage each individual lawyer to take the opportunity to provide information about his or her experiences with court personnel. If the court system is willing to attempt to serve lawyers as one of its customers, let's be willing to be customers who let the court system know what is best for lawyers, the justice system and the public.

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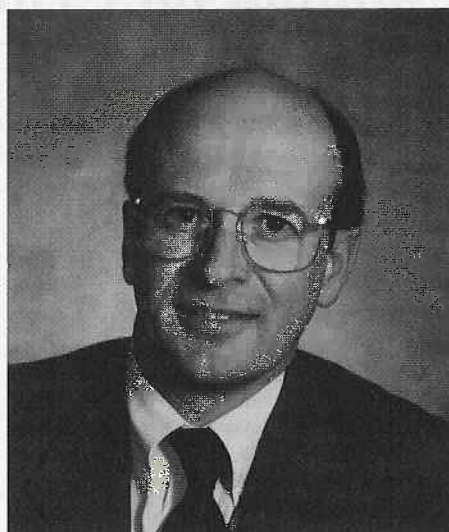
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Service

By James C. Jenkins

Recently, I was traveling home from the office after a particularly demanding day. Driving through a residential area, I rounded a bend in the road and caught sight of a little fair haired girl about 9 or 10 years old running along the sidewalk waving a homemade sign which read "Lemonade 25¢." She was frantically waving the sign in front of her to capture my attention. Her total focus was on me.

I must confess I considered driving on. It had been a long day and I just wanted to get home, but I remembered an admonition I had just read a few days earlier in a book. The author's advice was to never pass up a child's lemonade stand. Well, I thought, I'll never have a better opportunity to follow that counsel — so I stopped.

The little girl ran up to my window and instantly behind her appeared her young sister carrying a plastic pitcher and paper cups. Together, they carefully poured me a cup of lemonade. I was so impressed by

their enthusiasm and service. As I handed my new friend a dollar bill in payment, she smiled and put her "Lemonade 25¢" sign between her teeth to take the bill in her right hand. It was then, for the first time, I noticed that she did not have a left hand, only a stub at the wrist.

She reached in her pocket for change, but I said to her, "This is worth more than a dollar!" She took the sign from her teeth and with another big smile said "thanks" and ran home, back across the street with her sister and their unexpected profit.

In truth, the profit was mine. The stress and challenges of the day's work, which I had only moments before been lugging home, were lifted. What a refreshing experience. Lemonade, for me, has never tasted sweeter!

In an address last month to the National Conference of Bar Presidents, newly installed ABA President Jerome Shestack listed what he described as the "values" of

our profession:

- Ethics and Integrity (taking the high road),
- Competence and Independence,
- Education (educating the public and continuing education of the profession),
- Civility,
- Pro Bono Service, and
- The Ministry of Justice.

These "values" are all integral to providing professional service. Sometimes we find ourselves so entangled in the web of daily challenges that we lose our focus and forget our professional principles. All too often we allow distractions and excuses, and our own limitations to hamper our professionalism. Our goal should be to serve with the same integrity, confidence, and enthusiasm as my little friend who sells lemonade.

The Summit on Crime – We Came Together for Utah's Future

By Senator Orrin G. Hatch

Utah is a wondrous state in which to live and raise a family. We take pride and find faith and strength in the legacy and contributions of our ancestors – Native American, pioneers from what later became the eastern United States, and pioneers from what later became Mexico – who settled this area and labored together to build our great state. We continue to benefit from the strengths and diversity of our citizens – some here for generations, others newly arrived, all contributing to the vitality and stability of our communities. The state's growth, however, also has brought its share of growing pains. I convened the 1997 Summit on Crime to confront one of them, the same problem that plagues other growing states – crime.

All participants put forth substantial effort, and I commend them for their commitment and sincerity. The federal participants deserve particular appreciation: Attorney General Reno, Directors Freeh and Gonzalez, Administrator Constantine, and Commission Meissner. I especially would like to thank Professor Paul Cassell of the University of Utah College of Law, who is serving as the official Reporter for "The Summit on Crime: Coming Together for Utah's Future."

I believe that the Summit has reinvigorated the partnership between local, state, and federal law enforcement. We reached consensus on much of what needs to be done, and we are well on our way to crafting a blueprint that sets out a sound anti-crime strategy for Utah. This strategy will reaffirm that state and local law enforcement officials are the proper custodians of police power and that they are in the best position to tackle Utah's crime problem. State, county, and local government do most of the "heavy-lifting" when it comes to crime control, and, frankly, they should continue to do so.



ORRIN GRANT HATCH was a practicing attorney after receiving his law degree, first in Pennsylvania then in Utah, until his election to the United States Senate in 1976. Since then, he has been awarded an honorary doctorate from the University of Maryland and an Honorary Doctor of Laws from Pepperdine University, Southern Utah State University, and from the Cumberland School of Law at Samford University.

As the Chairman of the Senate Judiciary Committee, Senator Hatch is a leader in the fight for tougher anti-crime laws, civil justice reform to unclog the courts, and legislation to protect individual property rights. He also takes an active role in the confirmation of all judicial nominations, including justices of the Supreme Court. As Chairman, he also has a direct impact on such issues as civil rights, immigration, antitrust and consumer protection, and the confirmation of federal judges including Justices of the Supreme Court, and issues related to the Constitution.

Now in his fourth term as Utah's senator, Senator Hatch has championed a variety of legislative causes. Among his many achievements and initiatives are the balanced budget amendment to the Constitution, the Religious Freedom Restoration Act, the Omnibus Property Rights Act, the Antiterrorism and Effective Death Penalty Act, the Child Care and Development Block Grant Act, home health care, the Comprehensive Methamphetamine Control Act, the Dietary Supplements Health and Education Act, FDA reform, the Orphan Drug Act, the Ryan White AIDS Care legislation which provides needed services for adults and children afflicted with HIV, the Job Training Partnership Act, designation of the Mormon Trail, the Utah School Trust Lands Exchange Act, and the Radiation Exposure Compensation Act for the Utah downwinders.

That being said, the federal government has not done enough to lead in those problem areas that are its primary responsibility – illegal immigration and interstate drug trafficking. I think that during our day-long conference we made great progress in ensuring that federal agencies will step up to the plate and begin to curb the crime increase that Utah has witnessed. As members of the legal profession, we can appreciate that justice sometimes moves slowly and that the task ahead will be difficult. Yet, with a maintenance of effort from those in the best position to achieve results, we will achieve measurable progress.

Notwithstanding efforts being waged at all levels of government, according to figures released in late June by the Utah Department of Public Safety, overall crime is still on the rise in Utah. With the exception of 1994, overall crime has steadily increased in Utah since 1985. In 1996, when the nation experienced a 7% drop in violent crime, Utah saw a 3.6% increase in violent crime. For example, there were 810 rapes in 1996 – twice the number of rapes that were perpetrated just ten years ago. Robberies have increased to 1,342 in 1996. Aggravated assaults have steadily increased for the last ten years, from 2,732 in 1987 to 4,215 in 1996. It is clear that law enforcement at all levels will benefit from increased cooperation and support among the various agencies.

In determining what we can do together to help our law enforcement community in its effort to reduce crime, we focused the conference on four areas that appear to complicate law enforcement's ability to deal effectively with crime: (1) the increased presence of criminal illegal aliens; (2) illegal drug use and trafficking; (3) a serious growing gang and juvenile crime problem; and (4) inadequate detention space. Those problems are discussed below.

CRIMINAL ILLEGAL ALIENS

Criminal illegal aliens can and do operate here with little fear of punishment, because we do not have the capacity to respond to the criminal activity in the Salt Lake Valley. Frequently, individuals are arrested and released many times for different offenses, before they ever appear in a courtroom. The lack of detention space forces their release.

The Immigration and Naturalization Service (INS), in particular, has had difficulty grappling with the problem given the inadequate resources that it has at its disposal in Utah. In 1995 alone, Salt Lake City Police records indicate that there were 3,652 arrests for felony level narcotics violations. Of these arrests, 2,922 (80%) were undocumented aliens. Only 180 arrests (6%) ended up with INS holds placed on them.

As a result of the summit, Utah will soon see several initiatives that will help greatly in this area. For example, the Department of Justice has agreed to coordinate federal law enforcement efforts with those of state and local. I am confident that Utah's law enforcement community will implement this new cooperative endeavor in a responsible manner.

DRUGS

Like the rest of America, increased availability of drugs has resulted in an increase in drug use among teens in Utah since 1992. It is disturbing when we consider that 31% of teens in Utah admit to knowing a drug user, and more than a third of teenage users find buying marijuana easier than buying beer or cigarettes.

As drugs continue to pour over our borders, Utah has become a major distribution hub, with a system of highways and airports that makes Salt Lake City a very attractive location for major drug traffickers. Further, Utah's numerous, isolated airstrips provide convenient transfer stations for drugs that are moving across the nation.

The interstate drug trade in Utah involves many criminal elements and accounts for some of the increase in illegal alien criminal activity and gang activity in Utah. Fighting this growing problem will require a cooperative effort, and the Department of Justice has promised some important first steps. The Department has agreed to initiate a multi-jurisdictional "clean sweep" initiative to target criminal aliens engaged in drug trafficking and violent crime. This initiative will bring five

additional FBI agents and enhanced DEA presence to Utah. Utah will also see additional federal prosecutors, and thirty-nine state law enforcement officers will be given the authority to enforce federal drug laws.

GANGS AND JUVENILE CRIME

In 1989, Utah had fewer than 700 identified gang members. By the end of 1996, more than 7,000 gang members had been identified in the state in 598 active gang groups.

"Our ability to deal effectively with Utah's crime problem depends largely on our willingness to act aggressively, and to devise creative, effective, short- and long-term solutions that can be implemented at the federal, state, and local levels."

With the increase in gang activity has come an increase in violent crimes such as drive-by shootings and homicides. It is truly shocking to us that Salt Lake City experienced 208 drive-by shootings in 1996. Congress is debating a youth violence bill, which includes federal measures to combat interstate gangs and assistance for constructing needed secure juvenile facilities, but Utah is already working to tackle this problem. The Salt Lake Area Gang Project, for example, is coordinating and implementing gang disruption programs throughout the Salt Lake Valley.

DETENTION SPACE

A lack of adequate detention space to house federal, state, and local arrestees prior to trial severely hampers law enforcement efforts. With the 780-bed Metro facility and the 550-bed Oxbow facility, Salt Lake County is the primary source of jail space for the Salt Lake City area. Additional facilities in Davis, Utah, Wasatch, Tooele, and Weber counties bring the total bed space for the Salt Lake Region to approximately 2,368.

Most of these facilities, however, are operating at or near capacity, and the Metro Jail is currently operating under a federal court imposed population cap. More beds are desperately needed.

While Salt Lake County, as well as other

counties, should be commended for initiating the construction and expansion of detention facilities, present facilities do not meet our current needs for pre-trial detention facilities for all local, state, and, particularly federal detainees. Since completion of these new facilities takes years, we do not appear to have a short-term solution in place. As well, planned long-term increases in capacity appear to fall short of future needs.

At the summit, the Department of Justice increased its commitment for contracted jail space in Utah from 75 beds to about 300. The Department also agreed to explore how it might assist with the costs associated with renovation or construction of county facilities.

Our ability to deal effectively with Utah's crime problem depends largely on our willingness to act aggressively, and to devise creative, effective, short- and long-term solutions that can be implemented at the federal, state, and local levels. The summit allowed us to make great progress in this co-operative effort. For example:

- We have agreed to improve on the transportation capabilities of the INS so that law enforcement officials can expeditiously remove deportable illegal and criminal aliens from the state and the county.

- We have begun discussions about how to ensure that there are enough detention beds now and for the long-term to meet the increasing needs of federal criminal and immigration law enforcement. I have raised with General Reno, Governor Leavitt, and others my proposal that we consider placing a federal prison here in Utah.

- We are developing specific federal-state-local law enforcement initiatives to combat the scourge of drug trafficking through and in Utah, and we will see a more vigorous federal enforcement effort here in Utah.

I believe we have reached a turning point in the war on crime in Utah. The keen interest in this summit and the important discussions that took place demonstrate the commitment of our law enforcement community, of our civic officials, of our religious and business communities, of our federal officials, and of Utahns from all over the state to come together for Utah's future. I hope that the members of Utah's legal profession will join in this effort at all levels. Utah was built on faith and optimism, and the pioneer spirit is as strong today as it was one hundred and fifty years ago.

Utah: State of Alert

By Governor Michael O. Leavitt

Editor's Note: This article was presented at the Utah Crime Summit on June 30, 1997.

In October of 1993, a tragic gang murder in downtown Salt Lake City prompted action during a special session of the Utah Legislature. That special session established a long-term state plan to reduce crime and to keep our neighborhoods safe. It sent an unmistakable message that violence produces swift and serious consequences.

As a result, over the last four years, we have made massive investments in our criminal and juvenile justice systems. We added nearly 2,800 new beds or slots for adults and juveniles. We increased the operations budget for adult corrections, youth corrections, public safety and the courts by \$119 million. We spent an additional \$108 million on capital facilities. We appointed 17 new judges and hired 152 new probation officers and hundreds of law enforcement officers. We passed aggressive new laws increasing the penalties for serious youth offenders. We passed revolutionary juvenile sentencing guidelines that focus on earlier intervention in the lives of delinquent youth and tougher sanctions for chronic juvenile offenders. We have provided state mini-grants to communities for gang prevention and intervention. We instituted work camps for young offenders to help pay restitution to the community and their victims. They remove graffiti, mow lawns, paint, landscape and do conservation projects.

These efforts have and will continue to pay off. We have just released Utah's 1996 crime data. In 1996, Utah experienced a 2.6 percent decrease in the total index crime rate including a very small decrease, but nonetheless a decrease, in violent crime and a more significant decrease in property crime. That means a citizen of our state was less likely to be a victim of a crime in



MICHAEL O. LEAVITT has been governor of Utah since January 1993. He has led the state in an era of unprecedented economic prosperity. During this time, he has held regional and national leadership roles among governors. He is a past chair of the Republican Governors Association and the Western Governors' Association and the past president of the Council of State Governments. He currently sits on the executive committee of the National Governors' Association and the Republican Governors Association. He has received numerous awards, including the American Medical Association's Nathan Davis Award, which recognized him as the public official of the year for his efforts to improve health care in Utah. He has been called on regularly by the president and congressional leaders to help resolve federal issues that directly affect the states.

1996 than the year before.

Our objective, however, is not to simply reduce crime stats. The problem is not just statistical. It has a human face. It is an elderly woman who doesn't feel safe in her own home. It's the seventh-grade girl who cries when she is dropped off at school because she fears she will be beat up by a gang of girls. It's the young father who is afraid to look at the car pulling up next to him at a stop light. It's the couple who doesn't feel safe

going for a walk in their own neighborhood.

Last week, I was in North Dakota, the scene of terrible floods this spring. Those who managed the crisis described how they knew what to expect a day or more in advance, based on upstream conditions. If the tributaries went up, predictably a few days later, the river ran as a torrent. Armed with this knowledge, they prepared.

While this year's crime statistics show improvement in some areas, there are upstream conditions that mean Utah will be faced with a treacherous period in years to come. Our public safety and peace of mind are at risk.

Utah's population is growing rapidly. Not only the population, but the number of 14 to 21 year-olds. When it comes to crime, an expanding population of 14 to 21 year-olds is just like upstream tributaries running over their banks. Two laws of nature you can count on: water runs down hill and many 14 to 21 year-olds run into trouble. Our crime rates will go up unless we intervene.

Today, as Governor of Utah, I am issuing a proclamation, declaring a "State of ALERT." I call on government leaders and citizens to unite in turning back this threat. Our vigilance must be heightened, our commitment expanded and deepened to include all branches of government, every business, every community organization, every church, school, neighborhood, family, every person.

Under the "State of ALERT," I propose the following actions by government:

Action Item 1. We have invested substantially in prison facilities, but we still need more. Today, I call upon county, state, and national government leaders to respond between now and the year 2005 by building 5000 additional beds or slots for those who break the law. This will require enterprise and innovation, working together and breaking down artificial barriers.

ers between levels of government, and frankly the private sector. It can be done. And, it can be done in a way that all parties create efficiencies in construction and operational costs and most importantly, in societal costs.

Action Item 2. With population growth and the increased number of young people who will be entering the crime prone ages of 14 to 21, it will be necessary to hire 1000 new law enforcement officers throughout all levels of government by 2005.

Action Item 3. Law enforcement agencies must use the tools of technology to create a more cohesive approach to emergency management and arresting lawbreakers. When a bad guy leaves Tooele, officers in Salt Lake County should know the second he crosses the county line, and the police in Davis County should know if he heads their way. By working together, law enforcement officers can establish statewide communication through 800 megahertz technology. I call on law enforcement and local government leaders to work with the state toward a goal of statewide voice communication by the year 2000.

Action Item 4. We must increase the speed and certainty of punishment by reducing the backlog of justice. We need more judges and clerks and better technology to speed the process.

Action Item 5. A major part of Utah's crime problem comes from international drug trafficking by criminal, undocumented immigrants. The federal government has the responsibility to detain, deport, prosecute, and imprison these criminals. But it's not happening. Enforcement, prosecution and lock up are underfunded. Criminals walk free.

If our vision of a safer Utah is to be realized, the federal government must step up to its responsibilities. I call on the federal government to hire more INS agents. I call on the federal government to provide adequate resources for prosecution, defense and adjudication of such criminals. I call on the federal government to build a federal detention facility in Utah. Such a facility could be privatized and could serve the needs of Utah and surrounding states. These proposals do not require new laws. They simply require that the federal government comply with existing laws. State and local government are willing to help, but we can no longer afford to carry more than our share.

I would like to offer a reminder to our federal representatives: What I am proposing is the revitalization of an existing partnership, not a takeover by either party. The national government has a very well defined role. It needs to to its job better. Police power lies with states, and in turn, with units of local government. Those governments closest to the people are worthy stewards of that authority. Every day in cities and towns across this nation, dedicated men and women are serving the individual needs of their communities by securing the comfort, safety, morals, health and prosperity of their citizens. As these issues have become more prominent throughout America, we have seen an alarming willingness of the national government to federalize crimes and to pass legislation that dictates to local and state law enforcement agencies how to do their jobs. Congress need not, and should not, pass laws that federalize the police power or otherwise mandate the procedures and philosophies of our adult or juvenile systems of justice.

"If our vision of a safer Utah is to be realized, the federal government must step up to its responsibilities."

The action items I have spoken of thus far are the responsibility of government at some level. Government is well suited for these kinds of tasks. We can build jails, enforce the law, prosecute, judge and imprison, but if we believe this problem will be solved by tax dollars, bricks and bars alone, we are wrong. A true democracy requires that we give more of ourselves than taxes. It requires that we give our hearts to doing what is right.

I visited recently with some kids at the Decker Lake facility. I asked a 17 year-old, serving his third stint in Decker, what we could do to help him change. He responded. "Nothin' man. My mother tried to change me and my girlfriend tried to change me. Nothin's gonna change me 'til I decide to change in here." He was pointing to his heart. That was a powerful commentary. Government can lock up criminals, but we struggle to rehabilitate them. We can take children from abusive parents, but we can't bind their broken hearts. In the realm of

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human character, government tries hard, but flounders.

Hearts must change because the change of heart can change a community. A safe state includes contributions by federal, state, and local government, but also by schools, churches, community organizations and businesses; and most of all, individuals. This must be a coordinated, statewide, community by community, neighborhood by neighborhood, family by family, person by person effort to prevent and reduce crime.

Now, to the second party of my ALERT initiative, which focuses not on the responsibilities of government, but on the responsibilities of each of us as individuals. This initiative is a merger of the Governor's Initiative on Families Today and the Presidents' Volunteer Summit. Last March, the Religious and Community Leaders Conference was convened by the Governor's Initiative on Families Today. It attracted 4,000 leaders from throughout the state, at 31 sites, to organize local community projects focusing on families. In April, the Presidents' Volunteer Summit convened in Philadelphia. The summit was launched by the current and former presidents of the United States. Under the chairmanship of General Colin Powell, each state was asked to organize a similar gathering and to initiate efforts to achieve five broadly defined goals for our children. The five goals are :

- Caring adult
- Safe place
- Healthy start
- Marketable skills
- Service

Businesses, schools, churches, and community organizations have pledged their support of ALERT. The combined energy of volunteers and community leaders form the foundation of an undeniable force, an army of committed citizens, prepared to give in their own way to a united goal of safer streets and communities.

With this proclamation I propose that this partnership undertake five specific and measurable objectives that will be attained by the year 2000.

First, every child in Utah must have a parent or other caring adult in his or her life. We must start by caring properly for our own children, but more is required. Today, the state of Utah has only one third the number of foster families needed to care for children in crises. These children need safe havens when they have been beaten, neglected or abused. This is hard and often inconvenient, but it is the essence of human service. Abused or neglected children often continue the pattern with their own children. Today, I call on Utah families to come forward and offer their homes to foster children. I am setting a state goal to have 3,000 trained foster care families by the year 2000. At the same time, we must also

increase the number of volunteers in mentoring programs for children at risk across this state.

By this fall, the lieutenant governor and I will detail a plan to transfer the bulk of foster family recruitment and training from a state agency to a community effort that can harness the power of our schools, churches and civic organizations to address this problem. This is one thing we can do that will put a caring adult into the lives of children in need.

Second, by 2000 I propose that every high school area in Utah have an established and operating crime council. These community organizations can prevent crime from occurring and measurably increase the security of our neighborhoods and homes. Many communities are already working in partnership with local police and sheriffs' departments in neighborhood watch programs and cellular patrols.

Third, our goal is to decrease the number of low-birth-weight babies 10 percent. There is a direct correlation between low-birth-weight babies and negative social consequences. One factor that contributes to these babies is the use and abuse of alcohol and other drugs by expectant mothers. Substance abuse is so obviously at the root of the societal problems we struggle with every day - crime, family disruption and medical care costs.

Too often, low-birth-weight babies are

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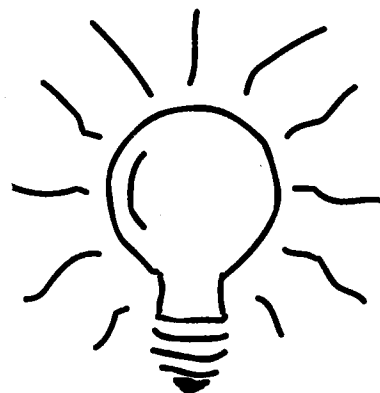
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born to teenage mothers and have a staggeringly high probability of entering our criminal justice system. The son of a teenage mother is 2.7 times more likely to be arrested and imprisoned than the son of a mother who delayed childbearing until her twenties.

Fourth, to remain crime free, our children need to have marketable skills. Young people who are busy and productive are not involved in crime. Our schools carry the load in preparing young people for the world of work, but there are areas where they need help. I will mention two.

Marketable skills start with reading. By the year 2000, ALERT volunteers can change the lives of at least 12,000 young people who are at risk of being functionally illiterate. I challenge the people of Utah to become involved with one of many wonderful literacy programs throughout this state. It will improve the quality of life for these children and for Utah's communities.

The private sector is critical to this goal. The Salt Lake Chamber of Commerce is organizing an effort among employers around the state to determine how to create work opportunities for young people. As part of its effort the chamber will reexamine requirements that a person be 16 years of age before they can legally hold a job. With proper safeguards, teenagers can productively work after school and avoid getting in trouble with the law. Work brings discipline . . . it brings dignity . . . it brings self respect.

Fifth, nothing changes the heart like service. Service must be re-enthroned as a basic personal ethic. People who serve in their community don't deface their community. By the year 2000, it is ALERT's goal that 75% of young people 12-18 provide service each month. Our state legislature must act to give liability protection to charitable organizations that provide volunteers and help in this effort.

Lt. Governor Olene Walker will oversee the ALERT partnership. A distinguished group of representatives from churches, schools, community organizations, businesses, media and governments has also agreed to serve as its steering committee. On September 27 of this year, ALERT will convene a volunteer summit. People will gather at 104 high schools throughout Utah to organize towards these objectives. We expect to have thousands of citizens willing

to work to assure that Utah is a quality, safe place to live as we enter the 21st Century.

The ALERT initiative is about caring adults, safe havens for kids, a healthy start, marketable skills, and public service. But most of all, it is about being alert in our hearts; alert and watchful and ready and eager to help others in our community.

*"Let us gather as a community
with a higher state of
preparedness, watchful and
ready for the challenges that
face us, eager to do our part."*

I talked with a principal friend named Nancy the other day. She told me about Jason, one of her students at an alternative summer school. Jason is 15 years old, but he has barely developed third grade reading skills. This summer session is one of his last shots at staying on course for high school graduation. He wears gang clothes and hangs out with a group of kids who circulate in and out of detention centers. Nancy is in constant negotiations with Jason's teachers just to allow him to stay in the classroom. The other day, Jason's teacher stormed into the principal's office with one of Jason's spelling tests. Only three words were listed on the 10-word assignment, all of them only remotely resembling the proper spelling. Then, scrawled across the bottom of the page was an indecipherable message, written in gang slang. This was the last straw, the teacher insisted. She wasn't going to deal with Jason any more.

Nancy took the test to her office, down-trodden. She had really held out hope that Jason may be able to turn his behavior around. As she stared at Jason's uncompleted test, she became intrigued by the formation of Jason's symbols; by the surprising care he had taken with a language she did not understand. As she studied the paper more carefully, she realized that Jason had written a message with the symbols, a message that like the pig Latin of another generation, could be decoded. There, in pretty plain print, once you took the time to figure it out and overlook a few misspellings, was Jason's message: "At least I tried," it

said. She read it once, then again, then she jumped up and yelped with glee. "At least Jason tried," she said to herself, standing there grinning in the empty school.

Jason is still coming back to school most days this summer. He is up against some serious disadvantages, many of which he created himself. But he's still there, thanks partly to a heart that was alert to him; alert and watchful and ready for him to grow, prepared to be a caring adult in his life, to help him take just one small step toward literacy and maybe even high school graduation.

My goal in declaring this state of alert today is not that we solve all of our community's problems with a government program or mandated volunteerism. Let us gather as a community with a higher state of preparedness, watchful and ready for the challenges that face us, eager to do our part. Together, we can build a stronger, safer community by having hearts that are in a state of alert.

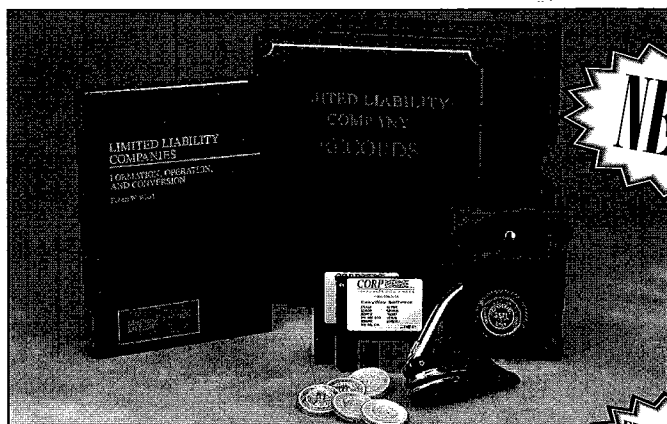


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Needs of the Elderly Committee Senior Center Legal Clinics

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.

Highlights from "A Summit on Crime – Coming Together for Utah's Future" Held at the Salt Palace on June 30, 1997

By Paul G. Cassell

The recently-held Crime Summit was one of the most remarkable gatherings of federal, state and local officials and private sector representatives ever assembled for the purpose of fighting crime. What follows are a few selected quotations from the Summit. Given that the Summit lasted a full day, only a tiny portion of the proceedings can be reproduced here. I have tried to pick some of the "highlights" that seemed most important, with apologies to the many speakers who could not be included here.

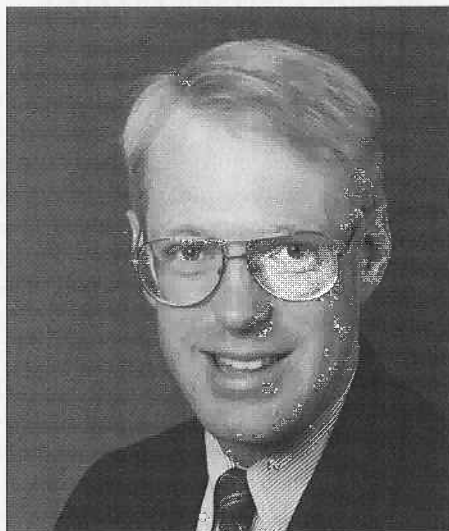
SENATOR ORRIN HATCH

We're gathered here today to confront the same problem that plagues other growing states, and that's crime. We're coming together not so that we can criticize one another, but rather to re-invigorate the partnership between state, federal and local law enforcement.

We must be sure that the blueprint we begin crafting today is Utah's strategy, not Washington's. State and local law enforcement people and officials are the proper custodians of the police power and they are in the best position to tackle Utah's crime problems. State, county, and local governments do most of the heavy lifting when it comes to crimes, and frankly should continue to do so. Still the federal government has not done enough to lead in those problem areas which are its primary responsibility – illegal immigration and interstate drug trafficking.

GOVERNOR MICHAEL LEAVITT

Utah's population is growing rapidly, very rapidly, among the largest in the nation in terms of percentage. Not only is our population growing, but the number of



PAUL G. CASSELL is a Professor of Law at the University of Utah College of Law. Professor Cassell teaches criminal procedure, evidence, and other subjects. He is also active in the crime victims' rights movement both locally and nationally. Professor Cassell is serving as the reporter for the crime summit and is preparing a final report of the ideas and proposals that grew out of it.

14 to 21-year-olds that we have in this state is growing. Our crime rate will go up in this state if we don't intervene and intervene now.

Action Item Number 1, by the year 2005 I propose that we build 5,000 additional beds and slots for those who break the law in our state. This will require enterprise and it's going to require innovation; it will require us to work together to bring down artificial barriers that come between levels of government, and frankly the private sector. But it can be done.

Action Item Number 2, with the popula-

tion growth that we're anticipating in this state and the increased number of young people who will be entering that crime-prone age of 14 to 21, it will be necessary, in my judgment, to hire, 1,000 new law enforcement officers throughout state, local, and federal governments in law enforcement and in correctional facilities between now and the year 2005.

Action Item Number 3, law enforcement agencies must use the tools of technology to create a more cohesive approach to emergency management and arresting those who break the law. By working together, law enforcement officers can establish a statewide communication system through 800 megahertz technology. Today I call upon law enforcement and local and state leaders and federal leaders to work together to develop this system into a statewide network [by the year 2000].

Action Item Number 4, we must increase the speed and the certainty of punishment by reducing the backlog of justice. We need more judges, we need more clerks, we need better technology to speed the process.

Action Item Number 5, the major part of our crime problem, as Senator Hatch has indicated, comes from international drug trafficking by the criminal undocumented immigrants. The federal government has a responsibility here to detain, to deport, to prosecute and to imprison these criminals. But it's just not happening yet to the degree it needs to.

A safe state includes contributions by federal and local and state governments, but we also need our schools, our churches, our community organizations, and, most of all, our individual citizens to step forward.

ATTORNEY GENERAL JANET RENO

... in talking to Senator Hatch, [he] urged that we increase the number of federal criminal prosecutors here in Utah by more than 10 percent, and we will be detailing lawyers from main Justice in Washington to work on this initiative.

MAYOR DEEDEE CORRADINI

... It has become increasingly clear that there are some factors in Salt Lake City's crime problems which are outside of local control.

Salt Lake City's largest and most obvious crime problem during the last two years has been the ever-increasing flow of illegal drugs into the area. Law enforcement officers have documented the connection between these drugs and international drug trafficking gangs from Columbia and Mexico...

Many might wonder why Utah, with our conservative and family-oriented reputation and Salt Lake City, in particular, is being targeted by international drug trafficking organizations. The major contributing factor to this problem is our community's inability to deal effectively with drug dealers, particularly with those who are illegal aliens. A Consent Decree Release System designed to address overcrowding in the Salt Lake County Jail has, in essence, created a revolving door for drug dealers.

Salt Lake City narcotics statistics indicate that between 80 and 90 percent of street-level drug arrests for distribution during 1996 and 1997 are believed to be illegal aliens.

With such a large percentage of the drug dealers who are illegal aliens, Salt Lake City and the surrounding communities suffer from a lack of federal facilities and personnel to process illegal nationals who have been arrested.

... Youth correction statistics for 1995 for the State of Utah revealed that the average juvenile offender accumulated an amazing statewide average of 23 misdemeanor convictions, 8 felony convictions, and 2.4 status offense convictions prior to being sentenced to a secure youth facility.

Our current system emphasizes the rights of criminal offenders or the conservative allocation of correctional resources over the safety of the community at almost every turn. It forces judges to give sentences based on availability of correctional

resources rather than basing the allocation of resources on realistic and proper sentencing. It ties the hands of virtually every professional within the justice system, both juvenile and adult, except the criminals themselves.

Currently many offenders wait between 6 to 12 months for adjudication of serious crimes, and this is unacceptable. Efforts must be made to ensure that offenders appear in court within 3 to 5 months.

If Salt Lake City, and Utah as a whole, hopes to retain a high quality of life for our citizens, we cannot allow the present situation to continue.

**MR. JON HUNTSMAN,
SR. CEO, HUNTSMAN CORP.**

Many of us who love this state and were reared in this state have watched in the last several years, and more deplorable in the last two to three years, as crime has escalated in our streets and our communities have become unsafe.

Many of the church leaders and the community leaders and the basic citizens of this state from a variety of communities have quietly pulled themselves together to say that they are not happy, they're not satisfied with what is being done in the areas of crime prevention.

**JUDGE ANDREW VALDEZ,
THIRD DISTRICT JUVENILE COURT**

... most of the gang kids, most of the people who are incarcerated, most of the adult criminals are having trouble. Two-thirds of my cases and two-thirds of most judges in the Third District are dealing with kids and adults as parents. These children have never committed crimes. These kids are abused, neglected, independent children. Everything from crack babies to 16, 17-year-old homeless teenagers. Most of the problems within these home situations are lifestyle related problems, drugs, alcohol, domestic violence.

**ELDER ALEXANDER B. MORRISON,
CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS**

... in our fight against crime, we need a one-two punch. In the short term we clearly need much more aggressive law enforcement.

... We need not only the right hand of law enforcement but we must also have the left hand of patient perseverance of crime

prevention. That starts in the family and in the home. And the greatest thing we could do to prevent crime is strengthen our families and strengthen our communities.

MR. LANE MCCOTTER

... I think the telling statistic is that at least 80 percent and I think personally that is probably a low figure, that 80 percent of all those incarcerated in our prisons here in Utah, in some way have drug and alcohol abuse problems.

**CHIEF REUBEN ORTEGA,
SALT LAKE CITY POLICE**

... I can't remember in the last 20 years that I have been in law enforcement where I have been so energized by what I have heard here this morning. And I'm so excited about what finally is happening here that I'm attempted at lunch time to call L.A. and tell them to forget about me. We have successfully removed this iron curtain of denial that has been here in this state about crime in this state.

**THOMAS A. CONSTANTINE,
DRUG ENFORCEMENT
ADMINISTRATION ADMINISTRATOR**

... As I read the work of Judge Hutchings and Professor Smith and analysis of crime rates in comparison to Utah in comparison to the nation and New York City, I couldn't think how ironic - couldn't help but think how ironic it was that it was really the death of a young man from Utah that changed the entire crime picture in the United States. In 1990, a young kid from Provo, Utah, with his family on the way to the tennis open in Forest Hills, Queens, defended his mother, his father, and his sister from a bunch of predators that were snatching change and slashing wallets and beating up his own mother.

They stabbed that kid to death in front of his parents. It created an outrage in that city like I had never seen before in my history. The headlines of every paper finally said we must do something about this problem in New York City. I watched partisan politicians from both sides in a state equally divided between Republicans and Democrats. Special taxes were enacted. 8,000 more policemen were added to the New York City Police Department. Tens of thousands of prison beds were built at a very expensive cost.

What has the result been? This is in the

face of a state whose economy did not grow like Utah's, the unemployment rate in that city really never wavered. But [New York City], through the effective use of law enforcement, and a just coming together of the community to say enough is enough, will this year go from 2,200 homicides just six years ago down to probably 800. So as we sit here, there are 1,400 people who will walk the city streets today who would be dead if there had not been reaction much like I have seen in this room today.

COMMISSIONER DORIS M. MEISSNER, COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE

Identifying, detaining and removing criminal aliens is INS's top priority in the interior of the United States. Since 1994, the immigration service, working very closely with Senator Hatch, has nearly tripled its enforcement capability in Salt Lake City and in Utah.

A provision of the 1996 immigration law which permits INS to delegate enforcement powers to state and local authorities subject to memorandum – memoranda of understanding and appropriate training will launch a new era of cooperation with local law enforcement.

When we have established the regulatory framework for this program, we would like to ask Utah to be the pilot for implementing these new law enforcement authorities.

COMMISSIONER MARY CALLAGHAN, SALT LAKE COUNTY COMMISSIONER

We've been greatly dismayed over the past years to see the ever-increasing numbers of illegal aliens committing serious crimes in our community. The majority of these crimes are drug related and have transcending ramifications. In 1996, 49 percent of all felony drug arrests in Salt Lake County were suspected undocumented aliens. In Salt Lake City this number exceeds 80 percent for '95 and '96. A third of murders were committed by illegal aliens in Salt Lake City in '95 and '96. Clearly the situation is unacceptable. A tiny portion of our community is committing a large percentage of the crimes, they are here illegally, and despite our best efforts and those of the local INS, we keep seeing the same faces over and over.

Salt Lake County is moving aggressively to deal with the situation by constructing a new 2,000 bed jail, numerous other efforts to increase detention space, drug courts, many new intake officers, officers on the streets and substance abuse programs. However, we cannot do our job if the federal government does not do its job. Illegal aliens are a federal responsibility, and to date the federal government has not met the challenge of rampant criminal activity by undocumented aliens in our community and many other communities across this country.

REVEREND FRANCE DAVIS CALVARY BAPTIST CHURCH

I would like to suggest that churches have buildings and facilities that are oft times not used to their fullest degree. And I would think that one of the very helpful things would be to use those more wisely – to use them for community meetings that talk about the issues of crime with adults, to use them for supplementing the educational process for young people or to use them to provide and invite mentoring and modeling of life for the people who are in our system and those who would possibly be there.

I would suggest that if we could just basically as churches help to provide the guidance that both our young and our older people need then we could be doing something in the preventative area.

MS. COLLEEN MINSON

I learned very quickly that my six children went out my front door and you know what, they came back saying things they had never heard in my house. And I started realizing I had to be worried about all of the other kids on my block and all of the other children who walked in the front door of the school that they went to. So not only do we have to strengthen the families the next environment that they operate in is their neighbor or immediate community. And I have learned from personal experience living in what was and is still sometimes a violent environment, that informal social controls have to do with the kinds of relationships that we have with people.

And the thing that we did to reconnect in my neighborhood which was undergoing lots of drive-by shootings four and five years ago, we started having neighborhood activity nights. Thursday night from 7 to 8 we had water fights, we made Piñatas, we had a fiesta, we did a read-a-thon. And a really

short period of time changed an environment that was paralyzed with fear in which children were dealt with as somebody to be afraid of to an environment where people knew everybody's names and when a Tongan 14-year old walked down the street it wasn't oh, my gosh is he a gang member, it was oh, hi Samuel, how are you doing? Would you mow my lawn?

That was something in our neighborhood we had to do for ourselves.

SENATOR HATCH

The end of our conference here today is just a beginning of our efforts to redouble our efforts to fight against rising crime in our state. Among the more important developments today are commitment to increased federal detention space for those accused of federal crimes and for illegal and criminal aliens. And a commitment to give state and local law enforcement access to federal information and the power to help enforce federal laws so that Utahns working with the Federal Government are better able to control crime in the state.



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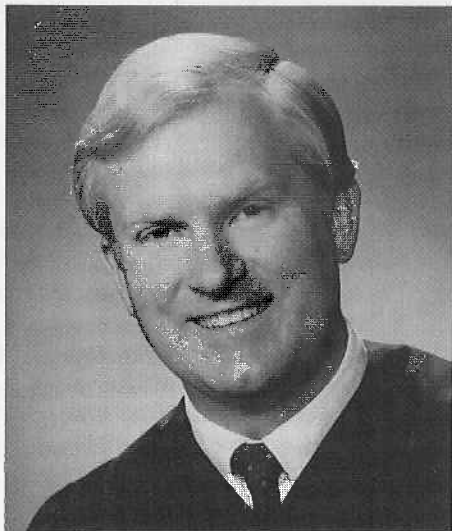
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The Good, the Bad, and the Ugly: Crime and Punishment in Utah

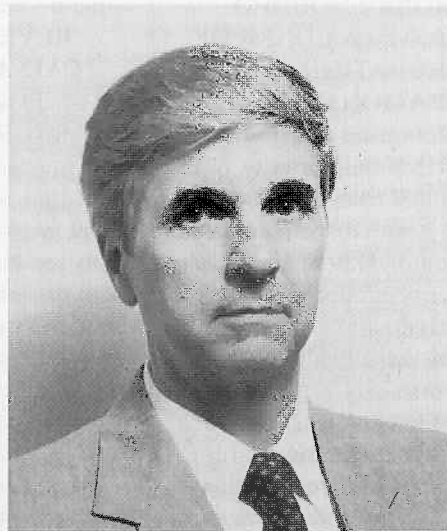
By Judge Michael L. Hutchings¹ and Professor Gerald W. Smith²



MICHAEL L. HUTCHINGS is a Third District Court Judge. He was appointed to the bench in 1983 by Governor Scott M. Matheson. He graduated from the J. Reuben Clark Law School in 1979 after serving two years as a member of the B.Y.U. Law Review. He has served previously as President of the B.Y.U. School Alumni Association and in 1989 was named Law School Alumnus of the Year.

In 1988, he was named Circuit Court Judge of the Year by the Utah Bar Association. He has served since 1986 on the Utah Bar Journal Editorial Board. He now is a Master of the Bench in the A. Sherman Christensen American Inn of Court I. He also is a member of the Ensign Peak Board of Trustees.

He is married to the former Terry Marks. They are the parents of six children.



DR. GERALD W. SMITH has been an Associate Professor and Director of the Criminology Program at the University of Utah since 1970. He received his B.A. and M.A. from the University of Louisville and a doctorate of criminology in 1969 from U.C. Berkeley. He has developed educational software that is used by many educational institutions throughout the country. He has recently published articles in professional journals on the development of individualized, computer aided instruction.

INTRODUCTION

Utah's crime rate is growing at an unprecedented pace - much faster than the nation as a whole. In fact, the national crime rate is decreasing while rising in Utah. Unfortunately, Utah's criminal justice resources have not kept up with the challenges associated with growth. It is the lack of resources which has, in part, fueled our crime rate increases in the wake of significant national crime rate decreases. Because the criminal justice system is not equipped to handle the increased demand for services, the atmosphere in Utah is quite friendly for crime - particularly non-violent crime. The cur-

rent situation actually encourages non-violent crime, rather than discourages it. Crime rates will continue to increase into the foreseeable future unless, and until, Utah catches up and gets ahead of the game - a "game" that victimizes everyone. This crime game results in unnecessary and incalculable losses.

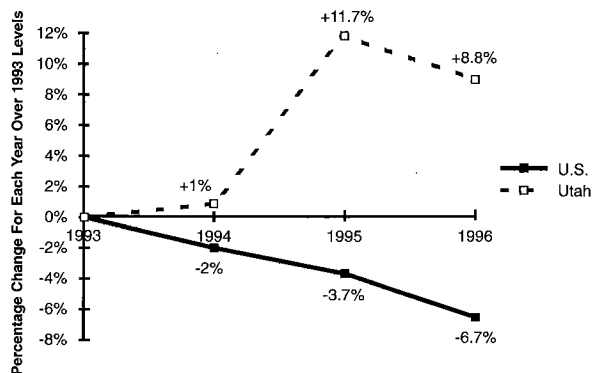
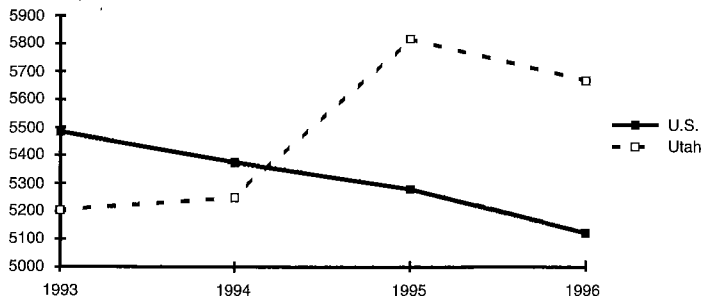
It is the purpose of this article to make some observations about the current state of affairs in Utah's war on crime. We assure the reader that we are not "playing with the numbers" or in any way trying to manipulate the outcome. The facts will lead you to conclude that some aspects of Utah's war on crime are good, some are

bad and some are ugly. You be the judge.

UTAH VS. THE NATION

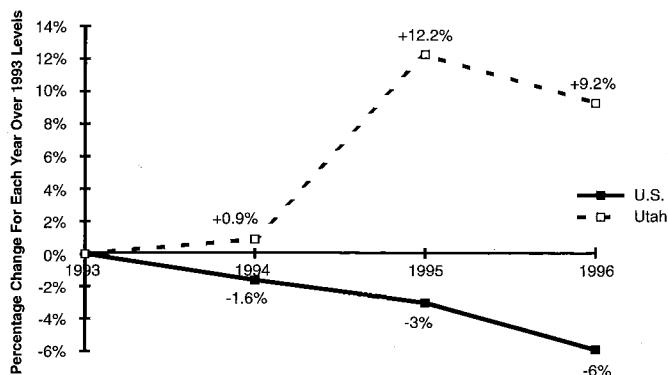
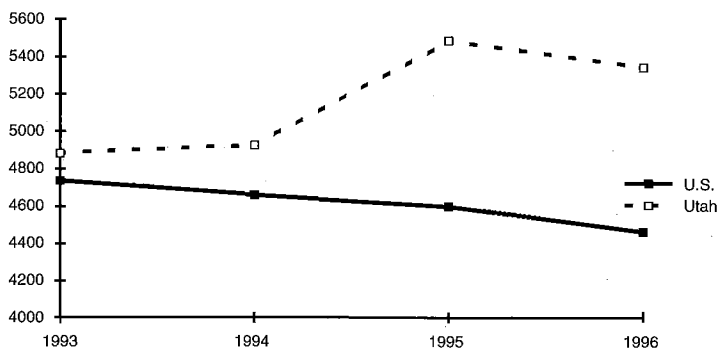
In 1995, Utah was 10th among the fifty states in total index crimes per 100,000 population.³ Utah's index crime rate was higher than that of California, New York, Illinois, Ohio, Texas and New Jersey. If crime in Utah continues to increase at the same rate as the past 3 years and crime in the nation continues to decrease at the same rates during the same time frame, it is very conceivable that Utah could be the number one crime state by the Winter Olympics in 2002. We must not allow this to happen.

Total Index Crime Per 100,000 Population



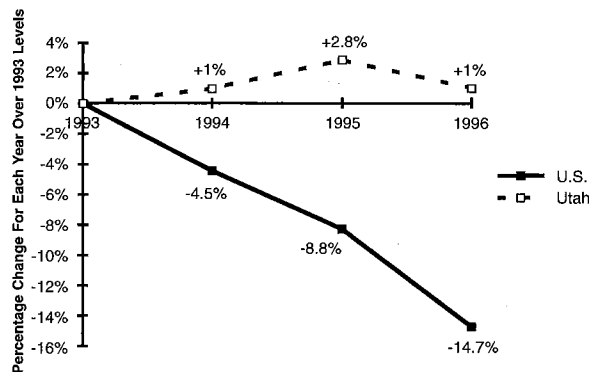
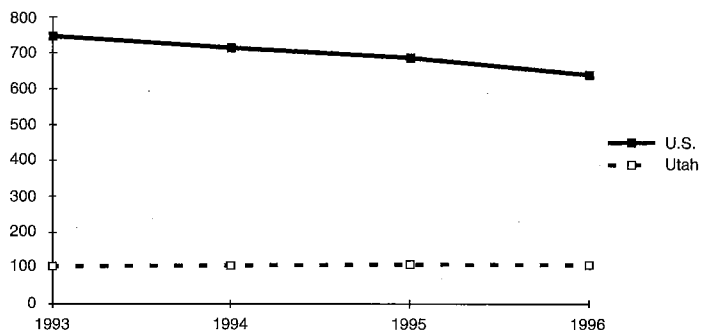
Much of our high crime rate is due to significant increases in property crime. In 1995, Utah was 6th among the fifty states in overall property index crimes (defined as burglary, larceny theft and motor vehicle theft) per 100,000 population. In the individual category of larceny theft, Utah had the third highest crime rate in the nation. Since 1993, Utah's property index crime rate has increased 9.2%, while the nation's rate has decreased 5%.

Property Index Crime Per 100,000 Population



Although our violent crime data is more positive than for property crime, the violent index crime (murder, forcible rape, robbery and aggravated assault) rate per 100,000 has increased modestly at 1% since 1993. However, the national violent index crime rate declined a substantial 14.7% during this same three year period.

Violent Index Crime Per 100,000 Population

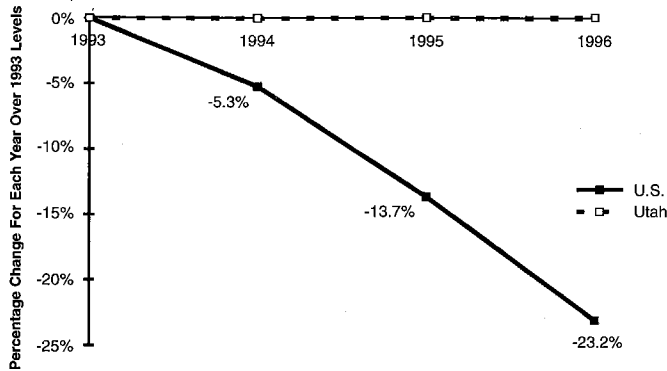
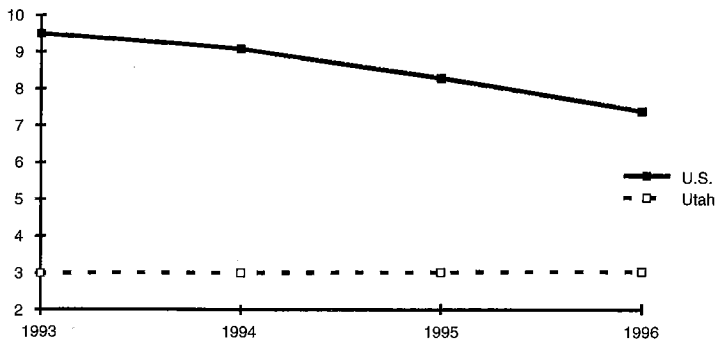


Since 1993, national crime rates have decreased in all major categories. In almost all categories, Utah has increased while the nation has decreased. In no individual index crime category has Utah performed better than the national average during the past 3 years. We are indeed facing a serious, growing crime problem.

Murder

Fortunately, Utah's murder rate is comparatively low (3 per 100,000 population) and remains relatively constant. However, the national average murder rate has decreased dramatically, by 23.2%, over three years.

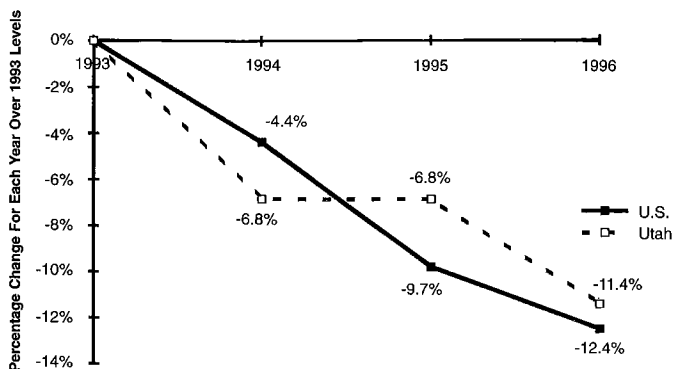
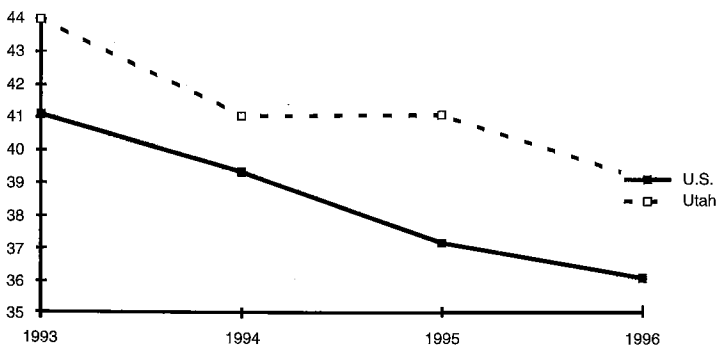
Murder Rate Per 100,000 Population



Forcible Rape

Unfortunately, Utah has a higher forcible rape rate per 100,000 population than the national average. Utah ranked 15th in forcible rapes per 100,000 population among the fifty states in 1995 - up from 36th in 1986. Although, the forcible rape rate in Utah decreased 11.4% since 1993, the national average has decreased 12.4%.

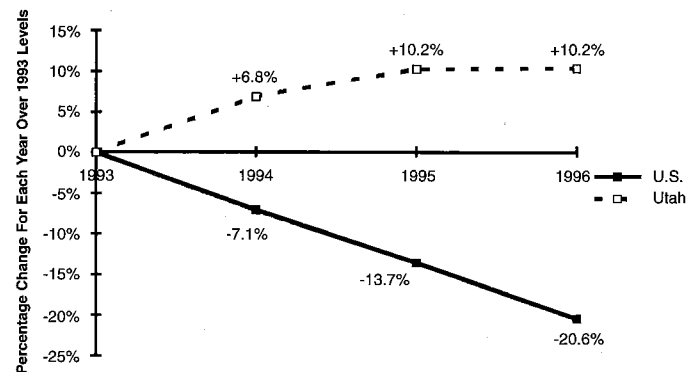
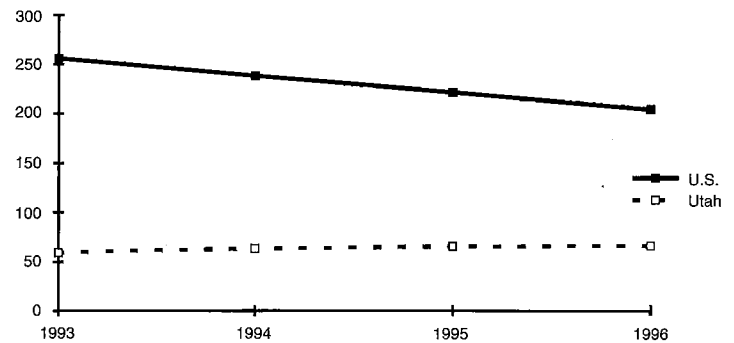
Forcible Rape Rates Per 100,000 Population



Robbery

Utah's robbery rate per 100,000 population has increased 10.2% since 1993, while the national average decreased 20.6%.

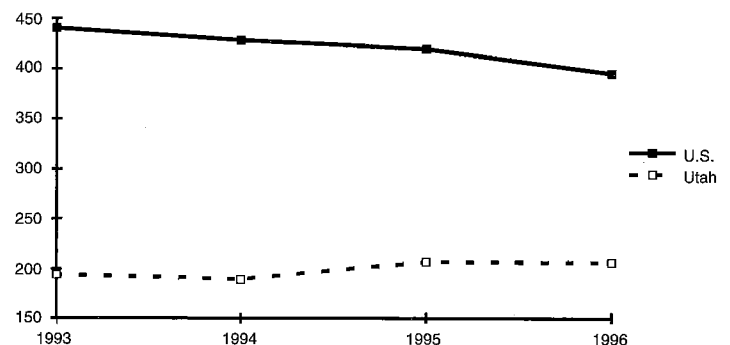
Robbery Rates Per 100,000 Population



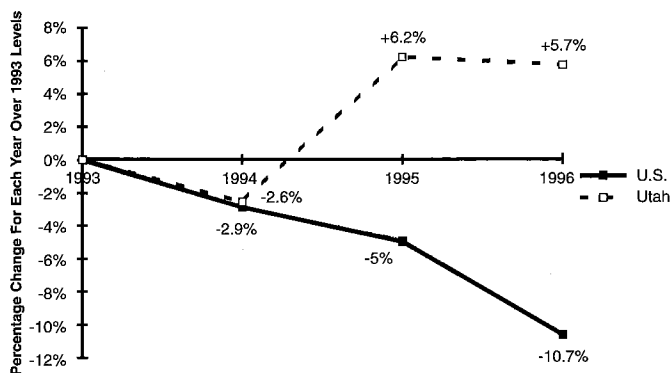
Aggravated Assault

Utah has a much lower aggravated assault rate per 100,000 population than the nation as a whole. Nevertheless, Utah's aggravated assault rate increased 5.7% since 1993, while the national average decreased 10.7%.

Aggravated Assault Rates Per 100,000 Population



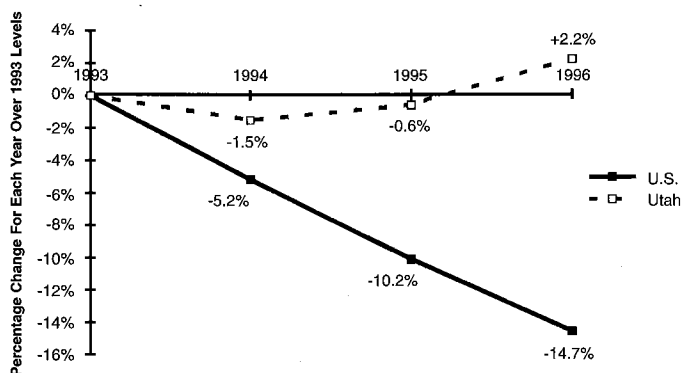
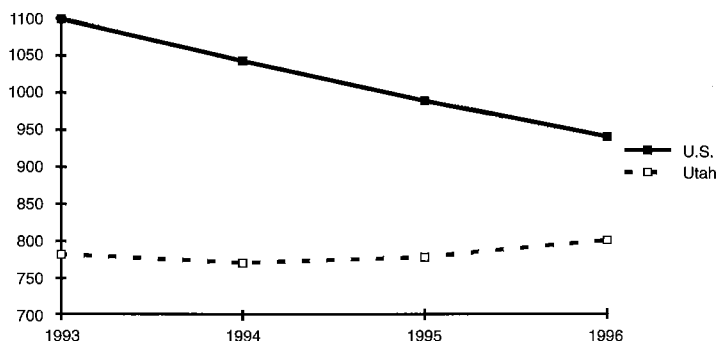
Changes in Aggravated Assault Rate



Burglary

Utah also has a lower burglary rate per 100,000 population than the national average. However, Utah's burglary rate increased 2.2% during the same time that the national average decreased 14.7%.

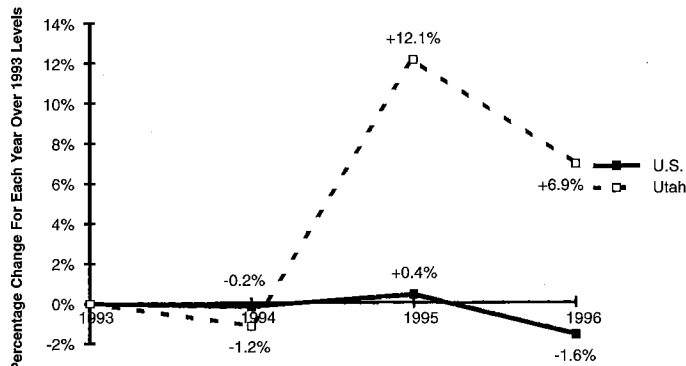
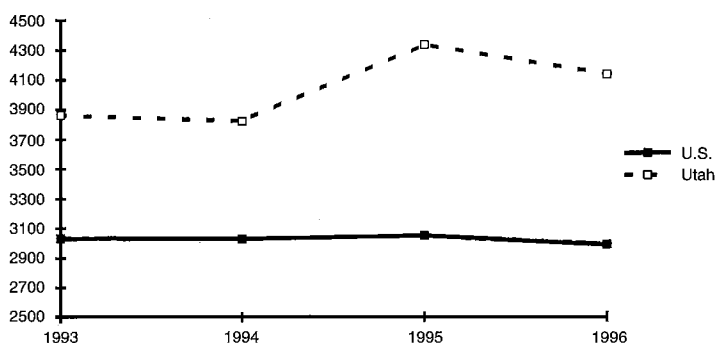
Burglary Rates Per 100,000 Population



Larceny Theft

Utah has a much higher larceny theft rate per 100,000 population than the national average, ranking third among the fifty states. Since 1993 our larceny theft rate has increased 5.9%, while the national average rate decreased 1.6%.

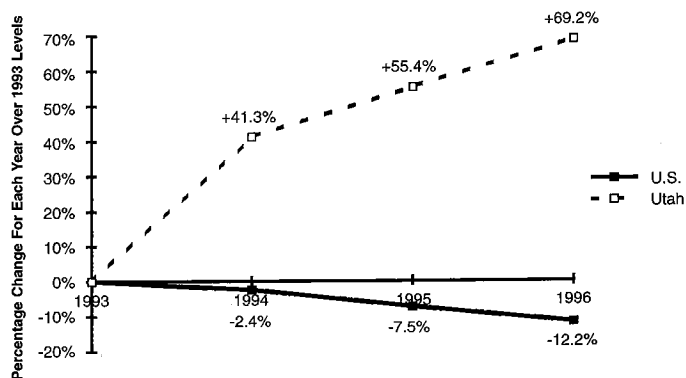
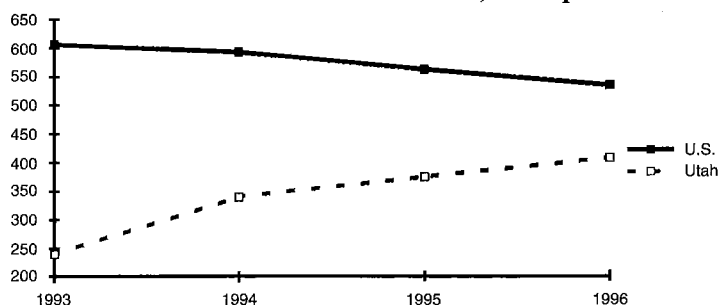
Larceny Theft Rates Per 100,000 Population



Motor Vehicle Theft

Utah's motor vehicle theft rate per 100,000 is much lower than the national average. Since 1993, however, the rate has soared by an incredible 69.2%. The national average has decreased 12.2%. With these numbers, motor vehicle theft clearly is Utah's new crime of choice.

Motor Vehicle Theft Rates Per 100,000 Population

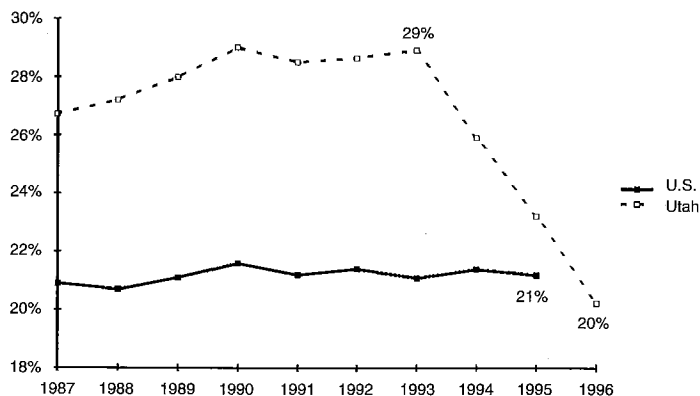


The conclusion to be reached is clear, Utah's crime rates are increasing while the national rates are decreasing. Behind each of these statistics are real victims, their families and friends who suffer, in some cases tremendously. Victimization costs our society so much. While we should not allow the misery of victimization to increase, this is exactly what is happening.

CRIME CLEARANCE RATES

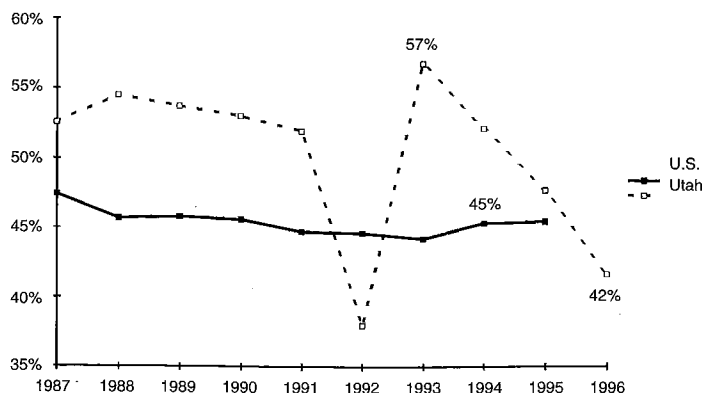
Not only are there increases in crime and victimization, but the efficiency of law enforcement in apprehending criminal suspects is decreasing at a dramatic rate. Surprisingly, Utah's overall clearance rates (the percentage of cases cleared by arrest) for all index crimes have dropped from 29% in 1993 to 20% in 1996.⁴ This is an alarming one-third reduction in efficiency in just 3 years. Furthermore, clearance rates have dropped dramatically in each of the following crime categories: murder, rape, aggravated assault, robbery, larceny theft, burglary, and motor vehicle theft since 1993. Utah's general clearance rates now are barely above the national average. A smaller percentage of criminals are now being arrested and brought to justice than ever before in recent Utah history. This indicates a serious loss of efficiency by Utah law enforcement creating a much more user friendly environment for Utah criminals.

Total Index Crime Clearance Rates



Utah's violent crime clearance rates over the past 10 years have dropped for all violent index crimes (murder, forcible rape, robbery and aggravated assault) from 57% in 1993 to 42% in 1996. For the first time, the clearance rates for these crimes are below the national average.

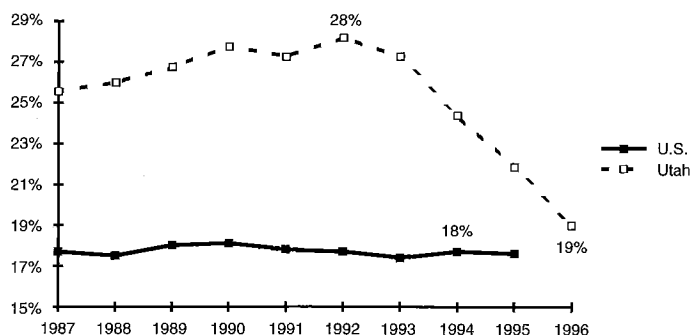
Violent Index Crime Clearance Rates



Over the past 3 years, murder clearance rates have dropped from over 80% to 50%, forcible rape clearance rates from 57% to 33%, robbery clearance rates from 32% to 26%, and aggravated assault clearance rates from 58% to 48%. Again, in each of these violent crime categories except robbery, Utah's clearance rates fell below the national average.

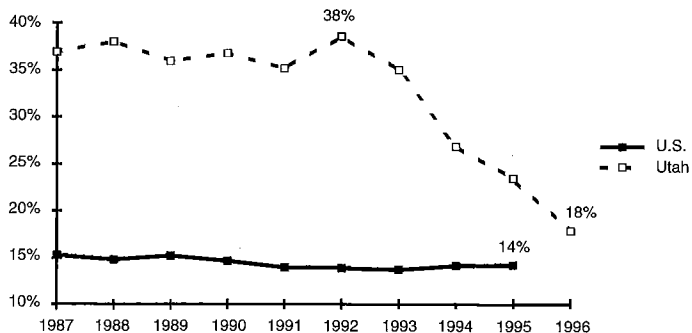
Since 1992, there is also a similar pattern of lower clearance rates for all property index crimes from a high of 28% to a low of 19% last year.

Property Index Crime Clearance Rates



Correspondingly, burglary clearance rates dropped from 17% to 12% and larceny theft clearance rates from 30% to 21%. Most troubling to us is the monumental drop in motor vehicle theft clearance rates from a high of 38% in 1992 to a low of 18% last year. This represents a 52% reduction in efficiency by Utah law enforcement in investigating motor vehicle theft since 1992. This dramatic loss of effectiveness is of great concern when coupled with the 69.2% increase in Utah motor vehicle thefts referred to earlier. With these numbers, it is no wonder that motor vehicle theft is Utah's new crime of choice.

Motor Vehicle Theft Clearance Rates

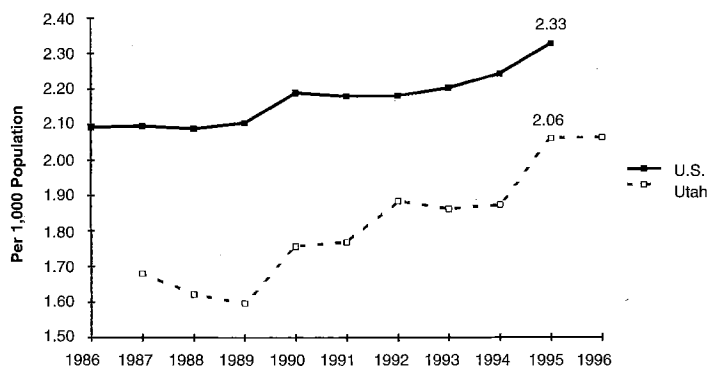


What could account for such a dramatic loss of efficiency in clearing these crime categories in the past few years? Law enforcement officials have provided us several explanations. First, these reduced clearance rates may be due to the demoralization of the police in response to the overcrowding of the Salt Lake County Jail and the resulting Consent Decree Release System (CDR) that particularly benefits non-violent criminals. Law enforcement is less motivated to work hard to arrest suspects when so many will be quickly released from the jail under the CDR system. The revolving door, particularly for non-violent offenders, has taken quite a toll on the morale of law enforcement.

Additionally, top level police administrators question the wisdom of increasing the staffing of detectives who are so crucial to follow up on cases, when the suspects that law enforcement works so hard to arrest are almost immediately released because of jail overcrowding. Bringing more criminals into the system, only perpetuates a "catch and release" revolving door system. Police administrators would rather assign their officers to do more productive things.

A second factor that may bear on lower crime clearance rates is that Utah, while 10th in the nation for total index crime, still employs fewer police than the national average. With a smaller number of police and a growing criminal caseload, it is no wonder that the percentage of crimes cleared is lower. While Utah is closing the gap with the national average of police per 1,000 residents, Utah still must hire approximately 540 officers to reach the national average.⁵

Full-Time Law Enforcement Officers



A third factor is that the police are arresting about the same number of offenders and are not able to keep up with the increases in crime. This theory goes that a detective can only follow up on so many cases in a given week and that the rest of the cases must be ignored.

DRUGS

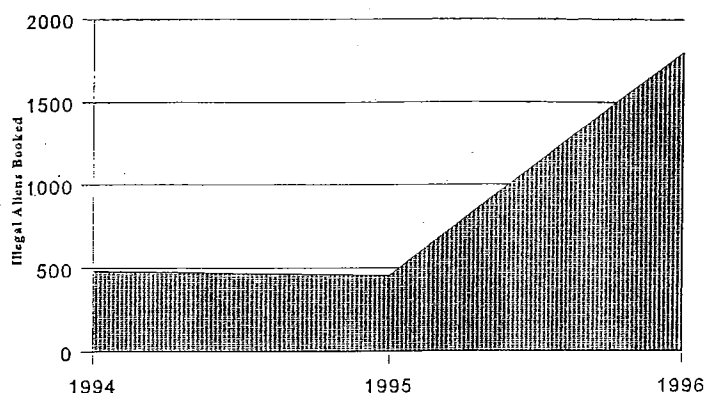
Utah's increasing crime rates are, at least, partially due to a dramatic increase in both the supply and the demand for illegal drugs. The wide availability of illegal drugs, particularly cocaine, heroin and methamphetamine, fuels crime increases because drug use makes people morally irresponsible. Not only does drug use increase the likelihood and severity of crime but it also damages families, weakens moral restraint, enslaves the mind, and destroys the soul of the user. Studies abound about the corrosive effect on the individual drug user and upon families and society as a whole.⁶ Drug use is highly correlated with criminality, violent crime, victimization, and is a major factor in child abuse.⁷ As drug use destroys a person's ability to support himself, he is left with few means of supporting his addiction, other than a life of crime.

Utah, particularly Salt Lake County, is experiencing a virtual crime wave of increased drug usage and distribution. Since 1992, drug related case filings have increased in Utah's District Courts by over 500%. Additionally, in 1996, 45% of all criminal cases filed in Utah's District courts were drug related - up from 20% in 1992.⁸ Clearly, all is not well.

Illegal Alien Drug Dealers

On the supply side of the market is a combination of illegal alien drug dealers, principally from Sinaloa, Mexico, who now dominate⁹ drug distribution in Salt Lake County. Approximately 80%¹⁰ of all those arrested for drug distribution in Salt Lake County were illegal aliens.¹¹ The number of illegal aliens booked into the Salt Lake County Jail for felony drug offenses increased from 456 in 1995 to 1804 in 1996, a 296% increase.

Illegal Aliens Booked into the Salt Lake Co. Jail on Felony Drug Charges



All illegal aliens who commit drug felonies can be subject to federal prosecution, with stiff minimum mandatory punishment imposed. However, the policy of the U.S. Attorney's Office is to decline prosecution on all but a handful of these offenders. In 1996, the U.S. Attorney prosecuted less than 5% of the illegal aliens booked into the Salt Lake County Jail for drug distribution.¹²

Consent Decree Release (CDR)

Because of jail overcrowding, the Salt Lake County Sheriff is forced to release prisoners without authorization from a judge and without posting bail. This is referred to as CDR (Consent Decree Release). This release is based on a point system, approved by the federal court in Salt Lake City, that weights drug dealers as less of a threat to society than violent criminals. Since the jail is often overcrowded, drug dealers are quickly released after booking. The number of illegal aliens released CDR, after having been booked for felony offenses, increased from 108 in 1994 to 592 in 1996, an increase of 448%. Of the 1,972 illegal aliens booked in 1996 for all felony offenses, 30% were released CDR.¹³

Correspondingly, the number of illegal aliens released CDR after having been booked for misdemeanor offenses increased from 44 in 1994 to 250 in 1996, an increase of 468%. Of the 544 illegal aliens booked in 1996 for misdemeanor offenses, 46% were released CDR.¹⁴

INS Deportations

The Immigration and Naturalization Service (INS) is deporting only a very small proportion of illegal aliens booked into jail. We only have numbers involving the Salt Lake County Jail. Between 1994 and 1996, the total number of illegal aliens booked into the Salt Lake County jail for all charges increased from 924 to 2,516, a 172% increase. In 1994, 156 illegal aliens were released by the Salt Lake County Jail to INS for deportation, only 17% of the total number of illegal aliens booked into the jail that year. In 1996,

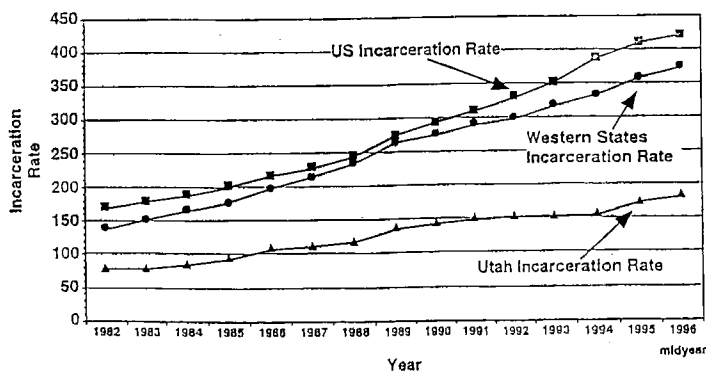
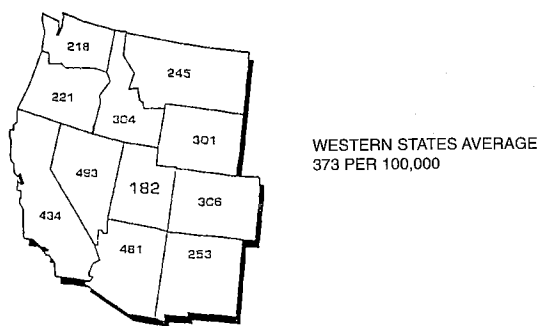
more illegal aliens were released to the INS for deportation (288) but this represents a percentage drop to only 11% of the number of illegal aliens actually booked that year.¹⁵

This currently bleak scenario may change, however. Senator Hatch's Crime Conference brought new attention to this problem and commitments were made by top federal law enforcement officials to improve the situation. Attorney General Janet Reno announced that she would authorize an increase of 10% in the number of prosecutors in the Utah U.S. Attorney's office. These 3 new prosecutors presumably would be utilized to prosecute more of those who violate federal drug laws. Additionally, promises were made by Doris Meisner, who heads the Immigration and Naturalization Service (INS), to more vigorously apprehend, detain and deport those who are involved in the Utah drug trade. Thomas Constantine, who heads the Drug Enforcement Administration, indicated that new DEA personnel would be dispatched to Utah to more vigorously enforce federal drug laws. Senator Hatch, Chairman of the Senate Judiciary Committee, with oversight over these matters and these officials, has stated strongly that he will work to ensure that the federal government does more to help solve these critical problems. What bottom line effect this new infusion of federal resources will have is yet to be seen but it is promising.

INCARCERATION

Utah's incarceration rate ranks 43rd in the nation at 182¹⁶ prisoners per 100,000 residents compared to 419¹⁷ nationally, while the western states average is 373 per 100,000.¹⁸ These low incarceration rates are in spite of Utah's ranking as the 10th highest of all 50 states for total index crime. Over the past 4 years, the national incarceration rate rose 28.5%, while the Utah incarceration rate rose only 21.7%.¹⁹ In fact, Utah has the lowest incarceration rate among the Western states and one of the very lowest incarceration rates in the nation.

Western States Incarceration Rates Per 100,000 Population



It is fair to characterize the Utah State Prison system as overcrowded. State officials are constantly trying to find space for state prisoners. Up to now, they have been successful in finding space by contracting with local counties for jail space in which to house state prisoners. Currently, however, that space is running out and Utah must build more prison beds just to keep up with an annual prisoner population growth rate of 11.7%²⁰ – five times faster than Utah's population is growing. Just to keep up with the increased numbers of new prisoners, Utah will need to build a 500 bed prison each year, but Utah does not appear to have a plan to accommodate this growth.

It may become necessary for Utah to initiate even earlier paroling of prisoners, which may exacerbate existing problems. Some might argue that, already, Utah paroles too many, too early. Utah's recidivism rate is high.²¹ Additionally, the percentage of Utah parolees readmitted into the prison leads the nation at 49.9% compared to the national average of 18.1%.²² Thus, nearly half of those going through the front door of the prison really are not new but are recycled through big revolving doors.

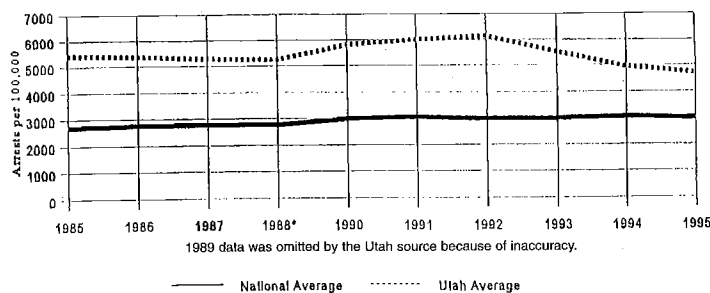
Utah currently spends a low percentage, 2.5%, of its annual budget on adult corrections. This rate is one of the lowest in the nation. The national average among the fifty states is 4.5%.²³

What does all this mean for Utah? We believe that Utah's comparatively mild commitment to adult corrections is a key factor in why crime is still a growth industry in Utah. Utah's state correctional system is user friendly toward criminals. Utah spends less money, incarcerates fewer criminals, has a high recidivism rate, and does not now have a realistic plan to keep up with growth. Utah is going in its own direction, and is out of step, with the majority of the other fifty states. This would be fine if we were doing better than the other states. We are not. In many categories we are doing worse. Our policies and numbers reflect the undeniable reality that Utah is a less threatening place for criminals.

JUVENILE JUSTICE

In 1995, Utah arrested 4,720 juveniles aged 10 to 17, 55% more arrests than the national average per 100,000 juvenile population.

Total Index Crime Arrests per 100,000 Juveniles ages 10 to 17



Arrests for property crimes accounted for over 93% of juvenile arrests in 1995, making Utah's juvenile property crime arrest rate 2nd highest in the nation. This high percentage of arrests is very troubling especially when we consider the high rate of adult property crimes in Utah. Utah's juvenile property crime rates actually exceed the rates of adult property crime.

Utah's juvenile violent crime arrest rate was 27th highest in the nation – slightly lower than the national average, but well above the violent crime rate for the state as a whole, which was ranked 40th

in the nation.²⁴ This trend of more violent juveniles may mean that Utah's adult violent crime rate will soon begin to rise as these violent juveniles become violent adults.

In 1995, 1.8% of the 38,052 juveniles who turned 18 had committed 4 or more felonies. This small and identifiable group of 715 youth accounted for 60% of all felonies committed by those in this same age group. This small group of serious offenders was also responsible for 19.2% of all misdemeanors and infractions.

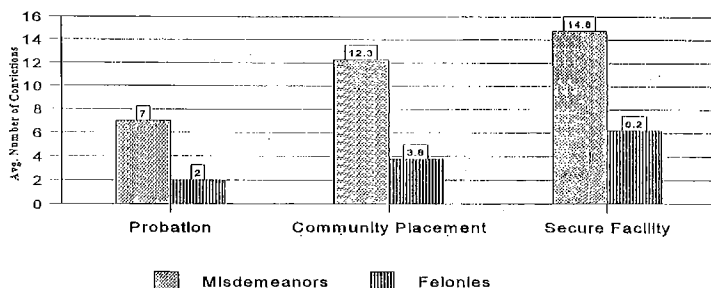
Unfortunately, there is no way that the present system can effectively deal with this small group of predatory offenders. Utah does not now have, nor is it programmed to have, enough detention and secure space to incapacitate these offenders. Comparisons between adult prison beds and juvenile secure beds tell so much about our inadequate juvenile resources.

In 1996, for every 1,000 adult arrests, there were 44.3 prison beds available for incarceration, but for every 1,000 juvenile arrests, there are only 5.4 secure beds available. Thus, the juvenile system has only one-eighth the secure space that the underfunded adult system has per 1,000 arrests.²⁵

When we compare adult and juvenile secure beds per 100,000 population, we reach a similar conclusion. For every 100,000 adults in Utah there are 345 prison beds; for every 100,000 juveniles there are only 32 secure facility beds.²⁶ Thus, the juvenile system has less than one-tenth the secure space that the underfunded and inadequate adult system has per 100,000 population.

This lack of resources is reflected in the following numbers. In 1996, the average juvenile on probation had approximately 9 convictions - 7 convictions for misdemeanors and 2 convictions for felonies. The average juvenile in community placement had 16 prior convictions, including 3.8 felonies, and the average juvenile in a secure facility had 21 prior convictions, 6.2 of these being felony convictions.²⁷

Criminal History of Juveniles Under NYC and Juv. Court Control, 1996

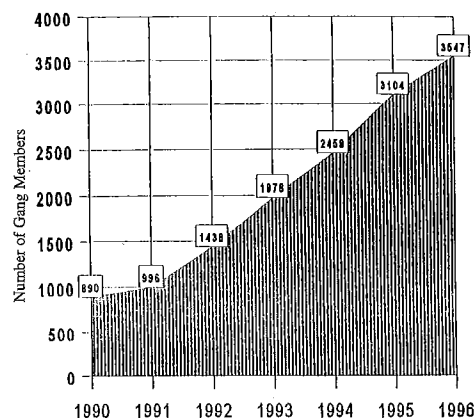


We have not found one person who believes that the resources in secure beds, probation officers, community placement, etc. are adequate to meet the demand placed upon the juvenile justice system. Despite recent legislative efforts, the system is still unprepared and under equipped to effectively stem the tide of juvenile crime.

Gangs

The number of identified gang members in Salt Lake County increased by 298% between 1990 and 1996. The following chart clearly shows the trend:

Growth in the Number of Gang Members 1990-1996 (SLCo)

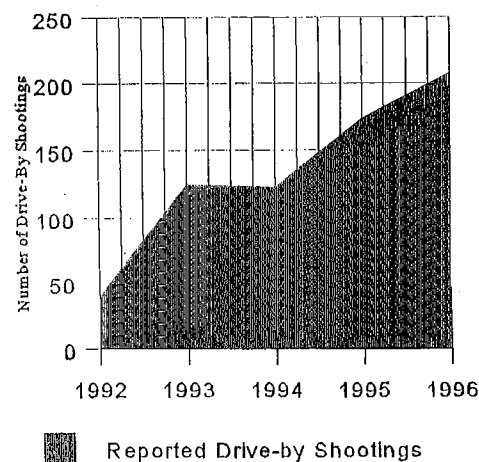


By June 1997, the number of gang members has increased to 3,772 in Salt Lake County. By June 1997, Weber County had identified 1,050 gang members, Davis County had identified over 700 gang members, and Utah County had identified 405 gang members.²⁸

Drive-By Shootings

In 1992 there were 40 drive-by shootings in Salt Lake County. In 1996 there were 208 drive-by shootings, a 420% increase. We do not think it coincidental that the increase in drive-by shootings mirrors the increase in motor vehicle theft. Law enforcement officers report that many gang members steal a car before a drive-by shooting and then immediately dispose of the car²⁹ to avoid identification. And if the juvenile is picked up before the drive-by shooting in a stolen car, generally very little happens to the juvenile.

Drive-By Shootings, 1992 to 1996 (SLCo)



Reported Drive-by Shootings

RECOMMENDATIONS

The most important function of government is the protection of its citizens. A government that fails to protect its citizens from crime is not meeting its first priority. Does it really matter what kind of transportation system we have if we're not safe from violent and non-violent crime? If Utah is to become a less crime friendly environment, large steps and not baby steps must be taken. These steps will not be easy nor inexpensive but we cannot afford to stumble and fall. In order to get its crime rate under control and reduce victimization with all the attendant benefits, Utah will need to undertake a series of reforms. And what reforms could be more

important to a society than those dealing with public safety. We believe the following are the necessary first steps.

1. Apply correct principles. Before we do anything, we should be sure and apply what we refer to as "correct principles." This could be defined as the application of policies that really work to accomplish the desired goals. Nor, do we need to reinvent the wheel when it comes to criminal justice matters. Some communities and states are doing a marvelous job in significantly cutting crime. New York City, for example, has cut crime nearly 50% over the past 3 years. How have they done it? What were the correct principles they applied to accomplish such a notable achievement? Their crime rates in all categories have been reduced significantly, while our crime rates have increased. Even now, Utah is not even keeping up with the mediocre standard of crime reductions set by the nation as a whole. Utah should seriously consider applying many of these same techniques. The application of correct principles in any process of real reform is crucial. We cannot continue to apply incorrect principles and expect good results.

2. Leadership and accountability. It is clear that significant reforms cannot be undertaken without strong leadership with a clear understanding of where we need to go and with the fortitude to get us there. Senator Hatch has shown leadership by convening the crime summit on June 30th and by working to increase federal crime fighting resources in Utah. Governor Leavitt has shown leadership by making new proposals to arrest crime in Utah including 1,000 new police officers, 5,000 new juvenile and adult beds by 2006, and new judges and court personnel. The Salt Lake County Commission and the Sheriff have shown leadership with its commitment to fund a new Salt Lake County Jail. But it is clear to us, that even more leadership will be needed in the future to properly arrest crime.

3. Build more jail, prison and secure juvenile facilities. The lack of adequate jail, prison and secure juvenile facilities is probably Utah's most glaring deficiency in fighting crime. Salt Lake County's CDR problem at the jail contributes significantly to a revolving door justice image. The state prison system also seems to be a revolving door with high rates of recidivism and parole revocations.

The juvenile corrections system, with its glaring lack of detention and secure space, also contributes significantly to a revolving door image. Our current practice of allowing juvenile offenders to commit a multitude of crimes before facing incarceration is contrary to good common sense. Keeping our most predatory juvenile offenders incarcerated would significantly reduce crime. Punishing those significant but few predatory juvenile offenders by incapacitating them in secure facilities is basically an unpleasant option that works. It reduces the amount of crime. We have a choice, we can follow our current path and live with more crime or have less crime by making punishment certain and real for repeat juvenile offenders.

Significantly, the Governor called for 5,000 new state and local beds in adult and juvenile facilities by the year 2006. We applaud this goal and wait to see him unveil his plans to accomplish this goal but it is not enough. Utah currently needs approximately 5,000 additional adult prison beds to bring the adult incarceration rate up to the national average of 419 beds per 100,000 residents. This figure does not include adult jail space or juvenile secure space. This is **critical** if we are to have substantial impact on

crime. There is a strong inverse relationship between punishment and criminal activity, as expected punishment increases, crime decreases.

4. Hire additional law enforcement officers. We need more peace officers to at least match the national average number of police officers per 1,000 citizens. These additional police officers should be placed strategically to improve crime clearance rates. At the crime summit, the Governor has called for 1,000 new police officers to be hired in Utah by the year 2006. How and when this important goal will be accomplished was not announced. It seems clear to us that Utah should have more than the national average of police per 1,000 residents since its crime rate is now 10th in the U.S.

5. Expand court services. Our courts have struggled to keep up with growing caseloads. Since 1992, criminal case filings have increased in Utah's District Courts by over 140%.³⁰ We have not increased the number of judges and court personnel to keep up with these caseload increases. At the crime summit, the Governor mentioned this as one of his top goals for fighting crime.

6. Develop Character Education Programs. We should not, however, give up on changing both juvenile and adult offenders into productive, moral citizens through work and educational programs.

A promising approach being developed by Larry Bench at the Utah State Prison involves having offenders study great books of western civilization that teach moral lessons and how to live a good life based on moral principles. The offenders read each book (there are 100 great books in the program), study the contents with self paced computer tutor lessons and take a rigorous mastery examination over the book's contents. University of Utah students from the Criminology Program lead discussion groups with offenders about each book once the offenders have completed the computer tutorials and passed the mastery examination. The program's aim is to teach offenders moral patterns of thinking in the same way that children are taught moral lessons with stories and examples. Since it will take a typical offender approximately 3,000 hours to complete the program, the time commitment is the equivalent to two years of college.

The program is still in a pilot stage but shows some promise in several areas. We mention this here as the type of educational program that should be required for offenders, both adult and juveniles. It is inexpensive to operate since the instruction is provided by self paced computer software, books are inexpensive, and the discussion groups are run by volunteers. We believe that an educational program, primarily character education, should be required within every prison and juvenile facility. All educational programs should require demonstrated mastery of a body of knowledge by examinations. Educational programs should replace the prison TV. The moral lessons taught on television have already been learned all too well by the offenders. Educational programs should also replace the weight rooms. It make no sense to provide facilities that build super strong criminals.

7. Expand current federal resources. The federal government needs to take responsibility for the detention, prosecution and punishment of federal crime, particularly drug crime. Additional sorely needed federal law enforcement resources have been promised by top officials at the crime summit. These promises need to be fulfilled.

The federal government needs to do a much better job of dealing with the small percentage of illegal aliens who are involved in the drug trade. The federal government has a special constitutional

responsibility in relation to illegal aliens which should not be ignored. The constitution vests in the federal government authority over all matters involving immigration and naturalization.³¹ Unfortunately, federal law is often not applied for purposes of detention, prosecution and deportation for the great majority of illegal aliens involved in the Utah drug trade. The effect of such policies is to create a very friendly environment for drug dealers in Utah. The federal government should build or contract for more federal detention space and provide adequate law enforcement and court resources to handle the increased load.

8. Develop effective crime prevention programs. We realize that strengthening the criminal justice infrastructure alone is not sufficient to effectively solve our crime problem. While punishment can be very effective in controlling some behavior, we need to intervene much earlier in the lives of salvageable young criminals. We need to save the abused, neglected, fatherless, and impoverished children before they become tomorrow's super predators. We need to build strong families, with both fathers and mothers committed to their children. We need mentoring programs that teach character values to youth. We need outreach programs through local churches ministering to the spiritual and material needs of our children. The criminal justice system should be the only institution we use to control our crime problem.

9. Expand effective drug and alcohol treatment programs. There is no question that drug and alcohol treatment is a key component in controlling crime. Yet, programs are closing, rather than expanding. There is a crying need for inexpensive treatment pro-

grams that work. Presently, there exists 6 and 7 month waiting list to get into drug and alcohol treatment programs. This is unacceptable and contrary to good reason. When a person says he is ready to get into a program, there should be one readily available.

10. Create a criminal justice think tank. We see a real need for an independent think tank to evaluate how we are doing and to recommend changes to our system. We need to find out what works and analyze its effectiveness as we implement significant reforms in the system. For example, New York City has made significant reductions in crime over the past 3 years. As we have talked with so many people involved in our criminal justice system, we have been surprised at how many have not known about New York City's remarkable crime rate reductions and the policies and procedures employed to reach such marvelous results. We are convinced that there is a need for creative thinking guided by careful research.

The think tank should collect data and evaluate criminal justice policy within each state and local governmental agency. This would provide research audit oversight to determine what works and what does not. Criminal justice programs, if we are not careful, can be very ineffective. Since substantial funds will be spent to strengthen the criminal justice system, a research audit of expenditures is necessary to maximize positive outcomes. A minimum of 5% of funding to build infrastructure should be allocated to research, audit and evaluation.

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CONCLUSION

We have reviewed the good, the bad and the ugly of some aspects of crime and punishment in Utah. Crime, particularly drug and non-violent property crime, is flourishing in Utah while it is being reduced in the nation as a whole. Law enforcement can be much more effective and crime can be reduced if we have the will and the resources to do it. Federal, state and local governments must cooperate to make Utah a place where all of us are free to pursue our lives unimpeded by crime. We have offered our analysis and proposed 10 recommendations to significantly improve our situation.

¹The views expressed herein are those of Michael L. Hutchings. Judge Hutchings does not speak for the judiciary or for any other person or entity. Additionally, the ethical code for judges specifically allows a judge to write on matters affecting the law, the legal system and the administration of justice.

²The views expressed herein are those of Professor Smith. He does not speak for the faculty or administration of the University of Utah or for any other person or entity.

³The last year upon which rankings between the states can be calculated is 1995. See, Uniform Crime Reports 1995, an FBI Publication released October 13, 1996. The information contained in the charts in this section of the article were based on preliminary information available on the FBI official web page. U.S. estimates for each previous year were obtained from the annual Uniform Crime Reports for that particular year. Utah estimates were obtained from Crime in Utah, an annual publication by the Utah Bureau of Criminal Identification, Utah Dept. Of Public Safety.

⁴The publication "Crime in Utah," supra, does not provide a clearance rate for the total of all Part I index crimes. This rate was calculated by dividing the sum of all Part I crimes cleared for each individual year into the sum of all Part I crimes for that same year. The raw figures were provided in "Crime in Utah." This chart represents the results of that analysis. The raw figures and the exact numbers and the calculations can be available by contacting either author or by referring to page 2.2 in the research monograph entitled "Crime and Punishment in Utah" distributed by the authors in conjunction with the June 30, 1997 crime summit sponsored by Senator Hatch.

⁵See Crime in Utah, supra, for the Utah rates and Crime in the United States, supra, for the U.S. average rates.

⁶T. E. Feucht, R. C. Stephens, and M. L. Walker, "Drug Use Among Juvenile Arrestees: A Comparison of Self-Report, Urinalysis, and Hair Analysis," *Journal of Drug Issues*, vol. 24, no. 1, 1994, pp.99-116.

⁷Reported in Body Count, William J. Bennett, John J. DiLulio and John P. Walters, Simon & Schuster, 1996, pp.142-143.

⁸Senator Orrin G. Hatch, A Summit on Crime - Coming Together for Utah's Future, published June 30, 1997, Appendix B entitled "Utah Drug Statistics."

⁹Id at 9. According to Senator Hatch, this combination of drug gang members, referred to as the "Sinaloa Cowboys," actually "control" the Salt Lake drug market.

¹⁰Id. at 22.

¹¹We emphasize that a small percentage only of illegal aliens are involved in the drug trade. Not all illegal aliens are drug dealers. The great majority of illegal aliens who come to Utah are not involved in criminal activity and do not present any problems for law enforcement. We agree with Senator Hatch that "simply because someone is an immigrant does not mean that he or she is a criminal or that they are here illegally. The vast majority of immigrants in Utah are

productive and law-abiding members of our neighborhood and communities. To believe otherwise would allow perception to trump fact, fear to trump rationality and intolerance to trump our democratic principles." See Senator Orrin Hatch, A Summit on Crime - Coming Together for Utah's Future, supra at 3. See also, Judge Michael L. Hutchings, Another Vietnam: Salt Lake's War on Crime, Utah Bar Journal, November 1996 at p. 39 (fn. 28). When an illegal alien, as with anyone else, is charged with a crime, that person must be judged individually and afforded all due process rights.

¹²Memoranda in possession of authors from Mark Vincent, Assistant U.S. Attorney, June 12, 1997; Adam Lewis, Salt Lake County Pre-trial Services, April 15, 1997; May 22, 1997 & June 22, 1997.

¹³Memoranda from Adam Lewis, Salt Lake County Pre-trial Services, dated April 15, 1997; May 22, 1997 and June 22, 1997 in the possession of the authors.

¹⁴Id.

¹⁵Id.

¹⁶Utah Dept. of Corrections Annual Report 1996, p. 38.

¹⁷The Corrections Yearbook, 1996, Criminal Justice Institute, Inc., p. 10.

¹⁸Utah Dept. of Corrections Annual Report 1996, supra.

¹⁹The Corrections Yearbook, 1996, supra at 10.

²⁰Id.

²¹According to the Corrections Yearbook, 1996 at pages 44-45, Utah's recidivism rate of 70% is the highest in the nation. We have contacted the Utah Dept. of Corrections Research Division. They reported that Utah's recidivism rate is approximately 48%. Both of these rates are higher than the national average of 37.4% reported in the Corrections Yearbook, 1996 p. 45.

²²The Corrections Yearbook, 1996, supra at 38-39.

²³The Corrections Yearbook, 1996, supra at 64-65.

²⁴See OJJDP, Juvenile Arrests 1995, p. 10; Commission on Criminal and Juvenile Justice, Juvenile Justice in Utah 1995, table 2.0; Crime in Utah, supra at p. 51 and Crime in the United States, supra.

²⁵Crime in Utah, 1996, supra; Division of Youth Corrections, DYC Annual Report 1996; Adult population calculated by subtracting juvenile population from the total population obtained from the U.S. Bureau of the Census "Resident Population - States 1970-1995"; juvenile population calculated by multiplying the Utah numbers reflected on the U.S. Bureau of the Census Chart "Resident Population under 18 Years Old (1995)" by the total Utah population obtained from the previous source.

²⁶Id. Beds per 100,000 was calculated by dividing the adult/juvenile populations by 100,000 and then dividing the total number of beds by the adjusted population number.

²⁷DYC Annual Report, supra at 24,27 and 30; Interview with Mike Phillips, Administrative Office of the Courts, June 23, 1997.

²⁸Salt Lake Area Gang project, June 1997.

²⁹Id.

³⁰See Senator Orrin G. Hatch, A Summit on Crime, supra.

³¹See Article 1, Section 8, United States Constitution

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Discipline Corner

DISBARMENT

On July 31, 1997, the Honorable Pat B. Brian, Third District Judge, entered an Order of Disbarment, Costs and Restitution disbaring Paul A. Price ("Price") from the practice of law.

The Court found that Price intentionally misappropriated and failed to account for client funds in violation of Rules 1.15(a), 1.15(b), 1.15(c) "Safekeeping Property" and Rules 8.4(a), 8.4(b), 8.4(c) and 8.4(d) "Misconduct", of the Rules of Professional Conduct. The Court further found that, under the Rules of Professional Conduct, Price had a strict fiduciary duty to maintain and safeguard client funds, and to account to clients for those funds.

More specifically, the Court found that through the years 1995 and 1996, Price intentionally engaged in a continuing pattern of misconduct, misappropriation and conversion of client funds in excess of \$154,000 including:

- (a) Intentional misappropriation and conversion of \$60,000.00 that Price held in escrow and was entrusted to Price by the parties to the sale or assignment of a Federal Communication Commission ("FCC") license;
- (b) Intentional misappropriation and conversion of \$55,492.26 from a client's trust funds that Price used to repay the \$60,000.00 that Price misappropriated and converted from the escrow of the FCC license sale.
- (c) Intentional misappropriation and conversion of \$30,547.30 in client funds in a probate matter.
- (d) Intentional misappropriation and conversion of \$8600.00 in funds held in trust for a business client in an arbitration proceeding.
- (e) On various occasions in 1995-1996, Price's client trust account had a negative balance, trust account checks were returned for insufficient funds, or the trust account was overdrawn as Price was depositing client funds into his own personal and/or business account. The Court found these actions con-

stituted misappropriation and conversion of client funds.

- (f) Misappropriation and conversion of funds held in trust for four other clients.

The Court ruled that: (1) Price knew that he held these client funds in trust and that he could not use these client fund for his own personal use; (2) that his misappropriation of client funds violated Utah Code sections 76-6-404 (theft) and 76-6-513(2) (violating fiduciary duty); (3) Price's conduct was aggravated by dishonest and selfish motives; a pattern of misconduct involving multiple offenses; substantial experience in the practice of law; illegal conduct; and (4) that Price's misconduct was not mitigated by any circumstances that justified imposition of a lesser sanction than disbarment.

Price's disbarment is effective March 12, 1997, the date that the Court entered an Order of Interim Suspension. The Court also ordered that Price pay costs and make restitution of \$120,964.56, plus interest to his clients.

ADMONITION

On or about June 20, 1997, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.4(a) of (b) Communication, and Rule 1.15(b), Safekeeping Property, of the Rules of Professional Conduct.

The Attorney was retained to represent a client in a child custody proceeding. The Attorney failed to keep his client reasonably informed about the status of her child custody matter and failed to properly comply with reasonable requests for information. The Attorney also failed to make explanations to his client regarding her child custody matter and thus failed to enable her to make informed decisions regarding the representation. The Attorney further failed to properly safekeep his client's original documents and failed to promptly deliver to the client said documents upon request.

There were no aggravating or mitigating circumstances offered to the Screening Panel.

ADMONITION

On July 14, 1997, an Attorney was admonished by the Chair of the Ethics and

Discipline Committee of the Utah State Bar for violating Rules 1.15 (Safekeeping Property) and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants), Utah Rules of Professional Conduct.

The Attorney had delegated the responsibility to his secretary/bookkeeper, who had been employed by him for 12 years, to keep track of all deposits and checks that were written from the Respondent's office accounts, including the client trust account.

Due to the secretary's serious health problems, the secretary failed to deposit proceeds from a settlement into the Respondent's trust account. The Attorney was not aware that funds had not properly been deposited into the trust account and disbursed settlement proceeds to the client and disbursed his fee from the settlement resulting in funds from other clients being used to pay a different client's settlement. Additionally, a number of checks written to pay client bills were not honored.

The mistake was discovered, settlement proceeds deposited into the Attorney's trust account and a reconciliation of the trust account was completed. To prevent further occurrences, the Attorney changed his trust account such that trust checks require two signatures, and the Attorney must be one of those persons signing the trust check.

An attorney has a non-delegable duty to monitor his trust account, and he is ultimately responsible for any acts of his employees as they relate to the handling of client trust funds in the trust account.

The failure of the Attorney to more closely supervise his employees and the negligent bookkeeping by the Respondent's employee resulted in violations of Rules 1.15 Safekeeping Property and 5.3 Responsibilities Regarding Nonlawyer Assistants of the Utah Rules of Professional Conduct.

ADMONITION

On July 21, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.3 (Diligence), Rule 1.4 (Communication), and Rule 1.16 (Declining or Terminating Representation) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a civil action. Thereafter, the attor-

ney moved from Ogden to Salt Lake City without informing the client of the move. On the day before a pre-trial conference in her case, the client discovered that her attorney would be unavailable to represent her at the conference and was forced to attend the pre-trial conference without counsel. The attorney failed to take steps to the extent reasonably practicable to protect the client's interests upon termination of representation of the client, such as giving reasonable notice to the client, and allowing time for the client to employ other counsel.

The attorney was court-appointed in 1994 to represent another client, who was incarcerated. The attorney met with the client only once between the time of the appointment and the time a complaint was filed on the client's behalf in October 1996. The attorney failed to respond to written correspondence from the client,

and moved from Ogden to Salt Lake City without informing the client of the move. Again, the attorney failed to take steps to the extent reasonably practicable to protect the client's interests upon termination of representation of the client, such as giving reasonable notice to the client, and allowing time for the client to employ other counsel.

In aggravation, the fact that there were multiple (two) offenses was considered, as well as the fact that the second client, being incarcerated and unable to freely communicate with the outside world, was vulnerable.

In mitigation, the attorney has no prior record of discipline, had no dishonest or selfish motive, exhibited a cooperative attitude toward the disciplinary proceedings, was inexperienced in the practice of law, and expressed remorse for failing to adequately notify all clients that the attorney was moving from Ogden to Salt Lake City.

ADMONITION

On July 23, 1997, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.15 (Safekeeping Property), Utah Rules of Professional Conduct.

On July 8, 1995, the attorney deposited a client's IRS refund check in the amount of \$4,166.85 and a Utah State Tax Commission refund check in the amount of \$2,007.84, for a total of \$7,174.69 into his trust account.

On July 24, 1995, the Attorney issued two checks to his client, each in the amount of \$3,587.34. Due to negligent bookkeeping practices, there were insufficient funds in the trust account to cover these two checks at the time they were written on the trust account. When the error was discovered, the amounts were promptly paid to the client.

Judicial Discipline Summary July 18, 1997

A. ADMONITIONS

Canon 3B(7) of the Code of Judicial Conduct (CJC) provides that "... a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceedings." A judge was admonished for initiating and participating in an *ex parte* communication concerning a pending proceeding. A mitigating factor was that within a short time after participating in the *ex parte* communication, the judge notified all other counsel concerning it. In a separate case, the Commission admonished a judge for participating in an *ex parte* communication with potential witnesses concerning a pending proceeding without having first obtained the consent of the parties' attorneys. **[NOTE: THE JUDGE RECENTLY OBJECTED TO THE SECOND ADMONITION, AND THE COMMISSION WILL REVIEW THE OBJECTION DURING ITS NEXT MEETING.]**

Canon 3B(94) of the CJC requires judges to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity..." A judge was admonished for failing to be patient and courteous with an attorney during oral

argument. The judge threatened the attorney with contempt under circumstances where the Commission felt the judge should have been more patient and courteous.

Canon 2 of the CJC requires judges to "avoid impropriety and the appearance of impropriety in all activities..." The Commission admonished a judge that to avoid the appearance of impropriety during the course of a trial, on actual trial days, a judge should avoid any private social activity with the attorneys appearing before the judge for one side in the matter.

B. PRIVATE REPRIMANDS

A judge who had argued with a store clerk was privately reprimanded for failing to observe high standards of conduct so that the integrity of the judiciary will be preserved, in violation of Canon 1 of the CJC; failing to exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A of the CJC; and failing to conduct the judge's extra-judicial activities so that they did not demean the judicial office, in violation of Canon 4A of the CJC. An aggravating factor was that local law-enforcement officers were called to investigate the incident.

The Commission privately reprimanded a

judge for violating Canon 4A(2) of the CJC, which requires judges to conduct their extra-judicial activities so that they do not demean the judicial office. During an in-chambers meeting, a 16 year-old youth became belligerent and insulting toward the judge. The judge knocked the youth's hat off, slapped him on the cheek, and told him to stop the offensive behavior.

A judge received a private reprimand for participating in *ex parte* communications concerning a pending proceeding in violation of Canon 3B(7) of the CJC, which provides that "... a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceedings." The judge had conferred privately concerning a pending case with some but not all the attorneys for the parties.

A judge was privately reprimanded for violating Canon 2 of the CJC, which requires judges to avoid the appearance of impropriety in all activities. In connection with a personal matter, the judge had contacted representatives of an agency that frequently appeared before the judge, when the judge knew or should have known that the contact could create the appearance of impropriety.

Utah State Bar Ethics Advisory Opinion Committee

OPINION NO. 97-08

(Approved July 2, 1997)

Issue: May an attorney, formerly employed by a government agency, represent a private client in challenging: (i) the validity or enforceability of statutes, rules, ordinances or procedures that the attorney participated in drafting; or (ii) specific contracts or easements that the attorney negotiated, drafted or reviewed for approval on behalf of the government agency?

Opinion: (i) As a general rule, a former government agency is not prohibited from presenting a private client in matters that involve the interpretation or application of law, rules or ordinances directly pertaining to the attorney's employment with a government agency. (ii) The attorney may not, however, represent such a client where the representation involves the same lawsuit, the same issue of fact involving the same parties and the same situation, or conduct on which the attorney participated personally and substantially on behalf of the government agency. In any event, an attorney may not undertake representation adverse to any former client where the matter is substantially factually related to the matter for which the former client retained the attorney's services.

OPINION NO. 97-09

(Approved July 28, 1997)

The Opinion is the result of a specific inquiry from a Utah attorney who has proposed to provide legal services as outlined in the Facts section in the body of the Opinion. The Opinion addresses the ethical consideration of a lawyer who plans to perform certain estate-planning legal services in conjunction with a non-lawyer estate-planning professional who is not employed or retained by the lawyer. In general, we find that the lawyer must perform an independent role as legal advisor to the client, assuring that the estate plan and associated documents are legally appropriate to accomplishing the client's objectives.

Facts

An estate-planning lawyer ("Lawyer") has been approached by non-lawyer estate-planning professionals ("Estate Planner") to provide legal services to clients referred

by Estate Planner, using the following procedures:

- Estate Planner will identify clients who require estate-planning services using advertisements, cold calls and other solicitation procedures. Estate Planner will meet with the client, complete with her a personal questionnaire form approved by Lawyer, and come to agreement with her about appropriate estate-planning vehicles to accomplish the client's estate-planning goals.

- Estate Planner will discuss with the client whether the client has an attorney she would like to use to complete the estate-planning documents. In the event the client does not desire to use another attorney, Estate Planner will recommend that she retain Lawyer to perform the necessary legal services.

- If the client has indicated a desire to retain Lawyer to prepare the estate-planning documents, Estate Planner will telephone Lawyer and describe the client's estate-planning objectives and the estate-planning

vehicle being recommended by Estate Planner and will obtain a quotation from Lawyers as to the legal fees he will charge to perform the legal services of preparing final estate-planning documents. Lawyer anticipates the most fee quotations will be a fixed fee of less than \$750. With respect to more complicated estates, Lawyer may quote an hourly fee or a fixed fee in excess of \$750. In such cases, Lawyer will send a letter to the client confirming the amount or basis for the fee. Lawyer will obtain the name of the prospective client from Estate Planner and will perform a conflicts check.

- After conflicts have been cleared and Estate Planner's client has agreed to be represented by Lawyer, Estate Planner will use a form prepared by Lawyer to create a "first draft" of the estate-planning documents. Estate Planner will not use Lawyer's forms unless the client has agreed to retain Lawyer to perform the legal services.

- Estate Planner will deliver the "first draft" of the appropriate documents,

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together with the personal questionnaire to Lawyer. Lawyer will then telephone the client and verify that the client intends to retain Lawyer to perform the legal services of completing the estate-planning documents. If Estate Planner's client agrees to be represented by Lawyer, Lawyer will (a) review the personal questionnaire, (b) review the first-draft of the estate-planning documents prepared by Estate Planner, (c) verify with the client the information set forth in the personal questionnaire, (d) inquire into the client's estate-planning goals and objectives, and (e) if appropriate, discuss alternative estate-planning vehicles to the first-draft documents prepared by Estate Planner. In most cases, these communications will be by telephone, not in person.

- Lawyer will then finalize the estate-planning documents and prepare (but not send) a "firm letter" addressed to the client, transmitting the final estate-planning documents and indicating that, in the opinion of the Lawyer, the final estate-planning documents are in accordance with applicable law and accomplish the goals and objectives set forth in the personal questionnaire.

- The "firm letter" will not be delivered to the client, but will be delivered to Estate Planner. Estate Planner will then deliver the firm letter and estate-planning documents to the client for execution.

- Lawyer does not intend to advise the client with regard to the execution of the estate-planning documents or with respect to the conveyance or transference of assets into trusts or other vehicles created by the estate-planning documents. Any advice required in these areas would be provided by Estate Planner.

- Lawyer will not advise the client as to the financial appropriateness of any investments recommended by Estate Planner as part of the client's estate plan.

- Estate Planner will bill the client a fixed fee for Estate Planner's services plus commission with regard to any investment products sold to the client, such as life insurance. Estate Planner will bill separately from the Lawyer for Estate Planner's services.

- Lawyer will bill separately for his services and will not share any portion of his fees with Estate Planner. Lawyer will not give anything of value to Estate Planner for recommending Lawyer's services.

Issues and Discussion

Issue No. 1: Does a lawyer performing estate-planning legal services for a client in conjunction with a non-lawyer Estate Planner provide competent representation under Rules 1.1 and 1.2(b) under the foregoing statement of facts?

Analysis: The proposed procedures underlying the relationship between Lawyer and Estate Planner include limitations on the scope of the representation to be provided by the Lawyer. Estate Planner, not Lawyer, will initially meet with the client and will counsel the client with respect to completion of the personal questionnaire form. The personal questionnaire form has been drafted to elicit the client's estate-planning objectives, assets and intended beneficiaries. On the basis of the information provided by the client in the personal questionnaire, Estate Planner – not Lawyer – will initially identify the appropriate estate-planning vehicles to accomplish the client's estate-planning objectives. It is Estate Planner – not Lawyer – who prepares the first draft of the estate-planning documents.

The legal services provided by Lawyer are: (1) a review of the personal questionnaire completed by the client and the draft estate-planning documents prepared by Estate Planner; (2) a consultation, normally by telephone only, with the client to verify the information contained in the personal questionnaire, the client's estate-planning objectives, and the appropriate estate-planning vehicle to accomplish these objectives; and (3) preparation of final estate-planning documents and a "firm letter" advising the client that the final estate-planning documents accomplish the goals and objectives of the client. The legal services provided by Lawyer will not include advice to the client with respect to the financial appropriateness of investments described in the estate-planning documents or advice to the client about the appropriate means of executing the estate-planning documents or placing assets into the estate-planning vehicles created by the estate-planning documents.

The foregoing limitations on Lawyer's services are intended to reduce the overall costs to the client of preparation of final estate-planning documents. The issue here is whether Lawyer has limited his services to the client to such an extent that he is no longer able to provide competent representation to the client.

Rule 1.1 of the Rules of Professional

Conduct provides as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skills, thoroughness, and preparation reasonably necessary for the representation." The Comment to Rule 1.1 states, in part: "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners."

Rule 1.2(b) of the Rules of Professional Conduct provides: "A lawyer may limit the objectives of the representation if the client consents after consultation." Finally, the Comment to Rule 1.2(b) provides, in part: "An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. *Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1.*" (Emphasis added.)

Rules 1.1 and 1.2(b) are intended to provide a lawyer and a client some latitude to agree, after consultation, to limitations on the scope of services provided by the lawyer. A lawyer may not, however, agree to a scope of services that excludes the methods or procedure necessary for competent representation. A lawyer is under a duty to inform clients of the relevant facts, law and issues necessary for the client to make intelligent decisions regarding the objectives of the representation.¹ Lawyer does not, therefore, provide competent representation to estate-planning clients in this case if he declines to counsel the client as the appropriate means of executing the estate-planning documents or as to the appropriate means of transferring assets into the estate-planning vehicles to accomplish the client's objectives.

To provide competent representation, Lawyer need not personally present the estate-planning documents to the client or otherwise be present during the execution of the estate-planning documents by the client or during the transference of assets into the estate-planning vehicles. It would be generally sufficient for Lawyer to provide the client a written protocol sufficient to permit the client and Estate Planner to execute the estate-planning documents properly and to transfer assets into the estate-planning vehicles so as to achieve the client's estate-planning goals.

A lawyer has an obligation not only to

advise a client of legal rights and responsibilities, but also to advise the client regarding the advisability of the action contemplated.² Lawyer does not, therefore, provide competent representation to the client if he declines to counsel the client as to the appropriateness or advisability of estate-planning vehicles recommended by Estate Planner.³ If, for example, Estate Planner recommended a living trust as the appropriate estate-planning device, Lawyer may not merely advise the client as to the client's rights and benefits under a living trust, but he must also counsel the client about other estate-planning options available to the client and about the advisability of the living trust for accomplishing the client's estate-planning objectives.⁴

Competent representation does not, however, require that Lawyer counsel the client on the advisability of specific investment products recommended by Estate Planner (such as the relative merits of life insurance companies or life insurance products), if such services are outside the agreed scope of Lawyer's services. A lawyer need not provide services ordinarily performed by investment or financial advisers. Competent representation does require that Lawyer counsel the client as to the appropriateness of life insurance or a life insurance trust in accomplishing the client's estate-planning objective, if these products or vehicles were recommended by Estate Planner to accomplish the client's estate-planning objectives.

Lawyer is under a duty to provide independent legal advice to a client and may not permit one who has recommended Lawyer's services to the client to direct or regulate Lawyer's professional judgment in rendering legal services.⁵ It is therefore necessary to competent representation that Lawyer provide an independent, genuine and meaningful review of Estate Planner's recommendations in conjunction with a consultation with the client. This issue of competent representation is tied to Issue No. 3 discussed below. A genuine and meaningful independent review cannot be afforded by Lawyer whose representation of the client is adversely affected by Lawyer's referral relationship with Estate Planner.⁶

A lawyer is under a duty to communicate with a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.⁷ Furthermore, where circumstances

require, a lawyer is under a duty to verify information furnished by a client.⁸ Competent representation, therefore, requires that:

(a) Lawyer will independently review the non-lawyer Estate Planner's choice of the appropriate estate-planning vehicles in a genuine and meaningful way in conjunction with a consultation with the client.

(b) Lawyer's communication with the client must be sufficient to reasonably satisfy Lawyer that:

- (i) the client is competent to formulate and execute the estate plan,
- (ii) the client filled out the personal questionnaire upon which Lawyer is relying,
- (iii) the answers provided in the personal questionnaire correctly reflect the client's estate-planning goals and intended beneficiaries, and
- (iv) the estate-planning vehicles contained in the estate-planning documents prepared by Lawyer are appropriate to accomplishing the client's estate-planning objectives.

(c) Lawyers will advise and counsel the client as to the advisability of the estate-planning vehicle recommended by Estate Planner. Lawyer should include in the scope of the client's representation advice as to the appropriateness of the estate-planning vehicles recommended by Estate Planner (such as a life insurance trust) and advice or counsel as to the appropriateness for the client's objectives of investments or other products sold to the client by Estate Planner.

(d) Lawyer will counsel the client how to execute the estate-planning documents and how to transfer assets to achieve the client's estate-planning goals.

The quantum and form of communication necessary for a particular representation will depend upon many factors and must be assessed by Lawyer on a case-by-case basis. This communication with the client may, under some circumstances, require face-to-face communications. Telephonic communications will be sufficient under other circumstances. It is unlikely that non-interactive written communications alone will be sufficient under normal circumstances.

Issue No. 2: Does Lawyer violate Rule 1.6(a) if he delivers the final estate-planning documents he has prepared to the non-lawyer estate planner for delivery to and execution by the client?

Analysis: The proposed procedures underlying the relationship between Lawyer

and Estate Planner contemplate that Lawyer will deliver the final estate-planning documents and the firm letter directly to Estate Planner for presentation to the client. The information contained within the final estate-planning documents is information relating to the representation of the client by Lawyer and is, therefore, confidential under Rule 1.6(a)⁹ of the Rules of Professional Conduct. Such information may not be disclosed by Lawyer without the client's consent after consultation, unless one of the exceptions to Rule 1.6(a) stated in Rule 1.6(b) is applicable.

The exceptions of Rule 1.6(b) are not applicable under the facts of this Opinion. The comment to Rule 1.6(a) provides, in part: "The confidentiality rule applies not merely to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source." It therefore does not matter whether Estate Planner is already privy to the information contained in the final estate-planning documents. Unless the client has consented to the disclosure by Lawyer of the final estate-planning documents to Estate Planner, Lawyer violates Rule 1.6(a) in delivering the final estate-planning documents to Estate Planner for presentation to the client.

Issue No. 3: Does Lawyer have the potential conflict of interest under Rule 1.7(b) when advising the client concerning the appropriateness of estate-planning vehicles recommended to the client by Estate Planner?

Analysis: As was discussed in connection with Issue No. 1 of this Opinion, competent representation of the client requires that Lawyer counsel the client with respect to the appropriateness of the estate-planning vehicle recommended by Estate Planner to achieve the client's estate-planning objectives. Providing such consultation to the client may place Lawyer in a conflict of interest under Rules of Professional Practice Rule 1.7(b):

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third party or by the lawyer's own interests, unless:

- (1) The lawyer reasonably believes the representation will not be adversely affected; and
- (2) Each client consents after con-

sultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation to each client of the implications of the common representation and the advantages and risks involved.

If Lawyer is receiving or expects to receive a significant number of referrals from Estate Planner, Lawyer's ability to advise the client as to the appropriateness of the estate-planning vehicles recommended by Estate Planner may be materially limited by Lawyer's relationship with Estate Planner or by his interest in receiving future referrals from Estate Planner.¹⁰ When Lawyer is receiving or expects to receive a significant number of referrals from Estate Planner, he may not accept the representation unless he reasonably believes that the representation will not be adversely affected and the client consents after consultation, including a disclosure of the potential limitations upon Lawyer's representation.¹¹ Lawyer's reasonable belief that the representation will not be adversely affected will be tested by the standard of a disinterested lawyer.¹²

The Comment to Rule 1.7(b) provides: "[W]hen a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such an agreement or provide representation on the basis of the client's consent."

Thus, Lawyer must carefully examine the nature and circumstances of the relationship with Estate Planner to verify compliance with Rule 1.7(b).

Issue No. 4: Is Lawyer responsible for conduct of Estate Planner that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer?

Analysis: Estate Planner will be soliciting clients for estate-planning services using cold call and other procedures that would not be permitted under Rules of Professional Conduct 7.3(a) if engaged in by a lawyer. The procedures postulated in the Fact section of this Opinion make clear that Estate Planner is not an employee of Lawyer.¹³ The issue, therefore, arises whether Lawyer is responsible for the conduct of the non-lawyer Estate Planner in soliciting clients who are later referred by Estate Planner to Lawyer.

Rule 5.3, Rules of Professional Conduct, provides as follows:

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

If Lawyer is "associated" with Estate Planner within the meaning of Rule 5.3, then Lawyer (assuming Lawyer is a partner in his law firm) is required to take measures to assure the compliance of Estate Planner with the professional obligations of Lawyer, and Lawyer (whether or not a partner in his law firm) is responsible for any conduct of Estate Planner in violation of the Rules of Professional Conduct if Lawyer ordered, or with knowledge of the specific conduct, ratified the conduct involved.

Whether an "association" has been formed between Lawyer and the non-lawyer Estate Planner within the meaning of Rule 5.3 will depend upon (1) whether Estate Planner refers legal work only to Lawyer or to a limited group of lawyers of which Lawyer is one; (2) the frequency of referrals by Estate Planner to Lawyer and Lawyer's expectation of future referrals; and (3) Lawyer's assistance, if any, to Estate Planner in the conduct of Estate Planner's services.

If Estate Planner has agreed to make referrals only to Lawyer, or to a small group of lawyers, the closer is the association between Lawyer and Estate Planner. Courts

and ethics committees have recognized that the exclusivity of the referral relationship is material to assessing a lawyer's responsibility for the conduct of an Estate Planner with whom Lawyer is working.¹⁴ Similarly, the frequency of referrals from Estate Planner to Lawyer and Lawyer's expectation of future referrals is relevant to the closeness of the association between Lawyer and Estate Planner. Finally, the greater the assistance afforded by Lawyer to Estate Planner in soliciting or management of Estate Planner's business, the closer the association between Lawyer and Estate Planner.¹⁵

The greater the association between Lawyer and Estate Planner, the greater is the justification for imposing upon Lawyer duties and responsibilities with regard to the conduct of Estate Planner under Rule 5.3. This analysis has the effect of discouraging *de facto* solicitation agreements designed to evade Rule 7.3.¹⁶

As the relationship between Lawyer and Estate Planner is described in the Request, it is sufficiently close to constitute an association for purposes of Rule 5.3. Estate Planner will refer all business of clients requesting a referral to Lawyer, Lawyer anticipates systematic and frequent future referrals, and Lawyer assists Estate Planner in soliciting clients and performing its services by providing Estate Planner the form estate-planning documents. Given Lawyer's knowledge of the cold calls and other solicitation methods of Estate Planner that could not be engaged in by Lawyer under the Rules of Professional Conduct, Lawyer's acceptance of referrals from Estate Planner will constitute a ratification of Estate Planner's conduct and will make Lawyer responsible for the unethical solicitation by Estate Planner under Rule 7.3(a), Rules of Professional Conduct.¹⁷

In summary, Lawyer is responsible for conduct of Estate Planner if (a) the relationship between Lawyer and Estate Planner constitutes an association within the meaning of Rule 5.3, and (b) Lawyer orders or, with knowledge of specific conduct, ratifies the conduct involved. Whether the relationship between Lawyer and the non-lawyer Estate Planner constitutes an "association" for purposes of Rule 5.3 will depend on factors such as (i) whether the Estate Planner refers legal work only to Lawyer or to a limited group of lawyers of which Lawyer is one; (ii) the

frequency of referrals by Estate Planner to Lawyer and Lawyer's expectations of future referrals; and (iii) Lawyer's assistance, if any, to Estate Planner in the conduct of Estate Planner's services.

Issue No. 5: If Lawyer provides forms of legal documents to the non-lawyer Estate Planner to use with its clients in preparing a first draft of estate-planning documents for later review by Lawyer, does Lawyer violate Rule 5.5(b) by assisting the non-lawyer Estate Planner in an activity that constitutes the unauthorized practice of law?

Analysis: Most of the courts and ethics committees that have considered ethical issues arising out of relationships between lawyers and non-lawyer estate planners have found the relationship unethical because lawyer is assisting the unauthorized practice of law by Estate Planner.¹⁸

Rules of Professional Conduct 5.5(b) provides in part: "A lawyer shall not: (b) Assist any person in the performance of activity that constitutes the unauthorized practice of law." The courts and ethics opinions that have reviewed relationships between lawyers and estate planners have considered whether the activities of an estate planner constitute the practice of law. When an estate planner's activities have constituted the practice of law, the lawyer's acceptance of referrals has been found to violate Rule 5.5(b). These opinions have consistently found that the independent drafting of legal documents by estate planners constitutes the practice of law.¹⁹ Similarly, it is the unauthorized practice of law for an estate planner to usurp a lawyer's independent judgment as to the appropriate estate-planning vehicle and to relegate the lawyer to a mere scrivener.²⁰

It is also the unauthorized practice for an estate planner to complete, or to assist clients in the completion of, form legal documents provided to an estate planner by a lawyer.²¹ Some courts and ethics committees have found that it is the unauthorized practice of law for non-lawyer estate planners to counsel clients as to appropriate estate-planning vehicles to accomplish a client's estate-planning objectives.²² Others have not found it to be the unauthorized practice of law for estate planners to recommend estate-planning vehicles, so long as they refer to a lawyer the drafting of estate-planning documents.²³

This Committee does not ordinarily

decide issues regarding the unauthorized practice of law. However, it is unarguably the practice of law for Estate Planner independently to prepare the first draft of the estate-planning documents.²⁴ Therefore, unless Estate Planner was acting as a non-lawyer assistant to Lawyer in the preparation of the first drafts and under adequate supervision of Lawyer, then Lawyer's actions in providing forms to Estate Planner for the purpose of allowing Estate Planner to prepare the first draft of the estate-planning documents violate Rule 5.5(b). Lawyer is assisting a non-lawyer in an activity that constitutes the unauthorized practice of law.²⁵

Some authorities have suggested that lawyers may avoid the risk of assisting in the unauthorized practice of law by Estate Planners through referral relationships with Estate Planners, if Lawyers engage Estate Planners as employees or independent contractors. These authorities have noted that Rule 5.3 authorizes lawyers to engage such non-lawyers assistants.²⁶ However, if Lawyer engages Estate Planner as a non-lawyer assistant, Lawyer becomes responsible for compliance with Rule 5.3, as was discussed in greater detail with respect to Issue No. 4 of this Opinion.

If Lawyer does engage Estate Planner as a non-lawyer assistant, he is required adequately to supervise the activities of Estate Planner in the preparation of first-draft estate-planning documents or in other activities constituting the practice of law. Absent adequate supervision of the non-lawyer assistant in such activities, Lawyer violates Rule 5.5(b) by assisting in the unauthorized practice of law.²⁷ Furthermore, under the procedures described for the relationship between Lawyer and Estate Planner in the Fact section, numerous other ethical violations arise if Estate Planner is functioning as Lawyer's non-lawyer legal assistant. Lawyer may not delegate to the non-lawyer assistant responsibility for establishing the attorney-client relationship.²⁸ The creation of an attorney-client relationship before Lawyer has ascertained the existence of an impermissible conflict of interest violates Rule 1.7,²⁹ and the cold calls performed by Estate Planner violate Rule 7.3 (prohibiting in-person solicitation).

Thus, unless the relationship between Lawyer and Estate Planner constitutes an "association" within the meaning of Rule 5.3 and Lawyer adequately supervises the non-lawyer Estate Planner in the preparation

of the first-draft documents, Lawyer violates Rule 5.5(b) by providing forms of legal documents to the non-lawyer Estate Planner to use with its clients in preparing a first draft of estate-planning documents for later review by Lawyer.

¹*Joos v. Auto-Owners Ins. Co.*, 288 N.W.2d 443 (Mich. App., 1979); *In re Ratzel*, 321 N.W.2d 543 (Wis., 1982).

²See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1523 (1987).

³See Ore. State Bar, Formal Op. No. 1991-115 (replacing Op. No. 523).

⁴See the *Committee on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa, 1992); Ind. State Bar Assoc., Op. No. 4 (1992).

⁵Utah Rules of Professional Conduct 5.4(c).

⁶In *The Committee on Professional Ethics and Conduct of the Iowa State Bar v. Baker*, 492 N.W.2d 695 (Iowa, 1992), the Iowa Supreme Court held that a lawyer did not provide a genuine and meaningful review of the estate planner's recommendations of a living trust when, out of 50 to 60 total referrals, the lawyer did not once suggest to the client that the living trust (for which the estate planner earned fees administering) was not appropriate for the client's situation.

⁷Utah Rules of Professional Conduct 1.4(b).

⁸See, e.g. *Dixon v. Perlman*, 528 So. 2d 637 (La. Ct. App. 1988).

⁹"A lawyer shall not reveal information relating to representation of a client except as stated in paragraph (b), unless the client consents after disclosure." Utah Rules of Professional Conduct 1.6(a).

¹⁰Ind. State Bar Assoc., Op. No. 4 (1992).

¹¹See *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992).

¹²Dallas Bar Assoc., Op. No. 1991-03, concerning a similar association between an estate planner selling living trusts and a lawyer, states that it would be highly unlikely that the relationship would allow the independent exercise of professional judgment required by a rule comparable to Utah Rules of Professional Conduct 5.4(c).

¹³If Estate Planner is an employee of Lawyer, then Rule 5.3 would unquestionably apply. Lawyer would therefore be responsible for solicitation of clients by Estate Planner using methods and procedures violative of Rule 7.3(a), if Lawyer accepted the clients solicited with knowledge of the unethical solicitation. Rules of Professional Conduct 5.3(c)(1) and 8.4(a).

¹⁴Ind. State Bar Assoc., Op. No. 4 (1992), addressed a relationship between a lawyer and an estate planner remarkably similar to the relationship analyzed in this Opinion. The Indiana Bar's Legal Ethics Committee found that the proposed procedures complied with the Rules of Professional Practice. The Committee cautioned, however, that "if this agreement was an exclusive agreement between the Financial Organization and the Attorney, it may well be considered a referral service in violation of Rule 7.3." See *Dallas Bar Assoc.*, Op. No. 1991-03; *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992). In *Mich. Bar Assoc.*, Op. No. RI-191 (Feb. 14, 1993), the Committee stated: "[R]eferrals given over only to one lawyer cannot help but generate 'the definite appearance of a quid pro quo . . . [which] constitutes giving value for a recommendation with the meaning of the rule.'"

¹⁵Most of the authorities addressing this issue have done so in the context of Rule 5.5(b) (assisting in the unauthorized practice of law). See, e.g., *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695, 702-03 (Iowa, 1992).

¹⁶This analysis under Rule 5.3 is supported by Rules of Professional Conduct 8.4(a), which provides: "It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

¹⁷Utah Rules of Professional Conduct 5.3(c)(1) and 8.4(a).

¹⁸*The Committee on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa, 1992); *People v. Macy*, 789 P.2d 188 (Colo. 1990); *Mich. State Bar*, Op. No. RI-191 (Feb. 14, 1993); *W. Va. State Bar*,

Op. 92-03; Ohio Supreme Court, Op. 92-15 (Aug. 14, 1992); Ore. State Bar, Op. No. 1991-115.

¹⁹*Bd. of Comm'rs of Utah State Bar v. Petersen*, ___ P.2d ___, 315 Utah Adv. Rep. 38, 1997 WL 200040 (Utah 1997); see also W. Va. Bar Assoc., Op. No. L.E.I. 92-03; Ore. State Bar Assoc., Op. No. 1991-115; *People v. Macy*, 789 P.2d 188 (Colo. 1990).

²⁰*Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992).

²¹Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993); Ind. State Bar., Op. No. 4 (1992).

²²Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993); Ore. State Bar, Op. No. 1991-115; Supreme Court of Ohio, Op. 92-15 (Aug. 14, 1992). See *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992); Ind. State Bar, Op. No. 4 (1992).

²³W. Va. State Bar, Op. No. L.E.I. 92-03 n.2.

²⁴See notes 19 and 21, *supra*.

²⁵It is not for this Committee to decide whether the initial recommendation by Estate Planner to the client of the appropriate estate-planning vehicle or the later counseling by Estate Planner of the client respecting the execution of the estate-planning documents and the transference of assets into the estate-planning vehicles is the practice of law. If such activities do constitute the unauthorized practice of law, Lawyer also violates Rule 5.5(b) by accepting referrals and thereby assisting Estate Planner in the unauthorized practice of law. See note 18, *supra*.

²⁶Ind. State Bar, Op. No. 4 (1992); Penn. Bar Assoc., Inquiry No. 90-65.

²⁷Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993).

²⁸*Id.*

²⁹*Id.*

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Negotiating the Amended Federal Court Local Rules of Practice

Markus B. Zimmer, Clerk of Court, U.S. District Court

Louise S. York, Chief Deputy Clerk, U.S. District Court

On July 18, 1997, the judges of the United States District Court adopted, with some revisions, the amended Rules of Practice proposed by the court's Advisory Committee after three years of careful deliberation and review. The amended rules are effective September 1, 1997. Copies of the amended rules with tabs and appendices were distributed to active members of the court's bar in late August. In this article, we provide a procedural map and highlight the more important changes.

NEW NUMBERING SEQUENCE

The most obvious change is that rules have been renumbered pursuant to the mandate of the Judicial Conference. The conference directed that all federal trial court rules conform to the numbering of the Federal Rules of Civil and Criminal Procedure. The rationale was to make it easier for counsel who practice in multiple federal districts to familiarize themselves with each district's rules. In the past, as many bar members are aware, numbering schemes varied, sometimes wildly, from one district to another with no discernible logic or rationale.

The new format should ease the burden on counsel of associating specific federal rules with their local counterparts. For example, the local rule that augments Rule 4 of the Federal Rules of Civil Procedure governing service of process, formerly cited as "D.Ut 106," is now numbered and cited as "DUCivR 4-1." Similarly, the local rule regarding the conduct of discovery in criminal matters, formerly cited as "D. Ut 306," is now numbered and cited as "DUCrimR 16-1."

NEW ORGANIZATIONAL FORMAT

Another major change is how the rules are organized. The old format of four sections of rules - 100s or general rules, 200s or civil rules, 300s or criminal rules, and 400s or district court rules of bankruptcy practice - have been collapsed into two new sections. They are the civil rules section, which tracks the **Federal Rules of Civil Procedure**, and the criminal rules section, which tracks the **Federal Rules of Criminal Procedure**. Many of the 400 series were eliminated; those that are being

retained fall under Rule 83 of the civil rules. The 500 series, or local bankruptcy rules, are being published separately by the bankruptcy court under its own auspices. The comprehensive index to the rules and the old/new rule conversion table have been updated and should provide helpful direction.

The published format incorporates each of the federal rules of civil and criminal procedure by title and in numerical sequence. Thus, an attorney can determine rather easily whether the court has adopted a local rule to supplement one of the federal rules; she need simply turn to the respective federal rule title and number. Any applicable local rule will follow directly below its federal counterpart.

CROSS REFERENCES

The attempt to match the substance of some of the local rules with suitable federal counterparts was not always successful. Some local rules were shoe-horned into what was deemed the most appropriate federal rule. Others were dissected into parts that subsequently emerged as stand-alone rules. To assist practitioners to navigate this new procedural geography, numerous cross references and notes have been added to the text of the rules. Moreover, because the criminal rules do not repeat all of the procedural guidance provided in the civil rules, the text of a number of the local criminal rules is followed by cross references to their civil corollaries.

DISCOVERY PRACTICE

The results of the Court's several year experiment with the innovative discovery practice provisions of the 1993 amendments to the Federal Rules of Civil Procedure yielded a final decision by the judges not to opt out of any of those provisions. The amended civil rules reflect that decision. DUCivR 16-1 outlines the procedures for complying with the provisions of Rule 16 of the Federal Rules of Civil Procedure. It clearly delineates the types of cases that are exempt from Rule 16 requirements and the planning meeting requirements. DUCivR 26-1 makes it clear that the general provisions of Fed. R. Civ. P. 26 apply to practice in the District of Utah. The local rule clarifies the requirements for filing documents,

and it specifies that select papers such as initial disclosures, interrogatories, and other preliminary discovery matters are not to be filed with the court. Expert witness reports prepared pursuant to Fed. R. Civ. P. 26 (a)(2)(B) must be filed with the court because they assist the judge to prepare for and manage the trial. The limits on the numbers of interrogatories and depositions specified in the federal rules are in effect unless modified by a court order. Requests to modify the limits can be raised at the initial scheduling conference or through a change in the scheduling order.

When discovery disputes erupt, counsel should review DUCivR 37 prior to filing a motion to compel. New language in the rule requires that such motions be accompanied by a copy of the discovery request, the response made to the request, and a succinct statement that addresses each objection and explains to the court why the response is inadequate.

MOTION PRACTICE

After considering expressions of concern from the bar during the public comment period, the Advisory Committee withdrew its original proposal to curtail the time frame for responding to motions. The time frame remains fifteen days for filing a response to a motion and seven days for filing replies to such responses. Old rule DUt. 202, has been separated into two new rules: DUCivR 56-1 deals exclusively with motions for summary judgment, and DUCivR 7-1 addresses all other motions. Both rules now include language that warns of sanctions for failure to comply with the rules on motions. Such sanctions include returning the motion for resubmission or denying the motion. The new rules also provide that failure to respond to a motion — including summary judgment motions — may result in the court granting the motion without further notice or hearing.

Another motion practice change is easing the requirement to submit an accompanying memorandum with each motion. DUCivR 7-1(b) specifies the motions for which no supporting memorandum is required. They include motions to extend time, to continue hearings, to

substitute parties, to approve stipulations, to initiate settlement conferences, and to enter or exit the court's ADR program. The motion itself must contain the grounds for the request and cite the appropriate statutory or other authority for granting the relief.

UNPUBLISHED OPINIONS

The revised rules address the issue of citing unpublished opinions as authority. DUCivR 7-2 details the procedure for citing this type of opinion and counsel's responsibility to provide the full text to opposing counsel. The provision in the old local rule that limits such citations to unpublished decisions of the Tenth Circuit or the District of Utah has been eliminated. The amended rule reflects the position that the judges should have the benefit of argument and reasoning employed in cases that directly bear on issues under consideration. The limited precedential value of the opinion will be considered by the judge in determining the opinion's relative significance. The court anticipates that this more liberal rule notwithstanding, the citation of unpublished decisions will remain the rare exception rather than the rule.

ALTERNATIVE DISPUTE RESOLUTION

The ADR rule, DUCivR 16-2, now provides a brief summary of the ADR program. The program's procedural details have been incorporated into a separate ADR Plan that is included as a separate item in the rules package. The scope of the ADR program has been broadened to provide access to bankruptcy court practitioners to mediate adversary disputes. The new provisions eliminate the requirement that the party sign the ADR certification form. Under the amended provisions, the attorney's signature suffices. The plan reduces the time parties have to designate the mediator or arbitrator. The number of arbitrators has been reduced from three to one, absent a stipulation by the parties to three. Additional guidance has been included on the process from referral to arbitration hearing. In addition, the parties now may stipulate to binding arbitration under the court-annexed program.

MOTIONS FOR ATTORNEY FEE AWARDS

DUCivR 54-2 provides that motions for attorneys' fees must be filed and served

within thirty days after entry of judgment in the district court or entry of the appeals court remand establishing a fee award. The fee motion must include the basis for the award and the amount claimed. It also must be accompanied by an affidavit that describes the attorneys' efforts, number of hours logged, rate claimed, and other supporting information. Attorneys' fees are not taxed as costs but are separately reviewed by the court and awarded only upon its order.

ATTORNEY DISCIPLINE

The Committee proposed and the court approved an entirely new attorney disciplinary process model. DUCivR 83-1.5 establishes a new peer-review process whose function is to assist the court. The basic grounds for disciplinary action remain the same: (i) discipline by another jurisdiction, such as the State of Utah, (ii) conviction of serious crime, (iii) filing of a complaint charging misconduct before this court, and (iv) any other charge of violation of ethical or professional standards. The rule creates a Disciplinary Panel that comprises three judges to supervise attorney disciplinary matters. This Panel then appoints a Committee on the Conduct of Attorneys that comprises five members of the court's bar who serve three-year terms. The Disciplinary Panel reviews complaints and may refer to the Committee matters that require further investigation. The Committee's recommendation is submitted to the Panel for final review and action. Procedures are slightly modified and streamlined when reciprocal discipline is being imposed. The new rule also establishes a procedure for reinstatement to active status after discipline has been imposed and its requirements satisfied.

LAW STUDENT PRACTICE

The court has approved a new program that allows law students under closely supervised circumstances to appear and practice before it. Qualifying law students must have completed at least two years of law school or be a recent graduate awaiting admission to the bar. The law student must have a supervising attorney present during all appearances and must obtain the prior consent of the client. The student may not take any fee directly from the client, but he can be paid at the discretion of the employing law firm or government agency.

DEPOSITS WITH THE COURT

Rule DUt. 110 has been divided into two new rules, DUCivR 67-1 and DUCivR 71A-1. DUCivR 67-1 provides additional guidance to assist parties who make deposits with the clerk as designated or qualified settlement funds. The rule reflects new statutory requirements for such funds, including appointment of an outside fund administrator to ensure that Internal Revenue Service requirements are met for the administration of the fund.

Another change facilitates the filing of certain types of civil actions that require posting of a bond under state law. The old rule required the filer to obtain a signed order from the assigned judge at the time of case opening to set the amount of bond and to authorize the clerk to accept the funds. This procedure often caused delay and inconvenience for counsel filing the actions and for the judge signing the order. New DUCivR 67-1(c) allows the clerk to accept an undertaking or bond proffered by the filer without further court order. The court subsequently will review the bond and, if necessary, adjust the amount. This procedure duplicates that of the Utah state courts in which the standard bond offered in these case types is \$300.

NUMBER OF COPIES REQUIRED FOR FILING

DUCivR 5-2 clarifies whether and how many copies of documents are required for filing. Some documents require no copies. Only one original of proposed orders, certificates of service, and returns of service should be filed. An original and one copy is needed for most other pleadings, motions, and other papers. The copy is forwarded directly by the clerk's office to the assigned judge. Where a civil case has been referred to a magistrate judge, counsel must submit two copies of each pleading; the second copy is forwarded to the magistrate judge. This rule also requires parties to file pleadings and copies at least two business days prior to a scheduled hearing so judges have time to review them prior to the hearing. This obligation also applies to jury instructions and is set out again in both DUCivR 51-1 and DUCrimR 30-1.

The court also has adopted in DUCivR 77-3 a new policy regarding orders entered into pursuant to a written stipulation or in open court in the parties' presence. Effec-

tive September 1, the clerk is not required to mail copies of these orders to the parties absent a specific request by the parties.

FILING SEALED DOCUMENTS

DUCivR 5-2(b)(2) simplifies the procedure for filing *qui tam* cases under 31 U.S.C. § 3729. The clerk of court may accept these initial filings under seal without a signed order that seals the case. This exception extends only to these *qui tam* cases, whose sealed filing is established by statute. The sealing of any other civil case by the clerk requires a judge's order.

MAGISTRATE JUDGE FUNCTIONS IN CIVIL CASES

DUCivR 72-2 outlines the general authority of magistrate judges in civil cases. The magistrate judges may grant applications to proceed *in forma pauperis*, authorize IRS levies and seizures, conduct supplemental proceedings, and conduct initial scheduling conferences. The rule also details magistrate judge jurisdiction pursuant to orders of reference. The last section of the rule reminds parties of the option of consenting to proceed before the magistrate judge in civil matters to final resolution.

FILING A COMPLAINT WITH AN APPLICATION TO PROCEED WITH A WAIVER OF FILING FEES

Recent federal legislation imposed new requirements on incarcerated plaintiffs when they file civil rights complaints that are accompanied by an application to waive the filing fee. DUCivR 3-2 clarifies the difference in the application process for incarcerated vs. non-incarcerated persons.

DISCOVERY MOTIONS UNDER FED. R. CRIM. P. 16

Under the old rule regarding discovery motions under Fed. R. Crim. P. 16, parties required to make disclosures were required to do so within 48 hours prior to trial. Under DUCrim 16-1, that time has been extended from 48 hours to 14 days prior to trial.

SEALED EX PARTE MOTIONS

DUCrimR 17-1 sets forth the procedures for attorneys appointed by the court under the Criminal Justice Act to file motions for the issuance of trial subpoenas, appointment of experts, authorization of travel, and other extra-ordinary expenses.

These documents are filed under seal, and executed orders are given only to the filer. After the case has gone to trial, or after a judgment has been entered, the court seal is lifted and these documents are placed in the court's publicly accessible case files.

CONSTRAINTS ON JOINT REPRESENTATION

DUCrimR 44-2 replaces prior rule DUt. 302 and imposes stricter requirements on the government. A government attorney now is obligated to notify defense counsel at the time that the government attorney becomes aware of any potential conflict of interest in joint representation of two or more persons in the same criminal matter. If the defense attorney does not satisfactorily resolve the conflict, the government attorney is obligated to file a motion to inform the court.

MAGISTRATE JUDGE AUTHORITY IN CRIMINAL MATTERS

A new rule, DUCrim 57-15, outlines the specific authority of magistrate judges in criminal matters. The new rule authorizes magistrate judges to issue warrants of arrest and conduct hearings in extradition proceedings in accordance with 18 U.S.C. § 3184. Two other rules, DUCrimR 57-6 and DUCrimR 58-1, concern appeals of magistrate judge orders in criminal cases. The first rule applies to preliminary criminal orders by magistrate judges; the second applies to appeals of final decisions of magistrate judges in petty offense and misdemeanor cases.

AFTERWORD

The amended rules of practice for the United States District Court reflect an intent on the part of the court and the Advisory Committee to provide the bar and the public with procedural guidance that is user friendly and unencumbered by legal rhetoric and undue bureaucracy. The new format is designed to ease the burden of locating specific rules by linking them to their closest federal counterparts and by noting other federal rules to which their content also may refer, either directly or indirectly. Although the effort to produce the amended rules has been a sustained and laborious one, both the court and the Committee invite constructive suggestions as to how the current edition of the local rules might be improved. Comments and questions should be addressed to the clerk of court who also serves as the reporter to the Advisory Committee.

Supreme Court Seeks Attorneys to Serve on the Utah State Board of Continuing Legal Education

The Utah Supreme Court is seeking applicants to fill four vacancies for the Utah State Board of Continuing Legal Education. Interested attorneys should submit a resume and letter indicating interest and qualifications to Brent M. Johnson, Utah Court of Appeals, 230 South 500 East #300, Salt Lake City, UT 84102. Applications must be received no later than September 30, 1997. Questions may be directed to Mr. Johnson at (801) 578-3800.

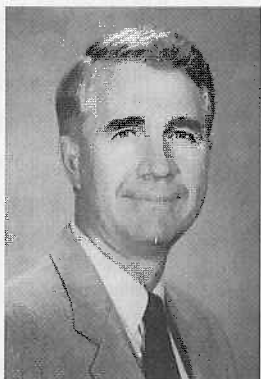
Supreme Court Seeks Attorneys to Serve on Ethics and Juvenile Procedure Advisory Committees

The Utah Supreme Court is seeking applicants to fill vacancies on the Advisory Committees on the Rules of Evidence and the Rules of Juvenile Procedure. Each interested attorney should submit a resume and letter indicating interest and qualifications to Brent M. Johnson, Utah Court of Appeals, 230 South 500 East #300, Salt Lake City, UT 84102. Applications must be received no later than October 20, 1997. Questions may be directed to Mr. Johnson at (801) 578-3800.

Utah Bar Honors 5 for Achievements in Law



Judge W. Brent West



Gayle McKeachnie



Jencie L. Anderson



Margaret R. Bird



Max D. Wheeler

The Utah State Bar has named its picks for judge, non-lawyer and lawyers of the year, citing all of the recipients for their achievements and service.

Second District Judge W. Brent West was selected by the Bar as "Judge of the Year." A graduate of Southern Methodist University, West served as Ogden city prosecutor before his appointment to the bench. He has also served as director of the Children's Aid Society and coached mock trials for Weber High School.

Vernal attorney Gayle McKeachnie, a share holder in the firm of McKeachnie & Allred, was named "Distinguished Lawyer of the Year." McKeachnie, who served four terms in the Utah House, is a member of the Utah Appellate Courts nominating

commission. He is a graduate of the University of Utah College of Law.

ACLU staff attorney Jencie L. Anderson was selected "Distinguished Young Lawyer of the Year." A William H. Leary Scholar and graduate of the U. College of Law, Anderson is responsible for all litigation, lobbying and community education for the ACLU.

Margaret R. Bird, who advises the state Board of Education on management of state trust lands, was honored for distinguished service to the profession by a non-lawyer. She was instrumental in the passage of the 1994 School and Institution Trust Lands Management Act and recently worked with elected officials on issues regarding trust lands in the Grand Staircase-Escalante National Monument.

The Young Lawyers Division of the bar was presented the Distinguished Section Award for contributing thousands of hours of service to the community. Among the projects undertaken by the division were the remodeling of the YWCA Battered Women's and Children's Center, ongoing support for the Tuesday Night Bar Program and representing the interests of children through the guardian ad litem program.

Salt Lake attorney Max D. Wheeler was named "Utah Trial Lawyer of the Year." A member of the law firm of Snow, Christensen & Martineau, Wheeler specializes in federal litigation. He is a graduate of the U. College of Law and is a fellow of the American College of Trial Lawyers.

Thank You!

I would like to thank all the members of the Bar Examiners Committee, Bar Examiners Review Committee and Character and Fitness Committee for a successful July Bar Examination that was given July 29th and 30th. Your voluntary time for the bar examination was very much appreciated.

Thank you again,
Darla C. Murphy,
Admissions Administrator

Request for Bar Examiner Review Committee Applicants

The Bar Commission is seeking additional members of the Bar Examiner Review Committee. Committee members are needed to review exam questions for the two yearly Bar Examinations to ensure that the questions are fair, accurate and consistent with federal and local laws. Committee service would be scheduled so that review and revisions could be completed several weeks before the July and February examination dates. Interested members of the Bar, including those who have previously applied, should send a resume to Ellen Maycock, Chair, 645 South 200 East, Salt Lake City, Utah 84111-3834. Application deadline is September 30, 1997.

CASE SUMMARIES

By Glen A. Cook

IN RE AFFIDAVIT OF BIAS

The Utah Court of Appeals reversed the trial court. The Utah Supreme Court reversed the Court of Appeals.

Subsequent to the Supreme Court decision, plaintiff's counsel filed an affidavit of bias against Justice Russon, pursuant to Rule 63(b) of the Utah Rules of Civil Procedure. He alleged therein that Justice Russon was biased, due to his past membership in the defense law firm, the possibility that Justice Russon was still receiving compensation from the firm, and the possibility that he had a continued relationship with the attorneys and employees of the law firm. Chief Justice Zimmerman directed Justice Russon to file an affidavit in response to the affidavit of prejudice. Justice Russon refuted the allegations.

Procedurally, the Chief Justice noted that only a justice on the Utah Supreme Court, other than Justice Russon, was qualified to pass upon the legal sufficiency of the affidavit. Secondly, only a single judge performs that duty, even in the case of multiple-judge courts such as the Supreme Court.

In discussing the timeliness of the affidavit, it was noted that Rule 63(b) requires the affidavit to be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. In this case, the Chief Justice accepted counsel's assertion that the purported bias was not known until after the Supreme Court decision was issued.

Substantively, the Chief Justice refused to issue a bright line rule prohibiting a judge from sitting on case on which his or her prior law firm was involved. It was noted that some situations might exist where a judge is required to disqualify herself, for example, when he or she has been counsel for either party in the proceeding, he practiced law with a lawyer who had worked on the matter at the time of their association. However, other factors were also noted that could lead to disqualification in the case of a former law firm: a continued financial interest in the firm, continued close personal relationships with members of the firm, employment by a family member in the firm, whether the judge had a significant involvement with



the Client while a member of the firm, or whether the judge's association with the firm was particularly recent.

STATE OF UTAH V. WINWARD,

319 Utah Adv. Rep. 8 (June 12, 1997).

During his criminal jury trial, defendant indicated on direct that he had not been interviewed prior to arrest. Upon cross examination by the prosecutor, this issue was explored. In closing arguments, the prosecutor stated:

Is it possible that he had some misconception about what the detective was going to do after he said he wanted to have his lawyer present? He certainly didn't put his lawyer on the stand to testify, so you would have to fill in the blanks for yourself.

On appeal, the Utah Court of Appeals held that the prosecutor's statements in closing may well have exceeded the limits of permissible comment on appellant's right to counsel, and were, "at the very least, bizarre." However, they declined to address the propriety of the prosecutor's closing argument, because defense counsel made a conscious tactical decision not to object and obtain a curative instruction at trial, thus waiving the right to review. It was further noted that an objection could have been lodged outside the hearing of the jury and after the prosecution's closing arguments. Again, because a conscious decision not to object was made, the court refused to find plain error.

CASTILLO V. ATLANTA CASUALTY COMPANY,

319 Utah Adv. Rep. 13 (Utah Court of Appeals, June 12, 1997)

Plaintiffs filed an Underinsured Motorist Property Damage (UMPD) claim against their insurance company, Atlanta Casualty. The insurer misinformed plaintiffs that their policy did not include UMPD coverage. The trial court ruled, as a matter of law, that the insurer breached the insurance contract when it erroneously denied claimant's UMPD claim. That ruling was not challenged on appeal.

Claimants hired an attorney who determined that their policy did include UMPD coverage. However, they were unable to reach an agreement as to the value of the destroyed vehicle and a lawsuit resulted. The two primary issues before the trial court were the value of the destroyed vehicle and whether the plaintiffs were entitled to attorneys fees and loss of use damages as a consequence of the insurer's breach.

The Court of Appeals found that the trial court erred in ruling, as a matter of law, that loss of use damages are limited to actual out-of-pocket expenses incurred.

The Court of Appeals held that it is widely accepted that the right to compensation for loss of use of a vehicle does not hinge upon the owner having actually rented a replacement automobile during the period of such loss of use. Producing receipts for money expended is not a legal prerequisite to recovering consequential damages.

However, the Court of Appeals refused to disturb the trial court's disallowance of the consequential damages claim. The Court of Appeals held that there was no proof establishing, with reasonable certainty, the amount of plaintiffs' actual loss. Even though the plaintiff testified as to the inconvenience caused by the loss of use of the vehicle, there was no testimony as to how much the family used the car or would have used a replacement. There was no evidence to dispel the possibility that a replacement vehicle would have just sat idle in front of the plaintiff's home for much of the 330 day period in which the vehicle was not available to them.



Utah Bar Foundation Election of Trustees and Officers



Hon. Pamela T. Greenwood



H. James Clegg



Joanne C. Slotnick



Randy L. Dryer

Hon. Pamela T. Greenwood was elected President of the Utah Bar Foundation Board of Trustees at the July Board meeting. H. James Clegg was elected Vice President and Joanne C. Slotnick was elected Secretary/Treasurer. Mr. Clegg is a member of the Salt Lake City firm of Snow, Christensen & Martineau and Ms. Slotnick is an Assistant Attorney General in the Criminal Appeals Division.

Randy L. Dryer was elected by the Bar membership to the Board of Trustees to a three-year term, and Pamela T. Greenwood

was re-elected to another term. Mr. Dryer is a member of the Salt Lake City firm of Parsons Behle & Latimer and Judge Greenwood serves on the Utah Court of Appeals.

Judge Greenwood said it is gratifying to be able to use funds which would otherwise not benefit anyone, to assist agencies providing legal assistance and education to those in need and lacking their own resources. Many people in this state are without adequate access to justice because of structural and financial barriers, even in this time of a strong and healthy economy. Judge Greenwood is

pleased that the Bar Foundation is able to alleviate that situation to some degree.

The non-profit organization of Utah lawyers has contributed over \$2.2 million to new and on-going projects and causes which provide free or low cost legal services, citizenship education, mediation services and other law-related services to the Utah community. In addition the Foundation provides ethics and scholarship awards to law students at the Brigham Young University and the University of Utah law schools.

CLE CALENDAR

NLCLE WORKSHOP: BANKRUPTCY LAW & SECURED TRANSACTIONS

Date: Thursday, September 18, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: \$30.00 for Young Lawyer
Division Members; \$60.00
for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: DRAFTING CORPORATE AGREEMENTS

Date: Thursday, September 18, 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

ALI-ABA SATELLITE SEMINAR: ESTATE PLANNING PRACTICE UPDATE

Date: Thursday, September 25, 1997
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: \$149.00 (To register, please
call 1-800-CLE-NEWS)
CLE Credit: 3 HOURS

20th ANNUAL SECURITIES SECTION WORKSHOP

Date: Friday, September 26, 1997
& Saturday, September
27, 1997
Time: To be determined
Place: St. George Holiday Inn
Fee: To be determined
CLE Credit: ~ 9 HOURS

ESTATE PLANNING AND RETIREMENT PLANS

Date: Wednesday, October 1, 1997
Time: 9:00 a.m. to 4:30 p.m.
Place: Provo Park Hotel
Fee: \$150.00 (lunch is included)
CLE Credit: 7 HOURS, WHICH
INCLUDES 1 IN ETHICS

NEW CHANGES IN DOMESTIC VIOLENCE

*Sponsored by the Criminal Law Section &
The Center for Family Development*

Date: Thursday, October 2, 1997
Time: 12:00 p.m. to 1:00 p.m.
Place: Utah Law & Justice Center

Fee: No charge – Brown bag
Luncheon or \$10.00 for a box
lunch – optional
CLE Credit: 1 HOUR
RSVP: Please call the CLE Department
at 297-7033, to register for this
luncheon. Space is limited and
registrations will only be taken
by phone. Please RSVP no
later than Friday, September
26, 1997. Please indicate at the
time of registration whether or
not you would like us to order
you a box lunch.

3RD ANNUAL NATIVE AMERICAN LAW SYMPOSIUM: CIVIL JURISDICTION & THE INDIAN CHILD WELFARE ACT

Date: Friday, October 3, 1997
Time: 9:00 a.m. to 5:00 p.m.
(tentative)
Place: University of Utah College of
Law – Moot Courtroom
Fee: \$75.00 for half-day; \$125.00
for full-day
CLE Credit: ~ 6 HOURS
Questions: Call Mary Ellen Sloan at
(801) 468-3420, or Linda
Priebe at (801) 363-1347

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

Total Due

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Phone

Address

City, State, Zip

Bar Number

American Express/MasterCard/VISA

Exp. Date

Credit Card Billing Address

City, State, ZIP

Signature

Please send in your registration with payment to: **Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111.** The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

Registration Policy: Please register in advance as registrations are taken on a space available basis. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day.

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

NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2 year CLE reporting period required by the Utah Mandatory CLE Board.

**ANATOMY OF A COMPUTER:
HOW TO USE PC'S IN
THE PRACTICE OF LAW**

Date: Thursday, October 9, 1997
Time: 8:00 a.m. to 5:00 p.m.
(tentative)
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: 4 HOURS

**NLCLE WORKSHOP:
ETHICS & CIVILITY**

Date: Thursday, October 16, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: \$30.00 for Young Lawyer
Division Members; \$60.00
for all others
CLE Credit: 3 HOURS

**COMMERCIAL AND CONSUMER
BANKRUPTCIES & BUYING
AND SELLING A BUSINESS**

— Two seminars in one!
(This seminar was originally
scheduled for March 21, 1997)

Date: Friday, October 17, 1997
Time: Session I (Bankruptcy) —
8:30 a.m. to 11:45 a.m.

Session II (Business) —
1:00 p.m. to 4:15 p.m.
Registration begins 30
minutes before each session
Place: Utah Law & Justice Center
Fee: \$85.00 for one session;
\$150.00 for both sessions
CLE Credit: 3.5 HOURS for one session
7 HOURS for both sessions

**THE ART OF EFFECTIVE
SPEAKING FOR LAWYERS**

Date: Wednesday, October 22, 1997
Time: 8:00 a.m. to 4:00 p.m.
(subject to change)
Place: Utah Law & Justice Center
Fee: \$140.00
CLE Credit: ~ 6 HOURS

**ACCOUNTING FOR LAWYERS:
USING FINANCIAL DATA
IN LEGAL PRACTICE**

Date: Thursday, October 23, 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

**ALI-ABA SATELLITE SEMINAR:
CRITICAL LEGAL ISSUES
FOR NONPROFIT ORGANIZATIONS**

Date: Thursday, October 30, 1997
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$125.00 for nonprofit man-
agers, directors & volunteers;
\$160.00 for all others
(To register, please call
1-800-CLE-NEWS)
CLE Credit: 4 HOURS

**LITIGATION SECTION
ANNUAL DISCOVERY SEMINAR**

Date: Friday, October 31, 1997
Time: 9:00 a.m. to 4:30 p.m.
(Registration begins at
8:30 a.m.)
Place: Utah Law & Justice Center
Fee: \$50.00 for Litigation Section
Members; \$100.00 for
Non-section Members
CLE Credit: ~7 HOURS, WHICH
INCLUDES 1 IN ETHICS

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Two break out sessions: Basic and Advanced presentations.

Up to seven CLE credit hours, including one of ethics.
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Changes in Tax Law ♦ Advanced Charitable Trusts
Basic Estate Planning ♦ Retirement Plans in the Estate
Advising the Trustee ♦ Advanced Planning: Family Business
Comparing Planning Choices ♦ Trust Tax Returns for Lawyers
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Advising Re: Retirement Plans ♦ Changes in Utah Probate Code

Featured presenters include:

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- Bruce Cohn
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- David Lauritzen
- David Sloan
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- Professor Patricia White

OCTOBER 1, 1997

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A comprehensive review of this area of
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645 South 200 East

Salt Lake City, Utah 84111-3834

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

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Required: a minimum of three (3) hours

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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

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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.

West Pioneers the Virtual Classroom on the Internet

**Top American law school are experimenting with
World Wide Web teaching techniques**

Information Age technology designed to fundamentally change how legal education is delivered and the way students learn is being tested on the World Wide Web (WWW) at law schools throughout the U.S. as part of an educational initiative sponsored by West Publishing.

Testing is currently being conducted by students and professors at Cornell Law School, Duke University School of Law, Georgetown University Law Center, University of Illinois College of Law, University of Minnesota Law School, University of Missouri-Kansas City, School of Law, Nova Southeastern University Shepard Broad Law Center, Santa Clara University School of Law, Stanford Law School, The University of Texas School of Law, and Wake Forest University School of Law.

The West Education Network desktop technology breaks down the walls of the traditional classroom and brings the concept of the virtual classroom to the WWW. Students and teachers can communicate more easily and efficiently, increasing the exchange of ideas and information. The WWW provides fingertip access to essential databases of information, as well as tools to better manage greater amounts of information. Use of this technology, regardless of the subjects involved or age of the students, holds potential benefits for students, schools and employers:

- **Virtual classroom & cooperative learning.** Students have 24-hour access to professors and other students via discussion forums on the WWW. Students help each other learn by debating issues and answering questions outside of class. Outside experts can also contribute to the class via these forums. Currently, for example, a group of students at Wake Forest University School of Law are communicating with David Epstein an attorney at King & Spalding, Atlanta, GA, who is an expert in bankruptcy law.
- **More effective teaching.** Professors can monitor questions and issues being discussed among students on the WWW forums and then address problem areas in class, making better use of valuable class time and giving professors the ability to cover more material than before. Wake Forest law professor Steve Nickles says, "It's like having an open door into my class, outside of class."
- **Meeting the changing needs of learners.** Increasingly, education is being viewed as a life-long process. The need for on-going skills development and retraining workers to meet changing job demands are important policy issues. The challenge is often access to education. Schools can use the WWW to meet the needs of learners and employers.

CLASSIFIED ADS

RATES & DEADLINES

Bar Member Rates: 1-50 words — \$20.00 / 51-100 words — \$35.00. Confidential box is \$10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please call (801) 297-7022.

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.

POSITIONS AVAILABLE

ATTORNEY POSITION OPEN – BUSINESS & TAX 3-5 years experience. Snow, Nuffer, Engstrom, Drake Wade & Smart seeks attorney for its St. George Office. Fax confidential application to (801) 628-1610 or email to tom.calegory@snedws.com; or mail to P.O. Box 400, St. George, UT 84771-0400.

Attorney: Multimillion dollar international company seeks litigation attorney for corporate legal department. Minimum requirements include: licensed to practice in Utah and 3-5 years litigation experience. Salary based upon experience. Send resumes to Marilee @ P.O. Box 651, Salem, Utah 84653.

Small Ogden Firm will provide modest office space and receptionist services in

exchange for part time contract work. Send brief resume to Box # 34, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Salt Lake Firm seeking full time Tax Attorney, LLM preferred but not required. Send a resume to, Box # 35, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Small firm in beautiful Cedar City, Utah, seeks associate with 2-6 years civil litigation experience, excellent interpersonal skills. Strong credentials required, real property law background helpful. Reply to Confidential Box # 36, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

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IDAHO BOUTIQUE FIRM: Network marketing boutique firm with national practice seeks attorney with 4+ years experience in consumer protection (particularly as it relates to network or multilevel marketing), food and drug, and/or sales and marketing law. Work includes multilevel marketing, food and drug, contracts, trademark, international, and general corporate. Excellent upward mobility opportunity for associate in a rapidly growing practice area. Clients include entrepreneurial start-up to medium sized companies in consumer products, non-prescription drugs, and telecommunications. Exceptional drafting and people/customer services skills essential. Significant client contract and substantial responsibility. Relaxed work environment and Rocky Mountain quality of life. Grimes & Reese, 1270 Woodruff Avenue, Idaho Falls, Idaho 83404. Web address - <http://www.mlmlaw.com>. Include salary history and requirements with resume.

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Six attorney office has immediate space available downtown Salt Lake City three blocks from the new courthouse. Easy freeway access. Free parking. Large reception area, conference room, secretarial space, copier, fax, new phone system and break room. 254 West 400 South, Suite 320. Call (801) 539-1708 or (801) 532-0827.

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Tired of commuting from Davis County into Salt Lake? Law office space available (office sharing with two other lawyers) at 380 North 200 West Bountiful, at a reasonable rate. Easy freeway access. Ample free parking for clients. Call Paul Hess or Larry Whyte for details, @ (801) 397-0363.

OFFICE SPACE/SHARING: Modest office space with receptionist in small Ogden Firm available in exchange for contract work. Send brief resume to Box # 34 Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

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Qualifications: Graduation from ABA accredited law school with Juris Doctorate; bar membership preferred. If not Bar certified, must successfully complete Bar requirements at next opportunity. Must possess working knowledge of state court system, Utah Law and legal terminology plus skill in legal research, legal writing format and citation techniques, excellent oral and written

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Salary: \$17.39 - \$18.36/hour (\$36,310 - \$40,423) depending upon qualifications, plus state benefits.

Closing date: September 30, 1997. Application and job announcement may be obtained from Sharon Hancey, Trial Court Executive, 43 N. Main, Brigham City, UT 84302, ph. 734-4600; Brigham City Dept. of Workforce Services; or Human Resources, Administrative Office of the Courts, 230 S. 500 E., Ste. 300, SLC, UT 84102, ph. 578-5804 or 3890. Equal Opportunity Employer.

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