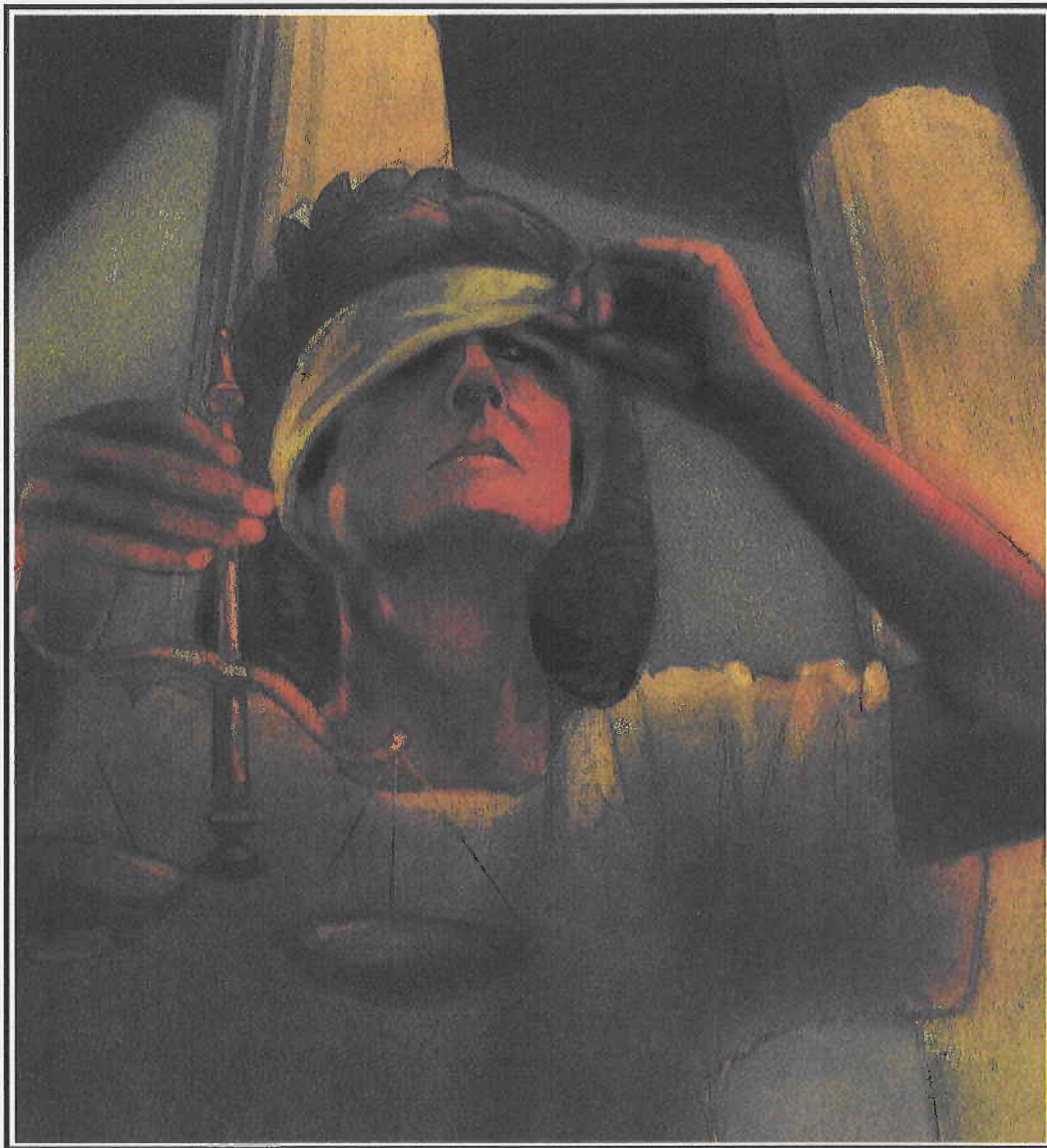


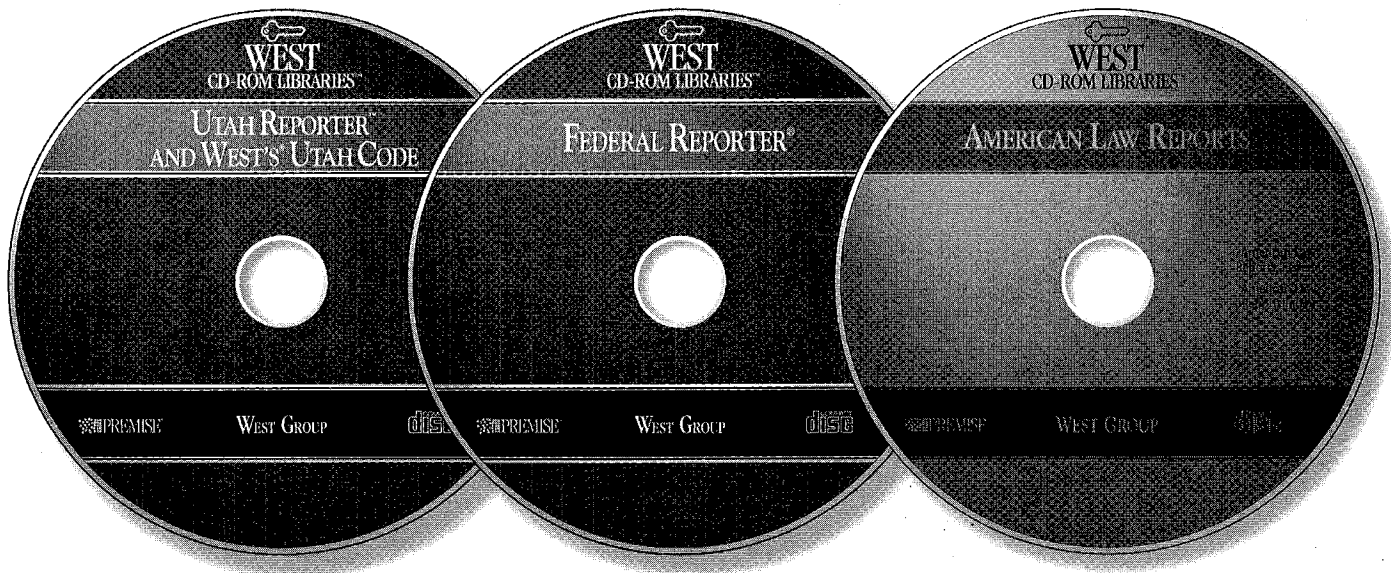
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ISSUE OF THE UTAH BAR JOURNAL



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CONTENTS:

PRESIDENT'S MESSAGE

A Memory for Law Day
by Charlotte L. Miller4

COMMISSIONER'S REPORT

The Million Dollar Question
by John Florez.....5

REPORT FROM THE CHAIR6

FROM OUR PERSPECTIVE7

LETTERS FROM OUR MEMBERS8

POINT/COUNTERPOINT –

**Mandatory Reporting of Pro Bono Service:
Why It Is an Issue**
by Chief Justice Michael D. Zimmerman13

**Mandatory Reporting of Pro Bono Services:
A Reasonable Response to a Public Need**
by Dennis V. Haslam.....15

**Mandatory Reporting Requirement:
"The Way Things Are"**
by Glen M. Richman16

PRACTICE POINTERS

Motions at Trial and After
by Francis J. Carney17

Avoiding the Unauthorized Practice of Law
by Katherine A. Fox and Carol A. Stewart22

CASES IN CONTROVERSY

**Salt Lake City v. Garcia: A Scientific
Evidence Decision Built Upon Sand**
by Ralph Dellapiana24

THE VOIR DIRE INTERVIEW

The View From the Other Side.....29

IN MEMORIAM

Wayne L. Black
by Fred R. Silvester31

David K. Watkiss
by Jeffrey D. Watkiss.....31

A CREDIT TO THE PROFESSION

Judge David Winder
by Gordon W. Campbell33

AMUSEMENT IN THE LAW

Boosting the Bootleg
by Herschel J. Saperstein.....34

Judge Ritter Revisited
by Glen E. Fuller.....35

BARRISTER

There's No Such Thing as "Entry Level"
by Brian Jones.....36

STATE BAR NEWS.....38

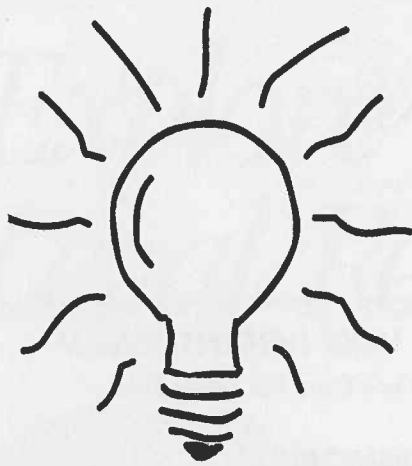
UTAH BAR FOUNDATION.....46

CLE CALENDAR.....47

CLASSIFIED ADS.....49

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Voir Dire is an independent intellectual journal for lawyers who litigate cases, and judges who decide them. *Voir Dire* is published twice a year by the Litigation Section of the Utah State Bar.

Voir Dire was created to provide members of the Utah State Bar with an alternative forum to examine issues and express opinions about the adversary system. *Voir Dire* strives to be practical and concrete, lively and readable, and will not avoid controversy or unpopular viewpoints.

The Editorial Board encourages submission of manuscripts of original articles, book reviews, comments, case notes, and letters from members of the Utah State Bar concerning the adversarial process and other material of interest to attorneys who venture into the litigation arena.

All contributions must be typewritten, double-spaced electronic printouts, with all references and footnotes numbered consecutively, on 8 1/2" by 11 1/2" paper. Manuscripts should be submitted with an electronic disk to the *Voir Dire* Editorial Board, 645 South 200 East, Salt Lake City, Utah 84111.

Publishing and editorial decisions are based on the Editorial Board's judgment of the quality of the writing, the timeliness of the article, and the potential interest of the readers of *Voir Dire*. If a submission is accepted for publication, the Editorial Board reserves the right to make deletions to conform to space limitations.

No submission will be published that contains defamatory or obscene material, violates the Rules of Professional Conduct, or which may otherwise subject the Litigation Section, the Utah State Bar, the Bar Commissioners, or any employee of the Utah State Bar to civil or criminal liability.

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Bar Information Line:
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Mandatory CLE Board:
297-7035
E-mail: mcle@utahbar.org

Member Benefits:
297-7025
E-mail: ben@utahbar.org

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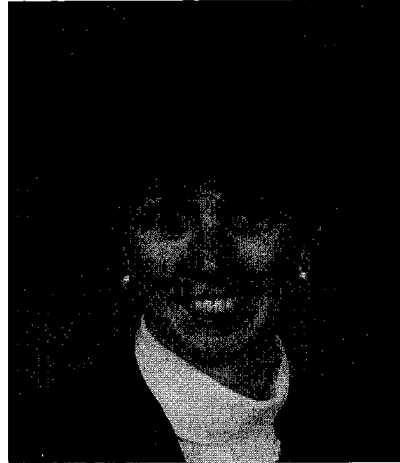
A Memory for Law Day*

by Charlotte L. Miller

I had the opportunity to attend a variety of Law Day functions this year; however, the truest celebration of law was not any official Law Day function, but was the memorial service for David K. Watkiss on May 1 (the real Law Day). The memorial service was a celebration of Dave's life, much of which was spent contributing to the legal profession. The most tangible contribution was certainly obvious - three children and four children-in-law who are lawyers. (One child is a reporter and that fact alone lends itself to such an abundance of overly clever remarks that I will let each of you create your own). At the memorial service, Dave's children reminded us of so many of the characteristics we liked about Dave—his fascination with people, his humor, his desire to have "clients" not a "client base," his desire to practice law not build a practice, his brilliance and humility.

Dave didn't consider himself a mentor or a leader—he was just interested in people. Every person I've spoken with about Dave believed he went out of his way for them, that he took a special interest in them. That natural interest encouraged young associates, and comforted and challenged clients and colleagues. A young attorney who had practiced with Dave wrote: "David was an example of how an attorney can be a successful, tough litigator and a courteous, honest and compassionate professional at the same time. His memory is a genuine motivation to me in my work."

Dave was never afraid of telling clients what they did not want to hear. In fact, he took some pleasure in telling many people what they did not want to hear. Dave could communicate in such



a way that his clients and colleagues would thank him for telling them how wrong or foolish their actions were. Dave had a great dry wit but was not flippant. He was thoughtful, polite, and intelligent, but knew not to take anything—especially himself—too seriously. Dave always introduced himself to my children as "Sam's grandfather." He understood his audience—as all great trial attorneys do.

Dave didn't work to be a "liberated man" and he didn't worry about being politically correct. Dave just did what he thought was right. As a result, he provided many opportunities and much encouragement for women to succeed in the legal profession. Dave told me to run for Bar Commissioner, to run for Bar President, but also told me it was a ridiculous thing to do. He was correct in all respects. Dave could be cynical and inspiring at the same time.

Dave made the most of every experience—whether it was representing a multibillion dollar client or talking to a child—and he was more likely to brag about his conversation with a child than a winning case. Dave represented powerful clients with lots of money, but he

told stories about what some might call "small" cases—the evicted tenant or injured plaintiff. Dave talked about cases he lost as well as those he won, and he told many of us that he learned more from his losses than his victories. He helped others learn from their losses by his willingness to share his own disappointing experiences.

Dave had a good time in all of his roles—he liked to work hard at the practice of law, he believed in the political process and supported it with enthusiasm, and he enjoyed his family. He was wildly in love with his wife. He adored and respected her—but mostly he was in love with her.

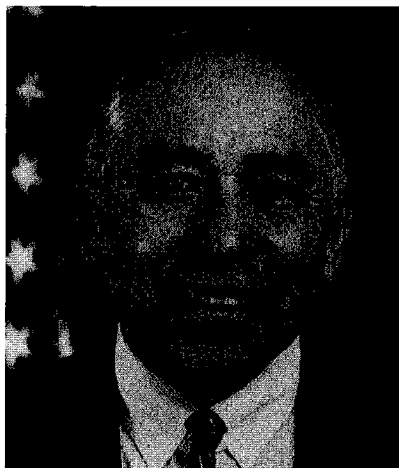
I am fortunate to have practiced law with Dave—but even more fortunate to have had a drink or two and a dinner or two with him and Dorothy. It is somewhat selfish of me to write about Dave. I am sure I just want to keep him around a little longer. For those of you who knew Dave (and many of you knew him better than I), think about him. It will make you smile. For those of you who didn't, ask someone to tell you a Dave Watkiss story. It is sure to teach you a lot about how to practice law and how to enjoy life. As a San Francisco attorney wrote upon learning of Dave's death: "David was one of the tall men in Salt Lake." A perfect memory for Law Day, and all the days we practice law.

**I encourage you to read the obituary at the end of Voir Dire written by Dan Watkiss. When I first heard that both items would be in the same publication, I worried about repetition. A close friend told me that an entire issue about David K. Watkiss could not be too much. So true.*

COMMISSIONER'S REPORT

The Million Dollar Question

by John Florez



The purpose of an integrated bar (a monopoly) is to promote the administration of justice and the professional development of lawyers. Toward that end, what has the Bar accomplished with the \$2.7 million budget? Why does it have a \$1 million surplus?

As a public member appointed to the Bar Commission, I keep asking simple questions for which, I think, Bar members and the public would like answers. Questions which I believe are critical to keeping any organization, especially a monopoly, cost-effective and responsive to its customers and stockholders.

Questions

1. If the mission of the Bar is to promote the administration of justice and the professional development of attorneys, what goals has the Bar established which would further that mission?
 - a. What are the problems with the Utah justice system, and what has the Bar done to resolve them?
 - b. What are the problems lawyers face in their daily practices, and what has the Bar done to help resolve them?

- c. How does the Bar measure success and who knows the results?
2. What is the vision for the Bar? Where does it expect to be in five years?
3. How does the Bar determine what programs or "good causes" to fund?
4. What programs does the Bar currently fund which:
 - a. Are "nice to have," but do little to further the Bar's mission;
 - b. Were timely years ago, but now have little relevancy to the needs of Bar members in their practices and should be eliminated?
5. What is the ultimate purpose of the Office of Attorney Discipline (OAD)? Is it simply to discipline unethical attorneys or is it to eliminate unethical conduct among the profession and maintain the public's trust in the profession? How is success of the program measured: by the number of disciplines meted out, or how it has reduced the number of ethical violations and improved the public's confidence in the profession?
6. Should the Bar be spending twenty-five percent of its budget on the OAD, or is there a better way

to carry out the program's intended purpose (assuming we know its purpose)?

7. What is the most effective way to improve legal services to the poor? Should the Bar put money into existing programs—to do more of the same—or should it be advocating for change and accountability?
8. If the Bar has put more money into improving *pro bono* efforts, how effective has it been? Of the 1,000 attorneys who have volunteered, how many have been used?
9. How useful are the CLE programs in assisting Bar members in their daily practice, and how accessible are they to members, especially in rural areas?
10. How best can the Bar assist attorneys in carrying out their "oath of office"—to promote the administration of justice (the primary purpose of an integrated bar)?

The final question I keep asking is: If I were an attorney, and membership in the Bar was voluntary, why would I want to join? If you don't ask these questions, who will?

YOUR MONEY, YOUR CHOICE!

REPORT FROM THE CHAIR

The Benefits of Membership

The Litigation Section is the largest in the Bar. Size and geographic diversity make it prohibitively difficult to hold meetings except at the mid-year and annual conferences. Still, the Section strives to provide tangible benefits for its members that go beyond having a voice at the table. For example, the Section owns dozens of CLE tapes and videos which may be borrowed from the Bar office. These include many of the most popular titles for which you and I regularly receive advertising mailers. The check-out fee is ordinarily \$30, but for Section members the cost is \$0. Last year, the Section put on a series of seminars collectively called The Trial Academy. The quality of the instruction was first-rate. Registration fees for Section members were substantially discounted. We intend to continue this practice at future presentations of The Trial Academy. Similar discounts are also available at NITA short courses hosted by the Section. It's easy to see that the annual dues of \$30 can be quickly recouped. Beyond such crass monetary concerns, the Section serves its members through a wide variety of activities, including the publication of *Voir Dire*, mandatory new lawyer training, and updating the Model Utah Jury

Instructions. We trust that our members feel their dues are being well spent, and that the Section is meeting their needs. We welcome any ideas or help to expand and improve the services which the Litigation Section offers.

A Short Tribute

I would like to add my voice in tribute to retiring Judge David K. Winder and share a brief reminiscence. Shortly after I began practice in 1980, my partners sent me to appear on an inconsequential matter in federal court. David Winder was the judge. He entered the courtroom through his private door and sprang up the stairs to the bench. He called the case, and recognized the other, more senior, lawyer by name. Then, to my total amazement, he entered my appearance for me and greeted me by name. We had never met before, and I saw no reason why he should have any idea that I even existed. I know now that my experience has been repeated hundreds of times with other lawyers. That Judge Winder would be so considerate of those who practiced before him still strikes me as amazing. Small gesture though it may be, this kindness typifies the graciousness of one of the finest judges before

whom any of us have, or ever will, appear.

Farewell to Arms

It has been a wonderful privilege for me to chair the Litigation Section this past year. The aspect of the experience which has most impressed me has been the willingness of Section members to volunteer their time to serve the Bar. The faculty of The Trial Academy, the Executive Committee, the Editorial Board of *Voir Dire*, and many others have given countless hours out of very busy schedules. With such committed people, I am confident of the continued quality of the Section's activities. That "good hands" feeling is reinforced as I turn the reins over to Vickie Kidman. She has been a stalwart, and will be a wonderful Section chair. ■

David Jordan

