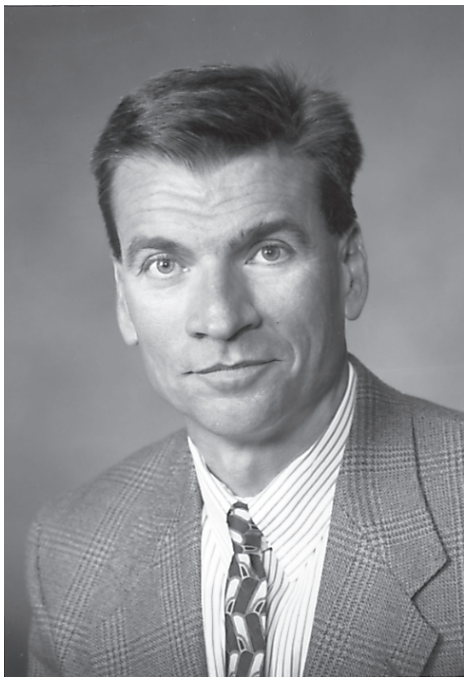
PRESIDENT'S MESSAGE

by Gregory G. Skordas
Salt Lake County Bar President

Jim Clegg
4/31/39 - 1/15/00

In December I was sitting in my office talking on the telephone. A secretary brought me a note that read "Jim Clegg is in the lobby." I immediately ended the telephone call and went to see him. Jim Clegg was not a man I would have wait in the lobby. He and I had tried to reach each other several times that day by telephone. Jim had left me a message to have him interrupted if he were on the telephone. I gave that instruction to the receptionist and she transferred me. While Jim was trying to pick up my call it somehow got bounced to another floor.

Jim embraced technology -- he dictated letters while riding his horse and took his laptop to his ranch. Jim also knew when the best course of action was to get up and walk across the street. Jim brought with him to my office an attorney who had made a mistake. Jim wanted me to help him. Jim made no judgments. He simply wanted me to help his friend. He introduced us, then graciously left. It meant a lot to me that Jim trusted me to help his friend.



Gregory G. Skordas

When Jim Clegg brought someone for me to help, there was no thinking twice. You see I owed Jim (not in his mind but in mine). Only once has my family ever really needed a lawyer. We hired Jim. Jim was patient, kind, thoughtful, and tough. He took care of us. He cared for us. He understood that the one role of a lawyer is to remove the stress and burden from a client. Jim did not have cases and clients, he had stories and people who trusted him.

Jim could bring calmness and the sense of safety to any situation. My youngest daughter was thrown off one of Jim's horses once (I understand she's in good company). My wife, who would normally be somewhat neurotic about such an event, was amazingly undisturbed. She said, "It's Jim's horse and Jim's ranch, there's nothing to worry about."

Jim brought that same sense of certainty to the practice of law. His warmth, wit and matter of fact brilliance was a pleasure to observe whether he was making a legal argument, telling a joke, or suggesting a good restaurant.

I yearn for another note saying that Jim Clegg is in the lobby. On January 15th Jim suffered a heart attack and died while riding his horse on his ranch. I will miss him.

Why the "Good Old Boys" are Good for Everybody

By Honorable Ronald Nehring

"Good Old Boys." This was the lead for the *Salt Lake Tribune*'s January 11 editorial which took issue with Governor Leavitt's appointment of Michael Wilkins and Matthew Durrant to the Utah Supreme Court. The sniping at the new Supreme Court nominees had barely subsided when bills appeared in the legislature with that shared the goal of making it easier to remove judges from the bench.

That the Utah Legislature would press for greater public accountability for the activities of judges comes as no surprise. In recent times the coming of a new year brings on bouts of dyspepsia among judges that can be traced less to holiday over indulgence than to apprehension over what new threats to judicial job security might emerge from the creative minds in the legislative branch. What made this year unique was the simultaneous appearance of both judicial hiring and firing on the public debate agenda. The appointment and removal of judges serve as useful points of reference to better understand the tension between judicial independence and judicial accountability. In my view, the product of this better understanding is a recognition that the political institutions of our state are better served by shifting our critical eye from the appointment process and focus our efforts on insulating judges from the risk of capricious removal from office in the name of judicial accountability.

The appointment of judges is intended to give expression of the public will. This is true even though Utah has opted to reject the purest form of public expression, direct contested elections of judges, in favor of executive nomination and legislative confirmation. The choice tomediate public input into the selection of judges through our elected representatives has served us well. By avoiding electoral slugfests, we have shielded the judicial branch from the poisonous mix of money and justice. A candidate's judicial appointment policy seldom mobilizes the voting public as Orrin Hatch's failed strategy of riding outrage over activist Federal judges to the Presidency bears witness. Still, every president or governor is impelled to stamp the judiciary with the imprint of the ideology and agenda that resonated with voters.

What vexed the *Tribune* was the governor's missed opportunity to inject "diversity" into the Court's composition. A "diverse" nominee is one who would presumably embrace one or more characteristics, eg. gender, skin color, judicial philosophy, that would distinguish him from the profile male, conservative, and Mormon body type and world view that dominates Utah. Put another way, a "diverse" appointee to our Supreme Court would be someone unlikely to have voted for the governor who nominated him. Most governors and the voters who elected them would not view advancement of the cause of diversity in their highest court with enthusiasm. One need not be a Machiavellian to understand that little good can reject the notion that it is a good idea to allow anyone holding a contrary viewpoint within reach of the levers of power.

A governor compelled to choose a judicial candidate with diversity credentials over a "good old boy" soulmate could rightfully feel less obligated to defend the judge against unpopular decisions and calls for his removal. If the popular will is compromised in the judicial appointment process, those elected officials charged with giving voice to that will can be expected to push for more public accountability and easier ouster of judges who render decisions which advance interests at odds with the majority.

Even the best qualified and courageous "diverse" judges will be motivated by professional self preservation. In the fact of a system which threatens removal from office for issuing unpopular rulings, it is unfair to expect "diverse" judges to boldly press to have their unique perspectives highlighted in their opinions. Individual and minority interests will be better protected by judges who can make principled rulings without fear or reprisal. Where judges are adequately shielded from public passion, conventional characteristics of diversity like gender, ethnicity, and religion diminish in significance. Of paramount importance to those seeking to place the imprint of minority perspectives on the law is that the task be accomplished with intellectual integrity and in a manner which does not erode the legitimacy of the rule of law. In this regard, it is not enough that a judge claim non-traditional life experiences growing out of membership in a minority race, religion or ethnic group. Rather, the judge must be capable of integrating his minority perspective into jurisprudence in an understandable, principled and persuasive way.

I submit that the task of making the law responsive to diversity issues falls first and foremost to lawyers. If this job of diversity-based advocacy is done well, a judge who is a "good old boy" but an otherwise well qualified in the sense of being intellectually honest and receptive to a well crafted argument is likely to give that minority perspective the force of law, provided the judge is sufficiently insulated from public second-guessing of his ruling. *Brown v. Board of Education* is but the most obvious illustration of this point put into practice. In arguing *Brown*, Thurgood Marshall presented an empirically based minority perspective on racial segregation inpublic education in manner that resonated with the Court's most recently appointed and influential "good old boy," Chief Justice Earl Warren.

Opinions which embrace minority per-

spectives should also enjoy greater institutional legitimacy when authorized by a court composed of judges appointed by a governor guided in his selection criteria only by his definition of "best qualified." By contrast, unpopular rulings issued by a court perceived to be occupied by judges appointed based on their diversity would be at risk of being read as promoting a diversity agenda at the expense of sound legal analysis and therefore less worthy of respect.

Although as a non-Mormon and a Democrat, I can stake only a modest personal claim to diversity status, I can state with considerable confidence that if faced with the choice of either a judicial roster filled with "good old boys" who enjoy the independence to make decisions unpopular with the majority or a diverse bench vulnerable to the passions of the electorate or the legislature, I'll take the "boys" everytime.

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You are cordially invited to attend the Annual Party and Dance
and Election of Officers of the Salt Lake County Bar Association
at The Country Club on Saturday, May 20, 2000
cocktails 6:30 • dinner 7:30 p.m. • dancing 9:00 p.m. • live music
$45 per person for members & guests / $60 per person for non-members
Limited seating, please RSVP no later than May 12, 2000

Second Annual Salt Lake County Bar Association Golf Tournament and Fund Raiser

DATE: Monday, June 5, 2000

PLACE: JEREMY RANCH GOLF COURSE

TIME: 7:00 a.m., Shot Gun Start, Scramble Format

COST: $70.00 per player, includes greens fees for 18 holes, cart, tournament fee and prizes

SIGN-UP: Anyone can enter, but registration will be limited to the first 144 who sign up. If you are interested, send a check for $70.00 per player (made payable to "Salt Lake County Bar Association") to Deno Himonas, Jones Waldo Holbrook & McDonough, 1500 Wells Fargo Bldg., 170 South Main Street, Salt Lake City, Utah 84101

THIS YEAR ALL PROCEEDS WILL BE DONATED TO – CAMP KOSTOPOLUS – WHOSE MISSION IS TO IMPROVE THE QUALITY OF LIFE OF INDIVIDUALS WITH DISABILITIES THROUGH A VARIETY OF RECREATION AND EDUCATION EXPERIENCES.

Corporate, Firm and Hole Sponsorships Are Available
Contact Deno Himonas (532-3200)

Justice Learned Tongue

Note to secretary. Please type my letter to Judge Furgis and while you're at it, post my monthly bromide to the Salt Lake County Bulletin. Please be careful not to mix the two up, I do not want my letter to Judge Furgis to land anywhere but in his hands. If you mix this up, the cat will really be out of the bag. I'm not going to have time to sign it so just sign it for me and mail it.

Thanks, Tongue

Dear Judge Furgis:

I appreciate your recent note, and it's a bummer about the shingles! (No pun intended). As far as I am concerned, the only shingles you should ever have are on your roof. I think old age is just God's way of making us not give a damn when our time has come.

I am responding to your "urgent message" with some dispatch because I detected some measure of angst in your inquiry. (Hence the "dictated but not read")

As I understand it, your State's Office of Judicial Administration has done the bidding of some officious litigators and decided to overhaul your law and motion procedures. Don't despair, we too used to have the procedure which permitted litigants to resolve their law and motion differences on a few days notice with a few pieces of paper and gather on one day of the week and ferret it all out. I agree that most such squabbles are easy to resolve and it is great to see the Bar up on their feet, working through their differences. However, your new system, which is exactly like our current program, "ain't that bad." The way it works is, if you have a dispute you have to write up a sheaf of paper, send it in, give the other side a chance to write up a pile of paper and then they have to send in a request (sort of a "mother may I") to see the Judge. And if you don't want to see them, you don't have to. In fact, you can just ignore it and hope they go away. Then if you see them, it's sort of like the tee times at the country club. You just have your secretary call when it's convenient for you and you only have one or two lawyers to deal with at a time. Talk about a clean calendar. While it's true that the young lawyers don't get much chance to get to court and learn how to argue cases, the way I figure it is, they'll get scared of the courtroom and maybe settle more cases and we won't have any calendar at all.

It gets better! Fasten your seatbelt because if you think these changes are something, wait until they glom onto the rules that the "rocket scientists" running the Federal courts have adopted. Our courts have just done so and now the lawyers can't even begin discovery until you have a tea party with the other side, lie to each other in writing about what you know and don't know, make an appointment with the court (at its leisure), and determine if the discovery plan makes everybody happy. Talk about nonsense and delay. But, again, what a boondoggle for the calendar. We've seen our mediation activity go through the ceiling. The beauty of all these brilliant innovations is that I've got leisure time I can't even believe. In fact, I'm almost up to date reading my Travel & Leisure and I'm holding therapy sessions every Thursday afternoon with the Christian Brothers (they think they still own the winery and get confused when they go in and end up on a tour).

Don't despair. These paper shufflers streamlined the system and you can start planning your vacation. Best ti Gurdy!

Fondly, Tongue
(dictated but not read)

Automating the Pracitce of Law

By Ryan R. Warburton

Imagine yourself in a meeting with a client at her office to discuss her estate planning needs. The client tells you all of the relevant information you need so that you can go back to your own office and begin drafting her a set of simple estate planning documents. She asks how long it will take to get her a first draft for review, upon which you respond, "one week."

Back at your office you have your secretary pull up some estate planning documents on the computer and search and replace names and other data relating to a former client. You then ask your secretary to find another previous matter that used customized language you had drafted (although you are just not quite sure which matter it was—something which seems to happen more often than it used to) because your current client is also requesting that same language. Your secretary gets a first draft of documents for you to review in one day. You then review the documents and note that all gender references in the document still refer to "he" instead of "she" and that the copy of the will you had your secretary use was not tailored as well to your current client as you thought. After both minor and substantive revisions you give the documents back to your secretary to complete a final draft.

As you promised, within a week you deliver the documents to your client for review. She calls you to let you know that the documents look fine, except that one of the signature pages still has the name of a former client on it. Although a little embarrassed at the oversight (especially since the former client is her ex-husband), you make the change and complete the estate planning documents.

Now, once again, image yourself at the same meeting with your client at her office. You have your laptop computer with you. As she tells you her relevant estate planning needs, you input the necessary data into your computer and it then assembles a first draft of documents for her. The documents are based upon an automated template set that contains all relevant provisions and contingencies that most clients would need. The computer has been programmed to select only those provisions relevant to your client that you tell it to use and to fill in all data that you input in the proper places with the proper punctuation. Thus, when you review the documents you find no errors. Within the day you deliver the documents to your client and she is impressed at your ability to deliver such high quality legal documents in such a short time. Sounds unreal? Not so.

Lawyers using a document assembly system efficiently create customized, high quality legal documents like this everyday. A document assembly system (DAS) is a computer system programmed to ask questions and automatically create customized documents or forms based on the answers given. Software is available to help automate a lawyer's practice with a DAS. One may characterize the benefits of a DAS into three categories: (1) to produce high quality standardized documents in the shortest period of time, (2) to reuse prior work product and expertise effectively, and (3) to eliminate redundant data.

A DAS helps attorneys produce high quality standardized documents in the shortest period of time. By using the same template every time, a DAS eliminates the process of creating a new document based on a similar one used for a previous client. For example, there would be only one template for all the wills done by an attorney which would then eliminate the worry of inconsistencies or customization in a prior document that have not been removed. In addition, the embarrassment caused from an error in a document or the possibility of malpractice due to an erroneous document is significantly reduced.

Another strength of a DAS is its ability to capture attorney expertise in a template and reuse it. In setting up a template to be used for a DAS, the attorney must make a very thorough review of the template and all possible legal contingencies a client may encounter. By doing this, the attorney's knowledge is captured in the template and may be reused many times without the need for a lengthy review of each document generated from the template. The template may and should be updated any time there is a change in the law or a previously unused provision is needed. The template should also be authored with help dialogs (similar to the help prompts used by other software) to help the template user make proper decisions for the client. With such help dialogs, a template becomes "intelligent" and may be used to train associates, legal assistants or secretaries.

Finally, in most cases a DAS eliminates the need to search and replace items in a document and based upon proper authoring will produce customized documents using proper grammar, punctuation and paragraph numbering. Unlike human document generation, a DAS does not get tired, forget small details or miss changes.

Before you run out and begin to create and implement a DAS there are several things to consider. First, your legal practice should be one that is benefitted from automated documents. Documents that are repetitious and used very frequently make better candidates for automation (ie. wills, trusts, leases, business formation, simple contracts, simple court filings, etc.). Blaine Carlton, managing partner of Ballard Spahr Andrews & Ingersoll, LLP has begun using a DAS for his public finance practice. "We generate a large number of documents involving similar transactions and [a DAS] gives us the ability to generate the basic documents more efficiently so we can focus more of our time on the complex legal issues of a transaction," Carlton said.

Another item to consider in creating a DAS is whether or not the time invested

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will benefit you or your clients in the long run. If one of your objectives is to be profitable, then you should make sure the amount of time and effort you invest to create a DAS will be returned to you and your clients over time. You should also make sure there is not an already existing system available, such as software for small business formation, that you can buy retail rather than creating your own DAS.

Finally, you need to address who will design, create, and implement the DAS for your practice. These issues may seem overwhelming at first, but with time, persistence and patience you can develop a DAS that works for you. When asked why he believes a DAS is something attorneys should seriously consider using, Carlton responded, "In today's technological world the amount of time a lawyer spends on document generation should be reduced by document automation so the lawyer can spend more time counseling with clients, analyzing the law, and advocating for them." Besides, with spring around the corner, document automation may also free up more time to work on your golf game.

Event Calendar

May 9 "The Law is Not a Jealous Mistress and Lawyers Are Not the Enemy," Ron Yengich, noon at the Downtown Marriott. Preregister by April 21. $20 for Salt Lake County Bar Members, $25 for non-members.

May 20 Salt Lake County Bar Spring Dance and Election of Officers, at The Country Club, $45 for members and guests; $60 for non-members. RSVP by May 12, 2000.

June 5 Second Annual Salt Lake County Bar Association Golf Tournament and Fund Raiser, Jeremy Ranch Golf Course; 7 a.m., Shot Gun Start, Scramble Format; $70.00 per player, includes greens fees for 18 holes, cart, tournament fee and prizes. Anyone can enter, but registration will be limited to the first 144 who sign up. To sign up, send a check to Deno Himonas, Jones Waldo Holbrook & McDonough, 1500 Wells Fargo Bldg., 170 South Main Street, Salt Lake City, Utah 84101