

PRESIDENT'S MESSAGE

by *Scott A. Hagen*
Salt Lake County Bar President

Some two or three years ago, I had the opportunity to testify before a committee of the Utah State Legislature on an issue affecting school nurses. I have a young son with juvenile diabetes, so I had a personal interest in ensuring that there were enough school nurses to provide care, if necessary, to school children. I had never testified in such a setting before, so I was pleasantly surprised at how the experience turned out. The members of the committee were mostly present at the meeting (unlike the U.S. Congress) and, without being prepared by staff members, were obviously interested in the issues. They listened attentively to my comments. They asked questions that were relevant and showed that they had understood what I had said. At the end of my remarks, the committee chair summarized (accurately) my testimony, and thanked me for coming in. The committee then invited any other private citizens in the room to testify. On the whole, I came away with a feeling that the legislators were sympathetic to my concerns, and that they would do something about it to the extent finances made it feasible.

Based on that experience and others I have had, I believe that our legislators, on the whole, want to do the right thing, and that they are willing to hear from others in deciding what that right thing is. Obviously, they don't always please everyone, including myself, but my sense is that they are willing to listen and will act on what they hear if they believe it appropriate.

Unfortunately, there are not many lawyers in our state legislature. What with the regular legislative session every Janu-



Scott A. Hagen

ary and February, special sessions when they are called, and committee meetings and related assignments throughout the year, lawyer-legislators have little time to carry on a law practice. Moreover, the legislators are not very well compensated for the time they put in. They receive a modest daily stipend when the legislature is in session and are reimbursed for most expenses, but that compensation is far lower than comparable compensation for most lawyers. Lawyers who serve in the legislature thus do so at considerable personal sacrifice, and not many can pull it off.

The end result is that although legislators are willing to listen, they may not have enough opportunities to hear from lawyers on issues that concern us. The only way to remedy that problem is to get to know our legislators and let them know our views on legal issues. Now is a good

time to start building such relationships, because there are many important legal issues currently being considered or which may soon come under consideration.

As many of you know, current legal issues include the current rules regarding the unauthorized practice of law, multidisciplinary practice, and regional agreements that would provide for practicing law across state boundaries without hiring local counsel. There are a multitude of other issues as well. We have an obvious interest in laws that affect our profession directly. But we may also have expertise that we can bring to bear on issues that are not specifically "legal," whether in environmental protection, criminal law, civil rights, and so on. Whether the topic directly affects law practice or not, if we have an expertise, our legislators can benefit from hearing from us.

Many of you may have been present at this year's mid-year meeting of the state bar in St. George. At that meeting, Justice Michael Wilkins of the supreme court gave a valuable and insightful presentation on important issues that will affect the practice of law. You may be interested to know that Justice Wilkins will reprise that important presentation at a luncheon sponsored by the Salt Lake County Bar Association on May 13, 2002. The title of the presentation is "The Scope of Lawyering: An Update on the Deliberations of the Utah Supreme Court Special Committee Examining the Scope of the Practice of Law." Please make it a point to attend. We will be inviting members of the state legislature to be there as well, and this may be an opportunity to

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Denise A. Dragoo

Candidate for President-Elect

Utah State Bar

I am pleased to present my “platform” for President-Elect to the Salt Lake County Bar Association. Currently, I am serving my 24th year of practice and my 10th year on the Bar Commission as your representative from the Third District. During my tenure, I have worked to give each attorney in the Salt Lake County a voice in the direction of the Utah State Bar, including:

1. The Right to Vote in This Election.

As Chair of the Elections Procedures Committee, I have recommended direct election of the President-Elect. Despite rejection by the State Bar Commission, I petitioned the Court to allow all bar members the right to vote for President-Elect. Last year, the Court mandated direct election, rather than selection of Bar president by the Bar Commission. It is critical that you exercise your vote to select the Bar leader of your choice.

2. Additional Third Division Commissioner.

The Third Division, including Salt Lake County, is by far the most numerous, with more than 3,900 of the 7,600 lawyers in the State. The Election Procedures Commission recommended that an additional Bar Commissioner be added to the Board from Salt Lake County. This recommendation was initially rejected by the Utah Supreme Court, but should be revisited as the size of the Third Division increases.

3. Salt Lake County Bar Integration into State Bar Decisions.

As President-Elect, I will continue to implement a communications plan which integrates the Salt Lake County Bar and other Bar section and committee representatives into the process for setting the Commission’s agenda. This plan includes

Salt Lake County Bar and other Bar leaders in a retreat in the fall of the year to convey the Commission’s objectives, annual calendar and long-range plan for Bar governance. These objectives will include a legislative agenda, supported by the Bar and Bar lobbyists during both interim and legislative sessions of the Utah State Legislature. This year the legislative initiative produced \$100,000 in state funding for the new Community Legal Center. The State Bar is partnering with the Legislature and the Utah Supreme Court to study the delivery of legal services by lawyers and non-lawyers. This study will result in legislative initiatives next session which will impact your practice and must be carefully monitored by the State and County Bars.

4. Diversity in the Profession.

The State Bar has been challenged by the Task Force on Racial and Ethnic Fairness to coordinate the efforts of the Salt Lake County Bar, Young Lawyers of Utah, Women Lawyers of Utah and the Utah Minority Bar Association to increase the number of minority lawyers participating in State and County Bar activities. Diversity training was incorporated into the curriculum of the leadership retreat this year; however, bar leaders must be encouraged to actively recruit minorities.

5. Voluntary Pro Bono Legal Services.

The State and the Salt Lake County Bar must also collaborate to support pro bono legal services. On March 28, 2002, the Disability Law Center, the Legal Aid Society and Utah Legal Services purchased the Community Legal Center in downtown Salt Lake City to house these services and provide centralized intake. Pro bono providers now need the cooperation of the State and the Salt Lake County Bar to pair volunteer attorneys

with these pro bono needs.

6. Streamline Admissions Procedures.

The hiring of a law-trained admissions director has improved the professionalism of the admissions process. Further streamlining of admissions appeal procedures can be achieved by relying on the Character and Fitness Committee to conduct those hearings subject to a narrow standard of Commission review. The Bar should forge agreements with neighboring state bar associations to facilitate multi-jurisdictional practice and reciprocity for our members.

7. Expedite Disciplinary Proceedings.

Despite recent rule changes, the disciplinary process grinds too slowly. We need to increase the prosecutorial discretion of the Office of Professional Conduct (“OPC”) to eliminate frivolous complaints and to reduce the time required to process legitimate complaints. Two more screening panels should be added to the 18 panels currently processing complaints. In addition, safe harbor opinions issued by the Ethics Committee can help avoid potential ethical problems before they reach the OPC. Finally, to reduce the fees of Bar members, reasonable attorneys’ fees should be recouped when the OPC prevails in disciplinary cases.

In sum, I look forward to working with the Salt Lake County Bar on an active slate of legislative and program matters to incorporate Salt Lake County Bar more fully into Bar governance. With this objective in mind, I would appreciate your vote for President-Elect. Please call (801) 257-1998 or send me an e-mail at ddragoo@swlaw.com if you would like to discuss these matters.

Debra J. Moore

Candidate for President-Elect

Utah State Bar

Dear Colleagues:

I ask you to vote for me for President-Elect of the Utah State Bar. I've practiced law for nineteen years and have served on the Bar Commission for seven years. My experience in private practice, government, and academia has prepared me to appreciate the needs of Utah lawyers in a wide variety of practices. As a Commissioner, I've heard from hundreds of other lawyers about how the Bar can help or hinder them and have become well-informed about the issues facing the Bar. I certainly don't pretend to have all the answers, but I'm willing to devote the time and energy to effectively advance the fundamental values and interests of the Bar and its members.

As President-Elect, I'd work to create and implement a comprehensive long range plan for the Bar. It's important that the Bar embrace long range planning for two reasons. First, the Bar faces substantial issues that require the kind of sustained, multi-year effort that a long range plan will cultivate. Those issues include the delivery of legal services, civility and professionalism, and racial and ethnic fairness, which are discussed briefly in the bullet points below.

Second, long range planning helps the Bar stay on track with its members. Good planning encourages broad participation, builds consensus, and fosters leadership among Bar members. A written, published plan also improves the Bar's accountability to members and provides a means of measuring the Bar's effectiveness.

Thank you for considering my candidacy for President-Elect. Please call me at 366-0100 or send me an email at dmoore@state.ut.us with any questions or suggestions that you may have. I would be honored to receive your vote.

Sincerely,

Debra J. Moore

"HOT BUTTON" BAR ISSUES

Delivery of Legal Services. Last year, the Utah Legislature voiced concerns about unmet needs for legal services. In amending the unauthorized practice of law statute, the legislature asked the Utah Supreme Court to study alternative means of delivery of legal services. The Court appointed three Bar representatives (David Nuffer, John Adams, and John Baldwin) to serve on the study committee. The study presents an important opportunity for the Bar to improve its relationship with the legislature and to correct misconceptions about the legal system. As the results of the study unfold, the Bar must also provide a strong, credible voice to address legitimate concerns by means that adequately protect the public.

Multi-disciplinary practice ("MDP"). After extensive review, the Bar petitioned the Court to amend the Utah Rules of Professional Conduct to allow lawyers to form partnerships and other associations with non-lawyers to provide clients a variety of services (multi-disciplinary practice). The Court recently denied the Bar's petition but expressed "its willingness to reconsider its decision in the future in light of experience that may be gained from other jurisdictions dealing with the multi-disciplinary practice issue." The Bar should continue to support MDP as a means of allowing lawyers to better serve client needs. For background on this issue, go to www.utahbar.org and click on the hot button sign at the bottom of the page.

Multi-jurisdictional practice ("MJP"). The Bar is considering a proposed rule that would grant Utah lawyers reciprocal rights to practice in other states. Several states in the Northwest have already implemented MJP among themselves. The need for more flexible rules governing rights to practice is widely recognized. I support the recommendation of the Bar's task force to petition the Court to allow MJP. For more informa-

tion, please see the article published in the March 2002 *Bar Journal*.

Civility and Professionalism. The Bar should rededicate itself to promoting civility and professionalism among Utah lawyers. The Supreme Court has recently formed a committee to address the perceived decline in professionalism. The Court's leadership on these issues provides an essential component for meaningful change, and the Bar must take full advantage of this opportunity to improve the public perception of lawyers, the quality of our practices, and our satisfaction with our personal and professional lives.

Racial and Ethnic Fairness. The Bar should continue to implement the recommendations of the Utah Task Force on Racial and Ethnic Fairness in the Judicial System. The Bar has provided its staff, the Commission, and other Bar leaders with training in cultural competency, and has obtained approval for CLE credit for cultural training seminars. The Bar has improved its tracking of racial data and is co-sponsoring an upcoming seminar on the judicial selection process with the Minority Bar Association and Women Lawyers of Utah.

Admissions. The Bar has hired attorney Joni Seki as Deputy General Counsel in charge of admissions and made substantial improvements in the administration of the bar exam and character and fitness review. Further refinements in the internal appeal process from decisions of the Character and Fitness Committee are under review. The Admissions Committee continues to review the bar examination itself and has made a preliminary recommendation to update the exam to include a skills component.

BIOGRAPHY

Debra Moore is the Employment Section Chief in the Litigation Division of the Utah Attorney General's Office. She is a 1983 graduate of the University of Utah College of Law, where she was a Leary

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Judicial Profile

Judge Randall N. Skanchy

By Robert O. Rice

One mark of a good lawyer is a willingness and ability to confront a new area of law, study it, learn it and make it one's own. Take Randall N. Skanchy, for instance. After two decades of a civil legal practice, his criminal law experience was limited to once representing a client charged with illegally shooting a protected prairie dog. Now, Judge Skanchy, sworn in as a Third District Court Judge on January 2, 2001, presides over a docket made up almost exclusively of criminal matters. The transition from civil lawyer to criminal judge did not happen overnight. Judge Skanchy reports that he had to "retool" himself, spending extra time in the library refreshing himself on criminal law and procedure. "I had to go back to the issues that we studied in law school," he said, describing a process that was "very interesting and quite rewarding to me."

After more than a year on the Bench, Judge Skanchy is getting comfortable with his new practice area and his new digs at the Scott M. Matheson Courthouse, where he replaced Judge William Thorne upon his appointment to the Court of Appeals. Judge Skanchy was appointed to the Third District's Criminal Division. Before picking up the gavel, Judge Skanchy was a civil litigator at Jones, Waldo, Holbrook & McDonough, where he practiced environmental and property litigation and general commercial litigation for twenty years. He graduated from Brigham Young University Law School in 1980 and was sworn into the Utah bar in the fall of that same year. His undergraduate credentials come from Weber State University.

Judge Skanchy describes his appointment to the criminal division as an entry into an intriguing new area of the law where he is anxious to affect meaningful change. "I think sometimes in this particular area (of criminal law) judges have the opportunity to make a difference in somebody else's lives," he said. For example, given "the right kind of defendant" appropriate judicial intervention can

be a catalyst for successful change. "I think it has to be somebody who has actually decided enough is enough. It may be the first occurrence, it may be the fifteenth occurrence. But at some point some defendants actually decide they want to make a change," Judge Skanchy said. With an appropriate sentence, reasonable probation and good supervision, for example, Judge Skanchy believes offenders can make that change for the better.

Though Judge Skanchy has been on the bench for just over a year, he is prepared to offer a few pointers to trial lawyers in his Court. The list is short and (hint, hint) succinct:

- *On Brevity:* "Brevity is a virtue and often times it's forgotten. We seem to have counsel often times fill up the void of silence with argument that is not necessary and not helpful."

- *On Cross Examination:* "There is obviously a skill associated with cross examination and part of it is brevity, as well. Every issue, every claim, every nuance doesn't have to be exhausted on cross exam. Skilled litigators tend to get to the point and jurors understand it."

- *On Juries:* "Juries aren't stupid. Juries seem to be able to comprehend very quickly the arguments being made by counsel. It seems to me that counsel think juries think more on an elementary level, but my experience suggests (jury members) are fairly sophisticated and experienced, and they take their responsibility very seriously."

- *On Civility:* "It's a unique experience for me to see the professionalism between counsel in the criminal bar Although most of my encounters with counsel have been entirely appropriate, the level of professionalism that exists between counsel in the criminal bar is very high. I think the civil litigators can take a page from their book."

- *On Courthouse Staff:* "Clerks are very important in the day-to-day working of the courtroom and in day-to-day interactions with the judge. The clerks have



Judge Randall N. Skanchy

the judge's attention and if it happens that a lawyer is rude to or has offended a clerk, the judge hears about it and that's never a good thing. Treat clerks with the same respect you would treat a judge."

- *On Advocacy:* "One thing I admire as a criminal judge is that there is a whole part of the Utah State Bar that I had no familiarity with and that's the criminal bar. There are wonderful trial lawyers at the prosecutor's office and at the defender's office. I just enjoy immensely listening to their arguments. I am impressed with their proficiency and skill."

- *On Lawyering:* "It's a wonderful profession of which I am proud. Lawyers since the beginning of this great nation have made significant contributions in every aspect of life. It is an honor and a privilege to be a member of the bar and it should give each of us an opportunity to contribute to the better good of our society."

Off the bench, Judge Skanchy wets a fly at his favorite fishing spots in Utah and Idaho, including the Provo, Weber, Green and Snake Rivers. Judge Skanchy and his wife, Sue Skanchy, have three

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FOURTH ANNUAL SALT LAKE COUNTY BAR ASSOCIATION GOLF TOURNAMENT AND FUND RAISER

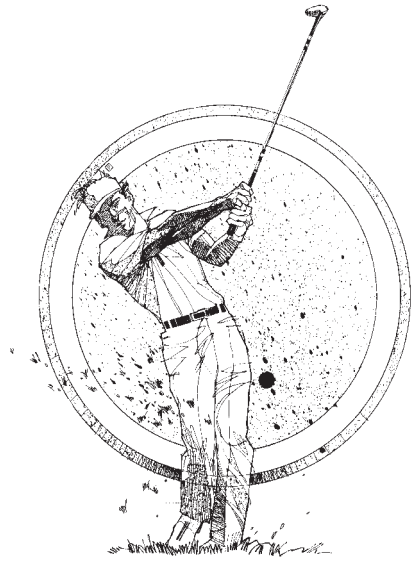
DATE: Thursday, June 6, 2002
PLACE: OLD MILL GOLF COURSE
TIME: 7:30 a.m., Shot Gun Start, Scramble Format

COST: \$75.00 per player, includes greens fees for 18 holes, cart, tournament fee, lunch and assorted prizes for low score (team), longest drive, and closest to the pin.

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 \$75.00 per player (made payable to "Salt Lake County Bar Association") to Mark R. Gaylord, Ballard Spahr Andrews & Ingersoll, LLP, 201 South Main Street, Suite 600, Salt Lake City, Utah 84101

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Presidents Message *Cont. from page 1*

hear about important issues and also meet your state legislator. In fact, if you know your state legislator, feel free to invite him or her to come and hear Justice Wilkins' presentation.

Our legislature can make good decisions on legal issues only if the legislators are properly "briefed," and they cannot be properly briefed without hearing from us. I suggest that we learn about these issues and then contact our legislative representatives.

On another topic, please mark your calendars now so that you can attend our spring dinner and election at Tuscan. The dinner will be held on May 31, 2002 (the Friday after Memorial Day). We will follow the dinner with our annual election of officers of the Salt Lake County Bar Association, and then, with a "casino night." This event is a great mixer and lots of fun, and I hope to see you there.

Debra J. Moore *Cont. from page 4*

Scholar and served as Executive Editor of the Journal of Contemporary Law and the Journal of Energy Law & Policy. Before joining the Attorney General's Office in 1991, she was a shareholder in the law firm of Watkiss & Saperstein, where she concentrated primarily on product liability litigation. Ms. Moore also taught Legal Writing at the University of Utah College of Law from 1993 to 1996.

Ms. Moore has served on the Bar Commission for about seven years. From 1994 to 2000, she was an elected, voting member of the Commission, representing the Third District. She is currently an ex-officio member of the Commission and the Bar representative on the Utah Judicial Council. She is a member of the Council's Policy and Planning Committee, and a former member of its standing committee on Judicial Performance Evaluation. As a Commissioner, she was a member of the Executive Committee for two years, a member of the Long-Range

Planning Committee, Co-Chair of the Commission's Equal Access to Justice Committee, Chair of the First Hundred Committee, and a member of the Review Committee for the Rules of Lawyer Discipline and Disability. She is a former Chair of the Utah State Bar Litigation Section and former member of the Executive Committee of Women Lawyers of Utah.

Judicial Profile *Cont. from page 4*

children - fourteen and twelve-year old boys and an eight-year old girl. The children are all athletic, so the Skanchys remain busy on weekends attending baseball games, soccer matches, and dance recitals. Civil War history is another passion. Judge Skanchy is planning a Civil War battlefield tour in the near future. He keeps a good book going most of the time, paying particular attention to biographies and histories.

New Judges Reception

Over 100 Salt Lake County Bar members took advantage of a unique opportunity to meet many of the individuals who have assumed new judicial positions in the past two years at the County Bar's New Judges' Reception on April 4 at the Alta Club. President Scott Hagen introduced the seven judges honored at the reception, then the mingling commenced over free food and drink (a big draw for lawyers, particularly in these harsh economic times). The County Bar Executive Committee thanks those who attended and extends its appreciation to the judges for their attendance and their service to the judiciary. The new judges are:

the **Honorable Christine M. Durham**, a member of the Utah Supreme Court since 1982 and the new Chief Justice.

the **Honorable Matthew B. Durrant**, a member of the Utah Supreme Court since 2000 and the new Associate Chief Justice.

Judge William Thorne, who was appointed to the Third Circuit Court in 1986 and the Third District Court in 1994. In July 2000, he was appointed to the Utah Court of Appeals.

Judge Randall Skanchy, who became a Third District Court judge in 2002.

Judge Bruce Lubeck, who took the bench in the Third District Court in March 2001.

Judge Stephen Roth, who became a Third District Court judge in 2002.

Judge Terry Christiansen, who was appointed to the Third District Court in 2000.

Judge William Thurman, who was sworn in as a United States Bankruptcy Judge in September 2001.

Justice Tongue

Dear Justice Tongue,
I'm a lawyer. Sometimes I'm not sure I know what I'm doing. I'm nervous and scared. Often, I think my clients can sense my condition because they seem more nervous and scared after a few months as my client, than they did when they first came into my office. Maybe I'm doing them a favor. Worrying about whether I know what I'm doing gives clients less time to worry about the problem that brought them into my office in the first place.

Now I've heard that Utah doesn't have a law prohibiting the unauthorized practice of law. I've also heard that part of the reason we don't have any law is because no one knows what practicing law is. If I don't know what I'm doing, how can I tell if I'm practicing law and know how much to charge for it, and if I'm not practicing law, why am I worrying?

Adam Neurotic,

Dear Neurotic,

Your plea for help stirred me from my state of Olympic Games euphoria. My nose is still tingling with the bubbly effervescence of the over the top good cheer that gushed from Utahns and the swollen sense of state pride that you couldn't have produced with a truckload of Viagra. But now, it's like late Christmas morning when the wrapping paper is strewn about the floor, it's like when the doorbell rings after hours of body preparation and your prom date has that big zit on his forehead. For two weeks there was a palpable feeling that there could be one Utah. Then the big flame went out and we stopped being Utahns and returned to our pre-Olympic enclaves and enmities, some of us to The Peoples Republic of Salt Lake, most of us to Ruzikastan.

Now, to the matter of your professional angst. You may find some comfort in the knowledge that you are by no means the first person who couldn't describe what he was doing, did it badly, and expected to be handsomely compensated for it. Enron executives are just the

most recent entries on this lengthy rogue's roster. Moreover, you are not alone in your befuddlement over what it means to practice law. At the mid-year meeting of the Utah State Bar, Supreme Court Justice Michael Wilkins challenged a throng of lawyers attending a discussion of "The Scope of Lawyering" to define the practice of law. Of course, this was a set up. Those who rose to the bait, which Justice Wilkins dangled from the dais, offered up creative, sensible and altogether unsatisfying candidates for what we do.

Much less challenging is identifying what lawyers don't do: they fail to meet the legal needs of Utah citizens. The best evidence that this is a clear and obvious fact is that even the Legislature recognized it. The first Special Session of 2001 saw the enactment of HB 2003 which created the Supreme Court's Study Committee on the Delivery of Legal Services. The Legislature charged the Committee with the responsibility of responding to its findings, among them the finding that Utahns were ill served by the members of our bar and, ominously, the finding that "in many situations, non-attorney professionals now provide, at low cost to consumers with adequate protections, services previously reserved by law to attorneys."

What is happening here? Osama bin Laden. Really. In remarks made at the University of Utah last fall, *New York Times* columnist Thomas Freidman described Mr. bin Laden and his ilk as exemplifying the democratization of terror. This phenomenon relies on the ready accessibility of information and easy global communication to empower individuals, like Mr. bin Laden, to exact mass mayhem, an enterprise once the exclusive province of professional armies and nation states.

The tools which permit an individual to hold his own with established institutions or even threaten their existence is not limited to religious fanatics or to the realm of geopolitics. They are also reshaping the traditional professions of law and medicine. Physicians now regularly treat patients who have armed themselves with vast bodies of information about their maladies and often with strongly

held views about treatments. Similarly, a simple internet search will expose hundreds of sources of information on legal topics, countless of them fashioned to serve the self represented litigant. These range from the ABA website's advice to the pro se litigant, "[i]ndividuals with legal problems are encouraged to discuss those problems with a lawyer," to the citizens justice website which welcomes you with "A Warning From the United States Supreme Court" that "75 to 90 percent of American Trial Lawyers are incompetent, dishonest, or both."

While even the most information-saturated person with an ailment will visit a physician to have tests performed, medicines prescribed and treatments administered—an exercise of prudence usually made more tolerable by the presence of insurance—that same person will think nothing of bypassing a lawyer on the way to the courthouse.

Even if a person is uneasy about going it alone, there are an ever expanding number of non-lawyers performing traditional legal work. Your banker will prepare your will and estate plan. Your accountant will advise you on tax law (once you post his bail). Your bartender will provide all of the additional counsel you need.

Is there anything that sets the labor of lawyers apart from widget making? The Utah Supreme Court seems to think so. It said,

[a]lthough "the practice of law" has not been exactly defined, an "ordinary reader" would understand that certain services, when performed on someone else's behalf, are part of such practice. Such services would include not only appearing in court, but also drafting complaints, drafting or negotiating contracts, drafting wills, counseling or giving advice on legal matters, and many other things.

Board of Commissioners of the Utah State Bar v. Benton Peterson, 937 P.2d 1263, 1268 (Utah 1997).

This functional definition looks re-

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Justice Tongue *Cont. from page 7*

markably dated after a mere five years. The better approach may be to put aside the inquiry into what lawyers do and step back to recall why we do it. These “whys” are the core values that distinguish the professions from the trades. These values include a high degree of trust, a trust earned by unwavering loyalty to the client, independent judgment and the unerring security of the client’s confidences. Are there any tasks in the affairs of men and women which demand these values today? If there are none, if these values have lost their relevancy, we have greater problems than any lawyer can solve.

Your Servant in Justice,
Tongue, J.

Utah Professionals 2002

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