PRESIDENT'S MESSAGE

by Scott A. Hagen
Salt Lake County Bar President

One of the benefits of practicing law is that we get to hear interesting stories. Before I started law school, a lawyer friend of mine told me that he enjoyed reading cases because he approached each one as an interesting story. The holding of the case was important, but could be remembered more easily as the moral of a story. When I started law school, I found that my friend's example was helpful. I enjoyed law school and was more successful when I focused on each case as a story rather than as simply the statement of a legal principle.

Of course, most of the best stories never get into the case books. The best stories are those known only to the lawyers who tried the cases. The lawyers know all of the facts, not just the facts received into evidence and discussed in an appellate opinion. I have heard many of these stories as I associate with fellow members of the bar. These stories are often humorous or poignant, and in many ways they may be more important than the case opinions that make it into the books.

I would like to share an experience from my own practice, back when I was serving as a JAG officer in the Navy. Like most lawyers in the Navy, I spent my time practicing criminal law, both appellate and trial. After an initial stint focusing only on criminal appeals in Washington, D.C., I was transferred to San Francisco, where I tried cases, first as a prosecutor and later as a defense counsel. One of my most memorable experiences as a lawyer came when I served as a defense counsel in the Navy. (I have changed the names and some of the facts of this story to maintain confidentiality.)

Many of you probably know that in a military court-martial, the jurors (known as the "members" of the court-martial)

Scott A. Hagen

are given the opportunity to ask questions of every witness as a matter of course. My most tense moment as a trial lawyer came during a felony jury trial, when my client, the accused, was faced with a seemingly innocuous question from one of the jurors.

My client (I'll call him Petty Officer Barton) was accused of a very serious sex offense. Petty Officer Barton consistently insisted that he was innocent of the charges, though there was some fairly strong evidence of guilt. In fact, he had taken one action that – only because of the timing of the action – was indicative of a consciousness of guilt. Petty Officer Barton advised me of this action, but again, strongly insisted that he was innocent, and gave me his rationale (other than consciousness of guilt) for acting as he had.

By the time of trial, the star witness against my client had more or less changed her story in ways that made her much less credible as a witness. Nevertheless, the prosecution went forward with the case because of the strong testimony given at the preliminary hearing.

As I expected, the prosecution case at trial was weak. The star witness's direct testimony was presented mostly through introducing her testimony from the preliminary hearing. The prosecutor seemed to have given up on the case, and did not call certain witnesses who may have strengthened his presentation. Nevertheless, the testimony from the preliminary hearing had been very certain and clear, and I believed that I had to introduce some defense evidence to make the strongest case for an acquittal for my client.

When the time came for presenting the defense case, therefore, I called Petty Officer Barton to the stand. I asked only a few questions, mainly to give him a chance to look the jury in the eye and deny that he had committed the offense. After ten minutes of direct testimony, I sat down for the prosecutor's cross-examination.

The prosecutor cross-examined Petty Officer Barton, but only briefly, and without gaining anything. The case was in good shape (from my point of view) when, consistent with usual procedure, the judge turned to the jurors and asked if they had any questions.

Questions from the military jury are in written form. The questions are given to the court bailiff, who takes them to the prosecutor first and then to defense counsel. Each question is on a separate form with a blank space for the prosecutor or defense counsel to quickly make a written objection. The question is then taken to the military judge, who rules on any objections. If the judge determines that the question may properly be put to the witness, the judge will ask the question.

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An Interview With the Honorable Rocky Anderson

By Francis J. Carney & Steven W. Dougherty

Those of us who knew and practiced law with or against Mayor Ross C. " Rocky" Anderson prior to his ascension to his current post as Mayor of Salt Lake City recognized that Rocky's* methods as a trial lawyer and citizen activist were more than quixotic. He threw himself into each case and civic cause with such fervor that it was difficult to keep pace. Indeed, I can remember one particular case involving a six week jury trial on behalf of a prison inmate who had been denied proper medical treatment that required two months of 300 plus hour billings, *back to back*! He devoured every bit of information on kidney disease, prison health care, and nursing standards he could get his hands on. Often, he was more knowledgeable than the expert witnesses in the case. I also remember his devotion to researching, drafting and lobbying to successful passage, on his own time, legislation dealing with shared child custody when he realized Utah's custody laws were biased against shared custody. Looking back on his prior career, his approach to litigation and citizen activism was preparing him well for political office. Although Rocky's free time is even more scarce now, he recently shared some of his impromptu observations of the differences and parallels between private practice and full-time public service and which aspects of private practice he misses most, and least.

As an elected official, it is not enough to make educated policy proposals. Those proposals must be advocated to a legislative body, such as the City Council, and to the public at large. As a private citizen and lawyer Rocky often found himself running into bad public policy and unable to get policymakers to do the right thing due to resistance to deviation from the status quo. Now, he enjoys being in a position where he can help formulate and implement public policy. He found that effecting social change on a case by case basis as a litigator or citizen activist was too slow. As Mayor he can get things accomplished more quickly with a greater impact on a larger number of people. However, the analytical and advocacy skills he honed as a lawyer have served him well as Mayor. Reducing complex factual and legal issues so that they can be easily understood and communicated is necessary, whether persuading a judge, jury, city council or the public. Of course, the method of persuasion is much more constrained in a courtroom than in a city council meeting or public debate. For example, when debating a Nicaraguan leader, Rocky did not exhibit the same restraint as when he asked the court, *prior to beginning an examination of a particularly hostile witness*, to caution the witness to answer his questions only with a "yes" or "no".

Rocky approaches his mayoral advocacy as more educator than adversary, awakening and raising the consciousness of policy-makers and the community on such issues as the benefits of Light Rail, the ineffectiveness of the D.A.R.E. program, and the impacts of the proposed Grand Mall, the "Sprawl Mall", the Legacy Highway and automobile dependency on the quality of life and health. While a public forum permits a broader appeal and greater impact than a courtroom allows, Rocky often is frustrated that his public advocacy is filtered through the media, which gives superficial treatment to the issues and thrives on conflict and controversy. He misses the intimacy of a jury and the clarity and control of a courtroom presentation.

As a lawyer, Rocky represented his clients' interests, which of course explains why he turned down many cases and took many that most other lawyers where unwilling to accept. Yet as a public servant, Rocky does not view his role as a "representative" whose positions are dictated by polls or public opinion. Rather, he believes that a public servant is elected on his character and broad philosophical principles and that it should be of no surprise to anyone that he would oppose what he views as bad policy proposals such as the Grand Mall, the Legacy Highway, moving businesses off of Main Street, or any programs that he views as divisive to the community. In that sense, he is not concerned with public perception and "winning" political battles, as much as making sure he has public input and that the basis for his positions and decisions are known to the public. Often trial lawyers are more focused on advocating their client's position and goals rather than listening to other people, taking all input and developing what they themselves determine is the best goal for the client and the means of getting there. In that sense, many trial lawyers may not do well in the public sector.

Rocky reports that he doesn't miss the administrative tasks of private practice, but he does miss the "laser-like intellectual focus that it takes to prepare for and try a case or draft a brief and argue an appeal." He even still dreams (actually *dreams* and not as a nightmare!) of volunteering to brief and argue a complex legal issue, sort of law-as-recreation. He also misses the relative refuge a private practitioner can enjoy. As Mayor, he is on the spot every waking minute, at the grocery store, on the street, in numerous meetings, and always with a mind to the press and their "sound bites."

Rocky truly epitomizes the "lawyer as public servant." Whether he planned it or not, the passion and dedication driving his private law practice was actually the best training for his public service. Many of the skills good lawyers develop would serve them well in public office. However, the drive to improve public policy is a skill which isn't necessarily developed in private practice, but is seen by Rocky as necessary for effective public service.

* With no disrespect to his office, years of familiarity and his open, personal character dictate the use of his common appellation.

Law School Named After Ray Quinney Founder Following Historic Endowment Gift

The University of Utah announced on November 2, 2001, that its law school will be renamed the S.J. Quinney College of Law after Joe Quinney, who with two partners founded Ray, Quinney & Nebeker. The S.J. and Jessie E. Quinney Foundation has provided $30 million in support to the College of Law, primarily for an operating endowment. This includes a $26 million endowment gift, which is one of the largest gifts in the University's history.

"The University is deeply grateful for this incredibly generous gift," said University President J. Bernard Machen. "The Quinney family and the members of the foundation board fully understand the enormous contribution a first-rate law school can make to the state and the nation, and are providing the resources to do just that. The foundation's support will allow the College of Law to achieve an even higher level of excellence."

The gift will support student scholarships, the law library, professorships, and special academic programs. It will invigorate student and faculty recruitment, enhance the curriculum and existing programs, establish new ones, and secure national recognition for the school's long tradition of outstanding legal teaching and scholarship.

"We are overwhelmed with gratitude and excitement," said Scott M. Matheson, Jr., dean of the law school. "This magnificent gift will propel our law school to the highest levels of quality and achievement in legal education." He emphasized that the school is honored to carry the name of "such an accomplished and distinguished member of the legal community." The Quinney foundation has made a "powerful statement," Matheson said, "about the importance of quality legal education and about their confidence and trust in this school. We are grateful beyond words."

"The naming of the law school after my grandfather is the highest honor that I can imagine," said Rick Lawson, family spokesman and a member of the foundation's board of directors. "My grandfather and grandmother always held education in the highest esteem, and this opportunity we've been given exactly matches the ideals they instilled in their family and colleagues. Joe Quinney knew the importance of well-educated lawyers, and this gift we make in his name will help the law school to train lawyers of the highest caliber and quality. It is a real pleasure to be able to be a part of that dream, which we know will benefit all of our community."

Herbert C. Livsey, also on the Quinney foundation board of directors, a 1969 graduate of the College of Law, and a partner at the law firm of Ray, Quinney & Nebeker, adds, "I am thrilled with the announcement" that the college will be named in honor of Quinney. "[He] was a first-rate legal scholar, and had a deep and abiding respect for the law. Joe never retired. He was in the office working until a few days prior to his death." Quinney died in 1983 after practicing law for more than 60 years.

Students are the ultimate beneficiaries of this endowment, according to Barbara Dickey, associate dean for student affairs. "Scholarships will directly aid [them], enrichment programs will enhance their law school experience, professorships will attract the highest caliber faculty, and library and technological developments will allow us to keep pace with the latest in computer technology," she said. All of this will help to make the S.J. Quinney College of Law a school its students will be proud to attend.

Quinney, a Logan native, graduated from Harvard Law School in 1919. He and his wife Jessie, who attended Radcliffe College, returned to Utah where he was admitted to the bar and began practicing law. With two partners, he founded Ray, Quinney & Nebeker, a prominent Salt Lake City firm. In addition to loving the law, Quinney was a passionate champion of Utah skiing. As a primary developer of Alta Ski Resort, he was a leader in the growth of the state's ski industry. He helped to form the Salt Lake Winter Sports Association in 1938 (later the Alta Ski Lifts Company), for which he served as president and chairman until his death. In addition, Quinney had a lifelong respect for the environment, especially Logan Canyon and the red rock country of southern Utah. He was a friend of Wallace Stegner. The Quinney Foundation helped to establish the Wallace Stegner Center for Land, Resources and the Environment at the College of Law with a $2.5 million grant in 1996.

The S.J. and Jessie E. Quinney Foundation annually makes charitable gifts to education, the arts, public television, medical research, and other causes. Ray, Quinney & Nebeker attorneys also serve on the boards of charitable foundations that distribute millions of dollars each year to benefit the community.

It is planned that the $26 million endowment gift will be paid out over 10 years.

Social Events

The Salt Lake County Bar's Holiday Dinner and Dance was, as usual, a smashing success on December 7, 2001. More than one hundred sixty people attended at the beautifully-renovated Salt Lake Country Club. At the height of the festivities, some of the lawyers and their guests formed a conga line on the dance floor—the hallmark of a great party. Who says lawyers are boring?

The next chance to let loose and socialize with your fellow practitioners will be May 31, when the Salt Lake County Bar holds the Spring Dinner/Casino Night at Tuscany. The Casino Night was a huge hit at last year's spring social, so we are repeating it this year. You will notice when you receive an invitation in early May that the price is only $25 for members and guests and $40 for non-members and guests. This is $20 lower per person than last year's event. Just as we discounted the price of the Holiday Dinner and Dance because the Salt Lake County Bar is enjoying a budget surplus this year, so have we discounted the price of the spring social to pass the savings along to county bar members. An open bar and meal at Tuscany for $25 is an unbelievable bargain. Please RSVP as soon as possible when you get the invitation, because space is limited.

Judicial Profile
Judge Paul G. Maughan

By Robert O. Rice

It comes as little surprise that Judge Paul G. Maughan's favorite sport is squash, a close cousin to racquetball. In squash, fair play, honor and trust are as important as a good backhand. Players place a high premium on playing by the rules; competitors are even expected to make interference and penalty calls on themselves. If squash partners don't meet these expectations, "it's usually not a very long-lasting relationship," explained Judge Maughan, a thirty-year veteran of the sport. The game provides an apt metaphor for the way Judge Maughan expects litigants to practice law. In Judge Maughan's court (the one next to his chambers, not the one at the gym) lawyers are expected to police themselves in the same manner that a conscientious squash player does – with due attention to full disclosure and following all the rules.

"I cannot stress enough the importance of integrity and ethics . . . ," Judge Maughan said of the practice of law in his court. "Attorneys are of course advocates and should present their client's case in the best possible light. I find no fault with that and have no problem with attorneys doing that. It's where they cross the line and misrepresent the law or the facts or don't disclose something that should be disclosed. That does more damage than perhaps they understand. Attorneys should also understand that judges talk to each other and on the occasion where something has been egregious, that is made known," Judge Maughan advised.

Governor Michael Leavitt appointed Judge Maughan to the Third District Court in December 1998, after a thirteen-year stint as Deputy District Attorney for Salt Lake County where he was assigned to the civil division. There, Judge Maughan concentrated in the areas of business regulation, environmental law and real estate. Prior to his District Attorney experience, Judge Maughan was in private practice at Bradley, Arrowsmith & Jackson and served in the Salt Lake City Attorney's Office for approximately ten years. He graduated from the S.J. Quinney College of Law at the University of Utah in 1974. Now assigned to the Third District's criminal division, Judge Maughan handles almost exclusively a criminal docket at the Scott M. Matheson Courthouse in downtown Salt Lake City.

After three years on the bench, Judge Maughan has some well-honed observations about good law practice. "I expect that attorneys who appear in front of me are not only advocates, but officers of the court. I freely admit I don't know everything in the law. I don't know any person, let alone a judge, who does. But I have found that the better attorneys are the better prepared attorneys who are willing to disclose both strengths and weaknesses of their cases and willingly discuss not only their client's best interests, but the state of the law."

Judge Maughan's views on sentencing are at once compassionate and pragmatic. "I find there are very few evil people," he said of criminal defendants in his courtroom. "They fall in all walks of life and most people are here [in court] because they don't have adequate life skills. It makes it challenging to try to craft a sentence that's meaningful without being unduly harsh. I think we would do well as a community and a society to find other alternatives to jail – treatment programs, resources that would uplift people rather than continually weigh them down."

As one example, Judge Maughan pointed to how the judicial system treats substance abusers, who commit a substantial number of crimes in Utah and across the nation. "I don't know that it does drug addicts and alcoholics good to just put them in jail," he wondered aloud. Make no mistake, Judge Maughan incarcerates drug and alcohol offenders. "But at some point those people will get out of jail and so, in and of itself, jail is not an answer. There needs to be resources and programs for these people where they can get treatment. . . . It's a matter of trying to encourage people who want to change their lives and making them aware of treatment programs. Otherwise they would just go out and re-offend."

Judge Paul G. Maughan

There are limits to Judge Maughan's views on dealing with drug offenders. "The area that I'm not very sympathetic to is meth labs . . . . That's an evil that I don't think society should put up with. In my mind there needs to be a severe consequence for producing and distributing that kind of product," he said.

Judge Maughan's paradigm for sentencing offenders focuses on more than just the defendants. "I try to weigh and craft a sentence that I think is appropriate for the community as well as for the defendant, and often the defendant's family factors in a little bit," he said, citing an instance in which a defendant had already been sentenced by another judge and was about to be deported. Defendant's counsel petitioned for a change in sentence to avoid the impending deportation. "I said if you can give me some authority to do that, I'll be happy to do it. But they couldn't. So he

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Pro Bono Initiative

The Salt Lake County Bar Association is proud to be a benefactor of the Pro Bono Initiative at the S.J. Quinney College of Law at the University of Utah. The Pro Bono Initiative is a service that links law students with attorneys who have taken on pro bono work and can use the assistance of a law student. We urge our members to consider taking part in this important new project.

The Pro Bono Initiative is a voluntary program offered by the College of Law to emphasize the centrality of public service to the legal profession. Through the initiative we hope to accomplish several goals. First, we want law students to recognize from the very start of their legal career the important professional responsibility attorneys have to provide legal services at no or a substantially reduced cost to those who could otherwise not afford them. We hope that law students who make volunteer work a part of their education will carry a commitment to public service into their professional lives. Second, we anticipate that student assistance will enable attorneys to complete their work on pro bono cases more quickly thus allowing them to take on even more pro bono cases. Third, through the program law students are introduced to the many career opportunities in public service law and a variety of areas of substantive law and methods of practice. Attorney supervisors are able to mentor the student(s) with whom they work. Finally, and importantly, we hope that the initiative will enable the Bar to help more pro bono clients. As you probably know the need for legal services is great, and the wait is unacceptably long.

Since its inception in the fall of 2000, the Pro Bono Initiative has placed 184 different students on pro bono cases. These students have performed approximately 5,200 hours of pro bono legal work under attorney supervision. Over the year we have established placement opportunities with nearly 70 non-profit organizations, firms, and private attorneys. Many of these placements, for example Utah Legal Services, offer experience in several areas of legal practice. Students have worked on many issues, including death penalty appeals, consumer issues, elder law, victims' rights, street law, and water law to name a few. A total of 35 generous law firms and individuals have become members of the Initiative by making a financial contribution and/or providing attorney supervisors to manage cases. A number of firms and individuals have become Benefactors or Grantors of the program by making a more substantial contribution. We appreciate the generosity and leadership of these many members of our community.

The Pro Bono Initiative has experienced substantially increased student participation since its launch last year. This past fall, 78 student placements were filled, a 27% increase over our inaugural semester. Of the students participating this fall over one-third were new to the program (students must complete their first semester of law school before they may participate, so only second and third year students take placements in the fall.)

Another innovation of the Initiative, our Spanish for Lawyers class, also continues to expand. Spanish for Lawyers is a hands-on class designed to teach basic Spanish for use in a legal context, often at one of our Street Law sites. Fluent Spanish speakers in the student body or on the faculty teach the class. This fall over 30 students and teachers participated, and a number of local attorneys also attended. Please contact us if you are interested in learning more.

This spring we will be expanding service opportunities further by arranging placements during the Olympic Games. Students will work as "Protest Observers" with the ACLU. We are also collaborating with Utah Legal Services' Rural Outreach Program. Through this program students and attorneys can make day trips to Fort Duschesne on the Ute Indian Reservation where they will offer supervised counsel to juveniles in Tribal Court. This offers a terrific service opportunity for students (and attorneys) who have time off during the Olympics.

If you are working on a pro bono matter and would like to have a student assist you, it's easy to sign up. Online registration is available at www.law.utah.edu/probono/. You can email us at probono@law.utah.edu. And of course you can phone us at 581-5418. If you are not working on a pro bono case at this time but would be willing to do so, we can help you with that as well. There are an endless variety of pro bono cases awaiting attorney assistance. If you have questions, please call Kristin Clayton at 581-7767 or James Seaman and Ben Whisenant at 581-5418.

Judicial Profile
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was deported and his [the defendant's] family remained. I don't know if they have since gone with him, but that was an area where I was very sympathetic to all concerned, but I had no jurisdiction. I had to live by the law and that was a legislative matter. [Defendant's counsel] withdrew their petition to modify because they couldn't give me the authority to do it," he said.

Judge Maughan was born and raised in Las Vegas, Nevada, and came to Utah to obtain his undergraduate degree in sociology at Brigham Young University before securing his J.D. at the University of Utah. He and his wife, Susan Maughan, have six children from their thirty-year marriage, including one in high school, two in college and three others beginning careers in medicine, investment banking and social work. Thirty years of squash have taken their toll on Judge Maughan's knees and, as a result, he is spending increased time on the links playing golf, the "second best" game.

Presidents Message
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Of course, during this entire process, the witness does not see the question. The witness hears the question for the first time when it is stated by the judge.

I was feeling fairly comfortable during Petty Officer Barton's trial as the bailiff took just one written question from the jury and delivered it to the prosecutor for his review. The prosecutor read the question and marked the box signifying no objections. The bailiff then brought the question to me for my review.

I was stunned when I read the question. It was the only question I had hoped would not be asked. It was written exactly to elicit the incriminating answer that would show that Petty Officer Barton had, at one time, acted in a way that demonstrated a consciousness of guilt. Based on the appearance of the jury and the prosecutor, it was clear to me that none of them had any idea of the question's importance. Of course, my client had no idea what question was about to be asked. He appeared somewhat relaxed, as if he assumed that the worst was over and that any questions from the jury would give him no problems.

I had no objection that could be made to the question. I therefore checked the box marked "no objection," and gave it back to the bailiff. As the bailiff took the question to the judge, I sat wondering what my client would say. If he answered the question truthfully, it could be persuasive evidence of guilt. I would need to somehow deal with that evidence in closing argument or with responsive evidence of some kind. On the other hand, if he perjured himself, I would have to deal with that in another way. Either way, this trial had suddenly gotten very difficult.

The military judge received the question from the bailiff, turned to my client, and stated it exactly as written. I really had no idea what my client would say or what I would do in response. And then, for some inexplicable reason, the judge restated the question, changing it slightly as he restated it. The judge could have had no inkling of the importance of the question as written. He must have modified it to elicit the information that he assumed the juror was really seeking. As modified, the question was completely innocuous. In fact, it actually allowed my client to give a very exculpatory answer. The prosecutor did not ask any additional questions, and the trial was effectively over. Petty Officer Barton never had to answer the question as actually written, and the jury voted to acquit.

It was clear to me after the trial that even my client had not appreciated how close the trial really was. I was the only one in the courtroom who knew how incriminating his answer could have been, and how remarkable it was that he had completely escaped having to answer the question actually written down by the juror.

As lawyers, we deal with disputes that are sometimes only resolved in trial, and even the most mundane issues can be dramatic when the jury is seated and the witnesses begin to give evidence. We all have these stories. Many of you undoubtedly have been through trial experiences that are a lot more interesting than the one I have just described.

If you have experiences that you would like to share, we are interested in publishing them in this newsletter. Contact me or any member of the executive committee. We'll help you get your story into print.

Third District Court
Staffing Plan For Salt Lake City Olympics

OLYMPIC COURT PLAN

Dates: February 8-24, 2002

Locations: Matheson, West Valley and Summit Courthouses

Cases:

1. Arraignments, Pre-Trials, and Preliminary Hearings to be held as needed for in-custody only. Trials will not be held unless extenuating circumstances.
2. Civil Cases limited to emergency settings only at Matheson and WVC.
3. Murray to hold protective order hearings. Legal Aid Society to prepare ex-parte petitions in Murray. Commissioners to hear domestic matters in Murray.
4. Protective Order signing judge to schedule time in Murray for protective order signing.
5. Ex-parte protective order petitions may also be filed at Matheson, but will encourage to file in Murray.
6. No unlawful detainer matters will be signed (3 day summons), issued (orders of restitution), or heard (unlawful detainer hearings) at Matheson or WVC during the Olympics.

Hours of Operation: 8:00 a.m. to 5:00 p.m. Mon.- Fri.
(After hours on-call schedule for cases such as mass arrest or overcrowded jail to be heard at jail)

Justice Tongue

Dear Justice Tongue,

I made only one resolution for 2002: to find a job with a good firm. You know, a '90's kind of employment package. New Lexus as a signing bonus. Spa membership. Personal trainer. My own website. It's still early in the year, but it's starting to look like my chances of making good on my resolution are about as good as Osama Bin Laden realizing his dream to light the Olympic flame. So, since I can't find a job, I'm doing the next best thing: looking for alternate New Year's resolutions. Can you help?

Sincerely,

Despairing New Bar Member (number withheld)

Dear No Number,

You were right to abandon your resolution. The lawyers who hire the likes of you have their own Lexus payments to worry about, are distracted by the Olympics, quailing about the recession, and scrambling to parlay terrorism into a profit center. They are not interested in you. But I am.

Happily for you, I have oodles of 2002 resolutions. I don't put much stock in resolutions for my personal use. But, when it comes to formulating resolutions that would help others to change their lives for the better (providing advice on how my fellow men and women can remedy their multifarious imperfections is why I was placed on earth and called to the bench), every day is New Year's Day.

It's been years since I doffed the robe for the last time–in an official capacity that is; I slip the sublime garment on whenever I respond to one of your letters. I'm not ashamed to say that I miss the visceral tingle that I felt while imposing a particularly well deserved sentence, the bonhomie of entering an onerous punitive damage award, and that time honored judicial activity of just being meddlesome.

Conjuring New Year's resolutions for the likes of you is quite a come down for me, but my inner call to serve is strong. I confess that I found great personal meaning in a remark ascribed to the late diplomat Paul Warnke that "absolute power corrupts and the loss of power corrupts absolutely" when I started offering my resolutions to the highest bidder on eBay. You are getting the ones left over after my end of season sale. I can't understand why they weren't more popular. Perhaps a category titled, "Resolutions for Lawyer Self Improvement" has little intrinsic market appeal, but here they are, presented to you in order of increasing degree of difficulty.

1. Read a book about the law that cannot be parlayed into more income or CLE credit.

Broaden your understanding of the law. Take on some bigger issues. Every year scores of interesting legal books are published, not all of them authored by talk show pundits. Want some suggested titles? Here are two: *All Laws But One* by William Rhenquist (Vintage Books, 2000) and *Troubling Confessions* by Peter Brooks (University of Chicago Press, 2001). These books stand out because they are short and not mired in footnotes. The Chief Justice arms you with all of the historical perspective you need, as well as some handy legal arguments should you find yourself appearing before a secret military tribunal.

Troubling Confessions features one of those titles that you might think could prick the curiosity of the Oprah Book Club people. By persuasively challenging our assumptions about the integrity of confessions, *Troubling Confessions* should be required reading for anyone still infatuated by Professor Paul Cassell's rationale for abandoning the Miranda warning.

2. Volunteer.

Seems like everyone was stirred to give of themselves in the wake of September 11. God bless you if you were one of the throngs who did. There was enough blood donated to stock the food storage of every LDS vampire on the planet. If you yielded to the power of your beneficent instincts and volunteered your time and talent - keep it up. You already know how good it feels. If you haven't volunteered, do it now. It's not too late, and there is plenty to do. Back when I was in a full-time struggle with narcissism and self aggrandizement, I found membership on the boards of nonprofit agencies to be an ideal tonic. If you share with Groucho Marx the need to reject membership in any organization that would accept you as a member, call the Greater Salt Lake Area Volunteer Center at (801) 887-1237 or access its website, www.volunteerinsaltlake.org.

3. Fire a client.

You know the one(s) I mean. Do it today.

4. Take the time to explore and understand the point of view of the other side of an issue which is very important to you.

Challenge yourself here. Pick the controversy that brings out the pit bull in you, the one where those holding the contrary view are presumed to suffer from terminal moral blindness and basement genetic experimentation somewhere in their lineage.

As a lawyer, you are trained to penetrate and advocate causes you might find distasteful. Put this talent to use on one of your personal "hot button" issues. Don't flinch.

5. Ask a judge for a candid appraisal of your work.

This is a less threatening than it might appear. Judges appreciate good lawyering. It should come as no surprise to you that over time a lawyer acquires a reputation which perfumes the courtroom upon the lawyer's arrival. Even judges endowed with the greatest equanimity are repelled to some degree by noxious fumes and drawn to the scent of a mountain meadow blanketed with wildflowers. Call it the reputational smell test.

Are these reputations, either good or bad, always well deserved? Of course not. All the more reason to get a reputation reading from time to time.

Over the past few months several of my contacts within the judiciary have managed to reach me at my secure confidential location. Some have expressed surprise and dismay at the increasing popularity of the disqualification motion. These motions, brought under Rule 63 of the Utah Rules of Civil Procedure, have an important role in preserving the impartiality and integrity of the judicial process. Too often, however, they are little more than thinly veiled adventures in judge shopping. Such motions seize on judicial smirk or expression of sarcasm to explain the demise of a case crippled by poor facts, unhelpful law, and questionable lawyering.

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Justice Tongue
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During my quickly forgotten tenure on the bench I was similarly targeted from time to time with claims of bias and prejudice. At the time I was puzzled why the lawyer did not attempt to bring to my attention my perceived lapses of impartiality before formally seeking my disqualification. The obvious answer is that such matters are delicate and invite improper ex parte communications. This is, I believe a false concern. Perceived bias is almost always based on judicial conduct susceptible to several interpretations and often left uncaptured on the record. As such, claimed acts of bias are best confronted at the time they occur. This can easily be done in a professional (read "whine free"), non-accusatory manner. Even if the judge does not believe that her conduct was biased, you will have sensitized her to the issue.

It is also ethically appropriate to visit privately with a judge about matters bearing on the quality of your lawyering so long as it does not concern a pending case. The judges I know will be flattered that you asked their advice and counsel while you will be the beneficiary of a reputation tune-up.

With renewed resolve for 2002, I remain,

Tongue, J.