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## Introduction: Equal Access to Justice in Utah

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## INTRODUCTION: EQUAL ACCESS TO JUSTICE IN UTAH

*SCOTT M. MATHESON, JR.\**

This symposium issue of the Utah Law Review is historically significant for several reasons. First, Utah has a rich and interesting history of access to justice, some of which is recounted in the following articles. Second, the University of Utah S.J. Quinney College of Law and more recently the J. Reuben Clark Law School at Brigham Young University have played important roles in that history. Third, and finally, this issue is the most extensive academic account of access to justice in Utah. We hope it is informative and helps point the way to improve access to justice in the future.

This issue's genesis was the 20th Annual Jefferson B. Fordham Debate, co-sponsored by the S.J. Quinney College of Law and the Utah State Bar held on January 15, 2004 in the Sutherland Moot Courtroom, with workshops the next day at the Utah Law & Justice Center. The debate resolution was "Be It Resolved: Utah should adopt a comprehensive state plan to assure that all persons have access to justice in all areas of law and in all forums." Linda F. Smith, Professor and Director of the S.J. Quinney College of Law's Clinical Program, organized and moderated the panel, which included prominent local and national commentators. She and debate participant Steven Scudder both have articles in this issue.

In Utah, the Utah State Bar, the law schools, and the legal community have collaborated on numerous access to justice initiatives. Utah Legal Services, the Legal Aid Society of Salt Lake, the Disability Law Center, and the Multi-Cultural Legal Center have anchored efforts to provide civil representation to those in need. The Utah Bar Foundation has consistently provided needed support. Remarkable law firm and lawyer support in recent years for the "and Justice for all" fundraising campaign that supports the legal service agencies has set Utah apart for participation by the profession. The opening of the Community Legal Center to house many of the agencies is a landmark accomplishment. The beginning of state legislative support is a promising recent development after years of uneven and declining federal support.

Legal education has provided a critical component. Civil and criminal clinic experiences for law students are now fixtures in the law school curriculum. At the S.J. Quinney College of Law, Professors Ronald Boyce and Lionel Frankel pioneered clinical education in criminal law. Professor Linda Smith developed a comprehensive clinical placement program through innovative curricular planning and by building outstanding working relationships with civil legal service providers. In 2000, the S.J. Quinney College of Law inaugurated the Pro Bono Initiative to team up volunteer students and lawyers in community service lawyering. Since then, over 1000 students have worked in more than 1000 projects.

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I am pleased to report that the Fordham Debate program on access to justice played a major role in the formation of an Access to Justice Council to address the legal needs of Utahns in the years ahead. With strong support from Utah judges and the Utah State Bar, the Council offers an exciting opportunity to promote access to justice. Much has been accomplished, but there is still much to do.

Forty years ago, momentum was building to make access to justice a reality for all Americans, not just those who could afford it. Key developments included the emergence of a constitutional right to counsel in criminal cases, recognized in *Gideon v. Wainwright* and embodied in the *Miranda* warnings (“If you cannot afford a lawyer, one will be provided for you at government expense.”), and the launch a few years later of the Legal Services Corporation and legal aid offices throughout the country to provide the poor with civil legal services.

Access to justice initiatives spread throughout the country. There were about 300,000 lawyers in the United States at that time. Today, there are well over a million. Much has been accomplished over these years, but it is still undisputed that we have not responded adequately to the legal needs of low- and middle-income people in our society. A common thread of the articles in this issue is to assess what has been done and suggest where we should go from here. You will find an extraordinary collection of articles that address access to justice from a variety of perspectives.

Professor Richard I. Aaron, a longstanding bankruptcy law teacher and scholar at the S.J. Quinney College of Law, wrote *Access to Justice: Consumer Bankruptcy*, which discusses the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. His article explores what the Act means to the comparatively high rate of bankruptcy in Utah, and how the Act benefits certain high-income debtors and disadvantages impoverished debtors.

BYU Professor James H. Backman’s article, *Law Schools, Law Students, Civic Engagement, and Community-Based Research as Resources for Improving Access to Justice in Utah*, reviews innovations developed at the Utah and BYU law schools to involve students in service-learning activities. The schools have collaborated and emulated one another’s ideas to benefit students and the community.

Professor David Dominguez describes an innovation he developed at BYU in *Equal Justice from a New Perspective: The Need for a First-Year Clinical Course on Public Interest Mediation*. His students provide non-adversarial consultative services to families in low-income neighborhoods. Families facing truancy charges, for example, learn from law students about school attendance law and how their voices can be heard in the school system. He challenges his students to think about system reforms.

In *The Effects of Alternative Dispute Resolution on Access to Justice in Utah*, S.J. Quinney College of Law Clinical Professor James R. Holbrook describes alternative dispute resolution programs in Utah’s court system. He explains how ADR programs help achieve access to justice goals through fair and efficient alternative processes for conflict resolution.

Tulane Law Professor Robert R. Kuehn wrote *Undermining Justice: The Legal Profession's Role in Restricting Access to Legal Representation*, a piece that has relevance to any pro bono or non-profit entity that provides free legal services. Professor Kuehn argues that attempts to constrain these services improperly restrict access to justice and should be resisted by the bench and bar.

Steven B. Scudder, Counsel to the ABA Standing Committee on Pro Bono and Public Service, kindly provided his article, *Justice Will Prevail (with a Little Help from Her Friends): Pro Bono in Utah*. Mr. Scudder reviews recommendations that his ABA Committee and consultants made to the Utah State Bar and Utah Legal Services to improve pro bono programs in Utah.

The final contribution is Professor Linda Smith's article on *Access to Justice in Utah: Time for a Comprehensive Plan*, which has been in process since 1996 when changes to federal law reduced funding for and restricted services provided by Utah Legal Services. As noted above, Professor Smith invited the community to consider developing a comprehensive state plan at the January 2004 Fordham Debate. Since then, she has worked to encourage leaders of the bench and bar to establish a planning structure and process. Her article sets forth the arguments for a comprehensive state plan. Professor Smith's efforts have been instrumental to forming the Access to Justice Planning Council to undertake this task on a permanent and ongoing basis.

On behalf of the University of Utah S.J. Quinney College of Law and the Utah Law Review, I wish to thank these authors. All of their articles are outstanding in their own right, and together make this issue of the Utah Law Review very special, one that should help the cause of advancing access to justice in the State of Utah.