

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

SALT LAKE COUNTY BAR ASSOCIATION

FALL 2016

President's Message

Giving back.

One of the most unique aspects of our profession is the ability to provide services at no cost to persons with unmet needs.

This is unique in that very few other professions support such programs, let alone actually require their professionals to do so. Rule 6.1 of the Rules of Professional Conduct states that "every lawyer has a professional responsibility to provide legal services to those unable to pay." Each lawyer should "aspire" to provide at least 50 hours of service. The rules go on to state that lawyers are urged to report their pro bono services annually to the Utah State Bar. Although there is no specific requirement to actually provide pro bono services, it is understood that each lawyer has a duty to provide those services. There is also the option to provide money rather than services by the ability to "discharge the responsibility to provide pro bono publico legal services by making an annual contribution of at least \$10 per hour" for each hour not actually provided in services. (Quick math: \$500 per year)

There are so many opportunities for lawyers to provide services and/or contributions. Here is a list of some opportunities:

Utah State Bar Pro Bono Commission Projects

Pro Bono Commission

-Take on a pro bono case, the Bar covers malpractice insurance, can provide a mentor, and you can do this even if you have an inactive license. We need the most help in family law, but also have pro bono cases in adoption and termination of parental rights, bankruptcy, estate planning, expungements, landlord tenant, limited assistance for military service members, minor and adult guardianships, probate, protective orders, post conviction, and public benefits.

-Contact probono@utahbar.org



Bart J.
Johnson

by Bart J. Johnson
Salt Lake County Bar President

Debt Collection Pro Se Calendar (SLC)

- The Debt Collection Pro Se Calendar is an innovative, "integrated" clinical model. It is a hands-on, in-the-courtroom, "immediate resolution and results" clinic. It covers a judge's designated pro se calendar, generally held every Wednesday, at the Matheson Courthouse starting at 1:00 p.m. It is staffed with volunteer attorneys and provides on-the-spot legal advice, limited representation, and procedural information to pro se litigants. The calendar lasts approximately two hours. Great way to do pro bono in a limited representation manner.

-Contact probono@utahbar.org

West Jordan Landlord Tenant Pro Se Calendar

-The West Jordan Landlord Tenant Pro Se Calendar is an innovative, "integrated" clinical model. It is a hands-on, in-the-courtroom, "immediate resolution and results" clinic. It covers a judge's designated pro se calendar, generally held every Tuesday at the West Jordan Courthouse starting at 8:30 a.m. It is staffed with volunteer attorneys and provides on-the-spot legal advice, limited representation, and procedural information to pro se litigants. The calendar lasts approximately two hours. Great way to do pro bono in a limited representation manner.

-Contact tyler.needham@utahbar.org

Pro Se Family Law Calendar (SLC and WJ)

-The Family Law Pro Se Calendar is an innovative, "integrated" clinical model. It is a hands-on, in-the-courtroom, "immediate resolution and results" clinic. At present, it covers a commissioner's designated pro se calendar, generally held twice a week, at the Matheson Courthouse. It is staffed with volunteer attorneys and interns, and provides on-the-spot legal advice and procedural information to pro se litigants. The calendar lasts approximately two hours.

President's Message

C o n t i n u e d

Great way to do pro bono in a limited representation manner.

-Contact Virginia@lovs.biz

Adoption and Termination of Parental Rights

-Judges refer adoption/termination cases to the Bar. Attorneys sign up to take these cases, and can receive mentorship from Kirton McKonkie.

-Contact probono@utahbar.org

Adult Guardianships and Conservatorships

-This project, administered primarily by the AOC, provides judges with a roster of attorneys, which the judge may appoint to represent adult respondents in guardianship and conservatorship proceedings. These attorneys must have malpractice insurance and have completed training. We help to recruit attorneys, and then the probate clerks email opportunities for representation to those attorneys.

-Contact probono@utahbar.org

Immigration Asylum Project

-This project is a collaboration between Holy Cross Ministries and the Pro Bono Commission. Holy Cross ministries performs the intake and screening on potential applicants for asylum to the U.S., and the Pro Bono Commission helps recruit attorneys willing to take on those cases. We held a two-day training on Immigration Asylum Law with more than 50 attendees, and many have taken on asylum cases.

-Contact probono@utahbar.org

Modest Means

-This program will provide you with referrals from an area of the public that greatly needs the assistance of attorneys. These individuals cannot afford full-priced legal assistance and they do not qualify for free (pro bono) legal services. They, however, would seek representation if offered at a reduced-price. This program is designed to bridge the gap and provide paying clients to attorneys who want to supplement their clientele, but are willing to charge lower fees to qualifying clients.

-Contact modestmeanssupport@utahbar.org

University of Utah S.J. Quinney College of Law Pro Bono Initiative

-The Pro Bono Initiative, or PBI, is a one-of-a-kind noncredit volunteer program that allows students to build real world problem-solving skills to serve their community. Clinics operate year-round and are staffed by our volunteer students and volunteer lawyer supervisors. PBI also pairs students with practitioners in various placements including law firms, where students assist on pro bono matters, as well as nonprofit organizations and legal-related agencies. Clinics include: American Indian Law, Debtors Counseling, Expungement, Family Law, Medical-Legal, Rainbow Law, Street Law, and Community Legal Clinics.

-Contact JoLynn.Spruance@law.utah.edu

Finally, as indicated above, everyone has the opportunity to donate rather than provide services and the opportunity to donate and provide services. And Justice for All, Utah Legal Services, and Legal Aid always appreciate and need your donations.

Judicial Profile

Justice John Pearce

By Kristen Olsen

Justice John Pearce, a Magna native, became Utah's newest Supreme Court justice in January of 2016 after working as a shareholder at Jones Waldo Holbrook & McDonough, general counsel for the Office of the Governor, and a judge on the Utah Court of Appeals. He and his wife, Jennifer Napier-Pearce, are also adjusting to her new position as the editor-in-chief of the Salt Lake Tribune, a position she accepted in August of 2016. "If we ever find ourselves in the same room for more than half an hour, I intend to ask her how she's enjoying it," he joked.

Aside from being extremely busy, Justice Pearce said they are both enjoying the challenge of their new roles. Justice Pearce, who earned a degree in economics from the University of Utah before attending law school at the University of California at Berkeley, feels that his time on the Court of Appeals and his experiences working for Governor Herbert have been invaluable in preparing him to work as a Utah Supreme Court justice. Being intimately involved in the legislative process and negotiating the language of bills, for example, has made him a more keen interpreter of statutory language and given him insights into the legislative process that have been tremendously valuable as a justice. In addition, Justice Pearce explained that a Court of Appeals judge is the most sophisticated consumer of Utah Supreme Court decisions. As such, he feels he developed a heightened sensitivity for how his opinions might be interpreted by lower courts.

While some aspects of his new job are very familiar, the transition from judge to justice has been more difficult than he would have imagined because he has had to learn to see the world a little bit differently. Justice Pearce noted that the dynamics of the Utah Supreme Court are very different from those of the Court of Appeals, as well. "It's harder to elbow your way into oral arguments with five people on the bench," he said. Procedurally, the decision-making process takes longer, and often, the cases at the Utah Supreme Court are more complex with several issues to parse through. Even though two additional voices and minds certainly complicate the decision-making process, "they complicate it in a good way," Justice Pearce said. "The diversity of opinion leads to well-reasoned results."



Justice John
Pearce

Usually, Justice Pearce said, he has a good idea of where he stands on a case before oral arguments, but he has changed his mind on rare occasions. More often, though, oral arguments are helpful in shaping the way he will frame and structure his position. He said the justices also use oral arguments to bolster their own positions or elicit concessions from an attorney that they can use while debating the issues in chambers. The best oral advocates, Justice Pearce explained, are those who have the ability to answer questions while weaving in the main themes of their cases. Those advocates can answer the difficult questions by showing the court why a particular answer does not matter to the overall themes of the case. While style points do not determine the outcome of a case, Justice Pearce mentioned that it is impressive when an attorney approaches the lectern without notes, showing a mastery of the facts and cases, and carefully considering each question before responding.

Brief writing is extremely important, Justice Pearce explained. He said he reads each set of briefs several times before oral arguments and feels that this is the time the writers have his undivided attention. The best advocates, according to Justice Pearce, are those who "draft briefs that take the readers by the hand and walk them logically through an argument," all while anticipating potential questions and attempting to resolve them. Anything that detracts from his walk through of an argument—such as spelling and punctuation errors—can become distractions. Justice Pearce noted that he appreciates attorneys who avoid repetition in their briefs. Good writers, he explained, are

"confident enough in their work to say it once, lay it out there, and trust that we will do the work necessary to understand it."

After oral arguments, Justice Pearce said the discussions between the justices can be very intense. "I thought I had faced harsh questioning when I appeared before the Court. I have faced much harsher questioning in conference," Justice Pearce said. While it's never personal or mean-spirited, he knows he will have to defend his positions from all sides to his colleagues. "Quite frankly," he said, "that's what makes the job invigorating." He added, "What we do is very important and the consequences are very important, so I wouldn't want it any other way."

Justice Pearce and Jennifer Napier-Pearce are raising two teenage sons, ages fifteen and eighteen. They enjoy traveling as a family, watching movies together, and playing board games.

Practitioner Profile

T y l e r N e e d h a m

By Kate Conyers

New Lawyer Spotlight: Utah State Bar Access to Justice Director Tyler Needham

Tyler Needham graduated from the S.J. Quinney College of Law at the University of Utah in 2015. Following the Bar Exam, he started working at the Utah State Bar as its Access to Justice Director. Under his leadership, pro bono programs and other programs at the Utah State Bar aiming to provide access to all of Utah's residents have increased in number, reach, and jurisdiction.

Born in Los Angeles, California, Tyler and his parents and little brother moved to Park City, Utah, when he was 7 years old. He attended Park City High School where he participated on student council, a position where he proved that he was a “nerd that the cool kids trusted to do it right.” This still very much applies in his life.

Tyler graduated in 2011 from the University of Utah with a B.S. in Political Science and a minor in Campaign Management. During college, he was active in politics, interning and volunteering on several campaigns, including those for Jake Shannon, Jim Matheson, and Peter Clemens. He volunteered for Jim Matheson when he ran against Mia Love in a race where she won by less than 800 votes, proving to Tyler that individual involvement in local issues can truly make a difference. Tyler also interned in Washington D.C. for Senate Majority Leader Harry Reid and the Democratic Steering and Outreach Committee. Although it was an incredible experience, Tyler missed Utah and decided that a career in politics wasn't for him.

During law school, Tyler served on the boards of the Public Interest Law Organization and the Minority Law Caucus and he served as the Student Director of the Street Law Clinic as a Student Fellow through the Pro Bono Initiative. He earned his Pro Bono Certificate by providing several hundred hours of community service. His passion for service also influenced his clerkships during law school at the Salt Lake County District Attorney's Office, Utah Legal Services, and the Guardian ad Litem's office.

While studying for the Bar exam in June, 2015, Tyler learned of a position for the Access to Justice Director for the Utah State Bar (“ATJ Director”) following the departure of Michelle Harvey. He knew it would be a perfect job for him based on his experience with pro bono programs and his passion to change policy and to make a difference in our community. Although he knew he would miss working in litigation, he applied and started in that position just a week after taking the Bar exam.

As the ATJ Director—a position created in 2012 to assist the Pro Bono Commission, the State's eight Pro Bono District Committees, and the Modest Means Committee—Tyler has had the opportunity to do awesome things and to work with amazing people including judges and

commissioners from across Utah who all have the same goal – to make justice more accessible to all of Utah's residents. That includes not only the poor but also the middle class and anyone else who may be struggling to find legal services because of finances, geography, technological difficulties, or otherwise. He passionately believes that it is his job to provide support and opportunities so attorneys can help individuals with their legal issues and to coordinate resources and volunteers. The Bar leadership, including Executive Director John Baldwin, President Rob Rice, and President Elect John Lund, are all very supportive of access to justice initiatives, Tyler's leadership, and the

direction and expansion of Bar sponsored pro bono programs.

One of Tyler's favorite pro bono innovations is the pro se calendar model. They are an incredibly effective and efficient use of attorney time, and they assist clients in family law, debt collection, and landlord tenant matters. Volunteers provide limited scope services for a few hours on a weekday without any ongoing responsibility. This program is a win-win as it makes a huge difference in the lives of individuals while also giving the volunteer attorneys litigation experience during a short-term, feel good pro bono experience. In fact, attorneys assisted over 1,200 people last year through the pro se calendars. With the expansion of pro se calendars across the state, many more volunteer attorneys are needed.



T y l e r N e e d h a m

Practitioner Profile

T y l e r N e e d h a m

The calendars were created and continue today because of the dedicated and ongoing work of Commissioner Sagers, Virginia Sudbury, Stewart Ralphs, and Charles Stormont.

It has been a lot of hard work to make legal services more accessible to all. Tyler gives a lot of credit to all of the people that are doing awesome things that make his job easier. But he acknowledges that there is still so much to do. Utah Legal Services provides the intake for more than 90% of the clients that Tyler's department places with volunteer attorneys. Judges also refer termination of parental rights cases and post conviction relief cases. There are many individuals, however, who are never paired with a volunteer attorney. While we are able to help hundreds of people every year, far more are unable to receive legal assistance, largely due to a lack of funding for legal services.

One project Tyler is working on to increase access to justice and opportunities for volunteer attorneys is the pro bono database, a portal through which volunteer attorneys can easily be matched to handle pro bono matters screened through legal related nonprofit organizations. Until the database is completed, Tyler and his staff will continue these efforts manually.

In his spare time, Tyler loves to be in the mountains, hiking, back country skiing, and rock climbing. He loves to read everything, but has a particular fondness for Steinbeck, Hemingway, and McCarthy. He has a big orange tabby cat named Leo.

If you are looking to volunteer on a pro bono capacity, definitely send Tyler an email at Tyler.Needham@utahbar.org. He will match your interests, abilities and timing with any number of pro bono opportunities. We are fortunate to have someone as passionate, hard-working and forward thinking as Tyler as our Bar's Access to Justice Director.

He passionately believes that it is his job to provide support and opportunities so attorneys can help individuals with their legal issues and to coordinate resources and volunteers.

Dear Justice Tongue:

I can guess in advance how you will respond to this inquiry, but can't help myself. In Donald Trump's very unconventional campaign, he attacked just about every ethnicity other than his own, including a rank racial attack on Federal Judge Curiel presiding in the case brought on behalf of students allegedly defrauded by Mr. Trump's "Trump University." That said, I seek your wisdom concerning how it is that this race-baiting, xenophobic, and otherwise offensive campaign gathered such traction.

**Signed,
I.T. Big**

Dear Mr. Big:

I have the sense, given the last few letters to which I have unwisely responded, that the good Justice may himself be the subject of "baiting" of sorts. Nevertheless, your meanderings have touched a chord and provoked thoughts that might be worth sharing.

I am uncertain Mr. Trump is anything, other than a very skilled self-promoting huckster. His sole ethos appears to be his own base self-interest. That said, this response is really not about him. Mr. Trump has never alarmed me. He has raised concerns certainly. What is alarming is not the speaker but the audience. The crowds that gathered around him seem to be especially aroused by his fiendish command of hateful speech tinged with the ugly specter of racism. This is worth talking about.

We were led to believe that Mr. Trump's campaign engine was fueled by uneducated white male angst and anger. It was certainly that, but more. It was observed that his "populous campaign" touched a nerve with those feeling marginalized or who otherwise considered themselves to be the "losers" in the last decade's economic shuffling of the deck. The theory was that such self-described "losers" were disadvantaged and could be aroused by hateful speech targeting "others." Those "others" included citizens whose rights and privileges in this country should have been fully respected even as they sacrificed themselves and their children in the causes of this great country. Nothing seemed to escape Mr. Trump's hateful wrath. So let us spend a minute on the fear and loathing of the "others" and what we have always supposed was the "American Dream."

Unless our great grandfathers wore feather bonnets and rode bareback, I suggest we might be of immigrant stock. This great nation of course is one of immigrants. It is also, by most estimates, the most successful, strong and economically advanced country in the world, despite what Mr. Trump has said to the contrary. If that is the case, one might want to consider that immigrants have provided and will provide enormous strength and benefit.

Recently a dear friend was naturalized as a United States citizen. That ceremony and the bestowal of American citizenship left her at once awestruck and giddy. The naturalization ceremony, similar to many over which I have had the honor of presiding, leaves one with a deep appreciation for the blessings of this Republic. When one witnesses the stories of so many who have struggled and sacrificed so much and traveled so far to gain citizenship and to participate fully in this country's future, one can be overcome by what we citizens take for granted. There is another cliché bandied about, namely "freedom is not free." Americans usually hear that statement in the context of mindless projection of military force abroad and the sacrifice of our men and women in theaters of war. The future may no longer tolerate such projections of power and this citizenry needs to be brave in a different way. Coddled and protected as we are from most of the conflagrations that have consumed the world, and many that we ourselves have ignited, we have ironically become, in some ways, one of the most fearful peoples of the world. This is true even though a majestic lady holding a torch has held out this great country as a welcoming beacon of hope to all the people.

The reason that demagogues gain traction with the rhetoric of fear and hate is that those two cousins are the antithesis of hope and love. Instinctively, humans fear more than they hope and therefore hate more than they love. It takes courage to embrace hope over fear. Those who preach the delusion of certainty want something from us. They want a measure of our

Justice Tongue

N O T T H E S P E A K E R B U T T H E A U D I E N C E

freedom and a sacrifice of the values that have always made this country great. The motto, “Make America Great Again,” presumed this country was not “great” and that one person could make it so. It was and is an evil and treacherous trap. Does our great Republic need constant modification and improvements? Does it desperately cry out for allegiance to core values above party dogma? Yes, absolutely. But those compromises and improvements need to be crafted by and for an engaged and knowledgeable citizenry. Absent that, we will have, as Jefferson predicted, the government we deserve, and we will destroy that with which we were endowed.

Living in an open, diverse and free society takes great courage, restraint, tolerance and civility. It requires both an understanding of and commitment to values which underpin this “great experiment.” America, as framed by our founders, has always been just that—an experiment. It tested whether a nation could be forged by immigrants on the premise that they, and more to follow, could undertake self-governance under mechanisms which offered and protected individual freedoms, which freedoms were nowhere else enjoyed. More than that, the chartering documents embraced principles of human equality before the law that its original founders and required compromises could not fully achieve. The slow and tectonic movement toward full realization of our nation’s declarations and aspirations of human freedom and individual worth and dignity was to be the labor of the coming generations; its beneficiaries.

This new nation was designed to break loose the bonds of tribalism that stifled and stilted the other nations of the world and so inspired one of those other nations to create and deliver a statute embolizing our inclusive creed to those “outsiders” struggling to breathe free. We ourselves have struggled against our own base instincts in which successive self-assuming “majorities” have tried to stake out dominance by which other citizens were marginalized as existing outside a tribe that by our declarations should never exist. The animating ideal underpinning this country is an affiliation to principles of self-determination within a social contract that saw all citizens as equal before the law and deserving of full legal enfranchisement. Arrayed against this “great experiment” and its continuing success are our base instinctive fears of the “others” which demagogues throughout time have sought to enflame and exaggerate, urging a betrayal of our own core values. Our responsibility, now and always, will be to take the side of our better angels and to protect those values against all threats, foreign or domestic.

Fondly,

Justice J. Learned Tongue

Helpful Thoughts from Justice Court Judges

Helpful Thoughts from Justice Court Judges: Salt Lake City and Salt Lake County Justice Courts



Judge John Baxter

Salt Lake City Justice Court Presiding Judge John Baxter

What types of cases do you lose the most sleep over?

I lose sleep over any case in which the defendants are poor, mentally ill, addicted, poorly educated or any combination of these.

Most of the people I interact with want to do the right thing, to make good if they think they have done something wrong, but so many are so poorly equipped to navigate the justice system that I sometimes feel like we, the justice system and society as a whole have failed them. We have failed to educate, failed to treat, failed to house, failed to protect them as children and now that they are adults are left with not much more to do than figure out what the legally correct and fair thing is to do. And mostly that means a penalty of some kind or another for people who are already pretty ground down. I try to deal with it by treating people with dignity, respect, and by doing more listening than talking. Don't know if it works.

What qualities/traits do you appreciate in the attorneys appearing before you?

I appreciate when attorneys care enough about their client, whether government or individual, to be able to honestly and fairly appreciate and articulate positions which best serve their clients' interests while acknowledging that other positions, with which they may not agree, exist and may have some validity. I don't like attorneys to sleepwalk through cases, to not stand up for their clients, or to personally attack opponents who are zealous advocates. Do advocate. Don't whine.



Judge L.G. Cutler

Judge L.G. Cutler

How do you prepare for a pretrial calendar and/or a motion hearing calendar?

To describe this accurately, I must define terms. Pretrial calendars in SLC Justice Court include probation violations, pending OSC adjudications, jail surrender hearings, and the more traditional first appearance after an arraignment. My

preparation also varies if the matter pending is a pre-adjudication allegation or a post-conviction matter.

I will have reviewed every case prior to the pretrial. My preparation is most dependent upon two elements. First, the seriousness of the offense, if a victim is participating in the case, and the history of prior compliance (e.g. FTAs, probation compliance, restitution). I view DUIs, DVs, and offenses against people as the most serious. Second, the procedural posture of the pending case (e.g. Information signed; E-citation filed timely; notice provided to all parties; date of violation; prior continuances; current or needed briefing/trial schedule).

If the pending allegation is a traffic offense (not substance/alcohol related) I spend less time reviewing the substantive allegation. But insure the procedural safeguards are met, notice provided, and the pleadings are consistent with the case history.

If the pending allegation or post-conviction is DV, DUI, or an offense against a person, I purposefully devote more resources (pre or post-conviction). In pending allegations, I review the matter for procedural issues, scheduling needed or missed, the formal information is filed and meets the elements of the offense. In all post-conviction matters, if a substance or domestic evaluation is provided, I will have reviewed it prior to any hearing. Look for critical issues and be prepared to ask the defendant about changes, positive or negative (e.g. housing, employment, living situation, family relationships). Knowing these critical issues will assist the Court in making better decisions to keep or correct a probation scheme toward success. In cases assigned to

Helpful Thoughts from Justice Court Judges

myself, an advocate on a post-plea should know all the information contained in any treatment evaluation submitted to the Court.

If the pending criminal (non-traffic) case is not DV, DUI, or a person crime, I reduce the time spent on probation issues and focus upon scheduling matters for hearing, trial or disposition. The majority of these dispositions focus on fines or community service and a timetable for payment/proof of hours.

Anything you would like attorneys to know about you as a judge or the justice court system in general.

In regard to the justice court system generally, I believe all advocates should understand two critical points about the Justice Court Clerks' Office. First, the clerks' functions are critical to a successful Court operation. Advocates can assist the court clerks in simple ways and increase the Court effectiveness, timeliness, and reduce the time to disposition. Examples: Immediately return calls, email requests, or any contact from the clerks' office. We always attempt to contact counsel to set mutually agreed upon hearing dates, prior to sending a notice. A delayed return call or email response only frustrates the clerk, requires the clerk call a second or third time, and delays the hearing date. These little delays are magnified by the overwhelming caseload in Salt Lake City Justice Court. [This court (4.5 fulltime judges) disposed almost 20% of all class B, C misdemeanors and infractions finalized in FY2016, statewide. This court is 25% busier than the 2nd busiest justice court countywide.* AOC: 6/30/16 Time to Disposition Report.]

Second, attorneys should understand that they are addressing the 'Court' when speaking to the clerks' office. This requires the same rules of civility and respect as if addressing the Court, judge or other attorneys. On a practical note, those attorneys who don't respond appropriately (either ignoring a clerk's request or acting disrespectful) do create an image and reputation within the Clerks' office. A professional reputation is difficult to preserve. Simple respect, understanding and responsiveness to the Clerk will yield more benefit to an attorney than she or he may know.



Judge Sydney Magid

Judge Sydney Magid

Is there a humorous story you can share?

A few years back, the Honorable Stephen Anderson, Tenth Circuit Court of Appeals Judge, appeared for jury duty in my courtroom. Both the prosecutor and defense counsel, surprised by having the appellate judge in the jury pool, moved to have him removed for

cause due solely to his professional status. After ascertaining that Judge Anderson did not believe any of the other jurors recognized him (and that he had not informed any of the other jurors what he did for a living), I denied the for cause motion reasoning "[i]f we can't trust a Tenth Circuit Court of Appeals Judge to be fair and impartial, who can we trust?" At first, I was certainly sorry that I had denied the motion for cause because his Honor was selected to sit on the jury and the case was hotly contested, requiring me to make numerous evidentiary rulings in the presence of a far more knowledgeable and superior jurist than myself. But, Judge Anderson was such a gentleman, it ended up being a good experience for all of us.

A few years back, another Tenth Circuit Court of Appeals Judge appeared before me as a Defendant in a traffic infraction bench trial. Prior to explaining the bench trial process, I asked if there were any defendants who had legal experience because I do not want to bore people who understand the trial process by explaining the trial process to them. The appellate judge raised his hand and said, "I have a little legal experience your honor." I put on my best game face and tried not to laugh. His opening was "I apologize your honor, but my insurance company sent me." The prosecutor was quite talented, but this particular bench trial was his first, and I found in favor of the defendant. After everyone left, the prosecutor lamented that he lost his first trial. To which, I responded "[i]t wasn't just any defendant you lost the trial to- it was a Tenth Circuit Court of Appeals Judge." The prosecutor was quite surprised.

Helpful Thoughts from Justice Court Judges

Do you have any advice to attorneys?

Things sound differently on the bench than do in the advocate's chair. I think the biggest mistake an attorney can make is to not listen closely to the testimony. As the trier of fact, the only thing I know about a case is what is said on the witness stand, and if you are not listening closely to what I am hearing, then you don't understand what I know and don't know about the case. My decision is going to be based solely upon what I know. Many attorneys are so busy writing down redirect or cross examination questions that they forget to listen closely to the testimony. Also, attorneys can become so familiar with their case that they assume I know several things they know, which, of course, I do not, unless it was presented in the evidence.

Any other advice to attorneys?

Sometimes as an attorney when you become familiar with your case, you forget the pitfalls of your case. As a young attorney, I remember thinking as I began working on a new case that there was no way we were going to win the case. But, later, once I was immersed in the case, I would start thinking there was no way we could lose the case. And, I couldn't remember what the pitfalls were unless I had written them down earlier. It is easy to lose your impartial perspective when you are immersed as an advocate. Write down the pitfalls for your personal reference and review them as you do your trial preparation.



Judge Catherine Roberts

Judge Catherine Roberts

What resource do you wish you had to make you more effective as a Judge?

More referrals for mental health services, and the ability to obtain a competency evaluation at the misdemeanor level.

What traits/characteristics are you still trying to improve as a Judge?

Demeanor and ability to keep cool under pressure.

How has your thinking about the justice court system evolved since you took the bench?

I have a lot more respect for this level of the criminal justice court system than I did before joining the bench. That might seem obvious, since I sought this appointment, but this is the most common level the average person may encounter—as a defendant, as a jury member or as a person fighting a traffic ticket. The system is professional and the judges, clerks, prosecutors and defense attorneys take it very seriously and are always trying to improve.

Helpful Thoughts from Justice Court Judges



Judge Jeanne Robison

Judge Jeanne Robison

Is there a humorous story you can share?

A defendant had obtained a UHP video. It was in a format he could not play without their software but he was able to convert it into a format he could play and stored it on a DVD of his own which he brought with him to court. He introduced

the DVD as Defendant's Exhibit 1 during his trial for a traffic offense. As soon as the footage of the traffic stop finished, the DVD continued to play a video of the defendant and another individual engaging in sexual activity. The entire DVD had been introduced into evidence so this was technically now part of the evidence in the case. But not relevant evidence, of course. And it had no impact on the outcome of the case other than causing some embarrassment to the Defendant, myself and others present. But it was very hard to conduct the rest of the trial while ignoring the "elephant in the room."

What is a good day on the bench?

I am often very stern when sending people to jail because I do not like it. It is a failure of the system. A good day is when everyone is in substantial compliance and no one goes to jail. Some may think judges like incarcerating people. We do not. Very good days are when we see Defendant's really succeeding. When a Defendant is able to turn their life around, I understand that they did it themselves, but I take pleasure in the very small role I may have played and great pleasure in their pride in themselves.

What other Judges or attorney do you admire?

As so many attorneys appear before me it would be improper to suggest favoritism by singling any out. I admire and try to emulate judges who never display frustration or displeasure and are able to dispassionately dispense well-reasoned rulings. Many judges possess these qualities but Judge Boyden is a specific judge whose demeanor I would like to emulate.



Judge Shauna Graves Robertson

Salt Lake County Justice Court Judge Shauna Graves Robertson

What's a good day on the bench?

For me a good day starts at 8:30 with the District Attorney ready to call cases. That means that the D.A. arrived at court prior to me taking the bench and or they have gone over their calendars with defense counsel before the day of court. I

like my calendar full enough that cases are being resolved in a timely and efficient manner but, not so full that there is no break between sessions. I feel that it is important that each individual have their voices heard. The defendant should go away feeling that the district attorney, defense attorney and judge gave their case the attention it deserved, regardless of their circumstances. I like for cases to move along and tend to frown upon multiple continuances, or attorneys with calendars so full you have difficulty setting a court date with them. It is my belief that a misdemeanor case should not take more than six months to complete (if there is a jury). Also a defendant should be able to be seen by a judge or counsel within 30 days. I love to hear motions or trials where there are good well thought out arguments. It is frustrating to see attorneys set hearings for which they know there are no bases. I like to finish my day around 6:00 p.m, but I would rather stay later than continue a case to another day. I don't expect everyone to be happy when they leave my court but, I do want them to feel valued and respected. When my day ends I like to feel I used my time wisely and I accomplished something.

For biographies for these judges, look here:

https://www.utcourts.gov/judgesbios/showGallery.asp?dist=3&ct_type=U

Movie Review

D e n i a l

By Rita Cornish

Before stepping into the theater to watch *Denial*, I thought I had an idea of what the show was about. The trailer portrayed it as the based-on-true-events story of a court case that tested the historical existence of the Holocaust--an event that is so entrenched in our collective knowledge as a human race that to question its occurrence is incogitable. Although I was mildly curious as to how they (Director, Mick Jackson and his team) could make a compelling movie about testing that hypothesis, actually seeing *Denial* was languishing on my todo list until October 27, 2016, the day Ammon Bundy and his cohorts were acquitted of all charges in the Oregon standoff trial. As the story broke, I found myself seriously questioning how a jury could acquit Bundy for a crime that I thought was a well-accepted historical event. In this case, the 41-day armed occupation of the Malheur National Wildlife Refuge in Oregon. While not on the same scale (indeed, not in the same universe) as denying the Holocaust, my disquiet over Bundy's acquittal had me handing over my \$11 for a ticket to see *Denial*. I left the theater as unsettled with the Bundy verdict as when I arrived but, in the intervening two hours, I was wholly entertained by a movie that was far more about lawyering than it was about the Holocaust.

At the center of the story, a self-educated Hitler scholar David Irving (played by Timothy Spall) whose bigoted rhetoric and denial of the Holocaust draws the pointed criticism of the film's protagonist, Deborah Lipstadt (played by Rachel Weisz). In the opening of the movie, Lipstadt is speaking at an event and promoting her new book on Holocaust deniers that identifies Irving as one such liar and falsifier of history. Unbeknownst to Lipstadt, Irving is in the audience and, at an opportune moment, he makes his presence known by challenging her to a debate on whether the Holocaust occurred. Conflict ensues, but Lipstadt pointedly declines Irving's invitation to argue the point.

Shortly thereafter, Lipstadt learns the Irving is suing her and her publisher Penguin in England for defamation for calling him a Holocaust denier, liar, and falsifier of history. These statements, Irving claims, have irreparably damaged his reputation as a serious scholar and historian. The English venue provides a bit of a plot twist in that apparently the

burden of proof is shifted from what is applied in the United States. Under English law, Lipstadt carries the burden of proving her statements are true and therefore justified, which despite our collective acceptance that the Holocaust occurred, is no small task because the Nazis left little or no physical evidence. No photographs. No film. The Nazis even leveled Auschwitz as they withdrew from Poland.

But from a lawyer's perspective, this is where the movie gets interesting. It explores the tension between putting on the story your client wants to tell and the story that will win the case. It's a tale of restraint. In the movie, solicitor Anthony Julius (played by Andrew Scott, who you may know from his portrayal of Moriarty on PBS's *Sherlock*) and barrister

Richard Rampton (played by Tom Wilkinson) end up at odds with their client Lipstadt. Lipstadt wants to put on a case that not only proves the truth of her statements but also provides a platform for Holocaust survivors to testify and tell their stories and the stories of those that perished. The legal team, on the other hand, is focused on the elements of their justification defense and want to put on the least risky evidence sufficient to meet the elements and nothing more. That limited evidence, in the lawyers' view, does not include Lipstadt's testimony or the testimony of any Holocaust survivors. The core of the plot is in the resolution of that tension and whether the evidence put on was too little, too much, or just right.



Denial has received mixed reviews. It is trending at about 6.8/10 on Rotten Tomatoes (https://www.rottentomatoes.com/m/denial_2016/). What seems to be the most pervasive criticism is that it lacks a fully cathartic moment or a great climax. I think that is because the average viewer is looking for that one great scene where a Holocaust survivor tells Irving off or Lipstadt loses her cool and dresses him down. But this movie does not have one of those big scenes, like Colonel Nathan Jessup (Jack Nicholson) yelling, "You can't handle the truth!" in *A Few Good Men* (1992). Rather, this is the story of building a case in thoughtful, even painstaking, baby steps that earn you the verdict you are hoping for. So, I can see why the average moviegoer who is use to a final boss battle at the climax of the movie leaves a little disappointed. Lawyers, however, are not likely to miss the impact of those baby steps.

Recent Precedents

New Lawyers and Judges Reception

The New Lawyers and Judges Reception was a great success. Over 150 of our members attended. Kudos to our Socials Committee members Jonathan Pappasideris, Mark Kittrell, Jennifer Mastrorocco, and Sam Meziani for putting on this terrific event.

Hello
My name is
New Lawyer



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Alpine Court Reporting and Xact Data Discovery

We would like to say thank you to our generous sponsors, Alpine Court Reporting and Xact Data Discovery. We would also like to thank Urban Pioneer Foods, Cheers and Swizzles, and Purely Linens for their support of our New Lawyers and Judges Reception.



Restaurant Review

A h n H o n g C a f é

By Michael Langford

My wife and I are avid fans of food traveler celebrity, Anthony Bourdain, and one lesson learned, is to not always judge a “book by its cover”. The Ahn Hong Café, is no exception to Bourdaine’s rule.

This hidden gem is located on 1465 S. State Street, Salt Lake City, in the middle of a strip mall, sandwiched between a body shop, cell phone re-seller, and a massage parlor. It is oftentimes overshadowed because of its crowded and more popular neighbor ,Tash’s Raman. We have never had an issue with getting a table at the Ahn Hong. The first time we visited this restaurant, our expectations were low, at best. However, we had been told by trusted foodies that the cuisine would defy expectations.

Our first visit left us pleasantly surprised, with Ahn Hong Café becoming one of our frequent and favorite dining experiences. You will find that the staff are always attentive and the food is fresh and delicious.

To begin, don’t let the Spartan décor dissuade you from entering the restaurant and ordering some of the many Cantonese delights. Ahn Hong has an extensive menu with multiple meat and vegetable dishes. However, my wife habitually orders the dumpling noddle soup, whereas I’m partial to the mushroom noddle soup. The noodle soups in particular are my comfort food on chilly winter days. Our two year old son prefers two orders of the steamed pork buns from Ahn Hong’s ample dim sum menu. Often times we order other dim sum fare such as the pepper shrimp or sweet custard buns. We are never disappointed. Come prepared with a heavy appetite as the portions are enormous.



A h n H o n g C a f é

Quick facts

- family owned since 1991
- hours, 11am-9:30pm M-F, 10am-10pm S-S

e-SLCBA

The SL County Bar online

SLCBA
SALT LAKE COUNTY BAR ASSOCIATION

on

facebook

Oh, yes, we're social...
The Salt Lake County Bar is on Facebook.
Check us out to connect with other members,
see pictures of our events, start a discussion
and other fun stuff.



SLCBA
SALT LAKE COUNTY BAR ASSOCIATION

Group on

Linked 

Our website address!

www.slcb.net

Check out back issues of the Bar and Bench, a calendar of
upcoming events, and other helpful information on the
Salt Lake County Bar's website.



The Salt Lake County Bar Association
Cordially Invites You to Attend Its
Annual Holiday Dinner

Friday, December 2, 2016

Cocktails at 6:30/Dinner at 7:30

Dancing to Follow, Featuring Live Music by The Number Ones
The Country Club
2400 East Country Club Drive, Salt Lake City

RSVP to Ms. Jeri Tovey by November 23, 2016
jeri-tovey@rbmn.com or (801) 531-2099

Limited Seating

\$80 per person for SLCBA members/\$90 per person for non-SLCBA members
Black Tie Optional

