

# BAR & BENCH

## SALT LAKE COUNTY BAR ASSOCIATION

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### President's Message

Contrary to some well published rhetoric recently, the report of the death of the independent judiciary is greatly exaggerated. As we all learned in elementary school civics, the Constitution specifically established three branches of government: The Congress, The Executive, and The Judiciary. These branches are described in the first three articles of the Constitution. Each of the branches of government is specifically defined in its scope and is intended to be equal with the others.

We as lawyers are officers of an independent, non-political, branch of the government—The Judiciary. Article 3 sets forth that the judicial power of the United States shall be vested in a supreme court and such inferior courts as congress might establish. The Constitution assigns to the Judiciary power extending to all cases in law or equity arising under the Constitution. Recently, the Executive branch suggested that courts are not authorized to determine the law. This suggestion, however, is incorrect. In *Marbury v. Madison*, the United States Supreme Court (the same one created by Article 3 of the Constitution) determined that in fact, the Supreme Court is specifically authorized to interpret law and decide what is constitutional. “It is emphatically the province and duty of the judicial department to say what the law is.” We as lawyers have an obligation to work hard to demonstrate that the judiciary remains independent and does not act as an arm of the other branches of government. News reports abound with stories of how courts have been politicized and people are wary of whether the judicial system is rigged or biased. Criticism of an individual judge for his or her decisions erodes trust in the system. Criticism of a judge personally, i.e., a bias because of ethnic background, is designed to diminish the result. Sometimes it is easy to criticize a judge for his or her decision or state that the system is not fair or stacked against an individual, but it is important to realize how these statements affect the perception of non-lawyers when it comes to the judiciary. Many people who deal with the justice

by Bart J. Johnsen  
Salt Lake County Bar President

system believe that they cannot be treated fairly or believe, worse, the system itself is unfair. It is difficult many times to convince a person that the system is fair in general when a person has just received what he or she believes is an unfair result. When a result appears to benefit a certain political position or cause, or when the media reports the result and states which president or governor appointed that judge, it can cause the appearance that the courts are political or biased. Yet, just looking at one particular result is an unfair way to judge the system.



Bart J.  
Johnsen

I deal with individuals in my practice and spend a lot of time discussing that although there was a result that my client does not agree with, it was not because of bias, whether specific or systemic; rather, it was a result of the judge applying the law to the facts at the best of his or her ability. It is important for each of us to correct the impression of bias to support the notion of a fair system. Remind non-lawyers that it is a time-tested process and sometimes courts make mistakes. The system is designed to allow people to seek justice but there is no guarantee that they will receive what they believe is just.

# Judicial Profile

## Judge Jill M. Pohlman

By Lauren Shurman

Judge Jill M. Pohlman was appointed to the Utah Court of Appeals by Governor Gary R. Herbert in May 2016. Judge Pohlman was raised in Salt Lake and Sandy, Utah, and spent much of her childhood dancing, singing, and acting (all hobbies she regrets to say she has long since abandoned). As a young child, Judge Pohlman did not know any lawyers and knew very little about the practice of law. That all changed when Judge Pohlman was in the fourth grade. As part of an elementary school program, she spent several weeks learning about the Constitution, the legislative process, and how legal disputes are resolved. She visited a juvenile detention facility and a courtroom, where she saw lawyers and judges in action. She and her classmates also conducted a mock trial, where Judge Pohlman played the role of the criminal defendant. This experience sparked an interest in the law that never waned, and Judge Pohlman set her sights on law school. In the meantime, Judge Pohlman honed her skills of persuasion by convincing her elementary school friends to play “The People’s Court” at recess. She invented factual scenarios and assigned her friends various roles—plaintiff, defendant, witness, bailiff, and Judge Wapner—which they would act out until a verdict was rendered. Judge Pohlman’s judicial aspirations, one could say, began on her elementary school playground, inspired in part by an ’80s television show.

Anyone who knows Judge Pohlman knows that she is an incredibly hard worker. Her educational career gives proof to this. Beginning in high school, she worked various jobs to start saving for college, while also earning college credit. She attended the University of Utah for her undergraduate studies, graduating with two degrees in just three years. She then achieved her longtime goal of attending law school. At the University of Utah, she found the study of law to be more diverse and rewarding than she anticipated. Originally contemplating a career in criminal law, she interned at the U.S. Attorney’s office under then-U.S. Attorney Scott Matheson. Judge Pohlman later accepted a summer associate position with Stoel Rives during her second summer of law school and gave civil litigation a try. She found that she enjoyed civil practice and remained with the firm for nearly 20 years. At Stoel,

Judge Pohlman handled a variety of commercial litigation cases, representing both plaintiffs and defendants. She litigated cases involving breach of contract claims, tort claims, unfair competition claims, intellectual property disputes, land use issues, anti-trust matters, employment law, and white collar criminal matters. She practiced in federal and state courts, in appellate courts, and before administrative agencies. Around the firm, she quickly earned a reputation as the go-to person for quality in-depth research, analysis, and writing.

When discussing her legal career, Judge Pohlman will quickly tell you that a highlight was clerking for Judge David K. Winder at the U.S. District Court. She says that

being asked to clerk for Judge Winder during her first year out of law school “felt like winning the lottery.” Judge Winder inspired Judge Pohlman to become a judge and also informed the type of judge she aims to be. From Judge Winder, Judge Pohlman learned to be prepared, to be humble, and to respect the law. As a judge, Judge Pohlman aims to emulate the thoughtful and respectful consideration that she observed Judge Winder give to the litigants who appeared in his courtroom.

Since joining the Utah Court of Appeals, Judge Pohlman has embraced the challenges that her new position brings. Those who have appeared before her will know that she brings her hardworking habits to the bench. Before oral argument, she will have studied the briefs and reviewed key

components of the record and relevant case law. If she is on your panel, know that you do not need to spend time going over the background of your case. Instead, it is most helpful to get straight to the merits, and spend the majority of your time focused on the hard issues. When asked what she appreciates most in oral argument, Judge Pohlman responded, “Candor. Admit your weaknesses and explain why you still win. This will enhance your credibility with the court.”

With respect to briefs, Judge Pohlman appreciates clarity and brevity. She offers three pieces of advice towards achieving these goals: (1) remove any extraneous rhetoric from your brief, (2) distill the facts to those that are important to your argument, and (3) dedicate your effort and space to your best arguments, rather than diluting your



Judge Jill M.  
Pohlman

# Judicial Profile

J u d g e J i l l M . P o h l m a n

brief with arguments you have little faith in. With respect to the first piece of advice, Judge Pohlman explained that she has a new appreciation for just how counterproductive unnecessary rhetoric is in briefing. Not only will it fail to score you any points with the judge, it will waste valuable space and distract her from the merits of the case.

Judge Pohlman notes that her task as a judge is, in many respects, like putting the pieces of a puzzle together. She will need to reconcile precedent and figure out how the facts square with the law. As a practitioner, your goal should be to help her fit the pieces together. It will not serve your goal to ignore unhelpful cases or facts. Rather, help the court see how they fit within the puzzle.

As a technical matter, Judge Pohlman appreciates when practitioners include the key documents in the addenda to their briefs, as is contemplated by the rules, so that she can easily refer to them as she studies the arguments. She also speaks very highly of the appellate clerk's office, and notes that the court's staff is happy to assist practitioners navigate the appellate process in any way it can.

Judge Pohlman is married to Troy Pohlman, a software engineer. They have three elementary-age children who keep them very busy. When she's not on the bench, you can find her cheering on her kids at soccer, gymnastics, or dance.

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# Judicial Profile

## J u d g e H e a t h e r B r e r e t o n

### By Rita Cornish

A native of Utah, Judge Heather Brereton grew up in Riverton. Though she never considered being a lawyer or judge as a child, she debated all through high school and is not surprised she has ended up in this profession. She reflects that “the same kinds of things that drive you to debate drive you to be a lawyer or judge.”

After graduating from Bingham High School, Judge Brereton attended the University of Utah, where she double majored in history and women’s studies. Concerned that those degrees were not highly marketable, she began considering graduate school. After taking a few classes and ruling out pursuit of a Master of Social Work, she enrolled in the S.J. Quinney College of Law at the University of Utah.

Following her graduation from law school in 1998, Judge Brereton started her legal career as a law clerk bailiff for Judge Steven Hansen in Utah’s Fourth Judicial District Court. When asked what it was like to mix the law clerk and bailiff duties, Judge Brereton explained, “It was a fantastic experience. I graduated from law school and immediately started my training at the police academy while I was studying for the bar exam. There were eight of us from my law school class doing the law clerk bailiff program, but there were also people from the Salt Lake Police Department and other diverse backgrounds in the program. It was really interesting—the complete opposite of law school going into that experience right after. I loved that job.” Judge Brereton not only worked day in and day out with Judge Hansen, which she describes as an “invaluable experience,” but also watched every second of court for a year. Recollecting on the experience she observed, “I think it really cemented that I wanted to do trial work.”

Judge Brereton followed up her year clerking in the trial court with another year long clerkship, this time with Judge Pamela Greenwood on the Utah Court of Appeals. Again, the experience was a complete contrast to the work she had been doing previously, and she enjoyed it immensely. Her clerkships helped Judge Brereton realize two things. First, she wanted to focus her practice in the public interest sector, specifically in criminal law. Second, she wanted to focus on trial work. With those things in mind as her appellate court clerkship was ending, she applied for both prosecutor and defense attorney positions.

She landed at Salt Lake Legal Defender Association (LDA) in August, 2000.

Initially, Judge Brereton started in the misdemeanor division of LDA but within a year and a half, she was defending felonies. Although Judge Brereton continued working on cases in the felony division, she also became the co-chief of the misdemeanor division in 2009 and later the chief of that division. In 2009 she also began working as a defender in one of Utah’s mental health courts.

A perfect storm of events led Judge Brereton to apply for the bench in 2014. In the spring of 2014, the Utah Commission on Criminal and Juvenile Justice had just begun the process of reviewing the state’s sentencing and correction data and considering the improvement and expansion of Utah’s reentry and treatment services for criminal offenders. Judge Brereton recalls that, at the time, there was a focus by the Utah Legislature “on treatment and evidence based practices and a lot of the things we were doing in the alternative courts, the problem solving courts—like mental health court” that got her to first think about applying for the bench. At nearly the same time, the first of what would become several positions on Utah’s Third District Court bench opened in the summer of 2014. Because of her background in criminal defense work, several friends and colleagues, including Judge Vernice Trease, who had a similar path to the bench, encouraged Judge Brereton to apply for the open positions.

The timing did turn out to be perfect. Judge Brereton was appointed to the bench in September 2015, to fill the vacancy left by the appointment of Justice Constandinos Himonas to the Utah Supreme Court. Judge Brereton spent her first year as a judge with a civil calendar, which has been an exciting challenge to become more of a legal generalist. She has recently been moved to a criminal calendar and hopes to be able to preside over one of the problem-solving courts in the near future.

Judge Brereton is passionate about the work done by Utah’s problem-solving courts: “My experience in mental health court is certainly one of the biggest reasons why I thought about applying for the bench. I think the problem-solving courts have the biggest chance of making an impact and helping people. As a public defender you see so many people where it is hard to figure out to help them, and those problem-solving courts do that and they exist because judges are willing to do the extra work to take those issues on.”

On the whole, Judge Brereton has been impressed with the practitioners in her court. When appearing before her, attorneys should be prepared to answer questions from the

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bench. Although Judge Brereton has read the briefing and many of the cases that are cited before she steps on the bench, she views oral argument as an opportunity for counsel to draw attention to the key facts and law that will drive the decision. Judge Brereton explained, “I do have questions in cases, and that’s why I set oral argument—so that attorneys can answer my questions and draw my attention to any issues that maybe were not in the papers. I tend to err on the side of asking more questions rather than fewer if I’m new to an issue.” Judge Brereton still likes receiving courtesy copies in binders, particularly in civil cases.

When away from the bench, Judge Brereton enjoys spending time with her husband and daughter enjoying what living in the Salt Lake valley has to offer—skiing, hiking, and swimming. She makes it clear, however, that regardless of what they are doing, her “focus is really just on spending time together as a family.”

“My experience in mental health court is certainly one of the biggest reasons why I thought about applying for the bench. I think the problem-solving courts have the biggest chance of making an impact and helping people.”



# Practitioner Profile

Stacie Stewart

By Kristen Olsen

Stacie Stewart, an attorney at Parr Brown Gee & Loveless, did not plan on becoming a lawyer. Instead, she followed her mother's advice and attended Utah State University to pursue a career in teaching. Stewart—who was born in Ogden and raised in Cache Valley—explained, “My mom was a teacher, and she felt it was a really great career for women.” Stewart taught tenth grade English at Mountain Crest High School and coached the debate team for several years—most of her debate students wanted to grow up to be lawyers.

When Stewart had her first child, she transitioned to directing an after-school program and writing grants for the Cache County School District. During this time, she had three more children and earned a Master's in Educational Leadership from Utah State University. Her final class of the program was called Legal Issues in Education, and it was taught by Carol Lear, then an attorney with the Utah State Office of Education. On her first day of Lear's class—as Stewart was contemplating the direction of her career in education—she remembers thinking, “That's who I want to be when I grow up. I want to be Carol Lear.”

Stewart called her husband on her lunch break and told him the good news. “There was just silence on the other end of the phone,” she said. Her husband finally responded, “Didn't you just get done going back to school?” Once her husband got used to the idea, Stewart took the LSAT, enrolled in BYU Law School, and moved her family of six to Provo, Utah.

Attending law school with four children “was a lot harder than I thought it would be,” Stewart said. Nevertheless, she decided to go “all in,” with the experience, but also attend events with her four children and eat dinner with her family every night. “I just stopped watching TV or reading for fun,” she explained. “I still remember taking my torts outline to one of my kid's piano recitals,” Stewart laughed, “and thinking, maybe this classical music will help me absorb this information better.”

Stewart planned to graduate and work in the field of education. During law school, Stewart reached out to Lear and asked for an internship position. Lear extended an offer, but encouraged Stewart to keep her options open and experiment with different areas of the law before committing to education.

Taking Lear's advice, Stewart summered at the Office of General Counsel at BYU and then at Parr, Brown, Gee & Loveless. After excelling at law school, she was offered a full-time position at Parr Brown, which she accepted, but deferred to complete a Ninth Circuit clerkship in Fairbanks, Alaska. Her children were 14, 12, 9, and 7 when she and her family moved to Alaska.

Stewart feels like living in Alaska was a positive experience for her and her family. “Every day was beautiful—even during the forest fire season and mosquito season, it was always beautiful.” Stewart said. She also found her cases at the Ninth Circuit to be very interesting and she enjoyed the variety of legal issues she worked on. “It was sobering in a lot of instances,” she explained, “because we were often the court of last resort.”



Stacie Stewart

Once she returned to Utah, she clerked with Judge Ted Stewart at the federal district court. It was very different from her Ninth Circuit clerkship, but she loved the experience. She was able to work on three jury trials, and found them all fascinating. They also helped steer her towards her current job as a business and real estate attorney.

At one point during her clerkship, she explained, the attorneys on a case kept filing new motions that seemed superfluous and unnecessarily contentious. “It was frustrating,” Stewart explained. That experience caused her to rethink her plan of becoming a litigator. She also remembered back to a civil trial class in law school when

she lost her mock trial and stewed about it for weeks. Between the superfluous motions “and the fact that I'm a really bad loser, I just thought, maybe litigation is not for me.”

Stewart started in Parr Brown's real estate department in 2016. “It's a good fit for me,” she said. Interestingly, Stewart thinks, she gets to spend more time with her family as an attorney than she did as a high school teacher and debate coach. “I just have more control over my schedule now, and I make nearly six times as much as I did teaching,” she said. “It's astonishing to me,” she said, “I'm not any smarter than I was as a teacher.”

She has not given up the idea of getting involved with education law sometime in the future, but in the meantime, Stewart is enjoying working at Parr Brown and raising her children with her husband in Provo, Utah.

# Practitioner Profile

Brent Manning

By Michael J. Langford

Who is Brent Manning?

This is a question I posed to a room of seasoned Salt Lake attorneys. The reaction I received was much like what one might expect when asking who Tom Brady is in a Boston pub; shock that I would even have to ask. Thank you SLCBA for getting me out of my bubble and enlightening me to the Brent Manning.

I first met Brent at a local climbing gym. He sheepishly informed me that he was not a strong climber. I quickly discovered that this was far from the truth as he gracefully moved up the wall with cat-like agility; I however, struggled and fell while trying to follow the same route. Brent showed great humility, as he informed me that he was able to make the most difficult move only because of his height, though we both knew that was not true.

Brent was born in Preston, Idaho, but was raised in Pocatello. He stayed close to home while studying political science at Idaho State University and worked as a volunteer student coordinator for George McGovern's presidential campaign. During summers in college he worked as a surveyor for the Forest Service in the Payette National Forest where he discovered a great love for the forest but knew his career path would lead him elsewhere. Brent also worked as a grave digger while attending Idaho State University. He said there was something appealing about digging a perfectly square hole.

After he graduated from Idaho State he applied and was accepted to Harvard Law School becoming the first graduate of Idaho State University to attend Harvard Law School. In law school, he had a multitude of jobs including a restaurant host and research assistant.

When he graduated from law school in 1975, he began working for Holme Roberts & Owen's Denver Office (HRO). Brent spent a lot of time exploring the beautiful terrain of Boulder, and quickly found his passion for rock climbing at the El Dorado crags near Boulder. After working for Holme Robert & Owen for several years, he decided to move back to Pocatello and started a small law firm. However, he soon realized that the Pocatello market

was too small for him so he moved back to Denver to once again work for HRO.

In the early 1980's, HRO opened an office in Salt Lake, and Brent moved from Denver to start the litigation department for the office. Seventeen years later, in 1997, Brent left HRO to start what is now Manning Curtis Bradshaw & Bednar. According to Brent, this was a big decision because up to that point, the bulk of his career had been spent working in a big firm. He now looks back at that decision with the strong belief that it was the best career decision he made in his life. He is proud that he has built a respected litigation firm. He loves working with his partners and is proud of the young lawyers that his firm has attracted. He however speaks fondly of his time at HRO due to their high expectations, emphasis on quality work, and the exceptional training he received.



Brent Manning

Brent says that he was born to be a litigator. The idea of being a gladiator in the legal arena appealed to him and early on he saw that the law was a means to achieve social justice. Brent has focused his practice on complex civil litigation, which includes, anti-trust, legal malpractice defense, and intellectual property litigation. Although, he has achieved many spectacular victories in his storied career, he seems most proud of the pro-bono work he has done. He views it as a huge part of being a lawyer in addition to some of the most gratifying work a lawyer can do. He

has successfully defended the rights of an indigent mentally disabled Utah State prisoner and protected an artist's constitutional rights of free expression in Park City.

As you may have concluded earlier, Brent is an accomplished mountaineer. He is one of the very few climbers that has climbed the highest summits in all 7 continents and he summited Everest in 1990. He says that Everest was his most difficult climb because of the time commitment, work and suffering involved. The temperatures can frequently be 40 degrees below zero and the altitude is hard on climbers. "It was probably one of the most miserable experiences of my life, but it was also one of the most wonderful," Manning said in a Deseret News article published in 1990. However, of all the climbs he has completed, he is most proud of completing the Cassin Ridge on Denali in 2000. The route is extremely difficult

## Practitioner Profile

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and committing. After a certain point in the climb, there is no safe retreat for climbers, your only option is to finish. He did the route with two of his close friends and climbing partners. When the risks are high you need to have trust in your friends and partners—true in climbing and in the law.

Brent says that he is not invited on high altitude climbing expeditions because he is a very technical climber but because he is a good “mule”. He is strong, he can carry a lot of weight, and he never complains. His never-quit attitude could take whatever punishment the mountain and conditions could dish out.

Brent analogizes climbing expeditions with complex litigation. He says with conviction, “In litigation as in big climbing expeditions, there are going to be highs and lows. You are going to suffer. But keep on charging forward and you will prevail.”

Although Brent no longer does expedition climbs, he still loves climbing and is at the climbing gym daily. If you don’t find him on the climbing wall, you can either find him backcountry skiing or biking, depending on the season.

He and his wife Chris, a renowned artist, have three adult sons. His sons have shared many of his adventures including climbing Mt Kilimanjaro and trekking to Everest Base Camp.

Brent has the respect of his peers. John Steiger, who is an attorney at the Office of the Interior, has known Brent since he clerked for him at HRO in 1990. To him, Brent has not only been a climbing partner, but a close friend, and a mentor. As a climber, Brent is extremely strong and always remains upbeat even on the toughest climbs. He is a steady shot. As a person, he is highly empathetic and embraces everything that he does. As an attorney, he is extremely hardworking, and his objective, on any case, is to work to ensure that he knows more than anyone else on the case.

“In litigation as in big climbing expeditions, there are going to be highs and lows. You are going to suffer. But keep on charging forward and you will prevail.”



Dear Justice Tongue:

**It seems of late you only respond to the pleas of the young lawyers, so let me address that issue first. I have been practicing as a trial lawyer just a little over a year, and before that as a paralegal and a law clerk. The current buzz words on the street are "alternate reality," where people (especially politicians) just make up facts and try to say it enough times that some may think it true. It is alarming enough in the world of politics, but I also see it playing out in trial practice.**

**In law school, we were taught that we must always be candid with the court, cite the cases accurately, and even cite the contrary cases and argue why they shouldn't be followed. We were told to present the facts accurately and draw arguments honestly from those facts. Too often I am seeing these teachings honored in the breach. Am I the Lone Ranger on this?**

**Lon E. Afraid**

*Dear Lon,*

*Your letter was misdirected. Your question is best posed to Tonto.*

*Yours truly,*

*Justice J. Learned Tongue*

Note from the Clerk of Court:

I apologize for the Judge's curtness, expressed in a rush to get to a vineyard retreat. I suggested a response could be prepared when the Justice returned. I only heard: "If you're that interested, you respond. You probably know better than I do what I would say."

I submit the following, and believe it is the sense of the good Justice.

It falls on me to read all of the briefs very carefully. My duty is to point out disparities I find between the factual foundation and the recitation of facts, fallacies in the arguments from the facts, and miscitation of cases. At the Justice's request, I do so with a red felt pen. It should be no surprise to you, that with increasing frequency, the briefs "bleed."

Justice Tongue would tell you that such shoddy practice comes at a perilous price to the practitioners and their clients. As a young lawyer, you must understand that your integrity is precious. To Justice Tongue, it is the Nile's source. This jurisdiction is small enough that the good Justice will see the same lawyers more than once, and there is no question in the mind of the Justice (and the colleagues on the bench) as to who they are, and whether and to what extent their arguments and representations can be counted upon.

I am harboring the suspicion that you might be wondering if you could glean benefit for your client by trying to confuse a Court, misrepresent facts, and "get away with it." I cannot say that does not happen. We all know it should not. What I can say is that it is infrequent and is usually unmasked to the great detriment of those who practice the dark art of misrepresentation.

Because you have disclosed that you are in the tender years of your practice, it is appropriate to review some advice that Justice Tongue gave to a young lawyer years ago as she launched her practice. Justice Tongue said, inter alia, the following:

What we have seen at times is adherence, in name only, to the standards of professionalism and civility. It betrays itself when lawyers are dissembling and misrepresenting albeit, in calm voices. They count on no one calling them out. [From my point

# Justice Tongue

## A l t e r n a t e R e a l i t y

of view, we need more of the latter than the former.]

Nevertheless, always be gentlemen and gentlewomen. Juries and judges consistently and overwhelmingly respond best to such demeanor. It is not enough of course just to be respected; but it is critical. And as importantly, you must prepare, dig, struggle, sweat, ponder, pry, search, rehearse, and meet all of the mind-numbing pretrial challenges so that you can appear before a judge or jury with your case intact and presented honestly; fairly; with fidelity to the facts and law.

Incline the jury and/or judge to want to help you because they respect you and believe you, and admire the manner in which you conduct yourself. If you act otherwise, you will be seen as a stereotype of lawyers people dislike. By the way, tell your clients that the same goes for them. A jury and/or judge is very reluctant to assist nasty people, and they see no reason to believe or help a witness who thinks it is necessary to overstate or argue their own case or who will not be content with the power of the simple truth they speak.

And finally, the Justice would repeat: “The single most unprofessional, uncivil, and unethical thing to do is to misrepresent or dissemble. Your integrity is one of the single greatest assets you have as a lawyer. Judges will respect nothing less, juries will sense its presence or absence instinctively, and the only colleagues you will need to concern yourself with, know it is there.”

By the Clerk of the Court

# Helpful Thoughts from Justice Court Judges

## Helpful Thoughts From Local Justice Court Judges



**Judge Daniel F. Bertch**

### **Judge Daniel F. Bertch, Draper Justice Court**

*What drew you to the bench? Is it what you thought it would be?*

My appointment was largely happenstance at an early stage of my career. I never really sought it out. I did not anticipate that I would become a social worker. Neither my B.A. in Asian Languages, nor law school prepared me

for that.

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

I am a believer in presumptive sentences for most offenses, as a way of being as rational and fair as possible, and to help me avoid any subconscious bias. This means that your client will probably be sentenced the same as 80% of other people with the same offense. I will be alert to facts to justify a different result in your case, but most of the time you can predict what the probable sentence will be for an offense. My belief is that this helps you focus your advocacy where it will be most useful to your client.

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

Don't take anything personally. I am trying to do the best for the parties and the community.

*What tips would you have for a young/new lawyer who is appearing in front of you for the first time?*

It helps to talk to someone who has appeared in front of me frequently. The public defenders have a good "read" on what to expect, what to say, what not to say.

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

With the new Workspace program, I can log onto my calendar the night and/or morning before a calendar and

look it over, and make tentative notes. If it is a motion, of course, I study the briefs, if there are any.

*What trait/characteristic are you still trying to improve as a judge?*

I am trying to be more patient with people who interrupt me. If I fail, be patient with me.

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

I really don't lose sleep over anything. But the ones I find most difficult to come up with the best decision are those with an intersection of mental health problems, substance abuse, and domestic violence.

*What is the greatest challenge facing Justice Courts in Salt Lake County today?*

A lack of resources for mental health and substance abuse. And jail space for those who need it.

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

Judges and society need much more investment in mental health treatment and substance abuse treatment. I hate to feel like the most humane course of action for a defendant is to be sent to jail, where at least they are housed, fed, and a minimum of medical care. Sometimes, regrettably, it is a huge step up from where they are living.

*What's a good day on the bench?*

Every day on the bench is a good one. All indoor work, with no heavy lifting.

*Do you have a humorous story you can share, and if so, what is it?*

When I make a joke on the bench, everyone laughs. When I tell them to my kids, they say the jokes are so stupid, they are embarrassed I made them.

# Helpful Thoughts from Justice Court Judges



**Judge Augustus Chin**

## **Judge Augustus Chin, Holladay Justice Court**

*What drew you to the bench? Is it what you thought it would be?*

After law school I worked initially as a law clerk-bailiff and then as a law clerk for the Honorable Tyrone E. Medley in Third District Court. That experience, the interaction between the court and the parties, knowing what

really happens behind the scenes, the careful thought in making decisions, and the opportunity to make a difference in the justice system fostered my interest in the bench.

My time on the bench has proven to be more gratifying than I thought it would be. I am honored to be serving in a role that makes me “part of justice being done.” The challenges in doing what is right gives me pause. I find myself giving careful consideration with respect to my decisions; making sure that I consider each individual and case as objectively as possible. I also try diligently to be respectful of everyone despite the errant choices or a hardened attitude towards the court or the process. I also try to make sure that my decisions are fair minded given the uniqueness of each case that I must consider. The few times when someone thanks me or sends me a written note is humbling.

*What trait/characteristic are you still trying to improve as a judge?*

I am always trying to improve my listening and observation skills so that a respectful, fair-minded judge.

*What tips would you have for a young/new lawyer who is appearing in front of you for the first time?*

Tips to a young or new lawyer appearing before me for the first time would include (a) try to be relaxed, (b) prepare your client for the process, (c) try to be punctual, (d) be civil and respectful to all officers of the court, and (e) most importantly be respectful to the clerks.

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

I find myself particularly concerned about Domestic Violence cases especially where children are present, DUI

cases especially with high BAC, and drug (substance use disorder) cases. Domestic Violence cases have lasting impact especially on victims and children. As a result, I am mindful that unless the accused can be convinced to have a changed attitude and to develop certain coping skills the cycle may be repeated to the detriment of the victims. DUI cases have potentially serious community consequences. As such, I am always hopeful that the offender will think carefully before driving under the influence in the future. Substance use disorder cases have unique challenges. Most individuals cannot afford the cost of long term counseling and/or treatment. In many cases, our efforts to immediately address the issues are made difficult by the lack of resources, cost-effective treatment options, and the offender’s inability to afford treatment. It is disheartening when someone suffers the ultimate demise because of his or her substance use disorder.

# Helpful Thoughts from Justice Court Judges



**Judge Michael W. Kwan**

**Judge Michael W. Kwan, Taylorsville Justice Court**

*Do you have practice pointers for attorneys who will have motion hearings and trials before you?*

Courtesy copies of cited authorities is appreciated. Prepare your witnesses. Know what your witnesses will say on the stand.

Do not walk in the well!!! Do not allow your witnesses to walk in the well.

*What tips would you have for a young/new lawyer who is appearing in front of you for the first time?*

Be prepared to answer questions about your position. Ensure that your research is complete. Know where the law ends and your argument must begin. Understand that your motion/briefing probably raised questions in my mind, anticipate what those questions might be, and try to prepare to answer those questions. Don't assume that because I ask questions, I have decided to rule against your client. If you don't know the answer to a question, say so and offer to submit supplemental briefing.

*What's a good day on the bench?*

When I can help someone begin the process of making positive changes in their life. Respecting individual dignity and humanity, helping someone who has lost their sense of self-worth, someone who has or will engage in self-harm, find hope is a very good day.

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

Background information at sentencing. More information on prior flight/safety risk at bail setting/PC determination.

*What local judges or attorneys do you look up to as mentors or great examples and why?*

Judge Medley, Iwasaki, Thorne and Hilder are all models of decorum, preparation and professionalism. Henri Sisneros for his compassion. Andy McCullagh for his zealous representation of the less fortunate and disenfranchised. Nearly the entire criminal defense bar (public and private)

for their tireless dedication to defending the Constitution and to holding the government accountable (myself included). Every prosecutor who toils nights and weekends trying to stay on top of their overwhelming caseloads, who seek justice and not just a win, and who never let victims of crime be overlooked or forgotten by the criminal justice system. All of my fellow justice court judges who all work hard to get it right the first time, who constantly and consistently study the law to stay abreast of the latest developments, who serve, with honor and distinction, their communities to ensure that justice is delivered throughout our great State.

*What is the greatest challenge facing Justice Courts in Salt Lake County today?*

Residual prejudices and misconceptions on what justice courts are, what we do, who the judges are and why we exist. Justice courts have suffered from accusations and rumors, some deserved and some undeserved, which have hampered public trust and confidence. Justice courts remain a scourge to a number of bar members. That number is shrinking due to efforts to improve judicial education, separation of powers and the separation of the judge from county/municipal revenue concerns. The Bar could play a significant role in improving the justice courts should it choose to do so. Justice Court Judges need attorneys to "have our backs" when we uphold Constitutional principles in the face of local political pressure. This support has been absent in the past. We should be working together to solve any problems and concerns with an eye toward delivering justice to each and every individual before our courts.



# Movie Review

## The Jinx: The Life and Deaths of Robert Durst

**By Kristen Olsen**

If you're like me, you're tired of hearing about a certain wealthy New York real estate heir. Luckily, this article isn't about Trump. It's about a lesser-known wealthy New York real estate heir, Robert Durst—who is the subject of a 2015 HBO documentary series called *The Jinx: The Life and Deaths of Robert Durst*—and who is currently awaiting his second murder trial. While Durst's story isn't breaking news, I've been surprised by how many attorneys haven't heard of him or the documentary series yet. This review is for them.

Durst is like Trump in that he grew up among the east coast elite, but instead of tweeting in an oval office right now, Durst is sitting in a small jail cell in California. What is interesting about Mr. Durst's plight is that, but for his desire to be the subject of a documentary series, he probably wouldn't be sitting in that jail cell. Be warned, there are a few spoilers ahead.

Durst, worth an estimated \$100 million, was first suspected of murder when his wife, Kathleen McCormach, a medical student, mysteriously disappeared in 1973. Her body was never found, and her case is still unsolved. In 2000, Durst was suspected of a second murder when the body of his longtime friend, Susan Berman, was found in her California home. Durst was questioned about her murder, but not arrested at the time.

Then, in 2003, Durst was arrested in Texas for the murder of Morris Black, after Black's body parts were found floating in Galveston Bay. Durst had been living as a deaf, mute woman in Galveston, Texas, but had allegedly become friends with Black prior to Black's death. Although Durst admitted to using a paring knife, saws, and an axe to dismember Black's body in his apartment, and admitted to dumping his remains in the bay, the jury acquitted him for murder. He was not charged with any lesser crimes, so he walked.

This is where things get interesting. Durst's story inspired the 2010 film, *All Good Things*, and Durst's character was played by Ryan Gosling. Durst watched the film shortly after it was released and contacted the film's director, Andrew Jarecki. He praised Jarecki on the film and offered to do an interview about his side of the story. Jarecki was a bit confused by the offer, but agreed to film the interview

and do a documentary about Durst's real life and story, which became *The Jinx*.

The documentary consists of interviews with Durst, interviews with others associated with all three suspected murders, and efforts by the filmmakers to solve the murders and potentially incriminate Durst. The *New Yorker* described Durst as “an indelible character, mesmerizing in his strangeness: He's parchment-skinned, blinky-eyed, lizardlike, but he has a quality of fragility, too, along with a disarming, if often peevish, directness.” <http://www.newyorker.com/magazine/2015/03/23/what-about-bob>.

The filmmakers' efforts to uncover new evidence and incriminate Durst culminated in an inadvertent on-film confession by Durst, which is certainly what sets this documentary series apart from anything else I've seen. A debate remains on whether this on-film confession will be admissible in court. See e.g., Robert Durst's Confession is Admissible, available at <https://www.bloomberg.com/view/articles/2015-03-16/robert-durst-s-confession-is-admissible>; Robert Durst's Confession is Inadmissible, available at <https://www.bloomberg.com/view/articles/2015-03-16/robert-durst-s-confession-is-inadmissible>.



As a result of Durst's involvement in the documentary and the new evidence uncovered by the filmmakers, Durst was arrested in New Orleans in 2015 for the murder of Susan Berman. At the time of his arrest, he had in his possession a loaded gun, marijuana, a flesh-toned latex mask with wig, a passport, fake ID, a map of Cuba, and over \$40,000 in cash.

Durst entered a plea of not guilty and claims he was on meth during the filming of *The Jinx*. He is now 74 years old and his health is failing. In February, Durst was wheeled into a Los Angeles courtroom for a pre-trial hearing where his friend testified that Durst had confessed to Berman's murder by saying, “I had to. It was either her or me. I had no choice.”

The next pre-trial hearing, which will focus on the admissibility of evidence, is set for April 25, 2017. *The Jinx* is available on HBO GO and HBO NOW.

# Recent Precedents

# 2016 SLCBA Holiday Party



You are cordially invited to attend  
the Salt Lake County Bar  
Association's  
Annual Holiday Dinner  
Friday, December 2, 2016  
The Country Club  
2400 East Country Club Drive  
Salt Lake City, Utah



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

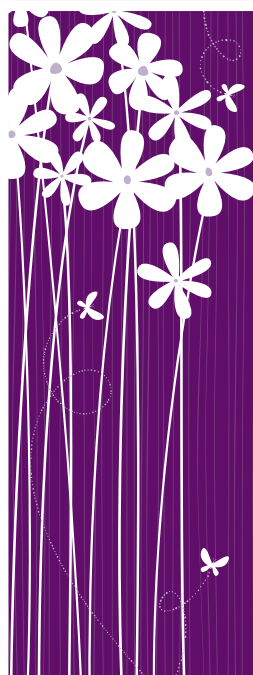
Linked in



Our website address!

[www.slcb.net](http://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.



*Save The Date  
The Salt Lake County  
Bar Association  
Annual Spring Dinner  
will be held on  
Friday June 2, 2017.*