

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

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SPRING 2009

President's Message

As you might expect, it has been a lean year for corporate sponsorships. So when we found ourselves faced with a shortage of sponsors for our annual charity golf tournament, we had to get creative.

For the last several years, the Salt Lake County Bar charity golf tournament has benefitted the Children's Justice Center. The CJC is a Salt Lake County government program that provides coordinated services to children who have been the victims of child abuse, including sexual abuse, physical abuse, child homicide and abductions. Its two centers are located in residential neighborhoods and designed to look and feel like "grandma's house," complete with sofas, comfy chairs, toys and teddy bears. This child-friendly atmosphere helps victims feel safe and alleviates the anxiety children and their families may feel about the criminal justice and child protection systems. Law enforcement investigators and child protective services are able to meet with the children and their families in this comfortable, non-threatening setting in order to obtain statements and provide support. The centers also provide crisis intervention, advocacy, and referral services to help the family cope with the aftermath of abuse. By coordinating these services, the CJC helps to protect the best interests of the child and minimize the secondary trauma caused to victims and their families by the investigative process.

While there are many deserving charities, the CJC is a natural choice for the Salt Lake County Bar. Whether we practice civil or criminal law, we are all keenly aware of the negative impact litigation can sometimes have on the parties involved. Yet we also understand the importance of vindicating the interests that the justice system is designed to serve. The CJC facilitates the



Diana Hagen

by Diana Hagen
Salt Lake County Bar President

prosecution of crimes against children while protecting the victims from additional harm. By supporting the CJC, our members are able to help the smallest and most vulnerable participants in our legal system.

With sponsorships dwindling in the current the economy, we decided to scrap this year's charity golf tournament and try something new – a silent charity auction at our annual spring party. For several years, we had hosted the spring party at Tuscany, featuring a social hour and dinner followed by casino games or live entertainment. This year, we decided to return to the Salt Lake Country Club for a traditional Dinner Dance. We expanded the social hour to allow members time to peruse the items in the silent auction while mingling with friends. (No one seemed to mind the extra half hour to socialize and enjoy the open bar.) The party featured a fantastic dinner followed by a live band and dancing on the country club patio. It was a terrific event enhanced by the added fun of the silent auction for a great cause.

The CJC staff did a wonderful job coordinating the auction. All of the items sold were donated by local law firms, attorneys and other members of the community so that all the money raised could benefit CJC's programs. The items ranged from wine baskets, art work and romantic get-a-ways to hand painted-skateboards, children's toys, and golf clubs. Thanks to the generous response from our members in attendance, we raised over \$3,700 – even more than we normally raise from the charity golf tournament.

(Continued on back cover)

Justice Tongue

The most effective trial lawyers

Dear Justice Tongue:

At the risk of insult and rebuke, and with no thought of my ego's personal safety, I venture an inquiry for your wise counsel. The practice of law holds one overriding allure to me, and that is the prospect that I can and will become, in due time (and with sufficient labor in the courtroom), a talented and effective trial lawyer (maybe one of the great ones). My bristling enthusiasm and undaunted ambition, however, continually run headlong into the ever increasing utilization of mediation, and the few times we do get to court we hear things from the bench like lawyers are "problem solvers" and other gesticulations seeming to impart the notion that a lawyer as combatant is an abhorrent concept. For my part, if I want to attend drum circles, I'll do it on my own time - in the law practice I am training to be a champion for my clients.

So, what is the answer?

Signed,

Clarence Dee

Dear Clarence:

You ask, what is the answer. I ask, in return, what was the question?

Well, if we must, let's wander in the wilderness together for a few moments and speak of the indispensable role of the "secular knight." (Sounds like someone needs a little reality check). Lawyers are lots of things to lots of people -- some very good things. Some lawyers do nothing but work out problems with no thought of failing to reach a compromise and with hellish fear that it should be otherwise. Even in the context of litigation, the most talented and effective trial lawyers should always work for the best interests of their clients, including but not limited to, obtaining appropriate and fair settlements if such are available and otherwise appropriate.

That said, almost any case can be settled if there is sufficient compromise, and in many cases such compromise would not only be disastrous, but grossly unjust. And that is when trials should occur and when trial lawyers should be called into battle. In that circumstance, trial lawyers as "problem solvers" do become "gladiators." And the weak

should fall away and the strong rise to the occasion. The instruments of battle are intellect, skill, knowledge, imagination -- all possessed by articulate combatants at the vortex of the clash of irreconcilable interests. All this occurs in the context of robust, elegant, well-designed, tried and true rules and traditions of adversarial presentations of fact and law for the purpose of determining what will be deemed to have occurred, and to which events, so determined, the law that will be applied for the resolution of a dispute -- most probably with one party losing completely. This is where you and your nascent talents will come into full career. There will be courtly, civilized combat of the finest kind.

Do not expect in this arena that which admits of weakness or that which is tolerant of sloth and indolence. Lives, freedom and fortunes will be at stake. The parties thereto will not always be forthcoming or truthful. But in that white-hot crucible designed to address the worst and most pitched feuds of the citizenry and to avoid violence in the streets, truth through angst and ardor will be the rule of the day.

In the priceless tome authored by Jerome Frank and dedicated to one of our predecessors, Justice Learned Hand ("our wisest judge"), Mr. Frank reminds us that the word "litigation" derives from the Latin words "litis" and "ago." "Litis," he

instructs us, "means 'contention, strife, a quarrel.' The word 'ago' means 'to go.' So, apparently, 'litigo' - from which we get our word litigate - originally meant 'go to it' in a quarrel, or to carry on a quarrel, to dispute, to engage in strife, to brawl -- and later, 'to go to law' in the sense in which that phrase is now popularly used. . . . Litigation, then is strife. A law-suit is a kind of fight or combat."

"As in a battle, so in a trial, leadership is essential, and, with it, training, discipline, skill, plan of action, method of procedure, etc. The leadership which in war is entrusted to the commander-in-chief, in a court battle is vested in the trial counsel. Upon him [her] devolves the duty of mustering all of the resources in his [her] power: knowledge, skill, the technique of his [her] craft, his [her] moral and intellectual stamina, directed to one end -- that of obtaining victory for the side he [she] represents. (Continued on page 7)

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Judicial Profile

Justice Matthew B. Durrant

By Trystan B. Smith

A Conversation with Justice Matthew B. Durrant

I know what you're saying, a conversation – odd? What happened to our judicial profile? As I prepared to meet with Justice Durrant, a profile just did not seem to fit. Governor Leavitt appointed Justice Durrant to the Utah Supreme Court in January 2000. (Yes, it has been that long.) At the time, he was serving as a trial judge in the Third Judicial District.

Over the past few years, I have had the fortune to interact with Justice Durrant in professional settings on a number of occasions. What I have learned is that the Associate Chief Justice has a talent for allowing you to forget about the robe and his title. Yes, his pedigree befits the job title. A 1984 Harvard Law School graduate, Justice Durrant clerked for Judge Monroe G. McKay of the U.S. Circuit Court of Appeals for the Tenth Circuit. Before coming to the bench, he practiced law at Parr Brown Gee & Loveless, where he focused on trademark and trade name litigation. Stoic and scholarly – Justice Durrant completed his undergraduate work at Brigham Young University, where he obtained a double major in American Studies and Japanese. He also taught constitutional issues in family law at BYU's J. Reuben Clark Law School. The profile, however, does not tell story.



Justice Matthew B. Durrant

It's a sunny afternoon in mid-May. As I enter the Matheson Courthouse and make my way to the 5th floor, I'm reminded of the often frantic and chaotic nature of this profession. People of every social and economic background pour themselves into the elevator, each of them silently carrying their burdens up the elevator and into a courtroom. As the elevator rises, it empties. As I enter the rotunda, with the sun shining brightly through the now calm, and silent space, I expect to make my way through a maze of clerks and staff, and walk via escort to Justice Durrant's chambers. To my surprise, there is no maze and there is no escort. Justice Durrant strides across the rotunda, conservatively attired in a tie and suspenders, to meet me himself. Warm, personable, and inviting, he reaches his out his hand and says, "Trystan, how are you?" For the next hour-and-fifteen minutes, we talk about

everything from his childhood, family, his work as founding chair of the Supreme Court's Professionalism Committee, oral advocacy, to golf.

Before settling in Utah, Justice Durrant's family lived for a short-time in Arkansas, where his father was stationed at Ft. Chaffee. He went to high school in Louisville, Kentucky. When I mentioned that Louisville was the home of Muhammad Ali, he reminded me with an exuberant smile that it was, "The proud home of Muhammad Ali." He also reminded me that his high school yielded such famous names as Wes Unseld and Diane Sawyer. For those of you who didn't know, Justice Durrant knows his sports as well.

Prominently displayed behind him is a family photograph – his wife, their six children and spouses, and one grandson. He proudly introduced me to his family, briefly summarizing their accomplishments and activities, but making special note to mention his grandson with a twinkle in his eye that every proud grandpa would understand.

As I thanked him for his time, he at once seemed uneasy to talk about himself, but also genuinely happy to meet with me. In true Justice Durrant fashion, our first fifteen minutes together were spent with him asking me my impressions of the Bar's mentoring program, civility, and the business side of the profession. When you spend time with Justice Durrant, you learn that despite the gravity of the decisions that accompany the Associate Chief Justice title, you're at ease because he's at ease. He has a passion for the profession and those that serve it.

Below are edited excerpts of my conversation with Justice Durrant:

Any advice you would give to practitioners or young lawyers?

Look to the standards of professionalism and civility as a guide. As a young lawyer, I would often struggle with the idea of extending courtesies as a sign of weakness. It is not a sign of weakness, but a sign of strength.

Who were your mentors?

Clark Waddoups and Rob Clark C they were always professional and civil. Both were careful, meticulous and extremely patient. (Continued on page 7)

Restaurant Review

E v a

By Mark Kittrell

Eva
317 S. Main St.
Salt Lake City, Utah

Eva is Salt Lake City's latest addition to "small plate" style dining. Occupying the space that housed Lazy Dog Pizzeria, Eva has transformed the space into a hip, contemporary, comfortable dining spot. Open for lunch and dinner, this review focuses upon Eva's lunch offerings.

As you walk in, you immediately notice the tall ceilings and thin length of the restaurant. On the right side is banquet seating and on the left side are stand-alone tables. Immediately facing the entrance is the kitchen area and a large wood-fired oven that is used to cook its "baker's pies." A small bar sits between the kitchen area and the stand alone tables. Lining the walls are large prints from local artist Trent Call. Each time we visited, the music selection varied (from 60s soul to well-regarded, present-day "indie" music), but fit with the mood of the restaurant. It was almost as if you asked your hip friend to program a playlist for your lunch.

Each time we ate at Eva, my lunch companions and I arrived right around noon, and we were greeted and seated promptly. During our three visits, the place filled up, but it never appeared as if there was ever a wait during lunch. This was nice, as it allowed us to enjoy the leisurely pace of the service.

The small plates concept is similar to Spanish tapas-style cuisine. While Eva advertises itself as a small plates restaurant, it has a number of items that, enjoyed on their own, make for a quite fulfilling meal. The lunch menu is separated into three items: "Baker's Pies," "Large Plates," and "Small Plates."

The Baker's Pies are 8-inch wood fired pizzas (all \$7.95) that are served on a fresh, slightly crusted, yet fluffy flat bread. The French Pie was a favorite among my dining companions. Consisting of brie, sliced pears, toasted walnuts, olive oil and arugula salad, it was a refreshing take on an old classic. The ingredients were well-proportioned and complemented each other very well. On another visit, one of my lunch companions ordered the Fisherman's, Eva's

take on a seafood-influenced pizza. He enjoyed the mix of shrimp, calamari, and braised octopus (along with tomato and olive oil). The Ratatouille blends zucchini, peppers braised with tomato sauce, and feta to create a filling, delicious pizza. Other pizzas on the menu included White (chicken, artichokes, béchamel, parmesan, and mozzarella), Eva's Pie (mozzarella, parmesan, and gruyere cheese), BLT (braised bacon, tomatoes, blue cheese sauce, and baby greens), and Pig Three Way (prosciutto, Italian sausage, smoked ham, marinated mushrooms, arugula, kasari cheese, and Caesar salad).

The Large Plates section of the menu contains two salads and three sandwiches, and a vegetarian mac and cheese.

On another visit, I ordered the roasted chicken salad (\$8). Expecting a concoction made with mayonnaise, I was pleasantly surprised to receive a mayonnaise-less chicken salad that is a lighter alternative to some of the other items on the menu. It is made with sliced grapes and apples, walnuts and blue cheese with a slight drizzle of olive oil. It was delicious and satisfying, but if you're really hungry, you would certainly need to supplement your salad with a small plate. The other salad is the Salad Landaise (\$8). This salad is made with poached egg, lardons, and dates. The true star of the Large Plates menu is the Slow-Roasted Steak Sandwich (\$8). Thinly sliced steak (which you can order rare,

medium or well done) with arugula and parmesan cheese is served upon an open faced flat bread. Picked up and eaten much like a taco, every dining companion who ordered this dish raved about it. On one occasion, we supplemented the steak sandwich orders with a small plate of fries (\$4) that was easily split among three of us. Other large plate items include vegetarian mac and cheese (with pea and caramelized onions) (\$8), baked turkey and brie sandwich (with cranberry and fresh greens) (\$7), and a baked ham sandwich (with gruyere cheese and béchamel) (\$7).

The small plates appear to make nice complements to the large plates or wood fired pizzas, or perhaps as a combination of items to be enjoyed together. The fries (\$4) were large enough to share as an appetizer among three to four diners. Lightly sprinkled with garlic, rosemary and parmesan, the fries were hot, fresh, and crisp.

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Eva should also
become a
destination spot
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and snack

Recent Precedents

2009 Spring Dinner



Restaurant Review

C o n t i n u e d

Other items include a Shrimp and Orzo Salad (\$4.50), Smoked Salmon Tartare (\$4), Sautéed Brussel Sprouts (\$4), Spanacopita (\$4), Wood-Fired Flatbread (\$4), Three Cheese Flatbread (mozzarella, parmesan, and gruyere) (\$5), and Organic Baby Greens (\$3).

Eva sports a broad wine, beer, and liquor menu with specialty cocktails. As the summer months take over and the pace of lunch reflects the mood in the city, Eva should

also become a destination spot for those looking to grab a post-work cocktail and snack. Eva might be a relatively new addition to the dining scene, but it has quickly developed a devoted following that will work to make it a long-time fixture in the downtown area.

Who Am I?

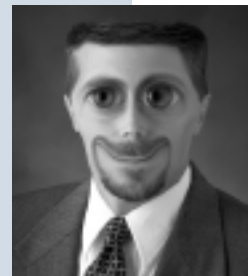
N a m e T h a t L a w y e r

Can you identify some of your most distinguished colleagues, whose pictures have been altered? Perhaps the facts about each attorney, which appear next to their photograph, will assist you.

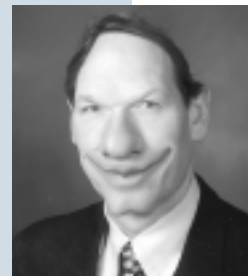
I was born and raised in Wyoming. Prior to practicing law, I was a high school teacher of English and Spanish. I am a hiker and a fly fisher.



I was in jail (very briefly) in Italy in 1986. Now, as part of my mid-life crisis, I am trying to rebuild a 1969 Triumph Trident motorcycle. The Utah Supreme Court, in an unusual move, wrote a footnote in one of its opinions saying that it appreciated my "exceptional" work as counsel even though it was ruling against my client.



I am originally from New York and spent my childhood as an Army brat. I was captain of my college lacrosse team. Our team's mascot was the polar bear, named after Admiral Robert E. Peary, one of my college's alum.



Send your guesses to anneliese.boohar@law.utah.edu. The winner will receive 2 tickets to the SLCBA Holiday Party.

Justice Tongue

C o n t i n u e d

Only not, as in war, victory at all costs, but victory for truth and justice. High indeed must be the quality of the man [woman] entrusted with so solemn a duty!" *The Art of Trial*, Norbert Savay.

All this occurs in the audience of a client's peers, hopefully constituting a jury "fair and true." The ground around the great and small is made even (more or less) by the talent and zeal and commitment of a fierce advocate, fair and even application of the rules of engagement, and an independent judge (that God help us has not taken sides so as to go back into combat themselves). And that fierce combat, that crucible in which the truth between men and women is brought forth, advocated, challenged and determined, makes everything else about the legal process real, and makes all of the other compromises on the basis of voluntary resolution possible.

Yours will not always be the time in the sun, but will require a fair portion of its powers to bring white light to the merit of your client's cause. And when your time

comes, all the hard work and sacrifice will manifest its worth. You will be a stanchion of the most precious redoubt of democracy, in which the high and the low, the great and the small, lay forth their lives, fortunes and sacred honor in a demonstration of faith in distributive justice.

As Milton eloquently wrote in *Areopagitica*: "I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary but slinks out of the race, where that immortal garland is to be run for, not without dust and heat. Assuredly we bring not innocence into the world, we bring impurity much rather; that which purifies us is trial, and trial is by what is contrary."

May there always be a place for those whose path you seek to follow.

Fondly,

Tongue



SALT LAKE COUNTY BAR ASSOCIATION

on



Oh, yes, we're social...

The Salt County Bar is now on Facebook. Check us out to connect with other members, see pictures of our events, start a discussion and other fun stuff.



Judicial Profile

C o n t i n u e d

You spent a significant amount of time as chair of the Professionalism Committee adopting the standards of professionalism and civility. Any additional words of wisdom?

Treat people with dignity, even when they don't deserve it.

Now that you've spent time as a trial court judge and an appellate judge, what do you miss most about being a trial court judge?

The excitement of trials. I also enjoyed the people I'd see – the lawyers, the clients. [For the litigants], the matter before me was the most important matter in their lives. *He reflects slightly as if remembering his time as trial court judge.* [But explains] I have one of the best jobs imaginable. Almost. I'd like to be a professional athlete, golfer, I love to golf.

Any advice you'd give practitioners about oral advocacy?

Answer the question, then provide your explanation. Don't quibble with the Justices – make your point and then diplomatically move on. Pick your best arguments and go with them. Don't make every argument. The Justices will hone in on your weakest arguments ... and you'll get bogged down. [The best practice] is don't make them in the first place. Move an argument along through a strategic concession, so the fight is about what really matters.

Where do you like to golf?

Riverbend [in Riverton]

President's Message

C o n t i n u e d

The Salt Lake County Bar is a great organization. It makes the practice of law a little more fun through social events and lighthearted publications. It makes the practice of law a little more interesting by sponsoring CLE events on current and provocative topics. It makes the practice of law a little more meaningful through programs like "Art and the Law" and the support of the Pro Bono Project. And

occasionally it gives us, as individual members, a chance to do something good for the justice system and the people it serves. Thank you for your generosity in supporting this year's charity event and for your membership in the Salt Lake County Bar.

