

# BAR & BENCH

## SALT LAKE COUNTY BAR ASSOCIATION

SALT LAKE COUNTY BAR ASSOCIATION

FALL 2014

### President's Message

by Amy Sorenson  
Salt Lake County Bar President

Probably like many of you, this past month, I've been dropping my kids off at their new school. The classrooms are sunny and perfectly organized, there are neat rows of hooks for backpacks lining the halls, and inspirational quotations on the walls greet the students every morning. Walking with them to their classrooms, I am filled not only with gratitude, but with something awfully close to . . . envy. The rhythm of the school year, its promise of a fresh start, of reunions with old friends and encounters with the new, the take-it-to-the-bank inevitability of growth and change, belonging. These happy certainties can seem awfully distant at least from law firm life, if not from the life of the law generally.

But perhaps our world, the daily work of lawyers and judges, of attending or conducting hearings, drafting pleadings, and managing client meetings and calls, needn't be so far removed from the intellectual growth, bright new beginnings, new and old friends, and sense of community associated with the school year. To me, membership in professional associations -- like the Salt Lake County Bar Association -- has always provided the working world equivalent.

In this regard, the Salt Lake County Bar Association's Continuing Legal Education Committee -- Judge Michele Christiansen, Chris Hogle, Clem Landau, Kristy Larsen, and Rita Cornish -- puts together, year after year, an incredible roster of CLE events that do nothing less than expand your substantive knowledge, your perspective, and your connections. If you don't believe me, I invite you to join us at our next "Trialpalooza" or "Appealpalooza" CLE for an informal lunch discussion with one of our fine trial or appellate judges seated at each table of attendees.

Of course, there's more to school than learning, and acknowledging milestones is as important as the knowledge gained throughout the year. On October 23, the Salt Lake

County Bar Association celebrates promising new beginnings with our annual New Lawyers, New Judges reception at The Alta Club. The event is an outstanding way to welcome our newest colleagues to the profession and to celebrate the accomplishments and dedication of some of our most experienced professional friends, as they take their places as the newest Utah judges.

On December 5, the Salt Lake County Bar Association will host another of our much anticipated annual traditions -- the Holiday Party at the beautiful Salt Lake Country Club. In the hands of the Salt Lake County Bar's incredibly able Socials Committee -- Jonathan Pappasideris, Mark Kitrell, Sam Meziani, and Jennifer Mastrococco -- events like these have become beloved ways to mark the passage of another year with your friends and

colleagues and to celebrate the holidays.

Through our Art and the Law program, the Salt Lake County Bar Association promotes public awareness of the rule of law and our system of justice by sponsoring an annual art contest in our local elementary and middle school classes, depicting the ABA's annual Law Day theme. Winners are chosen by our state court judges, who volunteer for duty and well appreciate the learning process the students go through in taking an often abstract theme -- last year's was "American Democracy and the Rule of Law: Why Every Vote Matters" -- and conveying it visually. Jack Nelson and Blakely Denny are heading up the Art and the Law program this year, and we expect another great group of submissions from schools across the county.

There's a lot more to look forward to in this year of your Salt Lake County Bar membership, of course -- we have incredibly dedicated executive committee members

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Amy Sorenson

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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.



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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.



You are cordially invited to attend  
the Salt Lake County Bar Association's annual  
Holiday Dinner Dance

Friday, December 5, 2014  
The Country Club  
2400 East Country Club Drive  
Salt Lake City, Utah

RSVP to Ms. Nicalee Nelson  
[nnelson@vancott.com](mailto:nnelson@vancott.com) or (801) 237-0227



\$75 per person for SLCBA members and guests  
\$85 per person for non-members  
Limited seating  
RSVP required by November 26

Cocktails 6:30 p.m.  
Dinner 7:30 p.m.  
Dancing (featuring The Number Ones) to follow  
Black Tie invited

# Judicial Profile

## Judge John A. Pearce

by Kate Conyers

Judge John A. Pearce was appointed to the Utah Court of Appeals by Governor Gary R. Herbert in October, 2013. Judge Pearce was born and grew up in Magna, Utah, but spent many of his summers near Newcastle, England visiting his mother's side of the family. He graduated from Cyprus High School where he was the State Sterling Scholar in Social Science. He attended the University of Utah where he graduated magna cum laude with his Bachelors in Science in Economics. He states that his decision to go to law school was "fueled by a lack of imagination," and his belief that a law degree is flexible and he could do anything he wanted with it. His favorite law school classes were History of American Law, Corporations, and International Law. During his first summer at law school, Judge Pearce externed with Justice Michael J. Phelan of the Court of Appeals, First Appellate District, in California. During his second year, Judge Pearce worked at the law firm of Sullivan & Cromwell, LLP, in Los Angeles. He graduated from the University of California, Berkeley School of Law in 1996.

Judge Pearce's legal career began at the law firm of Wilson Sonsini Goodrich & Rosati in Palo Alto, California, where he worked mostly on class action securities and intellectual property litigation for approximately two and a half years. When Judge Pearce decided to return to Utah, he was recruited by Judge Deno Himonas to practice with him at Jones Waldo, where he later served as a shareholder and member of the Executive Committee. Many years later, Judge Himonas also encouraged him to apply for the bench. Judge Pearce taught as an adjunct professor at the S.J. Quinney College of Law at the University of Utah. He also served on a number of boards and committees, including the Salvation Army Citizen's Board, the 337 Foundation, the Guardian ad Litem Oversight Committee, and the Salt Lake County Bar Executive Committee.

After ten years at Jones Waldo, Judge Pearce was recruited by Governor Herbert's then-Chief of Staff Jason Perry to become the Governor's General Counsel, where he spent his next four years before joining the bench. In addition to advising the Governor on legal and policy matters, Judge Pearce had the opportunity to interview dozens of judicial

candidates. Judge Pearce had advice for attorneys considering the bench:

If you want to be a judge, apply. Don't talk yourself out of it. Don't tell yourself the reasons you couldn't be picked. Apply. [Also,] take the application process seriously, think about what you are saying, and realize you are supposed to be an advocate. . . . Look at your application as your argument for why you would be a good judge. [Finally,] understand the different audiences you are going to have to convince; the nominating commission, the Governor and the Utah Senate.

Although being a judge was always at the back of his mind, Judge Pearce decided to apply for the bench because he found public service so rewarding. When asked why he applied for an appellate position, Judge Pearce stated, "Being an appellate judge is a fantastic job . . . if you are a lawyer who likes to think about the law and is fascinated by the development of the law. This was a job that married that service with an ability to think and help grow the law."



Judge John A. Pearce

The main goal Judge Pearce had when joining the bench was to do his best possible job for the parties and attorneys. He finds it extremely humbling to walk into the courthouse every morning entrusted to decide important issues and

to do something that matters. As a judge, Judge Pearce expected a tremendous amount of work, that the issues would be interesting, and that the cases would be sometimes difficult. However, he did not completely understand how much more careful and he precise he would have to be in his writing, knowing judicial decisions are picked apart, cited in other cases, and used to create future arguments. As a result, he is an even more careful and precise writer than he was already.

To prepare for his case, Judge Pearce will read through the briefs in order—blue, red, then grey—approximately six weeks before oral argument. As he reads, he will take initial notes on a template bench brief he fills out for each case. This "working document" identifies the issues, areas of further research, and questions he will need answered. A couple weeks before the argument, he will go through the briefs again, review his notes, pull cases cited in the briefs,

# Judicial Profile

## Judge John A. Pearce

and at this point, he will have his clerks read through the briefs and will start to discuss the issues with them. One or two days before oral arguments, Judge Pearce will read through the briefs a third time to make sure he remembers everything correctly and to see if he missed anything.

Based on his preparation, Judge Pearce has sound advice for attorneys writing their briefs:

Make your brief compelling. By the time I get to the bench, I will have read that brief a minimum of three times, and occasionally five to six times. ... You will have had my undivided attention for several hours before I take the bench, so take full advantage of that. Tell me why it is you should win, and if you can tell me in a way that makes me want to keep reading your brief, if you can make it compelling, and walk me through it logically, all the better. The best briefs are those that I read and I've been logically walked through an argument, I can follow it every step of the way. [A persuasive brief also] anticipates the questions that a judge is likely to have and responds to them.

He also notes that "storytelling is so important." Judge Pearce's biggest pet peeve is overly repetitive briefs. He also dislikes when parties or attorneys impugn a bad motive to the other side or engage in name calling. Finally, he finds bad punctuation, like a misplaced apostrophe, distracting.

Judge Pearce also has ideas about the purpose of oral arguments and how counsel should respond during them. "Counsel's best opportunity to get a court's undivided attention and to really say what you want to court to hear is in the brief. Oral argument is the court's only opportunity to engage with counsel to resolve concerns and questions that the briefs provoked. Consequently, counsel should not be discouraged if oral argument becomes more about what the court wants answered than what counsel came prepared to say." To that end, Judge Pearce asks "questions [he] really wants answered." He does not ask questions to prove that he has read the briefs or that he is paying attention.

He asks questions because he "honestly wants to know the answer." He explains:

I ask a lot of questions of both sides, so you probably can't read anything into it. If I'm having thoughts that could be troublesome for a party's case, I want to give them the opportunity to respond to those and to provide counsel an opportunity to address the way I'm thinking about a case. So most of my questions are aimed at allowing counsel to have an opportunity to specifically address my reactions to the arguments they've made in their briefs.

Furthermore, Judge Pearce suggests that:

"Counsel's best opportunity to get a court's undivided attention and to really say what you want to court to hear is in the brief."

The best arguments are those where counsel can answer the question and still work in thematically the things they wanted to talk about. The best oral arguments I think are those where people aren't married to specific language ... [but] are those that come in prepared with three themes they want to get across, or the impression they want to the judges to have when they leave the courtroom. Those arguments do not focus on specific words from a script but develop a theme that finds its way into answers to questions. .

Finally, Judge Pearce recommends that counsel try not to focus on one judge but to remember to address the entire panel. Overall, Judge Pearce views oral arguments as very important to helping shape his opinion, as oral argument influences his thinking "enough that counsel would be well served to prepare [for oral arguments] to change a judge's mind." If that's not enough, Judge Pearce has also "used things said at oral arguments to help change a colleague's thinking about an issue."

Judge Pearce is married to Jennifer Napier-Pearce, a reporter for The Salt Lake Tribune. They have two sons, Benjamin (16) and Jonas (13), and an English Pointer, Sydney (probably 6, the shelter wasn't entirely sure). Judge Pearce enjoys playing tennis with his sons, biking, and reading.

# Judicial Profile

J u d g e P a u l P a r k e r

## By Judge Julie Lund

Judge Paul Parker was appointed to the Third District bench by Governor Gary Herbert in August, 2013. His courtroom is located in the Matheson Courthouse. He is from Lehi, Utah. He served a mission in Oregon and received his under graduate degree in law enforcement from Weber State. He worked for 7 years as a law enforcement officer for Vernal City before attending law school at the University of Utah. He graduated in 1988 and after a brief clerkship at the Utah Court of Appeals he was hired by the Salt Lake County District Attorney's Office as a prosecutor. He worked at the DA's office for over 24 years before taking the bench just last year. His assignments at the DA's office included Special Victim Team leader and Criminal Division Supervisor. His interest in serving as a judge arose from his desire to find new challenges while continuing to work in the public service arena.

He is assigned to a primarily civil calendar and is enjoying the change from his years of criminal practice particularly the opportunity to deal with the variety of areas of law required in a non-criminal District Court calendar. So far he has spent most of his time in motions, hearings and bench trials. He presided over only one jury trial in his first year. He appreciates the professionalism of the attorneys that appear before him and has found their efforts to be very helpful to him. In the days of electronic filing, he still reviews and prepares for hearings on paper and so he appreciates courtesy copies particularly on longer motions.

Judge Parker observed that counsel in civil practice tend to be more contentious than their criminal law counterparts. He attributes this to the smaller size of the criminal law bar and the collegiality which exists among those attorneys.

The great outdoors is where you will find Judge Parker in his free time. He enjoys boating, four-wheeling and trap shooting and generally spending time with his family.



J u d g e P a u l P a r k e r



# Open Legal Services

## Extending the Reach of Legal Services

**By Tsutomu Johnson**

In the midst of a troubling job market, two recent law grads started Open Legal Services to provide legal services for the middle class. Not only have they been successful, their model is being adopted throughout the nation.

Open Legal Services began as a conversation between Daniel Spencer and Shantelle Argyle during their last year of law school at the University of Utah. Dan had interned for the Legal Aid Society and the Crime Victims Legal Clinic, and Shantelle had interned with the Legal Defender Association and clerked for Skordas, Caston & Hyde. Faced with the tough prospects for finding a job, they decided to start their own practice.

Because of their experience, they realized that the middle class is a forgotten market in the legal industry. Middle income clients earn too much to qualify for nonprofits and government programs that cater to the poor, yet they don't earn enough to hire traditional law firms. Dan and Shantelle decided to charge their fees on a sliding scale, based on each client's household size and income. This type of fee structure allows people at the top of the scale to help offset the people at the bottom. By charging fees, Open Legal Services is a sustainable organization because it is not dependent upon grant funding or donations.

Incorporating as a nonprofit further lowers costs and increase reach. While they don't expect to become wealthy with this business model, Dan and Shantelle have discovered that they can make a comfortable living while reaching an underserved population in a sustainable way.

Dan and Shantelle have since been contacted by dozens of attorneys across the country who are either running a similar model or looking to start one. They have teamed up with Community Justice Inc. out of Wisconsin to form an email list which connects attorneys on both sides to answer questions and provide a much-needed resource for this emerging business model. In addition, state bars in Montana, Washington, Wyoming, Utah, and the Supreme Court of Colorado have approached Dan and Shantelle to present on their business model and offer advice to the states on how to form their own organizations. Finally, Open Legal Services has been featured in The Atlantic and

the Deseret News, as well as Above the Law and several other online publications.

Open Legal Services is growing at a staggering rate. They started with Dan and Shantelle as the sole attorneys, and now maintain a staff of 3 associates and 1 paralegal in addition to themselves. They expect to hire at least 2 more attorneys before the end of 2014.

Dan and Shantelle decided to charge their fees on a sliding scale, based on each client's household size and income.

# Book Review

## High Price

**By Sam Meziani**

*“Most foolish of all is the belief that everything decreed by the institutions or laws or a particular country is just.”*

Cicero, *The Laws*, Book One.

In his 2013 book, *High Price*, Dr. Carl Hart, a neuroscientist and professor of psychology at Columbia University, presents a compelling argument by means of first hand research interwoven with his remarkable life story, that our current drug policies “are based largely on fiction and misinformation” and have “no foundation in evidence.”

The prologue recounts a 1999 experiment at a New York hospital designed to test the preference between “crack” cocaine and an “alternative reinforcer,” or other type of reward. In the experiment a nurse administered pure pharmaceutical grade crack cocaine to a street vendor, who typically spent between \$100 and \$500 per week on crack, and would be considered by many to be an addict. After taking a large hit of crack from a pipe, a computer signaled another hit was available. Rather than selecting another hit, however, the man selected five dollars in cash. The experiment showed that even a crack user is capable of making rational choices, and does not act like a stereotype, who by all popular accounts should have made endless requests for the drug. Through this and other experiments, Dr. Carl Hart began to question everything he had always believed about drugs and drug users.

Dr. Hart provides stories from his childhood in Miami in the 1970s and 80s to illustrate the vital role a rich social environment played in allowing him to make rational choices and avoid drug abuse. His earliest memories include watching his parents fight, including a horrific assault when his father hit his mother in the head with a hammer. His parents divorced and he moved annually, but always within neighborhoods entrenched in poverty. He was bussed to a school in a working class white neighborhood, but was placed in a temporary outbuilding with other black children who supposedly had “learning difficulties.” He moved into the projects in the 1980s. By every account, Dr. Hart faced serious challenges, put succinctly by his grandmother, who told him he would never amount to anything. Fortunately, he discovered he was a skilled athlete and for the first time in

his life, felt mastery and dominance playing football, and later basketball. In high school during the early years of hip hop, he became part of a DJ group which played large parties throughout South Florida. His main priorities were athletic performance, maintaining control in social situations, and spending time with girlfriends and “friend-girls.” “I didn’t want to feel out of control, ever....[and] I didn’t want to do anything that might impair my performance on the basketball court.” His social network supported his desire to avoid drugs for these reasons.

The lesson for Dr. Hart is that social connections play an important role in drug use, and that excessive drug use “is not simply caused by mere exposure to a substance.” For example, many people have probably heard about studies in which a rat or primate will continually press a lever to get cocaine, heroin, or methamphetamine until death, ignoring food and water. Dr. Hart points out that the animals in these studies were kept in isolation, in unnatural environments, and became stressed without social contact. By contrast, in studies which provide rats space for social contact, exercise, food, and sex, the rats use significantly less morphine, cocaine, and amphetamine, than isolated animals. According to Dr. Hart, poor people typically have fewer competing reinforcers, which may explain why crack never “ravaged” middle and upper class communities: “High socioeconomic status provides more access to employment, and alternative sources of meaning, power and pleasure....”

The book draws a fascinating connection between chemistry and law enforcement tactics. Quick: what is the chemical difference between crack and powder cocaine? Few people actually understand the chemical difference and why it is important. The key concept is “route of administration,” or the speed at which the drug enters the brain, and therefore the intensity of the effects. Think drinking on an empty stomach as compared to drinking moderately at dinner. Powder cocaine, which is commonly perceived as a “rich man’s drug,” is inhaled through the blood vessels in the nose, and the effects are felt within about 5 minutes after inhalation. The fastest route to the brain however is injecting or smoking. The routes of administration produce



## Book Review

## High Price - Continued

the most intense effects and are associated with the highest rates of addiction. Powder cocaine— cocaine hydrochloride— cannot be smoked because it decomposes under heat. Smoking requires removing the hydrochloride portion, which has no impact on the drug's effects. The resulting compound is smokable, but there is no qualitative difference. And yet the federal sentencing guidelines punish the smokable variant 18 times for severely than powder. For Dr. Hart, the missing hydrochloride element has additional economic and law enforcement consequences. Because its smokable form is more powerful, a smaller dose is necessary to achieve the same effect. Therefore it is less expensive and affordable to people with little money. Poor people are more likely to buy and sell on the street. Because street markets are more visible, law enforcement rationally places more resources in poor communities. As a result, conscious or not, Dr. Hart claims the impact of crack cocaine enforcement disproportionately affects poor people. Dr. Hart could be criticized for failing to support this claim with sufficient evidence, but the statement of [United States District Judge Mark W. Bennett](#), in the 2012 film "The House I Live In" lends support: "Of the 2,600 people I've sent to federal prison, I've seen three or four kingpins. We're incarcerating poor people, who are drug addicts."

Dr. Hart argues the drug laws are not only unjust in their application, but in their origin. As a PhD student at the University of Wyoming in 1996, Carl Hart discovered a 1914, article published in the *New York Times* with the subhead: "Murder and Insanity Increasing Among Lower Class Blacks Because They Have Taken to 'Sniffing' Since Deprived of Whiskey by Prohibition." Dr. Hart dove deeper and discovered experts testified before Congress that "most of the attacks upon white women of the South are the direct result of the cocaine-crazed Negro brain." The United States' first drug enforcement law, the Harrison Narcotics Tax Act, passed one hundred years ago in 1914, effectively prohibited cocaine. Whether such views were the cause of the legislation, or simply a correlation, remains unclear because Dr. Hart stops short of providing further evidence. In the chapter, The New Crack, Dr. Hart describes how current descriptions of methamphetamine users by law enforcement are eerily similar to century-old accounts of cocaine users, and argues the harm from amphetamines are exaggerated, given that

they are still used in the U.S. military to enhance performance and methamphetamine is approved by the U.S. FDA to treat ADHD.

The most moving part of the book is the first-encounter with his sixteen-year old son, whom he fathered as a teenager, but did not know about until he was served in his Brooklyn apartment with paternity suit papers. On a visit to Florida, Dr. Hart confronted "Tobias." Tobias was a crack seller, had fathered several children with different women, and had apparently shot someone. Tobias seemed to Dr. Hart as if he was another version of himself, but one who had been deprived of those positive reinforcers necessary for success. Tobias had not learned the joy of working hard and

Dr. Hart argues the drug laws are not only unjust in their application, but in their origin.

competing in athletics, had not been encouraged in his natural capacities by teachers or mentors, and lacked the values and formation that come from military training and culture. Tobias is not a drug user, so his problems cannot be reduced simplistically to drug use, or blamed on crack. Instead, he is "a young black man with no high school diploma and limited employable skills in a country that seems him as a problem, not a resource."

For all his myth-busting, Dr. Hart's treatment seems to skim over the real harm that drugs can cause. Most people, for example, probably know someone who has died of an overdose. Dr. Hart would view this as an educational issue; the failure to

properly communicate that mixing alcohol with any drugs, but especially opioids, (and pain pills popular in Utah), can be deadly. Dr. Hart suggests there are more than 20 million Americans who use illegal drugs regularly, and therefore overdoses are a relatively rare event. But even if drug use causes serious harm to only a minority of users, Dr. Hart's own rise proves the importance of avoiding drug use, (all the more so among poor people with few advantages), and therefore that governments have an interest in limiting use, even if current enforcement policies are flawed.

Reasonable people of good will can hold opposing views on drug policy. Yet it is hard to make the case that Dr. Hart's provocative arguments should not be considered by those who wish to hold an informed opinion. And even for those readers with no particular interest in drug policy, the story of Dr. Hart's rise from poverty and family dysfunction to Ivy League professor is inspiring.



# Recent Precedents

2014 SLCBA Spring Party



*The Salt Lake County  
Bar Association  
Annual Spring Dinner  
held on  
May 30th, 2014.*

# President's Message

C o n t i n u e d

## Continued from page 1

committed to keeping our community informed by producing this excellent newsletter and heading up our social media and membership drive efforts, as two more examples – but this course syllabus would be far too long if I tried to capture it all.

Thank you for your membership in the Salt Lake County Bar association, and if I or any of the officers of the Salt Lake County Bar Association can serve you better, please call. Unlike my kids, I can't promise you'll be taller at the

end of the year, but we are proud to think we're a part of your professional growth. I'll see you at our next event.

*The Salt Lake County Bar Association  
Cordially Invites You to Its  
New Lawyers & Judges Reception*

Thursday, October 23, 2014, 5:30 to 8:00 PM  
to Welcome the New Admittees to the Bar

Location: The Alta Club  
100 East South Temple

(Parking Available Northeast of the Alta Club)

No Cost to Attend. Hors d'oeuvres and Drinks Will be Served.

RSVP to Ms. Sandy Felkins at [sandy-felkins@rbmn.com](mailto:sandy-felkins@rbmn.com)  
or (801) 531-2099 by October 17, 2014.

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