

# BAR & BENCH

## SALT LAKE COUNTY BAR ASSOCIATION

SALT LAKE COUNTY BAR ASSOCIATION

SUMMER 2017

### Outgoing President's Message

by Bart J. Johnsen  
Salt Lake County Bar President

Summer is upon us and it has arrived with extra heat. Restaurants are celebrating summer by putting signs in their windows indicating that they are not a bar. And bars are clarifying that they are not a restaurant. The season of road construction is in full swing. Summer and road construction—two things synonymous. Kids are out of school and in various forms of trouble and cats cannot stay on any tin roof. Summer time and the living is easy.

The Salt Lake County Bar Association also celebrates summer by not having any meetings of the Executive Committee. The spring dinner dance and election of officers held June 2, 2017 at the Country Club was a success and is the last event of the year for the SLCBA. As always, this was a great event and very well attended and is planned and organized by our Socials Committee of Jonathan Pappasideris, Mark Kitrell, Jennifer Mastrococco, and Sam Meziani. In addition, during the 2016-2017 term, the SLCBA hosted CLE events, a new lawyers and judges' reception, and the ever popular Holiday Party in December. The CLE committee conducted various CLE events, including a well-attended event at Brewvies on the Texas abortion legislation. The CLE committee included Clemens Landau, Honorable Michele Christiansen, Kristine Larsen, and Richard Mrazik. Our membership, website, and social media committee, Aida Neimarlija and Jennifer Horne, maintained our web presence and ensured that the SLCBA was represented in social media, including Facebook. And as always, the SLCBA participates in the annual Art and the Law event related to Law Day around the country. Jack Nelson, Honorable Julie Lund, and Blakely Denny were incredible in organizing and soliciting participation from local schools. Finally, the Bar and Bench committee published three issues this year which were all successful. Thanks to Kate Conyers, Rita Cornish, Kristen Olsen, and Michael Langford for all their hard work on the Bar and Bench.



Bart J.  
Johnsen

It was the summer of 2005 when I joined the SLCBA Executive Committee. It has been my honor and pleasure to participate in the governance of the SLCBA. During my time

I have had the privilege of knowing and working with some of the most talented and wonderful people in the County Bar. I have appreciated all their efforts. The officers for 2017-2018 are Trystan Smith, President; Chris Hogle, Vice-President; Lauren Shurman, Secretary; and Jonathan Pappasideris, Treasurer. I am certain that they, along with the members of the Executive Committee will continue to serve you well.

Have a wonderful summer.

# Judicial Profile

## J u d g e D a v i d N . M o r t e n s e n

### By Rita Cornish

Although Judge David N. Mortensen was born and raised in Northern California, his Utah roots run deep. As he explains, “My parents and my entire extended family are from Utah, stretching all the way down South to Richfield and up North to Ogden.” Although Judge Mortensen’s parents grew up in Utah, they moved to the Bay Area to pursue teaching careers and mild weather and ended up staying to raise a family. In that family, Judge Mortensen is the middle of three children.

After graduating from Clayton Valley High School, Judge Mortensen attended Los Medanos Community College for two years. During those two years, he not only completed his general education requirements but also played the trombone in the Jazz band, which gave him the opportunity to travel Europe playing music festivals. Judge Mortensen took a break from his studies to go on a mission to Germany for the Church of Jesus Christ of Latter Day Saints.

Although he had given little thought to pursuing a career in law prior to his mission, he began to consider it during his time in Germany. By the time he enrolled at Brigham Young University following his mission, Judge Mortensen admits, “At that point, it was all about law school. It was really a process of elimination. I didn’t really like math or science but I did like to read, write, and think. So, I thought law would be a good fit.”

Judge Mortensen majored in English and minored in German, but found an unexpected pleasure in philosophy classes. He recalls, “I took two semesters of logic, because I thought it would be good for the LSAT, and ended up loving it. So, I took a lot more philosophy courses and by the end I was just a few credits shy of a minor.”

After graduating with his bachelor’s degree in 1990, Judge Mortensen directly enrolled in the J. Reuben Clark Law School at Brigham Young University. He recalls having enjoyed remedies and evidence because of the practicality of the classes. With respect to remedies, “it answers the question of what do we do about wrongs, and I also liked the fact that there was no one answer—there were multiple things you could do.”

Following law school, Judge Mortensen joined the Provo law firm Ivie & Young. It turned out to be a great opportunity for practice development. Within two years, Judge Mortensen tried his first jury trial. He developed a strong trial practice and also had the opportunity to follow matters through appeal.

In 2003, Judge Mortensen started applying for judgeships. The first time he applied was on a lark, but the interview process made him realize that he really did want the job. He would apply two more times before being appointed to Utah’s Fourth Judicial District Court by Governor Jon M. Huntsman, Jr. in 2006. He was Presiding Judge for two of years he served on that bench.

Judge Mortensen immensely enjoyed being a trial judge, but one of his favorite parts of the job was writing decisions. Recognizing that the judges in the appellate courts have more time to dedicate to writing, he began applying to the appellate bench in 2009 and was appointed to the Utah Court of Appeals by Governor Gary Herbert in May 2016 to fill the vacancy left by Judge John Pearce’s appointment to the Utah Supreme Court.

Reflecting on his first year on the Utah Court of Appeals, Judge Mortensen admits that he misses the direct interaction with the public that he had as a trial court judge. He also occasionally misses his front row seat for trials. “I loved watching really good trial attorneys do their thing. Attorneys who are good at trying cases—they know the rules of evidence and how to really examine a witness—it’s an art, and watching it can be awesome.”

On the other hand, Judge Mortensen is thoroughly enjoying both aspects of opinion writing—the process of making the right decision and the craft of writing an engaging opinion. With respect to the former, he has been pleasantly surprised by the engagement and discourse between and among the other judges on the court. He related, “I knew this was a collegial bench, but it’s even more collegial than I anticipated. For example, the judges on this court are not just tolerant of criticism, but they invite it, which I think is refreshing.”



J u d g e D a v i d N .  
M o r t e n s e n

# Judicial Profile

## J u d g e D a v i d N . M o r t e n s e n

Judge Mortensen offers two tips for attorneys practicing before the Utah Court of Appeals. First, with a nod to the Mark Twain quote, “I didn’t have time to write a short letter, so I wrote a long one instead,” Judge Mortensen encourages attorneys to take the time to refine their arguments and revise their briefs to be as succinct and straight-forward as possible. He explains, “Attorneys don’t always think about the volume of reading judges need to do or when in the day that judge is going to do it. If a judge is tired or switching gears, you want to make it as easy for them to understand as you can.”

Second, Judge Mortensen cautions litigants against using pejorative language. He elaborated, “Incivility is so distracting, I don’t think people understand that.... It’s ineffective to use a lot of rhetoric to tell me that your opponent is trying to get one over on the Court. It is highly effective, however, to show me the evidence without the rhetoric and let me draw my own conclusions.”

Outside of the courthouse, Judge Mortensen is a husband and father of four, two girls and two boys. He finds some time to fly fish and plays the guitar daily, but much of his free time is spent hiking on trails throughout the mountains and desert.

“I knew this was a collegial bench, but it’s even more collegial than I anticipated. For example, the judges on this court are not just tolerant of criticism, but they invite it, which I think is refreshing.”

# Judicial Profile

## J u d g e M a t t h e w B a t e s

### By Michael Langford

Judge Matthew Bates was appointed in July of 2016 by Governor Gary Herbert. He received his undergraduate and law school degrees from Brigham Young University. After graduating from law school in 2003, Judge Bates worked at the Litigation and Criminal Appeals Division at the Utah Attorney General's Office. It was there that he realized he had an affinity for case law and appeals. It was also there that he worked with and learned from two attorneys whom he considers mentors-Utah Court of Appeals Judge Frederick Voros and retired Deputy Solicitor General Laura Dupaix.

After leaving the Attorney General's office, Judge Bates worked at the Salt Lake County District Attorney's office. And then later at the Summit County Attorney's Office, where he worked until he took the bench. Judge Bates enjoyed being a prosecutor. He says there is no other area of law where attorneys have as much control over their cases, because their client is the state. He had an adversarial, but cordial and professional relationship with the many defense attorneys that were his opponents. Veteran criminal defense attorney David Shapiro found him formidable but fair. Judge Bates enjoyed working with the criminal bar because he felt that even though prosecutors and defense attorneys did not see eye to eye on cases, he felt that they always treated one another with respect. Good friend, assistant United States Attorney, Stephen Nelson developed a close personal and professional relationship with Judge Bates when both were at the Salt Lake County District Attorney's Office. He says that Judge Bates often presented case law updates to the Utah Prosecution Counsel and he was one of the few people that made could make these presentations both educational and entertaining.

At the time Judge Bates made the decision to apply to be a judge, he felt that he had a strong handle on the law and he firmly felt that he could use his experience to be of great service to the legal community. Judge Bates has been on the bench for a year and he welcomes the intellectual challenges of being a judge. Although the bulk of his experience is criminal law, he primarily presides over a civil docket. He relishes this opportunity because he is learning new areas of

the law and welcomes being educated by the many civil lawyers that appear before him. Regarding tips for practitioners that appear before him, he appreciates courtesy copies of pleadings. And most importantly, be kind to judicial assistants.

When he is not working, Judge Bates spends time with his wife and children. He also enjoys skiing and road biking and he often bikes to work.

Judge Bates is on the Supreme Court Advisory Committee on the Rules of Evidence and on the advisory board of the Utah Journal of Criminal Law.



J u d g e M a t t h e w  
B a t e s

# Director Profile

American Civil Liberties Union

By Kristen Olsen

I largely credit the American Civil Liberties Union (ACLU) with my decision to leave my previous career and attend law school as a mother of two. About a decade ago, the Utah Department of Transportation (UDOT) told my Iraq War veteran husband that he would not be able to engage in a peaceful protest on Utah roads because of the anti-war message he intended to convey. Not surprisingly, the ACLU was successful in educating UDOT about the fundamentals of our Constitution, specifically the First Amendment, and my husband was able to speak out against the Iraq War on a 500-mile peace walk down Highway 89. Not long after his walk, we both signed up for the LSAT.

Because of this experience, I was excited to sit down with the new Executive Director of the Utah affiliate of the ACLU, Brittney Nystrom, and thank her for all the ACLU does to protect civil liberties here in Utah. Nystrom came to this position in August of 2016 after a long legal career spanning jobs in private practice, nonprofit, and public policy work.

While the majority of Ms. Nystrom's career has been spent outside of Utah, she was born on Hill Air Force Base (back when the Base had a full-service hospital) and raised primarily in Ogden, Utah. After growing up as a non-Mormon in Utah, she was drawn to the study of anthropology at the University of Notre Dame. This was in part because she grew up with a bit of an outsider's perspective and loved unpeeling the layers of Utah's culture, which she found fascinating.

Ms. Nystrom appreciated the strong social justice focus at Notre Dame, including the Peace Studies program in which she minored. After graduating from college, she volunteered for AmeriCorps as a community employment counselor in Madison, Wisconsin. For the first time in her life, she worked closely with refugees and other minority groups, and she remembers realizing "there were just so many issues that a bus ticket and a bag of groceries were not going to fix."

Although her mother had told her growing up that she should become a lawyer, she never seriously considered it until she better understood the role lawyers can play in helping other people, like those she served in Madison. Once her eyes were opened to "huge social injustice, unfairness, and biases" as an AmeriCorps volunteer, she said

she felt law school might help her better understand these issues and "create change on a larger scale."

She attended law school at Northwestern University where she worked in the asylum clinic during her third year, representing men and women seeking humanitarian protection in the United States. She worked primarily on gender-based claims, including transgender individuals who faced persecution in their home countries and domestic violence victims who could not get protection from the police. After taking classes like securities law and contracts, she described the asylum clinic as "refreshing," and said it "felt like I stumbled into exactly the right niche."

After law school, Nystrom went into private practice at Fried, Frank, Harris, Shriver & Jacobson LLP in Washington, D.C., where she practiced corporate litigation and represented asylum seekers pro bono. Her mentor at the firm, Karen Grisez, helped her transition to a public interest job at the Capital Area Immigrants' Rights (CAIR) Coalition where she provided legal assistance to detained immigrants facing deportation in the Washington D.C. area. Nystrom remembers going once a week to different county jails to screen cases, follow-up with families, and match immigrants with meritorious claims with pro bono attorneys. She realized the systemic problems she was witnessing were much bigger than the individual cases with which she was helping. "I had to tell hundreds of people a week that I couldn't do anything and that they would be deported—it was soul-crushing," she said.

This frustration led her to transition to the public policy aspect of immigration law in Washington, D.C., around the same time that President Obama began his first term in office. She first worked for the National Immigration Forum doing advocacy and legislative work and then she transitioned to her role as the Director for Advocacy at Lutheran Immigration and Refugee Service. Of her time working in public policy, she said, "we did move the needle a bit and were able to make some changes that impacted thousands of people in a good way," including helping to secure the Deferred Action for Childhood Arrivals executive order (DACA).



Brittney  
Nystrom

# Director Profile

American Civil Liberties Union

“It was quite a roller coaster ride,” she remembers, when Members of Congress and the public first rallied behind the Syrian refugee crisis after images went viral of a drowned Syrian toddler washing up onto shore, only to withdraw that support after a series of terrorist attacks in Europe. More recently, she mentioned, in a matter of months she watched the incremental progress she and others had made towards a more fair and just system for immigrants and refugees deteriorate as President Trump attempted to implement his Muslim ban. “I do believe there will be a time where we will have an immigration system that is logical, but I don’t see that happening anytime soon,” Nystrom lamented.

“D.C. takes its toll,” according to Nystrom, and after eight years of trying to work with Congress to adopt needed changes, she felt it was time to move west. She loves her job as the Executive Director of the ACLU of Utah because she gets to help protect civil liberties in her home state while drawing on her years of experience as an advocate for immigrant populations.

“It’s challenging for the ACLU right now because we only have one client, which is the Constitution,” Nystrom explained, and that client seems to Nystrom to be under siege by the current administration. Nystrom said, “We have seen this administration launch attacks on a lot of the issues that we hold most dear,” including free speech, LGBT rights, women’s rights, and immigrant rights.

Luckily, the number of card-carrying ACLU members has more than tripled since President Trump took office, explained Nystrom. In Utah, the number of members went from approximately 1,500 to over 6,700 members today. The increase in numbers, Nystrom observed, is driven in large part by fear, by a desire to get involved, and by an effort nationwide to resist the current attacks on civil rights and civil liberties. As a result of this new support, the ACLU has hired new attorneys and staff throughout the nation. “It’s never enough,” Nystrom noted, because “the sheer size of the government’s attorneys and resources will always dwarf an organization, even as large as the ACLU.” She mentioned, however, that they are putting all the newfound support to good use. The ACLU of Utah, for example, is increasing community outreach in an effort to learn about and address all civil rights violations that are occurring statewide.

Nystrom said that the ACLU of Utah has great autonomy from the national organization with regards to what issues and civil liberties they choose to focus on. Currently, the ACLU of Utah is focusing on civil rights violations against immigrants who are facing an expanded deportation mandate, according to Nystrom.

The ACLU of Utah is also exploring civil rights violations occurring in Utah’s correctional institutions, notably within the county jails. Nystrom said, “we’ve seen reports that Utah has risen to the level of most deaths in county jails per capita.” The ACLU of Utah is looking at the causes very closely to ensure that no more preventable deaths occur in Utah’s county jails. The third area of focus Nystrom mentioned is improving indigent defense here in Utah.

“This is an issue we have been working on for years at the ACLU of Utah because our system of indigent defense is terrible,” she said. Last summer, for example, the ACLU of Utah filed class-action litigation to try to highlight this issue. She is hopeful that the state’s newly created Indigent Defense Commission, combined with the active litigation, will be successful in addressing these issues and protecting the constitutional rights of the accused here in Utah.

Most of the ACLU’s litigation in Utah depends on pro bono attorneys coordinating with the ACLU’s efforts. “We couldn’t do as much as we do without that kind of legal assistance,” Nystrom said. In

the legal community, Nystrom explained, “cooperating attorneys is a way we can expand our muscle.” Attorneys who are interested in getting more involved with the ACLU’s efforts here in Utah should contact Brittney Nystrom ([bnystrom@acluutah.org](mailto:bnystrom@acluutah.org)) or visit the ACLU website (<http://www.acluutah.org/>) to learn how to volunteer.

In her spare time, Nystrom enjoys exploring Utah’s natural beauty with her husband and two daughters, ages 17 months and three years old.

Of her time working in public policy, she said, “we did move the needle a bit and were able to make some changes that impacted thousands of people in a good way.”

# Director Profile

## Utah Indigent Defense Commission

By Rita Cornish

I recently had the pleasure and opportunity to sit down with Joanna Landau, the new Director of the Utah Indigent Defense Commission (the “IDC”), to discuss launch of the IDC’s mission to evaluate, advise, and improve indigent criminal defense services across Utah.

For those not familiar with the relatively new IDC, it was created by the Utah Legislature during the 2016 General Session. Senate Bill 155, sponsored by Senator Todd Weiler, grew out of a several years study on the needs of criminal defendants in trial courts that culminated in the Report of the Judicial Council Study Committee on the Representation of Indigent Defendants in Trial Courts.

Some background on how the Constitutional right to counsel works in Utah. Through several cases, SCOTUS has repeatedly held that the 6th and 14th Amendments require the states to ensure indigent criminal defendants and juveniles have the effective assistance of counsel when they are facing allegations of having committed a state offense. Utah delegates this Sixth Amendment responsibility to provide effective assistance of counsel, wholly to local governments—counties, cities, and municipalities. But those local services have never been overseen, guided, or funded by the state. The lack of state level oversight and guidance has led to a patchwork of indigent defense services with inconsistent standards, quality, and practices, and without any oversight or reporting mechanism to ensure defense services are in fact constitutionally effective. The passage of SB 155 in 2016, created the IDC to assist the state in meeting its obligations for the provision of indigent criminal defense services, consistent with the United States Constitution and the Utah Constitution. In the 2017 Legislature, the IDC’s scope was expanded to indigent juvenile delinquency representation and representation for parents charged with abuse, neglect, and dependency proceedings, for which there is a statutory right to counsel for indigent parents.

Presently, the IDC is composed of 13 voting and 2 non-voting members, who represent the diverse interests in Utah’s indigent defense system. With the creation of the IDC the Legislature also created staff with a full-time

Director, an active attorney responsible for assisting the Commission in investigating, reviewing, and assessing the provision of indigent defense services in the state.

In October of 2016, Joanna Landau was hired to this Director position. Prior to her appointment, Landau spent several years as an appellate attorney with Salt Lake Legal Defenders, where she represented indigent criminal defendants on appeals to the Utah Supreme Court and Utah Court of Appeals. She received her undergraduate degree from Wellesley College and her law degree from the S.J. Quinney College of Law at the University of Utah.

In the extraordinarily short ten months since she took the position, Landau has assembled a staff that includes an assistant director, Jojo Liu, and a research and data analyst, Taylor Mosolf. Liu, a former professor has a deep background in juvenile delinquency defense that complements Landau’s background. Mosolf, on the other hand, also an active attorney, came over from the State Auditor’s Office and brings expertise in finance and information systems, particularly with respect to the State of Utah’s systems.

Landau and her team have already started to make a dent in the colossal job of gathering information to assess the status of existing indigent defense services across the state. “We’ve been really lucky in the respect that Utah is transparent and has a lot of publicly available information, so we’ve been able to track down relevant information quickly. And AOC [the Administrative Office of the Courts] have made it easy to get large data with relevant information from the courts,” Landau explained. The ready availability of information has already moved the IDC’s mission forward. “We are at a point where we can start to ask what should be funded and how to structure services, rather than solely gathering information.”

Landau has also been studying other state’s models for the provision of indigent defense services. She pointed out, “there is no one model for how states provide indigent defense services—the one consistency is that so many states underfund indigent defense services.”



Joanna Landau

## Director Profile

## U t a h I n d i g e n t D e f e n s e C o m m i s s i o n

Utah, it turns out, was second to last in providing state funding for indigent defense. Landau, however, is optimistic: “We’re past the point where this [providing state funding and support for indigent defense services] is a debatable issue. . . . [and] we have a good commission. They’re committed to working through these issues.”

“[T]here is no one model for how states provide indigent defense services—the one consistency is that so many states underfund indigent defense services.”



# Director Profile

Utah Association for Criminal Defense Lawyers  
Executive Director Stewart Gollan

## By Kate Conyers

*“Don’t [mess] with people. Let people be people.  
Everyone’s life and feelings and families matter.”*

This statement by Stewart Gollan captures the essence of his beliefs regarding government and the criminal justice system, making him an excellent Executive Director of the Utah Association for Criminal Defense Lawyers (UACDL).

Stewart was born and raised in Utah and graduated from Brighton High School. He received his B.S. from the University of Utah in Philosophy with a Minor in Chemistry. After college, he worked for the Kennecott Environmental Energy Projects Group. Kennecott paid well, but after a few years, Stewart felt he was just delaying his post-graduate education. He applied for law school because he “needed something else to do.” Law school was a good fit as he believed it would lead him “to create change in the fundamental rules that govern us and the social structure in a way to make things more equitable.” Perhaps a bit naïve, it hasn’t stopped Stewart from continuing to create this type of change through his work with UACDL.

Stewart graduated from the S.J. Quinney College of Law at the University of Utah in 2009. While in law school, he earned a Merit on Entrance Scholarship and a Leadership Scholarship, given to a student who is nominated by most professors. He did so well in the Traynor Moot Court that he was one of two finalists that qualified for the National Team the following year. He also clerked for Salt Lake Legal Defenders and for the Utah Legal Clinic with Brian Barnard.

After Stewart graduated from law school, he worked alongside Brian Barnard of Utah Legal Clinic on many important First Amendment cases before the Tenth Circuit and as supporting counsel before the United States Supreme Court:

- *American Atheists v. Utah Highway Patrol*: The Tenth Circuit held the fourteen crosses placed on public land and used to memorialize fallen Patrolmen were in violation of the Establishment clause of the Constitution and therefore should come down.
- *Evans v. American Fork City* (2012): U.S. District Court Judge Ted Stewart ordered the State to stop enforcing its ordinance prohibiting panhandlers from standing on roadsides and asking for money.

- *iMatter Utah v. UDOT* (2013): After the Tenth Circuit remanded the case, the U. S. District Court held as unconstitutional UDOT’s requirement that event organizers obtain large liability insurance policies and collect releases of liability from all event participants prior to the staging of any event or protest on UDOT property. This financial burden basically restricted marchers’ first amendment rights on public highways.
- *Pleasant Grove City, Utah v. Summum* (2009): SCOTUS held that although a park is a traditional public forum, the display of a permanent monument in a public park is not a form of expression under the First Amendment but instead is a form of government speech.

After Barnard’s death, Stewart served as the Managing Attorney of Utah Legal Clinic for some time before starting his own firm where he continued his practice in civil rights, family law and criminal defense. His most notable case during that time was

- *Janis v. Davis School District* (2017): U.S. District Court Judge Shelby issued a temporary restraining order allowing a female student to try out for her junior high wrestling team. After the injunction was issued, the district changed its policy preventing females from participating on the wrestling team and allowed Stewart’s client to join the wrestling team.

In early 2017, Stewart applied to be the Executive Director of UACDL after the former director’s Kent Hart’s untimely passing. In becoming the Director, Stewart continues his fight for civil rights within the criminal justice system:

“Criminal defense implicates fundamental principles that protect all of us from government overreach, specifically due process under the Fifth Amendment. As a civil rights attorney and criminal defense attorney, it has become clear to me that in addition to advocating for that group of attorneys and the organization itself, the role of the Executive Director of UACDL is advocating for the constitutional bedrock that provides protections for every citizen, whether or not they are implicated in the criminal defense system. I can think of few things I would be prouder of than representing on behalf of that board.”

Stewart’s primary goal for the UACDL is to “expand the

# Director Profile

Utah Association for Criminal Defense Lawyers  
Executive Director Stewart Gollan

protections provided by the Fifth and Sixth Amendments—specifically the right to due process and right to counsel—to encompass every criminal proceeding that occurs in Utah, and to ensure that any such proceeding and every defendant subject to proceedings is guaranteed fundamental fairness and the financial resources to ensure such process, including to investigation, experts, and adequately paid and competent counsel.”

He also seeks to continue advancing UACDL’s interest: “Kent Hart made UACDL a statewide organization that, without a doubt, was influential in representing the interests of criminal defense attorneys. Under the influence of Kent and interim director Stephen Howard, UACDL continues to represent not just the interests of criminal defense attorneys and defendants, but also the public interest at large. It is my hope and belief that given this unbelievably strong foundation that these predecessors have laid I can continue to ensure that UACDL continues to advocate not just for fundamental constitutional principles that protect rights of every citizen, but also move us towards the sort of advancements in both criminal law and criminal procedure that we have continued to advance, standing on the shoulders of Madison and Jefferson, since we have begun this experiment in fundamental democratic representation that hasn’t only proved a success but a guiding light in government.”

Stewart enjoys his position with UACDL “because it stands for a principle bigger than each of us and our hopes against tyranny of government. We don’t usually deal with those issues every day, and it is because of these principles that we walk the streets safely and with autonomy. The fact that it is invisible to most of us is why the system of government works and why we need institutions like UACDL to protect us from government overreach.”

We congratulate the UACDL on its selection of Stewart Gollan as its Executive Director!

# Utah Prison Education Project CLE UPEP Feature

On April 5, 2017, a class of a dozen students from the University of Utah Honors College joined with the Salt Lake County Bar Association to host a panel discussion on higher education in prisons. The two groups hosted Sean Pica for the event, Executive Director of Hudson Link. Hudson Link is a college in prison program based in New York, where a cohort of men at Sing Sing Correctional Facility originally founded it. Hudson Link coordinates degree-granting college education among several universities and New York prisons.

With Dr. Erin Castro, an assistant professor of higher education and instructor of the Honors college class, and Jensie Anderson, a Clinical Professor at the SJ Quinney College of Law, the three panel members spoke about the benefits of a prison program through the University of Utah. Programs like Hudson Link have been shown to reliably reduce recidivism, restore families, rebuild communities, and enhance enrollment in postsecondary education after release.

The university class hosted several more events near the time of this CLE, in an effort to raise awareness and generate support for the concept of a college in prison program through the University of Utah: the Utah Prison Education Project (UPEP). UPEP is hosting admissions in late July and offer college coursework in the Men's and Women's facilities in Fall 2017.

Community members and University faculty, staff and students with experience and interest in the program are encouraged to contact UPEP:

Email: [utahpep@gmail.com](mailto:utahpep@gmail.com)

Facebook: [@utahpep](https://www.facebook.com/utahpep)

Twitter: [@Utah\\_PrisonEd](https://twitter.com/Utah_PrisonEd)



# National Law Day

## S L C B A ' s A r t a n d t h e L a w C o n t e s t

Every spring, in conjunction with the ABA's annual National Law Day, the Salt Lake County Bar Association sponsors the "Art and the Law" art contest for elementary, middle school, and junior high students in Salt Lake County. The purpose of the contest is to allow students to take abstract legal themes and express them through art. This year, students across Salt Lake County submitted over 75 entries that celebrated this year's theme of "The 14th Amendment: Transforming American Democracy." The Fourteenth Amendment was ratified during Reconstruction a century and half ago and is the cornerstone of landmark civil rights legislation. Through its Citizenship, Due Process, and Equal Protection clauses, the amendment has reshaped and advanced American law and society.

In crafting their pieces for the theme of "The 14th Amendment: Transforming American Democracy," students submitted varied and creative interpretations of the Fourteenth Amendment. Some students focused on voting rights, while others focused on diversity and the text of the amendment itself. Salt Lake County state court judges Su Chon, Laura Scott, Gregory Orme, Kimberly Hornak, Sandy Peuler, Elizabeth Hruby-Mills, and Vernice Trease volunteered their time to judge the art. The nine winners received cash prizes for both themselves and their classrooms and an invitation to the Law Day luncheon hosted by the Utah State Bar. The winning pieces are hanging in courtrooms across the county. We cannot wait to see the students' interpretation of the 2018 Law Day theme.

## Best in Show Taylor Simpson – McMillan Elementary



## Grade School

1st – Anna Jacobs – McMillan Elementary

2nd – Neica Thoi – Lincoln Elementary

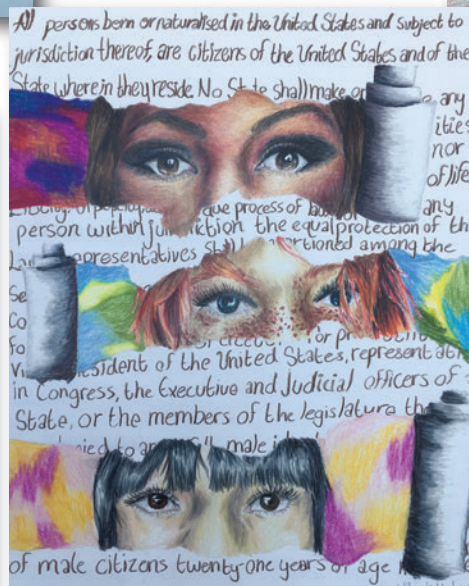
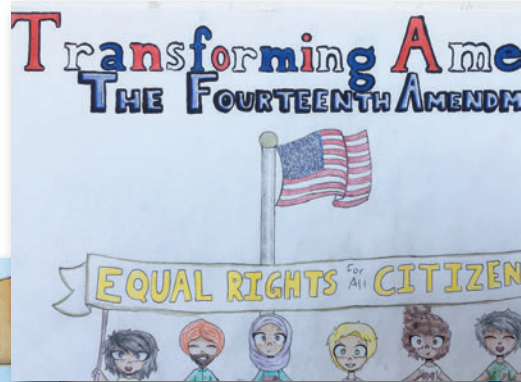
3rd – Johanna Summers– McMillan Elementary

## Middle School

1st – Nikayla Nielson– Eisenhower Jr. High

2nd – Brianna Oshess– Kearns High School

3rd – Daniela Hernandez– Eisenhower Jr. High



# Helpful Thoughts From Local Justice Court Judges



**Judge Anna Anderson**

**Judge Anna Anderson,  
South Salt Lake City  
Justice Court**

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

Anyone who knows me knows that there is nothing that I appreciate more than punctuality. Everyone who is involved in the court system knows the feeling of needing to be

in two (or three or four) places at once, and I understand that schedules can be difficult to manage, especially when a single attorney has several court appearances in different courthouses scheduled at the same time. That doesn't mean, however, that one judge or one client or one prosecutor should have to sit and wait for an attorney for three hours with no idea as to when he or she may be arriving, or if they are planning on arriving at all. A phone call or an email to the Court explaining a scheduling issue so that we all know that someone is going to be late is always appreciated.

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

I definitely lose the most sleep over cases where an individual suffers from a serious controlled substance dependency, and then fails to comply with treatment and/or fails to appear back in court. In the time after a warrant is issued, I worry about the safety of those individuals, and wonder if I will be notified down the road that the worst case scenario has occurred. There are several people I think about daily who are in this situation, and I hope that I see each of them again so that we can figure out a "Plan B." A lot of the people who have cases in justice courts are dealing with serious addictions, and are committing their first criminal offenses in an effort to support those addictions. If we can find a solution here, and can prevent those individuals from doing further harm to themselves, as well as prevent them from escalating to the commission of more serious offenses, everyone benefits.



**Judge Michael P. Boehm**

**Judge Michael P.  
Boehm, South Jordan  
Justice Court**

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

Inexperience is neither synonymous with ignorance, nor should it be. Don't hesitate to ask questions. Ask questions of other attorneys that have

appeared in the court what to expect. Ask questions of court staff to know about any policies or practices that are unique to the court you are appearing in. And by all means, ask the judge if you have a question.

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

There are many other virtues that may be important to a client, but these are the qualities that I appreciate in any lawyer:

1. Be reasonable.

A reasonable attorney understands the issues that the court is trying to resolve. His or her argument addresses those issues in a logical and pragmatic manner. This type of approach is far more persuasive than simply arguing a point.

2. Be accurate.

Judicial decisions are based on the accuracy of the evidence that is presented to the court. There are plenty of opportunities to contest the evidence in a case. You should never misrepresent the evidence or ignore an important piece of evidence that is contrary to your argument.

3. Be concise.

A good presentation has a beginning, middle and an end.

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

I want to have a positive influence on my community, and I hope to have a positive influence on the criminal justice system. Thus far, it has been an incredible experience.

# Helpful Thoughts From Local Justice Court Judges



**Judge Paul C. Farr**

**Judge Paul C. Farr,  
Sandy City Justice  
Court**

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

My response is the same as many other judges. Especially at the misdemeanor level, judges lack appropriate resources to deal with mental health and substance abuse issues.

It is very frustrating to have an individual before me repeatedly that I know has a mental illness or a substance addiction (or both). I know there are programs or resources that have been proven to be effective that could significantly help that individual. However, those resources are unavailable because of lack of funding or available space. It is sad that sometimes the only thing I can do is wait until an individual gets a felony charge so they will have access to mental health court, drug court, or other resources that they desperately need.

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

The best day on the bench is when I hear from an individual about their success. Sometimes this happens in court at a review hearing. Sometimes it is in the form of a letter that I receive after probation is complete. People will proudly tell me how many days they have been sober or drug free. They will tell me that after months or years of being homeless that they are employed and have a stable place to live. They have repaired broken relationships. Finally, on occasion, they will tell me thank you, and let me know that I played a part in helping them make these positive changes. I know there are many factors that help these individuals change their lives. But to know that I may have played just a small part is very rewarding. Those are the best days on the bench.

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

I expect that all attorneys appearing before me will be prepared, on-time, and will zealously represent their clients. What stands out to me is an attorney's demeanor while

doing so. I believe an attorney builds credibility and trust by being courteous, civil and professional. This applies to interactions not only with the court but with opposing counsel and witnesses.

Before becoming a judge I had a civil litigation practice. One time I was in a jury trial that lasted several weeks. The case resulted in a settlement prior to the trial concluding. The judge allowed us to talk with the jury about their experiences and perceptions. The jury could not remember many of the details regarding evidence that was introduced during the trial. However, they all remembered how particular attorneys interacted with witnesses and each other. Their perception of the case was based in large part on the demeanor of the attorneys and parties. It did not matter that an attorney had made a great argument or had a great line of questioning. If it was done in a rude manner, it was discounted to some extent by the jury. This was a great learning opportunity for me, and something that has been confirmed in subsequent experience. The phrase, "You can catch more flies with honey than vinegar," seems to be true in court.

# Helpful Thoughts From Local Justice Court Judges



**Judge Scott Mickelsen**

**Judge Scott Mickelsen, Bluffdale Justice Court**

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

A good day on the bench is a day when you hold a review hearing for someone you sentenced for drugs or alcohol addiction and they have improved. Seeing someone that has been taking advantage of the

resources that have been presented to them is very rewarding. It is not hard to tell who is making the effort to do better, because it shows in their face, their demeanor and over-all appearance. I have had many defendants thank me for helping them get their lives back and that is a good day.

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

Having worked in law enforcement for many years, and being exposed to the legal system at all levels, it was easy for me to be drawn to the Justice Court bench. So many of our citizens have encounters with the Justice Courts and it is important that they leave feeling like they were treated fairly. Our system of justice is the best in the world and we often take it for granted. My goal is to have citizens feel more confident in the system as a result of being exposed to it.

I am especially concerned about our youth. The Justice Courts have limited interaction with youth. Many have preconceived opinions that are not favorable to the system. Our youth are still capable of changing their opinions if treated fairly and given the chance to understand the logic of how the system works. My goal is to give them that chance and to positively and voluntarily change behavior.

The bench has been exactly what I expected it to be, with one exception. I have realized that the decisions I must make can have an even more powerful impact on individuals, their families and their personal relationships than I had first thought. I strive to keep that in mind the entire time that I am on the bench.



**Judge Paul Thompson**

**Judge Paul Thompson, Murray Justice Court**

*Do you have tips for lawyers appearing in the Murray Justice Court for the first time?*

If you represent a client charged with an offense under the domestic violence or driving under the influence statutes, a pre-sentence evaluation/report is ordered prior to

sentencing. The evaluation/report is referred to an agency, licensed by the state, but also approved by our court. The attorney may choose among the qualified agencies for the initial report and may, at sentencing, choose a different agency provide education, counseling, testing, etc. if ordered. We require that these agencies have representatives in the court for arraignments, sentencings, and review hearings. They also act as probation officers for the court. (Limiting education/treatment agencies to those approved by our court was objected to a few years ago but was approved by the Judicial Conduct Commission. We normally have 5-6 agencies that are qualified; any agency is free to apply.) The court also requires defendants in these cases to appear at review hearings, after sentencing, to determine compliance with court orders. The number of these hearings depend on the offense, whether supervised probation is ordered, etc. Defendants who comply with these procedures, at last check, have a recidivism rate of about half the state average.

*What drew you to the bench?*

Having had earlier experience in municipal administration and law, I saw it as a way to apply that experience in a service-oriented capacity.

*What do you see at the current challenges facing justice courts?*

I think the justice courts are often unfairly criticized by the press. They will open a news broadcast with deaths on the state's roads, caused by individuals violating traffic laws, then run stories about "minor" traffic offenses and courts existing only to raise revenue.



# Helpful Thoughts From Local Justice Court Judges



**Judge George Vo-Duc**

## **Judge George Vo-Duc, Midvale Justice Court**

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

As a judge who sees a fair share of drug-related offenses, I certainly wish I had more treatment options to offer defendants, even at the misdemeanor level.

For instance, I deal

with many paraphernalia cases; those are routinely marginalized in favor of possession charges, but when the paraphernalia is a syringe, I know I'm dealing with an IV user who is likely using heroin. In such cases, I would like to have the resources to fashion a sentence that gives EVERY offender the most effective and targeted treatment possible, but that is rarely an option in a time of finite resources. To compensate, I stay involved with defendants and schedule reviews to make sure they comply with the treatment that is available and to encourage them to stick with it. It's an active use of the "soft power" that any good judge should be able and ready to use if he/she means to effect real, lasting change.

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

I'm a brand-new judge who is looking to find his footing in an environment where he is unlikely to get objective feedback to help him improve that footing. It is thus natural to look around for more established jurists that espouse similar philosophies to those I hold dear. So far, Salt Lake City's John Baxter has been that jurist. I admire his respectful and straightforward demeanor in all things. Most of all, I admire and try to emulate the mix of pragmatism and compassion inherent in his rulings. As an attorney, I never wanted a judge to be a character. I wanted a judge with character. John Baxter is that judge and a good lodestone as I take my first steps on the bench.

*What is the greatest challenge facing justice courts in Salt Lake County?*

From my vantage point, I see uniformity and

professionalism to be great challenges in all justice courts. Justice courts serve mostly self-represented parties, and we need to implement state-wide resources for them to use on their case, be it small claims, criminal, or traffic. There is a great deal of information available, but until it is uniform in delivery and content, that information is a just a wall of chatter for pro se litigants. For instance, I would welcome state-wide forms for pleas. Every court has slightly different variations of the same form, and some degree of freedom is good, yet I wonder why some courts use a 5-page Plea in Abeyance form while others do with a one-page version. I realize that the movement is in the direction of uniformity, but I would welcome an increase in the pace of that movement. Having a set of standard resources promotes the perception – and reality - of professionalism, another notion that justice courts need to promote to correct some of the outdated perceptions the public entertains about municipal courts.

# Recent Precedents

2017 Spring Party



*SLCBA Spring Dinner Dance 2017*



*SLCBA Spring Dinner Dance 2017*



*SLCBA Spring Dinner Dance 2017*



*SLCBA Spring Dinner Dance 2017*

The Salt Lake County  
Bar Association  
Annual Spring Dinner  
held on  
June 2nd, 2017

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on

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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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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.



SLCBA CLE:  
JPEC Session with  
Special Emphasis  
on mid-term  
Judicial Evaluations



12:00 pm on September 28th  
Utah Episcopal Church -  
75 South 200 East, SLC .



Managing the Intersection  
of the First Amendment and  
Hate Speech: Reflections  
on Charlottesville CLE

Sept. 21 at noon  
Utah Episcopal Church - 75 South 200 East,  
SLC.

