

PRESIDENT'S MESSAGE

by John Lund
Salt Lake County Bar President

“Are you happy in your work?” A good friend and fellow lawyer often asks me this question. The question requires that I consider my life as a lawyer, not just my work as a lawyer. It's a good, basic question. It's a question worth considering for yourself.

Apparently there is a sense out there that many of us, especially younger lawyers, do not enjoy the work that we do. I hope that assumption does not apply to you. I hope it does not apply to the lawyers of Salt Lake County as a whole. Everyone should do a job that not only pays but fulfills. If you actually do dread going back to work on Monday morning, then perhaps it is time to consider something different. As E. E. Cummings wrote:

listen: there's a hell of a good universe next door; let's go

Have you already found a job in the law that allows you to say that you truly enjoy the practice of law? If so, it is probably because of the kind of legal work you do, or because of the people with whom you work, or because of a combination of those factors.

Do you find our Salt Lake legal community to be conducive to enjoying your practice? We have a quilt of useful bar associations and lawyer organizations, a well-staffed judiciary and usually civil colleagues. If you cannot enjoy practicing law here, you may not be able to enjoy it anywhere.

My answer to the question is: “Sure, I am happy in my work.” Here is why:

Practicing law is challenging. Cases come with novel legal allegations and al-



John Lund

ways a new twist on the facts. Theories must be understood, themes must be developed, facts must be convincingly proven. Clients have high expectations, regardless of whether they are paying for your services. If you like to be challenged every day, you are in the right profession. If not, it might be better to look for a different line of work.

Before you do, however, consider that the practice of law is really quite flexible. It is possible to gravitate towards the legal issues that capture your attention. If you want, you can change your area of expertise and learn a whole new area of the law. You can work for a government salary, for a non-profit with next to no salary, as a sole practitioner out of an office in your house, for a big corporation or for a private firm. In most cases, you can fire a client if you don't enjoy representing him or her.

Most of us cannot complain much about the working conditions. We work where it is clean and dry, cool in the summer and warm in the winter. We may not have all of the staff support we would like, but not many of us are cleaning the office bathrooms and emptying the trash. While the range of compensation from practicing law is very wide, nearly all of us are paid much more than the average person in the country. And when there is an opportunity to get out of the office for rest and relaxation, we live in a place that is second to none for recreation.

There are interesting people to meet. Experts, from many different fields, who know about all sorts of interesting things. Clients, who generally appreciate the hard work that is done for them, become loyal supporters.

Over the long term however, the most enjoyable relationships that come from practicing law are those that develop with colleagues. This is certainly true as to the lawyers who have worked together in our firm and I expect it is true in most offices. A sure way to fast friendship is to share the trials and tribulations of practicing law. On the whole, this seems to be more so with lawyers than with doctors, accountants or other professionals who practice together.

Fortunately, the camaraderie among lawyers extends beyond one's own office. Good relationships can develop with co-counsel and even opposing counsel over the course of working together on matters. In this regard, Salt Lake County is an especially enjoyable place to practice because of the prospect of working with those lawyers on subsequent deals

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Justice Tongue

[Editor's Note: Justice Tongue is still out of the jurisdiction on an extended perambulation in the provinces. This question has been referred to his law clerk, who, by dint of long tenure with the judge, appears to be an ample surrogate on this matter.]

Dear Justice Tongue:
I am a new lawyer. My question is how to be a most effective written advocate for my clients (when I get some). I have taken up station near the clerk's office at the courthouse, and the clerk, taking pity on me, has permitted me to see filings by many experienced lawyers, indeed some of the state's notables. I see that zeal is important. I note that a few of these experienced advocates even express it through the use of strong adjectives and adverbs, underlining, italics, bold face, and occasional pepperings of Latin. Please tell me how effective these devices are with judges and whether I should emulate them. I have a Black's Law Dictionary, 2d Edition, with lots of Latin phrases, and a good thesaurus.

Young and Tender

Well, there are two "schools" on the style of written advocacy, each having as its implicit premise a different view of the judge to which it is directed. Under the first view, one apparently reflected in the written advocacy that has impressed you, judges are seen as lumps of clay, numbed by years of lawyers' arguments into a state of complete inertia. To get them to act in your client's favor, a lawyer must move them through sheer force of will and personality, underscoring the rightness of your client's cause and the contemptible nature of your opponent. The second view, reflected in more muted advocacy, is that judges are reasonably intelligent and passably diligent, if skeptical, beings who want to do right, consistent with the law's directives. They will act in your client's favor if they are shown that a survey of the alternatives by an "honest" broker leads to the conclusion that the law, common sense, and justice

favor your position.

If asked, Justice Tongue would say that he is firmly of the second school, especially on days when he is suffering from the effects of too much of the Tillimore dew. (On the other hand, I can say that there are times when he appears to have at least feet, if not a head, of clay. But I digress.) I can tell you the hallmarks of advocacy shown by lawyers of both stripes, and the effects of each that I have observed, and I leave it for you to pick which you want to emulate. You should be forewarned that although I attempt dispassion on the subject, I have always identified with the "before" Charles Atlas in the comic book ads, and not the "after", and have always recognized in a small and stable bar, what goes around almost always comes around. (In fact, the judge and I have, on occasion, strained to see that this does happen. But more of that in another piece.)

There are any number of lawyers whose style of written advocacy manifests subscription to the first school. Many are younger lawyers, new to the field, who think that bluff and bluster is a must if a client is to be impressed, or a judge driven to give a favorable result. But, as you observed, even some older and more experienced lawyers occasionally follow the same course. Their written motions and briefs are readily recognizable. A quick fanning of the pages will show any number of !!!!!, often accompanied by words WRIT LARGE or underlined for emphasis. The switch from typewriters (which Tongue remembers, although I have never used one) to computers also permit these lawyers to use italics, at times in conjunction with underlining, and occasionally, WITH CAPITALS, and even BOLD. These lawyers obviously think that this EMPHASIS will make the judge PAY ATTENTION to what the LAWYER has to say. INDEED, there are times when they cannot seem to YELL in writing LOUDLY ENOUGH TO ASSURE THAT THEY ARE HEARD!!!!!! I would be remiss if I didn't note that this sort of typography is usually accompanied by repeated use of words and phrases such as "outra-

geous", "unconscionable", "my opponent flagrantly misstates [the law][the facts][the color of the sky]", "rule 11", "sanctions", "beneath contempt", and "patently frivolous". Lawyers who adopt this style apparently are of the view that the judge will be overwhelmed by the force of the argument, as distinguished from its inherent STRENGTH. In my experience, the judge may be overwhelmed, but it is more likely that they will only be provoked. You must decide which is more probable. In any event, "persuaded" is not the first word that comes to mind.

In contrast, those who subscribe to the second school probably are the majority of lawyers that come before our court. They eschew more than minimal use of font changes, over-the-top language, and personal attacks. They think that the interruption in the reader's concentration and resultant annoyance that accompanies these jarring changes in format and language has more negative potential than the small change in reader awareness that may accompany an encounter with a dramatic shift in typeface or usage. They also seem to subscribe to the view that while judges may be looking for help through the labyrinth that is most complex legal argument, judges are also very wary of being misled by lawyers. To avoid rousing this mistrust, these advocates craft their papers to take the judge by the hand and lead them through the argument step by step, acknowledging alternate byways but telling the judge why the one preferred by this lawyer's client is the correct one. This might be termed the "Guiding Light" view of advocacy. Because the judge is ready to "spook" as soon as they see an indicator of untrustworthiness in a lawyer, the advocate must be very careful not to give any sign of being disingenuous, while being as "helpful" to the judge as possible. Font changes (and even excessive use of quotation marks), like the use of dramatic adjectives and adverbs, and personal attacks are signs of hyperbole, and hyperbole, by definition, is not to be trusted. From talking to Tongue on his

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Judicial Profile

Judge Beth Lindsley

by Trina Higgins, Esq.

Beth Lindsley proudly calls herself “just a soccer mom.” And while she is a soccer mom and a soccer coach, Beth Lindsley is also a judge in the Third District Juvenile Court. When she is not on the bench, Judge Lindsley spends her time transporting her two children, Matthew, age nine, and Kyle, age six, to all of their sporting activities: baseball, swimming lessons, and the soccer practices and games that she coaches.

Judge Lindsley continues to be the youngest Third District Court Judge on the juvenile and district court benches, and keeps very busy in and out of juvenile court. Judge Lindsley’s caseload includes delinquency cases, criminal adjudications, and parental terminations. She covers many of the cases in the Sandy division and, until recently, sat in the Tooele division of Third District Juvenile Court two days a week. The case load is large and the individual cases can be difficult, but Judge Lindsley really enjoys the work.

Since taking the bench last year, Judge Lindsley states that she has been impressed with the skills and professionalism of the lawyers that have appeared before her. She believes that the majority of the attorneys appearing in her courtroom “really advocate for their clients, especially if they are representing children.” Judge Lindsley feels the reason for the high quality of the attorneys she sees is that they truly care about what they are doing and appear in juvenile court because they want to be there.

Judge Lindsley’s advice to attorneys appearing in juvenile court is to ask questions if one is not familiar with the juvenile court system. Things are different in juvenile court. The procedure is different and “even the terminology is different” explains Lindsley. She offers suggestions of some people who would be helpful in answering questions concerning juvenile court. Her list includes prosecutors-both Deputy District Attorneys and Assistant Attorneys General, con-

tract defense attorneys, guardians ad litem, court staff, and juvenile probation officers.

Judge Lindsley’s entire legal career has been focused on the juvenile court system. After receiving her J.D. from the University of Pittsburgh in 1990, Lindsley began working as a law clerk in what is now the Salt Lake District Attorney’s Office. One of her first assignments at the office was to assist in a capital case involving a juvenile who was charged with stabbing two people. Lindsley spent some time working with the juvenile court staff to gather pre-trial discovery and relevant paperwork for sentencing. This exposure was all it took for her to decide that juvenile court was where she wanted to practice law. Judge Lindsley spent the next eleven years prosecuting in the juvenile division of the District Attorney’s Office. Despite suggestions that she transfer to different divisions, Lindsley was adamant that she wanted to continue working in the juvenile division.

Judge Lindsley focused her career in this one area because she feels that she “can make a difference working in juvenile court.” She explains that despite the assumption that offenders simply move from juvenile crime to adult crime, the reality is that 85% of juvenile cases eventually conclude with positive results and the juvenile offender is not seen in the adult system. Lindsley speaks fondly about her days as a prosecutor and tells stories about how individuals she had prosecuted would later tell her thank you, and were anxious to show her the positive things they had accomplished since appearing in juvenile court. Lindsley has received graduation and wedding announcements from former offenders, and has run into people years later who wanted to tell her how much better they were doing. She said it is nice to see how these kids have improved.

Prosecuting in juvenile court was also interesting to Lindsley because of the wide variety of cases. “One day I was



Judge Beth Lindsley

sorting out a school fight, and the next day I was doing a preliminary hearing on an aggravated robbery.” While at the District Attorney’s Office, Lindsley tried many different types of juvenile offenses, including four homicide cases and many high profile cases involving juvenile defendants. Lindsley has also worked on several committees concerned with a variety of issues relevant to juvenile court including the Utah Supreme Court Rules of Juvenile Procedure Committee, the Children’s Justice Advisory Board, and the Utah Sentencing Commission.

Judge Lindsley was born in the Azores Islands, which are off the coast of Portugal. Her father worked for the Department of Defense, and his job required the family to move several times during her early years. First, Judge Lindsley’s family moved from the Azores to Washington, D.C., and then to Heidelberg, Germany (which she remembers how to spell from performing a cheer for Heidelberg High). During her sophomore year in high school, her family moved to Dugway, Utah, where Lindsley graduated from Dugway High in a class of only thirty-two students. “Culture shock,” is how Lindsley describes the move from Heidelberg to Dugway. Despite her first impressions of this State, Lindsley came

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President's Message

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or cases.

That is where the Salt Lake County Bar Association seeks to add to your enjoyment from practicing law. Over this past year we have provided many different ways for you to connect with other lawyers and judges. This Summer edition is the fourth and final edition of the Bar & Bench. Wholly apart from blathering President's Messages, the Bulletin has shared the musings of Justice Tongue, informative judicial profiles and case discussions, and photographic trips down memory lane. We have Rob Rice, Barbara Townsend, Trina Higgins and Robert Shelby to thank for preparing these editions. The County Bar has been continuously publishing the Bar & Bench for many years. Anyone who has tried to regularly publish a newsletter on a volunteer basis will appreciate the effort this requires.

The County Bar also has been a long-time provider of low cost CLE and this year was no exception. We presented a series of monthly CLE luncheons at the Marriott. The topics were always interesting and the food was quite good. Twenty bucks for an hour of CLE credit and lunch is a pretty good deal. Ken Black, Juli Blanch, Kristin Clayton and John Pearce did a fine job of putting these luncheons together.

If you went to either the mid-year or the annual convention of the Utah State Bar, then you had an opportunity to get some of the most painless CLE imaginable by attending the County Bar's showings of law-related films. This year in Sun Valley we combined the film with an ice cream social for a truly sweet package. Judge Leslie Lewis and Justice Ronald Nehring have faithfully produced these showings under the auspices of the County Bar for several years and we thank them very much for doing so.

The County Bar is nothing if not social. During our 2002-2003 year we hosted two different receptions, one for new lawyers and another for judges. Both of these receptions were free of charge to Salt Lake County Bar members. We also held a Holiday Dinner Dance at the Salt Lake Country Club and a Spring Dinner and Casino Night at Tuscany. Both were very well received. David Reymann and Diana Hagen did a wonderful job of organizing all of these events.

We also revived the golf tournament this year, thanks largely to the efforts of Jeff Gross and Laura Scott. Everyone who participated seemed to enjoy the early season tournament at Willow Creek and we raised a nice sum of money to contribute to the Juvenile Diabetes Research Foundation.

We also continued our outreach into the community with the Art and Law program, under Rob Keller's fine supervision, and as a grantor of the University

of Utah's student pro bono initiative. In addition, we played a very active role in providing presenters for the Utah State Bar's Dialogue on Freedom project to commemorate the first anniversary of the September 11 attack on our country.

Lest you miss any of the dates for these various events, you should know that they were all posted on the Salt Lake County Bar's website during the year and that will be true next year as well. That website is www.utahbar.org/bars/slcbbar. It was kept current this year by Diana Hagen. Thanks, Diana.

Going forward, the association will be led by newly-elected president Jeff Hunt and vice-president James Blanch. I would like to thank both Jeff and James, as well as treasurer Todd Shaughnessy, for their support during the past year. As any past president of the Salt Lake County Bar will tell you, the goal is to leave the post with good people in line for the years ahead and at least a little money in the bank. We certainly have good people in line on the Executive Committee. As far as money in the bank, check with Todd, but I am pretty sure that we did not spend every dime.

As for the years ahead, I will be practicing law. And I know that I will enjoy it more for having been involved in the Salt Lake County Bar Association, because of the friends and acquaintances I have made in the process. Many thanks to all of you and best wishes.

Justice Tongue

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more lucid mornings, there seems some agreement among judges about the "off-putting" quality of hyperbole. That does not mean that advocates using it lose; they may win in spite of it.

Now, all that said, Tongue and those he "hangs with" at a high-class private club which shall go nameless are not the only magistrates in town. There are judges who can get themselves worked up about the "equities" of a set of facts and the law be damned. They aren't necessarily in the majority, but they exist, and many judges may fall into this category on occasion. They want to feel

identified with a result, and like to feel moved to reach it. These judges may not be persuaded by the hyperbole evident in filings by advocates following the first path, but they may be pumped up by it. The hyperbole makes them feel that they are on the side of the angels and appeals to their basic biases about the parties and the "right" outcome. That particular feeling may be more important to these judges than thinking they are legally correct in some cold, analytical way.

As to which path to follow, you will have to decide. Justice Tongue (and I) would prefer the more analytical path, the one that views the judge as a persuadable, rational decision maker. Accordingly, Young and Tender, I would advise

the second path, the one chosen by a majority of lawyers and endorsed by the various codes of civility. Be temperate, treat the judge as rational, and your opponent as at least falling within the same species.

However, make your own choice, while always remembering if you behave like a bully, the Tongues of the world (and those of us who ghost behind them) will see that what goes around comes around (perhaps sooner rather than later). Nothing feels better than getting back at the bully. Most of us were "before" as kids, not "after".

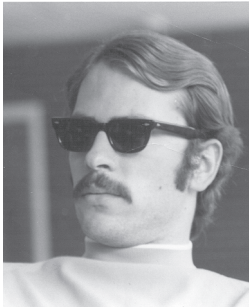
Yours,
Tongue, Justice

CORAM PARIBUS AD BARRAM

Welcome to this year's final installment of Coram Paribus Ad Barram. We elevated the bar with our last contest and, not surprisingly, only a few brave souls ventured guesses as to the identity of our featurees. We can only conclude Dick Burbidge's sunglasses threw everyone for a loop, as nobody correctly guessed his identity. Also featured last time were Assistant United States Attorney David W. Schwendiman and Chief Justice Christine Durham.

We return to our roots in this edition, and have selected three more current or former Salt Lake County Bar Members for your consideration. Once again we invite you to guess who is depicted in each "vintage" photograph. Those who correctly identify all three persons will be entered into a drawing for free admission to the Salt Lake County Bar lunch CLE of your choice next season. As always, the answers will appear in our next newsletter edition. Please e-mail your guesses to Robert Shelby at rshelby@scmlaw.com.

Featured Last Time:



RICHARD D. BURBIDGE



ASSISTANT UNITED STATES
ATTORNEY DAVID W.
SCHWENDIMAN



CHIEF JUSTICE
CHRISTINE M. DURHAM

Who Am I?

- Worked his way through college as a meat cutter.
- Played quarterback in high school under coach Lavell Edwards.
- First big case out of law school involved defending a conscientious objector.



- Born on the same day and year as Ozzy Osborne, a fact that greatly impresses her daughter.
- Worked part-time as a private detective during college, usually being discovered by the persons being followed.
- Played the part of the Virgin Mary five years in a row, in five different high school Christmas dramatic productions.



- Once taught a college course on fairy tales.
- Despite years of training and effort, was never able to fulfill his dream of dunking a basketball—for that matter, he never got close.
- Founded a Sports Trivia Society (STS) at his law school in part as a parody on the relevance of the Students for a Democratic Society (SDS).



Judicial Profile

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to love Utah and now lives in Tooele with her two boys and her husband, Jim who is originally from Tom's River, New Jersey.

The importance of family is evident in Judge Lindsley's chambers. Her walls are covered with framed black and white photos from all over the world which were taken by her grandfather during and after his time as a colonel in the United States Army. Her desk and windowsills are filled with smaller photos of her husband and their sons. A few other items stand out in the office: She has NASCAR memorabilia because her family likes to watch the races at the Rocky Mountain Speedway; a magazine featuring one of her favorite "hair band" singers, Jon Bon Jovi; and a small glass bottle filled with sand from the Jersey shore where her family vacations every summer.

Judge Beth Lindsley's devotion to her family and her children is obvious from the items in her chambers. Her commitment to the children in Salt Lake County is obvious from her courtroom demeanor and by her dedication to the juvenile bench.

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2003 Charity Golf Tournament

On May 19, 2003, the SLCBA charity golf tournament successfully returned to the Willow Creek Golf Course. While proclaiming that their prowess in the courtroom is matched only by their performance on the golf course, the team from Prince Yeates & Geldzahler finished in first place with a score of 59. Following them closely were the teams from the U.S. Attorney's Office (second) and from Burbidge & Mitchell (third).

The true winner from the golf tournament, however, was the Juvenile Diabetes Research Foundation, this year's charitable recipient of tournament proceeds.

The SLCBA would also like to thank the many sponsors who helped make the tournament a success. First, and foremost, Lexis/Nexis –provided a generous donation without which tournament organizers would have been stymied. The SLCBA would like to thank A. A. & Associates, Neilson Elggren, LLP, Parr Waddoups Brown Gee & Loveless, RGL – Forensic Accountants and Consultants, Salt Lake Legal and Thacker & Co. More than a few participants who braved a Squatters beer at 9:00 a.m. in the early morning chill (no names will be mentioned) would especially like to thank the Salt Lake Brewing Company, L.C. for refreshments as well as their sponsorship of the tournament.