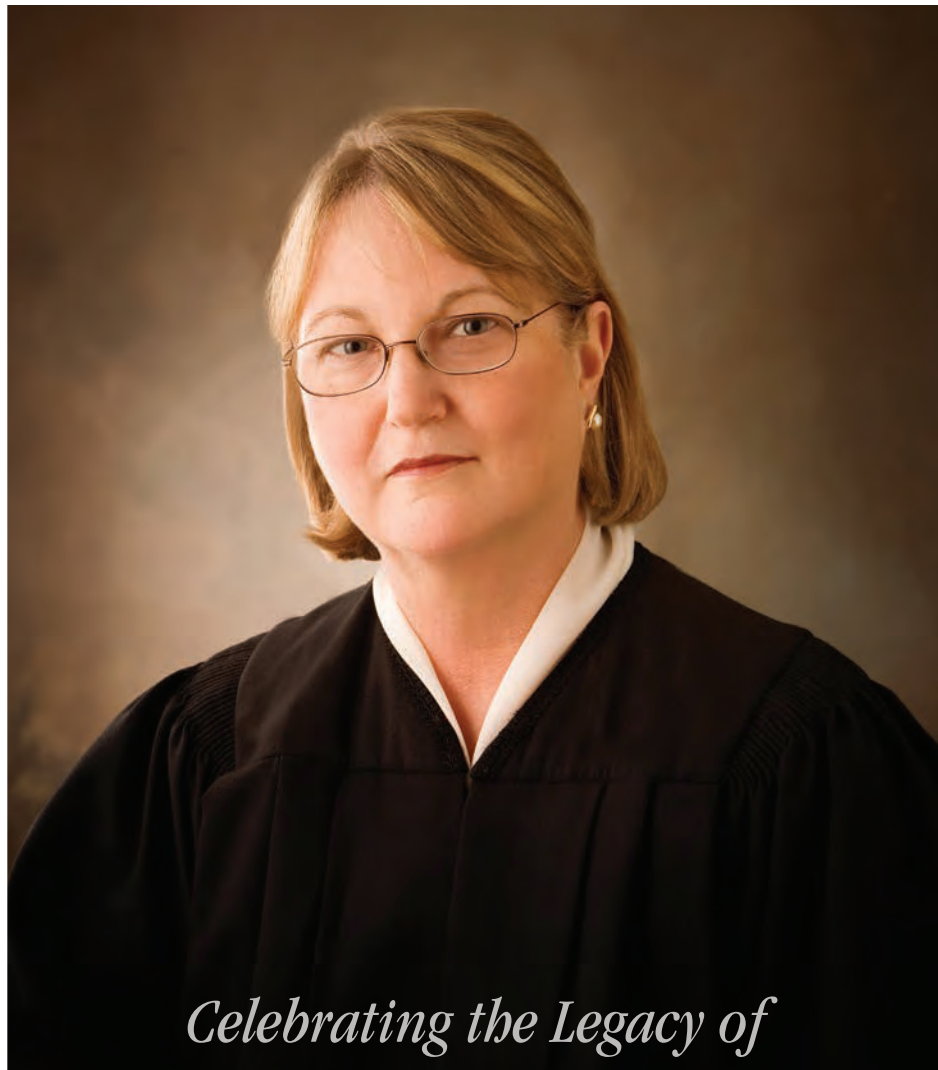


Utah Bar JOURNAL



Celebrating the Legacy of
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Volume 30 No. 6
Nov/Dec 2017

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Table of Contents

Letter to the Editor	8
President's Message Getting In, Getting Out, and Getting Along by John R. Lund	11
Article Celebrating Justice Durham: Mentor, Leader, Legacy by Linda M. Jones, Freyja R. Johnson, and Larissa Lee	14
Article An Interview with Justice Durham by Judge Evelyn Furse	32
Article Christine Durham: Catalyst and Supporter of Discovery Reform by Francis M. Wikstrom	37
Article Women in the Law: Refreshing our Collective Memory by Brit Merrill and Adrienne Nash	38
Focus on Ethics & Civility Justice Christine M. Durham – A Passion for Public Good by Keith A. Call	46
Article The Uniform Law Commission: What You Know Can Help Us by Justice Michael J. Wilkins (ret.)	48
Utah Law Developments Appellate Highlights by Rodney R. Parker, Dani N. Cepernich, Scott A. Elder, Nathanael J. Mitchell, and Adam M. Pace	52
Innovation in Practice Securing Client Communications by The Innovation in Practice Committee	56
State Bar News	58
CLE Calendar	69
Classified Ads	70

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The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea, a particular topic that interests you, or if you would like to review one of the books we have received for review in the *Bar Journal*, please contact us by calling 801-297-7022 or by e-mail at barjournal@utahbar.org.

GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

The *Utah Bar Journal* encourages the submission of articles of practical interest to Utah attorneys and members of the bench for potential publication. Preference will be given to submissions by Utah legal professionals. Submissions that have previously been presented or published are disfavored, but will be considered on a case-by-case basis. The following are a few guidelines for preparing submissions.

ARTICLE LENGTH: The *Utah Bar Journal* prefers articles of 5,000 words or less. Longer articles may be considered for publication, but if accepted such articles may be divided into parts and published in successive issues.

SUBMISSION FORMAT: Articles must be submitted via e-mail to barjournal@utahbar.org, with the article attached in Microsoft Word or WordPerfect. The subject line of the e-mail must include the title of the submission and the author's last name.

CITATION FORMAT: All citations must follow *The Bluebook* format, and must be included in the body of the article.

NO FOOTNOTES: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's

intended message may be more suitable for another publication.

ARTICLE CONTENT: Articles should address the *Utah Bar Journal* audience – primarily licensed members of the Utah Bar. Submissions of broad appeal and application are favored. Nevertheless, the editorial board sometimes considers timely articles on narrower topics. If an author is in doubt about the suitability of an article they are invited to submit it for consideration.

EDITING: Any article submitted to the *Utah Bar Journal* may be edited for citation style, length, grammar, and punctuation. While content is the author's responsibility, the editorial board reserves the right to make minor substantive edits to promote clarity, conciseness, and readability. If substantive edits are necessary, the editorial board will strive to consult the author to ensure the integrity of the author's message.

AUTHORS: Authors must include with all submissions a sentence identifying their place of employment. Authors are encouraged to submit a head shot to be printed next to their bio. These photographs must be sent via e-mail, must be 300 dpi or greater, and must be submitted in .jpg, .eps, or .tif format.

PUBLICATION: Authors will be required to sign a standard publication agreement prior to, and as a condition of, publication of any submission.

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Letter to the Editor

Justice Christine M. Durham
c/o the Editor, *Utah Bar Journal*

Dear Justice Durham:

Thank you for being the first female member of a court of general jurisdiction in the State of Utah.

Thank you for being the first woman to serve as a Justice on and as the Chief Justice of the Utah Supreme Court.

Thank you for giving generously of your time and talents to advance the quality and diversity of the Utah State Bar.

Thank you for being a supportive and considerate mentor, and for teaching us to be bold, compassionate, and committed to professionalism.

Thank you for serving the Utah State Courts with excellence and distinction for 39 years.

And thank you for your myriad accomplishments, which have made our accomplishments possible.

Respectfully,

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1. Letters shall be typewritten, double spaced, signed by the author, and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to BarJournal@UtahBar.org or delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters that reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published that (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.
6. No letter shall be published that advocates or opposes a particular candidacy for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
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IN MEMORIAM



Charles R. Brown

August 25, 1945 – October 8, 2017

It is with great sadness we announce the passing of our dear friend, colleague, and mentor, Charles R. Brown. Charles was an inimitable attorney and pillar of the Salt Lake legal community. He was dedicated and passionate about his clients, the firm, and the practice of law.

After five years of working as a trial attorney in the Office of Chief Counsel for the Internal Revenue Service, Charles went into private practice where for more than forty years he zealously represented individual and corporate taxpayers against the IRS. He often likened his representation of clients against the IRS to the story of David versus Goliath. Charles was passionate about his work, dedicated to his clients, and valued the integrity of the practice of law. In addition to his tax work, Charles provided counsel to many clients on complex business transactions.

We are honored to have been able to work alongside Charles and learn from him for many years. He was our friend and will be greatly missed.

ClydeSnow

Getting In, Getting Out, and Getting Along

by John R. Lund

Two hundred and thirty-seven new lawyers were just admitted to the Utah Bar. Welcome to each and every one of you! Earning your way into the practice of law in Utah is no small feat. Congratulations on your achievement. In this edition we celebrate someone who has not only gotten into the highest echelons of our profession but who has forged a path for many others as well. I refer of course to the Honorable Christine M. Durham, whose career has had a profound and lasting impact on Utah's jurisprudence, on the judiciary, and on the legal profession. Justice Durham, I hope the articles found in these pages will provide at least some record for future Utah lawyers of all that you have contributed and accomplished.

Getting In

Let's focus for a bit on what it took for young Christine Durham to get in. You'd think a bright young graduate of Duke Law School who was moving to Utah with her doctor spouse would be sought after by all of the big firms; but, that was not true for a woman in 1973. In 1973, the tennis world and more were being rocked by Billie Jean King's defeat of Bobby Riggs in the Battle of the Sexes. In 1973, Christine Durham faced similar gender bias in the legal profession. She had to knock down one barrier after another, with help she always acknowledges from certain discrete corners. Ultimately though, after two decades of service on the Utah Supreme Court, in 2012 she became Utah's first female Chief Justice.

Regrettably, in 2017 "getting in" is still harder for some people than for others. For whom is it harder? We know this. It's still harder for women, but it's also harder for persons of color, persons of different sexual orientation, and persons with disabilities. It's harder to get in with a good firm. It's harder to get the trust and confidence of senior lawyers and of clients. It's harder to get appointed to the bench. On that last point, we have a long way to go here in Utah. According to a nationwide study issued last year, "Utah is worst in the nation when it comes to having judges on the bench who reflect the state's population."

Robert Gehrke, 'Gavel gap' – Utah's bench least diverse in nation with white men holding 79 percent of judgeships, SALT LAKE TRIB., June 23, 2016, available at <http://archive.sltrib.com/article.php?id=4037262&ittype=CMSID>. The analysis showed that while white men are only 38% of the Utah population they hold 79% of the judgeships. White women, who are 40% of the population, occupy just 13% of the spots on the bench. And the percentages are even further out of line in regards to racial minorities, who now make up over 10% of Utah's population.

Getting included in all of the opportunities that a law license creates would seem to be a reasonable expectation for each of our new admittees. As for those of us who are already in, why should we care? Well, how about because it's really the only fair thing? But there are plenty of other good reasons. Two more stand out to me.

First, diversity provides strength to the entire legal system and enhances the delivery of justice for all. None of us think alike, but the more similar we are, the more similar our thinking. I've learned good lessons about equity and decency from my mother, my grandmothers, and my wife. I expect to learn more from my new daughters-in-law. Why wouldn't other women have valuable perspectives on legal issues? By the same token, persons of color understand racial discrimination at a whole different level than I ever could. Wouldn't all the people of Utah be better served by a bar and bench that was more reflective of everyone?

Second, it makes economic sense. With the changing demographics in our country, it is simply not good business to keep ignoring how the world is changing around us.

Corporate America has fully embraced diversity and inclusion and done so for competitive advantage. Here is Ivan Fong, SVP, Legal Affairs & General Counsel for 3M Company, on the issue:



At 3M, we view diversity as the appreciation of differences, and we use inclusion of those differences as a competitive advantage to power our curiosity and creativity. By enabling broader perspectives, insights, and ideas, diversity and inclusion gives us a greater edge in all we do. And diversity and inclusion allows everyone in the workplace to bring his or her “full self” to work and be respected and valued.

Juan M. Sempertegui, *Dollars and Cents: The Business Value of Diversity and Inclusion*, BUSINESS LAW TODAY (Aug. 2, 2016), available at https://www.americanbar.org/publications/blt/2016/08/02_sempertegui.html.

Getting all lawyers included is the primary mission of the recently formed Utah Center for Legal Inclusion (UCLI). See <http://www.utahcli.org/>. The blue-ribbon group of judges and lawyers forming the board of UCLI includes none other than Justice Christine Durham. They are focused on providing us all with the resources to increase the diversity, and thereby the strength, of our organizations. Keep an eye out for UCLI's leadership on this front.

Getting Out

When it comes to practicing leadership, no one does it quite like the military. Lt. General Jay Silveria recently showed that in spades. He is the superintendent of the United States Air Force Academy (the Academy) and a three star general. In late September, after racial epithets were scrawled on the doors of five black students in the prep school at the Academy, he made his position abundantly clear about how he expected people in his institution to behave.

To the 4,000 assembled cadets and the entire staff of over 1,000 more, the message was simple: “Treat all people with dignity and respect – or get out.” Molly Rubin, *“You should be outraged”: A US Air Force general gives a lesson in leadership after racist slurs*, QUARTZ, available at <https://qz.com/1090765/us-air-force-academy-read-a-generals-powerful-speech-condemning-racist-slurs/>. His speech was well received across the country and is worth a listen. <https://www.youtube.com/watch?v=sxITADfhXnk>.

In urging the cadets not to let their institution be taken away from them, Silveria said: “The appropriate response for horrible language and horrible ideas – the appropriate response is a better idea.” After noting that the Academy draws people from

all races, and from all walks of life, all parts of the country, all genders and upbringings, he went on: “The power of that diversity comes together and makes us that much more powerful. That's a much better idea than small thinking and horrible ideas.” *Id.*

We lawyers have an institution and better ideas to protect as well. Fortunately we don't have anyone slinging racial epithets right now in our community. But we do have an increasingly divisive society, and I submit the legal profession should set the better example. We are masters at civil discourse. It's what happens in every hearing and every trial. Further, as at least two hundred thirty-seven of you should recall, we all took an oath to “support, obey and defend the Constitution of the United States and the Constitution of Utah.” And the Fourteenth Amendment calls for equal protection of the laws for all. So should we not consider ourselves duty-bound to treat all people with dignity and respect, regardless of how different they are from us? I'd suggest we get out there and show folks how that is done.

Getting Along

The deadline for these messages is about a month before the *Bar Journal* is published. So, I am writing this message the week of October 2. News broke that Sunday night of the worst mass murder in modern U.S. history. Days later there were still only sketchy details about the murderer, and no one seemed to have any idea what possessed him to take dozens of weapons to a hotel room and begin shooting at thousands of innocent people with military style rounds on full automatic. It is monstrous. It demands our consideration, as does the whole growing list of horribly violent actions our fellow countrymen have inflicted on our nation.

None of us alone can reverse this trend. But each of us has an opportunity every day to push the needle back towards Good and away from Evil, back towards Fair and away from Unfair. With apologies if it sounds preachy, why not surprise someone today with how open you can be to their point of view? Why not embrace the way that someone is different from you and try to learn from it. What's the downside?

Let's work harder at getting along. That's what Christine Durham has done for decades. In the process she lowered barriers for other women in the Utah Bar and for that she deserves our deepest gratitude. We are a better organization for having her, and the women and minorities who have followed her, become members and leaders of the Utah Bar.



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Celebrating Justice Durham: Mentor, Leader, Legacy

by Linda M. Jones, Freyja R. Johnson, and Larissa Lee



LINDA M. JONES and FREYJA R. JOHNSON are appellate attorneys at Zimmerman Jones Booher, and LARISSA LEE is an attorney at Jones Waldo.



It was September 1981 when Christine Meaders Durham got the call. “Are you ready to make history with me again?” Governor Scott Matheson had been the first to appoint a woman to serve on a Utah court of general jurisdiction, and he would be the first to appoint a woman to serve as a justice on the Utah Supreme Court. Durham was thirty-six years old, and she had served as a district court judge for three years. To some, she may have seemed too young or to have had too little in-court experience. But she had the intellect and drive, and the time was right. With five young children at home and an energetic and supportive partner in her husband, Dr. George Durham, the woman who would become the first female justice of the Utah Supreme Court did not limit herself and was willing to take on opportunities as they arose. After an early career path that Durham would describe as accidental and fragmented, her course had come into sharp focus. She did not hesitate. She was ready.

Durham was used to being first. She was born in Los Angeles, the first of three children. When she was eleven, her family moved from Southern California to Washington D.C. for her father’s work with the Internal Revenue Service. The family later moved to France where her father served as an attaché to the Paris Embassy for the U.S. Treasury Department. Durham completed her prep school education in American and French schools in Paris and then returned to the States to attend Wellesley College. She met George Durham, who was attending Harvard, and they married during Christmas break her senior year. Durham began law school at Boston University while George completed his studies shortly after their first child, Jennifer, was born. The family transferred to Arizona State University so that George could teach to earn money for medical school. From there, they packed the car for North Carolina where the Durhams had been accepted at Duke University to attend law school and medical school.

The Durhams spent the next few years juggling schedules, studies, and work, as they raised their family, completed their degrees, and pursued careers. After the birth of Meghan, their second daughter, and law school graduation, Durham was surprised to learn that most firms in the Raleigh-Durham area were not interested in interviewing women lawyers. In a series of part-time stints that would characterize Durham’s early career, she taught a course in law and medicine at Duke University Medical Center, served as a research associate in the Department of Community Health Sciences, drafted legislation, authored handbooks for programs, and opened her own office to represent indigent criminal defendants and parties in personal injury and domestic relations cases.

When George accepted a residency in pediatrics with the University of Utah Hospital in 1973, Durham closed her North Carolina office and drove with her family cross country to their new home. Upon arriving in Salt Lake City, Durham encountered more challenges: an attorney confided that he would not interview a woman for an opening at a law firm, and the bar deemed her ineligible to take the exam because of a six-month residency requirement. Not wishing to start off on the wrong foot by suing the bar over the unconstitutional residency requirement, Durham decided to put her law degree to use with more part-time work. She taught courses at the J. Reuben Clark Law School and the University of Utah Medical Center, contracted with the Utah Attorney General’s Office to write appellate briefs, and worked for the board of the Odyssey House. Six months later – and shortly after the Durhams’ son, George, was born – she passed the bar, joined Johnson Parsons & Kruse, and began practicing securities and white collar litigation in federal court.

Because women were somewhat of a novelty in the Utah legal community, Durham endured micro-insults, unintended slights, and an attitude of dismissiveness while she worked to build her reputation and practice. Attorneys and judges expressed shock

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and surprise at seeing her handle a case or an argument; a judge asked her if women lawyers had bladders, suggesting she had taken too long in examining a witness; and when she won a case, the judge remarked that she had done a nice job “for a woman lawyer.” In contrast to this treatment, there was a notable exception in Norm Johnson, a mentor and senior partner at the firm. Norm was one of Durham’s first supporters and defenders. He wanted her to succeed. Within a couple of years after Durham joined the firm, she gave birth to another daughter, Melinda, and became a named partner of the firm, Johnson Durham & Moxley. Shortly after that, Norm encouraged Durham to submit a “letter of interest” for an appointment to the district court. In 1978, Governor Matheson called to appoint Durham to the bench for the first time. She was just thirty-two years old. Although three women had preceded Durham with judicial appointments,¹ she would be the first woman and the youngest person to be appointed to serve in Utah on a court of general jurisdiction.

Durham credits her ability to take advantage of opportunities as they presented themselves to her husband, George. He was her “secret weapon.” He was successful in his own career and would become chief of the medical staff at Primary Children’s Medical Center. When the Durhams welcomed their four-year-old nephew, Isaac, into the family, George was instrumental in keeping the five children on task and the household running smoothly. He went part-time with his practice to keep their lives balanced, which was particularly important to Durham as the work on the district court proved to be exhilarating and demanding.

Durham recalls that in the late 70s and early 80s, the district courts functioned as independent units. The system was fragmented and locally funded. There was little or no interest in court management or administration, no training or orientation, no judicial education, no bench books for new judges, and no collaboration among the district court judges. Durham found a mentor in Judge David Winder, who accompanied her to the state capitol to take the judicial oath in the chief’s chambers, took her to lunch, offered assistance, and provided his handwritten notes on a legal pad for jury voir dire. Those early experiences ignited Durham’s passion for judicial education and continuing professional education. In addition, Durham’s work ethic earned her the respect of fellow judges and she became the presiding judge of the Third District Court and the president of the Utah District Judges Association.

Three years later, Chief Justice Maughan began making the case

to the legislature and the bar for the creation of the court of appeals. The caseload for the justices on the Utah Supreme Court was crushing, with 700–800 new filings every year. Without an intermediate appellate court, the delays continued to build. In addition, two justices had retired from the court, one in 1979 and one in 1980, paving the way for change. Durham applied for a position, but she was not appointed.

Durham believed that in time, the legislature would consider the need for an intermediate appellate court. Suddenly and tragically, however, Chief Justice Maughan died from cancer. A few days later, while Durham was attending the viewing and funeral, Governor Matheson approached her and asked her to apply for appointment to the Utah Supreme Court. Shortly thereafter, Judge Durham submitted her application. When the governor called the second time, Durham was overjoyed. But the transition presented unique challenges. That same week, a district court judge had declared unconstitutional a statute that gave the senate authority to nominate and confirm judicial appointments. The governor considered the statute to violate the separation of powers provision and sued for declaratory judgment. After the district court struck it down, the legislature appealed. Under the circumstances, Durham was unable to officially take her seat on the court. Ever resourceful, the other justices offered a solution: they invited her to sit on cases as a substitute justice until her confirmation. Durham agreed to take on the extra work. At the time, the court was hearing thirty cases a month. Durham was not given a clerk to help with the supreme court caseload because she was not a justice, she did not get a break in her case assignments on the district court, and she was forced to drive back and forth between the district court and state capitol to hear cases.

When she finally took her place on the court in February 1982, she loved everything about it: the rulemaking, the research, the writing, and the collegiality. For Justice Durham, the job entailed more than the daily work of the court. She was a trailblazer, and she had a keen understanding of the historic significance of her appointment. She knew that her actions and behavior in her professional and community life were under a great deal of scrutiny and that what she said or did would reflect on women in general. If she failed to speak up, take a position, or serve in some capacity, she would be regarded as lacking in courage. A supportive colleague, Justice Dallin Oaks, counseled her to take measured steps and to accept opportunities that presented themselves. As Justice Durham stepped into the national landscape of women judges, she became a mentor and leader and she began shaping her legacy.

JUSTICE DURHAM: MENTOR

While several articles have been written about Justice Durham's extraordinary career on the Utah Supreme Court, one theme stands out: she has always taken the time to mentor and inspire others. Justice Durham has been a role model to countless individuals. It is often said that "you can't be what you can't see." Justice Durham has helped many people see what they can become. "[She] has not only broken down social barriers for women, she has served as an inspiration for anyone who aspires to transcend expectations." Brigham Fordham, *Tribute to Chief Justice Durham: The "Special Responsibility of Lawyers and Judges,"* 75 ALB. L. REV. 1679, 1680 (2012).

Throughout her career, Justice Durham has led by example.

Ellen Maycock recalled that when Durham was appointed to the district court,

[t]here were very few women lawyers in practice at that time and even fewer women judges. I think many of us were still trying to figure out a role model, and even though she was relatively young, Justice Durham fit that role. We are so fortunate that she turned out to be a great judge.

Years later, when Pat Christensen solicited feedback about Justice Durham from women lawyers across the state, she reported that "[s]o many women wrote about times when Justice Durham took them aside for a private moment and offered words of congratulations and encouragement – for persevering,

Jones Waldo congratulates Judge Ryan Harris

ON HIS APPOINTMENT TO THE UTAH COURT OF APPEALS.

Judge Harris practiced law at Jones Waldo from 1999-2011. He joins the prestigious list of former Jones Waldo attorneys appointed to the bench including:

Judge G. Rand Beacham, Judge William B. Bohling, Justice Deno Himonas, Judge Barry G. Lawrence, Judge Michael Murphy, Justice John A. Pearce, Judge Randall N. Skanchy, Judge Larry A. Steele, Judge Andrew Stone and Judge John J. Walton.



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despite difficult personal and professional challenges.”

Justice Durham has actively encouraged and supported women in seizing opportunities and leadership roles. Judge Jill Parrish said, “I will never forget the warm phone call of congratulations that I received from then Chief Justice Durham when I was nominated to the [Utah Supreme C]ourt. . . . Justice Durham immediately took me under her wing and mentored me through the process.” Judge Judith Billings recalled that Justice Durham encouraged her to apply for a vacancy on the district court: “Christine talked me into leaving a partnership in a large law firm, made calls in support of my application and coached me on my interview with the Governor.” Justice Durham subsequently mentored Judge Billings in taking on leadership roles in the National Association of Women Judges and the American Bar Association.

In addition to mentoring women individually, Justice Durham promoted institutional mentorship as a founding member of the Women Lawyers of Utah (WLU). As former U.S. Supreme Court Justice Sandra Day O’Connor observed, “Justice Durham worked hand in hand with women lawyers, helping to conduct workshops for aspiring women judges, meeting with the [WLU]

organization’s leadership, and helping to map out an agenda for the organization’s future.” She “has been and remains a steadfast advocate for the advancement of women in the profession.”

In addition, Justice Durham has been the featured speaker at the annual WLU Fireside, during which she regularly discusses issues affecting women. Pat Christensen characterized Justice Durham’s “relationship with WLU as an organization, and with Utah’s women lawyers and judges individually, [as] very personal – almost maternal.” Women lawyers in Utah “are able to be who we are, and do what we are able to do both professionally and personally in large part because Justice Durham has used the full measure of her own personal position and prestige to insist on it.”

Beyond mentoring women, Justice Durham has mentored and inspired countless young lawyers and law students, including the clerks and interns that have had the privilege of serving in her chambers. “[W]omen and men alike have lived richer lives of service by having Christine Durham to emulate.” Randall T. Shepard, *Dedication: On the Many Reasons for Our Gratitude to Chief Justice Christine M. Durham*, 75 ALB. L. REV. 1673, 1637 (2012).

One former clerk commented on the “pure collegiality and spirit of community that embodies her career and work” and recalled how Justice Durham “guided [him] to an understanding that nothing of import could be accomplished by hammering individuals[, who] we were in the process of trying to persuade to our position.” André Douglas Pond Cummings, *Chief Justice Christine M. Durham: Trailblazer, Pioneer, Exemplar*, 75 ALB. L. REV. 1657, 1665 (2012). That spirit of collegiality was evident in Justice Durham’s chambers as well as in her writing. Her “chambers were and are filled daily with free-flowing discussions, debates, and collaborations between clerks, interns, and the justice herself.” *Id.* at 1663–64. Her “office was always an inviting place to be, and her chambers also frequently drew clerks from other chambers for conversation and advice.” Steven F. Huefner, *A Champion of State Constitutions*, 75 ALB. L. REV. 1673, 1673 (2012).

To recent law school graduates, Justice Durham “helped to make real . . . the way that law both shapes and is shaped by society and social problems.” *Id.* She exemplified “the quintessential trait of a good teacher,” by “being able to fully hear others’ viewpoints while simultaneously challenging them to reach deeper.” Brigham Fordham, *Tribute to Chief Justice Durham: The “Special Responsibility” of Lawyers and Judges*, 75 ALB. L. REV. 1679, 1679 (2012).

Justice Durham’s clerks and interns learned not only from her professionalism and jurisprudence but also from the emphasis

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she placed on her family. “Chief Justice Durham’s experience is a welcome reminder that it is not necessary to compromise a commitment to one’s most important personal relationships in order to reach the highest pinnacles of this profession.” Jess M. Krannich, *In Dedication to Chief Justice Christine M. Durham*, 75 ALB. L. REV. 1667, 1670 (2012).

Indeed, throughout her career, Justice Durham has been a devoted mentor to her children and family. In comments gathered for the thirtieth anniversary of the founding of WLU, her husband, George, remarked that Justice Durham’s commitment to her family and willingness to love and serve strengthened them all.

In recounting lessons she had learned, Justice Durham reported that she had learned from her children unselfishness, organization, patience, humor, listening, and curiosity. From her youngest daughter, Melinda, Justice Durham said, “I have learned...that we are successful human beings to the extent we love and are capable of becoming loved and loving.” Truly, Justice Durham has learned this lesson well. As Chief Justice Durrant recognized, “Beyond [her] constant service to the profession... Justice Durham is a genuine person who has mentored many attorneys, is incredibly generous with her time, and is in constant service to others.”

JUSTICE DURHAM: LEADER

After serving twenty years on the Utah Supreme Court, Justice Durham became the state’s thirty-ninth Chief Justice. She was also elected President of the Conference of Chief Justices and served on the Board of Directors for the National Center for State Courts. Justice Durham was motivated in her leadership roles by a “deep commitment to the effective and efficient functioning of the courts as institutions.” She led the way in judicial education and helped found the Leadership Institute in Judicial Education, which promulgates national standards for continuing education for judges. Mary McQueen, President of the National Center for State Courts, lauded Justice Durham’s work, stating,

Our nation’s state courts are fortunate when leaders like Justice Christine Durham come along. Through her decades of service, she earned a reputation as a judicial officer who promotes progress, thrives on innovation, and shares knowledge. In the 1980s, judicial education was rare, and there was little interest to change that – until Christine got involved. Her commitment to and work in judicial education

In Memoriam – Dallin W. Jensen | 1932 – 2017



Dallin Jensen passed away on September 10, 2017, after a long and courageous battle with cancer, always remaining upbeat and positive.

For the past 29 years, Dallin was a shareholder at Parsons Behle & Latimer as a member of the firm’s environmental and natural resources practice group. Dallin specialized in water law and represented clients throughout the world. He was an outstanding lawyer and was very well-respected by clients, colleagues, and friends. Dallin was one of the best people to know both in and out of the office. His sense of humor, kindness and mere presence will be greatly missed by all of us.

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helped change the national landscape, especially in areas such as domestic violence, child witness testimony, and scientific evidence. State courts around the country are stronger and more effective thanks to Christine's numerous contributions.

In addition, as Chief Justice of the Utah Supreme Court and Chair of the Utah Judicial Council, Justice Durham was instrumental in improving the judiciary's internal operation and the public's access to justice. She believed that "[i]nstitutional independence includes the ability to manage resources, develop procedures, and establish policies and priorities for the essential functions of the courts." Justice Durham was committed to ensuring "access to justice, prompt resolution of disputes, effective use of and accountability for public resources, alternatives to litigation, and a whole host of other concerns that are part of the administration of the courts."

Consistent with that philosophy and as head of the judicial branch, Justice Durham launched initiatives and programs to give those without a voice a way to access the system and her work improved the efficiency and quality of Utah courts, all during one of the worst recessions in history. Under her leadership, the justice court system was reformed to improve the ability of justice courts to ensure fairness, accountability, and public safety; problem-solving courts were expanded to areas across the state; pro se litigants received support and resources with online court assistance programs, self-help centers, and online forms; interpreter services were dramatically improved; and the Initiative on Utah Children in Foster Care was launched to bring government leaders, members of Utah's child welfare system, and influential individuals in the community together to give foster children access to appropriate education, adequate health care, safety, and support as they grow into productive adulthood. Justice Durham also created programs to improve judicial administration, including the use of technology in courtrooms, making Utah a leader in the conversion to an electronic court record. Chief Justice Margaret Marshall of the Massachusetts Supreme Judicial Court described Justice Durham's service as

[leading] the way forward on a vast array of administrative matters: improved technology, judicial ethics, improved interpretive services for litigants who do not speak English, education for judges, improved rules of procedure, funding for the courts, the selection of judges, the strengthening of fair and impartial courts... the list is endless. Whatever she implemented in Utah was soon

copied around the country. And she looked around the country for the best ideas to implement in Utah.

Perhaps most enduring is Justice Durham's leadership in encouraging women and minorities in the practice of law and on the bench. Because of Justice Durham's early experiences as a young woman lawyer and judge, she made the decision to expand her spheres of influence and to throw herself into service and outreach on a national level. In addition to her work with WLU, Justice Durham became a founding member and past president of the National Association of Women Judges, which is dedicated to "preserving judicial independence, ensuring equal justice and access to the courts for women, minorities and other historically disfavored groups, providing judicial education on cutting-edge issues, and increasing the numbers and advancement of women judges at all levels to more accurately reflect their full participation in a democratic society."

Justice Durham has served on several national boards and committees dedicated to improving the judiciary and access to legal services, and as a result of her many contributions, she has been recognized and honored with numerous awards, including the William H. Rehnquist Award for Judicial Excellence from the National Center for State Courts, the Dwight D. Opperman Award for Judicial Excellence from the American Judicature Society, and the Transparent Courthouse Award from the Institute for the Advancement of the Legal System at the University of Denver, to name a few.

Chief Justice Roberts has praised Justice Durham's commitment to public service, judicial education, and justice during her distinguished years of service on the court. She is a diligent pathfinder for the participation of women and minorities in public life, she has championed the cause of judicial education, and she has worked tirelessly to improve judicial administration and access. As Alan Sullivan has noted, Justice Durham has taught

a master class in civic engagement and enlightened judicial leadership. Her students have been all of the judges and lawyers in our state. She brought our court system into the 21st Century by expanding access to justice and advancing civil and criminal procedures, sentencing and penal code reform, and judicial education. As important as all of these accomplishments are, she has shown us, by example, how essential gender diversity is to our system of justice.

JUSTICE DURHAM: LEGACY

In her work on the court, Justice Durham always brought a human perspective. For her, the cases were about people. She understood the impact court decisions had on real lives. It is perhaps for this reason that throughout Justice Durham's incredible tenure as judge and justice in Utah, she did not settle for merely meeting expectations and performing her duties with proficiency, but also she focused on greatly improving Utah's legal system both procedurally and substantively.

One of Justice Durham's most profound contributions to the legal profession has been her work in state constitutional law jurisprudence. Arguments asserting state constitutional rights went out of vogue in the twentieth century as the U.S. Supreme Court incorporated provisions of the Bill of Rights against states through the Fourteenth Amendment and expanded protections to citizens against state or local infringement of those rights. State courts began to decide cases involving state constitutional guarantees of individual rights by relying on federal jurisprudence even when state constitutions predated the federal constitution or when a significant period of time separated the adoption of the state and federal constitutions.

The era of the U.S. Supreme Court expansion eventually came to a close, and the Court began constraining constitutional rights. Those circumstances prompted Justice Brennan to publish a law review article in 1977, in which he fervently charged that state courts have denied citizens their full individual liberties by relying only on the protections of the federal constitution. See generally William J. Brennan, Jr., *State Constitutions and the*

Protection of Individual Rights, 90 HARV. LAW REV. 489 (1977). Justice Brennan urged state courts to develop their own bodies of case law resting on state constitutional grounds.

Justice Durham embraced Justice Brennan's message early in her work on the Utah Supreme Court, and she made herculean efforts to advance the development of state constitutional law jurisprudence not only in Utah but also nationally. She has written several law review articles and delivered lectures on the topic; she has taught a course on state constitutional law for years at the University of Utah's law school; and she has urged attorneys in presentations and in articles to raise arguments based on the state constitution. Justice Durham's work in advancing state constitutional law analysis is so celebrated that the Albany Law Review dedicated its State Constitutional Commentary Issue (Vol. 75.4) to Justice Durham and her contributions to the legal profession on the subject.

Justice Durham endorses use of the "primacy" model for state constitutional interpretation, in which a court is directed to turn first to the state constitution and state constitutional law jurisprudence, even if the federal provision is identical and federal jurisprudence would reach the same result. Courts adhering to this model rely on federal constitutional analysis only if the state constitution does not resolve the issue. Utah courts firmly follow the primacy model.

Justice Durham has explained that "[s]o long as state courts do not restrict individual rights below the minimum standard provided by federal protection, state courts are unconstrained in their power to interpret their own constitutions to provide greater protections of individual rights." Christine M. Durham,



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Words Do Not Do Her Justice



Congratulations to Justice Christine Durham on her retirement from the Utah Supreme Court. Among the extraordinary accomplishments, honors, and accolades in her forty years as a Utah jurist, the following are stand outs.

- The first female judge on the District Courts and the Supreme Court of Utah
- President of the Conference of Chief Justices of the United States
- President of the National Association of Women Judges
- Recipient of the William H. Rehnquist Award for Judicial Excellence

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What Goes Around Comes Around: The New Relevancy of State Constitution Religion Clauses, 38 VAL. U. L. REV. 353, 367 (2004). In addition, the ability to rely on state constitutional law grounds to ensure individual rights serves to insulate courts and litigants from the ebb and flow of federal jurisprudence, which was the impetus of Justice Brennan's article. This is particularly important because over 95% of all civil and criminal matters are heard in state, not federal, court. And, as Justice Durham recognized, "when state courts rely on their own constitutions to provide substantive protections for individual rights, they are reinforcing the sovereignty of the individual state in its power to guarantee to its citizens freedoms greater than those protected under federal law alone." *Id.* at 369.

Thanks in large part to Justice Durham's efforts, Utah now has a well-established body of case law resting on state constitutional rights. For example, one notable difference between Utah's state constitutional law jurisprudence and federal jurisprudence is the doctrine of standing. Utah's constitution does not contain the same "case or controversy" language and, accordingly, the Utah Supreme Court construes standing more broadly than what is allowed under federal law. Other notable distinctions include freedom of speech protections under Utah's article I, section 1; search and seizure rights under article I, section 14; and the uniform operation of the laws analysis under the Utah Constitution.

Although Utah's justices have long debated the proper tools for interpreting Utah's constitution – whether to look to the plain meaning, to the historical intent of the drafters, to sister states, etc. – all of the justices have agreed that analysis under the Utah Constitution is important, and this recognition is due in large part to the efforts of Justice Durham to bring these issues to the forefront and emphasize the separate nature of these rights. Justice Durham has left us with an enduring legacy that will inspire many generations of Utahns to come.

In closing, Justice Durham always had "a very strong sense that [she] wanted to do something important in this world" and she has well exceeded her own aspirations. Thanks to her determination, we have benefited from her invaluable contributions to the Utah Judiciary for more than thirty-five years. She has guided the effort to make justice more accessible and the judiciary more transparent. Her deep compassion, incisive legal analysis, and willingness to lift those around her have made her a brilliant jurist, an inspired leader, an admirable person, and a true friend. We celebrate her outstanding career.

1. Reva Beck Bosone graduated from the University of Utah College of Law and served as a Salt Lake City judge until she was elected to Congress, Judith Whitmer served as a juvenile court judge, and Eleanor Van Sciver served as a circuit court judge.



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It is hard to know where to begin in describing Christine Durham's contributions both here in Utah and nationally. On the national stage, she is a past recipient of the most prestigious award offered to state court judges – the Rehnquist Award for Judicial Excellence. In addition, she served as President of the Conference of Chief Justices. She has been one of our country's foremost advocates for educating the public about the role of judges and the importance of the independence of judges to our democracy.

But despite these extraordinary national contributions, I am even more appreciative of the contributions she has made in her role as a justice on the Utah Supreme Court. This is because I have been, for over seventeen years, the direct beneficiary of those contributions. Christine, in my view, is a model judge. She couples an extraordinary mind with a deep curiosity. And while she is firm in her commitment to principle, she is not just willing but eager to hear arguments contrary to her view on a particular issue. She is open-minded and, first and foremost, committed to finding the right answer, the answer dictated not by her personal preference, but by the law and the facts in a particular case. What's more, she has helped to make my time on the Supreme Court fulfilling and delightful. To me she is an ideal colleague, always willing to listen, never taking personal offense, and committed to fairness and justice.

Christine has been a giant not only nationally but here in Utah. She will be deeply missed by me, by my colleagues on our court, and by the citizens of our great state.

Honorable Matthew B. Durrant
Chief Justice, Utah Supreme Court

Chief Justice Durham's wit, intellect, and compassion were a role model for me and all others in the Conference of Chief Justices. She ensured that the rule of law, so vital to this country's success, was available to all citizens, regardless of their status in life. My tenure as Chief in Texas benefited immeasurably from the example of Christine's exceptional service.

Honorable Wallace B. Jefferson
Chief Justice (Ret.), Texas Supreme Court



Some of the things I admire most about Justice Durham are that she is endlessly curious and courageous, and that she lives life boldly. She never stops learning and growing and striving and sharing her wisdom and experience with others.

During her extraordinary career, she has never lost sight of the individuals around her, taking time to mentor and inspire: in the way she treats people from every walk of life with warmth and courtesy and respect; in the “human” perspective she brings to the deliberations of the Court – understanding that its decisions have real significance for peoples’ lives; through her exceptional negotiating skills – allowing others to feel heard and understood and finding points of consensus wherever possible; and through her quiet strength and grace under fire. Her empathy, her sharp intellect, her sense of humor, her authenticity, and her ability to balance a large, loving family life with a high profile career, have left an indelible mark on the Court, the legal profession, and, especially, women lawyers. I will be forever grateful for her friendship and example.

Patricia Christensen
Of Counsel, Parr Brown Gee & Loveless



For nearly forty years, Christine Durham has, by example, taught a master class in civic engagement and enlightened judicial leadership. Her students have been all of the judges and lawyers in our state. She brought our court system into the twenty-first century by expanding access to justice and advancing civil and criminal procedures, sentencing and penal code reform, and judicial education. As important as all of these accomplishments, she showed us, again by example, how essential gender diversity is to our system of justice.

Justice Durham has been our state’s resident expert on the history and meaning of the Utah Constitution, and she has insisted that our appellate lawyers treat state constitutional issues with the same rigor that we devote to federal constitutional issues. She has fearlessly dissented whenever she has concluded that the court strayed from our constitutional heritage. *See, e.g., University of Utah v. Shurtleff*, 144 P.3d 1109, 2006 UT 51, ¶¶ 59–75, (Durham, C.J., dissenting). In this and all of her work, and with all of her colleagues and counsel, she taught us (again by example) the virtues of civility, generosity, kindness, and humor.

Alan L. Sullivan
Partner, Snell & Wilmer L.L.P.



The opportunity to have worked closely with Justice Durham is one of the greatest privileges of my legal career. Justice Durham's keen intellect, unparalleled work ethic, dedication to the law and vision for the Utah court system are well known to those in the Utah legal community. Less well known are her equally impressive personal characteristics.

Justice Durham is one of the kindest, most caring and genuine people I have ever met. Although her schedule is incredibly full, she is never hurried. She always makes time to demonstrate a genuine interest in and concern for her friends and associates. Although she is passionate about her work, she is patient, calm, and the model of professionalism. She listens to and considers the positions of those with whom she may disagree and is never afraid to reconsider her initial position on an issue. Although she works tirelessly for the causes in which she believes, she does not become frustrated, impatient or angry when she encounters road blocks along the way. She rolls up her sleeves and calmly pushes forward with a quiet sense of confidence. Although she has achieved professional excellence and prominence on both a state and national level, she remains humble and approachable. Although her plate is incredibly full, she rarely declines an invitation to speak. She serves on endless committees and makes herself available to mentor and advise countless young lawyers. She has been a beacon for women lawyers and judges in Utah and nationally as she has worked tirelessly to advance opportunities for women in the profession.

Justice Durham was my valued colleague for twelve years and she continues to be a valued mentor, trusted confidant and cherished friend. I have no doubt that all who have had the privilege of knowing her feel the same way.

Honorable Jill N. Parrish
Judge, United States District Court, District of Utah



Christine Durham is a national and even international court leader. She has been a true visionary over the last few decades in the way in which she has positioned the Utah courts to move into the future. From court administration to electronic record keeping and filing, judicial performance evaluation to judicial education, tools for self-represented litigants to civil justice reform – she has been at the forefront of thought and action. Christine was one of the first women to excel in various positions – but that is not what most distinguishes her. What most distinguishes her career in my mind is that she has exemplified service: serving justice, serving the citizens of Utah, and serving the ideals of our profession. She pursued a calling, and we are all the beneficiaries of her legacy. We at the Institute for the Advancement of the American Legal System have been very privileged to work with her over the last few years on a number of projects; and I am even more privileged to call her a friend.

Honorable Rebecca Love Kourlis
Executive Director, Institute for the Advancement of
the American Legal System
Justice (Ret.), Colorado Supreme Court

I met Christine Durham in 1989 when I joined the National Association of Women Judges, a relatively young organization in which she had already assumed a leadership role. Since that time, she has committed her energy, skill and passion for justice to nearly every part of our justice system. She played a national leadership role in improving both legal and judicial education, in encouraging greater civility and professionalism among lawyers, and in assuring the equal treatment of all who enter our courts. She served as a role model, mentor and friend to countless women who became judges when the system was not entirely welcoming to them. She oversaw extensive improvements in the Utah judicial system and then helped all of us transport them to our own states. Joined by judges across the nation, I thank Utah for giving the justice system this extraordinary woman. We owe her a great debt of gratitude.

Honorable Ruth V. McGregor
Chief Justice (Ret.), Arizona Supreme Court





Justice Durham and I began our legal careers at approximately the same time, consequently I have observed her progress and considered her as both a colleague and a friend since the early 1970's. At that time, there were very few women lawyers in Utah and many fewer women judges. Justice Durham, along with Eleanor Van Skiver, Judith Billings, and Sharon McCully, were the first to serve as women judges in Utah. From that time onward Justice Durham has lead the way in encouraging women to become lawyers and to apply for judicial positions. She not only participated in mentoring and speaking on the subject, she, probably most importantly, set an example of excellence, public service, and outstanding integrity. Her trailblazing has largely contributed to an impressive increase in the number of women judges in Utah.

Justice Durham's accomplishments are legion. I am particularly impressed with her willingness eagerly to undertake challenges beyond, but not unrelated to, her duties as a district court judge or supreme court justice, she is a nationally recognized leader in the fields of judicial education and education in our public schools about the judicial system in America. In recognition of her labors and leadership, Justice Durham, in 2007, was the first and only Utahn to receive the William H. Rehnquist Award for Judicial Excellence. The award applauded her for exemplifying the "the highest level of judicial excellence, integrity, fairness, and professional ethics." Justice Durham has profound respect for the rule of law and the necessity of making true justice available to all people. She recently described her three greatest loves as her husband, her children and grandchildren, and the law, in that order. She is an inspiring figure for many, notably, the many women who have aspired to follow her example and increase the number and quality of women who serve as judges in Utah's state and federal courts. My heartfelt thanks to you, Christine, for your exemplary service, and my expectation of much more to follow.

Honorable Pamela Greenwood
Senior Judge, Utah Court of Appeals





There are Chief Justices, and then there are Great Chief Justices. There are good judges, and then there are those judges whose learning, balance, understanding, energy and humility places them in a different category. By any standard, Chief Justice Christine Durham is one of the best of the best.

In the Conference of Chief Justices, of which she was a distinguished and beloved President, I observed firsthand her indefatigable energy as she led the way forward on a vast array of administrative matters: improved technology, judicial ethics, improved interpretive services for litigants who do not speak English, education for judges, improved rules of procedure, funding for the courts, the selection of judges, the strengthening of fair and impartial courts... the list is endless. Whatever she implemented in Utah was soon copied around the country. And she looked around the country for the best ideas to implement in Utah. When I was Chief Justice of the Massachusetts Supreme Judicial Court, I invited her to speak with the Chief Justices of the Massachusetts Trial Courts to inform them of what Utah was doing. Her energy and commitment to administrative excellence made a big difference in my home state.

As one of the founders of the National Association of Women Judges, she is a wonderful role model, not only for women judges, but women from all walks of life.

She has long played national leadership roles in other organizations committed to improving legal education, and to improvements in the law. I have seen the results of her work in the American Law Institute where she served for many years as one of the most respected members of the Council. She was thoughtful in her comments, wise in her observations and clear when others are mired in confusion.

Chief Justice Durham is inclusive, welcoming, and collegial in everything she does. She has worked to strengthen ties between the bench and bar, and has traversed this country and traveled abroad to strengthen ties between and among many different legal systems. It is small wonder that she is recognized as one of the great state court leaders of our generation.



Honorable Margaret H. Marshall
Chief Justice (Ret.), Massachusetts Supreme Judicial Court

Christine Durham has been an inspiration and supporter for women lawyers in Utah for decades. I still remember how pleased I was when she was appointed to the Third District bench. There were very few women lawyers in practice at that time and even fewer women judges. I think many of us were still trying to figure out a role model, and even though she was relatively young, Justice Durham fit that role. We are so fortunate that she turned out to be a great judge.

Other people will list her many accomplishments, but one of the things I have really admired about Justice Durham is her consistent support of women lawyers, her ability to be well-informed about their issues, and her willingness to share her thinking on those issues. The annual Women Lawyers of Utah Fireside is a direct result of that support.

Ellen Maycock
Mediator and Arbitrator
Partner, Michael Best & Friedrich LLP



Our nation's state courts are fortunate when leaders like Justice Christine Durham come along. Through her decades of service, she earned a reputation as a judicial officer who promotes progress, thrives on innovation, and shares knowledge. In the 1980s, judicial education was rare, and there was little interest to change that — until Christine got involved. Her commitment to and work in judicial education helped change the national landscape, especially in areas such as domestic violence, child witness testimony, and scientific evidence. State courts around the country are stronger and more effective thanks to Christine's numerous contributions.

Mary C. McQueen
President,
National Center for State Courts

high praise



**DORSEY & WHITNEY CONGRATULATES JUSTICE
CHRISTINE M. DURHAM ON HER UPCOMING RETIREMENT AND
THANKS HER FOR HER SERVICE TO THE LEGAL PROFESSION
AND TO ADVANCING ISSUES OF DIVERSITY IN OUR COMMUNITY.**

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An Interview with Justice Durham

by Judge Evelyn Furse

On a beautiful Friday afternoon in August, I had the chance to sit with Justice Durham and ask her about her accomplishments. As any former clerk can attest, the opportunity to pick “your” judge’s brain and get her to talk about her path is akin to the pleasure one gets from selecting a fresh chocolate from among a new box of hand-dipped chocolates. May you find as much enjoyment in the conversation as I did.

JUDGE FURSE: In the last four decades, you have touched many people, and few of us know the breadth of your impact. Let’s talk about the legacy you leave us in a number of different fields. Considering first the field of judicial governance, how do you see your contribution?

JUSTICE DURHAM: With respect to the judiciary as an institution, one of the things I have learned is that you cannot address issues of fairness and justice in the court system unless you pay attention to the way courts are governed. Courts as institutions have to be organized, supported, and managed in such a fashion that judges and their support staff can actually provide what we think of as justice. That’s something I didn’t know when I came on the bench.

I thought in more “micro” terms – an individual becomes a judge, gets assigned to a courtroom and a caseload, then hears cases and tries to decide them fairly. The lawyers try to represent people fairly: that was my idea of the justice system. Not until I became engaged with issues about management and governance, which started when I was a trial judge, did I realize that the most minimal operational needs of the trial courts (e.g., collecting data and learning from it, assessing need and performance, figuring out emerging issues, planning for change) were completely dependent on political and funding and management issues.

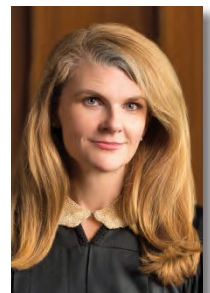
That’s what drew me into court management and governance issues – trying to think about how we as trial judges could do our business better, and thereby serve the public better. Later,

when I went on the Supreme Court, I started to see the courts from a “whole system” perspective based on what I had learned in the trial courts.

I was the beneficiary of an accident of timing, but I came on the Supreme Court just at the time the court was starting to engage with governance issues. The main motivation for the Supreme Court was that we needed an intermediate court of appeals, and that required a constitutional revision. When we had to revise the judicial article of the Utah Constitution, it really was an historical moment. The right people (from all three branches of government and from the public) and the right ideas came together. The changes made thoughtfully prepared the way for the creation of a strong, independent, self-governing judicial branch. Prior to the constitutional revisions in the mid-eighties, Utah did not actually have a cohesive judicial branch. We had fragmented court systems, each with their own funding lines, each with their own priorities and goals. We had no capacity for planning, no capacity for doing centralized budgeting. We did not really have a constitutional base for developing a fully independent court system until constitutional revisions in the mid-eighties.

For me, it was an amazing experience to watch and participate in that effort. I wasn’t on the front lines of the constitutional revision (Chief Justice Gordon Hall and Justice Dallin Oaks invested enormous effort in getting it done), but I was on the implementation task force that the governor set up to take what the constitution now permitted and to incorporate the new structure in statute.

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So I watched the creation and the building of our Judicial Council and our system of governance, which has given us the capacity to plan, to budget, to do court reform, [and] to set priorities in ways that really accounted for need rather than being driven by politics.

I feel extremely grateful for that opportunity and experience. Of course, it was capped for me later on with the opportunity to spend ten years as the CEO of the system – Chair of the Judicial Council – during its maturing and the coming to fruition of so many of the plans that had been laid earlier. I think Utah's judicial system and Utah's judiciary is one of the healthiest and strongest in the nation. We are now recognized, and have been for a number of years, as the “gold standard” for effective court governance.

JUDGE FURSE: Part of what has made the Utah judiciary the gold standard is judicial branch education. Now this represents another area you have had significant involvement with. What do you consider the legacy that you have left to judicial branch education?

JUSTICE DURHAM: The importance of education for the judges and staff of the judicial branch has mattered to me from the very beginning of my career. I was startled as a new trial judge to receive no orientation, no bench books, no mentors – to simply be handed cases and a borrowed robe on my first day. But before we had a centralized system of governance and a strong judicial council, there was no forum for developing educational principles.

Judicial branch education has three goals. One is to help judges and those working in the courts to learn and develop the skills they need to do their jobs. The second is to expose them to the substantive knowledge they need to do their jobs. The third leg of the stool is supporting personal and professional development. That's the idea that human development, cognitive development, ethical development, personal, spiritual, or whatever you want to call it, is constantly evolving throughout our lives. All adults realize, even though we probably thought differently when we were young, that you're not finished at some fixed point – not when you're twenty-one, not when you're thirty, when you're fifty. The idea of this third leg of the stool is to give judges, and everyone working in the courts, the opportunity to expand their intellectual and personal horizons to think about the way their life and the law is meaningful to them, and has meaning to the community.

My earliest work in judicial education was actually on the national level, and that's where I encountered some real experts in the area of adult education who were interested in the judiciary. We organized the Leadership Institute for Judicial Education, which trained teams of educators from all around the country (including more than one from Utah). We would bring in judicial educators, judges, and court administrators from court systems and education providers, and work with them about how to build on the principles of adult learning, lifelong development, and professional growth in their jurisdictions and programs. The work of the institute was funded by the State Justice Institute and, over a number of years, had a profound impact on the field of judicial education.



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I also served on the first education committee the Utah Judicial Council organized, and worked with the development of our standards and our practices. After I retired as Chief Justice, the council asked if I would come back to the judicial education committee, giving me the opportunity for the last five years to work on education again. So I feel that I have come full circle: this work has been very important to me, and I have been privileged to be part of it. It does feel to me like one of the major things that I have been able to stand up for and support in a public and high-profile way.

When I look at the programs we have now for orientation of new judges, for mentoring of new judges, for ongoing education, for substantive knowledge, skill development, and personal and professional development, it makes me really proud of Utah. And a little jealous of the many judges whose first days on the bench have, I hope, been a little less daunting than mine.

JUDGE FURSE: Let's talk about your jurisprudence. The more judges I get to know and watch over time, there are certain personal attributes that they bring to the process of judging, and values that are important to them in judging that go beyond any given case. In that world, what are you most proud of?

JUSTICE DURHAM: It's a little uncomfortable to discuss your jurisprudence, especially on an appellate court, where the cases are not "mine," but belong to the whole court. Yes, I may have authored an opinion, but everybody who signed on to it signed on to language, analysis, and ideas they understood to be reflected in the opinion. So it's not for the author or any other member of the court to articulate in a global way what anyone on the court was thinking or intended, except insofar as those things are part of the written opinion.

With that caveat, I can make some rather general and perhaps abstract comments. I like to think of myself as a jurist who cares deeply about the law, but who also tries to understand what the underlying human, social, and economic contexts may be. That's sometimes very difficult, but there are times when you see patterns in cases that contribute to and help shape the legal issues. This is particularly true in the arena of constitutional work because constitutions have many dimensions. They're intended in significant part to balance rights and responsibilities and to protect privileges, and to ensure a just and workable balance between governmental power and individual rights. The struggle to understand and enforce the balances weaves its way through a large number of the disputes that come to the court.

I guess what I'm most proud of is that I think I have managed to be fairly consistent in my concern for the values embedded in our state and federal constitutions as I understand them. I certainly understand that others don't always see the same values, or see them the same way. But I know that staying consistent over a long judicial career is not an easy task, and to the extent I have succeeded, I am glad.

JUDGE FURSE: Having had the opportunity to sit on the bench for so long, do you think that has given you an advantage in seeing patterns?

JUSTICE DURHAM: Yes. One of the things I have been thinking about as I approach retirement is the way in which the work of this court has changed over my tenure. Over its history, the Utah Supreme Court has had periods of law development that have focused on changing areas of law and have been more or less intense. I believe I came to the court at a time when a great many new questions were being raised, where statutory lawmaking was burgeoning, and where the norms of constitutional analysis were being re-examined. So much precedent was based on law and circumstances that had changed; it was an exciting time to be doing legal research and decision-making. I've mentioned statutory and constitutional law, but there have also been many changes, some of them sweeping, in areas of the common law.

After service for more than three decades, I have seen enormous changes in the law. I actually have a sense that now some [of] the questions and principles are starting to "come around again" in new contexts. With the changing composition of the court over the years, new eyes see different questions, and some principles regarded as settled are open to new exploration and re-examination in their turn. This is an inevitable part of judicial work and to be welcomed as the manner in which law must progress and adapt, but it can be disconcerting. The beauty of appellate work is the challenge to the intellect and the imagination – and I am deeply grateful to have been challenged to the end.

JUDGE FURSE: Looking at some of the other fields where you have left your mark, of all of your contributions to women's rights, which do you hold most dear?

JUSTICE DURHAM: That is where I started, going back to my law school experience, when women were rare in law school and even rarer in the profession (when I graduated the number of women lawyers in the United States was less than 2% of the total). When I was in law school at Duke, we had no women on the faculty or in the administration. One of the Associate Deans,

however, was an organizer of AALS's [the Association of American Law Schools] Committee on Women in Legal Education, and he arranged for me to serve on that body as a student member. The small group of Duke women students also organized a Women's Law Caucus and persuaded the administration to allow us to create a seminar on Women and the Law. One of the speakers who joined us was a young law professor at Rutgers named Ruth Bader Ginsberg, who was then compiling the first textbook on Sex Discrimination and the Law.

After law school I was invited to give a speech to the North Carolina Legal Secretaries Association on the Equal Rights Amendment (ERA), which was then just out of Congress and going through the ratification process. Our study of the ERA in the Duke seminar and preparing for that speech convinced me that I needed to work on this issue. I became very active in lobbying for ratification of the ERA in North Carolina.

When we moved to Utah in '73, I continued with that lobbying and did a lot of public speaking and legislative lobbying (which all came to naught). After the legislature refused to ratify, Rep. Beth Jarman persuaded legislative leadership to fund a joint task force to examine and eliminate sex discrimination in the Utah Code. Those of us on the task force and our staff attorney went through the entire code (this was before computers!) and proposed multiple revisions, which the legislature generally adopted. Despite the defeat of the ERA, I believe Utah was one of the first states in the country to clean up its statutes in a comprehensive way.

I have been a feminist all my life (even before I had the vocabulary for it); I have always hated unfairness and injustice in all their manifestations, including the issues facing women in the legal profession and in the legal system. The year before I went on the district court, Eleanor Lewis Van Sciver was appointed to the new circuit court. Governor Matheson had put Judith Whitmer on the juvenile bench in 1971. So by the time of my appointment in 1978, we had three sitting women judges. Well-respected lawyer Jan Graham came to me and to Eleanor and said, okay, we've got two judges on the trial courts now; I think we can get a women lawyers organization off the ground. So Eleanor and I and Jan helped launch Utah Women Lawyers, which has had a long and successful history of working for gender fairness and equality in the profession, the courts, and the community. Then, in 1979 the National Association of Women Judges (NAWJ) was founded by two California trial judges. I attended the founding meeting and realized I had found "my people" in terms of working to improve the courts. I eventually had the privilege leading NAWJ as its President. From the beginning, one of our huge priorities was getting more women on the bench. I don't think there has been a time in my entire career that I haven't been focused on issues affecting equal opportunities for women and minorities. Fairness and justice are impossible in systems that fail to provide equal opportunities to all.

JUDGE FURSE: So then an area many people don't know you have been involved in is the world of disability rights. How do you see your legacy there?



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JUSTICE DURHAM: My interface with the issues affecting people with disabilities and their families has been more personal and less visible or public. As a judge I have been unable to engage in politics or to lobby lawmakers. Before I took the bench, however, I had the remarkable experience of being on the founding board of the Legal Center for People with Disabilities and also served on the board of a non-profit entity called Developmental Disabilities, Inc. This work drew me because of our youngest daughter, [born] in 1976, with Down Syndrome. We feel so remarkably fortunate that our daughter arrived at a time when things were beginning to change in significant ways for people with disabilities. Public Law 94-142 has just passed, and for us it meant early intervention and educational opportunities unheard of for so many who had come before.

I may not have been a pioneer in this work – but in many ways our daughter has. She was the first child with disabilities that the Jewish Community Center preschool program in Salt Lake City ever enrolled, followed by many others over the years. She attended public schools and, thanks to extra resources, learned to read at a fourth–fifth grade level. She learned skills that have enabled her to live independently, to be employed and pay taxes, and to manage public transportation in a way no one else in the family could! In many ways being the parent of a child with a significant disability has been one of the most defining experiences of my life. It has probably changed me as a person as much as anything I have ever done. You come to look at life differently, and to be careful what you value in human beings. To the extent that I tend to root for the underdog – whether I had those tendencies to start with, or whether they were reinforced by having a child who is, I don't know. But I suspect that I am a different and better person as a result of the privilege of sharing her life.

JUDGE FURSE: What has enabled you to do all of this would you say?

JUSTICE DURHAM: That's a really interesting question: what drives driven people?

JUDGE FURSE: Well, not just what drives you but also what sustains you? Because many who are driven get burnt out or become disaffected.

JUSTICE DURHAM: Yes, that's true. First of all, I have a large amount of curiosity and so much of what I do satisfies that thirst to learn and understand. But the thing that really has sustained me over time is the way the work has, without exception,

allowed me to make valuable and deep human connections. I think about my work with women in the law, with NAWJ, with the courts and with my court, with judicial education and with court administration. I have had the chance to work with so many amazing people, brilliant people, talented people who are devoted to and care about the same values I do. In the end that has been what has kept me going: that community of people. It is a little worrisome to contemplate that phenomenon as one heads into retirement because, where the work and the connections are connected, it can be hard to sustain them when you're not doing the work anymore. So I will have to find new work that will keep me in touch with people I admire and want to spend time with.

JUDGE FURSE: Why retire now?

JUSTICE DURHAM: Well, I have to go in three years anyway. So I'm only retiring three years early. My health is good. I think I am still intellectually capable and there is an advantage to leaving before people start clamoring for you to do so. It seemed to me that the time had come to turn the work over to my colleagues present and future. I've had a great run; I've enjoyed everything I have ever done. Part of the reason it has been hard to decide to go is that the current constellation of the court (including Justice Parrish, who left not long ago) has been so wonderful. I have had many outstanding colleagues over the years, but in terms of the collegiality of the court, and its smooth operation as an institution, I have never experienced anything like the last five years. It's good to go out on a high.

JUDGE FURSE: From this vantage point of thirty-nine years on the bench, what would you like lawyers to know?

JUSTICE DURHAM: I care so deeply about the legitimacy and fairness of the American justice system. There are so many ways in which that legitimacy is being undermined by current problems: problems in resources, problems in culture, problems in the way the legal profession is structured, problems in the way the courts are able to organize and respond to need. So the message that I would like to leave with lawyers is that this is an extraordinary resource we have in this country – our justice system – and even with its flaws, it is still widely admired and considered a gold standard for fairness and access. That being said, fairness and access are not things we can ever take for granted. If lawyers don't dedicate themselves to that principle first and foremost, the best champions that the system has will not be serving it well.

Christine Durham: Catalyst and Supporter of Discovery Reform

by Francis M. Wikstrom

In December 2015, the Federal Rules of Civil Procedure were amended to great fanfare. Chief Justice Roberts hailed the changes to the discovery rules in his 2015 Year-End Report on the Federal Judiciary. The changes were designed to make discovery more efficient and less expensive. They were indeed significant. But they weren't novel. The new federal rules reflected in large part changes that had been made four years earlier in Utah thanks to the inspiration and leadership of then Chief Justice Christine Durham.

In that year-end message, Chief Justice Roberts noted that Rule 1 had been amended to add eight simple yet significant words. As amended, the federal rules would be “construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Chief Justice Roberts, *2015 Year End Report on the Federal Judiciary* [hereinafter, 2015 Report], 6, *available at* <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>. The Utah Supreme Court amended our Rule 1 four years earlier to add just two words, but to the same effect: “[The Rules] shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action.” Utah R. Civ. P. 1 (emphasis added).

Chief Justice Roberts also pointed out that amended “Rule 26(b) (1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.” 2015 Report, at 6. The 2015 federal rule limited discovery to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” and defined the factors that determine proportionality. Fed. R. Civ. P. 26(b) (1).

Four years earlier, the Utah Supreme Court amended our Rule 26(b) (1) to limit discovery to “any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality” defined in the rule. The Utah definition of proportionality included all of the elements listed in the 2015 federal rule, and more. Utah R. Civ. P. 26(b) (1).

In short Utah not only beat the feds by four years but also was the first state in the nation to implement comprehensive discovery and disclosure rules designed to reduce the cost and delay in the civil

justice system resulting from the “information explosion” from modern technology. Utah was the pioneer for discovery reform, and our rules have served as a model and benchmark for the reforms that followed in other jurisdictions. Indeed, no other jurisdiction has gone as far as Utah in terms of the breadth and comprehensiveness of discovery reform. And none of this would have happened without the leadership and encouragement of then Chief Justice Durham.

Back in 2007, before the recent rule reform movement had begun, Chief Justice Durham asked the Civil Rules Advisory Committee (Committee) to step back and take a broader look at our rules and how well they were accomplishing the stated goals in Rule 1. In response, the Committee began researching procedural rules in other states and throughout the common-law world. The Committee reviewed the surveys that were done by the American College of Trial Lawyers and the Institute for the Advancement of the American Legal system and by the ABA Litigation Section. It also looked internationally at the Woolf Reforms in Great Britain and similar studies.

Chief Justice Durham, along with the other Justices on the Utah Supreme Court, enthusiastically supported this effort every step of the way. She encouraged the Committee to think broadly and to act boldly. She was excited that Utah could serve as a laboratory to test new ideas. She often said that we could and should try new approaches because the court has the flexibility to change them if they don't work.

Among Justice Durham's many important distinctions and accomplishments, the Utah discovery rules are a testament to her leadership and foresight.

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Women in the Law: Refreshing our Collective Memory

by Brit Merrill and Adrienne Nash

Legend has it that in 1977 Pat Christensen, newly admitted to the bar, stood up in Chief Judge Willis Ritter's court in Federal District Court for the District of Utah to put her appearance on the record. Judge Ritter commanded, "Young lady, women don't practice in my court!" and instructed the marshals to throw Christensen in the court's holding cell.

By 1977, women were graduating from law schools by the dozens each year. Yet, by and large, the legal market was unprepared and ill equipped to welcome women into its fold. Facing downright hostility and passive aggressive slights, women lawyers turned to one another for support.

This article provides a historical overview of women in the legal profession nationally and in Utah. With a particular look at the founding and early years of Women Lawyers of Utah, this article includes well-known and less-known vignettes to refresh our collective memory on the struggle for gender equality.

Women's History: A Primer

1848 marks the beginning of the women's rights movement in the United States. In July 1848 the first women's rights convention took place in Seneca Falls, New York. This convention, known as the Seneca Falls Convention, was a gathering "to discuss the social, civil, and religious condition and rights of women." During the convention, sixty-eight women and thirty-two men signed a Declaration of Sentiments, modeled after the Declaration of Independence, that outlined the rights to which American women should be entitled.

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The Right to Vote

In 1869, several important "firsts" took place. Wyoming Territory became the first to grant women the right to vote. The legislature professed, "That every woman at the age of twenty-one years, residing in this territory, may, at every election, to be holden under the law thereof, cast her vote." Wyoming's acceptance of women's suffrage was a surprise to many, especially leading suffragists such as Susan Brownell Anthony and Elizabeth Cady Stanton, who assumed their eastern and more progressive home states would be more accepting than those states in the west.

In Utah, women won the right to vote twice. The first win occurred in 1870 when Utah Territory became the second territory to grant women the right to vote. This victory came without much protest or civil action from women's rights activists; however, at this time, women did not have the right to run for office. In 1887, the right to vote was taken away by Congress in an effort to end polygamy. Nevertheless, in 1895, women's right to vote was reinstated and women were granted the right to hold office as part of the constitution of the new state. Nationally, women won the right to vote in 1920 with the Nineteenth Amendment.

First Female Law School Graduates

In 1869 Ada Harriet Kepley (1847–1925) became the first woman in the United States to graduate from law school. However, at this time Illinois prohibited women from practicing law, medicine, and theology, so Kepley was denied a license to practice law. In 1872 a bill passed prohibiting sex discrimination in learned professions, but by that time Kepley was focused on reform efforts, including women's suffrage. It was not until 1881 that Kepley applied for and received a license to practice law.

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In Utah, Rebecca Garelick (1903–1995) became the first woman graduate of the University of Utah College of Law in 1924 and the ninth woman to earn admission to the Utah Bar. However, women's admittance to law school progressed slowly. "By the end of the 1920s, just three women had graduated from [law] school" in Utah. *College of Law History*, S.J. QUINNEY COLLEGE OF LAW, https://www.law.utah.edu/admissions/college_information/college-of-law-history/ (last visited Oct. 2, 2017).

First Women Admitted to the Bar

In 1869 Arabella (Belle Babb) Mansfield (1846–1911) became the first woman admitted to the bar in the United States after a favorable ruling by the Iowa courts. Notably, Mansfield did not attend law school, but rather studied for the bar exam for nearly two years in her brother's office. Three years later, in 1872, Charlotte E. Ray (1850–1911) became the first African American woman to graduate from law school and be admitted to the bar in the United States. Upon applying to law school, she shortened her name to C. E. Ray in order to conceal the fact that she was a woman because the school discouraged women from applying.

In 1872, Utah became the fourth state to admit women to the bar, preceded only by Iowa, Michigan, and Missouri. Cora Georgiana Snow Carleton (1844–1915) and Phoebe Wilson Couzins (1839–1913) were among the first women admitted to the Utah Bar and were admitted on the same day. "The Salt Lake Daily Tribune wrote of the experience: 'Miss Snow doubtless will render invaluable service to her sex in the future as counsel in cases where delicacy is a fundamental element of consultation.'" Stacie Stewart & Kristen Olsen, *Pioneers Who Paved the Way: A Look at Some of Utah's First Women Lawyers*, 287 BYU L. SCH., 1, 7 (2013). Throughout their careers both women proved to be instrumental in the women's rights movement. In 1976, over 100 years after the first woman gained admittance to the bar, the 100th woman was admitted in Utah.

First Female Judges

In the early 1870s, Esther Hobart Morris (1814–1902) became the first woman in the United States appointed to a judicial position. She was appointed by Governor John Campbell as Justice of the Peace in Wyoming Territory. Ironically, Morris was appointed to "serve out the term of a man who had resigned in protest after the women's suffrage amendment passed." *First Woman Justice of the Peace in America*, HIST. AM. WOMEN, <http://www.womenhistoryblog.com/2014/08/esther-hobart-morris.html> (last visited July 19, 2017).

At the federal level, Genevieve Rose Cline (1879–1959) became the first woman appointed to a federal court in 1928. Cline was appointed by President Calvin Coolidge to the U.S. Customs Court

and remained on the bench for twenty-five years. In 1932, Florence Ellinwood Allen (1884–1966) was appointed to the Sixth Circuit Court of Appeals, becoming the first woman to be appointed to a federal appeals court. Before her appointment, Allen served as a justice on the Ohio Supreme Court. In 1981, Sandra Day O'Connor became the first woman appointed to the United States Supreme Court. President Ronald Reagan nominated O'Connor, who was confirmed that September and retired twenty-five years later in 2006.

In Utah, Reva Beck Bosone (1895–1983) became the fourth woman to graduate from law school and in 1936, Bosone became the first woman in Utah elected to a judgeship, where she served on the bench for twelve years. Justice Christine Durham became Utah's first woman district court judge in 1978; four years later in 1982, she became the first woman to serve on the Utah Supreme Court after being appointed by Governor Scott Matheson. Just this year, the Utah Court of Appeals reached a majority membership of women after Judge Diana Hagan joined Judge Michele Christiansen, Judge Kate Toomey, and Judge Jill Pohlman.

First Female Jurors

In early American law, women were deemed unfit to serve on juries under the doctrine of *propter defectum sexus*, a "defect of sex." In 1879, the United States Supreme Court confirmed the

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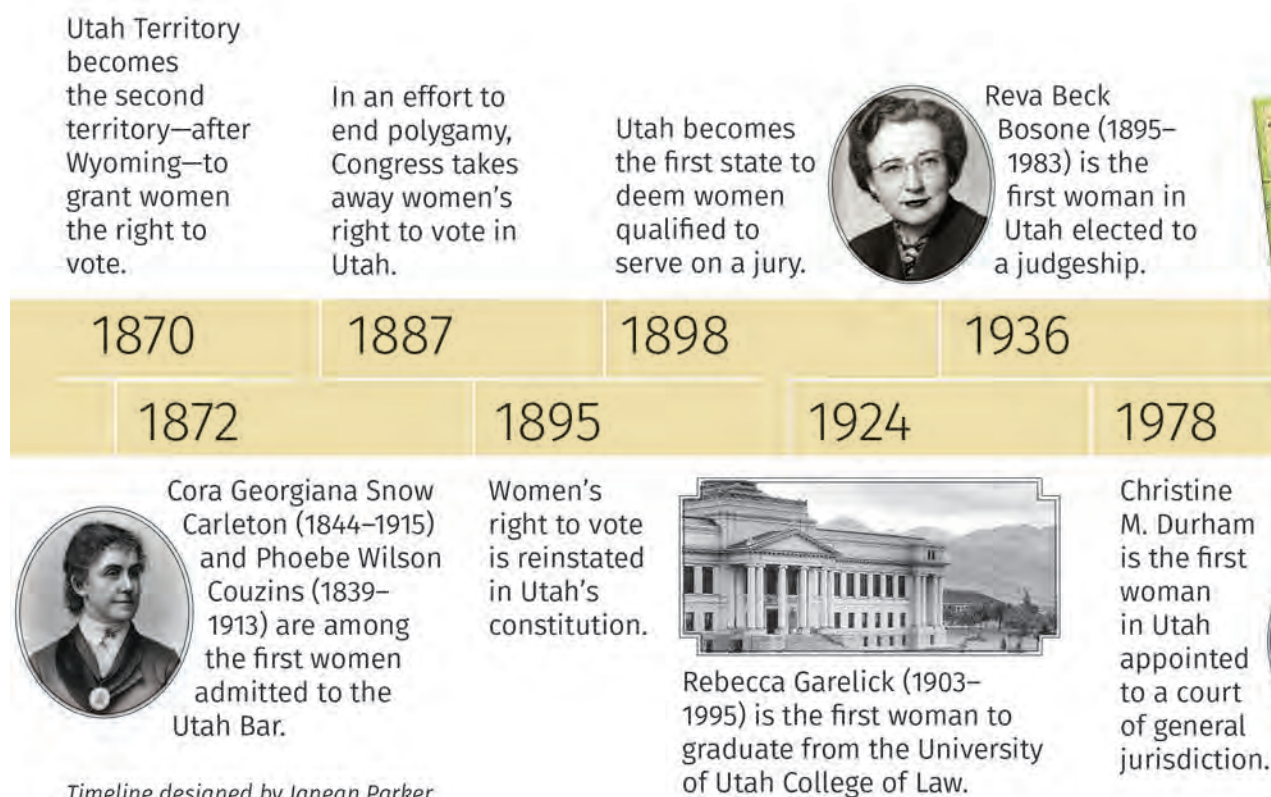
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constitutionality of allowing a state to “confine the selection [of jurors] to males.” Laughlin McDonald, *A Jury of One's Peers*, ACLU (Mar. 11, 2011), <https://www.aclu.org/blog/speakeasy/jury-ones-peers>.

Nonetheless, in 1898, Utah “became the first state to deem women qualified for jury duty.” *Id.* Generally speaking, jury service “fell under state rather than federal jurisdiction, resulting in different treatment in different states.” Holly J. McCammon, *Shoeborning American Women onto American Juries*, in *THE U.S. WOMEN'S JURY MOVEMENTS AND STRATEGIC ADAPTATION: A MORE JUST VERDICT* (2012).

By 1927, only nineteen states allowed women to serve on a jury, the “rationale” stemming from a variety of reasons –

[women's] primary obligation was to their families and children; they should be shielded from hearing the details of criminal cases, particularly those involving sex offenses; they would be too sympathetic to persons accused of crimes; and keeping male and female jurors together during long trials could be injurious to women.

McDonald, *A Jury of One's Peers*. Even as late as 1961, the

United States Supreme Court upheld a Florida law automatically exempting women from jury service. *Id.* The disparate treatment “went unreviewed until 1975, when the U.S. Supreme Court held in *Taylor v. Louisiana* that a jury pool consisting only of men deprived the accused of a fair trial by a jury drawn from a representative cross-section of the community.” McCammon, *Shoeborning American Women onto American Juries*.

First Female Bar Presidents

In 1991, Roberta Cooper Ramos applied to be president of the American Bar Association and “the 61-member nominating committee took an unprecedented 88 ballots before a three-way deadlock was resolved in favor of another candidate.” Michael Haederle, *But Can She Stop the Lawyer Jokes?: Law: Roberta Cooper Ramos, the first woman to lead the ABA, is tired of the anti-attorney backlash and wants to reform her profession's image*, L.A. TIMES (May 2, 1994), http://articles.latimes.com/1994-05-02/news/ls-52976_1_roberta-cooper-ramo/2. However, in 1994 “Ramos was unstoppable” becoming the first female president of the American Bar Association. *Id.*

Meanwhile, in 1990, Pamela Greenwood became the first female Utah State Bar president; four women have since served, including Charlotte Miller, Debra Moore, Lori Nelson, and Angelina Tsu.



Christine M. Durham is the first woman appointed to the Utah Supreme Court.

Judith A. Boulden becomes the first female United States Bankruptcy judge for the District of Utah.



Jan Graham is the first woman elected as the Attorney General of Utah.



Brooke C. Wells is the first woman appointed as a magistrate judge in the Federal District Court for the District of Utah.

After Diana Hagen's appointment, women hold the majority on the Utah Court of Appeals for the first time.

1982

1988

1993

2003

2017

1984

1990

1995

2014

Anne M. Stirba (1951–2001) is the first woman elected to serve as a Utah State Bar Commissioner.

Three years after she and Judith M. Billings were appointed as judges to the new Utah Court of Appeals, Pamela T. Greenwood becomes the first woman elected to serve as the Utah State Bar president.



Tena Campbell is the first woman appointed to the Federal District Court for the District of Utah.



Carolyn B. McHugh is the first woman from Utah appointed to the United States Court of Appeals for the Tenth Circuit.



Gender Equality Under the Law

In 1923, three years after the Nineteenth Amendment passed affirming women's right to vote, activist Alice Paul proposed the Equal Rights Amendment for the first time. The proposed Equal Rights Amendment stated, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

For nearly fifty years, women's rights advocates worked endlessly to persuade Congress to approve the proposed amendment. Finally, in 1972 the proposed amendment was passed by Congress and sent to the States for ratification. But by the end of the period for ratification, the Equal Rights Amendment was only ratified by thirty five states – three states short of the thirty eight required to put it in the Constitution. "The 15 states that never ratified the Equal Rights Amendment are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah and Virginia." *Famous Firsts in Women's History*, HIST., <http://www.history.com/topics/womens-history/famous-firsts-in-womens-history> (last visited Oct. 2, 2017). Consequently, while the federal government and all states have passed legislation protecting women's rights, these protections, aside from the right to vote, are not guaranteed by the Constitution.

In 1989, a female high school student challenged Virginia Military

Institute's (VMI) male-only admission policy and took her grievance to the United States Department of Justice. In 1996, her position was supported when the United States Supreme Court in *United States v. Virginia*, 518 U.S. 515 (1996), held that VMI's male-only admission policy violated the Equal Protection Clause of the United States Constitution. Writing for the majority opinion, Justice Ginsburg discussed how history has time and time again disproved stereotypes about women and how sex classifications "may not be used, as they once were...to create or perpetuate the legal, social, and economic inferiority of women." *Id.* at 533–34. In essence, the decision strikes down any law that "denies to women, simply because they are women, full citizenship stature – equal opportunity to aspire, achieve, participate in and contribute to society." *Id.* at 532.

The "Invasion" Year

1971 marks the turning point for Utah's women in the law. In 1971, while only one woman was admitted to the Utah Bar, a dozen women made up the incoming class at the S.J. Quinney College of Law. One woman lawyer refers to 1971 as the "invasion" year, the first critical mass of women law students. From 1971 on, the number of women law students continued to increase each year.

It is no wonder that talk of forming a women's organization in Utah began in the early 1970s. Justice Durham recalls moving to Utah in 1973 and attending the national meeting of women's law

student caucuses held at the S.J. Quinney College of Law. Justice Durham met a dozen or so female attorneys practicing in Utah, including Utah's first female judge, Reva Beck Bosone. "I was so excited because I came from North Carolina and Duke where there were so few women lawyers. Now I found out later, that was it! That was all the women lawyers in Utah."

From this meeting, a loose association formed and the group instigated bi-annual luncheons. "Each time we met, our numbers grew, as more women were graduating from law school. And every time we met, we debated whether if we organized we could provide more support to women, especially women coming out of law school."

In 1976, fifteen women graduated from the S.J. Quinney College of Law, including Jane Wise, who became one of the final first 100 women admitted to the Utah Bar. Wise reflects, "The first woman had been admitted in 187[2] before the Territorial Bar, and 10[4] intervening years passed before another ninety-nine women joined her in the ranks."

In 1977, Margaret Billings and Ann Wasserman wrote letters to the president of the Utah State Bar investigating the feasibility of forming a women's section within the young lawyers section of the bar. Billings and Wasserman also began contacting women lawyer groups in other states to see how the groups were organized. Billings reflects, "I was once active in trying to put such a group together, but interest at that time among other women attorneys was quite low and it never got off the ground."

The debate over whether or not to formally organize continued. One woman lawyer recalls, "There were some rocky times... and some real hot debates about singling ourselves out as women." Another recalls, "The older women, those who had been practicing for twenty years or so, were strongly opposed to such an organization. They explained, 'we've spent all our lives fighting to become lawyers rather than women lawyers and now you young people want to take us backwards.'"

On the other hand, recent graduates like Jan Graham missed the support and camaraderie of the student Women's Law Caucus. Graham reminisces, "I had a sense of being left alone to navigate this tricky male bastion by myself. Jones Waldo was progressive for the day, but still decidedly male dominated and wary of what women could, and should, contribute to the grand practice of law." Moreover, Graham was set on being a litigator. "The few women in the larger firms in Salt Lake were doing family law, estate planning, and just getting into real estate and banking law. For the most part, women were not litigators. That's what I wanted to do, and the waters looked decidedly uncharted."

Graham adds, "[T]he experience of young women was vastly different: the expectations and perceptions were planets apart. The social networking was particularly treacherous. Lunch, dinners, travel, drinks, and golf outing with clients: how were women going to move comfortably into this world?"

Pat Christensen agreed,

[W]e all recognized that it would be nice to have a group of women that we could get together and talk to about some of these issues and try to sort out how we were going to manage having careers and families and do it all and try not to lose our minds.

Finally, in the fall of 1980, Graham met with Justice Durham and Judge Eleanor Lewis and decided the time was ripe. On October 31, 1980, forty women lawyers met at the New Yorker restaurant in Salt Lake City and unanimously voted to form a women lawyers group in Utah. Several months later, in the spring of 1981, Women Lawyers of Utah, Inc. was born.

Through the Side Door, No More

"Women Lawyers of Utah exploded with support and enthusiasm. Our numbers grew faster than we ever could have anticipated," Graham remembers. The new by-laws stated four goals: (1) encourage professional growth and development, (2) assist in establishing professional contacts, (3) provide a support and communication network, and (4) generally promote the professional endeavors of women lawyers in Utah. Graham recounts, "There was always controversy about the mission. Are we a support group? A social group? A political group? A CLE vehicle? A career placement program? The answer to all the above was 'Yes.'"

In the 1980s, Women Lawyers of Utah was at the forefront of several political issues, including organizing a boycott of the Alta Club for its ban on women members. The Alta Club story is perhaps well known; yet it bears repeating here because it demonstrates the pervasive sexism Utah's women lawyers faced and Women Lawyers of Utah's swift, multi-pronged, and ultimately successful, riposte.

"Up to that point, the Alta Club had been 'the' spot for power lunches, board meetings, recruiting dinners and the like for most major businesses and law firms," reflects Graham. There was one problem for women included in these activities — the Alta Club did not admit women as members. And as non-members, all women had to enter the Alta Club through the side door, marked "Guest's Entrance."

Dear Colleagues,

This letter is being sent to all women attorneys of the Utah Bar. On October 31, 1980, a group of approximately 40 women attorneys gathered for a luncheon at the New Yorker in Salt Lake City. Judge Christine Durham of the Third District Court of the State of Utah and Judge Eleanor Lewis of the Fifth Circuit Court of the State of Utah spoke to the group about their enthusiasm for organization by Utah's women attorneys for the purpose of providing mutual support and the advancement of women generally in our profession.

As you may know, women attorneys in most other states have organized in some form, and these groups are accomplishing a great deal. In addition to supporting women candidates for the bench and State Bar positions, they provide professional support services ranging from litigation seminars to simple discussion groups. It is hoped that our organization can be whatever we need it to be, as our membership will surely be diverse. What we share is the common experience of being women in a profession where our small numbers (7% which includes the latest admittees) insure our noteworthiness for some time to come.

The invitation by Judge Durham and Judge Lewis to participate and support this organization was unanimously accepted. In addition, a group of fourteen attorneys volunteered to serve on an initial steering committee which will set policy, choose a name, select a form of governance, and make other decisions. An initial meeting is planned for this committee on December 5, 1980, at noon in the Board Room of the firm of Van Cott, Bagley on the 17th floor of the Crossroads Tower in Salt Lake City. If you wish to attend this meeting and have a voice in the formation of this organization, please call me on or before Friday, November 21, 1980. Sandwiches will be ordered for all those who attend (cost: approximately \$3.00).

Following this meeting, there will be an official solicitation for membership, including a broad survey to discern what issues are of major concern, and what we can do for each other in any form. Your response to this survey is essential to make possible a broad-based organization.

We want to extend a cordial invitation to you to join in this exciting endeavor.

Very truly yours,

Janet C. Graham
JONES, WALDO, HOLBROOK & McDONOUGH
800 Walker Bank Building
Salt Lake City, Utah 84111
Telephone: (801) 521-3200

JCG/km

Jane Conard, Women Lawyers of Utah's president at the time, organized a meeting with the Bar Commission. "There were three of us there, but they only wanted one of us at the table. I looked around and said where do you want me to sit? [One Bar Commissioner] looked at me and said, 'Why don't you come and sit here, dear.'" Conard presented her research and proposed resolution calling for a boycott of the Alta Club and was "met with total silence. Not a single question." Conard recalls, "[T]here was a motion to table the motion. And they never took action on it."

Women Lawyers of Utah also participated in coordinating a boycott of the Alta Club. Law firms such as Jones Waldo stopped holding

meetings there, and many law firms followed suit. At the same time, civil rights attorney Brian Barnard filed a lawsuit against the Alta Club, "because they had a state liquor license, that was the connection to state action," Conard explains.

Between the boycott and Barnard's lawsuit, the issue received publicity. Several news outlets contacted Conard. "They wanted a film clip of me in front of the Alta Club. I clarified that Women Lawyers of Utah was not involved in the law suit, while mentioning we did petition the bar." Eventually, the Alta Club speculated that without women members, the numbers would dwindle and the Alta Club would have to close its doors altogether – to men and women alike. So in 1987 the Alta Club voted – 153 to 55 – to allow female members. The first four women to join were Genevieve Atwood, Deedee Corradini, Annette Cummings, and Jan Graham.

Conard became a member of the Alta Club in 1995. In 2000, the Alta Club asked Conard to join its board. Conard's husband asked her whether the Alta Club knew of Conard's involvement

during the 1980s. "No," replied Conard, "and I think we'll keep it that way." Conard is happy to report that during her time on the board, the Alta Club was actively seeking female membership. And in 2008, the Alta Club elected its first woman president, attorney Ceri Jones.

A Voice for the Bar

In 1988, the relationship between the bar and Women Lawyers of Utah turned a corner. The Utah Legislature proposed legislation "that would have dramatically cut the funding for the judiciary branch. And the impact of that would have been to lose judgeships and to lose court personnel," recalls Christensen. At the time, Christensen was president of Women Lawyers of Utah and Kent Kasting was president of the Utah State Bar. Christensen reflects "historically the presidents that we had

RECEIVED *file*
CITY ATTORNEYS' OFFICE
DATE 11/29/85

WOMEN LAWYERS OF UTAH

P.O. BOX 932, SALT LAKE CITY, UTAH 84110

To the Membership of the Alta Club:

We are presently in the process of identifying various clubs and facilities in the Salt Lake area which are used by members of the Utah State Bar, as to any policies or practices which discriminate on the basis of sex, race or religion. We have been informed that the Alta Club follows certain written guidelines, one of which is that women are excluded from membership.

If in fact there is such a guideline, we are most interested in seeing it removed. Women lawyers are often involved in meetings, as well as lunches and dinners, held at your club. Due to the fine service you offer, and the pleasant surroundings, it is generally a pleasure to participate in such functions. With the existence of a discriminatory policy or practice, however, we are not comfortable in doing so. Many of us have spent much of our lives in efforts to eliminate discrimination, and cannot now patronize, or allow our professional organizations to patronize, clubs with discriminatory practices.

Many of your members have established reputations in the community for a sensitivity to fairness and justice. We hope all your members will, at this time, consider the excellent reasons for abandoning this discriminatory policy, and will vote to eliminate it. We would be happy to provide you with any information you might need about the movement of women into the "mainstream" of this community in the areas of law, medicine, business, and others. Many of these women would be members of the Alta Club, but for the discriminatory rule. We're sure most of you agree that the important factors which are considered about any person applying for membership at the Alta Club have nothing to do with gender, and everything to do with accomplishment and contribution.

We suspect that the rule barring women from membership is an old one that has been largely forgotten. Now is the time to remove it and allow women full participation in your fine organization.

Please notify us if we can be of any assistance. Thank you in advance for your attention to this important issue. We await your reply.

Very truly yours,

Jane Reister Conrad
for The Executive Committee
Women Lawyers of Utah

cc: Norman S. Johnson
Donald B. Holbrook

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Kasting approached Christensen and asked whether Women Lawyers of Utah would respond to the legislation. Christensen "wrote a letter to every member of the bar in Utah explaining the proposed legislation, how it would affect the judiciary, and asking every member to not only vote against it but to educate their friends and their family."

"Long story short, we were successful in beating back that legislation and the cuts did not happen. And really, it put Women Lawyers on the map in some ways, especially with the courts, but also with the bar, because we were able to go from being a voice for women to a voice for the Bar, to the broader community," reflects Christensen.

Gender and Justice Task Force

Between 1988 and 1994, Women Lawyers of Utah was active in implementing the recommendations from the Utah Task Force on Gender and Justice. The task force was established in November of 1986 by the Utah Judicial Council at the suggestion of Chief Justice Gordon R. Hall to inquire into the nature, extent, and consequences of gender bias as it might exist within the Utah State Court System. The task force was charged with examining both substantive and procedural aspects of the law and making concrete recommendations for reform where necessary

in order to ensure equal justice for all who use the courts.

dealt with had not been very sympathetic to women and when Women Lawyers had asked the bar to stop having meetings at the Alta Club, the presidents and the Bar Commission had pushed back against us." But Christensen and Kasting were friends and worked well together.

"In those days, there was a lot of pushback against the bar for anything they did that smacked of anything political or public policy beyond the practice of law," explains Christensen. In other words, the bar could not speak out against the legislation. So

In reality, funding for the task force was provided through the Women Judges Fund for Justice (the Fund), the philanthropic arm of National Association of Women Judges, at the suggestion of Justice Durham, who was president of the Fund at the time.

Chief Justice Hall appointed Justice Zimmerman and Aileen Clyde to chair the task force in its mission to understand issues of bias in Utah's legal system, including: courtroom bias against women; domestic violence laws and procedures; court access; child custody, visitation, and alimony. Findings included a description

of the problem discovered in each area and, most important, recommendations on how to address the issues to eliminate bias.

Christensen, fresh off her tenure as president of Women Lawyers of Utah, co-chaired the task force with Paula Smith to implement the many recommendations. “There were recommendations for the judges and court administrators, recommendations for the Bar, and law schools, recommendations for the legislature, prosecutors, police, the medical industry, and ecclesiastical leaders,” recalls Christensen.

If the initial study was a monumental undertaking, the implementation of the recommendations was of epic proportions. Under Christensen and Smith’s direction, an army of attorneys and judges, along with the bar, worked for years to implement the recommendations:

[W]e worked with the police department to educate about how to handle domestic violence situations and remove the abuser and make sure the abuser stayed away; we worked with the Statewide Association of Prosecutors; we worked with the Administrative Office of the Courts to educate the courts; we worked with the Women’s Law Caucus at the U to have the legislature pass spousal rape legislation; we worked with doctors to recognize domestic violence; we worked with the YWCA and victims of domestic violence; Women Lawyers of Utah worked to adopt the child support guidelines; Justice Durham created judicial training programs for all the courts.

Christensen concludes, “Over a period of five or six years a lot of these issues got a whole lot better because the Bar was involved, the legislature was involved, the judges were involved, the Administrative Office for the Court was involved, there were so many people that did so much.”

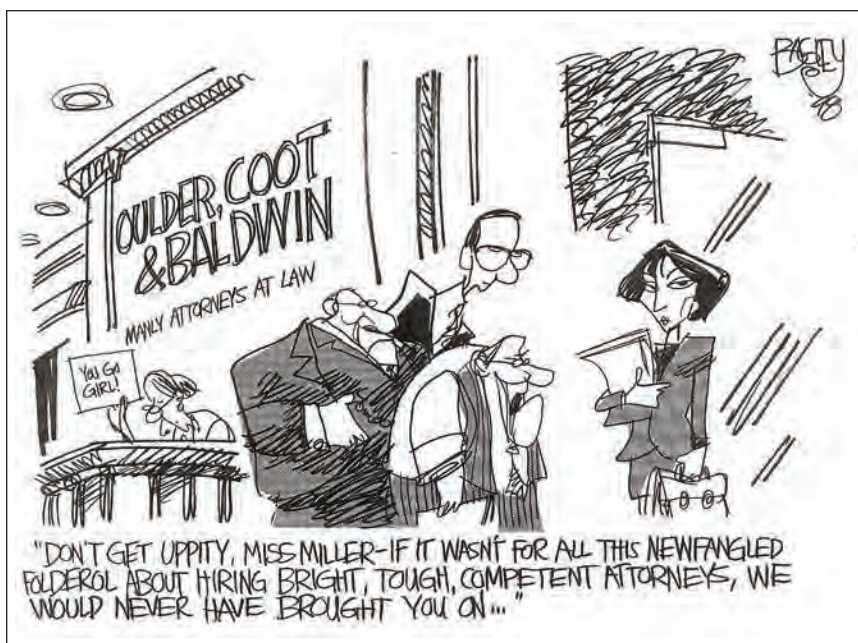
“Refreshing our Collective Memory”

In 1998, Charlotte Miller – as the Utah State Bar’s second female president – organized a large event to celebrate Utah’s first 100 women attorneys. With the impressive leadership efforts of Miller and a twenty-person committee led by Debra Moore, over 950 people attended the reception and dinner to honor Utah’s first 100 and celebrate women in the profession. The event’s eighty-eight-page program included biographical information on each of the first 100, photographs, and comments from many of the women about their careers, their experiences in the

legal profession, and their male and female mentors.

In his remarks, then Chief Justice of the Utah Supreme Court Michael D. Zimmerman, said he was struck by Lois Baar’s take on the evening:

Lois said, in effect, that this dinner should serve as an occasion to refresh our collective memory, to make sure that women lawyers don’t forget, and that the newest of you know, how hard the struggle for gender equity was, how recent your successes have been. And, perhaps more importantly, to realize that the struggle is far from over and will likely not end anytime soon.



Similarly, may this article refresh our collective memory of the struggles women faced, the momentous successes achieved, and the continued fight for equality. Today, women comprise approximately half of law school graduates and have for the past twenty years. However, statistics show that after law school, women’s representation in the legal markets dwindle – especially in positions of power. Nationally, 36% of attorneys are women. While roughly 50% of summer associates and 45% of associates are female, only 21% of partners are female. In Utah, women comprise a mere 24% of the active bar. And in Utah’s law firms, only 9% of attorneys are female.

Thank you to all the women who blazed the trail; to those who maintain the now well-trodden path; to those who brave new trails and unearth new ground; to those who normalize women in positions of power historically given to men by nature of sex alone. Your hard work and perseverance serve as everlasting sources of inspiration and allow us to more easily navigate the legal profession together.

Justice Christine M. Durham – A Passion for Public Good

by Keith A. Call

“Work hard, be professional and civil, take pride and joy in what you do.”

– Justice Christine Durham, Advice to Newly Admitted Female Members of the Utah State Bar

I do not know Justice Durham well. But her mark on my life as a lawyer in Utah is profound. To me, Justice Durham will always stand as a model of someone who uses her legal training for the betterment of the law and society. Among many other things, the Utah State Bar is far better off because of Justice Durham’s immense work in the areas of civility, training, and education.

In 2006, while Justice Durham was serving as Chief Justice, the Utah Supreme Court adopted the Utah Standards of Professionalism and Civility. Those standards have had a major impact on my own practice of law, and probably yours too. At the time of adoption, Justice Durham wrote:

Our profession has by tradition been a learned and respected one, but respect must be constantly earned and deserved. Public trust and confidence in the American system of justice depend in significant part on the integrity and high standards of professional behavior to which every lawyer (and judge) should aspire.

Christine M. Durham, *Promoting the Standards of Professionalism and Civility*, 19 UTAH B.J. 8, 8 (Nov/Dec. 2006).

These are words to live by. And by all accounts, Justice Durham has lived by them. In 2007, the National Center for State Courts gave Justice Durham its William H. Rehnquist Award for Judicial Excellence. This is one of the most prestigious judicial awards in the country and recognizes judges who display the highest level of fairness, integrity, and professional ethics. A year later, Utah Valley University’s Center for the Study of Ethics recognized

Justice Durham with its Excellence in Ethics Award.

Justice Durham has been a passionate advocate for judicial and civil education. In a 2008 op-ed piece published in the *Salt Lake Tribune*, Justice Durham wrote:

While our leaders have an obligation to address [many] challenges, the responsibility cannot lie with them alone. Our students are America’s future leaders, and – more importantly – America’s future citizens. What can we do to instill in them the habits of engaged and informed citizenship? One answer lies in civic education. . . . By teaching civics to every student, our future citizens will acquire the knowledge and dispositions that self-government demands.

Christine M. Durham, *Stronger Civics Education Would Aid American Citizens and Democracy*, SALT LAKE TRIB., Sep. 15, 2008, available at http://civicmission.s3.amazonaws.com/118/14/6/218/OpEd-Stronger_civics_education_would_aid_American_citizens_and_democracy.pdf.

Among many, many civil appointments, Justice Durham served on (and in some cases co-founded) the Rand Corporation’s Institute for Civil Justice, the Leadership Institute in Judicial Education, the Utah Coalition for Civic Character and Service Education, the Utah Commission for Civic Education, and the ABA’s Task Force on the Future of Legal Education.

KEITH A. CALL is a shareholder at Snow Christensen & Martineau, where his practice includes professional liability defense, IP and technology litigation, and general commercial litigation.



Justice Durham was also instrumental in spearheading the bar's New Lawyer Training Program (NLTP), which the bar adopted in 2009 while she was Chief Justice. The NLTP was formed after Justice Durham suggested the bar look at ways to address the difficulties new lawyers face and the perception that civility was eroding. See Marie Mischel, *Mentoring Helps Transition from Law School to Practice*, UTAH BUSINESS (Nov. 1, 2009).

She magnificently guided all Utah courts through one of the greatest challenges in many decades – the great recession of 2008–09. During the 2009 legislative session, Utah courts were facing a 20% budget cut, while experiencing a 15% increase in filings. Due in large measure to Justice Durham's efforts, the judicial branch suffered "only" a 5.5% budget cut. A passionate advocate for access to justice, Justice Durham was determined to find ways to deliver better judicial services using less money. She oversaw many significant changes, including digital recordings of hearings, reorganization of court clerk operations, shifting judicial resources, and electronic case filings. The Utah court system became a model for the nation. See generally Christine M. Durham, *Reaping Benefits and Paying the Price for Good Business Decisions: Utah's Reengineering Experience, Future Trends in State*

Courts, National Center for State Courts, 42 (2010).

In her judicial decisions, Justice Durham often faced offensive, inflammatory, and emotionally-charged facts and circumstances. Even in these difficult cases, her written opinions are characterized by analytical thinking, adherence to the rule of law, and complete respect. In one particularly difficult disciplinary case, she wrote, "In order for the disciplinary rules to achieve their goal of uniform application, district courts must strictly adhere to the analytical framework set forth in the rules." *In re Discipline of Tanner*, 960 P.2d 399, 403 (Utah 1998).

A 1,000-word column on ethics and civility could never begin to capture this Giant's contributions to the body, life, and soul of the law. Justice Durham's impact is not just limited to the Utah State Bar or the State of Utah. Her impact on the national legal community, and the nation and world at large, cannot be overlooked. Nationally, she is among the most prominent and well-respected judges of our time. But Justice Durham's most profound impact is on the lives of the hundreds of *individuals* who are better lawyers and better people because of her work and example. Like me.



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Snow Christensen & Martineau is pleased to announce that **Kylie Cox Orme, Rachel E. Phillips, and Andrew L. Roth** have joined our firm of skilled attorneys.



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The Uniform Law Commission: What You Know Can Help Us

by Justice Michael J. Wilkins (ret.)

As the government relations representatives (a.k.a. lobbyists) for the Utah State Bar, we are continually searching for improved and new ways that members can participate in the legislative process. Your knowledge and expertise is an important element in deliberations.

Therefore, we were grateful and excited that legislative members of the Uniform Law Commission reached out to us to promote greater dialogue from the legal community. With us, Sen. Lyle Hillyard, Rep. Lowry Snow, and Eric Weeks (Deputy General Counsel of the Office of Legislative Research and General Counsel) reviewed a number of options to achieve this goal. Among these was to republish, with updates, an article regarding the Uniform Law Commission submitted by former Utah Supreme Court Justice Michael Wilkins in December 2013.

Please take advantage of the great information Justice Wilkins details. If you have any questions regarding the legislative process, please let us know.

— Doug Foxley, Frank Pignanelli, and Steve Foxley.

INTRODUCTION

The Uniform Law Commission (ULC) was formed in 1892 to promote voluntary uniformity of laws of the states in situations where uniformity is both possible and also helpful to the citizens of the states. The ULC is composed of delegations from each of the states (including the District of Columbia, as well as Puerto Rico and the U.S. Virgin Islands). Delegations are selected and financed by their individual states. Delegates must be members of the bar and are commonly drawn from state legislatures (legislators and legislative staff lawyers), law school faculties, the practicing bar, and the judiciary. Extended service with a state delegation is common, although terms are set by individual states. *See generally* Uniform Law Commission, *About Us*, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Oct. 3, 2017).

Perhaps the best known and most widely-accepted product of the ULC is the Uniform Commercial Code, a fixture in the law school

curriculum for more than sixty years. The ULC is also the author of such common guideposts of practice as the Uniform Probate Code, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Anatomical Gift Act, the Uniform Declaratory Judgments Act, the Uniform Enforcement of Foreign Judgments Act, the Uniform Electronic Transactions Act, the Uniform Fraudulent Transfer Act, the Uniform Interstate Family Support Act, the various Uniform business entity acts (partnership, limited partnership, LLC, etc.), and many more.

The work of the ULC is ongoing. Efforts to study, draft, revise, and get the states to adopt the ULC's "products" are as active today as ever in its history. The purpose of this article is to alert members of the bar to the opportunity to help shape this powerful body of law, now and in the future.

WHAT THE ULC DOES

The ULC is composed of approximately 385 Commissioners from the fifty-three member jurisdictions. The entire body meets annually, usually in mid-July, for seven or eight days. This annual conference is the primary working meeting. During the annual conference, all 385 commissioners jointly review proposed uniform acts, consider them word by word, and approve or reject them as products of the ULC. For purposes of approval or rejection, each state has a single vote, with a majority vote needed for a proposed act to be advanced to the legislative bodies of the states for consideration.

To be considered at the annual conference, proposed acts generally follow the same path: proposal, study, drafting, style, reading for comment, and final reading. Let me describe each

JUSTICE MICHAEL J. WILKINS retired from the Utah Supreme Court in 2010. He continues to serve as chair of the Utah Uniform Law Commission, our state's delegation to the national conference of commissioners on uniform state laws, the Uniform Law Commission.



of these steps briefly to highlight opportunities for your direct influence. The real significance of early influence is that it precedes action of any kind by the Utah Legislature.

Proposal

Anyone who perceives a need for uniformity among the states in a particular area of law may submit a proposal to the Scope and Program Committee of the ULC. Although most proposals come through commissioners, submissions from others are welcomed.

Proposals are considered on their merits, with primary focus on areas of law that lend themselves to uniformity among the states and that realistically may be expected to be well received by the majority of states.

Study

If the Scope and Program Committee is convinced that a proposal represents a topic worthy of the expense and effort to study, a committee is appointed to undertake a careful examination of the subject. In addition, a reporter is appointed from among those legal scholars who are experts in the subject area. The work of study committees is usually completed within two years, most often by telephone conferences and electronic exchanges.

The task of the study committee is to develop an understanding of the issues and interests underpinning the proposed subject of uniform law sufficient to recommend for or against further action by the ULC. In reaching this conclusion, the study committee will reach out to those who represent stakeholders, such as ABA committees, industry and government groups, and other interested parties.

One of the most important tasks of a study committee is to build a list of parties who may be invited to act as “observers” in the study and drafting process. Observers are most often offered a seat at the table, as well as full participation in the work of the committees. Consequently, they are placed in positions of significant influence over the contents of the committee report.

Drafting

If a study committee reports to the ULC leadership that a proposed topic warrants further efforts, a drafting committee may be appointed. The drafting committee is given a specific charge within which to work, usually as a reflection of the recommendation of the study committee. The committee is composed of commissioners, one or more expert reporters, and observers.

During the first year a drafting committee prepares a preliminary draft of a uniform act addressing the subject. The draft is

presented at the annual conference of the ULC and read line by line. The drafting committee reads the proposed act aloud, and commissioners who are in attendance at the annual meeting offer comments on the proposal.

Following the “first reading,” the drafting committee spends the second year refining the draft, incorporating comments from commissioners and written comments from other interested parties. The goal is to have ready a final draft for the next annual conference.

Style

The ULC Committee on Style reviews all proposed acts for clarity and consistency with other acts.

Final Reading

After the second year of work by a drafting committee, as well as the final review by the Committee on Style, the drafting committee again appears before the full conference of commissioners at the annual meeting to read, line by line, the final draft. Commissioners review, debate, and often amend the final draft.

At the conclusion of the annual conference, each proposed act that has been presented for final reading is voted on by the states (the commissioners from each state decide whether or not their state will vote to approve each uniform act, as there is only one



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IDEAS INTO ACTION

vote per state). If an act receives a majority vote, it becomes an official product of the ULC, and each state delegation is expected to seek its introduction and enactment in their home state.

YOUR OPPORTUNITY

When a new proposed Uniform Act is presented to the state legislature, the views of the bar and others affected are always solicited and welcomed. Unfortunately, by the time a new act reaches the legislature, much of the policy debate has concluded. Significant changes are harder to make. On the other hand, as with so many policy formation processes, early input has much greater influence.

Individuals, bar sections, institutions, and other interested parties are encouraged to make their views known on subjects under consideration by the ULC at all stages of the process.

Comments can be made by communicating directly with committee chairs or members. Proposals for consideration of new topics are also welcomed and may be submitted directly to the ULC Scope and Program Committee.

To give you a sense of what is currently in the works, the following areas of law are being studied or drafted

by various ULC committees (updated in 2017): Adult Guardianship Jurisdiction; UCC Article 1; UCC Article 4A 2012 Amendments; UCC Article 7; UCC Article 9 2010 Amendments; Fiduciary Access to Digital Assets; Interstate Depositions & Discovery; Partnership, Revised; Real Property Electronic Recording; Trust Code.

HOW TO ACCESS THE ULC

The ULC website, www.uniformlaws.org, lists acts being considered or drafted, the names and contact information for the various committees, and the process for submitting a proposal to the Scope and Program Committee to consider a new issue. A periodic review of the website offers an accurate view of what is being studied, drafted, and promoted. The contact information for reporters is included in the committee listings, and reporters are especially receptive to thoughtful ideas and suggestions regarding drafts being considered.

In addition, Utah has seven commissioners, any one of whom will be happy to discuss activities of the ULC:

- Senator Lyle W Hillyard, Logan
lyle@hao-law.com, 435-752-2610
- Representative V. Lowry Snow, St. George
vlsnow@snowjensen.com, 435-628-3688
- Eric Weeks, Office of Legislative Research & General Counsel
eweeks@le.utah.gov, 801-538-1032
- Lorie D. Fowlke, Provo
lorie@scribnerfowlke.com, 801-375-5600
- M. Gay Taylor-Jones, North Salt Lake
mgtjones6@gmail.com, 801-296-1552
- Reed L. Martineau, Salt Lake City
rmartineau@scmlaw.com, rlm@scmlaw.com, 801-521-9000
- Michael J. Wilkins, Washington
justicemichaelwilkins@gmail.com, 801-580-4249

CONCLUSION

Since before Utah's statehood, the Uniform Law Commission has been crafting and promoting statutes for submission to the states to promote uniformity among the states. The expertise and insight of members of the Utah State Bar are valuable resources in that effort. We welcome your participation. The more the merrier. The sooner the better.



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Parsons Behle & Latimer is pleased to announce that Nicole Salazar-Hall and Tsutomu L. Johnson have joined the firm as of counsel in the Salt Lake City office.



NICOLE SALAZAR-HALL

Nicole Salazar-Hall practices civil litigation with a focus on domestic law, representing individuals in domestic cases, juvenile court child welfare cases, and actions challenging DCFS agency findings. She assists clients with divorce, custody, high net worth asset division, parentage, adoption, child welfare, minor child guardianship matters, and DCFS agency actions. She has worked with hundreds of clients in juvenile court throughout the State of Utah both prosecuting and defending abuse/neglect petitions. Nicole has also appeared before multiple legislative committees regarding child welfare and domestic legislation.



TSUTOMU L. JOHNSON

Tomu Johnson practices data privacy and cybersecurity law. His practice extends to state, national, and international matters. He has handled data breach litigation, negotiated privacy and security matters in complex commercial contracts, and guided more than a hundred incident response teams.

He has also helped clients create policies, procedures and controls that comply with privacy and security laws in the United States, Canada, the United Kingdom, the European Economic Area, Australia, Singapore, the Philippines, India, Turkey, Russia, and China.

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Appellate Highlights

by Rodney R. Parker, Dani N. Cepernich, Scott A. Elder, Nathanael J. Mitchell, and Adam M. Pace

Editor's Note: The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals.

UTAH SUPREME COURT

E.T. v. R.K.B. (In re Adoption of B.B.) **2017 UT 59 (August 31, 2017)**

In an interpretation of the Indian Child Welfare Act (ICWA), the court rejected the application of state law for acknowledging or establishing paternity and held that a federal standard applies. Specifically, the court held that **a standard of reasonability applies to the time and manner in which an unwed father may acknowledge or establish his paternity, as ICWA is silent as to both of these requirements, and a reasonable standard is consistent with ICWA's liberal administration.**

Boyle v. Clyde Snow & Sessions P.C. **2017 UT 57 (August 29, 2017)**

On a petition for certiorari to the Utah Court of Appeals in a case previously mentioned in these appellate highlights, the Utah Supreme Court reversed the court of appeals' decision that it lacked jurisdiction to divide fees between a lawyer and his former law firm because the law firm had failed to properly intervene in the case. The supreme court assumed the law firm had failed to properly intervene but held **the lawyer had waived any objection to the propriety of the intervention by "essentially acquiescing in the litigation over the merits of the firm's fee claim and by actively advancing his own competing claim to an award of fees."** *Id.* ¶ 13 (emphasis added).

Penunuri v. Sundance Partners, Ltd. **2017 UT 54 (August 25, 2017)**

Plaintiff petitioned for a writ of certiorari to resolve whether a court may grant summary judgment on a gross negligence claim in the absence of a standard fixed by law. The Utah Supreme Court affirmed the decision of the court of appeals, holding that **summary judgment dismissing a gross negligence claim**

is appropriate where reasonable minds could only conclude that the defendant was not grossly negligent under the circumstances, regardless of whether the standard is fixed by law.

State v. Garcia, 2017 UT 53 (August 23, 2017)

In this appeal of a criminal conviction, the supreme court held that trial counsel's assent to an erroneous jury instruction prejudiced the defendant but **prejudice cannot be presumed in the case of an erroneous jury instruction.** The court explained that "a proper analysis also needs to focus on the evidence before the jury and whether the jury could reasonably have found that [the defendant] acted in imperfect self-defense such that a failure to instruct the jury properly undermines confidence in the verdict." *Id.* ¶ 41. The court also rejected the defendant's argument that the phrase "an unlawful user of a controlled substance" – the basis of the charge of possession of a firearm by a restricted person – was unconstitutionally vague with respect to him. *See id.* ¶¶ 54, 57–60. In doing so, it **adopted an interpretation that has been accepted by many federal courts in connection with the similar federal statute: that there must be a "temporal nexus between the gun possession and regular drug use."**

Marziale v. Spanish Fork City **2017 UT 51 (August 22, 2017)**

This appeal centered on whether a payment error affected the timeliness of a personal injury claim against a municipality. The supreme court reiterated that **failure to file a timely undertaking did not present a jurisdictional issue and held that dishonor of payment did not affect the timeliness of the undertaking under the Governmental Immunity Act.**

State v. Francis, 2017 UT 49 (August 15, 2017)

The defendant and the State had entered a plea agreement the weekend before trial was set to begin. Before presenting that

Case summaries for Appellate Highlights are authored by members of the Appellate Practice Group of Snow Christensen & Martineau.

agreement to the district court, the State withdrew it on the basis the alleged victim objected to the agreement. Relying on contract law principles, the court held that “[t]he State may withdraw from a plea bargain agreement at any time prior to, but not after, the actual entry of defendant’s guilty plea or other action by defendant constituting detrimental reliance on the agreement.” *Id.* ¶ 23 (emphasis added). Because there was not sufficient evidence of detrimental reliance in this case, the State could properly withdraw the agreement.

Christensen v. Juab School District
2017 UT 47 (August 11, 2017)

This case involved a claim arising under the Reimbursement Act, which allows public employees to recover fees and costs for criminal charges arising out of or in connection with acts under color of the employee’s authority. The supreme court held a **teacher was entitled to reimbursement of fees and costs incurred in successfully defending charges of aggravated sexual abuse because the criminal information alleged that the former employee committed the acts while acting in a position of special trust as a teacher.**

In re K.T., 2017 UT 44 (August 8, 2017)

The supreme court held that the **juvenile court erred by adopting a per se rule that striking a child with an object (in this case, a belt), without any additional evidence of harm, constituted abuse.**

Garfield County v. United States
2017 UT 41 (July 26, 2017)

The court answered a certified question from the federal district court regarding whether Utah Code section 78B-2-201(1) and its predecessors are statutes of limitations or statutes of repose. The court held that these statutes are statutes of repose by their plain language, but it **construed them as statutes of limitations with respect to the State’s right of way claims under Revised Statute 2477 because to do otherwise would lead to the absurd result of the State automatically losing title to its rights of way without any opportunity to prevent the loss.**

Oliver v. Utah Labor Commission
2017 UT 39 (July 25, 2017)

This case involved a dispute over the interpretation of Utah’s permanent disability statute, Utah Code Section 34A-2-413. The



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ATTORNEYS AT LAW

We welcome two new attorneys to handle your **Appeals and Professional Licensing**:



Deborah Bulkeley is an experienced appellate attorney who served a judicial clerkship for the Hon. Carolyn B. McHugh at the Utah Court of Appeals and worked for the Criminal Appeals Division of the Utah Attorney General’s Office. Deborah can handle your appeals or act as a consultant to help guide you through the process.



Blithe Cravens is licensed in California, Kansas, and Utah. She brings nearly two decades of jury trial and litigation experience as a former prosecutor for the Los Angeles DA’s Office and Senior Trial Counsel for the State Bar of California. Her practice focuses on felonies, attorney discipline proceedings & DOPL professional licensing issues.

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statute requires an employee to satisfy six elements to be considered permanently disabled. One of the elements is that the injury “limit the employee’s ability to do basic work activities.” *Id.* ¶ 15. The court of appeals interpreted this to mean any limitation, no matter how slight. *See id.* ¶ 22. The supreme court overturned, holding that **the element is satisfied only when “the impairment meaningfully inhibits the employee from exercising a common core of capabilities.”** *Id.* ¶ 28 (emphasis added).

UTAH COURT OF APPEALS

In re P.F., 2017 UT App 159 (August 24, 2017)

In this appeal from the juvenile court’s order terminating parental rights of the child, the mother argued, among other things, that the child should have been placed with family or a member of her tribe as prescribed in the Indian Child Welfare Act (ICWA). The court of appeals **affirmed the termination order, holding that bonding with a foster family can qualify as “good cause” where, as here, the initial placement did not violate ICWA.**

State v. Holm, 2017 UT App 148 (August 10, 2017)

Holm was convicted of negligent homicide resulting from a traffic accident. During voir dire, Holm was not allowed to ask follow-up questions of individuals who had indicated they or someone close to them had been involved in a serious car accident. The court of appeals reversed the conviction, holding that **as proposed voir dire questions draw closer to probing potential bias, the court’s discretion in deciding whether to allow the questioning narrows and when requested questions go directly to the existence of actual bias, the court’s discretion disappears.**

White v. White, 2017 UT App 140 (August 3, 2017)

Prior to their divorce, the parties placed ownership of a rental property into a single member LLC. The divorce decree awarded the LLC and right to the property to husband, and he began residing in the property. Thereafter, the court entered various judgments against husband. Wife filed a motion seeking a charging order against husband’s interest in the LLC. Husband argued that the property was subject to a homestead exemption. The court of appeals held that **under the plain meaning of the statutory homestead exemption, the exemption could only be claimed by a human being and could not be claimed by the LLC.** *See id.* ¶ 24 (emphasis added).

Rule v. Rule, 2017 UT App 137 (August 3, 2017)

The court of appeals held that the district court **abused its discretion by making its alimony determination by assessing**

the wife’s needs and calculating her actual expenses at the time of trial, rather than the standard of living established during the marriage. The district court’s conclusion that the parties’ combined resources were insufficient to sustain the marital standard was not a sufficient justification to bypass the traditional needs analysis which requires consideration of the marital standard.

State v. Reyos, 2017 UT App 132 (July 28, 2017)

An acquaintance of Reyos told police that Reyos admitted to killing the victim, but at trial the acquaintance testified that he had no recollection of making this statement. The trial court admitted a recording of the acquaintance’s statement into evidence, and the jury ultimately convicted Reyos of aggravated murder. **Reyos argued on appeal that the admission of the recorded statement violated his Sixth Amendment right of confrontation because the acquaintance was unavailable for examination due to his amnesia. The court rejected this argument, concluding that unavailability under the confrontation clause is narrow and literal.** “A witness is unavailable if he does not testify but is available if he does.” *Id.* ¶ 19. The court concluded that the witness was available for confrontation clause purposes and therefore the trial court properly admitted the out-of-court statements. The court also rejected Reyos’s constitutional challenges to Utah’s aggravated murder sentencing scheme and accordingly affirmed his conviction.

State v. Magness, 2017 UT App 130 (July 28, 2017)

Magness asked to withdraw his guilty plea, arguing that it was not knowingly and voluntarily made due to misleading statements made by the prosecution that had undermined the voluntariness of the plea. The court of appeals agreed, holding that **the district court too narrowly focused on Rule 11 requirements and should have considered the totality of the circumstances, including Magness’s reasonable reliance on the prosecutor’s misleading statements.**

Silva v. Silva, 2017 UT App 125 (July 28, 2017)

After husband obtained a judgment against his ex-wife in their divorce proceeding due to her failure to convey real property the divorce court had awarded to him, husband brought this suit against his wife and her daughters alleging fraudulent conveyance and seeking to quiet title. Upon motion by husband, the court ordered alternative service by publication. When wife did not appear, the district court entered default judgment and a writ of execution on three of the wife’s properties, including the property at issue. Wife appeared through counsel later that month and moved to set aside the default under Rule 60(b).

The district court denied this motion. The three properties were then sold at a sheriff's sale. The court of appeals held that **wife did not receive the notice required by due process because husband had not acted diligently and taken all reasonably practical steps to give wife actual notice.** The district court therefore lacked jurisdiction over wife and the judgment, as well as the sheriff's sale and deed based on that judgment, was void.

***Christensen v. Christensen*
2017 UT App 120 (July 20, 2017)**

The court of appeals reversed the district court's decision not to terminate alimony, which was based on the district court's conclusion that wife was not "cohabitating" with her boyfriend, with whom she lived. **The district court erred in considering whether wife and her boyfriend held themselves out as husband and wife or had a reputation for being married because those were legally irrelevant considerations** for purposes of determining whether alimony must be terminated.

***Sauer v. Sauer*, 2017 UT App 114 (July 13, 2017)**

In this divorce case, the wife had estimated her housing needs for the purpose of alimony. The trial court rejected her estimate based on its concern that she may not be able to continue living with a friend and, as a result, her figures were neither credible nor relevant. Relying on *Dahl v. Dahl*, 2015 UT 79, the trial court imputed needs based upon the amount claimed by the husband. On appeal, the husband argued the court should have been bound by the wife's estimate. The court of appeals held the **trial court did not abuse its discretion by imputing a housing amount equal to that claimed by husband for the purposes of determining alimony, where there was no credible and relevant evidence of wife's need.**

TENTH CIRCUIT

***T.D. v. Patton*, 868 F.3d 1209 (10th Cir. August 28, 2017)**

The defendant—social worker appealed from the district court's denial of her motion for summary judgment on the basis of qualified immunity in this case involving a substantive due process claim under 42 U.S.C. § 1983. The plaintiff asserted that claim under the "state-created danger" theory, on the basis the social worker had temporarily placed him with his biological father — a registered sex offender — as a dependent or neglected child while in his mother's custody. Father allegedly sexually and physically assaulted plaintiff while he was in father's temporary custody. **After providing a useful discussion of the state-created danger theory, the Tenth Circuit held the**

social worker's conduct violated clearly established law, such that she was not entitled to qualified immunity.

***United States v. Haymond*
869 F.3d 1153 (10th Cir. August 31, 2017)**

The district court revoked the Haymond's supervised release in part because it found by a preponderance of the evidence that Haymond had knowingly been in possession of child pornography. Under 18 U.S.C. § 3583, revocation of parole for possession of child pornography triggers a mandatory minimum sentence of five years' reincarceration. The Tenth Circuit overturned the sentence, **holding that § 3583 violates the Sixth Amendment because it punishes Haymond with reincarceration for conduct of which he has not been found guilty by a jury beyond a reasonable doubt.**

***United States v. Thompson*
866 F.3d 1149 (10th Cir. August 8, 2017)**

As a matter of first impression, the Tenth Circuit held **obtaining historical cell-service location information under the Stored Communications Act did not require a warrant** because cell-phone users do not have a reasonable expectation of privacy in location data voluntarily conveyed to cell-service providers.

***City of Albuquerque v. Soto Enterprises, Inc.*
864 F.3d 1089 (10th Cir. July 25, 2017)**

This was an appeal from a district court's decision to remand a case after concluding that the defendant had waived its rights to remove. The Tenth Circuit affirmed, holding that **by filing a motion to dismiss in state court, even only an hour and twenty minutes prior to filing a notice of removal, the defendant had waived its rights to remove.**

***Punt v. Kelly Services*
862 F.3d 1040 (10th Cir. July 6, 2017)**

The plaintiff—employee appealed the district court's grant of summary judgment in favor of the defendants on her failure-to-accommodate claim under the Americans with Disabilities Act (ADA) and her genetic information discrimination claim under the Genetic Information Nondiscrimination Act. In evaluating the employee's ADA claim, the Tenth Circuit held that **a failure-to-accommodate claim does not require any evidence of discriminatory intent and, thus, is not properly characterized as a circumstantial evidence claim subject to the *McDonnell Douglas* burden-shifting framework or a direct evidence claim.**

Securing Client Communications

by The Innovation in Practice Committee

In May of this year, the ABA released ethics opinion 477 on the use of encryption for attorney-client communications. This is an update of various formal opinions starting with 99-413, which dealt with the confidentiality of email. The new opinion noted that an attorney is not compelled to use encryption with email: *“A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access.”* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 477, 1 (May 11, 2017), available at https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf. The opinion also stated that the scale for reasonable efforts have changed over the past twenty years and that new standards should be considered:

A fact-based analysis means that particularly strong protective measures, like encryption, are warranted in some circumstances. Model Rule 1.4 may require a lawyer to discuss security safeguards with clients. Under certain circumstances, the lawyer may need to obtain informed consent from the client regarding whether to the use enhanced security measures . . .

Id. at 5.

In a nutshell, the opinion indicates that encryption tools have reached a point where attorneys should have some understanding about encryption, that it should be available for use, and that attorneys be able to determine when and how encryption should be used. This “case by case” evaluation can be a serious challenge. *Id.* Therefore, lawyers may consider implementing a secure communication process that is used for all client related matters.

Securing SMS/Text Messages

Text messaging has grown in popularity as a tool for brief client communication. Unfortunately, the news is full of stories of texting gone horribly wrong. There are a variety of applications that can be installed on iOS and Android devices to encrypt messages. An example is Signal (<https://signal.org/>), an open source application endorsed by the Electronic Freedom Foundation. It allows for end-to-end encryption for text, video, voice, and file transfers. The service’s security is peer reviewed to ensure an elevated level of trust. The service is keyed off existing cell phone numbers and, other than the app itself, does not require any additional tools to be installed. A for-profit solution that is more geared to larger organization is SilentCircle (<https://www.silentcircle.com>). It too provides secure voice, texting, and file transfer services. It also has a management application that allows for an organization to manage all the mobile clients.

Securing Email

The migration to web-based email systems creates a challenge in the encryption of email. Most providers offer basic HTTPS level of encryption of the service but that can still leave emails unencrypted on the server. The goal for a cloud-based email systems is to provide verifiable encryption without creating a software burden. There are secure email services that can be used to provide a more secure service and ensure that clients can access your email without needing to install special software on their side:

- **MimeCast Secure Messaging service** (<https://www.mimecast.com>) – which can be tied into a variety of email platforms.
- **Virtru** (<https://www.virtu.com>) – A cloud-based solution that focuses on securing Gmail and Microsoft Office 365 accounts.

- **KolabNow** (<https://kolabnow.com/>) – A Swiss based company with all servers being contained in Switzerland, KolabNow is a complete solution, providing functionality much like Outlook.

Securing Files / Client Portals

An alternative to sending files via email, even in a secure environment, is the creation of a cloud-based secure portal. These services provide the security, encryption, and accountability to meet the requirements of federal laws such as HIPPA or Sarbanes-Oxley in a familiar web interface. They also allow for the storage and transfer of large files that may not make it through the size limitation set by email providers. Clients appreciate these types of services as they know that the files are in a secure repository that is accessible on demand.

- **Sharefile Legal** (<https://www.sharefile.com/industries/legal>) – Citrix Sharefile provides a complete solution that scales well from the solo practitioner to the larger firm. It can be plugged in to Outlook or document management systems like iManage.

- **Clio Connect** (<https://goclio.com>) – A practice management solution, Clio also provides a tool to quickly spin up a client portal. Connect provides the secure document storage but also allows for more collaborative tools. Clio Connect is available to all Clio customers at no extra charge.

- **MyCase Client Portal** (<https://www.mycase.com>) – Another great practice management tool, MyCase also adds in a client communication portal along the lines of Clio.

Conclusion

We have touched on only a few providers to provide a starting point. Consider setting some time aside with staff to review these tools and evaluate how they may strengthen the relationship you have with your clients. Your client's growing awareness of security and privacy may be that final argument for the use of these services. Having a discussion with your client on securing communications will show that you are willing to meet those concerns and to underline the unique relationship and services that only an attorney can provide.

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Notice of Bar Election: President-elect

Nominations to the office of Bar President-elect are hereby solicited. Applicants for the office of President-elect must submit their notice of candidacy to the Board of Bar Commissioners by January 2, 2018. Applicants are given time at the January Board meeting to present their views. Secret balloting for nomination by the Board to run for the office of President-elect will then commence. Any candidate receiving the Commissioners' majority votes shall be nominated to run for the office of President-elect. Balloting shall continue until two nominees are selected.

NOTICE: Balloting will be done electronically. Ballots will be e-mailed on or about April 2, 2018 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. April 16, 2018.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1. space for up to a 200-word campaign message* plus a color photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for the March/April Bar Journal publications are due along with two photographs no later than February 1st;

2. space for up to a 500-word campaign message* plus a photograph on the Utah Bar Website due February 1st;
3. a set of mailing labels for candidates who wish to send a personalized letter to Utah lawyers who are eligible to vote;
4. a one-time email campaign message* to be sent by the Bar. Campaign message will be sent by the Bar within three business days of receipt from the candidate; and
5. candidates will be given speaking time at the Spring Convention; (1) 5 minutes to address the Southern Utah Bar Association luncheon attendees and, (2) 5 minutes to address Spring Convention attendees at Saturday's General Session.

If you have any questions concerning this procedure, please contact John C. Baldwin at (801) 531-9077 or at director@utahbar.org.

*Candidates for the office of Bar President-elect may not list the names of any current voting or ex-officio members of the Commission as supporting their candidacy in any written or electronic campaign materials, including, but not limited to, any campaign materials inserted with the actual ballot; on the website; in any e-mail sent for the purposes of campaigning by the candidate or by the Bar; or in any mailings sent out by the candidate or by the Bar. Commissioners are otherwise not restricted in their rights to express opinions about President-elect candidates. This policy shall be published in the *Utah Bar Journal* and any E-bulletins announcing the election and may be referenced by the candidates.

Notice of Bar Commission Election: Third, Fourth, and Fifth Divisions

Nominations to the office of Bar Commissioner are hereby solicited for two members from the Third Division; one member from the Fourth Division; and, one member from the Fifth Division – each to serve a three-year term. Terms will begin in July 2018. To be eligible for the office of Commissioner from a division, the nominee's business mailing address must be in that division as shown by the records of the Bar. Applicants must be nominated by a written petition of ten or more members of the Bar in good standing whose business mailing addresses are in the division from which the election is to be held. Nominating petitions are available at <http://www.utahbar.org/bar-operations/leadership/>. Completed petitions must be submitted to John Baldwin, Executive Director, no later than February 1, 2018 by 5:00 p.m.

NOTICE: Balloting will be done electronically. Ballots will be e-mailed on or about April 2nd with balloting to be completed and ballots received by the Bar office by 5:00 p.m. April 16th.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1. space for up to a 200-word campaign message plus a color photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for the March/April Bar Journal publications are due along with completed petitions and two photographs no later than February 1st;
2. space for up to a 500-word campaign message plus a photograph on the Utah Bar Website due February 1st;
3. a set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division who are eligible to vote; and
4. a one-time email campaign message to be sent by the Bar. Campaign message will be sent by the Bar within three business days of receipt from the candidate.

If you have any questions concerning this procedure, please contact John C. Baldwin at (801) 531-9077 or at director@utahbar.org.

Twenty-Eighth Annual Lawyers & Court Personnel Food & Winter Clothing Drive

Selected Shelters



First Step House

Established in 1958, First Step House (FSH) has grown into a specialized substance abuse treatment center serving low-income and no-income adult men with affordable and effective treatment programs and services. In January of 2016, FSH opened a Recovery Campus dedicated to meeting the treatment and housing needs of veterans in our community.

The Recovery Campus, located at 440 South 500 East, provides 32 treatment beds and 18 transitional housing units for veterans receiving treatment for substance use and behavioral health disorders. Their treatment programs include evidence-based therapy, case management, life skills classes, employment support, housing support and placement, individualized financial counseling, and long-term recovery support. They seek to utilize the latest research to continually drive the care that they provide and are distinctive in their unyielding commitment to help people and families become well.

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- peanut butter
- powdered milk
- tuna

Please note that all donated food must be commercially packaged and should be non-perishable.

New & Used Winter & Other Clothing

- boots
- gloves
- coats
- sweaters
- trousers
- hats
- scarves
- suits
- shirts

New or Used Misc. for Children

- bunkbeds & mattresses
- cribs, blankets & sheets
- children's videos
- books
- stuffed animals

Personal Care Kits

- toothpaste
- toothbrush
- combs
- soap
- shampoo
- conditioner
- lotion
- tissue
- barrettes
- ponytail holders
- towels
- washcloths

Spring Convention

Utah
State
Bar®



March
8-10



in St. George



APPROVED FOR UP TO

10 HRS.

CLE CREDIT*

*Includes 3 hrs. Ethics and
1 hr. Prof./Civ.
Credit-type subject to change.

Dixie Center
at St. George

1835 Convention Center Drive
St. George, Utah

2018 “Spring Convention in St. George” Accommodations

Room blocks at the following hotels have been reserved. You must indicate that you are with the Utah State Bar to receive the Bar rate. After “release date” room blocks will revert back to the hotel general inventory.

Hotel	Rate (Does not include 11.6% tax)	Block Size	Release Date	Miles from Dixie Center to Hotel
Best Western Abbey Inn (435) 652-1234 / bwabbeyinn.com	\$145	10	2/10/18	1
Clarion Suites (fka Comfort Suites) (435) 673-7000 / stgeorgeclarionsuites.com	\$100	10	2/08/18	1
Comfort Inn (435) 628-8544 / comfortinn.com/	\$135	15–2Q 10–K	3/07/18	0.4
Courtyard by Marriott (435) 986-0555 / marriott.com/courtyard/travel.mi	\$159	10–K	2/09/18	4
Crystal Inn Hotel & Suites (fka Hilton) (435) 688-7477 / crystalinns.com	\$132	7–2Q	2/08/18	1
Fairfield Inn (435) 673-6066 / marriott.com	\$109	5–DBL 20–K	2/12/18	0.2
Hampton Inn (435) 652-1200 / hampton.com	\$169	20–2 beds 5–1 bed	2/10/18	3
Hilton Garden Inn (435) 634-4100 / stgeorge.hgi.com	\$132–K \$142–2Q’s	25	2/05/18	0.1
Holiday Inn St. George Conv. Center (435) 628-8007 / holidayinn.com/stgeorge	\$132–K \$142–2Q’s	8–K 7–Q	2/12/18	0.2
Hyatt Place (435) 656-8686 stgeorgeconventioncenter.place.hyatt.com	\$139 \$149	10–K 10–DQ	2/05/18	.02
LaQuinta Inns & Suites (435) 674-2664 / lq.com	\$99	5–K	3/02/18	3
Ramada Inn (800) 713-9435 / ramadainn.net	\$119	8–DQ	2/06/18	3
Red Lion (fka Lexington Hotel) (435) 628-4235	\$129	20	2/14/18	3
St. George Inn & Suites (fka Budget Inn & Suites) (435) 673-6661 / stgeorgeinnhotel.com	\$99	10–DQ	2/08/18	1

Pro Bono Honor Roll

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a free legal clinic in June and July of 2017. To volunteer call the Utah State Bar Access to Justice Department at (801) 297-7049 or go to <https://www.surveymonkey.com/s/UtahBarProBonoVolunteer> to fill out a volunteer survey.

Bankruptcy Case

Bryan Sullivan

Community Legal Clinic: Ogden

Skyler Anderson
Jonny Benson
Travis Marker
Chad McKay
Francisco Roman

Community Legal Clinic: Salt Lake City

Jonny Benson
Dan Black
Craig Ebert
Kendall Moriarty
Alan Mortensen
Bryan Pitt
Brian Rothschild
Paul Simmons
Kate Sundwall
Brian Tanner
Ian Wang
Mark Williams
Russell Yauney

Community Legal Clinic: Sugarhouse

Skyler Anderson
Jonny Benson
Brent Chipman
Cortney Kochevar
Lynn McMurray
Kendall Moriarty
Paul Simmons
Heather Tanana

Debt Collection Pro Se Calendar

Paul Amann
Michael Barnhill
David Billings
Christopher Bond
John Cooper
T. Rick Davis
Chase Dowden
Mark Emmett
David Jaffa
Parker Jenkins
Alexis Jones
Janise Macanas
Tyler Needham
Brian Rothschild
Charles Stormont
Francis Wikstrom

Debtor's Legal Clinic

Tyler Needham
Brian Rothschild
Paul Simmons
Ian Wang
Nate Williams

Expungement Law Clinic

Kate Conyers
Josh Egan
Stephanie Miya
Bill Scarber
Chris Stout

Family Law Case

Catherine Hoskins
Shirl LeBaron
Carolyn Morrow

Family Law Clinic

Justin Ashworth
Jason Jones
Carolyn Morrow
Kayla Quam
Stewart Ralphs
Linda F. Smith
Simon So
Sheri Throop

Free Legal Answers

Nicholas Babilis
Trevor Bradford
Marca Brewington
Amber Cushman
Lorie Fowlke
Travis Larsen
Tyler Needham
John Robinson
Joseph Rust
Anthony Saunders
Simon So
Wesley Winsor
Russell Yauney

Guardianship Case

Walter Bornemeier
Perry Bsharah
David Cook
Jacob Gunter

Guardianship Signature Program

Dara Rosen Cohen
Laura Gray
Jonathan Miller
Mary Rutledge

Homeless Youth Legal Clinic

Eric Ashton
Frank Brunson
Kate Conyers
Kent Cottam
Nicole Lowe
Mollie McDonald
Lindsey Parker
Dain Smoland

Lawyer of the Day

Jared Allebest
Jared L. Anderson
Laina B. Arras
Ron Ball
Justin Bond
Brent Richard
Chipman
J. Scott Cottingham
Christopher Evans
Amy Fiene
Crystal Flynn
Jonathan Grover
Mark Hales
Roland Douglas Holt
Ben Lawrence
Allison Librett
Ross Martin
Suzanne Marychild
Shaunda McNeill
Keil Myers
Lori Nelson
Lorena Rizzo-Jenson
Jeremy Shimada
Joshua Slade
Linda Faye Smith
Samuel J. Sorensen
Laja Thompson
Cristina S Wood
Kevin R. Worthy

Medical Legal Clinic

Stephanie Miya
Micah Vorwallner

Parental Rights Case

Chad McKay

Rainbow Law Clinic

Jess Couser
Russell Evans

Senior Center Legal Clinics

Kyle Barrick
Sharon Bertelsen
Kent Collins
Phillip S. Ferguson
Richard Fox
Michael A. Jensen
Jay Kessler
Terrell R. Lee
Joyce Maughan
Stanley D. Neeleman
Kristie Parker
Jane Semmel
Jeannine Timothy

Street Law Clinic

Nathan Bracken
Nick Daskalas
Jennie Garner
John Macfarlane
Elliot Scruggs
Jeff Simcox
Jonathan Thorne

Third District ORS Calendar

Tiffany Brown
Bryant McConkie
Lisa Perry
Beth Ranschau
James Sorenson
Liesel B. Stevens
Maria Windham

Tuesday Night Bar

Michael Anderson
Eric Ashton
Matt Ballard
Alain Balmanno
Dan Barnett
Mike Black
Christopher Bond
Jackie Bosshard
Mona Burton
Rita Cornish
Jasmine Fierro-Maciell
Josh Figueira
Craig Frame
Dave Geary
Bryan Gillespie

Mike Green
Joseph Hinckley
John Hurst
Emily Iwasaki
Craig Jensen
Paul Johnson
Jennifer Junkin
Nina Kim
Mason Kjar
Ken Logsdon
Lucia Maloy
Chris Mancini
April Medley
Ben Onofrio
Josh Randall
David Reymann
Michael Schefer
LaShel Shaw
Blake Steel
George Sutton
Jenette Turner
Morgen Weeks
Ben Welch
Matt Wells
Bruce Wycoff

Veterans Legal Clinic

Abby Brinkerhoff
Joseph Rupp
Katy Strand

West Jordan Pro Se Calendar

Brad Blanchard
Brian Burn
Katie Bushman
Ruthanne Frost
Bryan Gillespie
William Hains
Kim Hammond
Janise Macanas
Sean Umipig
Nathan Williams

Wills for Heroes

Kirsten Allen
Kaytlin Beckett
Nolan Cordon
Stacy Faust
Dani Hartvigsen
Scott Ludlow
Katie Paired
Daniel Vincent
Wiley Willden

LONEPEAK

VALUATION GROUP



FINANCIAL and SECURITIES FRAUD INVESTIGATION EXPERTS

Wayne Klein
JD, CFE

James Wood
CPA/CFF, CFE

Wayne Klein, JD, CFE and James Wood, CPA/CFF, CFE have recently joined Lone Peak Valuation Group, enhancing Lone Peak's Financial and Securities Fraud Investigative Services

Wayne has investigated white-collar frauds for over 35 years, with experience as head of the **Utah Securities Division**, the **Idaho Securities Bureau**, and the Antitrust Unit of the **Utah Attorney General's Office**. He has also been appointed regularly as a Receiver and Bankruptcy Trustee by federal and state courts. Wayne's experience also includes positions as an adjunct professor, as a consulting and testifying expert in dozens of cases around the country, and testifying before Congress on fraud issues. In addition to holding a Juris Doctor degree, Wayne is also a Certified Fraud Examiner.

Phone: **801-708-7700**

Email: wklein@lonepeakvaluation.com

James was previously with the **Federal Bureau of Investigation (FBI)**, where he spent 6 years conducting criminal financial investigations around the country. He also previously worked in **PwC's** forensics practice in Salt Lake City and as a Managing Director with the **StoneTurn Group** in Washington, DC. James is also a seasoned professor of accounting, with positions as an adjunct instructor at the **University of Utah**, **American University**, and **The George Washington University**. James is a Certified Public Accountant, Certified in Financial Forensics by the AICPA, and is a Certified Fraud Examiner.

Phone: **801-321-6350**

Email: jwood@lonepeakvaluation.com

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Attorney Discipline

UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the Bar's Ethics Hotline may be found at:

www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

Information about the formal Ethics Advisory Opinion process can be found at:

www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.



801-531-9110

ADMONITION

On August 17, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against an attorney for violating Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:

The attorney was retained to represent a client regarding a civil dispute. The matter was sent to arbitration and the client paid fees for the arbitration. The arbitration was cancelled. After the arbitration was cancelled, the remaining unused fees were refunded to the attorney. Approximately four months passed and the client requested a status update on the unused fees and a final accounting. The attorney requested additional time into the following month to complete the final accounting. Approximately five more months passed and the client still had not received a final accounting of the refund. The attorney failed to notify the client that the unused

arbitration funds had been received, and failed to promptly provide the client with an accounting upon request.

PROBATION

On August 8, 2017, the Honorable James T. Blanch, Third Judicial District Court, entered an Order of Discipline: Probation, against Amy L. Butters, placing her on probation for a period of one year for Ms. Butters's violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.15(a) and 1.5(c) (Safekeeping Property), Rule 1.16(e) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters, and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

In one matter, Ms. Butters was retained by clients to represent them in a bankruptcy matter. The clients paid Ms. Butters up front an amount which included attorney fees and filing fees for their bankruptcy

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proceedings. Ms. Butters deposited the clients' funds in her operating account before earning the funds. Months after receiving the clients' funds, Ms. Butters filed the petition and a deficiency notice went out the next day. Twice the case was dismissed for failure to pay the filing fees. Two months later, Ms. Butters filed a Chapter 13 Bankruptcy Petition on behalf of the clients. The Trustee filed a Motion to Dismiss. Ms. Butters filed an objection to the dismissal and a motion to abate four days after the deadline to file the objection had passed. After Ms. Butters filed a Chapter 13 bankruptcy petition on behalf of the clients, a hearing was held regarding the Motion to Dismiss and Objection. The court sustained the Objection to the Motion to Dismiss and required that Ms. Butters write the order and submit it to the court by a specified date. Two days after the deadline for filing the proposed order, the court issued an Order to Show Cause because of Ms. Butters' failure to submit a proposed order on the clients' Objection. The court denied the Objection to the dismissal, ordering the case dismissed for failure to prosecute. The court issued an Order to Show Cause for the petitioner to show why the case should not be dismissed on or before a specified date. Ms. Butters failed to file the requisite documents and the case was dismissed for failure to prosecute. More than two years after retaining Ms. Butters, the clients sent Ms. Butters a letter regarding their opinions about the handling of their case. A week later the clients retained new counsel to finish their case. Ms. Butters also deposited client funds in her operating account and failed to keep her funds separate from client funds. Ms. Butters deposited funds in her operating account when the funds had not been earned and the costs had not been incurred.

In another matter, Ms. Butters was retained to represent the client in a Chapter 7 bankruptcy matter. The client paid an amount of money to Ms. Butters for her representation. Ms. Butters filed a Chapter 7 Voluntary Petition on behalf of the client. The bankruptcy court sent a 341 Meeting Notice with a meeting date. Neither Ms. Butters nor the client attended the 341 meeting. The Trustee filed a Recommendation for Dismissal. Ms. Butters failed to file a timely objection and the case was closed. Ms. Butters filed another Chapter 7 Voluntary Petition on behalf of the client. The client contacted Ms. Butters regarding his move to Texas and the impact such a move would have on his bankruptcy proceedings. Ms. Butters indicated she would file a motion to allow the client to appear telephonically. No such motion was filed according to the court's

docket. The client received three email notifications regarding the 341 meeting, each indicating he was to appear by telephone in front of a Notary. During communications with the client the day before the 341 Meeting, Ms. Butters indicated she was to appear in person and because the client was in Colorado, Ms. Butters indicated she would discuss the case with the Trustee and file a motion to reschedule the hearing. Two days after the hearing date, the Trustee filed a Recommendation of Dismissal. Ms. Butters failed to file any objection to the dismissal and the Court issued an Order dismissing the case. Ms. Butters contacted the client after the Bar Complaint had been filed and indicated she would refund part of the money owed to the client if the client would agree to withdraw the complaint against her.

Ms. Butters also failed to respond to the Office of Professional Conduct's (OPC) request for information and failed to cooperate in OPC's investigation.

DISBARMENT

On February 22, 2017, the Honorable Kara Pettit, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order disbaring Robert H. Copier from the practice of law for his violation of Rule 3.1 (Meritorious Claims and Contentions), Rule 3.3(a) (Candor Toward the Tribunal), and Rules 8.4(c) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Copier was retained to represent several clients in a variety of litigation matters. Over a period of several years, Mr. Copier filed numerous meritless pleadings, motions, and papers. Mr. Copier filed hundreds of frivolous motions in the underlying litigation matters, and was ordered to cease filing frivolous motions. Mr. Copier caused actual serious injury to the parties of the underlying litigation matters because of the hundreds of thousands of dollars of legal expenses, time, and resources they were forced to incur in light of Mr. Copier's repeated frivolous filings. The courts awarded judgments against Mr. Copier for at least a portion of the fees but Mr. Copier had not satisfied the judgments. The hundreds of filings caused serious interference with the legal proceedings. Mr. Copier's intentional disregard of multiple court orders caused serious injury to the legal profession, legal system, and the public by creating a general mistrust of attorneys and the operation of the legal system.

Discipline Process Information Office Update

The Discipline Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Most attorneys who contact Jeannine do so in the early stages of a Bar complaint. Keep in mind Jeannine is available to assist and explain the process at any stage of a Bar complaint. Call Jeannine with all your questions.



(801) 257-5515 | DisciplineInfo@UtahBar.org

Mr. Copier falsely asserted to the court in a district court case that opposing counsel agreed with him in connection with a Settlement Agreement. Mr. Copier caused injury to the legal system and interfered with the legal proceeding by creating a general mistrust of attorneys and the operation of the legal system.

Additionally, Mr. Copier purportedly transferred treasury stock shares to companies he owned even though in one case the court had declared the stock void ab initio. Mr. Copier falsely claimed that an attorney's lien had been recorded in the official records of Salt Lake County, and was seeking to foreclose on two parcels of land pursuant to the lien. Mr. Copier further purported to transfer portions of the alleged lien to other parties in four separate transfers. Mr. Copier caused harm to the parties involved in the stock transfers, injured the tribunal and interfered with the legal proceedings before the Court. Mr. Copier's misconduct contributes to a general mistrust of attorneys and the operation of the legal system. By engaging in these activities, Mr. Copier engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, which seriously, adversely reflects on Mr. Copier's fitness to practice law.

Mr. Copier caused the parties and courts to incur unnecessary time and costs, through hundreds of frivolous motions and redundant or harassing filings. Mr. Copier violated courts' orders to not file motions or other papers without prior court approval, and failed to comply with the trial courts' orders that he appear in court for hearings. Mr. Copier's tactics delayed litigation and harassed parties. Mr. Copier was held in contempt by courts on two different occasions yet his misconduct continued. Mr. Copier's conduct caused serious interference with the legal proceedings and his intentional disregard of multiple court orders caused serious injury to the legal profession.

The following aggravating factors were found: patterns of misconduct, multiple offenses, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved, and refusal to acknowledge the wrongful nature of misconduct involved.

The following mitigating factor was found: absence of prior record of discipline.

DISBARMENT

On July 3, 2017, the Honorable Bruce C. Lubeck, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment, disbarring J. Wesley Robinson from the practice of law for his violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

In summary:

On December 12, 2014, Mr. Robinson pleaded guilty to a second-degree felony of Clandestine Laboratory Precursors; a third-degree felony of Possession of a Controlled Substance with Intent to Distribute; and a third-degree felony of Possession of a Firearm by a Restricted Person. The facts of Mr. Robinson's conviction based on a guilty plea were as follows: On February 18, 2014, Mr. Robinson aided and

abetted others by providing them with a residence and utilities necessary to possess laboratory equipment with the intent to operate a clandestine laboratory and to knowingly possess marijuana with the intent to distribute it. Mr. Robinson agreed and stipulated by the plea that those facts provide a basis for the plea of guilty and described his conduct and the conduct of others for which he was criminally liable.

There existed some mitigating factors. However, the mitigating factors did not outweigh Mr. Robinson's guilty pleas.

DISBARMENT

On August 11, 2017, the Honorable M. James Brady, Fifth Judicial District Court, entered an Order of Discipline: Disbarment, disbarring John E. Hummel from the practice of law for his violation of Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Hummel contracted with Garfield County to provide legal representation to indigent defendants. Based on the contract, Mr. Hummel was aware that he would receive a certain sum of money for providing legal services to indigents without any additional compensation or remuneration. Mr. Hummel accepted firearms and other property as payment from indigent clients. The clients were told by Mr. Hummel that they would get a better deal, less jail time, or that Mr. Hummel could do a better job if additional fees were paid. Criminal charges were filed against Mr. Hummel. A jury trial

Facing a Bar Complaint?



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was held and Mr. Hummel was found guilty of three counts of theft, second-degree felonies – and two counts of theft and attempted theft, third-degree felonies.

Mr. Hummel engaged in the criminal acts of theft and attempted theft, which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects. Mr. Hummel knew that his compensation was to come from the County, only. He deceived indigent clients and took money and property from them even though he was already receiving compensation for legal services from the County.

RESIGNATION WITH DISCIPLINE PENDING

On August 24, 2017, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Walter T. Merrill, for violation of Rules 1.15(a), 1.15(c), and 1.15(d) (Safekeeping Property), Rule 3.3(a) (Candor Toward the Tribunal), 8.4(b), 8.4(c), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Merrill's firm obtained approximately 1,400 debt collection cases from a law office that sold its collections practice. Immediately after the transfer, one of the clients expressed dissatisfaction with Mr. Merrill's firm. A representative from the client's office informed another attorney at Mr. Merrill's firm (Firm Attorney) that it was terminating the firm's representation of them on all cases. The Firm Attorney removed the client from the case management software and told the entire office about the termination, including Mr. Merrill. Mr. Merrill continued to work on the cases despite acknowledging that client had fired the firm.

Mr. Merrill informed the Firm Attorney that by looking on the court's Xchange he had discovered a list of cases filed by the prior law office where no work had been completed since early that year when the collection cases had been transferred. The cases were all from one client. The Firm Attorney offered to call the prior law office to get the missing files. Mr. Merrill declined indicating he found everything he needed on Xchange. Mr. Merrill instructed his receptionist to enter the cases into the case management software. When the receptionist was entering the cases, it was discovered that these cases were from the same client that had fired Mr. Merrill's office earlier in the year. The Firm Attorney confronted Mr. Merrill and Mr. Merrill explained that nobody had been working the cases since the prior law office sold their collection practice, and if someone didn't work the cases it would be a disservice to the former client. Mr. Merrill hoped that the former client would be happy he had rescued the cases and forgive his "transgressions."

A few months later, the Firm Attorney was covering a hearing in district court. While reviewing the docket, the Firm Attorney discovered a substitution of counsel by Mr. Merrill for the prior law firm; however, the prior law firm was never the attorney of record. The Firm Attorney told the court there had been a mistake and withdrew immediately.

Approximately two weeks later, the receptionist asked the Firm Attorney a question about a garnishment in which the debtor had proof that the entire judgment had already been garnished. The receptionist also indicated the creditor/client was a payday loan company. The Firm Attorney knew there was a mistake since Mr. Merrill's firm did not represent any payday loan clients. The Firm Attorney looked up the docket and discovered that Mr. Merrill had inexplicably entered an appearance. The Firm Attorney learned from the firm case management software that Mr. Merrill had just recently closed a different case against the debtor. The case had been satisfied through garnishment. The Firm Attorney realized that when Mr. Merrill could no longer garnish the debtor on the case, Mr. Merrill had gone onto Xchange and found another judgment against the same debtor and entered an appearance for a creditor that had never retained him.

A few weeks later, the staff at Mr. Merrill's office brought to the attention of the Firm Attorney a list of newly-opened case files where Mr. Merrill had entered appearances for "unknown" plaintiffs. In each case there was a judgment creditor not previously represented by counsel that had not pursued their debt in some time.

In one case, Mr. Merrill entered his appearance and a month later filed an application for a writ of continuing garnishment. The judgment was sold to a judgment recovery company. When the judgment recovery company tried to collect on the judgment, the company discovered that Mr. Merrill had entered an appearance on behalf of the original plaintiff and had accepted the garnishment payments without the original plaintiff's knowledge or consent. The judgment recovery company contacted the original plaintiff about the matter, and the original plaintiff indicated he did not have an attorney and had never heard of Mr. Merrill. The judgment recovery company then confronted Mr. Merrill. Mr. Merrill offered to send the company the money he collected but offered no explanation for his unauthorized work on the case or the collection of the improper garnishments. Mr. Merrill did not immediately pay the judgment recovery company the full amount of the funds he improperly garnished, and did not release the garnishment until a month after the judgment recovery company initially contacted him.

Mr. Merrill engaged in a pattern of locating cases on Xchange where the judgment creditors were not represented by counsel, and entering appearances on their behalf without first being retained by them or obtaining their consent.

Mr. Merrill engaged in a pattern of collecting funds on behalf of creditors who had not retained his services, and then failed to turn over the funds he collected to their rightful owner.

Mr. Merrill forged signatures on Declarations in order to enter appearances in cases where the creditors had not hired him and did not know he was working on their cases. In other cases, Mr. Merrill forged signatures on Declarations for existing clients.

Mr. Merrill deposited unearned funds into a personal checking account and on at least one occasion withdrew unearned funds from the trust account.

NEW BAR POLICY: BEFORE ATTENDING A SEMINAR/LUNCH YOUR REGISTRATION MUST BE PAID.

SEMINAR LOCATION: Utah Law & Justice Center, unless otherwise indicated. All content is subject to change.

November 3, 2017 | 12:00 pm – 1:30 pm **1.5 hrs. CLE**

Pretrial Release Risk Assessment Tool – Utah Courts discuss the tool and implementation for pretrial release. Cost is \$15 for in-person attendance or telephonic participation. Location: Utah State Bar. To register, go to: https://services.utahbar.org/Events/Event-Info?sessionaltcd=18_9295A.

November 8, 2017 | 12:00 pm – 1:30 pm & 5:00–6:30 pm **1.5 hrs. CLE**

Eat & Greet with Apple – Apple Services & Solutions in the Legal Practice. Cost \$15 for lunch session (includes lunch), \$10 for afternoon session (includes snacks). To register go to: https://services.utahbar.org/Events/Event-Info?sessionaltcd=17_9279NOV. Be sure to select the proper session when registering.

November 9, 2017 | 5:30 pm – 9:00 pm **2 hrs. CLE**

FALL FORUM. Judges and Lawyers Reception: 5:30 pm – 6:30 pm. **Film Presentation Documentary: *Beware the Slender Man*.** University of Utah S.J. Quinney College of Law Moot Courtroom, 383 South University Street, Salt Lake City.

November 10, 2017 | 8:30 pm – 4:45 pm **7 hrs. CLE, including 3 hrs. Ethics**

Fall Forum. 28 Tracks to choose from! Little America Hotel, 500 South Main Street, Salt Lake City.

Lawyers: \$245 before October 31, \$270 after
Active under three years: \$170 before October 31, \$195 after
Non-lawyer assistants: \$170 before October 31, \$195 after
Paralegal Division Members: \$130 before October 31, \$150 after

November 10–11, 2017 **2 hrs. CLE**

Litigation Section Annual CLE & Off-Road Shenanigans – Litigation Section Annual Judicial Excellence Awards, CLE & Off-Road Shenanigans. Marriott Springhill Suites, 1863 N. Hwy 191, Moab, UT. For more details and to register, go to: https://services.utahbar.org/Events/Event-Info?sessionaltcd=18_9092.

November 16, 2017 | 8:30 am – 9:30 am **1 hr. CLE pending**

Tips & Tricks to Avoiding a Mediation Meltdown. Join YLD for its free monthly CLE event, co-sponsored with the Utah Defense Lawyers Association. We will discuss the tips and tricks for successful mediation. Heather Thuet of Christensen & Jensen will present. Breakfast will be provided. To register go to: <https://udla.wildapricot.org/event-2671659>.

December 14, 2017 | 8:00 am – 4:00 pm **5.5 hrs. CLE, 1.5 hr. Prof./Civ.**

Annual Mangrum & Benson on Utah Evidence. Save the date. Registration will open soon.

February 23, 2018 | 8:00 am – 5:00 pm **7 hrs. CLE, 1 hr. Ethics**

IP Summit. Hilton Salt Lake City Center, 255 South West Temple. Save the date!

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CAVEAT – The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: April 1 deadline for May/June publication.) If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

WANTED

Seeking information regarding the Delfina C. Valdez Family Trust dated September 23, 1991. If you have any information regarding this trust, or the attorney that prepared it, please contact Kelly M. Kennedy, Esq. at 801-272-8261 or kelly@sealkennedy.com.

We are looking for the last Will for Jo (JoAnn) Shaw. It would have been drafted after October 2012. Mom had bright red hair and personality to match. She passed away on April 22, 2017. If you have any information, please contact me at flowergardenmama@gmail.com or at 801-690-0600.

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201.

JOBS AVAILABLE

Established AV-rated Business and Estate Planning law firm with offices in St. George, UT and Mesquite, NV seeks an Attorney for its St. George office. We are seeking a Utah or Nevada licensed attorney with 1–3 years of experience. Experience in Litigation, Business Law, Estate Planning, and/or Real Estate would be preferred but not mandatory. We offer a great working environment and competitive compensation package. Please submit resume, cover letter, salary history and references to Ricki Stephens at rstephens@barney-mckenna.com.

THE LAW OFFICES OF JORDAN F. WILCOX, PC is hiring attorneys for its Layton office. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief and strategic negotiations). Previous tax experience is not required, but previous work in retail, sales or other customer service area is preferred. Competitive salary, health insurance and 401K available. Please send a 1 page resume with 1 page cover letter including salary requirements to Info@TaxHelpUT.com.

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Opportunity to share office space. We have a couple of offices available for shared leasing. Our offices are located in a class A, South Jordan office building with easy freeway access off of 106th South. The shared space includes internet, personal phone line, common conference room, unlimited domestic long distance calls, and lots of parking. Contact Heather at Jenkins Law Office, 801-679-3010.

Law office, has office space for an attorney or mediator. Located at 480 East 400 South, Suite 201, Salt Lake City, Utah 84111 on the 2nd floor of the First National Bank building. Secretarial help available. Please call: 801-532-5951.

SERVICES

CALIFORNIA PROBATE? Has someone asked you to do a probate in California? Keep your case and let me help you. Walter C. Bornemeier, North Salt Lake, 801-721-8384. Licensed in Utah and California – over thirty-five years experience.

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CHILD SEXUAL ABUSE – SPECIALIZED SERVICES. Court Testimony: interviewer bias, ineffective questioning procedures, leading or missing statement evidence, effects of poor standards. Consulting: assess for false, fabricated, misleading information/allegations; assist in relevant motions; determine reliability/validity, relevance of charges; evaluate state's expert for admissibility. Meets all Rimmasch/Daubert standards. B.M. Giffen, Psy.D. Evidence Specialist 801-485-4011.

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