Federal Jurisdiction

Federal Bar Association Utah Chapter Newsletter Fall 2014

by Jenifer L. Tomchak

President's Message

Reasons to Celebrate

It is an honor to take the reins as President of the Utah Chapter of the Federal Bar Association. Our Chapter is among the largest and most active of the ninety chapters that make up the National Federal Bar Association, which has a presence in every circuit and in forty-three states, the District of Columbia, and the territory of Puerto Rico. The FBA was established in 1920 and, with 16,634 members, it is now the largest national association of lawyers and judges in federal courts. The guiding purpose of both the National and local FBA is to advance the "federal jurisprudence to promot[e] the welfare, interests, education, and professional development of all attorneys involved in federal law."

To this end, the FBA offers its members a number of benefits and services at both the local and national level. If you are a member, you are already familiar with the superior programs the Utah Chapter hosts each year, including its quarterly SideBar CLE series, the annual Southern Utah law Symposium, the annual Criminal Law Seminar, and the annual Ronald N. Boyce Seminar. Each of these events presents great opportunities to hear from federal judges and prominent federal practitioners on interesting and relevant federal legal issues. Our members also receive chapter newsletters, such as this one, with in-depth judicial profiles and insightful articles about noteworthy practitioners. (For more information about other member benefits and upcoming FBA events, please check out our website--http://www.fedbar.org/utah.html--and like us on Facebook.) Although I could fill an entire newsletter describing all of the great programs and member benefits we host every year, I would like to highlight just a few of the new programs and happenings of the FBA.

Networking and Mentoring Opportunities

This year the FBA will increase the number of opportunities for our members to socialize with other federal practitioners and judges and to mentor law students. While nearly all of the FBA's annual seminars include some social component (and the Annual Awards Dinner always presents a fantastic opportunity to mingle with distinguished practitioners and judges), the FBA is also adding new social activities to its calendar. The first, a mentoring social at Maxwells, took place in early April. There, federal practitioners and judges had an opportunity to meet with each other and our student members in a relaxed setting.

Student Chapters

The FBA is pleased to announce that it now has student organizations at both the S.J. Quinney College of Law and the J. Reuben Clark College of Law. The Presidents of each student group serve as ex officio members of the FBA board, and the FBA offers five scholarships to each chapter for all of its educational events. To further support those organizations and provide mentoring opportunities for our

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members, the FBA has hosted panels about federal clerkships and small group lunches with federal judges. The FBA also hosted a summer clerk luncheon where students clerking in Salt Lake City had an opportunity to learn more about the federal practice and to get to know each other better.

Celebrating Momentous Legislation

This year marks the 50th Anniversary of the Civil Rights Act, the Criminal Justice Act, and the Wilderness Act of 1964. Many of our CLEs will focus on these momentous pieces of legislation. For example, on April 17, the FBA hosted a reception celebrating the passage of the Civil Rights Act of 1964. Reverend France Davis recounted his experience preceding and following the passage of the Civil Rights Act of 1964 and discussed both how far we have come and additional areas for progress. His inspirational presentation was followed by a CLE panel with Magistrate Judge Brooke Wells (D. Utah), Blake Hamilton (Durham Jones & Pinegar), and Erik Strindberg (Strindberg & Scholnick), discussing best practices for representing clients with civil rights claims. This event was free to attorneys who participate in the Federal Appointment Wheel, a joint program between the Utah federal district court and the Utah Chapter of the FBA to help federal judges identify and appoint counsel in civil rights action.

The FBA is planning similar opportunities to celebrate the passage of the Criminal Justice Act of 1964 and the Wilderness Act of 1964.

Governmental Relations

As one of the many benefits of the Utah Chapter's relationship with the national Federal Bar Association, the national FBA organizes a Capitol Hill Advocacy Event each year to visit with members of congress and their staff to discuss, in a non-partisan fashion, issues facing the federal judiciary. This year, as in the past few years, those efforts focused on the state of crisis in the federal judiciary created by budget cuts and judicial vacancies. In January 2014, it was reported that ten percent of federal judgeships were vacant and half of those were classified as judicial emergencies.

These vacancies have had a profound impact on the administration of justice. Not only have overburdened courts and their mounting caseloads had to push off the resolution of both their criminal and civil calendars, but prosecutors have increasingly exercised their discretion to decline to prosecute or dismiss cases. In some areas, criminal defendants are waiting six months and civil litigants are waiting over two years, to have their cases resolved.

These delays are difficult not only for the judges and court staff that are struggling to keep up with the mounting caseload, but they also negatively contribute to the economy. According to a study by the Washington Economics Group, Inc., conducted in Georgia and Florida, case delays cause citizens to incur significant financial and other costs while they are waiting for justice; they have resulted in the reduction of fees collected by the courts; they have contributed to the loss of thousands of jobs—and millions of dollars in labor income—in each state; and they have adversely affected those states' ability to create and retain jobs or to attract and expand industries. The anti-business environment created by an inefficient judiciary is estimated to have cost those states over a billion dollars each year.

As the judiciary becomes increasingly reliant on Congress to operate effectively, it also jeopardizes its ability to function independently. An independent judiciary is critical to a functioning democracy and to the public's confidence in the decisions of the court. The independent judiciary is a key factor that distinguishes the U.S. court system from other court systems and has caused our court system to be admired and emulated around the world. This concept was so important our forefathers gave it constitutional protection.

To address the foregoing issues, on April 24, thirty-five chapter and circuit leaders met with representatives from eighteen states and Puerto Rico. (This was the largest Capitol Hill Advocacy Event in FBA history.) Their message was three-fold: (1) they urged support for the $6.7 billion funding request (a small increase above last year) for discretionary funding to the federal judiciary, (2) they urged the Senate to work in a bipartisan fashion to promptly provide an up-or-down vote to qualified judicial nominees, and (3) they urged Congress to establish additional judgeships in jurisdictions with emergency caseloads. On June 6, 2014, the Governmental Relations Committee released a report, showing that the number of judicial vacancies is declining, with 30 nominations currently pending and 68 judicial vacancies.

Conclusion

I am proud to be part of an organization that works toward improving the operation of the federal judiciary and federal practice for the benefit of all. I hope you will join us at some of our new events, continue to support our annual events, and take advantage of all that the FBA has to offer.

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Welcome to Our New and Renewed FBA Members

Welcome to the following new members:

Stephen H. Bloch
Southern Utah Wilderness Alliance

Joe Bushyhead
Southern Utah Wilderness Alliance

Douglas Crapo
Utah Attorney General's Office

Gregory Gunn
Strong & Hanni

Cheylynn Hayman
Parr Brown Gee & Loveless APC

D. Mark Jones
US District Court

Aida Neimarlija
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Landon Newell
Southern Utah Wilderness Alliance

Kristen R. Angelos
Utah Federal Defender Office

Justin G. Bossard
S.J. Quinney College of Law

Jeremy Brodis
S.J. Quinney College of Law

Amy L. Gerrard
S.J. Quinney College of Law

Mark L. McCarty
Richards Brandt Miller Nelson

Autumn Fitzgerald
Fitzgerald Law Office, LLC

Naziol S. Nazarinia Scott
Richards Brandt Miller Nelson

Jason B. Richards
Richards Law Group, P.C.

Stephanie Lewis
S.J. Quinney College of Law

To Join the FBA, see www.fedbar.org/join.html

Events Calendar

Tri-State Seminar, Jackson, Wyoming	*October 9-11, 2014*
2014 Annual Ronald N. Boyce Seminar	*November 7, 2014*
2014 Annual Awards Dinner	*November 12, 2014*
2015 Annual Convention, Salt Lake City, Utah	*September/October 2015*

New Member Profiles

Andrew Wojciechowski

Years in Practice: First Year Associate, Stoel Rives LLP

Law School: University of Utah S.J. Quinney College of Law

Favorite Book: It's hard to choose just one, so here's are a couple: Freakonomics, Levitt & Dubner; Where Men Win Glory, Krakauer; A Farewell To Arms, Hemingway

Areas of Interest: Litigation

Hobbies: Golf, cooking, travel

Why Did you Join the FBA?: I joined because I wanted to become more involved in the Salt Lake and Utah legal communities.

Jeremy Brodis

Law School: University of Utah S.J. Quinney College of Law

Years in School: 2

Anticipated Area of Practice: Litigation

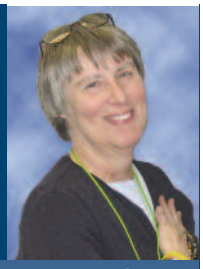
Hometown: Ogden, Utah

Favorite Board Game: Settlers of Catan

Favorite Baseball Team: San Francisco Giants

Lessons Learned in Law School: Law school is about learning how to be a better problem-solver, and effective problem-solving starts with preparation. The earlier you can start preparing, the better.

Why Did you Join the FBA?: I joined FBA because I wanted to start networking with federal practitioners while in law school.



by Louise York

Clerk's Corner

We Have Moved!

It is with mixed emotions that I write this column about the happenings at the court. The move into the new building has been a source of both excitement and confusion as we left the historic Frank E. Moss building for the bells and whistles of the new courthouse. But there is a sadness because of the death of Russell Kearl, long time law clerk to Judge Bruce S. Jenkins. Russ and I go back to the late 70s at the University of Utah College of Law. Russ worked in the library and was one of the first to learn about the new technology called "Westlaw" and how it would change legal research. Russ worked effectively with technology in the court, from Westlaw through CM/ECF, but Russ really loved books. He loved books of all kinds, books on all topics and, if you ever saw his office, you knew he was comfortable surrounded by books and papers. When we were filming "Courthouse" with KUED and needed a banker's lamp for filming, we found it there in Russ's Office. He went right to it, in the midst of the book and paper organized chaos. The most difficult part of the move for Russ was the necessary culling of library collections and he couldn't pass one of the bins of books destined for recycling without reaching in and attempting to rescue a few volumes. Russ was noted for his legal skills and knowledge and helped countless law clerks, deputy clerks and law students through the years, showing them how to be careful, how to be precise and how to be sure that you have done all the necessary research. Russ taught people to be thorough. Words mean something to Russ. He always took the time to publically comment on proposed rule changes with detailed memoranda which reflected a wide knowledge of rules and law.

Russell Kearl

Russ worked with Judge Jenkins for over 24 years - with a brief detour into the world of private practice. He was the quintessential law clerk but most of us here at the court will remember him not for his formidable legal analytic skills but for his kindness, his concern and his wry sense of humor. He was generous of spirit. He regularly donated leave to fellow employees who were suffering medical emergencies or wanting to extend maternity leave. His gentle voice and hearty laugh are very much missed. While he was generous of spirit, he was less than generous to us with information about his illness. For the last few months of his life, while he was fighting cancer, he kept his condition private from the rest of us and continued his work. He was steady and reliable until the end which came far too quickly for us to fully say good bye to him and let him know the positive difference that knowing him made in our lives. He was technically classified as an "elbow law clerk" but in many ways, he was the heart of his chambers and of the court.

Our new courthouse was dedicated on August 6, 2014 and GSA (General Service Administration) will officially take full possession. The staff has been trying to figure out how to get through security, how to answer the phones and how to find people six or seven floors up. It is a major adjustment for the judges to travel to courtrooms on another floor rather than to an adjacent courtroom like the Moss Building. After spending over twenty years in a windowless interior office, I am rejoicing in my south viewing windows on the second floor. We still have to fine tuning heating, cooling, lighting and security access. The light in the new building is amazing. If you haven't already, I hope you all get a chance to come over and appreciate the feeling of light and openness which define the new courthouse.

The Local Rules Committee finished up a few proposed amendments to the local rules which were released for public comment. There is some fine tuning of the recently revised rule for filing sealed documents which will hopefully address some confusion. Minor changes to a few other rules have been proposed. Please feel free to make proposals to the rules committee about any changes you would recommend to the rules. Chairman Greg Phillips, of Phillips, Ryther & Winchester would be glad to convey them to the committee for consideration.

The amended rule emphasizes that a notice of issuing a document subpoena must be served on all other parties and that a copy of the subpoena must be included with the notice. Like all other discovery, the notice will not be filed with the court but is exchanged between the parties.

Be sure to carefully review the rule changes before you issue your nationwide civil subpoenas. But, it looks like the process will be easier in the future.

by Parker Douglas

Judicial Profile

Judge Dale A. Kimball

"Life is not a final. It's daily pop quizzes," Dorothy Parker once quipped. The same thing might be said of a federal district court judge's daily calendar and Judge Dale A. Kimball of the District of Utah intimated as much when interviewed for this piece. This article sums up, to the extent summary is possible, the character of Judge Kimball's more than sixteen years of judicial service. Having practiced enough in Judge Kimball's court to know that, as the saying goes, "the menu is not the meal," I stick with facts and stories, some rather well-known to regular practitioners in Utah's federal court, some less so, to attempt to do justice to the Judge, to offer a flavor of the career, laying out a menu for those who have not had the pleasure of regularly participating in the meals. We begin with a few courses.

Judge Dale A. Kimball

One confirmed story that might sound apocryphal in the telling involves a civil matter, in which a law firm partner presenting argument in a summary judgment hearing inadvertently handed to Judge Kimball an exhibit that included a note to the partner from an associate that read: "Remember this is Judge Kimball. Speed is key." Embarrassed upon realizing the possible faux pas, the partner apologized to Judge Kimball straight away, and stated that he would address the issue immediately with his associate. In short, like many a modern partner may be tempted, he threw the associate under the bus. Without missing a beat, Judge Kimball replied that the partner should consider raising the associate's salary, as he had given the partner invaluable advice. An avid admirer of Shakespeare, Judge Kimball's sensibility and advice is perhaps seasoned by Hamlet's observations: "Brevity is the soul of wit" and "More matter, with less art," both surely good pieces of advice to all counsel, especially those who are prone to fancy their own rhetoric (though admittedly somewhat ignored here in the interests of completeness and full accounting).

Another tale, sounding similarly legendary but similarly confirmed, relates that soon after he took the bench, Judge Clark Waddoups approached his more tenured colleague Judge Kimball and asked him if the judicial duty of sentencing those convicted of federal crimes became easier with time. Always quick in reply, Judge Kimball told his friend and colleague that it was a sure sign that one should leave the bench if the task ever seemed to be become easier. Shakespeare again comes to mind: "Forbear to judge, for we are sinners all"; as does Justice Holmes's famous admonition on sentencing: "Beware how you take away hope from another human being."

Finally, consider an exchange I witnessed myself. During the prosecution of Brian David Mitchell, a witness on the stand was speaking of Mr. Mitchell's time in Idaho, years before Elizabeth Smart's abduction, and related that Mr. Mitchell had the reputation, believed by some, doubted by others, and fostered by Mr. Mitchell himself, of having the power to cure animals of ailments by a laying on of hands. As I asked the witness if it was well known in the community that Mr. Mitchell believed he had these powers, three of the five prosecutors at counsel table rose to enter a hearsay objection. Judge Kimball called a quick sidebar and four of us approached. I responded that I was attempting to establish grounds for an insanity defense, not a "divinity" defense, and that the witness's testimony was directly relevant to the possible state of Mr. Mitchell's mind, but was not offered for the truth of the matter asserted—that Mitchell indeed had the ability to heal animals by touch. Customarily quick on evidentiary rulings, Judge Kimball smiled (and seemed to quietly chuckle) and after taking the bench announced the hearsay objection was "overruled" and we proceeded, though the testimony was limited to whether Mr. Mitchell appeared to operate as if he believed he was divine, not whether he actually possessed divine powers, a point which counsel avoided altogether at the government's astute insistence.

These three stories—and others could certainly offer many more—demonstrate several things that seem central to Judge Kimball's approach to his office: a respect for straightforward argument; a generous sense of humor and appreciation for the sometimes entertaining serendipity inherent in every hearing, neither of which take away from the seriousness or dignity of the proceedings in his court; an even handed treatment of those who are not frequent practitioners in his court; a generous respect for all lawyers, seasoned or less so; and a similarly egalitarian treatment of all litigants who appear before him. In short, he's fair to all regardless of station, training and personal history.

Some might speculate that this democratic quality of his judicial demeanor may have come to him organically. Born November 28, 1939, Judge Kimball grew up on a dairy farm in Draper Utah and worked in the fields where his family grew alfalfa, sugar beets, and grain. He continued to work on the family farm throughout his schooling, including his time in law school.

Judge Kimball sometimes remarks that early mornings milking cows taught him the importance of responsibility.

He learned at a young age that if he didn't do his job, he would find himself between a barn full of unhappy cows and a house with unhappy parents. In this respect, his attentive work as a youngster appears to have continuing influence on the pragmatics of how he manages the matters in front of him. Judge Kimball has remarked the importance of working hard, working intelligently, and finishing tasks on time, qualities certainly appreciated by all litigants, and Judge Kimball is well known for making well-reasoned rulings in a timely fashion.

Judge Kimball first became interested in law while taking a commercial law class from E. L. Crawford at Jordan High School. He recalls that class opened a fascinating new world for him. Inspired by the resolution of conflicts the class covered, he began reading on his own about lawyers and the lives they led. It seemed to him that law practice offered an intellectually challenging career which could also benefit society. That is when he decided to become a lawyer.

After high school, he continued his intellectual distinction in college, and graduated magna cum laude from Brigham Young University with a B.S. in Political Science, and a minor in English. In 1967, he received his Juris Doctor from the University of Utah College of Law, graduating Order of the Coif and second in his class. While attending law school, he was a member of the Phi Kappa Phi Fraternity and was the Case Note Editor of the Utah Law Review.

No article on Judge Kimball would be complete without mentioning his devotion to, and the support he receives from, his family. He has been married to his wife Rachel for over 52 years, and they have six children, twenty-four grandchildren, and two great-grandchildren.

After admission to the Utah bar, his practice began quickly and his reputation for accuracy, fairness and efficiency also came quickly. He started his formal career at Van Cott, Bagley, Cornwall & McCarthy, then the largest firm in Salt Lake City. After seven years at Van Cott, Judge Kimball became a full-time law professor at BYU's J. Reuben Clark Law School. Shortly thereafter, he reduced his teaching to part-time and co-founded the law firm now known as Parr Brown Gee & Loveless. While maintaining his private practice at his firm, he continued to teach part-time at BYU from 1976 to 1980. From 1975 until his appointment as a United States District Judge in 1997, he basically maintained a full-time legal practice, primarily in commercial litigation. Judge Kimball reports that teaching law and writing articles have helped him as a Judge, because the rigors of painstaking academic research and analytical thinking he experienced as a law professor are central to his judicial decision-making process. This is clear to litigants before him, as his decisions consistently seem informed by the inherent tension in the law of making sure that general principles are consistently applied to cases involving different facts.

On September 4, 1997, President William Jefferson Clinton nominated Kimball as a United States District Judge for the District of Utah. Judge Kimball's nomination was confirmed by the United States Senate on October 21, 1997. On November 24, 1997, he was sworn in as a United States District Judge. Kimball replaced the Honorable David K. Winder, a judge beloved and respected by the Utah bar. After twelve years as a full-time district court judge, he took senior status himself on November 30, 2009. However, he maintained a full case load until November 30, 2010, and he currently maintains a 60 percent case load and has resumed teaching part-time at BYU's J. Reuben Clark Law School. It seems fair to say in retrospect that whether he knew so or not, President Clinton appointed in Judge Kimball a fitting replacement for the beloved, late Judge Winder, as Judge Kimball shares with Judge Winder a straight-forward, pragmatic approach to the cases in front of him, that are somehow both sensitive to the individuality of the litigants in front of him, while dispassionately reaching a just result, the precious and necessary quality of any good judge.

These qualities have been recognized consistently throughout Judge Kimball's career on the bench and off. In 1996, Judge Kimball was honored by the Utah State Bar as the "Distinguished Lawyer of the Year." In 2010, the Federal Bar Association, Salt Lake Chapter named him the "Judge of the Year." Judge Kimball is also a Fellow of the American Bar Foundation and has enjoyed serving among fellow lawyers and members of the community on many legal and community boards throughout his career. As recognized in the awards and distinctions throughout his career, he brings an even-handed respect to cases, both high-profile and run of the mill. He has remarked often that there is no "run of the mill" case, and it is clear to any marginally sentient litigant that though he has come a long way from his rural beginnings, an egalitarian respect for the parties in front of him remains a core of his character. This is so even in cases which have attracted attention beyond the doors of his courtroom.

His judicial tenure has involved high profile cases. At least two seem to stand out, though many could be added to the list: the Brian David Mitchell criminal trial, and another politically and culturally controversial civil case that is locally referred to as the Main Street Plaza II case. The Mitchell case gained national attention; the Main Street II case at least regional attention; both were highly charged cases for the state and local community and so put particular demands on the judge and presumably presented particular challenges. Having been counsel in one case, and an interested member of the community in the other, it is fair to say that he was clearly up to the task in both.

After Brian David Mitchell was declared incompetent to stand trial in Utah state court for the alleged kidnaping of Elizabeth Smart, he and co-defendant Wanda Barzee were indicted by a federal grand jury for kidnaping and unlawful transportation of a minor. Because Mr. Mitchell's competency to stand trial was at issue, the court sent him to a federal medical facility for a mental evaluation. On October 1, 2009, and December 1 through 11, 2009, the court held an evidentiary hearing to determine whether Mr. Mitchell was competent to stand trial. The court heard testimony from several psychologists and psychiatrists as well as Elizabeth Smart and many other witnesses who had interactions with Mitchell throughout his life. On March 1, 2010, the court issued a memorandum decision and order finding Mr. Mitchell competent to stand trial. The court then scheduled trial for November 1, 2010. Because of extensive pretrial publicity of the case, Mr. Mitchell's counsel filed a motion to transfer venue to another district. Judge Kimball denied the motion after reviewing juror questionnaires filled out by hundreds of potential jurors. After a five-week trial that proceeded on November 1, 2010, and continued until December 10, 2010, a jury found Mitchell guilty of both offenses. The trial focused mainly on Mr. Mitchell's insanity defense and required the jury to determine whether Mr. Mitchell was legally insane at the time of the offense. Elizabeth Smart again testified, as did many of the same witnesses from the prior competency hearing. The trial also raised several First Amendment media access issues that required rulings from the court throughout the proceedings. On May 25, 2011, Judge Kimball sentenced Mr. Mitchell to life in prison under the federal sentencing authority. Mr. Mitchell did not appeal. Although also declared incompetent in the state proceedings against her, Mr. Mitchell's co-defendant, Wanda Barzee was subsequently declared competent to stand trial as a result of forced medication ordered by the state court, and she ultimately entered into a plea agreement with the federal government. Portions of interviews with Ms. Barzee were entered into evidence during Mitchell's competency hearing and Ms. Barzee testified in person at Mitchell's trial. Judge Kimball sentenced Ms. Barzee on November 17, 2009, to 15 years in prison.

There are several things that can be said about the Mitchell case, but there are only a few things one can say with certainty. As one of Mr. Mitchell's counsel, I was one of three people in the Federal Public Defenders Office who deliberated on appealing the case. Candidly, I believed and still do, that Mr. Mitchell was not competent to stand trial, and as such, we who handled the case face the ethical question of how to proceed with a client we believed incompetent but who had been found competent—a situation in which there are neither clear nor easy answers. I also believe and still do, that the case should have been appealed on the decision not to transfer venue, which is publicly documented in a presentation to the Tenth Circuit Historical Society that can be found on youtube. From my perspective, however, Judge Kimball's competency decision could not have been successfully appealed, in part because, as is typical, he patiently took and evaluated evidence on the matter and entered a thoughtful, well-reasoned decision, which given the findings of fact left only one very difficult question for appeal: can a personality disorder be so pronounced as to make a person incompetent to stand trial? This lawyer would have appealed on the legal issue for appellate guidance, though end result in my estimation would have remained the same. And while I lost the two to one vote on appealing the venue decision, the law on the matter was in no way settled, and still is not, and Judge Kimball's approach to empaneling a fair jury did ensure that we had the most thoroughly vetted venire to be found in this venue. Reasonable minds can disagree on difficult questions, but what remains completely clear is that Judge Kimball rendered well-reasoned and thoughtful decisions that deserve respect as they are models for how a jurist should process difficult questions and for that Judge Kimball remained true to form.

At least one of the most contentious, or potentially socially divisive, cases over which Judge Kimball has presided is Utah Gospel Mission v. Salt Lake City Corporation, or what is commonly referred to as the Main Street II case. The lawsuit was the second round of a long-standing and divisive dispute pertaining to Salt Lake City's sale of a block of Main Street to the LDS Church. The first round of the dispute, which was handled by another judge in the district, involved the City's sale of Main Street Plaza and the City's reservation of a pedestrian easement through the Plaza, while allowing the LDS Church to control behavior and limit First Amendment activity on the Plaza. On appeal, the Tenth Circuit Court of Appeals ultimately determined that the easement itself was a public forum for First Amendment purposes and that the City and Church could not prohibit protected speech on the easement.

The Main Street II litigation challenged the constitutionality of the City's subsequent sale of the pedestrian easement to the LDS Church. Through the sale, the LDS Church secured the right to prohibit First Amendment activity on the Main Street Plaza, and, in exchange, the City obtained 2.125 acres of LDS Church-owned property in the Glendale neighborhood of the City, payment of half the attorneys' fees awarded against the City in the previous litigation, and $5 million in cash and land from the Alliance for Unity. In total, the City obtained over $5.375 million in land and cash in exchange for the easement, which had been valued at $500,000.

In the lawsuit, Plaintiffs argued that the Mayor's decision to sell the easement was brought about by the undue influence of the LDS Church. The City and the LDS Church, on the other hand, argued that the Mayor

proposed a compromise that, among other things, would bring many secular benefits to the City, including obtaining land and cash valued at over $5.375 million, putting to rest the legal battles between the City and the LDS Church, and helping to heal the wounds of a City divided along religious lines. The specific issues in this case were whether the sale of the easement: (1) violated Plaintiffs' rights to freedom of expression and assembly under the First and Fourteenth Amendments to the United States Constitution, and (2) constituted an improper establishment of religion under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Utah Constitution.

Judge Kimball dismissed both claims, finding that the property at issue had become an entirely private, Church-owned Plaza devoid of any government property interests that could create a public forum. The court determined that the free speech guarantees of the First and Fourteenth Amendments did not apply to the Plaza or to the now-extinguished easement. The court also found that Plaintiffs had not stated a claim under the Establishment Clause, finding that the sale of the easement to the LDS Church, even assuming that it was partially motivated by the religious purposes of those involved, served a reasonable secular purpose. Given the facts of the case, the court held that Plaintiffs had failed to allege that the City's actions had the principle or primary effect of advancing or endorsing religion because a reasonable observer would not view the decision to sell the easement as communicating a message of government endorsement of the LDS Church. In addition, the court determined that Plaintiffs had failed to adequately allege that the sale of the easement created excessive entanglement between the City and the LDS Church. If anything, the court found, the sale actually eliminated the likelihood of excessive entanglement. Finally, the court held that when the City merely elected one of two choices presented by the Tenth Circuit of Appeals in Main Street I, it could hardly be said that the reason for the City's decision was to promote or endorse the LDS Church. The Tenth Circuit Court of Appeals subsequently affirmed Judge Kimball's decision.

Like the Mitchell case, Judge Kimball in Main Street II exhibited a common quality in every case before him. No matter how contentious the litigation, there always seems to the practitioner that the court is doing what it ought to do, move decisively and constantly toward providing resolution to the case. In high-profile cases such as these two, those close to the cases both desire and dread finality, as socially they provide a cultural function for those to discuss the important issue they raise for the public. As one of those who has practiced fairly frequently before him, it seems that Judge Kimball understands this tension between the court as a legal institution and the court as a cultural institution, and that, quite rightly, he does what every judge should: bring the dispute before the court to resolution in as just, efficient and equitable manner possible. In this sense, too, he echoes Judge Winder.

Any account of Judge Kimball's tenure on the bench would be incomplete if it did not note that Judge Kimball has two very experienced law clerks, who are accomplished lawyers in their own right. Anne Whitehead Morgan has clerked for fourteen years with Judge Kimball and plans to continue with the Court for the foreseeable future. For almost six years prior to joining Judge Kimball, Ms. Morgan practiced with Parsons Behle & Latimer. Fellow clerk Susie Inskeep Hindley practiced with Holland & Hart for nearly four years before joining Judge Kimball in 2001. Judge Kimball notes that he intentionally hires experienced lawyers as his full-time clerks because even with his egalitarianism he pragmatically understands that new lawyers "don't know anything yet."

He has surely learned this from the experiences at least partially covered here. Judge Kimball himself has said that he believes that the best judges are non-ideological. In other words, they have no axe to grind. At the same time, he believes that people with strong political views can still be good judges so long as they set aside their political views when making decisions, and he pragmatically leaves the opinions of whether he does so up to others, as he understands the court of public opinion is another venue with standards unpredictable. While Judge Kimball has never had trouble making decisions, he does not believe that delaying even a difficult ruling is fair to the parties. He is dedicated to the principle that parties are entitled to a decision within a reasonable time. By issuing prompt decisions, Judge Kimball believes that parties then can decide whether to drop the matter, settle the matter, or pursue an appeal. Judge Kimball also feels that he has no obligation to persuade parties to settle cases. He believes he was hired to hear cases and decide them. Litigants before him understand this all too well, as when they are in his courtroom, they feel the comfort and anxiety of practicing before a lawyer's lawyer, and a judge's judge.

by Kris Angelos

Eighth Annual Criminal Law Seminar

The Eighth Annual Criminal Law Seminar was held on June 13, 2014, at the Hotel Monaco in downtown Salt Lake City, Utah. Approximately ninety-five criminal lawyers gathered for the presentation and luncheon sponsored by the Utah Chapter of the Federal Bar Association, the Utah Federal Public Defender Office and the Criminal Law Section of the Utah State Bar. Jennifer L. Tomchak, President of the Utah Chapter of the Federal Bar Association, welcomed all to the seminar, thanked sponsors for their generous support, and reminded everyone about the benefits of FBA membership.

The first speaker of the day was Ed Wall who gave a rousing and informative presentation on the topic of invoking a client's Fifth and Sixth Amendment rights prior to investigation and throughout criminal proceedings. The presentation focused on a history of Fifth and Sixth Amendment caselaw and a discussion of how to "entrench" these rights during the pendency of any criminal matter.

Next, in what has become a yearly tradition, Diana Hagen, Appellate Chief, United States Attorney's Office, and Scott Wilson, First Assistant, Utah Federal Public Defender Office, bantered back and forth during a discussion of developments in Tenth Circuit caselaw. Topics included a discussion of the "modified categorical approach" under newly enacted United States Supreme Court law and the problems with the use of GPS tracking technology under the Fourth Amendment.

The day continued with a presentation by Kathy Nester, the Utah Federal Public Defender, and John Huber, Executive Assistant United States Attorney, with Fred Metos as moderator. The panel discussed the impact of the "Holder memorandum" which directs prosecutors to file minimum mandatory charges only when certain criteria are met. Topics also included a discussion of the recently enacted drug guidelines that will take effect November 2014, which reduce previous drug offense guideline levels by two-levels. Ms. Nester suggested that defense counsel begin asking for this two-level reduction now as a variance under §3553 factors. Mr. Huber agreed and indicated that local prosecutors have been directed to stipulate to this two-level variance when defense counsel request the reduction. The panel ended with a discussion of future prosecution priorities and reentry courts.

The keynote speaker, Mark Geragos, spoke shortly after a delicious plated lunch was served. Mr. Geragos is a well-known criminal defense attorney who has been a prolific media commentator on CNN and has represented famous clients including Michael Jackson (child sex abuse), Winona Ryder (shoplifting), Scott Peterson (murder), and Chris Brown (assault of Rihanna). Mr. Geragos regaled all with his story of representing Susan McDougall, President Clinton's former business partner who spent eighteen months behind bars for her refusal to testify before a grand jury regarding whether the former president had lied under oath about his knowledge surrounding a "Whitewater" business deal. While highly entertaining, Mr. Geragos' speech also inspired many lawyers in the room and reminded all why they love the law. One attorney present at the seminar even suggested that he could check an item off his bucket list ---- i.e., meeting Mr. Geragos.

Next, Russell Robison, a former white-collar defendant who served four months in federal prison for making and subscribing false tax returns, discussed what he wished he would have known before serving time with the Federal Bureau of Prisons. He described his ignorance regarding court proceedings prior to his indictment, the embarrassment of telling family members he had been criminally charged, his fear of going to prison, and his concerns about receiving proper medical attention while at the prison. During his presentation, he reminded attorneys that defendants are people who have feelings and have families, and that compassion and respect are important when dealing with defendants.

The seminar closed with a panel discussion involving Judge Dale A. Kimball, Judge Clark Waddoups, Judge Evelyn Furse, and Nathan Crane. The topic of civility in the courtroom and ethics in sentencing was discussed. During the panel presentation, the topic of credibility with the court was addressed. Judge Waddoups reminded attorneys that credibility is essential to the practice of law since judges remember when a lawyer has wholly misstated law or facts in prior argument or briefs. These misstatements have the potential to impact an attorney's credibility in future cases. Additionally, the judges discussed their expectations regarding sentencing memorandum and highlighted the importance of filing written objections and any argument in a timely manner so that judges can be prepared to listen to argument and engage in questioning during the sentencing hearing.

All in all, it was a wonderful event with informative presenters. For those of you who attended, we thank you for coming and invite you to join us again next year. For those of you who were unable to attend, we will see you in 2015!

by Tanner Camp

Notable Decisions

***United States v. Medina*, No. 2:13-CR-140 TS, 2014 WL 1758073 (D. Utah Apr. 30, 2014).**

Officer Loveridge stopped Maria Teresa Medina's vehicle because of a broken taillight. *Medina*, 2014 WL 1758073, at *1. After noticing several air fresheners and pieces of luggage in the car, the officer called for a narcotics detection dog. *Id.* The dog indicated the presence of drugs which led to the discovery of a sizable amount of methamphetamine. *Id.* At trial, Medina moved to suppress the evidence seized during the search, arguing that (1) Utah's dog certification program was inadequate and (2) that the specific dog used in the search was unreliable. *Id.* at *2. The U.S. District Court for the District of Utah disagreed and held that "the facts surrounding [the dog's] alert would make a reasonable prudent person think that a search would reveal contraband or evidence of a crime." *Id.* at *5. First, the court concluded that Utah's training program for its narcotics dogs was not unreliable. *Id.* at *4. Even though the dog's accuracy was approximately 75%, the court reasoned that "it does not necessarily follow that an imperfect training program produces unreliable dogs." Second, the court concluded that the dog involved in this case was not inadequately trained. *Id.* at *5. The dog was performing at a level that was sufficient to obtain certification, which the court had already determined was reliable. The dog's alert would have made the reasonably prudent person suspect the presence of contraband and, therefore, the officers had probable cause to search Medina's vehicle.

***United States v. Lopez-Ayola*, No. 2:12-CR-00107-RJS, 2014 WL 2197065 (D. Utah May 27, 2014).**

Gamaliel Lopez-Ayola moved to suppress statements that he made during an interrogation, claiming the officers were required to stop questioning him after he invoked his right to counsel. *Lopez-Ayola*, 2014 WL 2197065, at *1. The court held, however, that Lopez-Ayola had not properly invoked his right to counsel and, therefore, the officers were not required to honor the request. *Id.* at *5. In order to benefit from the right to counsel, one's request must be "sufficiently [clear] that a reasonable police officer in the circumstances would understand the request." *Id.* at *3. In deciding whether a request is sufficient, courts balance the need to protect defendants from coercion with the need for police to conduct legitimate investigations. *Id.* at *4. In this case, the fact that there was a dispute between the officers and the interpreter regarding Lopez-Ayola's statements proved that the request was ambiguous. *Id.* Furthermore, the totality of circumstances demonstrated that Lopez-Ayola "was properly informed of his right to counsel and . . . did not invoke that right." *Id.* at *5. Accordingly, the court denied Lopez-Ayola's request to suppress his statements during the interrogation.

***Maranville v. Utah Valley Univ.*, No. 13-4129, 2014 WL 2696752 (10th Cir. June 16, 2014)**

Dr. Steven Maranville sued Utah Valley University for denying him tenure, claiming that the university had denied tenure without affording him due process. *Maranville*, 2014 WL 2696752, at *2. He also claimed that the denial of tenure was a breach of contract and a breach of the covenant of good faith and fair dealing. *Id.* at *1. The District Court for the District of Utah granted summary judgment in favor of the defendants and *Maranville* appealed. *Id.* at *2. On appeal, the Tenth Circuit affirmed the district court's decision, concluding that there was no constitutional violation and no merit to the common law claims. *See id.* First, the court held that a non-tenured professor does not have a "constitutionally recognizable property right." *Id.* at *3. "Only a formal guarantee of continuing employment under color of state law . . . would have created a property interest." *Id.* at *4. The court also held that denying tenure was not a breach contract because it was dependent on two conditions, one of which clearly had not been fulfilled. *Id.* at *5. Finally, the court concluded that the "implied covenant of good faith and fair dealing cannot be used to impose upon an employer the duty to end an employee's service only upon good cause." *Id.* Relying on these three conclusions, the court affirmed the district court's grant of summary judgment in favor of the defendants. *Id.*

by Jenifer L. Tomchak

Mid-Year Meeting Review

Over 140 Chapter Leaders, Circuit Vice Presidents, Division and Section Chairs, representatives of the federal judiciary, and representatives from the Board of Directors descended on Washington, D.C. on March 28 and 29, 2014, for the Federal Bar Association's Mid-Year Meeting. The meeting began with the Thurgood Marshall Moot Court Competition and celebratory reception, where a record forty-six teams fought to be the winning team. The team representing St. Mary's University of San Antonio took that title and also awards for Best Oralist of the Finals and Runner-up Best Oralist of the Competition.

The next morning the chapter leaders, Circuit Vice Presidents, and Division and Section Chairs met to discuss the importance of collaboration and to exchange programming ideas. These meetings also included an important discussion about Judicial Vacancies: The Path to Filling the Federal Bench, which was followed by a luncheon speaker, discussing the same topic. The presenters on the important topic of filling judicial vacancies, included West Allen, Chair of the Government Relations Committee; Bruce Moyer, the moderator and government relations counsel for the FBA; Maggie Whitney, Chief Counsel of nominations for the Senator Patrick Leahy of the Senate Judiciary Committee; Russell Wheeler, a judicial analyst for the Brookings Institute; Ted Lehman, Chief Counsel for nominations for Senator Grassley of the Senate Judiciary Committee; and Christopher Kang, Deputy Counsel, White House counsel's office.

Jenifer L. Tomchak, Utah Chapter President; Robert S. Clark, National Delegate; Mark Vincent, National Treasurer; and Jonathan O. Hafen, Tenth Circuit Vice President and Chair of the National Membership Committee

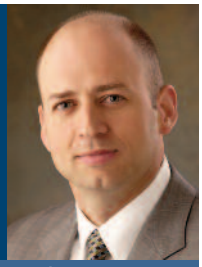
The Mid-Year meeting culminated with the National Council Meeting and a reception. The highlights of the committee reports at the National Council Meeting included reports from two members of the Utah delegation. Mark Vincent, National Treasurer, provided the Treasurer's Report. Jonathan Hafen, Chair of the Membership Committee and Circuit VP of the Tenth Circuit, provided a highly entertaining report about the wave of membership. He reported that we have reached a new all-time high in membership with 16,634 members across the nation. He also encouraged chapters to catch the wave and grow their membership by 3% by: (1) following its membership plan; (2) recruiting and converting law student members; (3) tapping into lesser-represented membership categories like women and government lawyers; and (4) collaborating with sections and divisions.

Matthew Moreland, President Elect, discussed the upcoming Annual Meeting in Providence, RI. He promised us a great time that included 500 fires floating down the river.

by Michael D. Stanger

Weber County FBA Sidebar

While attorneys in the Salt Lake area have regular opportunities to attend the FBA's Sidebar CLEs featuring members of the federal bench, such occurrences are not as common in other locations in the State. In an effort to expand the FBA's Utah footprint, the Honorable William T. Thurman, Chief Bankruptcy Judge for the District of Utah, and I took the show on the road to Ogden. At the June 20th monthly meeting of the Weber County Bar Association, hosted at the Hearth on 25th, Judge Thurman presented on best practices in Bankruptcy Court. I had the opportunity to give a brief introduction to the FBA before Judge Thurman's presentation, and plug the benefits of FBA membership. After a great presentation, a group of local practitioners numbering about 30 had the opportunity to ask Judge Thurman many questions and receive his feedback. I hope Judge Thurman's presentation was as valuable to the other attendees as it was to me. I anticipate the FBA visiting Ogden again next year, and perhaps even annually. If your local bar association would like to arrange something similar, please feel free to contact me at 801-530-7386 or mstanger@cnmlaw.com. Special thanks go to Weber County Bar President Michael S. Malmborg of Durham Jones and Pinegar for his efforts in making the visit a success, and, of course, to Judge Thurman.



by David L. Mortensen

Judge Shelby's Sidebar CLE Review

During the last FBA Sidebar Luncheon, we were treated to an engaging presentation by Judge Robert J. Shelby. As the newest Federal District Court Judge, Judge Shelby offered a number of important practice pointers for those appearing in his Court.

Setting Trial Dates. In civil cases, Judge Shelby will not be setting specific trial dates in the initial scheduling order. Instead, he will schedule civil cases for trial following resolution of any dispositive motions. If the parties decide not to file dispositive motions, they should inform his chambers and Judge Shelby will set a trial date following the close of discovery. Judge Shelby's Standard Civil and Criminal Trial Orders can downloaded at http://www.utd.uscourts.gov/judges/shelby_prac.html

Amending the Scheduling Order. Judge Shelby explained that his goal is to facilitate resolution of the parties' disputes. To that end, he typically grants stipulated motions to amend the schedule. However, stipulated motions should include proposed dates. Judge Shelby disfavors open-ended extensions.

Scheduling Oral Argument. Judge Shelby typically schedules oral argument after receiving a memorandum in opposition, but before receiving the reply memorandum. Usually 2-3 weeks before the scheduled hearing, Judge Shelby will begin reviewing the memoranda and discussing the motion with his clerks. At that time, Judge Shelby may decide whether to issue a written or oral decision. One week prior to the hearing, Judge Shelby receives a bench memorandum and draft order.

Judge Robert J. Shelby

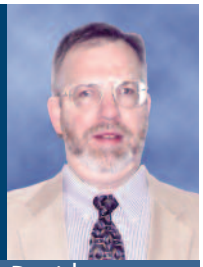
Summary Judgment Motions. In preparing summary judgment memoranda, counsel should follow the format set forth in Local Rule DUCivR 56. Judge Shelby may ask parties to resubmit their memoranda if they fail to comply with that format. Counsel should file courtesy copies of all dispositive motions.

Short Form Discovery Motions. Judge Shelby is using the Short Form Discovery Motion Procedure. An order requiring the parties to follow that procedure is usually issued in cases assigned to Judge Shelby.

Request for Overlength Memoranda. Unless it appears that a party is trying to overwhelm the other side with paper, Judge Shelby typically grants motions for leave to file overlength memoranda.

Temporary Restraining Orders. Parties should only file motions for temporary restraining orders in emergencies. Typically, Judge Shelby will not hear TRO motions ex parte. Parties should not call Judge Shelby's chambers to request a hearing until after filing a TRO motion.

The FBA Board appreciates Judge Shelby taking time to share his insights!



by David Holdsworth

Review of Civil Rights Act CLE

FBA Commemorates 50 Years Of The Civil Rights Act

This year marks the 50th year since the passage of the Civil Rights Act of 1964. As part of the commemoration and celebration of the Act's jubilee on April 17th, the Utah Chapter hosted a speech by Reverend France Davis, Pastor of the Calvary Baptist Church, and a panel discussion, featuring Magistrate Judge Brooke Wells and two local attorneys.

Rev. Davis has been an important voice in the Salt Lake community for over 40 years. What made his participation in this commemoration so intriguing was that he was present during the August 1963 March on Washington (during which Dr. Martin Luther King delivered his famous "I Have A Dream" speech). He was also present when Dr. King gave his "How Long?" speech in Montgomery, Alabama, and he also participated in the Selma to Montgomery march in 1965.

In a fascinating Q&A after his prepared remarks, Rev. Davis answered such questions as how the civil rights marchers handled logistics like food and lodging, how he happened to "end up" in Utah, and what he expects will be the civil rights struggles of the next few years.

The panel discussion featured participation by Judge Wells, Blake Hamilton, of Stirba, PC, and Kass Harstad of Strindberg and Skolnick. The panel discussed the variety of challenges in handling civil rights cases of all types: employment discrimination, excessive force by police, denial of equal protection, etc. The panel strongly encouraged younger attorneys and established mentors to participate in the FBA's Federal Appointment Wheel Program. (For those readers who may be unfamiliar with this program, it is a program through which federal judges can quickly identify and appoint counsel from a pool of volunteer attorneys to represent individuals a judge deems as having colorable civil rights claims.)

The FBA thanks all who participated in this celebration of the 50th anniversary of this landmark legislation.

For further information about the struggle to pass the Civil Rights Act of 1964, see the following books: Robert Mann, The Walls of Jericho. Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights, David J. Garrow, Protest at Selma, Martin Luther King and the Voting Rights Act of 1965, David J. Garrow, Martin Luther King, Jr., and the Southern Christian Leadership Conference (winner of the Pulitzer Prize). Related books include: Diane McWhorter, Carry Me Home, Birmingham, Alabama, The Climactic Battle of the Civil Rights Revolution (also a winner of a Pulitzer Prize), Ghosts of Mississippi, by MaryAnne Vollers (National Book Award Finalist), Jack Bass, "Unlikely Heroes. The Dramatic Story of the Southern Judges Who Translated the Supreme Court's Brown Decision into a Revolution for Equality, and Jack Greenberg, Crusaders in the Courts. How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution.

The key figure in the passage of the Civil Rights Act of 1964 was, of course, President Lyndon B. Johnson. Perhaps unfairly vilified by history for his role in the America's war in Vietnam, he should be justly honored for his skill in shepherding the Civil Rights Act through a somewhat reluctant Congress. When he began lobbying for passage of the Act, he shared these lofty thoughts:

"First, no memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest passage of the civil rights bill for which he fought so long. We have talked long enough in this country about equal rights. We have talked for one hundred years or more. It is time to write the next chapter, and to write it in the books of law."

"I urge you again, as I did in 1957 and again in 1960, to enact a civil rights law so that we can move forward to eliminate from this Nation any trace of discrimination and oppression that is based upon race or color. There could be no greater source of strength to this Nation both at home and abroad."

by Benson L. Hathaway, Jr.

Southern Utah Federal Law Symposium

Seventh Annual Southern Utah Federal Law Symposium

In what was the largest turnout of any prior symposium, the Seventh Annual Southern Utah Federal Law Symposium did not disappoint. Starting with Thursday night's presentation by renowned life's coach, Alan Fine, until the concluding observations of Mary Jo O'Neill, regional counsel for the EEOC, the seminar included practical pointers for increasing the value added in resolving disputes for clients in the federal system. Alan Fine revealed that greatness is not so much a function of knowledge as it is of focus. The panel of the Chief Judges, the Clerk of the Court, and the U.S. Attorney highlighted practical aspects to be confronted in appearing in the new federal courthouse including security issues and the technological advancements. All invited attorneys to receive instruction on courtroom technology, and Mark Jones extended a special invitation for a personal tour of the courthouse.

Judges Benson and Kimball explored the issues confronted under the rules of evidence at every point along the way, in any proceeding before the court, from relevancy to hearsay. Neither was reluctant to share humorous anecdotes demonstrating success and folly in application of the points discussed.

Guest speaker Brian Duffield, a product liability defense attorney with 35 years' experience compared trial advocacy to a drama, warning that a trial is in fact a drama, whether realized or not. If not, Mr. Duffield suggested, you aren't doing your job.

The Magistrate Judges' panel provided a top ten list of specific ways not to run afoul of the Magistrate Judge. All suggested, again, that attorneys seriously consider letting the assigned Magistrate Judge handle all substantive matters through trial. In support, Judge Furse posited that Magistrate Judges are able to set a trial, on average, five months after the dispositive motion deadline. Judge Furse also explained that an abbreviated discovery motion practice is being tested among the Magistrate Judges to determine whether a rule change would benefit the process, and invited the attorneys who actually do the research and writing to appear and argue the motions. In fact, that approach is Judge Furse's preference.

For lunch, Professor Jonathan Turley made a compelling argument for reforming the Supreme Court. Dr. Turley pointed out that the number 9 justices is pure tradition, was never debated and determined arbitrarily. Dr. Turley recommends that there should be 19 justices on the United States Supreme Court, the same number that has been adopted by the Circuits. Dr. Turley remonstrated the elitism of the Supreme Court. Currently its members are Harvard and Yale alumni only. Clerks form other schools have little if any chance of being hired. Dr. Turley suggested that the Supreme Court Justices need to "ride the Circuit" again. They have become insulated and out of touch and should be given the experience of applying the decision the Court issues to the people those decisions affect.

The bankruptcy panel discussed the updated status of the court rules and filings. Judge Thurman pointed out that the number of bankruptcy filings is on decline and noted that it appears to inversely track the economy. The Utah District Bankruptcy Court continues to be on the cutting edge of the ever-evolving body of bankruptcy court law.

Judges Nuffer and Shelby addressed effective advocacy. Specifically Judge Nuffer provided invaluable pointers on how to increase written advocacy. Highlights of Judge Shelby's insights included a warning to not misstate, mischaracterize or overstate the facts or law, to listen carefully to judge's questions and answer them directly, and to address argument to the court, not counsel.

West Allen, the National Chair of the FBA's Government Relations Committee and trademark litigator from Las Vegas, spoke to the ongoing struggle in getting judicial appointments confirmed. West also gave an excellent and practical tutorial on trademark law in terms of advising enforceability and enforcing the various levels of trademarks in court.

Finally, Ms. O'Neill shocked the audience with stories of actual discrimination that she has encountered in her position over the past several years. Of late she has observed there appears to be an increase of claims based on pregnancy and gender. Unwilling to await legislation, Ms. O'Neill underscored that EEOC enforcement is delighted with a perceived trend in judges recognizing gender as a protected class under Title VII actions.

It would be hard to find more practical instruction that directly applies to practicing before the Federal District Court than that received at this year's Southern Utah Federal Practice Symposium. Add to that the opportunity to mix and mingle with the Federal Judiciary and to rub shoulders with seasoned federal practitioners in such a beautiful setting as St. George makes this Symposium an event not to be missed. And if the substance of the Symposium is not enough, golf Saturday morning in Utah's beautiful Dixie provided the icing on the cake. Plan to join us next year in St. George on May 7, 8 and 9.

by Amber Mettler

Introduction to Federal Courthouse

Introduction to Federal Courts

The FBA held its annual Introduction to Federal Courts program for new members of the Utah Bar and their mentors on June 16, 2014, at the new federal courthouse building. After an introduction by chapter president, Jennifer Tomchak, the program kicked off with a presentation by Judge Dale A. Kimball on "Advocating with Professionalism and Civility in Federal Court." Judge Kimball had good advice for all the lawyers in the room – newly minted and otherwise – including to never misrepresent the facts, the law, or one's communications with opposing counsel, to not get angry, and to always be upfront with your client. Judge Kimball wisely reminded the group that whether you're speaking to the court or to the jury – be honest and get to the point.

Next up, attendees were provided some important advice from career law clerks, Anne Morgan (clerk for Judge Kimball) and John Durham (clerk for Magistrate Judge Warner). Anne and John advised attorneys to visit and explore the court's website (http://www.utd.uscourts.gov/). In particular, there is a lot of very helpful information at the "Electronic Case Filing" link, including samples of documents, information concerning administrative e-filing procedures, guides to creating documents with hyperlinks, and Judge Nuffer's resource materials. Anne and John also reminded attorneys that although some judges no longer need them, courtesy copies are still required and should be provided within a day or two of filing.

Chief Deputy Clerk and longtime FBA board member, Louise York, then gave everyone an orientation of the new courthouse, complete with a description of the different types of wood used on each floor.

Introduction to Federal Courts program

Finally, we heard from Jeff Taylor and Elizabeth Toscano who shared tips on working with the clerk's office and on being a new lawyer. They reminded everyone to try to have a sense of humor and don't be afraid to call the help desk if you have a question.

The FBA offers this program every year so if you missed it this year, be on the lookout for an invitation next year in May or June.

On March 21, 2014 a lunch was held at the University of Utah for law students.

by Aida Neimarlija

Law Student Reception Review

FBA Holds Its First Student Social

On April 3, 2014, the Federal Bar Association ("FBA") Board held its first annual Social with judges and their clerks, and approximately twenty-five student chapter members from S. J. Quinney College of Law and J. Reuben Clark Law School. The event was a great success. Magistrate Judge Evelyn Furse and many federal court clerks attended and enlightened the students about the federal practice, their career paths and other helpful matters.

In 2014, under the leadership of its president Jenifer Tomchak, the FBA formed a Socials Committee, with Shane Hillman and Aida Neimarlija serving as co-chairs. The goal of the committee is to facilitate opportunities for the FBA members, students, federal court judges and clerks to get to know each other and discuss issues related to federal law and the practice in federal courts in an informal setting. Please watch out for announcements concerning FBA's future social events on our website and Facebook.

Law Student Reception

Law Student Reception

Trivia Corner

With football season upon us, let's test your knowledge of early professional football teams in the United States:

1. **In the early 1920s, the Oorang Indians (Ohio) of the National Football League played the NFL team from Dayton, Ohio. What was the name of the Dayton team?**
2. **The Buffalo All-Americans, New York Brickley Giants, Cleveland Tigers, Evansville Crimson Giants and Rochester Jeffersons belonged to what professional football league?**
3. **The Marines and the Beavers vied for professional football supremacy in the 1910s in what Upper Midwest City?**
4. **The Florida Blazers and Memphis Southmen were shining stars in what mid-1970s football league?**
5. **The NFL is big-time sports these days. But can you name the NFL teams which played in the 1920s in the following cities: Duluth, St. Louis, Pottsville, Chicago and Providence?**
6. **After World War II, but before the NFL came of age in the 1950s, it boasted teams in a number of eastern and mid-western cities, some of which survived and some of which disappeared. Can you name the name of the teams in Boston, Brooklyn, Chicago and Cleveland?**