



# Federal *Jurisdiction*

Federal Bar Association Utah Chapter Newsletter

Spring 2012



by Jonathan Pappasideris

## President's Message

Like many of you, I'm often bemused when I see television commercials implying that the purchase of a particular product will instantly change my life for the better. For example, I have a difficult time accepting that using a certain credit card is my passport to

global adventure, or that cracking open a specific kind of frosty adult beverage will magically turn my living room into a spontaneous party. Call me a skeptic (I am an attorney, after all!), but I've always believed that, as the old cliché goes, the proof is in the pudding. Which is why, when a friend cajoled me to join the Utah Chapter of the Federal Bar Association ("FBA") in 2006, I didn't harbor high expectations that FBA membership would significantly better my practice. In fact, I think my first response to his invitation was something along the lines of "I have pending cases in federal court, which means I'm already an FBA member." Suffice it to say I was wrong on both counts.

To begin, you may believe (as I once did) that you are an FBA member simply by virtue of being admitted to the bar of the U.S. District Court for the District of Utah. Membership in the FBA, however, is entirely separate from and unrelated to your ability to practice in federal court. Founded in 1920, the FBA, which is presently comprised of over 15,000 lawyers (including 1,200 judges), is the premier national bar association serving federal practitioners and the federal judiciary. Membership in the FBA makes you a member of the Utah Chapter.

But, you may be saying to yourself, if I'm receiving this mailing, I must be an FBA member, right? Not necessarily. We decided to send this issue of *Federal Jurisdiction* (which is our local chapter newsletter) to all

attorneys admitted to the Utah federal district court bar, regardless of FBA membership status. If you're not sure whether you're part of our ranks, our current chapter roster can be found on Page 3, along with a membership application at the end of this newsletter. For those of you who are not FBA members, I invite you to take a look and learn about the exciting events we've got planned for the coming year, as well as what you've been missing out on.

If you practice in federal court, the FBA offers unique benefits that you just won't receive from any other organization. For example, on May 3-5, our Chapter is hosting its fifth annual Southern Utah Federal Law Symposium in St. George. In addition to CLE presentations featuring eight federal judges, the U.S. Attorney for the District of Utah, and the Chief Trial Counsel for the Securities & Exchange Commission (just to name a few), this year we also have the privilege of hosting the Chief Clerk of the U.S. Supreme Court, General William Suter, who will preside over a special swearing-in ceremony for those attorneys seeking admission to the U.S. Supreme Court Bar.

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# Utah Chapter of the FBA Members



## Are You A Member of the FBA?

Membership in the Federal Bar Association (“FBA”) makes you a member of the Utah Chapter. Our Chapter is comprised of federal judges and lawyers who practice in Utah federal courts. Participation in the FBA gives lawyers the opportunity to network with local attorneys and judges and stay up-to-date on federal practice and the latest developments in the law. Our members receive significant discounts on all of our CLE programs, including the popular Annual Ronald N. Boyce Federal Court Litigation Practice Seminar. In addition, members receive priority invitations to limited-seating events, including our “Side Bar” CLE luncheons featuring local federal judges. Members also receive *Federal Jurisdiction*, the Utah Chapter’s quarterly newsletter on events and developments of interest to local federal practitioners, and *The Federal Lawyer*, published monthly by the national FBA.

To join the FBA, please visit: <http://www.fedbar.org/join.html>.

For more information, contact the Utah Chapter's Membership Officer:

Benson L. Hathaway, Jr. - (801) 321-4835 - BHathawa@kmclaw.com

### FBA MEMBERS - UTAH CHAPTER

AS OF FEBRUARY 2012

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*This issue of **Federal Jurisdiction** has been circulated to all federal judges and attorneys with active cases before the U.S. District Court for the District of Utah. Remember that admission to the Court is not the same as membership in the FBA. To receive future issues, we invite you to join us as a member.*

## President's Message

*(continued from page 1)*

If your schedule won't permit a trip to St. George this year, please consider attending one of our other events, such as the Ronald N. Boyce Federal Court Litigation Practice Seminar or the Criminal Law Seminar, both of which are held in Salt Lake City. Alternatively, spend a lunch hour at one of our extremely popular "Sidebar" CLE presentations, which provide the opportunity to hear federal judges speak in an intimate setting on various topics of interest to federal practitioners. Look for one soon featuring the Honorable Scott M. Matheson, Jr., of the Tenth Circuit Court of Appeals.

In addition to priority admission and pricing to these and other FBA events, members also receive a free subscription to FBA National's magazine, *The Federal Lawyer*.

In short, if you practice in federal court, the personal and professional benefits associated with FBA membership are invaluable. If you are already a member, I look forward to serving as your President during the coming year. And if you're not, I invite you to learn more about us and consider becoming an FBA member. If you do, I'm sure that you (like me) will quickly come to realize that membership truly does have its privileges.

## Clerk's Corner

### Looking Forward to 2012

The court is anticipating major changes in 2012. As the building steadily rises to the west of the Frank E. Moss Building, there are important changes in the judiciary also looming. Also, we are waiting to hear of the confirmation of Magistrate Judge

David O. Nuffer as a district judge, filling the vacancy created long ago when Judge Dale A. Kimball took senior status. The slow pace of confirmation has nothing to do with Judge Nuffer, but everything to do with other forces and considerations. The court is very anxious to get this vacancy filled so that the cases can be equitably distributed and more efficiently handled. With only three active district judges on the bench, caseloads are rising for all judges. The work of the senior judges is vital to the court, as is the work of the magistrate judges, in handling civil consent cases.

Judge Nuffer's new appointment will create a vacancy in the magistrate ranks, and Magistrate Judge Samuel Alba recently confirmed that he will retire from the court at the end of June 2012. The Magistrate Judge Selection Panel has recommended candidates for the anticipated Judge Nuffer vacancy. A similar process will be initiated for Judge Alba's vacancy. Judge Brooke C. Wells became Chief Magistrate Judge on January 1, 2012, succeeding Judge Nuffer in that position.

Judge Alba has been such a unique force on the court during his service that he will be missed in many ways. He has been a breath of fresh air since the day he was sworn in. Judge Alba has led many initiatives for the court in improving case processing procedures. He worked tirelessly to gain new magistrate judge positions and has taken to the road to provide resources for Vernal and Monticello. There are other major contributions Judge Alba has made to the court on the administrative side that few members of the bar are aware of. His leadership of the magistrate judges during his years of service as Chief Magistrate Judge was extraordinary and resulted in improvements in communication between the district judges and the magistrate judges. Judge Alba has also served on National Committees, including the Defender Services Committee. Most recently, he and Judge Campbell were key players in designing the new courthouse and in the long drawn out battle to get the courthouse funded. We will miss the man who inspired "Pedro" of Napoleon Dynamite fame. But, on a more serious note, Judge Alba has been inspiring us for years. He is deeply loved and respected by courthouse staff. Judges' meetings will be far less enjoyable without his quick wit.



by Louise York

### Looking Back at 2011

The year-end case filing statistics are in—the court had 1,392 new civil cases filed and 1,156 criminal cases. This is a slight decrease from the 1,455 civil cases and 1,313 criminal case filed in 2010. The major reduction in civil cases were in the area of real property cases—generally dealing with mortgage foreclosures. The pattern of cases filed with that nature of suit is interesting:

2007	11 cases
2008	26 cases
2009	85 cases
2010	245 cases
2011	176 cases

Felony filings were the primary component of the decrease in criminal cases—717 filings in 2011, down from 858 filings in 2010. Indictments have decreased.

Unfortunately, this cannot be attributed to a lowering of the crime rate, but is more due to federal budget freezes and vacancies in the United States Attorney's Office.

Even though we have vacant judgeships, the judges spent increased time in court. Hours spent in trial or evidentiary hearings increased from 1,027 hours in 2010 to 1,234 hours in 2011. There were 42 trials held, 34 of which were jury trials. The jury administrator had some days with three different jury panels assembling at the court. And the *Novell v. Microsoft* case involved a huge investment of trial time. While Judge Motz came from Maryland to conduct the trial, the staff support, from courtroom deputy to court reporters and CSO support, were all supplied by our local staff.



US Supreme Court Justice  
George Sutherland  
Bronze portrait bust sculpted  
by Utah artist Stan Watts.

### Budget and Court Services

The administration of the court remains affected by budget concerns in Washington D.C. We continue to receive our allocations very late in the fiscal year and the amount allocated is capped or cut. Our court staff, like all other federal employees, have had their pay frozen. The staff now joins the judges who have not had a pay increase in several years. Despite the constraints, the clerk's office and chambers staff are hoping to maintain service at a professional level and not decrease their responsiveness to the needs of litigants, the bar and the public. Please be patient with us if we are a little slow in getting back to you when you call or e-mail.

### Pro Bono Law Firms

We are soliciting law firms to join the FBA/United States District Court for the District of Utah *pro bono* program. Give me a call at the court (801-524-6121) if you would like more information.



## Member Profile: David Barlow, U.S. Attorney For The District Of Utah

by Jonathan Hafén

New U.S. Attorney David Barlow brings with him years of legal experience and a desire to use his legal skills for the public good. Barlow's father was a salesman for Oscar Meyer/General Foods and the family lived in Utah, California and Idaho as Barlow was growing up. At a very young age, Barlow became interested in the concept of advocacy. He loved to take a subject, learn all about it, and come up with the best available arguments to support his chosen position. He was able to use these skills in high school, where he excelled in speech and debate events.

On a parallel track with his love for the law, Barlow was drawn to public service. In high school he helped found a local chapter of the "Youth to Youth" program, which focused on drug and alcohol abuse prevention for teens. The quality of his work caught the attention of national leaders, who invited him to make presentations at conferences throughout the country. Eventually, the U.S. Information Agency invited him to present programs broadcast to various countries throughout the world. The moderator of these broadcasts had to remind Barlow to speak slowly because his comments were being translated live. Often these programs were broadcast at odd times, sometimes as late 10:00 p.m. at night, due to differences in time zones for his audiences.

Following graduation from high school, Barlow enrolled at Brigham Young University, majoring in political science. There he worked as a research assistant for two professors in the political science office, David Magleby and Bud Scruggs. Said Scruggs, "David is the most authentic mix of brilliance, humility and good humor that I have ever encountered. He was that way when he was twenty-two and he hasn't changed. When he was awarded the prestigious Truman Scholarship, one of only 80 such scholarships offered nationwide, I teased him that there was no way he would ever end up in public service. With his intellectual gear he was headed to a top-tier law school where he would graduate with lots of opportunities and even more debt—a combination I reckoned would foil his dreams of fighting the good fight in the government sector. A good lesson: never underestimate David Barlow!"



David Barlow

Awards such as the Truman Scholarship came often to Barlow while in college. He was named by USA Today as one of the top 60 college students in the country. He learned of this honor while reading . . . USA Today. BYU's Golden Key Honor Society gave him its Most Outstanding Senior Award, and Barlow received a national graduate fellowship from Phi Kappa Phi. He graduated from BYU with a 4.0 GPA.

Following his graduation from BYU, Barlow attended Yale Law School. During his second year in law school, he contacted the local U.S. Attorney's Office and persuaded them to give him an internship. He worked on a variety of criminal cases and calls his time there "fascinating and fulfilling."

During his third year at Yale, Barlow externed in the local Federal District Court with the Honorable Peter Dorsey. During that externship, Barlow gained valuable experience helping Judge Dorsey resolve motions and draft opinions.

Following graduation from law school, Barlow practiced with the Chicago-based law firm of Lord Bissell & Brook. After a couple of years at Lord Bissell & Brook, Barlow received an offer to join Sidley & Austin. He was with Sidley for nearly a decade, where he handled a wide variety of matters, most of which were complex civil cases scattered across the country. As an associate, Barlow assumed progressively larger supervisory responsibilities for attorneys both inside and outside his firm for multi-jurisdictional litigation in numerous state and federal courts throughout the country. Over the course of his time at Sidley & Austin, and in addition to the cases he handled directly, Barlow had leadership roles in the handling of thousands of cases, and supervised more than one hundred attorneys within his firm, and scores of attorneys at other firms, on those cases.

Barlow moved back to Utah in April of 2010 to be near his parents and siblings, but continued to practice with Sidley, commuting to his office in Chicago weekly and to other parts of the country where his cases were located. Later that year, newly-elected Senator Mike Lee approached him and invited him to "come back and be my chief legal counsel." This presented a tough decision for Barlow, who would have to resign his partnership with Sidley to accept. He accepted the position to serve for "a year or two," but did not want to move his family to Washington. During his time with Senator Lee, Barlow commuted from Utah to Washington almost every week. His experience with Senator Lee was different than anything he had previously experienced.

“Unlike my legal practice, where it was my responsibility to apply the law, working with Senator Lee gave me the opportunity to participate in making the law. I found that exciting and challenging.” Barlow said. “It was advocacy, but in a much different form.”

In early August 2011, Barlow’s life once again took an unexpected turn. President Obama nominated him to be the U.S. Attorney for the District of Utah. President Obama and the First Lady had both worked at Sidley & Austin prior to Barlow’s arrival there. At the time of his nomination, a few commentators expressed concern due to his relationship with Senator Lee. However, Barlow’s nomination received broad bi-partisan support. Shortly after his nomination, Barlow received a unanimous favorable vote from the Judiciary Committee and days later his nomination was approved by the Senate.

Since joining the U.S. Attorney’s Office, Barlow has received favorable reviews from both inside and outside the office. His approach upon taking the position was to “get educated about my roles and responsibilities, and learn from my team.” Barlow indicates that he has been “extremely impressed with people in the office.” He is particularly grateful to Assistant U.S. Attorney Carlie Christensen, who “helped tremendously” with his transition into the U.S. Attorney’s Office.

Barlow appears to have quickly gained the respect of others in the U.S. Attorney’s Office. One member of the office described Barlow this way: “He is intelligent, willing and able. He has the credentials to have a really big head, but we all learned right away that that is just not his way.” Such sentiment is echoed by Scruggs, “as U.S. Attorney, David Barlow will always have this huge advantage: While others might be distracted by ego urges, petty grudges or the administrative burdens of the job, David will focus on determining what justice demands and how to achieve it. He genuinely doesn’t care about who gets the credit, but he is relentless in

doing what is necessary to get it right.”

Rather than focusing on himself, Barlow prefers to discuss what he hopes to see the U.S. Attorney’s Office accomplish during his tenure. His goals include building on good community relations to make sure the office is aware of and pursuing the criminal and civil issues of greatest importance to Utah, promoting strong cooperation between federal and state law enforcement agencies and offices, and using his office’s prosecutive resources with maximum efficiency in the environment of tight budgets and decreased staffing.

Barlow recognizes that he has not practiced extensively in Utah, but based on what he has already seen, it is clear to him that “there are many talented lawyers here in Utah, and the Federal Judges are well prepared and fair.” Barlow looks forward to getting to know the members of Utah’s Federal Bar Association.



David Barlow, U.S. Attorney For The District Of Utah



*The United States District Court for Utah has installed a wireless network in the Petit Jury Assembly Room and the Court Library. The wireless network is available during business hours Monday through Friday. A password is required to access the wireless network. The password will be posted on the library bulletin board and in the Jury Assembly Room along with basic wireless connection instructions.*



by Scott Young

## Kathy Nester: New Federal Public Defender for the District of Utah

Kathy Nester, the new Federal Public Defender for the District of Utah, is an ardent fan of the mountains, but she is still mastering the delicate art of driving in snow. "If it is snowing and you see my mini-van, drive the other way" is the advice she offered to anyone happening upon her in a snowstorm. Driving in the snow is just one of the challenges Kathy has faced since being appointed Federal Public Defender and moving to Utah from Jackson, Mississippi.

Although Kathy has been acting as the Federal Public Defender since August 1, 2011, she was formally appointed to the position on December 9, 2011. She replaced Steve Killpack, who helped found the office and was Utah's first Federal Public Defender. Kathy grew up in Texas and obtained her undergraduate and law degrees from the University of Texas at Austin. After graduating with her law degree in 1992, Kathy moved to Mississippi, where she worked in civil litigation and criminal defense. As a litigator, Kathy developed a passion for civil rights work, especially First Amendment issues.

In 1997, Kathy started her own law practice. During this time, Kathy served as a CJA panel attorney and represented criminal defendants in federal court. She joined the Federal Public Defender's

Office in Jackson, Mississippi in 2005 and worked there until she was appointed Federal Public Defender for Utah in 2011.

Kathy describes herself as "a true believer in the Federal Public Defender's mission to provide outstanding criminal defense to the indigent." This belief has been refined through her years of work on the CJA Panel and in the Mississippi Federal Public Defender's office. Among her most difficult cases was representing a Ku Klux Klan member who was charged with kidnapping and murdering two young African-Americans in 1964. Beyond the challenge of trying a case based on acts that occurred 40 years earlier, this case pitted Kathy's civil rights background against her belief in the right to vigorous criminal defense. Through this experience, Kathy honed her appreciation for the role federal public defenders play in the federal justice

system, a role she describes as "critical to our democracy." In her short time in Utah, Kathy has been impressed by the depth of talent and intellect in the Utah legal community and she hopes her passion and experience can further advance the advocacy provided by the Federal Public Defender's office.

When she is not working, Kathy enjoys spending time with her husband and two daughters in the Wasatch Mountains. Kathy was drawn to Utah by its beautiful scenery and she recently discovered the hike to Dog Lake from Milcreek Canyon, which is the best hike she has tackled to date. Although her hopes for a White Christmas were cruelly dashed by Mother Nature, she is looking forward to some of that famous Utah snow so that she and her family can go skiing.



Kathy Nester

## Sidebar Luncheon with United States Magistrate Judge Samuel Alba

Judge Alba has recently announced that he will retire in June after nearly twenty years on the bench. As part of the FBA's CLE/Sidebar Luncheon Series, join the Utah Chapter of the FBA and Judge Alba for a presentation entitled, "Reminiscences."

**Wednesday, March 28, 2012**

**\$35 for FBA Members**

**12:00 noon to approximately 1:15 p.m.**

**\$50 for non-members**

**Kirton & McConkie**

**1600 Eagle Gate Tower, 16th Fl. Media Rm.**

To register: Please send your name, bar number, and check payable to the "Federal Bar Association, Utah Chapter" to: Wendy Maynard, Kirton & McConkie, 60 East South Temple #1800, Salt Lake City, Utah 84145; or rsvp at [wmaynard@kmclaw.com](mailto:wmaynard@kmclaw.com)

1 hour CLE credit (approval pending). This luncheon has limited seating and so registration will be first come first served.





by Scott Young

# FBA Annual Convention

## The Windy City Hosts FBA's 2011 Annual Convention

On September 6-11, 2011, the Federal Bar Association held its Annual Convention in Chicago, Illinois. While participants were drawn to America's "Second City" by Wrigley Field, deep dish pizza, and the possibility of invoking their inner Ferris Bueller, they also found time to attend CLEs, discuss the direction of the FBA, and mingle with other federal practitioners.

### CLEs

The Annual Convention featured an array of insightful CLEs. Some highlights included Judge Richard Posner and Professor Michael Stone's spirited debate about the evolution of First Amendment law in light of 9/11 and Wikileaks. Professor Sheldon Nahmod's description of the breakdown of the judicial system in Nazi Germany, and Dean Erwin Chemerinsky's review of Supreme Court's 2010-11 term. These and other CLEs have provided helpful direction for practitioners in federal court.

### New President

On September 10, 2011, the Federal Bar Association installed Chicago-based Mayer Brown litigation attorney, Fern C. Bomchill, as its 84th president. Ms. Bomchill has been a member of the Federal Bar Association for 17 years, and has served in a number of chapter and national leadership roles. She joined the Federal Bar Association's national board of directors in 2006. Her practice concentrates on litigation, primarily in the federal courts, in matters involving banking, bankruptcy, commercial, consumer protection, contract, product liability, trust and tort claims. She is a graduate of the University of Chicago Law School.

### Events

One of the great cultural capitals of North America, Chicago is home to the Sears Tower, the Blues Brothers, and Harry Carey. The Annual Convention put this stylish city on display, hosting events at the Shedd Aquarium and the Art Institute of Chicago, and providing participants with an architectural boat tour on the Chicago River. These events allowed FBA members to "let their hair down" while providing an intimate glimpse of the city's finest attractions.

### Conclusion

After a highly successful convention, we are looking forward to convening in San Diego next year. We hope you will join us. If you have any questions, please contact me at [sy@scmlaw.com](mailto:sy@scmlaw.com).



Mark Vincent, Utah Chapter; FBA president-elect Fern Bomchill; and Dr. Michael Kiernan



Hon. Bob Bacharach; FBA President Ashley Belleau; Mark Vincent, Utah Chapter; Dr. Michael Kiernan



Jonathan Hafen, Vice President for the Tenth Circuit; Hon. Bob Bacharach, and Bob Desousa, FBA president-elect



Hon. Morton Denlow, swears in new FBA President Fern Bomchill



Bruce Moyer, FBA Government Relations Counsel; Susie Boring-Headlee, Executive Director, Idaho Chapter; and Bill LaForge, past FBA president

# FBA

*Salt Lake City*

# 2014

## Countdown to 2014

Salt Lake City will host the Federal Bar Association Annual Convention in Fall 2014. With Salt Lake City's new downtown gathering place, the City Creek Center, coming online this Spring, and the new Courthouse hopefully being completed by the Fall of 2014, this event will be a great opportunity to welcome hundreds of fellow FBA members from around the country to our capital city and its new downtown. It will also present a tremendous opportunity to showcase the natural beauty and culture of our fair state.

Our Utah Chapter has asked several members to work on a Steering Committee to coordinate planning for 2014. These members include:

- **Juliette White, Parsons Behle & Latimer (Chair)**
- **Jonathan Hafen, Parr Brown Gee & Loveless**
- **Ben Hathaway, Kirton & McConkie**
- **Jonathan Pappasideris, Ray Quinney & Nebeker, P.C.**
- **Amy Sorenson, Snell & Wilmer**
- **Jen Tomchak, Parr Brown Gee & Loveless**
- **Mark Vincent, U.S. Attorney's Office**
- **Judicial Liaison (TBD)**

At the present time, the Committee is just beginning to sketch out CLE presentations, speakers and possible venues, as well as thinking through possible evening and weekend events. If all goes as planned, we anticipate having a gala event at the new Courthouse sometime during the Convention. Other possible events might include a barbecue at "This Is The Place State Park" or the new "Museum of Natural History," activities at Snowbird or Park City, and attending performances with the "Mormon Tabernacle Choir" or "Utah Symphony."

The Committee welcomes any ideas, suggestions or offers of help. We will need the involvement of all Utah Chapter members to make the 2014 Annual Convention a success. Please feel free to contact any of the Committee members listed above.



by David Holdsworth

## Report on Tri-State Seminar

On September 22-24, 2011, the Wyoming Chapter of the Federal Bar Association sponsored the 7th Annual Tri-State Seminar at Teton Village near Jackson, Wyoming. The weather was delightful, the scenery spectacular and the program was outstanding.

The program featured an opening meet and greet session with Associate Justice Sonia Sotomayor and an evening reception honoring retiring U.S. District Court Judge William Downs, of Wyoming.

On Friday, the first presentation featured Jack Lockridge, Executive Director of the FBA, and Bruce Moyer, the Federal Bar Association's Counsel for Government Relations, discussing the FBA's issues agenda for 2012 and providing an update on pending legislative developments in Washington, D.C. Jack and Bruce discussed developments with respect to judicial funding, judicial vacancies, Rule 11 and general attacks on the independence of the federal judiciary.

The next session, featuring Barbara Melendez, of Kirton & McConkie, addressed the topic of helping employers comply with ever-changing federal immigration laws.

Two criminal law practitioners spoke next: Kelly H. Rankin, Assistant U.S. Attorney, and Nicholas Vassallo, Assistant U.S. Attorney, both of the District of Wyoming. They discussed trends in federal prosecutions and litigation.

Pete Williams, Supreme Court correspondent for NBC News, was our lunch guest and speaker. Mr. Williams provided a fascinating view of the work of journalists who cover the U.S. Supreme Court. He discussed a wide range of topics, including previewing the Supreme Court's upcoming term.

Friday afternoon concluded with two practitioners specializing in Western law subjects: Dessa Reimer, Holland & Hart, LLP, Jackson, Wyoming, presented "The Nuts and Bolts of Litigating an Administrative Record Review Case in Federal Court." Ms. Reimer discussed her experience in litigating oil and gas development and environmental issues in the Pinedale, Wyoming, area involving NEPA, ESA, FLPMA and NHPA.

Murray Feldman, Holland & Hart, LLP, Boise, Idaho, spoke on "Water Wildlife, Wetlands and Warming: Environmental Law Implications for the Mountain West."

Both attorneys addressed similar issues in their respective areas of administrative law: jurisdictional issues, standard of review, scope of the administrative review and procedures for briefing and arguing (standing, ripeness and exhaustion).

On Saturday morning, September 24, 2011, Teton Village served as the finishing point for the inaugural Jackson Hole Marathon. The Tri-State also featured three outstanding panel discussions.

The first set of panelists discussed court administered ADR/mediation, with input from Chief Magistrate Judge Candy Dale, of the District of Idaho, Susie Boring Headlee, ADR Coordinator for the District of Idaho, and Michelle Oldroyd, ADR Director of the University of Utah College of Law.

This panel discussion was followed by a panel discussion involving three Tenth Circuit Judges: Harris L. Hartz, Paul J. Kelley, Jr., and Carlos F. Lucero.

Judge Hartz suggested that judges are not looking for cites, they are looking for insights. He also suggested including guideposts in briefs and making them very clear (paying attention to headings of sections of the argument will enable the writer to not overlook issues).

Judge Kelley advised organizing a brief in a logical way with a temporal, story approach. Don't review the facts, go right to the issues. Know your standard of review. Sell your case from the very beginning, proofread your brief (every sentence needs a verb). In oral argument, come up with a theme and concentrate on one or two points.

Judge Lucero recommended preparing the summary of the argument as a roadmap. Losing a case is not a basis for an appeal. Concentrate on error. We are not the fact finder. There must be a clear articulation of the error. Keep it simple. In oral argument, don't treat questions as enemies. Answer the questions and master the record.

The final panel was the traditional (and always humorous) Chief Judge's panel involving Chief Judge Lynn Winmill, of the District of Idaho, Chief Judge Nancy Freudenthal, of the District of Wyoming, and Judge Dale Kimball, filling in for Judge Ted Stewart, for the District of Utah.

We invite all members to join us for next year's Tri-State Seminar, which will be held in Sun Valley, Idaho, on October 11-13, 2012.



# Fifth Annual



## Southern Utah Federal Law Symposium

*Please join us for the Federal Bar Association's Fifth Annual Southern Utah Federal Law Symposium May 3-5, 2012.. This event promises to be our best Symposium yet! The highlight of this year's symposium will be a United States Supreme Court Swearing in Ceremony conducted by Gen. William Suter, the Chief Clerk of the United States Supreme Court.*

The event will start on May 3 with an evening reception at Tuacahn Center for the Arts, where we will have the opportunity to chat with General Suter, and with Federal Judges from Utah and Nevada. Following the reception, Tuacahn will provide entertainment, and Fern Bomchill, the FBA's National President, will give her highly regarded presentation "Negotiating Ethics."



On Friday, following breakfast, our participating Federal Judges and other distinguished presenters will provide informative and entertaining CLE in a variety of Federal practice areas. Our lunch speaker will be Gen. Suter, who will give us his "Supreme Court Report." Following his remarks, he will conduct the Supreme Court swearing-in ceremony.

For you golfers, on Saturday, May 5, there will be a scramble golf tournament at the beautiful Coral Canyon Golf Course. You are free to arrange your own foursomes, or we will match people up. Prizes will be awarded.

To review the complete agenda, and to register, go to [www.utahbar.org/cle/events](http://www.utahbar.org/cle/events) and click on the link to the Southern Utah Federal Law Symposium. For any questions regarding registration or to register by phone, call (801) 297-7036.

See you there!



# Trivia Corner



In our last issue's trivia contest, we posed the questions: What have been the U.S. Supreme Court's 10 worst decisions and how should they be ranked (from worst to least worst)?

Our winner was Stephen Geary of Kirton & McConkie, who came closest to ranking the ten in the same order as Professor Bernard Schwartz had ranked them in his book *A Book Of Legal Lists*. For his efforts, Mr. Geary will be receiving a paperback edition of John Grisham's book of short stories, *Ford County*.

Professor Schwartz ranked the 10 worst Supreme Court's Decisions as follows:

1. Dred Scott v. Sanford, 19 How 393 (U.S. 1857)
2. Plessy v. Ferguson, 163 U.S. 537 (1896)
3. Lochner v. New York, 198 U.S. 45 (1905)
4. Hammer v. Dagenhart, 247 U.S. 251 (1918)
5. Adkins v. Children's Hospital, 261 U.S. 525 (1923)
6. Korematsu v. United States, 323 U.S. 214 (1944)
7. Bradwell v. Illinois, 16 Wall 130 (U.S. 1873)
8. Buck v. Bell, 274 U.S. 200 (1927)
9. Carter v. Carter Coal Co., 298 U.S. 238 (U.S. 1936)
10. Hepburn v. Griswold, 8 Wall 603 (U.S. 1870)

For this issue's trivia contest, we switch from the judicial branch to the executive branch—at least 24 of our nation's chief executives have been lawyers or law professors (albeit, some in a more tangential capacity). Can you name all of them and put them in the proper chronological order?



# Events Calendar

*Sidebar Lunch, Salt Lake City, UT*

*FBA Mid-Year Meeting, Washington D.C.*

*Fifth Annual Southern Utah Seminar, St. George, UT*

*Criminal Law Seminar, Salt Lake City, UT*

*FBA Annual Convention, San Diego, CA*

*FBA Tri-State Seminar, Sun Valley, ID*

*Ronald N. Boyce Litigation Seminar, Salt Lake City, UT*

*Utah Chapter Annual Awards Dinner, Salt Lake City, UT*

*March 28, 2012*

*March 29-31, 2012*

*May 3-5, 2012*

*May 11, 2012*

*Sept. 20-22, 2012*

*Oct. 11-13, 2012*

*Oct. 26, 2012*

*Nov. 14, 2012*

# connect



## through the Federal Bar Association

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

### Advocacy

The opportunity to make a change and improve the federal legal system through grassroots work in over 80 FBA chapters and a strong national advocacy.

### Networking

Connect with a network of federal practitioners extending across all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

### Leadership

Governance positions within the association help shape the FBA's future and make an impact on the growth of the federal legal community.

### Learning

Explore best practices and new ideas at the many Continuing Legal Education programs offered throughout the year—at both the national and chapter levels.

## expand your connections, expand your career

**THREE WAYS TO APPLY TODAY:** ① Join online at [www.fedbar.org](http://www.fedbar.org); ② Fax application to (571) 481-9090; or ③ Mail application to FBA, 1220 North Fillmore St., Suite 444, Arlington, VA 22201. For more information, contact the FBA membership department at (571) 481-9100 or [membership@fedbar.org](mailto:membership@fedbar.org).

## FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

### Applicant Information

First Name \_\_\_\_\_ M.I. \_\_\_\_\_ Last Name \_\_\_\_\_ Suffix (e.g., Jr.) \_\_\_\_\_ Title (e.g., Attorney At Law, Partner, Assistant U.S. Attorney) \_\_\_\_\_  
 Male  Female Have you been an FBA member in the past?  yes  no Which do you prefer as your primary address?  business  home

Firm/Company/Agency		Number of Attorneys	
Address		Suite/Floor	
City	State	Zip	Country
( )	( )		
Phone	Fax	E-mail	

Address		Apt. #	
City	State	Zip	Country
( )	( )		
Phone	Fax		
//			
Date of Birth	E-mail		

### Bar Admission and Law School Information (required)

U.S.	Court of Record: _____
	State/District: _____ Original Admission: / /
Tribal	Court of Record: _____
	State: _____ Original Admission: / /
Foreign	Court/Tribunal of Record: _____
	Country: _____ Original Admission: / /
Students	Law School: _____
	State/District: _____ Expected Graduation: / /

### Practice Information

#### PRACTICE TYPE

- Private Sector:  Private Practice  Corporate/In-House  
 Public Sector:  Government  Association Counsel  
 Nonprofit  University/College  
 Military  Judiciary

#### PRIMARY PRACTICE AREAS

- |  |  |
|--|--|
| <input type="radio"/> Administrative         | <input type="radio"/> Health                 |
| <input type="radio"/> Admiralty/Maritime     | <input type="radio"/> Immigration            |
| <input type="radio"/> ADR/Arbitration        | <input type="radio"/> Indian                 |
| <input type="radio"/> Antitrust/Trade        | <input type="radio"/> Intellectual Property  |
| <input type="radio"/> Bankruptcy             | <input type="radio"/> International          |
| <input type="radio"/> Communications         | <input type="radio"/> Labor/Employment       |
| <input type="radio"/> Criminal               | <input type="radio"/> Military               |
| <input type="radio"/> Environment/Energy     | <input type="radio"/> Social Security        |
| <input type="radio"/> Federal Litigation     | <input type="radio"/> State/Local Government |
| <input type="radio"/> Financial Institutions | <input type="radio"/> Taxation               |
| <input type="radio"/> General Counsel        | <input type="radio"/> Transportation         |
| <input type="radio"/> Government Contracts   | <input type="radio"/> Veterans               |
| <input type="radio"/> Other: _____           |  |

### Membership Levels

#### SUSTAINING MEMBERSHIP

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5% discount on the registration fees for all national meetings and national CLE events.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years .....	<input type="radio"/> \$155	<input type="radio"/> \$135
Member Admitted to Practice 6-10 Years .....	<input type="radio"/> \$215	<input type="radio"/> \$190
Member Admitted to Practice 11+ Years .....	<input type="radio"/> \$255	<input type="radio"/> \$220
Retired (Fully Retired from the Practice of Law).....	<input type="radio"/> \$155	<input type="radio"/> \$155

#### ACTIVE MEMBERSHIP

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years .....	<input type="radio"/> \$95	<input type="radio"/> \$75
Member Admitted to Practice 6-10 Years .....	<input type="radio"/> \$155	<input type="radio"/> \$130
Member Admitted to Practice 11+ Years .....	<input type="radio"/> \$195	<input type="radio"/> \$160
Retired (Fully Retired from the Practice of Law).....	<input type="radio"/> \$95	<input type="radio"/> \$95

#### ASSOCIATE MEMBERSHIP

Foreign Associate Admitted to practice law outside the U.S. ....  \$195  
 Law Student Associate Currently enrolled in law school .....  \$30

Dues Total: \$ \_\_\_\_\_

### Practice Area Sections

<input type="radio"/> Alternative Dispute Resolution.. \$15	<input type="radio"/> Intellectual Property Law..... \$10
<input type="radio"/> Antitrust and Trade Regulation.. \$15	<input type="radio"/> International Law..... \$10
<input type="radio"/> Bankruptcy Law..... \$10	<input type="radio"/> Labor and Employment Law..... \$15
<input type="radio"/> Civil Rights Law..... \$10	<input type="radio"/> Securities Law Section ..... \$0
<input type="radio"/> Criminal Law..... \$10	<input type="radio"/> Social Security..... \$10
<input type="radio"/> Environment, Energy, and Natural Resources..... \$15	<input type="radio"/> State and Local Government Relations..... \$5
<input type="radio"/> Federal Litigation..... \$10	<input type="radio"/> Taxation..... \$15
<input type="radio"/> Government Contracts..... \$20	<input type="radio"/> Transportation and Transportation Security Law..... \$20
<input type="radio"/> Health Law..... \$10	<input type="radio"/> Veterans Law..... \$10
<input type="radio"/> Immigration Law..... \$10	
<input type="radio"/> Indian Law..... \$15	

### Career Divisions

<input type="radio"/> Federal Career Service (past/present employee of federal government).....N/C
<input type="radio"/> Judiciary (past/present member or staff of a judiciary).....N/C
<input type="radio"/> Corporate & Association Counsels (past/present member of corporate/association counsel's staff)..... \$10
<input type="radio"/> Senior Lawyers* (age 55 or over)..... \$10
<input type="radio"/> Younger Lawyers* (age 36 or younger or admitted less than 3 years) .....N/C

\*For eligibility, date of birth must be provided.

Sections and Divisions Total: \$ \_\_\_\_\_

### Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. \*No chapter currently located in this state or location.

<p><b>Alabama</b>  <input type="radio"/> Birmingham  <input type="radio"/> Mobile  <input type="radio"/> Montgomery  <input type="radio"/> North Alabama</p> <p><b>Alaska</b>  <input type="radio"/> Alaska</p> <p><b>Arizona</b>  <input type="radio"/> Phoenix  <input type="radio"/> William D. Browning/ Tucson-\$10</p> <p><b>Arkansas*</b>  <input type="radio"/> At Large</p> <p><b>California</b>  <input type="radio"/> Central Coast  <input type="radio"/> Inland Empire  <input type="radio"/> Los Angeles  <input type="radio"/> Northern District of California  <input type="radio"/> Orange County  <input type="radio"/> Sacramento  <input type="radio"/> San Diego  <input type="radio"/> San Joaquin Valley</p> <p><b>Colorado</b>  <input type="radio"/> Colorado</p> <p><b>Connecticut</b>  <input type="radio"/> District of Connecticut</p> <p><b>Delaware</b>  <input type="radio"/> Delaware</p> <p><b>District of Columbia</b>  <input type="radio"/> Capitol Hill  <input type="radio"/> D.C.  <input type="radio"/> Pentagon</p> <p><b>Florida</b>  <input type="radio"/> Broward County  <input type="radio"/> Jacksonville  <input type="radio"/> North Central Florida-\$25  <input type="radio"/> Orlando  <input type="radio"/> Palm Beach County  <input type="radio"/> South Florida  <input type="radio"/> Southwest Florida  <input type="radio"/> Tallahassee  <input type="radio"/> Tampa Bay</p>	<p><b>Georgia</b>  <input type="radio"/> Atlanta-\$10</p> <p><b>Hawaii</b>  <input type="radio"/> Hawaii</p> <p><b>Idaho</b>  <input type="radio"/> Idaho</p> <p><b>Illinois</b>  <input type="radio"/> Chicago</p> <p><b>Indiana</b>  <input type="radio"/> Indianapolis</p> <p><b>Iowa</b>  <input type="radio"/> Iowa-\$10</p> <p><b>Kansas*</b>  <input type="radio"/> At Large</p> <p><b>Kentucky</b>  <input type="radio"/> Kentucky</p> <p><b>Louisiana</b>  <input type="radio"/> Baton Rouge  <input type="radio"/> Lafayette/ Acadiana  <input type="radio"/> New Orleans  <input type="radio"/> North Louisiana</p> <p><b>Maine*</b>  <input type="radio"/> At Large</p> <p><b>Maryland</b>  <input type="radio"/> Maryland</p> <p><b>Massachusetts</b>  <input type="radio"/> Massachusetts -\$10</p> <p><b>Michigan</b>  <input type="radio"/> Eastern District of Michigan  <input type="radio"/> Western District of Michigan</p> <p><b>Minnesota</b>  <input type="radio"/> Minnesota</p> <p><b>Mississippi</b>  <input type="radio"/> Mississippi</p> <p><b>Missouri*</b>  <input type="radio"/> At Large</p> <p><b>Montana</b>  <input type="radio"/> Montana</p> <p><b>Nebraska*</b>  <input type="radio"/> At Large</p> <p><b>Nevada</b>  <input type="radio"/> Nevada</p> <p><b>New Hampshire*</b>  <input type="radio"/> At Large</p>	<p><b>New Jersey</b>  <input type="radio"/> New Jersey</p> <p><b>New Mexico*</b>  <input type="radio"/> At Large</p> <p><b>New York</b>  <input type="radio"/> Eastern District of New York  <input type="radio"/> Southern District of New York  <input type="radio"/> North Carolina District of</p> <p><b>North Carolina</b>  <input type="radio"/> Eastern District of North Carolina  <input type="radio"/> Middle District of North Carolina  <input type="radio"/> Western District of North Carolina</p> <p><b>North Dakota*</b>  <input type="radio"/> At Large</p> <p><b>Ohio</b>  <input type="radio"/> John W. Peck/ Cincinnati/ Northern Kentucky  <input type="radio"/> Columbus  <input type="radio"/> Dayton  <input type="radio"/> Northern District of Ohio-\$10</p> <p><b>Oklahoma</b>  <input type="radio"/> Oklahoma City  <input type="radio"/> Northern/ Eastern Oklahoma</p> <p><b>Oregon</b>  <input type="radio"/> Oregon</p> <p><b>Pennsylvania</b>  <input type="radio"/> Eastern District of Pennsylvania  <input type="radio"/> Middle District of Pennsylvania  <input type="radio"/> Western District of Pennsylvania</p> <p><b>Puerto Rico</b>  <input type="radio"/> Hon. Raymond L. Acosta/ Puerto Rico-\$10</p>	<p><b>Rhode Island</b>  <input type="radio"/> Rhode Island</p> <p><b>South Carolina</b>  <input type="radio"/> South Carolina</p> <p><b>South Dakota*</b>  <input type="radio"/> At Large</p> <p><b>Tennessee</b>  <input type="radio"/> Chattanooga  <input type="radio"/> Memphis  <input type="radio"/> Mid-South  <input type="radio"/> Nashville  <input type="radio"/> Northeast Tennessee</p> <p><b>Texas</b>  <input type="radio"/> Austin  <input type="radio"/> Dallas-\$10  <input type="radio"/> Del Rio-\$25  <input type="radio"/> El Paso  <input type="radio"/> Fort Worth  <input type="radio"/> San Antonio  <input type="radio"/> Southern District of Texas-\$25  <input type="radio"/> Waco</p> <p><b>Utah</b>  <input type="radio"/> Utah</p> <p><b>Vermont*</b>  <input type="radio"/> At Large</p> <p><b>Virgin Islands</b>  <input type="radio"/> Virgin Islands</p> <p><b>Virginia</b>  <input type="radio"/> Northern Virginia  <input type="radio"/> Richmond  <input type="radio"/> Roanoke  <input type="radio"/> Tidewater</p> <p><b>Washington*</b>  <input type="radio"/> At Large</p> <p><b>West Virginia*</b>  <input type="radio"/> At Large</p> <p><b>Wisconsin*</b>  <input type="radio"/> At Large</p> <p><b>Wyoming</b>  <input type="radio"/> Wyoming</p>
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Chapter Total: \$ \_\_\_\_\_

## Payment Information and Authorization Statement

### TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ \_\_\_\_\_

Check enclosed, payable to Federal Bar Association  
 Credit:  American Express  MasterCard  Visa

Name on card (please print)

Card No. \_\_\_\_\_ Exp. Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application and/or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.*

**Signature of Applicant**

**Date**

**(Signature must be included for membership to be activated)**

\*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.