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# FAITH OR FEDERALISM: CHRONICLES OF THE FEDERAL COURT IN UTAH

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**A**s my fellow Federal Bar Association members converge on Salt Lake City for the 2015 Annual Meeting and Convention to be held Sept. 10-12, I hope they will carve out some time in their harried schedules to visit the old federal courthouse, a building on the National Historic Register. Observe the Classical Revival style of architecture, the fluted Doric columns, and the fine Utah granite facades. The floors of the lobby and corridors are a blend of marble, tile, and terrazzo, while the three original courtrooms were ornate, ornamental marvels, rising two stories high. Notice also the eagles with outstretched wings that flank the steps. But below those elaborate decorative bronze and aluminum grilles, the massive entrance doors invite one to step back into times gone by and witness a rich and raucous history that will capture and captivate students of judicial history and jurisprudence.

In the early 1800s, Utah marked one of the westernmost boundaries of 19th-century American civilization. Before long, however, pioneers, religious pilgrims, Native Americans, fortune-seekers and, eventually, Washington, D.C., politicians and their lapdog bureaucrats all were mightily engaged in a decadeslong scrimmage for control of a lush and pristine geographic area comprised of approximately 85,000 square miles of largely uncharted wilderness.

Once a desolate outpost on the road to California, Utah nowadays is perhaps best known to most Americans for its beautiful national parks<sup>1</sup>; breathtaking natural wonders<sup>2</sup>; prodigious snowfall; world-class skiing; endless miles of streams, lakes, and reservoirs; the Great Salt Lake; majestic mountains<sup>3</sup>; the musical Osmond family; and, of course, the Church of Jesus Christ of Latter-day Saints (LDS, or the Mormons; hereinafter, the Church).<sup>4</sup>

Peering back through the veiled mists of time, the early Mormons were family-centered folks who feared God and loved America and the U.S. Constitution. Conflicts tended to be resolved internally, as they did not particularly care for lawyers, whom Church leader Brigham Young derisively dubbed “pettifoggers.”<sup>5</sup> And they most assuredly did not see eye to eye with the federal

administrators who barked orders and dispatched troops from the nation’s capital, whom they viewed as the very incarnation of corruption and evil:

“I arose and spoke substantially as follows: ... I love the government and the constitution of the United States, but I do not love the damned rascals who administer the government.” —Brigham Young, *Journal History of the Church* 3–4, Sept. 8, 1851<sup>6</sup>

Occurring 156 years ago, in 1869, formerly separated iron rails were joined with a ceremonial Golden Spike, whereby two diverse train lines melded into the world’s first transcontinental railroad.<sup>7</sup> This event may well serve as a metaphor for the eventual harmonization of the discrete Mormon and non-Mormon constituencies in the state of Utah who in great measure have been able to overcome their differences and diversity to achieve a plethora of impressive accomplishments.

The saga of Utah is replete with colorful characters, cataclysmic events, heroes, and villains (both real and perceived). Furthermore, the chronicle of the federal court in Utah is but a microcosm of the state’s history writ large.

In order to properly understand and appreciate the trials and tribulations of the Utah federal court experience, one must first be well-grounded in the history of the area. The variegated economic, cultural, legal, political, religious, and social components of this fascinating human equation created a volatile admixture. The result was a powder keg that would eventually blow up in the face of the fledgling federal court.

### **Pre-Spanish History**

Any account on this subject must debut long prior to the Spanish Conquests, when the land which Utahans now occupy was home to various tribes of Native Americans. Dating back approximately 12,000 years, these ancient tribes included the Desert Archaic, the Anasazi, and the Fremont,<sup>8</sup> as well as later tribes such as the Shoshones, Navajos, Goshutes, Southern Paiutes, and Utes. It was the Utes, the People of the Mountains, from whom the state derives its name, Utah.

The first white (non-Native) explorers of this area were Franciscan friars. In the year our glorious American independence was proclaimed, 1776, a duo of Spanish curates left Santa Fe, (New Mexico) in search of an overland route to the Catholic Mission in Monterey (Las Californias) and, in so doing, had an opportunity to explore the land which now is part and parcel of Utah.<sup>9</sup>

The curtain next rises on the early American era of our story 193 years ago, in September of 1821, when Mexico declared independence from Spain following 11 years of blood-soaked hostilities resulting in some 2,000 casualties. Spain lost the continental area of the Vice-Royalty of New Spain, as Mexico thereby gained its independence. The Americans did not tarry long before moving into the geographical and political vacuum created by the absence of King Ferdinand VII and the Mexican Royalist soldiers.

The Great Salt Lake was discovered in 1824 by famous American frontiersman J.M. Bridger (aka, Old Gabe). He and other so-called mountain men explored the terrain, trapped and traded beaver, and interacted with the Native American tribes. By 1832, Antoine Robidoux had set up a trading post at the Utah Basin. Subsequently, John C. Fremont, and Christopher (Kit) Carson explored the Great Basin area. Soon, the first permanent settlement by Anglos, called Fort Buenaventura, was founded in 1846 and survives today in the form of Weber County Park in Ogden, Utah.

In 1846 in Washington D.C., James Polk was president of the United States, Roger B. Taney was chief justice of the U.S. Supreme Court, the Smithsonian Institution was established, and Elias Howe patented the sewing machine. The United States had declared war on Mexico, annexed California, and just admitted Iowa as the 29th state. In neighboring Texas, a state government was being installed, and back in Philadelphia the Liberty Bell grievously was cracked during a celebration of George Washington's birthday.

During that same year, around the globe, Ireland was plagued with the Great Famine, and England suffered under a cholera epidemic. The planet Neptune had been discovered, Abraham Gesner invented kerosene, and Adolphe Sax patented the aptly-named saxophone.

The Mormon religion had, by that time, already been around for a score of years or so. The Church of Latter-day-Saints had been founded in the early 1820s by New Yorker Joseph Smith. The Mormons had become well-accustomed to having to pull up stakes and leave town; after all, they had been run out of Illinois, Ohio, Missouri, and later Illinois again, where Smith himself was murdered

in 1844.

Meanwhile, in February of 1846, Church leader Brigham Young and many of his fellow Mormons left Nauvoo, Illinois, for parts unknown in what is now Utah. The so-called Mormon Pioneer Trail was crossed by 70,000 Latter-day-Saints settlers who left their homes back East mainly to escape religious persecution (admittedly, and regrettably, an oft-repeated theme in American history). When they reached the Great Salt Lake in 1847, Brigham Young firmly was convinced that they had indeed found their American El Dorado.

Within two years of their 1,000-mile trek and the settling of the Great Basin, the Mormons had drafted a proposed constitution for their blessed state of Deseret.<sup>10</sup> While the Mormons campaigned for such statehood and fulfillment of their precious dream, many other people were busily engaged in a quest for treasure of a more material kind.

"Gold! Oro! Gold!" The joyful shouts reverberated through Sutter's Mill in Colona, California, and the Gold Rush would be on for the next seven years or so.<sup>11</sup> It was 1848. Construction had started on the Washington Monument, and Wisconsin was admitted as the 30th state of the Union. In Boston, the first women's medical school (later to become part of Boston University) and the Boston Public Library were founded.

Across the pond in London, Karl Marx and Friedrich Engel published their *Communist Manifesto*. There were new constitutions in France and Holland and a revolution underway in Hungary. Richard Wagner was writing his operatic masterwork, *The Ring of the Nibelung*. Most important, both for America and Utah, during 1848 the Treaty with Mexico of Guadalupe-Hidalgo ceded, among other things, the land that is now Utah over to the United States.

### **American Ecclesiastical Courts in Early Utah**

At first blush, the notion of ecclesiastical courts conjures up visions of systems of medieval tribunals in Europe which wielded limited jurisdiction over religious cases.<sup>12</sup> Oddly enough, in the youthful days of Utah, a vibrant Mormon court system existed that adjudicated controversies between Church members. From the 1830s on, Church elders presided over trials; later, in 1834, a High Council Court was established, followed by the First Presidency Court (for purposes of handling appeals from the High Council).<sup>13</sup>

In the 1830s, however, these courts were looked to as a hospitable forum where Church members were encouraged to take their nonreligious disputes to be settled. The Church courts offered their LDS members a rather unique blend of divine, natural, state, and other law. Party satisfaction normally was high, as the punishments were relatively mild (an occasional whipping, and there was no jail), and lawyers were all disliked and distrusted by the common folk. Before 1850, those factors had fostered a situation wherein the Church courts were doing a brisk press of business, deciding and enforcing a wide array of civil and criminal matters. They continued to do so up until the passage of the Poland Act in 1874.<sup>14</sup>

### **The Provisional "State" of "Deseret"**

As noted above, following the Mexican cession of the area, Deseret applied for entrance to the union in 1849, but the application was denied, largely as a result of anti-Mormon (and anti-polygamy) sentiments in Congress, not to mention the nagging, pre-Civil War conundrum surrounding slavery. That would be the first of seven attempts at statehood by Utah over the course of the

next half century.

In truth, Utah had far less than the 60,000 population figure required for statehood by the Northwest Ordinance of 1785; by any reckoning, Utah had only about 12,000 people, not counting Native Americans. Utah had seven counties back then; today, it has 29.

However, in 1850 Congress hit upon an alternative solution to the LDS “problem,” aided by urging from President Millard Fillmore, and annexed Utah as a federal territory,<sup>15</sup> just as it had done with New Mexico. Congress, exercising its exclusive powers<sup>16</sup> in the Act of Sept. 9, 1850, created the Utah Territory. Presidential appointments were then employed to fill the seats for territorial governor, U.S. marshal, U.S. attorney, superintendent of Indian affairs, a chief judge and an associate judge.<sup>17</sup> At the same time, it was none other than Brigham Young who was appointed first territorial governor, as well as the superintendent of Indian affairs.

The federal court was destined to play an important, pivotal, and frequently controversial role in Utah’s legal and overall development. On the one hand, the Mormons viewed the federal court as the instrument of force by which Washington was formally, and repeatedly, stripping them of a wide body of rights and coercing them into submission against their religious and cultural sensitivities. On the other side of the fence, non-Mormons in the Utah Territory actually welcomed the federal court as a means of mending their community’s economic, legal, political, and social issues into one cohesive societal fabric. In that connection, it should be observed that, with the discovery of such as Salt Lake City.

### **The Federal Court System in Utah’s Early Territorial Days**

During the 45-year period from 1850 through 1895, no fewer than 51 federal judges were commissioned to serve in the Utah Territory.<sup>18</sup> Most lasted only a few years; many did not stick it out for even a single year.

The Washington-appointed federal officials sent to Utah, generally speaking, did not have fond memories of their experiences out west. At first, the Mormons welcomed some of them, regardless of their obvious religious and cultural differences. Eventually, however, the interpersonal relationships soured, many significant conflicts arose, blood was shed, and a war between the Church and the federal government was only narrowly prevented.

In the heat of summer 1851, Fillmore’s territorial officials first planted their dusty boots in Utah. They were judges Lemuel G. Brandenbury and Perry A. Brocchus and the territorial secretary, Broughton D. Harris. It was not long before Mormon social practices, mainly plural marriage, caused a massive rift. In truth, the federal officials abhorred the Mormons and their religious practices and social customs and generally treated Church members condescendingly; the federal officers magnanimously “were prepared to treat the Mormons as they would a tribe of Arapahoe Indians—not as animals, exactly, but certainly not as civilized people.”<sup>19</sup>

Not surprisingly, after a few run-ins with the Church, the fed-

eral judges and secretary, who deservedly feared for their physical safety, fled back to Washington, D.C., with their tails tucked neatly under their black robes. Christened the Runaway Officials of 1851, those federal appointees had left Utah before the end of that year, and their official posts remained vacant for two years thereafter.<sup>20</sup>

Parenthetically, that left the Church courts with a freer hand and allowed the probate court system in Utah to flourish. Happily,

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the years from 1853 through 1855 were calmer in the federal court sphere of influence in Utah, mainly owing to the appointment of two replacement judges who were generally conciliatory toward the Church and its members.

Unfortunately that relative tranquility was rather short-lived, as both judges died in 1855. They, in turn, were replaced with a pair of jurists who became well-known for their hostility toward the Mormons, judges W.W. Drummond and John F. Kinney. Judge Drummond accused the Mormons of poisoning his predecessor. Two years later, these two judges would, in a case of judicial déjà vu, also beat a hasty retreat from the territory, complaining that they had been thwarted from carrying out their official duties. Not long afterward, the Utah War (sometimes referred to as the Mormon War)<sup>21</sup> erupted; that quasi-conflict proved to be a pivot-point for the federal government and the federal court in Utah.

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Iconic Church leader and Governor Brigham Young remained stalwart in his resistance to federal authority. As a knee-jerk reaction, in 1857 and 1858, President James Buchanan dispatched 2,500 federal troops to Utah to restore order. He also planned to replace Young with a new (non-Mormon) governor, Alfred Cumming, along with a host of other federal judges and officials.

The Mormons were not about to cave in. They intentionally blocked the federal troops’ path to Salt Lake City, raided the military’s supplies, and drove off the army’s cattle, thus forcing the men under the command of Col. Albert S. Johnson to spend a brutal

winter at Fort Bridger, 100 miles north of Salt Lake City.

What is worse, to the southwest, on Sept. 11, 1857, Mormon militiamen murdered a wagon train of settlers—137 non-Mormon men, women, and children—in cold blood in what came to be known as the Mountain Meadows Massacre. The Church initially blamed Native Americans, but later proofs and court proceedings (over the span of two decades) in Utah's federal court painted a very different, and ugly, picture of LDS involvement in the bloodbath.<sup>22</sup>

Hence, in 1857 both sides rattled their sabers and ramped up their preparations, ostensibly to engage each other on a Utah battlefield. Indeed, Congress authorized additional troops, while the Church rounded up about 1,000 combatants. In late March of that year, 30,000 Mormon civilians evacuated south, heading down to Provo, fearing the worst.

Then, in a somewhat unconventional move, Buchanan sent Thomas Kane to Utah to attempt to negotiate a settlement; luckily, that gambit bore fruit. In April 1858, Young surrendered the governorship to Cummings, and in June, the Church accepted a presidential amnesty proclamation, clearing them of sedition.

Notwithstanding the foregoing, Young and his followers were perpetually watched with a jaundiced eye. Back East and in Congress, there was no dearth of debate regarding the Mormon "problem." Nonetheless, between 1860 and 1865, the issue was relegated to the back burner during the Civil War.

During Utah's territorial period and up until 1874 (with the enactment of the Poland Act), the Church courts remained busy, as did the Utah probate courts. Each Utah county had a probate court presided over not by an appointee (as in the federal system) but by a locally elected judge. Probate judges tended to be high-ranking members or elders of the Church. Perhaps "probate court" was a misnomer, inasmuch as those courts appeared to have had extensive jurisdiction well beyond probate cases into the bailiwicks of civil actions and criminal proceedings.

By way of comparison, the Church courts handled disputes between Church members, while the probate courts were looked to mainly for criminal proceedings, actions against non-Mormons, and when a formal decree was important for a party to secure. The Church courts were the preferred forum, and their utilization was urged in sermons; in fact, Church members who sued other members in the civil courts subjected themselves to probable Church discipline (up to religious disfellowshipment or even excommunication).<sup>23</sup>

### **Court System in Utah's Later Territorial Days**

The animosity between the Church and the federal government still had not been fully quelled. The state's long-standing motto may be "Industry," but, in the eyes of Washington, D.C., insiders, the single word that described Young, the Church, LDS members, and Utah was polygamy.

As a result, in 1862 Congress expressly outlawed plural marriage. The U.S. Supreme Court later upheld that law in 1879, as discussed in greater detail below.

The Poland Act was passed in 1874. That legislation eliminated the virtually plenary control the Church held over the system of justice in Utah. The Poland Act redefined the jurisdiction of Utah courts, restricting the formerly powerful probate courts (which had, for example, taken no action concerning the Mountain Meadows Massacre of 1857) to their traditional jurisdiction. The Act also eliminated the territorial marshal and attorney, transferring their

duties over to a U. S. marshal and U. S. attorney. Additionally, the law opened up the Utah jury system to non-Mormons.

Notably, no federal circuit court was ever established in Utah or with jurisdiction over Utah. As the years wore on, many litigants, especially Mormons, had chosen to take their cases to the probate court rather than before the federally appointed judge of the district court. To be sure, the Church steered its followers away from the courts and, especially, the federal court.<sup>24</sup> The practical effect was to displace the federally appointed courts and judges with a home-grown, Church-controlled system of justice.

Congress reacted by placing the Utah judiciary tightly under federal control. The Poland Act<sup>25</sup> now restricted the probate courts to matters of estates and guardianship, thus eviscerating their civil, chancery, and criminal jurisdiction. Moreover, it afforded the federal district court exclusive jurisdiction for all suits over \$300.

Many of the federal judges appear to have had, or carried out, an agenda to knock down the power and prestige of the Church at least a couple of notches. Plural marriage was viewed by most Americans as a barbaric rite, the Utah economy virtually was closed to non-Mormons, local elections allegedly were fixed, and the Church effectively ran a theocratic government over the local populace.

In 1875, the federal government hounded Young once again in the context of a certain legal action pending in the Utah (federal) Territorial Court, *Young v. Young*, in which one of his 55 wives sued Young for divorce and, to add insult to injury, sued him in a civil, not Church, court. In a very public and acrimonious divorce suit (wife "No. 19" had claimed abuse), and the court, applying federal law, found that the marriage was illegal, ab initio, because of the federal laws banning polygamy.

The (federal) territorial judge assigned to the case was James Bedell McKean, a Civil War veteran and certainly no fan of the Mormons. He held his commission from 1870 to 1875. His courtroom literally was above a livery stable.

Judge McKean ordered payment of alimony, and Young refused. In a contest of wills between overarching national authority and the power of a local, theocratic polygamist, McKean won out. He ordered Young to spend a demeaning and humiliating night in jail for violating the court order.

Young died two years later in 1877 and, so did not live to see the Church fully brought to its knees by Washington, D.C. In 1879, the U.S. Supreme Court handed down its historic decision in *Reynolds v. United States* in furtherance of the congressional campaign against polygamy.

This case may well fall under the category of "one must be very careful what you ask for!" The Mormon elders mistakenly believed the Morrill Anti-Bigamy Act to be unconstitutional, a deprivation of the Mormons' First Amendment right to free exercise of their religion. They further naively imagined that the Supreme Court would agree with their incontrovertible legal analysis and the laws of God, not to mention simple principles of common sense. Secure in their contemplated position, the Mormons dutifully handed over Church secretary George Reynolds as the sacrificial lamb to the federal courts.

In that test case, all of the requisite information, proofs, and witnesses were served up on a silver platter to the prosecutors. Reynolds was the proverbial sitting duck, an easy Mormon target for the federal judge to zero in on. Nevertheless, the first trial, somehow, ended in a hung jury. Later on, President Ulysses Grant fired Judge McKean and replaced him with Judge Philip Emerson. Judge

Emerson wasted no time retrying Reynolds and explained the distinction between the right to believe in something and the accompanying duty not to take action that violates the law of the land. In the second trial in the Territorial Court, held in 1875, Reynolds was not only convicted but shockingly sentenced by Judge Emerson to two years of hard labor.

After the Utah Territorial Supreme Court upheld the Reynolds case, it was brought to the U.S. Supreme Court. Argument was held Nov. 14–15, 1878, and the high court's decision was handed down Jan. 6, 1879.<sup>26</sup> Reynolds had no better luck in Washington, D.C. The Supreme Court held that religious duty is not a defense to a criminal indictment. Reeling in surprise, the compliant yet confused Reynolds was carted off to suffer the harsh conditions of the federal penitentiary in Utah to serve out his lengthy sentence.

In the 1880s, Congress persisted in its relentless crackdown on the Mormons and their separatist brand of theocracy. Most notably, in 1882, polygamists lost their right to vote by virtue of the Edmunds Act.<sup>27</sup> The act not only reinforced the 1862 Morrill Anti-Bigamy Act but also revoked polygamists' right to vote, made them ineligible for jury service, and prohibited them from holding political office. Washington, D.C., through its federal court, officers, and agents, thus was making life extraordinarily inhospitable for the Church members.

This legislation had a significant effect on the LDS community. Unannounced raids on Mormon homes became commonplace. Church buildings were seized. More than 1,300 men were arrested, convicted, and sent to the Utah federal penitentiary under the Edmunds Act. Women, who were viewed as victims, generally were not prosecuted, although some earned a trip to jail merely for refusing to testify against their hapless spouses. Because no Mormons could serve on the juries, convictions were almost guaranteed.

In 1890, the U.S. Supreme Court struck yet another blow to the hearts of Mormons and their Church. In *Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States*,<sup>28</sup> the court upheld the Edmunds-Tucker Act, which had, inter alia, unincorporated the Church. Congress, the Court ruled, had supreme power over territories, including the power to dissolve the Church and seize its property (as well as to direct the assets of the Church to be given to charity in Utah). Church property, continued the Court, could be seized, inasmuch as it was not properly transferred because the Mormons were using it to further the unlawful practice of polygamy.

Interestingly, the federal government did not seize any of the Church's real property, but it did spirit away some LDS assets. However, the governmental threat hit its mark dead center in the bull's-eye. Within five months, the Church completely relented on the issue of polygamy.

Ultimately, then, through the enactment of or the withholding of legislation (as on the question of statehood), Congress and the federal government succeeded in driving home all of their points and imposing the national will on the Mormons. Refusal of statehood, seizure of property, punishment for religious practices, and the deprivation of personal liberty all had their intended effect. The Church reluctantly hoisted the white flag of surrender when Church president Wilford Woodruff issued the Manifesto of 1890, thereby ending plural marriage and providing for a new state constitution and separation of church and state.

## Statehood for Utah

From that point forward, it was only four short years before the president signed enabling legislation and two more years until Utah finally was granted statehood in 1896, at which time a regular state court system was implemented. Henceforth, the court system of the Church ceased its handling and disposition of any nonreligious cases.

The year 1896 was lodged at the intersection of the Gilded Age, the Gay '90s, and the Progressive Era. At that time, President Grover Cleveland occupied the White House, and Hon. Melville Fuller was the chief justice of the U.S. Supreme Court.

In Michigan, the Ford Quadricycle was under development, and in Manhattan the New York Telephone Company was formed. Gifted musician and bandmaster John Philip Sousa composed his magnum opus, "Stars and Stripes Forever," the Mexican-American War came to an end and Utah, at long last, was admitted to the union as the 45th state.

This point in history teetered on the edge of the modern era, replete with its massive growth of cities and demonstration of a panoply of medical and technological marvels, yet still reflected some of the problems of the past. Wilhelm Rontgen discovered X-rays, and H.L. Smith experimented with the first X-ray machine. The first modern Summer Olympic Games were held in Athens. Gold had been discovered in the Klondike, Yukon, region of Canada. The world's third-oldest subway opened in Glasgow, Scotland. The rotary dial telephone was patented, as was Harvey Hubbell's electric light bulb socket with pull chain. The city of Miami was incorporated. In New York, accountants received the first batch of CPA certificates. On July 26, 1896, and thanks to a Thomas Edison invention, New Yorkers were treated to a viewing of the films at America's first movie theater, Vitascope Hall, where they were charged 10 cents each for admission.

During that same epoch, death and hardships also multiplied. The Philippine Revolution was in full swing. The last tsar of Russia, the ill-fated Nicholas II, was crowned. An earthquake/tsunami would soon take the lives of 27,000 people in Japan.

Out in the American West, it was supposed to be the dawn of a new era and a far cry from the pioneer days—but was it? To complicate matters, a substantial influx of non-Mormon immigrants began to arrive in largely agrarian Utah, primarily as a result of the railroad industry, precious-metal concerns, and the copper mines.

Free schooling was available on a territorywide basis by 1890. The University of Deseret (now the University of Utah) had been established in 1850. But what the nascent state really needed was a serious court system to deal with modern and evermore complex legal issues that were arising like so many tumbleweeds in the desert.

## Establishment of the U.S. District Court for the District of Utah

The U.S. District Court for the District of Utah was established in Salt Lake City, prior to Utah's statehood, on July 16, 1894.<sup>29</sup> The court's jurisdiction is the state of Utah.

Although it was not always the case,<sup>30</sup> appeals from this court, with the exception of Tucker Act cases,<sup>31</sup> are lodged with the U.S. Court of Appeals for the Tenth Circuit.<sup>32</sup> That tribunal hears and adjudicates appeals in the Byron White Courthouse in Denver, Colorado.<sup>33</sup>

Originally, the federal district court in Utah had but a single seat. Today, it has five authorized judgeships or judicial seats, although it

currently has one vacancy.

Back near the turn of the century, wondrous bright lights graced Salt Lake City at night. Newfangled electric wires, telephone lines, and street railways crisscrossed the small city, which by 1896 had a population of roughly 50,000 people, while Ogden had 15,000 residents, and Provo had 6,000 inhabitants.

Despite all the external trappings of improvements, real progress was stymied. The “city” that was Salt Lake extended for only eight blocks, giving way to lush farms beyond that informal barrier.

The Church remained a strong influence because people tended to continue to vote for parties based strictly along religious lines. In the end, realizing the stalemate, the Church, to its credit, proactively assigned its members to vote for either Democrats or Republicans and, thus, for more than a century has exhibited a strong two-party commitment in Utah.

When the time rolled around to build a federal courthouse in Salt Lake City, the campaign and process was no less contentious than the prior squabbles between the Mormons and the non-Mormon outsiders. In the end, there could be just one courthouse, and the non-Mormon minority and united business interests wrestled a victory away from the Church.

The federal government rustled up \$500,000 for the new U.S. Post Office and Courthouse—handsome sum in 1899. The question next arose as to where to construct the new hall of justice. Needless to say, the Church elders wanted it near Temple Square. Wealthy copper magnate Samuel Newhouse had other ideas. Envisioning a Salt Lake business empire of the nontheocratic variety, Newhouse bought up huge swaths of property surrounding a site that was deeded over by Samuel, Joseph, David, and Mathew Walker in November 1899 for \$1. The courthouse was ready for legal action by 1905.

Newhouse was businessman born in New York City to European-Jewish immigrants. A trained lawyer, he was a pure capitalist with vast and diverse mining and real estate holdings. He quickly erected skyscrapers (all of 11 stories tall!) in Salt Lake City and built both the Salt Lake Mining Exchange and the Commercial Club. A visionary juggernaut, Newhouse also constructed the Boston and Newhouse buildings and capped his efforts with his dream lodging, the Newhouse Hotel.

Against this frenetic business backdrop, in 1908 the federal district court in Utah entertained its first major case. In a very real sense, it was a case that pitted the country folk against urbanites, Mormon farmers against gentile city slickers, and individuals against the American business engine.

Newhouse was a well-liked and respected man about town. What the farming and country communities did not like was Newhouse’s copper-ore-smelting facility in Murray, a small town nearby. The poisonous gruel of thick, sulfurous smoke was bad enough, but the acid rain that inundated—and ruined—their crops, trees, and plants was more than they could bear, either physically or economically.

The table was being set for a major courtroom showdown. In those days, given the checkered history of the territory and the powers and persuasiveness of the business power brokers, one might reasonably have expected a lopsided result in court in favor of Newhouse—unless, of course, the judge demonstrated himself to be a courageous, straight shooter and unswervingly dedicated to the pursuit of justice. Much to the chagrin of Newhouse and his consortium, that was exactly what federal Judge John Augustine Marshall proceeded to do.

Judge Marshall was Utah’s first federal district judge. He was descended from royal judicial pedigree, the great-nephew of legendary U.S. Supreme Court Justice John C. Marshall. Utah’s Judge Marshall had been sitting on the federal bench just 12 years when the Newhouse case was called. Judge Marshall promptly ordered Newhouse’s company to either clean up or shut down. Newhouse did not appreciate the ultimatum, but he did comply; unfortunately for Salt Lake City, he opted to shut down operations and moved his business away.

Ironically, the man who almost single-handedly was responsible for the federal court building location and the construction of modern Salt Lake City ended up bankrupt. Newhouse was a broken man, in no small part due to his crushing defeat at the hands of the same Utah federal court that he had helped breathe life into. Newhouse was dead by 1930, a year after the Depression took hold.

Judge Marshall lived, but he did not fare much better. By 1915, he had resigned from the court. Apparently, pernicious gossip suggesting he had been having trysts with a courthouse cleaning woman ruined his reputation and ended his career. Despite expressing his belief that he had been framed (was this Newhouse’s revenge?), the saddened jurist chose to retire and disappear into the ether of relative obscurity.

## **Famous and Infamous Cases and Incidents in Utah’s Federal Court**

### **The Case of the Vengeful Widow**

The second federal judge on the district court bench in Utah, beginning in 1915, was Tillman Davis Johnson, a Southern Democrat and veteran of two wars. His military experience could not prepare him for the events that were about to unfold in his courtroom on the morning of Oct. 10, 1927. Eliza Simmons, the widow of a fellow who had been killed working for a local copper company, had lost her lawsuit in front of Judge Johnson. On what could have been the last morning of the judge’s life, the widow Simmons sneaked a revolver into the courthouse and fired six shots in the Judge Johnson’s direction. Miraculously, he survived the attack, despite being hit three times, and went on to serve a total of 35 years on the bench. It has been said that you can still see one of the bullet holes in the wall of Judge Kimball’s old courtroom.

### **Judge Ritter versus the U.S. Postal Service**

By all accounts, Judge William Ritter (a former law professor and yet another non-Mormon) was a brilliant man, but he also possessed a very complex and often eccentric, if not explosive, personality. In 1952, the quasi-fictional case of Ritter versus the U.S. Post Office grabbed national headlines. Annoyed and distracted by the noise that postal employees generated in the Post Office below his courtroom, Judge Ritter had the U.S. marshal arrest and detain<sup>23</sup> of Uncle Sam’s loyal postal workers. Judge Ritter later attracted unwanted attention outside the courthouse walls due to his long-running feud with Judge Albert S. Christensen and an uncomplimentary piece aired on CBS’ “60 Minutes.” Judge Ritter took senior status in 1970, but he died with his boots on in March 1978. Some folks in Salt Lake swear that Judge Ritter’s ghost still walks the halls of the old courthouse.

During the awkward and uncomfortable cohabitation of the courthouse by judges Ritter and Christensen, seasoned litigators reportedly engaged in a unique species of forum-shopping. They would simply and expediently file a pair of identical lawsuits and

then voluntarily dismiss the legal action that had been assigned to the judge they did not favor.<sup>34</sup>

### Radiation Poisoning Slowly Causes Judicial Fallout

In 1954, after a 50-year drought, the first Mormon was appointed to the federal bench in Utah. The unofficial ban was lifted in the form of the nomination of Judge Albert Sherman Christensen. He presided over important cases in the 1950s related to the alleged poisoning of sheep and the people of Utah as a result of radioactive fallout from above-ground nuclear testing in neighboring Nevada conducted by the U.S. Atomic Energy Commission (AEC). Judge Christensen ruled in favor of the AEC, which had persuaded the judge that the fallout caused no harm.

By 1979, however, congressional oversight hearings uncovered weighty evidence of AEC deception 1956. Feeling that he had

lost as much as 33 percent of their herds, representing about a \$250,000 loss. For the human victims, the radiation's even more devastating effects manifested themselves as cancers, thyroid maladies, and various congenital abnormalities.

After the Geiger-counter needles had spun off their scales, the government destroyed the animal carcasses and forced its scientists to rewrite their field reports (to eliminate any references to speculation about radiation damage or effects); under no circumstance could the AEC afford to allow the court to set any bad precedents that made AEC liable for radiation damage to either animals or humans. Thankfully, federal Judge Bruce Jenkins was about to change all of that.

Judge Jenkins recently celebrated the wonderful and impressive accomplishment of half a century on the federal bench. During that 50-year stint, one of his most famous cases involved a group of most

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“been led down the garden path” by the AEC and the feds, Judge Christensen’s 56-page decision concluded that “a species of fraud” had been committed upon the court by government lawyers and federal employees acting “intentionally false or deceptive.” He also noted improper attempts to pressure witnesses not to testify, a vital report intentionally withheld, and the “deliberate concealment of significant facts with references to the possible effects of radiation upon the plaintiffs’ sheep.” Accordingly, Judge Christensen set aside his prior judgment and granted the shepherders’ motion for a new trial. Talk about dredging up old ghosts.

Meanwhile, if anyone foolishly believed that the hoary animosity exhibited between the Mormons and non-Mormons had ended with statehood, witness the decadeslong skirmish between judges Ritter and Christensen. Civil in public to each other, their private war raged on, if sub silentio. In the courthouse, they reputedly would not even walk down the same staircase together.

Still, it was the Mormon Judge Ritter who signed the order staying the execution of convicted murderer and Mormon Gary Gilmore, although the Tenth Circuit Court of Appeals overturned his decision. In a case that had garnered national attention, Gilmore later was executed by firing squad in Utah.

On the positive side, apart from his undisputed great intellect, Judge Ritter, a New Deal Democrat, was widely believed to root for the underdogs and seemed to be favorably disposed toward Native Americans.

### Judge Jenkins and the “Down Winders”

On Jan. 27, 1951, a 1-kiloton bomb was exploded over Frenchman Flat in Nevada, heralding the beginning of atmospheric nuclear testing in that adjoining state. The sheep and their owners in Iron County, Utah, were the real victims of the radioactivity. Ranchers

unfortunate victims of American atomic testing, referred to as the Down Winders. A 13-week trial held in 1995, amassed some 7,000 pages of testimony. The judge wisely took the matter under advisement and took a year to craft a finely worded landmark decision that awarded damages to some of the victims.

Although the government appealed and in 1986 the Tenth Circuit Court reversed Judge Jenkins’s judgment (the U.S. Supreme Court refused to hear the case), in 1990 President George Bush signed the Radiation Exposure Compensation Act. That congressional legislation created a \$100 million trust fund designed to compensate citizens who lived downwind from the atomic tests and later were stricken with radiation-related illnesses.<sup>35</sup>

### Jury Heat for Fiery, Cross Burning Case

In 1999, Michael Brad Magleby was convicted of cross burning in Salt Lake City in front of the home of an interracial couple. The Utah federal courts rejected the defendant’s argument that the cross burning was constitutionally protected as “symbolic speech that uses fire.” The prosecutor in the case was now-Magistrate Judge Paul Warner. Magleby was convicted by an all-white jury for his hate crime and duly sentenced by federal Judge Dee Benson to a dozen years in prison, sufficient time, no doubt, to think twice before playing with matches again.<sup>36</sup> The Tenth Circuit later affirmed the conviction, and the U.S. Supreme Court refused to hear the case.

### Judicial Heat for Frivolous Olympic Torch Case

Fans of the Winter Olympics may remember the bribery case debacle of the early 2000s, a major scandal involving allegations of bribery used to win the rights to host the coveted Olympic Torch and the 2002 Winter Olympics in Salt Lake City. Federal District

Judge David Sam minced no words in dismissing the case against game organizers Tom Welch and Dave Johnson and, at the same time, excoriating federal prosecutors for having brought the case in the first place: “In all my 40 years’ experience with the criminal justice system—as an attorney and a judge—I have never seen a criminal case brought to trial so devoid of criminal intent or evil purpose.” Later he said: “Enough is enough,” stating he’d “be interested in knowing how much taxpayers’ money was spent investigating and prosecuting Welch and Johnson.”<sup>37</sup>

### The Elizabeth Smart Abduction Case

Also in 2002, Salt Lake City resident Elizabeth Smart was kidnapped and sexually abused for nine months by Brian David Mitchell and Wanda Barzee. The girl’s abductors were tried in Utah federal court and convicted nine years later in 2011. Mitchell, a street preacher who had forced Smart into a polygamous “marriage” along with Barzee, deservedly drew a life sentence from Judge Dale Kimball. Co-defendant Barzee pleaded guilty and was jailed for 15 years.

### The Sister Wives Polygamy Case

In December 2013 in the so-called Sister Wives case, federal Judge Clark Waddoups, in a 91-page opinion,<sup>38</sup> overturned at least a portion of Utah’s criminal law against polygamy, ruling that the language in the 1973 statute prohibiting polygamous cohabitation was a constitutional violation of guarantees of due process and religious freedom. Kody Brown, the family’s patriarch, along with his quartet of wives (who together have 17 children), are LDS members and television celebrities and had filed the federal case based upon privacy concerns—the right of consenting adults to be left alone.

In a last-ditch attempt to evade federal review, the Utah state prosecutor had strategically dismissed the criminal cases against the Browns, but Judge Waddoups did not allow the mootness doctrine to carry the day for the Utah county attorney. The court’s ruling was appealed to the U.S. Court for Appeals for the Tenth Circuit on Sept. 25, 2014, and remains pending.

### The Utah Same-Sex Marriage Ban Case

Also in December 2013, *Kitchen v. Herbert* was decided by the Utah federal court.<sup>39</sup> *Kitchen* successfully challenged Utah’s constitutional ban on marriage for same-sex couples. Judge Robert J. Shelby found the state ban on same-sex marriage to be an unconstitutional infringement of the 14th Amendment and ordered the state to cease enforcing its ban immediately. During 2014, all appellate avenues were exhausted by the state, and, thus in October 2014, when the Supreme Court denied the petition for review without comment and the Tenth Circuit lifted its stay, the district court’s order ending Utah’s enforcement of its same-sex marriage ban was in effect.

In terms of judicial and social history, one cannot help but wonder if Utah has been laboring under a devilish spell; as the adage goes, “It can’t win but for losing.” Just as it was in the 1800s, Utah always seems to be on the wrong side of history and the law, particularly when it comes to questions involving sex and marriage.

Whatever one’s personal views may be, one cannot say it is not interesting and thought-provoking, especially from a legal perspective. Time will tell if the federal court in Utah continues its trajectory as a leading jurisdiction involved in marital and religious issues as they are affected, and protected, by our U.S. Constitution.

### The New Federal Courthouse Starts out With a Real Bang

The gleaming, new \$185 million courthouse in Salt Lake City opened its doors Monday, April 14, 2014, 87 years after Judge Johnson was shot at by the widow Simmons. It took exactly one week for shades of the old West and the shadows of the old federal courthouse to return with a bang to the new federal court. During a Racketeer Influenced and Corrupt Organizations Act (RICO) case involving the Tongan Crip Gang, a deadly grouping of shots rang out in Judge Tena Campbell’s courtroom as a U.S. marshal repeatedly shot a gangland defendant who had grabbed a pen or pencil and charged at a witness testifying in court. The defendant, Siale Angilau, who was 6 feet, 3 inches and 260 pounds was on trial for a string of robberies, assaults, firearms charges, and for the shooting of two U.S. marshals in 2007. A mistrial was declared. As it turned out, no new trial was ever held; some would say divine justice was carried out, as the defendant later died from his wounds.

### The District Court Vicinages in Utah

The U.S. Post Office and Courthouse in Salt Lake City originally was at 350 S. Main Street. The building was completed in 1905, and its extension was finished in 1932. The U.S. District Court presided there until 2014.<sup>40</sup> It was renamed the Frank E. Moss United States Courthouse in 1990 after a U.S. senator. The current 10-story courthouse is nearby at 351 South West Temple.

The satellite branch of the court in Ogden, Utah, was completed in 1909, with its extension finished in 1932. The U.S. district court met there until 1965.<sup>41</sup> That building now is privately owned. St. George, Utah, is the site of another federal courtroom.

Technically, the U.S. district court is bifurcated into two divisions, North and Central. The Northern Division covers Box Elder, Cache, Davis, Morgan, Rich, and Weber counties; all remaining counties are covered in the Central Division. All records are maintained at the court’s headquarters in Salt Lake City. Similarly, all district judges have courtrooms and chambers in Salt Lake City. The District’s Ronald N. Boyce Law Library is at the Salt Lake City location.

### The Press of Business in the U.S. District Court for the District of Utah<sup>42</sup>

During the 10-year period from 2002 and 2012, well over 2,000 filings were made per year: 2,437 in 2002, 2,369 in 2005, 2,768 in 2010 (a 10-year high), and 2,306 in 2012. The 10-year low came in 2010 with 2,120 filings.

Civil case filings have outweighed the criminal cases: in 2002, 1,549 civil and 895 criminal; in 2005, 1,279 civil and 1,090 criminal; in 2010, 1,455 civil and 1,313 criminal; and in 2012, 1,418 civil and 888 criminal.<sup>43</sup>

The largest number of filings in 2012 were in contracts (203), torts (210), civil rights, prisoner cases, and property rights. The lowest number of filings had to do with immigration (1), labor, forfeiture (8) and bankruptcy cases. In 2012, only 10 tax cases came before the court.

A sampling of the 10-year statistics revealed: 2,345 filed cases, 2,074 pending cases, and 2,408 terminated cases in 2005; and 2,628 filed, 2,251 pending, 2,475 terminated in 2010.

The number of pending cases per judgeship were: 415 in 2005, 451 in 2010, and 453 in and 2012. Trials completed per judge were: 20 in 2005, 33 in 2010, and 20 in 2012. Civil cases pending were: 91

in 2005 (6.4%), 108 in 2010 (6.5%), and 134 in 2012 (8.1%).

The median time to trial for civil cases was: 24.5 months in 2005, 34.5 months in 2010 and 34.3 months in 2012. The median time to trial for criminal felony cases was: eight months in 2005, six months in 2010, and 7.5 months in 2012.

## The Jurists of the U.S. District Court for the District of Utah

The court was established July 16, 1894. Over some 121 years, only 18 judges have served on this bench. Congress has authorized five active<sup>44</sup> judgeships for this district<sup>45</sup>; currently, the court has one vacancy. Counting senior judges, nine federal judges sit on the bench here. The current chief judge is Hon. David Nuffer. The district court's roster<sup>46</sup> includes:

### U.S. District Judges

#### Former Judges

**Hon. John Augustine Marshall** (1854–1941). He sat for 19 years from 1896 to 1915. The very first federal judge in Utah, he was the grand-nephew of U.S. Supreme Court Chief Justice John Curtis Marshall (1801–1835). Judge John A. Marshall was born in Virginia and earned his law degree at the University of Virginia (LLB). Prior to ascending the federal bench, he was in private practice and a Utah territory probate court judge. He also served as a territorial representative. Nominated by President Grover Cleveland, *supra*, Judge Marshall resigned from his post.

**Hon. Tillman Davis Johnson** (1858–1953). He sat for 38 years from 1915 to 1949. He was born in Tennessee and became a lawyer by “reading the law.”<sup>47</sup> Prior to ascending the federal bench, he was a teacher and school principal. He also served as a Utah state representative. Nominated by President Woodrow Wilson, Judge Johnson died in office.

**Hon. Willis William Ritter** (1899–1978). He sat for 29 years from 1949 to 1978. Born in Utah, he graduated from the University of Utah. He earned his law degrees at the University of Chicago Law School (LLB) and Harvard Law School (SJD). Prior to ascending the federal bench, he was in private practice. He also served as a law professor at the University of Utah. Nominated by President Harry Truman, he served as chief judge from 1954 to 1978 and died while office.

**Hon. Albert Sherman Christensen** (1905–1996). He sat for 42 years from 1954 to 1996.<sup>48</sup> Born in Utah, he graduated from the National University School of Law (now George Washington University Law School) (LLB) and earned his juris doctor at the same institution. Prior to ascending the federal bench, he was in the U.S. Navy and in private practice. He also served as a visiting professor of law. Nominated by President Dwight Eisenhower, he took senior status in 1971 and died in office.

**Hon. Aldon Junior Andersen** (1917–1996). He sat for 25 years from 1971 to 1996. Born in Utah, he graduated from the University of Utah. He earned his law degree at University of Utah's College of Law (J.D.). Prior to ascending the federal bench, he was a staff attorney for the Utah State Tax Commission and in private practice. He later served as a Utah district attorney and district court judge in the Utah state court system. Nominated by President Richard Nixon, he served as chief judge from 1978 to 1984, took senior sta-

tus in 1984, and died in office.

### Senior Judges<sup>49</sup>

**Hon. Bruce Sterling Jenkins** (1927–). He has been sitting since 1978. Born in Utah, he marked 50 years on the federal bench earlier this year. He graduated from the University of Utah and earned his law degree (LLB) from the University of Utah College of Law. Prior to ascending the federal bench, he served in the U.S. Navy and in private practice. He also served as assistant attorney general, deputy county attorney, referee in bankruptcy, state senator, and adjunct professor. Nominated by President Jimmy Carter, he served as chief judge from 1984 to 1993, and he took senior status in 1994. Judge Jenkins is the author of more than 200 published opinions, as well as articles and commentaries on legal subjects cited by other courts, and in legal texts and law review articles.<sup>50</sup>

**Hon. David Keith Winder** (1932–2009). He sat for 30 years from 1979 to 2009. Born in Utah, he graduated from the University of Utah and earned his law degree at Stanford Law School (LLB) Prior to ascending the federal bench, he served in the U.S. Air Force and in private practice. He also served as a deputy county attorney, assistant U.S. attorney, and chief deputy district attorney, as well as a judge on the Utah state district court. Nominated by President Jimmy Carter, he served as chief judge from 1993 to 1997, took senior status in 1997, and died in office.

**Hon. John Thomas Greene Jr.** (1929–2011). He sat for 26 years from 1985 to 2011. Born in Utah, he graduated from the University of Utah and earned his law degree at the University of Utah College of Law. Prior to ascending the federal bench, he was engaged in private practice and served as an assistant U.S. attorney, a special assistant attorney general, and a member of the Utah Board of Higher Education. Nominated by President Ronald Reagan, he took senior status in 1997 and died in office.

**Hon. David Sam** (1933–). He has been sitting since 1985. Born in Indiana, he graduated from Brigham Young University and earned his law degree at University of Utah College of Law (J.D.) Prior to ascending the federal bench, he was in the U.S. Air Force JAG and in private practice. He also served as a county attorney, county commissioner, Utah state district court judge and part-time faculty member of Brigham Young University. Nominated by President Ronald Reagan, he served as chief judge from 1997 to 1999 and took senior status in 1999.

**Hon. Dee Vance Benson** (1948–). He has been sitting since 1991. Born in Utah, he graduated from Brigham Young University and earned his law degree at Brigham Young University Law School (J.D.) Prior to ascending the federal bench, he was engaged in private practice and served as counsel to the U.S. Senate Committee on the Judiciary and was chief of staff to Sen. Orrin Hatch of Utah. He also was an associate deputy attorney general and the U.S. attorney for the district of Utah. Nominated by President George H.W. Bush, he served as chief judge from 1999 to 2006 and took senior status in 2014.

**Hon. Tena Campbell** (1944–). She has been sitting since 1995. Born in Idaho, she earned a bachelor's degree from the University of Idaho, a master's from Arizona State University, and a law degree

from the Arizona State University School of Law (J.D.). Prior to ascending the federal bench, she was engaged in private practice and served as deputy county attorney and an assistant U.S. attorney. Nominated by President William J. Clinton, she served as chief judge from 2006 to 2011 and took senior status in 2011.

**Hon. Dale A. Kimball** (1939–). He has been sitting since 1997. Born in Utah, he graduated from Brigham Young University and earned his law degree at University of Utah College of Law (J.D.) Prior to ascending the federal bench, he was engaged in private practice. He also served on the faculty of the Brigham Young University Law School. Nominated by President William J. Clinton, he took senior status in 2009. Judge Kimball has authored numerous legal publications.<sup>51</sup>

**Hon. Brian Theodore (Ted) Stewart** (1948–). He has been sitting since 1999. Born in Utah, he graduated from Utah State University and earned his law degree at University of Utah College of Law. Prior to ascending the federal bench, he was engaged in private practice and served as an assistant to Sen. Orrin Hatch. He also was a Commissioner for the Utah Public Service Commission, executive director for the Utah Department of Commerce, executive director for the Utah Department of Natural Resources, and chief of staff for Utah Gov. Mike Leavitt. Nominated by President William J. Clinton, he served as chief judge from 2011 to 2014 and took senior status in 2014.

**Hon. Paul G. Cassell** (1959–). He sat from 2002 to 2007. Born in California, he attended Stanford University and earned his law degree at Stanford University Law School (J.D.). Prior to ascending the federal bench, he was law clerk to Hon. Antonin Scalia (U.S. C.A., D.C. Cir.) and Hon. Warren E. Burger (Sup. Ct., U.S.). He also served as an associate deputy attorney general, an assistant U.S. attorney and professor of law at the University of Utah College of Law (1992–2002, 2007–present). Nominated by President George W. Bush, Judge Cassell resigned in 2007.

#### Current Active Judges:

**Hon. Clark Waddoups** (1946–). He has been sitting since 2008. Born in Idaho, he graduated from Brigham Young University and earned his law degree at University of Utah College of Law. Prior to ascending the federal bench, he was engaged in private practice and served as law clerk to Hon. J. Clifford Wallace (U.S. C.A., Ninth Circuit). He was nominated by President George W. Bush.

**Hon. David Nuffer** (1952–). He has been sitting since 2012. Born in Oregon, he graduated from Brigham Young University and earned his law degree at Brigham Young University School of Law (J.D.). Prior to ascending the federal bench, he was engaged in private practice and served as an adjunct law professor at the Brigham Young University. He was nominated by President Barack Obama. He began his current term as chief judge in 2014.

**Hon. Robert Shelby** (1970–). He has been sitting since 2012. Born in Wisconsin, he graduated from Utah State University and earned his law degree at University of Virginia Law School (J.D.) Prior to ascending the federal bench, he was law clerk to Hon. J. Thomas Greene (U.S.D.J., D. Utah). He was engaged in private practice, served in the Utah Army National Guard, and was an instructor

at the University of Utah. He was nominated by President Barack Obama.

**Hon. Jill N. Parrish** (1963–). She has been sitting since 2015. Born in Utah, she graduated from Weber State University and earned her law degree at Yale Law School (J.D.). Prior to ascending the federal bench, she was law clerk to Hon. David Winder (U.S.D.J., D. Utah), engaged in private practice, served as an assistant U.S. attorney, and was a justice of the Utah Supreme Court (2003–2015). She was nominated by President Barack Obama.

#### Chief Judges

##### Former Chief Judges:

Hon. Willis William Ritter (1954–1978)<sup>52</sup>  
Hon. Aldon Junior Anderson (1978–1984)  
Hon. Bruce Sterling Jenkins (1984–1993)  
Hon. David Keith Winder (1993–1997)  
Hon. David Sam (1997–1999)  
Hon. Dee Benson (1999–2006)  
Hon. Tena Campbell (2006–2011)  
Hon. Ted Stewart (2011–2014)  
[subhed 2] Present Chief Judge  
Hon. David Nuffer (2014–present)

#### U.S. Magistrate Judges

##### Chief Magistrate Judge

**Hon. Brooke C. Wells** (1947–). She has been sitting since 2003. Born in Oklahoma, she graduated from the University of Utah and earned her law degree at University of Utah College of Law (J.D.). Prior to ascending the federal bench, she was an attorney in the Utah Legal Defender's Office, an assistant U.S. attorney, and chief of the Violent Crimes Section.

##### Senior Magistrate Judges

**Hon. Robert T. Braithwaite** (1950–). He has been sitting since 2003. Born in New York, he graduated from the University of Utah and earned his law degree at University of Utah College of Law (J.D.). Prior to ascending the federal bench, he was engaged in private practice and served in the U.S. National Guard and Army Reserve (JAG), as a city attorney, a deputy county attorney, and a Utah district court judge.

**Hon. Paul Warner** (1949–). He has been sitting since 2006. Born in Washington state, he received bachelor's and master's degrees from Brigham Young University and earned his law degree at Brigham Young University Law School (J.D.). Prior to ascending the federal bench, he served in the U.S. Navy (JAG) and Utah Army National Guard (JAG) for 25 years, retiring in 2006 as a colonel. He also served as an Assistant Utah state attorney general, assistant U.S. attorney, and U.S. attorney for the District of Utah.

**Hon. Evelyn J. Furse** (1973–). She has been sitting since 2012. She graduated from the University of North Carolina and earned her law degree at New York University School of Law (J.D.). Prior to ascending the federal bench, she was a law clerk to Hon. Christine M. Durham, chief justice of the Utah Supreme Court. She also was engaged in private practice and served as a senior city attorney for Salt Lake City.

**Hon. Dustin B. Pead** (????–). He has been sitting since 2012. He graduated from the University of Utah and earned his law degree at University of Miami School of Law (J.D.) Prior to ascending the federal bench, he was a judge on the Salt Lake City immigration court, an attorney advisor to the Board of Immigration Appeals, and an assistant U.S. attorney.

#### Former Magistrate Judges

**Hon. David Nuffer** (*see* U.S. District Judges' Biographies, above) He served as a part-time magistrate in 1995 and a full-time magistrate in 2003.

**Hon. Samuel Alba** (????–). He sat on the bench for 20 years starting in 1992. He graduated from Utah State University and earned his law degree at Utah State University College of Law (J.D.). Prior to ascending the federal bench, he served in the Arizona Public Defenders Office and as an assistant U.S. attorney and was engaged in private practice. He retired in June 2012.

#### Other Important Current District Officials

Clerk of the Court: D. Mark Jones

U.S. Attorney for the District of Utah: Carlie Christensen, Esq

Federal Public Defender: Kathryn N. Nester, Esq

U.S. Marshal for the District of Utah: James Thompson

#### U.S. Bankruptcy Court, District of Utah

The U.S. Bankruptcy Court is at 350 S. Main Street in Salt Lake City. David A. Sime is the current clerk of the court. In 2011, the U.S. Bankruptcy Court in Utah handled 18,414 cases.

#### Chief Bankruptcy Judge

**Hon. William Thomas Thurman**<sup>53</sup> (????–) He has been sitting since 2001, and his term ends this year. Born in Washington, D.C., he graduated from the University of Utah and earned his law degree at University of Utah College of Law (J.D.). He served as a judge pro tem with the Utah State District Court.

#### Bankruptcy Judges

**Hon. R. Kimball Mosier** (????–) He sat from 1995 to 2009, and has been sitting in his second term since 2009 (due to end in 2023). Born in Washington, D.C., he graduated from the University of Utah and earned his law degree at University of Utah, College of Law (J.D.). He previously was engaged in private bankruptcy law practice and was a trustee in numerous Chapter 7 cases.

**Hon. Joel T. Marker** (????–). He has been sitting since 2010, and his term ends in 2024. He graduated from the University of Wisconsin and earned his law degree at University of Utah College of Law (J.D.). He previously was engaged in private bankruptcy law practice and was a trustee in numerous Chapter 7 and Chapter 11 cases.

#### Practicing Law Before This Court

The controlling rule is DUCivR 83-1.1. This court allows for general admission, pro hac vice admission, and law student admission. To practice before the bar of U.S. District Court or U.S. Bankruptcy Court for the District of Utah, an attorney must be an active member in good standing of the Bar of the District Court or be approved by the court to appear pro hac vice on a case-by-case basis.

As set forth in DUCivR 83-1.1(b)(1), an attorney must be an active member in good standing of the Utah State Bar to be eligible to become a member of the Federal Bar.

To apply for admission to the Bar of the Federal Court, resident and nonresident applicants must seek a sponsoring attorney who is an active

## For Further Reading

**U.S. District Court for the District of Utah:** [www.utd.uscourts.gov](http://www.utd.uscourts.gov)

**Judges' Directory (biographies, practices, and procedures) for the District of Utah:** [www.utd.uscourts.gov/judges/judgepage.html](http://www.utd.uscourts.gov/judges/judgepage.html)

**U.S. District Court for the District of Utah Opinions (displaying memorandum decisions for 2005 to present):** <https://ecf.utd.uscourts.gov/cgi-bin/opinions.pl>

**Federal and District of Utah Local Rules:** [www.utd.uscourts.gov/documents/rulepage.html](http://www.utd.uscourts.gov/documents/rulepage.html)

**Benchbooks, U.S.D.C. D. Utah:** [litigation.utahbar.org/benchbooks-us-district.html](http://litigation.utahbar.org/benchbooks-us-district.html)

**Utah Judicial Conduct Commission :** [jcc.utah.gov/faq/index.html](http://jcc.utah.gov/faq/index.html)

**Ballotpedia (interactive almanac of U.S. politics):** [ballotpedia.org/United\\_States\\_District\\_Court\\_for\\_the\\_District\\_of\\_Utah](http://ballotpedia.org/United_States_District_Court_for_the_District_of_Utah)

*Have Gavel Will Travel: A National Park Judge Reflects on Truth, Justice and Why Every Juror Deserves a Doughnut, Robert T. Braithwaite (U.S. Mag. Judge for D. Utah); Cedar Fork, 2015*

*Seven Miracles That Saved America: Why They Matter and Why We Should Have Hope, Chris Stewart and Ted Stewart; Shadow Mountain, 2009*

*The Mark of a Giant: 7 People Who Changed the World, Chris Stewart and Ted Stewart; Shadow Mountain, 2013*

*The Miracle of Freedom: Seven Tipping Points That Saved the World, Chris Stewart and Ted Stewart; Shadow Mountain, 2015*

member in good standing of this court's Bar to move for the applicant's admission. Attorneys who are not members of this court's Bar may practice before this court only after having been admitted pro hac vice pursuant to DU.Civ. Rule 83-1.1 (d). Nonresident attorneys who wish to be admitted must find local counsel to sponsor their temporary admission. Local counsel shall move the admission of the pro hac counsel and substitute in court if required.

Law students may enter an appearance in any civil or misdemeanor case before the court if they meet the requirements set forth in DUCivR 83-1.6. Law students appearing before the court must be supervised by an attorney who is an active member of the court's Bar, have the client's written permission to appear on the his or her behalf, and be certified in writing by an official of their law school as having good character and the necessary qualifications to provide the legal representation permitted by DUCivR 83-1.6.

## Concluding Remarks

Having mushroomed from a modest 250,000 people in 1896 to just over 2.7 million people today, the people of the Beehive State have much to be proud of. Indeed, of all 50 states, Utah boasts the youngest population, highest birth rate, lowest death rate, healthiest people, highest literacy rate, highest percentage of high school graduates, and highest percentage of college-educated people.

The myriad memories and vibrant history of the federal courthouse and federal court in Utah stand as a silent tribute to the flesh-and-blood men and women—the judges, court staff, parties, jurors, and witnesses—who all had some measure of influence and played vital roles in shaping this often colorful and always fascinating slice of American judicial history. We trust that the court's judicial workshop long will continue to serve as a master craftsman of Utah's and America's corpus of jurisprudence and ever remain the proverbial beehive that the state is named after. ☺



*Ira Cohen, B.A., J.D., LL. M., is a partner of Henkel & Cohen, P.A. in Miami. He is a proud member of the Federal Bar Association, and of the Florida and New York Bars. Cohen has been practicing law for more than 30 years.*

## Endnotes

<sup>1</sup>Arches National Park, Bryce National Park, and Zion National Park.

<sup>2</sup>For example, one may gaze in wonder at the 270-foot-long, 290-foot-high Rainbow Bridge, the world's largest natural bridge, found in the Glen Canyon National Recreation Area.

<sup>3</sup>For a light-hearted anecdote about a federal judge and a Utah mountain, read: Kathryn Rubino's "The Epic Tale of Judge Moss and his iPhone" at [abovethelaw.com/2015/04/the-epic-tale-of-judge-moss-and-his-iphone/](http://abovethelaw.com/2015/04/the-epic-tale-of-judge-moss-and-his-iphone/) (last accessed May 30, 2015).

<sup>4</sup>Other prominent or otherwise famous Utahans include John Moses Browning (gunsmith), Philo T. Farnsworth (television pioneer), and Willard Marriott (hotel chain founder).

<sup>5</sup>"I swear by the God of heaven that we will not spend money in feeing lawyers. All the lawsuits that have been got up against the [Latter-day] Saints have been hatched up to fee lawyers. I would rather have a six-shooter than all the lawyers in Illinois." (Sermon delivered in March 1845 by Young, quoted in Hal Schindler's "No Love Lost on Lawyers Brigham Young Railed on Lawyers, Banish-

ing Them to Long Missions," SALT LAKE CITY TRIBUNE, July 9, 1995 (last accessed May 31, 2015); "It would appear that [lawyers] think a civilized community cannot live long together without contention and consequent lawsuits. The law is made for the lawless and disobedient, not for the good, wise, just and virtuous. Law is made for the maintenance of peace, not for the introduction of litigation and disorder." Brigham Young speaking at the Bowery on Temple Square in 1866, *Id.*

<sup>6</sup>"It is alleged and reiterated that we do not love the institutions of our country. I say, and have so said for many years, that the Constitution and laws of the United States combine the best form of Government in force upon the earth. But does it follow that each officer of the Government administers with justice? No; for it is well known throughout our nation that very many of our public officers are as degraded, debased, corrupt, and regardless of right as men well can be.

<sup>7</sup>"I repeat that the Constitution, laws, and institutions of our Government are as good as can be, with the intelligence now possessed by the people. But they, as also the laws of other nations, are too often administered in unrighteousness; and we do not and cannot love and respect the acts of the administrators of our laws, unless they act justly in their offices." Brigham Young, *JOURNAL OF DISCOURSES* 6:344.

<sup>8</sup>*Golden Spike National Historic Site is a U.S. National Historic Site at Promontory Summit, north of the Great Salt Lake. The site commemorates the completion of the first transcontinental railroad where the Central Pacific Railroad and the Union Pacific Railroad met up on May 10, 1869.*

<sup>9</sup>For proof of life in Utah before the native tribesmen, one can visit the Cleveland-Lloyd Dinosaur Quarry in the San Rafael Swell, Cleveland, Utah, which contains the densest concentration of Jurassic dinosaur fossils ever found. This site was designated a National Natural Landmark in 1965.

<sup>10</sup>The Dominguez-Escalante Expedition was comprised of Francisco Atanasio Domínguez and Silvestre Vélez de Escalante, Franciscan priests, and Don Bernardo Miera y Pacheco, a cartographer. Due to hardships suffered along the route, which later came to be called the Old Spanish Trail, the party did not achieve its goal, but the maps they created served well the future pioneers. Needless to say, as they traveled, they tried to proselytize the Native Americans to become Christians.

<sup>11</sup>The State of Deseret was the provisional state of the United States proposed in 1849 by LDS settlers. Lasting slightly more than two years, it was never recognized by the federal government. The name Deseret derives from the Book of Mormon's word for honeybee.

<sup>12</sup>While some gold was found in Utah, the principal mining industry here was copper.

<sup>13</sup>Ecclesiastical courts (called also Courts Christian) are defined as "[a] generic name for certain courts having cognizance mainly of spiritual matters. ... A system of courts in England, held by authority of the sovereign, and having jurisdiction over matters pertaining to the religious and ritual of the established church, and the rights, duties, and discipline of ecclesiastical persons as such." BLACK'S LAW DICTIONARY at 460 (5th ed., 1979).

<sup>14</sup>*See* Backman, James H., Courts, Ecclesiastical, Nineteenth-Century (1992), [eom.byu/index/php/courts](http://eom.byu/index/php/courts) (last accessed May 30, 2015).

<sup>15</sup>*Id.*

<sup>15</sup>Article IV of the U.S. Constitution provides: “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

<sup>16</sup>All territory under the control of the federal government is considered part of the United States for purposes of law.

<sup>17</sup>*See, generally, Cooley, Everett L. “Carpetbag Rule-Territorial Government in Utah,” UTAH HISTORICAL QUARTERLY 26, No. 2 (Apr. 1958): 107-129.*

<sup>18</sup>The list of all Utah territorial judges, together with the micro-filmed records and case files of the territorial court from 1870 to 1896 are available at the National Archives in Denver, Colo., as part of Record Group (RG) 21.

<sup>19</sup>Furniss, Norman F., *THE MORMON CONFLICT: 1850-1859*, 29.

<sup>20</sup>On Jan. 4, 1852, the New York Herald printed the scathing 1852 Report to President Fillmore from the Judges of the Utah Territory; an article with “astounding revelations” on the same subject appeared in the Saint Joseph Gazette on Feb. 4, 1852; the report and article are reprinted at [truthandgrace.com/1852presidentreport.htm](http://truthandgrace.com/1852presidentreport.htm) (last accessed on May 30, 2015).

<sup>21</sup>The Mormons were involved in their fair share of wars. First, there was the Mormon War of 1838, a conflict between the LDS members and the people of Missouri; from 1844 to 1846, in the Illinois Mormon War, they fought their neighbors in the western part of Illinois; from 1857 to 1858, in the Utah War, the church and its LDS members challenged the federal government.

<sup>22</sup>The first federal trial resulted in a hung jury. In the second case, however, John D. Lee, an LDS member, was convicted and, on March 23, 1877, executed by firing squad. Coincidentally, Brigham Young died that same year.

<sup>23</sup>*See Backman, supra.*

<sup>24</sup>“Keep away from courthouses; no decent man will go there unless he goes as a witness, or is in some manner compelled to. We have the names of those who attended that courtroom, and we will send those characters on long missions, for we want to get rid of them, and we do not care if they apostatize or not.” Attributed to Brigham Young. Schindler, *supra*.

<sup>25</sup>18 Stat. 253.

<sup>26</sup>98 U.S. 145, 25 L. Ed 244 (1879).

<sup>27</sup>The Edmunds Anti-Polygamy Act was signed into law by President Chester A. Arthur on March 23, 1882.

<sup>28</sup>136 U.S. 1, 10 S. Ct. 792; 34 L. Ed. 478 (1890).

<sup>29</sup>The first judgeship was not, however, established until two years later in 1896.

<sup>30</sup>As assigned in 1929, appeals from the federal court in Utah went to the Eighth Circuit Court of Appeals.

<sup>31</sup>Patent claims and claims against the U.S. government under the Tucker Act, are appealed to the Court of Appeals for the Federal Circuit.

<sup>32</sup>Three active judges sit on the bench of the Tenth Circuit from Utah: Hon. Scott Matheson; Hon. Carolyn B. McHugh; and Hon. Michael B. Murphy; in addition, the two senior judges from Utah are Hon. Hale Anderson and Hon. Monroe G. McKay.

<sup>33</sup>For an extensive treatment of the 46-year history of the territorial courts, *see, generally, THE FEDERAL COURTS OF THE TENTH CIRCUIT: A HISTORY*, Chapter V: Utah: The Territorial and District Courts, The Tenth Judicial Circuit Historical Society (1992).

<sup>34</sup>Taken from Judge Jenkins’ remarks during the course of a very informative and well-done documentary film prepared about the embattled history of Utah’s federal court in Utah, which aired April 29, 2014, on KUED-Channel 7 and viewed by the author on [www.video.kued.org/program/utah-history](http://www.video.kued.org/program/utah-history) (last accessed May 31, 2015).

<sup>35</sup>Subsequently, the law was amended to rescind \$100 million maximum and to make other necessary changes. The law reads, in material portion: “The United States should recognize and assume responsibility for the harm done to these individuals. And Congress recognizes that the lives and health of uranium miners and of innocent individuals who lived downwind from the Nevada tests were involuntarily subjected to increased risk of injury and disease to serve the national security interests of the United States. The Congress apologizes on behalf of the Nation to the individuals ... and their families for the hardship they have endured.”

<sup>36</sup>*United States of America v. Michael Brad Magleby*, D. Ct. No. 98-CR-565, Dee Benson, J., *affirmed* on appeal by the U.S. Court of Appeals for the Tenth Circuit, 241 F. 3d 1306 (Tenth Cir. 2001).

<sup>37</sup>Reported at [www.KSL.com](http://www.KSL.com), Dec. 5, 2003 (last accessed May 31, 2015).

<sup>38</sup>*Brown, et al. v. Jeffrey R. Buhman*, County Attorney for Utah County, Case No. 2:11-cv-0652-CW.

<sup>39</sup>961 F. Supp.2d 1181 (D. Utah 2013), *affirmed*, 755 F.3d 1193 (10th Cir. 2014); *stay granted*, 134 S. Ct. 893 (2014); *cert. denied*, No. 14-124, 2014 WL 3841263 (Oct. 6, 2014).

<sup>40</sup>The U.S. Circuit Court for the District of Utah met there in Salt Lake City until it was abolished in 1912.

<sup>41</sup>The U.S. Circuit Court for the District of Utah also met in Ogden until 1912.

<sup>42</sup>*See, generally, U.S. District Court Judicial Caseload Profile Reports*, for various years at [www.uscourts.gov/cgi-bin/cmsd](http://www.uscourts.gov/cgi-bin/cmsd) (last accessed May 29, 2015).

<sup>43</sup>Apparently, “[a]ccording to an article published this summer (2013), Utah leads the nation in convictions for federal cases of ‘simple possession’ (of marijuana).” Smoland, Dain, “Utah’s Dubious Distinction: The Most Federal Port Convictions,” Sept. 25, 2013, <http://smolandlaw.com> (last accessed May 30, 2015).

<sup>44</sup>*See* Title 28, U.S. Code Section 133(a).

<sup>45</sup>Seat 1 was established Jan. 4, 1896, 28 Stat. 107; Seat 2 was established Feb. 10, 1954, 68 Stat. 8 (temp.) (75 Stat. 80 [perm.]); Seat 3 was established Oct. 20, 1978; Seat 4 was established July 10, 1984, 98 Stat.333; and Seat 5 was established Dec. 1, 1990, 104 Stat. 5089.

<sup>46</sup>The author is indebted to the Federal Judicial Center for the judges’ raw biographical information and data. *See* [www.fjc.gov](http://www.fjc.gov).

<sup>47</sup>Far more prevalent before the advent of law schools, “reading the law” is the method by which budding lawyers may enter the legal profession by means of a protracted internship or apprenticeship under the tutelage or mentoring of an experienced judge or attorney before taking the bar examination. Surprisingly, a small number of U.S. jurisdictions still permit this practice today, including California, Vermont, Virginia, Washington, and Wyoming.

<sup>48</sup>*See* Brinkerhoff, Allan T. (former law clerk), “Judge A. Sherman Christensen,” [static1.squarespace.com/static/54170cd0e4b00eba52a2db00/t/545167f4e4b08a9d208843b7/1414621172631/Christensen\\_bio.pdf](http://static1.squarespace.com/static/54170cd0e4b00eba52a2db00/t/545167f4e4b08a9d208843b7/1414621172631/Christensen_bio.pdf) (last accessed May 30, 2015).

<sup>49</sup>In addition to the limit set forth in Title 28 U.S. Code Section

133(a), the federal districts are authorized to use “senior” judges.

<sup>50</sup>Selected speeches and published articles include: “*The First Thing We Do...*” 6 UTAH BAR J. 31 (Oct. 1993); *Causation And The Judicial Equation*, 1 COURTS, HEALTH SCIENCE & THE LAW 320 (1991); 4 UTAH BAR J. 24 (Nov. 1991); “There Are Seeds In That Apple,” Aldon J. Anderson American Inn of Court (Sept. 26, 1991); “The Essential Teacher,” Educator’s Hall of Fame Dinner, Davis County Schools (April 27, 1993); “One to Grow On, A Celebration of the Constitution,” Annual Constitution Day Banquet, Utah Society of the Sons of the American Revolution (Sept. 12, 1992); *The Integrity of Words*, 1988 UTAH L. REV. 291; “The Role of the Court in Risk Assessment,” in *Dealing with Risk: The Courts, the Agencies and Congress*, Fourteenth Annual Conference on the Environment, American Bar Association Standing Committee on Environmental Law (May 17–18, 1985), 16 ENV. L. RPT. 10187 (July 1986); *The Essential Quest [The United Nations]*, VITAL SPEECHES, Vol. LVII, No. 4 (1991), 4 UTAH BAR J. 11 (Feb. 1991); “*Managing the High Profile Case*” (*Taking the Constitution Seriously*), 2 UTAH BAR J. 14 (Jan. 1989); “The Fact Behind the Word,” Federal Bar Association, Utah Chapter Luncheon (Feb. 10, 1989); “*During Good Behavior ...*” THE UTAH BAR JOURNAL, Vol. 14 (1986); *African Journey*, RES GESTAE, WINTER 1985 (Univ. of Utah College of Law); *Commencement Address*, University of Utah College of Law (May 19, 1979), THE UTAH BAR JOURNAL, Vol. 7, Nos. 4-9 (Summer–Fall 1979); *The Lawyer as an Educator*, THE UTAH BAR JOURNAL, vol. 2, no. 1 (Spring 1974); *Communication in the Courtroom*, 48 AM. BANKR. L.J. 377 (1974); Chapter 26, “*Problems of Discretion and*

*Responsibility: The Debate Over Tort Liability*,” HANDBOOK OF PUBLIC LAW AND PUBLIC ADMINISTRATION; “*Is That a Fact?*” (Evidence and the Trial Lawyer), THE UTAH BAR JOURNAL, Vol. 12, No. 4 (April 1999); *For Thinking Press 1, For Compassion Press 2, For Judgment Press 3*, VITAL SPEECHES, Vol. LXVIII, No. 7(2002), [www.utd.uscourts.gov/judges/jenkins.html](http://www.utd.uscourts.gov/judges/jenkins.html) (last accessed May 30, 2015).

<sup>51</sup>Case Note, *Appropriation of Name, Likeness and Personality - Relatives and Administratrix Held to Have No Claim Under Privacy or Property Theories*, 9 UTAH LAW REVIEW 999 (1964-65); Note, *The Constitutional Convention, Its Nature and Powers - And the Amending Procedure*, 1966 UTAH LAW REVIEW 390; Note, “Like Grade and Quality” under section 2(a) of the Robinson-Patman Act, 1967 UTAH LAW REVIEW 251; Kimball, *Compulsion Without Protection or Recourse: The Case for No-Fault Accident Insurance for School Children*, 1975 UTAH LAW REVIEW 925; Parr and Kimball, *Acquisition of Non-Mineral Land for Mine Related Purposes*, 23rd Annual Rocky Mtn. Min. L. Inst. 595; AMERICAN LAW OF MINING, 2nd Ed., Ch. 204, “*Liens*”; Dale A. Kimball, *Freedom and Independent Courts*, UTAH BAR JOURNAL, June/July 2003, at 29, [www.utd.uscourts.gov/judges/kimball.html](http://www.utd.uscourts.gov/judges/kimball.html) (last accessed May 30, 2015).

<sup>52</sup>See Jenkins, Bruce S. (Senior U.S.D.J., D. Utah), “*Lessons Learned From The Principles, Practices and Personalities of Utah’s First Chief Federal Judge*,” Federal Bar Association Seminar, Salt Lake City, Nov. 7, 2008.

<sup>53</sup>Judge Thurman also serves as the chief judge of the 10th Circuit Bankruptcy Appellate Panel.