

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

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FALL 2009

President's Message

When Attorney General Eric Holder announced last month that Khalid Sheik Mohammed and four other alleged conspirators in the September 11 attacks would be tried in a public criminal trial in New York, rather than the secretive and arguably unlawful system of military commissions, the decision immediately became the grist of pointed political attacks. Sarah Palin opined that it was an "atrocious decision" because of the chance that Mohammed could get acquitted on "court room technicalities." Karl Rove and Newt Gingrich sent out urgent messages to their Twitter followers, attempting (unsuccessfully) to mobilize a march on the U.S. Senate. Representative John Shadegg of Arizona openly speculated on the House floor that trying Mohammed in New York will cause Mayor Bloomberg's daughter to be "kidnapped at school." And John Yoo, one the architects of "enhanced interrogation" under the previous administration, worried that the trial would unveil the torture he helped to authorize, and thus would be "an intelligence bonanza for al Qaeda."

While it is hard to find a perfect historical parallel where the mere specter of a public trial has inspired such fear, the use of the civilian criminal courts to try alleged terrorist suspects is not novel. The Bush administration used the civilian courts to try multiple high-profile defendants in terrorist plots, including Zacarias Moussaoui, John Walker Lindh, and Jose Padilla, all of whom are now serving significant time in federal prisons. Those trials managed to take place without kidnappings, new terrorist attacks, or the

by David Reymann
Salt Lake County Bar President

collapse of civil justice. In contrast, the military commissions system has managed one full trial in eight years, which resulted in Osama bin Laden's driver receiving a sentence of five months.



David Reymann

There is certainly a political dynamic at work here, and reasonable minds can disagree on the best way to bring these individuals to justice. But as lawyers, we should all be concerned about the suggestion that public criminal trials are an inadequate, or even dangerous, process by which to adjudicate the guilt of terrorists, or anyone else for that matter.

The mere possibility of an acquittal has never been a justification for subverting the trial process, nor has the fear of reprisals from those being tried. To the contrary, the actual possibility of exoneration, coupled with vigorous advocacy on behalf of the accused, is precisely what makes verdicts rendered by our system credible. If we fail to live by those rules when trying our most hideous criminals, we can hardly be heard to criticize other countries, as we recently did with Iran, for rendering questionable verdicts in kangaroo courts.

Also troubling is the suggestion that we should fear a public trial because of what Mohammed or his co-defendants might say. The public is not so weak that it needs to be protected by the government from hearing Mohammed peddle his deranged propaganda. In fact, that type of paternalistic attitude elevates hateful rhetoric, not diminishes it.

(Continued)

Justice Tongue

Princes of Thieves?

Dear Justice Tongue:

Friends are tired of hearing me yap and recommended that I impose upon you my earth-shattering, soul-shaking concerns. So where do I begin? Perhaps with some context. Over the years, I have become steadily alarmed that the captains of industry have turned into princes of thieves. It is astounding to me that their whole universe seems to revolve around short-term profits designed to promote the price of their stock options onto which are dolloped and slathered increasingly astounding "shock-the-conscience" salaries and perks. Why my concern? It occurs to me that such unabated and unabashed behavior has had and will have a steadily deteriorating effect on all of American industry. It's not hard to imagine the likely effect upon the "worker bees" operating under the supposed leadership of these ravenous corporate officers. Would it not be both understandable and fully predictable that those making minute fractions of what their leaders can and do swipe from the corporate coffers would decide that maybe they should also be in it just for themselves? It occurs to me that we've seen the deleterious effect of the "what's in it for me" mentality as it has leaked its toxic waste into the mainstream of the American ethic. So, what does this have to do with the practice of law? I'm getting there. If you think I was shocked by the boatloads of cash that these corporate officers hauled out of the treasuries of American companies, imagine how aghast I was when these arrogant "take responsibility for your deeds and actions," "down with the welfare state" captains of the behemoth corporations flew their lavish jets into our nation's capital holding out beggar bags. Oh my God! And could I believe that the nation's largest investment houses were literally putting a gun to Uncle Sugar's head demanding, bribing, cajoling, tricking, extorting hundreds of billions of dollars of bailout money because they had ravenously invested in and promoted products about the substance of which they had no clue, all the while creaming billions of dollars in profit from the promoted fluff.

And naturally my concern was what would be the effect on the average American citizen as he or she sits in a court of law deciding whether Harry has some legal responsibility to Bobbie Joe. Why am I concerned about that? Well, a few of these average

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Americans read newspapers and all of them watch television. They may come by a notion that the rules of American commerce do not apply as they once thought. They may think that you are not responsible for the consequences of your actions or choices if you're big enough or bring the country to its knees enough such that thousands of people will be thrown out of work and the nation spiraled into an historic depression. And they may conclude that not only are you not punished for your misdeeds and greed, but rather that the nation actually rewards you with money that it borrows from the grandkids and great grandkids of these average citizens that we call upon to leave the few jobs they have to sit in a courtroom and apply traditional notions of fair play

and substantial justice, of responsibility for the consequences of actions, of the obligation to meet contractual promises. My concern, quite frankly, is that we may be schooling, promoting and generating a citizenry of complete cynics and skeptics who have been taught by leaders of industry and finance along with the "best politicians money can buy" that the most important thing they can do is take whatever advantage they can whenever and wherever they can and skirt their responsibilities under any guise, lie, scheme or artifice. That is not the citizenry that ought to be hearing cases with a view toward distributive justice in the American tradition.

And I'm not sure who gets hurt by it in any particular case. It may be that the juries are so cynical towards big corporations that they'll slam them just for the joy of it. Or it may be that they'll decide that even if someone has breached a contract, it doesn't matter. Just look at AIG or General Motors. Yes, let's take AIG, one of the world's largest insurance companies. It insured risks that it now admits it did not understand in amounts that it now admits it could not cover. And what about General Motors and its bondholders, you know, the moms and pops, the little people and their pension plans that it stiffed while the chief executive walked from the colossal car wreck with a multi-million dollar golden parachute? Where I come from, some of this starts to smack of fraud and some of these little people might be asking questions like "Where in the hell are the indictments?" And when they're sitting in front of folks who have committed crimes under the old rules, which crimes pale in comparison to the

Judicial Profile

J u d g e M i c h e l e C h r i s t i a n s e n

By Rick Ensor

A Utah native, Judge Christiansen was born and raised in the Salt Lake Valley until she headed to Lawrence College, in Appelton, Wisconsin, where she majored in history. Faced with the question of what to do with a history degree, Judge Christiansen wavered between obtaining a master's in history and attending law school at the University of Utah.

Judge Christiansen enjoyed law school, and clerked for Parsons Behle & Latimer during the summers. She was intent on joining the firm's civil litigation practice when she heard the news of Tena Campbell's appointment to the federal judiciary. Young, confident, and not knowing Judge Campbell in the least, Judge Christiansen called Judge Campbell to see if a clerkship was a possibility. She must have said something right, as Judge Campbell selected Judge Christiansen to be her first law clerk.

After spending a year at the federal court, Judge Christiansen rejoined Parsons Behle & Latimer, working as an associate in the civil litigation section. She remained at Parsons for approximately two years when an opportunity presented itself with the United States Attorneys office. At that time, federal law enforcement policy was placing an emphasis on the criminal prosecution of illegal aliens who had previously been deported, but had reentered the country and committed felonies, particularly violent felonies. Judge Christiansen tried these types of immigration cases for a couple of years and then moved to prosecuting child exploitation and pornography cases, which she describes as a rewarding but extremely difficult job. She prosecuted these cases for five years, and other cases involving violent crimes, when a new opportunity presented itself.

Having experienced the inside of the federal judiciary, private civil practice, and the prosecutor's office, Judge Christiansen joined Governor Huntsman's office as the Director of the Commission on Criminal and Juvenile Justice. The Commission is comprised of eighteen people from all parts of government who assist the Governor's office with the development of justice policy for the State of Utah. Judge Christiansen was on the Commission for

approximately eighteen months when Governor Huntsman appointed her as General Counsel to the Governor's Office, where she remained until her appointment to the judiciary. When asked about the time on the Commission and with the Governor's office, Judge Christiansen's warm response demonstrated her deep respect for Governor Huntsman, who she called a "true leader" and the type of politician that we should all hope for and expect.

Judge Christiansen was appointed to the bench in May 2007. The Senate confirmation process was fairly uneventful except for her eight-year-old daughter's refusal to sit still while her mother was answering questions from the Senate Judicial Confirmation Committee. Her current



Judge Michele Christiansen

docket is about eighty percent criminal cases and twenty percent civil cases. I attempted to gather a couple of helpful hints that might be useful to all lawyers appearing before Judge Christiansen, whether civil or criminal. First, Judge Christiansen appreciates briefs that provide relevant precedent. Once the correct precedent is identified, the lawyer needs to take the next step and make a cogent argument using the caselaw to support the argument made to the Court. Second, Judge Christiansen always reads the briefs and the relevant cases before oral argument or making a decision. She will therefore know if the cases cited do not address the issue at hand and will press counsel on that fact. Finally, in recognition that access to the judiciary is important, Judge

Christiansen seeks to remain available to help resolve disputes that arise during the course of a case. If a lawyer needs immediate assistance or guidance, Judge Christiansen's clerk should be contacted and an effort will be made to deal with the issue at hand.

Restaurant Review

V i n t o

By Mark Kittrell

Vinto

418 East 200 South

SLC, UT

(801) 539-9999

www.vinto.com

Vinto is a relatively new wood-fired pizza place that opened in the long-vacant space that was occupied by the former Wings and Things on 200 South.

The restaurant owners have completely redesigned the space from its chicken wing and burger shack days. Walking into the restaurant, you immediately notice four large, intricately woven lights hanging from the ceiling, which accentuate the curved booths placed strategically around the restaurant to give a sense of intimacy to many of the tables. At the entrance is a chalkboard, where patrons can write their names if there is a wait. Also on the chalkboard is the daily wine special, which lists the wine available for \$4 per glass. Just to the right of the entrance is a long, wooden bar, stocked with bottles of wine and sparkling water. Just past the bar is the wood fired oven and semi-exposed kitchen.

The menu offers many options, but centers itself on the wood-fired pizzas.

Supplementing the menu is a list of daily specials for zuppa, antipasti, pasta, pizza, and dessert. On our visit, my wife and I ordered the grilled fresh artichoke (\$7.50), the Verdura chopped salad (\$8.50), the grilled vegetable piadina (\$6.50), the Tuttabella pizza (\$9.00), and the Vinto gelato/sorbetti sampler dessert (\$6.00). Each of these dishes were sizable enough to share, and with the exception of the dessert, they are brought to your table as they become ready.

The artichoke appetizer was coated with a mild vinaigrette and quite a bit of olive oil. The texture was a bit chewy, and the oil drowned out any flavor one might taste from a grilled artichoke. Next time, I would probably skip the artichoke as an appetizer and try something like the housemade meatballs (\$8.00) or a salad.

The Verdura chopped salad was quite tasty, and reminded us a bit of Mazza's tabbouleh salad. The salad contained mixed greens, green beans, zucchini, peppers, corn,

avocado, eggplant, asparagus, tomatoes, and a lemon-basil vinaigrette. All of these ingredients were mixed, chopped and then served.

The grilled vegetable piadina is a sandwich/wrap-like item, with the ingredients (zucchini, peppers, eggplant, red onion, mushrooms, arugula, parmesan and pesto vinaigrette) resting on top of warm, soft, unleavened bread. Folded and eaten much like a taco, we quite enjoyed this dish.

The Tuttabella pizza is a wood-fired pizza, with housemade sausage, caramelized onion, fresh tomato, garlic, roasted peppers, and fresh mozzarella. The crust was light and crispy, and the sausage was delicious.

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We finished off dinner with a sampler of the gelatos and sorbets that are made in-house. That night, we sampled 3 gelatos (pistachio, hazelnut, and vanilla) and 3 sorbets (pineapple, blood orange, and chocolate). Vinto has nailed the gelato-making process. The gelatos were all rich, creamy and fresh with just the right mix of flavor and sweetness. The sorbets were quite delicious, too, but we were slightly disappointed with the chocolate sorbet. Made with dark chocolate, the sorbet came off a bit too chalky. The favorites at the table were the hazelnut and pistachio gelato and pineapple sorbet.

Vinto also offers a wine/beer/spirits menu with very reasonable prices. All bottles of white wine are \$26 per bottle and all bottles of red wine are \$28 per bottle. The beer selection mixes in solid European choices with a handful of out-of-state microbrews. All beer is \$5 per bottle. All spirits are \$6 per cocktail.

If in search of a casual, hip, quick spot for dinner, Vinto should serve you well. Although we were not pressed to hurry, my wife and I were in-and-out of the restaurant within an hour. Vinto is a welcome addition to Salt Lake's dining scene.

Recent Precedents

New Lawyers and Judges Reception



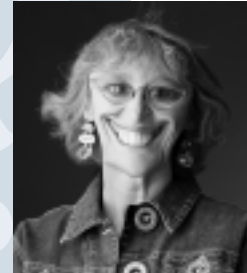
The Salt Lake County Bar Association's New Lawyers and Judges Reception to welcome the 2009 Utah State Bar admittees was held on Wednesday, October 28th, at The Alta Club

Who Am I?

Last Issue's Answers

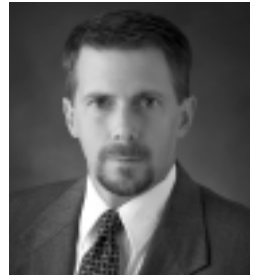
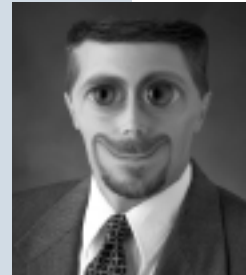
Here are the answers from our last issue. Thanks to our panel of attorneys for being good sports about the desecration of their portraits.

I was born and raised in Wyoming. Prior to practicing law, I was a high school teacher of English and Spanish. I am a hiker and a fly fisher.



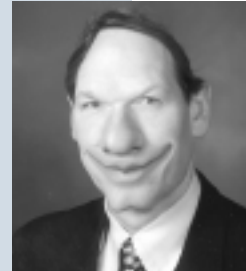
Lisa Yerkovich

I was in jail (very briefly) in Italy in 1986. Now, as part of my mid-life crisis, I am trying to rebuild a 1969 Triumph Trident motorcycle. The Utah Supreme Court, in an unusual move, wrote a footnote in one of its opinions saying that it appreciated my "exceptional" work as counsel even though it was ruling against my client.



Matthew Moscon

I am originally from New York and spent my childhood as an Army brat. I was captain of my college lacrosse team. Our team's mascot was the polar bear, named after Admiral Robert E. Peary, one of my college's alum.



David Jordan

Congratulations to our winner, Rick Rose.

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Justice Tongue

C o n t i n u e d

misdeeds that are now being rewarded out of the public treasury, they might wonder whether application of the criminal code is harsh at best or a travesty at worst.

The average citizen might ask, Why is it that Goldman Sachs doesn't have to chase AIG through bankruptcy and end up with a big goose egg - like all the little people do when they get stiffed? It's got to be a slap in the face. They may figure out that not only were these "stanchions of free enterprise" "bailed out," they were bailed out with the money from generations to come. Indeed, protection of the unborn might take on a whole new economic meaning.

What I believe is that everyone is going to be hurt because the long-standing, hard-fought for, earnestly and conscientiously crafted tenants of American jurisprudence may start to appear to the average citizen as quaint and irrelevant notions whose time has passed.

The little speeches that the judges give to jurors as they are sitting and watching the proceedings may ring a little trite and outdated as the great and powerful corporate interests don't seem to bother themselves with any of the rules anymore as they socialize their losses and privatize their gains. Well, anyway, that's my concern. What is your take?

Sincerely,
Perplexed

Dear Perplexed:

My take?

Fondly,

Justice Tongue



Our website address!

www.slcountybar.org

Check out back issues of the Bar and Bench, a calendar of upcoming events, and other helpful information on the Salt Lake County Bar's website.

SLCBA
SALT LAKE COUNTY BAR ASSOCIATION

on

facebook

Oh, yes, we're social...

The Salt County Bar is now on Facebook. Check us out to connect with other members, see pictures of our events, start a discussion and other fun stuff.



President's Message

C o n t i n u e d

Thirty years ago, before the Patriot Act, the renewal of secret military trials, and the many other alterations to our justice system brought on by 9/11, Justice Berger observed that “[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”

The public prosecution of Mohammed and his co-conspirators may well allow for more anti-American rhetoric to be injected into the public discourse. It may confirm facts about torture used by this country to obtain confessions and other evidence. And it may not result in the verdict or sentence that most Americans desire. But in the end, it will be a result rendered in the light of day, with the full array of protections given to our own citizens. There can be no more emphatic embrace of the values attacked on 9/11 than the refusal to discard those values in the pursuit of vengeance.

In that sense, Attorney General Holder's decision to try the most high-profile 9/11 suspect in public court is a testament to the bedrock principles of our system of justice, and the idea that our fidelity to that system should be at its greatest when it is most inconvenient to do so. As lawyers, that is something we should all be proud of.