

The Utah Chapter
of the 10th Circuit Historical Society
and the Federal Bar Association, Utah Chapter

Present

**CHURCH AND STATE:
GOVERNMENT INVOLVEMENT IN FIRST AMENDMENT
RELIGIOUS EXPRESSION**

A Panel Discussion of the *Sumnum* Cases
**The Legacy of Civil Rights Champion
BRIAN M. BARNARD**

Panelists:

Judge Dale A. Kimball

Senior U.S. District Court Judge

Judge Dee Benson

U.S. District Court Judge

Richard A. Van Wagoner

Snow Christensen & Martineau

James L. Harris, Jr.

Attorney at Law

Moderated by Professor RonNell Andersen Jones

Brigham Young University J. Reuben Clark School of Law

Monday, October 15, 2012 at 5:30 p.m.

Frank E. Moss Federal Courthouse
350 S. Main Street, Salt Lake City, UT
Courtroom No. 420, Fourth Floor

1.5 hours of CLE credit available.

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CASE SUMMARIES

Summun v. Pleasant Grove et al

District Court Case No. 2:05-cv-638- DAK
(2:06-cv-996, consolidated)
2006 WL 3421838
10th Circuit Court of Appeals Case No. 06-4057
483 F.3d 1044, 499 F.3d 1170
U.S. Supreme Court Case No. 07-665
129 S.Ct. 1125

In 2005, Summun, a religious organization headquartered in Salt Lake City, filed suit against Pleasant Grove City and several current and former city officials for the city's maintenance of a donated monument detailing the Ten Commandments in a city park. The plaintiffs sought an injunction to require the city to erect a similar monument outlining the group's guiding tenets in the same park as the Ten Commandments. U.S. District Judge Dee Benson denied the injunction and the plaintiffs appealed to the Tenth Circuit Court of Appeals.

The Tenth Circuit subsequently reversed the district court's order and Pleasant Grove appealed to the Supreme Court. In the Supreme Court case, the Justices held that permanent monuments in public parks are a form of government speech and not subject to scrutiny under the Free Speech Clause.

American Atheists, Inc., et al v. Utah Highway Patrol Association

District Court Case No. 2:05-cv-994-DS
528 F.Supp.2d 1245
10th Circuit Court of Appeals Case No. 08-4061
637 F.3d 1095
U.S. Supreme Court Case No. 10-1276, 10-1297
132 S.Ct. 12

Beginning in 1998, the Utah Highway Patrol Association sought to honor the memory of those officers who had died in the line of duty by erecting white, twelve foot by six foot crosses on the sites where the officers had died. In 2005, plaintiffs filed suit against the Association and other state officials for violating the Establishment Clause outlined in the Fourteenth Amendment and asked the district court to order the defendants to remove the crosses because of a perceived state endorsement of Christianity. U.S. District Judge David Sam granted the defendants' motion for summary judgment allowing the crosses to remain in place.

On appeal, the Tenth Circuit Court of Appeals reversed Judge Sam's ruling, concluding that although the crosses had a secular purpose they could convey to a reasonable person the state was endorsing Christianity.

The U.S. Supreme Court denied certiorari, Justice Thomas dissenting.

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RELATED CASES

Freedom from Religion Foundation, et al v. City
of Ogden et al
District Court Case No.
1:98-cv-00150-BSJ

Summum, et al v. Ogden City, et al
District Court Case No.
1:99-cv-00031-BSJ

Summum v. Salt Lake County, et al
District Court Case No.
2:94-cv-00906-DB

Summum v. Salt Lake County, et al
District Court Case No.
2:95-cv-00798-DB

Summum v. Duchesne County, et al
District Court Case No.
2:03-cv-01049-DAK

COUNSEL OF RECORD

Summum v. Pleasant Grove, et al

Plaintiffs

Brian M. Barnard
James L. Harris, Jr.

Defendants

Meb W. Anderson
Edward L. White,
III
Francis J. Manion
Geoffrey R. Surtees
Wayne K. Caldwell

American Atheists, Inc., et al v.

Utah Highway Patrol Association

Plaintiffs

Brian M. Barnard
James L. Harris, Jr.

Defendants

Thomas D. Roberts

Intervenor Defendants

Brett Harvey
Byron J. Babione
Frank D. Mylar
Barry C. Hodge
David J. Hacker
Delia B. Van Loenen
Joseph J. Martins

Freedom from Religion Foundation, et al v. City
of Ogden et al,
Summum, et al v. Ogden City, et al

Plaintiffs

Brian M. Barnard
James L. Harris, Jr.

Defendants

Allan L. Larson
Andrew W. Morse
Richard A. Van
Wagoner

Summum v. Salt Lake County, et al
(consolidated cases)

Plaintiffs

Brian M. Barnard
Andrea J. Garland
James L. Harris, Jr.
John P. Pace
Joro Walker

Defendants

Douglas R. Short
Jay L. Stone
Patricia J. Marlowe
David E. Yocom
Patrick F. Holden

Summum, et al v. Duchesne County, et al

Plaintiffs

Brian M. Barnard
James L. Harris, Jr.

Defendants

Cindy Barton-
Coombs
Lyle J. Fuller
Edward L. White,
III

Francis J. Manion
Geoffrey R. Surtees

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BRIAN M. BARNARD

When the historical society planning committee first set out to highlight these cases, we immediately knew that Mr. Barnard had to be one of our panelists. Not only did Mr. Barnard represent the plaintiffs in all of the related cases, but he was also a very well respected member of the bar who championed civil rights causes. Several months ago, Mr. Barnard agreed to appear on our panel and indicated his excitement to do so.

Sadly, Mr. Barnard passed away at his home on September 4, 2012. The Tenth Circuit Historical Society and Federal Bar Association wish to express our gratitude to Mr. Brian Barnard for his contributions to the judicial system and to the community at large.

Below is the obituary that was published in the Salt Lake Tribune on September, 9, 2012 as well as links to a selection of stories dedicated to the life of this staunch officer of the court.

Brian Moore Barnard
Obituary



1945 - 2012

Brian Moore Barnard, beloved brother, uncle, boss and friend turned in his "lawyer shoes" for good on September 1, 2012 and decided to start practicing law in a different place (if there is any such place). Brian Barnard was born May 24, 1945 in California to John Moore Barnard and Mary Roberta Perry. He graduated from Loyola Law School in 1969 then moved to Utah in the early 1970s. Soon thereafter, Brian Barnard opened his own practice, Utah Legal Clinic. Brian was known to many as Utah's "gadfly" attorney. He dedicated his life and his practice to protecting the personal civil rights and liberties of individuals who lacked the choice or the power to do so on their own and leaves a timeless professional legacy as a civil rights attorney. Brian profoundly touched those he worked with and those who knew him. Though the community will remember Brian as a bulldog for civil rights in the courtroom, we will remember Brian also for the big-hearted man he was outside of the court. A compassionate individual, Brian loved to give of himself to those in need, whether they be charitable organizations, family, employees, or unsuspecting members of the community. On warmer days, he could be seen walking to his downtown law office from his home near the University, picking up discarded trash and cans in the streets and trimming back overgrown bushes and trees obstructing the walkway as he walked. Brian also had an unbridled passion and was a huge supporter of the local arts. He was a season ticket holder for many Utah acting and dance companies, and shared that love with those close to him. We will miss seeing the Halloween windsock marking the space he staked out at the Red Butte Garden Concert series every summer, the "office outings" to Wyoming Downs, summer barbecues and Christmas parties at Brian's home and the annual outing to Salt Lake Acting Company's Saturday's Voyeur. He was a strong believer in the power of education, and freely shared the knowledge he possessed, as well as supported higher education for those he loved. Many individuals enjoyed the fruits of his labor, both literally and figuratively. Brian loved to garden, and loved to share his abundant crop in both fresh and dried form with co-workers, friends, neighbors, and even opposing counsel. Those who knew him are better for

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having known him and the law and the legal community will be forever grateful for his work and his contributions both to his craft and the cause of justice.

Brian M. Barnard was survived by his brother, John Perry Barnard, nieces, Heather Rando (Chris) and Marissa Noriega (Marcos), and great nieces and nephews, Eva, Daniel, Nina and Lucas, as well as his "office family," past and present.

Friends, colleagues, clients and members of the community are invited to attend a memorial open house in Brian's honor at Starks Funeral Parlor located at 3651 South 900 East from 6:00 to 8:00 p.m. on Tuesday, September 18, 2012 to celebrate his life and achievements, as well as share our favorite memories. He will be laid to rest at Mount Olivet Cemetery. In lieu of flowers, donations may be made to Utah Civil Rights & Liberties Foundation, 214 East 500 South, Salt Lake City, Utah 84111, to help continue his lifelong fight for civil rights.

Arrangements entrusted to Stark Funeral Parlor. Online condolences may be offered to the family by visiting www.starksfuneral.com.

“Community Mourns Death of Civil Rights Attorney Brian Barnard,”

Aaron Falk and Brooke Adams, Salt Lake Tribune, Sept. 4, 2012,

<http://www.sltrib.com/sltrib/news/54826614-78/barnard-utah-brian-legal.html.csp>

“Brian Barnard, An Advocate for Sideways Views,” Salt Lake Tribune, Sept. 5, 2012,

<http://www.sltrib.com/sltrib/opinion/54834820-82/state-barnard-utah-bar.html.csp>

“Brian Barnard, Civil-Rights Champion, We Hardly Knew Ye,”

Peg McEntee, columnist, Salt Lake Tribune, Sept. 8, 2012,

<http://www.sltrib.com/sltrib/news/54851311-78/barnard-says-mcentee-brian.html.csp>

“Well-Known Civil Rights Attorney Brian Barnard dies at 67,”

Emiley Morgan, Deseret News, Sept. 4, 2012,

<http://www.deseretnews.com/article/865561779/Well-known-civil-rights-attorney-Brian-Barnard-dies-at-67.html>

“Civil Rights Attorney Brian Barnard Has Died,” Billy Hesterman, Daily Herald, Sept. 5,

2012. http://www.heraldextra.com/news/local/civil-rights-attorney-brian-barnard-has-died/article_cdc68c6a-aef4-5c86-9e60-78f2f8cf2b47.html

“Utah Civil Rights Lawyer Brian Barnard Dies,” Ben Winslow, Fox13 News, Sept. 4, 2012,

<http://fox13now.com/2012/09/04/utah-civil-rights-lawyer-brian-barnard-dies/>

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MODERATOR

RONNELL ANDERSEN JONES

RonNell Andersen Jones is an Associate Professor of Law at Brigham Young University's J. Reuben Clark Law School, where she teaches constitutional law, First Amendment, legislation and media law.

After graduating first in her law school class, Professor Jones clerked for the Honorable William A. Fletcher on the Ninth Circuit Court of Appeals and for Justice Sandra Day O'Connor on the United States Supreme Court. Before entering academia, she was an attorney in the appellate division of Jones Day, where her work focused on Supreme Court litigation and included major constitutional and First Amendment cases.

A former newspaper reporter and editor, Professor Jones researches and writes on legal issues affecting the press and on the intersection between media and the courts. She is a regular presenter at media law conferences and was the director of a nationwide empirical study of the frequency and impact of subpoenas served upon newspapers and television newsrooms. Her work on that project is regularly cited in debates on Capitol Hill and has been featured in the New York Times, the Washington Post and USA Today, as well as on MSNBC, Fox News and National Public Radio. Her recent articles have appeared in *Minnesota Law Review*, *Washington Law Review*, and *Washington & Lee Law Review*.

From 2004 to 2008, Professor Jones was a Distinguished Faculty Fellow at the University of Arizona Rogers College of Law, where she team taught an annual course about the United States Supreme Court with Justice O'Connor.

In 2010 Professor Jones published an article in the Brigham University Law Review entitled, *Pick Your Poison: Private Speech, Government Speech, and the Special problem of Religious Displays*. As part of this article Professor Jones examined the Pleasant Grove v. Sumnum and Salazar v. Buono cases. The citation for the article is **2010 B.Y.U. Rev. 2045**.

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PANELISTS

CURRICULUM VITAE

Judge Dale A. Kimball

Personal

Married: Rachel Ballard Kimball

Business Address

United States District Court
350 South Main Street
Salt Lake City, Utah 84101

Education

B.S., Political Science, 1964, Brigham Young University
Provo, Utah, Magna Cum Laude
Juris Doctor, 1967, University of Utah Law School

Honors and Activities

Law School: Finished second in class, Order of the Coif, Case Note Editor of the Utah Law Review, Phi Kappa Phi

Present: Fellow of the American Bar Foundation
Master of the Bench, American Inn of Court I
Board Member, Utah Chapter Federal Bar Association
Adjunct Professor of Law, BYU Law School
Member, Federal Judges Association
Member, American Judicature Society

Former: Utah State Bar Distinguished Lawyer of the Year 1996
Member, Tenth Circuit Judicial Council
Chairman, Judicial Performance Evaluation Committee
Counselor to the Inn, American Inn of Court I
Member, Judicial Conference Committee on the Administration
of the Bankruptcy System
Member, Utah Federal District Court, Mediation/Arbitration Panels
Member and Chairman, Pioneer Theatre Board
Member, Board of Directors, Deseret News Publishing Company and
Member Executive Committee
Professor of Law, J. Reuben Clark School of Law,
Brigham Young University
Chairman, Utah State Bar Ethics and Discipline Committee
Chairman, Utah State Bar Committee on the Unauthorized

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Practice of Law

Member, Alta View Hospital Board of Governors

Member, Jordan Education Foundation Board

Trustee of the University of Utah College of Law Alumni Board

Board Member, Salt Lake Chapter, J. Reuben Clark Law Society

Experience

1967-1974: Associate, then Partner, VanCott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah

1974-1976: Professor of Law, J. Reuben Clark School of Law at Brigham Young University

1975-

Nov. 24, 1997: Founding Member, Kimball, Parr, Waddoups, Brown & Gee, Salt Lake City, Utah

November 24, 1997 - Federal Judge in the United States District Court for the District of Utah

Publications

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, Second Edition, Chapter 204, "Liens"

Dale A. Kimball, Freedom and Independent Courts, Utah Bar Journal, June/July 2003, at 29

Presented papers and speeches at energy seminars, litigation seminars, American and Federal Bar Association seminars, and various bar meetings and conventions.

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JUDGE DEE BENSON

Judge Benson was born in Sandy, Utah. He graduated from Jordan High School. He received his Bachelor of Arts degree from Brigham Young University in 1973 and his Juris Doctorate in 1976 as part of the charter class of the J. Reuben Clark School of Law at BYU. Judge Benson currently serves as a district court judge, and is a former chief judge, for the United States District Court for the District of Utah. Judge Benson was nominated on May 16, 1991 by President George H.W. Bush and confirmed by the United States Senate on September 12, 1991. He received his commission on September 16, 1991. Prior to taking the bench, Judge Benson practiced law in a private law firm from 1976-1984. He served from 1984 to 1986 as a Counsel for the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution. From 1986 to 1988 he was Chief of Staff for U.S. Senator Orrin Hatch. In 1987 he was a Counsel for the Iran-Contra Congressional Investigating Committee. From 1988 to 1989 he served as an associate deputy U.S. attorney general and from 1989 to 1991 as the U.S. Attorney for the District of Utah. In 2004 he was appointed to the Foreign Intelligence Surveillance Court by Chief Justice William Rehnquist and served until 2011. Currently, Judge Benson is serving as a member of the Judicial Conference

RICHARD A. VAN WAGONER

Richard (Rick) is licensed to practice law in the State of Utah since 1985 the year he graduated law school at the University of Utah. He graduated from Weber State College (now University) in 1982 with honors. During law school he served as Managing Editor of the Utah Law Review, and graduated Order of the Coif. He served as President of the Young Lawyers Section of the Utah State Bar, among other Bar assignments and services. He has worked at Snow, Christensen & Martineau since 1983 to the present, except for one year as a law clerk to Judge J. Thomas Greene, United States District Judge, District of Utah, from 1985-86. His practice has evolved over the years but for the past 15 years, has focused on commercial litigation, criminal defense (primarily white collar), and the First Amendment. He has presented at a number of seminars involving trial practice and issues relating to the interplay between civil and criminal matters. He is recognized by Best Lawyers in the areas of First Amendment and white collar litigation and is A/V rated by Martindale-Hubble since 2000. He also was an adjunct Professor at the University of Utah for thirteen years and has served on the boards of a number of nonprofit organizations.

JAMES L. HARRIS, JR

James Harris is an attorney licensed and practicing in the State of Utah since 1998. Mr. Harris received a Bachelor of Science degree from the University of Utah in 1994 and then completed his Juris Doctorate from Willamette University in 1998. His areas of practice include, but are not limited to, employment law, family law, Social Security disability disputes.