

Introduction to Speech by Judge Jenkins | By Juliette Palmer White

This spring, Hon. Bruce S. Jenkins, celebrated his 50th anniversary as a member of the federal judicial branch in Utah. First appointed to the Utah federal bankruptcy court in 1965, Judge Jenkins was nominated by President Jimmy Carter to serve as a district court judge in 1978. Judge Jenkins served as chief judge from 1984 to 1993. During his tenure on the district court, Judge Jenkins has presided over a number of legendary cases, including the downwinders trial that which resulted in a remarkable opinion that, while overturned by the Tenth Circuit, ultimately inspired the U.S. Congress to remedy the harms that occurred in that case. Judge Jenkins is also a prolific writer, scholar, and historian.

All of this occurred in the Frank E. Moss Courthouse, the federal courthouse for the District of Utah for more than 100 years. Two years ago, the Utah Chapter of the FBA invited Judge Jenkins to speak about the history of the Moss Courthouse at our chapter's annual federal practice seminar. At that time, a new federal courthouse was under construction in Utah and was on schedule to open in spring 2014, and local members of the bench and bar were anticipating the new building and reminiscing about the old building. Judge Jenkins accepted our invitation and prepared a speech that captured that rich history as only he could—captivating and delighting the audience. Judge Jenkins has now generously allowed us to republish those remarks for you. We hope that you enjoy this glimpse into Utah's legal history as much as we did.



GOODBYE OLD, HELLO NEW!

Memories, Myths, and Folklore of the Moss Courthouse¹

BY HON. BRUCE JENKINS

Nudged by the prospective move of the U.S. District Court from 350 South Main St., its home of 107 years, to that mysterious structure next door to the west, I have been asked to say a few words about the history of the court and some of its personnel, and touch on myths, folklore and memories associated with the court.

Rather than speak of substantive things—Ritter anticipating Gideon's right to a lawyer, Christensen on irradiated dead sheep, the fallout cases, Kimball on Elizabeth Smart, Singer/Swapp, Benson's credit card case, Sam's Olympic case, the pending cases involving 12,000 roads claimed by Utah across public lands—those kinds of things (you will get your share of that today), I thought I would concentrate on the structure and operational side of court life, essentially the back shop side.

First, we are going to miss the old building. Moving is mandated. Otherwise, I think we all would stay where we are. I know I would. Well, so much for judicial power when dealing with General Services

Administration (GSA), the god of all landlords, and the administrative office of the U.S. courts. Leaving the building is like saying "so long" to an old and valued friend—the kind of friend you're comfortable with just being in the same room, even with no conversation. The goodbye is not quite funereal, but close.

You're used to the space, you know where things are. Important things like which door leads to the courtroom, where the bathroom is, and where the books are. For example, I keep the *Harvard Law Review* in the bathroom just to have it handy, for whatever reason. To be even-handed, the *Utah Law Review* is there as well.

You know how to make things work. You know how to call the building manager to keep the air conditioner or heat on so that a deliberating jury can continue its work in comfortable circumstances.

Moving to a new space is a new challenge and is always a little frightening. It is like moving to a new house, and you wonder about the neighborhood. You don't really know if you have the energy to get acquainted with the maze of new digs. Chambers are such that

you no longer walk right into the courtroom, and you are no longer within speaking distance of staff.

The Moss Courthouse still feels like home. Indeed, this court has been housed at Post Office Place and at 350 South Main St. since 1906—some 107 years.

Right up front, let me dispel the first myth: It is not true that I have been in the building from the beginning. I was not born in the sorting room of the U.S. Post Office, and I am not 107 years old.

But this is not about me. As we talk today, I want you to consider the probabilities of the assertion by some very bright people that the ghost of Willis W. Ritter, like Marley's ghost, walks the corridors of the second floor by night, and if you are working late, one wonders why the hair stands on the back of your neck when a window rattles or an elevator sounds. Or somewhere in your inner consciousness, a gruff professorial voice says, "Now Mr. S., what are the facts of that case?" Is your personal test of probability the preponderance standard, clear and convincing, or beyond a reasonable doubt? No rational lawyer believes in ghosts. Yet, John Boyle, a former law clerk and devout rationalist, remains fully convinced.

Myth? Folklore?

The U.S. District Court sprang to life contemporaneously with Utah becoming a state in 1896. From then until 1954, there was but one judge. The first, John A. Marshall, salary \$5,000, served from the beginning until 1915. He resigned rather than face a scandal involving a cleaning lady. The second was Tillman D. Johnson, a Woodrow Wilson appointee, salary \$6,000, who served from 1915 until 1949. The third appointee was Professor Willis W. Ritter, a non-Mormon, salary \$15,000, who, when he ran into confirmation trouble, was given an interim appointment in 1949 by Harry Truman (Utah needed a judge) and, in 1950, a permanent appointment. His sponsor and loyal friend was Sen. Elbert D. Thomas, ardent Mormon. In their early years, they had been young faculty members at the University of Utah.

As a symbol of economic activity and change, when Ritter was appointed in 1949, a postage stamp for a first-class letter was three cents. When I was appointed in 1978, it was 15 cents. It is now 46 cents, with an increase pending. In those days a judge had a special frank. Nowadays we buy stamps. Civil filing fees in 1949 were \$15. The filing fee today is \$400.

For 58 years, the District of Utah had but one federal judge. That changed in 1954. Arthur V. Watkins, then senior senator from Utah (he had replaced Democrat Abe Murdock) worked to get a temporary second judge for the Utah District. He succeeded. He sponsored A. Sherman Christensen, a bar president and fellow Utah county resident, and Eisenhower appointed him in 1954 to the new temporary position, which became permanent in 1961. Now there were two judges and for the first time in history a new chief judge, Willis W. Ritter. In a two-judge court, if the parties do not agree, the chief calls the shots. They didn't, and the chief did, and that went on until Sherm took senior status in 1971.

I could spend days, if not decades, talking about disagreements, but I won't. Instead I will highlight one historic event: In 1958, there was a movement in Congress to limit the terms of a chief judge. The legislation passed and limited the chief's term to seven years with mandated retirement as chief at age 70.

By 1968, Willis had been chief for 14 years and would turn 70 in January 1969, and Sherm thought Ritter's time as chief would soon be over, and he, in the normal order, would become chief. There was only one problem—the 1958 act was amended in the legislative

process by Sen. Frank Church of Idaho, who had a father-in-law who was a chief judge. Willis owned land in Idaho—the famous Thousand Springs Ranch. Thirty-two chief judges, among them Willis Ritter of Utah and Chase Clark of Idaho, were grandfathered in, and Willis remained chief until the day he died.

Frustrated and disappointed, Sherm took senior status, and Aldon Anderson succeeded to that position. He was only the fifth district judge in Utah history. He was the choice of the first Sen. Bennett. He was appointed by Richard Nixon. He used to laugh and say that his commission bore the signature of a president who resigned and an attorney general who went to prison. Kind and gentle Judge Anderson had a wicked sense of humor.

Sherm really came into his own after he took senior status. He tried cases all over the country, sat on special courts and numerous important committees. He may best be remembered, on assignment from then-Chief Justice Warren Burger, for starting the American Inns of Court Experiment, demonstrating its viability, with Inns of Court number one. He, along with Judge Anderson, are really the fathers of a movement with about 350 chapters nationwide and about 27,000 current members. As a charter member of Inn one, I watched and helped with their struggles and the growth and spread of a very viable idea.

In March of 1978, Willis died. For the first time in history, the congressional delegation, Sens. Hatch and Garn and Congressmen Marriot and McKay, created a statewide merit selection commission, headed by Rex Lee, then dean of Brigham Young Law School and vice-chaired by Walt Oberer, dean of the University Law School, along with 14 others. They asked for applications. I applied. I was one of five recommended to President Carter.

Lightning struck—the Utah delegation signed off the traditional blue sheets. In contrast to present practice, my Senate hearing was promptly scheduled. It lasted about 20 minutes.

My family and I were invited to have lunch with former Sen. Ted Moss. As we walked to the Senate dining room, Sen. Moss spotted then Vice President Fritz Mondale walking a few yards ahead and hollered, "Hey, Fritz, come over here. I want to introduce you to our newest federal judge." He walked over, shook my hand, and acknowledged my wife, Peggy, and son, Mike, and then said to me, "Oh, to be a federal judge. You don't even have to talk to God." It sort of reminded me of the quip, "Thank God I'm an atheist." We had bean soup with our lunch.

A few days later, my commission arrived in the mail, and I was sworn in in the ceremonial courtroom. Judge Anderson and Judge Christensen were still traumatized by Willis' orders and allowed no cameras in the courtroom or the building, and I was required to have my picture taken on the front steps of the building, flanking the stone eagle. I became the sixth U.S. District Judge.

In 1978, there were still just two active judges. I succeeded to Willis' cases, at that point more than 800. I succeeded to the Ritter position, which had been Tillman Johnson's and which had been John Marshall's. I tried to emphasize that I succeeded Judge Ritter; I didn't replace him.

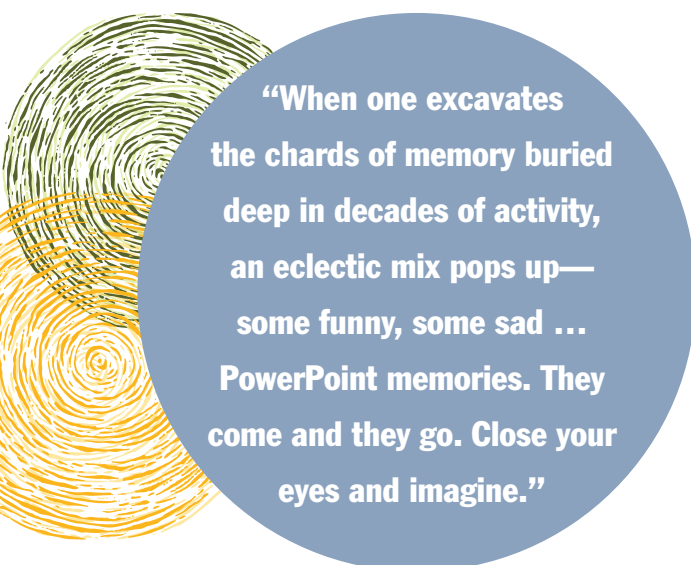
Chief Judge Anderson was easy to work with. We began the process of starting a rules committee to assist in creating local rules. Christensen had his own set, and Willis had none. We localized, by rule, case assignments, which had been the subject of a Circuit rule when Willis and Christensen couldn't agree, and found new life when Willis and Anderson couldn't agree.

In the mid-'50s for a short time, cases were assigned sequentially. First to Willis, then to Christensen, then to Willis, and so on. Knowledgeable lawyers who wanted to "judge shop" soon filed duplicate complaints at the same time. Willis got one. Christensen got the next. The lawyer would then dismiss the case before the judge he didn't want. That didn't last too long, and when Willis wanted to do all the assignments himself, that's when the Circuit stepped in and provided a random draw.

For many years, our building was primarily the U.S. Post Office, and was really noted more for that function, until the main post office moved. We acquired much of the vacated space, remodeled, and moved the clerk and probation offices to the main floor.

Judges, prisoners, marshals, FBI agents all used public elevators. Anderson thought we needed a garage and elevator of our own. Under his watch, the garage and new judicial elevator were built. The elevator was multiple-use; we shared it with those in custody being transported from holding cells to courtrooms—of course, not at the same time. It was a real improvement.

One day I was going from the garage to my floor. The elevator stopped. I punched the buttons up and down. Nothing. I finally had sense enough to notice and call on the emergency phone. A nice, pleasant, well-modulated voice said, "This is not a working number. Kindly consult your local directory." This is not a working number! For reasons known only to God for some reason, watching Congress these past three weeks, this conversation popped into my head. "This is not a working number." How sad.



**"When one excavates
the chards of memory buried
deep in decades of activity,
an eclectic mix pops up—
some funny, some sad ...
PowerPoint memories. They
come and they go. Close your
eyes and imagine."**

As some of you know, I came to 350 South Main in a formal sense when I was appointed referee in bankruptcy. It was 1965. I was the only one. The position is now called bankruptcy judge. There are now three. I note 1965 as a date when I became close to the happenings in the building. Ritter had a very long-going case, and he sequestered a jury in what is now a Hilton Hotel. Marshals were present. Security was supposed to be tight. Well, after the jury reported its verdict, there were two quick divorces among jury members and one quick marriage. I learned from that. As a district judge I have yet to sequester a jury.

In 1984, Chief Judge Anderson, nervous about some Congressional machinations, took senior status early without serving out his

seven-year term as chief, and I suddenly found I was chief. I was the third chief in district history. Judge Winder had filled a third authorized position in 1979, and a fourth was authorized in 1984. So, when I became chief, the Anderson position and the new position were filled by judges Sam and Greene. There were now four of us. A fifth was authorized by Congress in 1990 and filled by Judge Benson in 1991.

Judge Anderson, as a senior judge, occupied a newly built courtroom on the main floor, south side. Judge Greene was in the middle courtroom, second floor. And Sam waited for a new courtroom to be finished, north side, main floor.

While chief, we made great effort to restore the courtrooms on the second floor to their former glory—removed lowered ceilings, got rid of the florescent lights, duplicated the prior chandeliers, and placed them in a condition which reflected what they were when originally built. Judge Greene insisted on red, white and blue decor, not quite like the original. They are great courtrooms.

Quite frankly, we all wish we could take them, along with the fourth-floor courtroom, with us to the new building.

In the '80s, under my watch as chief, we were part of a 10-court pilot program on electronic filing, which has morphed into what we have today. Quite frankly, I miss the paper filing, the trip to the courthouse by lawyers who get to know court personnel, original signatures on papers, and the vanished bicycle messengers—and I think of ends and means, purpose and process. Do we keep the books to run the business, or do we run the business to keep the books?

As you know, the law is a very human institution, and the court is no exception. I want to tell you two true stories, list a few memories, and then I shall be through.

The first was told to me by a friend, Mickey Duncan, gifted debater, gifted lawyer, who succumbed to dementia brought on by Parkinson's. When he was at the height of his powers, he told me of his older brother, Lamar, who was defending a Mann Act case, taking someone across state lines for immoral purposes. Ritter was the judge.

There was a jury. A young lady involved was a defense witness. Lamar had talked to her to help her clean up her language. After direct examination by Lamar, the U.S. attorney on cross asked, "Now Ruth, do you know what intercourse is?" She answered, "Suh, I didn't know what intercourse was until I met Mr. Duncan." The judge recessed for a few minutes.

You may not know that John Mortimer, creator and author of *Rumpole of the Bailey*, spoke in our ceremonial courtroom in 1996. He was in town for book signings and a fundraiser for public television. We arranged to have him speak to a joint meeting of the Inns of Court, which, by then, had grown to three. He was a tall, imposing figure, and much fun to talk with. He hinted broadly that during his talk he would like something to drink. He was not referring to water, and was known to prefer Dom Perignon.

We had Inn one, populated with BYU students, and Salt Lake and Weber groups. We had concern as well with memories of Judge Ritter's Wild Turkey days.

I had very conventional thick water tumblers in the ceremonial courtroom kitchen. Bob Campbell ran to the liquor store and bought a flagon of champagne, and we filled the water tumbler with champagne and refreshed it from time to time, and the famous author of *Rumpole of the Bailey* regaled the audience with one story after another. He was happy, and grew happier as the evening wore on.

The audience was both intrigued and charmed, and the evening was an absolute smash hit.

You may remember that Rumpole talks about the golden thread that runs through the whole history of law—the presumption of innocence.

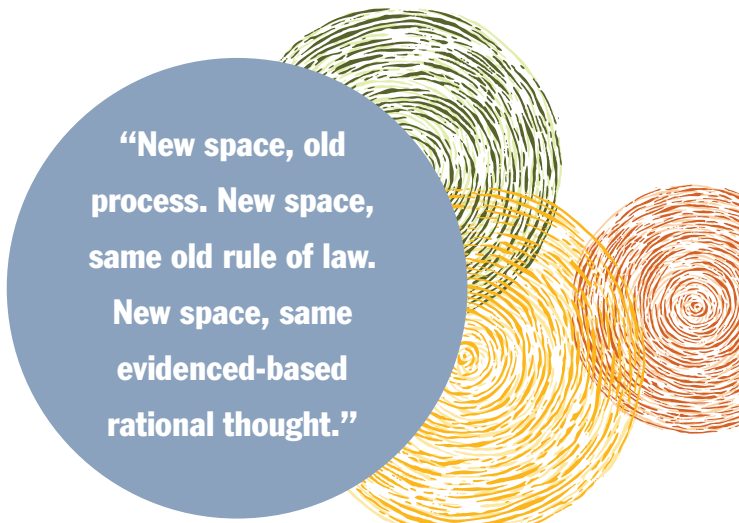
When one excavates the chards of memory buried deep in decades of activity, an eclectic mix pops up—some funny, some sad.

Quick flashes. PowerPoint memories. They come and they go. Close your eyes and imagine. I remember the conveyer belt on the Christensen bench. An exhibit for the judge's scrutiny would be handed to the courtroom deputy who would place it on the south end of the conveyer belt. The judge would activate the belt and the exhibit would travel from the south end of the bench to the center, and would be examined by the judge, placed back on the belt, and returned to the clerk, the belt turned off and, if appropriate, the exhibit passed back to counsel.

I remember the long lines of blue-clad state prisoners standing or sitting in line down the central hallway of the second floor awaiting entrance from the north into the Ritter courtroom. In those days, the entrance was not from the back, but from each side, north and south. It was habeas day, and dozens of state prisoners were transported by buses from the state prison to get their turn before the judge. Sometimes he would release one forthwith.

I remember Mike Wallace, the famous TV producer on *60 Minutes*, trying to get Ritter to be interviewed and being refused. Mike said, "Judge, I can make you a celebrity," and Ritter responded, "Mike, I am already a celebrity. No."

I remember the process for assigning a charged person a defense



**"New space, old
process. New space,
same old rule of law.
New space, same
evidenced-based
rational thought."**

attorney. Ritter would simply have Hana Shirata, a deputy clerk, go down the bar list and call and assign. Of course, no excuses, and in those days, no money as well.

I remember the process I sometimes used to get a jury to make up its mind. In those days we sent a jury out for lunch in the company of a marshal. Often we sent them to a local Chinese restaurant. It was owned by an oriental gentleman who was really a fantastic cook, but his everyday meals were often only so-so. If the jury was still deliberating and the dinner hour was approaching, I would sometimes send a note

McHugh Profile continued on page 60



**Parsons Behle & Latimer
is proud to support the
Federal Bar Association Annual
Meeting and Convention.**

NATIONAL EXPERTISE. REGIONAL LAW FIRM.
201 South Main Street, Suite 1800 | Salt Lake City, Utah 84111 | 801.532.1234

Parsons Behle & Latimer, one of the most established and respected law firms in the Intermountain West, combines the personal service and competitive rates of a regional firm with the expertise, credentials and qualifications of a national practice. To retain the legal experience you need, look no further than your own backyard.

**PARSONS
BEHLE &
LATIMER**

parsonsbehle.com

BOISE | LAS VEGAS | PHOENIX | RENO
SALT LAKE CITY | WASHINGTON, D.C.



WHERE OTHERS
SEE CHALLENGES,
WE SEE OPPORTUNITIES.

DURHAM
JONES &
PINEGAR

www.djplaw.com

COURTHOUSE SPEECH continued from page 51

suggesting that I was going to have them go to dinner at the same place they had lunch. Nine times out of 10 we would get a verdict.

Forever etched in memory is the tearful mother describing her pain in watching a child of tender years slip from life as a result of exposure to low-level radiation fallout from testing carried on by a careless United States in Yucca Flats, Nev.

I remember a convicted Joseph Paul Franklin at sentencing picking up a silver water pitcher and throwing it at a black D.C. prosecutor, and being subdued by eight vigilant marshals.

I remember shortly after Judge Ritter died, the LDS church, under Spencer Kimball, changed the policy in respect to blacks and the priesthood. I saw Nancy, Willis' daughter, near ZCMI. The Mormon action was on everyone's lips. Nancy laughed, pointed to heaven, and said, "Well, the old boy is still stirring them up." Perhaps he was.

I remember Judge Ritter's court crier going to the special liquor agency in the Newhouse Hotel to buy Wild Turkey, carrying a check from the chief to pay for it. He was informed, "We don't take checks." Spence said, "You will take this one." And of course they did. Willis lived in the hotel and walked across the street to work.

Back to the pain of moving. No way can a New York architect duplicate the aura of history of 350 South Main, nor duplicate the old world craftsmanship of the courtrooms on the second floor. The new courtrooms, in the opinion of many, may be too stylish, perhaps too banal. Hopefully, the people involved within the system—the lawyering, the judging, the staff work—will enable the court to continue to fulfill its Constitutional function of helping people and entities solve problems, and do so in peace.

I have had the good fortune to try cases in all the Tenth Circuit states except Oklahoma, as well as sit on appellate panels in the Tenth and the Ninth Circuits. In my opinion, the Federal Bar in Utah is as good, if not better, than any I have come across in my travels.

The third branch, the court branch, is the stable branch. It really is the glue which holds this country together and provides a constant and available opportunity to resolve difficult questions that the parties, including governments, have been unable to resolve for themselves.

New space, old process. New space, same old rule of law. New space, same evidenced-based rational thought. New space, disinterested judges—not uninterested, disinterested. New space, same thoughtful results. That process, that number, truly is a working number.

What I am trying to say is, it's the people—the lawyers, the judges, the staff, the tradition, the culture. The rule of law and all that such implies and, thankfully, they are all coming with us. ☺

Judge Jenkins was appointed U.S. District Judge by President Jimmy Carter in 1978 after recommendation by a bipartisan merit selection committee. He is a former president of the Utah State Senate.

Endnotes

¹Speech by Bruce S. Jenkins, U.S. Senior District Judge, District Of Utah, at Federal Bar Association Seminar, Little America Hotel, Salt Lake City, Oct. 25, 2013. © 2013 Bruce S. Jenkins. Reprinted with permission.