

Judicial Remembrance

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Hon. Willis W. Ritter Lessons Learned from the Principles, Practices, and Personality of Utah's First Chief U.S. District Judge

IN THE MID-1960s, an incident occurred across the street from the Salt Lake City federal courthouse, at the Manhattan Club. During the 1950s and 1960s, prominent Utahns would frequent the club for lunch, a drink, conversation, or just to pass the time with compatible people. The mayor, a governor, a National Guard general, a city commissioner, and the venerable Judge Willis W. Ritter would all gather at the Manhattan Club. Sometimes, after too much conversation and too much Wild Turkey, the conversation would grow heated. One afternoon, a city commissioner and Chief Judge Ritter began to quarrel and the commissioner challenged Willis to a duel. The commissioner was a small, skinny little guy; whereas Willis, though short, was shaped like a massive pear. They both stood toe-to-toe on the postage-stamp-sized dance floor. The chief judge replied to the commissioner's challenge: "Okay, protocol says that I get to choose weapons," and the commissioner responded, "Yes, that's right." Willis shouted, "Then I choose bellies," and bumped the commissioner with his massive belly and laid him out flat on the dance floor.

While funny—and, by the way, true—today it seems so incongruous that the presiding officer of the federal court, who each day helped people solve problems in a peaceful and rational way, and a city commissioner, who passed ordinances on how citizens should treat one another, in a stressful liquid moment of their own, should choose the most primitive of ways to settle an argument. The symbolism speaks volumes.

It has been 30 years since Chief Judge Willis W. Ritter died. I succeeded Judge Ritter. I didn't replace him, for no one could.

From the distance of 30 years, I want to try to do four things: First, to provide background and context, I want to present a short history of the U.S. district court in Utah before Judge Ritter assumed the bench. Second, I want to sketch Ritter's early life, his appointment as judge, and his subsequent elevation to chief judge. Third, I want to relate, in vignette form, a few incidents, practices, and cases from his 30-year tenure in an attempt to depict the flavor of the man. And fourth, I want to distill a few lessons learned from him about law and about life.

From 1896 (the year Utah became a state) until 1954, the District of Utah had one federal district judge. The first judge was John Marshall, a Cleveland appointee and distant relative of the great Chief Justice of the United States. Judge Marshall served from 1896 until 1915 and resigned after an alleged affair with a cleaning lady. The second district judge was Tillman Johnson, a skinny little animated shoestring of a man, who was appointed by President Woodrow Wilson in 1915. Both Marshall and Johnson were non-Mormons by design, President Wilson made it an express condition. Both judges were born outside of Utah. Johnson served until 1949 when, in June of that year, he retired at the age of 93. In 1944 (when Johnson was 88 years old), the attorney general of the United States wrote to the judge, respectfully suggesting that it might be time for him to retire. (It was even rumored at the time that Ritter wanted to replace Johnson as early as 1944. Ritter had confided to a friend that "Tommy"—Sen. Elbert D. Thomas—had promised him that position when Johnson retired.) Judge Johnson, a feisty sort, replied to the attorney general that the question of if, or when, the judge retired was none of the attorney general's business, pointing out that Johnson had a lifetime appointment. He didn't refer to the last clause in the presidential commission, which says that the judge's lifetime tenure is in force as long as he exhibits "good behavior." The same condition of "good behavior" was included in the commission of the third U.S. district judge, Willis W. Ritter, who, unlike Johnson, was a native Utahn; Ritter was born

on Jan. 24, 1899, in Salt Lake City, but like Marshall and Johnson, he was not a Mormon.

After a brief stay in Salt Lake City, Ritter's family moved to Tintic in Juab County, where his father worked in the mines and his mother worked as a sometime nurse and midwife. When Ritter was about seven years old, the family again moved to a resort that his father had inherited—the hot pots near Heber, Utah, which the family ran. A few years later, the family moved to Park City, Utah, where his father again engaged in hard-rock mining.

Conditions were harsh and money was scarce. Ritter's mother and father divorced. His mother remarried and took her three younger children with her to California and left Ritter with an aunt and uncle in Utah. It should come as no surprise that the boy felt abandoned.

He attended Park City High School, where one of his classmates was Roger Traynor, who later gained fame as a highly respected chief justice of the state of California. In a class of 18, Traynor stood first and was the class valedictorian; Ritter was second and was salutatorian. Roger McDonough, who later served twice as the chief justice of the Utah Supreme Court, was a teacher at the school, where he taught both future judges. All three—the teacher and his two students—were smart.

After graduating from high school, Ritter had a brief stint in the mines, spent a brief time in the Army, and studied for a year at the University of Utah. He got his law degree from the University of Chicago, from which he graduated cum laude; in 1926, he became a member of the Illinois bar. He practiced tax law in Washington, D.C., for two years and then was invited to teach at the University of Utah Law School. While teaching, he finished his undergraduate work at the university and made Phi Beta Kappa. He later earned a master's degree at Harvard University.

While teaching at the University of Utah, Ritter became a great friend of Elbert D. Thomas, a young political sci-

ence professor, and was active with him in the faculty senate. That friendship flourished and lasted a lifetime. Ritter was an indifferent Catholic; Thomas, an ardent Mormon.

I lay this background for a reason. In 1932, Elbert D. Thomas—known as “Tommy” to Ritter—ran against the Mormon apostle Reed Smoot, an incumbent Republican U.S. senator who had been in the Senate for more than 30 years. Smoot was an icon and considered unbeatable. He was first appointed by the Utah legislature and continued in his seat after direct election by the people came about. Now remembered for the Smoot-Hawley Tariff, he was perhaps more famous at the time for his war on pornography. He was immortalized in the poem by Ogden Nash,

Senator Smoot, Republican Ute,
A man of power and pelf.
He'll save our homes from erotic tomes
By reading them all himself.

Helped in the election by Roosevelt's landslide victory, Thomas beat Smoot and was twice re-elected.

His electoral victories enabled Thomas, in 1949, to sponsor and recommend to President Truman that his faculty friend, Willis W. Ritter, replace Tillman Johnson, who had finally decided to retire.

Despite enormous political and family pressure on Thomas, he stuck by his old friend and sent his recommendation to Truman asking for his nomination. By then, Ritter had been teaching law for more than 20 years and had practiced on the side for prominent clients. His specialties were tax, property, trusts, and estates.

He was a demanding teacher. He was Socratic—the *Paper Chase* professor personified—and, on occasion, he was downright mean. After a poor recital by a hesitant student, Ritter said slowly, “Now Mr. Smith, I recommend that you transfer to the School of Engineering. Over there, they learn to work with their hands.”

Ritter's nomination to the bench bestirred



controversy and opposition. In the U.S. Senate, Arthur V. Watkins asked for public hearings, citing letters of criticism he had received. Although the Judiciary Committee's subcommittee involved in Ritter's nomination recommended his confirmation, that recommendation was not considered by the full Judiciary Committee before Congress adjourned for the year.

In October 1949, Truman made a recess appointment. Utah needed a judge, but as *Time* magazine pointed out, it wasn't until after almost a year of "wrangling, secret hearings [in spite of Sen. Watkins' request for public hearings], Republican protests, and disapproval by the American Bar Association's ... Committee" that Ritter was confirmed. He had survived an extensive and bitter confirmation fight with cross-currents arising from ambitious competitors, the Mormon desire for a Mormon judge, and the Republican desire to wait Truman out and have an appointment of their own. Truman renewed Ritter's nomination and, with the "advice and consent of the Senate," Ritter was appointed to his lifetime position on July 7, 1950.

Ritter's formal swearing-in took place on Aug. 1, 1950, presided over by Circuit Chief Judge Orie Phillips, who came from Denver to administer the oath. Judge Johnson, who had retired by then, opened court. The president of the Utah State Bar, David L. Stine from Ogden, presented the judge to the court, and Judge Phillips administered the oath. Complimentary and idealistic speeches were offered, and Ritter realized his longtime ambition.

Not bad for a Park City kid from a broken home. But, sadly, the confirmation process, which raised questions of loyalty to the United States, philandering, his arbitrary and tyrannical behavior, and his sobriety, colored his tenure until the day that he died. He never got over it. Emotionally, it was like a cancer that metastasized over the next 28 years and affected almost every action he took.

In spite of the condition that he was to occupy the position as long as he exhibited "good behavior," Judge Ritter didn't always behave very well. Perhaps it was his behavior that led the Eisenhower administration—with the prodding of Sen. Watkins, a vocal critic of Ritter—to pass legislation creating a second judgeship in 1954: a temporary position that would morph into a permanent position. Thus, Senator Arthur V. Watkins sponsored A. Sherman Christensen for the post, and President Eisenhower appointed him. It was in 1954, upon the ascendancy of Sherman Christensen to the bench, that Willis Ritter became the first chief judge of a two-judge court.

The law was then in a two-judge court, if the judges couldn't agree on court policy, rules, or personnel, that the chief judge made the decision. In Judge Ritter's view, not much had changed. He thought there was no need for a second judge; therefore, for all intents and purposes, the second judge did not exist. What conversation occurred between the two

judges occurred via the newspaper. Other than decisions about chambers personnel, all decisions were made by the chief judge. Ritter was the one who chose personnel for the Office of the Court Clerk and the Probation Department as well as the commissioners (predecessors of magistrate judges) and the then-referee in bankruptcy. There was only one then. Courtroom deputies were Chief Judge Ritter's choices as well. Case assignment became a matter of controversy, which the circuit court finally had to settle in 1958.

Ritter enjoyed the status of chief judge until he died in 1978, even though his years of service were enmeshed in controversy. In 1977, Wade McCree, the solicitor general of the United States, and Ramon Child, the U.S. attorney for Utah, filed a petition in excess of 800 pages asking the circuit court to remove him from every case in which the United States was a party. This was sparked by his erratic use of a trailing calendar, according to which a multitude of cases were set to be heard on the same day and at the same time, following a policy of "wait your turn."

Ritter was not a tall man—about 5 ft. 7 in. tall—but he was a big man; he had large head with shock of gray hair when first appointed, which quickly turned white. His complexion was florid, which contrasted greatly with his white, white hair. He was shaped like a pear—some preferred to say a pouter pigeon—with a very large chest and an abundant belly.

He brought to the bench the demands of a teacher, sympathy for the underdog born of his days as a hard rock miner, a short fuse when he thought someone was unprepared, a growing passion for Wild Turkey bourbon whiskey, an animus toward those who had objected to his appointment (particularly those affiliated with the Mormon church) and, in my opinion, a subsurface need for praise and acceptance. He was a complex man of many parts. He collected Indian weavings, early paintings of Utah scenes, and old coins. He also bought a ranch in Idaho, which he visited often. He was himself a litigious person, who sued and was sued over water rights and mining claims. In short, Willis Ritter was a walking civil war—both a good guy and a bad guy, with an unrequited feeling for the underdog. His bad guy persona was emotionally triggered and would win the internal war too often.

A few Judge Ritter stories briefly merit mention. Toward the end of his tenure, the judge hit the national news because of, among other things, his confiscation of a KSL camera taking his picture as he walked across the street from the Hotel Newhouse, his residence at the time, to the courthouse. He was visited by Mike Wallace, of "Sixty Minutes" fame, who wanted to interview the judge on camera, but Ritter routinely refused to be filmed. Wallace said, "Ah judge, I could make you a celebrity," to which Ritter replied, "Mike, I am already a celebrity." In the end, no interview took place.

On another occasion, one of his law clerks was given a check and told to go across the street to the liquor agency in the Newhouse Hotel and purchase three bottles of Wild Turkey. When the law clerk was told that the agency did not take checks, he responded, "You will take this one." The store clerk looked at the check signed by the hotel's tenant on the 11th floor and accepted it.

Early on in his career, Judge Ritter was handling the criminal calendar. It was his style to hear orally from the probation officer at the time of sentencing. Bernie Rhodes, then a newcomer to probation, was in court with a young man convicted of a drug offense. Bernie tried to say "LSD," but it came out "LDS" (which is short for Latter-Day Saints, another name for the Mormon church.) The probation officer tried again, but made the same error. Ritter looked down from the bench and said, "I know what you mean, Mr. Rhodes. However brief the exposure with LSD or LDS, they both result in hallucinations."

In those days, it was the practice of Ritter to appoint counsel for criminal defendants. He was a pioneer of this approach, which anticipated the *Gideon* ruling. Ritter would take the bar list and have his clerk call the attorney and tell the attorney that he or she had been appointed. Refusal was not an option and payment was nil. One newly minted attorney with such an appointment, dressed in his best court attire—shoes polished, dark suit, white shirt, conservative tie—interviewed his client and prepared remarks for the court. His client was in custody and appeared in court wearing prison garb; his hair was long and he had a beard. With both client and counsel standing before the bar, Ritter looked down and said, "Now which of you is the defendant?" adopting a pattern that had been used by his predecessor, Judge Johnson.

When Sherm Christensen came on board, the system that was used for case assignment—before the circuit forced a random draw in 1958—was to take cases alternatively in the order in which they were filed. It took practitioners not too long to know how to beat the system: they would file two identical cases and then dismiss one. The manipulation did not all flow in one direction; one prominent lawyer once said to me, "I would rather have the chief full of Wild Turkey than that other guy sober."

Judge Ritter is also remembered for his efforts to stop the execution of Gary Gilmore. The judge entered his order and state officials took a state plane carrying the attorney general as well as some members of the circuit court and flew to Denver at night so that there would be a panel in place to deal with the judge's order peremptorily, which they did so in the early morning hours of Jan. 17, 1977. The panel vacated the stay, and the execution—the first in the country in many years—took place. Ritter's response was "that lawless bunch." He said that often.

Judge Ritter's decisions were frequently reversed:

some say that 40 percent of his rulings in criminal cases were reversed and 80 percent of his decisions in civil cases were overturned. The first reversal came in a sensational murder case called *Braasch and Sullivan*, in which the judge granted the defendants' *habeas* petition because of the absence of competent counsel in their state murder trial.¹ His action foresaw the later U.S. Supreme Court case of *Gideon*, in which the Court ruled on a defendant's right to counsel in criminal cases.

The second reversal occurred in the cases involving Indian ponies, in which Ritter held for the plaintiffs against the United States for the destruction of Indian horses that had been rounded up by the Bureau of Land Management and sold for three cents a pound.² He tried the case, found liability and damages of \$100,000, was reversed by the circuit, which was in turn reversed by the Supreme Court on liability, but they lamented the lack of a record on damages. He tried the case again on damages, made extensive findings, and found damages of \$186,000. This decision was reversed again by the court of appeals, which reassigned the case to Judge Kerr of Wyoming, in effect finding that Judge Ritter was too emotionally involved in the case. The case was later settled for \$45,000.

The third case is that of El Paso Natural Gas, a divestiture case that ultimately went up and down the appeal ladder and eventually led the U.S. Supreme Court to remove Judge Ritter from the case entirely.³

His strong suit was his vigorous analytical mind. He did best in the courtroom when he was challenged by a problem or a proposition that interested him. He could, if he wanted to, make the effort, focus quickly on the critical question, and rule then and there. Hence, many of his cases were not appealed, but quickly resolved. He was handicapped by his uncontrollable emotions and a penchant for intruding in the trial of a case.

He could be charming, solicitous, attentive, compassionate, interested, and a gracious host—indeed the epitome of a sophisticated gentleman. A former client, a brilliant businessman who was trained as a lawyer, called the judge an American tragedy—a man with a huge potential that was wasted. A former clerk called Ritter a Shakespearean tragedy—a man who had gained a longed-for position for which he was ill-suited. In his later days, he was caricatured in a brutal cartoon printed on the cover of a local magazine; when handed a copy, the judge wept.

Shortly after Ritter died, I ran into his daughter, Nancy. President Kimball and the Mormon church had just announced the revelation on African-Americans and the priesthood and its availability to all qualified males. Nancy pointed to the heavens and said, "I guess the old boy stirred them up."

Several lessons can be learned from Judge Ritter's life:

- Don't duel with a federal judge when the judge chooses the weapon, but don't hesitate if the weapons are rules, disputes, and facts.
- Be prepared as though you needed to recite something in class; perhaps the judge is willing to learn.
- Have the courage to state and defend your position, but be sure you have a position to defend.
- Know the local rules, but—just as important—know and understand the judge and recognize that resolving human problems is a complex and very human enterprise.

It is fun to speculate about the turning points of history. Had two young faculty members not become friends; had Thomas not beaten the unbeatable Mormon apostle, Reed Smoot, and been re-elected two more times; and had Tillman Johnson not finally decided to retire and Truman not beaten Tom Dewey—then Willis W. Ritter would have ended a career in the law as a *Paper Chase* law professor at the University of Utah Law School. If so, the people of the placid state of Utah would not have had the opportunity to observe, decry, applaud, and wonder about the new U.S. district judge—and to do so for a colorful and chaotic 29 years. **TFL**

Judge Jenkins is a U.S. senior district judge in the District of Utah. The comments in this article were first presented by Judge Jenkins at a seminar sponsored by the FBA's Utah Chapter in November 2008.

Endnotes

¹*Application of Sullivan*, 126 F. Supp. 564 (D. Utah 1954), *reversed sub nom. State of Utah v. Sullivan*, 227 F.2d 511 (10th Cir. 1955), *cert. denied sub nom. Braasch v. State of Utah*, 350 U.S. 973 (1956).

²*United States v. Hatabley*, 220 F.2d 666 (10th Cir. 1955), *reversed, Hatabley v. United States*, 351 U.S. 173 (1956), *on appeal after remand, United States v. Hatabley*, 257 F.2d 920 (10th Cir.), *cert. denied*, 358 U.S. 899 (1958), *further proceedings sub nom. United States v. Ritter*, 273 F.2d 30 (10th Cir. 1959), *cert. denied*, 362 U.S. 950 (1960).

³*United States v. El Paso Natural Gas Co.*, No. 143-57 (D. Utah Nov. 20, 1962) (unpublished disposition), *reversed and remanded*, 376 U.S. 651 (1964), *on remand, United States v. El Paso Natural Gas Co.*, 37 F.R.D. 330 (D. Utah 1965), *reversed and remanded with instructions, Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967).

