



Interview The Hon. Bruce Jenkins, U.S. District Court Judge (Senior)-Utah by Ken Verdoia, June 26, 2013

Ken Verdoia:

Judge, of all that we've talked about in the hour leading up to this, the one thing that I've found delightful to begin with is this notion of a young boy in the 1930s, walking up Main Street to go to a theatre and having his first encounter with this. Tell me a little bit about being a kid growing up in Salt Lake City in the '30s and how you first walked into this building.

Judge Jenkins:

Yeah, I'm happy to do that, just casting back by own mind and binding the shards of memory. I was probably eight maybe nine and I was on my way to the Victory Theatre that was on Broadway, if I remember right. We used to go there to watch the serials, Tom Mix and others and we would walk from where I lived which was west of West Temple on a street called Jefferson Street, between 8th and 9th south and I think that I first came in here as kind of an exploring kid and saw the post office and I think that I may make this up; that my mother had asked me to buy some stamps for her and I probably went to the counter and purchased some one cent stamps, maybe some penny postcards but I was maybe eight or nine.

Ken Verdoia:

Time moves forward or ahead for both the building and that boy that grows and becomes a university student, university law student and then I'd like you to consider the building in the 1950s that you entered as a young practitioner of law - the sights and sounds very different from what we know now. So take me as your colleague, your fellow time traveler back to what it was like to walk through the doors and experience this building back in those days.

Judge Jenkins:

Yeah, well, in those days of course the post office was still here; there were other agencies as well. There were IRS offices, if I remember correctly, among other government agencies: the probation department, the US attorney, and the configuration was somewhat different. You may remember that the ceremonial courtroom on the second floor at that time you entered from the side and not from the back where it is now. It was really a hallway through the courtroom and there was cork on the floor. And at that point in time there was one federal judge still. Utah started out with one and it had one from 1896 until 1954. But at that point in time it was Judge Ritter, not yet chief judge because there was no need for a chief judge since there were no subordinates.

Ken Verdoia:

What was the sound like, the environment, I've commented to you that I've noticed how the sound has changed over the past three years.

Judge Jenkins:

The sound has changed. Obviously, the traffic patterns have changed because of the fact that the post office moved. The ceremonial courtroom that you now enter from the back rather than from the side. One of the things walking through that hall that was part of the courtroom was a friend of mine, Max Chops from the city police department. Max had been called in on some kind of a matter that was pending before the then judge and Max had taps on his shoes and he walked in on the tile floor and the tap tap tap resounded and as a result there was a response from the then presiding judge and Max went to jail. I guess I shouldn't say that, should I?

Ken Verdoia:

No, that's a fine story. And the supporting structure of the work of the courts and going in behind the scenes, I mean, I remember an era where it was the clacking of typewriters- sometimes the feverish clacking of typewriters in the courtroom.

Judge Jenkins:

Oh yeah, the clerks office obviously was located at a different location and they indeed had clackings of typewriters and among the innovations that we saw at that point in time was the use, particularly in some routine matters in the bankruptcy court. The use of rubber stamps to complete a particular court record.

Ken Verdoia:

So that would give it's own sound a thump thump-

Judge Jenkins:

Why sure, why sure.

Ken Verdoia:

As we consider the story history of this building, you and I agree that one of the things that's most important is to help the public understand how a federal district court fits into

this concept of a national system of justice, really of equal justice under the law. Help me understand so that the layman follows along how this place fits into that big picture.

Judge Jenkins:

Sure as best I can, if you try to describe the federal system in contrast to the state system. The best place to start of course is the Constitution; one of the things I enjoy doing is to carry around with me a copy that is readily available of the Constitution – an amazing document. But the court system - the federal court system finds its origin in Article Three of the Constitution, and let me just indicate here what section one of article three says. It says the judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish, and section two talks about the nature of the judicial power that the federal courts have in contrast to the state courts. The federal courts are limited in nature; the state system has an almost unlimited area of power and activity, but in the federal system you start with the Constitution you start with powers that it enumerates. Among other things it says the judicial power should extend to all cases in law and equity arising under the Constitution. The laws of the United States and treaty is made among other things and then they talk about admiralty law, they talk about maritime jurisdictions, they talk about controversies between citizens in different states. So basically what we're talking about is limited Constitutional power as enacted, pursuant to which I should say the Congress has enacted federal laws. The federal courts should be concerned with treaties. Federal courts should be concerned with crimes as defined by the Congress, special jurisdiction over Indian tribes because of their special relationship to the United States government and of course contests or cases between citizens of different states limited circumscribed and you can see the relative status, let's put it this way, of the various courts within the federal system as contrasted to the state system. Here essentially if you want some help in an area where the federal court has power to act, you end up asking - that's here at the district level. It's where most crimes are charged, most crimes are tried, civil cases are tried and there are currently now ninety-four federal district courts, several of the court that we have in Utah. The district boundaries of this court are co-extensive with the boundaries of the state, but in places like New York where they have a number of districts. Here we have five so called active judges now plus some seniors, but in New York for example and this other district of New York, they have twenty-eight judges doing the same kind of work we do here depending on the parties and the questions and so on. What happens if you don't like what happens here? Well, you go to what's called a court of appeals, a circuit court of appeals - that's just a fancy label that says there are some geographic areas. There are twelve, counting the District of Columbia in the federal court system. You don't like what you get here you can appeal to a court of appeals; you are confined to your geographic area ordinarily as defined by a certain number. Here we're in the tenth circuit, we used to be part of the eighth but we're now the tenth and we have what six states that if I'm right, Utah and New Mexico and Oklahoma and Colorado, Wyoming and Kansas. If you don't like what you get there you go to the court of appeals and it's ordinarily in Denver with a series of judges and you say, oh, if you don't get justice there, well, where do you go? Well, maybe you stop there because very few people or very few cases go to the United States Supreme Court. The United States Supreme Court, of course, is the last word. That's where things stop. Ordinarily not very many people get

into the United States Supreme Court and when people say I'm going to take it to the United States Supreme Court, they don't understand that they first have to ask permission of the court to get in as a practical matter, to see if that's a question that has national significance or national import. That in brief - not entirely it's pretty sketchy of the federal system - where you start, where you appeal to, where you try to get in if you can - the Supreme Court issues full opinions in about seventy-five cases a year, they used to do more on that depending on the personnel and the people. Not too long ago, maybe as many as a hundred and fifty a year. But the things that start out in the federal district court run into the hundreds of thousands. So your chances of getting in are slim. About the state system, does most of the work - that's where quantitatively most of the work is done. At the court of appeals level in all twelve courts of appeals plus the thirteenth, the federal circuit that deals with specialized cases, patent cases among others customs cases, there are six hundred and seventy-eight district court judges. There are about a hundred seventy-nine court of appeals judgeships. There are three hundred and fifty two bankruptcy judges, and five hundred and fifty to one full time and part time magistrate judges but as effective that are on a district level, six seventy eight. For a long time Utah had only one - as I say from 1896 until 1954 at which time we ended up with two.

Ken Verdoia:

When you talk about the structure, I had a very good friend of mine, a professional colleague actually from Great Britain, a journalist, who said let me say a little about Americans, is whatever you talk about any issue invariably your average American will say 'I know my rights, I know my Constitutional rights.' It seems to me as a marketplace of ideas this courthouse plays a pivotal role in helping decide, clarify and explain exactly what are those relationship rights that exist under the Constitution. Is that a fair assessment?

Judge Jenkins:

I think that's a very fair assessment in reference to who gets to decide, which gets to say. You know a lot of the great questions in any kind of an institutional decision-making is, who gets to say? To begin with on a simple problem like a Constitutional right for free speech, so called, something like that if needed to be vindicated would often come here, particularly, well, little things. I had a cable case years and years and years ago out of the Ogden area where there was an effort on part of the locals to shut down a particular kind of speech going on in in the cable business, and Dave Wilkinson Attorney General at that point had defended it. The station brought an action through Mill Abrams, who's fairly famous back east in First Amendment stuff and we ended up indicating that the locals, Roy City if I remember right, lack the power to in effect censor what was going on. They were trying to deal with, not with pornographic material at all, which was inappropriate and awful but with a lesser kind of scurrilous activity. That landed here, Abrams landed here, Wilkinson ranted here, and we decided the matter and it went up in the court of appeals, stopped there. It said, that's right, Roy doesn't have the power. Folks often intuitively know rights without being in a position to express what they are. One of the virtues of any court system, as you know, is that we provide a service to enable people to get a system in resolving problems that they're incapable of resolving for themselves - not just people but entities, municipalities, even states where you have a clash of opinion or a

clash of sovereignties. Indian tribes for example, this is the place where it ordinarily starts.

Ken Verdoia:

Is this then, and I characterize it this way, that if you seek the pulse of a living Constitution, you feel the pulse in its court system. Yes, you can see it in the legislative branch, yes, you see it in executive decisions, but if you truly want to feel the pulse of a living Constitution, you feel it in a place like the Moss Courthouse.

Judge Jenkins:

Well, I think that's absolutely the truth, and not only just in Moss but in the courthouses. Similarly, similarly endowed or empowered all over the country, in all ninety-four district courts, the court system provides an environment where people end up accepting, for the most part, the decisions on matters of great moment - Constitutional matters, rights matters, for example. And I think that one thing that distinguishes the court system is the fact that we provide continuity. That is to say we can reach back and deal with precedent and recognize history and recognize what others have done, and I think that we can provide the stability if people feel comfortable about vindicating rights in a system where you can do it peacefully in contrast to exercising arms, let's put it that way. And I think also a system can provide what I like to call integrity, that is to say the judge - in the federal system judges are appointed for life and that's for a purpose, and appointed by the President with the advice and the consent of the Senate, but they're appointed for life so that they can be insulated from the reach of inappropriate forces. And one of the things that a court can provide is, as I say, what I like to call integrity - it disinterests me, it's not uninterested, it's disinterested, it has no ax to grind. Unlike other institutions, the courts can take time to think. One of the problems in public discourse now days, in my opinion, is that everybody has an answer in thirty seconds. Everybody pretends to talk about a twelve hundred-page bill without having ever read it. I tell the kids that work with me and others that have, you know, when all else fails look at the books, when all else fails read the documents. When all else fails, know what you're talking about. And I think that in addition to taking time to think, that in a hotly contested legal proceeding, civil or trouble you're interested with dealing with information and the appropriate gathering of information by the attorneys and the presentation of information - facts, we call them, facts. What is a fact? There are a hundred variations on that, let me tell you but we're interested also in the appropriate legal provision applied to the facts and we end up majorities helping resolve facts. Good system, excellent system. I'm a great fan of juries, they have - I was going to say good instincts, which is, I guess, the best I could say. Most juries are conscientious and most come in before they're seated, - before it begins for their benefit, are apprehensive and a little irritated, but when it's all over, they do well, but I'm a fan of juries. I think a broad section of the community, given the opportunity to weigh the information that's presented, lot of folks think that a contest in court is a battle, a jousting match, theatre. At best, I think it's an educational process.

Ken Verdoia:

Tell me how that educational process has personally shaped you, because we talked as that eight or nine year old running up the street with a few pennies in his pockets to buy

stamps for his mom never envisioned his professional life would be so deeply engrained with this building. How have you been educated through these years of service and what you've witnessed and what you've presided over?

Judge Jenkins:

Yeah, a good attorney, a good attorney is intent on educating the judge, educating the jury, but educating the attorney on the other side of the case; and you find that a very modest percentage of cases actually go to trial. You might get five percent that actually get to a point where something's called and sworn and put on the witness stand. But that interim process of educating everybody involved is hopefully a rational process and a process where talk is important and communicating is important, so that people begin to understand it's not in this issue that's involved. Good heavens, it's this issue and often when you start asking question like Socrates used to do and to begin to ask questions of counselors, tell me what it is that you're really talking about here, oh, and can you give me the incident that you're referring to, and can you explain to me what happened historically? Because a lot of what we do is after the fact expertise. We're dealing with history and we're dealing with the worlds that exist. The mind begins to turn and people begin to focus and it's focused thinking that ends up educating all of the parties involved so that you finally decide this is the question for decision, it isn't twelve questions for decision, this is the question for decision. Is this a question for fact finders where you have disputed issues that need to be resolved or is this an issue for the court, where it's the legal proposition that needs to be resolved? All of that isn't a Roman contest of gladiators in the Coliseum at all. The good practitioners that you see, in my opinion, know what they're doing and they lay it out in a methodical organized way, and they've thought about it. The process of thought and actually presenting an issue for determination has to go on before the attorney ever arrives in court in an idealistic society. But if it hasn't gone on prior to the time that they arrive in court then a few well-paid, priced questions dealing with a particular subject is very useful.

Ken Verdoia:

It seems to me that what you're identifying is that you realize the skill is not necessarily your acquisition of a body of knowledge, but over time your ability to ask the salient question, the essential question.

Judge Jenkins:

Oh, yes, and you know on the part of practitioners that takes courage, you have to eventually say to yourself, what's really involved. What's really involved? It's a form of easiness when you get twelve statements and a pleading purporting to characterize a particular event when only one good one would do the job. But that's part of the mix that we deal with all the time, and that's where folks who need the help of the court can come in relatively easily, have easy access to ask for help and on occasion find that their position is vindicated, well, as you can see. Occasionally funny things happen in court.

Ken Verdoia:

Tell me. Give me an example.

Judge Jenkins:
Oh, good.

Ken Verdoia:
I love the example that you offered of - that a case involving the Ten Commandments might not be a-

Judge Jenkins:
A source of fun.

Ken Verdoia:
A source of humor, but he said it actually lead to some of the memorable exchanges you've had in your court.

Judge Jenkins:
Oh yes, oh yes. You know, we've had interesting people around the country who've been interested in displaying the Ten Commandments. If you research those, there're really twelve, but on one occasion we had an attorney, he had a local guy who was complaining about the erection of the Ten Commandments involved in a municipal park. And we got into a factual exchange as to the origin of the Ten Commandments. And I - one day I asked him, I said, who do you propose to call as a witness as to the origin of the Ten Commandments? It's a little difficult to subpoena God. That was fun, though; we had fun with some other things. We had a very interesting case involving a wine product, which was being produced by a religious group. The label was inaccurate and the Pure Food and Drug was concerned about it, and we were in one of the other courtrooms. The defense attorney, who's now dead, asserted, Judge, this isn't wine, he said, it's 'liquid knowledge.' And I said, oh, that's interesting; the medium is the message, I take it. Each centimeter has some symbolic value, but tell me where did you get your formula for liquid knowledge? Oh, he said, we got it from the Egyptian Book the Dead. Oh, I said, that's interesting. I said, believe it or not, I've got a copy of the Egyptian Book of the Dead back in chambers, I'll have the clerk go get it and you can show me in the Egyptian Book of the Dead where the formula came from.

Ken Verdoia:
Did he carry the dead?

Judge Jenkins:
Well, I brought it out, had it brought out. He pointed to a fairly ambiguous section that wasn't really as concrete a formula as had been suggested...It was (laugh) an interesting adventure as to a unique defense as to the fact that the wine they producing was indeed wine that should be sold in the liquor store, not in book stores.

Ken Verdoia:
Let me ask you, people driving by, riding light rail past this building see the name Frank E. Moss Federal Courthouse. For a lot of people that would just be a name that's on a building. They'll consider the building somehow tied to someone from the past and they

might even read the plaque that's in the lobby downstairs. But the name Frank E. Moss is more than just a name on a building, it's someone you knew very well and that you worked with for a time. I found it interesting that you told me how you actually worked with Frank.

Judge Jenkins:

Oh yes, when I first got out of law school, I think the largest law firm in town had maybe eight or ten people, there were basically no jobs and for a time I had gone with Clint Vernon up in the Attorney General's office and I was there all of six months and Clint got whipped in the general election and the job evaporated and the house was cleaned and I was back relying on my wife to support us. And after awhile I was hired by Frank to work as a Deputy County Attorney, primarily dealing with charging criminal defendants or otherwise handling preliminary matters really, any criminal matters, which were then prosecuted by the District Attorney. So I worked with Frank over in the Salt Lake County Attorney's office where we located on the fifth floor of the City and County Building and eventually put me in charge of the office as an office manager as well as prosecuting people. But there I got well acquainted with Frank and his wife and his kids, but in addition to that, in that particular office at one time or another there was David Watkins who became a famous trial attorney here in town, a very good trial attorney. Scott Matheson was there, who became governor of course, Pete Leery was there who became a state district judge; Frank Wilkins was there who went on the state Supreme Court and thereafter practiced. Bill Kyus was there; William Thurman who became US Attorney was there as well. A woman named Lucy Red was there. She eventually went to Washington and worked for the Interior Department for many years until she retired. Did I mention Jay Banks who became the District Attorney and a State District Judge as well? A congenial smart bunch, let's put it that way. Ted and Frank had a good feel for surrounding himself with persons of ability, and then of course we got well acquainted when he ran again for county attorney, Wally Sandack run ran against him (laugh). Wally Sandack had a political slogan, you know at that time Ted was city judge and Sandack's political pitch was 'elect Wally Sandack county attorney and let Moss grow on the bench', but Ted eventually went on to be elected to the United States Senate where he served for eighteen years and was eventually replaced by Orrin Hatch.

Ken Verdoia:

Tell me the story of the naming of this building; it actually occurs while you are the presiding chief judge.

Judge Jenkins:

I was chief judge here at that time, yeah.

Ken Verdoia:

Tell me how you heard about the news.

Judge Jenkins:

Well, Wayne Owens sponsored the legislation, but as a practical matter, some nice person from the White House called me to see if it was all right with me. That's the first I'd

heard of it. But it obviously was all right with me. I knew Ted, I knew his abilities and I knew his service and I was personally delighted that someone like that would be recognized by Wayne's activities and the legislative activities to memorialize the work that Frank had done, not just as a United States Senator but as a local official as well. He did great work particularly in the area of examining rest homes, so called, all over the country. He did great work in the area of Western Water and of course it's well known as to his work with a national parks.

Ken Verdoia:

Among the many figures that you've had associations with over the years you go back in a period of time to when there was only one federal judge and you actually were a student, a person who's kind of a story name in the history of the federal courts in Utah, Judge Willis Ritter -

Judge Jenkins:

Willis Ritter.

Ken Verdoia:

Journalists tell different stories but you begin your story of Willis Ritter as a law student at the University of Utah, you studied underneath him.

Judge Jenkins:

Absolutely. I was a student of Judge Ritter before he was a judge at the University of Utah, and took classes from him among them: property, trusts, got acquainted with him then and his somewhat irascible at different personality, let's put it that way but he was a - that wasn't the first time that I had contact with him. I lived not too far from his house and I was a paper boy, I delivered papers to his home and on occasion ran him down to collect the money; he was sometimes tough to collect from (laugh)

Ken Verdoia:

Tell me the story of his appointment because that's interesting, an illustrative process of how judges have been appointed over times and sometimes how the system of appointments works.

Judge Jenkins:

Yeah, well the first -

Ken Verdoia:

We begin with he really wanted this position, he really wanted this position.

Judge Jenkins:

Oh yeah, oh yeah he did. The first judge in Utah after statehood was a man named John Marshall who was a distant relative of the famous chief justice and John Marshall ran into trouble by being too friendly with the cleaning woman and resigned and moved to Nevada, and the next one was a man named Tillman Johnson. Tillman Johnson was a school teacher, really, but a trained person who was appointed by Woodrow Wilson in 1915, and he was the only judge - the only district judge in the whole district, state of

Utah at least.

Ken Verdoia:

You mentioned that Wilson had a special criteria-

Judge Jenkins:

He did.

Ken Verdoia:

As he considered that appointment.

Judge Jenkins:

Had to be a non-Mormon, and Johnson filled that bill, had had a courtroom in here and had one in Ogden, and had a house up Ogden Canyon where he went for three months in the summer and held court up there. But he was advancing in age, I have a certain sympathy for that at this point, but he was advancing in age and in the '40s - I've seen correspondence where the Attorney General, Biddle, wrote to Judge Johnson and suggested that it might be time for him to retire. And Johnson wrote back a nice little letter that in effect said I'll retire when I damn well please, it's none of your business. And of course that's part of the one of the three great branches of government, of the legislative, the executive, the judicial and it vindicates that provision of the Constitution where a United State District Judge is appointed for life, with the provision on good behavior. And Tillman finally retired, if I remember right, in '49. I was just starting law school and Willis, who had, during the war, ceased professing for a while and went with the LPA, was interested in that position. Willis has a sponsor named Elbert D. Thomas. Elbert D. Thomas ran against Senator Smoot in 1932. Senator Smoot had started his senatorial career when the legislature appointed United States Senators and then went on to the popular vote after that. But Elbert D Thomas taught school at the University of Utah. He was a political science professor and a very ardent LDS, had been a mission president in Japan, if I remember. Willis taught law at the University of Utah, Willis was teaching law before he ever had an undergraduate degree. He had had one year at the University, graduated from Chicago with honors, practiced in Washington and then came back here to teach at the University and while he taught law at the university he got his undergraduate degree, believe it or not, and graduated Phi Beta Kappa if I remember right. Anyway appointments, Thomas became United States Senator, he and Willis had become friends on the campus. They were young college professors and became very good friends and worked together in the University administration, the faculty senate - things of that kind. That friendship continued on and while there was great controversy when the Tillman Johnson vacancy opened up and great ambitions on the part of a number of people to fill that position, Willis had helped Thomas during many of his campaigns and Thomas remembered. Thomas recommended him to Harry Truman. Now the position was vacant, people needed a judge. There was controversy, there was no recommendation out of the sub-committee of the judicial, but people needed a judge. Harry Truman appointed Willis Ritter as an interim appointment to fill the position so that there could be service out here and it was - and he did that in 1949. His hearings went on for about a year and there and at various parts of the country, and then

after the sub-committee recommended that he be appointed after all of the controversy, the committee reported him out and the Senate confirmed him and he was actually sworn in in '51, I think, '51.

Ken Verdoia:

Why is opinion seemingly so split about him as he sat on the bench because you said you always had a good relationship, he always spoke very, very highly of you and viewed you as one of the great contributors, was very pleased that he was able to bring you into positions within the federal judiciary, and yet as a reporter who was tossed out by the scruff of his neck from the Ritter courtroom, he had - I would say disdain would be a nice way putting his opinion of the press. Help me understand this incredibly complex character of Ritter.

Judge Jenkins:

Well, I think people will be trying to understand him for not just decades but centuries to come. He was complex. He was, in essence, his own worst enemy because a man who prided himself on his rationality and his ability to make decisions and to make them fairly quickly; he often was caught up in emotions, that in my opinion he himself couldn't control. One of his clients who is a very prominent business man here in Salt Lake prior to his appointment who thought he was an absolute wonder ended up calling him a personal tragedy simply because all of his failure to, in his opinion, live up to the capacities that he had. No one ever disputed the fact that he had a razor sharp mind. His inability to overcome and forgive, in my opinion, contributed to the controversy that surrounded him to the point where the local US Attorney who was then Raymond Child, coupled with the United States Attorney General towards the end of his days filed a petition seeking to have him removed from all the cases that the United States was involved with. Not too long after that he passed away.

Ken Verdoia:

Considering you were talking about-

Judge Jenkins:

I've written an article on Willis, I'll give it to you sometime.

Ken Verdoia:

And I'd like to read that, I would like to read that. One thing you told me as you described your experience of how you understand that it's better to be, I don't know if the word dispassionate is the best way, but how you try to analytically try to get to asking the right questions, seeing what's really in place. In one respect you're saying, well what we've got to do is keep our heads cool and make sure we're asking the right question, and then people at times would say that was the last thing that Judge Ritter would do - that he had a strong sense of right and wrong before any attorney would open their mouth.

Judge Jenkins:

Well and some suggested it depended on who the attorney was that opened his mouth, with a memory that he couldn't obliterate from some of the controversy that was started.

But as I'd say, I always got along with Willis. You know, he had a wonderful secretary for a long time, Ms. Jensen, and if I were going to go into saying when I was bankruptcy judge or those days referring bankruptcy she'd say "Bruce, today's not a good day," and she was nice to let me know to come back another time. And I think that people have to recognize that he was a pioneer, getting back to rights. For example, in some of the early cases he anticipated the Supreme Court in requiring counsel for parties defended, and there was an early case - the Brash and Lome case, no, not Lome, Brash and Sullivan; Bausch and Lomb is an optician manufacturer - Brash and Sullivan where he appointed some outstanding university faculty members to represent these defendants anticipating what the Supreme Court would later all do, and requiring a destitute defendant to have counsel so that they could receive due process under the Constitution of the United States.

Ken Verdoia:

As you have so clearly pointed out that he replaces Tillman Johnson, serves in a sole capacity for a period of time and then recognition by the powers that be in Washington D.C. and the caseload is growing and there's at least a need for a temporary addition to the federal judiciary-

Judge Jenkins:

Yes.

Ken Verdoia:

The political wheels have turned-

Judge Jenkins:

Yes.

Ken Verdoia:

No longer is a Democrat in the White House, now a Republican is in the white house in the form of Dwight Eisenhower-

Judge Jenkins:

And also Arthur V. Watkins beat Abe Murdock, so Arthur V. Watkins was back as United State Senator at that point.

Ken Verdoia:

So there's a Republican advocate back there for the next-

Judge Jenkins:

Oh yes, and as well as Wallace Bennett, and Wallace Bennett you may recall beat Senator Thomas in 1950, I guess, but Arthur V. Watkins was an ongoing adversary of Willis's and had been during the controversial hearings as well. But he was interested in sponsoring to get an alternative to one man and went to bat on the legislature, achieved the legislation for a temporary, and then sponsored Christensen.

Ken Verdoia:
Sherman A. Christensen.

Judge Jenkins:
Sherman, and Sherman had been president of the bar and prominent in Utah activity -Utah County's activities. And Sherm eventually was appointed by Dwight Eisenhower and then there were two.

Ken Verdoia:
And I can only assume that as brothers of the judicial road that Judges Ritter and Christensen got along perfectly well.

Judge Jenkins:
Well, both were very strong personalities, let's put it that way. In a two man court, and this was something new, in a two man court if they agree that's wonderful; if they don't agree the power still resides with the chief and as a practical matter Willis ignored him and they ended up communicating through the newspapers as much as anything. I shouldn't tell tales out of school, should I?

Ken Verdoia:
I actually consider we're in school, I do.

Judge Jenkins:
But I mean they learned to tolerate each other. But the chief judge in a two-man court has the last say on almost everything with the exception of personal staff.

Ken Verdoia:
I wanted to ask you, and I introduced the name of Sherman Christensen, because as I look at the history of this courthouse and the cases and controversies that have played out over the past seventy, eighty years. One that I found very compelling is the cases related to exposure of the citizenry and the landscape to radioactive fallout during the years of open air and nuclear weapons testing in Nevada. And Judge Christensen almost when he was first appointed to the bench heard a case of a group of Utah sheep ranchers, Bullock et al versus the United States that argued they had been damaged by fallout from the 1950s. Judge Christensen heard that case and almost with a clear eyed commitment he says 'you're asking me to believe that our federal government would injure citizens and then misrepresent the injury to me and I find that very difficult to accept'. Fast-forwarding to almost thirty years later as you're listening to Allen, Judge Christensen sees the documentation coming out and writes an extraordinary opinion saying, a species of fraud was perpetrated on my court. When you were a witness to this time, this evolution, goodness knows you were up to your neck in alligators at the time, but do you recall that evolution and the impact it had on this jurist?

Judge Jenkins:
Well, he thought he'd been had, putting in bluntly. The fallout cases, including the Allen case - I got the Allen case shortly after I was appointed. I was appointed in 1978 and the

Allen case had some very interesting attorneys, Stuart Udall was one of them, a man named Dave Haralson was one of them out of Arizona, a man named Ryan out of St. George. There were eleven hundred and ninety-two plaintiffs in that case, asserting that they had suffered as a result of exposure to low level radiation because of the testing that had gone on in the Yucca Flats, Nevada and they were suing the United States under what's called the Tort Claims Act. In ancient history the king, being a servant of God and an appointee of God, could do no wrong. The government eventually seceding to the kingship can still do no wrong. But eventually the Congress, in their wisdom, they actually passed legislation, passed the Tort Claims act that said, in effect, if the government does bad things through negligence, it ought to be as responsible as a private person. And it was under that act that the Allen Case was brought. Well, you can't hear eleven hundred and ninety-two separate cases, and they weren't a class action, they were separate cases. So we worked out a system where they would - I would have the attorneys jointly select what we called a bellwether cases, representative cases that would be in a position to have evidence of such a nature that we could decide the issues. And once those were decided, deal with the other eleven hundred plus cases on an item by item and case by case basis. And we tried that case with these prestigious lawyers, with a few slide in little incidents. The United States wanted me to specially vetted so that I could be privy to secrets, I'd just been passed on by the United States Senate, I'd just been appointed - I'd been vetted with the FBI. They had checked back to my grade schools (Laugh) in their examination of my alleged fitness, and I brushed that aside and told them we were going to go ahead. Anyway we ended up with our so-called bellwether cases, and we tried that case for over thirteen weeks and we had about seven thousand pages of testimony and we had almost two thousand exhibits. And we had the most amazing array of witnesses I'd ever seen up to that point and indeed since. A man named Carl Morgan, who used to head up Oakridge, a tall stately man that was obviously a very, very bright man who was an expert brought on by the plaintiffs and they had another one whose name I could never pronounce, out of San Francisco, an academic amazing guy who - Schweitzer, who was equally impressive, and it took us more than a year to write that opinion, very long. Almost a full ream of paper. And of the course the United States took it up on appeal and the court of appeals reversed me saying it came within the discretionary function on the part of the United States to do what they did. I thought it was a fairly shallow opinion, but the beauty of that case is that the record that we made over those thirteen weeks was utilized by Stu Udall and others to educate the Congress, and the Congress finally said the king has a conscience and there was legislative benefits provided for an expanded group of people who had indeed been exposed to low level radiation on the part of the United States, not just from what went on Yucca Flats but what went on the Uranium mines as well and in other locations. So that some good came from that. One of the happy things that I had in that case for me other than the disappointment as to what it seemed to me to be a very superficial reversal, was a letter from a man from named Kenneth Culp Davis who was a professor at San Diego University, had been at Harvard, admitted to Mexico, all over, and indeed had taught a summer class at Utah that I took and he gave me an A, but this was years later of course. And Kenneth Culp Davis wrote me a kind letter to say that this was one of the greatest opinions he had ever read and that we would ultimately prevail, the position would ultimately prevail and asked permission to use it in part of his textbooks. And that -

Congress actually stepping up to the plate provided me with enough psychic income to assuage any disappointment that I might have had in making an effort. One interesting thing, maybe I'll divert, right after we filed that opinion here it was in May of 1984, I got on an airplane. I had been asked by the State Department to go talk to some people, some judges and others that were in West Africa and I went to Nigeria and I went to Liberia and the press on that case had reached both of those places. And the lawyers were astonished that a judge had the temerity to call his government to account; they could hardly believe it and I was almost like a rock star amongst the members of the bar, the judiciary in both places because of that effort to recognize that the government itself is subject to law.

Ken Verdoia:

I'm sure you understand this but for an average American sitting in front of you to hear that, that's - you look at the record of human history, it's an extraordinary moment. Where a judge, a branch of government can look at the actions of government and say yeah, there are mistakes here, there is a factual record that is beyond dispute in this community and that the government must be held accountable.

Judge Jenkins:

Oh yes, and you see people love to talk about the root of law, just a wonderful abstraction. You need to turn that around and you have to say to yourself if you're serious and meaningful, law rules, George doesn't rule, Obama doesn't rule, law rules. Now this gets back to my earlier reference to the king who could do no wrong; they begin to believe that they were God's agents on earth and what they spoke, they spoke not only civilly, but ecclesiastically. They were carrying out God's good word and it took an absolute revolution historically for someone to get to the point where you say 'hey the sovereign is subject as well, it isn't King Henry that rules, it's the law that rules', and that is of a revolution of immeasurable proportions. That switch in thinking took centuries.

Ken Verdoia:

That's an extra -

Judge Jenkins:

When Judge Sirica said to Richard Nixon, 'turn over the tapes' you probably have the most dramatic example at that point in time that resulted in what subsequently occurred and the resignation of the department. Calling government to account in the federal system as a practical matter, if you have a moribund Congress, the only remedy that you have is to rap on the third branch's door and hopefully if you have standing and if you have an ongoing contest and something that merits the attention, you're then in a position to get a ruling that believe it or not in most of our history is acquiesced in, is acquiesced into the parties and you say why does that happen. Why is that when we see a third world country or a country in process that that doesn't happen, where they don't pay any attention? In Liberia, in Nigeria some nice judges would get me in a corner and tell me they had issued a bit of habeas corpus directed to the then government, which was military, to produce a prisoner, they just ignored - just ignored or where somebody who's not part of the ruling party as happened in Liberia gets hanged by his heels as a display to

teach him a lesson as to acquiesce in what they say, but one of the really interesting things to me is that people are willing and they're willing because of the process. They trust the process as being a fair process and they abide even often when they don't agree with the result, when there is a genuine contention as to differences of opinion, but they abide. And that's one of the interesting things that happens with a case generating on the district level, going to the court of appeals, getting in the door at the Supreme Court and getting a determination. Obviously, nobody's completely happy but they abide, they abide and rather than taking up arms or shooting the opposition or engaging in self-help they, I think, give credence to the process. When we talk about due process, process which is due, the people are supposed to be entitled the American system, difficult as that is on occasion, flawed though it is, on occasion poorly done, let's put it that way whatever. But there's a process and the process sometimes takes a long time to cure mistakes. One of the fascinating things is that in the business that goes on here, as well as what goes on across the street in the State Supreme Court and elsewhere, that the effort is an effort at rationality of consistency, of precedent, of being willing to listen and willing to consider a position that somebody has. Most folks, most cases I should say, most cases in my opinion are fact driven, fact driven; propositions of law are out there and law is everywhere.

Ken Verdoia:

Rather than partisan driven, rather than economic benefit driven, rather than personal gain driven.

Judge Jenkins:

Fact driven, fact driven. Sometimes the Supremes help us on this, where you have a proposition of law that hasn't been determined and people are arguing about what the law is or what the law ought to be. When the legislature has not spoken or the legislature has spoken ambiguously and nobody knows what the heck they're talking about or somebody's given an interpretation, the interpretation eventually gets structured into the fabric of the law and is there and you see that it grows and grows. Start out well, start out with the Constitution, even the preamble We the People, We the People - when the Constitution was written it didn't include blacks, it didn't include women, the words are still there but the words have been given new meaning and now when we talk about We the People, and this is where the early constructionists run into trouble 'you mean to tell me that you want to go back to We the People as it existed prior to the time where the definition was expanded to be inclusive rather than exclusive'? Well, we have to think about that. The law evolves, cultures learn, institutions learn. We end up when we know better. We can do better but we have to know better.

Ken Verdoia:

I'm almost to the point where we end this session with you, for a couple of reasons. First of all, I'm probably boring you to tears.

Judge Jenkins:

Oh no this is -

Ken Verdoia:

Secondly, your responses are far better than my questions, but the final question that I want to ask you that means a great deal; I've talked with a number of different judges on different levels, I have a very good friend who put on the robes. This notion of 'putting on the robes' and becoming a judge and stepping out from the practice of law whatever, whether you're in government or private practice and you take on this new role, you literally put on the robes and one of them who's a juvenile court judge says 'I had to learn that it was not the cape of Superman that I was putting on, but rather a temporary cloak that required me to listen rather than be the fountain of all wisdom.' You put on the robes a long, long time ago.

Judge Jenkins:

Yeah.

Ken Verdoia:

And still there's that ceremonial aspect of being in chambers, putting your robe on, walking into a courtroom. What does that mean to Bruce Jenkins, all these years, that moment in time?

Judge Jenkins:

Well, the court is a very human institution. You're dealing with human problems, you're dealing with institutional problems, you're dealing with everything from discrimination or alleged discrimination to the most intricate kinds of subjects relating to knowledge. The physics involved in fall out, for example, involve differing concepts of qualified experts as to the nature of exposure. The United States took the position that there was a sliding scale called a threshold; that anything below the threshold was okay, anything above the threshold was not okay. Carl Morgan, and his calling pointed out that any exposure, any exposure produced damage. Since that case the threshold promulgated by the United States has gone down and down and down so that the threshold concept is a slippery concept and then the question becomes only a public policy question. If you're interested in the safety of people and any explosion produces damage, then ought we not to err on the side of safety and have those who are produced the factual scenario, which produced the conditions responsible for creating the conditions, which could cause damage. Now, the quantity of damage is a different question. But the joy of this job is in part variety. One day I could be dealing with a topic like physics and be taught by exquisitely trained individuals who come here as witnesses, witnesses because they know something - they know something. Variety is fascinating but the attitude has to be the same, it seems to me, because what comes across the threshold is extremely important to those people who are involved in trying to ask for help to resolve a problem, whether it's the United States asserting that they traded people off enclaves, exposed to low level radiation the same as the folks that they warned in the enclaves that had of heard or Oakridge and had them wear appropriate badges, had them tested periodically, had blood counts periodically, and at the same time advertising in pamphlets made available to off reservation people - they needed to be treated with the same deference and with the same concern for safety. But you ask me about robes. So you try to do as best you can with the information that you're provided with by practitioners and others and apply the appropriate legal proposition, if

there is one, as best you can. And one of the nice things as a trial judge, I think, people think I'm kidding them but I'm not. There's nothing wrong with having more than one set of eyes look at something, and I say to people, appeal if you want to appeal, appeal. That's their job. That's not my job and it's their job to see if this makes sense or whether it doesn't and I don't have much concern other than in the fallout case, as to what they do, if they make sense as well. So it's a responsibility and I've been at it for a long time, if I didn't enjoy it I wouldn't keep doing it.

Ken Verdoia:

And that clearly is the case but I understand, well do you have enough time for one last question? This will be short, you talked about appointment for life and for many of us that's an abstract concept-

Judge Jenkins:

Mm-hmm.

Ken Verdoia:

But the simple premise is that once you put the robes on, you literally can never take them off. You choose, I mean they become part of you.

Judge Jenkins:

Well some people take them off and they go out and make lots and lots of money (laugh) but if you like what you do, and you occasionally do a little good, why not?

Ken Verdoia:

Judge Jenkins, I'm going to ask you to go back in time to when you were a young University of Law student and, as I understand it, that wasn't your first exposure to Willis Ritter, but certainly became an opportunity for you to come face to face with him, and the way Willis Ritter approached the law and his expectations. Tell me what you recall of Willis Ritter as a law professor.

Judge Jenkins:

Well, he was very similar to what he was as a judge, but he was a very demanding law professor and was strict in his interest in making sure that students were prepared and his methodology was Socratic. His own preparation was obvious, the subject that he was teaching was something that he thoroughly knew and obviously had thought about and worked on and rehearsed over a period of years. He was a good teacher, on occasion a less than kind teacher.

Ken Verdoia:

You said that that in many respects would continue to manifest itself when he was on the bench, that he did not suffer fools gladly in his courtroom.

Judge Jenkins:

Oh no, and it was his determination as to who or who was not a fool. That was, of course, what motivated him. But he, I have to say he was a good teacher.

Ken Verdoia:

One thing that attorneys have mentioned to us back in the days of his time on the bench is when he would call his calendar.

Judge Jenkins:

Yes.

Ken Verdoia:

He would instruct all the participants to show up at the same time on the same day and be ready to go and woe unto the person who was not ready to roll.

Judge Jenkins:

That's absolutely true, he had the call of a calendar and half the bar association would show up in this courtroom and he would take one by one and determine whether people were ready to go forward or not. It was his way of moving things along, and quite frankly when he mixed a call of the calendar, and set times for moving forward, he would also deal with law and motion matters at the same time and that's actually where he, I think, was in his element because he could deal, and deal almost summarily, with many questions that related to particular cases as they moved along. And he would often rule from the bench and move the matter along. I think there he was professorial, for want of a better word, and was interested in the subject and was in a position where he could grasp quickly what people were talking about.

Ken Verdoia:

Attorneys at the time would say that he was often two big steps ahead of the case the attorneys were trying to make, and at times he would be impatient because he knew where they were going. He just wanted them to get there.

Judge Jenkins:

That's a very accurate I think and good observation.

Ken Verdoia:

Then in the 1950s, and we'll backtrack a little bit, but another figure comes to the federal court in Utah in the form of A. Sherman Christensen.

Judge Jenkins:

Yeah, that was in 1950.

Ken Verdoia:

A man who's characterized as a gentleman, a man who has an extraordinarily passionate connection to the law and the proper procedure of administering justice and he comes to the federal court hoping to find the rules of procedure well-established and in place and if not he wants to advance those. Seemingly, on one hand, you have Willis Ritter - the new deal Democrat, "I know the rules, I am the rules." On the other hand, you have A. Sherman Christensen - the Eisenhower Republican, saying a more genteel, a more

ordered process is required in the courts. Did that set up a civil war here in this building?

Judge Jenkins:

I wouldn't characterize it quite that way but there was an atmosphere of adversaries with different points of view and each a very strong personality and each quite frankly a very resolute personality - some would even say stubborn personalities. And they soon essentially communicated through the newspapers.

Ken Verdoia:

Tell me how that went. How would you do that?

Judge Jenkins:

Well, you have to start out early. You have to remember that Utah, the district of Utah from 1896 until 1954 had a single US district judge. Willis Ritter was the only judge after appointment, first a temporary appointment in '49 and then a permanent appointment in '50. There was no chief judge at that point. There was just a single judge and then in 1954 Eisenhower appointed Sherm Christensen and at that point Willis became chief judge. Now in a two-judge court, if the parties don't agree, the determination on most things is made by the chief judge. So that Sherm arrived, in my opinion, Judge Ritter felt he was unnecessary. But there he was and at that point Judge Ritter became Chief Judge Ritter in a two-judge court. On most things, he called the shots and didn't have to communicate.

Ken Verdoia:

There are instances that we've found in correspondence where Judge Ritter actually refers to A. Sherman Christensen -

Judge Jenkins:

Well, I've not seen that, but it was an interesting time. One example, I've been told by some old timers now dead, in a two judge court the sequence of assignments in those days early on was sequential. One judge would get the one case, the next case assigned to the next judge in sequence. Knowledgeable lawyers in those days wanted the judge shop as a practical matter, would file two cases - same case, two cases and then would immediately dismiss one. I guess I'm not talking out of school, am I?

Ken Verdoia:

No, not at this stage. Out of this sense of two headstrong individuals, there really does emerge a new era of procedure and rules of court.

Judge Jenkins:

Oh, yes. Willis, of course, felt like the federal rules of civil procedure were adequate, the national rules. And Judge Christensen was interested in having some local rules that were applicable at least in his portion of the operation, and he ended up with a set of his own. So that if you were in Judge Christensen's court you were interested in following his procedural rules.

Ken Verdoia:

There is a wonderful memorandum written by Judge Willis Ritter to the staff of the court of the federal district for Utah saying rules adopted in another federal court are not operative in his court.

Judge Jenkins:

Yes, well he was making it clear.

Ken Verdoia:

Did he not like the press? Did Judge Ritter not like the press?

Judge Jenkins:

Oh, I think that he liked some of the press. Of course he was friends, great friends of the publishers of the Salt Lake Tribune, and on occasion, he didn't particularly like them either, but was more tolerant of that particular group.

Ken Verdoia:

You as a young man became very familiar with their practice of law; what did you learn from watching Willis Ritter on the bench and Sherman Christensen on the bench that would eventually inform and grace your appearance on the bench?

Judge Jenkins:

Well, personalities matter, attitudes matter, the larger issues matter. The interest of the culture, the interest of law and order mattered, of course. When I came on the bench there were still just two of us. Judge Anderson had succeeded Judge Christensen. Judge Christensen had taken senior status and was a senior judge. Judge Anderson succeeded him. Judge Anderson was then, along with Willis Ritter, the federal district court and Judge Anderson was a more compliant, sociable person in dealing with Judge Ritter. Judge Anderson had been one of Ritter's students as well, early on in Judge Ritter's tenure at the University and Anderson's going to school there. And Judge Anderson made a great effort, a great effort to get along with the then chief judge and things mellowed in that situation. And then after Willis passed on and I succeeded to that position, there were still just two, Judge Anderson was my chief. And I went back a long way with him. I had been at the county attorney's office when Alden was District Attorney, and we worked together trying cases. He was also a fairly interesting son of the neighbor in the general area near the University and had been a contemporary of a brother of mine, my older brother. And so I knew Judge Anderson very well, and he and I got along very well. He was a balanced, hard-working, well-intentioned person, and we worked well together. And it was as much his attitude of inclusiveness of court associates and personnel as anything else that informed me as to what I liked to do when I became chief judge.

Ken Verdoia:

One reference to your appointment to the bench when you're confirmed is that you bring a breath of fresh air after the rigid era.

Judge Jenkins:

(Laugh) Well, I hope it's still blowing.

Ken Verdoia:

What did you think when you got the call and can you recount to us this process of how you had percolated to the point where your name would be put forward to the president for a nomination and do you recall the nomination process and how that played out for you because you're a rare witness to a very rare process.

Judge Jenkins:

Well, the process has changed, of course. I came down and went to work in the court system down here in 1965 when I was appointed bankruptcy judge, then called referee in bankruptcy. And to give you an example of the Ritter-Christensen communication, I'd been president in the state senate and Judge Ritter asked me to come down and talk with him. I came down and there was a vacancy in that particular position and he wanted to have me fill that. He offered that to me and I had four little kids at home and I said, "sure," after talking with my wife, "why not?" And the good judge announced it to the press. He had forgotten to talk to Judge Christensen and Judge Christensen called me and let me know in no uncertain terms that the chief hadn't talked with him and wasn't too happy about it. But things calmed down and in a week or so Judge Christensen in his gentlemanly way called me and went along with the idea. That's just one personal example of communication. Until Judge Ritter died, he continued as chief Judge during his whole tenure here and for the first time in history in Utah, the congressional delegation at that time, which was a split delegation, decided to put together a merit selection committee, which had been headed up by then Dean Rex Lee of BYU and Walter Ober, Dean at the University of Utah and then if I remember right fourteen others - a cross section around the whole state and for the first time in history they asked for applications and I applied. And the selection committee was kind and I was one of five that was recommended to the President. And I did well at Justice and I did well with the split congressional delegation - at least they signed off (laugh). My name went to the White House and I was selected, nominated.

Ken Verdoia:

Do you remember the call?

Judge Jenkins:

I do. I had gone traveling with my family to pick up a son who had been on a mission in the in Japan and Peggy and I had taken the other three children and we had traveled to the far east to pick up Michael as he completed his Japanese mission. And we got home on the 26th of August - the 27th of August I had a call not from President Carter but from the White House saying that my name was going to be sent down. And this, when it was after really all of the background checks and then down and the time was set up to go visit at the Department of Justice. And then we had a hearing and Ted Moss, who had been displaced by Orrin Hatch, spoke up for me at the hearing. Our hearing lasted about fifteen minutes and then some nice people were back there and came to the hearing - Brad Kessler among others. Ted invited me and Michael and Peggy to go to lunch at the Senate Office Building, and we walked across to the Senate Office Building and coming

down the walk was Fritz Mondale, the Vice President. And Ted said "Fritz, come over here and meet our newest US district judge." And Vice President Mondale came over and shook my hand and got acquainted, and then he said - and I'll never forget this - he said "oh, to be a federal judge, you don't even have to talk to God" (laugh) and then we went and had lunch.

Ken Verdoia:

That's wonderful. What do you think now when you look at a process where a nomination of a judge to the district court or the circuit court can be stalled for months and months over partisan wrangling that exists on the congressional level?

Judge Jenkins:

You know, there's an obligation, it seems to me, on the part of those who work in this great government, in particularly the three great branches, to do their job, to do their job and when you end up because of an absence of genuine interest in staffing. One of the three great branches of government you impose upon people who are waiting in line to have problems solved that they're incapable of resolving for themselves and who need to get into a courtroom where the matter can be taken care of - people can go about their business. It's unfortunate that the process that's available, it seems to me, if competent people are nominated - but I take this from my own experience as a legislator up here on the hill. You get people who are nominated. If they're competent, if they're not crooked, regardless of the party, if that's the nominee of the executive as a practical matter you confirm and give him, the people that he needs, to do his job. And we worked that when I was President of the State Senate. There were a number of people with whom some in the our side of the senate had some difficulty and I say "hey, the executive says he's competent, you can judge that for yourself. He's not a crook, he's able to do the job, give him the people that he needs." Partisan wrangling demeans the whole process. It's unfair not just to the candidate or the nominee; it's unfair to the people of the United States. I recommend that those engaged in that look at the founding fathers' document and recognize that when they orate about the rule of law they ought to recognize that part of their job is to follow their responsibility, not only just talk about it but undertake it.

Ken Verdoia:

That's brilliantly stated. We talk about partisanship and even the most naive observer recognizes that partisanship has been part of judicial selection since 1787. But in the federal district for Utah there was another aspect of selection of judges that played out for more than fifty years, the initial fifty years. And it's perhaps given voice by Woodrow Wilson in his appointment of Tillman Johnson saying, "I have three criteria-

Judge Jenkins:

Yeah.

Ken Verdoia:

Make sure he's a lawyer, make sure he's a southern Democrat and make sure he's not a Mormon.

Judge Jenkins:
Yeah.

Ken Verdoia:
How far have we come?

Judge Jenkins:
Oh, I think we've come a long, long way. I think that Johnson's reign, you know, was from 1916 until 1949, a long time single judge. Controversy rose again, in my opinion, with the appointment, really the designation by Elbert D. Thomas, Senator Thomas, who had been a faculty colleague of Judge Ritter's. Thomas taught at the University, taught political science. Judge Ritter taught law. They were young colleagues on that campus from the late '20s to early '30s, and Elbert D. Thomas was interested in, or stuck to his guns, I should say in pursuing the Ritter appointment. And there was an uprising, in my opinion, at that point where there were some other ambitious people who were interested in that position and some who had a certain animus, let's put it that way, and some thought it ought to be, I'm sure, an LDS appointment. At least there were those who worked in that direction, and of course when Johnson retired, and I might say that he just didn't - parenthetically here in the '40s, in the early '40s, when Johnson even then was getting up in age, a justice department official wrote to him and suggested that he ought to retire and Johnson wrote back, told him that it was none of his business, he would retire when he got good and ready. But even then, back in the early '40s, I would suspect that Judge Ritter was even then interested. But historic events are fun. Lots of folks thought Tom Dewey was going to beat Harry Truman, that didn't happen. Had that happened, the history of the district court in Utah and many other courts would have been different. But Harry Truman gave Willis Ritter, at the behest of Thomas really, a temporary appointment when the controversies arose and then subsequently a permanent appointment. I thought there was in those days a little sub-surface kind of animas that may have been displayed by Wilson's criteria. And all of that goes back historically, way back. You can go back to 1847 if you want, and the effort to establish what was basically an ecclesiastical kingdom.

Ken Verdoia:
In effect, Senator Arthur Watkins, in advancing the appointment of Sherman Christensen, the creation of that second seat, is trying to push down back on those scales and address that closet, if you will, religious bias, and say "look, we are along into this process, we are not treasonous, we are good American citizens it's about time we took that one off the agenda."

Judge Jenkins:
Sure. And that made great sense. Now Judge Christensen of course was a distinguished lawyer, a water expert, former president of the Utah Bar Association, a formal naval officer. It was a good appointment even the old-fashioned way, but you ended up with water and a well.

Ken Verdoia:

It's very interesting. [Break]

You take that seat and they try to pass the magic wand over you-

Judge Jenkins:

Yeah.

Ken Verdoia:

And say, "now be above the fray, now have your soul cleansed and be pure as the driven snow and begin anew with clear eyes." The layperson looks at this and says, "oh, every judge has got to be, everything he's experienced goes with him on the bench." So how do you make that transition from at times being an advocate or being partisan and then finally being in this position where they want you not to be the partisan animal?

Judge Jenkins:

Yeah.

Ken Verdoia:

How did you make that transition?

Judge Jenkins:

Well, you don't leave yourself on the doorstep at home. You are what you are. But you make a great effort to be disinterested - not uninterested, but disinterested. You're interested in hearing the material that's presented and trying to evaluate that as best you can. You're interested in the process that's historically has been validated over centuries as to the manner in which disputes can be resolved. You're interested, it seems to me, in taking time to think. You're not there as a partisan, you're there as a judge and to do the best you can with the tools you have to arrive at what makes sense. How do you walk away? You don't walk away, you're there, you have your own attitudes. You have your own inclinations. You have your own biases, but you try to set them aside as best you can and assist in bringing order out of chaos. (Laugh) And having good reasons for doing whatever it is that you do.

Ken Verdoia:

One of your clerks that we interviewed, Patrice Aren't, and I mention her by name-

Judge Jenkins:

Oh Patrice, yeah.

Ken Verdoia:

Marvelous woman, I hold in very high regard and she said as one of your law clerks, there was a case that came in and she was assigned to do the research on it and to work closely with you and she said you both were hoping that this one person would kind of triumph in their case because it was an important case that could affect a lot of people. But she said at the end of the day, you looked at the facts and you said "they're not there and as much as I might want to see this person's voice heard, I can't let this process go in this direction; I can't let my personal desire compromise my vision of what's the right thing to do" and Patrice said she went home and she cried because of how right you were.

Judge Jenkins:

Well, I hope they affirm me on appeal (laugh). You do the best you can with what you've got to work with, and I think that you have to recognize that you're not pronouncing universals even though the universal may be involved, but you're dealing with practical problems that people have and you're assisting them in resolving a particular matter so that they can go on with their lives. And while it may have some consequence down the road or it may tie in with the universal of some kind, the service that you really perform is to resolve it, get it behind people. Get them on their way doing something productive. Cases in my opinion have individual circumstance, context is so important, attitude's so important. We end up pretending, so we can look inside somebody's head. Well, okay, modern imaging may provide some basis for doing that, but you do the best you can. It doesn't mean that you wander the wasteland, you tie in with precedent, you tie in with the statutes, you tie in with the propositions but the variables, the variables and facts are so important, and for the most part, in my opinion, facts drive.

Ken Verdoia:

I want to ask you about the honor roll that exists in your office. I call it the honor roll, but it's that long list of photographs of the young men and women who have served as law clerks, and I think one of the very important roles of the Federal Court in Utah has been to help the best, the brightest, these promising young attorneys have that experience as clerks to better understand what it means to apply the law and to be a good lawyer. What do you hope a clerk takes away from their time with you?

Judge Jenkins:

It's a wonderful opportunity for a young person because they can observe what goes on in the courtroom and they often discover that the person of monumental reputation in the press can himself be unprepared or they can discover that just plain diligent work a day work and adequate preparation, whether you graduated from BYU or the University of Utah doesn't mean that you can't do as well or even better than those who came from Harvard or Yale or anywhere else. They can acquire during their tenure here of working as research clerks assisting the judge, in my opinion, ten years of experience for one year of observation because they can actually see what's going on in the clerk room and how important it is that people learn how to analyze and to focus and to present and do so in a fashion that makes sense. I'm very proud, well, of all of those on the wall. All of them have contributed. There's nothing more helpful in my opinion than a judge who leads a fairly reclusive life to be in a position to talk with somebody who's smart about a particular subject and converse and examine that subject from all sides. And a bright young person working for a judge is in a position to be a wonderful sounding board and often a creative sounding board to contribute to the overall effort to make sense out of what you're doing. Many of them have gone on to do amazing things but and all of them have contributed.

Ken Verdoia:

What I find interesting is that would assume that all of the activity of consequence plays out in a room such as this we're in right now. There is so much else that goes on, the

people working, the support structures, marshals, probation service, bankruptcy, the magistrates - it's just a constant activity that most people don't understand. So what's going on behind the scenes?

Judge Jenkins:

Yeah and that's where decision-making occurs, it's a practical matter. The matter in which you seat a jury, the kind of information that's made available to the jurors, the limitations that they have, the effort to obtain a cross section of a community to sit on juries. There was a movement not long ago and still is in some parts of the federal system where they use smaller and smaller jurors. In Utah we use a twelve-man jury, sometimes a little change, but generally speaking twelve man jury. Alden Anderson, when he was chief, there was a great effort to cut jury costs. Both he and I agreed that we needed a cross section of people on a jury in part because of the nature of our culture here in Utah. We need to have that juror group as widespread as possible and we continue as a matter of policy the twelve-man jury, which still makes sense to me.

Ken Verdoia:

Especially when you look at the deep history of the pre-statehood courts, the allegations of manipulation of jury make-up; it went all the way to the US Supreme Court over time.

Judge Jenkins:

Yes, yes.

Ken Verdoia:

Nothing worse than manipulating the make-up of a jury.

Judge Jenkins:

Oh, no, and we do we do a pretty good job now. We used to do it using human hands. We now use computers to ascertain a base, a so called grand wheel from which we can draw down again using computer systems to get a decent cross section of people. I'm a believer in the jury system as you can see.

Ken Verdoia:

But you allude to the fact of one of the big changes you've seen over your term of service here in the Moss Courthouse is the way technology has changed so many of the facets of the support structure. I would imagine it's been a very significant change for you.

Judge Jenkins:

Yeah, when I was chief judge we were one of ten pilot courts around the nation beginning to integrate into the computer world. My own attitude is I love the books. I have trouble with computer screens. I prefer the books. I prefer to be able to handle and look or to paste or not, but the fact that there is something that's a tool and that's what it is, a tool, and sometimes not a very good tool. In no way should we part from the process of judgment. One of the difficulties with the abundance of modern day technology tools is that people begin to think that they're a substitute for thought. An algorithm is no substitute for thought. Machines don't think, and the process of deciding cases is a

human process involving human beings, again doing the best they can with the tools that they have, and the tools some people suggest modify the matter in which we actually look at the material and I think that's true. I can see in the pleadings that people file, the absence of some references that would obviously be there if they had actually gone to the books. Interesting life, I hope we survive.

Ken Verdoia:

Well, one thing we are going to do, you and I together, is - of course, your steps will be far more prestigious than mine - but we're going to walk into a brand new court building.

Judge Jenkins:

Absolutely.

Ken Verdoia:

And that's going to be, according to the way the General Services Administration describes it to me, the most modern, the most technologically adept, the fanciest - it's a high rise, it looks modern from the outside, but you seem to be saying "wait a minute, it's not the building."

Judge Jenkins:

No, it's not.

Ken Verdoia:

It's the people.

Judge Jenkins:

And that's so true. You need adequate facilities but more importantly you need adequate people and regardless of wherever you sit, the confidence that people have in what the courts do is really the key to having people abide by what the courts do. If we end up with an absence of confidence in what people do in the process, the adequate process then we would all, as a culture, be in trouble. As a civilization, we would be in trouble. You think of the major issues that the courts have resolved without guns, without fighting - the major issues. You just look at the Civil Rights Movement, Brown versus Board of Education. It takes awhile but you watch that and you look at the right to counsel. That's one, an area where sometimes people short shrift Judge Ritter because he was an early pioneer in that area as to the right to counsel, he anticipated getting that. But the law grows, the law adapts, the law changes. It's not there cast in stone. It's an exemplar of how people struggled to maintain a semblance of law and order over the years and have a decent civilization.

Ken Verdoia:

You told me a marvelous story of your first time coming into this courthouse back in the '30s as a kid with a couple of pennies in your pocket buying some stamps for your mom.

Judge Jenkins:

Yeah.

Ken Verdoia:

The day will come when you're going to be walking down those courthouse steps and you're going to be walking up new ones next door.

Judge Jenkins:

Yeah, I've got an elevator over there that'll take me up to the tenth floor. That's assuming I can walk that far.

Ken Verdoia:

For all that we gain what will we lose when we close these courtrooms and repurpose them?

Judge Jenkins:

Yeah. I'm a traditionalist. I revel in tradition and I think that it's important that historic things have their place. Recognizing that sometimes the expansion of population requires something new, I was an early advocate of putting a new story on this building in contrast of building a new one or if we were going to build a new one I was an advocate of building it to the south because of the parking and security problems. But regardless of where you function, I think the process and the confidence that people have of the process and the willingness of those engaged in the process to do the work will create a new tradition, perhaps a continuation of the old tradition. But new surroundings ought not to obliterate or obscure the basic documents, the fundamental process of being in a court process, the thought and effort that goes on in deciding any kind of a disputed proposition or a disputed question of fact. I'm personally sorry to lose the old building but I'm willing to give it a try, let's see how it works.

Ken Verdoia:

Perusing that same fundamental American commitment, equal justice under law - you have walked that walk, Judge Jenkins, and you have done it with honor and dignity, and by all whose polls we have taken, you have brought great honor upon this court by the sheer commitment you've had to being even-handed, inclusive, and just. I don't know a more fitting way in this interview than to simply thank you for what you've done and more importantly extract as much of a promise as I can that you'll continue to do it.

Judge Jenkins:

Well, I hope they'll blank that part out, as far as I'm concerned, you'll make me weep. I don't know whether you've taken pictures of the portraits here in this courtroom of colleagues and predecessors, and of course the statue of Tillman Johnson somewhere here - if it's still around. All of these colleagues have contributed to the American tradition in their own personal way, and all I can do is say thank you for your nice words. I love what I do. I'm terribly conscious of the mortality tables. My kids wonder, "When are you ever going to retire?" My wife's grateful that I come to work, and I love each challenge of each day and with the extent that I can be helpful, I'm grateful for that opportunity, and I'm doubly grateful for the chance I've had to associate with the many in

this building, including administrative people - probation people, attorneys particularly, those who try - all of that I'm grateful for and I'm hopeful that whatever small contribution I've made to some extent endures. Perhaps that's the only immortality that anybody could have.

Ken Verdoia:
End on that note.

Judge Jenkins:
Well, good heavens, thank you.