

COURTHOUSE INTERVIEW – THE HON. PAUL CASSELL, FORMER U.S. DISTRICT COURT JUDGE- UTAH.

Ken Verdoia:

All right Paul; let's begin with the most simple of all premises. I was talking to a neighbor the other night and he said, why are they building that new courthouse because they just built the Matheson courthouse? Which speaks to this absence of understanding that can exist out there in the lay community about the role of the federal courts. Walk me through it, why do we have a federal court system?

Paul Cassell:

Well, we end up in this country - we've got a dual system of justice. We have the state system and the federal system, and a lot of times there's overlap and so people wonder, why do we need two courthouses? For example, if somebody is committing a crime selling illegal drugs, well, that can be prosecuted either in the state system or the federal system. But there are a lot of things that have to be handled exclusively here in the federal courthouse. For example, what if a crime is committed on a military base, or an Indian reservation, or a national park? Those are federal territories and those would be federal crimes that can only be handled here, and then there are lots of other things, too, that run the gamut - environmental statutes, those are federal laws although there are some state laws but many of the most important ones are federal statutes. Federal civil rights laws forbidding discrimination based on age or race, religion - those are enforced here in the federal courthouse. Labor laws again are administered by the federal system. So we have a lot of things that have to be handled here in the federal courthouse regardless of how many state courthouses there are around the state.

Ken Verdoia:

The media represents the courts as great scenes of drama. What do those representations, be they entertainment-oriented through theatrical presentation or even daily journalism, what do they misrepresent -- About what the federal court system truly is?

Paul Cassell:

Yeah, one of the tricky things when you watch a TV program about a court case, Law and Order or something, is it starts at nine o'clock and by ten o'clock it's done. And unfortunately in the real world, we just can't move cases along that rapidly. I mean, there's a complaint that's filed, there are witnesses that need to be deposed, there are legal motions that need to be decided - all in anticipation of getting that to trial. And so that takes eighteen months or sometimes even much longer than that, and so I think that's one thing people don't appreciate or maybe have a misunderstanding about how the legal system works. It just can't operate in a sixty-minute time frame; it's something to give a fair hearing to both sides. It just takes quite a bit longer.

Ken Verdoia:

Another observation we encounter is that people look at the federal courthouse and they say, oh, federal courthouse is just courtrooms. But actually there's a wealth of activity that goes on outside of the court. Can you help us understand what that is like behind the scenes?

Paul Cassell:

Right, so maybe one way of addressing this would be, let me just tell you a little bit about what a judge's chambers looks like. It's obviously got a judge, but there's a whole supporting staff that goes along with that to make sure that when the judge comes out on the bench, the judge is in a position to give a full and fair hearing to the litigants that are coming in front of him. And so obviously there might be an administrative assistant to help answer phone calls and to make sure all the briefs and other materials are presented properly to the judge. There's also a very important person that's a scheduling clerk and so when the judge walks out for a two o'clock hearing, well, how do we know there aren't three hearings and, wait a minute, this one had to be rearranged because of conflict in a lawyer's schedule or breakdown in the jail transportation system, whatever it may be, and so you've got somebody to make sure the train's run on time and the schedule goes forward. There are also a number of law clerks. The legal issues that confront federal judges nowadays are exceedingly complex, and so typically judges will have two recent graduates from the University of Utah or BYU or another neighboring law school that will help provide some legal

research to sort through all the briefs that the lawyers are filing. And then on top of that you have an additional clerk's office and other support here, the security people and a variety of things that go on and so. Gosh, for every judge, my guess is that there are probably ten or fifteen people behind that judge making sure that he or she is in a position to reach the right ruling.

Ken Verdoia:

What's this like as a place to come to work? I mean this is not just another office; you're coming into a place that embodies living history, a living Constitution if you will.

Paul Cassell:

So one of the things that's neat when you walk around the courthouse is you see portraits that date back literally more than a century of jurists that were here earlier and other people that were involved in the court system, and so that gives you a sense that you're standing on the shoulders of other people that have been there before and that have dealt with difficult issues in their times and tried to make the justice system work. So there's sort of an aura here that this isn't just punching the clock, just isn't, you know, filling time or whatever, but trying to resolve legal problems that people have had for decades and decades and trying to reach the right result, whether it's a business dispute, criminal dispute, an environmental dispute, and to get that resolved in a fair way so that we can move forward as a society.

Ken Verdoia:

What was the best part of the job as you had the robes on, what was the best part?

Paul Cassell:

So for me, I always had a bit of an adrenaline rush just stepping up on the bench when there were good attorneys and parties that desperately wanted to get an issue resolved, and I was the person who was then going to make that decision. I was going to listen to the claims that were being presented and I was going to wrestle with the law. I was going to work with my law clerks and others to try to reach the right result. I mean, that was exciting because I felt like I was making a difference; there was going to be a ruling one way or the other, hope maybe, that sometimes I make one person very happy and the other person unhappy, hopefully in a number of cases maybe made everybody a little bit happy as we moved forward. And so it was exciting to be a part of, and it's at what is at bottom a problem-solving regime. People have problems and that's why they come to the federal court, and if we're doing our job they can at least leave with answers to those problems.

Ken Verdoia:

It has become very convoluted at times on the district court level, circuit court and on. At times you can't deny the partisan aspect of it, and yet for the individual selected to step to the bench and assume the role, the first thing that's required is that your hard drive get wiped clean, if you will. And then approach with almost a freshness, an impartiality, a neutral stance, how did you approach that? Was that a challenge for you?

Paul Cassell:

Right, it was a tricky proposition for me to try to come up here and to put behind some of the causes that I'd been arguing for at the University of Utah law school where I came to this job from. I had been an advocate for crime victims, and now I had a number of defendants that were also seeking justice. And for me, I had to set aside those earlier preconceptions and try to make the case fairly or decide the case fairly for both sides. And it was interesting when I'd step onto the bench, I think some defense attorneys were frankly the most concerned about what I would do, but perhaps by the time I left, I think I had at least a few fans in the defense farm because I had - maybe because I had a background of seeing one side of the case, I could very much appreciate the other side of the case, and I could do things like criticize mandatory minimum sentences because I had a firm understanding of all sides of those issues. But it's hard to walk into something and to leave behind all that you've previously held dear and just decide based on the facts in front of you. But that's what judges have to do.

Ken Verdoia:

One of the issues that you dealt with, you've just alluded to, mandatory minimum sentencing. And as you sat on the bench there was a sense that emerged that you looked at this and you said, "you know, this is simply not right." As a judge, I'm feeling whether it's the extensive reach of a legislative body in the courtroom, tell me why that caused you so much pause.

Paul Cassell:

Well, judges apply the law, they don't make the law; and so our job is to read the black letter of the law that Congress has written, and then to apply it in a particular case. But all of us come to the court with a gut sense of justice and sometimes, very rarely, you see a law that just doesn't line up. It seems to be so out of the ordinary that no reasonable person could really think this was a fair and just result. And I had one of those cases where I was asked to sentence a young man to fifty-five years in prison simply because he had been involved in three marijuana deals with a firearm, a serious crime to be sure, but not one that I thought involved the need for a life sentence. And so I really struggled with applying the black letter of the law to what I thought was going to then lead to an unjust outcome.

Ken Verdoia:

This is all part of your person, when you put on the robes you represent the United States of America being the honest arbiter of the cases and controversies that come before you, but you don't stop being a person. You have values, you have interests. You have directions of where you want to go, when did it start to come to you that perhaps a lifetime appointment to the bench was not going to be in your best interest?

Paul Cassell:

Well, so I was very honored to be put on the bench and I worked extremely hard to do the right thing in all the cases that came in front of me because I never forgot that something that actually Senator Hatch told me, you know, when he put me on the bench, he said "Paul, you remember these are real people with real issues and you treat them right," and then so I tried to treat them the right way, attorneys, the litigants, and to reach the right result. But after a while I began to realize that maybe I was a little less of an umpire and a little more of a ball player - that I wanted to be there swinging the bat rather than calling the balls and strikes. And so I felt like I - there was some causes that I wanted to pursue, some cases that I wanted to argue, some law review articles I wanted to write, and so I just left the bench and went back to a place that I love - the University of Utah.

Ken Verdoia:

And you say that very eloquently, that's a marvelous explanation and yet people look at you and say are you nuts? I would give this arm, that arm, this leg. I would throw over everything I am for that opportunity, and you walked away from it. How do you respond to the person? Do they just not understand?

Paul Cassell:

Well, I, you know, maybe I made a mistake in stepping into the job because I know a lot of people went to bat for me and pushed me to get this job. It's not an easy thing to do and in fact one of the hardest things I've ever done in my life is to tell some of my backers, who had helped me get this position that I felt like I could no longer stay here for the rest of my life. But one of the hard things about this job is it's a lifetime appointment, and so many other jobs if you get itchy feet or whatever you can move on to something else and that's not the way this job typically works. And so I think maybe I made a mistake in taking it at a very young age when I had some other things that I needed to do, and maybe, I think, for some other jurists that had come onto the bench maybe at a different phase in their careers, a little more, frankly, maturity perhaps and certainly wisdom and experience - maybe that's why many of our best jurists are those who have had a full experience in the legal system and other parts of life because they can bring all that to bear on the cases that they decide.

Ken Verdoia:

You've already touched on this earlier response but I want to return to it, the federal district for Utah will soon move into a new building and according to the General Services Administration it's going to have every technological advancement. It looks different, it feels different, the court rooms will be different, it's new, it's now and it's happening, but what will we lose in the process of moving from site A to site B?

Paul Cassell:

I think we're going to lose a little bit of the history that you just sort of feel walking into this building. You know there have been jurists and lawyers and litigants that have been here for more than a hundred years, and you sort of hear those ghosts a little bit when you walk in and it maybe gives you a sense of, I don't know, the importance, maybe, of the cases that are in front of you, and certainly the importance of the task that's in front of you deciding these cases fairly. With that said, let me just be clear, I'm one of the biggest advocates for a new courthouse because there comes a time when technology, logistics, the population of the state and other factors come together and say it's time to move on, to wave goodbye perhaps to that legacy and to start a new legacy in a new building.

Ken Verdoia:

What are you most proud of on your time on the bench?

Paul Cassell:

I think one of the things I am most proud about is that there were certain people that were skeptical that I could be fair and could decide cases, you know, frankly, in favor of criminal defendants and not just in favor of prosecutors. And I think there were people that wondered about that when I left or when I entered the bench, and when I left, I think most people would say that I decided cases, calling them as I saw them, calling them both ways, not leaning one way or the other. At least I would hope that's the thought that they had. So, if I at least made a few people happy along the way that their case was fairly decided and that justice was done, then I feel like my time here was well spent.

Ken Verdoia:

As you've mentioned when it comes down to it, this really is just a series of rooms and it's the humanity that brings life and purpose to them and if you look though at the history of these rooms, the people that have walked the hallways that you've alluded to, the cases and controversies, the issues, the evolution of rights, the understandings, both for victim and for defendant, for those who were at one time were as having no rights. This really becomes a great continuum of the American experience, you've got to feel proud about being part of that continuum of the American experience and trying our best to do the right thing and learn from our mistakes.

Paul Cassell:

Right, I mean one of the neat things about working here in the federal system is I've always liked to say that we do cases the right way here. There's some other courtrooms frankly in our state and elsewhere where there just not enough lawyers, not enough support to fairly decide the issues and I feel like here in Utah and indeed generally in the federal court system, fortunately, we've had the support of Congress and of good judges around the country to try to put in place a system so that everybody get's a fair shake and it's been interesting, too, to watch that. We now have for example, I think we've made as a country great strides in enforcing civil rights and forbidding discrimination based on gender or religion or other things like that and I think it's fair to say that not just here in Utah but across the country the federal courts have often times been in the forefront of moving us forward in those areas, of ending a sad history for example of racial discrimination or other forms of discrimination. So to play a small part in a system that's made such great strides was very exciting for me.

Ken Verdoia:

Excellent, I just have a couple of clerks say that one of the most profound impacts of the federal court system actually takes place in the selection of clerks, young people right out of law school. It has a formative impact on their expectations of self as a lawyer and how to do things the right way so why don't you give me a minute or two thinking about the importance of that clerk year of what it can mean to them?

Paul Cassell:

Well, a law clerking experience can be a tremendous thing for a lawyer because it gives you a chance, I think, to start to understand how the system works, how the judges think, how do litigants operate? I had the benefit of working for two fantastic judges, I clerked for then Judge Scalia when he was on the DC

Circuit and Chief Justice Burger in his last year on the Supreme Court, and they were both fantastic experiences for me that I think really formed my sense of what a good lawyer should do. And one of the things that really shaped my experience here as a judge was one of the experiences I had clerking for Judge Scalia. We had a case involving sausages and so as you can imagine there were a number of jokes that could be made about sticking things in sausages and so on and so forth so I was working with Justice Scalia, then Judge Scalia, to help draft that opinion and putting in a number of jokes about sausages and things like this and then he took them all back out and said "Paul you need to remember that this is a case that's not just for our amusement, this is a case about, somebody's got a business that's at stake here and other people that have a regulation that's protecting the public safety." That really drove home to me that these cases have real world consequences for real world people, and I think the chance to see that as a law clerk, to see the litany that's coming in, to see a defendant be sentenced, to see a victim give a victim impact statement - those kinds of things. To observe that first hand from the site of a courtroom, not from the bench obviously or not from the lawyer's chair, can really drive home to young attorneys how important their career can be.

Ken Verdoia:

When I've talked with law clerks, they say what they will remember the most, are the moments where they looked at each other in the eye and either shared laughter or they shared tears -

Paul Cassell:

Yeah, the people - I mean, that's the thing that I miss the most about having left here. The building is neat and the cases are important and intriguing, but, you know, I had a great crew of people that I assembled around me that were just wonderful to work with, and the attorneys too. Not every lawyer is in federal court and so you've got - there are very fine lawyers in state court, I don't want to belittle them, but I think a number of the people that I had arguing these cases, they were making some fantastic arguments and oftentimes were among the best lawyers in the state. And so to hear, you know, able advocates going at it and then to know I was making the call, that was a just a wonderful experience.

Ken Verdoia:

Final thought, when you're a law student back at Stanford you would study Supreme Court decisions - Versus the United States of America ...I mean these were powerful epic cases and controversies. That involved the very future, fortune and purpose of this nation that you and I feel so passionately about. Those were the cases that were on your docket every single day; this wasn't just an academic exercise. You held in some serious measure the fate of this nation in your hands, didn't you? That could be a bit overdrawn, because there's always review, but this notion of these cases, these controversies, these people mattered.

Paul Cassell:

Well, I wouldn't say that I held the fate of the nation in my hands, I would say that I held the fate of individuals in my hand, and I tried to approach the cases that way. You know whether it was a defendant who was looking at a mandatory minimum sentence or plaintiff who said that her business had been unfairly damaged. I mean I always understood that there were real world people and these rulings were going to have real world consequences, and that was frankly the hardest part of the job, wasn't an academic exercise in writing an article, it was telling somebody you're going to win, you're going to lose, you're going to go to prison, you're going to pay money - that was a very challenging thing to do.

Ken Verdoia:

Perfect, on that one we will end.