



COURTHOUSE INTERVIEW RON YENGICH, ATTORNEY

Ken Verdoia:

When we talked earlier, you talked about the need for the courts to be this place where the reasoned voice of rational actors can argue can disagree, can even be angry with the decision.

Ron Yengich:

Right.

Ken Verdoia:

But that they stay reasoned and they stay rational in the way that the courtroom handles the great issues, the cases and controversies, but that there are influences that can be brought to bear-

Ron Yengich:

Right.

Ken Verdoia:

And you've seen those and there's a negative impact. Tell me about your concerns when external influences from either the high and mighty or the low and angry reach into a courtroom.

Ron Yengich:

So the thing that as lawyers we do and what people don't understand because of stereotypes is what we do is, we take the world's most difficult problems and we attempt to solve them in our adversary system. And in the Federal Court those, quite often, are the most difficult problems, and the only way you can solve problems is by having a forum where you can argue, and you can argue vigorously, and you can present facts, not just opinion but facts, and have somebody make that decision. And you go in with the idea that you're putting it to someone - sometimes a jury, sometimes a judge, sometimes both - and that when you come out, whether you win or lose, you had a fair shot and the decision has been made and that the respect that you have for that decision is because of the process. That the belief that we have in the process. In my experience when there are outside influences, be that from the broiling crowd or the phone call to one of those participants making a decision or some other less benign influence - be it fear of political retribution or that type of thing - when they come in, they spoil the system, because then we don't have the faith that that decision is made on a fair playing field. And as a lawyer I've lost more than I've won. I'm a criminal defense lawyer; I lose everyday. I'm not batting two ten, I'm below the Mendoza line and that's my - that's that's really how it should be, okay? Because if prosecutors are doing their job, they're charging the right

people and so that's okay. What I want, and what good lawyers want - we want a fair shot. We want somebody that's going to apply the law fairly and equally and equitably to my client when I walk in there, and when these other influences come in, then we don't have that assuredly [surety?] that that's the case and so then it makes it difficult for us to believe in the system. The things that are said in these walls of this office are never said in the courts, and that's good, because I come back here quite often angry and say mean things that I'm sure I'm going to pay for one day, things I would never say in court. And when I have crossed that line, and I've been called on it, that's been right for me to be called on it because that's supposed to be a place, you know I don't want to overdo it, but it is supposed to be a place of majesty where we're arguing as gentleman and ladies for a purpose that transcends our own ego. Now, I really believe in that, I firmly believe in it - that's why I still do this.

Ken Verdoia:

Some people would see an active demonstration of hundreds outside of the federal court as an awesome display of the will of the public, but when you walk out of a court and witness that, your heart didn't soar with the joy that this was the way the system should be.

Ron Yengich:

No, I mean I, you know - and I've had a few of those. I believe in people expressing themselves non-violently and by protest. I'm good with that, but I don't always believe that those type of protests accurately understand what went on in the courtroom, and so they'll take a portion of that and then they will run with that just as people that have power sometimes attempt to influence decisions because they pick a portion of what a case is about and that is what interests them and then they try to influence that decision because of their political view. I think that's troubling and I think it's something that we've got to really worry about. If we believe in the process and we've - a lot of people forget and it goes back to your question about tradition and history. If we believe in the process, then things can be fixed on appeal. And sometimes they aren't fixed and we have to go to other measures. But for me personally, if I lose, I take it and the reason I take it is because if I've done my job, I've done my best and I believe in the inherent honor of the people I'm arguing against and the judges and as long as we can do that, then as imperfect human beings then we live with that.

Ken Verdoia:

Are we also changing the amount of input that we're throwing at the federal courts now from a lot of different sources and the major one, may in fact, be the Congress of the United States?

Ron Yengich:

Yeah, the problem we've had and the, one of the distinctive things that I've seen over the last several years is that particularly on the criminal side, which is all I do, we have - Congress has made a lot of things federal crimes that historically have been handled in the state courts. And the state courts are set up a little bit differently. They've got their own procedures to eliminate bad cases and to eliminate things that probably don't need the tempered reasonable response and the lengthy response that we should get in the federal courts because they are fairly simple things to deal with. But Congress in their lack of wisdom has decided that we will make them federal crimes and they will prosecute them as federal crimes instead of the bigger crimes that should be handled by a government that has the wherewithal to do it. Along with increasing punishments with minimum mandatories, and also in increasing punishments with the federal sentencing guidelines, and as a result of that, I think that we've seen an influx of cases in federal court that really shouldn't be there. They should be handled by the states and the county prosecutors and I think it's undermined a lot of what we do over there. I think it really has.

Ken Verdoia:

Let me ask you something, which may not be fair because I didn't prepare you for this topic, but do you still recall the first time you tried a case in the federal district court where you went in there and you said, you know, appearing for the defendant Ronald J. Yengich of Salt Lake City? Do you recall that? I mean, don't give me the circumstances, but do you recall the feeling, the anticipation walking up the steps, walking into a courtroom, saying here I am?

Ron Yengich:

Yeah, I do, and I remember going over there with my old law partner John O'Connell, but I remember my first federal criminal case and - I was an appointment and I was appointed by Judge Bruce Jenkins, I think at that time, maybe not. But I remember going over there and I remember walking into the court and I remember the sense that I had of not dread, but anxiety over doing it right and carrying into that courthouse the idea that I was worthy to walk in there where some really great lawyers had practiced. And that is a hundred percent true, because I loved practicing law and I wanted to do my very best. And so I still get that anxiety when I go to court, all courts, not maybe to that degree but there's a genuine anxiety when you go in and you want to put not just yours but your client's best foot forward in the tradition of the people that have been great lawyers, some of whom taught you, some judges who have taught you, people like Bernie Rhoades, the other people that I have respected, because I've always felt, to a certain degree, that I carry that with me when I walk into a court. Now, I have my own style, I have my own approach, but that is the way you should do it. You and I are baseball fans, and we've heard about great baseball players who say the day it doesn't matter to me anymore is the day I'll retire. The day I can't carry it the way that I want to the plate, I'll retire. Well, I kind of feel the same way, I mean if I can't walk over there with the idea that I'm doing important business, that this isn't simply just another one in a long line but that professionally I've got somebody's life in my hands than I, no matter what kind of case it is, than I shouldn't be there.

Ken Verdoia:

Time and time again whether it's judges we interview, attorneys, people who are serving there as law clerks - they all stay there for their own unique position, even if they've been an attorney there, when they became a judge, they felt that the courtroom represented the standard that they hoped to prove themselves worthy to because they wished to continue the tradition of American law, that they wanted to see it carried forward one more generation. Is that similar to what you're talking about?

Ron Yengich:

Yeah, I mean what I'm saying is this, that when I stand up in court it may be me for the defense but it's not just me. It is John O'Connell, it is my law partner Earl Xaiz and Brad Rich and Phil Hanson and Gil Athey and Jerry Kinghorn and Jon Hill and Ronald Rencher and Fran Wickstrom and a number of people - you could even go beyond it, Sumner Hatch and Judge Gould and Judge Alsap and Ronald Boyce - I really do feel that way. I feel like they are the ones that kind of put me there. I let them down sometimes, I'll have to admit that, but I really try not to because I believe that that tradition is something, if somebody watches me practice in the courtroom that they will pick that up and say, well, that's how it should be done. I hope I do that, I really, really do. That is something that is incredibly important to me and, again, I'm not perfect at it, but I really do hope that if they were to look at me and go back to where we started this, if A, Sherman Christensen looked at me he'd say 'okay'.

Ken Verdoia:

On the home stretch now, just a couple more. I think the first time I went bounding up the steps into the federal court building back in the '70s, it's changed a lot-

Ron Yengich:

Yeah.

Ken Verdoia:

The sights, the sounds-

Ron Yengich:

Yeah.

Ken Verdoia:

And especially what you'd experience when you walk through the door. So, go with me back to the '70s, and we're walking up those stairs, people think now, well, the first thing you're going to experience is the metal detector-

Ron Yengich:

Yeah.

Ken Verdoia:
Back then you didn't.

Ron Yengich:

No, you went in through a lot of different doors. You could go in and, you know, there were a number of different doors, and you would go into the courthouse. And again for me, I mean, I would generally go up to the - it would be something, I would have to go up to the US Attorney's Office, which was there. I mean Salt Lake City was a small town, it wasn't LA, it wasn't San Francisco, it wasn't even Denver at that time. So you would go in, the US Attorney's Office was there, the probation office was there - and there were three courts at that time, three district courts that you could go to. There wasn't - doors weren't locked, you could knock and go in, you could even maybe knock on the judge's door and poke your head in and see who was there. And the other thing was you would see a lot of people that might be missed by people. There was a lady named Fern who cleaned the second floor, this wonderful old crusty lady that was there all the time, but she was great and you could talk to Fern about cases, you'd go "oh yeah I've seen that before. Yeah I remember that. Well, yeah, this judge is this way or this judge is that way" and she was terrific. But then again she had been there from time immemorial, it seemed like, and it was a wonderful feeling. It was a different feeling that we lose automatically when we become a bigger city and things like that change. But it was marble, okay. The thing about the federal courts that you walk in and you get the sense of it being marble and wood and an idea that this is really a temple of justice, which is what we used to call them in England, we lawyers did. But that's really what it was and it was cool and as a young lawyer who was making my home in the federal court a lot, it was a wonderful place to go and just great people as I said. Jan Smith and her husband Jerry, who was a marshal, and Dan Dotson and so many other people. I'll miss people that I shouldn't, Judge Winder's clerk, Louise, who was such a wonderful woman, and Judge Jenkin's clerk was such a terrific woman and of course they still are, all those people are there, the problem is now they're locked behind doors that you can't get to because of security concerns.

Ken Verdoia:

Final thought, people when they talk about the new courthouse, especially the General Services Administration says about the new building, 'wait till you see this new courthouse, twenty-first century hard wired modern cutting edge absolutely ergonomically designed in every facet, you're going to love this.' What will we lose when we make that little short walk around the corner and go into a new building and turn away, closing down the district courthouses in the Moss, even though activities will remain there, what will we - what might we lose as we make that walk up the street to the new building?

Ron Yengich:

I think we'll lose a lot, and I'll tell you why. I've been in the ergonomically hermetically sealed courthouses around the country because I've practiced not only in Utah; we lose that attitude that comes with the traditional, old-fashioned courthouse that has something to be said about where the judge is placed. The, quite often the dark woods and the feeling that this is some place where great people have trod, where great judges have sat and they've done it for a long, long time. It is the difference between high church and low church, if you will, okay and that's a big difference. That is a big difference because what you get is whether - when you feel, and I truly mean this because I've been in the new courthouses, when you feel that you're walking into a courtroom where Tillman Johnson and Willis Ritter and Alvin Anderson and Sherm Christensen, and run down the list of people - Dave Winder, and on and on and on - have sat, and maybe as lawyers have argued and that other great lawyers like Phil Hanson and Jim Houseley and Ronald Rencher and Frank Wickstrom and so many other people, I think it makes a difference and I think it should make a difference and the thing is that lawyers, young lawyers should know that. They should sense that, they should feel it because I think it makes you a better lawyer and if it makes you a better lawyer it means that justice is closer to you than in some courthouse where it is hermetically sealed and you can use PowerPoint easily. Because the truth is this: good layering and justice doesn't come through gimmicks, it comes from being able to take a set of facts, to distill them and to give them to a trial of fact or someone who's going to make a decision, so that they can honestly make that decision. And all the rest of that stuff is just eye candy, because as lawyers we're always going to have to stand at a podium and argue our case and that's what makes it great.

Ken Verdoia:
How did you come to know A. Sherman Christensen?

Ron Yengich:
He was a professor that I had for seminar at the University of Utah-

Ken Verdoia:
What was the seminar?

Ron Yengich:
I knew of his name, of course, but it was a seminar about practicing law and I'll never forget his whole point was to principalize and proceduralize the practice of law and the approach to the court.

Ken Verdoia:
You made mention of the notion of high-ceilinged majesty that plays out in federal courts, did A. Sherman Christensen seem to represent that type of setting for the practice of law in the federal court system?

Ron Yengich:
Yeah, he did, and I think that he kind of imbued people that knew him with this idea that federal court was a step above, it wasn't better, I mean state court from justice courts to the supreme court all have their own majesty about them. But that the federal court was a step above in the sense that the types of cases that were done there, the issues that were dealt with, the more deliberate nature of the practice in federal court allowed for the type of attitude that would be more of a traditional professionalism for lawyers to approach.

Ken Verdoia:
Sherman Christianson, well, obviously we don't have the opportunity to sit down and talk with him, so take us back in time, take us back to the '70s when you met him as a law school student. Describe this man, the way he presented himself, the way he talked, what he was like in that seminar setting.

Ron Yengich:
He was a, he was really a very deliberate man, a man who was genteel, might even be the word, he was the type of person that commanded respect, not out of force or body presence but merely by the manner in which he spoke, and the concern and the nature of the way he approached the subject that he taught us. I really respected him and I've got to admit off the top that I didn't know, I had heard that he was kind of a distant man, that he was difficult to approach, that because he believed that there was a pure distance between judges and lawyers out of concern for the appearance of fairness, but I found during that seminar that he was a very smart man and a man who really loved the law. And as I understand it his father, I think, had been a judge in Carbon County, if I'm not mistaken, and his brother Colin was a judge in the Fourth District who I practiced in front of a great deal. They were a little bit different above their look and the way they approached things but it was clear that this was a legacy lawyer, someone who had been trained about the importance of the law in resolving disputes and in really the majesty of the law. And so when you ask about the high-ceilinged courts, to me, he reflected that. He reflected that attitude that when you come into the federal court, you're coming into, in a sense, a different legal world and that that should open you up to high-ceilinged majesty of what you're doing when you get there.

Ken Verdoia:
What did you take away? And the only reason I ask you this is because you said he was a profound influence on you as a young man studying law, what do you think in your gut was the take away that you took away from this time with Sherm Christianson?

Ron Yengich:
Well there's no doubt when I - after I started in the public defenders office or Salt Lake Legal Defenders, I spent lots of nights and early mornings, and again principalizing and proceduralizing how I would approach cases. Now, of course that was more of a - that wasn't the federal court, that was misdemeanor and felony cases that were processed sometimes quickly, but I took the time to and I've still got these things that I did at that time - standard way to approach a DUI, standard way to approach a simple felony, standard way to

approach a homicide case. And I did that throughout my career, even after I went into private practice so that I had something to rely on when I took a case, a checklist, if you will, but a procedure that I would follow. That was a profound thing for me to see, it wasn't somebody else doing it because his teaching was you've got to principalize and proceduralize how you approach things, taking into account your positive things as a lawyer and building them into how you approach a case with it. That was an important aspect of me as a young lawyer and even closing on forty years of being in the practice of law, it still has a definite impact on me.

Ken Verdoia:

You've given us a couple of observations about Judge Christensen in the courthouse, in the federal courthouse now the Moss Courthouse. One that you shared with us was consistently this notion of process and procedure and that was the notion of the conveyor belt that would bring information to and from, tell me about that.

Ron Yengich:

Yeah, it was great. I actually tried some cases in front of Judge Christensen and in his courthouse, or courtroom, excuse me, you remained at the podium. You didn't wander around when you were asking questions or you were arguing, you asked leave to approach the bench; but he made it clear he didn't like that. He did not like off the record discussions or having to have the court reporter come up to the bench. And when you put an exhibit into evidence, he had this little conveyor belt that ran along from where the clerk then sat over to the bench, and again I think it was a means of distance. It was a - it was the distance that he thought was necessary between the judge and the lawyer and the jury, and so you would give it to the bailiff who would take it up to the conveyor belt and he would put it on the conveyor belt - a piece of paper or a weapon or whatever it would be - and then the judge would hit the button and the exhibit would go slowly over to him and then it would stop and he would look at it and he would make his ruling. I look back at that on that with great humor, but also with a certain degree of love because we've lost all that now in large part here in the Twenty-first Century when everything has to be done so quickly and we've got PowerPoint this and PowerPoint that. There was a sense that this was a thoughtful process, that it wasn't just hurry up and get it done, but that it was this thoughtful process that required us to think through what we were doing. That may not have been the intention, but that certainly was the effect.

Ken Verdoia:

The physical space of the Moss Courthouse, the courtrooms themselves, you've said that one of the things you almost despair thinking about is, when you're trading this one hundred year old edifice with its established courtrooms for the new modern building that's popping up behind you. You've almost indicated that you despair for what we might lose in that process of moving away from that solid mahogany nature of a courtroom with the big ceilings.

Ron Yengich:

Tradition is important in the law, the idea that you know the high bound precedence that we look at? All done by computer now. I get that, I understand I'm a dinosaur in that regard, but those precedents are reflective of a tradition that has been built upon. That is something that is imposed from without, that it's part of the foundation of the law, and I really feel this way about courtrooms. You know the great courtrooms to argue in do have a majesty, they speak to the nature of our profession, that we are professionals, that this is in a place where, for lack of a better term, there is a liturgy that you are going through, that it is deep, that it has meaning and that it's done in a space where it is conveyed that that meaning has worth when you get up on your hind legs in the court and speak and when witnesses answer questions and when judges make rulings. And I think that that type of tradition is important for us to - again, when we walk in there we attempt to put aside a lot of the personality that is not conducive to solving problems, because we all have that - certainly I do - we all have that ability and we have the ability to bring it into a courtroom and when we bring in too much of that then we lose, I think.

Ken Verdoia:

One other aspect that you've alluded to that I've heard many times and I'm asking each person to share their own recollections - that you and I were coming on the scene just as this period of the great two lions was coming to an end. Sherman Christensen was already on senior status and then Willis Ritter passed away,

but for twenty years these two men, each with their own clear strengths, attributes and wisdom, couldn't get along with each other.

Ron Yengich:
Yeah, yeah.

Ken Verdoia:
What are your recollections of that?

Ron Yengich:
Well, I know the stories of them not riding in the same elevator anyway, and, you know, coming in at the same time, and if there was an elevator that came down, they just both wouldn't get into it. And the idea that there really was no real contact with them, between them of any personal nature and that probably is greater reflection of Ritter's personality than Judge Christensen. I mean, I would have to concede that I was never there for any of their arguments, but I think that that is sadness but it's not unknown in the law. I mean, there are people I don't get along with and people that don't get along with me. When you are going into a business or when you're going into a profession that is based upon advocacy and adversary system, a system that kind of rewards being a good advocate and even judges fall into this, then it's not unusual for people to really not like their adversaries. And I think that they really were in an adversarial situation for a number of reasons that - you know politically, a different judicial temperament, a different attitude about what was important in the law, issues over who was in charge and who wasn't in charge. And so that type of adversarial thing is not unusual in the law and I think it played out in their personal life together.

Ken Verdoia:
Judges get a lot of ink, a lot of the attention, but one thing that you have stressed to me is that there's a lot of other really important people that have made a federal court system work in Utah over the years. They've defined it by their presence and their contributions and let's start with an office, if you will, that a lot of people wouldn't understand. The magistrate and one of my longest serving people that I admire, Ronald Boyce.

Ron Yengich:
Sure, Judge Boyce was one of my mentors. He was a professor at the University of Utah College of Law, and I had more courses from him than any other professor, and although we did not share political views on the same side of the aisle I had great love for him as a professor, and he became a magistrate. He had been a commissioner, which was what magistrates were once called, early on in his legal career and he was a great and wonderful influence on a lot of us and he and people like Dan Alsap and Judge Calvin Gould, among others who were magistrates, they really were in many ways along with the people that assisted them, and I particularly think of Jan Smith who was Judge Alsap and Judge Gould's clerk for a long time. They really were the heartbeat of that courthouse because so much of what happened in the courthouse started with them and it - and then Sam Alba, a great lawyer, a great man, also being an example of it - and there are many others which I won't name them all, but they really were the heartbeat. They are what made the things work in that courthouse on a day to day basis because much of what happened came to them first and they are they are forgotten by people who don't know. But the people like myself who practice in that courthouse routinely realize that that their contribution is maybe one of the greatest contributions that has been made over a period of time in the court system in the federal courts.

Ken Verdoia:
Explain it for a layperson, what's a magistrate?

Ron Yengich:
Magistrate is a judge that does, in criminal cases, the initial appearance, sets trials, does hearings on bail release or a pre trial release - they do a lot of the motions, the important motions and then they write recommendations to the district court judge. They're the people that are the most hands-on, on even a lot of civil stuff, the initial motions that can be critical in a case and so they're the manner in which they handle them, those matters - the intelligence with which they handle them and their control of the lawyers in those

circumstances can set the tone of the case for the district court a lot of the time and as a result of that they're critical to success in the federal courts.

Ken Verdoia:

How did Boyce succeed, what about him that made him a success in that position?

Ron Yengich:

Well, I wish he were here to hear this, he knew everything. I mean he - and if he didn't know it he'd pretend that he did, I mean it was a common joke between he and I that we would argue, but he was such a well-read man, there was very little that you could bring up in a courtroom setting that he didn't know. One of the things I miss most about going to the federal court is going in back in to chambers with him and not talking about the case but just talking to him about things, talking about politics or when I was in my Civil War period about the Battle of Antietam, or I remember one day he and I arguing over whether MacArthur was right to abandon the Philippines or not. And he knew everything, and it was great to talk to him. But again that's the tradition of lawyering, which is that you are somebody that just doesn't know the law, but that you know about a lot of things that you can bring to bear as a lawyer on argument or as a judge in making decisions, and he was that way.

Ken Verdoia:

Tell me a little bit about Bernie Rhoades.

Ron Yengich:

Bernie Rhoades was the head of the federal probation department. Bernie Rhoades was Willis Ritter's right-hand man and Bernie Rhoades was, in criminal cases, the key to understanding what was right and what was wrong in the federal courts. He was born in Hannibal, Missouri; he's back there now. He was, he is indescribable. He is truly indescribable, a brilliant man, a well-read man, a man of unique compassion for the people that he and his probation office supervised. He took care of judges, he took care of lawyers, he took care of clerks, he helped the marshals. He had one of the best attitudes about life that I've ever seen, he was a gentleman in the true southern nature of what that meant and considered himself so and he was somebody that when he left his position and it was taken over by another wonderful man named Pete Hawn, people didn't - a lot of us didn't think that the federal probation office would be able to handle it because he had such an impact. For example, he made sure that Judge Ritter, who I'm told actually observed it, would drink after work and we all know that and Bernie was sometimes ordered to go along. Bernie took care of him. Bernie looked out for him and there were a lot of us that were Bernie's' protégés, where we could go to him and say - and this is a probation officer, this isn't a lawyer - 'You know I'm thinking of doing this, what do you think? Is this a good argument or a bad argument?' And Bernie would help you with that; he was great to young lawyers. He's one of the most amazing figures in my life as a lawyer and he wasn't a lawyer.

Ken Verdoia:

You mentioned that the practice of law over your professional career, we're not talking about four hundred years-

Ron Yengich:

Seems like it.

Ken Verdoia:

We're talking about forty years, has changed so dramatically from the way you studied and entered into it and to what it is now - the influences that are out there. Are those changes good, bad or indifferent and what catches your attention?

Ron Yengich:

You know when you get older, you always think that your era was better and I get that, I'm well aware that that is a fact of life. But when I started there was an attitude that the law was a profession and that was driven home to us. Ron Boyce an example of that, Lionel Frankel as my professors at the U among others.

You know this is a profession; this isn't a business. I mean I've heard that a lot. We have changed, I think that the law now is a business model; we've taken it as a business model with advertising and other things such as that. Whereas when we've done that, we lose the idea that this is a higher calling, that this really is a vocation - it isn't simply a job and I have seen a change in that. I think a lot of the older lawyers that I've talked to have seen that because we talk about that a lot. And I think that that is something that is lost, how you get back to that I don't know. I'm sure there are people that would disagree with me in that, but in going back to your point about the federal courts and the high-ceilinged majesty that is something that that kind of - we embrace that there, I hope still because it still exists there.

Ken Verdoia
Thank you.