A HISTORY OF THE UNITED STATES DISTRICT COURT FOR UTAH: A TIME OF EXPANSION WITH REPOSE 1978 through 2014

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A Legacy of Controversy

The repose of the years from 1978 to 2015 begs the question: is it just seemingly so because of the contrast with the preceding years, or has the Utah District Court been unusually free of conflict and contention? The transfer from territory to state reduced the Utah federal judiciary from three to one. The titanic struggle over authority from 1848 to 1896 subsided. There were only three judges over the span from statehood until the 1970's: John August Marshall, Tillman Johnson, and Willis Ritter. While the diminished conflict is due to many social, political and economic factors, personality of the federal judges explains much of the change. John Marshall claimed distinguished ancestry including his namesake Chief Justice. He practiced mining law before and after his judicial tenure. Tillman Johnson was the only Utah district judge to have read law to become a lawyer. Both men had reputations as stern and demanding but were supported by the bar and community. Not so with the final lone judge, Willis Ritter, who divided both the bar and the community.

During Ritter's tenure on the bench, conflict, stalemate, and notoriety swirled about the United States District Court for Utah. A colleague of many years incisively captured Judge Ritter: "...Willis Ritter was a walking civil war…both good guy and a bad guy…with an unrequited feeling for the underdog."[1] The fracas was not a local matter. National discussion erupted when CBS *60 Minutes* broadcast "USA v. Judge Ritter" on January 8, 1978, two months before Judge Ritter died.

He came to the court as a brilliant academic, respected enough to be short-listed for president of the University of Utah. He was an undoubted protector of

[1] Bruce S. Jenkins, The Federal Lawyer, March/April 2009 page 28. Also, *Lessons Learned from the Principles, Practices and Personalities of Utah's First Chief Federal Judge*, November 7, 2008, available at Tenth Circuit Historical Society, www.10thcircuithistory.org. A substantial analysis, but early, is *Thunder Over Zion: The Life of Chief Judge Willis W. Ritter* by Patricia F. Cowley and Parker M. Nielson.(Univ. of Utah Press 2007).

the powerless, particularly the Navajo and the juvenile. He did not suffer fools gladly and was tough on white collar criminals. Often the "powerful" whom Ritter called to account were the United States Attorney, the Utah Attorney General (whom he would order out of his court), or the Church of Jesus Christ of the Latter Day Saints (the Mormons) whose name would roll derisively off his tongue. Which of his internal combatants will be the historical survivor? Will the quick mind insightfully cutting to the core overshadow the jurist who was perceived by some as an abusive alcoholic?[2] It may take much longer than the nearly forty years since his judicial service ended for the dust to settle and posterity to gain a clear vision of the life of one who prompted such sharp divisions over judicial propriety versus judicial independence.

Addition of Judicial Officials

At Judge Ritter's death, four judicial figures served the district court of Utah: a senior and an active Article III judge, a bankruptcy referee, and a part-time magistrate. At the end of 2014, nineteen judicial figures had chambers and courtrooms in Salt Lake City: four active (and a vacancy pending confirmation will add one more) and six senior Article III judges, four bankruptcy judges, and five magistrate judges. Such expansion means that authority and power are dispersed. Besides expansion of judges, the legal, economic, and social contexts have changed substantially during the period of this history. There are many facets to the observable quiet tenor, and these will be identified in a brief and general way here.

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[2] Three factors converge to suggest that Judge Ritter may have been an alcoholic, but it is a likely diagnosis to remain forever tentative. Judge Jenkins's apt description of a man at war within himself is a classic description of the addicted, as epitomized in Robert Louis Stevenson's *The Strange Case of Dr. Jekyll and Mr. Hyde* (1886). The organization with the most extensive experience and a respected reputation insists that only the individual can declare himself or herself an alcoholic: "And be careful not to brand him as an alcoholic. Let him draw his own conclusion." *Alcoholics Anonymous*, 4th ed., page 92, (Alcoholics Anonymous World Services, New York, 2001). Judge Ritter's flaunting of his daily consumption of Wild Turkey; proclaiming his federal chambers immune from the restrictive liquor laws of the State of Utah; and the self-inflicted social and professional wounds associated with his drinking fit the self-diagnosis tests offered by Alcoholics Anonymous. The likely diagnosis also is drawn from the higher incidence of alcoholism amongst lawyers than amongst the general population. *See, e.g.*, Patrick Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. of Addiction Medicine 46 (Feb. 2016).

Judicial power was shared and dispersed, but still, multiple strong personalities could clash. They operated in close physical proximity. Unlike comparable and neighboring states, there is no formal division of north and south as in Nevada; there is no distribution of chambers to different communities as in other single-district states such as Idaho, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. While the single-judge district ended formally with the appointment of Sherman Christensen by President Eisenhower in 1954, division of power did not change the environment. As a practical matter, it might as well have been two separate districts. Judge Ritter, now chief judge, had little interest in sharing or coordinating with anyone concerning administration of the United States District Court of Utah.

There were separate rules of procedure; all hiring was without consultation; there was even separate swearing in of new lawyers admitted to the court. The number of the District Judges increased to three when Aldon Anderson joined the court in 1971, upon appointment by President Nixon, as Judge Christensen retired to senior status. After the death of Judge Ritter, Bruce Jenkins was appointed by President Carter in 1978. A new judgeship was created in 1979 to which David Winder was appointed by President Carter. An additional judgeship was created in 1985 to which President Reagan appointed J. Thomas Greene. David Sam succeeded to the position of Judge Anderson, as he took senior status the same year. A further judgeship for Utah was created in 1991, and President George H.W. Bush appointed Dee Benson. With retirement to senior status by Judge Jenkins, President Clinton appointed Tena Campbell in 1995. She became the first woman to be a United States District Judge in Utah.[3]

When Judge Winder retired in 1997, Dale Kimball was appointed by President Clinton. Judge Brian Ted Stewart was appointed by President Clinton when Judge Greene retired in 1999. Paul Cassell was appointed by President

[3] Judge Campbell was not the first woman judge in Utah. Reva Beck Besone served as Salt Lake City judge for twelve years from 1936 to 1948, when she was elected to Congress. Justice Christine Durham was appointed to the Utah Supreme Court from the state district court in 1982, later serving as Chief Justice. A number of other women were appointed to the Utah Courts of Appeal, district courts and juvenile courts before Judge Campbell was seated on the United States District Court for Utah. Also, women served as federal Article I judicial officers in other Utah federal courts. Judge Judith Boulden served as bankruptcy judge and Judge Brooke Wells served as magistrate judge.

George W. Bush in 2002, but resigned in 2008 to return to law teaching. Clark Waddoups was appointed by President Bush to the vacancy. Judge Robert Shelby was appointed by President Obama in 2012, as Judge Campbell chose senior status. Judge David Nuffer was appointed in 2012 by President Obama when Judge Kimball retired. Judge Jill Parish became the second woman on Utah's Federal District Court bench when she was appointed by President Obama in 2015, as Judge Benson retired. The bench of the United States District Court for Utah now reached five active (with a pending nomination) and six senior judges, each of whom carried an active caseload and a daily schedule.

Each of these judges brought distinctive personal, educational, and professional experience to Utah's federal bench. Judge Sam, for example, is probably the only federal judge -- or, perhaps, state, too -- with an active beehive in his chambers. Judge Benson chose an alternative career because his career as a professional soccer player did not pan out. Judge Greene demanded that his courtroom ceiling be painted in the flag's red, white, and blue. More important than idiosyncrasy was their shared experience. Most were graduates of the state's law schools. All had some years of private practice which, in the centralized legal community around Salt Lake City, meant at least nodding acquaintance. In the words of Judge Winder, "I know how it can get out there."

Judge Benson and Judge Stewart served as assistants to Senator Orrin Hatch. Judge Anderson and Judge Winder served as Salt Lake County Attorneys and as state judges in Salt Lake County, although not contemporaneously. Judge Benson and Judge Campbell served as Assistant United States attorneys together, as did Judge Winder at an earlier time. Judge Kimball and Judge Waddoups were partners in the same law firm. Perhaps Judge Jenkins is the best example of how the Utah legal community is so interconnected. He was a student of Professor Willis Ritter at the University of Utah law school; later he was appointed as the bankruptcy judge by then Judge Willis Ritter; and he succeeded Judge Ritter on the Federal District Court after Ritter's death, receiving Ritter's caseload.

Aldon Anderson was perhaps the personification of the Quiet Man.[4] He

[4] The 1952 Republic Pictures film which won an academy award for director John Ford. John Wayne, in the title role, is a man who is slow to anger despite his prowess as a boxing title contender. The movie was based upon a short story by Irish novelist Maurice Walsh appearing in the Saturday Evening Post February 11, 1933, and in The Quiet Man and Other Stories (Appletree Press 1992).

confided to Judge Ronald Boyce how humbled he felt by his responsibility. His reputation for quiet demeanor and deferential ways was everywhere except on the handball court where he was nationally ranked. He succeeded Sherman Christensen and therefore served for the last years of Chief Judge Willis Ritter. Judge Anderson commanded his clerks to treat Judge Ritter with the utmost respect and courtesy despite some trying events such as being denied access to the Xerox machine and barred from entering the courthouse on weekends at the instruction of Judge Ritter.

Judge Anderson's frugality was folklore, including arranging to stay at Motel 6 for circuit assignments which then required advance cash payment as part of its low-overhead policy. Even on long trials, he shared a room with his law clerk, alternating each night as to who would lead in prayer for divine guidance in doing justice the next day in court. Judge Anderson served the (then) northern division in Ogden, traveling at least monthly, but more as the occasion demanded. An alert to his waiting wife when court ran late meant a collect call so as not to put the long distance call on the government's tab.

Judge Anderson carried the burdens of federal judicial office with grace, his staff remembering the nightly packed briefcase for work at home until midnight or later. He ruled that the First Amendment forbade the seizure of adult materials, and the claimed contraband had to be returned to an Ogden store. *Eagle Books, Inc. v. Ritchie*, 455 F. Supp. 64 (D. Utah 1978). Outrage in the press and in telephone calls and letters must have distressed a man with Judge Anderson's standing in his church, but he said nothing and let his decision stand by itself. His expectation for lawyerly performance is expressed by his co-founding of the American Inns of Court, a national movement for professional development by bringing judges, seasoned and neophyte lawyers, and law students together for dinner and advocacy exercises. His expectations were delivered in quiet style in the courtroom. "Do you have a copy of the Federal Rules of Civil Procedure in your office?" was a strong admonition to a procedurally errant lawyer. "If I seem sleepy, it is because I was up late reading your 70-page memorandum," sent the message to the prolix advocate.

"Decent Dave" is the moniker assigned by those who dealt with Judge Winder in federal court or, preceding his appointment by President Carter in 1979, as judge of the Utah Third District Court in 1977, as Salt Lake County attorney in 1965, and as Assistant United States attorney in 1963. The slang was not meant to be demeaning, but recognized a casual and outgoing manner which brought a like response by people in the street or even the restaurant washroom. It meant heading to his closet at

home nearby the courthouse to give his own pants or his wife's dress to the accused appearing in a prison jumpsuit. A cub reporter, later a lawyer, interviewed Judge Winder and was struck by two things: the copy of the Norman Rockwell painting, *The Problem We All Live With;* and the fact that the interviewee -- a federal judge -- listened to the interviewer -- a cub reporter.[5]

The attribute most ascribed to Judge Winder by lawyers was judicial craftsman. In speaking to young lawyers, he stressed that claims of fact must be accurate, that citations must be precise, and that the lawyer's word must be trusted. The craft of judging mattered deeply to him; some complained that he was fanatic about it. Judge Winder was also as concerned that the craft of judging was seen to be done as well as in fact done. The repeated observation was that a litigant or lawyer leaving his courtroom felt respected, listened to, and treated fairly. He might withhold a decision which he reached on the bench lest the litigants feel that his speed diminished the care and respect given to their cause.

Judicial craftsmanship was not lightly achieved. One law clerk despaired that he tried to impress Judge Winder by arriving bright and early at 8:00 a.m., only to find his judge there already. The law clerk tried again at 7:30 a.m. and 7:00 a.m. and still found Judge Winder there in chambers. Finally, he arrived at 6:00 a.m. only to find Judge Winder already there, at which point he gave up. The pattern of arriving at work closer to 4:30 a.m. supposedly became habit, developed from the prominent Winder Dairy where he worked growing up. Calling court into session at 8:00 a.m. probably seemed late into the workday to Judge Winder, but not to the lawyers who complained about this schedule.

A Quality Bench

The reputation of each judge as a listener with an even temperament and accepting courtroom demeanor is a key factor in the repose that defines the court during this period. After a contentious hearing in an appeal from a decision of the bankruptcy court by a pro se litigant, the courtroom bailiff apologized to Judge Jenkins for failing to step in as the angry advocate lacked respect for the federal court. Judge Jenkins assured the bailiff that he was confident of his control, and

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[5] Norman Rockwell, *The Problem We All Live With*, oil on canvas, (1963), Norman Rockwell Museum, Stockbridge, MA; *Look Magazine*, January 14, 1964. The painting was prompted by a photograph of Ruby Bridges, age 6, walking to integrate the William Frantz Public School in New Orleans, November, 1960, while flanked by United States Marshalls.

that it was crucial that each party and counsel exit the courtroom certain that his or her view was heard. Variants of the same theme are echoed in the comments of law clerks and lawyer evaluations for each judge without exception. Respecting the advocate's role in the American adversarial process undoubtedly explains the reciprocal respect which reporting lawyers uniformly accord the judicial temperament for each judge. Judge Winder's comment, "I know how it can get out there, " would apply across the bench since literally every judge had some experience as a private practitioner; Judge Greene , Judge Kimball, and Judge Waddoups had nearly a century of experience as lawyers in private practice amongst them.

To compare intellectual capacity or scholarly output of these jurists would be absurd. Every law clerk reports that his or her judge is "brilliant" or "amazingly bright" which may be true but requires some discount for lawyers fresh from school. Among seasoned lawyers, some complain that Judge Jenkins is "too bright," perhaps awed by his pontifical pose with fingers touching, eyes to the ceiling, while reciting for the record lengthy findings in a complex case.

The scholarly output of a federal judge is sometimes measured by published opinions which form the jurisprudence of the District Courts and add to the mosaic of federal law. Tallying the total volumes for each judge may be misleading, it being a factor of length of service and character of cases which are randomly assigned. West, Lexis, and other reporting services are known to be generous in choosing opinions to publish. All judicial biographies are dripping with various honors. However, Judge Jenkins probably has the most academic recognition, including Order of the Coif membership, a Phi Beta Kappa key, and the Bruce R. Jenkins Jurist-in-Resident Program at the University of San Diego School of Law. Judge Jenkins has authored the longest list of published articles in addition to his judicial opinions including *Allen v. United States*, 588 F.Supp. 247 (D.UT 1984), *rev'd* 816 F.2d 1417 (10th Cir. 1987), *cert. denied* 484 U.S. 1004 (1988), which is an opus running 225 pages in the Federal Supplement.

Most of the judges have been associated with university or law school teaching, Judge Benson and Judge Jenkins having taught most extensively. Judge Cassell was the only member of the court to have been appointed to the court from a law school professorship since Judge Ritter was appointed in 1949. Judge Benson regularly teaches an evidence course to law students, and has co-authored *MANGRUM AND BENSON ON UTAH EVIDENCE* (West. 2004). It would be a cavalier or unobservant lawyer who failed to consult the evidence text co-authored by

Judge Benson.

Magistrate Judge Ronald Boyce, a full-time professor at the University of Utah law school while a part-time magistrate judge, was considered by virtually all of the district judges as the scholar with the most complete and encyclopedic knowledge of the law. Several of the district judges instructed their clerks that it was more efficient to run upstairs and see if Judge Boyce was in than to run a quick Westlaw or Lexis search. If a citation were needed on some point, Judge Boyce would almost always have the reference at recall. Indeed, as observed after his death, his library filled his law school and courthouse offices and his home as well, including the bathtub and dishwasher. Once catalogued and donated, the 22,000 volumes filled many stacks at the law library. The library in the new courthouse is the Ronald Boyce Law Library. Magistrate Judge Ron Boyce is the only other judicial officer of the court to be honored with a professorial chair named after him. It is another illustration of the interconnected character of Utah that Judge Paul Cassell assumed that chair after his resignation from the court and return to law teaching.

Workload

The sharing of judicial power through expansion of the federal bench in the District of Utah was not driven by the expanding caseload or changing demographics in Utah. Trials in recent years have been on the decline. This is true nationally, not just in the Utah district. It is true of state courts as well as federal courts. It is true despite exponential growth of law and lawyering during the same period. The filings in the Utah District Court in 1978 totaled 658; an exceptional 2814 in 1985; 1544 in 1995; and 1723 in 2000. Generally, fewer than 800 criminal cases and 1500 civil cases were pending in the District of Utah up to the end of 2014. Management statistics kept on active – not senior – Article III judges reflect in the neighborhood of twenty completed trials each year.

The rise in criminal cases persuaded the judges to implement a federal public defender program in December, 1999. Utah's Federal District Court was the last in the Tenth Circuit to do so. It finally stepped away from the procedure established by Judge Ritter before *Gideon v. Wainwright*, 372 U.S. 335 (1963), which imposed the Sixth Amendment right to counsel upon the states. Judge Ritter appointed counsel as a professional obligation and without expectation of remuneration. Before becoming a judge, David Winder relates cutting short a family holiday at Disneyland because

he received such an appointment, and knew that he must promptly respond or the U.S. Marshall would come looking for him.

A change in judicial activity, away from lengthy jury trials, is the observation of all of the judges. The expansion of the court seems anomalous against the decline of the judge as renderer of decisions at trial. However, there are too many aspects to adjudication to make surface judgments about the work of the district court judges. [6]

There are other factors at work supporting a decline in jury trials in criminal

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[6] There has been substantial decline in trials measured by dockets, trials per capita, and subject matter of litigation. *See, e.g.,* Patricia W. Hatamyar Moore, *The Civil Caseload of the Federal District Courts*, 2015 U. ILL. L. REV. 1177 (filings dispute claimed litigation explosion); Marc Galanter and Angela M. Frozena, *A Grin without a Cat: The Continuing Decline & Displacement of Trials in American Courts*, DAEDALUS, Vol. 143 No. 3 (Summer 2014) pp. 115 – 128 (decline in trials against rise in legal activity and lawyering raises normative questions about the nature of judging); Herbert M. Kritzer, *The Trials and Tribulations of Counting "Trials",* 62 DE PAUL L. REV. 415 (2013) (while there is no doubt as to the decline in trials, variables arise over the definition of what constitutes a trial) ; Marc Galanter, *The Hundred-Year Decline of Trials and the Thirty Years War,* 57 STAN. L. REV. 1255 (2005) (rise in lawyer populations, regulation, legal materials, expenditures juxtaposed against decline in trials which still command popular focus); Peter L. Murray, *The Disappearing Massachusetts Civil Jury Trial*, 89 MASS. L. REV. 51 (2004) (data from 1925 to 2000 demonstrates decline from 11% to 2% of cases that actually try, from 27 trials per judge to 2 per judge); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, *1* J. OF EMPIRICAL LEGAL STUDIES 459 (2004) (data shows 60 per cent decline in trials between mid-1980's and 2002).

During the period of this history the role of the trial judge has changed, marked especially by the Federal Rules of Civil Procedure and emphasis upon the administrative responsibilities of the judge for efficient and expeditious case management: *See: e.g.*, Steven S. Gensler, *Judicial Case Management: Caught in the Crossfire*, 60 DUKE L. J. 669 (2010) (conference poses policy questions regarding role of the Article III judge, single rules paradigm for all cases, and the scope of judicial discretion); and Judith Resnik, "*Managerial Judges*", 96 HARV. L. REV. 374 (1982) (discovery controls, settlement emphasis, and other case management strategies beg question as to input to the policy choices).

Decline in trials is not indicative of a decline in conflicts or disputes. Adjudication of disputes by federal officers involving subjects such as social security, immigration, veterans affairs, tax, patent and bankruptcy is many fold that of the Federal District Courts. For example, the administrative law judge hearing social security disputes will average an annual caseload one hundred times that of a district judge. In the private sector, technology has assumed adjudicatory tasks such as Ebay Dispute Resolution and Allstate Colossus which might otherwise appear in state or federal court dockets.

filings. Status offenses such as possession of a weapon by a restricted person and immigration offenses such as return to the U.S. by a deported person lend themselves to summary disposition.

The character and the population of the State of Utah has undergone substantial change. None of these shifts would explain the expansion of the federal judiciary in Utah. Utah is consistently one of the fastest growing states. The 1980 census was 1,461,037; the 1990 census was 1,722,850; the 2010 census was 2,763, 885; and 2,942,902 is the estimate at the close of this history. With the rise in population the workforce remained heavily in public employment. There was a shift away from jobs in extractive coal, copper, and other minerals as markets changed. Military installations at Hill Air Force Base in Ogden and the adjacent Ogden Defense Depot were the largest federal installations. The Dugway Proving ground and the chemical weapons depository, combined with the adjacent weapons testing range, did not employ substantial numbers, but did occupy large chunks of the state between Salt Lake City and the Nevada border.

State public employment was dominated by education. In addition to the public elementary and high schools, there were three state universities at the beginning and five at the close of the period of this history. The character of private employment changed dramatically. The extractive copper and coal mining industries reduced employment as markets dwindled and technology increased. The Geneva Steel Company, which began as part of the strategic spread of basic industries essential to the war effort, closed through bankruptcy. The Browning Firearms Company, which originated in Ogden, remained as a subsidiary of an international Belgian conglomerate in a much reduced fashion. The Remington plant, which was added to Utah as part of the strategic distribution of arms during World War II, disappeared. Technology, particularly in software, has mushroomed between Salt Lake City and Provo.

Other national developments have influenced the work of the Utah Federal District Judges. For example, the creation of the Foreign Intelligence Surveillance Court in 1978 brought a different dimension to the work of Judge Benson as one of the appointed members of the court. He is the only judge from the Utah district to serve on that court. [7]

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[7] Congress established the Foreign Intelligence Surveillance Court in 1978, 50 U.S.C.A. . § 1803, as part of the Foreign Intelligence Surveillance Act, Pub L.95-511, 92 Stat. 1783. The court reviews warrants drafted by the National Security Agency General Counsel's Office, and certified by the Attorney General. Surveillance subjects are either a "foreign power" or "the

Another source of change is The Civil Justice Reform Act of 1990, 28 U.S.C.A. §§ 471-482. It added only one more judge to Utah, but profoundly affected the way in which all federal judges do and account for their work. [8] In the Fifth Circuit two judges tried to get Congress to recognize the consequence of its actions on the federal courts. [9] Chief Judge John R. Brown of the Fifth Circuit Court of Appeals pointed to recent legislation that illustrated 41 ways in which the jurisdiction of the court was increased. Chief Judge Charles Clark, also of the Fifth Circuit, testified to the Senate in 1984 that 316 statutes increased the jurisdiction of the federal courts over the preceding fifteen years.

Expansion of the Federal District Court in Utah while retaining the appearance of cooperation and consensus is due, in part, to the selection process of nominees. The last rancorous or deeply divided nomination was that of Judge Ritter. Judicial appointments have not reflected sectional divisions or local clamor. Cohesion within the selection process may have resulted from the powerful influence of Senator Orrin Hatch, who became a senator in 1977, and held a key position -- sometimes as chair -- on the Senate Judiciary Committee. No appointment, regardless of party, has been made without some discussion with Senator Hatch.

The judges share common experience to a significant decree. Judge David

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agent of a foreign power" or a citizen or resident alien who may be involved in the commission of a crime. The court membership was expanded from seven to eleven by the USA Patriot Act of 2001, Pub. L 107-56, 115 Stat. 272 (October 26, 2001). The judges of this court are appointed by the Chief Justice of the U.S. Supreme Court for non-renewable seven year terms, three of whom must be sitting near to the D.C. home of the court. A Foreign Intelligence Surveillance Court of Review may review, at the government's request, the decisions of the Foreign Intelligence Surveillance Court. The review court judges are three circuit judges appointed by the Chief Justice.

[8] Some viewed the impact upon the federal courts as revolutionary while some saw the impact as nettlesome paper shuffling. *Symposium, Reinventing Civil Litigation: Evaluating Proposals for Change*, 59 BROOKLYN L. REV. 655 (1993); Edward D. Cavanagh, *The Civil Justice Reform Act of 1990 and the 1993 Amendments to the Federal Rules of Civil Procedure: Can systematic Ills Affecting the Federal Courts be Remedied by Local Rules?,* 67 ST. JOHN'S L. REV. 721 (1993); and Jeffrey J. Peck, *"Users United:" The Civil Justice Reform Act of 1990*, 54 LAW AND CONTEMP. PROBS. 105 (1991).

[9] Deborah J. Barrow and Thomas G. Walker, A COURT DIVIDED. THE FIFTH CIRCUIT COURT OF APPEALS AND THE POLITICS OF JUDICIAL REFORM. 247 (Yale Univ. Press 1988).

Sam was a state district court judge in the eastern part of the state, seated in Vernal. Judge Sherman Christensen's pre-judicial practice was in Provo, a mere 30 miles from Salt Lake City. All of the other federal judges are identified with Salt Lake City during the decades prior to their judicial appointment. The court sits only in Salt Lake City. Formerly there was a court in Ogden, but the court building was sold in 2005. A bankruptcy judge does appear in Ogden at the James Hansen Federal Building. St. George is the state's southernmost city, and a courtroom is leased from the Utah state courthouse for occasional use.

Many cities distant from the Salt Lake City courthouse, such as Cedar City, Delta, Logan, Monticello, Price, and Richfield to name a few, have no regular visits from the federal court. Such distance seems at odds with the patterns established in the eighteenth and nineteenth centuries that courts should sit close to the population generally measured by a day's ride. However, Utah is a thinly- populated state. It is ranked 12th in size, but 31st in population. This contrasts, for example, with New Jersey, another single federal district state, which is first in population density, and has judges in Camden, Newark, and Trenton; or Nevada, a state similar to Utah in density, with judges in Las Vegas and Reno. Ninety percent of the Utah population is concentrated in a narrow corridor of Provo-Salt Lake -Ogden with other communities broadly scattered. This population is largely homogenous reflecting the historic development of the state as the refuge for the Mormons and small minority populations.

The Article III United States District Judges are the subject of this history. Their work is fundamentally shaped by other federal judicial personnel, the magistrate and bankruptcy judges. The magistrate judge position dates from 1968, through The Federal Magistrates Act of 1968, Pub. L. No. 90-578, Title I,§ 101, 82 Stat. 1112, 28 U.S.C.A. *§* 631. Substantial expansion of the magistrate judges' role came about with The Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (December 1,1990).[10] Magistrate Judges are appointed

[10] Local Rules, DUCivR 72-1 through 72-3 delegate extensive civil and criminal authority to the magistrate judges in the Utah district. The local rules respond to the planned expansion of the magistrate judge as an adjunct judicial officer to the Article III judge. Hon. Anthony J. Battaglia, *Sex, Lies & Magistrate Judges*, 54 THE FEDERAL LAWYER 48 (June 2007) (misconceptions about the magistrate judge as limited judicial figure abound) ; Tim A. Baker, *The Expanding Role of Magistrate Judges in the Federal Courts*, 39 VALPARAISO L. REV. 661-692 (2005) (Describes changes in the authority of the magistrate judge) ; Leslie G. Foschio, *A History of the Development of the Office of United States Commissioner and Magistrate Judge System*, 1999 FEDERAL CTS. L. REV. 4 (1999) (evolution of the role from commissioner

by the district court for eight-year terms for full time judges and four-year terms for part time judges. They exercise delegated authority which, at the choice of the Utah district judges, is as extensive as possible. During the time of Judge Anderson, the magistrate judge heard only criminal arraignments, and no discovery disputes or trials.

In 2014, case management of discovery and pre-trial matters for the district court is largely the work of the magistrate judges. Also magistrate judges hold trial and enter judgment in civil cases with the parties' consent, and conduct virtually all federal misdemeanor trials. In part, the magistrate judges are adjuncts to the district court in the management of civil and criminal cases. In part, the magistrate judges are separate federal courts rendering decisions in civil and criminal cases that would otherwise add to the burden on the district judges. And, in part, the magistrate judges flexibly facilitate developments in the federal judicial process. An example of flexibility in the judicial process is the diversion court of Magistrate Judge Brooke Wells which creatively responds to the mentally ill confronting jail for crimes committed.

Three full-time and one senior United States Bankruptcy Judges sit in Utah as a statutory unit of the United States District Court. 28 U.S.C.A. § 151. These judges are appointed by the Tenth Circuit Court of Appeals for fourteen-year terms. At the beginning of the period covered by this history, Judge Bruce Jenkins was a bankruptcy referee, later designated United States Bankruptcy Judge. He succeeded Judge Ritter on the District Court bench in 1978, just as

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to adjunct judicial officer); Philip M. Pro and Thomas C. Hnatowski, *Measured Progress: The Evolution and Administration of the Federal Magistrate Judges System*, 44 AMERICAN UNIV L. REV. 1503 (1995) (legislative history and plan of the Judicial Conference to expand the magistrate authority); and Brendan Linehan Shannon, *Note: The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer*, 33 WM. & MARY L. REV. 253 (1991-1992) (expanded authority of the magistrate judge requires re-thinking of Article III boundaries).

The Supreme Court has recently addressed the boundaries between the judicial power of the Article III court and the non-Article III bankruptcy court. *Executive Benefits Ins. Agency v. Arkison*, 134 S.Ct. 2165 (2014), sustained non-Article III judicial decisions rendered as recommended findings to be upheld even if *de novo* review by the Article III district court did not receive new evidence. *Wellness International Network, Ltd. v. Sharif,* 135 S.Ct. 1932 (2015), sustained the final adjudication by the non-Article III court if consent to that court was knowingly and voluntarily given.

the bankruptcy court and bankruptcy process was fundamentally changed by the 1978 Bankruptcy Reform Act.[11]

Throughout our history, the United States District Court has acted as a court of bankruptcy as well as a court of admiralty along with general jurisdiction designated by Congress. It continues as the court of bankruptcy with original jurisdiction over all bankruptcy matters as directed by 28 U.S.C.A. § 1334. However, 28 U.S.C.A. § 157 permits the district court to delegate to the bankruptcy judges all of the cases and proceedings in bankruptcy. Literally every district court in the United States has exercised this power to delegate so that, functionally, the bankruptcy judge presides over the United States Bankruptcy Court. The history of the bankruptcy court in Utah is detailed in Hon. Judith A. Boulden and Kenneth L. Cannon II, *Utah Bankruptcy Practice in the Early Era 1898-1949 and Utah Bankruptcy Court Practice in the Modern Era. 1950 – 2015*, available at http://www.10thcircuithistory.org/court-history-1992-present/.

The United States Bankruptcy Court of Utah has played a distinctive national role in the development of the law in many respects. The new law in 1978 cried out for guidance. Bankruptcy Judge Ralph Mabey and Bankruptcy Judge Glen Clark rendered a series of opinions that read like law review articles, bringing national attention to the Utah Bankruptcy Court and shaping the jurisprudence of the field. An example is *Dewsnup v. Timm* , 502 U.S. 410 (1992), which upholds Judge Clark's decision reported in *In re Dewsnup*, 87 B.R. 676 (Bankr. D. Utah 1988).

In *Dewsnup*, Judge Clark confronted a fundamental problem of balance between the struggling mortgagee-debtor and the secured lender when land values plummet. A Utah debtor sought to cash out the secured lender at the lowered values for his farmland during the farm crises of the 1980's. The effect would be to give the debtor the benefit of any future rise in land values. A literal reading of one statutory section would have permitted this, but at the cost of eviscerating the distinction between liquidation in chapter 7 and reorganizations

[11] Pub. L. No. 95-598, 92 Stat. 2549- 688 (November 6, 1978) codified in 11 U.S.C. §§ 101 et. seq. Major revisions include the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-333, 98 Stat. 353 (July 10,1984) and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005). The evolution of the bankruptcy court is explained in Richard I. Aaron, BANKRUPTCY LAW FUNDAMENTALS, *Chapter 1, Overview* (Thomson-Reuters 2015).

of individuals in chapter 13 or businesses in chapter 11. Judge Greene, in affirming the decision on appeal to the District Court, deferred to the analysis of Judge Clark in this specialized and technical legal area. The Supreme Court altered the rationale in affirming, provoking Justice Scalia, with Justice Souter, to scold the majority for bowdlerizing a natural reading of what Congress said to what the majority thinks it should have said. Despite the controversy, the policy of Judge Clark was upheld in *Bank of America, N.A. v Caulkett*, 135 S.Ct. 1995 (2015).

A final component of the work of the District Court is the alternative dispute resolution program for which Utah was a pilot district at the inception of the national program in 1989. [12] The establishment of ADR in the federal judicial system was another component of the sweeping changes brought by the Civil Justice Reform Act of 1990.[13] The program is based upon consent of the parties with the possibility of trial later, with the judge knowing only that the ADR effort was not dispositive.

Facilities

All of these judicial officers are housed in Salt Lake City. The original situs is a 1905 neo-classical edifice at the southern edge of the city center, built at a cost of $500,000. In 1978, the building was a mixed-use federal building, primarily the main post office and federal courts building. By 1990, the post office moved, and the courthouse was named for Senator Frank E. Moss. A few postal boxes remain at the southeast corner as a reminder of the past. There are also some ghosts such as the twenty-six postal workers whom Judge Willis Ritter had arrested and threatened with contempt in his courtroom for using the noisy elevators while court was in session.

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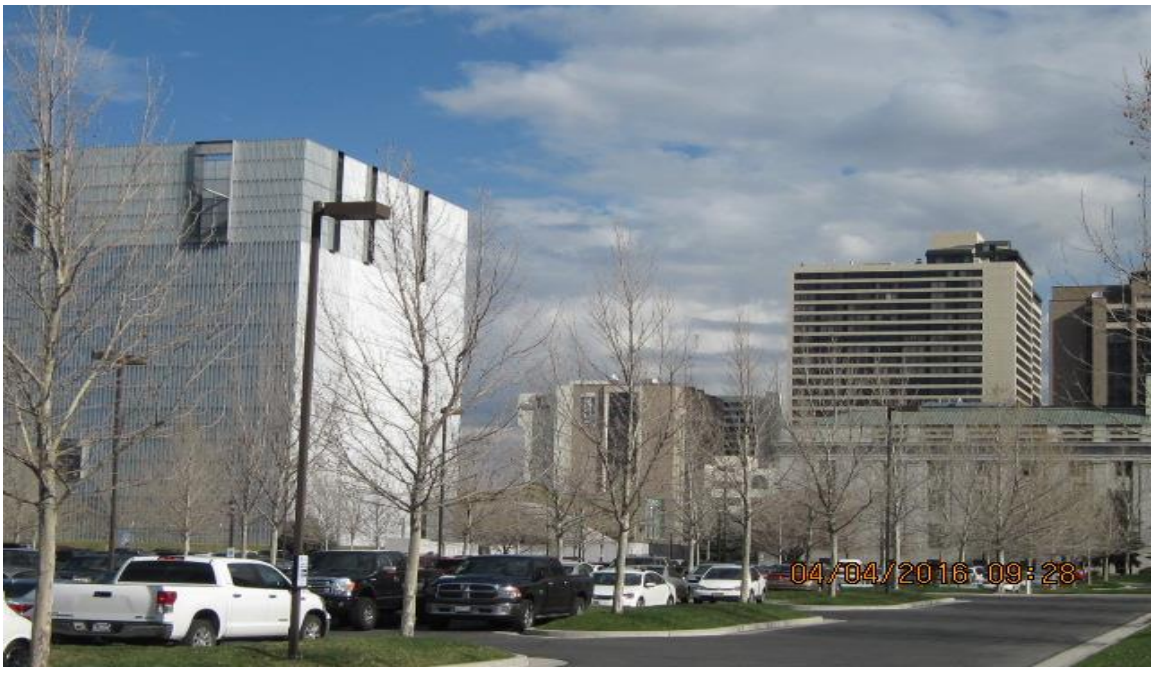
[12] Local Rules, DUCivR 16-2 outlines the ADR program. James R. Holbrook, *The Effects of Alternative Dispute Resolution on Access to Justice in Utah*, 2006 UTAH L REV. 1017, 1026-1027 (explaining the program). *See also*, James R. Holbrook and Laura Gray, *Court-annexed Alternative Dispute Resolution*, 21 J. OF CONTEMP. L. 4 (1995).

[13] 28 U.S.C.A. §§ 471-482. Carl Tobias, *Civil Justice Reform and Balkanization of Federal Civil Procedure*. 24 ARIZ. ST. L. J. 1393 (1992).

Frank E. Moss Courthouse



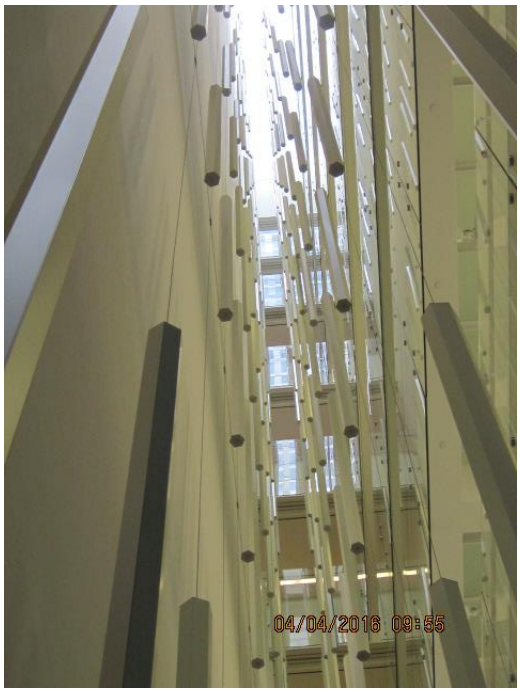
United States Courthouse of the Utah District Court

A new United States Courthouse of the Utah District Court, derisively called the Borg Cube by some critics, opened in 2014, under budget at $181 million. The all glass exterior reflects the surrounding mountains. There are some new features such as a bicycle room and judicial robbing rooms. The courthouse is set back from the streets of West Temple and 400 South. Parking for judges and delivery of prisoners is underground with access through a manned control. The design has three separate systems for traffic flow: one for the public, one for the judges, and one for prisoners. The judges and their staffs are behind doors with public access limited to a single public entrance through metal detectors. Once inside the building, courtrooms have public access. Judges have a separate elevator system. Prisoners are routed through a third system. Images are available at http://cityhomecollective.com/place-worship-u-s-courthouse-utah-district/ and http://www.archdaily.com/588373/united-states-courthouse-salt-lake-city-thomas-phifer-and-partners

Clearing of the space to the west of the Frank Moss Courthouse required the condemnation of a local watering hole, the *Port O'Call*. The lifting, rotation, and movement of a multi-story building, the historic Odd Fellows Hall, is recorded on www.YouTube.com. The bankruptcy court remains in the Frank Moss Courthouse with tunnel access between the new and old buildings. The bankruptcy court has no criminal jurisdiction so the security concerns driving the new building were lessened.

The Clerk of the District Court has a reception area and counter, but occasions to visit the Clerk are few. Case filing, management of the docket, and arrangement of hearings are completed without having to leave one's office through the CM/ECF electronic filing system. Some hearings, especially in the St. George courtroom, involve online communication. Research into cases and rulings is through the court website or the national PACER system. Behind the counter are specialists in finance, budgeting and, of course, information technology.

At the center of the ten story atrium is a sculpture by James Carpenter of 342 aluminum rods, mirrored at the top to direct sunlight to imitate ice crystals.



Carpenter sculpture at the U.S. District Courthouse, Salt Lake City

Inside the interior granite walls of the new Utah Federal District Courthouse, the judges enjoy what has universally been described as cordial and cooperative relationships. This is in somewhat stark contrast to the working relationships of the federal judges in Utah during the Ritter era. The collegiality of Utah's current federal bench is illustrated by the fact that the District's annual retreat in recent years has included magistrate and bankruptcy judges, as well as district judges, a union not universally celebrated in other federal districts across the land.

Cases of Note

The surrounding mountains, the distance from major population centers such as Denver and San Francisco, and the homogenous population do not isolate Utah from outside forces that on occasion bring notoriety to the Utah District Court. One example is the conviction under 18 U.S.C.§245(b) of John Paul Franklin for violating the civil rights of two men in August of 1980. Franklin was an avowed white supremacist, Ku Klux Klansman, and American Nazi party member who attacked African-American and other victims around the United States. Franklin's killing career ended after targeting Ted Fields and David Martin III, jogging with two white women in Liberty Park, a "Central Park" in Salt Lake City. Franklin

used a sniper rifle from behind his Chevy Camero to kill the two men. He was apprehended, tried before Judge Bruce Jenkins, convicted, and sentenced to two consecutive life terms. The conviction and sentence were affirmed on appeal. *United States v. Joseph Paul Franklin*, 704 F.2d 1183(10th Cir. 1983).

Franklin reviled presiding Judge Jenkins as a communist agent. During his trial Franklin leaped upon the African-American Justice Department counsel, Richard Robel, sitting at the prosecution's table and attempted to choke him to death before being subdued by marshals.[14]

Later in other venues, Franklin was found not guilty of attempting to kill Vernon Jordan, president of the National Urban League, in Indiana in May of 1980. He subsequently admitted to the shooting. He also admitted to his assault upon Larry Flynt, publisher of *Hustler* magazine, leaving Flynt paralyzed. Shortly after his federal civil rights conviction, Franklin was convicted in Utah state court for the murders of Fields and Martin, and then tried and sentenced to death for murders in Missouri.

A less visible intrusion into Utah was the radioactive cloud. The B-29 crews who dropped atomic bombs upon Hiroshima and Nagasaki trained at the Wendover Air Force Base on the Utah and Nevada border. This began the nuclear age. At the other end of the state, the Nevada nuclear testing center is south and west of Utah's "Dixie," where the lower elevation and southern border with Arizona promote an expanding population away from snow. It is also downwind from the prevailing winds. The Atomic Energy Commission and Department of Defense officials who designed and conducted nuclear tests were accused of indifference to the Utahns in Dixie as cancers appeared and animals died. The story is told in a history by Professor Howard Ball, JUSTICE DOWNWIND: AMERICA'S ATOMIC TESTING PROGRAM IN THE 1950'S. (Oxford Univ. Press 1986). The findings on the Federal Tort Claims Act are told in a work of comparable size, the opinion by Judge Bruce Jenkins in *Allen v. United States*, 588 F.Supp. 247 (D.Utah 1984), *rev'd* 816 F.2d 1417 (10th Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988).

The political and social issues surrounding nuclear weapons are important

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[14] The next time violence occurred during trial in Utah's Federal District Court was some 34 years later in 2014, within days of the opening of the new courthouse. A shooting in the courtroom of Judge Tena Campbell forced a mistrial. Associated Press, http://nypost.com/2014/04/21/1-injured-in-salt-lake-city-courthouse-shooting/ .

questions. The legal issues are as vital, but less visible. For example, what is the responsibility of the sovereign for acts relating to nuclear testing which incidentally harm its citizens? The Tenth Circuit decided the policy question of sovereign immunity by holding that such official actions were discretionary functions excepted from tort liability despite congressional directives about public health and safety. The trial court's factual findings that nine of the claimants were victims of radioactive fallout were not disturbed. Neither was Judge Jenkins' analysis of administrative responsibility which was embraced as a model in the leading administrative law treatise.[15]

Salt Lake City was the venue for the 2002 Winter Olympics. This international extravaganza is a prize for which there is worldwide competition. The awards go quite beyond the medals and bouquets bestowed upon athletes. One reward was the political boost to Mitt Romney, former governor of Massachusetts and future presidential aspirant, who reputedly rescued the games from economic collapse. Less public are the economic rewards spread amongst those who administer the games and supply the needs of the athletes, support staff, and near million spectators. That the games were successful was captured in the comment, intended as a compliment circulating at the time, that the Mormons ran the games as well as the Germans in 1936!

The quest for hosting an Olympiad involves many years of effort and lavishing gifts upon those in the Olympic hierarchy who award the bid to an aspiring city. Tom Welch and Dave Johnson of the Salt Lake Bid Committee learned the art of gift-giving while observing the successful bidders for the 1998 Nagano games. Prior to that time, promotion of Utah largely consisted of passing out cowboy hats and honey. After Salt Lake City was successful, and the Bid Committee became the Salt Lake Organizing Committee, the Department of Justice investigated Salt Lake City's bid solicitation process.

Tuition for American college for the children of foreign Olympic bid voters, medical care for family, jewelry and lavish travel were some of the expenses, all totaling about a million dollars. All were incurred in seeking good relations amongst the Olympic dignitaries casting ballots for the favored city. Tom Welch

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[15] Kenneth Culp Davis, ADMINISTRATIVE LAW IN THE EIGHTIES. § 27: 12-l, (1989): ("Our conclusion, strongly supported, is that in future law the discretionary exception will be and should be in line with Judge Jenkins's masterful opinion, despite denial of *certiorari* after the Tenth Circuit reversed his decision.")

and Dave Johnson were indicted on three theories. The first was that they violated the Utah commercial bribery statute, a misdemeanor, as the predicate for violation of the Federal Travel Act. The second theory was mail and wire fraud. The third alleged deprivation of the Bid Committee of its honest services.

Judge David Sam threw out the indictment, expressing umbrage at the concern of the federal prosecutor to protect the morality of the Utah Olympic promoters and citizens by invoking a state statute which the Utah state prosecutors did not see as offended and which was rarely invoked. The Tenth Circuit Court of Appeals reversed and remanded for trial. *United States v. Welch*, 248 F. Supp. 2d 1047, (D. Utah 2001), *rev'd* 327 F.3d 1081 (2003). Judge Sam proceeded with the trial on remand. After trial, he dismissed the indictments against Welch and Johnson, finding the evidence so insufficient that the jury could not reasonably convict.

The virtual wars between church and state of the nineteenth century ended after Utah became a state in 1896, but the residue from the Mormon domination of the territory continues to bubble up in issues that the federal court must resolve. One example is the tragic death of John Singer at the hands of law enforcement personnel. Judge David Winder described this as being of "Tolstoyan proportions." John and Vickie Singer lived in a small community in the mountains east of Salt Lake City. Their personal construction of the Mormon religious texts prompted their eventual excommunication from their church. Their choice to keep their children at home to avoid the corrupting effect of secular education in the public school brought attention to the children. A series of events unfolded tragically. Officials checked into the welfare of the Singer children. An armed John Singer, in turn, responded by warding off the officials. Warrants issued for John Singer's arrest, and his death resulted when those warrants were served. Vickie Singer brought actions for wrongful death in which Judge Winder granted summary judgment, finding no evidence of a civil conspiracy. *Singer v. Wadman*, 595 F. Supp. 188 (D. Utah 1982), *aff'd* 745 F.2d 606 (10th Cir. 1984).

Royston Potter was a police officer for Murray City, a Salt Lake City suburb. He performed his job well. He had two wives and actively practiced polygamy out of a good faith belief that such was a religious mandate. Perhaps 10,000 active and open polygamists lived in Utah at that time with only a handful of prosecutions in the preceding thirty years, even though polygamy is a criminal offense and was banished as part of the admission of Utah to statehood.

Potter was fired from the Murray City police force, a decision that was upheld on appeal by the Civil Service Commission. He sued for damages for violation of his civil rights as well as declaratory and injunctive relief. Cross motions for summary judgment centered on the vitality of the late nineteenth century Supreme Court decision, *Reynolds v. United States*, 98 U.S. 145 (1878). Judge Sherman Christensen, then a senior judge, granted the summary judgment for defendants, finding that the firing of police officer Potter for violation of his oath to uphold the laws and Constitution did not infringe on his First Amendment rights. Judge Christensen deliberately avoided the *Reynolds* analysis, but he acknowledged that its *stare decisis* effect could not be ignored. He reasoned that the laws maintaining monogamous marriage were intertwined so that the result of *Reynolds* placing polygamy outside of the First Amendment was still vital precedent. The Tenth Circuit Court of Appeals affirmed Judge Christensen, specifically his analysis and treatment of *Reynolds*. *Potter v. Murray City*, 585 F.Supp. 1126, *aff'd* 760 F.2d 1065 (10th Cir. 1985), *cert. denied*, 474 U.S. 849 (1984).

Can a church-run business limit hiring to those who meet its religious criteria, even if the job is routine and identical to non-church businesses? Subsidiary corporations of the Mormon Church operated the Deseret Gym and the Beehive Clothing Mills. Some of the plaintiffs did clerical work or sewed garments used in Mormon temple ceremonies. One plaintiff was a maintenance engineer at the Deseret Gym. Another plaintiff was added who drove a truck for Deseret Industries, a food and welfare instrument of the Church. All were discharged because they did not meet the Mormon criteria of worthiness to receive a temple recommend, that is, to participate in temple ceremonies which devout members consider to be a central religious activity. They sought certification as a class action, asking damages for wrongful discharge and for emotional distress during interviews with church members appraising their worthiness. Their theory was that the clothing mill and gym operations were secular activities and not protected by the First Amendment as religious activities. They further sought protection under federal and Utah anti-discrimination laws.

Behind the statements of legal theory and the undisputed basic facts of this case lay delicate issues of the boundaries between church and state. Rather than simply examine the job of each plaintiff, Judge Winder applied a three-pronged analytical framework to conclude that granting of the federal exemption for religious activity to the secular work performed by the plaintiffs would violate

the Establishment Clause of the First Amendment. The discharge was not actionable as emotional distress because plaintiffs were employees-at-will and protected only if the discharge met the Utah standard of outrageous or intolerable conduct. In a subsequent proceeding Judge Winder found that only the plaintiff working at the Deseret Gym would satisfy the criteria for merely secular work. The use of the temple garments in church ritual and the history of the Church employing members in its overall welfare program left the status of the Beehive Mill employees less clear and required more factual development to resolve. On direct appeal, the Supreme Court unanimously reversed, drawing the distinction between the non-profit character of the three Mormon Church enterprises and for-profit activities of a religious organization. *Amos v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 594 F.Supp. 791(D. Utah 1984) and 618 F. Supp. 1013 (D. Utah 1985), *rev'd,* 483 U.S. 327 (1987).

A Jewish student at West High School in Salt Lake City complained that the acapella choir-- an elective activity -- was led by a Mormon teacher who used every opportunity to promote his religion. West High School was one of three public high schools in the city with a magnet school program for gifted students. The allegations of her complaint were that the teacher included Christian devotional music with performance sites at the Catholic cathedral, the Presbyterian Church, and at Temple Square, the site of the original Mormon temple and adjacent buildings in the center of Salt Lake City. She also alleged that on a choir field trip to Oregon, the choir sang at an Oregon Mormon ward, and students participated in the worship service there. In the practice of one song, "Lamb of God," she alleged that the teacher turned out the classroom lights and instructed the students to "envision Jesus dying for our sins." The student asked that the choir be restrained from singing "Friends" and "The Lord Bless You and Keep You" during the upcoming public graduation ceremonies.

Judge Greene denied a temporary restraining order, dismissed the complaint, and refused to allow an amendment to the complaint. On appeal to the Tenth Circuit, the Circuit issued its own injunction pending appeal. At the graduation, the audience of parents and students broke out singing the two proscribed songs. The Circuit directed Judge Greene to review the facts as a special master at the student's request for a finding of contempt of the Circuit injunction. He concluded that the school principal and teacher had made every effort to comply with the restraining order, but that the audience felt that its traditions were being trampled. Shortly after the case was argued on appeal, the

student graduated after choosing not to participate in the choir during her senior year. The Tenth Circuit affirmed the dismissal of the case as moot and affirmed the findings of no contempt. *Bauchman v. West High School*, 132 F.3rd 542 (10th Cir. 2001), *cert. denied*, 524 U.S. 953 (1998).

Judge Paul Cassell was appointed to the Utah Federal District Court by President George W. Bush. Judge Cassell was the first judge to be appointed from an academic background since Judge Willis Ritter. Judge Cassell stayed on the bench only a short time before returning to the University of Utah law faculty where he resumed his academic pursuit of criminal law. While serving on the court he sought the attention of the President and Congress specifically in *United States v. Angelos*, 345 F. Supp.2d 1227 (D. Utah 2004), *aff'd* 433 F.3d 738 (10th Cir. 2006) *cert. denied*, 549 U.S. 1077 (2006). At issue in this case was review of the conflicting statutory minimum sentences and the sentencing guidelines. The defendant was convicted of three marijuana sales to federal officers. This was a first time offense by a successful businessman and parent. He possessed a pistol which was not used or brandished during the sales. Statutory minimums required a 55 year sentence. Judge Cassell's essay-like opinion detailed the absurdity of the sentence which he was compelled to impose in contrast to shorter sentences for various heinous offenses. His opinion, transmitted to the President's pardon counsel and the Congressional committee chairs, pleaded for a review of the policies mandating the sentence in this case.

After his return to law teaching, Professor Cassell continued pursuit of change and commutation of the sentence which Weldon Angelos was serving. In a letter to President Barach Obama, reprinted February 9, 2016, in *The Washington Post*, Professor Cassell sought more proportionate treatment in Angelos' sentence through exercise of the President's powers. President Obama did not pardon Angelos or commute his sentence. The Utah U.S. District Court did, however, re-sentence Angelos to a reduced term from which he was released June 3, 2016, as reported in *The Washington Post* on June 18, 2016, and *The Salt Lake Tribune* on June 24, 2016.

The tipping point in the evolution of a U.S. constitutional right to recognition of same-sex marriage was Judge Shelby's opinion in *Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013), *aff'd,* 755 F.3d 1193 (10th Cir. 2014) *cert. denied*, 135 S.Ct. 265 (2014). Judge Shelby took a cue from the dissent of Justice Scalia in the Supreme Court's decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013),

which struck down the barrier to federal domestic rights in the federal Defense of Marriage Act; and *Lawrence v. Texas*, 539 U.S. 558 (2003). Justice Scalia asserted that the logic of *Windsor* pointed directly to curtailing state regulation of marriage. Judge Shelby became the first federal judge to find a state prohibition on same-sex marriage violates the Fourteenth Amendment due process and equal protection clauses. The position of Judge Shelby eventually became the position of the Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

The State of Utah and subdivisions thereof share governance of much of Utah's land. With five national parks, almost twenty-three million acres of land under Bureau of Land Management oversight, national forest lands, military installations, weapons testing sights, and lands held by Native American nations, the State of Utah does not have sovereign control of more than 70 percent of its land mass. Not surprisingly, the Utah Federal District Court has historically exercised jurisdiction over many important issue concerning use of Utah's land.

Meyers v. Board of Education of San Juan County, 905 F. Supp. 1544 (D. Utah 1995), is an illustration of the role of the federal courts in tribal issues. Navajo parents brought a class action against, among others, the San Juan County, Utah Board of Education seeking to require it to provide a high school more accessible to remote areas of the reservation. The southeast corner of Utah is the area of least population density and the farthest from a large urban center. The community on Navajo Mountain had more than a hundred high school-age children with the Arizona-Utah border splitting the community. The San Juan School District is the largest in geographical area in the nation. Tribal schoolchildren have long been a concern of the Bureau of Indian Affairs. School bussing is a common solution, but the absence of roads puts the school bus route 200 miles through Arizona and back to Utah. The bus commute is longer than the school day. A lesson from forced integration of public schools is that the federal court may not be the best school superintendent.

Judge Jenkins acknowledged this reality in the conclusion of his ruling on class certification in this case. What the federal court can do is answer the legal question: who has the obligation to provide equal education to these children? Judge Jenkins rejected the class action request as premature because there were too many fact issues yet unresolved. Judge Jenkins made clear in his opinion denying motions for summary judgment that the State of Utah, the local school board, and the federal government all shared enforceable duties to the Navajo children.

Having Judge Jenkins's opinion as a framework for negotiation, a high school was built. Lawrence Baca, one of the counsel, called this case the *Brown v. Board of Education* decision on behalf of Indian children. *See* Lawrence Baca, *Myers v. Board of Education: The Brown v. Board of Indian Country*, 2004 U. OF ILL. L. REV. 1155 (2004).

Protection of the wilderness is a recurrent theme in Utah federal court jurisprudence. The federal court over the years has been asked to balance the interests of those who seek wilderness preservation and those with different uses in mind for the public lands.

The Burr Trail is a 66 mile dirt road in southeastern Utah. It illustrates the conundrum of R.S. 2477, a nineteenth century federal recognition of access in support of mining claims that was repealed in 1976, with the residual rights preserved. While the repeal stopped the acquisition of future rights, the then extant rights acquired over a century promised litigation of numerous issues. What did those rights include? Certainly not fee title; but are they easements, licenses or some other distinct property interest? Could the property interest be lost from disuse? Could the BLM or National Park Service be prohibited from blocking the use of state routes? Who held the interest since there was no notion of registration and record keeping, and the R.S. 2477 claims in Utah alone ranged between 5,000 and 10,000 claims. Which federal and state agencies could make binding decisions concerning such matters? What kind of deference should be paid to administrative decisions by whichever agency? What private interests, however publicly spirited or greedy and narrow, should have standing to be heard in demanding or blocking action? [16]

Judge Anderson approved Garfield County's upgrading of a portion of the Burr Trail into a two- lane gravel road over objections of environmental groups that claimed that this infringed on wilderness study areas at two points and lacked a required environmental impact statement. *Sierra Club v. Hodel*, 675 F.Supp. 594 (D. Utah 1987), *aff'd in part and rev'd in part* 848 F.2d 1068 (10th Cir. 1988). On

[16] The literature is substantial. *See* e.g., Lindsay Houseal, *Wilderness Society v. Kane County, Utah: A Welcome Change for the Tenth Circuit and Environmental Groups*, 83 DENV. U. L. REV. 725 (2010); Tolva Wolking, *From Blazing Trails to Building Highways: SUWA V. BLM & Ancient Easements Over Federal Public Lands*, 34 ECOLOGY L. Q. 1067 (2007); and Bret C. Birdsong, *Road Rage and R.S. 2477: Judicial and Administrative Responsibility for Resolving Road Claims on Public Lands*, 56 HAST. L. J. 523(2005).

remand Judge Anderson rejected claims that a separate impact statement was required, but directed relocation of some of the right of way. *Sierra Club v. Hodel*, 737 F.Supp. 629 (D. Utah 1990), *aff'd sub nom. Sierra Club v. Lujan*, 949 F.2d 363 (10th Cir. 1991). The Tenth Circuit Court of Appeals reversed as to the environmental impact statement. After remand, Judge Anderson sustained the BLM study approving the road work. The Circuit Court affirmed, rejecting the environmental groups' claims that the study was not adequate and that there was outside influence.

An analogous dispute arose where Kane County claimed that a management plan intruded on its water rights and upon its ownership rights under the former R.S. 2477. *Kane County v. Salazar*, 495 F.Supp.2d 1143 (D. Utah 2008), *aff'd* 562 F.3d 1077 (10th Cir. 2009). The Circuit Court affirmed the decision of Judge Jenkins dismissing the county's claim and finding his analysis "persuasive." Judge Jenkins had ruled, in part, that the counties lacked standing and, in part, that other federal law controlled the issues of quiet title.

In *United States v. Garfield County*, 122 F.Supp.2d 1201 (D. Utah 2000), Judge Jenkins ordered re-vegetation for the trespass committed by road grading in excess of a right-of-way and without prior permission from the National Park Service.

Three Utah counties sent bulldozers into wilderness and national monument areas claiming their right to do so as part of the acquired rights under former R.S. 2477. Judge Tena Campbell granted summary judgment to the environmental organizations that opposed such action. *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 147 F. Supp.2d 1130 (D. Utah 2001). The Circuit Court affirmed. 425 F.3d 735 (10th Cir. 2005).

Subsequently, Kane County removed BLM road signs restricting access and enacted an ordinance for off-road vehicles. Judge Campbell rejected the county's right of way claims and was affirmed by the Tenth Circuit Court of Appeals. *The Wilderness Society v. Kane County*, 560 F.Supp.2d 1147 (D. Utah) *aff'd* 581 F. 3d 1198 (10th Cir. 2009).

Another clash of interests centers on the ski areas in the Wasatch Mountains adjacent to Salt Lake City. Most of the slopes and lifts in the ski areas are located on federal Forest Service lands. *Citizens Committee to Save our Canyons*

v. Tidwell, 463 F. Supp. 2d 1316 (D. Utah 2005), *aff'd sub.nom Citizens Committee to Save our Canyons v. Krueger*, 513 F.3d 1169 (10th Cir. 2008), concerned helicopter skiing to which backpacking skiers and hikers objected. Judge Stewart found that the required environmental impact study was sufficient even though a headcount of those who wanted the backcountry undisturbed was not attempted.

In the urban corridor of the state, a new expressway called the Legacy Highway was proposed to move the heavy commuting traffic between Salt Lake City and the expanding populations to the north. The communities such as Ogden and Brigham City were already served by an existing, but sometimes clogged, interstate highway. A coalition, which included the Mayor of Salt Lake, objected that the proposed highway trampled on protected wet lands adjacent to the Great Salt Lake, and also that it favored cars over alternative transportation choices such as light rail. The wetlands at issue are 75% of the wetlands in Utah and are part of the Pacific Flyway used by millions of migratory fowl.

Once again the litigation centered upon administrative law issues and the adequacy of environmental impact analysis. As with his decision in the Navajo high school case, Judge Jenkins used compliance with environmental protection laws to frame negotiations. *Utahns for Better Transportation v. U.S. Dept. of Transportation*, 180 F.Supp.2d 1286 (D. Utah 2000), *aff'd in part and rev'd in part*, 305 F.3d 1152 (10th Cir. 2002). Negotiation of an ultimate settlement took considerable time in light of the multiple participants involved, viz., the Utah state legislature as well as the different state and federal agencies plus the participating private interest groups. The settlement in 2005 saw a reduced footprint of the highway as well as a study of alternate transportation from Ogden and Salt Lake City. The communities in between are now served by a commuter rail.

A final example of the diversity of issues focused on the public lands of Utah is the decision of Judge Tena Campbell in *Chemical Weapons Working Group, Inc. v. Dept. of the Army*, 963 F. Supp. 1083 (D. Utah 1997), *aff'd* 111 F.3d 1485 (10th Cir. 1997). The Department of Defense set up the Tooele Chemical Agents Disposal Facility to incinerate chemical weapons stored just west of Salt Lake City. The Tooele facility held some 30,000 tons of munitions which was 40% of the chemical weapons agents stockpiled around the nation. Over many years the containers were deteriorating. Plaintiffs sought to halt the incineration claiming risk to the surrounding population and water. Judge Campbell found that there was

no threat of irreparable harm posed, and no supplemental environmental impact statement was required. She acknowledged some risk of accident, but the balance in light of the deteriorating containers favored the plan to dispose of the chemical agents.

Cases like those highlighted above have been important in shaping public policy in Utah and beyond. Yet, the overwhelming share of Utah federal decisional law is merely part of the mosaic that is federal jurisprudence, involving high drama only for the immediate parties. With any case, there may be a ripple effect, like that spreading from a splash in a tranquil pond. It takes time to realize the effect. Lawyers and others may look to these cases for guidance in some facet of their work or lives, but only they are likely to take note.

Those who have performed over the years the various roles in the workings of Utah's Federal District Court have played a part in that state's history – sometimes in the glare of national and international media; sometimes with resulting applause or opprobrium; but, most often, in isolation and without notice.

Bibliographic Note

Court histories of this genre have established historiographical custom that detailed discussion of judges performance on the bench should wait until the service of particular judges has terminated. Some footnoting is used, but only to explain or expand an assertion in the text and not to verify assertions as such.

Recent historiography of the federal courts varies from the most scholarly to casual recounting. *The Federal Judiciary in Utah. History of the Territorial Judges for the Territory of Utah 1848–1896 and United States District Judges for the District of Utah 1896 – 1978* by Clifford L. Ashton (1988) *and History of the Bench and Bar in Utah* by C.C. Goodwin (1913) are the primary resources. Extensive use is made of the Tenth Circuit Historical Society website: http://www.10thcircuithistory.org/.

Since the Utah court is part of the federal judicial system, analysis of other districts is relevant to the United States District Court of Utah. These include: Peter Charles Hoffer, Williamjames Hull Hoffer, and N.E.H. Hull, *The Federal Courts: An Essential History* (Supreme Court Historical Society/Oxford Press 2016); Jeffrey B. Morris, *Federal Justice in the Second Circuit, A History of the United States Courts in New York, Connecticut & Vermont 1787 to 1987* (Second Circuit Historical Committee); Stephen B. Presser, *Studies in the History of the United States Courts of the Third Circuit* (Bicentennial Committee of the Judicial Conference); Deborah J. Barrow and Thomas G. Walker, *A Court Divided. The Fifth Circuit Court of Appeals and the Politics of Judicial Reform* (Yale Univ. 1988); *Establishing Justice in Middle America: A History of the United States Court of Appeals for the Eighth Circuit* (Historical Society of the United States Courts in the Eighth Circuit) (Univ. of Minn. 2007); David C. Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891- 1941* (Univ. of Calif. 1994.); Christopher P. Banks, *Judicial Politics in the D.C. Circuit* (Johns Hopkins 1999); Judge Marion T. Bennett, *The United States Court of Claims: A History. Part I. The Judges 1855- 1976* (Bicentennal Committee of the Judicial Conference 1976); Judges Wilson Cowen, Philip Nichols, Jr. and Marion T. Bennett, *Origin-Development-Jurisdiction 1866-1978 Part II* (Bicentennal Committee of the Judicial Conference 1978); Donald R. Songer, Reginald S. Sheehan, and Susan B. Haire, *Continuity and Change on the United States Court of Appeals* (Univ. of Mich. 2000).

The Historical Society of the Supreme Court, www.supremecourthistory.org, is rich with material relating to the Supreme Court. Historical societies of various circuit and district courts have varying depths of materials. The Ninth Circuit, http://www.njchs.org/, and the Southern District of New York, http://history.nysd.uscourts.gov/, are especially rich. The Federal Judicial Center, http://www.fjc.gov/ , provides federal judicial history, federal court historical programs, and society sites for the various circuit and district courts historical societies.

Commentary about the individual members of the United States District Court for Utah are drawn from multiple sources. Footnotes to each assertion and sentence are omitted in light of the generalist objectives of this history. A biography of Judge Aldon Anderson for the Tenth Circuit Historical Society by Alan Brinkerhof appears separately at www.10thcircuithistory.org.

The following generously provided their time for personal interviews: United States Marshall Randall Anderson; Judge Dee Benson; former judge and Professor Paul Cassell; Senior Judge Bruce Jenkins; former U.S. Attorney and Professor William Lockhart; Former Asst. U.S. Attorney now Hon. Richard McKelvie; Senior Judge David Sam; Chief Deputy Clerk Louise York; and Magistrate Judge Brooke Wells. Each interview was a general discussion centered around two broad questions: What are the most significant events at the Utah federal court? Do you believe that the United States District Court for Utah is different from other district courts, and, if so, why?

Many law clerks were solicited for comment. Not all were reached, and not all who were solicited made a response. Many responded generously, and some provided documents not available in general circulation. The following are in possession of the author: Federal Jurisdiction, Federal Bar Association Utah Chapter Newsletter, Fall 2009 (commemorating Judge David Winder). James R. Holbrook, An oral history interview of Judge Bruce Jenkins. Transcripts from portrait unveiling ceremony for Senior Judges Anderson,Greene, Jenkins, Sam and Winder (April14, 2010).

Westlaw and Lexis provide data and commentary, at least as to sitting judges whether active or senior. The Biographical Directory of Federal Judges available on the federal courts website at www.uscomis.gov is similarly helpful.

Statistical information and related data as to court filings and demographics of the State of Utah are taken from government publications. Federal Courts Management Statistics published by the Administrative Office of the United States Courts http://www.fjc.gov/history.nsf and http://www.uscourt.gov/statistics-reports. Census information is available at http://www.census.gov/quickfacts; *Population Brief: Trends in the Western U.S. The State of Utah 1980-2006* by Don E. Albrecht, Western Rural Development Center, U.S. Dept. of Commerce, Economics and Statistics Administration. U.S. Census Bureau: Census Utah, 1970, 1980, 1990 and 2000. Also, Thomas G. Alexander, *Utah. The Right Place* (2nd Revised Ed 2003) (Utah Statehood Centennial Project of the Utah State Historical Society).