

Judge A. Sherman Christensen

By Allan T. Brinkerhoff¹

A. Sherman Christensen was the fourth person² to be appointed United States District Judge for the District of Utah. He was born June 9, 1905, in Manti, Utah. His father was a prominent lawyer who also served for a period of time as a state court judge. Judge Christensen was a prominent trial attorney in Provo, Utah. He was President of the Utah State Bar and active in the Republican Party. In 1940 he was that party's nominee for Congress. When he was sworn in as federal district judge, he was 49 years old. He was the first member of The Church of Jesus Christ of Latter-day Saints appointed to the federal bench in Utah. In 1990, the American Bar Association presented him with its highest honor, the ABA Medal, recognizing Judge Christensen's "conspicuous service in the cause of American jurisprudence." He remained active in his work as judge until he closed his office just four years before his death at age 91.

As a boy, Judge Christensen learned and experienced a rural upbringing. His father, A. H. Christensen, finishing law school at the University of Michigan in Ann Arbor in 1899, returned to Manti, Utah and set up law practice and became a prominent attorney in Manti and later in Provo, Utah. His father became a state court judge in Manti, Sanpete County, Utah, and also owned sheep and operated the Star Ranch in the Mona, Utah area. Judge Christensen recalled going to his father's courtroom in Manti. "My father was my model," he said. "I vividly remember going to his courtroom, which was in an old building in Manti, Utah. You had to go up a rickety flight of stairs to the second floor. There was a big pot-

¹ The author was law clerk for Judge Christensen in 1975-76.

² The previous three Judges to be appointed were John Augustine Marshall (served until 1915), Tillman D. Johnson (served from 1915 to 1950) and Willis W. Ritter (served from 1950 to 1978).

bellied stove that the sheriff kept stoked with coal.” Judge Christensen attended high school in Manti, Utah, and did ranch work and herded sheep for his father during summer breaks.

After leaving the bench, in 1921 Judge Christensen’s father moved his family from Manti to Orem, Utah, to be closer to a university. His father continued to practice law in Provo, Utah where he became law partners with Arthur V. Watkins, who later became U.S. Senator from Utah. As a young man, Judge Christensen worked as a clerk in his father’s law office and became an efficient typist. His father also insisted that he learn and use short hand. The short hand skills and the association with his father’s law partner, Arthur V. Watkins, would later be factors in his opportunity to attend law school in Washington, D.C. with a scholarship, and his eventual appointment to the federal bench in Utah.

Judge Christensen attended Brigham Young University in Provo from 1923 to 1927. During this period he met and married Lois Bowen. In 1927 they moved to Washington, D.C. where Judge Christensen worked as a file clerk for the War Department. While so employed, he became aware of a part-time position, which required short hand and typing skills, to assist the chancellor of the law school at the National University (later absorbed by the National Law Center, George Washington University, Washington, D.C.). As a result of his efficient and capable work on the chancellor’s writing project, Judge Christensen was offered a position in the law class, with a scholarship. He attended law school from 1928-1931. In 1931, he was awarded an LL.B degree from National University.

From 1928 to 1932 he worked as an assistant business specialist in the U.S. Division of Commercial Laws, Bureau of Foreign and Domestic Commerce. He passed the District of Columbia Bar in 1931 and the Utah State Bar in 1933. He returned to Utah and practiced

with his father's law firm from 1932 to 1942 in the areas of real property, water law and commercial litigation. Long afterward, he recalled those days with great fondness, saying that in the 20 years he and his father practiced law together there was never a harsh word between them.

In 1942, when the United States entered World War II, Judge Christensen left the law firm and enlisted in the United States Navy. From October 1942 through December, 1945 he served as Lieutenant and later Lieutenant Commander in the Navy, commanding the auxiliary Naval Air Stations along the West Coast. During this period he also became a Navy pilot.

Following World War II, he returned to his law practice in Provo, Utah. He was a partner in Christensen & Christensen from January 1946 to May 1954. The firm's practice grew quickly as did his reputation for wisdom, competence, and trial work. In 1951-52 he was elected and served as the President of the Utah State Bar.

In 1954 he was nominated for appointment as United States District Judge, District of Utah, by President Dwight D. Eisenhower.³ After Senate confirmation, he was sworn in on June 26, 1954. The next 17 years of his life would be filled with pockets of strife as he joined the notoriously independent Chief Judge Willis W. Ritter as the second federal district judge in a district that until that time had been only a one-judge court. Judge Ritter did not believe a second judge was warranted or necessary and was generally uncooperative and resentful with the appointment of a second judge. Judge Christensen

³ When he went to the White House to be interviewed by President Eisenhower, the President entered the room, shook his hand and said, "I want to meet the only judicial candidate thus far in my Presidency who the FBI has given a perfect score in its background check." This, of course, was consistent with the integrity and straight-forward manner in which Judge Christensen had practiced law and otherwise conducted his life.

was strong-willed, principled, and recognized as one of the foremost trial lawyers in Utah at the time of his appointment to the bench. He was not intimidated by Judge Ritter who ignored him whenever possible and generally communicated with him through the local newspapers. Years later, regarding Judge Ritter, Judge Christensen observed:

The seeds of conflict in the District of Utah must have existed long before the occurrences recounted here, possibly arising from the childhood, development, and early experiences of a not untalented, indeed an intermittently charming and brilliant man, who found himself in a position of extraordinary power with irresistible opportunity for its abuse, and from my own English-Danish ancestry which perhaps too strongly inclined me to resist what I regarded as tyranny.⁴

Judge Ritter's biographers, in *Thunder Over Zion*,⁵ provide the details of the difficulties and the reoccurring controversies that Judge Christensen would experience with Judge Ritter during the 17 years they served together on the bench. In 1949, after being nominated as federal district judge by President Truman, Judge Ritter experienced a sharp, prolonged and bitter confirmation contest with Utah Senator Arthur V. Watkins as his antagonist in chief. (*Id.* 124). Judge Ritter was finally confirmed in 1950, but when Senator Watkins later secured a commitment from the new Eisenhower administration to support a second judge for Utah, Judge Ritter did not believe that a second judge was needed. He saw the move as a campaign to weaken his position and dilute his power as Utah's only federal judge. (*Id.* 200) "Moreover, the choice of Christensen ensured both offense and greater independence (by Ritter), for his nemesis, Watkins, had been law partner to Christensen's father and office colleague to Christensen himself prior to

⁴ After taking senior status, Judge Christensen wrote a 338-page book titled *Persons and Processes, An Anecdotal View of Federal Judicial Administration 1954-1991*. The book details his 37-year career as a federal judge including, among many other things, a detailed description of the conflicts, issues, and differences of philosophy that existed between himself and Judge Ritter. Judge Christensen decided not to publish the manuscript. Despite urging from numerous legal and historical scholars in Utah, Judge Christensen's family, thus far, have also declined to have the book published.

⁵ See, Patricia F. Cowley & Parker M. Nielson, *Thunder Over Zion*, University of Utah Press, Salt Lake City (2007).

Watkins's appointment as a state judge in Utah's Fourth District in 1930." (*Id.* 200)

"Ritter's attitude toward a new judge might have been the same, whoever the appointee, but the two were as unlike as two highly able judges might be. They clashed, initially, over matters of administration" (*Id.* 201) and they clashed over many other issues as the years ensued.

Perhaps a single example of the disputes over court administration will suffice. As Chief Judge, Ritter directed the assignment of "all cases of any importance to himself, leaving only trivial matters or those that he chose not to handle for the 'junior' Judge, Christensen. Ritter's way of carrying out his administrative role was to make all decisions himself allowing his fellow judge no say at all." (*Id.* 201) Not being able to resolve the issue, in 1957 Judge Christensen took his frustrations over assignment of cases to the Judicial Council of the Court of Appeals for the Tenth Circuit. He urged that the "Chicago System" of "automatic alternate assignment" should be imposed by written rule of the court of appeals. "The Judicial Council agreed, eventually issuing an order, on January 20, 1958, that cases were to be assigned by a sort of blind drawing, lot or chance, or on an odd-even basis." (*Id.* 202). Notwithstanding the many controversies that existed over the years, "Christensen—himself the consummate gentleman, both to Ritter, lawyers and members of the public", believed that he and Judge Ritter should be genial with one another. (*Id.* 201) Judge Christensen was always that and more.

During his 17 years as a district judge, Judge Christensen worked tirelessly on every sort of case that was filed and came before the Court. Judge Christensen handled significant litigation relating to the uranium ore boom in Utah in the 1950's, many federal securities cases during a period in which Utah became known as "the penny stock capital of

the world”, cases relating to Utah’s extensive mining industries, cases arising in connection with alleged damages to livestock (sheep) from the United States Atomic Energy Commission’s atmospheric nuclear tests at its Nevada Test Site in 1953, innumerable federal regulatory cases, and all of the other cases that routinely come before the federal courts.

Beginning almost as soon as he was appointed to the bench and ending with the case of *Telex v. International Business Corporation* in the District of Oklahoma and *Sherman v. British Leyland Motors, Ltd*, in the Ninth Circuit, antitrust cases were almost constantly before Judge Christensen in one way or another.⁶ These cases were usually complex and often protracted. While he had no formal academic background in economics, his early Washington D.C. experience in the Bureau of Foreign and Domestic Commerce as assistant business specialist had stimulated an interest and at least some perception in this field. Judge Christensen observed that he related to the complexity of the problems presenting by these cases, including the difficulties of processing, evidentiary questions relating to the intimate interface between law and economics and the problems of instructing juries in this complicated field. He became very adept in handling antitrust and other complicated commercial cases. Those practitioners who often appeared before Judge Christensen during his 17 years on the bench overwhelmingly characterized his preparation, judicial temperament, hard work and demeanor in the most laudatory terms.

⁶ *Brigham City Corporation v. General Electric Company; United States v. Beatrice Foods Company; United States v. Morton Salt Company; United States v. Utah Pharmaceutical Assn.; United States v. Lucky Lager Brewing Co. of San Francisco; Intermountain Ford Tractor Sales Co. v. Massey-Ferguson, Ltd.; Uintah Oil Refining Company v. Continental Oil Co.; Christiansen v. Mechanical Contractors Bid Depository; Utah Gas Pipeline Corp. v. El Paso Natural Gas Co.’ Fisher Banking Co. v. Continental Baking Company; Gossner v. Cache Valley Dairy Assn.; Gardner v. Awards Marketing Corporation; Public Service Co. of New Mexico v. General Electric Co.; Covey Oil Company v. Continental Oil Company.*

In addition, court administration was one of his strong preoccupations. He referred to it as a means to the end of achieving a fair and effective disposition of litigation. He was particularly effective in adopting rules and procedures that would make the Utah federal court more accessible to all members of the bar.

Before he was appointed, the Utah district court was not readily accessible to all members of the bar. Relatively few lawyers undertook to master the new rules of civil and criminal procedure, and relatively few of them had the personal knowledge of the individualistic practices of Judges Johnson and Ritter. The number of attorneys regularly appearing was limited, and newcomers frequently associated old-timers of that bar for particular cases. There were no written local rules of court then in use. Judge Christensen observed that the procedures in the district of Utah were then among the most complex in the entire federal system because of lack of written local rules for the guidance of court personnel, the bar and the judges themselves.

Judge Christensen undertook to change this. After several years of trying to engage Judge Ritter to jointly promulgate local rules of court, Judge Christensen undertook the job alone. He drafted local rules (for his court) entitled *Handbook of Trial Practice in the United States District Court (Where the Federal Rules of Procedure Leave Off)*. He obtained permission from the Tenth Circuit Judicial Council to publish them, and then had them published and distributed by the Administrative Office of the United States Courts. Judge Ritter, in his court, overrode them by his own *ad hoc* procedures, but they were routinely sent out by the clerk's office to both Utah and out-of-state counsel who asked for copies of the local rules of court.

Effective August 17, 1971, Judge Christensen took “senior judge” status and moved his chambers out of the Courthouse, and took up new chambers in the Federal Building several blocks away. Judge Christensen acknowledged that the years of conflicts with Ritter “finally led to my taking Senior Judge Status in 1971 before ordinarily I would have considered it.” (*Id.* 214). Taking senior status, he explained, was the only way that a third federal judge could have been appointed in Utah inasmuch as Judge Ritter was not inclined to take senior status. However, 1971 did not mark retirement for Judge Christensen. The next 20 years he continued to make substantial contributions as a federal judge, law professor and author.

Judge Christensen enjoyed a stellar reputation as a judge and jurist. Through his work on many national federal judicial committees, Judge Christensen was friends with many federal trial and appellate judges, including a warm personal relationship with Warren E. Burger, Chief Justice of the United States Supreme Court. Upon taking senior judge status, Judge Christensen immediately became available for numerous other judicial assignments and invitations. For a decade or more after 1971, Judge Christensen accepted invitations from many, if not all, of the federal circuit courts of appeal to sit by designation with circuit court panels to hear, decide and write appellate decisions in many, many cases. He also sat by designation in other districts as a trial judge as well as the district of Utah.

In 1972, Chief Justice Burger, appointed Judge Christensen to serve as a member of the Temporary Emergency Court of Appeals,⁷ which was a special federal appeals court

⁷ The United States Congress established the Temporary Emergency Court of Appeals in December 1971 (85 Stat. 474) and granted it exclusive jurisdiction to hear appeals from the decisions of the U.S. district courts in cases arising under the wage and price control program of the Economic Stabilization Act of 1970. Congress authorized the Chief Justice of the United States to appoint to the temporary court three or more district and appeals court

created by Congress to hear appeals of energy-related cases from all the federal district courts arising exclusively under the Economic Stabilization Act of 1970. The judges appointed to this court resided in all parts of the United States and the cases before the Court were heard by panels of three judges. Judge Christensen enjoyed the warm and cordial relationship that existed among the distinguished jurists, almost exclusively senior-status judges, who were appointed to serve on the Court. For nearly a decade, Judge Christensen travelled all over the United States to sit on the many panels of this Court. He authored many duly recorded appellate decisions pertaining to the legal issues of the energy crisis that the United States worked through during the 1970's and 1980's.

By his own count, Judge Christensen, as a district judge, entered judgments in more than several thousand cases. He wrote over 200 opinions that were published by West Publishing Company. Eighty-five of his district court opinions were reviewed on appeal with eighteen being reversed, seven affirmed in part and reversed in part, and sixty affirmed without qualification. For the Temporary Emergency Court of Appeals he wrote thirty-one prevailing opinions, reviewable directly by the Supreme Court, none of which

judges, each of whom was to serve on a part-time basis for an indefinite term. The court exercised the same powers as a U.S. court of appeals, and it was authorized to prescribe its own rules of practice, which it did when its three district and six circuit court judges convened for the first time in February 1972. The Temporary Emergency Court of Appeals was modeled on the Emergency Court of Appeals, which was established in 1942 to hear appeals in cases involving various wartime price control measures and which heard its last case in 1961.

Although the Economic Stabilization Act expired in 1974, Congress extended the operation of the Temporary Emergency Court of Appeals in the Emergency Petroleum Allocation Act of 1973 (82 Stat. 627). The court exercised the judicial review provisions of the energy price stabilization program established by the act. The temporary court's jurisdiction was further expanded in the Energy Policy and Conservations Act of 1975 (89 Stat. 871) and the Emergency Natural Gas Act of 1977 (91 Stat. 4). In 1992 Congress abolished the Temporary Emergency Court of Appeals and transferred both its jurisdiction and its pending cases to the U.S. Court of Appeals for the Federal Circuit (106 Stat. 4506).

were reversed. For other federal courts of appeal, he wrote sixty prevailing opinions, none of which were reversed by the Supreme Court.

In 1975, Judge Christensen became an adjunct professor at the College of Law at the University of Utah. From 1975 to 1977, he was appointed as an adjunct professor of law at the J. Reuben Clark Law School at Brigham Young University (“BYU”). While at BYU’s law school, two story lines converged that would eventually impel Judge Christensen into the position of mid-wife in establishing the American Inns of Court.

At BYU law school Judge Christensen taught trial practice. Many times he approached the dean of the law school, Rex Lee, and voiced his opinion that too many lawyers appearing before him in the federal court room were not sufficiently trained for trial practice. He urged Dean Lee to do something about this problem in addition to offering a trial practice course for a group of willing law students. He urged that there was a need to do something for those lawyers who were already practicing and that the law school was the proper place for this education and training. In his very gentlemanly and courteous manner he continued to press Dean Lee on this subject. During this same period of time, another set of circumstances was developing towards the same end.

For many years Chief Justice Warren Burger also felt strongly that practicing lawyers needed additional education and training relative to trial work and their appearances before the courts. The Chief Justice had made some attempts to do something about it in the 1960s while he was still a judge on the District of Columbia Circuit. Those attempts did not succeed. In 1979, he decided to try again. He was then at the Obert C. Tanner summer cabin outside of Salt Lake City. He invited Dean Lee and Dallin H. Oaks, then president of Brigham Young University (and also a lawyer), to lunch at the cabin on

August 1, 1979. The Chief, with a chef's apron on, prepared lunch, and also presented the problem, discussed the advantages of the British Inns of Court system, and asked them to experiment at BYU with a system that would borrow the best from the British system. They agreed to do so.

Dean Lee then married the two story lines by asking Judge Christensen to head up this experiment.⁸ Judge Christensen formed an "Ad Hoc Committee" with four BYU law students. This committee met every Saturday afternoon in Judge Christensen's Provo apartment. By December 1979, Judge Christensen with his student sounding board had written up a nine-page draft for a "Pilot Project for an 'Inn of Court'." He then invited twelve "great lawyers" (his words) to form the initial "Benchers" of this new American Inn. And from there, the selection of a second tier of experienced but not yet master practitioners, and, chosen by Dean Lee, a tier of law students and two law professors. This was the first American Inn, and as far as they knew, the only one. It is now known as The A. Sherman Christensen Inn.⁹

The American Inn met for the first time in February 1980 in Provo. After each of its monthly evening meetings, the executive committee met to review what had gone right, what did not work, and what could be improved. At the end of the academic year, those involved deemed the experiment a success. A second American Inn was started in 1981,

⁸ There was already a "think piece" created by Judge J. Clifford Wallace of the Ninth Circuit, and a file of reactions to that think piece furnished by dozens of leaders of the bar (many quite negative). Judge Christensen met with Judge Wallace in connection with the initiation of his work. More information is available on the subject in *The American Inns of Court: Reclaiming a Noble Profession*, by Prof. Paul E. Pixton, then chair of the BYU History Dept, published in 1997 by the American Inns of Court Foundation.

⁹ Judge Christensen's involvement in establishing the American Inns of Court was contributed for this biography by Sherman L. Cohn, Professor of Law, Georgetown University Law Center, 600 New Jersey Avenue, N.W. Washington, D.C. 20001-2075, telephone: 202-662-9069; fax: 202-662-9411.

with students from the University of Utah.¹⁰ In the fall 1983, Chief Justice Burger appointed an Ad Hoc Committee of the Judicial Conference of the United States on the American Inns of Court, with Judge Christensen as the chair of the committee. He remained chair until July 1984, when he resigned due to the deteriorating health of his beloved wife. He was replaced by his friend and colleague, Judge Aldon J. Anderson.

One additional event grew out of Judge Christensen's work in founding the American Inn. In 1989, the Lord Goff of Chiveley, one of the British Law Lords, speaking at a national gathering of the American Inns, issued a challenge to a room full of judges and trial lawyers: if the British Inns should indict George Washington for treason, would the American Inns defend him? The challenge was immediately accepted.

One afternoon thereafter, Chief Justice Warren E. Burger called Judge Christensen and said that he had been asked to go to London to sit on the three-judge panel for the George Washington Trial. He said that he thought it best to decline the invitation, but asked Judge Christensen to take his place. A trial was held in the Great Hall of Lincoln's Inn in October 1990. George Washington was marched in by redcoats and placed in the dock. The witness for the prosecution was Lord North, then prime minister of Britain. The witnesses for the defense, in addition to Washington, were Thomas Jefferson and Benjamin Franklin (who stole the show). The Court consisted of three judges, two from the United Kingdom, and Judge A. Sherman Christensen from the United States. Judgment: Acquittal. Judge Christensen stated that this was the most he had ever enjoyed a trial.

¹⁰ Then in 1982 Judge Wallace wrote a piece in the American Bar Association Journal describing the American Inn concept and how it worked in practice. Judge Christensen became the focal point of inquiries from around the country. In 1982 American Inns were started in Hawaii and Mississippi and in 1983 an American Inn was started in Washington, D.C. Some attempts at starting American Inns took years to succeed. A few attempts did not succeed at all. However, all looked to Judge Christensen for guidance and to help solve problems as they occurred.

Judge Christensen authored more than 30 articles and papers on a wide variety of legal as well as other subjects that have been published in many different law reviews and other publications. He also authored and published two books of poetry.

Judge Christensen's family was of paramount importance to him. He and his wife, Lois, were the parents of three very accomplished children: Albert Kent Christensen, Karen Donna Coffey, and Krege B. Christensen. He had fourteen grandchildren and his posterity continues to increase.

Remaining active as a settlement judge, Judge Christensen continued to maintain his chambers in the Federal Building in Salt Lake City until he was 87 years old—finally closing his office after his wife died in 1992. Judge Christensen died in Provo, Utah on August, 13, 1996, and is buried in Manti, Utah.