Your Inside Track Newsletter

Description

Second Edition

Interview with Richard Busch

default watermark

Part I

By Judith Finell

Legal Career Development, Client Relationships, and Milestones

Judith Finell

I wanted to talk a little bit about your career, because some of the people reading this will be embarking on a legal career or are in law school. Iâ??d love to hear what you feel are milestones, or what the cases youâ??re proudest ofâ??or whatever youâ??d like to share about your experience in this field.

Richard Busch

Well, thatâ??s an interesting question. There have been so many cases now over the course of the last 20-plus years. A lot of ups and downs, you know. A lot of successes and an incredible amount of work to do it. Iâ??m a little bit more reflective now. You know, my career is really an interesting one because I didnâ??t start out to be an entertainment lawyer. I joined my law firm in the early 1990s and almost immediately went from Nashvilleâ??we represented the Tribune company in New Yorkâ??to New York to look into a situation involving the *New York Daily News* where it was being slammed by an onslaught of workersâ?? compensation claims. Hundreds and hundredsâ??maybe more than 1000, actually. I was asked to look into it, and I decided, in my opinion, that it was all fraud. We ended up bringing, based on my recommendation as a 25-year-old kid straight out of law school, a 600-defendant racketeering case against basically everyone who worked with the *New York Daily News*â??unions, doctors, and lawyers. And, I spent five years in New York prosecuting that case. We got co-counsel, because theyâ??re not going to trust a 25-year-old kid with something like that. But I got experienced partners at the law firm of Sidley Austin as co-counsel, very experienced guys I love to this day. They taught me a lot. I spent five years living in New York prosecuting that case, and that was an amazing experience. I am very proud of our work on that case. Iâ??ll never forget that case, the experience I got from it, and the people I met and got to work with. Two of these guys from Sidley Austin are, to this day, like brothers. By the time I was like 25, 26, they were already, you know, late 30s, 40 years old. They were incredibly experienced and talented, and they took me in, and taught me a lot. We worked night and day for five years on that. I like to say, I either did 600 depositions over those five years, or I did the same deposition 600 times.

default watermark

Judith Finell

Thatâ??s interesting! It sounds like a virtual fourth, fifth, and sixth year of law school, in a way.

Richard Busch

It was an amazing experience. And then, on my last day in New York, we settled the case, and I was going back to Nashville. I was waiting outside of my building for a taxi, and a guy stood next to me, and asked me which way I was going. I told himâ??and it was snowing, no cabs were coming. I suggested that we share a taxi. We shared a taxi, and he asked me what I was doing in New York, and I kind of told him what I was doing, just like I told you, in 30 seconds. I said, â??Oh, so Iâ??m going back to Nashville, where my firm is located.â?• And he said, â??Oh, my wife is in the music business, and we go to Nashville. Give me your card and weâ??ll call you next time weâ??re there.â?• I had one card on me. I gave it to him, and out of the taxi I went. And, you know, six months later, he called me and said, â??Hey, remember me? We shared a taxi in New York.â?• And it turns out that his wife was the copyright administrator for Bridgeport Music and Westbound Records in Detroit, and they had 500 cases of sampling of their music that they had identified. She said, â??Weâ??re looking for a lawyer, and Nashville would be a great

place to do something like this.â?• I went to Detroit and they said, â??Go to Detroit, meet the owner.â?• I said, â??I donâ??t know anything about music law. I donâ??t know anything about copyright law.â?• They said, â??You can learn it. Just go up there and meet him. Maybe heâ??ll like you and hire you.â?• So I went, and he liked me, and he hired me. And, you know, six months later, we filed the *Bridgeport Music*, *Westbound Records*, a famous litigation. 500 cases where I was up against every major entertainment firm in the country. I like to call it the Music Lawyers Relief Act of 2001, because everyone had a piece of it. They were all going up against me, you know. I was still kind of a kid then, like 30 years old. Just amazing. And we won every case we tried. The biggest was that we beat Diddy and Bad Boy Music, and got punitive damages in that caseâ??thatâ??s another storyâ??for millions of dollars. And you usually canâ??t get punitive damages in a copyright infringement case, but we got [them]. So thatâ??s one that Iâ??m really proud of. It was my first real major jury trial victory, so thatâ??s always going to be at the top of my list.

We won several others. We established law thatâ??s taught in law schools to this day. I have four or five cases from that time that are taught in law school to this dayâ??all those are very important to me. And then, of course, a few years laterâ??you know, life is like this, itâ??s amazingâ??[with] the people you meet, you keep getting great stuff. And a few years later, iTunes launches, and Eminemâ??s people have this idea that artists are being underpaid for digital downloads because record labels are paying them under the record sold provision of their record contract, which gives them a very low royalty rate. And Eminemâ??s people, Joel Martin in particular, felt that these were licenses. Under most record contracts, artists get 50% of labelsâ?? net receipts for licensed income. And they believed these downloads were licenses. And record labels were saying that no, they were records sold. And so Joel told the owner of Bridgeport in Westbound, because he grew up with him, that he had this idea. Then, Armen Boladian said, â??Hey, youâ??ve got to go down to Nashville and meet Richard Busch. Heâ??d be the perfect lawyer for that.â?• So they came down, they met me, and they liked me, and hired me. And we ultimately won that case, which changed the entire way digital royalties were paid to artists. And that was world-famous litigation. Itâ??s spawned class actions, probably cost record labels, I donâ??t know, a billion dollars ultimately, in paying artists what they deserve to be paid for permanent downloads. Now we have interactive streaming, which makes permanent downloads kind of a dinosaur, but at the time, the way people digested their music was through the Apple iTunes Store, buying permanent downloads. That was an amazing victory. And that was the â??Bad Boyâ?• case that put me on the map, I think. But that Eminem digital download case was world-famous and really was an amazing victory.

default watermark

I had a big case involving Al Bell, who was the owner of Stax Records. He owned the song â??Whoomp! (There It Is),â?• which is a big song, and it had been taken from him. And I was able to win a jury trial and get that back for him. Alâ??s one of the sweetest, kindest men Iâ??ve ever met, and I love him. Winning that case for him was amazing. And, of course, â??Blurred Lines.â?• And then, you know, a lot of cases after that, weâ??ve won and that weâ??ve settled and resolved. Itâ??s been an incredible run, an incredible career.

Itâ??s hard to imagine that itâ??s been 20 years of this, but all of those cases Iâ??m incredibly proud ofâ??even cases youâ??ve never heard of that Iâ??ve won for people that I care about. I take, you know, my responsibilities to my clients very seriously, and I take it very personally, and itâ??s been great. But all those cases, and many more, I think of very fondly. You mentioned â??Photograph.â?• Martin Harrington is a dear friend of mine, and he wrote this song called â??Amazingâ?• and we filed against â??Photograph,â?• by Ed Sheeran. [There were] literally 38 identical notes in the chorus. We canâ??t talk about what happened, other than we settled it. But Martin is credited as a co-writer on â??Photographâ?• now, which is one of Ed Sheeranâ??s biggest songs. That was a great case. We didnâ??t try it. We ultimately settled it. Thereâ??ve been a lot [of cases] and theyâ??ve all been great.

Judith Finell

Thatâ??s leading me to another question. It sounds like you develop a very deep friendship and connection with the people you represent. And I witnessed it myself with you and Jan Gayeâ??s family. It seems to reach beyond the ordinary lawyer-client relationship. So, Iâ??m wondering, do you take on cases because you believe in those particular individual artists, or is it more the way in which the case may address the law or change it?

default watermark

Richard Busch

Thatâ??s a really good question. First of all, I learned a long time ago that you have to put everything you have into what you do. You have to care about what you do. And you have peopleâ??s lives in your handsâ??if not literally, financially. And you know theyâ??re putting their faith and trust in you. Itâ??s like when you go to war with someone, you develop this bond that you canâ??t have with other people when you donâ??t share that experience. Thatâ??s just who I am as a person. I really care about my clients and my friends, and it just inevitably happens. At this point in my career and in my life, I only take on cases that I care about and [in which] I care about the people. Iâ??m lucky and fortunate enough now that I donâ??t have to really worry about some things that maybe other people do, as far as taking on things they shouldnâ??t take on, or doing things that are distasteful for them. I donâ??t have to do that.

Judith Finell

Yes.

Richard Busch

So, yes, I do tend to develop [relationships]. Thatâ??s just in my personality. You and I have become very close. Itâ??s just in my personality to become close with people and to develop this kind of bond, and it means a lot to me. Itâ??s one of the only reasons I do this now, to be honest.

Judith Finell

Do you take on cases because you have a connection with the individual artist, or is it more because of what it represents in the law and possible changes that you feel you should address?

Richard Busch

More the former, but also the latter. Listen, we still have a business to run, right? I have associates who work for me. I have people who need to make money. The firm needs to make money and do well. So obviously, itâ??s not just based on personal relationships. We look at whether itâ??s worth it to do it and whether the result is justified by the work that weâ??re going to have to do to achieve a certain result, and all of that goes into it. But, for me, personally, at this point, Iâ??m not going to enjoy doing [something] that Iâ??m not going to enjoy, or not enjoy the people with whom Iâ??m working. Iâ??m not going to say any names, but there have been plenty of cases that Iâ??ve just quit or didnâ??t take on because I didnâ??t want to work with the people that I was going to be forced to work with.

default watermark

Music Industry â??Disruptorâ?•

Judith Finell

My next question is whether you see yourself as a disruptor in the music industry?

Richard Busch

I know people think of me that way. I remember thereâ??ve been articles like â??The Most Hated Man in the Music Business.â?• Iâ??ve seen that.

Judith Finell

Yes.

Richard Busch

Which is kind of funny. I get a kick out of that stuff. I have a certain reputation now. I know what Iâ??m doing. I like to be the underdog in cases that I take on. And if Iâ??m in this industry and Iâ??m on the side of the underdog, then Iâ??m inevitably going to go up against people who are on the side of the major corporations. If I feel Iâ??m right on the law, Iâ??m not shy about wanting to pursue the cases that we pursue. If that makes me a â??disruptor,â? you can label it whatever you want. Thereâ??s a place in life for everybody, right? Thereâ??s a place in life for people who challenge the machine and who challenge the bigger guys, the deep pockets. And thereâ??s a role for people who defend those people. I just enjoy, much more, being on the side of the little guy or the plaintiff and going against the big guy. Itâ??s more fun. Itâ??s more satisfying. Whatâ??s the satisfaction in just representing a big company that really doesnâ??t care? Theyâ??re doing things that are for the bottom dollar or whatever. Whether they win or lose doesnâ??t change anybodyâ??s lifeâ??versus doing something that, if you win, you literally change peopleâ??s lives. I mean, that is pretty awesome. I enjoy doing that still. But if you ask me why, I guess thatâ??s the answer to the question.

default watermark

Judith Finell

Thank you for your wonderful answers. Do you have any predictions about whatâ??s next? Are you going to be involved with things like AI-created music or determining what should be protected?

Richard Busch

I donâ??t know, Judith, I donâ??t know. If I get phone calls. If people want to talk to me about things. You know, I get calls every day. We turn down 90% of the things that come to us. Iâ??m very selective about what I do now. But if something comes to me thatâ??s good and interesting and the people that are coming to me are first-rate people whom I enjoy talking to and being engaged with and working with, then Iâ??m happy to do it. Iâ??ve got a great team that works with me, and itâ??s the same thing with them. I want to work with people I enjoy working with. When you get to be 50 years old, your perspective on what you want to do [changes]. Time becomes more valuable and you want to make sure youâ??re spending your time doing things that are worthwhile.

Part II of the interview continued in the next issue.

default watermark

default watermark


default watermark

Richard S. Busch is a Partner and Head of the Entertainment and Intellectual Property Sections of King & Ballow. His practice areas include Litigation (State and Federal), Entertainment Litigation, and Intellectual Property Litigation. Mr. Busch has litigated, and won many of the landmark music cases over the last 15 years, including *FBT v. Aftermath Records*, which established that Eminemâ??s recording agreement entitled him and his production company to 50 percent of the labelâ??s net receipts for permanent download revenue (which spawned numerous class actions), and the â??Blurred Linesâ?• copyright infringement case. Mr. Busch most recently brought numerous actions against Spotify alleging that Spotify streams musical compositions on its platform without license or payment to publishers and songwriters, and challenging the constitutionality of the Music Modernization Act.

Â© 2022 Your Inside Track LLC

Your Inside Track reports on developments in the field of music and copyright, but it does not provide legal advise or opinions. Every case depends on its particular facts and circumstances. Readers should always consult legal counsel and forensic experts as to any issue or matter of concern to them and not rely on the contents of this newsletter.

Date Created
April 12, 2022
Author
judith-finell

default watermark