TRANSCRIPT Episode 29 – Rod Andreason

Jonathan Bench: Today I'm joined by Rod Andreason, an attorney who has practiced commercial litigation for more than 25 years, trying cases in federal and state courts and in arbitration. He is a past chair of the litigation section of the Utah State Bar and the current chair of the Utah Supreme Court's Advisory Committee on the Rules of Civil Procedure. He has been recognized with the State Bar's President Award for Exceptional Service to the legal community and voted by his peers as Legal Elite, Super Lawyer, or Best Lawyer on many occasions. His clients range from individuals to large and complex businesses in contract, trust, intellectual property, and other business disputes. He's the father of four great children and the grandfather of three wonderful grandchildren. He is the author of the recently released book, *Unite or Fall: The Choices We Each Must Make Today and The Fallout If We Fail*. Rod, thank you for coming on the podcast today.

Rod Andreason: Thank you for having me, Jonathan.

Jonathan: I'm very excited to dive into your book, which is what this episode is going to be specifically focused on. At the same time, I want to get a little into your background personally and professionally—how you got to where you are now, and a little bit about who Rod is on the inside—so we can understand why you chose this topic for your book and what you have to share with us through your many years of experience.

Rod: Jonathan, I've been in the fighting profession for many years. I do commercial litigation. It's about debates, disputes, back and forth, sometimes very aggressive and often very high stakes. That's been the work that I've done. But at the same time, a lot of what we see in debating and disputing, especially in this country, has become increasingly acrimonious. It's not just about aggressive issue debate; it's more about personality attack and division for the sake of division, not for achieving certain results or solving certain problems.

Over the last 10 years or so in particular, this has bothered me in terms of how we address issues in the country. I like the work that I do. I love serving my clients. I don't like the way that we do it these days—and not so much in the law. In the law, it's better, frankly, than what we do as individuals. I don't like how we talk to each other about things we disagree about.

Jonathan: Talk about your background for a minute. Did you grow up in a family where disagreement happened and it was dealt with well? I'm really interested in this idea of disagreeing not for the sake of attacking, but of finding the points and getting down to the substance. I think this is great legal training. Even me as a non-litigator, I find this very

interesting. I think I'm a much better arguer now than I was when I started. I used to be very emotional, and I probably would have gone toward more of the things you're talking about.

But in my legal training, it caused me to focus on appearing in front of a dispassionate fact finder and making sure we understand everything on both sides. Is this something you grew up with, ingrained in you, or is it something that came to you professionally after study and deciding this is where you wanted to practice law?

Rod: I think some of both. I grew up in a family of nine kids. I was second oldest and often had the role of shepherding the others. There was a lot of analysis and debate at my home. My father is a university professor, and he demanded thoughtful analysis of the issues we discussed at home, whether it was with my older brother, with other siblings, or with him as a matter of policy or debate. I think that was helpful to me and informative.

A lot of it, though, has come in my practice and training as an attorney. As we learn to focus on what the issues truly are, as opposed to irrelevant sidebars, and as we address the real basis for decision, cutting away the things that are less important and focusing on solutions and resolution instead of battle and emotional lashing out, I think we become better at truly resolving problems and disputes and achieving solutions instead of simply taking shots at each other over and over again. Litigation practice has been very helpful in bringing me to that kind of approach.

Jonathan: Did you always plan on going to law school?

Rod: I thought about it as a teenager, and then I essentially wrote off law school and being an attorney because, from everything I could tell in popular media, attorneys were terrible people. I didn't want to be that, so I backed off. I did debate in high school, which again would tend someone toward being a lawyer, especially a litigator. But it wasn't until college that I really had a seminal experience talking with another attorney and felt strongly that this was the direction I should go.

Jonathan: Let's turn to your book. You've talked in general terms about what prompted you to write it. Is there anything specific that happened through the years where you thought, this is going to be worth my time—to step away from a busy legal practice and sit down and write this book?

Rod: There was, Jonathan. It was really the debates and the acrimony that surrounded presidential elections. I began to dread presidential election years simply because I knew I'd be getting what everyone else was getting, and that was debates that focused on people and increasingly resorted to name-calling instead of addressing real substantive challenges that people were facing.

With the advent and increased use of social media, that meant not only political figures were speaking online or in radio and television ads, but now friends and family members joined in the fray. They not only promoted political issues, but began attacking those who didn't believe the way they did. It became a matter of people canceling each other or no longer speaking to each other, cutting off contact simply because someone belonged to a different political party or held even a single different political opinion.

That kind of unhealthy severing of ties and relationships, and attacking of other people, has been supported and enhanced by social media algorithms that reward engagement, including opposing engagement and contention. That's what made me really step back and say, maybe it's worth my time to cut back my legal practice for a period and spend a lot of time writing and then editing this book. It was a leap of faith for me. I had to drop my practice significantly. It was a tremendous financial loss, and I never expect to make that up by doing this book. But it took years, and it's been a substantial work.

Jonathan: Clearly you're passionate about it, and I'm really happy you can educate me and the rest of us listening—and others who might read this transcript later—about why this is so important to us in society. In section one of the book, you start with a wide lens and address the importance of unity to us as human beings. How does unity impact the way humans can flourish?

Rod: The reason I do that is because I think so often, in the midst of debate and contention where issues really don't get resolved, it's important to step back and ask: how do we succeed in general? How do we thrive as people?

Where this really comes into play in a clear way is in our own global supply chain, or in the food supply chain that allows you and me to have food on our table at any given meal. Unless farmers are able to provide their products to a shipper, who then brings them to a retail grocery store and eventually to our tables, we don't eat. That kind of unified action is important not just in receiving food, but in every other aspect of our lives. It's important socially and politically as well.

If we don't cooperate in the ways we resolve problems or address the issues we need to function in society, we don't succeed. I think people forget that when it comes to political and social issues. They think we can continue to argue and it'll be okay. But unless we achieve unified discussion and debate—and accept the "C" word, compromise—we don't achieve solutions.

In the book, I talk about how this principle is essential all the way down to our atoms and elements, our planet, and everything else in nature working together. Unless we realize that

we only function well together when we act unitedly, we won't get to the next step, which is understanding how to accomplish that kind of unified action.

Jonathan: You talk about the miracle at Philadelphia in 1787 and the success of the difficult Constitutional Convention. You outline several points that contributed to the adoption of this unique document that guides our political institutions in the U.S. and has been a framework for many other countries to follow. Can you walk us through the Philadelphia miracle from your perspective?

Rod: I address that because I think it's such a good model for us. The men who assembled in Philadelphia to prepare the Constitution were all very passionate, strong individuals. They represented very different interests from the places they served. They had constituents in large states or small states, focused on agriculture or finance or many other things, with very different backgrounds and interests. And yet they came together to create this amazing Constitution, which has been a model for the world.

The things they did to achieve that document are a great model for us. One is that they allowed themselves to change their minds. They didn't publish their discussions. They didn't have an open mic. They weren't being watched all the time. They essentially sat in a chamber, negotiated, and discussed things, and were flexible in their decisions even when their constituents had adamant positions. They weren't seen as flip-floppers. They went in and did the work until they understood the other side and could find agreement.

Another thing they did was connect with each other not just on the convention floor. They met personally. They got to know each other as individuals. There weren't many boarding houses, so they often stayed in the same places. They went to the same places for dinner, to the same pubs and brewing houses. They knew each other well enough and cared about each other enough that they were willing to listen. They understood more fully that the person on the opposite side perhaps was still coming from a good place, had a good heart and good intentions, and wasn't simply the villain on the other side.

Another important rule of the Constitutional Convention was that no one could speak a second time on an issue until everyone had been heard at least once on that issue. That enabled fuller discussion and gave everyone a chance to share a viewpoint. No one was excluded. There weren't rules or practices that kept voices out. So everyone felt like a participant. They were involved, they contributed, and that made for a greater ultimate whole.

Jonathan: I love that—getting with people offline, out of the limelight, no sound bites being picked up, and just breaking bread together, talking about the issues that are important to them, finding out where they came from. I think you're right that if we all start with the

concept that everyone else is looking out to do the best they can for their own, yes, of course we're all acting out of self-interest, and oftentimes we need to be persuaded to put some of that aside. But I think if we can talk together, I've always found that getting in a room with someone and really understanding where they come from, without any other agenda, is a great prerequisite.

It's the way I build relationships with my clients and the way I try to build relationships with my colleagues—to understand where they came from without judgment initially. Then we can talk about the hard issues after that.

Rod: Agreed.

Jonathan: In section two of the book, you address the unraveling ties in the United States that are making us much less united. You talk about fading ties in personal life, family and extended family life, religious community, middle-class America, corporate America, federal government, and national pride. It feels like things have been unraveling significantly for years. What ties do you think are most impactful—the ones that can make the most profound difference for all of us if we focus on those first?

Rod: I think the ties that are most impactful and most important to preserve are those closest to us. The personal ties we have with other human beings most closely associated with us are by far the most important.

So many people today don't have good personal connections with others, even friends, the way they did in previous years. A lot of our connections have been through social media or online. They've become less personal. Frankly, they're done less in person. We've lost a lot of the human touch of having simple, basic, normal interactions with other people.

That really resounds in the family, where once families were much more closely connected—whether it was on farms decades ago or simply in the home, interacting, talking with each other, accomplishing tasks together, having family activities, sporting events, and other things that connected and bound them. So often now families are not seeing each other or doing things with each other. Children may come home to have a meal, but if our homes are boarding houses, our children aren't connecting with us, we're not connecting with them, and we're not establishing the personal ties that help us feel secure and supported when times get tough—and times inevitably do get tough.

From there, I branch out to the next closest thing. Few neighbors know each other in a community. The barn raisings of early America are now distant memories, something out of a history book. We used to at least know our neighbors well enough to assist when things went badly for them, to provide a loaf of bread or a cup of sugar, to help people move in when they came to the home down the road. That's sadly happened less and less as we

become less connected, less willing to reach out, more technologically focused, and not as focused on the humans around us.

Jonathan: It's interesting. I grew up in a small town in the Midwest, in Wisconsin, where we largely had no fences between yards. Now I live in the Salt Lake City metropolitan area, where we all have fences. In some ways it makes me quite sad that my kids can't play night games across the backyards with other kids in the neighborhood, which used to be a nice superhighway for kids to travel through to get from point A to point B.

I think they've adapted a bit. Now they mostly play in the cul-de-sac, and that works. They spread the word and they all get together. But it is interesting the way we have to grapple with how interconnected we are through technology and also how disconnected we are by outsourcing our yard work or outsourcing other things where we would normally be out in the community doing things. My wife has made this point often—she says, "I need to get out and do more yard projects and have the kids with us." That's the goal: to be out there working together.

I grew up in a large family as well, so I have strong memories of working outside in the garden and yard together because we had a lot of mouths to feed. A lot of that resonates with me.

Rod: Me too. We had a garden, and the time spent removing rocks, weeding, or shucking corn and doing other things—those are formative memories, and they definitely connected us to each other.

Jonathan: Let's pivot for a minute to our current connection to the federal government. This is an interesting topic for me. I went to law school not because I was interested in government and politics, but because I somewhat ran out of options and heard about these business lawyers and thought maybe that would be a good place for me. So I'm not the quintessential lawyer. I love talking to lawyers who knew where they were going, put themselves on the path pretty early, and felt very passionate about something. I've mostly been passionate about understanding the world, and that has shaped the way I interact with it and the way I run my practice now.

But I do have great respect for those who have an understanding of—and even a passion for—current politics. So tell me, Rod, what about the federal government in relation to the states and to us as individuals?

Rod: Our connection to the federal government has gotten so bad I almost hesitate to quote some of the polls that have been released in recent years. But people in Gallup polls and others think the federal government is not only not helpful and not functional, but more

likely to harm the country and the economy than to help it. Ratings for Congress are especially bad.

When's the last time we publicly knew of a congressional vote that didn't come down to a 51–49 or 52–48 decision in the Senate, or something that wasn't resolved purely as a matter of party politics? Some work does go on behind the scenes. It's less well known. It's what some call the "secret Congress" that does get some things done. But we've had more government shutdowns in the last 10 years than in many previous periods of our history.

We've seen essential government workers used as political footballs in fights between the two major political parties over issues they each want to promote. This type of political gamesmanship—fighting for the sake of the game and for the sake of particular issues, regardless of what it does to federal workers, farmers, immigrants, or others caught in the crossfire—has made it so states increasingly don't trust the federal government and move forward with their own solutions to national problems affecting them.

Individuals don't believe Congress can accomplish anything, so they turn to more extreme solutions or hope for something more extreme. I think that's part of why we've seen more reliance on one-person action, whether by executive order or other unilateral moves. In terms of actual discussion, resolution, compromise, and solving real problems through our main elected officials in Congress, it just doesn't seem to be happening, and people are giving up on it happening.

Jonathan: In section three of the book, you talk about these forces of division and rage, which I'm particularly intrigued by. What are the key forces dividing the U.S. today, from your perspective?

Rod: Some of the greatest forces of division and rage are relatively simple and fairly new in the sense that this social media experiment we've been conducting for the last 15 years or so has changed the game. As I mentioned earlier, individuals are now joining in the political fray not just by talking on the street or with friends or on the phone, but by publishing anything on social media—whether it's well researched or not, thought out or not, extreme or moderate.

The algorithms of key social media platforms are intentionally set up to pit people against each other. It has created a forum for controversy, fighting, and antagonism. It's one of the greatest forces of division and rage in our country right now. That's exacerbated by the fact that many people are now getting their news on social media, which often doesn't have the same vetting, sourcing, or credibility that more established news platforms have.

Fake news has become more frequent and even more amplified by foreign interests that have attempted to promote false information in ways that divide Americans. This has been

clearly established in previous presidential elections, as interests from Russia and other countries have intentionally fomented controversy through social media simply to divide us. Frankly, it's working.

We've also been divided around issues, particularly social issues. Recent Supreme Court decisions, abortion, climate change—many of those have continued to separate us. But what hurts us the most, and what I see as the greatest force of division and rage, is that we are turning not just to disagreement but to demonization. We call the other side morally corrupt and beyond saving. The wording and language we use make it increasingly easy to justify not only disagreeing, but hating—and eventually turning to violence.

We've already had violence and attacks, and I'm concerned that much more could break through and cause much more significant harm. Anytime we create a dichotomy—a two-sided dispute—it creates significant danger. Thomas Jefferson said he didn't mind political parties per se, but he was against there being only two of them. He said men are by their nature divided into two opposing parties. My concern is that because we increasingly know exactly who those two opposing parties are, and we see them mapped out in red and blue every election cycle, the rhetoric is getting more dangerous and more aggressive. That increases the chances of creating a two-sided battle yet again in this country, and that scares me.

Jonathan: So I'm thinking in macro terms here. In a perfect world, would it be better if we had multiple political parties? Or is the answer less social media? I'm sure it's a combination of many things, but just off the top of your head—for someone like me, who tends to tune out rather than tune in when things get especially passionate—what do you think? I consider myself fairly moderate, somewhere in the middle, maybe from legal training. If you had a wand, what would you do? Would you turn off the political function of the social media tap? What are some easy fixes, whether practical or not?

Rod: If I had the wand, I probably would take politics out of social media. I'd make it something that involved people talking face to face. No more keyboard courage, if I could wave that wand. There's something called toxic disinhibition, which describes the phenomenon that if people don't see the person they're actually speaking with, they're much more likely to be less inhibited, to say things they wouldn't normally say face to face, to lash out, and to be mean and nasty. They'll say things that would be reprehensible in person, things they wouldn't even think of saying if they were sitting together at a restaurant or pub, as the Founders did during the Constitutional Convention.

So if I could take that kind of political fighting out of online interactions, especially social media, I would seriously think about doing that. In a perfect world, though, we don't take

away tools from people; we teach people how to use the tools better. I hope people can learn that these tools do have good functions and can serve us well, but they need to be used carefully or they can become tools for great harm.

Just as a hammer can be a great tool to build a house or do something constructive, it can also be a murder weapon. The same is true for social media. It can have great advantages, but it's also a powerful tool for destruction. Because we carry it around on our phones, walk with it everywhere, and receive instant notifications, if some event goes out on social media and people respond too quickly and too passionately—even based on false information—we can have a significantly violent and perhaps catastrophic event. So even if we can't take the tool away, we've at least got to teach people how to use it better.

Jonathan: You do have a good news section in the book. In section four, you suggest that we have hope for change—that we can change and be better if we take certain steps. You have 27 chapters on this subject. What actions seem most important to you?

Rod: They really tie back to the Constitutional Convention. I've been a little concerned that as people begin reading my book, they see so much of the negative and the sad—the unraveling ties, the forces of division and rage tearing us apart—that they don't get to this good news portion. It's a long book, frankly. I keep cutting it down, but it still has around 1,200 footnotes and over 400 pages. If I could, I might create a version that only has these 27 good news chapters.

I draw from the Constitutional Convention, from lessons in nature, from statements and examples of the Founding Fathers, Oprah Winfrey, and other notable people who have achieved success and peaceful cooperation in their lives. One of the suggestions I make is to get close to your opponents, get close to your adversaries. Sit down and see them face to face. Learn that they really are human, and let the temptation to demonize and dehumanize them back off. If we engage with them in person, see sincerity in their eyes, and learn from them in close proximity, we're much less likely to call them terrible names and attack them the way we often do.

In a related sense, we also need to be prepared to truly listen—not to talk for the sake of being heard, and not to listen only so we can respond with a rebuttal, but to truly understand the perspectives of people who think differently. There are times this has happened even in contentious disputes, and they've been resolved very well.

I cite in the book an example in Loudoun County, Virginia, where there were opposing perspectives on what should be taught about same-sex marriage and gender issues in the county curriculum. The school board meeting on the subject was so contentious that people were yelling and throwing things. But when the two different sides were brought

together in a less formal setting and had a chance to get to know each other more personally—talk about their interests, their hopes, their dreams—they developed an understanding of shared interests. They were then able to see each other as normal people with good desires, trying to support what they believed were good things. They found compromise, reached solutions, and resolved it. That's not something only they can do. Everyone can do that if they try.

Jonathan: Section five of the book is the warning section. Why do you feel Americans should be warned about this lack of unity?

Rod: I'm afraid we're a little like the classic story of the boiling frog. If a frog is in tepid water, it'll stay there even if the temperature increases. If it's put into hot water, it'll jump right out. But if it sits in warm water and the temperature rises degree by degree, eventually the frog boils to death.

I'm concerned that we are the boiling frog. We've been in this state of slowly increasing animosity, contention, and dispute for so long. We know it's bad. It's often discouraging. We know it's not getting anywhere. But we're not really doing anything about it. We're not taking active steps to change the way we talk with each other. We're not trying to reach compromise and do the hard work of achieving resolution, even if it means giving something up. One of my chapters is called "Sacrifice for the Win," because I think to achieve compromise and resolution, we really do have to sacrifice.

We're simply letting this happen to us, or being participants in it ourselves, and we're not seeing further down the road. We've already had significant losses in the attacks and outbreaks of violence and rage we've seen. That's bad enough. But if we don't take active steps to change how we speak to others, how we interact on social media, and how we address key issues on which we disagree, it's not going to improve itself.

In the introduction to the book, I said I feel like we're sliding down a hill toward the edge of a precipice. It can't continue the way it is without eventually breaking into free fall. I don't want that to happen. I named the book *Unite or Fall* as a message people should understand right away: if we don't take active steps to unite, we will fall. It's not a matter of if; it's a matter of when.

That final section makes some predictions about what might happen. One example is immigration. We haven't done much to fix immigration laws or problems in our country in many years. We obviously have many problems related to immigration, whether it's security or laws that allow legal immigration in sensible ways. The rules are labyrinthine. No one can navigate them without significant help. So on one side we have aggressive enforcement measures heightening fear and contention, and on the other side we have

lawbreaking and avoidance of the rule of law in terms of how people approach immigration status. Everybody knows we need sensible immigration laws. We can't seem to achieve them. Things can get much worse, and we've headed down a bad path.

But this pertains to all of our issues. At some point there can be a two-party war in our country based on the issues the parties increasingly embrace. They are becoming more polarized in their positions. They used to be much more centrist than they are now. As they become more polarized, and as we become more divisive, contentious, and angry, greater violence is inevitable unless something changes. I think we need to do all we can to avoid that.

Jonathan: Your book is geared in many ways toward the United States. Does it apply to other countries and their unity—or lack thereof?

Rod: I think it does. I focused on the United States because I feel like we're nowhere near as united as we should be, and we have significant problems. This is my backyard. This is where I live. But we see similar effects in countries around the world, where people are less and less willing to talk about an issue and instead simply want to focus on the fight.

The fighting becomes more extreme, the debate points more agitated, the purveyors of positions more aggressive, and middle ground and compromise seem harder and harder to reach. There are examples around the world where this has been done well, even for centuries in some places. But in many other countries, from what I see and hear, people are also experiencing increasing division and contention and can see similar types of active fighting and civil discontent that can go to an extreme level. We don't want that for anyone.

Jonathan: Rod, we're about at time. Any parting thoughts? I do have one last question for you I didn't prep you for, and it's a little off topic, but I want to give you a chance to share any final thoughts you have for the audience today.

Rod: I obviously don't do this for me. This has been a significant investment of my time, interest, and finances. I don't do it for money, and I'm not getting any personal benefit out of promoting this. I care about how we are doing and will do as people—as a country in the United States, and as other countries as well.

There's no doubt that unified, cooperative work leads to success, happiness, and peace. What we're doing right now isn't that, and it's getting worse. So I'd encourage anyone listening to find ways to reconcile with people where relationships have gone bad, to reach out to people you're upset with or angry with or have had disputes with, and seek to resolve those. In your communications, when you disagree with someone else, focus on resolving the problem and not attacking the person.

Seek to get up close and personal, to listen, and to understand before pushing the button on your computer, responding on social media, or lashing out in any other way at someone else for believing something different than you do.

Jonathan: So Rod, here's my final question. If money were no object, and you had to leave your current position, what would you be doing with your time over the next 10 years? How would you spend it?

Rod: I love being an attorney and practicing law, and I think we do significant good work in resolving disputes and helping people achieve peace. People maybe don't understand that outside the legal world, but people come to us whether it's with a contract that needs to be achieved so they can cooperate in a transaction, or a dispute in litigation that needs to be resolved so they can move on peacefully with their lives.

What we do as attorneys is and should be about peacemaking and unifying and achieving *e pluribus unum*—that motto of our country, "out of many, one"—which is intended to be something that galvanizes and brings us together. Good laws also create *e pluribus unum*. Good lawyers create out of many, one. So I'm happy to do that work for my clients.

But to answer your question, if I weren't constrained by money or the need to continue practicing in the same way, I think I would go out and speak to more people about these issues and encourage them to seek solutions and compromise, to avoid the negative attacks, and to seek a peaceful, united, collaborative way forward on many different fronts.

There's so much good volunteer work to do, whether in our communities, neighborhoods, churches, or organizations. I would promote and encourage that type of cooperative work and connection that we've lost so much of in our country over the last two decades.

Jonathan: Well, Rod, thank you so much for your time and your expertise. This has been a great opportunity for me to learn from you, and I know others will certainly benefit from this. I look forward to catching up with you later and getting your updated viewpoint on how you see things developing.

Rod: Thank you, Jonathan. I really appreciate the chance to talk with you.