

HOWARD C. BRATTON

In 1964, President Lyndon Johnson appointed Howard Bratton United States District Judge for the District of New Mexico. Judge Bratton was born in 1922 in Clovis, New Mexico, where his father Sam was a state district court judge. Shortly after his son's birth, San Bratton began a run for the New Mexico Supreme Court, to which he was elected in November of that year.

The family moved to Santa Fe, where the court sat. In mid-1924, Justice Bratton resigned from the court and ran for the United States Senate. He was elected, and the family moved to Albuquerque where they established their permanent home and where Howard grew up.

Senator Bratton was elected to a second term in 1930, and in 1933 was appointed to the Tenth Circuit Court of Appeals by President Franklin Delano Roosevelt.

Young Howard attended Albuquerque schools until high school, when he went off to school at New Mexico Military Institute. He graduated from there at age 15. He graduated from the University of New Mexico in June of 1941 at age 19 and that fall entered Yale Law School.

Following the outbreak of World War II, he left Yale to enlist in the Army, where he served in the European Theatre until victory in Europe, rising to the rank of Captain.

He returned to Yale, completed his legal training and came home to New Mexico to practice. He practiced for a brief time in Albuquerque but shortly moved to Roswell, New Mexico, where he practiced law with Harvey, Dow, and Hinkle, which subsequently became Hinkle, Bondurant, Bratton, and Christy.

In March of 1964 he was appointed a United States District Judge for the District of New Mexico and assumed office one month after his forty-second birthday.

The court was headquartered in Albuquerque, although the judges traveled from time to time to other designated places of holding court, so Judge Bratton moved his family back to Albuquerque.

During his years as a practicing attorney he had been President of the New Mexico Junior Bar Association, President of the Chavez County Bar Association, and Chairman of the Public Lands Committees of both the New Mexico Oil and Gas Association and the Interstate Oil Compact Commission.

In addition, he served as a member of the New Mexico Commission on Higher Education and of the Board of Regents of the University of New Mexico, where he also served a term as President of the Board.

He continued to serve on the university's Board of Regents until 1968, when he resigned, having correctly concluded that student interest at the university would give rise to litigation in federal court.

He served as a member of the Judicial Conference of the United States and as a member of three of its committees: the Committee on Financial Disclosure, the Ad Hoc Committee on International Judicial Relations, and the Committee on Operation of the Jury System, chairing its Subcommittee on Pattern Jury Instructions. He also served as a member of the Judicial Center Board, running educational seminars for federal judges while on the Board. He was elected the first President of the Tenth Circuit Trial Judges Association (which later became part of the Federal Judges' Association).

Judge Bratton was a first-rate administrator. He was responsible for the change in federal law that made it possible for the Clerk of Court to grant temporary delays of jury service to prospective jurors in lieu of the requirement that any delay in service be granted by order of the district judge. He also instituted the practice of delegating discovery in civil cases to the U.S. Magistrate, who, until that time, had handled only initial presentations in criminal cases and misdemeanors. This resulted in a higher and faster termination rate for civil cases in the District of New Mexico, and the Federal Judicial Center later recommended that other district courts consider following suit.

When Judge Bratton came on the bench in 1964, his colleague H. Vearle Payne had been on the bench for only one year. The two preceding judges had died within a four-month period of each other after both had suffered prolonged illnesses. Judge Bratton's father, as a Senior Circuit Court Judge, acted for several years as a trial judge in the district, but he, too, died within the same four months, leaving the district without any sitting judge.

The two new judges worked very hard in those early years to clear up the backlog of cases resulting from the long illnesses of the two previous judges. One of Judge Bratton's law clerks remembered working in one of those years on the Fourth of July, Christmas Eve, and New Year's Eve.

One of the most interesting cases to come before Judge Bratton in those early days involved an uprising of a group of Hispanics in Northern New Mexico whose main claim was that Carson National Forest was actually land grant land and belonged to their people. In the fall of 1966, they overpowered the forest rangers trying to collect entrance fees at the Echo Amphitheater Camp Ground in the national forest. They were lead by

one Reis Tijerina, the leader of Alianza Federal de Mercedes, an organization formed to publicize their claim that many Hispanics were wrongfully deprived of rights to land in the national forest by the treaty of Guadalupe Hidalgo.

The case came down to simple assault on federal officials (the manhandling of the rangers) and to conversion of government property (the seizure of the trucks the rangers were driving).¹

Because the point of the action was to garner publicity, Tijerina had issued a press release and, together with some of his followers, had tried to serve the Regional Forester in Albuquerque with notice that they intended to exercise their rights and authority within their jurisdiction, i.e. the national forest. He refused service and gave them a letter stating that use of the camp ground must be in compliance with federal regulations, including payment of an entrance fee. Thus the stage was set for the confrontation that followed and the enormous publicity surrounding it.

Emotions among the Alianza and its followers were running high, and on the day that the group entered the camp ground they were in an angry and threatening mood. The rangers were arrested for trespassing and told they must leave. They tried to take down license plate numbers as they left but were seized again and told they would be arrested again if they did not leave. They were also refused the right to take their trucks with them.

The ensuing publicity reached national levels, and, when the case was set for trial, a motion for a change of venue was made, the defendants asking that the case be moved to New York, Chicago, or San Francisco. The court concluded that the pre-trial publicity

¹ U.S. v. Tijerina, et. al., 407 F.2d 349 (10th Cir. 1969).

could hinder a fair trial and moved the case to Las Cruces, New Mexico, one of the designated places in the district for holding court.

When the case came on for trial, the followers of Tijerina and his five co-defendants traveled to Las Cruces, where they camped just outside of town and crowded into the courtroom each day of the weeklong trial. The atmosphere was extremely tense, but Judge Bratton presided with such composure that nothing happened to interfere with or prejudice the proceedings. It was a tribute to his air of authority, his composure, and his even-handedness in the conduct of the trial that it ended with defendants' convictions and without the occurrence of any untoward incident.

In a state with a small population some questions of applicable law were slow to arise, and Judge Bratton had occasion in diversity cases to anticipate what state law would become in certain cases. One such interesting case was brought on behalf of a workman whose eye was injured by a metal fragment when he struck a metal tooth that he was installing on a dirt scoop with a metal hammer, causing the tooth to splinter.

The issue was whether the jury should be instructed on the theory of strict liability, as stated in Section 402 A of the Restatement Second, Torts. Judge Bratton concluded that a New Mexico court would so instruct and submitted the case to the jury on the theory of strict liability, refusing to instruct on contributory negligence. (The case was tried before New Mexico adopted the theory of comparative fault.) The jury returned a verdict for the plaintiff. The case was affirmed on appeal, Judge Murrah noting that the Circuit had deferred to Judge Bratton's judgment of the law of New Mexico before and,

since the logic was equally persuasive in the present case, there existed no reason to refuse deference to Judge Bratton's judgment.²

Probably one of the most important cases to come before Judge Bratton arose from a lawsuit referred to by many New Mexicans as the Great El Paso Water Grab. The case arose when the city of El Paso, Texas, filed applications with New Mexico's State Engineer which would allow it to divert groundwater from wells drilled into aquifers in New Mexico that were hydrologically connected to the Rio Grande River and to transport water across the state line to El Paso. All of the applications were denied on the ground that the New Mexico Constitution and a New Mexico statute prohibited export of the state's groundwater. El Paso responded by filing suit in federal district court in New Mexico, asking that the prohibition be declared unconstitutional on the ground that it violated the Commerce Clause of the United States Constitution.

After the evidentiary hearing and before Judge Bratton had rendered his decision, the United States Supreme Court entered its opinion in Sporhase v. Nebraska, 458 U.S. 941 (1982), in which it decided that water is an article of commerce and that only under certain conditions may a state prefer its own citizens. Judge Bratton applied the principles enunciated in Sporhase and held that New Mexico water embargo violated the Commerce Clause of the United States Constitution.³

New Mexico appealed the decision, and its legislature, which was in session at the time Judge Bratton entered his decision, immediately made changes to the New Mexico Water Code that brought it into compliance with the principles of Sporhase, enacting N.M.S.A. §72-12B-1, which set forth the conditions under which out-of-state water may

² Moomey v. Massey Ferguson, Inc., 429 F. 2d 1184 (10th Cir. 1970).

³ City of El Paso v. S.E. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

be appropriated, i.e. if such use is not detrimental to the public welfare or contrary to the conservation of water within the state. The statute also listed six factors to be considered by the State Engineer when acting upon applications for out-of-state water uses.

The Tenth Circuit vacated Judge Bratton's decision in light of these legislative changes and remanded the case for consideration of the rights of the parties in light of the changes in New Mexico law.

El Paso then filed an amended complaint challenging the constitutionality of the new laws. Since the new statute did not involve an explicit prohibition to interstate transportation of groundwater and was drafted in accordance with Sporhase, Judge Bratton examined the factors that the State Engineer was to evaluate in acting on an application for export of groundwater and concluded that they were not facially discriminatory, but should be evaluated on a case-by-case basis to determine whether the burden on interstate commerce from their application was reasonable.⁴ The same criteria were added to the statutes covering new applications for in-state use of groundwater. However, the legislation did not apply them to transfers of in-state water rights, and the imposition upon transfers of water rights out-of-state was impermissible.⁵

The second decision in the El Paso water case resulted in many hearings and the ultimate denial of El Paso's applications by the State Engineer on the grounds that El Paso had not shown need for the water within a reasonably foreseeable period.

El Paso's effort to file a third supplemental complaint was not timely and was refused, as was its effort to get into state court, which the state court dismissed for lack of subject matter jurisdiction. Thus, the case was finally over, and El Paso has not tried

⁴ City of El Paso v. S.E. Reynolds, 597 F. Supp. 694 (1984).

⁵ Ibid.

since to file any applications under §72-12B-1, but the decisions in the case continue to govern the statutes, regulations, administration, and planning regarding water policy in New Mexico.

In recognition of his exemplary service, the New Mexico State Bar named Judge Bratton Judge of the Year in 1981. The state bar also conferred upon him the Outstanding Judicial Service Award in 1987, the Distinguished Judicial Award in 1992, and the Professionalism Award in 1994. The New Mexico Trial Lawyers Association gave him the Award for Dedication to the Advancement of Law in 1987, and the Albuquerque Bar Association named him Outstanding Judge in 1987.

In the late 1970's, the Albuquerque Bar Association began an annual polling of Albuquerque lawyers, asking them to rank all the federal district judges and the Albuquerque state district court judges on such attributes as knowledge of the Rules of Evidence, knowledge of the law, expeditious handling of cases, demeanor, fairness, and courtesy. Judge Bratton was given nearly perfect scores in these polls and was ranked as the best judge of the group by Albuquerque lawyers in every year that he served as an active judge.

In 1971, the University of New Mexico conferred upon Judge Bratton an honorary Doctorate of Law, and the University of New Mexico Law School gave him its Distinguished Service Award in 2000.

Judge Bratton lived a life of which anyone could be proud and which many would envy. Much of the credit for his accomplishments must go to his father, an outstanding man under whose tutelage he was shaped into the outstanding man that he became. By example, Judge San Bratton taught his son enormous integrity, courtesy, kindness,

geniality, and the saving grace of a marvelous sense of humor, as well as instilling in him the notion of public service. Judge Bratton lived up to his father's teachings throughout his life.

He had a sunny disposition, he ran an orderly and pleasant office where his staff was happy to work, and he justly earned a reputation as a great judge.⁶

Judge Bratton served as an active judge from 1964 until mid-1987, when he took senior status. He was Chief Judge from 1964 to mid-1987. He continued to work as a Senior Judge until 2000, when illness caused him to resign. He passed away in May of 2002.

⁶ Letter from L. Ralph. Mecham, Director of the Administrative Office of the Limited States Courts, to Frances Bratton (May 31, 2002).