

THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

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Profile: Judge Stephanie Seymour

By Eric Turner

Trailblazer is the word often associated with Judge Stephanie Seymour, the Tenth Circuit's first female judge, who has witnessed significant changes in the legal landscape since joining the bench more than 40 years ago.

"I feel like an accidental role model," Judge Seymour said in a 2011 interview. "It's nice to think that I may have influenced younger women to do something that they might not otherwise have done, like apply for a judgeship, take a chance on something, realizing they can have a career and have a family, anything in that regard. I mean, times have changed."



Senior Judge Stephanie Seymour

Judge Seymour's judicial career almost didn't get off the ground. The time was 1979. President Carter took the rare step of establishing merit nominating commissions for federal appellate judges in an effort to open the process for a more diverse pool of candidates. At that time, there was only one sitting female federal appellate judge in the country. Judge Seymour, then 39, applied. There were 35 applicants for a new Tenth Circuit judgeship, and to narrow down the list, the commission chair—a 70-year-old trial lawyer from Wyoming—suggested that each commission member name an applicant who's obviously not qualified. He started and named Judge Seymour. Josie Heath, a non-lawyer member of the commission from Denver, asked why. The chairman said: "Because she has four children and couldn't possibly handle the job."

Heath was stunned. After some time to gather her thoughts, it eventually became her turn to eliminate an applicant. She named a sitting justice of the Oklahoma Supreme Court, which stunned the chairman. "You can't do that," he said. "He's obviously well qualified." Heath replied: "No, he's got five children and couldn't possibly handle the job."

The point was made. Judge Seymour's name was placed back into consideration and was one of four the commission sent to President Carter. As they say, the rest is history. President Carter nominated Judge Seymour to be the first female judge in the Tenth Circuit.

Judge Seymour said she didn't know how close she came to not being a judge until she heard the story from a mutual friend of Heath's years later. In 2006, Heath—herself an

inductee into the Colorado Women’s Hall of Fame—was introduced during the ceremonial presentation of Judge Seymour’s portrait when she took senior status. Heath received a sustained ovation after Judge Robert Henry told the story.

Judge Henry told many stories that day, telling those at The Broadmoor that Judge Seymour was the first woman to be part of Harvard Law School’s moot court championship team, convincing the dean to list her first name—as opposed to the traditional first initial—on the permanent plaque so that other women would see. In practice, she became the first woman hired as an attorney by Baker Botts before establishing herself as the first female law partner in Tulsa. As a judge, she was the third woman to become chief judge of a circuit court when she served from 1994 to 2000, and she became the first woman to preside over the Judicial Conference of the United States in 1999.

Judge Henry also told Judge Seymour’s story through the words of others who contributed letters for the occasion.

President Carter: “You’ve served the federal judiciary with distinction and have more than justified the faith I placed in you by appointing you to the U.S. Court of Appeals over two decades ago. The recognition you are receiving today is testimony to the impact you have made on the lives of those whom you have served so well.”

Justice Ruth Bader Ginsburg: “President Jimmy Carter cared deeply about the health and welfare of the federal judiciary. He aimed to, and succeeded in, changing the complexion of the third branch by appointing highly qualified women and members of minority groups to judicial office. The portrait you are about to see is no doubt beautiful, as Stephanie is. I expect it will also show that one need not be large to handle power successfully.”

Then-Chief Judge Deanell Tacha: “Stephanie Seymour has been a role model, mentor, respected colleague, and a dear friend to me. Whenever I think of Stephanie Seymour the judge, I think of those copious scrawled notes on the front of every brief. She has always been well prepared, keenly engaged, probing in her questioning, and precise in her analysis. We have been so fortunate to have Stephanie Seymour as a chief and a colleague.”

Then-Tenth Circuit Clerk Betsy Shumaker: “Judge Seymour is part of the generation which made it happen for the rest of us. The amazing thing about her is that although she is a true trailblazer, none of us would ever have a vision of her slamming her fist through the proverbial glass ceiling. She is much too subtle for that. Rather, it is her quiet yet powerful competence that has always struck me. She has such an amazing intellect. We are awestruck by it. Yet, she gets real life. Her support meant the world to me. All because she gets it.”

Law clerk Mary Margaret Giannini: “When I think of Judge Seymour, Lady Justice comes to mind: A woman of strength, intelligence, insight, compassion who renders balance and justice in the world. I learned a great deal about all of these things while working for Judge Seymour. However, what I treasure the most about Judge Seymour is what she taught me about balance. As demanding as her job is, and as hard as she works, Judge Seymour does not let the rigors of appellate judging render her life unbalanced. I am convinced that by living a balanced life, Judge Seymour was more able to render balanced justice. It is this lesson for which I am most grateful.”

Daughter Bria Simpson: “Growing up with my mom, I learned that there are no limits to what a woman can achieve. I see other women struggling with how to be a mom and be

an individual, and I realize how lucky I am that it never occurred to me that one role might erase the other. She's always been a mom and a strong woman. Of all that I've learned from my mom, this is what I value the most."

Daughter Sara Crecca: "Most of my classmates had no idea my mother was a judge. She was never remotely interested in power or even just the image of power for power's sake. She was always this sort of reformed shy person who would rather lay low and just be committed to doing her job well."

In October 2020, Judge Seymour was featured on a CBS Evening News segment as one of three trailblazers from the judicial class of 1979. That year, President Carter appointed 23 women to lifetime federal judgeships, more than doubling the number of women appointed as federal judges in the previous 190 years. Judge Seymour was one of 11 appointed to a circuit court. "We got used, early on, to dealing in a man's world," Judge Seymour said. She recalled when she was pregnant and practicing law she went with one of the partners in her firm to a state court proceeding in a small town in Oklahoma. As she was following the male partner to the front of the courtroom, she said "the bailiff just threw his arms across the way after my male colleague went through, and he said only lawyers are allowed up here." She said, "I stood up straight, stuck my belly out, and said I'm one of those and just pushed my way through."

President Carter appointed Justice Ginsburg to the D.C. Circuit a year later in 1980. Judge Seymour and her husband, Tulsa attorney Tom Seymour, became friendly with Justice Ginsburg and her husband Marty Ginsburg through the years and had much in common. "Stephanie is as blessed, as I am, in a marriage without artificial boundaries," Justice Ginsburg wrote in 2006. "Marty and I were drawn to Stephanie and Tom for that very reason—because they genuinely share the joys and sometimes trials of raising a family, and because Tom and Marty regard their wives' work as at least as important as their own."

Judge Seymour grew up in Battle Creek, Michigan, with three siblings in a family that often traveled the country for three months in the winter while being homeschooled in the car. She attended Smith College, an all-female school in Massachusetts. There, she took a political science course on the Constitution and set her sights on law school. After graduating magna cum laude, she became one of 23 women in her class of 580 at Harvard Law. She had men ask her, "What are you doing here taking the place of a guy?" She responded: "There's only 23 of me, what are you doing here taking the place of a woman?"

Times have changed, indeed.

"When I graduated from law school in 1965, only 3 percent of the law school graduates in the country were women," Judge Seymour said. "By the mid-'70s, it had gotten close to 50 percent. So I was just the beginning of a huge tide of women starting to go to law school. When I first became a judge, there were hardly any women in the courtroom, and that's changed drastically. Being the first woman in a lot of things is fun. Times have just changed, and it's been fun to watch that."

Sources: Presentation of Portrait, Judicial Conference, September 9, 2006; Oral History Interview with Stephanie Kulp Seymour, Inductees of the Oklahoma Women's Hall of Fame Oral History Project, interview by Juliana Nykolaiszyn, May 24, 2011; Voices of Oklahoma, Judge Stephanie Seymour, interview by John Erling, September 5, 2019; CBS Evening News, These Three Trailblazers Paved the Way for Women in Judiciary, interview by Jan Crawford, October 19, 2020.

Tales from the 10th: A new podcast series

By Stacy Guillon, Leah Schwartz, and Tina Howell

Today's remote world has left the legal community hungry for high-quality, compelling content. The "Tales from the 10th" podcast series will bring the Tenth Circuit's rich history, culture, and traditions soon to your smartphone, tablet, and computer for your listening pleasure.



Historical Society volunteers are partnering with the Tenth Circuit's library staff to develop and produce this new series. The goal is to educate the community about the federal courts and civics generally, while also connecting the Society with its members and a broader base of listeners from all states within our Circuit.

In each 30-minute episode, our host, Leah Schwartz of Jackson, Wyoming, will interview a judge, lawyer, litigant, court staff member, or anyone else with a story to tell from the Circuit's history. Tina Howell (the Court's Emerging Technologies librarian) and Stacy Guillon of Denver, Colorado will co-produce the series and, with help from other volunteers, will research and coordinate interviews. Some interviews will focus on individual judges and lawyers, and their careers.

Others will address broader topics including the Circuit's history, jurisprudence, culture, and contemporary contributions. The podcast may also feature highlights from previously archived audio including interviews, Fireside Chats, and recorded oral histories.

Initial episodes will cover:

- 1) How the Court acquired the Byron White courthouse building in Denver from the Post Office, with help from Congress;
- 2) The life and career of Justice Byron White;
- 3) Justice Ruth Bader Ginsburg's work on the *Moritz* tax case and her husband Marty Ginsburg's recollection of how her groundbreaking work on that appeal led to RBG joining the Supreme Court;
- 4) Stories about notable lawyers including Elisha J. Scott (who helped pursue the *Brown v. Board of Education* school desegregation case in Kansas);
- 5) Stories about the early territorial and district courts; and
- 6) The appointment process for federal judges (now and in the past).

We welcome your ideas for other episodes. Please forward them to the Historical Society's email address: 10thcircuithistory@gmail.com

We will notify members as we release podcast episodes which will be available for download on the Historical Society's website and wherever you subscribe to podcasts.

Remembering Justice White: A Bobby Event

By Steve McAllister

The Historical Society hosted a unique event the afternoon of March 11, 2020 to celebrate the latest Supreme Court Justice bobblehead produced by *The Green Bag* (a publication based in Washington, D.C.), this one commemorating our own Justice White. The event consisted of stories and reminiscences about Justice White shared by three of his former law clerks with strong ties to the Tenth Circuit—Senior Circuit Judge David Ebel, Albuquerque attorney and former Historical Society Chair Andy Schultz, and then U.S. Attorney for Kansas Steve McAllister—and the reading of remarks prepared by *Green Bag* Editor-in-Chief, Ross Davies. All attendees received a Justice White bobblehead as a keepsake.

The stories about Justice White focused on his character and personality more than his work on the Court. Andy Schultz relayed how Justice White called the home of Andy's parents to offer Andy a job. The Justice did not identify himself and asked for "Mr. Schultz", to which Andy's mother replied, "that's Dr. Schultz" (Andy's father is a physician), resulting in an awkward silence on the other end of the line. Steve McAllister shared a similar story of Justice White doing his own calling. When Steve was working for his Circuit judge, the administrative assistant informed him one day that an "older man" kept calling for Steve but refused to leave a message. Finally, Steve was at his desk when the call came, and Steve answered to hear "Steve, this is Byron White, and I want you to come work for me."



Judge Ebel shared stories he had received from clerks across the entirety of the Justice's time on the Court as Judge Ebel prepared to eulogize the Justice at his funeral. These stories illustrated both the Justice's competitive nature and his independent spirit. Judge Ebel also shared stories of Justice White after his retirement when the Justice worked in chambers in the Byron White Courthouse. For example, one day the Justice wanted to look for earrings for Mrs. White at a shop in downtown Denver. The elderly widow who ran the store showed the Justice a tray of earrings but none caught the Justice's eye, so she went to get another tray, leaving the first one on the counter. When she returned, the Justice scolded her. "We could have robbed you," he said, to which she replied, "no you couldn't, I would have chased and tackled you," to which the Justice indignantly responded "you couldn't tackle me," "yes, I could," and they argued on as a bemused Judge Ebel watched.

For those who knew Justice White well, he was a pillar of strength, courage, integrity, modesty and many other admirable attributes. Whether running over opponents on a football field, calmly watching kamikaze planes crash into the ship on which he was standing and then going below deck to rescue trapped sailors, quietly acing his law school courses, capably serving his legal clients, resolutely facing down a hostile governor in the civil rights era, or efficiently and matter-of-factly resolving cases as a Justice, he was always the same man. Never a showoff, never seeking attention, and never about Byron White. Judge Ebel brought these points home when he closed the "story" part of the event with a memory of how he and the Justice were going through materials from the Justice's life one day and came across a high school notebook. The Justice, whose body by then was failing him, became animated and repeatedly uttered the word "If." Inside the notebook was a copy of the poem "If" by Rudyard Kipling. After all those years, Justice White remembered what was in the notebook, and it was important to him. Read "If" (easy to find online) and you will see why. The poem will tell you a lot about the kind of man Justice White was.

The event closed with the distribution of Justice White bobble to those in attendance, so they had them in hand while McAllister read Davies' prepared remarks. Davies had planned to attend, but last-minute illness precluded his presence. Davies' wonderful remarks began by drawing a connection between Justice White and the origin of the *Green Bag* bobble in 2002. Davies observed that whenever White was asked about writing his memoirs, his response was "I have," which those who knew White took to mean he believed his judicial opinions were his memoirs. Davies explained that the bobble is created in that same spirit—each bobble represents *only* aspects of a Justice's *judicial* work. *The Bag* has resisted efforts of fans and supporters to incorporate interesting tidbits from a Justice's off-the-Court or pre-Court life, taking the firm view that Justices are not "entertainers or politicians."

But then why does the Justice White bobble prominently hold a basketball, if not as a representation of his famous sports prowess? Look closely, and you will see the ball has a small shark on it, for Jerry "the Shark" Tarkanian, once head coach of the UNLV Running Rebels and the respondent in *NCAA v. Tarkanian*, a 5-4 Supreme Court decision in which Justice White wrote for the dissenters (and thus in favor of Tarkanian's position). The White bobble, notably, is more *literary* than sporty. The bobble has three allusions to Shakespeare plays, all linked to White opinions. First, is the bird, the "hell-kite" of *Macbeth*, which in the play wreaked havoc "at one fell swoop," just as White accused the Court of doing to the legislative veto provisions present in nearly 200 federal statutes in his famous dissent in *INS v. Chadha*. Next, is the "crown" the hell-kite wears, which (as in *Julius Caesar*) "like Casca's

knowing disbelief of Caesar’s ‘thrice refusal’ of the crown, clever investors [in *Basic v. Levinson* likely] were skeptical of petitioners’ three denials that merger talks were going on.” Finally, the two handled bucket/basket, or buck-basket, historically known as a “cowle,” a word which can also mean “a written engagement,” connects to *Cohen v. Cowles Media*, in which the respondent made and broke a promise to the petitioner. White’s majority opinion enforced the “cowle,” the engagement, against respondent Cowles. There is more great fun on the bobblehead (and don’t forget the box as well!) than this article can begin to cover.

For a more fulsome explanation of the details of the bobblehead, please visit:

http://www.greenbag.org/bobbleheads/pdfs/White_annotated_bobblehead_2019.pdf

The Tenth Circuit Historical Society expresses special gratitude to Mr. Ross Davies, Editor-in-Chief of *The Green Bag*, both for his written contribution to the event and, most especially, for *The Green Bag’s* generous contribution of a sufficient number of Justice White bobbleheads to provide one to every person who attended the event, as well as to ensure that Justice White bobbles grace the offices of Judges and Court personnel across all six states of the Circuit.

**JUSTICE
BYRON R. WHITE
THE BOBBLEHEAD**

“Blackstone described it as ‘a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded.’” *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

Does a state school’s enforcement of NCAA rules and findings make the NCAA a state actor? *NCAA v. Tarkanian*, 488 U.S. 179 (1988) (White, J, dissenting): Yes, because the school and association acted jointly.

Basic Inc. v. Levinson, 485 U.S. 224 (1983) (White, J, dissenting): “It seems quite possible that, like Casca’s knowing disbelief of Caesar’s ‘thrice refusal’ of the Crown, clever investors were skeptical of petitioners’ three denials that merger talks were going on.” (citing “W. Shakespeare, Julius Caesar, Act I, Scene II.”)

Fruits of a search of a building in Burbank, CA (where oranges were grown in quantity) in reasonable, good-faith reliance on a defective search warrant are admissible. *U.S. v. Leon*, 468 U.S. 897 (1984).

[W]e conclude that the First Amendment does not confer on the press a constitutional right to disregard promises that would otherwise be enforced under state law.” *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991). Cf. *The Merry Wives of Windsor* (Mistress Ford: “Wher’s the Cowle-staffe?”); *cowle* and *cowl*, OED.

Stay tuned.

Robinson v. California, 370 U.S. 660 (1962) (White, J., dissenting): “If this case involved economic regulation, the present Court’s allergy to substantive due process would surely save the statute and prevent the Court from imposing its own philosophical predilections upon state legislatures or Congress. I fail to see why the Court deems it more appropriate to write into the Constitution its own abstract notions of how best to handle the narcotics problem, for it obviously cannot match either the States or Congress in expert understanding.”

“For purposes of 4 U. S. C. § 111, military retirement benefits are to be considered deferred pay for past services.” *Barker v. Kansas*, 503 U.S. 594 (1992) (intergovernmental tax immunity).

In the legislative veto case, *INS v. Chadha*, 462 U.S. 919 (1983), Justice White dissented alone: “Today’s decision strikes down in one fell swoop provisions in more laws enacted by Congress than the Court has cumulatively invalidated in its history. I fear it will now be more difficult to insure that the fundamental policy decisions in our society will be made not by an appointed official but by the body immediately responsible to the people” Cf. *Macbeth* (Macduff: “All my pretty ones? Did you say All? Oh Hell-Kite! All? What, All my pretty Chickens, and their Damme At one fell swoope?”)

If you are looking at the packaging for Justice White (or if you are looking at this annotation in color), and you are wondering why it is so brightly pink and blue, read his colorful, circuit-split-resolving opinion for the Court in *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992), a Lanham Act case. And if you are wondering why he is accompanied by a steelhead trout, read *Department of Game of Wash. v. Puyallup Tribe*, 414 U.S. 44 (1973) (including his concurring opinion), interpreting the Treaty of Medicine Creek.

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