

In Memoriam
HONORABLE OLIVER SETH

United States Court of Appeals
for the Tenth Circuit

In Memoriam
HONORABLE OLIVER SETH
1915–1996

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Santa Fe, New Mexico
November 21, 1996
4:00 p.m.

Present:

HONORABLE STEPHANIE K. SEYMOUR, Presiding
Chief Judge, United States Court of Appeals for the Tenth Circuit
Tulsa, Oklahoma

DR. ALBERT G. SIMMS
Physician and long time personal friend Santa Fe, New Mexico

THOMAS B. CATRON III
Attorney at Law Santa Fe, New Mexico

HONORABLE MARK B. McFEELEY
Bankruptcy Judge and former law clerk for Judge Seth
Albuquerque, New Mexico

HONORABLE WILLIAM J. HOLLOWAY, JR.
Senior Judge, United States Court of Appeals for the Tenth Circuit
Oklahoma City, Oklahoma

JUSTICE BYRON R. WHITE, Retired
Supreme Court of the United States Washington, D.C.



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Proceedings

CHIEF JUDGE SEYMOUR: Good afternoon, ladies and gentlemen. This is an extraordinary session of the United States Court of Appeals for the Tenth Circuit to honor the memory of our distinguished and beloved colleague, Oliver Seth. All of the active judges of our court are here, along with two of our senior judges, Judge Bill Holloway and Judge Robert McWilliams. And we're very pleased, of course, to be joined by Justice Byron White, who was our Circuit Justice for so many years and who has known Oliver for many, many years.

I would like to first recognize the family of Judge Seth who are here and ask them to stand, starting with Jean Seth, his wife of many years, his daughters, Laurie and Sandie Seth, and in addition, Jean's two brothers, Alan and Bill and their spouses are here. Welcome to you all.

We have a number of judges from the district court bench and from the state court that I would like to recognize. District Judge Leonard Wexler is here visiting from the Eastern District of New York. Judge Wexler. And Magistrate Judge Lorenzo Garcia is with us, I believe. From the Supreme Court, Chief Justice Joseph Baca, Justice Pamela Minzner and Justice Dan McKay. We're very glad to have all of you here. From the Court of Appeals, Judge Christina Armijo.

I would like all of the former law clerks of Judge Seth to stand. We are very happy to have you here. Last, Rosie, Judge Seth's long-time secretary. We're happy to have you here.

We will now hear from several speakers who will offer their memories of Judge Seth. The first one who will speak to us will be Dr. Albert Simms, long-time friend of Oliver's and Jean's. Dr. Simms.

DR. SIMMS: May it please the Court. Distinguished guests, family of Judge Seth, and friends. If Judge Seth were here now, a man of great humility and modesty, he would whisper to me, "Now, be careful what you say." I'm honored to say a few words about Judge Seth's personal life and background as a friend of more than 65 years. Although it was widely known that his health was failing, it still came as a shock that this valued man passed away suddenly in March of this year.

Judge Seth was born in Albuquerque May 30th of 1915, son of Julien Orem and Bernice Grefe Seth. His father had come to New Mexico in 1912 as a recent graduate of the law school of the University of Virginia, just shy of his 20th birthday. The laws of the New Mexico bar at that time required that he should be at least 21 to apply for the exam. So Mr. J.O. Seth took a job with the Department of Interior, wrote extensively about matters involving the Forest Service. And Judge Seth had told me that he had, on a number of occasions, been in the Dakotas settling Indian land claims. Mr. Seth, after his admission to the bar, after he had worked for the Interior Department, came back to Santa

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Fe where, in 1918, he established his law firm, now Montgomery & Andrews, a prestigious firm, indeed.

Oliver Seth had a very normal childhood here in Santa Fe. He was known to be quiet, friendly, big, healthy, polite, good at his studies, too. The family home was located on a hillside near the Santa Fe River at the site of the present building of the state Supreme Court. There was a large basement with a long workbench beneath the house where his brother Jim, known to be fascinated with electrical matters, would show his tricks to the neighborhood kids. In a few years brother Jim would be awarded the first Thomas Edison Fellowship and went on to a career in electronics. Judge Seth was particularly proud of the brilliance of his brother.

Judge Seth went to the Santa Fe High School where he played basketball under Coach Sweeney, a name familiar to most of us. He was admitted to Stanford University, he graduated in 1937 with Phi Beta Kappa honors.

While at Stanford, he enjoyed basketball and became an accomplished golfer. Then on to Yale Law School where he and my brother John, who had been a long-time friend, became roommates during their course in law school.

Graduating in 1940, Oliver returned to Santa Fe, took the bar exams, was admitted, and started in his father's firm. He'd barely started when the clouds of World War II appeared. He did not wait to be drafted, he volunteered, and it was a matter of pride all of his life when he was told that he was the first person who volunteered from Santa Fe County. He told me that on many occasions.

He went on then to Fort Bliss for his basic training and then on to Officer Candidate School in Virginia. He was assigned first to an infantry unit, but headed for Europe. But he applied for a transfer—he had several New Mexico friends who later served in the 200th Coast Artillery, they were New Mexico boys whom he had grown up with. However, his application for transfer was denied, the commanding officer said that he needed Oliver to play basketball on the unit's team, hoping to make the division championship. So his athletics prowess was beginning to catch up with him. And as I look around, I can imagine that that applied to more than one federal judge.

Oliver served in the Army of the United States from 1940 to '45, rising to the rank of major, serving in the Intelligence Corps, European Theater. As the war in Europe wound down, the Americans captured the bridge at Ramagen at the edge of the Rhine. All military units within more than 50 miles immediately wanted to cross it, and there was a crisis. Major Seth was sent with an evaluation team to look at the bridge and see if it might still be functional. It was their decision that some of the lighter units could use it for a few days, giving the engineering corps time to put the pontoon bridges down for the big push. For his services, he was decorated not only by his own Army but received the Croix de Guerre from the government of France. After VJ day, he returned, after five years of service.

Shortly after his return, he met the vivacious Jean MacGillivray of Albuquerque and Santa Fe. Jean, herself, had served her country, working for the FBI during the war. From the beginning, she played a most important part of his life. They were married in 1946, and her daughters, Sandra Bernice and Laurel Jean, are here today with their mother.

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Oliver was a family man. In spite of his heavy schedule, there was always time for family projects in the art galleries, Sandie's construction work in Taos, the book the girls wrote on New Mexico architecture, raising horses in Taos, whatever.

Oliver practiced in the Seth & Montgomery firm from '46 to '62. He found time from his busy practice to serve his community in many ways, being a director of the Santa Fe National Bank, the New Mexico Oil and Gas Commission, counsel for the Cattle Growers Association, Regent of the Museum of New Mexico, the School of American Research, and many more.

Oliver went everywhere and did everything, including a few social events with Jean, sometimes two or three in an evening. We all attended many gatherings at their home, and they were so generous in sharing their friends.

On the lighter side, Oliver had many qualities enjoyed by his friends. Former Governor Jack Campbell, with us today, told me that Judge Seth was one of the last great gentlemen of this community. His wife Ruth Ann gave him the title of Saint Oliver, and my wife Barbara, also with us, didn't think that was adequate and dubbed him Super Saint. He would listen intently to all of the woes that his friends would tell him, not only at the coffee clatches at the La Fonda, but wherever, whether the problems were local or national. And he was very quiet and would simply smile and say, "Don't worry. I'm sure it will all work out in the end."

He was a Good Samaritan. Whenever they were in distress, drivers on La Bajada Hill, in the snow or mud or with motor trouble, Jean knew that they were going to stop, it was just a question of which car they would help first. One night they gave a distressed motorist a ride into Santa Fe, and the passenger said, "I'm a civil servant, work for the government. What do you do?" And after a pause, the driver, then Chief Judge of this Court of Appeals, said, "I work for the government, too."

On another occasion, he put on his old clothes and a Stetson hat and took Jean and a load of paintings from her gallery to a museum showing in Wichita. And the driver very helpfully carried the paintings in and helped hang them on the wall and so on. And the lady curator, a museum director, told Jean that she might bring her driver in for supper, not guessing who the driver was.

Then there was the time in the elevator at the La Fonda Hotel, another passenger introduced himself and shook hands with the Judge. The Judge said, "I'm Oliver Seth." When the other passengers got off of the elevator, Jean looked at Oliver and said, "Just for one moment, couldn't you be Judge Seth?" Oliver smiled, he pushed the down button, said, "Are we still married?" He liked the brief reply, the bottom line. Other stories of his modesty abound.

Oliver Seth was nominated to this circuit court of appeals in 1962 by President John F. Kennedy upon the recommendation of our senior United States Senator Dennis Chavez. After his confirmation, he worked arduously for 36 years, as others will tell. In spite of intermittent health problems, he would always be back to work in a few days and always available for his friends and family.

In January of this year, it was obvious that he was tiring, in spite of appearing to enjoy his regular routine. Like the person he was, he kept right on going,

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smiling, enjoying family and friends, never a word of complaint.

His death was sudden. The saying, "The good Lord touched him and he slept," could not be more apt in his case. Judge Oliver Seth went to his eternal rest on the evening of March 27th, 1996. His beloved wife was at his side.

The likes of Judge Seth may not come our way again for years to come. He will be missed, but not forgotten.

CHIEF JUDGE SEYMOUR: Thank you, Dr. Simms.

We will now hear from Thomas Catron, a long-time member of the legal community, who will tell us about Judge Seth's legal career.

MR. CATRON: Justice White, Chief Judge Seymour, Judges, ladies and gentlemen, and particularly Jean and Laurie and Sandie. I am particularly honored to be—to have been asked to speak at this memorial and this coming together in honor of Oliver Seth.

What I have to say will be largely personal and not particularly about his great and distinguished service on the Court of Appeals. In fact, my contact with Judge Seth on the Court of Appeals was virtually nonexistent. In cases which I had before the Court of Appeals while he was a member of it, he was never on any of the panels before which I appeared. I always thought that this was because he was so aware of my persuasive oratorical powers and legal acumen in the course of our personal relationship, he would unfairly judge my cause. On the other hand, he might have thought that the very lack of those would cause such sympathy and bias that he could not otherwise judge impartially. In any event, I've always regretted that I missed that opportunity and the opportunity to address him as Your Honor.

Oliver and I do not—I never addressed him as Judge Seth except in a few formal introductions. We were very good friends. We both went to Stanford, although quite a while apart, and we both joined our fathers' firms after graduating from law school. Our children went to school together at various times, and our fathers, J.O. Seth and Fletcher Catron, were very good friends and distinguished members of this legal community.

Oliver was fortunate enough to belong to the Sky High Duck Club, of which I was also a member. The Sky High Duck Club was a group of members who owned a quite comfortable, but sometimes very cold, cabin in the—near the little community of Bountiful in the San Luis Valley in southern Colorado. The Duck Club owed its existence to a very warm water spring which fed a number of small slues and ponds. It was a delightful place and a place where we had a great deal of community and fun. Unfortunately, with the dropping of the water table, the spring dried up and the ponds disappeared, and with that, the ducks went away and also, unfortunately, the companionship that went with our weekend at the Duck Club.

However, they continued with the same people in many ways over the years. When I first joined the group, there were six or eight active members of the club, and among them were my father, Oliver's father, J.O. Seth, and Seth Montgomery, former Chief Justice of the New Mexico Supreme Court, whom I know many of you know. It was characteristic of Oliver's character and sportsmanship that one of the first things he told me or admonished me was that no matter how hungry you were or how much you wanted to take back a couple of ducks for

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your dinner table, you never, never shot a duck while it was on the pond before it got a chance to be skybound. And we always adhered to that.

There were many good stories that came out of the Duck Club, and I will only allude to one in which, on one particularly bitterly cold morning when there were just a few of us there, including Oliver and Oliver's father and my father and I, Oliver's father put his dentures into a glass of water, and the following morning when we all arose to go out to the early morning hunt, they were in a solid block of ice. However, that was defrosted, thawed in a very short time, and we went out without incident.

While I never had the pleasure—and I think it would have been a pleasure—of appearing before Oliver while he was on the court, I did have the opportunity to know him as a fellow lawyer, both in cases in which we appeared together, same side, and other cases in which we were on opposite sides. He was never combative. He was always persevering and always a gentleman.

I knew Oliver as an intelligent, capable, and ethical adversary, not to mention a reasonable man. And I think it was because of that reasonableness that in the quite voluminous cases that we had against one another, we never actually went to court. We were always able to settle before that time, and I always attributed that to Oliver's reasonableness, if not persuasiveness, and, I hope to some extent, my own.

One notable characteristic of Oliver's when he was practicing law was his devotion to his clients with confidentiality. He kept his confidentiality to such an extent that he would never even divulge who the client was unless he was forced to under circumstances which required it. I think sometimes you'd have to read the pleading before you would know Oliver was involved in a particular case. And it was an exceptional circumstance when his name ever appeared in the paper as representing anyone in a particular case. I would see this confidentiality when friends would gather around, lawyers, and the subject would come up involving individuals whom I knew Oliver represented and there would be long discussions about this particular individual, but never would Oliver as much as say, "Oh, yes. He's a client of mine." And through his years as an attorney, he represented a good number of very prominent clients, and I think it was so characteristic of him that he would never say to anybody, "Oh, yes. He's a client of mine," much less say anything about the nature of the representation. So it was that kind of man who met those ideal confidentiality which are the very spirit of the bar.

Some of you may have known Oliver's father, J.O. Seth, and those of you who did probably know that J.O. Seth was often called Judge Seth. I often wondered and never found out how this title came about, as J.O., to the best of my knowledge, was never a judge. He just seemed like a judge. In any event, it was Oliver who made the name Judge Seth come true, and he did it with great dignity, intelligence, and compassion.

Oliver was not just a good lawyer and a good judge, he was a good man. He was a gentleman. He was a gentle man. Oliver had a wry sense of humor which was often evidenced only by the not very humorous statements, but always followed by a smile and a twinkle in the eye, which you knew when you watched him, this was a joke. I don't believe that I ever heard him say an unkind word about anyone. He was characteristically kind and slow to condemn.

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I probably should tell you about the advisory legal opinion I solicited from him and he gave it, but it's never been published. As many of you may know, Oliver was an avid gardner, and he enjoyed nothing more than his spring planting and seeing his flowers bloom, and they were always in evidence at the times of Jean's and Oliver's many parties.

One day we were discussing serious damage imposed on the garden by marauding squirrels and rabbits. And the squirrels and rabbits all appeared to have a very particular taste for petunias, which were planted in abundance. I told Oliver that I had an ethnological solution to the rabbits which involved a mutual friend who was a retired surgeon in Tesuque. This surgeon was one of the first who would take in injured raptors from eagles to owls and set their wings, otherwise careful with them, and keep them until they were ready to fly alone. I, during that time, was helping the doctor in the feeding of those raptors during their period of healing, and I helped that need by shooting a few of the abundant cottontails that were foraging in our garden and then taking the birds—the cottontails to the doctor to feed. I told Oliver this story, but I don't believe he ever followed my suggestion.

The advisory opinion part of this story is that we both discussed trapping these animals and we both agreed that the Have a Heart Trap never seemed to capture rabbits. But I told Oliver that great success in trapping squirrels could be accomplished with these traps, but that the problem was where to release the squirrels so that they wouldn't come back to your yard. I told Oliver that I'd solved the problem by taking them down to Federal Park and releasing them around this courthouse.

It was then that I asked for the advisory opinion because I had released these rabbits right underneath his office window, and I said I wanted an advisory opinion as to whether or not I was violating any federal law by doing this. He never once suggested that this was an improper question or even that there was a jurisdictional problem involved. He even went so far as to say that he thought it was a good idea and entirely proper. To the best of my knowledge, he never followed it himself.

I want to conclude these remarks by acknowledging that which Oliver himself always acknowledged, and that is that his success as a lawyer and as a judge and as a wonderful human being was in no small part due to the support and love of Jean and Sandie and Laurie and of his love and support of them. Thank you.

CHIEF JUDGE SEYMOUR: Thank you.

We will now hear from Judge Mark McFeeley, bankruptcy judge from Albuquerque, who was one of Oliver's law clerks.

JUDGE McFEELEY: I don't know why I'm the one to be wearing glasses. I also don't know how I got to be third because all of the good stories started to come out already.

Jean, Judge Seymour, I thank you very much for giving me this privilege and opportunity to be here today on behalf of who you can see are many of the Judge's clerks. I think my count when I got the list from Rosie showed me there were 51 all together, and I just hope I can express how all of them felt.

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One of the nice things about this chance was it gave me a chance to call a lot of the clerks and talk to them and just sort of confirm what I thought and felt about the Judge was true. And you'll have to excuse me, I'm going to probably read more than I should, but I think that's the only way to get through this.

I don't think you can really talk about having been one of the Judge's clerks without talking about what I call the institution of coffee. Coffee was a ritual. I learned about the coffee the first day I appeared for work when Judge Seth stuck his head in the clerk's office and said, "Would you like to go to coffee?" He continued to do that, he didn't presume that you were going with him at all. Every time he was going, he would stick his head in the door and say, "Would you like to go to coffee?" He was just that way. In the days when I clerked, I think the whole city of Santa Fe could set its clock at 9:30 because that's when the Judge and his clerks and Mr. Vernon and Mr. Frith walked into the restaurant at La Fonda for coffee.

In visiting with clerks, we tried to figure out why this was important to the Judge, and we sort of took the liberty of analyzing coffee. Coffee was really Judge Seth's way of staying grounded in the community and in life, I think. It was his way of not staying in the Ivory Tower or being isolated after he became a judge.

Going to coffee, in itself, was an interesting experience. The Judge seemed to know everybody you passed on the street, including many of the tourists who were in town, and he knew them by name, and he knew the names of their children, and he would stop and inquire about them, and you had the sense that he really cared and wanted to know. The Judge was also the only person I ever knew who actually tipped his hat to the ladies when he walked down the street. That may have been because he was one of the few people I knew who wore a hat; but he did, in fact, do that.

Coffee was a discussion of the events of the day, what was happening with friends and with family. And as has been said before me, the Judge tended to get the conversation going and then sit back and watch it expand, saying a word or two, perhaps, if it got a little heated, change the subject, and cautioning a brash new law clerk that you didn't talk about law at coffee unless some nonlawyer asked a question about it and then you answered and got on to a different subject. The year I clerked was an interesting time because the Watergate hearings were going on, so they were always hot topics of conversation. It also probably dates me a little bit.

Judge McKay, during the presentation of Judge Seth's portrait at the Tenth Circuit Conference, said that the Judge was an emensely private man. I always thought he was shy. What the Judge did share—and I will say, as opposed to Mr. Catron, I never called the Judge Oliver in 25 years. He would share what Jean was up to and what Laurie was up to and what Sandie was up to and maybe how his garden was doing, but not very much about himself. I think between going to coffee and being Jean's date at all these many social events that they attended, and there were many, that's how the Judge stayed current on what was happening in the world and what people thought about it and how he stayed grounded. And I think it's only appropriate to mention that on his last day he went to coffee. Excuse me.

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The Judge had a real sense of New Mexico and its history and its beauty and its people. When you could get him talking, that's what he was usually telling you about, something funny that had happened to him when he was practicing law or something about the history of the state or something about Santa Fe. He had a real commitment to New Mexico. At least one of his clerks all of the time had some strong tie to New Mexico, whether they were a graduate of UNM Law School, or somebody who grew up here and wanted to come back, or somebody who had a reason for coming. One of the clerks said to me when we were talking, that the Judge understood the importance of life as well as the importance of a career. And I think his clerk selections reflected that.

The Judge, being the chief judge during part of his time at the Tenth Circuit, got applications from the top graduates of the top law schools all over the country. But he was much more interested in why you wanted to be here and what you liked about New Mexico and why you needed to be here. And I, at least, am very thankful for that, and I'm sure there are others amongst us who feel the same way.

As a result, I think the Judge left a legacy to New Mexico. As you can see by the clerks who are here and many who aren't, many of the clerks are involved in public service and community service all throughout the state and contribute greatly, I think, to the state. And I think—I think each of us know that when we do that, we have the Judge's approval.

It was interesting hearing Dr. Simms talk about Saint Oliver because there's a group of clerks that I hang out with who have always called the Judge Saint Oliver, not to his face, obviously. One of them said her ethical standard in life was "what would Saint Oliver say" when she had a question. Another clerk told me the only time she'd ever seen the Judge angry was when he thought one of the attorneys appearing before him wasn't being straightforward. I think you can understand what a high standard in life that he really had and really set. I never saw him mad in all the years that I've known him.

And Mr. Catron talked about the twinkle in his eye. The Judge really was one of the few people I ever met where you could see the twinkle. When you looked at him and saw that twinkle, you knew you were about to be blessed with some wry remark that captured just exactly what was happening.

I want to share with you just one personal story. During the year that I clerked, the Judge was on a panel of a case from Wyoming, and it dealt with the conviction in Wyoming of a gentleman who was selling liquor within the confines of a reservation but on state land. And he had a state license, but the tribe had—Tom's laughing—the tribe had passed an ordinance requiring a tribal license, and he didn't bother to get one and kept selling liquor. So he was arrested and tried and convicted in Wyoming.

And the case came up on appeal, and the Judge was on the panel and was assigned to be the authoring judge, and I got to work on the draft of the opinion. And I'd had a course in Indian law in law school, so I was ready. And I did a lot of research. And the Judge had said when he handed me the case that the panel was—wanted to reverse and set aside the conviction.

And after doing my research, and with this strong sense of Indian self-determination, I went and sat with the Judge one afternoon. And I guess I

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wasn't a very good advocate because, as much as I tried, I couldn't convince him that reversing the district court was wrong. And I breathlessly got through with my argument and said, "Judge, I vote to reverse." And he looked at me, and he said—excuse me, I said, "I vote to affirm." He looked at me and he said, "Well, I vote to reverse, and my vote counts more than yours." Being the kind of man he was, he then said, "Why don't you give me the case and I'll write it, and you go do something else."

And I have to finish this story. The case went to the Supreme Court, and the next year I got a call from Tom Olson, who was one of my successors, and Tom said, "You might be interested in *Law Week* this time. It's got your Wyoming case in it." So after lunch that day I went by the Judge's office and went in the law clerks' office, and Tom handed me *Law Week*. And there were two cases in *Law Week*, one was the Wyoming case and the other was a case from Louisiana in which the issue was whether or not women could be on a jury. And as I started reading the case, the Judge walked in from lunch and looked in the office and said, "You're in practice two months and you already have a Louisiana jury trial?"

After I finished reading the *Law Week*, which reversed the Judge, I might say, I just visited with Tom for a while, and then I went and stuck my head in his office. And very seriously, he looked at me, but you could see the twinkle coming. He said, "Just trying to uphold the Tenth Circuit's record of never having been affirmed in an Indian case." And I understand y'all are going to get another chance.

I heard Mr. Catron start telling the squirrel story, and my heart sort of sank because that's a good part of what I wanted to tell you about. But let me tell you about it from Miles Hanisee, who was one of the Judge's last clerks.

As Mr. Catron said, the squirrels were eating the Judge's petunias, and the Circuit was coming to town in the not too distant future, and he wanted everything just right because, as they always did, they were going to entertain. So they tried a couple of—and that was the point where the Judge wasn't driving, so Miles had the opportunity to drive him around town. And so the first thing they went and got, I guess at Mr. Catron's suggestion, was some kind of pellets that were supposed to repel squirrels, but all that did was attract more, as I understand it. Then they got something that's supposed to smell bad to squirrels; but, according to Miles, it smelled really bad to him and the squirrels didn't mind.

So then they went and got the squirrel trap. And they tried some different kind of baits, which weren't very successful. Finally, one morning they put some apples in the trap, and then they went off to the office. It wasn't long after that that the phone rang and Jean, very excitedly, said, "Oliver's got a squirrel. Oliver's got a squirrel." So Miles and the Judge went to the house, and the squirrel was, in fact, in the cage and just going crazy, banging around the cage. And the Judge was worried the squirrel was going to have a heart attack. They finally figured out if they put some black plastic over the squirrel cage, that the squirrel would calm down, and they did that.

And then they put the squirrel in the back of the car and off they went. And I guess, having reviewed the Federal Park here, they decided that—the Judge's criteria was he had to release these squirrels someplace that was in an environ-

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ment at least as good as that that he was taking them from. So they drove around town discussin the merits of squirrel habitat, and they finally ended up at Bishop's Lodge, which has a pond and lots of flowers, from what I hear. Miles said they were quite surreptitiously getting this squirrel out of the car and out of the cage and out of the plastic bag and pointing it toward water. In fact, the Judge was worried for days afterwards that the poor squirrel might not find water, so the next time they did it, they had to get closer. In case somebody's here from Bishop's Lodge, I won't tell you how many times, but I will tell you that the flowers were beautiful by the time the judges got here.

I've often said that the only person I've ever worked for who treated me better than I treated myself was Judge Seth, and I think that feeling was universal amongst his clerks. I talked to the Judge's very first clerk who said the Judge was the kindest person he'd ever met. One of the Judge's recent clerks said, "If your first job was clerking for Judge Seth, how do you improve on that?" The Judge was the absolute epitome of a gentleman, that is, he was most gentle man I've ever known.

Most of the Judge's clerks continued to feel connected to the Judge long after their clerkship was over. Many, many of us continued to go to the Judge for advice and counsel time after time during our lives. You could sit down and talk with the Judge and, as someone told me, you got guidance and advice without ever knowing you were getting it. The Judge was always delighted to see you. He dropped whatever he was doing and asked about your family and your children and wife and your general well-being and then perhaps about how your career was going. And then when you asked him about him, you heard about Jean and Laurie and Sandie and their accomplishments, the gallery, the horses, and the house, the book.

I've never heard the story of how Jean and Sandie and Laurie came to call the Judge Honey, but for those of you who know him well, that's what he was called. That's something else I never called the Judge. But between the Judge and Jean and Sandie and Laurie, I think every year they sort of added another member or two to their family as clerks came through, and we all continued to feel a part of the family.

I know I've said too much, and if the Judge were presiding, he would have turned the red light on a long time ago. I've searched for words to sum up the Judge, and I think I found them best said in an editorial which appeared in the *Santa Fe New Mexican*. It's obviously written by someone who knew the Judge very, very well. It said—excuse me—"He was a towering figure, physically, professionally, and morally, and he was respected for his legal knowledge, as well as for his gentle behavior." To that I can only add, he's very much cherished by his clerks.

CHIEF JUDGE SEYMOUR: Thank you for expressing the feeling of many of us.

Before I give this over to our next speaker, I have been asked by our three senior judges who are not able to be here to read their comments. First is from a colleague, Senior Judge Jim Barrett from Wyoming, who was unable to be here because he's recovering from an operation. He says, "I regret that I cannot be on hand for the memorial ceremony in honor of the late and kind generous friend and colleague, Oliver Seth. It was my good fortune to be favored by

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Oliver's wise guidance and concern over the years. His intelligence, kindness, generosity, and friendship made ours a better court and the world a better place."

And from our colleague Senior Judge Monroe McKay from Utah, who is in South Africa for the year, he has a few extra words, Monroe fashion. Judge McKay says, "On prior occasions, including the presentation of his official portrait, and at the memorial service, I have commented on Chief Judge Seth's warmth, humanity, good humor and other indispensable qualities which made the court such a wonderful place for us during his tenure. On those occasions, I did not take the time to comment at any length on his scholarship. I have wondered lately why I should have been guilty of such neglect. After all, he mastered the rigors of Stanford and Yale. His opinions were constantly before us for decades. Time and reflection on his many opinions lead me to the conclusion that he achieved a level of scholarship few are able to achieve.

"The essence of his opinions was completeness and accessibility. He always covered everything necessary to full disposition of all issues fairly raised, without the flourishes and additions that we so often mistakenly label as scholarly. The parties and other scholars could always tell exactly what principles led him to his conclusions even though his writing could be described as spare. The organization of his thoughts seemed always to lead his mind and that of the reader directly and fairly to the resolution of the point at issue. While I myself am often inclined to point the next step beyond the case at hand, he seemed unfailingly able to stay tightly attached to the facts before him and the narrowest principles necessary to dispose of the case at hand. From conversation, I learned that he had great trust that those who followed could be relied on to carry the rule forward fairly when new facts required it. That is not to say that he expected always to agree with the next extension but rather that the institution of the court was best served by the discipline he practiced and the good faith of his successors. He believed in legal evolution based on ever changing community experience. He was always in touch not just with former times but with current times. While I found him informed about the past, I can never recall thinking he was in any way stuck in the past.

"If he ever overlooked relevant authority (cited in briefs or not) it never came to my attention. His judgments relied on his understanding of the cases and of society and rarely required reference to commentators.

"Finally, his language was devoid of both jargon and flourish. It would satisfy the most scholarly mind while at the same time entirely accessible to readers of much more modest experience or ability. Perhaps that is the ultimate in scholarly writing: a difficult idea or analysis expressed in such a way that the reader is unaware of how difficult it was before he reduced it to his own plain expression. That is not to say that I would always wish to ape him, but it is to say that it was always a pleasure when I agreed with his judgment, and I almost never dissented from him.

"I join the others today in paying deserved tribute to our much loved and admired colleague. I still miss him too much. I regret that time and half a globe has kept me from being with you in person."

And from our senior judge colleague from Kansas, Judge Jim Logan, "As one of Judge Seth's admiring colleagues, I have asked Chief Judge Seymour to

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express my regrets that I will not be present to hear what will no doubt be warm and admiring recollections of our esteemed colleague. My absence is because of a long-ago commitment to a vacation trip which my wife and I mistakenly believed would not conflict with a court term.

"I have many fond memories of Oliver Seth. He became Chief Judge just as I came on the court, and became an important mentor immediately. As Chief, he moved things along quickly and easily. We judges are almost unaware of any administrative problems of the court, because Oliver handled them easily and with dispatch. He was a man of few words—his speeches seldom exceeded four paragraphs and most often were accompanied by a twinkle in his eye and a very nice light touch. A gentle giant of a man, he could be firm when the occasion called for it; I sometimes thought of him as having an iron fist within that velvet glove.

"We will miss his many contributions to our court, and especially his wisdom and geniality."

And now I give you a colleague, Judge Bill Holloway, who will talk about Oliver's years on our court.

JUDGE HOLLOWAY: Judge White, Chief Judge Seymour, my fellow judges and friends of Judge Seth, it is my distinct privilege to have been invited by Chief Judge Seymour to make remarks for our court at this memorial service. Speaking for the court, as she asked me to do, it is both a daunting challenge and a pleasant and easy responsibility because of the wealth of happy memories our judges all have of Judge Seth. I speak of our recollections of him as our associate and as our chief judge on the court of appeals and also of the warm and treasured memories of the district judges, bankruptcy judges, the magistrate judges, and state judges throughout the circuit which Judge Seth served so well as a circuit judge for some 34 years and as chief judge from 1977 to 1984.

During the 80 years of his remarkable life, Judge Seth achieved notable professional, academic, and military honors which have been recounted for you by other friends today. I will try to sketch some of the important aspects of Judge Seth's accomplishments as a judge of our court from his appointment by President Kennedy until his passing this year.

First, many of my earliest recollections about Oliver were his wise contributions in our conferences after arguments we heard. It was not his style to intervene aggressively during oral arguments by questioning counsel. He preferred to quietly ponder the arguments, allowing the attorneys to develop their cases. His comments were reserved for the conferences of judges of the panel or the full en banc court, whichever was hearing the case.

I remember in particular one very significant civil rights case we had shortly after I joined the court. It troubled the panel and the judge who had prepared an initial opinion. We had reargument en banc and lengthy discussions in our conference afterwards. This was a case which had been dismissed as not being a viable civil rights claim, but the authoring judge of our opinion and all of us had great difficulty trying to express a rationale upon appeal for a logical ruling if we upheld that dismissal. After lengthy debate back and forth, Oliver quietly observed, "If we are having this much difficulty with this case in trying to uphold that dismissal, maybe something is wrong with it." This was but one

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occasion of which there were many when Oliver's brief comments caused us all to reconsider our views.

Yesterday, Judge Porfilio commented to our panel, Judge Brisco and me, in Albuquerque that he learned early that if Judge Seth dissented, you had better listen.

I remember especially the particular contributions Oliver made as our chief judge during those seven momentous years of his leadership of our circuit. He had vision in practical, down-to-earth decisions as well as in far reaching legal rulings. It may be hard for most of you to remember, but there was a day before fax machines and e-mail. I remember that very early in his tenure as chief judge the prospect of connecting him from Santa Fe to the administrative office in Denver was suggested by the use of fax machines. They asked him how many fax machines he felt he should have for his contact with Denver, and he said, without hesitation, he wanted that equipment for every judge of our court to connect us all. He was already foreseeing the rising pressure of emergency cases and the day when we were scattered out but we would desperately need to have panels proceed on emergency matters with papers being sent to all of our judges for immediate action. His leadership in our automation was invaluable.

Another practical aspect of Oliver's foresight was his early vision of our new magnificent marble courthouse in Denver. He appointed very early on a planning committee for him to work with to start years ago to make the early but critical efforts to obtain that building and the means for refurbishing it. Working with that committee, the General Services and post office officials, he launched that important project for our circuit.

I became acutely aware of the respect that Oliver had throughout the nation when I followed him later and attended the judicial conference meetings in Washington. Whenever I would go, there would be a barrage of questions, "How is Oliver?" from the Chief Justice, Chief Judge Clark of the Fifth Circuit, Chief Judge Browning of the Ninth, Chief Judge Lay of the Eighth. All made careful inquiries about Oliver's welfare. The comments about his contributions to the judicial conference were uniform; he had made a profound impact on them all.

But perhaps Oliver's personal work ethic was the special challenge to all of us that we most remember. Term after term the calendar would come and the panel listings would appear, showing the presiding judges. Leading the way, day after day, term after term, despite his heavy administrative burdens, the panels read, Judge Seth presiding, Judge Seth, Judge Seth, Judge Seth through all of our work schedules.

I believe, however, there can be no question that Oliver's most valuable contribution was to inculcate in all of us a spirit of warm collegiality so essential to the successful work of a multi-judge court. This spirit developed because of the warm understanding and patience which Oliver showed for every judge on the bench and in the conference room. His contribution in this respect was also demonstrated by the hospitality and friendliness that Jean and Oliver always gave us at their suite in the Brown Palace. Every judge and spouse was warmly welcome, and Oliver also enriched our meetings by including some of his extraordinary friends, like Bill Vernon of Santa Fe, your beloved leader in civic and banking affairs here who frequently was in Denver when we were because of

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meetings with his Federal Reserve Board colleagues. These memorable gatherings with Jean and Oliver are treasured by all of us.

Oliver gave us so much by his example, so much inspiration and so much of his wisdom that he can never be forgotten. The contributions he made through the successful workings of our court will last far beyond his years. We will never lose sight or feeling of the profound values which Oliver passed on to us. They have become an imperishable page in the history of a grateful court.

CHIEF JUDGE SEYMOUR: Thank you for expressing for all of us our high affection and regard for Oliver.

And, finally and especially, we'd ask Justice White to reminisce just a bit about his memories of Oliver.

JUSTICE WHITE: I hope you can all hear me. I don't seem to have a—I'm not sure that they want to hear me anyway.

Somebody said that I had known brother Seth for a long time, and I certainly have. Back in 1961 and '62 there were about 100 vacancies in the federal system that needed filling. And in those days, at least the White House didn't dominate who was about to be nominated. They would take—the President and counsel would probably take the recommendations of the attorney general, especially since the attorney general was the President's brother. It fell to the deputy, which I was, to start to get things going.

And we were—the attorney general was determined to try to get us as fine quality judges to fill these vacancies as we possibly could. But it wasn't easy, it wasn't easy because senators, congressmen, politicians, everybody seemed to think that they had a hand in it, and they certainly did, and they would have dominated the entire field if you would let them. Well, we were determined not to do that. And it took a little while to find out who the most acceptable lawyer in the state of New Mexico was and to be sure that it would be impossible for anybody to object to him, and we found him, and we found her, too.

Oliver came to my office, and we had a fine talk, and it came to be even more obvious that this had to be the man. And he was nominated, and I'm sorry that I left the justice department before he was confirmed and took his seat. But on the other hand, I was immediately able to read his—to grade his papers to know what he was doing. And he was doing awfully well.

And, by the way, I always—you know, the circuit justice attends the circuit conferences and you go to the meetings, meetings with the judges. And I have gone to an awful lot of judicial conferences around the country, and it seemed to me that the Tenth Circuit conferences were probably the most fun and the most pleasant. Some of these conferences, the judges can get you in a corner and hassle you around about problems, things that they don't like, and the way the circuit is run. But I always—I found that the Tenth Circuit, down through the years, was—probably had the best collegiality that I had experienced. And this was especially true when—I call him the Great Honorable Seth—I came to be chief judge. He was a master at this sort of thing.

And, you know, way back in the early seventies it became perfectly obvious that the Supreme Court of the United States could not possibly keep reviewing any significant percentage of the judgments coming out for appeal. And the result was, sometimes over my dead body, that just an awful lot of cases in the

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court of appeals that I thought ought to be reviewed and in the past they would have been reviewed, but they just couldn't. And the court preferred to be relatively up-to-date rather than to overcrowd their docket. The result was that the courts of appeals rapidly and steadily and to this very day have still increasing their importance in the federal judicial system. And the—for all practical purposes, the courts of appeals have been the final word in so many kinds of cases that they never were before. And that sort of a thing calls for talent in chief judges, I'll tell you that, because as the courts of appeals grow, the administrative job becomes terribly important. And around the country, some chief judges had an awful lot of trouble, and—but not Oliver. And he—well, I always admired him, liked him, and I agree with all the characterizations of Oliver, Oliver Seth. And, of course, we just hated to come to Jean and Oliver's house. Jean, you know that's so.

But it really was a great pleasure to know Oliver, and it's great pleasure to keep him near to, and these two wonderful daughters of his. And I think that the Chief Judge said that I had some remarks to make. I bet you she does.

CHIEF JUDGE SEYMOUR: Thank you very much, Justice White, for being here and for sharing those memories of Oliver with us.

I don't have many things to say because so many things have already been said. I do want to thank you all, each of you, for coming here today to help us honor our dear colleague. Oliver Seth was so special to all of us in so many ways. His impish wit made us laugh when we were taking ourselves too seriously, his firm but very tactful leadership as chief judge took us through a rather turbulent time when our caseload was exploding simply with grace, is all I can say. And his sensitivity to the human side, human consequences, of his legal decision making gave us pause in our own decision making. And that was a very important thing on this court. We, his fellow judges, gained as much as the litigants and the lawyers did from his experience, his judgment, and his wisdom that he acquired from so many years on this court and from the beloved people of New Mexico who meant so much to him. We were all privileged to be associated with Oliver Seth on this court.

Thank you all for helping us to honor the memory of our dear colleague. Jean Seth has asked me to ask you all to stay a few minutes outside to visit with the family, with Justice White, and with our judges. And with that, court will stand adjourned.

(Proceedings concluded at 5:18 p.m.)

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