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The Historical Society of the Tenth Judicial Circuit

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Chair's Note • *By Alleen VanBebber*

The first half of the year was filled with work on two current major initiatives. Our Board Counselor, Greg Kerwin, is leading a working Committee, chaired by John Partridge, to build the long-awaited permanent exhibit on the first floor of the Byron White Courthouse. The Board has retained Jean Svadlenak, a well-known museum consultant, to work with Court staff and the Committee. They are preparing a comprehensive plan for the exhibit. Phase One is underway, including conceptual design and space use planning, research and artifact selection, and consideration of technology and interactive devices. The Committee welcomes volunteer assistance of all kinds. If you have research and writing to contribute, know of cases or stories unique to your state's history at the Tenth Circuit, have artifacts or know where they can be found, want to write a grant, have ideas for displays or presentations, or have any other good ideas, please let Greg, John, or me know. We are at: vanbebberlaw@aol.com, and gkerwin@gibsondunn.com and jpartridge@gibsondunn.com.

The second initiative is a complete update of *The Federal Courts of the Tenth Circuit: A History*, which we published in 1992. It will have historical essays and succession tables for each Article III Court, Magistrate Court, and Bankruptcy Court in the Tenth Circuit, along with biographies of each Article III judge who died after 1992. This is a daunting task that has been undertaken by Board member Bruce Campbell, who recently retired as U.S. Bankruptcy Judge for the District of Colorado. Expect to see an update on the update from Judge Campbell in our next issue. And if he calls and asks you to help with research and writing, please help or find someone who can do the job! To volunteer or discuss, he's at abcampbell45@gmail.com

We'll be having our yearly in-person Board meeting in Denver during Court Week in November. Please tell me if you have something for the agenda or want to sit in. And don't miss upcoming events at home, planned by our six State Vice Presidents for all of you and your guests.

Centennial Courthouse Celebration

The District Court of the Eastern District of Oklahoma will be hosting a celebration of the 100th anniversary of the Ed Edmondson U.S. Courthouse on November 19, 2015. Everyone is invited to view the restored first floor, join the judges for a presentation with special guests at 1 p.m., enjoy a reception to follow on the historic third floor, and view artifacts and visuals of a century of service at 5th St. and Okmulgee Avenue.

In Memoriam

Judge Clarence A. Brimmer

The Honorable Clarence "Bud" Addison Brimmer, Jr., of Cheyenne, Wyoming, died on October 23, 2014. He was born in Rawlins, Wyoming, on July 11, 1922, to Geraldine Zingheim Zimmer and Clarence A. Brimmer, Sr. Their father practiced law in Rawlins, where Bud grew up with his sister, Dorothy, and his brother, William.

Bud was the editor of the newspaper at the University of Michigan, where he went for both undergraduate and law degrees. After service as a sergeant in the U.S. Army Air Corps during World War II, he returned to Rawlins, joined his father's law firm, and met Emily Olene Docken, a schoolteacher. Bud and Emily married on August 2, 1953. They were married for 58 years and had four children: Geraldine, Philip, Andrew, and Elizabeth. His parents, sister and wife preceded him in death.

Bud was active in Republican politics, serving as Wyoming State Chairman from 1976 until 1971, when he was appointed by Governor Stan Hathaway as Wyoming's Attorney General. In 1974, he was appointed as United States Attorney for the District of Wyoming. The next year, President Gerald Ford nominated him to be a United States District Judge, and he was sworn in on September 22, 1975, as the fourth federal district judge in the history of Wyoming.

Judge Brimmer is well remembered for his courteous, thoughtful demeanor and his sense of inherent fairness, all of which extended to both his life as a judge and his life as a family and community member. His judicial career included a seven-year appointment to the Multi-District Litigation panel. From 1994-1997, he was a member of the Judicial Conference of the United States Court, which is the principal policy-making body for the federal court system, including two years on the Conference's Executive Committee. He took senior status in 2006 and continued to serve the judiciary until he heard his last case in 2012. He loved literature, music, travel, and gardening, in particular his cultivation of orchids that brightened the long Wyoming winters.

John Field Simms • *By Elizabeth A. Martinez*

Photo source: University of New Mexico School of Law

Over the course of his 50-year legal career, John Field Simms served as an Arkansas state representative, a justice of the New Mexico Supreme Court, and lead defense counsel in one of the most important trials in New Mexico's history. By the time of his death in 1954, he had solidified his reputation as one of the state's top trial lawyers, with a talent for written and oral advocacy, and a winning personality that made him popular with jurors and colleagues alike. Yet, Judge Simms was a man of relatively humble beginnings.

Born in small-town Arkansas on May 6, 1885, Judge Simms attended local schools before entering Vanderbilt University to study law. He received his law degree shortly after his 21st birthday and, despite meager resources and little experience, opened a solo practice in Texarkana, Arkansas. Although he did not take on important clients, Judge Simms earned a following among the men and women of his town, who valued his "common touch" and his skill as an empathetic listener and effective problem solver. Judge Simms soon gained the attention of the United States District Court for his district, and was appointed as a federal Bankruptcy Referee.

By 1911, Judge Simms had become well known in his community, and was elected to the Arkansas Legislature. Although only 26 years old at the time, Judge Simms impressed his colleagues in the legislature with his wit, engaging personality, and talent for persuasive public speaking, which allowed him to successfully explain bills and advocate for or against them. He also excelled at writing laws in simple language that could be understood by laymen. By the end of the 1911 term, Judge Simms appeared to be on course for a promising legal and political career in his home state.

Judge Simms' career path took a sharp turn two years later, when a case of incipient pulmonary tuberculosis forced him to leave Arkansas and relocate to a sanatorium in Silver City, New Mexico for a year. Determined to put his year of rest to good use, Judge Simms studied the Compilation of New Mexico laws and taught himself to speak, read, and write in Spanish. When doctors warned him that a return to Arkansas would be dangerous for his health, Judge Simms decided to make New Mexico his permanent home. He was admitted to the New Mexico Bar in 1915, and began practicing in Albuquerque, then a city of 25,000 with a strong Bar.

Soon after starting his practice, Judge Simms became known as a capable and experienced lawyer, both in court and in office consultations. He briefly practiced with his brother, Albert G. Judge Simms, who left the profession in favor of a banking and political career. Judge Simms later formed a partnership with a former Assistant Solicitor for the Atchison, Topeka, and Santa Fe Railway, Clarence M. Botts, and achieved statewide attention for his advocacy.

In recognition of his strong analytical and writing skills, Judge Simms—a lifelong Democrat—was appointed to the Supreme Court of New Mexico by Governor Richard Dillon—a Republican—in 1929. Judge Simms filled one of two new judgeships that had been added to the Supreme Court in order to help manage the court's two-year backlog of opinions. Following his appointment, Judge Simms devoted himself to the task at hand and churned out approximately 50 opinions that were later described by Justice John C. Watson as "models of brevity and clarity." On the bench, Judge Simms was known not only for his ability to analyze and apply controlling legal principles, but also for his interest in making the law serve justice, equity, and truth.

Though he enjoyed his time on the Supreme Court, Judge Simms was first and foremost an advocate. Anxious to return to his roots as a litigator, he did not seek re-election when his term expired in December 1930. Instead, he re-established his law practice and began attracting important clients. During this time, Judge Simms developed into a skilled trial lawyer who could present compelling legal arguments to the judge while persuading members of the jury with common-sense principles and the realities of everyday life. Those who practiced with him described him as "almost invincible" before juries, and noted that his "eyes brightened" and his "senses quickened" as cases became increasingly difficult and intricate.

These trial skills were put to the test in the so-called "Gallup 14 trial," one of the most important legal cases in New Mexico's history and in Judge Simms' career. The case arose out of a peaceful strike of the Communist Party-affiliated National Miners Union in Gallup in 1933. Following the strike, the governor declared martial law and used National Guard troops to seal off the town. The strike ended in 1934, and a riot subsequently broke out in which the county sheriff and two other men were killed. Ten union members were charged with murder, and the case began to receive national attention, in part because of the Communist Party's affiliation with the defendants. National labor leaders and attorneys from New York and Los Angeles became involved in the defense of the accused union members; but the presiding judge appointed Judge Simms as lead counsel for the defense, in the hopes of minimizing national attention and securing the best New Mexico representation available for the defendants. Following a sensationalized trial, the defendants were convicted of murder. Although Judge Simms did not secure a defense verdict, he went on to form, with the prosecuting attorney-- then Assistant Attorney General J.R. Modrall—what has become the largest law firm in New Mexico.

Though he maintained a busy private practice for most of his career, Judge Simms believed that lawyers should also put their expertise to good use by donating time to the community. Consistent with this belief, Judge Simms devoted much of his time to two major public institutions: the University of New Mexico and the state penitentiary system.

John Field Simms *(continued from previous page)*

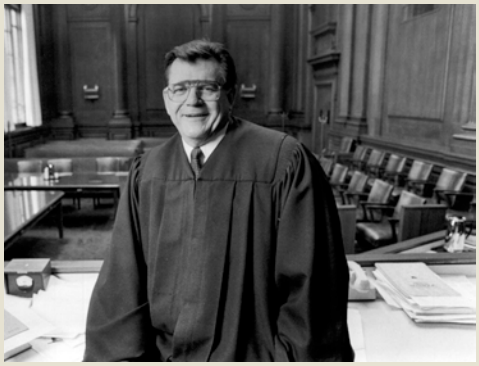
From 1927 to 1951, he served the U.N.M. Board of Regents, first as a board member and secretary, and later as the Board's attorney (a role that he filled for 20 years for only a token retainer). Judge Simms' years of service coincided with unprecedented growth and development at the University. At the time, the University lacked modern facilities necessary to meet the demands of increasing enrollment, and lacked the funds to construct the badly needed facilities. Judge Simms made the construction possible by devising an original plan to borrow the lacking funds and repay them from income of the University's permanent investment fund. This plan was essential to the University's growth and success in the mid-20th century.

Judge Simms also served as the Chairman of the State Penitentiary Board from 1937 to 1946. Shocked at conditions in outdated and isolated penitentiary buildings, he focused his attention on improving facilities and developing rehabilitation options for first-term prisoners. He conceived and spearheaded a plan to buy 2,100 acres of farm land south of Los Lunas, where he developed a prison farm facility for reforming young men and restoring them to society. This penitentiary farm is still operational, and is used as a reward for model prisoners.

At Judge Simms' 1954 eulogy, attorney W.A. Keleher offered the following insights on Judge Simms' career and character: "As a young lawyer, he aligned himself on the side of justice, and throughout his professional life remained a champion of justice. He believed that unjust and unfair laws should be repealed; that any appellate court decision which was unjust to any person or prejudicial to any group should be overruled." This dedication to justice can be seen not only in Judge Simms' pro bono work and advocacy for underrepresented populations, but also in his commitment to bringing the highest level legal skills to New Mexico courtrooms and judicial chambers. His contributions to the legal community continue to be felt, in the form of his Supreme Court opinions, his 78-year-old law firm, and the rich history of his trial advocacy for local clients.

Celebration of 50 Years on the Bench

Judge Bruce Jenkins • *By Alleen C. VanBebber*



On March 17, 2015, members of the Historical Society gathered with some 200 others in Salt Lake City to celebrate the occasion of U.S. District Judge Bruce Jenkins' golden anniversary on the bench. The event included a retrospective of Judge Jenkins' major decisions and his impact on the legal community in Utah. A panel of former law clerks, including U.S. Tenth Circuit Judge Carolyn McHugh, discussed the Judge's impact on them and their legal careers.

After two years in the Navy, Bruce Jenkins finished undergraduate and law degrees at the University of Utah and went to work as an Assistant State Attorney General, then as a deputy Salt Lake County prosecutor, and then in private practice. He also was appointed and then re-elected twice as a Utah state senator, serving as its minority leader and then as the president of the Utah Senate. In 1965, he was appointed to the federal court as a Utah Bankruptcy Referee (now Bankruptcy Judge), and he was nominated by President Jimmy Carter as District Judge in 1978. From 1984-1993, he served as Chief Judge. In 1994, he took senior status, but he remains in full service on the bench.

A highlight of the event was a video interview, filmed by local public television station KUED. Judge Jenkins spoke about the "downwinders" case he decided in 1984. More than 1,000 plaintiffs filed civil actions against the United States under the Federal Tort Claims Act. They alleged the federal government negligently harmed people downwind of radiation coming from atomic testing at Yucca Flats, Arizona, from 1951-1963. After a 13-week trial of "belwether" cases deemed representative of all the claims, Judge Jenkins filed a 490-page opinion favorable to the plaintiffs. The Tenth Circuit Court of Appeals reversed his decision, but it is recognized that the Jenkins opinion had much to do with persuading Congress to grant legislative relief for those harmed by radiation from Yucca Flats, uranium mines, and other government projects.

Judge Jenkins spoke of his belief in the federal court system, which provides "an environment where people end up accepting matters of great moment," and "stability that makes people comfortable with vindicating rights." He is a "great fan of juries. They have good instincts." He observed that, while they may come in apprehensive and a little irritated, most jurors are conscientious, and "when it's all over, they do well." For judges, he appreciates a system that allows them to "take the time to think." And as for technology, he accepts its value as a tool, but "an algorithm is no substitute for thought. The process of deciding cases is a human process."

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Please e-mail Nic Heinke at nic_heinke@yahoo.com if you prefer to receive the Newsletter electronically. It will help reduce our costs. Thanks.

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