HISTORICAL SOCIETY OF THE DISTRICT OF COLUMBIA CIRCUIT

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CASES FROM OUR RICH HISTORY: LAFFEY V. NORTHWEST AIRLINES

By Stephanie Marcus, Society Board Member

Mary Pat Laffey in Northwest uniform, c. 1968 (Courtesy Mary Pat Laffey Inman)

This month marks the 50-year anniversary of the D.C. Circuit's principal merits decision in *Laffey v. Northwest Airlines*, 567 F.2d 429 (D.C. Cir. 1976), a landmark ruling in Equal Pay Act and Title VII litigation.

In 1970, a group of Northwest Airlines female flight attendants (then known as stewardesses) sued, alleging that Northwest paid and otherwise treated them less favorably than male pursers performing equivalent duties. The case spanned over a decade in the D.C. federal courts, including two arguments before different D.C. Circuit panels. The second panel — comprising then-Judges Ruth Bader Ginsburg, Robert Bork, and Kenneth Starr — issued a per curiam opinion in 1984 reaffirming the legal holding in the 1976 decision. The Historical Society's resources include the oral history of Justice Ginsburg, given almost 25 years later, which offers rare insight into the decision.

Following a bench trial, U.S. District Court Judge Aubrey Robinson held that Northwest Airlines violated the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 by paying stewardesses less than pursers for equal work under similar conditions, providing them less favorable benefits, and applying weight restrictions solely to stewardesses. *Laffey*

continued...

v. Northwest Airlines, 366 F. Supp. 763 (D.D.C. 1973). On appeal, in an opinion by Judge Spottswood Robinson joined by Chief Judge Bazelon and Judge Tamm, the D.C. Circuit "sustain[ed] the District Court's adjudications on all substantive questions of statutory infringement," affirming that the pay disparity violated both the Equal Pay Act and Title VII and upholding the finding that Northwest's layover, uniform, and weight-restriction policies "have operated disadvantageously upon employees who are women," in violation of Title VII.

Ruth Bader Ginsburg

Although the court of appeals remanded on several remedial issues, these merits holdings remained the law of the case throughout the *Laffey* litigation, and the D.C. Circuit reaffirmed them in its 1984 per curiam decision, *Laffey v. Northwest Airlines*, 740 F.2d 1071 (D.C. Cir. 1984).

Robert H. Bork

Justice Ginsburg recalled in her oral history (Session 7, Sept. 2000, at 265-269) that the opinion mattered because *Laffey* was the longest-running Title VII and Equal Pay Act case in the D.C. federal courts, and because Northwest, in this "end of the road, the last appeal," raised "a bunch of new. . . highly creative" arguments the panel unanimously rejected.

She sensed Northwest's lawyer had counted her out and "didn't want to engage in any colloquy" with her, instead "playing to the sides" toward Judge Bork and Judge Starr — a tactic that failed: the per curiam opinion "resoundingly affirm[ing] Judge Robinson's decision" was a "great victory" for the stewardesses and "very heavy loss for Northwest Airlines." Ginsburg said, "I don't betray a great confidence when I say that I wrote most of this opinion," and wanted it to convey "that we are judges applying the law," that it doesn't do for a lawyer, "even such a good one," to assume he can "forget her and concentrate on persuading the others."

Kenneth W. Starr

The *Laffey* litigation "set the precedent for nondiscriminatory hiring of flight attendants across the industry." Liza Weisstuch, *Glamour, Travel, Sexism: When Flight Attendants Fought Back*, New York Times, Feb. 19, 2024. And beyond! – Fast forward to 2024, when PBS's American Experience series premiered "Fly With Me," telling the story of Mary Pat Laffey and other flight attendants who "were on the frontiers of the battle to assert gender equality and transform the workplace."

Just as important, from the perspective of the rule of law, it reaffirmed the high standard of judging in the D.C. Circuit. As Justice Ginsburg observed, *Laffey* is "a very good illustration that when the law is clear and you have a strong case on the facts, it doesn't matter if it's Judge Bork or Judge Ginsburg or Judge Starr, we all agree." «

Judge Aubrey Robinson

LOOKING BACK 25 YEARS–THE SUPREME COURT COMES TO THE PRETTYMAN COURTHOUSE: OCTOBER 2001

By Joseph R. Palmore, Society Board Member

You very likely know that September was the 25th anniversary of the September 11, 2001 attacks on the United States. But you may not realize that October marks the 25th anniversary of an episode in which the federal courts of the District of Columbia came together in a remarkable display of judicial resilience.

On the heels of September 11 came the anthrax attacks, in which letters contaminated with the deadly biological agent were sent through the mail. Five Americans were killed in what the FBI has called the worst biological attack in U.S. history.

The federal courts in the District of Columbia became part of this story when anthrax spores were detected in the Supreme Court's mail room on Friday, October 26, 2001, requiring closure of the building. The Court's next oral argument session was scheduled for the following Monday, forcing a stark choice: cancel arguments or find another place to hold them.

Cancelation was unthinkable. So the Court executed an emergency back-up plan. It would hold argument in the D.C. Circuit's ceremonial courtroom in the E. Barrett Prettyman Federal Courthouse. The following week, the Supreme Court thus heard three days of argument there, from October 29-31, 2001. As Chief Justice Rehnquist announced from the bench on the first day, this marked the first time the Court met outside its building since it opened in 1935. (The Court had at least one relocation before that—when the British burned the U.S. Capitol during the War of 1812, the Court met in a rented house that later became a tavern.)

While a Supreme Court session at the Prettyman Courthouse was a novelty, the ceremonial courtroom there was deeply familiar to one-third of the Justices at the time. Justices Scalia, Thomas, and Ginsburg had all been judges on the D.C. Circuit.

Despite the changed venue, the arguments that week went off as normal, with advocates fielding rapid-fire questions from the Justices. And the Court's presence there was symbolically important.

Photo by Franz Jantzen, Collection of the Supreme Court of the United States

As a Washington Post editorial put it: "[E]ven more powerful than the message of where the justices sat was the message of what they did: They heard arguments, issued orders and conducted their business on schedule, if not as usual. They had been shifted, but they hadn't been stopped."

I had the privilege of serving as a law clerk to Justice Ginsburg during October Term 2001, so I witnessed these events firsthand. The start was unnerving, as law clerks and Court personnel lined up to have our noses swabbed to check for anthrax. (All were negative.) But the time at the Prettyman Courthouse provided us an opportunity to see the Justices in new and more informal settings. Instead of the spacious separate chambers of the Supreme Court, Justices and their law clerks squeezed into shared office space and worked at close quarters. (We joined Justice Thomas and his clerks in an office suite.)

* * *

On October 31, 2001, Chief Justice Rehnquist closed the third of three argument days at the Prettyman Courthouse by thanking the staff of the Supreme Court, D.C. Circuit, and district court for successfully pulling off the relocation. And he then announced simply: "We plan to return to our building for oral arguments next week." «

THE SOCIETY'S LATEST ORAL HISTORY: NATHAN LEWIN

The remarkable life and career of Nathan Lewin, one of the foremost advocates for religious freedom in the past 50 years, is now the subject of his oral history published in August by the Historical Society. Born in 1936 in Lodz, Poland, with the specter of Nazi Germany hovering over his family, Lewin describes the tense moments as his mother and father sought to escape Poland.

Shortly after Hitler invaded, Lewin was shepherded into Lithuania at the age of three, along with his parents, maternal grandparents, and uncle. Fighting to escape, his mother eventually found a sympathetic man in the Japanese consulate, Chiune Sugihara, to provide the family with a transit visa in August 1940. Traveling through Russia, then Japan, Lewin and his family finally arrived in the United States in March 1941.

What followed was a career not to be forgotten: graduation from Harvard (in the same class as Justice Scalia), a clerkship with Supreme Court Justice John Marshall Harlan II (and his conversations with Justice Harlan about whether Lewin's strict observation of the Sabbath would make a difference in being hired), joining the Jimmy Hoffa prosecution in the DOJ, serving in the Solicitor General's office before becoming a founding member of the boutique firm Miller, Cassidy, Larroca & Lewin, and then arguing countless times in the Supreme Court and lower courts on behalf of Jews and other religious minorities seeking to ensure their constitutional right to freedom of religious expression.

And for good measure, along the way Lewin found himself presenting argument with his partner Jack Miller in the Supreme Court on behalf of Richard Nixon, and later representing then-Attorney General Edwin Meese in the second Independent Counsel investigation of Meese in 1988.

This oral history is a fascinating read, replete with recollections of the workings of the Supreme Court in the early 1960s, observations on the evolution of constitutional litigation over the meaning of the Free Exercise and Establishment clauses, and descriptions of scores of other events in the Washington legal community over the past 65 years. Don't miss it. «

GALLERY WALK: A LOOK AT A PORTRAIT IN THE COURT'S COLLECTION, ITS SUBJECT AND THE ARTIST

PORTRAIT OF JUDGE WALTER S. COX (1826-1902)

By Eva Petko Esber, Society Board Member

In his 1900 portrait by Washington artist Harold L. MacDonald, Judge Walter S. Cox's black attire dissolves into an equally dark background. Only his face and collar stand out. It is a quiet image that belies the intensity of his professional life. Cox was defense counsel for two alleged Lincoln conspirators, a witness in President Johnson's impeachment, and the presiding judge at the trial of President Garfield's assassin.

Cox posed for the portrait just after retiring from the bench, turning then to life as an academic and author. MacDonald, meanwhile, was at the height of his success as one of Washington's most sought-after portraitists. But tragedy – the loss of his arm and homelessness – lay barely a decade ahead for him.

Both the subject of the portrait and its artist are compelling markers of their times.

THE SUBJECT: JUDGE COX

Walter Smith Cox (1826–1902) was born in Georgetown, D.C., and educated at Georgetown College and Harvard Law School. His private-practice career put him at the center of two of his era's highest legal dramas, and at the helm of a third while on the bench.

In 1865, at age 39, Cox served as defense counsel for two alleged Lincoln conspirators, Michael O'Laughlen and Samuel Arnold. The contention for both was that, although they had joined Booth's plot to kidnap Lincoln, they abandoned it before it turned to murder. Cox pressed that distinction hard before the Military Commission. Both were convicted but spared execution, receiving life sentences.

Three years later, Cox testified as a defense witness at the 1868 Senate impeachment trial of President Andrew Johnson. The impeachment centered on his removal of Secretary of War Edwin Stanton without the Senate consent the Tenure of Office Act required. Cox testified that Johnson retained him to challenge the Act and defend the removal in support of Johnson's defense that he lawfully pursued judicial remedies. The impeachment failed by a single Senate vote.

A decade later, Cox joined the bench, appointed in 1879 by President Rutherford B. Hayes to the Supreme Court of the District of Columbia. His most storied moment came in 1881, presiding over the trial of Charles Guiteau, assassin of President James Garfield — the first non-military trial of a Presidential assassin in the nation's history. Jeffrey Morris' history of the D.C. Circuit courts, *Calmly to Poise the Scales of Justice,* calls it the era's most celebrated insanity case, crediting Cox with steering a difficult courtroom, despite Guiteau's outbursts and disruptions, with unusual fairness. He was, as Morris observes, "an able jurist, prudent and honorable, neither petty tyrant nor bitter partisan," who gave Guiteau "a scrupulously fair trial — perhaps too fair." Morris, at 49-51.

Before and after his 1899 retirement from the bench, Cox devoted himself to teaching, codifying the District's laws, and writing law books. Among his books was the 1901, *Lessons in Law for Women,* a primer for a general female readership, whose Introduction explained that he wanted "to put the female on an equal footing, as it were, with the average business man, in the understanding of her interests and the protection of her property." He died in June 1902 at 76 years old.

continued...

THE ARTIST: HAROLD L. MACDONALD

Harold MacDonald (1861–1923) was born in Manitowoc, Wisconsin, and trained as an artist in Paris before settling in Washington in 1890, where he immediately helped found the Society of Washington Artists. He was known as much for his personality as his art, a consummate entertainer who drew people into his circle. He produced portraits of cabinet secretaries, judges, and other Washington luminaries, including at least one Supreme Court Justice.

In 2007, more than a century after MacDonald's heyday, a fire broke out at the D.C. Public Library's Georgetown branch. Washington Post columnist John Kelly visited the scene and found a water-damaged portrait on the sidewalk — a long ago Georgetown mayor painted by MacDonald. A library archivist told Kelly that MacDonald, once a premier Washington artist, had died penniless and committed to St. Elizabeths Hospital.

Stunned, Kelly pursued the story. He found contemporaneous Washington Post accounts that, on May 27, 1912, MacDonald fell and fractured his left shoulder. Gangrene set in, and the arm was amputated. Despite the amputation, apparently of his non-dominant hand, the artist continued painting for years. His temperament changed, though, and friends drifted away. By the early 1920s the once-celebrated artist was destitute, sketching fellow homeless men in Judiciary Square on scraps of paper. "Whatever the cause," Kelly concluded, "the seeds of mental illness grew." (Kelly, 8/2/2007.) He was committed to St. Elizabeths and died there at the age of 62. «

SOURCES

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- U.S. National Park Service, Ford's Theatre National Historic Site, "The Lincoln Conspirators"
- Hinds, Asher C. *Hinds' Precedents of the House of Representatives of the United States*. Vol. 3, chap. 69. Washington, D.C.: Government Printing Office, 1907. Digitized by the U.S. Government Publishing Office.
- Walter S. Cox, *Lessons in Law for Women* (Brentano's, 1901)
- John Kelly, "Looking Behind the Portrait for the Artist," *The Washington Post*, May 30, 2007, B.3.
- John Kelly, "Portrait of an Artist's Mental Descent," *The Washington Post*, 2007, B.3.
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SIDEBAR

The trial of President Garfield's assassin, presided over by Judge Cox, was the subject of a Historical Society program in 2008. The program, "Technology in the Courtroom: Could It Change the Course of History?" utilized the 1881 Guiteau trial to discuss using technology to present evidence and argument to a jury, then a burgeoning topic. Attorney David Kendall of Williams & Connolly delivered an "old school" closing argument for the prosecution drawn from the actual trial transcript.

Mr. Kendall also brought along an associate in the role of Guiteau, who interrupted the argument with hecklings and interjections as Guiteau. Chief Judge Boasberg (then on the D.C. Superior Court) followed with a "new school" version of the same closing, built with technological images and animations. A recording of the program is available on the Society's YouTube Channel and accessible through the Society's website. «

ATTENTION D.C. CIRCUIT AND DISTRICT COURT LAW CLERKS– FALL 2026 LAW CLERKS RECEPTION

Former Law clerks, did you receive an email with your invitation to this year's October 29, 2026 Annual Law Clerk and Judges Reception, hosted by the Society?

No?!?

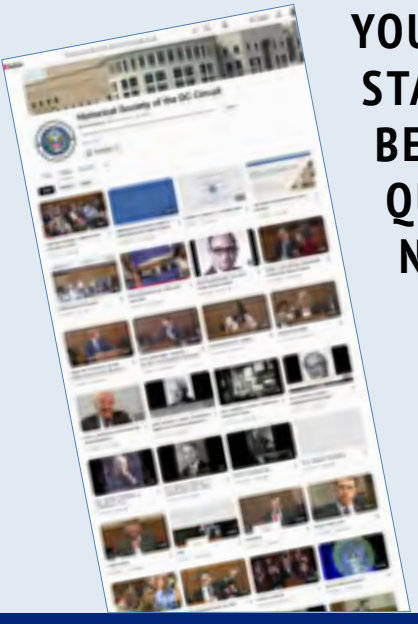
Perhaps your contact information with the Society is out of date. It's not too late. Reach out to the Society's Executive Director, Leith Alvaro, at info@dcchs.org for full event details, to RSVP, and to update your contact information. We hope to see you there.

If you cannot attend this year, please still be sure to keep the Society advised of your current contact information, at the email address above, to receive future announcements directed to former law clerks. «

NOW ON YOUTUBE: SOCIETY'S PROGRAM "ANATOMY OF A FALSE STATEMENTS PROSECUTION"

In case you missed it, the Society's highly regarded program entitled "Anatomy of a False Statements Prosecution in the D.C. Circuit Courts – The Scooter Libby Trial" is now available on the Society's YouTube Channel.

The program chronicles the challenges of prosecuting and defending a high-profile false statements case in the D.C. Circuit. The program includes discussions, comments and dramatizations of events during the 2007 trial by trial practitioners, including several who participated in the 2007 trial, as well as Judge Reggie Walton, who presided over the trial. «



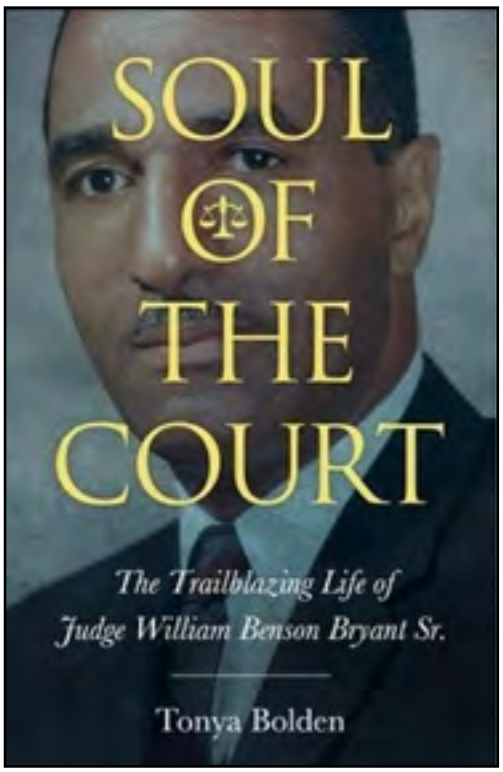
FOLLOW US ON LINKEDIN & YOUTUBE TO STAY CONNECTED BETWEEN OUR QUARTERLY NEWSLETTERS

ICYMI - RECENT SOCIAL MEDIA POSTS

Since our July 2026 Newsletter, the Society's LinkedIn page included posts –

- recognizing the significance of law students' summer job experiences, with reminiscences drawn from Dean Judith Areen's oral history and her summer internships with Ralph Nader in D.C. and with the Students Civil Rights Research Counsel.
- marking the Labor Day Weekend by harkening back to the D.C. Circuit's 2009 decision in *Fed-X Home Delivery v. NLRB*, 563 F.3d 492, addressing the frequently recurring issue of distinguishing employees from independent contractors.
- celebrating the back-to-school season with school days memories drawn from the oral histories of Justice Ruth Bader Ginsburg, Judge David Sentelle, and former chief U.S. Probation Officer Gennine Hagar.

JUDGE BRYANT BIOGRAPHY AVAILABLE FOR PURCHASE



Initiated and sponsored by the Historical Society, the first full-length biography of trailblazing D.C. attorney and judge, William Benson Bryant, *Soul of the Court: The Trailblazing Life of Judge William Benson Bryant Sr.* is now available for purchase. Orders can be made by going to Bookshop.org. The book can also be ordered at Amazon.com and Barnesandnoble.com.

Written by award-winning author Tonya Bolden, this biography narrates the story of a life of compassion, unparalleled integrity, and unwavering belief in the dignity of every human being.

More information about *Soul of the Court: The Trailblazing Life of Judge William Benson Bryant Sr.,* can be found at www.upress.state.ms.us/Books/S/Soul-of-the-Court. «

Historical Society of the District of Columbia Circuit

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