

## In Praise of City Court

Phoenix City Court has been much maligned through the years, mostly by lawyers from the large “prestigious” law firms who never went there. To those of us who practiced there, or, like me, became judges there in days past, it had a peculiar charm that the higher (and stuffer) courts lacked.

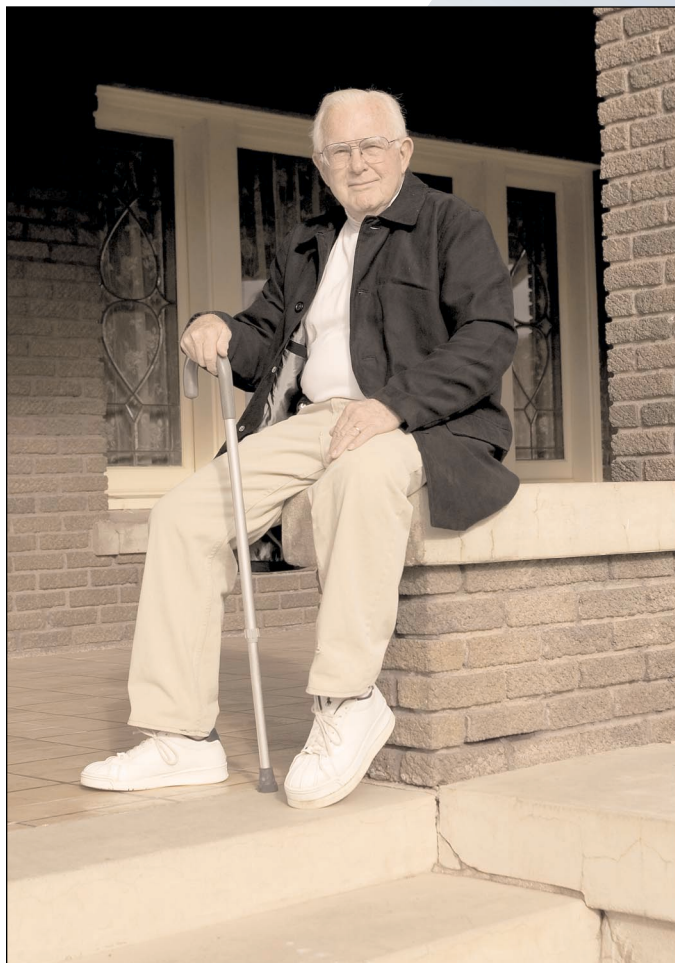
When I came to the City Court bench in 1975, the entire operation was housed in a building at 4th Avenue and Washington, occupied in the early days of Phoenix by a now long-defunct Packard automobile agency. The building, we were

told, had several years before been condemned by the City. The roof leaked, and court was held for a time not only in the ground-floor courtrooms, but also in the basement. The law library was also in the basement and was reached by descending a spiral iron staircase. When the sun was in the right position, one might stand outside the main door of our courthouse and pick out the Packard logo hidden under multiple coats of paint on the side of the building.

In spite of the many shortcomings, there was a spirit of camaraderie among the people who worked there—not only

the clerks, court reporters and judges, but the prosecutors and public defenders, and, if you can believe it, among the habitual offenders who passed through the system on a regular basis. Some of these became well known to all of us, and we regarded them not only with a certain tolerance, but sometimes almost with affection. These were the lost souls who were battling their own demons, or seeking some recognition in a world they did not understand, or which did not understand them.

One of these characters was Tony. Perhaps he is still around, so I won't use his last name, even if I could spell it.



**Ralph G. Smith** received his law degree at Northwestern University in 1950. He was an enlisted man in the Navy and received a fleet appointment to the U.S. Naval Academy. He practiced law for two years and then worked in business, which took him to Chicago, where he met his wife, Elba Diaz Sanchez. He worked for three years in Puerto Rico, traveling the Caribbean and South America for Maremont Automotive Products. He and his wife married in 1950 and have six children, 19 grandchildren and six great-grandchildren.

Admitted to the Arizona Bar in 1957, he became an Assistant U.S. Attorney in Phoenix, and later became an in-house counsel to Arizona Savings Receivership and later Gibraltar Savings Receivership. He then went into private practice. He went on the City Court bench in 1975.

Anyway, he was a frequent transvestite who sometimes went by the name of Stefanie Powers, or something similar.

All the policemen knew Tony and apparently picked him up and booked him when they had nothing better to do. He was basically harmless, and became so friendly with the court personnel that he used his “feminine” talents to bake cookies, which he presented to the ladies at the front desk. I never sampled these offerings, since I didn’t know if Tony may have laced them with some unusual herbal ingredients.

One of my encounters with Tony as a defendant occurred when he was charged with some motor vehicle violation for operating his mo-ped down Washington Street. The State did not effectively challenge Tony’s *pro per* defense that he was pedaling the vehicle at the time, and not using its engine, so I turned him loose, as I recall. On that occasion, he came to court in male clothing, apparently not wishing to wrinkle his miniskirt.

Tony truly thought of himself as female, and some of his illegal activities were engaged in, he said, in his effort to get enough money to have a sex-change operation. I don’t know if he ever attained his goal, but if not, I am sure he is still trying.

My most memorable experience with Tony and his trials (literally) and tribulations was when he was charged with soliciting an act of prostitution on East Van Buren. According to the police officers’ testimony, Tony, in his miniskirt, was seen flagging down vehicles and engaging the drivers in some sort of salacious conversation. One of these was a pickup truck with some construction equipment in the back. Tony got into the truck, the officers followed as it went around the corner, and the driver and Tony entered a motel room. The officers then collared both Tony and the truck driver, who was amazed, chagrined and humiliated, all at the same time, when he was told that Tony was, in fact, male. He agreed to be a witness and thereby avoided being classified as a “John.”

Tony knew a lot of lawyers from his many experiences in City Court, and he got one of the more flamboyant ones to

represent him at trial. The defense that this gentleman came up with was “impossibility of performance”! Tony, being a male, you understand, could not perform the sexual acts commonly associated with the business of being a prostitute. This was in an era when a lot of us were unsure as to what exactly went on behind a hooker’s closed doors. The State was represented by a feisty little guy known for his aggressive cross-examination.

Anyway, the case went to trial, and the State presented its star witness, the truck driver, and rested. The defense then put Tony on the stand, and he testified that, yes, he was a male, endowed with the usual male appendages, although he was taking steps to change all that. The court did not require any stricter proof of Tony’s testimony in that regard.

Now came the cross-examination. The prosecutor stepped forward with a mean little smile and began to question Tony about all the various and sundry ways two men could engage in some sort of unlawful sexual activities. This was all rather interesting to some of us more naive types, and the prosecutor was really warming to his task, even though the courtroom was empty of spectators.

Then it happened. The courtroom door swung open, and in came a rather elderly woman, a schoolteacher, and her entire class of fifth-graders, who were being shown how the court system worked in Arizona.

The prosecutor’s smile became a look of amazement, and defense counsel was hiding his face in his hands. Tony was the only one who seemed to be enjoying the situation, and at that point I declared a short recess while the prosecutor took our teacher aside and explained what type of case we were trying. The fifth-graders marched obediently out of the courtroom, and the trial went on. Tony was convicted, but I can’t recall what his sentence was.

Tony was also an early activist for gay rights. I could never figure out if he regarded himself as actually gay, or just a woman stuck in a man’s body, but at any rate he brought up the question of same-sex marriage before many, if any, people

had thought of it. He and his male “companion” actually got the Clerk of the Superior Court to issue a marriage license for the two of them, and then succeeded in getting Justice of the Peace John Murphy to perform a marriage ceremony.

Judge Murphy, who later became a City Court judge, was anything but a gay activist. He was a staunch Catholic who took his duties very seriously and after some research concluded that nothing in the Arizona law prohibited same-sex marriages. Of course the marriage was invalidated shortly thereafter by a higher court, probably the Superior Court, and it became a matter of judicial history. I am surprised that the story has not been retold now, years later, in the light of the actions of the Massachusetts court. If Tony is still alive, I am sure he is looking with glee at the accounts of present events.

There were many other habitués of City Court who became familiar faces. One was Jamie Jackson, who, though nominally male, habitually wore female clothing and makeup. It was always interesting to see the reaction of young men in the courtroom when Jamie was brought in by the police. Most of the men would have tried to date him if he were not in handcuffs, because he was the prettiest “girl” in the place. Poor Jamie was a gentle soul, who just didn’t fit. He even used the women’s rest room until someone mentioned the fact to the court administration. The female clerks and bailiffs really didn’t mind, because Jamie was harmless, soft-spoken and friendly. We were all saddened when he reportedly died of a drug overdose.

Another character we dealt with was a gentleman who fancied himself a priest or preacher. I am not sure of his claimed denomination, but at all times he wore a Roman collar and a suit of patriotic red, white and blue. I can’t recall if it was red pants with blue coat and white shirt or some other similar combination. He faded into history somewhere along the line.

And I can’t forget Fonzo (I think that was his name). One day at the call of the calendar, Fonzo came zipping into the courtroom on roller skates. Fortunately

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the skates had plastic wheels, not metal, so they did not make too much noise, but it seemed to me that this was a little out-of-keeping with the decorum of the court, even City Court. In addition to this, Fonzo was carrying a guitar, on which he had mounted a female mannequin head. He would talk or sing to the mannequin, who always had a dreamy, or we might say, unreal, look in her eyes.

I called this gentleman to the bench and inquired just why in blazes he thought he could come to court on roller skates. He explained that this was his only mode of transportation, since he didn't own a car or bicycle. After sufficient stern warnings, I allowed him to remain with his skates on, and we tried his case without incident. I can't recall what the case was about, but it may have had something to do with the guitar and the mannequin.

Eventually the court was expanded to include courtrooms in the old County Courthouse, and I acquired a courtroom on the upper floor in the northeast corner of the building. This was nice, because the courtroom was roomy, and the old-fashioned woodwork was very beautiful. Of course, there was a pigeon problem. The little balcony outside the windows could have been a prime source of guano for any enterprising landscaper, but we learned to live with all the "cooing."

One day during the lunch break, I was in my office when a gentleman appeared and asked if he could go into the courtroom and look around. I agreed when he explained that he had been on the jury that tried Winnie Ruth Judd for the horrendous murder-dismemberment, which occurred in 1931. He walked around the courtroom, pointed out the seat he occupied on the jury, and explained how Winnie Ruth continually twisted her handkerchief all during the trial.

Life in the Old Courthouse was doubly interesting because of the architecture of the place. There were all sorts of nooks and crannies, some of which were turned into offices. At the top of the building was the infamous jail, the "High Five." Only the old-time criminals remember the

High Five, which was called that because it was on the fifth floor. It was almost medieval, with its iron bars, open windows and lack of any sort of cooling. When City Court got to the building, some of us would occasionally go up there, wade through the inches of dust on the floor, clang the iron doors and reminisce about the desperadoes who may have been residents from time to time.

When I took a plea from a DUI defendant, or found one guilty, I would frequently order a probationary period in which the defendant would be ordered to attend some 20 Alcoholics Anonymous meetings. Some of these defendants apparently came to regard me as a father figure, even though a lot of them were older than I. They would complete their probationary periods, but they would still come down and sit in my office and talk until I found a way to get them to move on and make room for the next business. This was before all the security equipment was installed. It was not as safe a court then, but it was a lot friendlier.

City Court in those days was a sort of family group. We actually had real live female court reporters, not the tape machines that are now in use. These girls would frequently give us the benefit of their opinions after cases were tried, and sometimes we were cast in the role of curbstone psychiatrists to help them out with problems relating to the actions of their boyfriends or the techniques to be used in buying a car. One told of a great deal she got from Earnhardt after she insisted on seeing Tex himself and then dissolved into tears until he gave up and gave her a discount just to get rid of her.

Another reporter, a single mother at the time, had her two young children with her when a case in my court went overtime. We wound up letting the kids sit behind the bench with me, to keep them both quiet and interested. One reporter was in the habit of making caustic nonverbal comments on the testimony of witnesses by sitting with her machine in such a way that

neither the jury nor the witness could see her expressions, which were nevertheless clearly visible to the judge. Grimaces or rolled eyes let us know what she thought, even though we really did use our own judgment.

As I said, we were all comrades then, and not all the cases were as simple or inconsequential as those I have described. There were frequent constitutional questions to decide, especially with regard to DUI trials. I suppose my claim to fame was *Baca v. Smith* in which the Arizona Supreme Court decided that second breath samples were mandatory, even though the breath used in the primary test had been destroyed.

I think all of us were conscientious judges, but we sometimes succumbed to the stress of particular situations. One poor soul could not stand the stress and committed suicide while in the throes of depression. Another became certain that the police had formed a conspiracy against him and that his bailiff was somehow involved. He chased her, screaming, down the staid halls of the Old Courthouse, and then took a leave of absence to get counseling. Still another became so annoyed at the failure of the administration to fix or replace a broken chair behind his bench that he finally picked up the offending piece of furniture and flung it, crashing, into the center of the courtroom, while the prosecutor and defender ducked for cover.

All in all, my years in City Court were memorable, and I still look back fondly on the 17-year experience, and especially on the people involved, the court personnel who managed, generally, to keep me out of trouble, and the court reporters who, for the most part, lent a decorative air to the old Packard building. I also miss some of the defendants, many of whom were like those described above—poor lost souls who found in City Court a place where they were known and, in effect, tolerated, in spite of their failure to fit into society as the law demanded. I hope they somehow found their way. 