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BYRON WHITE: A SINGULAR LIFE

*Leon E. Irish**

Thank you very much, Dean Kmiec. It is a pleasure to have you here. I am Leon Irish. I attended Stanford University, the University of Michigan Law School, and then the University of Oxford. I clerked for Justice White in the October Term of 1967. I have done a variety of things since then, including the private practice of law, work for the federal government, and teaching. I am now a visiting professor at Temple Law School.

The Dean has given you a very good sense of much of the public life of Byron White. I would like to reach back a little further because I think Byron White was uniquely a man of his time and place, and it is worthwhile to take a moment to think about what those were. He served as an Associate Justice for thirty-one years, which is a longer period of service than all but nine other Justices.¹

Justice White regarded his opinions and votes, as a Justice, as an adequate public account of his life; he never wrote anything biographical. He zealously guarded his personal life and the privacy of his family. To many people and to the public, Byron White was an enigma; he seemed distant, taciturn, rough, and cold. To those of us who personally knew him, the defining characteristics of the man included: discipline, ferocity, brilliance of mind, determination always to do his best, integrity and rectitude, warmth and loyalty to personal friends and family, a keen sense of fun, and devotion to his work and country. Where did those characteristics and values come from?

Byron White was born in 1917 in Ft. Collins, Colorado.² His father and mother were poor frontiersmen primarily of German stock.³ He grew up in Wellington, Colorado, which is a dot on the high prairie of Colorado—a desolate place that lies north of Denver, south of Cheyenne, and east of the Rocky Mountains.⁴ His grandfather fought with distinction for the north in the Civil War, fathered fifteen children, and died in poverty in Iowa before Byron was born.⁵ His father, Alpha Albert White, married

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1. DENNIS J. HUTCHINSON, *THE MAN WHO ONCE WAS WHIZZER WHITE* 2 (1998).
2. *Id.* at 14.
3. *See id.* at 11-14.
4. *See id.* at 14-15.
5. *Id.* at 12-14.

Maude Berger.⁶ Neither of Byron White's parents ever went to high school, but they always put education first for their children.⁷ The White family was active in the political and social life of Wellington.⁸ Wellington was a very small town with a few thousand people, in the middle of Colorado's sugar beet industry.⁹

Alpha White was the resident manager of a lumber company.¹⁰ He and Maude had two children, Clayton Samuel ("Sam") and Byron Raymond.¹¹ Sam White, four years older than his brother, was a distinguished scholar and athlete in his own right.¹² As valedictorian of his high school class, Sam won a four-year scholarship to the University of Colorado.¹³ He played both football and basketball, and was awarded a Rhodes Scholarship to the University of Oxford.¹⁴ When people admired his football prowess, he said, "If you think I'm good, just wait until you see my little brother."¹⁵ Sam attended medical school, married and had children, and went on to have a distinguished medical career in Arizona.¹⁶

Byron White did his first work in the beet fields of Colorado at the age of six.¹⁷ Throughout his high school and college years, in addition to classes and athletics, he did odd jobs, such as unloading lumber from trains and trucks, shoveling coal, sweeping out buildings, swinging a sledgehammer for the railroad, and hashing a fraternity.¹⁸ The work in the sugar beet fields was his most consistent job. Cultivation of sugar beets, at that time, was backbreaking labor.¹⁹ When Byron White was still in junior highschool, he and his brother Sam rented twenty-five acres of land and planted, grew, and harvested their own sugar beets.²⁰ Their father, from whom they had learned their strong work ethic, also taught them how to relax.²¹ Alpha White took his boys fishing in the

6. *Id.* at 14.

7. *Id.* at 22.

8. *Id.* at 22-23.

9. *Id.* at 14-16.

10. *Id.* at 14.

11. *Id.*

12. *Id.* at 23-24.

13. *Id.*

14. *Id.* at 24, 31.

15. *Id.* at 29.

16. *See id.* at 324.

17. *Id.* at 16.

18. *See id.* at 18, 29.

19. *Id.* at 16.

20. *Id.* at 18.

21. *Id.* at 20.

surrounding streams. It was from those early experiences that Byron White developed a lifelong passion for fishing.²²

Byron White graduated with the highest academic ranking ever obtained at Wellington High School, won a four-year scholarship, and followed his brother to the University of Colorado.²³ He went on to play varsity football, basketball, and baseball while compiling one of the best academic records ever attained at the University.²⁴ At Colorado he became famous—first in the state and then in the nation. He was unbelievably competitive, remarkably fit, incredibly disciplined, and unflinchingly determined to win.

In football, White ran, kicked, and threw the ball; he also played defense.²⁵ In White's senior year, his Colorado Buffalos were undefeated.²⁶ White finished the season as the leading scorer in the nation.²⁷ After seeing White play, the widely syndicated sports writer, Henry M'Lamore, dubbed him "The Whizzer."²⁸ It was a name Byron White would come to hate, but never to escape.

The rest of Byron White's résumé is widely known, and as the Dean has already gone over it, I will not repeat it. I should add that he was the first law clerk of the Supreme Court to be appointed to the Supreme Court²⁹ and that he and his wife Marion had two children, Nancy and Barney.³⁰ Justice Byron White was like athlete Byron White – prepared, combative, disciplined, and tough. He had the uncanny ability to go directly to the heart of any problem he encountered. On the Court, he was consistently the best-prepared Justice and the most penetrating and assertive of questioners. His writing was so dense and tightly reasoned that it was often opaque. A major function of his law clerks was to open up his dense language and make his opinions more easily read and understood.

Byron White believed that the Supreme Court had an important but secondary role to play in our very complex system of government. He was skeptical of overarching theories of law; he was a lawyers' lawyer who wanted to get each case right. He shunned the spotlight and always understated his accomplishments. He read voraciously, loved art,

22. *See id.*

23. *Id.* at 24.

24. *Id.* at 86.

25. *Id.* at 55.

26. *Id.*

27. *Id.*

28. *Id.* at 50-51.

29. *See id.* at 197. White clerked for Justice Vinson during the October 1946 term. *Id.*

30. *Id.* at 238.

excelled at every sport he tried, and believed deeply in this country and the democratic process. He was the finest exemplar of the values and ideals of his time and place in America, and he was the most extraordinary man I have ever known.

Now, let us proceed to the substantive topics. An important measure of any Supreme Court Justice is the distinctive view he brings to important subjects. We have chosen four areas that illuminate the jurisprudence of Justice White: the First Amendment, the Fourth Amendment, the Equal Protection Clause, and Affirmative Action and the Separation of Powers.