

## DEDICATION: JUDGE STEPHEN F. WILLIAMS

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This issue of the *Energy Law Journal* is dedicated to Judge Stephen F. Williams, who passed away in August 2020 after nearly thirty-five years on the U.S. Court of Appeals for the District of Columbia Circuit. The following pages reprint a series of reflections on the Judge from twenty of his D.C. Circuit colleagues.<sup>1</sup> That is fitting as no one person could do justice to the full life and career of Judge Williams. He was a brilliant jurist, a prolific producer and consumer of ideas, and one of the most deeply kind people I have ever met. His colleagues' comments bear that out, painting the picture of a man of extraordinary intellectual curiosity, deep warmth, and unerring commitment to the rule of law. For those of us who knew Judge Williams, their reflections are a comfort and a fond reminder of our time with him. And for those who didn't, they will serve as a stirring introduction to a most remarkable man.

The *Energy Law Journal* is the perfect venue to house these reflections. Judge Williams was a professor of energy and administrative law before he took the bench. And, as another of his former clerks put it at a D.C. Circuit ceremony honoring the Judge, he had an "extraordinary love of cases dealing with the Federal Energy Regulatory Commission."<sup>2</sup> It should come as no surprise then that Judge Williams authored many of the D.C. Circuit's most important FERC decisions, including the seminal *Associated Gas Distributors v. FERC*.<sup>3</sup> Judge Williams's opinion in that case upheld FERC's Order No. 436, helping to usher in the era of competitive energy markets. Simply put, modern energy law would look very different without Judge Williams's contributions.

But part of what made Judge Williams so special, particularly for readers of this Journal, was the zeal and creativity with which he tackled what some—but never Judge Williams—might call the more mundane FERC cases. A recent favorite of mine was his opinion for the Court in *Exelon Corporation v. FERC*.<sup>4</sup> Oral argument in that case went deep into the intricacies of bidding parameters, market mitigation, and the very nature of section 205 of the Federal Power Act—the sort of details that the Judge relished. Yet his questions at argument uncovered the possibility that "the parties' dispute may be illusory."<sup>5</sup> And so, to "crystallize the apparent dispute (or harmony!) between the parties," Judge Williams remanded the record, but not the proceeding, to the Commission,<sup>6</sup> thereby securing

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\* Matt was a law clerk for Judge Williams from 2013-2014 and is currently a Legal Advisor to FERC Commissioner Richard Glick. The views expressed herein are his own.

1. These comments were originally published on the court's website.  
2. Portrait Ceremony Presentation Tr. at 30, available at <https://dcchs.org/wp-content/uploads/2019/02/Stephen-F-Williams-Portrait-Transcript.pdf>. That ceremony included no fewer than 20 references to FERC, surely a DiMaggio-like record for events of that sort. And to hammer home the point, another speaker, Judge David S. Tatel, succinctly observed that "the Judge loves FERC cases" with an enthusiasm that could be surprisingly infectious. *Id.* at 12. Around the same time, and in recognition of that love for energy law, Judge Williams received the Energy Bar Association's prestigious President's Award. See Awards, Energy Bar Ass'n, <https://www.eba-net.org/about/awards/#President> (last visited Oct. 5, 2020).

3. 824 F.2d 981 (D.C. Cir. 1987)

4. 911 F.3d 1236 (D.C. Cir. 2018).

5. *Id.* at 1238.

6. *Id.* at 1239.

an expeditious and authoritative answer to the issues on review without transgressing the limitations imposed by the *Chenery* doctrine.<sup>7</sup> It was an outcome that illustrated the unique combination of creativity, curiosity, and affection for administrative and energy law that made Judge Williams the very model of an energy lawyer.

For those of us still grappling with his absence, his colleagues' reflections are a welcome reminder of what made Judge Williams special. I am grateful to the *Energy Law Journal* and its editors for making those comments available to a community of readers who share the Judge's love of energy law and especially a good FERC case.

### **Statements from the Court about the Passing of Judge Stephen F. Williams:**

#### **Statement of Chief Judge Sri Srinivasan:**

On behalf of our Court, I am profoundly saddened to convey that our colleague, Judge Stephen F. Williams, has passed away. Judge Williams committed his professional life to teaching, writing, and serving the public, including service on our Court for more than three decades. He had an uncommon love of ideas, an extraordinarily broad-ranging intellectual curiosity, an infectiously good-spirited demeanor, and a joyful sense of humor. We have been immeasurably enriched by the privilege of serving with him. We will sorely miss our dear friend, and will long cherish fond memories of engaging with him on the work of the Court, of sharing a smile with him about matters large and small, and of seeing him on his trademark bike rides to and from the courthouse. We extend our deepest condolences to Judge Williams's wife Faith and their children, grandchildren, and extended family.

#### **Statement of Judge Karen LeCraft Henderson:**

Steve Williams was a good sport. In the early 1990s, when several of us made plans to go to a baseball game at Camden Yards, Steve told us he'd never been to a MLB game. We told him he had to wear a baseball cap - he didn't have one, went out and bought a bright green one and wore it the whole day. Last Christmas, my clerks gave me (and themselves) red Christmas sweatshirts with an image of President Reagan and the line "Mr. Gorbachev, deck those halls!" Wearing the sweatshirts, we all marched down the hall to Steve's chambers and, unannounced, asked him to translate "deck those halls." He laughed, didn't miss a beat, and gave us a translation. Steve was also a stoic. He suffered with terrible back problems and eventually had the fusion surgery that was supposed to relieve the pain. For years, Steve walked with one hand pressed to his back but never once complained of the pain. Steve was a *rara avis* in many ways but none more than this: he was one of the kindest, gentlest people I've ever known. RIP

#### **Statement of Judge Judith W. Rogers:**

Judge Williams was as smart as they come, intellectually curious, and exhibited a kind sense of humor about all of us and the world in general. It was a privilege to serve with him. Before joining the Court, I read *Williams on FERC* - his opinions engaging in an extended dialogue with the agency. At our first oral argument, he asked about Article III standing, which no party had mentioned. All in all a good

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7. See *SEC v. Chenery Corp.*, 332 U.S. 194 (1947); *SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

introduction to the D.C. Circuit! Throughout the years we untangled issues together, and enjoyed doing so, once even co-authoring a signed opinion. I will miss him. Chief Judge Srinivasan's wonderful statement about him captures our loss at this very sad time.

**Statement of Judge David S. Tatel:**

Collegiality is critical to effective appellate judging, and no one did it better than Judge Steve Williams. During our deliberations, at oral argument, and in his beautifully written opinions, Steve always considered the views of others—including those with whom he disagreed—and responded respectfully and on the merits, often changing his own thinking and the thinking of his colleagues. Steve and I rarely disagreed, but when we did it was not only intellectually satisfying for us both, but produced stronger opinions. In one case where I dissented from his opinion for the court, Steve suggested that along with the two opinions, we should publish in F.3d the some-half dozen memos we had exchanged in order to show the public “how,” as Steve put it, “judges seek to reach consensus.”

Steve Williams was a model appellate judge. The D.C. Circuit, indeed, the entire federal judiciary, will surely miss his wisdom, gentle spirit, and fierce commitment to human freedom and the rule of law.

**Statement of Judge Merrick B. Garland:**

Steve was the kindest of colleagues, eager to engage in vigorous intellectual debate in the most open-minded and non-personal way. He was a man of wide-ranging interests, from the economics of regulation to Russian land reform at the beginning of the 20<sup>th</sup> century. He was at heart the law professor he had been before taking the bench, and it is no surprise that many of his superb law clerks have gone on to become professors themselves. His fellow judges will sorely miss him.

**Statement of Judge Thomas B. Griffith:**

Steve Williams possessed the intellectual curiosity of a scholar and the commitment to justice of a public servant. These traits worked in tandem in Steve to create not only a great judge, but a remarkable and inspiring human being. Every encounter with Steve summoned the best in you. Being around him made you want to think more clearly, read more broadly, speak more carefully, and live more fully.

**Statement of Judge Patricia A. Millett:**

Judge Stephen Williams was, as many have observed, a giant in the law with an unparalleled intellectual vibrancy. It was an immeasurable privilege to share the bench with him. But the robe did not make Judge Williams; Judge Williams made the robe—through his dignified service and unbending commitment to delivering justice in each case. He was a man of incomparable decency. He was quick to listen and always considered his colleagues' reasoning carefully and thoughtfully before responding. He was a true expert in disagreeing agreeably. Judge Williams was in love with the law and a perpetual learner, eager to embrace and to wrestle with complex problems and ideas. Judge Williams was also an intellectual explorer, always seeking to amass new knowledge about new subjects inside and outside of the law. In my early years on the court, Judge Williams warmly welcomed me, and took the time to get to know me as a professional colleague and as

a person. (We learned that we share a love of dogs, and my clerks, assistant, and I were thrilled to meet his dogs when they came to chambers.) He was always kind and patient, with a warm smile and an endearing manner of embedding a chuckle into his sentences. Words cannot convey how much he enriched the court and my service here. We need more Steve Williamses in this world.

**Statement of Judge Cornelia T.L. Pillard:**

We have lost a great jurist, a beloved colleague, and a dear friend. Steve Williams' distinctive voice and mind—brilliant, to-the-point, and independent—are beautifully memorialized in his written work. It was no surprise to me when I joined the court seven years ago to encounter a person of gravitas. He powerfully expressed his skepticism with a furrowed brow, a quizzically cocked head, and penetrating lines of questioning. That intense devotion to the law and to ideas—to getting it right—was also, in Steve, bound up with a great deal of fun and warmth. He was the first colleague to invite me for lunch when I joined the court. He was happy, comfortable, often full of mischievous humor or a big laugh, when debating and puzzling over ideas. His chambers were just two floors directly below mine, piled with books and adorned with family photographs accumulated over a long and full life. He made me feel welcome whenever I dropped in to talk about a case, seek advice, say hello. Steve never lost the air of the law professor, greeting one in his socks, ready to talk, share and discuss a draft, and spontaneously summon the clerks to join in. We did sometimes disagree—I still recall the series of three conversations we had in one case about whether he would accommodate my request to change a single word—but we did so with mutual regard and trust. Our court and our nation are the better for the extraordinary public service of Judge Stephen F. Williams. We will dearly miss him.

**Statement of Judge Robert L. Wilkins:**

I am truly heartbroken about the passing of Judge Stephen F. Williams. Steve was a colleague in every best sense of the word: solicitous, wise, intelligent, unfailingly good natured, thoughtful, and fair. My heart goes out to his wife Faith, all of his children, and his entire family. Our court and this nation owe Judge Williams a tremendous debt of gratitude for his many years of exemplary service, and I am indebted to him for his friendship.

**Statement of Judge Gregory G. Katsas:**

Simone and I mourn the passing of Judge Stephen Williams and send our condolences to Faith and the entire Williams family. Steve was brilliant, engaged, kind, gentle, and insatiably curious. He was a joy to argue before and to work with as a colleague. He served our court with distinction for more than three decades, and we will miss him dearly.

**Statement of Judge Neomi Rao:**

Judge Stephen Williams will leave a lasting mark on the D.C. Circuit, particularly with respect to administrative law. As a colleague he was generous and energetic and always willing to engage. When I first joined the court, he graciously took me to lunch and jumped right into a conversation, one might even say inquisition, about my academic and government work. His wide ranging interests and knowledge made every conversation a pleasure. His passing is a loss to this court and he will be sorely missed.

**Statement of Judge Harry T. Edwards:**

I was heartbroken when I learned that Judge Williams had passed away. Although I knew that he had been struggling, I never gave up hope that he might recover. My wife and I talked about him every day after he was hospitalized and he was always on our minds and in our prayers.

To say that Judge Williams was a treasured colleague is an understatement. He was a truly outstanding jurist, always thoughtful, precise, and fair. He was sterling in his service to the court, the parties who appeared before us, the legal community, and the public. He was tough as nails in analyzing cases, but he had abiding sense of justice. He really cared about the legal questions before the court. The Rule of Law was not an abstract notion to Judge Williams. He wanted us to “get it right” in deciding cases and he wanted the parties who appeared before the court to be well served (and to know that they had been well served). Justice mattered to Judge Williams.

I will be forever grateful for Judge Williams’ support when I was Chief Judge. We were aiming to create a truly collegial body of judges on the D.C. Circuit and Judge Williams never wavered in backing our goal. I have long maintained that on a truly collegial court, judges have a common interest in getting the law right, and that, as a result, we are willing to listen, persuade, and be persuaded, all in an atmosphere of civility and respect. Collegiality is a process that helps to create the conditions for principled agreement, by allowing all points of view to be aired and considered. Judge Williams understood this and lived by this creed. He was always helpful to his colleagues in parsing difficult cases, without rancor, partisanship, bluster, or arrogance. He understood that the quality of judges’ decisions improves when collegiality filters their decision making.

I also greatly admired how Steve lived his life on his terms. He was never disrespectful of others, but he never coddled to conventions. He knew what mattered to him (and to his family) and he lived his life to reach those aspirations. He followed the same rules as a scholar and teacher. I loved the spirit with which he approached life (even when I scolded him about riding his bicycle in the streets of Washington, DC, or teased him about his rather extraordinary scholarship on Private Property in Russia).

The loss of Judge Williams takes a big chunk out of my heart. He was a dear colleague and I am very unhappy that he was a victim of the awful coronavirus that is plaguing our society. He will be sorely missed by the court, the legal community, the legal academy, and the public that he served so well. My loss is more personal, however. I have lost a wonderful colleague and friend, with whom I worked for about 35 years, and from whom I learned an immense amount about the law and life. He modeled things for me that I will always hold special. And he was always gracious, generous, and respectful in his offerings, which often came with a smile or one of Steve’s patented laughs. It is sad to lose such a good person.

**Statement of Judge Laurence H. Silberman:**

I sat with Stephen Williams for almost 35 years but we go back even further. We were classmates at Harvard Law School where we were even members of the same social club. As judges, we typically saw cases – starting with *Morrison v. Olson* –

through the same legal lens, although he never thought I put as much stress on economics as he thought appropriate. We often shared early drafts of opinions. His brilliance, his exactitude, and dedication to reach the right legal answer in difficult cases was inspiring and his breath of interest in world affairs and history which he shared over lunch was extraordinary.

For me, however, most of all, he was my dear friend whose absence will be a constant source of pain.

**Statement of Judge Douglas H. Ginsburg:**

Steve was already on the court when I joined in 1986, so we spent 34 years together, hearing cases, conferring, having lunch, and sharing academic articles we thought worth recommending. Steve enlightened and enlivened our every minute together with his insights and unfailingly good humor. Judges, colleagues, and friends like that don't come along very often; they are to be prized and deeply missed, as is Steve, by all who worked with him. The courthouse will be a darker place without the light he shed.

**Statement of Judge David B. Sentelle:**

Steve was an erudite and scholarly colleague: a judge who never lost his love of learning, his intellectual curiosity. As a person and as a friend he was generous and kind. The court, indeed the world, was a better place because he was in it. We will miss him.

**Statement of Judge A. Raymond Randolph:**

We all will greatly miss Steve, with his exceptional industry and intellect, and his notes to us after he read circulating opinions. But what I miss most of all is Steve's good humor and his loud, boisterous laughter at his colleagues' quips. May he rest in peace.

**Former Judicial Colleagues:**

**Statement of Chief Justice John G. Roberts, Jr.:**

I had the honor and privilege of both arguing before Judge Stephen Williams and serving alongside him on the Court of Appeals for the District of Columbia Circuit. He was a good friend and one of the shining jewels of the Federal Judiciary. When you ran into him you never knew whether the conversation would turn to Russian history or a new way of looking at an old legal problem. He combined an incisive mind with a gracious manner. I will miss him.

**Statement of Justice Clarence Thomas:**

Virginia and I are deeply, deeply saddened to learn of the passing of Judge Williams. From our first meeting over three decades ago to our last chat, he was always delightful and cheerful. As a judge, he was scholarly, brilliant, and principled. As a colleague, he was simply a joy. His passing is a profound loss to all who knew him. Our hearts, our thoughts, and our prayers go out to Faith and her family at this most difficult time.

**Statement of Justice Ruth Bader Ginsburg:**

Judge Stephen Williams was a grand colleague. Whether we agreed or disagreed, integrity characterized his opinions. He never disguised the difficulties by shoving them under the rug. Blessed with a sense of humor that reduced tensions, he cared deeply about the wellbeing of the planet we inhabit, and conducted his personal life in accord with that caring. I count it my good fortune to have served with him.

**Statement of Justice Brett Kavanaugh:**

Ashley and I are heartbroken by the passing of Steve Williams. We extend our deepest condolences to Faith and to the entire Williams family, and to all of the former Williams law clerks. The Kavanaugh family has been praying for Steve over the last several months, and we continue to pray for him and his family. May he rest in peace. I loved Steve Williams. He was my great friend and the very best of colleagues. Steve Williams personified collegiality. He was a principled and rigorous scholar, teacher, and judge. He never cut corners, and he insisted that the parties to a case, particularly the government, likewise not cut corners. He sought to ensure that the government dealt with the American people lawfully, fairly, and honestly. And that was exactly how he handled every aspect of his job. For twelve years together on the D.C. Circuit, when I had a really tough opinion or decision, I would consult Steve. I would often send him an email asking him if he would mind looking at a draft. Usually by the next morning, I would receive a thorough email back with his invariably insightful and wise comments and suggestions. Steve Williams was my go-to friend for advice and counsel, for suggestions and critiques. He made me think, and he made me laugh. He spent many, many hours talking with me, exchanging emails, and writing memos. He helped me become a better judge and a better citizen. The last time I saw Steve in person was last year as he visited at the Supreme Court. We hugged each other goodbye that day, as he wished me good luck in my new assignment. I will always cherish that hug. And I will always try to live up to the highest standards of American judging as exemplified by Steve Williams. May God bless Steve Williams and the entire Williams family.

**Statement of Judge James L. Buckley (retired):**

I last served with Judge Williams twenty years ago, so I will limit my comments to what it was like to have him as a colleague. And this requires an understanding of what it is like to work as an appellate judge.

Soon after I joined the court, my wife asked me what my new work was like. I told her that I had joined the equivalent of a cloistered monastery. Outside the few hours spent hearing oral arguments one week a month and aside my own staff, the only human beings with whom my work brought me into contact were my fellow judges. Under such circumstances, the quality of colleagues as human beings as well as professionals assumes a special importance.

Steve Williams was a winner in every category one would hope for in a judicial monastery. He had the highest marks for intelligence, intellectual integrity, humor, kindness, and consideration. He earned total respect both as a judge and as a human being. And to cap it all, when he and I were on panels that had to make sense of particularly complex federal energy regulations, he always insisted on writing the opinion. That was true friendship.