

# JUSTICE STANLEY G. FELDMAN

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Fred Rodell in his classic and heretical book *Woe Unto You, Lawyers!* charges that the law is the killy-loo bird of the sciences. It insists on flying backwards because it doesn't care where it's going but only where it's been. In his fifteen years on the Arizona Supreme Court, and particularly during his last five years as Chief Justice, Stanley G. Feldman has turned the killy-loo bird around—forcing the law to move ahead to new truths, new techniques and new usefulness.

But such willingness to challenge the existing order is nothing new to Stanley. Born in New York City in 1933, to Meyer and Esther Feldman, his family moved to Tucson, Arizona in 1938 for his mother's health. My wife, then Frances Smith, was the older woman in Stanley's life—she and her family lived next door. He was six and she was eight. In school the future justice was essentially a contrarian, questioning and challenging everything. At an early age he discovered the pleasures of the public library, spending much of his time there. In fact he read the entire encyclopedia before finishing junior high school. His great obsession in school was basketball; fortunately for Arizona his enthusiasm wasn't matched by his talent. Otherwise he might have spent the last fifteen years coaching basketball instead of turning the killy-loo bird around as a Justice of our Supreme Court.

Justice Feldman graduated at the top of his class from the University of Arizona College of Law in 1956, then set up a practice with Charles Whitehill and Bill Scott. He soon established himself as one of the outstanding trial lawyers in the city. His wife, Frieda, provided loving support as he built his career. In 1968 he joined Robert Miller and Donald Pitt to form Miller, Pitt & Feldman. During his years of private practice he served as president of the Pima County Bar Association, then as president of the State Bar of Arizona. He was known throughout the state as an exceptional litigator—one who was willing to take difficult cases and establish new law if necessary to achieve justice. In 1976 cancer took Frieda, leaving Stanley as a single parent to their daughter Elizabeth.

In 1982, Governor Bruce Babbitt, in what he told me was his most important act as governor, appointed Stanley Feldman to the Arizona Supreme Court. The new Justice brought to the Court an enormous capacity for work and an intense passion for justice. He also retained his love for Tucson and has maintained a home there for the past fifteen years while working during the week at the Court in Phoenix. This has not been easy for his wife, Norma, whose help and understanding have enabled Justice Feldman to serve the state so well.

Perhaps the most controversial decision Justice Feldman authored in his early years on the bench, the *Darner*<sup>1</sup> decision, best demonstrates his passion for justice.

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1. *Darner Motor Sales, Inc. v. Universal Underwriters Insurance Co.*, 140 Ariz. 383,

Prior to *Darner*, the courts could not, in a contract case, examine evidence to determine the intention of the parties unless the contract was found by the court to be ambiguous. Justice Feldman in *Darner* held, in essence, that the primary objective of the courts should be to enforce the contract as intended by the parties. Evidence of surrounding circumstances, including negotiation, prior negotiations, subsequent conduct and the like would be taken to determine the parties' intent with regard to integration of the contract and then to interpret the meaning of its provisions. (Later in *Taylor*,<sup>2</sup> Justice Feldman made it clear that, in the case of a fully integrated agreement, such extrinsic evidence would not be admissible for the purpose of varying or contradicting the writing.) Essentially, *Darner* recognized that in the real world people often sign written agreements without knowing their contents—has anyone ever stopped to read every word in the agreement one must sign in order to rent a car? Fred Rodell would have been surprised and pleased that, at least in Arizona, this reality was finally recognized by the law.

Justice Feldman is not, however, an advocate of change for its own sake. In the *Gila River Adjudication*<sup>3</sup> when hydrologists and water law scholars urged him to change Arizona law to recognize that surface water and groundwater are in reality one hydrologic system, he refused to change water law principles that had governed Arizona business and property transactions for decades. His opinion recognized the hydrologic realities but stated that too many property rights had vested on the basis of the legal distinction between surface water and groundwater, and it is the legislature's responsibility to determine whether change should be made, not the Court's.

Full analyses of the decisions of Justice Feldman will occupy legal commentators for many years. His impact on the law in Arizona has extended well beyond legal opinions. As Vice Chief Justice under then Chief Justice Frank Gordon, Stanley Feldman worked to initiate the revolutionary changes in the administration of the law that have occurred over the past ten years. After the 1988 Town Hall on Civil Justice in Arizona, How Much and for Whom, Vice Chief Justice Feldman worked with Chief Justice Gordon to establish the Commission on the Courts. That Commission made findings and recommendations in 1989 for shaping the direction of Arizona's courts in the future.

Then in early 1990, the Arizona Supreme Court and the State Bar of Arizona appointed a special committee to address discovery abuse, cost, and delay in civil litigation. The committee was chaired by Tucson lawyer Tom Zlaket, former president of the State Bar and later to be the successor to Stanley Feldman as Chief Justice of the Court. The Zlaket Committee recommended significant changes in the discovery rules to obligate lawyers to disclose to the opposing party all evidence relevant to the issues in the case. An important goal of the changes was to level the playing field for clients—so that the legal system would be more likely to dispense justice depending on the facts and law instead of the relative abilities of the parties' lawyers. The new disclosure rules were adopted in December 1991 just as Stanley Feldman was becoming Chief Justice.

During Justice Feldman's five years as Chief Justice, many other changes were adopted to modernize the legal system and refocus attention away from the lawyers to the clients and the relative justice of their positions. On the basis of a report from a Supreme Court Committee chaired by Judge Michael Dann, the Arizona

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682 P.2d 388 (1984).

2. *Taylor v. State Farm Mut. Auto Ins. Co.*, 175 Ariz. 148, 854 P.2d 1134 (1993).

3. 171 Ariz. 230, 830 P.2d 442 (1992).

Supreme Court, in December 1995, adopted new rules to provide jurors with better tools and increased participation which will assist them in understanding the facts and the trial process. The juvenile justice system was reformed. Computerized kiosks were opened to provide self-service legal assistance to the public.

The judicial innovations adopted by the Arizona Supreme Court have attracted national attention. Courts throughout the country now look to Arizona. Justice Feldman is invited to speak in Washington, New York and at various state bar conventions so that others can learn from our experiences. Perhaps as other states shift their focus from strict legal rules and procedures to the search for justice, Fred Rodell will be proven wrong. If so, Justice Stanley G. Feldman will deserve a large share of the credit.

