



The Historical Society of the Tenth Judicial Circuit

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CHAIR'S NOTES By Greg Kerwin

A British Perspective on U.S. Judicial Independence: The 2010 Fireside Chat program with Justice Ginsburg and Justice McLachlin was incredibly interesting and moving (see below). But you will also not want to miss reading the insights of Lord Igor Judge, who is the Lord Chief Justice of England and Wales. Lord Judge spoke at the Broadmoor on August 28, 2010 at the Tenth Circuit Bench/Bar Conference. The title of his talk was: *No Taxation Without Representation: A British Perspective on Constitutional Arrangements*. A copy of his remarks is posted on the Historical Society's website.

In less than an hour's time — and speaking from notes instead of a prepared text — Lord Judge wove together a brief history of the American Revolutionary War (in his words, "your War of Independence") from the British perspective, English legal history, and a comparison of the foundations of the governments in Britain and the U.S., along with a touch of English poetry (Andrew Marvell's ode *To His Coy Mistress*: "But at my back I always hear Time's winged chariot hurrying near.") Highlights of his remarks, to pique your curiosity, include:

- "One of the problems with history is that when we look back at what happened we assume that what happened would inevitably have happened. I mean no disrespect, but even if the American War of Independence was destined to succeed, those who took part in it had no particular reason to believe that it would. It took great courage to sign up to it."
- "Your constitutional roots include a civil war which culminated in the execution in 1648 of a monarch who proclaimed the Divine Right of Kings, and the removal of another in 1688 when he sought to subvert the constitutional changes consequent on the execution of his father."
- "Am I the only person here who is moved by the thought that as long ago as 1618 a tiny band of individuals believed that concepts like freedom of speech and trial by jury actually mattered, at a time when such concepts would have been beyond the comprehension of any other contemporary society of which I am aware. And we all still believe it."
- "My thesis is that in England we granted ultimate sovereignty to Parliament because it was through Parliament that we sought to curb the divine right of kings In your situation, many years later, . . . Parliament was undoubtedly perceived to be integral to the problem. . . . In the 1760s and 1770s Parliament in London appeared to be unwilling or unable to see that the position of the Americans was entirely consistent with established constitutional principles. For you a sovereign Parliament was the problem. It could therefore not be the solution."



Lord Igor Judge

New and existing members: We welcome to the Society 30 new members who signed up at the recent Bench/Bar Conference. For existing annual and installment-life members, we will be sending out reminder letters soon for annual dues due in 2010. And for life members, we welcome and appreciate your contributions. Your continued support makes a difference.

Fireside Chat with Justice Ginsburg • By Paul Hickey



Justice Ruth Bader Ginsburg

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the United States

Justice Ruth Bader Ginsburg presented her late husband Martin "Marty" D. Ginsburg's speech that he had prepared to deliver at the Bench/Bar Conference before his untimely death this summer. Justice Ginsburg did a remarkable job of delivering this address. His speech was relevant, insightful and humorous. Marty discussed how he persuaded Justice Ginsburg, then a young lawyer and professor, to take the appeal of Charles Moritz from the Tax Court to the Tenth Circuit. The appeal was successful and Mr. Moritz was allowed the dependent care deduction previously denied him on the basis of gender. Thus, Justice Ginsburg's career as a successful appellate lawyer began in our Circuit. See *Moritz v. C. I. R.*, 469 F.2d 466 (10th Cir. 1972). Following the remarks, the Fireside Chat between Justice Ginsburg and Canadian Chief Justice Beverley McLachlin proved to be a most enjoyable and informative discussion. The discussion was led by thoughtful questions from Robert Henry and Nina Totenberg. If you were unable to attend the Conference, the Fireside Chat can be seen at <http://www.c-spanarchives.org/program/295217-1>. In addition, please see Stephanie Francis Wand's wonderful article on Justice Ginsburg in the October 2010 *ABA Journal*: "Family Ties."

Lifetime Members of the Society can be found on the website:

http://www.10thcircuithistory.org/lifetime_members.htm

C O U R T H O U S E S O F T H E 1 0 T H C I R C U I T

Kansas City Dole Courthouse • *By Alleen VanBebber*



It was 1990. Judges were riding in elevators with families of people they had just sentenced. Prosecutors were sharing restrooms with witnesses they had just called liars, and worse. It was past time for a different federal courthouse. That same year, it was announced that a new one would be constructed on 4.76-acres at Fifth Street and State Avenue. Construction began in 1992, and the building was finished and occupied in 1994, at a cost of \$33,000,000. The Robert J. Dole United States Courthouse was named on May 15, 1998, in honor of the Senator from Kansas who had then given more than 50 years of service to his country as a soldier, a county attorney, a state legislator, and a member of Congress. Presiding at the ceremony was Senior Judge Earl E. O'Connor, who had overseen planning and construction while serving as Chief District Judge.

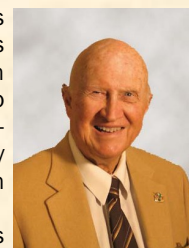
From its inception, this courthouse has been recognized for economy and innovation, including being one of the first federal courthouses to adopt the concepts of shared courtrooms and a shared library. Granite panels trim an exterior of buff- and gray-colored, precast concrete that simulates limestone and granite and covers a steel frame and a concrete foundation. High-ceilinged lobbies and main corridors are finished with granite and marble. The courtrooms contain ample supplies of electronic equipment needed in today's technology-dependent trials. Space initially occupied by non-related agencies has been designed to allow court expansion as it is needed in the future.

In addition to the offices, secure parking, prisoner spaces, and meeting rooms one finds in most federal courthouses, this Courthouse has the "Uncle Sam Academy," a day care center for children of employees. And it includes a rotunda made beautiful by a combination of statues and Richard Haas's murals entitled "Justice of the Prairie." The display intertwines the history of Kansas City and the U.S. court system and represents land use on the Kansas Plains. Today, the Kansas City Courthouse is visited by jurists, legislators, and architects who want to see a courthouse that has successfully combined cost-effective construction and innovative use, while yet maintaining the dignity expected by the public for important public business.

N O T A B L E L A W Y E R S

Robert H. Harry • *By Judge David M. Ebel*

Around Christmas, 1952, Byron White, then a lawyer at the Denver firm of Lewis, Grant & Davis (now Davis, Graham & Stubbs) persuaded his former Yale law school classmate, Robert H. Harry, to leave his position as an associate attorney with the Wall Street firm of Hughes, Hubbard & Reed and to travel west. In this way, Colorado acquired one of the most gifted litigators ever to grace its courtrooms. Bob went on to have a storied career that included trials of many important cases. Perhaps more significant, and more lastingly, Bob became an important mentor for many young litigators at Davis, Graham & Stubbs. If you truly seek a memorial honoring Bob Harry, you can find it in the lives of the lawyers who have taken inspiration from his methods of trying cases and his commitment to professionalism, competence and ethical behavior.



Bob received from Yale both his undergraduate and his law degrees, although the law degree was delayed somewhat by his decision to leave law school soon after Pearl Harbor and to seek a commission in the U.S. Naval Reserve. After joining Davis, Graham & Stubbs, Bob became the first litigation specialist in that firm and, eventually, head of the litigation department. The idea that litigation would be handled by a specialist rather than by each lawyer handling the litigation for his or her own regular clients was fairly novel in Denver at that time. One of Bob's first assignments in Denver was as court appointed counsel to represent one of the defendants indicted for advocating the forcible overthrow of the U.S. government. Although it took courage to represent alleged communists at that time, Bob and the other young lawyers who accepted those appointments unhesitatingly took the assignments, and all of them went on to subsequent illustrious careers.

Among his many other achievements, Bob served as a regent on the American College of Trial Lawyers and as the Tenth Circuit ABA representative evaluating federal judicial candidates. Bob came out of retirement to become a founder and the first President of the Historical Society for the Tenth Judicial Circuit. Our Society owes its existence in significant part to him.

When I asked Bob what advice he would give to young lawyers today, his advice was simple. He said, "Develop patience, and don't cut corners." To that I would add advice that he often gave me, "Develop a theme for your litigation. Don't let the details overwhelm those few things that will be decisive." Bob has been one of the great pioneers, visionaries and mentors on the Colorado legal scene for more than fifty years.



State Project Updates

Colorado: The Society is planning a program in Denver in the Spring of 2011 on the McVeigh trial for the bombing of the Murrah federal building.

Kansas: KU law professor Michael Hoefflich spoke on September 10, 2010 in Lecompton, Kansas — the territorial capital of the Kansas Territory — about the history of that town and 3 of its buildings, including a discussion of the efforts to keep Kansas a slave state when it entered the union.

Oklahoma: Vice-Chief Justice Steven W. Taylor spoke at the Oklahoma City National Memorial Museum on October 28, 2010 about the Terry Nichols/Oklahoma City bombing trial in state court; Judge Taylor presided over the jury trial in 2004.

Utah: The annual Utah program, held on April 27, 2010, was titled "Masters of the Utah Bar" and featured three elder statesmen describing their careers and work.

Wyoming: On September 23, 2010, John W. Davis, author of *Wyoming Range War: The Infamous Invasion of Johnson County*, spoke on the establishment of the rule of law in northern Wyoming. The informative event was co-sponsored by the Society and the University of Wyoming College of Law.

DISTINGUISHED JUDGES' BIOGRAPHIES

Chief Judge Mary Beck Briscoe • *By James K. Logan*

Chief Judge Mary Beck Briscoe of the Tenth Circuit U.S. Court of Appeals is a native Kansan, raised on a farm near Council Grove. After receiving her undergraduate degree from the University of Kansas, she worked briefly in industry. Her father's untimely death caused her to consider other career options, and she decided to apply to enter law school. She applied to one law school, the University of Kansas Law School, was accepted, and worked her way through law school as a resident assistant in the freshman dorms. Her choice of a legal career turned out to be propitious for both her and for those of us who revere the law and the legal profession.

Jobs for women lawyers were scarce when she graduated from the University of Kansas Law School in 1973. She began her legal career as an attorney-examiner for the Interstate Commerce Commission in Washington, D.C., but in early 1974 she got a call back from an interview she had taken in law school with the U.S. Attorney's Office, and in March of that year commenced ten years' service as an Assistant U. S. Attorney in the District of Kansas. As an AUSA, she enjoyed a variety of civil, criminal, and appellate casework, and tried jury and bench trials in Wichita, Topeka, and Kansas City. She also appeared frequently to argue cases before the Tenth Circuit U. S. Court of Appeals. Under the merit system in effect in Kansas, she was appointed as a Judge on the Kansas Court of Appeals in 1984, and in 1990 was selected by the Kansas Supreme Court to be Chief Judge of the Kansas Court of Appeals. During that tenure she obtained an LL.M. degree in the judicial process at the University of Virginia Law School. Judge Briscoe continued on the Kansas Court of Appeals until appointed in 1995 as a Judge on the U.S. Court of Appeals as my successor. On May 1, 2010 she replaced Robert Henry as Chief Judge of the Tenth Circuit.

In addition to the many appeals Judge Briscoe has helped decide in more than 26 years as a state and federal appellate judge, she has served the legal profession and the judiciary in many other ways. She has served six years on the Judicial Conference of the United States' Codes of Conduct Committee. She is a past chair of the Appellate Judges Conference of the American Bar Association. In 1992 she received the Kansas Bar Association's Outstanding Service Award for her work as co-chair of the Task Force on the Status of Women in the Legal Profession. Judge Briscoe serves on the University of Kansas Law Society's Board of Governors, and in 2000 was awarded the Distinguished Alumna Award from that school. In 2001 she was inducted into the University of Kansas Women's Hall of Fame. Her husband of 36 years, Charles Briscoe, is Director of the Legal Aid Clinic at the University of Kansas Law School where he has represented indigent clients and taught for the past 16 years.

Judge Briscoe has the experience as both an appellate judge and as a former state court chief judge to be an outstanding leader in her new role as Chief Judge.

Judge David K. Winder • *By Craig Carlile*

Judge David K. Winder grew up on a dairy farm in Granger, Utah. A lot of life's best lessons are often learned caring for and working with animals. Dairy farms require early mornings, hard work, and patience with reluctant cows. What Judge Winder learned as a youth was reflected in his professional career. Judge Winder always started his day sometime around 5:00 a.m. He was tireless in his preparation for each case, and he had an abundance of patience even for those who seemed intent on testing his limits. Ever the gentleman, Judge Ronald Boyce once said of him: "To the extent people can ever feel good about the litigation experience, he makes them."

Judge Winder attended the University of Utah where he earned a bachelors degree. His time at the "U" was interrupted by his service in the United States Air Force. Upon his return to college he met the love of his life, Pam. After graduation, Dave and Pam moved to California where he obtained a law degree from Stanford University. They returned to Utah where Dave worked as a prosecutor and private attorney before being appointed as a Utah state court judge. In 1979, he was appointed as Judge in the United States District Court for the District of Utah; this was the year after he was recognized by the Utah State Bar as the Outstanding Judge of the Year. Judge Winder was subsequently the highest rated state or federal judge in Utah and was recognized by the American Trial Lawyer Magazine as the Best Judge in the Tenth Circuit. Judge Winder served the United States Federal Court in several capacities. He was appointed Chief Judge in May of 1993 and also served as Chair of the Disciplinary Panel.

Honors were not important to Judge Winder but people were. He never thought himself better than anyone else and always introduced himself on the phone or in person as David Winder and never used the title "Judge," much to the chagrin of a former clerk who, upon returning home from school wondering if Judge Winder was going to offer him a clerkship, asked his wife if the Judge had called. His wife responded "no, but some guy named David Winder did call." The first thing one would notice when entering Judge Winder's chambers was a large Norman Rockwell painting hanging directly behind his desk. It depicts a brave African-American girl being escorted to school by a group of United States Marshals. Entitled "The Problem We All Live With," the painting was inspired by a series of photographs of a young girl named Ruby Bridges integrating an elementary school in New Orleans during the 1960s civil rights battles. It epitomized Judge Winder's care and concern for all people and that all were to be treated equally and fairly in his courtroom. He treated everyone with the same courtesy and civility, be it the woman who cleaned his chambers or the attorney general of the United States. He was grateful for the opportunities he had to serve in the law and through the law tried to improve the human condition. He was devoted to Pam and their children. It has been said about great mentors that you learn more from watching them in action than from what they tell you. Every lawyer who ever appeared before Judge Winder found in Judge Winder a mentor from how he conducted his courtroom to what he expected from all who appeared there. His was a legacy of judicial excellence, of personal integrity and compassion, and of uncommon courtesy and decency.

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"Notes" of Interest:

The Historical Society of the Tenth Judicial Circuit is looking for volunteers for our committees. If you would like to serve with our Directors or on membership, website, or biography and publications committees, please send an email to piskey@hickeyevans.com. You will enjoy being a part of this important Historical Society.

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