



# THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

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## CHAIR'S NOTES

*By Greg Kerwin*

We are pleased to honor Tenth Circuit Judge Robert McWilliams in this newsletter and at the November 16, 2011 reception at the courthouse in Denver. Judge McWilliams recently took inactive senior status. Judge McWilliams first started working as a judge in 1949, long before most lawyers currently in practice were born. In the 21 years before he joined the Tenth Circuit in 1970, he had already distinguished himself in the Colorado courts as a Denver trial judge and a Colorado Supreme Court justice.

Bob McWilliams is a role model for a successful, effective judge: a delightful, unassuming, well-rounded friend, mentor, and colleague; a careful thinker with unflappable, moderate judgment founded on common sense; and a hard-working judge with deep respect for collegiality, precedent, and enduring legal principles. He taught several generations of law clerks, lawyers, and colleagues the essence of what it means to be a neutral decisionmaker. And long before it was fashionable, he knew the importance of staying physically fit with his daily swimming and exercise routine.

With the November 16 reception, we are also pleased to start displaying the first group of new historical exhibits in the southwest wing of the Byron White Courthouse. But this is just a beginning. We have more space to fill and more exhibits that will be ready soon, and the plan is to rotate exhibits and regularly add new material. Please volunteer your time and ideas so that this will be a living exhibit about the rich history of the people and the courts in the six states in the Tenth Circuit.

## NOTABLE LAWYERS

### The Scotts of Kansas and *Brown vs. Board* • *By Alleen C. VanBebber*



*Charles Scott, Sr.*

*Photo courtesy of Scott family*

Elisha J. Scott came to Topeka, Kansas, from Memphis, Tennessee, with his parents and twelve older siblings. In 1916, Elisha graduated from the Washburn University School of Law in Topeka. He was the only black student in his graduating class, and he was the third black Washburn graduate.

Elisha became well known in Kansas and nationwide for his success—and flamboyance—in the courtroom. Kansas lawyers still tell stories of his remarkable ability to wrench acquittals in impossible cases by using a unique combination of legal acumen and dramatic flair. He represented world heavyweight boxing champions Joe Louis and Jack Johnson, as well as the Negro Baseball League. In 1924, he successfully ended exclusion of black students in Coffeyville, Kansas. Among his best-known efforts was his representation of black and American Indian clients from Oklahoma and Texas who had been driven from their oil-rich lands. Elisha died in 1963, at the age of 73.

Elisha and his wife, Esther, had three sons: Elisha J. Scott, Jr., John J. Scott, and Charles S. Scott, Sr. All three became lawyers and joined their father in his practice in Topeka, but Elisha Jr. then moved to Flint, Michigan, to join his uncle's law practice. John and Charles both graduated from Washburn Law School after interrupting their educations for military service in World War II. Elisha and Charles had initial success with efforts to integrate elementary schools in Johnson County, Kansas. John and Charles successfully represented plaintiffs in several cases filed to provide blacks equal access to Topeka's restaurants, theaters, and swimming pools.

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## COURTHOUSES OF THE TENTH CIRCUIT

### Ewing T. Kerr Federal Building and United States Courthouse • *By Paul Hickey*



Photo courtesy of "Courthouses of the West" website:  
<http://courthousesofthewest.blogspot.com/2011/02/ewing-t-kerr-federal-courthouse-casper.html>.

The Ewing T. Kerr Federal Building and United States Courthouse in Casper, Wyoming was completed in 1932 under the supervision of architect James A. Wetmore, acting supervising architect of the Treasury Department. Louis A. Simon, then superintendent of the Architectural Division, likely oversaw the building design. (See <http://www.gsa.gov/BuildingOverview>.) It was funded by the 1926 Public Buildings Act.

The building was constructed in the Neoclassical style utilizing brick and Wyoming sandstone. It is three stories high and, within the west facing façade, is a sandstone frontispiece containing a three-arched entranceway with recessed entries beneath an engaged portico. The balance of the exterior is American bond brickwork. The courtroom itself has original walnut paneling and leather clad double doors. Original wood trim, marble door surrounds and flooring, together with the brass elevator doors are still present in this stately building. *Id.*

In its early years, portions of the building served many purposes, including that of a courtroom. It was, however, primarily used as a Post Office and also housed military recruiters. At that time, there was only one sitting Federal judge, who was located in Cheyenne. The Judge would occasionally travel to Casper to hear cases.

In the 1970's the post office moved to a new Federal building a few blocks away and the Kerr building was remodeled to better use its space. The building housed several Depression era murals, which were then moved to the new post office building. (See *Courthouses of the West: Ewing T. Kerr Federal Courthouse, Casper, WY*, <http://courthousesofthewest.blogspot.com>.) The building underwent additional renovation in the late 1980s, at which time the current District Court facilities were renovated and developed. In 1998 the Courthouse was listed in the National Register of Historic Places.

The building received its current name pursuant to Public Law 102-262, on March 20, 1992. Ewing Thomas Kerr was born in 1900 in Bowie, Texas. He practiced law practice for a short while in Cheyenne, then served as an Assistant U.S. Attorney for the District of Wyoming from 1930-1933 and the State Attorney General from 1939-1943. He served Wyoming and the Country with distinction as a District Court Judge for over 36 years.

Recently retired Judge William F. Downes was the first Federal District Court Judge to live in Casper. Judge Downes also served the District of Wyoming and the Country with distinction from 1994 until his retirement in July of this year. Be sure to see the Ewing T. Kerr Federal Building and United States Courthouse at 111 Wolcott Street on your next trip to Casper.

## NOTABLE LAWYERS

### The Scotts of Kansas and *Brown vs. Board* • *By Alleen C. VanBebber*

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During the late 1940's the NAACP began its legal attack on the doctrine of "separate but equal" public education, including civil complaints filed in five federal courts. In February 1951, Elisha, John, and Charles Scott, along with their friend Charles Bledsoe, prepared and filed one of them, *Oliver Brown v. Board of Education of Topeka, Kansas*, in the U.S. District Court for the District of Kansas at Topeka. Charles Scott, a childhood friend of Brown, helped persuade Brown and others to join in the class of 13 plaintiffs and their 20 children.

All five cases went to the U. S. Supreme Court, which bundled them under the caption of *Brown*. Among the several lawyers involved, Charles Scott was selected to represent the Kansas case before the Supreme Court. The cases were decided in 1954, the same year that John Scott took a job as assistant solicitor for the U. S. Department of the Interior, where he worked for 30 years. He died in 1984, at the age of 65. Charles continued to practice law in Topeka and to exercise leadership roles in local and national civil rights organizations. He died in 1989, at the age of 67. His papers are collected at the Spencer Library on the campus of the University of Kansas in Lawrence.

The unanimous 1954 decision of the Supreme Court did not end the history of *Brown*, or of the Scott family's role in the case. In 1955, "*Brown II*" delegated to the District Courts the job of timely enforcement of desegregation. In 1979, Charles Scott's son, Charles Jr., joined with Topeka attorneys Richard Jones and Joseph Johnson to file "*Brown III*," on behalf of Linda Brown Smith, whose children were by then students in Topeka schools, challenging Topeka's implementation of the *Brown II* directives. In 1999, Topeka schools were meeting court-approved standards of racial balance, and *Brown III* was concluded. One of the resulting magnet schools was named after the Scott family attorneys in recognition of their roles in the *Brown* cases and other civil rights efforts.

## DISTINGUISHED JUDGES' BIOGRAPHIES

### Judge Robert H. McWilliams • *By Kathy Plonsky*



"A Colorado legal icon with no ego." That is how Judge Neil Gorsuch recently described Judge Robert H. McWilliams, who assumed "inactive senior judge status" in May 2011, and closed his office at the age of 95. Few people fit that description, and it is one reason that Judge McWilliams has been such a unique asset to the judiciary for over 62 years. He was born in 1916 in Salina, Kansas, the oldest of three brothers. In 1927, the family moved to Denver, and he graduated from South High School and then DU with a degree in political science. In 1941, he graduated with honors from the DU College of Law, and ranked first in the bar examination that year. He joined the Denver District Attorney's office, where he remained until 1949. During that period he also served in World War II. In 1949 he briefly practiced law in Denver's Majestic Building with Ray Danks. Then, as he remembers, "I was called by the mayor of Denver, Quigg Newton, who asked if I wanted to be a part-time municipal judge. I said 'Yes.' And before long, the whole thing got out of hand." Judge McWilliams was appointed to the Colorado State District Court bench in 1952, and then was elected to the Colorado Supreme Court in 1960, where he ultimately served as Chief Justice for three years. In 1970 he was appointed by Richard M. Nixon to the Tenth Circuit to succeed Jean Sala Breitenstein.

Judge McWilliams's ethic, intellect, and humanity are reflected in the comments of his fellow jurists. Chief Judge Mary Beck Briscoe recently commented: "His length of service to the court is truly remarkable--he has been a judge on our court for 41 years." Judge Stephanie Seymour recalled, "He is not the least bit arrogant despite his many accomplishments, and is one of the most even-keeled people I know. He has always been fair minded and moderate in his views. It has been a pleasure to serve all these years with Bob. I will miss him."

Judges James Barrett and Monroe McKay noted that Judge McWilliams was a kind, considerate colleague, whose years on the bench have been a great and wise service to Colorado and the United States. Judge Stephen Anderson waxed poetically: "In the twenty-six years I have been associated with Judge McWilliams I have learned from him lessons too challenging to follow: First, the Roman injunction, in Latin, 'Mens Sana in Corpore Sano' -- a sound mind in a sound body.... Then the Greek: Aristotle's Golden Mean: the desirable middle between two extremes. I can remember only one opinion of mine which provoked enough indignation on the Judge's part to dissent--and he was right! I still regret my failure to be counseled! ... In addition to his intellectual contributions, Judge McWilliams has shown all of us heart-true collegiality--without rancor but with understanding and a joint commitment to the work." Judge Carlos Lucero remembered, "My friend and colleague is a wonderful human being. Most remarkably, I admire him for his good judgment, great conscience and an innate sense of the ethical. I wish him and Joan the very best in their future years." Judge Michael Murphy recalled, "I met Judge McWilliams in 1972 when I was clerking for then Chief Judge David T. Lewis, a close friend and confidant of Judge McWilliams. My memory of Judge McWilliams during my clerkship was that he had a humanizing and moderating touch with some of his tough colleagues."

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### Judge Martha A. Vásquez • *By Arturo L. Jaramillo*



Born in Santa Barbara, California to a supportive and closely knit family of immigrants, Judge Vásquez is an alumna of the University of Notre Dame, where she received her B.A. degree in 1975, followed by a J.D. from the Notre Dame law school in 1978. Following a brief stint with Michigan Migrant Legal Services, Judge Vásquez served as an assistant public defender in New Mexico from 1979-1981. Judge Vásquez then entered private practice with the Jones Firm in Santa Fe, NM, where she worked until her appointment to the bench.

Judge Vásquez was nominated to the U.S. District Court for the District of New Mexico by President Bill Clinton on August 6, 1993. She was the first woman appointed to the U.S. District Court for the District of New Mexico, and later served as the court's Chief Judge. Judge Vásquez's work ethic was key to her success. Judge Vásquez learned to make crucial decisions promptly and worked late nights when decisions had to be rendered the next day.

Reconciling court schedules with the parenting of four young children was challenging and frustrating. As the first woman on the court, Judge Vásquez was not inclined to ask her male colleagues on the bench to cover for her so she could attend school plays or athletic events. "Ultimately I chose events that were special for my children and set aside time for my family, finding ways to balance the responsibilities of my position with the needs of my family. I missed a lot of things, but in the end, that is part of the responsibility of doing this job well."

Judge Vásquez has managed her responsibility over the last eighteen years with a stern but quiet confidence. A stickler for quality briefing on important legal issues, including the sentencing stage in criminal cases, Judge Vásquez demands quality legal work from the lawyers who practice before her. Further, managing the immigration crisis along border states has been of paramount importance in the District of New Mexico, and is a matter over which Judge Vásquez has been intimately concerned and outspoken. Protecting the rights of immigrants while managing a burgeoning caseload is among the most difficult aspects of her job. Improving the diversity of jury panels in the district, particularly with respect to Native Americans, was a principal goal during Judge Vásquez's tenure as Chief Justice. In developing new ways to make a difference on this difficult issue, she met with tribal and pueblo leaders throughout New Mexico and attended tribal conferences throughout Indian Country to emphasize the importance to the judicial system of having Native Americans serve on juries. After 18 years on the bench, Judge Vásquez has come to savor and enjoy her role as a district judge. "I haven't gotten cynical. I see every case as a new life experience. The stories are usually sad and most people would have a hard time seeing what we see everyday. Nevertheless, it is my responsibility to relate to all sides and decide each case with a fresh perspective."

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Judge Robert H. McWilliams • *By Kathy Plonsky*

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As Judge Gorsuch recently concluded: "Sitting on the Tenth Circuit bench with Judge McWilliams was a highlight of my career. He is known and admired by three generations of my family, yet he is one of the most unassuming people I know. His work is exceptional for its brevity and clarity, and it stands the test of time. As I work on a case today, I have on my desk one of his opinions from 1975 to guide me. He left a tremendous mark, and I want him to know that we love him, we honor him, and we will miss him on the bench."

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