



# THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

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## Chairman's Notes • *By Paul Hickey*

We are all at that point of the year where we can't believe it is almost over! I have much to report from the past 11 months of this year and much for all of us to look forward to in 2013. My notes summarize the state programs of our individual states, membership luncheons held in Utah and Wyoming and the dates for the Bench/Bar Conference next Summer.

### State Programs

- *Colorado:* DU Law Review and the Historical Society will sponsor a symposium in Denver entitled "Forty Years Since Keyes, Equality of Education Opportunity and the Legal Construction of Modern Metropolitan America" January 31 – February 1, 2013, honoring the 40th anniversary of the Supreme Court Decision *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).
- *Utah:* Tenth Circuit Historical Society and the Federal Bar Association, Utah Chapter, presented a panel discussion moderated by Professor Ron Nell Anderson Jones of the J. Reuben Clark School of Law (BYU) on October 15 at 5:30 pm at the Frank E. Moss Courthouse. The program "Church and State: Government Involvement in First Amendment Religious Expression" was a panel discussion of the Summum cases. Panelists included Judge Kimball, Judge Benson, Richard VanWagoner and James Harris, Jr.
- *Kansas:* The Society hosted a program entitled "The Story of Immigration and Citizenship in Kansas and Immigration Law." Judge Eric F. Melgren discussed development of the law and history of immigration in Kansas. Panelists, Kathleen Harvey, Mira Mdivani, Michael Sharma-Crawford, and Rekha Sharma-Crawford, discussed current immigration issues for attorneys, including their "top ten" malpractice dangers. The session was from 4:30 to 6 p.m. on Thursday, November 15 in the Kansas City, KS federal courthouse.
- *Wyoming:* On October 22, 2012, the Historical Society and the University of Wyoming Potter Law Club hosted Judge Ebel as a speaker during Law Week. Judge Ebel provided an outstanding discussion of Justice Byron White. His insightful remarks overviewed both the legend and the life of Justice White. Students and faculty of the College of Law were treated to a remarkable presentation.
- *New Mexico:* In November, the Society co-hosted with the Albuquerque Bar Association, an evening of history in honor of Judge Black, who recently took senior status. Please see Judge Black's informative History of the Judiciary in New Mexico on our website, www.10thcircuithistory.org

### Membership Drives

*Utah & Wyoming Membership Luncheons:* Jonathan Dibble and I each recently hosted luncheons in our respective cities informing local attorneys of the benefits in joining the Society. Several new members for both states came from these luncheons. Alleen VanBebber, Membership Chair, will be scheduling a conference call with all state membership contacts to continue these efforts at recruiting new members. [Another suggestion for growing our membership is to purchase gift memberships for friends, colleagues or family. The membership application forms can be accessed from the "Membership Information" tab on the Society's website, www.10thcircuithistory.org. We hope many of you will take advantage of this opportunity.]

### 2013 Bench/Bar Conference

*Annual Bench/Bar Conference* will be held August 29-31, 2013, Broadmoor, Colorado Springs, Colorado. Please mark your calendars. We will have more to report next Spring.

## NOTABLE LAWYERS

### Patrick J. Hurley • *By Steven K. Balman*

Patrick Jay Hurley was born on January 8, 1883, in the Choctaw Nation in Indian Territory. Hurley started his law practice in Oklahoma in 1908—the year after Oklahoma became a state. He served as President of the Tulsa County Bar Association in 1910 and 1911. Hurley also was national attorney for the Choctaw Nation. When World War I began, Hurley joined the United States Army as a Captain. Declining a JAG position in Washington, D.C., Captain Hurley went to France where he fought in several battles and was cited by Gen. John J. Pershing for gallantry in action. Hurley was also awarded the Distinguished Service Medal for his first diplomatic mission: He represented the United States in negotiations with the Grand Duchy of Luxembourg.

After the war, Hurley—now a Lieutenant Colonel—attended George Washington University. He then returned to Tulsa, reopened his law office and became involved in oil and gas, commercial real estate and banking. As a result of his investments, Colonel Hurley became one of the wealthiest men in Oklahoma. Among other things, he built the Ambassador Hotel in Tulsa. Located at 13th and Main, the Ambassador Hotel was restored in 1999 and is listed with the National Trust for Historic Preservation.

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## DISTINGUISHED JUDGES' BIOGRAPHIES

### Judge Paul J. Kelly, Jr.



Lawyer, legislator, judge, and volunteer fireman: Judge Kelly has served the public in many different capacities over the years. His story is one of serendipity seasoned with good old-fashioned hard work. 2012 marked Judge Kelly's twenty-year anniversary as a judge of the Tenth Circuit Court of Appeals. He shows no sign of slowing down.

Judge Kelly was born in December 1940 in Freeport, New York, a long way from the state of New Mexico where he would spend most of his adult life. His father, Paul J. Kelly, Sr., was a state trial court judge for Nassau County. Paul Kelly, Jr., however, set his sights on becoming a trial lawyer, not a judge--at least at first.

In 1963, the future Judge Kelly graduated from the University of Notre Dame with a bachelor's degree in Business Administration. He followed this with his J.D. from Fordham University Law School in 1967. At Fordham, Judge Kelly attended evening classes while working full time as a law clerk for a respected firm in New York City. It was there, during his time at the firm, that he had a chance encounter with local counsel from Roswell, New Mexico.

Half in jest, Judge Kelly asked the Roswell lawyer whether they needed any new lawyers out there. The lawyer not only assured him that they did, he invited Judge Kelly to fly out for an interview. When he landed in Roswell, the New Mexico firm rolled out the red carpet for him. They held a reception in his honor and introduced him to lawyers from many other firms in the city. There was just one detail that needed to be settled. Would the firm cover his travel expenses? Judge Kelly asked. Sure, the senior partner replied, but on one condition. If we make you an offer, and you say "yes," we'll reimburse all your travel expenses. But if you say "no," we'll only pay half. When the offer came, as a law student with a wife and young children, Judge Kelly wisely opted for the "all expenses paid" option. And so, he became a New Mexico attorney.

For the next twenty-five years, Judge Kelly served in private practice in New Mexico. During this time, in 1976, he was encouraged by local leaders to run for state representative. He ran a hard and successful campaign for the office at the same time as he maintained his law practice. Judge Kelly served in the New Mexico state legislature for four years, from 1977 to 1981. He was chair of the Consumer and Public Affairs Committee and worked as a member of the Judiciary and Rules Committees. Ultimately, however, he found his work as a "part time" legislator interfered with his legal work; he concluded he simply did not have time to do both well. So, he declined to run for a third term and returned exclusively to private practice. In 1983, his firm chose him to manage their new office in Santa Fe.

Judge Kelly became a volunteer firefighter literally by accident. In fall 1984, while driving home from work he encountered an automobile wreck. After checking to make sure everyone was all right, he began directing traffic around the crash site. When the volunteer firefighters showed up, they were so impressed with his work, they invited him to join their organization. He has served ever since as a volunteer firefighter and emergency medical technician for the Hondo Volunteer Fire Department.

In 1991, Congress created two new judgeships for the Tenth Circuit Court of Appeals. President George H.W. Bush nominated Judge Kelly for one of the vacancies, and he was confirmed in 1992. When interviewed by the "How Appealing" blog in 2004, Judge Kelly had this to say about his service on the Tenth Circuit: "While I have enjoyed sitting with other courts, naturally I think the atmosphere on the Tenth is exceptional! So far every judge who has come to our court, regardless of background or philosophy, has made a conscious effort to get to know colleagues and to socialize when we sit together and at other times during the year. Collegiality is a product of respect before disagreement (and we do disagree on some issues). It takes real effort on the part of each judge to maintain collegiality. But the rewards far exceed the gains. I think that all of our judges really look forward to going to court terms and functions."

Judge Kelly currently serves as President of the Oliver Seth American Inn of Court, Chair of the Tenth Circuit Complex Disciplinary Committee, and a member of the Tenth Circuit Rules Committee. He also serves as a member of the Codes of Conduct Committee of the Judicial Conference of the United States, having previously served on the Judicial Branch Committee and the Civil Rules Advisory Committee. He is a member of The American Law Institute. With all these responsibilities, he has also found time to "moonlight," sitting by designation as a federal district court judge in the District of New Mexico.

### Judge Richard D. Rogers • *By Alleen VanBebber*

At 90, Richard D. Rogers comes to the Topeka, Kansas federal courthouse every working morning, does his job, and greets frequent visitors to his chambers, all with the same smile and affable conversation he has displayed for the 37 years he has served as a U.S. District Judge. From first grade, his boyhood home was in Wamego. Dick and his brother Robert immediately began their working lives, sweeping floors in the general store run by their parents, William C. and Evelyn Rogers. Today, Judge Rogers credits his mother for instilling in him a strong work ethic, most of his better behaviors, and respect for the rights of others.

At the age of eight, Dick got a job as a drugstore "curb service boy." He continued working through high school at the Wamego Drugstore, which he recalls as the primary town gathering place. At the drugstore, he met Delmas C. Hill (later to be a judge of both the U.S. District Court and the Tenth Circuit Court of Appeals) and other lawyers whose conversations piqued his interest in law school. Dick also recalls that bootleg alcohol was sold out of a shack behind the store, mixed with near beer or grapefruit juice, and enjoyed in the drugstore's booth seating. Most likely, it was at the drugstore that Dick began honing his comic timing and collecting his huge stock of humorous anecdotes and pithy sayings, for which he is almost as well-known today as he is for his legal decisions.

The family moved to Manhattan so that Robert and Dick could go to Kansas State University and live at home to save expenses. Dick took part-time jobs, pledged Beta Theta Pi, played varsity football, and joined the ROTC.



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## Judge Richard D. Rogers • *By Alleen VanBebber*

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The outbreak of World War II meant he would graduate early and enter the Army as a Corporal. He soon was commissioned a Second Lieutenant and applied to the Army Air Corps, where he became a bombardier assigned to the 456th Bomb Group (H), 744th Air Squadron, Fifteenth Air Force, flying B-24 Liberators out of Italy. Flying B-24's was dangerous business for his Group: 319 personnel were killed in action and 206 went missing after planes went down. Dick Rogers logged 221 hours in 33 combat missions and was promoted to Captain. By War's end, he had received four bronze stars; the air medal with two oak leaf clusters; and the Distinguished Flying Cross.

Coming home at age 24, Rogers made two significant decisions: he would go to law school at the University of Kansas under the G.I. Bill, and he would marry his Wamego sweetheart, Elizabeth (Beth) Stewart, who was by then a music teacher. They settled in Manhattan, where Dick began private practice, and they raised three children, Letitia (Tish), Cappi, and Richard Kurt. After Beth's death, Dick married Cynthia (Cindy) Tilson Concklin and became an actively involved stepfather to her children, Katherine and Kenneth.

As it does for many judges, politics played a large role in Dick Rogers' pre-bench life. He was elected mayor of Manhattan at age 30. He was state chairman of the Kansas Republican party and was elected to the Kansas House of Representatives. In 1968, Dick was elected to the Kansas Senate, where he was serving as president when he was appointed to the federal bench in 1975.

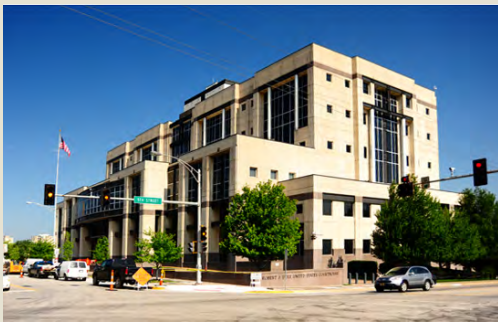
Judge Rogers has had a number of high-profile cases, in particular the second life of *Brown v. Board of Education*. The case remained open for provision of remedies required by the Supreme Court, and for some 12 years he supervised it. But Judge Rogers thinks the case originally styled *Arney v. Finney* was equally far-reaching, with efforts over twenty years to improve conditions in the Kansas state prison system.

Judge Rogers is a voracious reader of several books each month, particularly historical nonfiction. The study of history is his avocation, and he was pleased to serve the Kansas Historical Society as its president in 1995. Looking back on his own history for this article, he noted that appellate courts today give less deference to district judges and are careful to hold them to high standards. The main concern he has is for the independence of the judiciary and Congress' failure to provide salaries sufficient to allow some of the best candidates to leave private practices for the bench while they still have children to educate.

He says the most enjoyable part of the job continues to be conversing and working with the many good lawyers he sees in his courtroom. He doesn't think he's changed much, except that his years of presiding over criminal cases have made him learn more compassion for people in trouble. Lawyers and non-lawyers can agree that Judge Rogers is a man with a big heart and a store of great good humor, as well as a judge who treats everyone in the courtroom with patience and consideration.

### COURTHOUSES OF THE TENTH CIRCUIT

#### Robert J. Dole Courthouse • *By Michael H. Hoeflich*



In the earliest days of the American republic, judges, both state and federal, were often required to hear cases in whatever buildings they could find space. But the majesty of the law and those who administer it has long been the inspiration for buildings built specifically for the purpose of housing the judiciary and those who assist judges in doing justice. The Federal District Court for the District of Kansas has occupied a number of courthouses in the past one hundred and fifty years. During the territorial period, territorial judges appointed by the president held court wherever it was convenient, but primarily in Leavenworth – then the home of federal troops and a fort – and at Lecompton, the territorial capital, where the territorial governor made his home. But once Kansas became a state, federal courts were generally held in multipurpose federal buildings. In 1900 the federal government constructed a new post office and federal courthouse at the corner of Seventh and Minnesota in Kansas City, Kansas.

It was designed by James Knox Taylor in the classical style. Its exterior was graced by two-story columns and the main façade incorporated classical arches framing both the entranceway and the windows. It was home to the Federal District Court from its completion until 1959. It also was used by the U.S. Circuit Court from 1948 until 1959.

The second federal courthouse in Kansas City was completed in 1959 at 812 North Seventh Street. It was designed by the architectural firm of Radotinsky, Meyn, and Deardorff of Kansas City. The building was approximately fifty-three thousand square feet, and cost \$2.5 million to construct. The new courthouse also housed several federal agencies. One office was used by the Kansas Second District's congressional representative in Congress. It was dedicated in 1960, and used by the Federal District Court of Kansas from its opening until 1994, when the present federal courthouse was completed.

Construction for the present federal courthouse at 500 State Avenue in Kansas City, Kansas, was begun in July 1991. It was designed by the Wichita architectural firm of Gossen, Livingston Associates. Then Chief Federal District Judge Earl O'Connor played an important role not only in securing the new courthouse building but also in its design. Traditionally, each judge was assigned his or her own courtroom, chambers, and law library. The new courthouse departed from the tradition and features some shared courtrooms and a shared law library. The new design not only fosters interaction among the judges but provides for significantly enhanced security, necessary in today's more violent times. The courthouse is named for Senator Bob Dole, who was instrumental in its creation.

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In the 1920s, Colonel Hurley was appointed Assistant Secretary of War by President Hoover. When the Secretary of War died, Hurley was promoted. He served as Secretary of War in President Hoover's cabinet until 1933. In 1932, a group of disgruntled World War I veterans called "the Bonus Army" marched on Washington, D.C. Hurley ordered the Chief of Staff of the Army—Douglas MacArthur—to evict them. Gen. MacArthur, aided by Dwight Eisenhower and George Patton (among others), carried out Hurley's order in a manner that has been much criticized. There were civilian casualties. Many historians believe the incident contributed to President Hoover's landslide defeat in 1932. Hurley was promoted to Brigadier General in 1941, when the U.S. entered World War II. General George C. Marshall sent Hurley to the Far East to examine the feasibility of relieving U.S. troops besieged on the Bataan Peninsula. While Hurley was to deliver food and ammunition on three occasions, he could not evacuate the Bataan garrison. Japanese forces captured the garrison and the "Bataan Death March" ensued. At the conclusion of his mission to the Philippines, Hurley embarked on a series of assignments as a personal representative of President Roosevelt, including to the Soviet Union, the Near East, the Middle East, China, Iran and Afghanistan. In 1944, Hurley traveled to China as a personal envoy of President Roosevelt to Chiang Kai-shek. Later that year, and after first refusing the assignment, Hurley was appointed Ambassador to China. In February 1945, President Roosevelt entered into a secret agreement with Winston Churchill and Joseph Stalin at Yalta. The Yalta agreement granted concessions to Stalin and Mao. Hurley did not approve of the Yalta agreement, and eventually resigned the ambassadorship after President Truman failed to correct what he viewed as the errors of Yalta. Upon his return, Hurley moved to New Mexico. He ran unsuccessfully for the U.S. Senate in 1946, 1948 and 1952. He had more luck in his new business venture—uranium mining. Hurley died in Santa Fe on July 30, 1963, as the last living member of the Hoover Administration.

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