



THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

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Chair's Note

By Steve Balman, Franden Farris Quillin Goodnight + Roberts, Tulsa, Oklahoma

This year will be an exciting year for the Republic, and an exciting year for the Historical Society. The Tenth Circuit Bench & Bar Conference will be held at The Broadmoor in Colorado Springs, Colorado, from September 1-3, 2016. At the Conference, the Historical Society will sponsor a “fireside chat” with Justice Elena Kagan of the United States Supreme Court. Please plan to attend.

This year also marks the one-hundredth anniversary of the completion of the Byron White United States Courthouse in Denver. The Tenth Circuit is planning a special celebration on Tuesday, November 15, 2016. We will provide more information as the event nears.

AROUND THE CIRCUIT

An Interview with Chief Judge Mary Beck Briscoe

By Carol Gilliam Green, Former Clerk of Appellate Courts, State of Kansas

A recurring theme in the personal and professional lives of Chief Judge Mary Beck Briscoe is the value of hard work. Judge Briscoe grew up on a farm in Morris County, Kansas, along with two older brothers; each of the siblings had assigned farm chores, which instilled the value of responsibility and a true love for the outdoors.

Judge Briscoe attended a two-room elementary school in Parkerville, Kansas. There were five pupils in her grade, and the entire school was comprised of thirty pupils and two teachers: a teacher for grades 1-5, and another for grades 6-8. This environment provided an early lesson in teamwork and collegiality, as the children worked along with their teacher to achieve a common goal.

After a brief detour in eighth grade to experience big-school life at Salina Junior High School, Judge Briscoe returned to Dwight Rural High School. It had fifty-two students, with eight in her graduating class. Judge Briscoe believes that her small-town education conferred several advantages upon her, including the ability to participate in many activities. For example,



she acted in plays, took up the trumpet, advanced to state competition in piano performance, and was the drum major for the marching band.

After high school, it was a given that Judge Briscoe would attend college. She enrolled at the University of Kansas, and lived in a scholarship hall among women who were driven to succeed and for whom grades were important. One of her teammates in College Bowl competitions was now-famous mystery novelist Sara Paretsky.

Judge Briscoe graduated from the University of Kansas with majors in German and International Relations; however, she had only a vague idea how those majors might translate into a career. After a brief foray into a clerical job (where she learned there were few management opportunities for women), Judge Briscoe returned to KU for law school, graduating in 1973 along with seven other women.

Having learned that equal employment opportunity for women in the early 1970s was most readily available within the federal government, she moved to Washington, D.C., to take a job with the Interstate Commerce Commission (now known as the Surface Transportation Board). Just months later, Robert J. Roth, the United States Attorney for Kansas from 1969-1975, approached Judge Briscoe and hired her as the first woman litigator in the office. There, she had a wide range of experience in criminal and civil litigation, as well as the opportunity to pursue challenging appellate work. She advanced to the position of supervising attorney during the last five years of her tenure in that office.

Judge Briscoe is quick to credit those who have advanced her career, and she recognizes Bob Roth as a significant legal mentor. She also feels fortunate to have learned how to litigate before Kansas federal district judges Wesley Brown, Earl O'Connor, Arthur Stanley, George Templar, and Frank Theis. All were no-nonsense judges who took their responsibilities seriously and expected nothing less from counsel appearing before them.

After a notable career in the United States Attorney Office, in 1985, Governor John Carlin appointed Judge Briscoe as the first woman to serve on the Kansas Court of Appeals, which was then a seven-member traveling court with a heavy caseload. Road trips across the state with two colleagues engendered a natural collegiality among members of the court, and Judge Joe Haley Swinehart, an appointee from Wyandotte County, actively promoted an *esprit de corps*. Chief Judges J. Richard Foth and Bob Abbott generously shared their knowledge and years of experience with the newest member of their court, who ultimately served as its chief judge herself from 1990-1995, until she was appointed to the Tenth Circuit Court of Appeals by President Clinton.

Judge Briscoe's litigation experience in federal courts and her time as a state appellate judge assured that she would be immediately effective upon arrival at the Tenth Circuit. Again she became a chief judge, serving in that capacity on the Tenth Circuit from 2010-2015. During her tenure, she was appointed by Chief Justice Roberts to the Executive Committee of the Judicial Conference of the United States. She, along with her colleagues, was tasked to address the

sequestration's effect on the Judiciary Branch. Rather than taking senior status as she might have done after she ended her time as Chief Judge, Judge Briscoe remains in active status. She loves the work, and there is more to be done.

When asked about her most memorable case from each appellate court she has served, she named *Wichita Wire, Inc. v. Lenox*, 726 P.2d 287 (Kan. App. 1986), which adopted for Kansas the federal courts' four-factor standard for analyzing the issuance of a preliminary injunction. Judge Briscoe, new to the state bench, was surprised no clear standard existed in state courts. The case also memorable because Judge Briscoe was presiding for an all-woman panel; she was joined by two state district court judges (Janice D. Russell and Jean F. Shepherd), who were specially assigned to a "blitz" docket intended to reduce the Kansas Court of Appeals' backlog.

Her most memorable case on the Tenth Circuit is a relatively recent one: *Essex, et al. v. Kobach, et al.*, 874 F.Supp.2d 1069 (D. Kan. 2012), the redistricting case filed in federal court when the Kansas Legislature failed to approve new district maps for the United States Congress, Kansas Senate, Kansas House of Representatives, and Kansas Board of Education following the 2010 census. Judge Briscoe, along with two federal district judges (Chief Judge Kathryn Vratil, presiding, and Senior Judge John Lungstrum), formed the three-judge federal panel tasked with reaching a constitutional solution on redistricting after legislative default.

When asked whether her approach to cases is any different on the Tenth Circuit than it was on the state court, Judge Briscoe responded that her approach to cases is always the same. She says that cases are like puzzles to be solved, each one different even though there are commonalities. Law clerks are assigned early to scour the record for potential jurisdictional or evidentiary issues that the panel may need to address through notice to counsel or orders to show cause. Prior to oral argument, the judge reads briefs, cases, relevant parts of the record, and the prehearing memorandum prepared by her clerk. She believes thorough preparation is as key for a judge as it is for attorneys appearing before the court.

Throughout each stage of her career, Charles A. "Chuck" Briscoe, a fellow law student at the University of Kansas and her husband since 1974, remained a constant source of support. The Briscoes are the ultimate legal power couple, a source of inspiration and encouragement to one another. Chuck served as an Assistant County Attorney in Hutchinson, Kansas, before becoming an Assistant Attorney General in Attorney General Curt Schneider's administration. Following years of distinguished private practice, Chuck joined the faculty at the University of Kansas Law School Legal Aid Clinic in 1995, and retired in 2013 as its Director to pursue personal interests. The judge's own personal interests include gardening at their Lawrence, Kansas, home. "I like to get outside. If it rains, then I will read."

Judge Briscoe's only advice to attorneys is edit, edit, edit; briefs are too long! She puts a premium on civility in an attorney's writing, as well as in the courtroom. "Focus on the job you are doing. If you do that well, you'll have credibility."

Notable Circuit Lawyer: Daniel S. Hoffman

By James M. Lyons, Lewis Roca Rothberger Christie LLP, Denver, Colorado

Daniel S. Hoffman, viewed by fellow Colorado lawyers and judges as a giant in the legal community, had a remarkable career, which included part ownership of the Denver Nuggets, marching with Dr. Martin Luther King at Selma, and representing the late Michael Jackson in defense of a copyright claim by having him create a song in live testimony before a Denver federal court jury.

Born in New York City in 1931, Dan graduated from high school at 15. Although accepted at the Ivy League colleges to which he had applied, he was told that he needed to come of age. However, the University of Colorado accepted him to start right away, so at age 16 he came to Boulder. After an outstanding academic career, Dan enlisted in the United States Air Force. As a service member, he began a movement to unionize enlisted personnel. For his trouble, Dan was court martialed (but later acquitted). He was honorably discharged from the Air Force, and he left the service determined to pursue a legal career.



Photo courtesy of the University of Denver
Sturm College of Law

Moving back to Denver, Dan enrolled in the University of Denver College of Law, where he graduated first in his class, *summa cum laude*. Eschewing 17th Street law firms, Dan joined the firm of Fugate & Mitchem. Dan later formed a personal injury trial firm with such luminaries as Norm Kripke, Jim Carrigan (who eventually served as a Colorado Supreme Court justice and United States District Court judge), and later Jerry McDermott. With this firm and its successors, Dan rose to become the preeminent personal injury trial lawyer in the state and region.

At age 32, Dan was recruited by Denver Mayor Tom Currigan to be Denver Manager of Safety with the charge to clean up the Denver Police Department after a notorious scandal involving police involvement in a burglary ring. As part of that reform, Hoffman moved the Excise and Licensing Office out from the City's law enforcement arm into an independent agency.

Returning to private practice, Dan pursued his legal career and his life-long interest in justice and civil rights. In 1965, he joined Dr. King on his civil rights protest march from Selma to Montgomery, Alabama, an event he regarded as perhaps the most meaningful of his life. He also served as state director for Senator Robert Kennedy's 1968 presidential campaign, and joined the protests later that year at the Democratic National Convention in Chicago.

Returning to his legal career and private practice, Dan became an investor in the Denver Nuggets of the ABA. He eventually was retained to negotiate the merger of the ABA with the NBA, often entertaining players at his home where he shared his love of classic jazz.

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In 1978, Dan was recruited to serve as Dean of the Denver University College of Law, a position he kept until 1984. During this time, Dan strengthened the curriculum and faculty and stressed student development for professional careers. After serving as Dean, Dan was a trial partner and department chair in a series of major Denver law firms, including Holme, Roberts & Owen, McKenna Cuneo, and Hogan & Hartson. Throughout this time, Dan maintained his interest in public affairs, politics, pro bono service, and representation of the poor and disadvantaged.

Dan suffered a stroke in 2009, which ultimately resulted in his death. He was survived by his wife of over 50 years, Beverly, and his three daughters, Lisa, Robin, and Tracy.

Colorado Chief Justice Michael Bender said of Dan that, “he represented large corporations as well as the little guy. He was the ultimate model of a wonderful lawyer.” Among the trial bar in Denver, it was often said that there was Dan Hoffman and then there was everyone else.

Muskogee Oklahoma Courthouse Celebrates Centennial

By Steve Balman, Franden Farris Quillin Goodnight + Roberts, Tulsa, Oklahoma

The United States Post Office and Courthouse in Muskogee, Oklahoma, recently celebrated its one-hundredth anniversary. The courthouse—which in 2003 was named the Ed Edmondson United States Courthouse—is the headquarters and home of the United States District Court for the Eastern



Photos courtesy of
the Library of Congress

District of Oklahoma. The anniversary celebration occurred at a special court session on November 19, 2015. The festivities were presided over by Chief Judge James Payne, and included presentations by a local historian and a representative of the family of Ed Edmondson.

Mr. Edmondson spent a lifetime in public service. Most notably, he served in the United States House of Representatives from 1953 until 1973. After graduating from the University of Oklahoma in 1940, Mr. Edmondson joined the Federal Bureau of Investigation and served as a special agent until 1943. He was on active duty with the United States Navy from 1943 to 1946, and served in the reserves until 1970. He earned a law degree from Georgetown University in 1947.



Mr. Edmondson had five children. One of his sons, James E. Edmondson, is a Justice of the Oklahoma Supreme Court. Another son, Drew Edmondson, is a former Attorney General of Oklahoma. Mr. Edmondson was the brother of J. Howard Edmondson, a former Governor of Oklahoma and United States Senator.

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Highlights of the celebration included descriptions of the careers of various Judges of the United States District Court of the Eastern District of Oklahoma, including the Honorable Robert Lee Williams. Judge Williams was nominated for a district judgeship by President Woodrow Wilson on December 3, 1918. At the time, Judge Williams was Governor of Oklahoma. He served as a district judge from 1919 until 1937 and as a judge of the United States Court of Appeals for the Tenth Circuit from 1937 until 1948.

Other featured speakers included former Chief Judges Joseph Morris and Frank Seay. Judge Morris served on the United States District Court for the Eastern District from 1974 until 1978, having previously served as the Dean of the University of Tulsa College of Law. Judge Seay was appointed in 1979, served as Chief Judge from 1980 until 1996, and assumed senior status in 2003.



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