



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

"History," Aristotle wrote, is "what Alcibiades did and suffered." It is personal and particular. The purpose of the Historical Society is to preserve the stories of the judges, lawyers, and staff of the Tenth Circuit, and the cases decided by the Court. That task, started long ago, continues under the leadership of Judge Bruce Campbell. Visit the Society's website and watch the progress.

The model of judicial history is Gerald Gunther's biography of Learned Hand. See Judge Posner's review of Gunther's book at 104 YALE L. J. 511 (1994). If you haven't read Gunther's book, give it a look. Thank you for supporting the Society!

AROUND THE CIRCUIT

Tenth Circuit Courthouse Centennial Anniversary

By Alleen VanBebber

Judges, attorneys, and friends of the Tenth Circuit Court of Appeals gathered in Denver on November 15th to celebrate the 100th anniversary of the Byron White United States Courthouse. The afternoon began with scheduled (and some impromptu) tours of the space conducted by judges, clerks, former clerks, attorneys, and staff with many years of combined history to relate.

The Courthouse opened in 1916 as combined-use space. The basement and first floor were the U.S. Post Office; the second floor included a large library and two courtrooms. One courtroom was for the Tenth Circuit, which has been recreated today as Courtroom 3, and the other was for the U.S. District Court. The latter courtroom is the most historically accurate in the building and remains a District courtroom today. The third and fourth floors housed other federal agencies.

Posters from the Historical Society, which worked with the Court and the Faculty of Federal Advocates to present the anniversary festivities, displayed views from the early days. Today's visitors see original post office boxes and writing tables from when the first floor corridor was the Post Office lobby. People are amused to learn of still-existing stable space in the basement that was originally used for horses for Post Office wagons, and to see the building's interior hallway honors the riders of the Pony Express, including William ("Buffalo Bill") Cody.

Chief Judge Timothy Tymkovich welcomed sitting, senior, and former Circuit judges and a packed audience to the Ceremonial Courtroom for the commemorative program. The master of ceremonies was former Judge Robert Henry, President of Oklahoma City University, who read congratulatory letters from U.S. Supreme Court Associate Justices Ruth Bader Ginsburg and Sonia Sotomayor, and

introduced speakers J. Bishop Grewell, on behalf of the Faculty of Federal Advocates, and Marcia Krieger, Chief Judge for the District of Colorado.

Senior Judges John Porfilio and Stephanie Seymour, and former Judge Deanell Tacha, Dean of Pepperdine University Law School, then recalled what led up to the renovation. By the 1960s, numerous changes, mostly to the detriment of the internal architecture, had happened. The Post Office took control and drastically altered the building's appearance and use. The program speakers gave primary credit to Senior Judge Stephen Anderson for persuading Congress to renovate the building as a Courthouse and place the U.S. Courts in charge. The speakers noted that their timing was fortuitous, because they received firm backing for the project from influential Senators.

After two years of GSA's renovation and construction, the Court was thrilled to move into its new and former home. The building was dedicated and renamed as the Byron White U.S. Courthouse in 1994, and the judges celebrated at the Judicial Conference with an original musical comedy, *The Phantoms of the Courthouse*, featuring judges of Tenth Circuit courts and a guest-starring role for Justice Ginsburg. The commemorative program included a copy of the show's playbill and highly entertaining excerpts from the videotape.

Finally, the commemorative program featured a presentation on Associate Supreme Court Justice Byron White. His son, Charles B. "Barney" White, appeared by video to share personal reminiscences and observations of his father. Senior Judge David Ebel, who was one of Justice White's law clerks, spoke movingly about the gentility and humility of a man whose personal accomplishments were so numerous as to be deemed incredible.

From the beginning, its architecture and interior details had been praised as among the finest examples of early 20th Century neoclassic design for public spaces. Today the courthouse has been restored to show why it was placed in the National Registry of Historic Places, and to honor the people of the six states for which it represents justice.

Retrospective Event Celebrating the History of U.S. Attorney's Office in Colorado

By Greg Kerwin, Gibson, Dunn & Crutcher LLP, Denver, CO

Seven former United States Attorneys for Colorado joined the acting U.S. Attorney and about 120 lawyers and judges for a wide-ranging retrospective discussion of the 35 year history of the U.S. Attorney's office in Colorado. This Historical Society program on October 12, 2016, featured: Bob Miller (1981-88), Michael Norton (1988-93), Henry Solano (1994-98), John Suthers (2001-04), Bill Leone (2004-06), Troy Eid (2006-09), and John Walsh (2010-16), with Nic Heinke and acting U.S. Attorney Bob Troyer moderating the discussion. Tom Strickland (1999-2001) was unable to participate.

Participants noted the substantial growth of the office since 1981, and the change in priorities for federal law enforcement with strong emphasis now on national security and terrorism investigations following the September 11, 2001, attacks. Everyone agreed that political factors never influenced the substantive prosecutorial decisions they made.

When Bob Miller started in 1981 the office had only about 25 AUSAs, half of whom were handling civil cases. Bob recounted how he met with then-Chief Judge Fred Winner to obtain relief for the

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office from the informal “Winner Rule,” where prosecutors understood that no more than five counts were allowed in an indictment. Miller started part-time US Attorney’s offices in Grand Junction and Durango. The victim witness assistance program and drug task force also were getting started during his tenure. Miller’s team spent substantial time working on the prosecution for federal civil rights charges arising from the 1984 murder of outspoken lawyer and radio talk show host, Alan Berg, by members of a white supremacy group.

The office doubled in size during Mike Norton’s tenure, growing to approximately 53 AUSAs. Norton’s team dealt with the savings and loan crisis and investigations of environmental problems at the former Rocky Flats nuclear weapons production facility. A special grand jury worked on the Rocky Flats issues and that investigation attracted attention and some criticism from politicians in Washington D.C.

During Henry Solano’s time, the office maintained fully funded western slope offices in Grand Junction and Durango. His team assisted with the investigation of the April 1995 bombing of the Murrah Federal Building in Oklahoma City, which led to criminal trials of Tim McVeigh and Terry Nichols before Judge Matsch in Denver in 1997. The Colorado US Attorney’s office supported those trials, which required configuring a special courtroom in the Byron Rogers courthouse and assistance to family members and victims from Oklahoma who attended parts of the trials in Denver. During Solano’s time, the office grew to 69 AUSAs and added an appellate division.



Photo of current and former US Attorneys for the District of Colorado. Courtesy of Greg Kerwin.

Tom Strickland hired Bob Troyer as an assistant and began his tenure the day after the April 1999 Columbine High School shooting in Colorado.

John Suthers began work as U.S. Attorney on September 4, 2001, one week before the United States shifted its focus to national security and terrorism with the 9/11 attacks in

New York and Washington. He described how those attacks shifted the Department of Justice’s priorities, where all 93 United States Attorneys from around the country communicated about a response with then Attorney General Ashcroft and President George W. Bush. Federal law enforcement officials sought, as much as possible, to prevent terrorist incidents in advance. Suthers dealt with issues arising under the Patriot Act and also the aftermath of corporate accounting scandals that began in 2001 involving Enron, WorldCom, and Global Crossing, including an investigation of Qwest that led to prosecution of its former CEO, Joe Nacchio. Suthers also oversaw the prosecution of a former U.S. Forest Service worker who caused the large Hayman forest fire in 2002 in the foothills southwest of Denver.

Bill Leone had worked as First Assistant under Suthers and continued to deal with the focus on terrorism following the 9/11 attacks. He reiterated the view of all participants about the non-partisan nature of the job. Leone spent five years working on the “all consuming” investigation and prosecution of Nacchio. Leone praised as an “unsung hero,” Dave Gaouette, who has served as one of the career lawyers in the office since joining it in 1989. Leone noted the important role the U.S. Attorney plays in protecting the office from political influence and interference. He also noted the personal challenge prosecutors face in pulling the trigger on a prosecution when innocent peoples’ lives also will be affected.

During Troy Eid’s tenure the office faced budget challenges, with room for 70 AUSAs but funding for only 58. He noted the exploding docket during that time, with about 3,000 civil cases, 700 to 800 criminal cases, and 100 appeals per year. Eid finished up work on the appeal from the Nacchio conviction, recounting that he traveled to Washington at his own expense to meet with the Solicitor General to obtain permission to seek rehearing *en banc* in the Tenth Circuit. Eid helped coordinate federal law enforcement work for the Democratic National Convention held in Denver in 2008, including a briefing for then-candidate Barack Obama, and facilitating places for protesters to demonstrate during the convention.

John Walsh discussed the office’s intense work on the Zazi terrorism investigation, which uncovered a plan to place a bomb in the New York subway. Walsh believes the Colorado office has gained national prominence and is now well integrated into the regular work of “main Justice” in Washington. He noted the current work of some of the office’s senior staff members on D.C. working groups. Walsh observed that the office has gone through some generational changes with the retirement of AUSAs from the savings and loan era leading to challenges and opportunities with a new group of career lawyers. Walsh instituted quarterly excellence awards for AUSAs, and federal and state law enforcement officers, and has sought to coordinate federal law enforcement efforts with state and local officials. Examples of that include coordination for investigation of the Aurora theater shooting, the Planned Parenthood shooting in Colorado Springs, and the murder of the chief of the Colorado Department of Corrections.

A video of this program will be posted soon on the Historical Society’s website.

Oklahoma City Federal Courthouse Renamed To Honor William J. Holloway, Jr.
By Andy Lester, Spencer Fane LLP, Oklahoma City, Oklahoma

He was the longest serving judge of the United States Court of Appeals for the Tenth Circuit, and he worked with 35 of the 42 judges who have ever served on the Tenth Circuit bench. He authored hundreds of decisions, including almost 700 published opinions, and was legendary for his attention to detail and encyclopedic knowledge. Yet he was not known simply for his prolific professional publications. Instead, colleagues, counsel, and kindred uniformly describe him as kind, caring, and compassionate.

Judges and lawyers of the six states that form the Tenth Circuit easily recognize those words as describing former Chief Judge William J. Holloway, Jr. And, for two days in February 2016, those who knew him best gathered in Oklahoma City to honor his memory, first for an evening event put on by the Oklahoma City Chapter of the Federal Bar Association (and co-sponsored by the Historical Society), followed by a daytime dedication of the building that houses the United States District Court for the Western District of Oklahoma.

For over 50 years, the building that occupies the block of Northwest 4th Street between Robinson and Harvey was known simply as the United States Courthouse. That ended on a crisp, cloudless February day, when Judge Holloway's youngest family members helped unveil the building's new name: William J. Holloway, Jr. United States Courthouse.

Several speakers mentioned Judge Holloway's dedication and hard work. He was generally the first one to arrive at the courthouse and the last one to leave it. In a video clip recorded in his late 80s, Judge Holloway essentially apologized that he no longer came in on weekends, "except just before a court term." Amazingly, shortly before his passing in 2014 at the age of 90, he was still reviewing opinions even while confined in his hospital room.

Throughout his career, Judge Holloway maintained the same approach to cases. He believed it important to give the parties every opportunity to air their viewpoints, to take seriously the decisions of the Supreme Court and to "apply them as conscientiously as I can."

Although he had a keen sense of humor, Judge Holloway never used jokes, witticisms, or literary references in his opinions. Cases, he believed, were not about him, but about the parties and their dispute, and he believed he should not make a joke "about someone's very important case." Yet, he also never criticized others for employing humor in judicial opinions.



Similarly, Judge Holloway never criticized a lawyer in writing. To be sure, he did not believe it inappropriate to criticize a lawyer from the bench. Even so, Doug McBee, who served as Judge Holloway's law clerk for 20 years, says he never saw it happen.

Several people mentioned a favorite Scripture often quoted by Judge Holloway. Found in Micah 6:8, it says:

And what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God.

Judge Holloway did not merely say these words; he lived them.

In 1931, as his last official act on his last day as Oklahoma's Governor, William J. Holloway, Sr., wrote a touching letter to his seven-year-old son. He concluded with these words: "My prayer and greatest ambition is that you may have good health and live to become a useful and upright citizen." The life of William J. Holloway, Jr., for whom the federal courthouse in Oklahoma City is now named, shows that prayer was answered many times over.

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Denver, CO 80202

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