

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RESOLUTION

In Memoriam

of

THE HONORABLE JEAN S. BREITENSTEIN

Presented by:

HONORABLE ROBERT H. McWILLIAMS
United States Senior Circuit Judge



HONORABLE JEAN S. BREITENSTEIN

Resolution

We pause for a moment to pay our respects to one of our peers who passed away last year. Jean Sala Breitenstein died on January 30, 1986, at the age of 85, as the result of complications arising from a stroke suffered the preceding month. Judge Breitenstein was a federal judge for 32 years, but his judicial record was much more than one of mere longevity. His was a record of unsurpassed excellence.

Judge Breitenstein was born on July 18, 1900, in Keokuk, Iowa, the son of George J. Breitenstein and Ida Sala Breitenstein. The Breitenstein family moved to Boulder, Colorado, in 1907, and Judge Breitenstein grew to adulthood in Boulder, receiving a bachelor of arts degree in 1922 and his law degree in 1924, both from the University of Colorado. Judge Breitenstein passed the Colorado Bar Examination in 1923, a year before his graduation from law school, and he had to complete his legal studies before being formally admitted to the Colorado Bar. He was a member of both Phi Beta Kappa and Order of Coif, tangible evidence that he possessed an unusually brilliant mind.

When Jean Breitenstein was attending law school he met Helen Thomas, a young lady from Boston, who, after two years at Radcliffe, came west and enrolled at the University of Colorado. Jean and Helen were married in 1925 and, six months prior to Jean's death, they were so fortunate as to celebrate their 60th Wedding Anniversary. Helen Breitenstein has herself attended many of our Judicial Conferences. The Breitensteins have two children, Eleanor Breitenstein Wilfley, whose husband is a successful Denver businessman, and Peter Breitenstein, an equally successful attorney in Denver.

Judge Breitenstein's professional career can be divided into two parts: First, from 1924 to 1954, he practiced law, and second, from 1954 to 1986 he served as a federal judge.

Upon graduation from law school in 1924, Judge Breitenstein went to Craig, Colorado, where he practiced for one year. It was in Craig where he first began his lifelong study of water law, a subject upon which he became so well-versed that he was the preeminent authority on water law in the entire West. After a year in Craig, Judge Breitenstein moved to Denver where he practiced law until his appointment to the federal bench in 1954. From 1925 to 1929, he served as an assistant state attorney general and from

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1929 to 1933 as an assistant United States attorney. Judge Breitenstein was a solo practitioner, although for many years he officed with Ralph Carr, who was Governor of Colorado from 1938 to 1942. Judge Breitenstein had a distinguished and highly successful career as a practicing lawyer. He was a trial lawyer of unusual ability and was known as a lawyer's lawyer, which means, to me, that when a lawyer gets a difficult or complicated case, he would like to get someone like a Jean Breitenstein in as co-counsel.

In 1954, President Eisenhower appointed Judge Breitenstein to the United States District Court for the District of Colorado, and in 1957, President Eisenhower appointed him to the United States Court of Appeals for the Tenth Circuit. He continued to serve in this latter capacity until his death, sitting at a term of court in the week immediately preceding his stroke. Judge Breitenstein's career as a federal judge has been a remarkable one. Besides being a stalwart on the Tenth Circuit, he sat outside the circuit on many important assignments by the Chief Justice. He indeed had a national reputation. In 1970, Judge Breitenstein took senior status as a circuit judge, and I was appointed as his successor. As a senior judge, Judge Breitenstein continued to work on a full-time basis, for which I am most thankful, because it allowed me the opportunity to work with him on a daily basis for some 15 years. I have learned much from watching him.

Lawyers' comments about judges are not necessarily complimentary. But a recent publication, *The Almanac of the Federal Judiciary*, under the heading of "Lawyers' Comments," had this to say about Judge Breitenstein, and these are direct quotes: (1) "Nonpolitical and scrupulously fair; (2) has an unrivaled grasp of law relating to water rights; (3) his opinions are a model of clarity; (4) one of a small handful of truly great contemporary circuit judges; (5) knows everything about everything, and even more about water law; (6) and finally, a national treasure." I would simply add: Amen. He was indeed an extraordinary human being. We are all fortunate that our path crossed his.

Accordingly, the Judicial Conference of the Tenth Circuit hereby commemorates the life and service of Judge Jean S. Breitenstein. I move the Conference to adopt this resolution by a standing vote and a moment of silence, and that a copy of this resolution be sent to the members of the Breitenstein family.