



THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

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CHAIR'S NOTES

By Paul Hickey

I am pleased to serve as the Chairman of the Historical Society for the next two years. I want to acknowledge Greg Kerwin's leadership, service and continuing commitment to the Historical Society. We are all indebted to Greg's continued commitment to the success of this organization.

We have committed to focusing on growing the organization during the next two years. Alleen VanBebber has agreed to serve as Chairman of the Membership Committee. We now have in place state directors who have each taken up the challenge of maintaining and adding members to the Historical Society. In this regard, Jon Dibble and his firm recently hosted a lunch meeting which included representatives from 13 of the larger law firms in Salt Lake City. Thanks also to Alan Sullivan for his remarks at this event. I urge all of you to join us in recruiting new members to the Historical Society. 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.

I hope that all of you have recently received an invitation to the Judge Henry Portrait Presentation, which will be held on May 9th at 4:00 p.m. at the Byron White Courthouse in Denver. This event promises to be a most entertaining and enjoyable occasion.

The Society looks forward each year to the individual state programs. I am happy to share that the Wyoming program this year will be presented by Judge David Ebel at the University of Wyoming College of Law on October 22, 2012. Judge Ebel has agreed to speak on Justice Byron White, for whom Judge Ebel, as many of you know, served as a Law Clerk. We are looking forward to his presentation. The Utah members of the Society will be meeting on May 16 to finalize plans for the Utah program, which is expected to be held this fall.

As a final note, some members have expressed a desire to receive their newsletter electronically, rather than in hard copy. Electronic delivery of your newsletter will help keep down our costs. *Please e-mail Nic Heinke at nic_heinke@yahoo.com if you would like to receive future newsletters electronically.* Thank you.

COURTHOUSES OF THE TENTH CIRCUIT

Ed Edmondson United States Courthouse • *By Steve Balman*



The United States District Court for the Eastern District of Oklahoma is based at the Ed Edmondson United States Courthouse in Muskogee, Oklahoma. It was built in 1915 and listed in the National Register of Historic Places in 2000. The Courthouse was named in honor of Ed Edmondson in 2003. A member of the United States House of Representatives, Ed Edmondson was also an F.B.I. agent and a naval officer. He is the father of five, including Oklahoma Supreme Court Justice James Edmondson and former Oklahoma Attorney General Drew Edmondson. Ed Edmondson's brother was J. Howard Edmondson, a former Governor of Oklahoma and U.S. Senator.

In 2007 and 2008, the Ed Edmondson United States Courthouse was the scene of the trial of Gene Stipe, a well-known Oklahoma politician and trial lawyer. One of the most colorful figures in Oklahoma history, Stipe was once described as "the Prince of Darkness" in a New Yorker article. In 2003, Stipe was charged with perjury and conspiracy to violate federal election law. Stipe pleaded guilty and was sentenced to 5 years probation, 6 months home detention and 1,000 hours of community service. He was fined \$735,567. Stipe resigned from the Oklahoma state senate and the Oklahoma Bar Association. In 2007, the government moved to revoke Stipe's probation on the ground that he had consorted with a felon. Stipe was indicted on new federal charges—bribery, mail fraud and witness tampering. In 2008, United States District Judge Ron White ruled that Stipe—age 82—was incompetent. Judge White dismissed the probation revocation proceedings. Because of the Judge's ruling that Stipe was incompetent, the additional federal charges have never been prosecuted. See Kent F. Frates, *Oklahoma Courthouse Legends* 168 (2010).

DISTINGUISHED JUDGES' BIOGRAPHIES

Judge James E. Barrett • *By Richard J. Barrett*



Judge James E. Barrett, 89, of Cheyenne, died November 7, 2011. He was born April 8, 1922, in Lusk, Wyoming, to four-term Congressman, Governor and United States Senator, Frank A. Barrett, and Alice C. Barrett. Barrett served in the U.S. Army during World War II. He landed at Omaha Beach during the allied invasion in June of 1944, and was attached to Gen. George Patton's Third Army and Gen. Omar Bradley's First Army.

He was a solo practitioner in Lusk for 18 years and served as Niobrara County & Prosecuting Attorney, Town Attorney and School District Attorney. He served as Wyoming Attorney General from 1967 to 1971. Barrett considers the Black 14 case to be his most significant during that time. The case involved 14 African-American University of Wyoming players who were suspended from the team because they wanted to wear black armbands during the UW/BYU game to protest Mormon Church policies regarding African-Americans. Barrett handled the case almost entirely on his own. Ultimately, the Tenth Circuit ruled the state could not allow the players, as its agents, to use State-owned facilities to conduct a protest against a church's policies during a public sporting event. "The interesting thing," Barrett said, "was that they were both fighting under the First Amendment. The 10th Circuit held that the separation of church and state was the more compelling need."

In December of 1969, while flying as a lone passenger in a State-owned airplane, the pilot suffered a cerebral hemorrhage and Attorney General Barrett was forced to take control of the aircraft. Without piloting experience or radio instruction, he circled the town of Rawlins for 45 minutes. After many harrowing experiences, including severing of power lines and striking an antenna on the courthouse roof, he crash-landed in an open field. The plane was wrecked but Barrett, though suffering serious injuries, managed to walk away.

In 1971 he was appointed by President Nixon and confirmed by the U.S. Senate to serve as a judge on the Tenth Circuit. He maintained his residence chambers in Cheyenne and served on the court until his death. In 1990, the court honored him as a Senior Judge in a portrait ceremony in Cheyenne. Chief Judge William Holloway remarked at the time that Barrett was a driving force for the court and a friend to all. His Tenth Circuit colleague, Judge Wade Brorby, described him as the most productive judge on the court and "the finest human being I have known." Judge Barrett participated in the disposition of 9,000 cases and wrote more than 3,000 opinions while on the bench.

In addition to his regular court duties, Barrett was appointed by Chief Justice Burger in 1979 to serve as one of three original judges on the U.S. Foreign Intelligence Surveillance Court of Review, the only "secret" court in the country. The court met in a special vault in the Department of Justice and sat on cases involving foreign espionage. In connection with his duties, Barrett became thoroughly acquainted with the workings of the FBI, CIA and National Security Administration. While he was not at liberty to discuss the cases on which he sat, Barrett later remarked that he had been surprised by the magnitude of foreign espionage on U.S. soil during the latter stages of the cold war.

Judge Barrett valued the warm and collegial relationships with his Tenth Circuit colleagues and the spirit of comradery among the Tenth Circuit staff. He had a special fondness and admiration for his long-time friends, Judge Oliver Seth and Judge William Holloway, with whom he shared office space at the Tenth Circuit headquarters in Denver.

Judge Barrett was known for his lively sense of humor and Tenth Circuit anecdotes. He told of the early 1970's when Chief Judge David T. Lewis caused the Marshall's Service to install electronic devices, panic buttons and security cameras in both the resident chambers and the Denver chambers. One day just as oral argument commenced in Denver, the door opened from the robing room directly behind Judge Lewis's chair on the bench. Out walked a very young, small boy dressed in a Cub Scout uniform holding tickets to a Cub Scout fundraiser. Judge Lewis was startled. The attorney who was arguing stopped speaking and Judge Lewis asked the young boy how he managed to access the courtroom. The boy shrugged his shoulders. Judge Barrett volunteered to take the boy to the Clerk's Office, but not before Judge Seth and he bought tickets. After conference that day, Chief Judge Lewis had a serious visit with the Marshall about court security!

Judge Barrett and Judge William E. Doyle packed their bathing suits when they traveled to court. One year they were in Oklahoma City for an early May session. They stayed at a large motel with a beautiful outdoor pool. Following the first day of arguments, they arrived back at the motel and agreed to meet at the pool. Judge Barrett got there ahead of Judge Doyle. He noticed there were no other persons at or in the pool. Putting his foot in the water, he knew why. It was frigid. At about that time, Barrett saw Bill Doyle approaching the pool. Barrett held his breath, slipped into the pool and started swimming. Judge Doyle called out, "How is it?" and Barrett replied, "Just great, Bill." Thereupon, Judge Doyle plunged in. Shooting out of the water like an orca whale, he screamed, "Ye Gads!" and scrambled out of the pool. Never again did he take Judge Barrett's word about water temperature.

Judge Barrett once sat on a special panel assigned to hear the appeal in a bitter battle for control of the Denver Post. Former Supreme Court Justice Arthur Goldberg appeared on behalf of the Colorado newspaper owners. Midway through Justice Goldberg's argument, Judge Barrett suffered a severe cramp sending spasms of pain racing down his left leg. He braced his leg against the bench with all his strength, but the pain increased. He began squirming around and perspiring heavily, contemplating falling off the chair to the floor. Judge Delmas Hill and Judge Oliver Seth nodded toward him. Their attention, together with Barrett's physical gyrations, caught Justice Goldberg's eye. However, he interpreted Judge Barrett's plight as unusual interest in his argument and began focusing almost exclusively on Barrett. Seconds before he prepared to fall out of his chair as gracefully as possible, the cramp passed. In finishing his fine oral argument, Justice Goldberg never again took his eyes off Judge Barrett.

Over the course of his legal career, Judge Barrett encouraged many young attorneys. Several years ago, retired federal prosecutor and judge Richard Stacy wrote a letter of thanks to Barrett. "Your distinguished career as county attorney, attorney general and Tenth Circuit judge is well known to all. What is perhaps not so well known is the contribution you have made as a mentor to the young attorneys who have had the honor of working for you over the years. You taught us how to deal with the facts and law to win our cases, and all with great humor. But the facts and law are only part of the equation. Fairness, honesty, and ethical treatment of your fellow man: I learned those things from you. By far the most important lesson you taught me was integrity. Many times during my career as an attorney, prosecutor and judge, I asked myself, 'What would Jim Barrett do?' The answer always served me well."

DISTINGUISHED JUDGES' BIOGRAPHIES

Judge Bruce S. Jenkins • *By Michael Jenkins*

"With one eye (tri-focal adjusted) on the mortality tables, and the other (tri-focal adjusted) on family and personal projects long promised and long delayed, and while Peggy and I still have good health and good humor and can still appreciate and enjoy, I have decided to 'retire' as an active Judge and take senior status." So wrote Judge Bruce S. Jenkins in August 1994 after 16 years on the federal bench in the District of Utah. Flash forward almost 18 years to 2012. With one eye (now cataract surgery adjusted) on those same mortality tables, and the other eye (awaiting cataract surgery) on family and personal projects so well accomplished, Judge Jenkins is a model of how to balance a keen drive for continued public service as an busy Senior Judge with the caring and personal attention he provides to his family, neighbors, friends and the community.



That Judge Jenkins continues to accomplish so many extraordinary things at such a fast pace as he approaches his 85th birthday is no surprise to anyone who knows him well. He has been working at this same speed and level of accomplishment since a very young age when, as his children can recite from many stories told around the family dinner table, young Bruce delivered newspapers, reset bowling pins by hand, and even scooped ice cream to earn a few dollars while he worked hard at his elementary school lessons. After graduating from the University of Utah law school in 1952, Judge Jenkins went on to work in private practice and later in state and local government legal positions. At age 31, he was appointed to fill a vacancy in the Utah State Senate and was twice reelected to that position by large margins. Then, at age 36, he was elected as President of the Utah State Senate. Before his political ambitions took him too far down that career path, Judge Jenkins was appointed bankruptcy judge where he handled over 17,000 bankruptcy proceedings. In 1978, he was appointed to the federal bench by President Jimmy Carter. Judge Jenkins served nearly 9 years as Chief Judge for the District of Utah.

Judge Jenkins has authored opinions, essays and speeches on a variety of legal and other subjects and has been published in magazines and journals ranging from *The Federal Lawyer* to *Vital Speeches of the Day*. He is in demand as a public speaker, and has lectured before bar associations, judges, and law schools, as well as civic, professional and academic groups. He is the recipient of numerous awards, including "Alumnus of the Year," by the University of Utah College of Law, the "Distinguished Judicial Service Award" by the Federal Bar Association, "Judge of the Year" by the Utah State Bar Association, and the George Washington Medal by the Freedoms Foundation at Valley Forge.

In 2006, he received the "Lifetime Service Award" from the Utah State Bar Association. In 2007, he was honored by the University of San Diego School of Law, which established the "Bruce S. Jenkins Jurist-in-Residence Program." This program brings distinguished judges from around the country to lecture at the law school, including Justice Antonin Scalia who was the inaugural resident jurist. Judge Jenkins is described by his long-time law clerk Russ Kearn as "a man of keen intellect, impeccable integrity, profound compassion and considerable courage. He comes to court each day with a deep and abiding sense of respect of the role that society has bestowed on its judiciary, the power of the court to call persons and the government to account, and the intrinsic genius of the judicial process itself, and every person's opportunity to be heard in a fair and impartial, open and public proceeding."

Through all of his many accomplishments, awards, and "your honors," Judge Jenkins' family has worked equally hard at keeping him as grounded and humble as a judge can be. Peggy likes to remind him that, even though he may command great respect and obedience when on the bench, he still has to take the garbage out at home. In addition, Judge Jenkins' four children, their spouses and ten grandchildren serve as a gentle reminder that Judge Jenkins is "dad" and "grandpa" first and everything else second. And to Judge Jenkins' everlasting credit, so he is.

NOTABLE LAWYERS

William A. Keleher • *By William B. Keleher*



William A. Keleher, born in Lawrence, Kansas in 1886, was brought to Albuquerque by his parents as a two year old. As a young man he was employed in a number of jobs and eventually as a newspaper reporter and finally as city editor of the Albuquerque Journal. Ambitious to become a lawyer, he tried to "read law" under the supervision of different lawyers but concluded it would be necessary to attend a law school if he was to be a success in practicing law. Washington & Lee University, Lexington, Virginia, accepted him as a "special student" and in 1915 he graduated with his LL.B. Returning to Albuquerque he opened his law office as a sole practitioner and practiced law for more than fifty years, founding what is today Keleher & McLeod, P.A. During his legal career he served Albuquerque as city attorney long before the City employed a full time attorney.

His law practice was wide in scope, as he represented individuals and corporations. He not only practiced law, his civic activities were many and varied. William A. Keleher served as Chairman of the state's Democratic Central Committee, as well as on the board of directors of Public Service Company of New Mexico and Equitable Life Assurance Society of the United States.

In 1933 Keleher was appointed as Conservator of the First National Bank of Albuquerque, which had failed. He rebuffed efforts by the Albuquerque National Bank to purchase the assets of First National because, as he expressed later, Albuquerque would not amount to anything if there were only one bank in town. First National was successfully reorganized as First National Bank in Albuquerque.

In 1932 he was appointed to the New Mexico State Board of Finance and served on that board for the next sixteen years. In 1935 New Mexico public schools were in a financial crisis with salaries of teachers unpaid. At a special meeting of the Finance Board he urged Governor Tingley to send a special message to the legislature asking for the enactment of a sales tax and when Tingley finally agreed

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William A. Keleher • *By William B. Keleher*

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Keleher and J. O. Seth drafted the Emergency School Tax Act which, enacted by the legislature provided for statewide funding of public schools. In 1940 the North Central Association determined New Mexico A & M (now New Mexico State University) would be dropped from the list of accredited institutions, primarily because of political influence. Governor John Miles removed the entire board of regents and named five new regents, one of whom, W. A. Keleher, at the first board meeting was elected chairman of the regents. Under the leadership of the new Board of Regents the accreditation of New Mexico A & M was restored.

In addition to the practice of law and civic activities he also pursued his love of history, writing five books, each dealing with the history of New Mexico. His 1942 book, Maxwell Land Grant, was written to trace the history and resulting problems of a land grant in New Mexico. Other subjects included the American occupation of New Mexico, the Confederate invasion of New Mexico, the Navajos' Long Walk, and the Lincoln County War. The books he authored were scholarly and thoroughly researched. More than 50 years after he graduated from the law school, the scholarship of his research and writing of New Mexico history was recognized by the Washington & Lee chapter of Phi Beta Kappa by awarding him with an honorary Phi Beta Kappa key. In 1999 the New Mexico State Bar included him in a list of New Mexico lawyers receiving a Century of Achievement Award. He died in 1972 at the age of 86.

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1550 17th Street # 500
Denver, CO 80202

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