



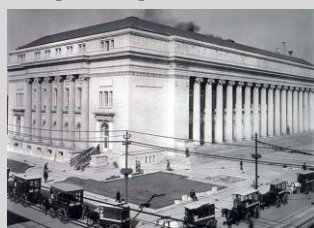
THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT

www.10thcircuithistory.org — Info@10thcircuithistory.org

Chair's Note

By Alleen VanBebber

At year's end, we can look back at significant work, including measurable progress in coordination with the Court, toward a permanent historical exhibit on the first floor of the Byron White Courthouse; work toward a complete update of *The Federal Courts of the Tenth Circuit: A History*, which was first published in 1992; presentation of district-wide programs; and cooperative efforts with other non-profit groups to help communities gain knowledge and understanding of their federal courts at work.



Too many people view lawyers, judges, and the courts as separate from—and foreign to—daily life. The Society's primary goal is to keep the history of the Court alive and vibrant, in order to show how legal history is woven into the life of every individual and every community. In these, my last months as your

Board Chairman, I thank all of you for your work in support of the Society. Whether you continued your years of hands-on support, financial support, or both; or whether you were new to the ongoing work of the Society, we hope you will help continue our mission with the good and cheerful spirit that you have shown so many times.

Also, please join me in welcoming our able current President, Steve Balman, to the office of Chairman, and in giving him your support and best wishes as he begins his two-year term in January 2016.

CIRCUIT HAPPENINGS

Introducing the New Chief Judge of the Circuit, the Honorable Timothy M. Tymkovich

By Timothy Zimmerman

On September 30, 2015, the Tenth Circuit held an investiture ceremony to welcome the Honorable Timothy M. Tymkovich as the 12th Chief Judge of the Circuit. Chief Judge Tymkovich is only the second Chief Judge to hail from Colorado, following the very first Chief Judge of the Circuit, Robert E. Lewis.¹

Judge Tymkovich, or Judge T, as he is affectionately known to his clerks, is a Denver native and a third-generation Coloradan, having attended Colorado College in Colorado Springs and then the University of Colorado Law School in Boulder. After graduating from law school, Judge Tymkovich clerked for Chief Justice William H. Erickson on the Colorado Supreme Court. Judge Tymkovich has tried to model the experience of his clerks after the experience he had with Chief Justice Erickson many years ago, and the Judge credits Erickson as his closest mentor throughout his career. After clerking, Judge Tymkovich entered private practice at the Denver firm of Davis Graham & Stubbs, in their Washington D.C. office. Notably, while at DGS, Judge Tymkovich counted among his colleagues David Ebel and Neil Gorsuch, who were a senior partner and summer associate, respectively.

¹ Interestingly, Judge Lewis was first nominated to the United States District Court for the District of Colorado by President Teddy Roosevelt in 1906, and then nominated by President Warren Harding to a seat on the Eighth Circuit in 1921. When the Tenth Circuit was formed in 1929, Judge Lewis took over as Chief and served until he assumed senior status in 1940.

After practicing at DGS, Judge Tymkovich was appointed Colorado Solicitor General by then-Attorney General Gale A. Norton, whose leadership style and commitment to public service the Judge has tried to emulate. As Solicitor General, Judge Tymkovich argued two cases before the United States Supreme Court and numerous cases in Colorado state and federal courts, including the Tenth Circuit. After serving as Solicitor General until 1996, Judge Tymkovich returned to private practice and opened his own firm, Hale Hackstaff Tymkovich.

In 2003, President George W. Bush nominated Judge Tymkovich to the Tenth Circuit, and his nomination was swiftly approved by the Senate only two months later. Since 2003, Judge Tymkovich has served on the Tenth Circuit and has developed a reputation as a fair and pragmatic jurist, who is, above all else, interested in reaching the correct result in the cases he rules on. In addition to his duties on the Tenth Circuit, Judge Tymkovich took an active role on the Judicial Resources Committee of the United States Judicial Conference, and served as chair from 2011 until his elevation to Chief Judge.

Several former clerks spoke at the investiture ceremony—and dozens were present—commenting on Judge Tymkovich’s deep relationships with his clerks and his judicial temperament. The Judge has a reputation for



Photo courtesy of the
Honorable Timothy
M. Tymkovich

carefully considering each case, deciding just the issues presented, and trying very hard to reach a consensus with the other panel members. In addition, his clerks commented on the importance of oral argument to the Judge, who each term reminds his clerks that oral argument may be one of the most important days in the parties’ lives, and that the Court has a responsibility to be well prepared for each case and to treat all cases with the utmost respect.

Judge Tymkovich praised the former Chief, Judge Mary Beck Briscoe, at the investiture, and remarked that he has “big high heels to fill.” In addition to continuing the good work that Judge Briscoe started—including guiding the Circuit through some very difficult financial times and raising the profile of the Circuit by serving on the seven-member Executive Committee of the Judicial Conference—Judge T plans to: (1) “first, do no harm”; (2) continue pushing the Circuit to be a model in efficiency and a leader in the adoption of technology in its duties; and (3) continue to decide cases in a timely and fair manner.

The Judge has ruled on a number of high-profile cases, including two that were affirmed by the United State Supreme Court over the last two

terms—*Burwell v. Hobby Lobby Stores* and *Loughrin v. United States*. In addition, Judge Tymkovich remarked that one of his most memorable and unique cases was *United States v. Hatch*, where the court used the 13th Amendment, which outlawed slavery in 1865, and the 1883 *Civil Rights Cases* (particularly the “badges and incidents of slavery”

line of precedent), as the rationale to affirm the constitutionality of the federal Hate Crimes Act. Judge Tymkovich also commented that he is proud of the many employment law cases he has worked on, along with a law review article on this subject he authored, *The Problem with Pretext*, which has been widely cited—including by Justice Alito’s majority opinion in the 2013 decision *Vance v. Ball State University*.

Judge Tymkovich is married to Suzanne Lyon, who is a former U.S. Department of the Interior attorney and western novelist, and they have two sons: Michael, a project manager at a consulting firm in Washington D.C., and Jay, a second year law student at Georgetown University Law Center. Since 2008, Judge Tymkovich has taught Election Law every fall at his alma mater, the University of Colorado Law School, and spends as much time as possible in the Colorado mountains and at his condo in Breckenridge. At the investiture, one of his former clerks remarked that she looks forward to the day when the Judge decides to moves his chambers to Breckenridge permanently. When asked about the chances of doing this, Judge T remarked that “it depends on the snow.”

AROUND THE CIRCUIT

The Historical Murals and Sculptures of the Kansas Federal Courthouses

The United States District Court for the District of Kansas has occupied various locations and buildings throughout the State. Before federal buildings were established, court proceedings would take place in any convenient location and building that had enough space. After statehood, federal courts would be housed in multipurpose federal buildings. As caseloads grew in the 1880s, so too did the need for buildings that could hold increased public access and allow courts enough space to do their work. Oftentimes, courthouses were housed with post offices.



Since establishment of statehood, six cities have housed federal courthouses in Kansas: Fort Scott, Kansas City, Leavenworth, Salina, Topeka, and Wichita. The first federal building and courthouse was built in Topeka in 1884. Some of the old combined post-office courthouses are no longer occupied by District Courts, and others were demolished. Currently, there are occupied federal courthouse buildings in Kansas City, Topeka, and Wichita. These, along with unoccupied courthouses in Fort Scott and Salina, hold artworks that capture significant moments in Kansas' history, from pioneer expansion to the turn of the century.

Much artwork found in federal courthouses throughout the United States is the result of "New Deal" projects commissioned during the depression era of the 1930s. In 1934, the Public Works of Art Project Agency ("PWAP") commissioned 15,660 works of art for display in federal buildings, including some 700 murals. PWAP ended that same year, and commission of public art was assigned to the U.S. Treasury Department. Its newly founded Section of Painting and Sculpture (later known as the Section of Fine Arts) commissioned some 1,400 murals in post offices spanning more than 1,300 American cities, including in the federal courthouses of Fort Scott, Salina, and Wichita. In succeeding years, Congress continued to provide for murals and sculpture in newly built federal courthouses. In Kansas, this included Topeka (1979) and Kansas City (1994).

Fort Scott

The 1937 oil-on-canvas mural "Border Gateways" remains in a former courtroom of the Fort Scott post-office courthouse building constructed in 1936. The post office is now the sole occupant of the building. The mural depicts the settler rush created by the 1854 passage of the Kansas-Nebraska Act, which admitted these two new territories, and millions of fertile acres to be farmed along with them. The mural shows arrival by covered wagon, horseback, stagecoach, and walking. In the bottom left corner are a group of Native Americans watching the settlers' progression.



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explorekansas.blogspot.com

The artist, Oscar E. Berninghaus (1874-1952), was born in St. Louis, Missouri, and studied at St. Louis School of Fine Art and Washington University. Berninghaus found his inspiration in Taos, New Mexico, where his artwork embodied the American Southwest. He was one of the six founders of the "Taos Society of Artists," and for years he split time between New Mexico and Missouri, before eventually becoming a permanent resident of New Mexico.

Wichita

Two murals, "Kansas Farming," by Richard Haines (1906-1984), and "Pioneers in Kansas," by John Ward Lockwood (1894-1963), hang in the Wichita Federal Building and U.S. Courthouse on the east and west walls

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of the lobby. Both are oil-on-canvas works that were commissioned in 1936 by the Treasury Department's Section on Fine Art.

"Kansas Farming" has three panels, separated by a cornstalk and a sunflower, that show different aspects of rural life and farming in Kansas. In the middle scene, a farmer on horseback is visiting with friends. Nearby a man is planting and two children are looking to the sky at a passing mail plane. The right panel has a farmer feeding his hogs, looking toward the left panel, which shows produce packers, while in the background a train symbolizes the growth of industry in farming. Haines was born in Iowa and studied and taught at the Minneapolis School of Art. He was a noted watercolorist and his murals include those done for the Mayo Clinic.

"Pioneers in Kansas" is a collection of images depicting postal service transportation through the Midwest.



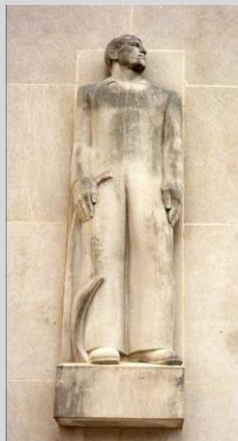
Photo courtesy of the Library of Congress

In the center is a stagecoach carrying mail, while a steam train emerges to the right, symbolizing westward expansion. A couple stands in front of the train, while the woman reads a letter. The left side has a Pony Express rider and a Native American exchanging gunfire. A vulture circles above, symbolizing the danger associated with mail delivery in the Midwest.

Lockwood, the artist responsible for "Pioneers in Kansas," was born in 1894 in Atchison, Kansas, and he found inspiration for much of his work in Taos, New Mexico. In 1938 he was appointed head of the University of Texas Art department, where he was able to shape and develop its new program. From 1948–1961, he taught at the University of California, Berkeley, and the University of Kansas (1957–1959).

Salina

The entrance to the former Salina post-office courthouse is guarded by two sculptures on either side of the door. In 1989, the building was put on the National Register of Historic Places, and it is now occupied by the Smoky Hill Museum. "Land" and "Communication" were commissioned by the Treasury Department's Section of Painting and Sculpture for installation in 1940. "Land" is a working man holding an axe and dressed in a long-sleeved shirt, overalls, and boots. "Communication" is a woman standing with a young boy holding onto her dress. Both sculptures are of stoic individuals with blank faces, symbolizing the durability of the people of Kansas.



Photos courtesy of the Smithsonian American Art Museum

The sculptor, Carl C. Mose (1903–1973), was born in Copenhagen, Denmark, and studied at the Art Institute of Chicago. Mose taught at Washington University in St. Louis, Missouri. His sculptures—primarily portraits—can be found throughout the country, but many remain in Missouri. Arguably, his most famous sculpture is of St. Louis Cardinals Hall of Famer and Presidential Medal of Freedom Honoree Stan "The Man" Musial, which stands prominently in front of Busch Stadium in St. Louis, Missouri.



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Kansas City

In 1994, the mural “Justice on the Prairie” was installed on the first-floor rotunda of the Robert J. Dole Federal Building and U.S. Courthouse. Spanning two opposing curved walls and finished in the *trompe l’oeil* style favored by the artist, Richard Haas, the mural depicts the settlement of Kansas in the nineteenth century. Tens-Qta-Ta-Wa, a Shawnee prophet, stands against the background of a pioneer settlement.



Photo courtesy of the Library of Congress

On the opposite wall, the mural depicts twentieth century Kansas City. Three figures stand against the background of a Kansas City neighborhood with skyscraper skylines. The first figure is a family of a tribal nation, the second is a figure of Justice with two children to her side, and the third is an African American family. The mural includes a number of quotations and other inscriptions, including the words of novelists, tribal nation leaders, and David Josiah Brewer, who is the only Kansas-born justice to have served on the U.S. Supreme Court.

The artist, Richard Haas, is best known for his architectural murals. He was born in Wisconsin in 1936 and received his Master of Fine Arts from the University of Minnesota. He subsequently taught at Michigan State University and Bennington College, served as president of the National Academy of Design, and won numerous awards, including awards from the Guggenheim Fellowship and National Endowment of the Arts.

Topeka

Since 1979, “The White Tornado” has been suspended from the top of the atrium of the Frank Carlson Federal Building and U.S. Courthouse. The sculpture measures 60 feet by 50 feet, built of an aluminum framework with five white neon lights. The framework takes the form of a tornado and the neon lights symbolize lightning bolts. When viewed from below they create a star. Prisms on the outside of the windows surrounding the space sometimes refract light to display rainbows in the atrium.

The sculptor, Rockne Krebs, was born in Kansas City, Missouri, and majored in sculpture at the University of Kansas. He was a primary innovator of the use of technology with art. Krebs was widely known for installations that included laser lights, mirrors, prisms, and lenses. Krebs also worked with a variety of media, such as neon, natural light, Plexiglas, and *camera obscura*. Those works that incorporated the sunlight were fashioned around the changing angles of the sun. Many of his installations, despite not encompassing solid forms, were created for outdoor locations. Though many of his technical sketches for his installations are on exhibit, most of the installations themselves have not survived. In 1977, Krebs said that, of 38 major pieces, only two still existed.

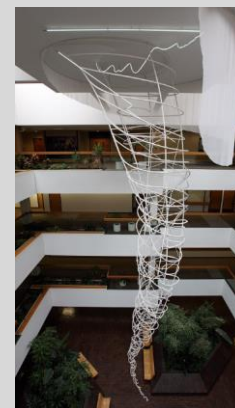


Photo courtesy of the Library of Congress

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In federal buildings across America, artwork that belongs to the people builds a spirit of community and records for history the artistic and creative sensibility of the times in which those works of art were created. Congress has recognized this, and has commissioned the permanent placement of both beautiful and symbolic works of art in federal courthouses since the beginning of the federal court system. Such work reminds us that beauty and a strong sense of community are intertwined in the public life of our country, as well as in the private lives of our citizens. The occupied and unoccupied federal courthouses in Kansas are a prime example of the intersection between art and law.

** Our thanks to Lindsey Debenham, a student at Washburn Law School, Topeka, Kansas, for researching and drafting this article.*

The Historical Society of the Tenth Judicial Circuit
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Fall and Winter Reminders:

Our annual Board meeting will be held from 1:30-3:30 p.m. on November 16, 2015, at the Byron White Courthouse. Museum consultant Jean Svadlenak will be there to discuss plans for the Courthouse exhibit, Judge Bruce Campbell will report on the book project, and we will discuss long-range planning. All Society members are encouraged to attend and participate.

District Events

Colorado - The annual Board meeting will be immediately followed by the Colorado District's program, which will run until approximately 6:00 p.m. The Colorado District's program—a "Family Reunion" to celebrate former law clerks and staff attorneys of the Tenth Circuit—will include a judge-presented program in the ceremonial courtroom and a cocktail party in the second-floor gallery. If you are a former law clerk or staff attorney, please plan on attending, and please spread the word to your former colleagues! For event specifics, feel free to contact Colorado VP Nic Heinke (nic_heinke@yahoo.com), or Greg Kerwin (gkerwin@gibsondunn.com).

Oklahoma - The Eastern District of Oklahoma group will help the District Court celebrate the 100th anniversary of the Muskogee Courthouse on November 19, with events starting at 1:00 p.m. For information, contact Oklahoma VP Adam Doverspike (adoverspike@gablelaw.com).

Membership Renewal

It's time to renew your Tenth Circuit Historical Society membership. For online renewal, please visit <https://coloradogives.org/HistoricalSocietyTenthJudicialCircuit/overview>. Renewals and donations transacted on "Colorado Gives Day" (December 8, 2015), including donations scheduled in advance to be processed on December 8, will especially benefit the Society, because for that day only the Society will receive small additional donations from the foundation that manages the donation portal. As it's nearing traditional gift-giving time, please think about giving a membership for a holiday or milestone gift (*e.g.*, new job, graduation, or passing the bar). Thank you in advance for your support!

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