

**Program Celebrating the Life and Career of
US District Judge Richard P. Matsch (1930-2019)**

**November 20, 2019 at 3:30 pm at the
Byron White United States Courthouse, Denver, Colorado**

Transcript

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Timothy Zimmerman 0:00

My name is Tim Zimmerman. I am the Colorado State, Vice President of the Tenth Circuit Historical Society and on behalf of the Society, I welcome all of you here today to this great event honoring Judge Richard Matsch. If any of you are interested in learning more about the Society, there are many members here in the audience today. Feel free to reach out to us afterwards. We are glad you are here. And we have a great program lined up for you today. Our first speaker will be Chief Judge Tim Tymkovich, my former boss and the Chief Judge of the Circuit. I'll turn over to him. And thank you, everyone.

Judge Timothy M. Tymkovich 0:35

Thank you, Tim, and congratulations to the Tenth Circuit Historical Society for putting on this very important event. I'm looking forward to listening to a really talented slate of speakers. And I want to personally thank the Matsch family for their appreciation and support of this program. It's been a difficult transition for them over the last couple months and they have been wonderful to work with on behalf of the Circuit. So thank you and we appreciate your attendance today.

My job is to introduce our master of ceremonies. Our Master of Ceremonies today is the Honorable James K. Bredar. He serves as the Chief Judge of the United States District Court for the District of Maryland. He clerked for Judge Matsch in 1983

to 1984. Judge Bredar was raised in Denver and he graduated from Manual High School after he and hundreds of his classmates were transferred there pursuant to Judge Matsch's order in *Keyes v. City and County of Denver*. Judge Bredar served as the Deputy District Attorney, as an Assistant US Attorney, and as an Assistant Federal Public Defender here in Colorado before he was appointed to the Federal Public Defender's Office in the District of Maryland in 1992. He later served as a magistrate judge and then was nominated and confirmed as a United States District Judge In 2010, and is now serving as the District of Maryland's Chief Judge.

Before turning over the mic to Judge Bredar. I know many Denver high schoolers in my college class who, like Judge Bredar, experienced busing after the *Keyes* decision. Ironically, in 1995, when I became Colorado Solicitor General, I represented Colorado in front of Judge Matsch on the issue of whether the busing order should be terminated. Many lawyers at the time, maybe both before and after, were terrified at the thought of appearing before Judge Matsch in any case, let alone a high profile case. But my experience in that case was a highlight of my career. And judge Matsch was the epitome of a judge's judge. We later saw that when he presided over the Oklahoma City bombing case.

Judge Matsch parked downstairs in this building. So I used to see him quite frequently before he began using a driver. I have to say he was usually pretty cordial, except those few times when the Circuit might have reversed him and it became a little frosty. Over Christmas last year I stopped by his chambers for the last extended conversation with him. After he loosened up a bit, we spent about an hour talking about his war stories, his nomination process, his confirmation, Colorado politics in the 60s and 70s, and his years as a judge. It was really a delightful experience for me. And little did I realize it was the last chance I would have to speak with him in a personal and extended way. It was a privilege to work with him as a colleague in this great federal courthouse. And I welcome the comments and remarks of our speakers this afternoon. Judge Bredar.

Judge James K. Bredar 3:38

Good afternoon. Thank you, Chief Judge Tymkovich, for that introduction and thank you to you and to your colleagues for accommodating us this afternoon in this truly stunning courtroom. This is a meeting of the Tenth Circuit Historical Society during which we will acknowledge and discuss the life and judicial career of the Honorable Richard P. Matsch, who passed from this life on May 26 of this year. Before we begin our program, it is my privilege to introduce a number of distinguished guests. First, I recognize the many members of Judge Matsch's family who are with us this afternoon, to include the Judge's eldest daughter, Katherine Daley, and her husband John, accompanied by their children, Martha and Kate Daley. Also with us today are the Judge's son, Dan Matsch, and his spouse Carol Conigliaro. Molly Briggs, also a daughter of the Judge, is here with her husband Mark, and their daughter, Ms. Rosie

Briggs. Last, we are joined by daughter Marti Matsch and her husband Andy Dieringer, and their son, Alden. I note that several other members of the wider Matsch family are here, some having traveled considerable distances. We are honored that you are with us today. Thank you so much.

It was next my plan to honor a very special guest Ms. Ginger Wentz, who unfortunately due to illness is unable to join us this afternoon. As many of you know, Ms. Wentz served as Judge Matsch's judicial assistant from 2005 until September of this year, when the Judge's files had been transferred and his chambers closed. I want to thank Ginger on behalf of Judge Matsch, who isn't here to thank her, and also on behalf of his family and this Court community, to acknowledge her incalculable contributions, in service to the Judge, to the Court, and to the thousands of litigants who appeared before Judge Matsch during those 14 years. I also wanted to acknowledge that before joining Judge Matsch, Ginger served with Judge Arraj in a similar capacity from 1967 until 1993. Think about the privilege that she enjoyed so closely working with not one, but two giants in Colorado's legal history.

I also note the service of Ms. Kathy Terasaki, the Judge's Court Recorder, who served with him in court for over 25 years. I note the presence today of Jane Trexler, who also worked with the Judge as a Judicial Assistant.

Next, I want to honor Judge Matsch's colleagues, the judicial officers serving in the United States District Court for the District of Colorado and in the US Bankruptcy Court. The Matsch family is grateful that you are here to honor Judge Matsch.

I note the presence of many members of the staff of the United States District Court beyond chambers, who served with Judge Matsch. Probably none from the time he came on the bench here as a referee in Bankruptcy 54 years ago, but nonetheless, perhaps some who served with him for decades. On his behalf, thank you for your presence today, and for all you did over those years, to help him excel at what he did.

Last, I wish to acknowledge the presence of my many fellow rpm, that's lower case, law clerks. 35 former clerks are present today, from Colorado and from across the country. This is a fine tribute to our mentor. I specifically acknowledge career law clerks. Stephanie Stark. Libby McKeever, and Robin Beatty, who served with Judge Matsch not like most of us for just one or two-year terms, but for many, many years as career clerks.

A few moments ago when I welcomed everyone, I indicated that we were present for an acknowledgement of Judge Matsch's life, and the many contributions he made during his judicial career. It might not have been apparent, but I chose my words carefully in describing the purpose for our gathering. In the years prior to his death, Judge Matsch gave instructions that upon his passing, there should be no portrait, no funeral, and no memorial service. Now, if at this moment, I was standing at the lectern

upstairs in Courtroom A and confronting a still-living Judge Matsch, I would not relish the opportunity to distinguish between a "memorial service," and an Historical Society meeting during which an acknowledgement of a person's life and career will occur. Nonetheless, I believe distinctions can be drawn. You will find that today's speakers are not here so much to eulogize the Judge, as are they to acknowledge and comment on those traits and qualities and values that distinguished him, that made him such a towering figure in this profession, this community, and within his family. All judges make their mark, but there can be no quarreling with the notion that Judge Richard P. Matsch is truly an historical figure. And that's not just because of his greatest hits . . . the Denver Public Schools desegregation case, the Order trial, or the Oklahoma City bombing cases . . ., but more because of the distinctly interesting principles and themes that are recurrent in his total body of work. Judge Matsch hated flattery. But he loved, and was a keen student of, history and it is the recording of the latter that engages us today.

In the time before he expired, the Judge had conversations with at least one of his adult children, during which the prospect of some event commemorating his life was broached, in spite of his prior admonition, and he reportedly acquiesced and allowed that some commemoration of his passing might well occur, and if it did, it was fine if his family and loved ones participated. So, in meeting today to discuss and remember his life and work, we are not completely out of bounds. Sure, I can see his moustache curling and twitching at me right now, but to the extent there are a few compliments paid to him this afternoon, it won't be the first time that things didn't go exactly as he thought they should in this appellate courtroom. So be it. Off we go.

Five of us will speak to you this afternoon. First, we will hear from Judge Lewis T. Babcock, one of Judge Matsch's colleagues. Then we will hear from Justice Rebecca Kourlis, a colleague from the state courts and also an academic with a deep interest in Judge Matsch's approach to his work. After Justice Kourlis, we will hear from former federal public defender Michael G. Katz, a lawyer who practiced before Judge Matsch for almost three decades. After these three professional colleagues we will hear from Katherine Daley for the Judge's children. Finally, I will offer a few comments before we bring things to a close.

It is my privilege to now introduce Judge Lewis T. Babcock. Judge Babcock is a senior United States District Judge here in the District of Colorado, who served as Chief Judge from 2000 until 2007. Before joining the federal judiciary in October of 1988, he served for five years as a judge on the Colorado Court of Appeals, and for seven years as a district judge in La Junta. Judge Babcock was born in Rocky Ford and he received his law degree from the University of Denver in 1968. Judge Babcock, we look forward to hearing your remarks.

Judge Lewis T. Babcock 13:18

Chief Bredar, Chief Tymkovich, may it please the Court. I never get tired of hearing lawyers say "May it please the Court." And sometimes it doesn't. But in viewing and looking at all of our Circuit judges who are here today to recognize Judge Matsch, this in itself, is significant recognition of Judge Matsch. I want to thank the Historical Society for being an impetus to conduct these proceedings. And I especially want to thank Judge Matsch's family who at least overruled in part Judge Matsch, in agreeing to be here and be a part of this proceeding.

Judge Matsch spoke at a tribute to Judge Alfred A. Arraj on May 11, 1993. And this is what Judge Matsch said of Judge Arraj. "What was it about Judge Arraj that was so singular that we recognize him as a paradigm. Simply stated he knew who he was, what he wanted to do, and why he wanted to do it. That's judgment. But I would add, and he knew how to get it done."

Now the clear example of this superlative character trait of Judge Matsch was the Oklahoma City Bombing trials. He knew what he wanted when it was handed off to him by Judge Seymour. He wanted a fair trial. Trial was Judge Matsch's pole star, a fair trial especially. And he knew he could not get a fair trial for these two defendants in Oklahoma, given the breadth of sentiment among the population, and he for sure knew he couldn't get it behind the wire at Fort Sill. So he brought the case here. He knew that that was a reason why he might want to bring it here is to foster the fair trial.

And he knew early on that it was clear to everybody, that security was paramount. He knew he didn't want to be distracted by security concerns. So he reconstituted the District Court Security Committee, designating a judge of the district court to chair the committee, and then appointing to the committee a judge of the Circuit Court, the Circuit Clerk, Circuit Executive, the US Marshal, Federal Protective Service, Denver Police Department, and Denver Fire Department. And this committee dedicated to the security of the conduct of the McVeigh/Nichols trials, worked. He also knew that he did not want to be distracted by the concerns of the press and the media. So he delegated to Jim Manspeaker, who was also on this Security Committee, the relationship with the media and press. And Jim Manspeaker handled that beautifully. You did not have press relations became a problem for Judge Matsch. So Judge Matsch avoided the distraction of security concerns and he avoided distraction of the media.

Judge Matsch knew that the cases should be severed. He did that. The Congress of our country, passed special legislation mandating that the proceedings here be videoed to a courtroom in Oklahoma City. Rather than being distracted by a potential litigation involving separation of powers, according to the doctrine of our famous general, George Patton, he went ahead and did that. Forward. Always forward. That was Judge Matsch's mantra.

And as we all know, those cases were tried to completion. McVeigh was executed. Terry Nichols' conviction was affirmed. He resides down in Florence. And the work that Judge Matsch did on those two cases went a long, long way. And I believe that that was in the back of Judge Matsch's mind, to reestablish the dignity and faith that can be placed in our judiciary in this country. And it did that after that fiasco out there with O.J. Simpson. I have no doubt about it in my own mind.

Judge Matsch also knew, this is where history really comes in, the value of history. As Judge Bredar indicated, he's well read. So Judge Matsch knew the value of history and he wanted to do something about it, and he restored Courtroom A of this building. It was occupied before this building was occupied by the Tenth Circuit.

He knew the value of a good trial. He did not particularly recognize the value of Rule 56. They had a lot of good trials over here in Courtroom A. I want to say a word about Courtroom A. It is the historic district court courtroom. It would not be remiss, with all due respect to the Tenth Circuit, to designate Courtroom A as the Richard P. Matsch Historic District Court courtroom with a suitable plaque. You all have the power. That's why I say so respectfully. Thank you again to Judge Matsch's family. This would not happen without them.

Judge James K. Bredar 21:23

Thank you Judge Babcock for those insights, wonderful insights about judge Matsch. And you were obviously a deeply trusted colleague of his as the one who experienced chairing that Security Committee that the Oklahoma City cases brings to mind.

Next, we will hear from Justice Rebecca Love Kourlis. Justice Kourlis served as a member of the Colorado Supreme Court for over 10 years, leaving judicial service in 2006 to become the first Executive Director of the University of Denver Institute for the Advancement of the American Legal System. Before taking the bench, Justice Kourlis practiced law in Denver, and in Craig, Colorado, where she and I first met when we had a case against each other in 1984. Justice Kourlis, I don't remember who won or lost. Only that I was a young Deputy District Attorney going up against a prominent lawyer from a storied Colorado family, and that made me very nervous. I only relaxed after we began to interact and I discovered the warmth and professionalism she has displayed throughout her career. Justice Kourlis, we look forward to hearing from you,

Justice Rebecca Love Kourlis 22:57

Chief Judge Bredar, thank you. Chief Judge Tymkovich, members of the Tenth Circuit. So I have an observation that I think Judge Matsch would appreciate as I start into my remarks, and that is that this is absolutely not a memorial service because people are clapping. Right? Definitionally we have now determined that we have distinguished this from that which he said we were not to do.

So my role here is to talk just a little bit about some interactions I had with Judge Matsch over the latter course of his career and the last actually 14 years. And let me tell you how I came to have that honor. My initial experience with him as you will certainly hear was as a young lawyer, quaking in his presence and knowing only that he both demanded and provided excellence. But that wasn't really where my friendship with him started.

I think it initially began when I gave a speech as a trial court judge to incoming members of the bar about how I saw the profession. And I got a note from him afterwards saying, "I really appreciated your speech. Judge Richard P. Matsch." I still have that note. And it was so meaningful to me that he would do that. And then when I decided to step down from the Colorado Supreme Court and create this Institute, to which you have just heard reference, and I'll come back to that in a moment in terms of why it has the absolute name which is incapable of acronym. I tried to figure out a way to say an un-acronizable name. But suffice it to say that that's where we ended up. But he called me and said, "So I hear you're going to start this institute for the purpose of improving the legal system. I have some ideas about that. And if you're interested in hearing them, come on down." Which I did. And it started a pattern of going to talk to him, visit with him, about four or five times a year. During each occasion, he would have a stack of materials on his desk about things he wanted to talk to me about and things that were going wrong that he wanted me to fix, or publications of IAALS that he wanted to call to my attention because he didn't entirely agree with them. And we would have a conversation or sometimes a debate about the legal system. We had particular debates about case management, which he was not a huge fan of, and which IAALS was very committed to. The story of the name of IAALS, with which Judge Matsch was very involved, this Institute for the Advancement of the American Legal System. I wanted to call it something that had to do with justice, or improving the legal system, or the system of justice. And he was definitive that justice and improvement were subjective. What we were going to do was try to advance the legal system. "If that's what you're going to try to do, say it. And don't get cute about it." So we ended up with the name that finally was made into the acronym of IAALS. But Judge Richard P. Matsch was responsible for the naming of that Institute.

I have two observations that I would like to share with you in terms of the character of the man. The first of which relates to the fact that as I would visit with him in his chambers, I sat in the chair. He had the desk that faced the window and I was at

the right angle and I sat in the chair looking at him and looking up at the bookcase. And there was a picture up there of him with some members of your family, in western regalia, sepia tones, right? It was probably taken at the Stock Show, and probably a number of you have had similar pictures of yourself and your family taken. And I asked him about it one day and he said, "Well, I really value that picture, because it recognizes two things. It recognizes that I love the West. But with me it's a little bit of a costume."

Well, I'm here to tell you, I don't think it was a costume. And I want to relate that to the fact that the Code of the West, I think, is what drew Judge Matsch to our whole history and the concept of the West. And I want to remember with you what that Code requires, and how it relates to Judge Matsch. "Live each day with courage. Take pride in your work. Always finish what you start. Do what has to be done. Be tough, but fair. When you make a promise, keep it. Ride for the brand. Talk less say more." Well, maybe that one wasn't directly on point. "Remember that some things aren't for sale, and know where to draw the line." In my view that sums up who he was and what he believed in and what he demanded of the people with whom he was willing to share the person he was.

And one last thing, you've already heard mention of it. He loved jury trials. He loved presiding over them. He felt every case should have realistic access to a jury trial. He thought they were the highest form of justice. He loved the insertion of everyday common sense into the process, the accountability of it, and the grounding of it. So in closing, and with due regard for the fact that a jury is most likely not the ultimate arbiter of the worth of a man, the life of Richard P. Matsch has been judged by a jury of his peers, all of us here today and the multitudes of people he influenced who are not in these rooms today, and has been found worthy, honorable, and something that is a credit to our nation, under God, indivisible, with liberty and justice for all.

Judge James K. Bredar 31:06

Justice Kourlis, thank you for those clear-eyed observations about Judge Matsch. Our next speaker is Michael G Katz. Mr. Katz served as the Federal Public Defender for the Districts of Colorado and Wyoming from 1979 until he retired in 2004. In those 25 years, he represented literally hundreds of defendants before Judge Matsch, and was a participant in some of the most celebrated trials, in which the Judge presided. He won the outright acquittal of his client in the sensational trial of the members of the so-called "Order," who were accused of assassinating Denver radio talk show host, Alan Berg, as well as other racketeering acts. Mr. Katz, we look forward to your remarks.

When I would ride the RTD bus from Denver to Boulder, I would sometimes see Judge Matsch. On those occasions I might nod hello, but I would keep a respectful distance. One winter evening when the bus was quite full, I took a seat in the row in front of him. As the bus pulled out of the station, I settled in for the 45 minute ride home. No more than 10 minutes had passed, when an arm abruptly extended over the back of my seat, and an issue of *The Economist* was thrust in front of my face. "Here," the voice from out of the dark commanded, "Look at this." Startled I stared at the open page. I was never a fast reader and the dim reading light didn't help. A mild panic set in as I tried to discern what this article he insisted I read was about. It was subtle, and not even the author's main point. But there it was. Public servants acting in a manner inconsistent with their responsibilities. Turning and handing the magazine back to him, I shook my head in dismay, and made an observation that demonstrated, I had gotten the point. He uttered an affirmation, satisfied that he had made his point. And so we both settled back in our seats in the dark for the rest of the trip home.

Judge Matsch was not inclined to verbiage. Nor was he someone who lectured. He didn't see it as his place to teach lawyers how to do their job. And yet if you appeared before him enough, and you paid attention, there was much to be learned about integrity, competence, and the roles we all play in our system of justice.

For 25 years, I had the privilege of practicing in front of him. The big cases and weighty decisions, the larger-than-life events that marked his career, are well-known and documented. I won't talk about those. Instead, I will share some vignettes. Not dramatic, yet revelatory.

At one of my very first trials before Judge Matsch, a prosecution witness was testifying. I was distracted by something that my client was asking me while simultaneously looking down at the witness's written statement. Suddenly I realized I had heard the witness say something that might have been significant. I had missed the question that elicited it. So I rose and I asked Judge Matsch to have the court reporter read the question back. "Which question?" Judge Matsch asked me. "There have been several." "The one about the police officer?" I replied. "Which police officer?" he said. There had been several. "The one about the vehicle," I said, becoming frustrated. "Which vehicle?" he responded. There had been several. Trying to stay composed. I quietly sat down having been taught a simple lesson. A lawyer should always pay attention.

Now the courtroom scene is a multi-defendant gambling case with tables enough to accommodate five defense lawyers, their egos, and their clients. Jury selection is over and the jurors are assembled when one of the defense lawyers known more for bravado than scholarship or preparation, asked to approach the bench. A slightly surprised Judge Matsch rolls his chair to the side of the bench, away from the jury, motioning

counsel forward. We all followed to where the black robed figure is hunched forward, and wait. "Your Honor," the bold one says in a somber tone, "I must object to these proceedings. This is clearly not a jury of my client's peers." The black robed figure fixes his gaze on the counselor and listens. "Furthermore," he says, "this case presents a serious question of a federal court's jurisdiction in this matter." The force field emitted by the Judge's glare is palpable. Before another word is uttered, Judge Matsch snaps, "Cut the crap." As he shoves his chair away from the bench, propelling it back from whence it came, it is clear the bench conference is over. Without a peep, like baby ducklings all in a row, we returned to our seats and the trial commences.

The lesson to be learned: A lawyer should know what he is talking about. And he should know when to talk about it. It's not just a duty he owes the judge or jurors, whose time he may be wasting, but a duty he owes his client.

On a spring morning nearly 40 years ago, 200 people lined Highway 93 along the western boundary of Rocky Flats. At a predetermined time they cross, en masse, the fenced and posted barrier on that federal facility, trespassing in an act of civil disobedience to protest the enrichment of uranium and the production of nuclear weapons. They are arrested and taken to federal court. 200 defendants in one case is a lot, especially when each is requesting a jury trial and there are only five district court judges to try all these cases. The court decides to divide the defendants into manageable groups and assign teams of two or three lawyers to each group. They do not object to being joined and represented in this manner, because they all have the same defense: choice of evils. They want to testify about the dangers of nuclear proliferation and the hazard posed by Rocky Flats. But at a consolidated motion hearing, the Chief Judge rules the defendants cannot testify to these matters, that they are not a legal defense. The jury trials are thus greatly abbreviated and the protesters are found guilty. Most groups proceed quickly to sentencing. But Judge Matsch takes his time, eventually setting his sentencing for a Friday night. This raises some eyebrows and causes some grumbling. Is this intended to inconvenience the defendants and to discourage lengthy speeches? Or worse still, is this done to discourage media coverage and limit the hoped for publicity?

On the night of sentencing we assemble in a courtroom in a nearly deserted courthouse. When Judge Matsch takes the bench he tells us why this unusual time for sentencing. He says that while the concerns motivating the defendants to engage in their protest were not admissible in court, he wants to hear from them about their backgrounds and why and how they came to be there. He chose this time because he wanted to avoid having to limit their allocutions, due to the press of court business during regular court hours. Sometimes quietly, sometimes dramatically, the defendants tell their stories. Judge Matsch does not merely listen, but he asks questions and makes observations, encouraging an open and candid dialogue. One of my clients, a somewhat rough-hewn young man from Washington State, tells how he has spent a couple years traveling around the West, doing agricultural work picking fruit. When he heard about

the protest, he hitchhiked 1,000 miles to get there. He tells the judge he'd never seen a more beautiful morning than that spring day at Rocky Flats and spoke eloquently about the fields of wildflowers, extending west to where the Rocky Mountains rose out of the plains. He says seeing so many people come together to take action in this cause made it all the more beautiful. When at last he finishes, Judge Matsch says, "You know, Justice William Douglas picked cherries in Washington in his youth." The young man grinned.

When it comes time for my last client, a young woman from San Diego, to address the court, she approaches the podium shyly. She says she doesn't want to take any more of the court's time because her fellow defendants have already addressed her reasons for coming to Denver. There's little she can add. And then she says, "Judge Matsch, I just want to tell you what a pleasure it has been to be convicted by you." There was a momentary pause, as Judge Matsch sat back ever so slightly. "Young lady," he said, "you make it very difficult for me to sentence you." The lesson: Judges have a duty to take the time to try and understand the people who come before them and recognize the meaning and value of their lives.

It is the scene of yet another multi-defendant case, this time involving large quantities of drugs. Opposing the government are five experienced defense counsel, one of whom is the legendary Rollie Rogers. For many years, he had been the Colorado State Public Defender. The government case rests on a co-conspirator, who had become a cooperating witness. His testimony is devastating, but his record is abysmal. Rollie Rogers' cross examination is formidable, peeling away layers of the informant's credibility and demonstrating he might say anything to save himself. In closing argument, the prosecutor in an attempt to shore up his witness's credibility, argues that the man has already pled guilty to the conspiracy charge and will receive a lengthy prison sentence. The prosecutor then says, "To hear, Mr. Rogers, it seems he believes our witness deserves the death penalty. With that, Rollie Rogers springs to his feet and booms objection, I have never believed any human being deserves the death penalty. Judge Matsch quickly summons counsel to the bench. Once at sidebar, he addresses the prosecutor. "You may not be aware of this, but Mr. Rogers is a strong opponent of the death penalty. The prosecutor says he did not know that. To which Judge Matsch responds. "Well, now that you're aware of that, what do you propose to do about it?" "I guess I owe Mr. Rogers an apology." Judge Matsch says, "And how do you propose to do that?" The prosecutor pauses briefly and then says, "On the record, in front of the jury." Judge Matsch looks at Mr. Rogers, who nods his head. Once seated Judge Matsch asked the prosecutor, if there's something he wishes to say. "Yes, Your Honor. I want to apologize to Mr. Rogers, and the jurors in the courtroom for suggesting that Mr. Rogers, an opponent of capital punishment, would ever think it appropriate to subject anyone to the death penalty." The lesson here: In addition to the ethics and legal rules that govern all courtrooms, in Judge Matsch's courtroom, someone's deeply held personal beliefs are to be respected.

In this final scene, a jury is in deliberations late one afternoon in a trial for bank robbery. Judge Matsch has just received a note from the jury requesting a magnifying glass. A key piece of evidence in the prosecutor's case is a bank surveillance photo of the robber. It's not the best quality. My client has a silver tooth and I have argued to the jury the person in the surveillance photo does not have a silver tooth. The prosecutor has argued that despite the grainy quality of the photo, there does appear to be something reflected in the robber's mouth. Perhaps a silver tooth. After hearing from both sides, Judge Matsch sends a note back to the jury, denying their request for the magnifying glass, and tells them they must rely on their own senses in examining the evidence.

The next morning the jury returns to deliberate and in 30 minutes, they return a guilty verdict. The judge thanks and dismisses the jury. But shortly after lunch, I receive a phone call from the clerk's office. Judge Matsch wants the parties back in court that afternoon. When we assemble, the judge tells us that the court clerk had been contacted by a juror, who had told them that a juror had brought a magnifying glass into deliberations that morning. Judge Matsch tells us he intends to assemble the jury that afternoon. Once assembled, Judge Matsch brings the jury into the courtroom. His inquiry confirms that a juror had brought a magnifying glass into the deliberations. Judge Matsch then tells the jury that their actions created a problem for the court and for the litigants. He tells him he will be considering whether their verdict can stand. He dismisses the jury and tells them that their names will be stricken from the jury roll, and they will be excused from any further jury service in federal court. The jurors silently file out of the courtroom with heads bowed, humbled and embarrassed.

Judge Matsch gives us two weeks to file motions. I move to set aside the verdict, which the prosecutor opposes based on a Tenth Circuit opinion in a civil case, in which a juror had brought a magnifying glass into deliberations. The Circuit ruled that a magnifying glass does no more than enhance one's visual acuity. Judge Matsch listens carefully to our arguments. And when we are done, says simply, "I had told this jury they were not allowed to bring a magnifying glass into the jury deliberations. They did not follow my instructions. If they did not follow my instructions on this matter, how can I be sure they followed my instructions on the presumption of innocence, the burden of proof, or the right of the defendant to remain silent." He grants a new trial. The lesson: Jurors are not merely individuals, but are, when they come together in a jury, the linchpin of the justice system. They have a solemn duty to the community to obey the law and act with integrity in dispensing their justice. And anything less will not be tolerated.

These vignettes, the briefest of episodes are like pencil sketches. A fair outline in service to a full portrait. It would take many stories, from many different tellers, to paint that portrait. I hope I have contributed something to an understanding of the values and principles that animated this remarkable jurist, who often intimidated us,

occasionally frustrated us, but mostly inspired us, by being in his presence and learning from him.

Judge James K. Bredar 45:09

Thank you, Mr. Katz. For those views, memories, and insights. You have a perspective about the judge, unique to those who, like yourself, tried scores of cases before him during his decades on the bench. Thank you.

Next we will hear from a member of Judge Matsch's family. Judge Matsch's family decided as a group that just one of their number would speak on behalf of all. Judge and Mrs. Matsch--Lib, as she was known to many of us--had five children. Daughter Betsy, known within the family as "Scout," predeceased the Judge and Mrs. Matsch, but Katherine, Dan, Molly and Marti, together with their spouses and several children are present today. And Katherine will speak on their behalf.

Katherine M. Daley 46:27

The Matsch family would like to thank the Tenth Circuit Historical Society and Greg Kerwin, especially, for organizing this event to honor our dad, even against his wishes. Thanks to Judge Bredar for facilitating, to all our speakers, and to all of you for coming today. We also want to thank Judge Bruce Campbell for interviewing our dad last fall. We are grateful to have that interview, especially now that he is gone.

I am Katherine Matsch Daley and I just have to say it's really odd to be in a place where people know how to pronounce that name. I am the oldest of the Dick and Lib Matsch children, and I and my siblings, Dan, Molly and Marti wrote this statement together. Our youngest sister Betsy is also contributing today because today would have been her 52nd birthday.

Our Dad as you now know, told us not to eulogize him and I won't, but we his children are very proud of him. He lived his life with the intensity of someone who was doing exactly what he wanted to do. He loved his country passionately. And including his service in Korea and his nine years as a referee and then judge in bankruptcy court, he served it for 56 years. We are very honored to have been a very small part of that.

We know that the intensity with which he lived his life sometimes made him hard to work with. Over the years we've met law clerks and attorneys who have had the fortune, or perhaps misfortune, to work with or appear before him. "Your dad is so tough and intimidating," they always tell us. "He has a really high standard for excellence."

We know. The bar for excellence was set high and set early for us in the Matsch household. Although our dad's parents did not go to college--his father finished high

school and his mother eighth grade--they made sure that their sons worked hard in school, and our dad put the same pressure on us. At dinner, which we ate together every night without fail, there were often pop quizzes on material he thought that we should be learning in school. For instance, he might call on a seven year old to recite the Gettysburg Address. If she admitted that she did not know the Gettysburg Address, or even what it was, well, we all knew a lot more before the end of dinner. And if the topic of conversation could be turned into a debate, you could be sure he would make sure it would be, with our dad choosing the side less well represented. And he did not hold back even if you were ten.

He was demanding of the people around him, but he was even more demanding of himself. He got up every morning seven days a week at 4:30. And for 30 years, he ran three miles every weekday and 10K's on Saturday and Sunday. Starting when he became a bankruptcy referee in 1965, and continuing the rest of his life, he worked long hours every day and on weekends. To relax, he would go out on the tractor and mow our three-acre property.

We rarely took family vacations. When we did, it was either a judicial conference or was a trip to our dad's hometown. While other kids went to Disneyland or the beach, we spent a week of the summer in Iowa, Burlington, Iowa. But we are not complaining. To us that was the most magical place on earth. We would take the train, the Denver Zephyr, which was a treat in itself. But the best part was seeing our dad with his big brothers on the Matsch farm. On "vacation," our dad would want to do projects. So Charley, his oldest brother, would have a list for each day. We would pick apples, or clean out the calving barn, or watch as the Matsch brothers cut down a tree, or fixed fences. And they would shoot trap, and we would all eat a delicious meal created by our Aunt Marie. In Iowa he could really relax and be his true self.

Of all the ways in which journalists described him, there was only one that he really liked, and that was as "The Son of Iowa." Being from Iowa was central to who he was. He felt that the experience that best prepared him for his career was serving as a grocery clerk at Matsch's Market, his dad's grocery store. Burlington is right on Mississippi River. So it is a river town, a railroad town, and of course a farming town. Though there is a strong German influence, it was pretty diverse in the 1930s and 40s. Since Matsch's Market was a neighborhood store that served the less fashionable part of town, he knew people from many walks of life and knew their stories and saw firsthand how unfair life can be. He wanted to help the people who get stepped on in life, which inspired him to become a lawyer. He was raised with the mid-western values of hard work and integrity, basic core values, he kept his whole life. He was amused by the name of the standardized test that we took in school, the Iowa Basics. He told us that we had an unfair advantage, since we were being raised by an Iowa Basic.

It was in Matsch's Market that he got to know Dick Plock, a lawyer and the father of the lawyer by the same name in Denver, who encouraged him to go to law school.

His brothers, who were much older than he, and whom he very much admired, were also a strong influence on him. When he was thinking of going to the University of Iowa with his friends, brother Bob, he was sent to the University of Michigan by the Army to learn Japanese during World War II, convinced him with the help of his brother Charley, to go to Michigan instead. And it was brother Bill, who went to school and played football at DU after serving as a pilot in the Pacific during World War II, who encouraged him to move to Denver and helped him get established here.

His service in Korea was also an important part of his life. Although he was not able to share any of the particulars about what he did during that time because his work was classified, he did tell us that he witnessed a big demonstration, which when it turned into a riot made him understand fully the need for the rule of law in a society. He felt honored to work with career soldiers, especially a sergeant who told him one day when they were relaxing with scotch and cigars, "Matsch, one day when you are a senator, or whatever it is you become, remember the grunts like me." It was a defining moment for him and he mentioned it often.

One person who deserves a lot of credit for who our dad became, was our mother, Lib. His Secretary Ginger Wentz, told us that when our dad was asked by reporters what accomplishment he was most proud of, he said, "Convincing Lib Murdock to marry me." In the early years of our childhood, the two of them were a dynamic duo, helping to produce the annual Law Club Show. Our dad rewrote lyrics to whatever Broadway musical was chosen for the show. I still know all the songs from Hair, though I have never seen it. And our mother sang and danced and did the choreography. But it was not just on the stage that they were a good match. Our parents were true partners. They literally saw eye to eye, and he respected and admired her, as much as she respected and admired him.

Much of who he really was, he hid behind a public persona. It wasn't because he was shy, as one journalist said. It was because he didn't want who he was, to get in the way of doing his job. He made speeches about law and worked on committees, but he did not speak about politics. He believed that a measure of a good judge was not being able to tell their political leanings either through their public comments or by reading their decisions.

Part of his public persona was the cowboy boots and hats and the moustache. He loved Colorado and the West, and though he called himself "a fantasy cowboy," he did ride. His last horse was a big paint named Chief. Another part was his eyebrows, which grew wild and untamed, a full inch above his browline. At the barbershop, his regular barber, Jenny, would offer to trim them saying, "You look so scary. Do you want to frighten someone?" To he would answer, "Leave them."

Without much to go on, journalists often got things wrong about him. He was really irritated when one journalist said that he was a "tee-totaler." For the record, he

drank beer and whiskey and scotch, though never at work. He also did not like being called "smallish and bespectacled," as one reporter did, because it made him sound bookish and nerdy. Though of course, he did read, a lot. And he was short. However, a friend, remarked that it was a gift that his smaller body did not match his enormous personality and presence. His friend said to our dad once, "It wouldn't be fair to those of us who have to deal with you if your stature was as large and intimidating as your personality." Plus, he liked it when people underestimated him. It gave him an advantage.

At home, he was not always intimidating. He could be very funny, and in addition to interrogation or debate, there was a lot of laughter at the table. He liked to read aloud and he had a great voice for it. He was also a talented writer. His American Literature professor at Michigan wanted to mentor him in writing. When he told her that he had come to Michigan to study law, she sighed and said, "What a waste." She did convince him to take a short story class with the writer in residence at Michigan at the time, Alan Seeger, and he loved the experience. But he stuck with law. As an outlet for his creative talent. He would make up ridiculous and irreverent lyrics to songs that he would sing to us to make us laugh, including in church, to the great irritation of our mother.

At other times he could be very intimidating. He used his courtroom voice at home, too, and it was even more powerful at close range. But mostly we knew what to do to avoid it. The rules in the house were simple. We had to be home for dinner at 6:00 pm. We had to do well in school. We had to do our chores. We had to stay out of trouble, or at least out of the newspapers. And we weren't allowed to touch the pencils on his desk because they were federal property.

In his American Constitutional Law class in Michigan, in response to a comment young Dick Matsch had made, his professor said, "Mr. Matsch, you have an 18th Century mind." Thought it was intended as a joke, he loved that comment, and would often say, "I was born in the wrong century." Despite that handicap, he did eventually master the art of texting, including emojis. Though he was sometimes hard on lawyers, he really loved a good trial, and when we got a group text from him in the morning that said, "Interesting case. Good lawyers. Boxing, glove emoji. Smiling cowboy emoji." We knew that he was going to have a good day. And we were too.

He believed in pulling your boots on and going out each day and doing a good job. Whenever any of us was upset about the state of the world, of our country, or of our government and would tell him our worries, he would say, "Not in Courtroom A. We are doing our part in Courtroom A." Most of the people here today had a lot to do with what went on in Courtroom A. Even though she's not here, we want to acknowledge Ginger Wentz, who was, like our dad, a product of the Judge Arraj era. She offered to come out of retirement for one year but stayed for fifteen, even through some very tough times in her personal life and in ours. Ginger, thank you. I don't know

anyone who is able to keep calm and carry on as well as you. And to everyone else who helped fight the good fight, Stephanie Stark, Robin Beattie, Nick and Libby McKeever and all the other law clerks, secretaries, federal marshals, courtroom deputies, court reporters, lawyers, we want to say thank you for doing your part in Courtroom A. Boxing glove emoji. Smiling cowboy emoji.

Judge James K. Bredar 59:19

Thank you, Katherine. That was powerful. That was poignant. It was moving

This gathering, this program, is a meeting of the Circuit's Historical Society. Our objective in convening this afternoon is to make a record--a record in our collective minds of just who Richard P. Matsch was, a record of why his time with us was important, a record of the lessons that we should carry forward from his tenure as a lawyer, as a judge, as a father, and as a man living among us.

For all the complexity that swirled around him--the complicated cases that he was called to resolve, the national and international issues that vexed him in private, the legal system's contortions during the sixty-plus years that he labored within it--through all that turmoil he stayed true to core principles--values that I, and every law clerk who was privileged to serve with him, could not help but to absorb during our times in chambers.

Two of those principles--values that he lived by and championed--warrant attention, in these final comments.

The first principle was, and is, this: Demand excellence, first and most assuredly from yourself, but then, also, most definitely from everyone in your orbit. Colleagues, counsel, staff, loved ones. Don't take shortcuts, and challenge those who do. In any matter of substance, never settle for anything less than maximum effort. A year after completing my clerkship, the judge invited me to return to chambers to talk about my experiences as a young prosecutor in Moffat County. I proudly told him that I tried 11 cases in that year, and that I had won 10 of them. He went right after me: "Well, what happened in the 11th case?" "The guy was acquitted," I stammered. And, from him: "So you charged somebody with an offense, and it turned out you couldn't prove it?" From me: "Well, I guess that's right Judge." Translation: until you are perfect (and no one is), there is no time or space for self-congratulation. Instead, go back to work. focusing on those areas where you can still improve, and there are a lot of them.

The second great principle was, and is, this. The adversary process is sacred. It is not individuals--not him nor any other single person--who have the capacity to accomplish justice, or identify truth, or that which we accept as the best that mere mortals can achieve on those scores. No. Only process can accomplish the mission. In truth seeking, it's all down to the adversary process: The battling out between two

skilled and well-prepared advocates, before a neutral, unbiased fact finder. The adversary process, functioning in a context and structure framed by law, is the greatest engine ever conceived by men and women to discern the truth of a disputed matter. This he believed to his core.

Many of my fellow rpm clerks are present today, and if you're like me, word of the Judge's death in May brought with it a flood of memories. First, a few rules ... there were petty ones like never, ever leave chambers without your suitcoat on. A more substantive one was "no pillow talk." What is pillow talk? According to the Judge, that's when a clerk repeats to an outsider anything said or overheard in chambers.

So hopefully he will forgive me as I engage in a little "pillow talk" right now sharing a few of the innumerable pearls of wisdom that he imparted to clerks, very much in no particular order:

1. The only "job security" is what's under your hat.
2. It's tough to stay clean. That's a very scary thing to have said to you by the judge you've just clerked for 11 months, and you're contemplating a career at the law, and you've been watching all these criminal cases proceed in front of him, and most significantly, watching the sentencing hearings. But 30 years later, 40 years later.
3. It's "blocking and tackling" that wins football games; same is true in court--focus on the fundamentals.
4. Remember your oath.
5. The most important purpose of the Constitution is to restrain government power and prevent tyranny.
6. Know your position, and play it. Don't try to play others' positions.
7. When you take a job, write your resignation letter on your first day, keep it in your top drawer so you can produce it quickly if ever your superior directs you to do something you know is wrong or questionable. Never cede to another control of or responsibility for your own integrity.

Judge Matsch was not in this work for adulation, although many idolized him. He was not much impacted by criticism, although there were more than a few times when he was excoriated. He was in it for the challenge. He relished presiding at trial--the more complex the legal questions, the more aggravating the facts, the better. Very early in my own clerkship I was eating lunch in the old cafeteria in the federal building--many others including the Clerk of Court, Jim Manspeaker, were at the table. Conversation turned to the recent indictment of the entire leadership of the "Sons of

Silence" motorcycle gang (or club, as the Judge required us to refer to them). Jim Manspeaker casually observed: "I don't know which judge will randomly draw the case, but I do know which one will try it." All eyes then fell on me, the newbie rpm clerk at the of the table, and at that moment it registered--that I had signed up to clerk for a judge whose drive and passion for the battles waged in court were already a thing of legend by 1983. He was on the bench to try cases. And for reasons I no longer remember, perhaps Mr. Katz does because he was there, the "Sons of Silence" trial was transferred to him from another chambers--a few months after that lunch. And of course, he tried it.

I don't think Judge Matsch had heroes, per se, other than Atticus Finch. There were philosophers whom he sometimes quoted--Carl Von Clausewitz, the Prussian military theorist comes to mind--and a few other famous figures for whom he noted admiration because of one or more qualities, for instance: 1. General George Patton; 2. Coach Bo Schembechler; 3. President George Washington; 4. Judge Alfred A Arraj--"Triple A."

Judge Matsch wasn't perfect. Sometimes, particularly in the earlier years, the sound and fury camouflaged the underlying genius. Beyond the sharp edges, though, he was the paragon of what we hope for when our presidents select candidates for judicial office:

He was smart. He was intellectually honest. He was industrious. He was a gifted communicator. He was impartial. He was utterly independent. He never forgot his roots in the family grocery store in Burlington, Iowa. He was humble, but also not afraid to exercise the power afforded him in pursuit of the lawful and the righteous. He was brave.

By his example, by his reverence for the law and its processes, by his absolute devotion to duty, he set the course for his peers and for his successors.

As I noted a few minutes ago, this is a meeting of the Historical Society of the Tenth Circuit. Why do we lawyers and judges, record and then study our history? So as to learn from it, to make further progress on the road to forming that more perfect union that fired the imaginations of the founders but which eludes us still, to this day.

Richard Matsch led us further down that road--the road that leads to a more perfect union--and he shared with us the values and the map and the means to carry on with the work after his passing--to make more progress on that journey. Let us not fail to embrace his example--let us be inspired by his prodigious contributions to make our own.

Chief Judge Tymkovich, Mr. Kerwin and Officers of the Historical Society, it has been my honor to participate this afternoon. Thank you so much for inviting me, and I

thank all of you on behalf of all of the family and everyone for being present and participating in this acknowledgment.

Please join us upstairs in the Portrait Gallery on the second floor for a reception which will follow immediately upon our adjournment here. Chief Judge, may we be excused?

Judge Timothy M. Tymkovich 1:12:50

Court's adjourned.

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