



Presentation of Portrait

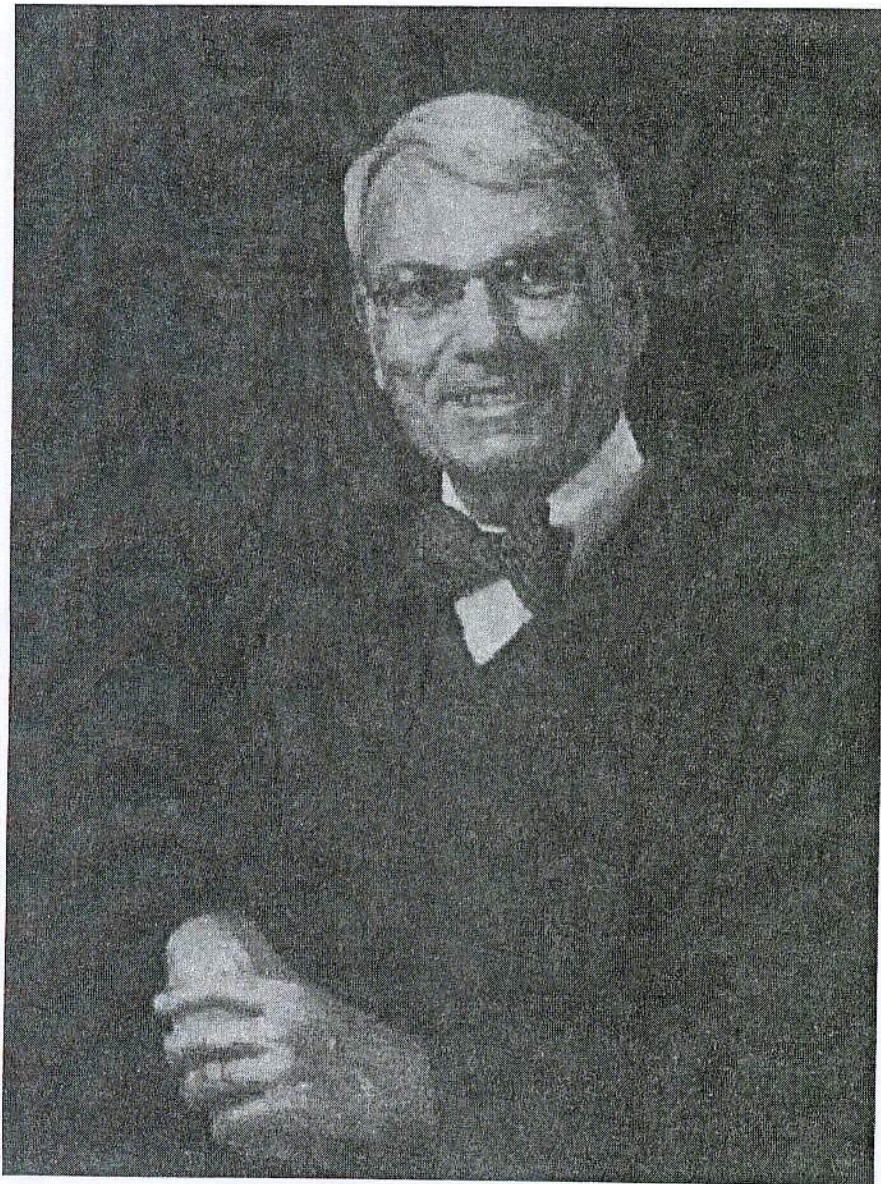
HONORABLE
DAVID M. EBEL

United States Court of Appeals
for the Third Circuit

Presentation of Portrait

HONORABLE
DAVID M. EBEL

Judicial Conference
September 9, 2006



HONORABLE DAVID M. EBEL

Proceedings

JUDGE DEANELL TACHA: I now turn the program over to the master presenter who will succeed me in just a very few minutes—actually, it's about a year I think. So I give you your next Chief Judge, Judge Robert Henry.

JUDGE ROBERT HENRY: Thank you, Chief. Love the shoes.

A little introductory comment: As the old saying goes, "I want to say something before I make my speech." Once before in dedicating the portrait of one of our colleagues, I made some remarks about the judicial monastery. I said that the cloak—or maybe it is the shroud—of what we do must of necessity remain gathered about us. But in these special times of portrait presentations, with special judges, we open the monastic doors, share with you our love and admiration for distinguished colleagues, and explain why we hold them dear. What I meant, of course, is that judging, as Justice Alito explained this morning, is by nature a bit of a cloistered existence. It's not as cloistered here as it is in the Third Circuit, but it's cloistered nonetheless. And it's especially cloistered in appellate courts where a good part of our work is done, not in open court, but behind closed doors. By necessity, much of what we do has to remain confidential because the difficulty of the disputes that we resolve and the intensity of the feelings behind these questions require judicial and judicious procedures.

But time marches on, and when judges decide to take senior status, this circuit opens the cloister and we invite those members of the bench, bar, and academy to help us publicly honor our colleagues who richly deserve it.

Some of you who are here in this very large crowd may have come to honor these distinguished judges. Others may have come, out of curiosity, to take a peek inside the cloister. Perhaps others mistakenly paid for this lunch, and at these prices they think they'd better stick it out. But all of you are welcome. And I think when you focus on the remarkable duo that we honor today, you'll understand their singular (or should I say "dual"?) contribution to keeping this circuit the antithesis of Oliver Wendell Holmes's description of the Supreme Court in the early 20th Century: "nine scorpions in a bottle."

Now one other thing. Our artist, Mike Wimmer, is one of the leading young portraitists in America today. His commissions have included Admiral William Crowe, Ambassador Jean Kirkpatrick, and mega-millionaire businessman, Sam Walton.

He began his career as a commercial artist. Some of you may have seen his reworking and new version of Mr. Clean. That study, I think, was helpful for painting Judge Ebel's portrait. Mike also does the drawings for one of Colorado's local, very stimulating companies, Celestial Seasonings. And noting Judge Seymour's affinity with the kitchen, I think perhaps that work helped him with her portrait.

PRESENTATION OF PORTRAIT

Now I probably shouldn't go here, but you know I occasionally do. Mike is a very perceptive individual and I asked him what he learned from today's two honorees during the sittings for their portraits.

Well, of Judge Seymour, he said she had a humility about her and she openly welcomed the opinions of others about the portrait and how it should be. She so wanted her family to be referenced in the painting, and you must see how Mike Wimmer has done that. And, Mike said, she seemed to not want it to be about "the black robe," although "Of course, I realized that the robe is kind of the thing that she's being honored for, so it does make its appearance!"

As to Judge Ebel, he said there was a cordiality and an aura of fairness and impartiality about him: "He was sort of like Mr. Rogers with a gavel."

Perhaps, I should stop there and let the portraits tell their stories, but you're not so lucky. If I were using a musical term to describe both of these judges, I would pick the term "fugue." Their lives are a series of repetitive themes that are played in counterpoint, forming a remarkably harmonic musical and legal whole that I think J. S. Bach himself would like.

On that note, Chief Judge Tacha, Judges of Tenth Circuit, family of Judge Ebel, particularly his 7 ½ grandchildren who are here, Sophia, Elena, Connor, Davis, Garrison, Maya, and Owen (and one whose name and gender is yet to be announced):

It was an inauspicious beginning. The young judge, on his maiden voyage, had completed his first day of oral arguments. Expectations were high. After all, he had been a partner in one of Denver's most prestigious firms and the protégé of its finest trial lawyer. He had clerked for a distinguished Supreme Court Justice, and one who was an icon in Colorado and the Tenth Circuit. He had graduated number one in his class from the esteemed University of Michigan Law School, where he was Editor-in-Chief of the Michigan Law Review. The slightly bookish—okay, slightly nerdish—young judge had been a persistent questioner that opening day, cutting to the chase, and politely pushing his colleagues for adequate time to pose his questions.

After the court adjourned, the judge, feeling that things had gone rather well, took some time to gather his detailed notes and stack of bench memos, and when ready to exit he turned and found that the other judges had already departed. This presented a bit of a problem, as those of you who remember the old courtrooms may attest. The sort of 50's architecture included a ribbed concave backdrop to the bench in which there was a cleverly concealed door—all the more to make imposing the *judicial* entrance. You see, the idea was that all of a sudden, the walls would part and the judicial presences enter. But the problem here was the *judicial exit*. Baby judge school had not included directions on how to open discretely eccentric doors.

As David Ebel would later recall his first judicial moment in the sun, "For a few moments I attempted without success alternatively to push and pull on various segments of the paneling." As the *wunderkind* struggled to appear judgely as he prodded and pushed on the unforgiving woodwork, the audience became first interested, then amused, and finally enraptured as they lingered for the end of the battle between judge and door. I mean, if you were an attorney, especially one who had just been prodded by his questions, wouldn't you?

HONORABLE DAVID M. EBEL

The door showed no sign of acquiescence to judicial will—sort of like my home state. As in knock and announce cases, each door has to be taken on its own terms. As David later concluded “Discretion was the better part of valor, and I simply hoisted my robe to walking height and departed the front public door with what little dignity I could summon for the occasion.” Eighteen years later, we honor the superlative career that grew from those humble beginnings.

At these sorts of events we often hear that the celebrated elder is, among what other accolades can be offered, “a judge’s judge.” With all respect, I seldom think that is the case, nor is it necessary or even advisable that every judge be a “judge’s judge.” In any event, that Platonic ideal is rarely reached—so infrequently that some may suggest that it doesn’t exist. David Ebel, however, is such a judge in reality and ontologically. As David’s son Mark says, “my father is not unique for any single quality that he possesses, but for the combination of all of them.” It is these combinations of judicial virtues that makes David, in my view, the best example of the judge’s judge that I know.

Today, I want to try to perform some of the fugue that is David Ebel; but he is certainly difficult to notate in the time allowed.

David is a native of Wichita, Kansas, where he attended public school. As to guidance for his impressive career, he mentions a remarkable second grade teacher who realized he had a bit of a reading difficulty, and determined to fix it. What she did must have worked, because David became an excellent student, and was the star of his high school’s debate team. In fact, his debate coach, Matt Hill, became perhaps the first mentor who exercised a profound influence on his life. The Coach stressed integrity of sources, and as David told me, “there was no doubt that you would be off the debate team if any of your source material was mischaracterized in an argument.” Attorneys, take note.

I suspect that many of the qualities of our hero—his intelligence, industry, integrity, and impartiality were apparent during high school. When a family friend of one of my clerks heard that he was working for a Tenth Circuit judge, the friend volunteered that he had known another Tenth Circuit Judge—David Ebel—as a teenager in Topeka. David it turns out, was one of the founding members of a “Youth Court”—an institution based on the unusual idea of having juvenile offenders’ fellow students decide the appropriate punishment. David, said the friend, was the presiding judge of that court—listening with great attention and care to the individual cases, communicating with his troubled peers in a way that many teachers and counselors could not, and devising creative sentences. Even then, David Ebel was a judge’s judge.

David earned a debate scholarship to Northwestern University, where he continued to have an excellent record, with one exception. His family notes that he had a bit of a problem with languages, Latin in particular. He joked that the only reason he passed college Latin was that he managed to pull the prof’s car out of a snow drift, thereby earning a plebeian’s C, the only one he would ever receive. But, the most significant event from his Northwestern days occurred when, as Senior Class President, he stayed over spring break for political duties. He noticed for the first time a very special young woman who had also stayed over the break, but in her case it was because of musical obligations. Gayle Nordby was a fine musician, a

PRESENTATION OF PORTRAIT

fine pianist, and an accomplished oboist. Indeed, she had received an oboe scholarship to Northwestern.

Now David is not particularly compulsive and is initially quite cautious. He also is frugal, so he invited Gayle out for a cup of coffee and a ping-pong game that he narrowly won. Thus challenged, he decided to try a real date, and called with a suggestion. Gayle, however, turned him down with what he considered to be a particularly flimsy excuse: She had to stay home "to make oboe reeds." David later told me, "Although I have been turned down for many different reasons, this is the most creative explanation that was ever offered."

Fortunately, Gayle's being merciful to a broken reed was not the end of the story, for she must have made enough reeds that night to go on a second date, this time to the Comedy Club in Chicago. And after that evening, it was no joking matter for David. He recalls that, "It really was love at first sight (if you don't count the ping-pong match). I was quite unprepared for falling in love, but it was all beyond my control. I loved her then, and still love her now. I can't believe how blessed I have been that she has been willing to share her life with me all these years." David and Gayle dated through senior year and, after the first year of law school, they married. Eighteen months later, their first child, Beth, arrived.

As I previously intimated, law school was successful. Afterward, David, Gayle, and young Beth found themselves in a Washington D.C. apartment as David prepared to begin his clerkship with Justice Byron White. When they arrived and were awaiting David's first clerkship check, their apartment housed a unique, though limited, collection of furniture: a crib, a card table, and a very nice globe (which had been a gift from Michigan's Law Review Staff). It was also a weekend when the banks were closed so they slept on the floor until they could return and borrow some money.

Byron "Whizzer" White was not fond of his nickname, but he grew to be especially fond of David Milton Ebel. Justice White was, of course, a legendary figure: a football Hall of Famer, an intellectual (indeed, his high school, college, and law school Valedictorian), a Rhodes Scholar, and a courageous warrior for civil rights when in Robert Kennedy's Department of Justice. But he was also a remarkably humble man, who noted this same quality in his gifted young clerk. David had a remarkable clerkship experience: "Clerking for him at the United States Supreme Court convinced me of the public service value of a judicial career. I was hooked by the prospect of spending every working day with no masters except truth, fairness, and justice. Justice White also modeled decency, hard work, and integrity. My clerkship with him certainly left an indelible impression upon me of what an ideal judge should be like."

Justice White and David became even closer friends after his clerkship. They went fly-fishing, sometimes inviting other judges such as Judge Baldock. And Justice White would always pal around with David when he came to our Circuit Conferences. At the late Justice's funeral, the White family asked David to do a reading, and later the White clerks chose him to be the clerks' representative at the official memorial service where David presented eloquent remarks that our Historical Society has frequently featured at programs about Justice White.

I now want to leave legal background and skills for a moment, and mention an area where I think David and Gayle have been greatly undervalued—and that is

HONORABLE DAVID M. EBEL

their investment successes. It's not that they have a vast accumulation of capital. In fact, they are less motivated by acquisition than almost any couple I have known. They have, however, *spent* a lot of money, as Williams College, Oxford, Harvard Medical School, MIT, Duke, Stanford Law School, Duke (again), Wharton Business School, and Dartmouth can attest. These are the colleges attended by the Ebel children. And although each child certainly contributed themselves with scholarships, their own funds, and their effort, my point is that David and Gayle have wisely invested in their children. As a result, our society is richly blessed with a pediatrician, a corporate lawyer, a bio-tech businessman, and a geologist, all outstanding in their fields.

The money was indeed well-spent, and the kids have some great observations about their Dad. Kate, the youngest but the most interested in old stuff (she's a geologist), recalls:

My Mom went back to teaching when I started elementary school, so from kindergarten through second or third grade it was up to Dad to get me ready for school. This meant that I was allowed to wear my favorite dinosaur sweatshirt every day for about two months. His attitude was that if I was happy with how I looked, who was he to tell me what was or wasn't cool? In addition to wardrobe oversight, my dad was in charge of making me a lunch each day. His favorite game was "let's see how many different types of food I can pack into Kate's lunchbox." So while my friends were eating their standard peanut butter sandwiches, I feasted on lunches containing miniature portions of green olives, radish slices, cheese and crackers, a dozen blueberries, a handful of pretzels, three slices of turkey in a baggie, and a brownie for good measure. And no lunch was complete without a scribbled note on my napkin to remind me that he loved me.

Kate also mentioned, with some humor, another of her father's famed culinary cacophonies: His favorite camp breakfast, pepperoni-scrambled eggs. Maybe this was before cholesterol. Don't try it at home, folks.

Mark, the V.P. and General Counsel of EyeRis Company, whom I previously quoted about his Dad's unique combination of virtues, lists four virtues in particular: His father's moral compass, community service, curiosity, and love and affection. In discussing his Dad's moral compass, Mark recalls the time when his father, then both judge and attorney for the tiny town of Bow Mar, was pulled over by the local constabulary for a traffic violation. When the officer saw whom he had stopped, he apologized, and prepared to leave. No one who knows David will dispute what Mark says happened next: David insisted that he should be treated like everyone else, and demanded that the officer write him a ticket. It is unclear whether he also demanded a search of the trunk, but you get my point, and, of course, David was willing to get a ticket to make his point.

Mark points out that David's community service included, most poignantly, individual mentoring for two generations of children who lost their fathers and a young prisoner who continues to struggle to get his life on track. As Mark notes, there "are dozens, maybe even hundreds" of people who credit his dad with being a major influence on their lives. He also talks of his Dad's 30 years of teaching confirmation classes to young people at his beloved Presbyterian Church. Now that class would be interesting to hear; I'm certain it is fair and open to wide-ranging discussion. I wonder if David goes into the majority and minority views, religion and

PRESENTATION OF PORTRAIT

economics, and critical Presbyterian studies. One thing I do know, good Presbyterian that David is, he thinks he should receive no accolades for this detailed service, as it was all predestined anyway.

Mark describes David's curiosity which we all know, and his passionate interest in religion, music, biology, and physics. Like Kate, he suggests his father's familial accomplishments in love and affection are even greater than his professional accomplishments.

Ted, who is in the bio-tech business, wrote me about his father's religious faith:

His faith is so fundamental to who my father is. His personal relationship with God is what I think drives my dad. He has always taken the time to nurture this faith and has kept it unwavering as the compass in his life. I think this is what has kept my father so consistent, loving, focused on giving, dedicated, and the many other adjectives that could be used to describe him.

Importantly, the strength and example of his faith has made many others (including myself) much stronger in our faith. The fact that my father, an intellectual, has embraced his religion with so much conviction has undoubtedly given strength to many many others. This is not just a dimwitted evangelist, but someone who has undertaken thoughtful and investigative study to further his faith. What's great about this though is that my father has somehow managed to be incredibly non-judgmental despite his own strong faith. No doubt that many of the people he loves and appreciates the most share different faiths.

Ted also talks about David's commitment to his family, and repeats the theme of all his siblings that David is a world-class grandpa. He calls his father a naturalist who hikes, bird-watches, climbs, skis, and loves to go fishing. He shares some of the family aphorisms: "Ebels can do anything," "Creativity is more important than memory," and "if you're going to do it, do it with a smile." Like his brother, Ted referenced a "few wonderful and at times annoying quirks." Evidently, the Judge has a "Church Lady superior dance" from Saturday Night Live in which he sticks out his tongue, and puts his hands on his hips while sticking out his back-side. None of the children have the heart to tell him that this doesn't even vaguely resemble the original "superior dance," though some may argue that it's been improved. I think I did see this, once, Ted, during the conference for a lengthy en banc.

Ted also poked a little fun about his Dad's memory of names, foreign language skills, and the denial of the true color status of his hair at various times in his life (it is now "salt and peppered"). Ted's closing thought is of homogenous praise for his Dad's hollandaise sauce.

Beth, a pediatrician who also teaches and researches at the University of Washington, suggested that hanging around her Dad makes one a better person. She also talks about his curiosity and his telling his children and grandchildren such important pieces of knowledge as "God is part man and part woman," and "if you need to outrun a bear, run down hill. Bears run very slow down hill." Again, don't try this at home.

But most interesting to me was what she termed one of the "dreaded Dadisms." "If we were stretching the truth just a bit," her father would say, "practice your

HONORABLE DAVID M. EBEL

integrity, practice your integrity!" This essentially Aristotelian point—that virtue can be taught by practice if by no other means—seems to me to be one of David's greatest contributions to public and private life, because he lives it every moment. Now Beth says, "I smile a bit sheepishly on occasions when I find myself recreating those words to my little girls when they seem to be a bit 'confused' about the truth."

I have to pause here to reference Mark's mention of his father's work with a troubled young man who became almost like a foster child to him. A telling and funny story resulted from this kindness that bears repeating, in David's words:

I had been lamenting to the parents of one of the young people in my confirmation class at church that I had upheld lots of jail sentences and felt badly that I had not had the opportunity to have a one-on-one relationship with any of them where I might help them get a new start in life. The parents said they knew of a young man who was in state prison for gang activity, and they knew that no one ever wrote to him or visited him. Notwithstanding the contrary advice that I got from the Justice Department after they checked on his background, I started a correspondence relationship with him and would occasionally send him small gifts. That ripened into a friendship, to the point that I once got a father's day card from him where he commented that he never knew his father and had only been able to turn to the gang for advice as to how he should act before I took an interest in him. Of course, during the correspondence, I never told him I was a judge.

Eventually he got out of jail on parole, and I found him a job, a free car, and a place to live. He was doing great, and we met weekly to talk about how a man should deal with the stresses of life that he faced.

Unfortunately, he had an inadvertent slip up when he contacted one of his prior victims, which was prohibited by the terms of his parole. He was arrested and the parole revocation hearing was conducted in jail. I arrived to testify on his behalf and to explain to the judge the kind of support that was available to him if he were allowed to remain on parole. When I entered the jail, I was rather briskly—even enthusiastically—pat-searched by a guard. Again, I had not identified myself as a judge to anyone there. During my testimony on his behalf, the judge asked me what my profession was. I had to say, "I am a federal judge." I could not help but notice that the guard that had pat-searched me then turned to his fellow guard providing security at the hearing and mouthed the words, "Holy Sh _ _!"

Besides David's nuclear family, he has a broader family of very special note. His relationship with his law clerks is also the stuff of modern Western legend. Their pictures cover the walls of his personal space in chambers—not properly matted, in my view—but prominently placed. He insists on introducing his clerks to the other judges, where he touts our imaginary virtues, and directs his clerks to ask us questions. He requires each clerk to bake, from scratch, a birthday cake for another on the appropriate day, and he plays the game himself. His clerks must arrange chambers visits to as many unique ethnic restaurants as they can find, and he frequently conducts field trips to museums, lectures, and cultural events. The clerks do an annual newsletter, and time alone prohibits me from quoting at length from both the clerks and newsletters, but both sources have influenced this tribute.

I do want to give a little feel for the Ebel chambers by quoting a clerk who described some of her Favorite Clerkship Memories:

PRESENTATION OF PORTRAIT

1. Saying "I don't know" during my interview and being told that I would be a great lawyer.
2. Going out to drinks and trying to define "love."
3. Not coming in last in the chambers putting competition.
4. Debating whether a woman or an African-American would become President first.
5. Not coming in last in the chambers stairway superball competition.
6. Going to the art museum and trying to define "art."
7. Eating Judge Ebel's homemade tiramisu on my birthday.

In addition, several important colleagues and compatriots have offered some thoughts and greetings that I want to share. First, Supreme Court Justice Steven Breyer lauds Judge Ebel's accomplishments. He writes:

Dear David, I'm glad your portrait will grace the Courthouse walls—reminding judges and litigants alike what a fine judge you have been. I know that Justice White was proud of you—and you completely lived up to his highest expectations. One good thing about senior status is that it's meant to change nothing at all. Thus, you will continue—fine judge that you are—to sit and serve our judicial branch, which will please bench, bar, and community. I send my congratulations and very best wishes.

Second, our distinguished Chief, Judge Tacha, has some special observations:

Judge David Ebel cares deeply about the court as an institution and about the people who serve as judges and staff of the court. His quintessential kindness, thoughtfulness, and gentle demeanor combine with a powerful intellect to make David Ebel the kind of judge to which we all aspire. He works ceaselessly on behalf of the law and the court. His career has emulated the career of his mentor, Justice Byron White. He has definitely done the Justice proud! He diplomatically requires of all those with whom he works the highest levels of excellence, tough-minded analysis and hard work that he requires of himself. He respects lawyers, litigants, and judges alike. He treats every issue with the careful, thorough analysis that is so characteristic of his work. He unfailingly brings the full measure of his intellect and energy to trying to "get it right." Every chief that has served with David Ebel thanks him for his monthly dose of humor. Each month on my desk there arrives a pile of law-related cartoons that pick my day up and that I use to lighten my approach to my administrative duties. Best of all, David Ebel thinks of the judges on the court as his family. He loves his personal family deeply and expands that circle to include his colleagues and their families. He is one of the first to be on the phone on a family occasion, when someone is facing a personal challenge, or to celebrate a joyous occasion. David Ebel defines a man of humane letters and intellect. He is a beloved colleague.

Betsy Shumaker, our Clerk of Court, shares:

As you know, Judge Ebel was the presiding judge and author in the McVeigh matter. That case ended up with 208 docket entries. The record filled our entire upstairs vault. That panel spent the better part of 1998 working on the appeal, which required an extraordinary commitment of time (and it never counted as anything more than one case, I might add). One day in the middle of it I went to

HONORABLE DAVID M. EBEL

Judge Ebel's office to get some direction on one of the myriad procedural rulings the panel had to make. Members of the press were calling daily at that point and everyone was well aware of the national importance of what was going on. Despite the enormity of the work, and the public pressure involved, Judge Ebel always, always, remained absolutely focused on the real issues at hand. I remember that day because it was one of those times that he said to me, "its all about the Rule of Law," and then went on to espouse his philosophy as a Judge. He explained that it wasn't about the pressure, or the press, or anything else, but that it was about the Rule of Law. That struck me that day, and it has remained with me ever since. Apart from being one of the smartest people I've ever met, Judge Ebel is a Judge's Judge. We all respect him immensely.

And finally, Robert H. Harry—David's mentor at Davis, Graham and Stubbs, a man David described as the finest trial lawyer he has known, and the last of three greatly influential mentors that I will mention today—has this to say about the future plans of today's male hero:

Spending time with his grandchildren would be the main thing. He also plans to continue work as a federal judge mainly sitting with the Tenth Circuit and possibly others. He has committed to serve on the U. S. District Court for Colorado by taking regular assignments just as the active judges do. He hopes to continue with foreign assignments such as the recent ones in Rwanda and Montenegro and one scheduled in Moscow. He would also like to teach.

Now, as impressive as those activities are, there are those among us who are inclined to believe that they will be eclipsed by what he actually *does* for the rest of his life. We believe that he will achieve heights far beyond our wildest dreams. His character and talents are so great that we expect a world that is so greatly in need of leadership to call upon people like David Ebel to provide it.

In closing, I will take the speaker's prerogative to say something before I finish. I want to propose some of what I think David's legacy will be, even though he is skeptical that circuit judges leave one. First, I think his legacy is one of openness, that teaches us to question our own views for as long as it takes. Second, I think his judicial philosophy is worthy of consideration, being open where it *should be open*, and restrained where it should be restrained. Third, I think David's contributions in the field of ethics will continue to bear fruit at home and abroad. And finally, David's international judicial relations work will continue and produce observable improvement and portend a brighter future for the rule of law.

Openness: David is not and has expressly stated he does not want to be considered to be the kind of judge who, in the famed phrase, "may be wrong, but never in doubt." David says, "I may be right, but I worry about it and try to stay open minded until I must land." Many of us remember when, several years after reaching a decision that had resulted in a significantly increased prison sentence for the defendant, David became convinced that his earlier decision was wrong. He called for en banc review to obtain reversal of his own precedent, and asked the clerk's office to track down the defendant's attorney in the earlier case to notify him of the change in our law and to suggest that he might want to move to reopen his earlier case to get relief.

Philosophy: In the Fall 1993 issue of LITIGATION David mused about his judicial philosophy.

PRESENTATION OF PORTRAIT

It is nothing more complicated than trying to decide each case with impartiality, according to established legal principles where possible, and using logic and appropriate policies underlying the relevant law to fill in the gaps. This approach has two bedrock principles: (1) a preeminent allegiance to objectivity and (2) a belief that a careful application of the pertinent law, tempered by consideration of such law's *raison d'être*, can yield a principled decision not based on a judge's personal political views or philosophy.

Of course, there is still room for disagreement within even these well-crafted parameters. But reviewing the Ebel corpus makes it clear that he has been a principled struggle to meet these lofty goals.

Ethics: I contacted my friend Marilyn Holmes, the General Counsel to the Code of Conduct Committee, where David served with distinction for seven years and was offered further extension to Chair the Committee. Marilyn said that during his seven-year tenure, he presided over the consolidation and revision of what had been several separate employee codes of conduct. This was a landmark undertaking and resulted in adoption of the Code of Conduct for Judicial Employees, applicable to almost all federal judicial employees (other than federal defender employees, who have their own separate code). Judge Ebel also played an invaluable role in some of the most controversial ethics issues to come before the Committee, serving as the *de facto* deputy chair. All those characteristics he brings to your court—clarity of judgment, wisdom, collegiality—were hallmarks of his service on the Code of Conduct Committee as well.

I might say that David's service on that committee underscores the point that ethics, unlike laws, cannot be encompassed by a code. He worked to craft rules that could be flexible enough to allow judges to do community service that was proper and helpful, while avoiding appearances of impropriety. Not surprisingly, much of his international work has been in the field of ethics, where the American Judiciary is clearly the most highly regarded in the world.

That leads me to my final point, international judicial relations: As a result of the genocide in Rwanda, which Elie Wiesel has termed one of the West's most grievous moral failures, all but fifteen of Rwanda's prior judges had fled, been killed, or were themselves implicated in the genocide. As a result, Rwanda had to institute a village-court system of justice, which would require a lot of uneducated people to serve as judges to help judge the 120,000 prisoners being held in jails for the genocide (some held for 10 years without a trial because there were no judges left in the country to conduct trials). Working through the coordination of William G. Paul's A.B.A. Africa, David Ebel went to Rwanda to work out a meaningful and simple code of conduct.

One of the judges that David thought was a budding leader was Tharcisse Karugarama, who at the time was the vice-Chief Justice of the Rwanda Supreme Court. He was also the head of the committee that was drafting a set of statutes to establish a new judicial system in Rwanda. This involved converting their judicial system from a civil law system to a common law system, and included setting up the courts, the appeals process, the prosecutorial branch of government, etc.

Later, David returned to Rwanda at the request of Justice Karugarama to help that country craft an entire new judicial system. Tharcisse, by the way, has recently

HONORABLE DAVID M. EBEL

been appointed Minister of Justice, the highest position in Rwanda for matters of justice.

David has also been to Montenegro twice, and has done considerable work with Russian and Canadian judges. His work is so highly regarded that he will no doubt continue to be in demand. As our Chief Justice recently said in a speech at the Reagan Library:

It's a daunting challenge . . . to establish an independent judiciary that will be able to apply the rule of law to the government as well as to the governed, in societies that have not known such a force for generations, if at all. But the rule of law is a Cathedral that we have to build, brick by painstaking brick.

As I highlighted at the outset, David Ebel is not very good at exiting. I take the greatest comfort from that, because we need him for a very long time.

I will also observe that when David finally does approach the Pearly Gates, I think St. Peter will say, "Ah, Judge Ebel! What a great service you rendered not only for the law, but for the 'least of these.' I especially liked *Harris v. Champion*, as well as your literal reading of 'I was in prison and ye came unto me.'" And a long and interesting conversation will result. I might also say that later, when Gayle joins him, St. Peter will also have an interesting, and a bit shorter greeting. It will be, "At last!"

Madame Chief Judge, I move that David Ebel and those who most define him, Gayle and his family, come forward to unveil his portrait. And with that, I rest my case.

†