

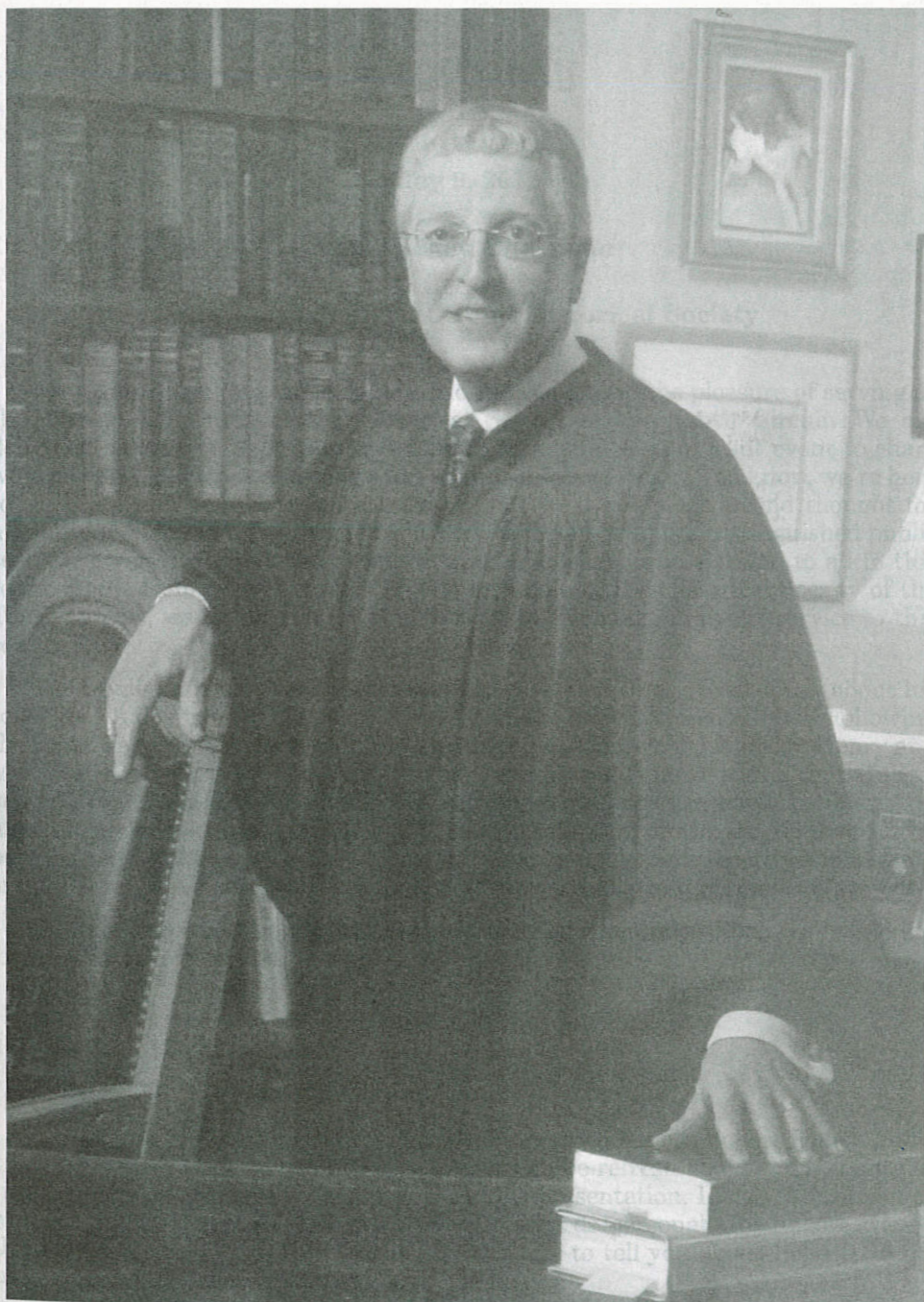
United States Court of Appeals
for the Tenth Circuit

Portrait Presentation

HONORABLE
ROBERT H. HENRY

HONORABLE ROBERT H. HENRY

May 9, 2012



HONORABLE ROBERT H. HENRY

Former Tenth Circuit Chief Judge Robert H. Henry is one of those rare individuals who can try anything and succeed. He is a gifted at everything he tries—and he has tried nearly everything. When he prematurely stepped down as Chief Judge of the United States Court of Appeals for the Tenth Circuit, and when he retired from the federal judiciary entirely in order to become President of

Proceeding

May 9, 2012

Paul Hickey, Chairman

The Tenth Judicial Circuit Historical Society

Good afternoon, my name is Paul Hickey, and I have the pleasure of serving as the current Chairman of the Historical Society of the Tenth Circuit. We are delighted to be here today and delighted to have such a significant event to share with all of you—friends and colleagues of Judge Robert Henry. You know, we're here to celebrate and possibly roast a little bit, but we'll hold that second thought for a minute. We are certainly here to celebrate someone who is a distinguished public servant, a very distinguished jurist, an academic leader, and a friend to all in this room. Judge Henry, on behalf of the 400 members of the Historical Society of the Tenth Circuit, we thank you for your service to the court and your service to this country.

We are distinguished in another way today to have Judge Ebel speak about his colleague, Judge Henry, and those remarks will be delivered in a minute. Following the remarks by Judge Ebel, we'll have an unveiling that we'll ask Judge Henry and Mrs. Henry to come up and perform that task for us. And following that, Judge, you have the floor. I won't say the last word, but we'll say you have the floor. And after those remarks by Judge Henry, we have a reception on the second floor in the portrait gallery. We hope that all of you will be able to join us up there for fellowship and for some friendship and exchange with Judge Henry and others that are here.

So, thank you all for coming. Without further ado, Judge Ebel, we're looking forward to your remarks.

David Ebel, Judge

Tenth Circuit Court of Appeals

Thank you all for being here today. Your presence honors Robert Henry, and I know he is most grateful you are here. There will be refreshments and a chance to visit upstairs on our second floor following this presentation. I urge each of you to go upstairs after the ceremony to give your regards personally to Robert Henry. Until then, sit back and relax because I am going to tell you about Robert Henry, and it's going to take about twenty minutes.

Former Tenth Circuit Chief Judge Robert Harlan Henry is one of those rare individuals who can truly be called a Renaissance person—gifted at everything he tries—and he has tried nearly everything. When he prematurely stepped down as Chief Judge of the United States Court of Appeals for the Tenth Circuit, and when he retired from the federal judiciary entirely in order to become President of

PORTRAIT PRESENTATION

Oklahoma City University, the judiciary lost a great Judge and a unique individual. I lost one of my dearest and most valued colleagues on the court.

Before I turn to his numerous contributions as a Judge, let me focus on his other accomplishments. Before becoming a Judge, Judge Henry had already served in the other two branches of government. At the ripe old age of 23, he was elected as a State Representative to the Oklahoma legislature. He served for ten years and he was so popular that several of his elections were unopposed. During that time he was the Chair of the majority caucus and Chair of the powerful committees on the judiciary and the budget. He then moved to the executive branch where he served two terms as the Attorney General for the State of Oklahoma. During his second campaign, he won in a landslide, helped no doubt by the fact that once again the opposing party chose not even to field a candidate. Are you seeing a pattern here?

There remained one branch where he had not yet served—the Judiciary—but more to that in a moment. I mention Judge Henry's service in these other two branches of government not just to burnish his credentials as a Renaissance Man, but to illustrate his credentials as a Judge. Because, there is no doubt that his intimate knowledge of the other two branches of government made him a better and more understanding Judge.

Next, Judge Henry decided to experience academia, where once again he excelled. For several years he served as a Professor of Law and Dean of the Oklahoma City University School of Law. He was so popular at the school that they eventually named a courtyard in his honor.

As most of you in this room know, he is an author and speaker par excellence—indeed, *sine pari* (without equal). You could choose the most abstract of topics, but if it were announced that Judge Henry was going to be the speaker, you would have a full house.

What else? He is an accomplished musician. He is a vocalist and pianist and has sung alongside his wife, Jan, in a well-regarded choral group in Oklahoma City. He can recite without notes from Shakespeare, Sophocles, and others of that ilk. He is well versed in the sciences, and helped fund the internationally acclaimed collection of rare historic scientific texts maintained at the University of Oklahoma.

And don't even get me started on his culinary skills. He often grows his own ingredients and his cuisine really should, at some point, be featured on Iron Chef. Being invited to dinner at the Henry house always promises abundance, subtly, and originality.

In short, Judge Henry truly deserves the title often applied to him of "Renaissance Man" and all of these diverse experiences made Judge Henry a better Judge as they made him a more complete observer of life.

But let's move on to his judicial career. He was nominated to the United States Court of Appeals for the Tenth Circuit by President Clinton on February 9, 1994, and confirmed by the Senate in near record time, less than three months later. By modern standards, that is virtually inconceivable. He received his commission on May 9, 1994. He served as Chief Judge of the Tenth Circuit Court of Appeals from 2008 through 2010. On April 30, 2010, he resigned his Chief Judgeship, and on June 30, 2010, he resigned his commission as a Federal Judge on the Tenth Circuit Court of Appeals in order to take his new assignment as President of Oklahoma City University.

What kind of Judge was Robert Henry? Although he is apt to call others a "Judge's Judge," that label applies to him. Those looking to brand Judge Henry

HONORABLE ROBERT H. HENRY

with a particular judicial ideology will be disappointed. He was truly not governed by ideology. It was his fervent desire simply to follow the law, which he revered. He believed deeply that everyone in Court should be treated with dignity and should be given a careful and objective hearing. There was no litmus test other than the overarching principle that each litigant, no matter how powerful or insignificant, was entitled to equal respect and attention from the Court. That is not a bad judicial philosophy. I believe the founders of our Constitution would have approved. Judge Henry was precisely the kind of well-rounded Judge that they must have had in mind when they created an independent judiciary.

It was said by de Tocqueville that "there is hardly a political question in the United States which does not sooner or later turn into a judicial one." And how true that observation has proven to be. I venture to say that Judge Henry has written or voted on most of the major issues in our society over the course of his participation in 1,125 published opinions, authoring 290 of them during his tenure on the federal court. In addition, he has participated in 3,487 other unpublished opinions. Whether you know it or not, there is not a person in this room whose life has not been affected by the jurisprudence of Robert H. Henry.

In addition to his day job deciding cases, Judge Henry accepted many important *administrative assignments* within the federal Courts. Perhaps chief among them, from 2008 to 2010 he was Chairman of the United States Judicial Conference Committee on *International Judicial Relations*. That is an extremely important and prestigious committee that coordinates activities between the U. S. Judiciary and the judicial interests of other countries throughout the world. As National Chairman of that committee, Judge Henry traveled extensively, with particular emphasis on the Middle Eastern countries. As the representative of the United States Judiciary, he helped export around the globe the American genius of an independent and impartial judiciary.

Judge Henry also served on the United States Codes of Conduct Committee for Federal Judges, which gives ethical advice to all Federal Judges about the ethics standards by which Judges are governed. He has served on numerous other national committees and councils as well. He has left his mark indelibly on the entire United States Judiciary and on the judicial systems of many countries around the world. It is a legacy equaled by very few. And I would say, not a bad gig for a country boy from Shawnee, Oklahoma.

One matter of particular interest for Judge Henry is the relationship between the Courts and the practicing bar and indeed with the larger society in general. Every two years we have had a large conference between the federal bench within the Tenth Circuit and the bar that practiced before the federal courts. Judge Henry's legacy on that conference is indelible.

To watch Judge Henry orchestrate and influence those conferences was a bit like watching a tornado tango with a hurricane. But there was always a method behind his madness. He believed that if we got to know each other—if Judges got to know one another and if Judges and the lawyers who practice before our courts got to know each other, good things would happen. Out of familiarity, he believed, would grow understanding, and out of understanding would grow consensus, and that could lead to reconciliation and peace. Pretty heady stuff, and to think that most of us thought when he promoted so many social activities involving Judges, that he was just being a party animal.

For example, he created a sing-along at our biannual bench/bar conferences, at which time the lawyers and Judges and spouses would stand up and sing a variety

of popular tunes, often solo or with only a small group of colleagues. Somehow, he coaxed Justices O'Connor, Breyer, and Ginsberg and other high powered dignitaries to participate. Believe me, you haven't truly lived if you haven't had the opportunity to see Justice Breyer do the hand jive in front of an audience, who may have initially assembled as strangers but left as friends. It is a valued tradition of our Court which I hope will continue. By the way, I have a sing-along program from one of those conferences which is being signed by all the Judges on our court, and I will shortly be giving that to Judge Henry.

Judge Henry also introduced symposium luncheons at our conferences with diverse experts in areas that reach far beyond the law itself. Once again, there was a method to his madness as he sought to stretch us and expand our horizons and experiences—all to the end that we might be better Judges of the core issue that infuses our work—the issue of the human condition.

Within the more cloistered halls of the Tenth Circuit, he similarly promoted collegiality. He embraced what is called an "attitude adjustment" hour, which was a time where we would gather following a hard day of appellate argument to celebrate—perhaps over a beverage or two—our common commitment to justice and the law. Even there he would occasionally bring in speakers on diverse issues.

Judge Henry's breadth of interests and his boundless enthusiasm has endeared him to many—the great, the near great, and many who would fall into the "other" category. In the first of those categories—the great—he formed unusually close friendships with several Justices on the United States Supreme Court—most notably with Justices Breyer, Ginsburg and O'Connor. Let me read briefly from letters that we have received from Justices Ginsburg and Breyer in commemoration of this occasion.

First, from *Justice Ginsburg*:

Robert Henry's 15 years' service to the Federal Judiciary in general, and the Tenth Circuit in particular, is cause for celebration. So, too, is the model of *sympathique* fellowship he continues to set in the United States and abroad. Robert is a man of many talents. I am reminded of them by books and art kept in my home, works Robert gave or recommended to me. The Tenth Circuit's former Chief is also a host and chef supreme, as legions of visitors to his *casita* in Santa Fe will attest. May his bright mind and caring heart inspire countless others to follow in his way.

With cheers for the ever Honorable Robert Henry's past performances, I anticipate many encores from him in years to come.

Now let me read a letter we received from Justice Breyer. But before I do, in order for you to understand his letter you need to know of one of Judge Henry's quirks. Often, the Judges would dine together during those weeks when we are all gathered to hear cases. Judge Henry, for some unknown reason, developed a habit of "borrowing" a spoon from the restaurant. As we all were leaving past the maître de on the way out, he would toss the spoon on the floor at Judge Murphy's feet—giving the impression that Judge Murphy had pilfered the spoon and that it had fallen out of his pocket as he was leaving the restaurant. Judge Henry would then apologize profusely and would promise to keep a closer eye on his kleptomaniac colleague. This would usually send Judge Henry into a sustained, but subdued, period of mirth, but it had a tormenting effect on Judge Murphy who eventually took extreme defensive measures so as not to exit a restaurant anywhere in the presence of Judge Henry. Why did Judge Henry find this so amusing? I cannot say. But, in any event, with that background, let me read to you *Justice Breyer's* letter:

HONORABLE ROBERT H. HENRY

Dear Robert,

I wish I could be with you. With or without the portrait, you are thought of by your colleagues, the bar, and the community—as always having made and continue to make, a major, special contribution to your profession—which continues. I'm glad, though, the portrait is there. And I send my congratulations. We all miss you—Joanna too.

Best,
Steven

p.s.—The kitchen said someone was trying to steal their spoon. I said it was not Murphy—they said it was Henry—maybe it was Lucero. Good Luck.

Steven

And with his letter, Justice Breyer sent a spoon from the Supreme Court dining room which I will pass on to Judge Henry. On the spoon is a note that reads:

Stolen from USSC. Please return before May 2045 (or else!)

Sincerely,
The Kitchen Assistant

Well, we could, had time permitted, have gathered a hundred or more such letters. The truth is, Judge Henry has more close friends than I have acquaintances. His number of acquaintances exceeds my ability to count. All these people can't be wrong in their judgment of him. He is a man worthy of being called "dear and valued friend."

In summation of this complex man, Judge Henry, at his core, is a man of peace. For that, we and all citizens within the Tenth Circuit, owe him our thanks.

We now come to the reason we are all gathered here—the unveiling of his portrait which will hang in our halls of the Tenth Circuit.

But, you need to know this was not the first time that Judge Henry sat for his portrait. The very same artist that painted this picture, Mike Wimmer, was previously commissioned to paint a great mural that is now displayed in the rotunda of the State Capitol building in Oklahoma City. That mural was to depict an historic event where an Indian woman named Mohongo was presented at the royal court of King Charles X of France. The artist, Mr. Wimmer, said that he had no picture of King Charles X and he didn't know how to paint him. He assumed, however, that Robert, perhaps because of his Romanesque profile, might look a bit like King Charles X. So, he asked Robert to sit for the portrait in the role of King Charles X. Robert did so, and if you go to the rotunda of the Oklahoma State Capitol to this very day you will see a wonderful mural there of this event, and there, as King Charles X, you will see an easily recognizable portrait of our own beloved former Chief Judge. During one of the portrait sittings, his wife, Jan, complained to the artist that she was worried this presentation of Robert Henry as the King of France, had the potential of going to his head and perhaps making him a bit swollen with pride. Robert's response to his wife was simply, "You commoners just don't understand."

Well, in the presence of Robert Henry, it is easy to feel like a commoner. He is so uncommon himself that how can the rest of us not feel common? And yet, that

PORTRAIT PRESENTATION

would be the very last thing that would be in Robert's mind or in his desires—this gentle man of peace and goodwill. Ladies and gentlemen, I am delighted now to ask Judge Henry and his wonderful wife, Jan, to come up and unveil the portrait.

Robert H. Henry, President

Oklahoma City University

Dear Colleagues, Chief Judge Briscoe, Judges of the Tenth Circuit—all very dear and esteemed friends—the employees of the Court—Circuit Executive Dave Tighe, with whom I worked on some very important administrative matters—Betsy Shumaker, the platonic ideal of the Clerk of the Court—our wonderful Staff Counsel—our CSOs—our fabulous Court community—former Chief, now Dean, Deanell Tacha, who presides over clearly the most beautiful law school in the country. It is a city on a hill, and it has found a great leader. Deanell and I just sat on a moot court with our dear friend, Chief Justice, Beverly McLachlin, of Canada. The United States has no greater friend than Canada, and there is no greater jurist in Canada than she. What a wonderful place Pepperdine is and how lucky they are to have you. Tenth Circuit Historical Society, the host organization. I was Chairman of our history committee and made the recommendation to create this society, and because of David Ebel and Robert Harry, that society became a reality. I am sorry that Robert Harry is not well today and please, David, take my regard and mention to him that I thanked him, because he is astounding. I can't think of a private attorney who has done more service for the Tenth Circuit than he. And, Gayle Ebel, simply a saintly person for many reasons, not the least of which is being married to David. David is such a skilled advocate that he can argue convincingly for virtually any proposition, even when it's as dangerous as my character and abilities, thank you—I had the best lawyer in town today. Unfortunately, Mike Wimmer did not do so well. The painting looks just like me. But aren't the foreground and background interesting? And I think confession being good for the soul, I should reveal a couple of things—the books. The book on the bottom is Bernard Schwartz' fabulous classic, *Main Currents in American Legal Thought*. It is an astounding and bracing book that begins with the jurisprudence of the Golden Age when John Marshall cavorted with the gods, and it ends with the fragmented jurisprudence of whatever it is that we have. It's an astounding and wonderful book. And over that, in black, perhaps a bit more practical, Erwin Chemerinsky's *Federal Jurisdiction*—the most recent version which I found as a *vade mecum*—a handbook to always go to brush-up on what was to come.

When Judge Seymour gave me my oath of office in a hospital room in 1994, I believed that I would someday die a Federal Judge, hopefully not then. Slightly over a couple years ago, two universities and the law school advised me that I'd been nominated for top positions in their organization and requested that I submit applications. I was relieved to find that none of the nominations came from my colleagues on the Tenth Circuit. For reasons beyond the scope of my brief response today, I now find myself out of the monastery and back in the middle of a very active and remarkable city—Oklahoma City—and incidentally, the city with the least unemployment in the country today, presiding over that city's university—Oklahoma City University—which is a liberal arts school, and I will live and die by the liberal arts.

Things do change. I noted with odds today the ghostly apparition that has now replaced the Rocky Mountain Diner. Even the Rocky Mountain Diner is gone. I remain a judicial partisan, a member of the bar dedicated to the defense of the

independence of the judiciary and to try to get the judiciary, Judge Gorsuch, the tools that it needs. I will stay involved in lots of ways. First, OCU has a law school and we are very proud of it. We recently worked with SueAnn Fitch following efforts begun by Judges Tymkovich and Gorsuch, also Lucero and Holmes, who had a remarkable CLE on capital litigation. We spent an entire morning; our former Judge Couch, the new Dean of our law school, instructed the bar. It was a wonderful service to the bar and is something that we will continue to be involved with. We will continue to use our Judge-in-Residence Program that brings as many of you judges as we can to campus so that people will get to know you and learn about what judges need and what tools and what arguments are helpful to judges. I am doing some pro bono activities, from moot court cases to mediations. I serve on some committees of our state Supreme Court and I'll continue to be involved as I can, perhaps in the Uniform Law Commission where I am a life member. I will continue to do some public advocacy for the third and least dangerous branch. I still serve on the Foundation for the Future at Justice O'Connor's request based in Amman, Jordan, where we are trying to bring human rights, and particularly women's rights, to the Arab world. My international work really was started by Judge Seymour who nominated me to Justice O'Connor's International Law Committee. And, colleagues, if there's anything I can do to help you in any way, you just give me a call. My sixteen years here are the greatest years of my efforts for public service, eclipsing those of the other two and more dangerous branches.

The late Chief Justice Rehnquist was absolutely correct in a talk he gave where he said that our framers had two great innovations in terms of structure of government. The first was the idea of a President and the second was the idea of an independent and impartial judiciary. And the former idea has not been popular. Most countries do not have Presidents and continue to use parliamentary systems. But, that idea which Chief Justice Rehnquist called the crown jewel of our framers—that idea of an independent and impartial judiciary—is the world standard. It is the world standard and our judiciary is admired by all from countries like Equatorial Guinea which will not in my lifetime have an effective judiciary, to countries like Jordan and Morocco that have a chance.

In closing, I want to thank you all—especially my Tenth Circuit colleagues and especially David Ebel—for commissioning this portrait and for overlooking my faults. Roscoe Pound famously noted that the law must be stable yet it cannot stand still. The Tenth Circuit bench and its bar are great companions in this quest to figure out what Pound meant and to resolve that controversy. This is a great Circuit. It has a great bench. It has a great bar. And, Mr. Chairman, as I used to say at the end of a very long administrative meeting following a day of arguments, I now move that we go to the motel and lie down.

Thank you very much.

Paul Hickey, Chairman

The Tenth Judicial Circuit Historical Society

(Part II)

Judge Henry, thank you so much for taking time to give us those remarks. I think part of the reason that this courtroom is full is the anticipation of hearing you for another occasion, and those of us from Wyoming have some wonderful recollections of the time that you came to our law school and shared some wonderful

PORTRAIT PRESENTATION

words with graduates as well as the practicing bar and bench of that state. Thank you for that as well.

Judge Ebel, wonderful, wonderful address—so thoughtful and so exquisite in your delivery. Thank you.

Don't worry if you don't have a chance to come up and see this portrait right away because we are going to have it on the second floor. There will be a chance there for the next hour or more to enjoy some conversation and to see what a wonderful portrait this is.

So, thank you all for coming. And thank you for your support of the Historical Society. We are adjourned.