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## The Honorable Robert H. McWilliams, Jr., United States Court of Appeals, Tenth Circuit

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THE HONORABLE ROBERT H. MCWILLIAMS, JR.,  
UNITED STATES COURT OF APPEALS,  
TENTH CIRCUIT

DORIS B. TRUHLAR\*

The nicest, most unassuming person around on the federal bench is Bob McWilliams—more properly known as the Honorable Robert H. McWilliams, Jr., Senior Judge, United States Court of Appeals, Tenth Judicial Circuit. I was a law clerk for Bob in 1980-81, in one of the best years of my legal career, and a time I will always cherish for the fond memories I have of “the Judge.”<sup>1</sup> This Article is not a dispassionate, unbiased profile. Rather, it is a tribute to an outstanding man who has served as a judge for more than forty years.

Bob is a 1941 honors graduate of the University of Denver (DU) College of Law, and also received his Bachelor of Arts degree from DU in 1938, with honors. Additionally, he received an honorary degree from DU in 1971. One of the most loyal, devoted alumni of DU, Judge McWilliams serves his alma mater in various ways, living out a life of public service that makes him one of the University’s most distinguished graduates.

When I told Bob I was honored with a request by the DU Law Review Editor-in-Chief, Diana A. Cachey, to write this article for the Centennial Issue of the *Denver University Law Review*, I also commented to him that I would write that he was an “honorable guy,” which he should take a great compliment. His response, pure Bob McWilliams: “Well, I’d hate for you to tell them I’m dishonorable.”<sup>2</sup>

The “honorable guy” description is, in my way of thinking, praise of the highest sort. It describes a man who is intelligent, well-rounded, loves life, treats others with courtesy and consideration, and is respected throughout his community and nation. Bob is an individual who has earned the respect, praise and admiration of his colleagues. He wrote approximately eleven hundred opinions since President Nixon appointed him to the federal appellate bench in 1970,<sup>3</sup> and is known for his ability to

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1. Judge McWilliams was “surrounded” by women that year. Rema Batson, now Rema Rickman, was, of course, his secretary, as she is today. My co-clerk was Maureen Reidy, now Maureen Witt, a partner at Holland & Hart. It was a wonderful year.

2. Bob himself has been known to describe himself in somewhat similar terms. In a quote in *The Denver Post* in 1984, Bob stated, “I guess all I can hope for is that people will say, ‘He did the best he could with a degree of intelligence and common sense. Some people may think I was over my head in the municipal court.’” THE DENVER POST, Sept. 3, 1984, at B-3, col. 3.

3. Counting the opinions he wrote on the Colorado Supreme Court, where he was a Justice and Chief Justice, he has written close to 1,600 appellate opinions. This count does

say a great deal in a simple, concise style, using a minimum amount of words and avoiding legal mumbo-jumbo or lengthy dissertations.<sup>4</sup>

Putting aside his credentials as a outstanding jurist, it's no exaggeration to say that Bob is beloved. Those fortunate to be counted as among his many friends and colleagues universally describe Bob as fair-minded, even-tempered, good-natured, patient, tolerate, honorable and even extraordinary.

Bob also contributed to the community in many little-known ways. It takes nine index cards in the morgue<sup>5</sup> at *The Denver Post* to summarize all the articles that have appeared in *The Post* over the years, chronicling his achievements and career. For example, he served as the President of the Denver Rotary Club, a group in which he remains very active, and has been the Keynote Speaker for Denver Law Day. He served as President of the Colorado Tennis Association and DU Alumni Association. Bob was a past recipient of the Denver Junior Chamber of Commerce Good Government Award. He also was a vocal and outspoken proponent of our current judicial selection system, which replaced a system of judicial elections. These achievements are intended only as examples—it would take much more space than allotted here to describe everything Bob accomplished in his career.

The oldest child in a family of three sons, Bob was born in 1916 in Salina, Kansas. Most Coloradans have forgiven him for his accident of birth long ago,<sup>6</sup> even when he insists on watching the Kansas football games on Entertainment & Sports Programming Network (ESPN). We were informed, however, that his loyalty to his adopted state of Colorado is complete—he cheers for the Buffs, not the Jayhawks, in games between University of Colorado and Kansas. His late-in-life love of ESPN is a reflection of a lifelong devotion to sports, both as a participant and a spectator. Bob and his son make a trip together every summer to Chicago, Illinois, at a time when both the White Sox and the Cubs are in town, so they can see several baseball games, hopefully more than one a day.

At the age of 11, Bob moved to Denver, Colorado when his father became chairman of the Department of Sociology at the DU.<sup>7</sup> Bob's childhood and teenage years were happy ones. Graduated from South High School in Denver in 1934, he distinguished himself as an outstanding athlete, as well as a bright student who excelled academically and was a leader among his fellow students.

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not, of course, include any of the decisions Judge McWilliams made during his years as a trial court judge.

4. Judge Logan noted in his remarks of July 27, 1990, that Bob's word processor is reputed to have a nine-page maximum.

5. An old-fashioned, newspaper word for library.

6. Apologies to Judge Logan.

7. Bob's dad was a popular Denver City Councilman for eight years, from 1947 until 1955. He died in 1959. Bob considered following in his father's footsteps, by becoming a professor. Fortunately for the profession and the bench, he was attracted to the law and decided to attend law school. He has ties to academia, however, serving as a part-time and adjunct law professor at the University of Denver, and also receiving an honorary LL.B. from DU in 1971.

After South High, Bob went on to DU, where he majored in political science, graduating in 1938. He took only one course from his father, criminology, and made an "A." He was Junior Class President and student body President in his senior year of college. Also during his senior year, he won a law essay contest, in constitutional law, which netted him the then-princely sum of \$200.<sup>8</sup> A brilliant undergraduate student, he also excelled at tennis and basketball.

In 1941, Bob graduated with honors from DU College of Law<sup>9</sup> and also was admitted to the bar, ranking first in the bar examination that year. After admission to the bar, Bob joined the Denver District Attorney's office, where he remained until 1949, except for his military service. Bob was a sergeant in the United States Army, assigned to the Office of Strategic Services from 1945 until 1946. He served as a special agent with the Office of Naval Intelligence from 1942 to 1945.

In 1949, he entered private practice in Denver, while also serving part-time as a Municipal Court Judge. In January, 1949, Bob and Ray Danks had opened their law offices in the Majestic Building in downtown Denver when Mayor Quigg Newton's administrative aide, Ralph Radetsky, called to offer Bob an appointment as a full-time municipal judge. Bob accepted the offer and has been on the bench continuously since then.

"The Judge," as he is known to the dozens of law clerks who work for him over the years, was at the Denver Bar Association picnic in June 1952 when he learned that Governor Dan Thornton was trying to reach him. This time, the telephone call was for a promotion—from municipal court to Denver District Court. Two years later, he ran for election for his first full term on the district court, along with all the Denver District Judges, and won. He later served as Chief Judge of the Denver District Court, and was elected by his fellow Colorado Judges to President of the Colorado District Judges Association.

Elected as Justice on the Colorado Supreme Court in 1960, Bob won the biggest victory of any Colorado political race that year, outdistancing the margins for the Presidential candidate, the United States Senator running for re-election, and all the United States Congressional races. Indeed, Bob did very well in elections, garnering the support of virtually all lawyers in Colorado, according to his long-time friend, Bill Steele. The only close race Bob ever ran was the one in 1954, two years after he was appointed to the Denver District Court when he ran for his first full six-year term. He came in ninth of the nine winning candidates. At the time, he vowed not to run again in a Denver judicial race and he didn't. He ran

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8. The essay contest was part of Denver's sesquicentennial celebration of the signing of the United States Constitution.

9. The University of Denver College of Law Class of 1941 was truly outstanding. In addition to Bob, the class included former Colorado Governor John A. Love, Supreme Court Justice Leonard B. Sutton, and National Labor Relations Board Judge Howard Jenkins, Jr. The class roster reads like a *Who's Who* of the legal profession. Additionally, the graduates of the Class of 1941 were S. Leonard Berenbeim, Robert M. Bowen, Robert L. Hartman, Charles J. Higson, Mack L. Kennedy, Elizabeth L. Kofoed, James H. Mosley, A. William Prior, J. Woodson Railey, and Peter S. Razatos, and Roy O. Samson, Jr..

for the Colorado Supreme Court in 1960 when his six-year term was up on the District Court.

Bob was Chief Justice of the Colorado Supreme Court for three of his ten years on that court, including a stint as Chief from 1969 until his appointment to the United States Tenth Circuit Court of Appeals in 1970. During the time he served as Chief Justice, he was also elected as a Vice Chairman of the National Conference of Chief Justices.

As many have noted, Judge McWilliams is known for his direct, concise writing style. He always believed that the task of an appellate court is to decide cases fairly and quickly, without writing a treatise.<sup>10</sup> He seldom writes dissents, having written fewer than 20 dissents or special concurrences during his 22 years as a United States Court of Appeals judge. Bob says, in deciding whether to dissent, the question is whether his indignation would overcome his inertia—and it seldom does.

No matter how great his contributions as a jurist, it is as a human being that Bob excels. His personal life, and his approach to it, make him outstanding. He is neither condescending nor arrogant. He makes friends and keeps them for life. Bob's sense of humor is well honed. He is known among his colleagues on the appeals court as, in Judge Logan's words, "a remarkable human being."<sup>11</sup> Judge McWilliams enjoys life—he swims and walks for physical exercise every day, and seems many years younger than his chronological age. Judge Logan, who recently turned 63, remarked, "I'm planning to model my 'older years' after Bob—he doesn't seem old. It's hard to believe he's 76. He really is a remarkable human being."

Bob's personal life included devoted, loving relationships within his family. In 1941, the same year that he was graduated from law school and was admitted to the bar, Bob was traveling on a train from Colorado to the West Coast for a shipboard trip to Hawaii to a sporting event.<sup>12</sup> On board the train, he met a young woman, Catherine Cooper, a native Coloradan, who was also Hawaii-bound. Bob and Catherine always remarked on the fact that, although both of them were from Colorado, they managed to avoid meeting each other until they were both on a train outside of the state.

Catherine was making the trip to visit another young man to whom—as rumor has it—she was practically engaged. By the time their ship arrived in Hawaii, however, the other suitor was—according to McWilliam's legend—entirely out of the picture. Bob and Catherine were married in 1942.

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10. Until about twelve years ago, he did not use any footnotes in his opinions. There are probably about five times as many footnotes in this profile of Judge McWilliams as he ordinarily uses in his lengthiest opinion. Bob, this is intended as an example of *reasonable* use of footnotes—sort of a model for your reference in writing opinions.

11. The Honorable James K. Logan, Judge, United States Court of Appeals for the Tenth Circuit. Judge Logan presides in Kansas.

12. As is alluded to above, Bob is somewhat of a compulsive observer of sports, and was even back then.

Catherine and Bob had one son, Edward, who they named for one of Bob's brothers,<sup>13</sup> who lost his life during World War II. Bob's son, Ed, possessed the good sense not to become a lawyer—he's a successful real estate broker. Ed's wife Marilyn, however, is an attorney, having graduated from the DU College of Law in 1991. Ed and Marilyn have three daughters. Family being very important to Bob, he treasures his granddaughters. Visitors to his chambers in the Denver federal courthouse are often shown pictures of granddaughters, Catherine, Sarah, and Anne, three delightful, charming young women.

Bob's wife Catherine died in 1984, after two very difficult illnesses. Bob and Catherine were married for forty-two years. Judge McWilliams was a loving, devoted husband to Catherine through her difficult illnesses leading up to her death.

Bob was subsequently fortunate enough to find another lovely and talented Colorado woman with whom to share his life. In 1986, he married Joan Harcourt Cady, one of his former law clerks. Joan, formerly a partner at Gorsuch Kirgis Campbell Walker and Grover, actively practices law in Denver, concentrating in alternative dispute resolution, an area in which her colleagues recognize her as practitioner, expert and teacher.<sup>14</sup> Joan describes her husband, Judge McWilliams, as extremely easy to live with, a good cook and one of the most flexible human beings she's ever met.

Joan sums up her husband in a sentiment that reflects the feelings of the many friends and colleagues who are fortunate enough to count Bob as a friend: "He's a gift!"

Joan, plenty of us agree!

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13. Surviving brother David McWilliams lives in Denver, and he and Bob maintain a close relationship. Bob was the oldest, Ed the middle and David the youngest.

14. Joan is an Adjunct Professor at the DU College of Law.

