

Judicial Profile

NICHOLAS J. PATTERSON

Hon. William J. Holloway Jr. Senior U.S. Circuit Judge, Tenth Circuit Court of Appeals

JUDGE WILLIAM J. HOLLOWAY JR. is a true gentleman. In the 40 years Judge Holloway has served as a judge on the U.S. Court of Appeals of the Tenth Circuit, he has impartially decided cases while treating colleagues, litigants, clerks, and staff with kindness and respect. “William Holloway is a man of sound judgment,” explained Justice Stephen Breyer, the circuit justice for the Tenth Circuit. “He is held in great esteem by his colleagues of the bench and bar alike. He has provided 40 years of outstanding service to the federal judiciary—for which we all are grateful.”

Born in Hugo, Okla., Judge Holloway comes from an Oklahoma family with a tradition of commitment to public service. His father, William J. Holloway Sr., was a highly regarded governor and lieutenant governor of Oklahoma. In high school, Judge Holloway won two national debate championships and became an outstanding student at the University of Oklahoma, which he attended for two years before leaving to serve in the U.S. Army during World War II. He attained the rank of first lieutenant before returning to the University of Oklahoma and earning his bachelor's degree. He then attended Harvard Law School, where he studied with renowned legal scholars like Dean Erwin Griswold and Henry Hart. After finishing law school, Judge Holloway worked as an attorney with the U.S. Department of Justice in Washington, D.C., where he helped litigate the steel seizure case, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952). During this time, he also became friends with a young William H. Rehnquist.

After working in Washington, D.C., for two years, Judge Holloway returned to Oklahoma in 1952 to practice law with the firm of Crowe & Dunlevy in Oklahoma City. In 1963, Judge Holloway married Helen Hoehn. The couple has two children, William J. Holloway III and Eleanor Gentry Holloway, as well as two grandsons. President Lyndon B. Johnson nominated Judge Holloway as a judge for the U.S. Court of Appeals for the Tenth Circuit, and he was confirmed



by the Senate in 1968. In 1984, Judge Holloway became the chief judge for the Tenth Circuit and served in that role until 1991; he assumed senior status the following year.

In the 40 years that Judge Holloway has served on the Tenth Circuit, he has, in the words of the current chief judge, Robert H. Henry, “served the federal judiciary and the people of the United States with unwavering integrity, civility, and industry, and with a profound commitment to administering justice and preserving the rule of law.” He has not done this through public speeches or extensive writings on the role of the courts, explained Andrew M. Coats, his former colleague at Crowe & Dunlevy and now dean of the University of Oklahoma Law Center; rather, he has “helped foster the public’s trust in a strong and independent judiciary by his conduct on and off the bench.”

Judge Holloway has furthered judicial independence through his 40 years of public service by tenaciously protecting the civil rights of those who come before him without regard for his own popularity. In

particular, when there were many problematic capital cases pending in the Tenth Circuit in the mid-1980s—including many from Oklahoma—Judge Holloway worked to protect the civil rights of defendants sentenced to the death penalty. For example, in *Chaney v. Brown*, 730 F.2d 1334 (10th Cir. 1984), Judge Holloway held that a death penalty imposed by a jury in a case heard by a district court in Tulsa County was unconstitutional, because the prosecutor withheld FBI reports that could have raised the inference that the defendant had not personally committed the murders.

Judge Holloway also protected the rights of death penalty defendants on the national level through his work as chief judge of the Tenth Circuit on the Judicial Conference of the United States, the federal court system's top policy-making group, at a time when recent Supreme Court decisions had placed substantial procedural obstacles in the path of state inmates seeking to file federal habeas corpus petitions. In 1989, Chief Judge Holloway joined 13 other federal judges in writing a highly unusual letter that was sent to the Senate and House Judiciary Committees and challenged Chief Justice William H. Rehnquist's authority as a spokesperson for the federal judiciary on the death penalty. The letter was a response to Chief Justice Rehnquist's formal transmission to the Senate Judiciary Committee of a proposal by a special committee headed by retired Supreme Court Justice Lewis F. Powell Jr. to speed judicial review of death sentences. The previous day, a majority of the Judicial Conference had rebuffed the chief justice's attempt to gain immediate approval of the proposal and voted to defer consideration of the proposal until the next scheduled meeting of the Judicial Conference. Chief Judge Holloway subsequently testified before the Senate Judiciary Committee on the proposal.

The following year, a majority of the Judicial Conference again rebuffed the chief justice by voting to amend Justice Powell's committee's proposal. The Judicial Conference voted to relax the proposal's tight limits on the ability of state death row inmates to file more than one habeas corpus petition in federal court and to allow the limits to take effect only in states that agreed to provide competent lawyers at all stages of the criminal proceedings against defendants charged with capital crimes. Ultimately, no version of the Powell committee's report was enacted into law.

As a consequence of these efforts, Judge Holloway was the subject of many death threats as well as biting criticism by the media, said Judge Robert E. Bacharach, a law clerk for Judge Holloway during this period and now a magistrate judge in the Western District of Oklahoma. Judge Holloway never complained about the threats or the media criticism and never talked to the media—even when gentle correction could have eliminated considerable unkind and misguided criticism of his judicial role. He recognized that his role was to decide cases and protect the rights of liti-

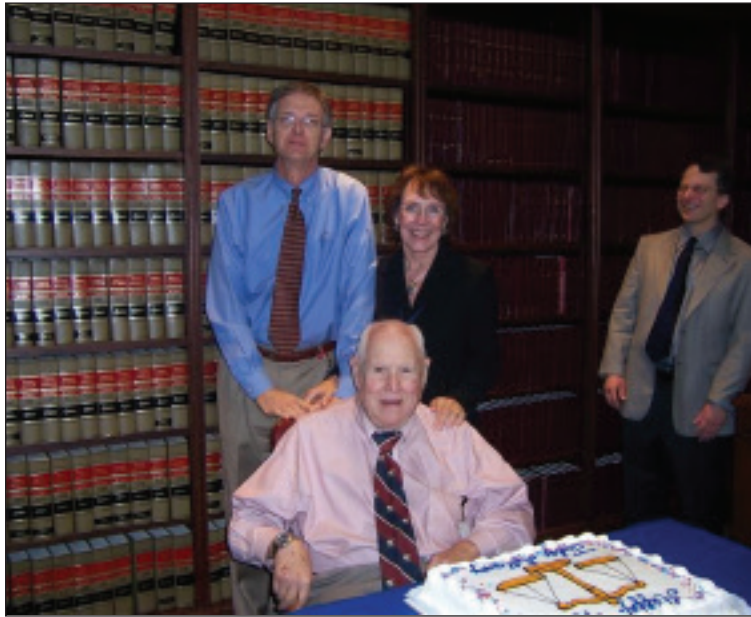
gants—including the least popular—and to disregard any outside influences that would affect the job that he was appointed to do.

Judge Holloway's dedication to the rule of law, his sensitivity to litigants, and his humility are also evident in the opinions he writes. As Judge James K. Logan stated at the presentation of Judge Holloway's portrait in 1992, the long hours that Judge Holloway works are reflected in the quality of his written decisions. Judge Logan noted that "we colleagues know that when we find a Holloway opinion in our research we need only check subsequent developments, as he has carefully and accurately cited all the pertinent authorities and made all of the analyses possible. His opinions are excellent and definitive." Chief Judge Henry recalls Judge Logan's less formal statement as he was describing the work of his colleagues when Chief Judge Henry first came onto the court in 1994: "A Holloway opinion," Judge Logan said, "is money in the bank." An example of Judge Holloway's meticulous approach is his antitrust decision in *Aspen Highlands Skiing Corp. v. Aspen Skiing Co.*, 738 F.2d 1509 (10th Cir. 1984), in which he upheld the district court's judgment in favor of an operator of an Aspen skiing facility on its monopolization claim against a larger operator. Judge Holloway carefully examined the applicable statute, extensive case law, and dense economic evidence presented at trial and produced a clear and easily understandable opinion. The Supreme Court subsequently affirmed this opinion unanimously in a decision that has been included in antitrust textbooks.

Today, after more than 40 years on the bench, Judge Holloway still works at least six days a week. "His work habits are legendary," Oklahoma Governor Brad Henry recently stated. "[H]e continues to work as hard, or harder, than most judges who are half his age."

In approaching cases, Judge Holloway applies an incremental, precedent-based method similar to that of his friend Justice Byron R. White, who served as the circuit justice for the Tenth Circuit. Judge Holloway decides issues one case at a time. "Judge Holloway has always worked tirelessly to arrive at the correct answer under the law—through a process divorced from political or philosophical agendas," explained Judge Jerome A. Holmes, a former clerk and now colleague of Judge Holloway on the Tenth Circuit, "Judge Holloway is a 'judge's judge.'"

In addition to applying his legal knowledge and work ethic to his opinions, Judge Holloway is guided by his heart. Judge Holloway writes each opinion with a deep understanding of the effect the decision will have on the people who appear before the court. Emblematic of this understanding is that in the thousands of opinions Judge Holloway has written, he has never made a joke. That is not attributable to an inadequate sense of humor; Judge Holloway is a very witty person. However, as he has explained to many



On Judge Holloway's 40th anniversary on the Tenth Circuit: Judge Holloway with Doug McBee, law clerk; Nancy Smiley, judicial assistant; and Magistrate Judge Robert E. Bacharach.

law clerks, most parties will have only one experience with the legal system, and attempts at humor by the court can often be misunderstood as insensitivity to the litigant. Instead, Judge Holloway endeavors to write opinions that are as clear and straightforward as possible so that litigants, whether or not they prevail, feel as though they have had their day in court and have been treated with dignity and respect. Judge Holloway has always keenly understood that his role in the legal system is to decide appeals, and his ego and personal amusement are unimportant.

Judge Holloway also expresses his respect for litigants by limiting the number of questions he asks during oral arguments to those essential for understanding any factual and legal underpinnings of the case that were not clearly articulated in the briefs. He has explained to his clerks that litigants have only a short time to make their arguments and he does not want to take away from this time unless absolutely necessary.

In addition to showing respect for the rule of law through the way he treats litigants who come before him, Judge Holloway expresses this respect by following a strict personal ethical code. If an action might have even the slightest hint or appearance of impropriety, he will not do it. Even though the Tenth Circuit

allows judges to sit on cases involving their former law firms after a reasonable amount of time has passed, in his 40 years on the Tenth Circuit, Judge Holloway has never sat on a panel in a case in which his former law firm was involved.

Judge Holloway's kindness, optimism, and friendship have had an uplifting and enduring impact on those who have come into contact with him, including judicial colleagues, attorneys, and law clerks. He is generally regarded as a leading force behind both the Tenth Circuit's and the Oklahoma City Federal Courthouse's traditions of collegiality among judges. "Judge Holloway is the kindest and most considerate man I know," said District Judge Lee R. West, who has served with Judge Holloway for more than 30 years. "It would be wrong to say that concern for others is second nature to him," said Doug McBee, who has been Judge Holloway's career clerk since 1994, "it's first nature."

In addition, the high regard in which Judge Holloway is held by judges, practitioners, and professors in Oklahoma City led the Oklahoma City legal community to form an Inn of Court affiliated with the Oklahoma City University School of Law in his honor. "Through our school's affiliation with the William J. Holloway American Inn of Court, our students are exposed to the high standards to which Judge Holloway holds himself and the extraordinary respect that he has earned from the bar by virtue of his adherence to those high standards," explained Lawrence Hellman, dean of the Oklahoma City University School of Law. Judge Holloway also has been a mentor, teacher, and friend to generations of clerks over the past 40 years. These former Holloway clerks include a Tenth Circuit judge and a magistrate judge in the Western District of Oklahoma, distinguished trial and corporate attorneys, government officials and attorneys, and law professors. Working closely with his clerks, Judge Holloway has taught them how to critically and impartially analyze the law while treating judges, colleagues, and litigants with kindness and dignity. "In his humble and unassuming way," Chief Judge Henry has written, "Judge Holloway has fought the cynicism that sadly plagues so much of our society (and in particular our legal culture) with the most effective of measures: his example." **TFL**

Nicholas J. Patterson was a law clerk for Judge William J. Holloway Jr. from 2002 to 2003.