

United States Court of Appeals  
For The District of Columbia Circuit

# Portrait Presentation Ceremony

ROGER ROBB

3:30 p.m.  
March 4, 1985  
Ceremonial Courtroom  
United States Courthouse  
Washington, D.C.



HONORABLE ROGER ROBB

# Proceedings

---

**CHIEF JUDGE ROBINSON:** The court is now convened in this special session for the presentation of the portrait of Judge Roger Robb. We are honored by the presence, on the bench, of the Chief Justice of the United States, who formerly was a member of this court and now is our Circuit Justice.

We welcome the members of Judge Robb's family who are here: Mrs. Irene Robb, his wife; Mr. Charles Robb, his son and Mrs. Robb; Mrs. Elliot Billings, his sister, and Mr. Billings; and Mr. George Billings, his nephew.

The importance of this occasion is marked also by the attendance of a large number of distinguished guests. Among them are Chief Judge Howard T. Markey of the United States Court of Appeals for the Federal Circuit; Chief Judge Aubrey E. Robinson, Junior, of the United States District Court for the District of Columbia, and judges of that court; judges of the District of Columbia Court of Appeals; Chief Judge H. Carl Moultrie, I, of the Superior Court of the District of Columbia, and judges of that court; the Honorable William H. Webster, Director of the Federal Bureau of Investigation; the Honorable Harold Tyler, formerly Deputy Attorney General of the United States and later a United States District Judge; the Honorable Joseph E. diGenova, United States Attorney for the District of Columbia; and Mr. Kenneth W. Parkinson and Mr. H. Donald Kistler, former law partners of Judge Robb.

There are other guests who will later appear as participants on the program and still others, including spouses of some of our judges, too numerous to mention.

It is now my pleasure to present to you, the Chief Justice of the United States.

**CHIEF JUSTICE BURGER:** Judge Robinson, Judge Robb, Mrs. Robb, members of the family and my colleagues of the bench and bar, I have known Roger Robb I think since I first came to Washington, which is longer ago than I like to remember, now going something over 30 years.

My first awareness of him was I was handed a transcript to review and see whether the proceeding in which that transcript was relevant had been a matter appropriately handled. As I said, he was just a name to me then. It was an administrative proceeding,

## PRESENTATION OF PORTRAIT

not a judicial one, and by the time I finished that reading of that transcript, I had formed a very high opinion of the lawyer who had conducted it and that opinion grew as I became acquainted with him over the years and after that when we became good friends and later colleagues on this court for at least a brief period before I was kicked upstairs.

I am delighted and honored to take part in this program, delighted that through the energy and imagination of some of our colleagues, it has been developed, this program, to insure that all of the Judges who serve are remembered with their portraits in these halls.

I might add, before I close, that in so many respects Roger Robb represents the type of judge which all of us, who have been in the English courts, recognize as the enormous value of their great judicial system where, to become a judge, you must first have been a leading barrister. Surely Roger Robb was one of the leading barristers of this bar, if not of the United States.

So, Roger, I consider it an honor as well as a personal pleasure to be here today to take part in unveiling your portrait.

CHIEF JUDGE ROBINSON: Thank you, Mr. Chief Justice. The Court now turns to one of its members, Judge George E. MacKinnon.

JUDGE MacKINNON: May it please the Court, Chief Justice Burger, Chief Judge Robinson, Judge Robb, Mrs. Robb, distinguished guests and friends. This pleasing opportunity at this moment in the history of the Court has been afforded me to join in making a few observations on the occasion of the presentation of the portrait of Circuit Judge Roger Robb who has been my very close personal friend and judicial colleague for a number of years.

In one respect, I have a unique ability to comment on Judge Robb's judicial service since our tenure on the court has coincided precisely. We were both nominated and confirmed on the same date and our commissions are both dated May 6, 1969. Since that date, we have ruled on all manner of cases, civil, criminal, and administrative and we have agreed and sometimes disagreed as to their disposition.

Also, in company with a substantial number of other judges of our Court and the District Court, we have lunched together at the large Judges' table practically every day we were in the courthouse over the past 16 years. The complexion of this luncheon table and the benefits to the participating Judges parallels that of the Inns of Courts of England. Every court should have the benefit from having such a daily meeting place. The camaraderie, with the attendant exchange of thought and opinions on all subjects, legal

## HONORABLE ROGER ROBB

and otherwise, broadens one's ability to deal with judicial problems and results in a greater understanding of the work of the courts.

In other words, you can gather, I have had a close relationship with Judge Robb over the years and feel qualified to tell you a little about him, about the man, and about the Judge. I can tell you that Judge Robb brought to this court an exceptional background. After graduating from Yale and its law school in 1931, he served as an Assistant United States Attorney in the District of Columbia where he was a highly successful practitioner and prosecutor for seven years. Then followed 31 years as a lawyer in an extremely varied private practice in the District, which included additional practice as appointed counsel in criminal cases and as special counsel for Congress in some nationally famous investigations.

He also carried on a very successful private practice as a personal legal advisor on all manner of legal problems to a nationally syndicated journalist, to some of the nation's leading businessmen and the high government officials in Washington. He argued significant cases in appellate courts and in the Supreme Court of the United States and came to be regarded as one of the nation's great trial lawyers. Thirty-eight years in such extensive practice in and out of all courts can equip a man to be a judge. In my opinion, Roger Robb was then as well qualified by his ability, personality and character to serve on this court as any judge who was ever appointed. His knowledge of District law has not been surpassed by any appointee.

So in 1969, at age 61, Roger Robb began his tenure as a Circuit Judge on the same court that his father had served on beginning in 1906. If you want to read some exceptionally fine, scholarly, judicial opinions, take down the volumes of U.S.App.D.C. from 1906 to 1937 and read any of the opinions of Justice Charles H. Robb, who was appointed by President Theodore Roosevelt, as an Associate Judge for the Court of Appeals for the District of Columbia, the predecessor of this present United States Court of Appeals. You will then see where Roger got his start. He has followed in the footsteps of his illustrious father.

From close observation over our entire judicial tenure on the court, I can tell you that Judge Roger Robb's opinions have also been outstanding. They have been uniformly scholarly, concise, sound models of clarity and generally the product of extensive personal review of the records, briefs and arguments. These judicial decisions have been consistent and evenhanded judgments. They reflect the knowledge and wisdom he gained from his fine education and 38 years in the rough and tumble of one of the broadest legal practices that any lawyer could enjoy.

## PRESENTATION OF PORTRAIT

No judge's decision is any better than his knowledge. Justice without wisdom is impossible. And Judge Robb's decisions, to the profit of our bench and bar, have been well grounded in both knowledge and wisdom. His opinions are gems of legal thought and analysis. Their legal quality is matched by a preeminent scholarly quality which, together with his brevity of expression, has produced outstanding results for the Court.

As one concrete example, I give you the case of *Swain v. Presley*, 515 F.2d 1290. The question in this habeas corpus proceeding was whether a prisoner convicted in the local District of Columbia courts had a right to bring a habeas corpus proceeding in the United States District Court. The case was heard *en banc* by all nine judges of the court. Eight ruled that the prisoner had a right to bring habeas corpus in the United States District Court, and thus, in effect, circumvent the D.C. courts. The independence of the local court system of the District was at stake.

Judge Robb alone dissented. He supported the independence of the local D.C. courts and wrote that the prisoner could be limited by statute, as he was, to the D.C. courts when applying for collateral postconviction relief. His dissenting opinion was terse, concrete and to the point. It covers just slightly more than one page in the printed reports.

When the case reached the Supreme Court, the majority decision was reversed and Judge Robb's dissent was sustained without a single dissent from any Supreme Court Justice. A singular instance of unanimity on that court. That is a silent tribute to Judge Robb's penetrating, incisive, legal mind.

Moreover, his expertise is not confined to the law. He is also an expert on major league baseball, Yale football, and their teams back to the time of Pudge Heffelfinger and Walter Camp and the history and campaigns of the famous Civil War Generals. His personal library on Civil War history would weigh down a platoon, and he has personally trod over many of the battle fields.

I will not dwell on his personal philosophy on the bench which is readily discernible in his fine opinions, except to say that it is practical, down to earth, and completely realistic. Along with some others, he believes, as is said, colloquially: "If it ain't broke, don't fix it." Judge Leventhal expressed a similar principle: "Don't surrender the good in search of the perfect." Both expressions aim toward the ultimate test of a decision, its workability within the law and our complex society.

Judge Robb has also contributed more than his share to improve the administration of justice, serving by appointment from the Supreme Court on numerous special judicial committees. These

## HONORABLE ROGER ROBB

include the Board of Certification that selected the original Circuit Executives for all of the nation's United States Courts of Appeals; the Commission on the Revision of the Federal Courts Appellate System which, among other things, made recommendations to the break up of the Ninth and the old Fifth Circuit; and he served for a number of years on the Advisory Committee on Criminal Rules of the Judicial Conference of the United States. Also, since 1978 he has been the Presiding Judge of the division of the Court for the appointment of special prosecutors. This important three-judge panel has been required to appoint special prosecutors, and to define their prosecutorial jurisdiction, in a number of highly political and volatile situations. The absence of substantial criticism of the work of this division, which has been called on in both Democratic and Republican administrations, is a fine tribute to the excellence with which this panel, led by Judge Robb, has discharged its difficult duties in the glare of high national publicity.

You should also know that Judge Robb, since his appointment, has devoted his entire time and efforts to the work of the Court. He has never let himself be distracted from his judicial duties by peripheral attractions. He has never sought headlines or public acclaim. Outside interests and activities and striving for public acclaim can substantially interfere with a judge's primary obligations. Judge Robb recognized this and decided to restrict himself to the work of the court. As they would say in Vermont, where he and his father were born: "He tended to his knitting." And this court has been the beneficiary. Our tremendous and difficult case load requires such dedication.

I believe I have said enough for you to realize that, like myriads of others, I hold Judge Robb in the highest esteem. He is what I would call a judge's judge. I know of no greater tribute that a judge can earn. We are all overjoyed that his former law clerks are presenting this portrait. In years to come it will be a reminder of his strong contribution to the work of this court.

Thank you.

CHIEF JUDGE ROBINSON: Thank you, Judge MacKinnon. The Court is pleased to recognize Judge Oliver Gasch, of the United States District Court for the District of Columbia.

JUDGE GASCH: May it please the Court. Chief Justice Burger, my colleagues of the higher court, and my colleagues of the trial court, Judge Robb, the family and many friends, at the outset, I wish to thank Roger's law clerks and his other friends for arranging for Mr. Don Stivers to paint this extraordinary likeness of our dear friend. Mr. Stivers also painted the portraits of George Hart, Leo Rover, Austin Fickling, Harold Greene, Bill Bryant and

## PRESENTATION OF PORTRAIT

myself. I wish to express my appreciation to Mr. Stivers, not only for the skill with which he has faithfully represented his subjects, but also for portraying something of the innate character of these men.

I first met Roger about 66 years ago when we joined Miss Cloakey's sixth grade class at the Force School on Massachusetts Avenue. As I recall, this was his first exposure to school. His father, Judge Charles Robb, had been a school teacher in Vermont, and he arranged for Roger's first schooling. It goes without saying that Roger was well taught from the beginning. Roger was soon recognized as our expert in American history, excelling particularly in the Civil War period and in a later period which involved Theodore Roosevelt. He was always eager to recite, to the delight of his less well-prepared classmates.

Judge Charles Robb had been an Assistant Attorney General in the Roosevelt administration and a close friend of the President. Given half a chance, Roger would relate anecdotes about T.R. that were not contained in our history book.

Without doubt, Roger was the brightest boy in the class. There were some girls, however, who gave him competition. There was Laura Loving, the daughter of the Assistant Engineer Commissioner. Laura had a photographic memory. She could recite a page from Dr. Frank Carpenter's *World Travel Geography* without missing a comma or semicolon. When it was Roger's turn, he inserted interpretative and explanatory paragraphs of his own which delighted Miss Cloakey.

I remember when we were in Miss McWilliams' eighth grade class. She assigned Roger and me to debate the Eighteenth Amendment. We walked down to the WCTU and the Methodist Board of Temperance and Public Morals, and we got the literature. I remember Roger's closing line, with a magnificent gesture and a tremendous crescendo, he intoned, "Whiskey never did anybody any good." Sixty-four years later, we enjoy our Scotch together. It would seem that his attitude has mellowed, and so has he.

After Force School, we went on to Western High School—where he again impressed his fellow students and his teachers with his tenacity, his learning and his good humor. He was on the swimming team, the debating society, and was president of the dramatics club. I shall never forget his performance in the title role of Julius Caesar. He spoke these prophetic lines: "I am constant as the northern star of whose true fixed and resting quality there is no fellow in the firmament."

I remember the intense competition between Roger and Sylvia, now my domestic advisor, for top honors in Miss Rice's civics class;

## HONORABLE ROGER ROBB

importantly, the former Miss Rice has been Mrs. Roger Robb since last October.

Yale had the privilege of entertaining Roger for the next seven years, during which he earned his Phi Beta Kappa key and membership on the law journal. These were formative years. His father's influence also was strong and enduring. They took long walks together. The Judge explained the intricacies of his cases and those of his colleagues to Roger who seemed to understand and was able to ask questions. When I was with him, for instance, when we walked out to Griffith Stadium to a ball game, I usually maintained a discreet silence to mask my ignorance.

Some years later, after serving as an Assistant United States Attorney and as special counsel for the Atomic Energy Commission, and as a partner in the firm of Robb, Porter, Kistler and Parkinson, he was nominated and confirmed to be a Judge of our Circuit Court of Appeals. Probably no Judge ever sat on this Circuit Court who brought to the court as much trial experience as Roger. In his seven years in the United States Attorney's office he tried all kinds of criminal cases, including 30 murder cases and often wrote the appellate briefs and argued the appeals. Leo Rover told me that in his long experience with that office, Roger was the only assistant who could have done this. In my eight years in that office, I never knew of any comparable performance.

Later he served as special counsel for the Smith Committee of the House. For years he served as counsel for the late Fulton Lewis, Jr. He represented Senator James Eastland in the Dombrowski case and Senator Barry Goldwater in the Ginzburg libel case and by court appointment, successfully served as counsel for Earl Browder, the head of the Communist Party.

His trial and appellate experience ran the gamut. There was never even an intimation of ineffective assistance of counsel. My colleagues on the trial court and I are especially grateful for his service on the Circuit Court. As one of them phrased it, when Roger is on the panel, you know he has read the record, has researched the law, and the opinion will be brief and to the point.

I thank you.

**CHIEF JUDGE ROBINSON:** Thank you, Judge Gasch. Judge Robb's portrait is the project of his law clerks, his relatives and his friends. The court now recognizes Mr. Paul L. Friedman, who served as Judge Robb's first law clerk.

**MR. FRIEDMAN:** Mr. Chief Justice, Chief Judge Robinson, members of the Court, Judge and Mrs. Robb, family and friends of Judge Robb, I am honored to speak here today on the occasion of

## PRESENTATION OF PORTRAIT

the presentation of Judge Robb's portrait to the Court that he loves so much and has served so well.

I speak not only as Judge Robb's first law clerk and as his friend, but also on behalf of his many other friends and admirers, including his over 30 current and former law clerks, some of whom have come to be present here today from as far as California, Arizona, Missouri, Texas, and North Carolina, and all of whom have been enriched as lawyers and as people by their association with Judge Robb.

The presentation of Judge Robb's portrait to the court today brings together those people who love and respect this very special man—his former clerks, his colleagues at the bar and on the bench, his friends, and his family, including, of course, his wonderful wife, Irene Rice Robb, who has been his strength and his inspiration over this difficult recent period, and who inspires and enriches the lives of all of us who know her.

In the very beautiful work of art we will soon unveil, everyone will recognize the strength, the wisdom, the experience and the character of Roger Robb, the man, the lawyer and the Judge. And all who pass through this courthouse in the future will be able to see on canvas those special qualities that all of us here today have come to know and respect.

In his career as a practicing lawyer before joining the Court, as you have heard, Roger Robb represented people of varying backgrounds, of varying beliefs and stations in life and he represented them with equal vigor and equal success. In addition to the numerous uncompensated court appointed cases where his clients were indigent defendants, he also represented many prominent people, including Senator James Eastland in *Dombrowski* versus *Eastland* and Senator Barry Goldwater in his successful libel action against Ralph *Ginzburg* and *Fact Magazine*. As court-appointed counsel, as Judge Gasch mentioned, Judge Robb successfully represented Earl Browder, the former Secretary General of the American Communist Party in his criminal trial for contempt of Congress.

Judge Robb was counsel to the Personnel Security Board of the United States Atomic Energy Commission in the matter of Dr. J. Robert Oppenheimer. In a 1955 article in the *American Bar Association Journal*, a prominent trial judge described Roger Robb's conduct of the cross-examination of one witness as "magnificent," and he described it as a model "of brevity and effectiveness." Any trial lawyer who has ever read excerpts from that transcript dreams of some day duplicating a courtroom performance that skillful.

## HONORABLE ROGER ROBB

Roger Robb's career as an eminent trial and appellate lawyer set the stage for what was to become an equally outstanding record on the bench. When he joined this Court in May of 1969, Judge Robb occupied a unique and special position in at least three respects.

First, as was mentioned earlier, Judge Robb became one of only two Circuit Judges in history to have followed in his father's footsteps. Judge Robb's father, Judge Charles H. Robb, was a member of the United States Court of Appeals for the District of Columbia for 31 years, from 1906 to 1937.

Second, Judge Robb became the only member of the Court at the time with purely local ties and qualifications. He had been raised in the District of Columbia and was educated in its public schools. Judge Robb had been a member of the District of Columbia bar since 1931, serving for eight years as an Assistant United States Attorney for the District of Columbia and from 1938 until he took the bench, as a private practitioner here. He had been active in the Bar Association of the District of Columbia and had served as its vice-president.

Third, unlike his colleagues on the court, Judge Robb had been a trial lawyer first and foremost, a truly great one for 38 years. He brought to the court a unique appreciation for the preeminent importance of facts in judicial decision-making and a practical understanding of the rules of evidence, courtroom procedures and the trial of cases. As a result, he prepared for the first oral argument he ever heard as a Judge and for virtually every one since, I suspect, by spending at least as much time reading the trial transcript as he did reading the briefs. Any lawyer who has ever appeared before Judge Robb not fully prepared, and even some of us who thought we were, knows this only too well.

After years of experience in the trenches, preparing, examining and cross-examining witnesses, and trying every manner of case, Judge Robb came to the bench with a view that the role of the appellate judge is limited: to decide only the case before the court, on the basis of the record developed through the adversary process, by the trial lawyers and the trial judge. He believed that new and innovative theories were not always preferable—indeed, usually they were not—to the tried and tested fundamental concepts on which our system of justice is based, concepts as basic as proof beyond a reasonable doubt, the presumption of innocence, and due process of law.

As his colleagues on the Court know, Judge Robb also brought to the bench a sense of fairness and objectivity and an ability to put aside his personal views in favor of deciding each case on its merits as the facts and the law require. On countless occasions, he would

## PRESENTATION OF PORTRAIT

say to his law clerks when he told them how he planned to vote on a particular case: "My vote on this one may surprise some people, but I call them as I see them." And he still does.

Thus, in his first year on the bench, Judge Robb was the lone dissenter from an *en banc* decision of the court holding a portion of the Narcotic Addict Rehabilitation Act unconstitutional. Four years later his view of the law was adopted by the Supreme Court. In another case, to the surprise of some, he wrote the opinion for a three-judge district court, holding that the retroactive application of the so-called Hiss Act, to deprive Alger Hiss himself of his government annuity, was an unconstitutional *ex post facto* law.

And early in his judicial career Judge Robb dissented from the affirmance by the court of a criminal conviction on the grounds of insufficiency of the evidence, and he wrote: "The requirement that guilt must be proved beyond a reasonable doubt is not a dry, legal formula or a routine incantation. It is the standard which for centuries has been used, understood and applied by lawyers, judges and juries, the standard which for centuries has shielded the innocent man from dubious and unjust convictions by whimsical juries with resulting forfeitures of life, liberty and property."

This language is typical of the clarity, fair-mindedness and reason which Judge Robb brings to every case. These qualities, his scrupulous attention to factual detail and precedent, his intellect and essential decency have earned him the respect of his colleagues, even when they do not agree with him, and the respect of the trial bench and of the bar.

Unlike Judge MacKinnon and Judge Gasch, when I first met Judge Robb it was already 1969 and he had just been nominated by the President to sit on this great court. Those of you here today who had known Judge Robb throughout his early years knew by then what I and his other law clerks soon discovered, that Roger Robb was fair, precise in his thinking and in his writing, and a great believer in our legal system and its ability to seek and find the truth through the adversary process. We also learned, of course, of his love for baseball, and of his love for Shakespeare, and of his amazing ability to recall with equal accuracy a line from King Lear or the batting average of Babe Ruth. And we discovered too, his great talents as a raconteur who could regale a crowd, large or small, with fascinating tales of the courtroom, of his own trial experiences and those of others.

In addition, we learned of those special inner qualities Judge Robb possesses that have been so important to him and to those around him, particularly in these recent years: his indomitable spirit, his quick wit, his mental toughness, and his sharp mind.

## HONORABLE ROGER ROBB

Judge Robb, each of us here today cherishes your friendship and respects your contributions to the Court and to the legal profession. We only hope that the portrait your law clerks, your family and your friends present to the court today will serve in a small way as a lasting statement of our admiration, and our respect, and an inspiration to young men and women who aspire to be great lawyers and who love justice.

Thank you.

CHIEF JUDGE ROBINSON: Thank you, Mr. Friedman. The Court now recognizes another of Judge Robb's former law clerks, Mr. Patrick M. Raher.

MR. RAHER: Mr. Chief Justice, Chief Judge Robinson, members of the Court and distinguished guests, it is a pleasure and an honor for me on behalf of the law clerks, friends and the family of Judge Robb to present to the Court his portrait.

The portrait was painted by Mr. Don Stivers of Wilton, Connecticut. Mr. Stivers is a well-known artist and has painted many other government officials, including French President Charles deGaulle, Texas Governor John Connolly, and Secretary of the Navy, Elmo Zumwalt. You have already heard of other Judges in this city that he has painted, as identified by Judge Gasch, and one other member of the court sitting in this room right now has also been painted by Mr. Stiver, and that is Judge Harold Greene, whose portrait is over in the Superior Court.

Judge Robinson, as we unveil this portrait, I would ask the Court to accept it and place it on display in the courthouse in recognition of Judge Robb's faithful and dedicated service to this Court.

Thank you.

JUDGE ROBB: I had thought perhaps I would say a few hundred words, but I think in view of the lateness of the hour, and the fact that my heart is pretty much running over, I am just going to say thank you, thank you very much, to all of you people. Thank you, God bless you. (applause)

CHIEF JUDGE ROBINSON: It gives me great pleasure to accept this portrait on behalf of the court. We are grateful to Judge Robb's law clerks and other contributors for this wonderful gift, and equally appreciative to Judge Robb for his magnificent performance as a judge of this court. He brought to the bench the great ability, the vast experience, and the superlative qualities so vividly described by the speakers this afternoon, and, following in the footsteps of his distinguished father as a member of the court, has served it these many years in the highest tradition of the federal judiciary. His portrait will continually remind us of the

## PRESENTATION OF PORTRAIT

shining example he has set, and inspire us to constantly strive to do our very best in the interest of the court.

The audience is invited to come to the well of the courtroom and view Judge Robb's portrait after we adjourn. A reception for invited guests will follow in the Judges' Dining Room on this floor of the building.

The Marshal will now adjourn this session.

**THE MARSHAL:** This Honorable Court now stands adjourned until further order of the Court.

(Whereupon, at 4:25 p.m., Court was adjourned.)