

Robert Henry

A life in pursuit of justice—Robert has served the law as a judge, lawyer, and educator.

Chapter 01 - 0:57

Introduction

Announcer: Robert Henry is a former United States circuit judge who was the 17th president of Oklahoma City University. He formerly served as the attorney general of Oklahoma from 1986–1991, before resigning early in his second term to become the dean of the Oklahoma City University School of Law, where he remained until 1994. President Bill Clinton appointed Henry as the United States circuit judge of the U.S. Court of Appeals for the 10th circuit, a position he held until he resigned in 2010 to return to Oklahoma City University as president. He retired as president in 2018 and since has worked as an attorney specializing in mediation, moot courts and appellate advocacy. In his oral history interview, you will hear Robert talk about his first political campaign when he was 23 years old, why he likes to make jams and jellies, his friendship with Sandra Day O'Connor, and other interesting stories on the oral history website, VoicesofOklahoma.com.

Chapter 02 - 4:05

Shawnee

John Erling: My name is John Erling. Today's date is October 23, 2020. Robert, would you state your full name, please?

Robert Henry: My name is Robert Harlan Henry.

JE: And your date of birth?

RH: April 3, 1953.

JE: And your present age?

RH: I am now 67.

JE: Alright. I'm in our offices here in Tulsa recording this. Where are you?

RH: I am in the offices of Whitten and Burrage Attorneys in Oklahoma City, Oklahoma.

JE: Alright. Robert, where were you born?

RH: I was born in almost the center of Oklahoma in the wonderful town of Shawnee.

JE: Yes...

RH: Home of Shawnee Milling Company.

JE: Right. And there are many notable people who came from Shawnee. I have a list here— Jack Baer, sports star; Dan Boren, son of David Boren; Joe Frank Cobb; Leroy Gordon Cooper, one of the original Mercury Seven astronauts.

RH: Oh yes, I remember when he did his orbit of the earth. All the people of Shawnee turned their porch lights on at night in hope that he could...as he flew over that area...in hope that all of those lights would shine up just a little beady piece of light that he might be able to see. And then we named our vocational technical school after him, Leroy Gordon Cooper Vo-Tech School.

JE: Oh, okay. Robert Galbraith, Jr. drilled the first oil well in Glenpool; your cousin, Brad, governor of Oklahoma; Kim Henry; you, of course...

RH: Yes.

JE: And then Brad Pitt, the little boy who went up and became an actor/producer in Shawnee.

RH: Yes, I hear that Brad says that Shawnee is a good place to be from.

JE: Oh well (laughs).

RH: (laughs)

JE: And well there's a whole list here I don't have time for all of them, but then notable is Troy Smith, developer of Sonic Drive-Ins, opened the first one in Shawnee in '59.

RH: Absolutely. You talk about a guy who knew how to do it—he got it down to a fine science and built a really fine company and was quite a philanthropist. He gave a lot of money to various charities. But I remember going to the place that was the first Sonic and one of the things they did that we kids enjoyed was they put a peppermint candy in the little bag of food that you got. The hamburgers tasted really good but to our juvenile taste buds, that little peppermint candy really sort of hit the spot.

JE: (laughs) That's cute. And, you know, during Covid where people were hesitant to go to restaurants, Sonic and other drive-ins probably had an uptick in business because they could just, you know, drive in with their car and not expose themselves. So that probably was an answer for many restaurant needs.

RH: Well it certainly has been for me because there is one on the way to the office and I (laughs) stop there more than I stop anywhere else. And you know what? They still give the peppermint!

JE: (laughs) That's great! Alright (laughs). I guess I better send you one in the mail at the end of this thing, right? (laughs)

RH: (laughs)

Chapter 03 - 6:00**Henry Family**

John Erling: Your mother's name?

Robert Henry: Her name was Tobler...Hazel Tobler. She was from Spiro, Oklahoma in God's country. You know that part of Oklahoma.

JE: Yeah.

RH: Leflore County where Bob Kerr built his cattle ranch. You know why he built it there?

JE: Why?

RH: Because it had the most rainfall of any county in Oklahoma. He wanted those black angus cattle to have plenty of grass to eat. But Spiro was the Spiro Indian mounds...Spiro was a great little town. It lived for football and the Baptist church, I think.

JE: Yes (laughs). Describe your mother, her personality and what you drew from her.

RH: Well, my dad used to say that my mom was in charge of the religion in our house. I think that was probably true. She would be a Southern Baptist nun, I think. Although as she got older, she became more of an independent Baptist. But she was a very kind, sweet person. She taught Sunday School to the 3-year-old children in the First Baptist Church there in Shawnee. She loved little children. She had a degree in secretarial science, which is what women did in those days, from Oklahoma Baptist University. So I did get some real good help from her in typing papers over the years (laughs).

JE: And then your father's name?

RH: My father was Lloyd Harlan Henry. He was kind of a cut-up. He was a World War II veteran. I guess at 19 he was over in Africa and he did D-Day and was a decorated paratrooper. He just became very interested in government and law battling through the war. He came back, and he had enrolled in Oklahoma State University before the war but he left it to join the paratroops. But then when he came back, he decided to go to Oklahoma Baptist University because it was near where his parents lived in Pottawatomie County. His parents were lifetime school teachers. That's where the young college student who was a secretary to Dr. Raley, the president of the university, noticed him—and that was my mother. She noticed him and kind of looked at his records and everything...(laughs) probably was a violation of the law...but anyway, they hit it off and had a wonderful marriage and three children.

JE: Did you have brothers or sisters?

RH: I have an older brother—a brother who is 3 years older than I—and a sister who is 3 years younger than I.

JE: Alright. Then you have a cousin by the name of Brad Henry, the 26th governor of Oklahoma.

RH: His father was my Uncle Charles. That was my dad's brother, Charles Henry, who was also in the legislature and a county judge from Pottawatomie County.

JE: And then something that will probably never happen again, you swore in Brad to be governor. It is unlikely that scenario will happen again, although you can't ever say no, but it was the first time I'm sure.

RH: It was...as a judge, I couldn't be involved in his campaign because judges are nonpartisan. But when he was elected, the inaugural ceremony is not considered a partisan ceremony. All of the statewide officials are inaugurated too at the governor's inauguration, so you have people of both parties being selected. Cousin Brad asked me to administer his oath of office and swear him in, so we got his father's Bible and used the family Bible for the swearing in ceremony.

JE: Very good.

Chapter 04 - 4:35

Public Service

John Erling: How does public service come about in your family to Brad, to you—it must come from grandparents, or where does it come from?

Robert Henry: Well, you are prescient. It actually did come from our grandparents on the Henry side—Granddad Henry and Grandmother Henry. Granddad ran for public office but was not elected and I always thought that was strange because I thought he was probably the finest of anyone who wore the Henry name. But he was a school teacher, a basketball coach, and a principal in Pottawatomie County, Bethel Acres, Maud, various towns. Grandmother taught at elementary school. One of their students is Wayne Greene of the *Tulsa World*.

JE: Oh yes.

RH: He had been in class and thought they played a significant role in his life. But my granddad used to...every campaign season, would always have bumper stickers and signs in his car. He would tell us to pick a candidate and support that candidate in the election. It doesn't matter which election it is, you know. You could pick the state representative, you could pick the county commissioner, you could pick the court clerk if you wanted, but just pick somebody that you knew or that you liked or that you wanted to know and support them. So we sort of grew up going to meetings, you know, where somebody would step up on a bale of hay and then on the back of a pickup truck and he would desperately try to avoid swallowing a moth while you made your speech, you know.

JE: (laughs) Right.

RH: I was not always successful in avoiding moths but it does really interfere with the meter and rhythm of the speech when you swallow a moth.

JE: (laughs)

RH: But I did everything I could to save his life, you know, but I couldn't do it.

JE: (laughs) I understand. (laughs) So then it was part of your DNA, but then probably part of your DNA was the democratic party as well. I mean, that was probably where it was set with your grandfather.

RH: Well, my dad said once; he said, "Son, I've made you a Baptist and a democrat and the rest is up to you." We were...you know, the democratic party was pretty conservative in Oklahoma in those days and probably still is relatively on the conservative side of the democratic party. In my childhood, it was pretty much a democratic state because of the Civil War, you know, the war of northern aggression as it was still referred to. You know, Lincoln and the union were republicans so democrats sort of took things over in the south. But the democratic party became more involved in racial matters. You know, Lyndon Johnson was a big leader in that, so the party sort of moved to the left a little bit for a number of years. So it is not the rock-ribbed conservative democratic party that it used to be.

JE: Yes.

Chapter 5 - 8:13

Student Council President

John Erling: It would have been...I think you were about 10 years old, 1963...President John Kennedy, JFK as we called him, November 22nd was assassinated. As a 10-year-old and now you look back, what are your recollections of that day?

Robert Henry: Well, I'm in my office right now and I'm looking at a beautiful oil painting I have on the wall and it shows young John John in his delightful little formal coat saluting the caisson. Remember that photograph...

JE: I sure do.

RH: ...when his father's caisson was being rolled by. JFK...I do remember him. My parents, of course, were democrats and so we supported him even though he was Catholic. Because, you know, the Baptists and Catholics at that time didn't get along very well.

JE: Right.

RH: But my father was very ecumenical and I remember him teaching me about JFK. My mother...you know, when he was killed, she said, "Now we're going to make a scrapbook

of this and we're going to collect all of the clippings that we can because this is a historic thing and this is something, this is the most sad thing you'll see in your life probably in a public matter." So we kept a scrapbook...which I have lost track of it now but for many, many years...JFK compared to Eisenhower and other people in politics at the time, he seemed so young.

JE: Yes.

RH: He was witty and clever. He must have worked on his little *beau monde*, you know, like Churchill did because he always had something witty and clever to say. Jackie, you know, refurbished the White House and brought sort of a new fashion to the job. It was such a tragic thing. I remember it very well to this day.

JE: So we have you in Shawnee High School. Were you involved in debates or what have you? You said you were president of the student council?

RH: Yes, I was also on our debate team. I won a bid to the state debate championship, but I was not a very good athlete. In fact, I was not an athlete at all—a fact that disappointed my father greatly. I think he could have cared less about debate skills and the fact that I was an excellent student. I think he wanted me to be able to return a punt, which I was terribly unable to do.

JE: (laughs) But he must have been proud of you. You were the national winner of the Elks Leadership Award.

RH: Well I think he liked that. Barry Goldwater and Ernest Hollings had made that selection and won me an all-expense paid trip to New Orleans for me and my family. He liked that too. The Elks would probably be disappointed with this but he actually had a hurricane. Have you ever had one of those? It's a cocktail.

JE: No.

RH: It's a New Orleans standby that's about a quart of various kinds of intoxicants. I'd never seen my father consume many things alcoholic but he did when we were having dinner one night there at New Orleans.

JE: And then, I mean you were a bright young man, of course. The William Randolph Hearst Foundation scholarship—tell us about that.

RH: Well that was a scholarship that was founded by the Hearst Foundation, which is one of, you know, America's great foundations. It was...you had to take a test, write an essay, and do an interview. Each state got to send two people and, among other things, you got to spend an afternoon in the office of one of your United States senators. But we also had a meeting scheduled with President Nixon, who cancelled, but we had Melvin Laird, the secretary of defense, who we met there. We met Hubert Humphrey. We met all of these great, great senators. We had a full week in Washington; a \$5,000 scholarship, which \$5,000 was significant in those days in '71. I have remained active in the program and the

Hearst Foundation has invited me to come back and speak to the delegates there for, I guess, probably the last 15 years. The Hearst Foundation does a lot of good things but I think this senate youth program is maybe their flagship.

JE: Right, and then Senator Fred Harris and former Senator and Governor Henry Bellmon made that selection of you.

RH: Yes. Now Senator Harris was so busy at Washington, I didn't get to see him when I worked in his office. I just got to be in his office. I did get to go to a press conference that he had with Sol Linowitz. But I wasn't...you know, they didn't ask for my opinion about anything. I was just a student, you know. But I was able to leave a note with Senator Harris asking him to come speak at my student council banquet—the annual banquet for the student council at Shawnee High School. Now Senator Bellmon did have time to meet with me and went to lunch with me. Vietnam was the big issue there and Senator Bellmon was a little bit to the right of me on Vietnam. I just kind of thought he was not the coolest thing. He seemed to me to be kind of laid back and too conservative. It's interesting because he later became one of my greatest friends and one of the people I admire most in political life when he was governor and I was attorney general. I just didn't give him enough credit when I was a kid. But Senator Harris did come back to Shawnee and speak at my annual student council banquet. It alienated some of the locals there because Harris was too liberal for some of them in those days. But anyway, it made me really happy.

Chapter 06 - 4:13

Washington, D.C.

John Erling: Because I did all this background on you, you met another famous person in Washington, D.C. You walked into the Mayflower Hotel and...

Robert Henry: Yes...

JE: ...and you shook...

RH: ...the hand of Tiny Tim, is that who you're talking about?

JE: No, I understood you shook the hand of J. Edgar Hoover.

RH: Oh I did, I did do that too. But Tiny Tim...you remember Tiny Tim, tiptoe through the tulips?

JE: Of course (laughs), yes.

RH: He was staying in the Mayflower. Because I didn't meet J. Edgar Hoover there, I met him at another place. I'll tell you about that real quick in a minute. But Tiny Tim came in with those mounds of unkempt curls. You remember those weird curls he had?

JE: Yep.

RH: And ukulele in tow. And Mrs. George R. Hearst, Rosalie Hearst, was there with the students. She walked over to him and she said, "Mr. Tim, I am Rosalie Hearst. I met you at 'such and such place' and 'such and such place' and I'm here with the Hearst Foundation. We would just be so appreciative if you would give us a little time and meet these students who are all honored scholars from all the states in the union." And she just put her arm in this unkempt hippie-looking character, you know, and she is one of the very well-groomed socialites, a very refined person. And she charmed him and he spent several...I would guess he probably spent at least an hour with meeting all the students. We didn't get him to sing "Tiptoe Through the Tulips" but we did meet him. Then when we were touring the FBI building...the FBI people in charge of the tour were very officious and very humorless, and Mrs. Hearst walked up to one of them and she said, "I wonder if the director would be able to meet with these students," and this man said, "The director is very busy madam." And she said, "Well yes I suspect that he is, but would you mind to just go tell him that Mrs. George Randolph Hearst is here with the students from the Hearst Foundation. I know Mr. Hoover and I think he might want to do this." So the guy said, "Well, this isn't gonna happen but I'll go do it." So he came back and he was growning and very upset and he said, "The director will meet all the students. They may only say their name and the state they are from. That's the only thing they may say to him." (laughs) So she called us all together and said, "Now students"...and there were 106 of us. They have some representatives from something other than states, but all states are represented. And so told us what we were supposed to do and she said, "Now this is very rare to get this done so I want you to be sure you follow the rules." Nobody would dare to say anything else to Mr. Hoover other than "Robert Henry, Oklahoma" (laughs).

JE: Did he say anything to you or just...

RH: He just shook our hand. He was getting older then and was...seemed a little bit diminutive, you know, but it was all business.

Chapter 07 - 6:18

State Legislature

John Erling: What year did you graduate from Shawnee High School?

Robert Henry: 1971.

JE: Alright, and so then you go on to college at Oklahoma University, right?

RH: Yes, I was a university scholar there at OU. I graduated in 3 years at OU and then went to OU Law School and graduated in 2-1/2 years there and ran for the legislature my last semester.

JE: Right. Your trip to Washington and all, did that plant any seeds for you as you came home, maybe what I want to be or do or politics? Did it have any lingering effect on you?

RH: It did. I thought that my ultimate goal in life was at that point to be a United States senator. I thought that's what I wanted to do. That would have been...I was realistic enough to know that, you know, I couldn't become the president of the United States. That would be highly, highly unlikely for multiple reasons including not being qualified (laughs).

JE: (laughs)

RH: But I thought I might be able to make it in the senate and that was the goal I had for a while but that changed as other things happened down the line.

JE: Right. You were elected to the Oklahoma Legislature and that was the last semester of law school, right?

RH: Right. I had five opponents and that was a barn burner of a race, and I ended up in the runoffs with my oldest opponent. I was 23 years old and people were calling me a kid and saying I was too young to be in the legislature. Interestingly, my uncle, Charles Henry, had many years earlier—or several years earlier, quite a few years earlier—been elected to the legislature at age 22.

JE: Hmm, wow.

RH: So there was some precedent. But I was 23 and ended up in the runoff with the oldest person in the race. So it was the oldest person versus the youngest person. There was a runoff for the state representative, the state senator, and the county sheriff. I led the runoff—I got more votes than all of the others did in all those three races.

JE: What was the name of the oldest...what was the name of that opponent and how old was he?

RH: He was 52 or 53, I think. His name was Edgin. His family...he had a brother, I think, who was the county commissioner, so he'd had some family in politics too. Of course, we were all democrats. There weren't...Pottawatomie County was still a democratic haven at that time.

JE: So then it's interesting how they trusted you at your age over that. But then, I mean, your family was entrenched—your grandfather, father and uncle—in Pottawatomie County. I would imagine...obviously, that helped.

RH: It certainly helped. My grandmother—my sweet Grandmother Henry, who was the elementary education teacher—she made phone calls all day long. She went to...in the general election, you know, there were a couple boxes that we didn't do so well. So grandmother in her 70s decided she would go door-to-door in those boxes. She knocked door-to-door. She met some of her former students, you know. But it's gotta kind of help when a sweet old lady grandmother comes out wanting to campaign for her grandson.

JE: Maybe you and your family just out hustled the other person...probably was one of the ways that you won.

RH: I think we just truly outworked him. In the general election, the students from OBU were not there. You know, it was summer break. But in the runoff, they came back. We had really organized Oklahoma Baptist University. We won that box by 300 votes, I think, which was very significant.

JE: Then you ran unopposed for the next four elections.

RH: Right. You know, if you kind of do it right, sometimes you can let it carry you through for a while. We worked so hard and I worked really hard as a state legislator and joined all of the things I was supposed to join and acted in my church and acted in the community. So I was unopposed all the way through to 1986 when I ran for attorney general.

JE: I think a friend of yours said that you beat nobody four times.

RH: Right (laughs). Associate Dean Arthur LaFrancois of OCU Law School said, "Well that's no big deal, you beat nobody four times."

JE: (laughs) Okay, so that span was about '77-'86, so you spent nearly...

RH: Right...

JE: ...about 9 years...

RH: 10 years.

JE: 10 years there, right.

Chapter 08 - 8:10

Accomplishments

John Erling: In the late '70s/early '80s, a few issues...some things you were proud of that you accomplished as a state legislator.

Robert Henry: You know, one of the things, John...you remember the old Oklahoma gridiron we used to have where the press roasted everybody. Their motto was "There's always an aroma in Oklahoma"...

JE: (laughs)

RH: ...you know, the ethics of the state legislature were pretty lax. We didn't have an ethics commission. We had very minimal laws. Lobbyists passed out money left and right. It was... initially we didn't have open meetings and open records. Those came and were enforced throughout my 10 years in the house. Fortunately, I was on the right side of those issues. Now, you know from your profession...can you imagine what things would be like without open meetings and open records?

JE: Oh yes.

RH: Just awful. I remember one time there was...you know, I was trying to get along with all the members of the legislature because I thought I might want to try to run for, you know, one of the offices—majority caucus chairman...you know, maybe someday speaker. So I was trying to get along with everybody. But some of them I couldn't really get along with. I went to...there was a room called the cheese room. Have you ever heard of that?

JE: No (laughs), no...

RH: You'll have to ask your wife, Margaret, about that...if she ever heard any stories about the cheese room. But there was this room that the lobbyists pooled together and just kept a bar and snacks going, you know, every night. People would go there to the bar and drink free whiskey and talk to the lobbyists. One night, I decided well I better go check this cheese room out and see what it's like. I got in and there was a big card game going on. There was a sort of uniquely presented woman—uniquely clad. I couldn't exactly tell what it was about her but there was something different about her. I found out...some person came over and said, "Well, this is a prostitute who these lobbyists have brought in here and the winner of the card game gets to have her services."

JE: (laughs)

RH: I said, "Oh, okay, thank you," and I backed out of that place and I never came back. I just thought, you know, there's a lot of stuff going on in here and I don't think I'm for any of it.

JE: (laughs) Was that a room in the capitol?

RH: No it was in a sleazy hotel not too far from the capitol.

JE: Okay (laughs).

RH: But they don't have that anymore, I'm glad to say. You know, one of the persons serving the bar was a house sergeant at arms. I don't even know how that happened. I hope he was just volunteering. I hope that wasn't, you know, part of his job.

JE: (laughs)

RH: I don't think it was. But I never did...well I was elected majority caucus chairman one time but I could never reach a broad enough group of people, I think, to become the speaker.

JE: And why is that? You seem like a charming guy and all. I mean, why wouldn't they cater to you?

RH: Well, for one thing, I didn't think it was a good idea to be playing poker for prostitutes. And I had...I don't know...I was kind of a bit of a straight arrow, I think.

JE: Not in with the guys, the boys, the boys club?

RH: Yeah, not in with some of the boys, you know, that had wine, women and song.

JE: Right.

RH: I was pretty interested in the song part of it but not the wine and women.

JE: Right. The school of science and math—you were involved with that.

RH: Yes that under the leadership of the great and now [unintelligible] Penny Williams, who was a great friend of yours...

JE: Yes.

RH: ...and Margaret's.

JE: Let me just say that we have Penny Williams' interview here on the website, VoicesofOklahoma.com, so with that plug, move ahead and tell your story.

RH: Okay. Somebody used to say about Penny Williams, you know, if you have 10,000 ideas, a couple of them have got to be okay. You know, she had so many ideas. Everything she ever read, she got something from. "Hey, look at what they're doing here in outer Mongolia"...

JE: (laughs)

RH: ..."Maybe we could do that here," you know. But she came up with this idea of creating a school for our brightest students. Because we found that a lot of our really bright students in Oklahoma high schools, they were stealing hubcaps because they were bored to death. There just wasn't enough to do, enough going around. You know, the deity makes his or her gifts geographically without any particular rhyme or reason. We have smart people born in Oklahoma too.

JE: Right.

RH: Really smart people. And so we found that we thought we could create this residential high school that would probably be affiliated with one of our universities and give our brightest and best high school students the brightest and best teachers that we could buy. Tulsa took a great leadership role—the Schustermans, Penny Williams, other people in Tulsa, the Lortons...Tulsa took a great leadership role in helping this, even though there was an argument over where it should be. Tulsa wanted it and Oklahoma City wanted it. It finally ended up in Oklahoma City, which I think is where it needed to be actually because that's where the capitol was, that's where all the resources were concentrated. So they worked initially with OU and OSU but created a remarkable school of science and math.

Chapter 09 - 3:13

Jams and Jellies

John Erling: Let me interject here that you had a huge interest in public service but that's not the only interest you had. You talked about your grandmother and such an influence, but she influenced you in the love of gardening and cooking.

Robert Henry: Yes I had one grandmother was a gardener and the other grandmother was a cook.

JE: Oh really, okay. So both of them.

RH: Yeah, the grandmother that was the cook also did a little bit of gardening. But the grandmother who was the gardener was one of the worst cooks I have ever known.

JE: (laughs)

RH: Her idea of a hamburger was to get the frozen meat out of the freezer and hack at it with a wooden blade until she could get kind of a squared off patty and then she'd put it in a warped Teflon skillet and fry it up and put some Oreo cookies out and an old big glass bottle of Coca Cola and that was supper. But boy could she garden and she was the teacher. My other grandmother was a fabulous cook. She made cakes and pies and jelly. I still make jellies and jams because I learned that from her. Both of my grandmothers were very religious people. I'm pretty ecumenical now...I'm very ecumenical now. They were both...the gardener was a Methodist who converted to the Baptist church because of my granddad. My grandmother, the cook, was a Baptist from Spiro, Oklahoma.

JE: So you must have, as a young man...maybe those jams and jellies you entered at the State Fair for some blue ribbons?

RH: I did not as a young man but I did later (laughs). A few years ago for two or three years, my wife and I entered jams and jellies in the State Fair. I served on the State Fair board. That didn't give me an edge because we entered them under Jan's name, but we won several blue ribbons. There's something about jams and jellies—they just taste better homemade. You know, you go buy a jar of Welch's grape jam and it just doesn't quite do it for you.

JE: I can hear the announcer say, "It's got to be Smuckers."

RH: (laughs) Well, Smuckers has that strangely alliterative name, but Smuckers couldn't compete to my grandmother's jams and jellies.

JE: So it's got to be Henry's—we can put it that way.

RH: Yeah, I'll have to make you some sometime.

JE: I'd like that, right.

Chapter 10 - 3:40

Collapse

John Erling: You mentioned Jan, your wife. She kept you straight with your teeth. She was a dentist—professor of dentistry.

Robert Henry: Yes, she is a fabulous, fabulous person. She and I were married in 1993 and she stayed with me through thick and thin and through my hospital stay that I had this last year that was 49 days. She just is a wonderful person and she is just getting ready to retire from a dental career.

JE: Yeah. You know, I've got to ask you, 49 days in the hospital. I mean, how do you handle that and how do you stay positive and depression and all of that? So that came as a result of your heart ailment, right?

RH: Yes, I developed some sepsis and I got a bad infection. I think it was like on a Monday and I developed these chills. I went to my college roommate, who is a physician, and he said well I'm going to send you to the lab and we're going to run some tests on your blood and, you know, we'll get those back tomorrow and see how things are going. I was getting ready to actually fly on an airplane to Denver to participate in a case and to make a speech for the 10th circuit. I just collapsed in front of my car. Somehow one of my shoes was off my foot, my telephone was away from my body, and I was just out. Somebody walking a dog came by and called the ambulance and the ambulance came and they rushed me to the OU Trauma Center because I was in really bad, bad shape. So they almost lost me but they decided that they could transfer me to Integris because Integris had more heart machinery. So they induced a coma for several days, so I was just completely out of it for several days while they kept me alive and then they brought me back. I couldn't walk. The last part of my stay, I had to go to the rehabilitation center/the rehabilitation hospital to spend the last few days there. But I don't recommend 49 days in the hospital, I'll tell you.

JE: No, no, no, not at all. Okay, this happened in the last year, in 2019?

RH: Yes it happened really in November of last year, just a little less than a year ago. So my Thanksgiving and Christmas were spent in the hospital.

JE: Okay here we are now in October 2020. Your strength today—are you back to full strength?

RH: I wouldn't say full strength but I'm pretty much there. I've got a little bit of neuropathy left in some areas but my brain seems to be working now, which is relatively good.

JE: Yes, it is (laughs).

Chapter 11 - 8:42

Attorney General

John Erling: Alright, so let me bring you here to 1986. You leave the legislature and then you had the endorsement of Carl Albert and David Boren to run for attorney general. Was that a design of yours or did they come to you and say you should run for attorney general? How did that come about?

Robert Henry: Well, I had gotten to know Carl Albert, who was a lover of Oklahoma history as I was. You know, they called him, as you will recall, John, the little giant from little Dixie.

JE: Yes.

RH: You know, he was a smallish person with a booming voice and a towering intellect. We just became good friends. I went to see him when I was getting ready to run for AG and he quietly made an appointment for me in his office. He was a retired member of Congress

then but having been a former speaker, they gave him an office. He was like an extra congressman for Oklahoma because he just continued to do stuff for Oklahoma from this office. I went to see him and we exchanged pleasantries and he said, "Well, what can I do for you, young man?" and I said, "Well, I have a favor to ask. I'm getting ready to run for attorney general and I would really like your endorsement. If you would do that for me, I would do something valuable for you." I was playing a little game which I thought he would like. He looked at me and said, "Well what would that be?" and I said, "Someday I will find a young idealistic person and I will support them when they run for office." And he said, "Well, you couldn't want much more than that, could you?" And he said, "I thought that that might be why you were coming." He said, "I hope you won't mind but I have called a press conference for five minutes from now and the press will be in meeting and I'd like to endorse you at that press conference."

JE: Oh my!

RH: One of the members of the press said, "Well now Mr. Henry's opponent is a former prosecutor named Julian Fite and why would you endorse him?" I think this reporter thought that maybe Speaker Albert hadn't really given it any thought, which was not his way of doing things. The speaker said, "Well, sir, I have nothing against Mr. Fite. I know nothing bad about him at all. But I do know a lot of good about Robert Henry. Let me start with his father who is a distinguished judge and jurist in Shawnee," and he just went through and he started telling my life story, you know, which he knew, you know. The guy said, "Okay, okay, I get it, I get it, I get it, I get it."

JE: (laughs)

RH: David Boren actually called me and said...later on after I got through the primary; he couldn't get involved in the primary...but after the primary was over and I had won, you know, the democratic nomination, he said, "I wonder if you'd like to allow me to be your honorary campaign chairman," and I said, "Well, uh, yeah is the short answer to that." Because, you know, David Boren was stronger than dirt in those days and still is, in my opinion...just a great leader. So he and I actually went on the campaign trail together and made speeches together and went through various parts of Oklahoma. So I got to campaign with two of the masters that year.

JE: David Boren at that point...what was he at that point?

RH: He was the United States Senator.

JE: Okay, at that time, alright. Were you planning...this is, of course, I've become attorney general, then I'm going to run for governor, maybe I'll run for senator. I mean, was there a method to your madness in AG's job?

RH: Boren wanted me to consider running for governor but I didn't think I could do that. I thought that I needed to do something that would be easier to accomplish. So there was,

you know, lieutenant governor, auditor/inspector, attorney general...and I thought well, the most interesting of these jobs is attorney general, and so I decided to run for that. My sort of plan was to be attorney general for a term or two and then run for something else, you know...run for governor or back to my old idea of United States Senator if it worked out. But things didn't work out that way.

JE: But then you were re-elected four years later and again without opposition.

RH: Right, and then I decided to leave politics for a while and go into education.

JE: Alright, but let me just say that Mike Turpin preceded you and that's when he ran for governor.

RH: Right.

JE: And so that's why the AG's office became open.

RH: Correct.

JE: And then Susan B. Loving succeeded you and you had appointed her as assistant attorney general.

RH: I appointed her my first assistant. She was a pregnant woman when I appointed her. She was the first woman to be named first assistant. She was actually with child when I asked her if she would do that job. She was a phenomenal person.

JE: So then you served under Governors Henry Bellmon, your friend, and Governor David Walters.

RH: Yes, both good friends. Bellmon became a very special friend. I spoke at his funeral and wrote the forward to his award-winning book, *The Life and Times of Henry Bellmon*. But he was a great, great soul. You know, he was kind of a towering person. He still had a farmer/rancher's hand...big rough hands. You know, he could run cattle and plant wheat until the end of his life. He was a person who just grew constantly. He was always trying to learn something new to do, you know.

JE: Let me say that I have his interview. I was at his ranch house/farmhouse to interview him and he is on our website. And David Walters I have interviewed and he is on our website as well. I always remember when House Bill 1017 was such a major issue and eventually passed and he came over here and he signed that. As a matter of fact, one of the schools where my wife, Margaret, was, I remember that tree he sat under and he signed that bill, House Bill 1017, supporting education.

RH: I need to hear both of those interviews. You know, David Walters was an exceptionally bright person. He had some problem that occurred, some campaign finance issues, that compromised his career a bit. But talk about a bright person, as you know and as I'm sure is clear on your interview with him. He and Henry Bellmon were very, very different in almost every way but both exceptionally talented public figures.

Chapter 12 – 4:30**Illinois River**

John Erling: A little bit about when you were attorney general—a case or two or remembrances that you have of your time there. I think the Illinois River case would have been a major case for you, wouldn't it?

Robert Henry: Right, that was where I worked with your friend, Ed Brocksmith.

JE: Yes.

RH: The Illinois River...as you know, the city of Fayetteville dug a canal to divert part of their sewage into the Illinois River. You know, the Illinois River was our most pristine river. The water quality/potability was so good, you could just drink it. It was crystal clear. You know, we were beginning to have some problems with chicken farms and other things but we were finding those and working on those. Then this sewage from Fayetteville...even though it was treated sewage, and they maintained that the quality of water they were dumping in it was pristine and good, I was well if it's that good, why don't you just keep it then. Don't dump it, just put it in your own...where you have been putting it where it goes into Beaver Lake. I mean, that town...they could never win that argument because if it was so good, why did they want to divert half of it?

JE: Right.

RH: Ed Brocksmith was...he and Ed Edmonson—the two Eds—and Julian Fite worked really hard on the Illinois River case. We took it all the way up to the 10th circuit and then I had left the AG's office by that time. I had planned to argue it in the supreme court of the United States but it went to the supreme court and Robert Butkin, who was then in the attorney general's office, argued it and won about half of it. The part that we lost was really sad. I had described the Illinois River case as a jihad, as a holy war, and it was probably the thing that I most worked on when I was attorney general. There were other things—the multi-county grand jury we established, we reformed the way that legal services were handled to the state agencies, but that didn't have the excitement of hope for warfare like the Illinois River did.

JE: Right, but you know, that's...when you just said multi-county grand jury...now we just say it like that but there was a point where a grand jury was just for Pottawatomie County or Adair County and it wasn't multi and so what you just said so fast, you were able to draft a statute that made it multi-county grand jury so they could come from obviously many counties.

RH: Right. You know, when you could only ask about criminal things that occurred in a single county, that greatly limited the county grand jury as a way to investigate crimes,

particularly drug crimes. That what I was interested in. You know, in the time that I was attorney general in '86, drugs were one of our big problems—probably our biggest problem in crime was drugs and the murders and injuries and robberies and all of those things that accompanied them. I'm here in my office looking at a cartoon that Jim Lange of the Daily Oklahoman drew showing me with a great big club, showing Attorney General Henry with my sleeves rolled up and a great big, huge club entitled "First Multi-County Grand Jury"...

JE: (laughs)

RH: ...and it says in the caption of the cartoon "big stick," you know, so it was a big stick. The multi-county grand jury has been used for a lot of things now. The original purpose was for drug crimes but they have been used for other things as well.

Chapter 13 - 4:40

Oklahoma City University

John Erling: Then you're attorney general until '86 and you decide to leave the attorney general's office and to accept a position as dean and professor of law at Oklahoma City University. Tell us why. How did that come about?

Robert Henry: Well, to be totally truthful, I had gone through a divorce and I had two young children. I was having trouble making it financially with the relatively small salary that the AG made and trying to run two households. My ex-wife was going back to work but she needed a semester or two to complete some schooling and things. So I was trying to come up with enough money to support two households and she was trying to come up with money to support a household too, you know. I was approached by Oklahoma City University and they wanted me to serve as dean of their law school. The remuneration was over twice that of the AG's office and so I said I guess I'm being asked to deal with the critical shortage of lawyers in our society. You know, it's more important to train lawyers than it is to have AG's with experience. The legislature had promised to raise the AG's salary but they didn't get it done before that election and you can't raise it...you have to raise it before an election; you can't raise it after an election. You have to wait until four years, so there was no chance that any help was going to come. So the financial picture was a great part of it.

JE: Well then that was a major pivot for you because it landed you in the world of law and you had not really been an educator before that. So how did that experience work for you? Did it take a while to get into the swing of things or was it easy from the get go?

RH: Well, you know, one of the things that they wanted me to do was raise money. Well, I knew how to do that a little bit from political work. I knew how to make a speech. I had never written a law review article before and I wrote my first law review article. I've written a number since then. It was a great three-year period. I enjoyed it. I enjoyed being a part of Oklahoma City. You know, as attorney general, I had been pretty much interested in the entire state but as deal of the law school, I did most of my work in Oklahoma City working with the law firms here. It was a good place for me and I did learn a lot.

JE: Well I'm sure you produced some fine attorneys out there that are doing well in practice to this day.

RH: Well, you know, one day I was in my office and I had filed an article. I needed a new secretary. This young woman came to my office and her resume had been selected from the stack. As I was interviewing her, I found that she had taken the law school entrance test and done really well on it. I said, "You know, madam, you have an outstanding score here and your grade point is good. Have you ever thought about not working here but becoming a lawyer?" She said, "Well, I've thought about it but I'd have to scrape some money together right now. I don't have enough money to get my books. I could probably come up with...you know, since you let us pay the tuition out, I could probably do that but I just don't have the money for the books." I said, "Well what if I find the money for the books and then you can give them back to me and I'll recycle them," and I did and I got her in law school and she graduated and has become a successful lawyer. You love things like that when they happen.

JE: Absolutely. Great story.

Chapter 14 - 4:50

Judge Henry

John Erling: Alright, so you're teaching at Oklahoma City University and then there's something else happens to you. Somebody reached out to you about becoming a judge. So let's visit with you about that.

Robert Henry: Okay, well it was actually my friend, Tim Leonard, who served in the legislature together. Tim was a republican, I was a democrat, but we were great friends. He came over to my house one night while we were having an OCU gathering for the law school. He said, "You know, there's a position open for the 10th circuit. Why don't you apply for that?" I thought well, I don't know whether I could do that. He said, "Well, you know, David Boren is a good friend of yours," and he said, "You know, there are other people here—

David Walters is a friend of yours, Mike Turpin is a friend. Why don't you look into this?" I really think the person who played the key role is David Walters who was a close friend of President Clinton. Now I had sued President Clinton when I was attorney general and he was governor of Arkansas. I had sued him over the Illinois River case. So, you know, I did have a little repair work that needed to be done.

JE: (laughs) Yes.

RH: He later joked about that to his staff. But it all came...when the dust cleared, I was nominated by President Clinton and served 16 years in the 10th circuit.

JE: Right, out of Denver...

RH: In Denver, yeah. I'd say that the 10th circuit is the highest federal court in the land because Denver is 5280 feet so...

JE: (laughs)

RH: It's the highest court.

JE: But it includes six states—Oklahoma, Kansas, New Mexico, Colorado, Wyoming and Utah, portions of the Yellowstone National Park extending into Montana and Idaho. So you had many, many interesting cases.

RH: Right. One of the most interesting cases I had was a case about the reintroduction of wolves into Yellowstone Park. Do you remember when that happened?

JE: I kind of do, yes.

RH: It was a big deal. What was interesting is Bureau of Land Management was trying to figure out whether to do this, the BLM. They opened it up for public comment. I wondered at the start of this who would win the public comment—the wolves or the non-wolves. It wasn't close. The great majority of comments wanted the wolves to be reintroduced. But there's a different intensity of desire. The people that wanted the wolves reintroduced just sort of romantically liked, you know, the wolves and cry wolves...you know, the wolves are a romantic creature.

JE: Right.

RH: They are where our dogs come from.

JE: Right.

RH: But the people who are opposed to it were ranchers, farmers and hunters and they were really opposed to it. I mean, it was a do or die thing with them. So it got really controversial. The courts decided...as a matter of administrative law, we decided that the BLM had followed the rules and done it properly and their desire to reintroduce the wolves was approved. I'm told that's been very successful. You know, they were beginning to have overpopulation of deer and elk. The reintroduction of the wolves cut that population down. I'm sure that ranchers still probably disagree with it because I'm sure they lose some sheep and cattle to the wolves.

Chapter 15 - 5:22**Death Penalty**

John Erling: President Clinton, I think, told your staff something kind of interesting about you.

Robert Henry: Well, I think he might be talking about when they were in the oval office. I got a call one day from Ron Klain who has been mentioned in this current...who has helped Vice President Biden now. He's one of the top officials in the Biden campaign. But Ron Klain said, "Your name came up in the oval office today. We had brought up the 10th circuit spot and the president said who are people talking about in the 10th circuit and we said well everyone seems to be wanting this young former attorney general, Robert Henry, who is dean of the law school there. He's gotten good reports from your friend, Mike Turpin; from Governor David Walters; from, on the republican side, Governor Henry Bellmon; and several other people. He just seems to be unanimously liked." And President Clinton said, "Well don't you know why everybody likes him?" and they said, "Uh, well, do you know something we don't know, Mr. President?" and he said, "Well the reason everybody likes him is because he sued me."

JE: (laughs)

RH: They all just kind of turned pale. But then he said, "But I forgave him." So is that what you were thinking of?

JE: It was, yes. And you were there 16 years, the last 2 as chief judge. So explain a little bit about the circuit court of appeals. That's where we make our appeal—those who are probably on death row or whatever? Do they make appeals and you're the intermediary between them and the supreme court?

RH: Right. Pretty much all death penalty cases eventually get to the 10th circuit. They don't have to but, you know, most people will appeal their death cases. So that's a lot of the work, because on a death penalty, there's not a whole lot of room to do very much on those cases. But you want to make sure that they are done properly and that they're done correctly. You know, you're talking about taking a life and it's just imperative that everything be done properly. So death penalty cases I always found to be very hard because...now some of them weren't so hard but others where there were multiple defendants and you are trying to figure out maybe who is the real shooter or, you know, who is the hit man...you want to really make sure that everything was looked at closely and carefully.

JE: And what was your personal view of the death penalty?

RH: I came to be against it. That didn't mean I wouldn't vote to support it because my personal views were not dispositive of a legal view, you know. But I came to the point where I thought by the time we go through all of the safeguards to go through the process, the

person that we are getting ready to execute is not the same person that they were. A lot of them become model prisoners. Many become model prisoners and they just...you know, they were involved with drugs and maybe even addiction, you know. I no longer think the death penalty makes sense. That's a controversial view but that's...you know, you asked what I personally thought and that's what I personally think.

JE: Right. Were you surprised in cases that came to the 10th circuit and you'd review them and there were glaring glitches or errors and say how in the world could this have been settled in such a manner when it's real obvious to us the evidence wasn't there? Was it that kind of experience for you?

RH: I had a couple of cases of prosecutorial misconduct that were so egregious that you wonder if the jury got a fair look at the evidence, you know. The prosecutors have a great deal of influence over the jury and you've got to require them to follow the law carefully and to not, you know, use evidence prejudicially. There were a couple of DA's that had problems with that and we had to watch their cases a lot.

Chapter 16 - 8:13

Female Judges

John Erling: You know, we can't talk about your time there without talking about Judge Stephanie Seymour from Tulsa. The two of you served together.

Robert Henry: Right. Judge Seymour is one of the great women jurists certainly in Oklahoma history—probably the greatest in Oklahoma history. She and Ruth Bader Ginsburg were good friends and worked on similar cases and issues. Stephanie Seymour is about as good as it gets. She has been a wonderful, wonderful example of why women (laughs) can be good judges and make good judges. I mean, when she first came in, if Jimmy Carter hadn't broken open the selection process, she never would have had a chance because they were always doing the good old boy syndrome. I believe she was the first woman to chair the judicial conference of the United States, which is the meeting of the chief justice and all the chief judges of the circuit courts and representatives of the district courts. The chief justice always chairs it but occasionally the chief justice will have someone chair while he or she would go to another meeting or something. I believe it was Chief Justice Rehnquist asked Stephanie Seymour to chair one time, and she was the first woman to chair that judicial conference for the United States. I think you have interview her too, have you not?

JE: I have and she talks about many firsts. I'm recalling right now how she could show women that you can both be a mother and be taking care of children and be a judge both. There

was some concern about that. There were even men say well how can you do this because you're a female and you're a mother? So then the retort was how can you as a man? You've got children at home; how can you take care of both jobs? And so, she was feisty and, yes, we have her interview and she is a great example for all but maybe particularly for females in law.

RH: Like when Sandra Day O'Connor...President Reagan had decided that he wanted to name a woman to the supreme court when he was running for office. When he decided to name Sandra Day O'Connor, whom I also became good friends with, it's amazing how controversial that was. People thought...Justice O'Connor showed me copies of some of the letters that the supreme court had received...they just thought it was awful to name a woman—that a woman couldn't handle the job, couldn't handle the stress, couldn't handle the work, couldn't have a family, and obviously it's the woman's job to take care of the family and, you know, she should do that and not do other things. You know, her husband has to make the living and just things that we no longer...I hope we no longer believe those. I don't think we do...or at least a great overwhelming majority of people have kind of figured out that women can handle this just fine, thank you. Stephanie Seymour is certainly an example of that.

JE: You mentioned Sandra Day O'Connor. You became friends with her. A little bit about her and your interaction with her?

RH: I met her at a...we were both speakers at a lawyers' meeting and I told...it's too long to tell but I told a long complicated shaggy dog joke and she really liked it (laughs). She came over to me afterwards and said, "I want you to go over that joke with me again. Now let's write it down, let's get it down." Later she wrote Stephanie Seymour and said, "I need a representative from each circuit to serve on an international law committee" and Stephanie Seymour called me and she said, "You're always interested in international law, why don't you do this?" So she got me hooked up with Justice O'Connor and we became friends. The next thing you knew, we were in Bahrain at the first Arab judicial forum. We were working on international meetings of judges. And then we went to China; we went to Czechoslovakia; we had a joint meeting with Canada. We did a number of international things. Later when I was inducted into the Oklahoma Hall of Fame, I asked her to be my introducer and she came and gave us three days of time to come and present me for the Oklahoma Hall of Fame, which I greatly appreciated. You know, I remember one time when we were in China with a group of judges, our Chinese host came and said, "You'll need to keep Thursday morning open for a possible high-level meeting." One of my colleagues said to me, "What does that mean?" and I said, "That means that Jiang Zemin, the president of China, wants to meet Sandra Day O'Connor," which is exactly what it meant.

JE: Wow.

RH: They said, I asked them later, “Why did this come about?” and they said, “Well because Sandra Day O’Connor is the most powerful woman in America. The president, Jiang Zemin, wants to meet her and he ought to be able to do that.” Well, Justice Scalia and Justice Kennedy had been there a couple of weeks earlier. He didn’t want to meet them. He wanted to meet this remarkable woman, you know. And we went and had a private meeting with him that was fabulous. They sort of danced with each other a little bit about some issues that, you know, we had different opinions on. It was obvious that both of those great leaders admired each other greatly.

JE: And you were a witness to it.

RH: I was a witness to it. I have a picture proving it (laughs).

JE: That is great. Then another one that you became good friends with was Ruth Bader Ginsburg who passed away recently and we’re still dealing with that today. We can talk about that. But talk about Justice Ginsburg, your relationship with her.

RH: Well, as you pointed out, she just passed away. Of course, right now, her seat is being filled in Congress and so it’s on everybody’s mind. It’s kind of interesting...people always talk about they call her a liberal justice and I guess she was in many ways, but the great body of her work for women is stuff that is not controversial now. I remember...and John, I’m sure you do too...you remember the controversy about women in combat?

JE: Oh yes.

RH: And, of course, women were in combat long before people knew they were in combat because, you know, once women are at a military base, if that base is attacked, you think they’re going to just sit there?

JE: Right (laughs).

RH: You know, they’re going to defend the hearth and home. Justice Ginsburg really, really made all sorts of things happen for women that are no longer controversial; although, you know, her good friend, Justice Scalia, and she had a number of disagreements about things.

Chapter 17 - 4:17

Thirsty Boys Law

Robert Henry: One of them was about a fascinating Oklahoma case called Craig v. Boren. And that Boren was, of course, Governor Boren who was sued ex officio by virtue of being governor of Oklahoma. Can I tell you a little bit about that case?

John Erling: Yes.

RH: There was a sort of get-and-go type facility, a grocery store that sold a lot of beer called the Honk and Holler in Stillwater, the Honk and Holler. And Oklahoma had passed a law that prohibited the sale of so-called non-intoxicating 3.2 beer. Now that's an interesting thing. You know, 3.2 beer is legally classified as non-intoxicating. Of course, it's about as non-intoxicating as pure alcohol is, you know.

JE: Right.

RH: But for strange reasons, you know, Oklahoma...Will Rogers said that prohibition was better than no whiskey at all.

JE: (laughs)

RH: Oklahoma has always had weird, weird laws for alcohol. But there was this law... Oklahoma passed a statute that prohibited the sale of 3.2 beer to males under the age of 21 but it allowed females over the age of 18 to purchase it. Women were getting a little extra right here that men didn't have. One of the males who, just as Ginsburg called them—the thirsty boys...the thirsty boy, Curtis Craig, and he got the owner of the Honk and Holler to join with him and they brought a lawsuit. Ruth Bader Ginsburg was working as an attorney for the American Civil Liberties Union and she advised them, she helped them with an amicus brief and she was present at the counsel table during the oral argument before the supreme court. So Justice Ginsburg had a huge role in this Oklahoma case. When the court finally decided what to do with it... the court always has to figure out when you look at a matter of discrimination...and that's what this was, men were discriminated against...when you look at discrimination, there has to be some sort of reason for it and you have to figure out what level of scrutiny to subject that statute to. The courts have developed different kinds of scrutiny, but they didn't have a high level of scrutiny for discrimination based upon gender. The court decided in this case that there would be an intermediate scrutiny applied to discrimination based on gender under which the state would have to prove the existence of an important governmental objective and the law must be substantially related to that objective. So that intermediate scrutiny, which became and still is the law for discrimination based on sex...it was applied in the Virginia Military Institute case that Justice Ginsburg wrote as a justice of the supreme court where she, you know, brought women into the Virginia Military Institute. She found that the prohibition against them going there did not pass the intermediate scrutiny. So it's kind of a fascinating Oklahoma case based on the thirsty boys from Stillwater, Oklahoma that played a big role in women's rights.

Chapter 18 - 7:07**Hot Button Cases**

John Erling: There are hot button cases that come before the supreme court, but then they rule on many other cases that affect our lives and don't get as much attention.

Robert Henry: That's right. I mean, the hot button cases—abortion comes to mind clearly...but the overwhelming majority of supreme court cases are not 5-4 cases. They are 6-3, 7-2, 9-0. You know, a lot of cases are just the law is fairly clear. But some issues are on the margin, you know. You know, *Roe v. Wade* is in the sites of some people that are trying to overturn that. Maybe gay marriage will be controversial again. Some of those issues become too hot for the political branches to handle and so they end up before the court. Some people say the court should avoid those issues and others say no, the court has to resolve the cases that come before it. A lot of issues end up in the courts these days because our political branches are kind of broken.

JE: I think you've raised those issues that could become hot button again because of Amy Coney Barrett, who would be the replacement of Judge Ginsburg and here we are October 23, 2020, and the senate is about to vote on her on Monday. Of course, with a republican senate, then that's obviously likely to happen. So I think we should point that out, those issues are now becoming front and center because of her appointment.

RH: That's right and, you know, you take like the issue of gay marriage. The pope has recently come out endorsing civil unions. Did you see that?

JE: I sure did. That's very current. Right.

RH: That's a huge compromise for the Catholic Church, but he feels very strongly about it. The Catholic Church is still a monarchy. He's the king. You know, as long as he is calling the shots, the church will be endorsing a civil union. Imagine what would happen if the court changed gay marriage laws in the United States today. I mean, I don't even know what would happen. It would be really difficult. Would the marriages that have already been consummated remain consummated and going forward marriages couldn't be consummated? Would it be a state by state issue? You know, there are different ways it can pan out. We'll just have to sit back and see.

JE: Right. I couldn't help but think as I watched the hearings and what will be Justice Barrett... and we've seen other candidates as well...how they, should I say, hide behind the law? The senators want to know well how do you feel about this, how do you feel about that? They are able to skirt it so we kind of don't know what they really feel. Am I right in that summation?

RH: Well, yes. I mean, justices are reluctant to say how they feel about something that's not before them because hard cases make bad law, the old saying is. You know, you gotta

know what each of the facts are—each of the relevant facts are—before you can give an opinion. Senators have a right to ask and a right to push to push for any answer they want, you know, and the judicial candidates have a right to answer in the way that they want to answer too. Then the judiciary committee and then the senate will decide whether the person can be admitted to the court.

JE: One more case that is affecting Oklahoma today and your comment on it would be *McGirt v. Oklahoma* which would determine the federal government and tribes that they have jurisdiction that they have over major crimes in Indian Country including much of where I am here, eastern Oklahoma. That ruling—how do you see that affecting our state in the coming years?

RH: A lot is going to have to be worked out and I'll have to say, I did participate in an amicus brief on that case so I want to let you know that I have taken a position on *McGirt* and my position is in line with *McGirt*. I think the 10th circuit unanimously decided the *Murphy* case which was a companion case to *McGirt* because it pointed out that before a reservation is terminated, you have to go through some explicit requirements to make sure that that's what you want to do. Congress has plenary power over Indians. It can do whatever it wants to do. It has jurisdiction and power to do all sorts of things. But it does have to do them within a certain process. That's what *McGirt* said and I think it was right. That being said, I think there's a lot of working together that needs to be done between the Indian tribes and the state of Oklahoma on various issues. It's going to take a while to work that all out. I don't think people should get upset until they talk through it and think about it because, you know, the tribes were promised all sorts of things that were violated. Almost every treaty that was ever given to the five tribes was violated. Just as Hugo Black once said, "Great nations like great men should follow their word." I think there's an argument to be made that the United States should follow its word or if it comes time to change its word, it needs to explicitly carefully point out that it's changing it and follow the previous precedent that showed that there were detailed things that needed to be done before you could disestablish a reservation.

Chapter 19 – 6:12

Oklahoma City University Again

John Erling: In 2008, you became chief judge of the court. So I guess somebody...many, many people would wonder...being a judge on the 10th circuit is a lifetime appointment. You could have been there until you decided you didn't want to be there. But you gave that up

to become president of Oklahoma City University. So we gotta know what's going on in your brain there.

Robert Henry: Well, and that may have been a mistake (laughs). I had always wanted to be... along with a United States senator, something else I wanted to be was a liberal arts college president. That opportunity came. Also I had some financial issues again. My daughter had just been in New York University, which is one of the most expensive places on the planet to go, and my son was in a private school too. I felt like I needed to make some money to pay those college debts. That was something that came to my mind. But I had this great desire. I loved the liberal arts and the pursuit of the liberal arts, the glories of Greece and of Rome from my childhood. My favorite book is *The Iliad* (laughs).

JE: Okay.

RH: I thought I would enjoy doing that role. The judicial life is a monastic life sometimes. Sometimes it's kind of nice to leave the monastic life and get back out in the real world. So all of that stirred in. It was a really difficult decision and I'll never really know whether I made the right one or not. I now miss the court a lot. Some of my judicial colleagues have passed away and I miss them greatly. It was a big decision.

JE: So can I ask you then if you had to do it all over again, would you have remained on the circuit?

RH: I think I probably would.

JE: I appreciate your honesty. I am quite certain you and Jan, your wife, contribute a lot to the life of Oklahoma City University as president.

RH: Well, we tried to. It was a great run. We both love the arts and OCU is very well know for the arts. Interestingly, I had built...when I was at OCU first to be the law school dean, I raised the money to build a new law building. When I came back as president this time, they needed another new law building.

JE: (laughs)

RH: So I presided over the acquisition of the old Oklahoma City High School, a wonderful Andrew Solomon Layton building. I don't know whether you've seen it or not but it's a beautiful cut limestone building that now houses the OCU School of Law.

JE: As a president of a university—of any university—much of your time must be taken up with raising funds.

RH: Yes, unfortunately you gotta raise funds and there's two ways to do it—tuition and donation. So it takes a lot of time and effort to doing that. You know, people would often say “what's it like being president, do you have to raise a lot of money?” and I would always say, “Yes, have you got any?” You know, it never could be very far outside the pale. I mean, you always had to be looking for ways to do that. It's expensive to hire faculty and develop facilities and educate people. It's just truly a monumental work. We're going to be seeing...who knows as we work through COVID what will happen as we...you know,

the inability to have in-person classes is really a hard thing for me to think about. It's just something about the interaction of students that I don't know can easily be met on line, you know.

JE: How many years were you there as president?

RH: Eight.

JE: So then, was it your health or why did you leave? Was it you felt as long as any president should be?

RH: Well, my health had given me some problems and I thought I wasn't sure that I could get my health back with the stress and pressures of the presidency, so I decided to step down. It probably turned out that that was wise because my health did take, you know, a bad turn. But anyway, I'm doing better now.

JE: Right. And then you're now with a law firm. What type of law are you working with?

RH: I'm actually by myself but I share space with Whitten and Burrage. Reggie Whitten and Mike Burrage are two of the most fabulous lawyers in America really, just absolutely outstanding. They have allowed me to share space in their fabulous offices here in Oklahoma City. I've done some mediation work, settling cases through mediation. I've done quite a bit of that and then also done some consultation and work on Indian law matters.

Chapter 20 - 5:48

Debo and Momaday

John Erling: Here's a name I'd like you to comment on and that is that of Angie Debo, who was one of our great historians, and talk to her about why she is so meaningful to our state.

Robert Henry: Well, I'm glad you mentioned her because the thing I am most proud about in the legislature is I found out when I was in the legislature that we didn't have the portrait of a woman hanging in our state capitol building, which I find hard to believe. You know, we have this idea of the pioneer woman and we have that sculpture of the pioneer woman. The idea of the pioneer woman is so true. Women played such a huge role in Oklahoma history and in the frontier and yet they seem to kind of be ignored in the art. So Penny Williams and I joined together and got Angie Debo's portrait painted and hung, and that is the first woman's portrait hung in the state capitol. It is in the rotunda area along with Robert S. Kerr and Will Rogers and Sequoyah. What she did was tell truth to power. She told the true story of Oklahoma's Indians. She told the true story of Oklahoma. I remember she wrote in her book, *Oklahoma Foot-Loose and Fancy-Free*, that here is the cause of Oklahoma's political turmoil—a people agrarian in outlook and Jacksonian in

politics had to meet a state of change faster than the world had ever seen before. What she meant is, you know, people who are farmers and people who were Jacksonian, you know, the spoiled system, my friends deserve good and my enemies deserve evil, had to deal with all this change and we didn't deal with it extremely well. So she told some really hard truths about Oklahoma. But the reason she told them is because she loved them so much. She loved Oklahoma and she loved the Indian tribes. So I think students need to learn about her. When they come to the state capitol, you know, she's right in the same nooks of the woods as Carl Albert's portrait and Bob Kerr and Will Rogers.

JE: She was, as I recall, controversial in the fact that when she would write, I think it was the book "When the Still Waters Run Deep," she would write...you know, we talk about the cowboys out conquering the west and we don't think about the tribes and how they were feeling about it. So she took the view of writing about the tribes and how they were affected and that was, I believe, somewhat controversial.

RH: Oh it absolutely was because, you know, the tribes had been decimated by broken treaties and didn't have a lot of wealth and power to support themselves. You know, one of the great things about gaming—gaming has given tribes some revenue to rebuild some of their fabulous institutions that were good and important and added to the culture of Oklahoma. She belongs up there with Will Rogers. Can I say one other thing about Will Rogers?

JE: Yes.

RH: I was just thinking...Ogden Nash wrote a book of epithets before people died and he wrote one for Will Rogers that said something like this - "I came with gum and grin and lariat to entertain the proletariat and with my Oklahomely wit, I brightened up the world a bit."

JE: (laughs)

RH: So I think that's...I think it's really neat that Angie faces Will Rogers there and, you know, she was the patron saint of the Indian tribe and he, of course, was one of Oklahoma's most famous Indians.

JE: Yes. Another famous person who wrote about you, I believe, and gives me a chance to promote it is N. Scott Momaday because I've interviewed him as well. Didn't he write a poem about you?

RH: He did. He did write a couple of poems. He became a great friend. Like Ogden Nash, he used to write epithets. Did he ever share any of those with you?

JE: No.

RH: "Here lies a woman sweet and chased, here lies the matter chased makes waste."

JE: (laughs)

RH: And let's see, "The patron of a modern sex: Here lies a landscape architect, her (something something) belies her. She smells of mold and fertilizer."

JE: (laughs)

RH: He used to write these little epithets. My favorite work of his was “In the bear’s house,” these conversations between God and bear.

JE: And we talked about that, right?

RH: Yeah. I got him to re-issue that book and he added some new ones to it.

Chapter 21 - 4:20

Advice for Students

John Erling: What do you say to students, youngsters who listen to Voices of Oklahoma and use it as research and all. What do you say for them who are coming out into the world?

Robert Henry: Well, who was it...those who don’t study history are doomed to repeat it. Was it Toynbee or somebody said that, you know. If we don’t study our history, it is likely to come back and bite us in the butt (laughs).

JE: Yeah.

RH: You know, it’s just like I told a few things here today that I wouldn’t normally tell. I’ve never talked about the cheese room publicly before. But I think it’s important when people are studying that they learn about these things and how they happened and they learn about Henry Bellmon, which you quite appropriately interviewed him at his farm which is a cool thing.

JE: Yeah.

RH: And Stephanie Seymour. You know, there are so many things that women just think nothing about having the right to do them now but people like Stephanie Seymour fought to make those things happen.

JE: Right, and we have in our library so many stories of how blacks were treated in Oklahoma in the ‘40s and ‘50s and I have probably 10-15 individuals who talk about that and so the blacks of today can look back on that and say wow I can’t believe that’s the way it was. But they fought for their rights today and that’s how history...we look back on history...I feel funny even talking to you like this because you know more about it than I do...but it becomes a pathway to the future. We look back and say, “Oh, they did that; well, that was wrong. We don’t have to live through that now; we can move ahead without having to experience that.” That’s why history is so important for today and the future.

RH: Well, Angie Debo and Danny Goble made us understand that so much of our political culture in Oklahoma is southern. You know, that’s that agrarian Jacksonian business, you know. And we still have a lot of southern culture...the race issues in Tulsa, you know...the

1920 Race Massacre there, what an astonishingly difficult, terrible thing that was for this state. There are still wounds from some of these things. If we don't talk about them and don't understand them, you know, we won't overcome them.

JE: Right. And your reference to that makes it real current. Today in our newspaper, the Tulsa World, is a mass grave that was opened in the last two days where they found 18 male bodies. There has always been that thought that there are mass graves as a result of that riot. Sure enough...and they don't know for sure now but they kind of feel like maybe that's a possibility. They were all in coffins but it was all unmarked. Here I said October 23, 2020. They decided to cover them back up again, make sure that laws are adhered to, and they probably will exhume them in the spring. So here we are from 1921 to 2020, we're still dealing with that issue.

RH: And, you know, we're dealing with white supremacy. It's an issue in this presidential race even, you know. I heard an interview the other day about a white supremacist who is running for the state legislature and not retreating from those views...not our state legislature, I'm happy to say...it's in Idaho.

Chapter 22 - 2:52

How To Be Remembered

John Erling: So then I always ask at the end of an interview how you would like to be remembered. I don't know how much thought you've given to that but I just throw it out. How would you like to be remembered?

Robert Henry: Well, I haven't given it some thought. I guess with all the health difficulties I've had lately, I ought to think about doing that. You know, I have been given four honorary doctorates from Oklahoma's four premier universities, and I hope that that suggests that I was standing for the liberal arts tradition. Alexis de Toqueville said America is great because America is good. I hope that that's what I stand for and that's what I believe...the better aspects of the liberal arts tradition and how that can help Oklahoma. Oklahoma is poor and we are ignorant about a lot of things. We have to admit those things and deal with both of them. We need to improve the wealth of our people and we need to improve the knowledge that we have. One of the things that makes that happen is, you know, remembering our history which we come back again to the remarkable job that you've done. I'm just very grateful one of the things I'll be remembered for is I was interviewed by you.

JE: (laughs)

RH: Somehow...I mean unless you change your mind, somehow I made it into this august list of people.

JE: (laughs) Well, believe me, it is my honor to have interviewed you. I've known you, of course, for many, many years. So for to us to finally do this is a great honor and it will be a great interview to add to our library. I thank you very much for this interesting several hours that we have spent together. One more question I was going to ask you. Your sense of humor is great. I appreciate it and, of course, many do. Does that come in your family? Did your parents or grandparents, did anybody else show up with this kind of sense of humor that you have?

RH: My father. He was always...he was known for telling jokes and telling stories. He just had a great sense of humor.

JE: Thank you, Robert. Talk to you later.

RH: Alright. Bye bye.

Chapter 23 - 0:33

Conclusion

Announcer: This oral history presentation is made possible through the support of our generous foundation-funders. We encourage you to join them by making your donation, which will allow us to record future stories. Students, teachers, and librarians are using this website for research and the general public is listening every day to these great Oklahomans share their life experience. Thank you for your support as we preserve Oklahoma's legacy one voice at a time, on VoicesofOklahoma.com.