A Tribute to the Honorable Henry A. Politz, Chief Judge, United States Courts of Appeals for the Fifth Circuit

Dathan Voelter
Victoria S. Salzmann, Phoenix School of Law

Available at: https://works.bepress.com/victoria_salzmann/10/
A TRIBUTE TO THE HONORABLE HENRY A. POLITZ
CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FOREWORD

The Baylor Law Review is proud to dedicate this special symposium issue to the Honorable Henry Politz. Judge Politz grew up in Louisiana in hard times. He went to Louisiana State University, where his education was interrupted by the Korean War. He served as a member of a bomber crew and was shot down over North Korea. When he finished his service, he returned to Louisiana State University and completed his education in law. He excelled in private practice and tried every kind of case imaginable. Judge Politz was appointed to the Fifth Circuit by President Carter when the Fifth Circuit was expanded in 1979. He joined the court along with fellow Judges Reynaldo Garza, Reavley, King, Johnson, and Williams.

The Baylor Law Review applauds Judge Politz for his numerous contributions both to the legal system and to Baylor. He is famous for crisp and insightful opinions and for putting lawyers at ease during arguments. He is also famous, however, for asking tough questions. He is a friend to Baylor Law School, where he has judged competitions and contributed to the Law Review. Judge Politz has been loyal to the Constitution and the rule of law, and it is only appropriate that this symposium on The Constitution in the Twenty-first Century be dedicated to him.

The Baylor Law Review is proud and privileged to have the opportunity to make this tribute to Judge Henry Politz.

Dathan Voelter
Symposium Editor

Victoria S. Salzmann
Editor in Chief
The Honorable Thomas Reavley
Judge, United States Court of Appeals
Fifth Circuit

In 1978, the Carter administration constituted a committee of lawyers to submit to the Department of Justice a list of fifteen persons in Texas and Louisiana considered qualified for appointment to the seven open positions on the Fifth Circuit. (That was merit selection.) The committee invited written information from potential nominees and then conducted interviews in the two states for two states for several months. More than one member of the committee told me about their interview with Henry Politz, a Shreveport lawyer. It was the first I had heard of Politz, and it was clear that he had captivated the committee. They spoke of his sharpness and spirit and charm. Knowing him today as I do, I can easily imagine how his energy and charisma electrified the session. He was recommended, nominated, and appointed. I was fortunate to be commissioned with him in July of 1979. Now he is ending his term as chief judge and will probably join me on senior status before long.

Henry Politz is widely known today among lawyers and judges. As chief judge of this circuit and a member of the executive committee of the Judicial Conference of the United States, that was inevitable. But the man has done far more than his judicial duties required; he hardly ever declines an invitation to confer or teach or speak. Whereas years ago I decided—for self-protection—to avoid trying to entertain with my speeches, Politz has mastered the art of Cajun storytelling and performs whenever the opportunity arises. He teaches; he looks after the personal needs of colleagues and court staff; he handles mountains of administrative paper work; he performs the parental oversight of his eleven children, for example, regularly hunting West Texas hill country with them. And, he labors faithfully on his huge judicial docket. He has personally answered my telephone calls to his office on more than one Sunday. If the man has ever tired or collapsed, I have seen no sign nor heard any word of it.

Finally, I hold up Henry Politz as the model for collegiality among judges. There has always been disagreement between judges, and that is certainly true today. But in recent years there has been a decline in the appreciation of personal feelings of others and an increase of discourtesy among judges. Too often, a judge will abuse another judge because the other is regarded as nothing more than someone who thinks wrongly and must be outvoted. Though Judge Politz and I have often disagreed, he has
never once failed to treat me as I would want to be treated. Be assured that he has strong convictions beneath that charm and warm heart he always exhibits for his colleagues. Go one step for him, and he will go all the rest of the way.

I ask the sophisticated reader to forgive my saying so in this learned journal, because I must say it: I love the guy.
The Honorable Robert M. Parker
Judge, United States Court of Appeals
Fifth Circuit

When Henry A. Politz took his place on the court of appeals in 1979, he brought with him the reputation of being a first-rate trial lawyer. Specifically, he was known as a lawyer who would tee it up before judge or jury, happily content to let his clients’ fate depend upon his considerable advocacy skills. No so-called litigator, who after exhausting all possible discovery, would frantically seek any available mediator in order to avoid the final reckoning of a verdict; Hank Politz sought solutions in the arena. He is reported to have commented: “After all, that is why they build courthouses—to try cases.”

He transferred the skills honed at trial to the far different task of sitting as an appellate judge who, with the benefit of hindsight, engages in the task of error correction and protection of the rule of law. In doing so, he revealed that his years of experience as a trial lawyer had left him with a deep appreciation of the fact that the uniquely human endeavor of trying cases is not an exercise in the pursuit of perfection. Those of us on the district court who monitored the goings on at the court of appeals came to admire not only the scholarship but the wisdom repeatedly revealed in his opinions as he conducted his search for the answer to two simple questions. Was the trial and its result fair to the litigants and has fidelity to the rule of law been preserved? His opinions to this day amply demonstrate that twenty years on the court of appeals has not altered his approach. His tenure as chief judge, with its circuit-wide administrative responsibilities, has been marked by an overriding concern for the welfare of the district courts. A concern dictated by an appreciation of the fact that public support for formal dispute resolution in the federal courts is dependent upon what happens at the trial court level. In his words, “Our goal must be for litigants at the end of the day to walk out of the courthouse knowing in their hearts that they were treated fairly, whether they won or whether they lost.”

Serving for five years as his colleague on the court of appeals has deepened my admiration, respect, and affection for Hank Politz. I have been astounded at the sheer effort that he brings to the task of judging. On many occasions, I have called his office late in the evening or on the weekends with the full expectation that he would answer the phone and I
have not been disappointed. I suppose it is reflective of the level of enthusiasm with which he embraces life in all its aspects. Raconteur, storyteller extraordinaire, legal scholar, and humanitarian all fit as descriptive terms for this warm and wonderful human being. Serving with Hank Politz has enriched my life in so many ways. He has been a role model for those of us who strive for collegiality in a contentious endeavor and his concern for the less fortunate has been a constant reminder that we truly are our brothers' keeper.

It is altogether fitting and proper that this distinguished journal should honor Henry A. Politz.
The Honorable Neil E. Kravitz
Associate Judge, Superior Court
District of Columbia

The Honorable Henry A. Politz, Chief Judge of the United States Court of Appeals for the Fifth Circuit, recently said the following about a judge’s proper role:

Your only client is lady justice. In each matter that you have presented to you, you have the wonderful, wonderful opportunity to achieve a just result. How lucky are the people who have that opportunity.

No formulation could more accurately describe Judge Politz’s approach to his own judicial service over the past twenty years.

I know, because I served as one of Judge Politz’s law clerks in 1983-1984, immediately following my graduation from law school. All of us in Judge Politz’s chambers that year—the judge himself, his two wonderful secretaries, and the three often bewildered law clerks—worked together very intensively as Judge Politz grappled with many of the most important and difficult legal issues in the areas of school desegregation, employment discrimination, imposition of the death penalty, separation of powers, antitrust, and patent infringement.

As one would imagine, my co-clerks and I learned a lot from Judge Politz. We also gained a real understanding of the importance of good advocacy and picked up invaluable insights into the ways in which judges decide cases.

Yet, the most enduring lesson I learned during my clerkship were about matters far more important than the techniques used to construct good oral arguments concerning the substantive issues addressed in the cases before the Court. Judge Politz spent an extraordinary amount of time with me and my co-clerks talking about the joys of the practice of law, the critical importance of honesty, integrity, and ethics in all aspects of the judicial process, and the unique opportunities lawyers have to make a difference, not only in the lives of their individual clients, but in their communities, as well. Judge Politz’s unabashed passion for justice came shining through in everything he did and said that year.

I have been very fortunate to maintain a close mentoring relationship with Judge Politz over the past fifteen years, as I have married, had a child, and pursued a series of varied and fascinating legal jobs in Washington.
cannot overstate the positive influence Judge Politz has had on my development as a person and as a lawyer. Every time I have wished to speak with him about a case, about a potential career change, or about a personal matter, Judge Politz has been there for me.

I am certain, however, that Judge Politz's influence in my life has never been as great as it will be over the next several years. For I recently had the great honor of being sworn in as an Associate Judge of the Superior Court of the District of Columbia—an honor made all the more extraordinary by Judge Politz's willingness to travel to Washington, D.C. to administer the Oath of Office. As I now assume the weighty responsibilities of a trial court judge, I will have my best opportunity to try to put unto practice those invaluable lessons I have learned from Judge Politz over the years. In this regard, I would like to share my thoughts about a few of the ways in which I hope to emulate Judge Politz's approach to serving as judge.

Judge Politz always has understood that the judicial system exists primarily for the parties—the individual people who are directly affected by particular cases. Complex questions of law may make litigation more intellectually stimulating. But ultimately, the real sense of value a lawyer or a judge gets from his or her work derives not from intellectual stimulation, but from the knowledge that he or she has made a real difference in the lives of other human beings. Judge Politz practiced law according to this philosophy for more than twenty years, and he now has judged this way for another twenty. To him, the allure of publishing precedent-setting opinions is insignificant compared to the importance of reaching just results for the particular individuals affected by his decisions. I cannot think of a better model for a new trial judge to follow.

Judge Politz works very, very hard. With the exception of a few days he took off to go hunting, he worked every day of every week throughout the year of my clerkship; I understand from the clerks who have followed that the Judge's unrelenting pace has not slowed in the past fifteen years. Judge Politz views his work as too important to permit anything but his best effort in each case.

Nevertheless, Judge Politz recognizes that it is essential for judges to maintain their interest in, and their energy for, other aspects of their lives. Judge Politz's own love of life and his fascination with the world around him—particularly the unique cultural attractions of his native South Louisiana—bubble to the surface of everything he does. Judge Politz also recognize the importance of permitting occasional light moments to interrupt the otherwise solemn work of a judge. I doubt very much that I
ever will have an opportunity in the D.C. Superior Court to publish a decisions that contains the definition of a Cajun delicacy—cf. Martin v. Norman Industries, 725 F.2d 990, 992 n.1 (Politz, J.) (defining “crawfish boil”), but I know from observing Judge Politz that I must not permit the weight of my obligations to strip me of my sense of humor or to deprive me of a feeling of accomplishment regarding cases already properly decided.

Judge Politz spoke the words quoted at the beginning of this tribute just a few moments before he administer the Oath of Office to me at the local courthouse in the District of Columbia. His eloquent comments, which reflected so well the selfless approach he has pursued for twenty years on the bench, were a great inspiration to me and to my colleagues. They focused our attention right where it should be—on our awesome duty to be fair, compassionate, and just in rendering decisions that will affect so significantly the lives of others. As Judge Politz told us, the responsibility of serving lady justice is a rare privilège, indeed.

Each morning as I prepare to take the bench to begin hearing cases, I look at a photograph of Judge Politz that hangs in a prominent spot on the wall of my chambers. I think about Judge Politz’s energy, about his passion for justice, and about his absolute integrity. I think about what I can do that day to advance the interests of my new client, lady justice. I do so knowing that I am guided by the finest role model a new judge could ever have.
Roger Braugh, Jr.
Associate, Fulbright & Jaworski, L.L.P.
Houston, Texas
Former Law Clerk to Judge Politz

I served as a law clerk to the Honorable Henry A. Politz from August 1996 to August 1997. Although I am honored to participate in the dedication of this publication to Judge Politz, I regret not having the benefit of years to reflect on my experience with him better assess his influence on my development as a lawyer and a person. But, recent experience has its advantages, not the least of which is the clarity of memory.

I first met Judge Politz during an interview in his Shreveport, Louisiana chambers. I expected to find a black-robed, somber intellect pondering the latest Supreme Court decisions. Instead, I found a jovial, yet serious man in leisurely attire steeped in paperwork and surrounded by mementos too numerous to count. His bookshelves were filled with hundreds of biographies and historical works. To think that the Judge, his large desk littered with the work of the court, had read all of those books was mind-boggling.

I soon learned how Judge Politz had time to read as much as he did—he worked longer and harder than anyone half his age. He often handled the administrative affairs of the circuit by day and his own caseload by night. I cannot count the many times a guilt-ridden law clerk, his identity to remain anonymous, skulked home at seven in the evening while the Judge continued working into the wee hours of the next morning.

Despite his heavy administrative workload as chief of the Fifth Circuit, Judge Politz never shortchanged his work as a judge. All litigants who have had, or will have, appeals before Judge Politz should know that: in addition to reviewing bench memos prepared by his clerks, Judge Politz reads every brief, and often reads the controlling case law as well. Many non-lawyers may expect a federal appellate judge to read every word of an appeal, but a practicing lawyer must accept that, in reality, judges often do not have the time or inclination to read everything before them. In this regard, Judge Politz is the exception, not the rule. He is truly a public servant, in every good sense of the title.

Although I cannot speak for the Judge, I believe that his judicial philosophy, in part, compels this remarkable devotion. Judge Politz
believes that justice is the end of the law. Accordingly, not only is he intimately concerned with applicable legal principles, but equally concerned with the particular facts of each case. Judge Politz appreciates the gravity of his role in the dispensation of justice. He is a champion of the Constitution, a guardian of individual liberties, and is very much aware that his decisions, except in the rarest of cases, are final and will be the last opportunity for a litigant to be heard. This sobering realization is even more poignant in criminal cases generally, and in death penalty cases in particular. In short, the weight of justice on his shoulders compels his incredible devotion as a judge.

Judge Politz’s influence on constitutional law in the Fifth Circuit is well documented, but the value of his community involvement cannot be gainsaid. Throughout his career, Judge Politz has remained devoted to serving the local community. For example, during the Christmas season, law clerks have the option of joining the Judge in his aging minivan as he delivers food and gifts to underprivileged families. And, despite formidable work commitments, Judge Politz remains accessible to the community and to family and friends. He often answers his own telephones and will not permit others to screen his calls. His role as federal judge and lawyer demeans him to the public; the robe does not elevate him above community concerns.

Less important to society, but very important to me, is the role that Judge Politz has played in my development as a lawyer and a person. I am challenged by his accomplishments as an attorney and community leader to devote more time to public service. I am constantly reminded by his example that with the privilege of being a lawyer comes the responsibility to practice law ethically so that justice may be done. I understand that my role in our legal system requires no less. I believe that justice has a place in the administration of our laws, even though at times the law requires unjust results. The continued success of our legal system depends in large part on the work of dedicated and selfless lawyers—lawyers and judges such as Judge Politz.
David Schenck
Partner, Hughes & Luce, L.L.P.
Dallas, Texas
Former Law Clerk to Judge Politz

I had the extreme good fortune of serving as a law clerk in Judge Politz’s chambers. One skill the Judge imparts is the ability to find the center of a thing. I’d like to use this limited space to turn that skill on the Judge. The way I see it, Judge Politz has a very clear center. I must admit I know very little about the Judge’s childhood other than this. He grew up on a farm in a large and very modest family. This wasn’t ginseng farming. We’re talking South Louisiana sugar cane. You can always see those early defining experiences in families like that. Hard work. No calling in sick. No vacation. No 401(k) program. Those experiences shape a person. Of course, he eventually left the farm, went off to LSU and went on to serve on a bomber in the Korean War. When he came back, he went to law school, worked hard, and became a great lawyer and a great judge. But you can still see these early experiences in the Judge of today. Some are just endearing or humorous—others are awe inspiring.

First, the humorous. During my year with the Judge, we labored in some of the ugliest offices anywhere. There were no windows—they’d only distract us from the people’s business, as the Judge would often remind us. One of my co-clerks worked on a chair that actually reclined. In fact, it sort of wobbled in every direction. The covering was some kind 1950’s-vintage naugahide. One of the arms had stuffing pouring out it. Anyway, one afternoon as Steve was moving a comma up and down a page, I heard a thundering crash from his office next door. I raced over to see Steve on the floor and the chair contorted backwards on the floor. It had broken, finally. We were far enough along in the year to know that no one was going to be killed for this. Then, it dawned on us. This chair was history, at last. No doubt, generations of law clerks, many of them probably pre-dating the Judge or maybe even the Fifth Circuit had dreamed of this day. Now, someone from on high could sign a request and a new chair would fly in from Washington. So, someone, feigning disappointment, told the Judge—who was buried under the work of that day.

To our dismay, within 15 minutes, in strolls the Judge carrying a giant red tool box. Everything stopped. Out of the box came a hand-drill, a
screwdriver, wire and God knows what else. Jerryrigging and improvising with hopelessly inadequate tools are par for the course on the American farm and the chambers of Judge Politz.¹ After about a half an hour, the chair was permanently locked in an almost upright position, although it now listed to port about ten degrees. Steve silently went back to work on the edge of the chair. The refusal to accept that anything is so far gone that is should simply be thrown away is a classic trait of a farm-raised kid. The second is the unflinching willingness to use hopelessly inadequate tools. Look in any milkhouse. They're rise with heart-stopping do-it-yourself wiring solutions.

Now, the serious. Judge Politz was obviously instilled with the sunrise-to-sunset work ethic early in life. At some point in the transition, the sunset part got lost and he started working well into the night. I'm not embarrassed to say that Judge Politz worked harder than I did. He worked harder and longer than anyone I've ever seen. That says a lot about a person when he can't be fired and he can't have his pay reduced. The Judge has other impressive traits. He always cuts to the heart of the issue and he's not afraid to call them like he sees them. I don't know anyone who tells a hand-wringing story about Judge Politz. He expects the same from lawyers who appear in front of him. He wants, as I once heard him put it, the food put where the small goats can get it.

Another farm-related quality is the Judge's complete commitment to the idea that no one is too insignificant to be taken seriously or treated fairly. This is true of the people who work in the court building, the parties with cases before the court, the lawyers and even the law clerks. By the end of my year with the Judge, I'd gotten bold enough to corner the Judge after a First Amendment argument to plead a different result than the one he'd planned on. The Judge was intending to vote with the government, to my dismay. I spent the better part of an hour trying to convince him to change his mind. He heard all I had to say and promptly voted with the government. It's been my good fortune to argue before him several times since I've been in private practice. As a lawyer my experience has been much the same. He'll listen carefully but he'll always do it his way.

I think a disproportionate number of our highest contributing citizens rise from long, hard days of honest work on the farm. And, the way I see it, Judge Politz is a perfect example.

¹Earlier law clerks still whisper the word "fire" when they mention the aftermath of the Judge's re-wiring of the Mr. Coffee machine.