



Hon. David L. Russell

Senior U.S. District Judge, Western District of Oklahoma

by Gerard Michael D’Emilio



Gerard Michael D’Emilio is an attorney with GableGowals in Oklahoma City. He previously served as Judge Russell’s law clerk. He also recently clerked for Judge Jerome Holmes, U.S. Court of Appeals for the Tenth Circuit. D’Emilio graduated with highest honors from the University of Oklahoma College of Law in 2018. He thanks those who contributed to this profile, especially Judge Russell and his judicial colleagues, staff, and former clerks.

If you are looking for someone who has done it all, Judge David Russell may be your man. Now entering his 40th year on the bench, hardly a legal position exists that Judge Russell has not performed in his decades-long career of public service. Through it all, the native Oklahoman has been led by the principles of fairness, open-mindedness, selflessness, and humility—and his sterling reputation in the Oklahoma legal community reflects this.

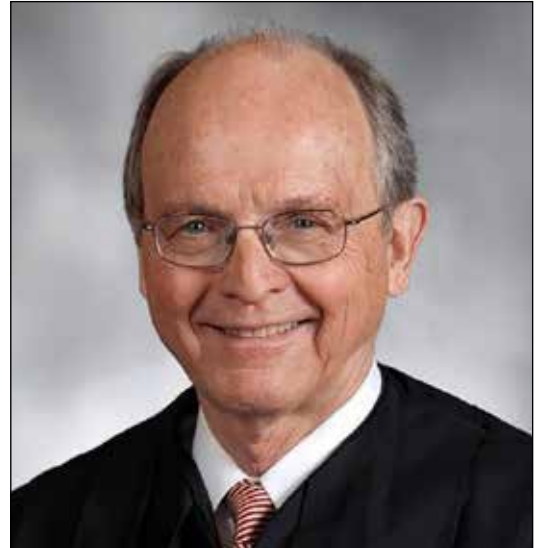
Judge Russell was born in Sapulpa, Okla., in 1942, the younger of Lynn and Elizabeth Russell’s two children. Owing to his father’s career, Judge Russell led an itinerant childhood, attending at least nine different schools across two states. Eventually, his family settled in McLoud, Okla.—on the homestead Judge Russell’s grandfather claimed during Oklahoma’s Kickapoo Land Run in 1893. Auguring an exceptional future, Judge Russell skipped the last year of high school and graduated early in 1959.

After high school Judge Russell attended Oklahoma Baptist University (OBU) in Shawnee, graduating with a bachelor’s degree in just three years. It was at OBU that the future judge first developed an interest in politics:

OBU was just perfect. I had some wonderful professors there. I had three or four professors that literally affected my life. They had that kind of influence on me, history and politics and philosophy and literature. Believe it or not, I picked up a book at OBU by William Buckley called “Up from Liberalism”—and my family had no political background at all—and reading it, again, affected my life. I was kind of fascinated by politics and by his slant on it.

Motivated by his new interests, Judge Russell started at the University of Oklahoma College of Law in 1962, graduating in 1965 at the age of 22—the youngest-ever graduate of OU Law at the time.

After graduation, Judge Russell rose to the rank of lieutenant commander, including three years of active-duty service in the Navy’s Judge Advocate General’s Corps, traveling as far as the Philippines and Hong Kong to try cases—ideal for the man who would



one day visit every continent on Earth. Returning to Oklahoma City in 1968 and looking for work, he walked into the Oklahoma attorney general’s office and, on a whim, asked to speak with G.T. Blankenship, the man who held the position. Blankenship hired Judge Russell on the spot.

After two years, Blankenship informed 28-year-old Judge Russell that Oklahoma’s governor, Dewey Bartlett, wanted him as his legal counsel. A late-night interview at the Governor’s Mansion began Judge Russell’s long and career-shaping association with Bartlett. Judge Russell would eventually serve as Bartlett’s chief legislative assistant when the former governor became Oklahoma’s senator.

In 1975, Senator Bartlett submitted 33-year-old Judge Russell’s name for U.S. attorney for the Western District of Oklahoma—the “best job in the world,” says Judge Russell. His tenure did not start quietly:

The first case I handled when I was the U.S. Attorney was for the attempted bombing of the Western District courthouse. A woman had left a bomb at the west side of the courthouse on a Sunday night. She allegedly had been a part of the Symbionese Liberation Army. Fortunately, the bomb didn’t go off. The jury convicted.

Judge Russell left the U.S. attorney's office in 1977, but following the elections of President Ronald Reagan and Senator Don Nickles, R-Okla., in 1980, he again became the Western District's U.S. attorney—the only person to hold that office twice. His term was again eventful, as Judge Russell handled a massive public corruption case that led to the prosecution of over 200 Oklahoma county commissioners for illegal kickback schemes.

Judge Russell's second stint as U.S. attorney was even briefer than his first—as he was quickly nominated for the position he holds today. Judge Russell remembers the call informing him of his nomination:

I knew I was under consideration to be a federal judge, but it was not set in stone. I was sitting at my desk in the U.S. Attorney's office one day and my secretary came in and said, "Mr. Russell, there's a call for you from the White House, from the President." And I kind of rolled my eyes and thought, "which of my friends is doing this to me?" I said, "Okay, put him through," kind of laughing. I answered the phone and this voice says, "Mr. Russell, can you hold for the President?" I still thought one of my pals is pulling my leg here. And then this voice came on, and President Reagan has a rather inimitable voice, and he could not have been more gracious. He said, "David, I'd like to nominate you to be a federal judge, if you'd consider that." And of course I said yes.

Nominated on Dec. 4, 1981, Judge Russell was confirmed by the Senate on Dec. 16, received his commission on Dec. 17, and was sworn in on Jan. 12, 1982. He originally served in a joint seat for the Eastern, Western, and Northern Districts of Oklahoma, but he was reassigned only to the Western District in 1990. The thought of becoming a federal judge having never crossed his mind, Judge Russell was 39 years old when he assumed the bench.

Like his time as U.S. attorney, Judge Russell's judicial tenure started off with a bang. Within months of his swearing-in, Oklahoma's Penn Square Bank failed, and with the failure came a glut of civil cases: the Western District wound up with the highest case load per judge in the nation, and Judge Russell went from 180 pending civil cases when he started to over 600 cases by the mid-1980s. He oversaw scores of trials arising out of the bank failure, affording him critical courtroom experience from virtually his first day as a judge.

Judge Russell's early years on the bench also reaffirmed his conviction that the life tenure enjoyed by federal judges is a critical component of the measured decision-making and evenhandedness typifying the federal judiciary. In 1983, Judge Russell issued an order in *Norma Kristie, Inc. v. City of Oklahoma City*, which involved the plaintiff's permit request to rent Oklahoma City's Myriad Convention Center for a national female impersonator contest, the "Miss Gay America Contest."



Judge Russell in Antarctica, 2001.

The city, without explanation, denied the request; the city manager later testified that he denied the permit because "he thought the event to be an open expression of homosexuality which ... violated prevailing community standards" and, therefore, was "obscene."¹

Judge Russell ruled for the plaintiff, finding the Convention Center to be a public forum and noting that "[p]rior restraints on expression," like the city's permit denial, "come before the courts bearing a heavy presumption against their constitutional validity."² He wrote further,

Whether the pageant is an open expression of homosexuality is irrelevant. In view of acclaimed performances by Dustin Hoffman, Julie Andrews, Flip Wilson, Harvey Korman, Tony Curtis and Milton Berle in the roles of female impersonators, such impersonations may not be necessarily equated with homosexuality. In any event, homosexual expression is protected. The First Amendment values free and open expression, even if distasteful to the majority ... As Voltaire said, "I disapprove of what you say, but I will defend to the death your right to say it." Particularly disturbing to this Court is Defendant[s] conduct in dealing with Plaintiff's application. Defendants made no effort to follow the clear dictates of the U.S. Supreme Court Instead, in the face of clear-cut mandates, Defendant ... unilaterally rejected the application without investigation and based only on his own opinion. Providing wholesome entertainment is an admirable motive, but government officials at all levels must shoulder the responsibility of following the law and upholding the Constitution, even when to do so is unpopular.³

Applying straightforward First Amendment principles, Judge Russell ordered the city to rent the Convention Center for the pageant and awarded fees and costs to the plaintiff. The pushback was swift: Judge Russell was denounced by courthouse picketers and castigated



Left: Judge Russell with a Kangaroo in Sydney, Australia, 2008. Below: Judge Russell by direction signs in Antarctica, 2001.



in newspaper op-eds. But the reaction only satisfied him that his decision was right. It also made him recall how he sometimes felt in private practice, when he would appear before elected state court judges whose campaigns might have been managed by opposing counsel. Even if those judges' rulings were fair and impartial, such familiarity between the bench and certain attorneys gave a distasteful impression. So critical to the mission of the federal judiciary is its insulation from the vicissitudes of public opinion. "The idea that a judge and his interpretations of the law should be subject to the public whim and to editorials and to the threat of being defeated in the next election because he may rule some way that's unpopular—it just goes against the whole grain of what the judiciary is supposed to be about," says Judge Russell. "The independence of the federal judiciary is the hallmark of the federal system." That commitment to following the law, without fear or favor, continues to guide him.

Perhaps the most consequential—and trying—time in Judge Russell's tenure was during his seven-year term, from 1994 to 2001, as chief judge of the Western District. At 9:01 a.m. on April 19, 1995, Judge Russell boarded a plane in Oklahoma City bound for Washington, D.C.,

with a changeover in Dallas. When he stepped off the plane in Texas, an American Airlines employee met him and said, "You need to call Washington." Judge Russell would soon learn that one minute after his departure, Timothy McVeigh detonated a bomb in front of the Alfred P. Murrah Federal Building across the street from the Western District courthouse, killing 168 people and injuring over 680 more in one of America's most devastating domestic terror attacks. The blast damaged the courthouse so extensively that many, including Judge Russell, initially believed it was the target.

Judge Russell, as the court's leader, took action. That evening, he raced to the court to protect its computers from the rain falling through broken windows. The next day, he assembled the Western District's judges at his home; settling on a course of action, they went so far as extending statutes of limitations until the court reopened—which it did by the following Monday. As chief judge, Judge Russell also handled all preliminary matters before the indictment of McVeigh and his accomplice, Terry Nichols, including securing counsel for both. In one of Oklahoma City's darkest hours, Judge Russell offered calm, clear-eyed leadership for the continued administration of justice.

Judge Russell held his judicial seat for another 12 years after serving as chief. While he took senior status in July 2013, he continues to keep a full docket. Never lacking for energy, Judge Russell is, as a former law clerk puts it, "Senior in Name Only."

About a life so significant, there is plenty more on which to comment. There is the judge's beloved wife of 50 years, Dana; their daughters, Lisa and Sarah; and their three grandchildren. There are the myriad awards he has won—among them the Rogers State University Constitution Day Award, the Oklahoma Baptist University Profile in Excellence Award, the Journal Record Award for Outstanding Judge, the Oklahoma Board of Trial Advocates Judge of the Year Award, and the Oklahoma Bar Association Award for Judicial Excellence. There are the administrative positions he has held on the District Judges Association of the Tenth Circuit and the Judicial Conference of the United States—even being appointed by Chief Justice Rehnquist to the Conference's Executive Committee. And there are his more than 20 years of service on the Oklahoma Methodist Foundation's Board of Directors.

But what stands out most is his reputation. One lawyer praised Judge Russell's courage, judgment, integrity, and dedication. His judicial peers lauded his loyalty, generosity, graciousness, and approachability. His friend, the late Judge Lee R. West, admired the quality of his trial work, noted that he had the lowest reversal rate of his colleagues, and opined that he was likely "the



Top: Judge Russell with the African gentlemen in Kenya, 1999. Right: Judge Russell in the well-appointed cabin in the Orient Express, 1996.

best-read member” of the Western District—no surprise, given Judge Russell’s well-known reputation as an avid reader. A second colleague admired Judge Russell’s job-like patience, rock-steady countenance, work ethic, and effectiveness as a mentor. Another fellow judge said,

Judge Russell speaks often of others’ kindness and humility, but never about his own. Yet he is one of the kindest and most humble individuals that I’ve ever met. Having known Judge Russell for many years, I have never heard him speak ill about anyone; he instead relishes the opportunity to speak of others’ accomplishments. Judge Russell is one of God’s finest creations.

With qualities like these, it should be obvious why Judge Russell is regarded as a superlative trial judge—he was even named Outstanding Federal Judge by the Oklahoma Trial Lawyer Association in 1988. And one need only attend Judge Russell’s *voir dire*—where he recounts the history of the common law and the jury system to potential



jurors—to know that trials are his favorite part of the job. While he would not change a thing about his career, Judge Russell does regret the diminishing opportunities for civil trials in federal court.

Having served 40 years as a federal judge, Judge Russell shows no signs of slowing down. He remains an exemplar for young lawyers, both those who clerk for him and those who appear in his courtroom. A faithful devotee to fairness, to calling “balls and strikes,” Judge Russell’s tenure on the Western District reminds practitioners why America’s federal judiciary is the envy of so many nations. ☺

Endnotes

¹*Norma Kristie, Inc. v. City of Oklahoma City*, 572 F. Supp. 88, 90 (W.D. Okla. 1983).

²*Id.* at 91.

³*Id.* at 92 (citation and paragraph breaks omitted).

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