

# Denver Law Review

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Volume 80  
Issue 4 *Symposium - History and Practice of  
Law and the Business of Judging*

Article 7

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January 2003

## The Practice of Poetry, History, and Judging

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### Recommended Citation

Gregory J. Hobbs, *The Practice of Poetry, History, and Judging*, 80 *Denv. U. L. Rev.* 756 (2003).

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## The Practice of Poetry, History, and Judging



## The Practice of Poetry, History, and Judging

Gregory J. Hobbs, Jr.

Associate Justice, Colorado Supreme Court

**I am delighted** to accept the *Denver University Law Review's* invitation to share a perspective on a law topic of personal importance. Judges are not often asked for their personal viewpoint. There is good reason for this: Judges cannot allow their personal views to stand in the way of their sworn judicial role.

The mystery is this: We get to become judges because the perspective we have gained as individuals in the community led to our nomination and appointment to the bench. Having called us to service, the Judicial Nominating Commissions and Governors who select us—and the citizens who retain us in office—certainly expect that we will bring our personal resources to bear in performing the public's work. These personal resources include our personality, education, experience, skills, expertise, and what we like to do.

Born to an Air Force family, I had the great fortune of living all over the West, including Alaska, California, and Texas. I grew up along the shores and rivers where a fisherman father and a mother who believed in blessings cared to take their four

sons and daughter. My wife appeared to me at Philmont, the National Boy Scout Camp in northern New Mexico's Sangre de Cristo Range. We were both on summer staff there in the Sixties. Her home was Colorado. We served in the Peace Corps together. She is a teacher. I constantly learn from her. She is the inspiration of inspirations who keeps me going.

Blessings are of water and the spirit. History was my college major at Notre Dame. I've been writing poetry longer than I've been a lawyer; I am glad to include in this essay poems I have written of living and working in Colorado. My first law job after graduation from Boalt Hall, Berkeley, was Law Clerk to U.S. Circuit Judge William E. Doyle. He served on the Colorado Supreme Court before joining the federal judiciary. I pass his picture every day in the hall outside the door of my chambers.

When I left Colorado, after the clerkship, to practice in San Francisco, Judge Doyle's parting reproach/challenge to me was, "Why don't you make your stand here?" I'm still standing on the

strength of that question.

Judge Doyle began to teach me the practice of judging. Judging is the practice of translating the experience of the community into a just decision grounded firmly on scholarship and common sense responsive to the facts and the law of the case.<sup>1</sup>

## JUDGES MUST BE STUDENTS

Law is the written experience  
Of the People

Wise for being slow to change,  
Courage for the changing

In the strength of individual experience,  
One Nation

Joined to the community  
Of individuals,

Judges must be students  
Of the experience of the community.

## Becoming a Coloradan

We are blessed to live in the land of the Great Divide. Surely, it's a place of poetry,<sup>2</sup> nature, men and women, words, passion, spirituality, delight, tragedy, insight, wit, brevity, discipline, melody, a profound sense of passing, and so a profound sense of gratitude for the opportunity to be here, at this time, in this place, with this person, this bird, this tree, this flower, this river, that hill, the one behind it, so on up to altitudes and attitudes, where oceans gurgle from snow seeps, in multiple directions, drawn by gravity to destinies far and near.

## COLORADANS

To each of us  
The land, the air, the water,  
Mountain, canyon, mesa, plain,  
Lightning bolts, clear days with no rain,

At the source of all thirst,  
At the source of all thirst-quenching hope,  
At the root and core of time and no-time,  
The Great Divide community

Stands astride the backbone of the continent,  
Gathering, draining, reflecting, sending forth  
A flow so powerful it seeps rhythmically  
From within,

Alive to each of us,  
To drink, to swim, to grow corn ears,  
To listen to our children float the streams  
Of their own magnificence,

Out of their seeping dreams,  
Out of their useful silliness,  
Out of their source-mouths  
High and pure,

The Great Divide,  
You and I, all that lives  
And floats and flies and passes through  
All we know of why.

Thomas Hornsby Ferril worked for the Great Western Sugar Company. He was also a poet. He knew how water and well-prepared soil can siphon sugar to a poem and sugar beets. He loved Colorado history—plains history, stream history, mountain history—the history of rocks and rivers and how they came before and will outlast us. He wrote *Two Rivers*<sup>3</sup> about the confluence of the South Platte and Cherry Creek, from which Denver sprang as a result of an 1858 gold find. His poem sings of the wagon people and the invitation of the waters: "If you will stay we will not go away."<sup>4</sup>

Living through the Dust Bowl, Ferril knew enough of water scarcity to also write a poem he titled *Drouth-1824*: "Hear how the wagons crack/ In the copper drouth of the prairie."<sup>5</sup>

Another great western writer, Wallace Stegner, said: "Adaptation is the covenant that all successful organisms sign with the dry country . . . [W]ater is safety, home, life, place. All around those precious watered places, forbidding and unlivable, is only open space, what one must travel through between

**Justices on the Colorado Supreme Court are appointed for ten-year terms. The Chief Justice is selected from among the presiding Justices on the Court and serves at the pleasure of a majority of the Justices**

Colorado Judicial Branch Website, Colorado Supreme Court,  
<http://www.courts.state.co.us/supct/supctindex.htm> (last visited Apr. 20, 2003).

places of safety.”<sup>6</sup>

Stegner’s calling was to write about the joy and scarcity of the watering holes. He showed us how to relate our kinship to each other and to every other living thing that depends on water for a living. He softened no blows about our wasteful habits and busted hopes. “The town dump” is “our poetry and our history”<sup>7</sup> he said in *Wolf Willow*,<sup>8</sup> his reminiscence about growing up as the child of homesteaders on the plains of southern Saskatchewan very near Montana’s border.

What a concept, by our garbage are we known! What Stegner found in the dump as a kid was every sort of trace of what Westerners prize and discard in trying to perch a toehold. What he meant to say—as always—he said tartly and wisely: “The lesson they preached [from all these throwaways] was how much is lost, how much thrown aside, how much carelessly or of necessity given up, in the making of a new country.”<sup>9</sup>

Stegner match paired his critical eye with his hopeful eye. Optimism and community he thought to be the West’s future legacy:

*Angry as one sometimes gets at what heedless men do to a noble human habitat, one cannot be pessimistic about the West. This is where optimism was born. And when the West learns more surely that co-operation, not rugged individualism, is the quality that most characterizes and most preserves it, I will seize the harp and join the boosters, for this will be one of the world’s great lands.*<sup>10</sup>

Waste, necessity, opportunity, community—these are characteristic Western experiences. Despite our go-it-alone pretensions, enduring amidst this magnificent and capricious landscape has always meant pulling together. Those who get greedy and cannot cooperate will be exposed by the land and their neighbors for what they are, destructive of community and of themselves.

We are still a wagon people. We are immigrants, homesteaders. We are yet settling into this great land.

We are marked by what we take—and what we give back—to the land and to each other. We are contemporaries passing through what has been, what is, and what shall be. We are tenured to this place of boom and bust hopefulness. We must see and hold on to what we value most.

### CODE OF THE PASSING THROUGH PEOPLE

Pack our wagons, so the axles ride a little  
 Higher than the wagon-tearing stones, not so high  
 A capsized-wind will blow over the edge all we  
 Carefully stowed, or in mire-hole sink beyond

Resurrection. Pack only what we’re needing and  
 Hope chest bear for when we homestead arrive, and there’s  
 Cause for remembering what of our ancestors  
 At table before us spread, to remember theirs.

And do not expect what we do not earn, and thank  
 Always for what is given us. And do not waste  
 What tomorrow we may need, or blind to another’s  
 Need, in grace and privilege, we may choose to freely

Give. Sharpen our axes, oil our guns, for they are  
 Tools, like the hammer, nail, stool, hand, and milking pail,  
 Lamp, wick, candle, planed-off plank and any good book,  
 Needle, thread, spindle, spool, crank, flume and headgate wheel,

Self-defense a right, but never to pick a fight  
 Or intimidate or disregard innocents  
 Or refuse to forgive or ask for forgiveness.  
 Insist that conscience begins in living it, string

String, every string, so every string plays of future  
 Well-being. How the red wing blackbird morning sings  
 And barn owl hunts the fluttering evening, cherish  
 Every creature for that creature’s form of speaking

And every intonation and form of being.  
 And when we borrow another person’s strength or  
 Natural feature, honor and repay, in how we  
 Transforming live and love and better pass on through.

We are part of developing a new country, a country of law, justice, love, individual rights, and community rights. This is a work of duty

and the public interest forged of humility, hard work, and the friction of conflicting voices and ideas which ignite the spark—induced by the oxygen of inspiration—that lights the way.

To help this light shine more clearly, we must understand the dark of our history as well as the bright.

### **Carved Out of the Public Domain**

Congress carved the Western Territories and States out of the public domain, acquired by purchase, exploration, conquest, and negotiation, forged into highly consequential legal instruments, the 1803 Louisiana Purchase, the 1846 Oregon Compromise, and the 1848 Treaty of Guadalupe Hidalgo.<sup>11</sup> This vast expanse—from the Mississippi River to its headwaters on the Continental Divide, from the Snake and the Columbia Rivers to the Pacific Ocean, from the San Luis Valley of the Rio Grande and the Colorado River from its source on the western side of the Great Divide to the California delta, across the Great Basin to the Sierra, from its foothills to the long western shore—this vast and incomparable expanse gave birth to the Public Land States, 30 in all, creatures of the federal determination to follow the lead of those who were already going there.<sup>12</sup>

The job of the mapmakers was to reduce the scale of the West to features and contours, to show the lay of the land, where the rivers fall from peak to forest through the livestock grazing zones, then to the agricultural bottom land capable of cultivation by irrigation from the streams, exposing geological formations where might lie the valuable minerals.

Those explorers who mapped the west, Hayden, Powell, Wheeler, and King,<sup>13</sup> brought with them sketchers, photographers, and landscape artists—among them, Holmes, Jackson, Bierstadt, Moran, and Egloffstein—to portray the book of the western wilderness—magnificent, savage, alarming, and alluring.<sup>14</sup>

The job of the artists was to fire the mind with the sublime. Here the Creator had done the most glorious work, the Falls of the Yellowstone, the Chasm of the Grand Canyon, the sliced-off magnificence of Yosemite's Half Dome, and the sheer precipice of El Capitan. Out here, in the language and concepts of Manifest

Destiny, Providence wrote Independence, Freedom, Challenge, Promise, and Fulfillment on the face of every feature of Nature's blessing. Here, Salvation and all the tools needed for Sustenance and Deliverance had come together.

All in the interest of settlement. From their outset, the Territories and States preoccupied themselves with reducing the land, the waters, the timber, and the minerals to possession. For example, the very first session of Colorado's territorial legislature in 1861 adopted a statute that defined "real estate" as "any right to occupy, possess, and enjoy any portion of the public domain."<sup>15</sup> It also passed a water law that allowed any person to cross the lands of another to access, and remove from the streams, water necessary to work mining claims, irrigate farm land, and supply the factories, however far removed those uses might be from the stream.<sup>16</sup>

From the mines, from the farms, grew the towns and cities. Agriculture, mining, manufacturing, every form of commerce, recreation, tourism, transportation, education, and that most adaptable and necessary resource—people moving here to build and shape community—these are the sticks in the bundle of Colorado's heritage, past, present, and future. This legacy always takes shape from the land, the water, the sky, the vistas, and the limits we impose on our use of them.

### **Don't Go There! (But We Must and We Shall)**

John C. Fremont was called the great pathfinder. But his risk-taking in the face of due warning about the elements led others to disaster. He persuaded Bill Williams to guide him up into the teeth of the Big Winter of 1848.<sup>17</sup> The warnings came from other mountain men at Bent's Fort and Pueblo.<sup>18</sup> Senator Thomas Hart Benton, Fremont's father-in-law, conjured up Fremont's fourth expedition to resurrect his son-in-law's reputation after Fremont had been court-martialed.<sup>19</sup> Various groups were vying for the glory and reward of having the transcontinental railroad route.<sup>20</sup> Senator Benton convinced St. Louis investors to finance Fremont. Bill Williams just barely escaped the disaster; the persistent rumor is that he and other survivors resorted to cannibalism after Fremont got out to Taos and went on to California.<sup>21</sup>

Fremont declared the expedition a success, despite the ten who died.<sup>22</sup> He became a California Senator and, in 1856, the first Republican candidate





for President after getting rich on a Sierra foothills land grant. His wife Jessie, a fine writer, is credited for ghost writing his adventurous accounts of exploration.

Abraham Lincoln ran in 1860 on a platform supporting passage of the Homestead Act and the Railroad Act.<sup>23</sup> Colorado Territory came into being in 1861. The Colorado militia under Chivington exterminated a peaceful band of Native Americans at Sand Creek in 1864, a year of escalating scalplings and killings by Indians and Whites.<sup>24</sup> The coming of the railroad cleaved through the two cultures of the Squaw Men, a single generation of a few white men who lived in community with Native Americans.<sup>25</sup>

## THEY CALL ME SQUAW MAN

They call me squaw man. On account  
Of the Cheyenne woman I live with.  
There weren't no other women here

When I came out. Her people took me  
In. We'd skinned along the cottonwood  
Bottoms, at Big Timbers on the Arkansas,  
Set our poles and wrapped our hide tight  
To the raw smoke opening at the top,  
Strangle berries was already freezin'.

That's when the Pathfinder come through,  
Says he discovered South Pass, crossed  
The Sierra in a big snow, liberated California.  
Says he knows where the Railroad's got to go,  
From St. Louis out the Arkansas, up and over  
The 38th Parallel.

I says to him, Don't go up there. We been  
Chunkin' ice out of river edges since  
September just to get a drink. Up in the hills  
Deer and bear been growin' more than usual  
Hair, and it ain't strange ten feet or more  
Of snow up there with early signs like this.

"Old Fool," he says. "I've done it all before.  
Follow me, Men, don't listen. Just up  
And over the other side to California!"

He tries the San Juans in December,  
Gets hisself and the men stuck in a notch  
Between the Rio Grande and whatever.  
Bogs down at Christmas. The mules was  
Freezin' in their tracks and there wasn't  
Any eatin' left a civilized man can mention  
Once they was down and the flesh stripped.  
The Pathfinder skedaddles out of there  
To Taos and Californi.

There's ten men didn't. Left their marks  
On the bark where a Griz can't reach  
And claw when the snow melts.

We almost didn't make it neither. There was  
Nothin' for us to cut but rabbit, coyote.  
Grandfathers stirred their story sticks into the  
Coals, said of the ice that never melts up in the  
Yellowstone country. We drew buffalo on the  
Inside of tipi walls with cold smoke the fires  
Made when the old men fell quiet, and let  
The children gnaw the bottom thongs. River  
Finally loosed and we scraped into the Sand Hills.

My woman died of the pox. Chivington gutted  
Her family a year later. The railroad's chasing  
The old Smoky Hill trail into Denver. They've  
Carved through Cheyenne for the trans-continental.

I spend my days hacking around Fort Lyon,  
The white people tell their children

Don't go near that squaw man!

Our state has had great moments of progress and great moments of shame. Entrepreneurial enterprise has been present from the start. After the Civil War, General William Tecumseh Sherman was assigned military jurisdiction over the West. He decided he needed to see what was there. He traveled up the Platte Trail and then came down the Front Range from Fort Laramie.<sup>26</sup> He most looked forward to seeing and being in the Rocky Mountains. He was a private person; he hated receptions and having to make speeches.<sup>27</sup> Wouldn't you know! The civic leaders of Denver came out to see him and invite him to a reception and give a speech.<sup>28</sup> Their motivation, to get the Army to build forts in Colorado so Denver merchants could sell them supplies.<sup>29</sup>

Our state has had its moments of great shame: the Sand Creek Massacre, riots against the Chinese in downtown Denver in the 1880s, the Ludlow Massacre of 1914, Ku Klux Klan marches in the 1920s, de jure discrimination against African-Americans in the Denver public schools as recent as the 1960s.<sup>30</sup>

The hospitality that Governor Carr showed to the Japanese people interred here during World War II,<sup>31</sup> the federal court orders against segregation in the schools; our efforts at opening up trade routes to Africa, Central and South America, and Asia; our election of Hispanic, African-American, and Japanese-American leaders—these demonstrate a Colorado compassion and commitment to a community that, despite difficulty and temptation, points to achieving what is fair and just.

We have a choice, the choice that every generation of Coloradans gets to make.

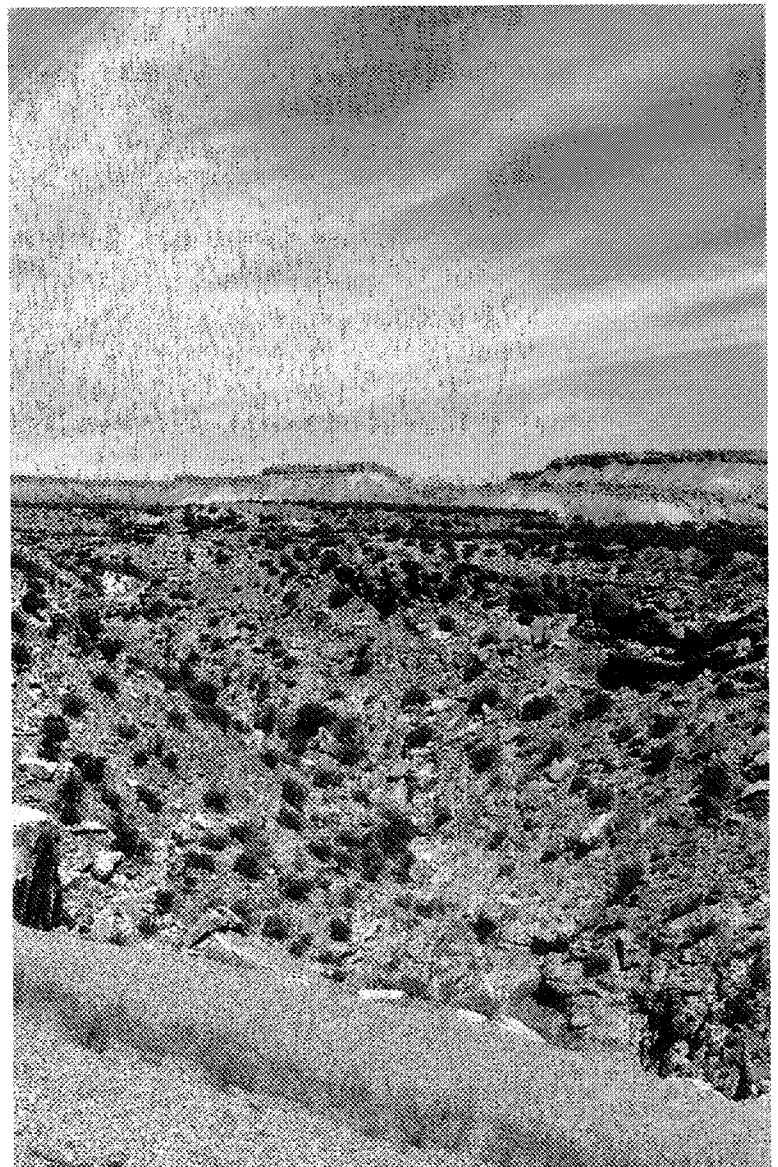
### **WHICH COLORADO SHALL WE BE?**

I wander through a state that's grown  
From out of prairie grass, a state of roots  
In confluence of creek and river path.  
I loathe this state, I love this state, for what  
It's been and is, mean and dusty, lovely, green,  
Which Colorado shall we be?

I'm the state of Chivington, of hounding out Chinese,  
Of walking through the streets in sheets and  
Fixing school boundaries to keep them Afros out.  
I'm the state of parks and trees, of getting exercise,  
Of welcome you, I'd like to help, what interests you?  
Which Colorado shall we be?

### **Thirst at the Watering Hole**

Justice is not a vaporous ideal. It's the thirst for searching out the watering hole. To smell the oasis and then, unerringly, to humble on the path that leads some other there—and they to others. Consider humor, honesty, humility, the three uh huhs! When we look to those we truly admire, isn't it their grace, their judgment, their kindness, their practicality, their intellect, their skill and craft, their unique madness and magic, their counsel and wisdom, their art, their





passion, their generosity that fills us with gratitude and profits us to the core?

Judging well in community benefits from having worthy mentors and colleagues, and focusing on the heart of the job. State and federal appellate judges must exercise scholarship and common sense. All judges have this responsibility of course. But appellate judges, in particular, have a duty to articulate justice and the law, in writing, for public guidance.

The third branch of government, the judiciary, governs primarily through the written judicial opinion. Authoring a written opinion for an appellate court can be very humbling—because of the work it takes and the impact court decisions can have on citizens and the community.

The work is hard and important.

First, the appellate judge needs to thoroughly research, read, and write the proposed opinion to be as correct as one can based on the law and the facts of the case. A judge is making a judgment on what others have done or left undone in their lives. The judge always owes the parties to the appeal the courtesy of fair and diligent consideration.

Second, the appellate judge needs the vote of a majority of the judges or justices who must decide the case. Otherwise, the judge's opinion will never see the light of day. One of a judge's colleagues may end up authoring the court's decision, simply by proposing

or pettiness. The law's not about the judge anyway. It has to do with people in community. Next time around, when the judge gets the next assignment to write the proposed majority opinion, he or she will have the privilege of convincing colleagues yet again.

Third, and most important, the appellate judge must learn never to give up listening and learning about people and the law, and how the work of justice is the crucial work of any civilized society, in all ages. Growing into the job—every day a judge gets to do the job—is the mark of settling into his role and responsibility of being an appellate judge.

## JUST DESSERTS

Judges enjoy the last word  
By keeping their mouths shut  
After their judgments are in.

Whether it's a good judgment  
Does not depend on who says  
What about them, but whether

They speak experience accurately.  
Peoples and principles are Wilderness-  
Shaped. Holding court's a session

### FAST FACT

**Among the duties delegated to the Chief Justice of the Colorado Supreme Court, the Chief Justice is responsible for appointing the Chief Judge of the Court of Appeals and the Chief Judge of each of Colorado's 22 judicial districts.**

*Colorado Judicial Branch Website, Colorado Supreme Court, <http://www.courts.state.co.us/supct/supctindex.htm> (last visited Apr. 20, 2003).*

a concurrence or dissent that gains enough votes to become the court's judgment.

For example, the Colorado Court of Appeals sits in three judge panels to decide a case; a judge needs the vote of at least one other judge besides his or her own. Our Colorado Supreme Court—which chooses which of the decisions of the Colorado Court of Appeals we will undertake to review—has seven justices; a justice needs the vote of at least three other justices.

The appellate judge must never give in to anger

In dutch-oven cooking, citizens stir  
Ingredients, what they do, what they say.  
Just desserts merit savoring.

Judges look through the windows of their cases onto the landscape of what actually happens in the lives of citizens. They are reporters, educators, guides, scholars, idealists, pragmatists, and decision makers. They are bound by principle to articulate principles the

best they can discern and apply them, window-by-window, case-by-case, upholding the rights and the responsibilities of individuals and the community. They must be sign readers of the facts and mapmakers of justice and the law.

## OUT ON THE ROAD TODAY

A.  
Can't make it on the cleaning stints,  
Gotta' get good tips tonight  
Just can't get kicked out  
Of another apartment,

Damn bus is late again  
Momma's got the baby,  
Hope she's not too sick,  
What if I get sick, no benefits?

*Two guys snigger, leer at her,  
She huddles in her slicker.*

B.  
I'm just hanging with the brothers  
At the Points outside the bar,  
I see them coming, I start walking,  
They pull a patrol car onto the sidewalk,

Hey you, they say! I just keep on stepping,  
Hey you they say, stop right there!  
Get on over here! My fist is clenched,  
That's proof enough for them.

*He doesn't hang at the bar with  
The guys who buy at Cherry Creek.*

C.  
I get to the King Soopers, wait in line  
At the pharmacy counter, sorry we can't  
Do that, they say, hasn't been approved,  
Call your insurance company,

Car smokes, emission test is due,  
Another \$500.00 to the mechanic  
Maybe gets it through, what if I forget  
And drive with the registration out?

*A grandfather on oxygen tries to steer into traffic,  
Park it or walk it! screams the driver behind.*

D.  
Will the young mother raped  
Outlast her cross-examination?

Is the constitution in place for a  
Black stop in a "bad" neighborhood?

Will the jury see those teen-aged epithets  
Caused one of the elders to crash into a pole?

*What if they, what if we, what if I  
Just don't care?*

E.  
Call the next case!<sup>32</sup>

## Upstream

Ferril spoke of how his father took him fishing, how he took his father's ashes back to the river, and how the rocks and the waters will outlast.<sup>33</sup> I thank my father for the fishing; my mother for the blessing; my wife for the loving inspiration.

## FISHERMAN'S KNOT

Lord, my hands tremble,  
I must take off my glasses,  
Hold the line to my eye  
And twist three or four  
Times. This space between  
The loop, Lord, help me  
Hold it here, grant me  
Just a little more light  
To thread the gap between  
My thumb and forefinger,  
Let me cinch my filament  
To your swivel. Lord, I am  
Complete, I hear the stream  
Behind me continuing.

## Endnotes

<sup>1</sup> History can resonate in a state supreme court's consideration of a contemporary legal problem. I cite instances in the footnotes that follow.

<sup>2</sup> On the day he appointed me to the Colorado Supreme Court, Governor Roy Romer requested that I not put poetry into my judicial opinions. But he also wrote me a note eight days after I was sworn in, saying, "I hope you still take time to enjoy your poetry, hikes and other important parts of life." I am honoring these requests and hopes.

<sup>3</sup> THOMAS HORNSBY FERRIL, *Two Rivers*, in THOMAS HORNSBY FERRIL AND THE AMERICAN WEST 122 (Robert C. Baron et al. eds., 1996).

<sup>4</sup> *Id.*

<sup>5</sup> THOMAS HORNSBY FERRIL, *Drouth--1824*, in THOMAS HORNSBY FERRIL AND THE AMERICAN WEST, *supra* note 3, at 16.

<sup>6</sup> WALLACE STEGNER, *Living Dry*, in MARKING THE SPARROW'S FALL: WALLACE STEGNER'S AMERICAN WEST 226-27 (Page Stegner ed., 1998).

<sup>7</sup> WALLACE STEGNER, *Wolf Willow: A History, A Story, and A Memory of the Last Plains Frontier* 36 (Penguin Books 1990) (1962).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 35.

<sup>10</sup> WALLACE STEGNER, *The Rocky Mountain West*, in MARKING THE SPARROW'S FALL: WALLACE STEGNER'S AMERICAN WEST 259 (Page Stegner ed., 1998).

<sup>11</sup> LOREN L. MALL, PUBLIC LAND AND MINING LAW: TEXT AND CASES 4-7 (3d ed. 1981); see also *People v. Schaefer*, 946 P.2d 938, 942-45 (Colo. 1997) (discussing, in the context of the Fourth Amendment's reasonable expectation of privacy the tent as habitation in the West from Lewis and Clark to the contemporary tourist); *Lobato v. Taylor*, 71 P.3d 938, 945-57 (Colo. 2002) (discussing, in the context of deeds to land of the Sangre de Cristo Grant in the San Luis Valley, Mexican land grant, settlers' rights, and Colorado Territorial law).

<sup>12</sup> MALL, *supra* note 11, at 7-8.

<sup>13</sup> WILLIAM GOETZMANN, NEW LANDS, NEW MEN: AMERICA AND THE SECOND GREAT AGE OF DISCOVERY 412-14 (Penguin Books 1987) (1986).

<sup>14</sup> See generally WILLIAM H. GOETZMANN & WILLIAM N. GOETZMANN, *The West of the Imagination* (1986).

<sup>15</sup> *Gillett v. Gaffney*, 3 Colo. 351, 358 (1877); *Bd. of County Comm'rs v. Vail Assoc.*, 19 P.3d 1263, 1275-78 (Colo. 2001) (discussing taxation of private ski area on U.S. Forest Service Land in context of Colorado and United States public land law).

<sup>16</sup> *Bd. of County Comm'rs v. Park County Sportsmen's Ranch*, 45 P.3d 693, 705-08 (Colo. 2002) (discussing English common law and Colorado water law in the context of federal and state

public land law); *Yunker v. Nichols*, 1 Colo. 551 (1872); COLORADO FOUNDATION FOR WATER EDUCATION: CITIZEN'S GUIDE TO COLORADO WATER LAW 4-5 (2003) (discussing Native American and Hispanic water uses and water structures).

<sup>17</sup> ANDREW ROLLE, JOHN CHARLES FREMONT: CHARACTER AS DESTINY 115 (1991).

<sup>18</sup> *Id.* at 114.

<sup>19</sup> *Id.* at 123.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 118.

<sup>22</sup> *Id.* at 120.

<sup>23</sup> STEPHEN E. AMBROSE, NOTHING LIKE IT IN THE WORLD: THE MEN WHO BUILT THE TRANSCONTINENTAL RAILROAD 1863-1869, 67, 79-80, 172 (2000); see also *McCormick v. Union Pac. Res. Co.*, 14 P.3d 346, 352-53 (Colo. 2000) (discussing the federal railroad acts and land patents from the public domain).

<sup>24</sup> CARL UBBELOHDE ET AL., A COLORADO HISTORY 106-09 (8th ed. 2001).

<sup>25</sup> See *id.* at 109.

<sup>26</sup> ROBERT G. ATHEARN, WILLIAM TECUMSEH SHERMAN AND THE SETTLEMENT OF THE WEST 74 (1995).

<sup>27</sup> *Id.* at 75.

<sup>28</sup> *Id.* at 76-78.

<sup>29</sup> *Id.*

<sup>30</sup> See CARL ABBOTT ET AL., COLORADO: A HISTORY OF THE CENTENNIAL STATE 153, 283-87, 322 (3d ed. 1994); LOUISA WARD ARPS, DENVER IN SLICES 23 (1959).

<sup>31</sup> ABBOTT, *supra* note 30, at 365-66.

<sup>32</sup> *Outlaw v. People*, 17 P.3d 150, 153-54 (Colo. 2001) (discussing the unwarranted stop of an African-American person in Denver's Five Points neighborhood).

<sup>33</sup> THOMAS HORNSBY FERRIL, *Fishing Upstream With My Father and Time of Mountains*, in THOMAS HORNSBY FERRIL AND THE AMERICAN WEST, *supra* note 3, at 21, 114.

*Justice Gregory J. Hobbs, Jr. is an Associate Justice for the Colorado Supreme Court. Justice Hobbs received his Bachelor of Arts degree, Magna Cum Laude, from the University of Notre Dame, 1966, and his Juris Doctor degree from the University of California at Berkeley (Boalt Hall), 1971, where he was Supreme Court Editor for the California Law Review. Prior to his appointment to the bench, Justice Hobbs practiced law for 25 years, with an emphasis on water, environment, land use, and transportation law. Justice Hobbs was a law clerk for Judge William E. Doyle, United States Court of Appeals for the Tenth Circuit; senior partner with Hobbs, Trout & Raley, P.C.; partner with Davis, Graham & Stubbs; First Assistant Attorney General, Natural Resources Section, State of Colorado; and an Enforcement Attorney for the U.S. Environmental Protection Agency. In addition, Justice Hobbs also taught grade school and served in the Peace Corps in South America. Justice Hobbs was appointed by the Governor to the Colorado Supreme Court on April 18, 1996.*