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Gary Lozow

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THE HONORABLE LEWIS T. BABCOCK, JUDGE, FEDERAL DISTRICT COURT OF COLORADO

GARY LOZOW*

Lewis T. Babcock was born in 1943 in Rocky Ford, Colorado. His small town origins belie a keen intellect and sophisticated world view, which have marked his quick rise through the state and federal bench. He received his B.A., *cum laude* in 1965 and his J.D. in 1968 from the University of Denver. In between his degrees, he married his high school companion Judy, and has been blessed with two children, John and Katherine. Judy is a teacher and administrator in the Boulder school system and a fitting partner for this judge for all seasons. In 1988, Lew received an L.L.M. from the University of Virginia School of Law. He is a member of Phi Beta Kappa and the Order of St. Ives.

Lew began his legal practice in Rocky Ford, Colorado in 1968 where he worked in a small general practice setting with Rex Mitchell. It is clear that Rex honed the judge's legal acumen and took advantage of Lew's fledgling golf game, gin rummy and cribbage skills. During his practice, Lew served three years as the Las Animas City Attorney and six years as the Rocky Ford City Attorney, and was also the part-time Assistant District Attorney for the Sixteenth Judicial District. In 1976, Governor Richard D. Lamm appointed him to the Colorado District Court for the Sixteenth Judicial District, where he served until Governor Lamm appointed him to the Colorado Court of Appeals in 1983. In 1988, Judge Babcock was appointed to the United States District Court for the District of Colorado by President Ronald Reagan. Judge Babcock's meteoric rise through the judicial system came as no surprise to his law school classmates, such as myself.

Judge Babcock's opinions, on both the Colorado Court of Appeals and the United States District Court, are noteworthy for their rare combination of scholarliness and realism. His talent for simplifying complexity and clarifying ambiguity is demonstrated by his use of strong language and clear-cut analysis. Nor, as the cases discussed below reveal, has he shied away from controversial issues or taken the path of least resistance. He calls them as he sees them.

In *Simkin v. Heil Valley Ranch*,¹ Judge Babcock dissented from the majority's holding that an exculpatory agreement did not absolve a ranch from liability to the plaintiff as a result of her fall from a horse. The majority held in accordance with prior Colorado Supreme Court precedent, but the Colorado Supreme Court subsequently sided with Judge Babcock

* University of Indiana (B.A. 1965); University of Denver College of Law (J.D. 1968).
1. 765 P.2d 582 (Colo. Ct. App. 1988) (Babcock, J. dissenting), *rev'd*, 784 P.2d 781 (Colo. 1989).

and enforced the exculpatory agreement. Babcock's courage to eschew precedent where common sense dictates, exemplifies both his willingness to depart from the beaten path and his sense of fundamental fairness.

In *Cook v. Rockwell International Corp.*,² a 1991 case that Judge Babcock decided while on the federal district court, the plaintiffs sued for "recovery costs" associated with certain environmental hazards at the Rocky Flats Nuclear Weapons Plant, located northwest of Denver. Judge Babcock's thorough opinion discussed the scope of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This opinion demonstrates his ability to explain an ambiguous and complex federal environmental law in clear and simple terms.

In *Sierra Club v. U.S. Department of Energy*,³ another 1991 opinion from the federal bench, the Sierra Club sought a permanent injunction under the Resource Conservation and Recovery Act (RCRA), enjoining the Department of Energy from resuming plutonium processing at the Rocky Flats Nuclear Weapons Plant. Like CERCLA, RCRA is a complex environmental law that allows private parties to bring actions to compel the cleanup of environmental hazards. In his strongly worded opinion, Babcock demonstrated his dedication to resolving legal disputes quickly and fairly. Within one week after the injunction hearing, he had sifted through the scientific evidence and RCRA morass to fashion final judgment that balanced the public interest and continued operation of Rocky Flats.

In *Hansel v. Public Service Company*,⁴ a sexual harassment action, Judge Babcock gave form to the amorphous duty of an employer to seek out and rectify sexual harassment occurring in the workplace. Babcock's opinion, the first to address whether the 1991 Civil Rights Act applied retroactively, set forth a bright line rule that the Act did not apply retroactively to cases pending when it became law. Although some courts disagree with the holding, the case has become a lightning rod for this controversial topic.

In *Alvarado Partners, L.P. v. Mehta*,⁵ Judge Babcock analyzed the implied right to indemnity and contribution under the 1933 Securities Act and the 1934 Security Exchange Act. Demonstrating his common sense and judicious approach to unresolved issues of national dimension, Judge Babcock meticulously reasoned that there is no right to indemnity under the 1933 Act and, by implication, that contribution is prohibited under both the 1933 Act and the 1934 Act.

In *Colorado National Bank of Denver v. Adventura Associates, L.P.*,⁶ Judge Babcock clarified the theory under which damages are recoverable for negligent misrepresentation, an issue which was still being debated in Colorado state courts. Nevertheless, he held that the Colorado Supreme Court would adopt the "economic loss rule" to measure damages recover-

2. 755 F. Supp. 1468 (D. Colo. 1991).

3. 770 F. Supp. 578 (D. Colo. 1991).

4. 778 F. Supp. 1126 (D. Colo. 1991).

5. 723 F. Supp. 540 (D. Colo. 1989).

6. 757 F. Supp. 1167 (D. Colo. 1991).

able for a negligent misrepresentation claim. This opinion reflected his realism and business sense — qualities that are often lost in legal analysis.

In recent months, Judge Babcock has demonstrated courage, fairness and respect for the integrity of the judicial process by dismissing charges against criminal defendants when the government has failed to meet its burden of proof. His years of practice as a government lawyer prior to his appointment to the bench only served to heighten his belief in the most fundamental concept in the criminal justice system: that the prosecution should be put to its proof. Perhaps these decisions, more than any others, demonstrate Lew Babcock's reverence for the law.

For example, in *United States v. Forbes*,⁷ Judge Babcock granted a motion to dismiss a prosecution for distribution of a purported analogue of a controlled substance. In dismissing the case, he held that the statutory definition of a controlled substance analogue was unconstitutionally vague as applied to the drug at issue, and that a drug may be an analogue only if it meets both the chemical structure and pharmacological effects prongs of the statutory definition. *Forbes* was the first case in which the government prosecuted the distribution of the drug under the controlled substance analogue statute. More recently, in a stock fraud prosecution, Babcock granted the defendants' motion for judgment of acquittal at the end of the government's case, holding that the government had failed to raise a jury question whether defendants were "constructive insiders" who had a duty to disclose under federal securities laws.⁸

Judge Babcock's opinions are flavored by his rural background, a life of practicality and humble interests illuminated by a rare intellect. A marathon runner, photographer, reader and lover of American Southwest Indian art, Lew has traveled far from the concerns of his rural origins, but has never abandoned their bedrock values.

I must confess a certain reverence when Lew has the time to opine on some of the important aspects of the judiciary's obligations. He views his role as a servant to the public. He fulfills that role with intellect, clarity, integrity and an unyielding work ethic. The message that reverberates in his court is driven by his commitment to equal justice. All fellow lawyers and laymen who pass through the portals of his courtroom are treated fairly during their journey.

7. 806 F. Supp. 232 (D. Colo. 1992).

8. *United States v. Freedman*, No. 92-CR-372 (D. Colo. June 22, 1993) (unpublished opinion).

