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Justice William H. Erickson joined the Colorado Supreme Court in 1971. His appointment to the court as Governor John A. Love's third merit appointee followed a colorful and vigorous twenty years of trial practice and service to the legal profession. Known for his ability as a trial lawyer to extract defensible positions from sometimes indefensible clients, Justice Erickson has demonstrated exemplary service and loyalty to the public and his profession through his tenure as Supreme Court Justice and his leadership in local and national bar associations.

For twenty years, Justice Erickson combined an illustrious trial practice with generous service to the legal profession. He defended some of Colorado's most infamous criminals—Joseph Corbett, convicted of murdering Adolph Coors III, and Eugene "Checkers" Smaldone, alleged Denver kingpin and organized crime figure; he defended a bitter takeover attempt of The Denver Post by newspaper magnate S.I. Newhouse; he represented personal injury claimants and insurance companies under then-nascent product liability theories; and he represented district court judges whose salaries had been wrongfully frozen by recalcitrant county administrators.

Justice Erickson's heterogenous trial practice was balanced by service to the bar. He was president of the Denver Bar Association in 1968-69; he represented Colorado in the American Bar Association as a member of the ABA's governing body, the House of Delegates; and he chaired the ABA's council of the Section on Criminal Justice in 1971 and 1972. After joining the Colorado Supreme Court, Justice Erickson was elected to the Council of the American Law Institute and to the Fellows of the American Bar Foundation, on both of which he continues to serve.

Following his appointment to the Colorado Supreme Court, Justice Erickson was named by President Richard M. Nixon to chair the President's National Committee for Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance.[1] Erickson's familiarity with "bugging" did not begin with the Wiretap Commission. In 1973, he was one of four finalists for the position of Special Prosecutor for the Watergate investigation. Archibald Cox was subsequently named to serve in that capacity.[2]

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1. *See* UNITED STATES NATIONAL COMMISSION FOR THE REVIEW OF FEDERAL AND STATE LAWS RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE, ELECTRONIC SURVEILLANCE REPORT (1976).

2. *See generally* J. DOYLE, NOT ABOVE THE LAW 42 (1977). The other finalists were Federal District Court Judge Harold Tyler, Deputy Attorney General Warren Christopher,

I. PRIVATE PRACTICE

A. *Professional Background*

Justice Erickson, a Denver native, graduated from the Colorado School of Mines in 1947 with a degree in petroleum engineering. His father, A.X. Erickson, had a successful trial practice in Denver and Justice Erickson chose to follow in those paternal footsteps. Justice Erickson attended the University of Virginia School of Law, obtaining his LL.B. in 1950. He joined his father's small Denver law office immediately upon graduation.

Intent on developing his litigation skills, the young Erickson haunted the federal courthouses in search of pro bono appointments in criminal matters. In 1951, federal appointments were unpaid; unsurprisingly, Erickson obtained as many cases as he could handle. Despite his precocity, Erickson's tender age and lack of experience resulted in many a "trial by ordeal." Nevertheless, that courtroom wisdom or sixth sense which may be acquired only through experience was developed early in the young litigator. Indeed, the federal judges, grateful for Erickson's willingness to take pro bono cases, were generous in critiquing Erickson's trial work and offering advice. It did not take long for Erickson to gain a reputation for his skills as a trial lawyer.

Justice Erickson founded his own firm in 1958. Along with two tax specialists, Hayes R. Hindry and Milton E. Meyer, Jr., Erickson created Hindry, Erickson & Meyer. The senior Erickson became of counsel to the firm. The firm grew to twenty-two attorneys by 1969 and included Denver-area practitioners Kerwin H. Fulton, Charles F. Brega, C. Henry Roath, Jay L. Gueck, and James J. Morrato.

Justice Erickson left Hindry, Erickson & Meyer in 1969 and formed an insurance defense practice with Duane O. Littell. That partnership ended after a brief period. Erickson then practiced under his own name until he was appointed to the Colorado Supreme Court in 1971.

B. *Significant Cases*

Justice Erickson practiced law with and against some of the nation's legendary trial lawyers. In addition to some of Colorado's masters, Erickson tried cases with Louis Nizer, Arthur Goldberg, Edward Bennett Williams, and John W. Davis. These formidable friends and foes highlight a variegated criminal and civil practice.

1. *Corbett v. People*[3]

On February 9, 1960, Joseph Corbett, Jr. kidnapped and murdered Adolph Coors III. Coors, scion of the well-known Golden, Colorado brewing family and officer in the Adolph Coors Brewing Company, dis-

and retired Federal Judge David Peck. All four were unable to sacrifice their independence as prosecutors to the conditions set forth by Attorney General Elliot Richardson.

3. 153 Colo. 457, 387 P.2d 409 (1963), *cert. denied*, 377 U.S. 939 (1964).

appeared on his way to work; a pool of blood lay next to his car nearby his mountain home. After a nationwide manhunt, Joseph Corbett was identified as the prime suspect and arrested in Vancouver, British Columbia on October 29, 1960.

Corbett's father sought to retain Justice Erickson for the younger Corbett's defense. Many of Erickson's clients, however, were close friends of the Coors family; he therefore declined to take the case. The defense counsel subsequently retained by Corbett lacked the time and funds to prepare an adequate defense. The trial court, on the defense attorney's recommendation, subsequently appointed Justice Erickson to assist in the case.

The case garnered extraordinary publicity. The news media voted the disappearance of Coors and Corbett's subsequent arrest as the first and second most newsworthy stories of 1960. Corbett was convicted and sentenced to life imprisonment. Later appeals centered on the substantial prejudice generated by the notoriety and infamy of the case, the inappropriateness of venue in the county where the Coors brewery was located, and the insufficiency of circumstantial evidence presented by the prosecution. Nonetheless, both the Colorado Supreme Court[4] and, on a writ of habeas corpus, the federal district court for Colorado[5] affirmed the conviction.

2. *Caroll v. United States*[6]

In some cases, the trial lawyer has bad facts—in others, bad law. When the lawyer has both, and the trial judge also doffs his robes of impartiality to assist actively in the prosecution of the defendant, the criminal defense lawyer and his client face insurmountable odds. Justice Erickson faced each of these tribulations in *United States v. Carroll.*

Howard Carroll was a Colorado businessman who violated the federal securities law by artificially inflating the value of his company's stock and then selling his shares in the company. Justice Erickson was retained to defend Carroll in federal district court in California. Unfortunately, the evidence of Carroll's guilt was overwhelming and the trial appeared to be only an exercise in damage control.

The day prior to trial, one of Carroll's former business associates told Carroll that he would offer favorable testimony in Caroll's behalf for $5,000. Erickson advised Carroll to purchase a small tape recorder and record the offer of perjured testimony. After the evidence was obtained, the FBI was informed and agents subsequently arrested the prospective perjurer when the money was exchanged.

Howard Carroll's cooperation was unrewarded. At trial, the federal district judge transgressed the bounds of courtroom neutrality by his active and overtly biased questioning of witnesses and assistance to the

4. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).
5. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).
6. 326 F.2d 72 (9th Cir. 1963).

inexperienced federal prosecutor assigned to the case. The judge assisted the prosecutor in laying a foundation for the admission of key exhibits and in cross-examining important witnesses for the government. On appeal, the Court of Appeals for the Ninth Circuit, while upholding Carroll's conviction due to the overwhelming evidence of guilt, harshly criticized the conduct of the trial judge.[7]

II. THE COLORADO SUPREME COURT

William H. Erickson was appointed as an Associate Justice to the Colorado Supreme Court in 1971 by Governor John A. Love. Erickson replaced Chief Justice Robert H. McWilliams, who resigned to join the United States Court of Appeals for the Tenth Circuit. Erickson served as Chief Justice during the 1983-85 terms. He is now the senior member of the supreme court.

A. *Significant Opinions*

1. Criminal and Constitutional Law

Justice Erickson's opinions in the field of criminal law seek to strike a balance between the rights of prosecution and the rights of the defendant. Erickson has authored opinions which enhance judicial protections for the criminal defendant, and others which expand the powers of the police and prosecution.[8] Typically, his opinions reflect the court's consensus on an issue and therefore gather unanimous support. Even in years when the court split on a number of issues—the late 1970s and early 1980s—Justice Erickson was often able to find a middle ground agreeable to each member of the court.

Justice Erickson has advocated the adoption of a "good faith" exception to the exclusionary rule, but has labored faithfully within the confines of United States Supreme Court jurisprudence which, until 1984, apparently limited the use of such an exception. In *People v. Deitchman*,[9] for example, Justice Erickson argued that the purposes of the exclusionary rule—to deter unlawful police behavior and to vindicate the goals of the fourth amendment—are not met where police behavior is unaffected by application of the rule. Similarly, in *People v. Sporleder*,[10] Erickson noted the inconsistency in using the exclusionary rule where the court adopted a new privacy standard at variance with the standard set forth in a directly applicable United States Supreme Court precedent. The majority in *Sporleder* held that the use of pen registers by police investigators to record telephone numbers dialed on private telephones was an illegal invasion of privacy rights under the Colorado

7. *See* J. GOULDEN, THE BENCHWARMERS (1974).

8. *Compare* People v. Botham, 629 P.2d 589 (Colo. 1981) (reversing murder conviction due to extensive pretrial publicity) *with* People v. Sporleder, 666 P.2d 135 (Colo. 1983) (dissenting on issues relating to the suppression of pen register records) *and* People v. Clement, 661 P.2d 267 (Colo. 1983) (upholding police search of automobile trunk).

9. 695 P.2d 1146 (Colo. 1985).

10. 666 P.2d 135 (Colo. 1983).

Constitution unless the police first obtained a warrant supported by probable cause. Justice Erickson dissented in *Sporleder*, asserting that the use of a pen register by police investigators did not transgress legitimate privacy interests, and, in any event, the evidence should not be suppressed based on the court's new rule. Instead, Erickson would have applied the reasoning employed by the United States Supreme Court when it analyzed the identical issue in *Smith v. Maryland*.[11]

Sporleder provides an insight into Justice Erickson's cautious approach to the interpretation of the Colorado Constitution in the criminal procedure area. While recognizing the plenary and independent authority of state supreme courts to interpret state constitutions, Erickson noted the institutional risks to courts—to their legitimacy, consistency, and authority—which may accompany activist use of a state constitution to avoid United States Supreme Court precedent.

Justice Erickson's dissent in *Sporleder* is balanced by his dissent in *People v. Spies*.[12] In *Spies*, he and Justice Quinn urged the court to adopt an automatic standing rule in cases where, without a search warrant, the police obtain evidence from third parties or where the criminal defendant does not have a possessory interest in the property that is searched. The majority adopted the rationale of *United States v. Salvucci*,[13] holding that standing was not automatic; instead, the criminal defendant must establish a legitimate expectation of privacy in the property searched.

Justice Erickson sought sensible limits to the standing doctrine in non-criminal cases. In *Conrad v. City and County of Denver*,[14] the four to three majority opinion held, over Erickson's dissent, that non-resident citizens (and one resident) who paid taxes in Denver had standing to challenge the City of Denver's nativity scene erected on the steps of the City and County Building. Erickson argued that the controversial issue asserted by these plaintiffs, based primarily on subjective injuries, was better left to the political process and should not be resolved by the courts.

Justice Erickson's position as a swing vote sometimes left him alone in the middle. In *Lujan v. Colorado State Board of Education*,[15] the court reviewed the constitutionality of Colorado's school financing system. The court split three-one-two; Justice Erickson's concurrence provided the fourth vote necessary to uphold the constitutionality of the legislative scheme. His concurrence, however, emphasized the slim margin by which the financing system passed constitutional muster and the clear need for legislative reform.

2. Free Speech and Libel

Justice Erickson has varied most dramatically from the majority of

11. 442 U.S. 735 (1979).
12. 200 Colo. 434, 615 P.2d 710 (1980).
13. 448 U.S. 83 (1980).
14. 656 P.2d 662 (Colo. 1982).
15. 649 P.2d 1005 (Colo. 1982).

the court in the area of free speech and libel law. In *Walker v. Colorado Springs Sun, Inc.*,[16] the court adopted a libel standard more solicitous to the media than that in almost any other state. The court held that, when publishing false and defamatory statements, but where the matter involved is of "public and general concern," the media are subject to a "reckless disregard for the truth" standard of review. Justice Erickson, in a lone dissent, urged instead that the proper standard should be "simple negligence." Erickson stated that the problematic opportunity for a libel plaintiff "to vindicate and protect his sullied reputation" mandated a standard that strikes a "reasonable balance between the right of the news media under the First Amendment and the right of the private citizen" under tort law. In Justice Erickson's view, a negligence standard provided that balance.

A number of other state courts, in analyzing the *Walker* libel issues for the first time, have adopted Justice Erickson's reasoning. The Oklahoma Supreme Court rejected the standard promulgated by the *Walker* majority as "not achieving a balance or accommodation" with the conflicting values of news media rights and privacy rights.[17] The Oklahoma Court instead adopted the negligence standard suggested by Justice Erickson. The Hawaii Supreme Court likewise criticized the *Walker* majority for basing its decision on unverified speculation about the need to insulate the media from its own excesses by a reckless disregard standard.[18]

Justice Erickson also dissented in *Diversified Management, Inc. v. Denver Post, Inc.*,[19] on the grounds that he expressed in *Walker*. Erickson reiterated his view that private citizens are effectively precluded from libel relief by *Walker* and that Colorado's standard of review encouraged "irresponsible, inaccurate and unreliable journalism."

Surprisingly, in a 1983 decision in the libel area, *Burns v. McGraw-Hill Broadcasting Co., Inc.*,[20] Justice Erickson authored a four to three majority opinion that explored novel issues involving fact and opinion and their different shades of meaning in modern reporting. The court held that "opinions which imply the existence of an undisclosed defamatory factual predicate may support a cause of action in defamation" if "a listener cannot evaluate the alleged defamatory language because no basis for the statement has been disclosed."

3. Water Law

The Colorado Supreme Court has few peers in the area of prior appropriation law. A major contribution by the court to the resolution of federal-state water management problems in *United States v. City and*

16. 188 Colo. 86, 538 P.2d 450 (1975).
17. Martin v. Griffin Television Inc., 549 P.2d 85, 92 (Okla. 1976).
18. Cahill v. Hawaiian Paradise Park, 56 Hawaii 522, 543 P.2d 1356 (1975).
19. 653 P.2d 1103 (Colo. 1982).
20. 659 P.2d 1351 (Colo. 1983).

County of Denver.[21] This case was the culmination of fifteen years of litigation in state and federal courts involving the rights of private appropriators, the State of Colorado, and the federal government to allocate Colorado's water. The court, through Justice Erickson, unanimously upheld the applicability of the prior appropriation doctrine to federal lands and acknowledged the traditional relationship between Colorado law and federal reserved water rights.

4. Torts

Justice Erickson has authored a number of opinions which explore the increasingly ambiguous law of torts. Traditional common law policymaking in this area has been challenged by intensive legislative activity regulating conflicts between injured plaintiffs and insured defendants. In *Martinez v. Stefanich*,[22] a unanimous court, through Justice Erickson, held that joint and several liability applies in a comparative negligence setting. Erickson reaffirmed that policy in *Mountain Mobile Mix, Inc. v. Gifford*,[23] which explored the issue in the context of multiple defendants.

Justice Erickson has also been active in the products liability field. The Colorado Supreme Court has split on a number of difficult product liability issues. For example, in *Kysor Industrial Corp. v. Frazier*,[24] Justice Erickson's four to three majority opinion held that a plaintiff's mishandling or misuse of a product can abrogate a duty to warn or instruct by the manufacturer. The court split again in *Palmer v. A.H. Robins Co.*,[25] where the majority affirmed a substantial punitive damages award against a manufacturer of contraceptives. In dissent, Justice Erickson discussed the adverse policy ramifications of punitive damages in mass tort litigation. He has consistently called for creative intervention by the General Assembly in areas where the judiciary is unable to provide comprehensive reform.

CONCLUSION

In his diverse career, Justice Erickson has made a substantial contribution to the trial bar, the public, and Colorado jurisprudence. He is by temperament a lawyer: devoted to the profession and energetic in his approach to public and private duties. Justice Erickson's judicial philosophy draws on principles of balance and consensus; he demonstrates a constant search for workable and principled standards. He draws from his experience as a lawyer and an administrator, never losing sight of the needs of both the practicing bar and the public for fair, economical, and expeditious delivery of legal services.

21. 656 P.2d 1 (Colo. 1982).
22. 195 Colo. 341, 577 P.2d 1099 (1978).
23. 660 P.2d 883 (Colo. 1983).
24. 642 P.2d 908 (Colo. 1982).
25. 684 P.2d 187 (Colo. 1984).