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GEORGE E. LOHR

CLYDE O. MARTZ*

Justice George E. Lohr is ideally suited for judicial office and uniquely qualified for the appellate bench. He is a quiet, reserved and an objective legal scholar without any professed political or social ideology. He pursues the rule of law with a perceptive case-by-case concern for equity and justice in an abstract sense, being little influenced, he confesses, by any perceived impact his decisions may have on the litigants or society. He declares that most legal issues he has encountered as a lawyer, trial judge, or in his present appellate court role fall into a gray area, being neither black nor white. He sees merit generally in the positions advanced by each adverse party. Although Justice Lohr suggests his impartiality and indecision may be a weakness, those who have critiqued his performance on the bench uniformly point to them as strengths. These qualities have made Justice Lohr a good listener, a careful analyst, and an articulate opinion writer.

With a measure of humility, he characterizes himself as a small-town personality, pointing with pride to his birth and youth in Gary, South Dakota, finding satisfaction in the development of his personal qualities, and judging himself critically on the professional character of his performance. He denies personal ambition and is inclined to be critical of his limitations. He perceives that nothing has come to him, even his judicial appointments, by reason of any personal drive for advancement. He gains more satisfaction out of the activities he pursues than the recognition and commendation received from others.

When asked to identify those opinions and decisions in trial and appellate roles in which he takes pride, Justice Lohr says he views them all alike. The fact that some have involved issues of wide public interest does not make them more important in his eyes. A small case or a personal grievance is every bit as important to him as a case with media and wide professional interest.

Notwithstanding his critical self-evaluation, success has pursued him throughout his career as has the admiration and affection of all who have practiced with him or before him in his successive roles of lawyer and judge. Justice Lohr received a B.S. degree in Civil Engineering from South Dakota State University in 1953 and a J.D. Degree from the University of Michigan in 1958. He joined the Denver law firm of Davis, Graham & Stubbs in 1958, where he practiced as an associate and later as a partner for ten years in the real estate and natural resources departments, doing extensive work on oil and gas, mining and real estate title and transactional matters. He was a superb craftsman, a grammatical

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purist and an organizational zealot; a tireless and imaginative worker with unparalleled analytical depths and practical creativity. Upon the completion of the organizational work for the Snowmass area in 1968, he was offered, and he accepted, a position as corporate counsel for the Janss Corporation, the developer of Snowmass. He thereafter moved to Snowmass when the Corporation acquired the Snowmass Project.

When an opening arose on the District Court bench of the Ninth Judicial District in 1971, Justice Lohr filed his name as an applicant in a form he describes as a notice of availability without an expectation of appointment. He made that move as a matter of intellectual curiosity; he suggests that many attorneys wonder what it is like behind the bench. To his surprise he was appointed to the bench in 1972, and served as District Judge, Chief Judge, and Water Judge for what he describes as eight exciting years. During that period he sat on a wide variety of domestic relations, civil and criminal cases, gaining state and national notoriety for his judicial role in the trial of Claudine Longet, and his sentence of Longet to thirty days in jail for criminally negligent homicide in the death of skier Spider Sabich. He also sat on the murder trial of Theodore Bundy, finding on the motion of Bundy that the Colorado capital punishment statute was unconstitutional, a decision later affirmed by the Colorado Supreme Court. True to his personality and objectivity, he made his decision in each case without regard to public reaction or personal censure, pursuing the rule of law as applied to the facts presented to his court.

While serving as a trial judge in the Ninth Judicial District, a number of Justice Lohr's cases were appealed to the court of appeals and to the supreme court. He was affirmed in most cases and reversed in but a few. Justice Lohr reports that he was never disturbed by a reversal as long as it was not based upon an error in procedure or judgment for which he felt personal accountability. When the supreme court reverses a trial court on the basis of a difference in opinion on the law or a development in the law, he views the reversal as part of the judicial process and not in any way critical of the decision-making procedures of the lower court.

In 1979, when Justice James Carrigan accepted an appointment to the federal district court, Justice Lohr once more submitted an application for appointment, more as a notice of availability than a calculated solicitation of office. To his surprise and great pleasure, Governor Lamm appointed him to the supreme court and brought him to Denver.

In his seven years on the Colorado Supreme Court bench, Justice Lohr has written approximately 210 opinions, plus a modest number of concurring and dissenting opinions. This profile author read thirty-five opinions in full, and the headnotes of another sixty-eight opinions, all for the purpose of understanding Justice Lohr's style, searching for his judicial philosophy, and trying to understand the regimen of his decision process. It was an experience I recommend to all. Justice Lohr's opinions are good reading. They follow a formalized style, which he

attributes to judicial opinions generally, beginning with a precise statement of the character of appeal, a brief statement of facts, a statement of each issue to be addressed and his judicial response thereto, concluding with the decision and mandate.

The opinions are carefully reasoned and noticeably free of dictum. Justice Lohr is critical of the use of dictum as a guideline for future action, believing that decisions should rest on particular facts and the case or controversy between particular parties. In response to the suggestion that dictum might guide private conduct in ways to avoid litigation and, on remand, avoid unnecessary costs of further appeals, Justice Lohr reaffirmed to this author that he addresses the issue for decision and pays little attention to the costs of litigation or the impact of any particular case on the course of future litigation.

Justice Lohr's cases rarely engender dissenting opinions. The justice explains that draft opinions are circulated to the court and comments and sometimes dissenting opinions are prepared and further circulated. In his experience, dissenting opinions sometimes either become, or are incorporated into, majority opinions through a re-examination of all points of view. Rarely, he says, has he been 100 percent secure in any position he takes.

From 1976 to 1979, Justice Lohr served as Water Judge of Water Division No. 5 and participated in a number of significant water adjudications involving major western slope conditional decrees. He gained a reputation as a leader in the water bar and was expected, on appointment to the supreme court, to specialize in water opinions. He has, to be sure, written a significant number of such opinions, including the lengthy analysis of nontributary groundwater rights in what has been popularly known as the *Huston* case. Justice Lohr denies, however, that he specializes in water matters, believing that each judge on the court should take responsibility for a proportionate share of all kinds of cases. He states that only in that way are we assured that the law is addressed by seven judges rather than one or more who may be characterized as specialists in particular fields.

Justice Lohr demeans himself as being less productive than his fellow judges because he has difficulty meeting the forty-opinions-per-judge-per-year target set by the court. He cannot help himself, he says, from pursuing all lines of argument developed in briefs and oral arguments, even those that appear to be superficial upon first examination. He generally prefers briefs that are short and to the point, being memoranda of arguments and authorities, with clear statements of issues for decision. At the same time, he confesses, he gets comfort from extensive briefs in cases where he has decision-writing responsibility. His comfort comes from the sense that nothing has been overlooked.

Despite his reservations regarding productivity, the consensus is that Justice Lohr puts in long hours in his professional assignments and has an unqualified dedication to the excellence of his work product. He nonetheless prides himself on being a family man and spends all the

time he can spare with his wife, Paula, his son Scott, and daughters Karen and Sarah. He loves the mountains, particularly in the Snowmass-Aspen area where he lived for ten years. He makes four or five backpack trips a year into the back country and loves fly fishing in the rivers in the area.

In the eyes of all those who have had any professional association with him in his years of practice or later in his work on the bench, Justice Lohr is a remarkable individual and a jurist who will long be remembered for the quality he has brought to his service on the bench.