

# **THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO<sup>1</sup>**

The United States District Court for the District of Colorado is the federal district court whose jurisdiction is the state of Colorado. When the United States Congress organized Colorado as a judicial district on June 26, 1876 it authorized one judgeship for the District Court. Between 1954 and 1984, six new judgeships were authorized, bringing the current number of available judges to seven. At the end of 2009, however, there were two vacancies. The five active judges have their chambers and courtrooms in the Alfred A. Arraj U.S. Courthouse in Denver.

## *Current Judges*

Chief Judge Wiley Young Daniel, the eldest of the judges by length of service, was appointed by President William J. Clinton on March 31, 1995 upon the retirement of Judge Sherman G. Finesilver. He was the first African-American to be appointed to the United States District Court for the District of Colorado. Confirmed by the Senate, he began service on June 30, 1995. He became Chief Judge in late 2008 upon the resignation of former Chief Judge Edward W. Nottingham, Jr.

Judge Marcia S. Krieger was appointed by President George W. Bush on September 10, 2001, upon the death of Judge Daniel B. Sparr. Confirmed by the Senate, she began service on January 30, 2002. Prior to her appointment, Judge Krieger served as a U.S. Bankruptcy Judge in Colorado.

Judge Robert E. Blackburn was appointed by President George W. Bush on September 10, 2001, when Judge Zita L. Weinshienk took senior status. Formerly a state judge in the 16<sup>th</sup>

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<sup>1</sup> David L. Erickson, the editor/author of this chapter is an attorney, arbitrator and historian living in Evergreen, Colorado.

Judicial District in southeast Colorado, he was confirmed by the Senate and began service on March 6, 2002.

Judge Philip A. Brimmer was appointed by President George W. Bush on July 10, 2008, when Judge Lewis T. Babcock took senior status. The son of Clarence A. Brimmer, a Wyoming federal court judge, he was confirmed by the Senate and began service on October 14, 2008.

Judge Christine M. Arguello, of Hispanic background and the most junior of the judges by length of service, was appointed by President George W. Bush on July 10, 2008, when Judge Walker D. Miller took senior status. Confirmed by the Senate, she began service on October 21, 2008.

Joining these judges in the Arraj Courthouse are Senior Judges John L. Kane, Zita L. Weinshienk and Walker D. Miller. Senior Judge Lewis T. Babcock is located in the nearby Byron G. Rogers United States Courthouse, and Senior Judge Richard P. Matsch is located in the historic Byron R. White U. S. Courthouse which houses the Denver-based U.S. Court of Appeals Judges.

The two vacancies that existed at the end of 2009 (the cutoff date for this volume) in the District of Colorado were due to the death of Judge Phillip S. Figa on January 5, 2008 and the resignation of Judge Edward W. Nottingham, Jr. on October 29, 2008.

These district judges are assisted in their duties by eight magistrate judges who conduct a wide range of judicial proceedings to expedite the disposition of the civil and criminal cases. Congress determined the powers and responsibilities that could be delegated to Magistrate Judges, but the specific duties are at the discretion of the individual courts. In Colorado District the Magistrate Judges do not try cases.

Within the Federal District, roughly bounded by 17<sup>th</sup> and 20<sup>th</sup> Streets and Stout and Champa Streets in downtown Denver, are the United States District Court for the District of Colorado, the United States Court of Appeals for the Tenth Circuit and the U.S. Bankruptcy Court. Also, within this area are the local offices for a variety of departments or agencies of the United States Government including the Federal Bureau of Investigation, the Department of Labor, the Internal Revenue Service and the Commission on Civil Rights.

*Alfred A. Arraj U.S. Courthouse, Denver*

The Alfred A. Arraj U.S. Courthouse, located at the corner of 19<sup>th</sup> and Champa Streets, is the primary courthouse for the United States District Court of the District of Colorado. Built at a cost of \$85 million, and completed in October 2002, it is the centerpiece of the Federal District and was designed to handle expansion needs for the Federal District Court of Colorado for the next 30 years. A 10-story high-rise with approximately 325,000 gross square footage, it consists of two structures, the pavilion building and the tower building, containing ten district judge courtrooms, four magistrate judge courtrooms, and one special proceedings courtroom. The building is also houses the offices of the U.S. Marshals Service.

The courthouse is energy efficient through the use of natural daylight and highly efficient mechanical and electrical systems. The building also has an under-floor air distribution system where low-velocity air efficiently conditions the space and removes air pollutants.

*Byron G. Rogers Federal Courthouse, Denver*

Prior to construction of the Alfred A. Arraj U.S. Courthouse, the primary courthouse for the United States District Court for the District of Colorado was the Byron G. Rogers Federal Courthouse, in the block bounded by Champa and Stout Streets, 19<sup>th</sup> and 20<sup>th</sup> Streets, Denver.

In 1961, the federal government allotted funds to purchase the site and appropriated

additional monies in 1962 for the construction of the complex, which included the courthouse and an adjoining high rise. In 1984, the complex was named the Byron G. Rogers Federal Building and Courthouse. Congressman Rogers, the long-time congressman from Denver, was instrumental in securing funds for the courthouse. The courthouse was the location of several high profile trials, including that of Timothy McVeigh who was convicted of the 1995 bombing at the Alfred P. Murrah Federal Building in Oklahoma City. It underwent a full modernization between 2002 and 2006.

*Wayne N. Aspinall Federal Building and U.S. Courthouse, Grand Junction*

Located at 400 Rood Ave., Grand Junction, this three-story Italian Renaissance Revival style building was constructed as a post office in 1918. The walls are of Indiana limestone, and the tall first floor windows are set in rounded arches. In 1938, the rear of the building was extended. The building is listed on the National Register of Historic Places. In 1972, Congress renamed the building the Wayne N. Aspinall Federal Building and U.S. Courthouse after the prominent U.S. Representative from Palisade. Congressman Aspinall, a friend and political ally of Congressman Rogers, graduated with him in 1925 from the University of Denver Sturm College of Law.

*United States Courthouse/Federal Building, Durango*

Located at 103 Sheppard Drive, Durango, this building contains a courtroom and also houses several federal government offices including the Social Security Administration, Interior Department and the Federal Bureau of Investigation.

*Byron R. White U.S. Courthouse, Denver*

Located at 1823 Stout Street, Denver, the Byron White U.S. Courthouse was originally

the main U.S. post office in downtown Denver but now houses the United States Court of Appeals for the Tenth Circuit. Appeals in the Colorado District are taken to the Court of Appeals, other than patent claims which are appealed to the United States Court of Appeals for the Federal Circuit, and larger claims against the U.S. government under the Tucker Act of 1887 where the United States waived its sovereign immunity for certain types of claims.

A fine example of neoclassical grandeur, the 244,000 square foot building is clad in white Colorado Yule marble, renowned for its uniform pure white consistency. The front exterior has a three-story portico of 16 fluted Ionic columns. In 1973, the building was listed in the National Register of Historic Places.

In 1994, the building was renamed the Byron R. White U. S. Courthouse in honor of the former United States Supreme Court Justice from Colorado who served from 1962 to 1993. The building contains the Byron White Memorial which includes items from his Supreme Court office and memorabilia from his family or regarding his multiple and diverse careers as a professional athlete, attorney, military officer and judge. The display, a project of The Tenth Judicial Circuit Historical Society, is open to the public.

#### *Procedural Developments*

Over the last twenty years there have been numerous changes in court procedures for the Colorado District. In August of 1990, Congress passed the Civil Justice Reform Act of 1990 (28 U.S.C.A. §§ 471-482) requiring each federal judicial district to conduct a self-study, with the aid of an advisory group, and develop a plan for civil case management to reduce costs and delays in the federal court system. Of particular emphasis were issues in effectively and efficiently managing case discovery and the implementation of alternative dispute resolution programs. This was followed by Executive Order No. 12778 issued by President George W. Bush on October

23, 1991, also dealing with changes needed in the federal courts.

In response, the District Court of Colorado appointed an Advisory Group co-chaired by Chief Judge Sherman Finesilver. Although he had not yet been appointed to the bench, Chief Judge Wiley Young Daniel was also a member of the group. After a series of meetings they made 23 recommendations to the court; a number of which dealt with various methods of encouraging negotiated settlement or the use of alternative dispute resolution.

The court then prepared and approved a Civil Justice Reform Act Expense and Delay Reduction Plan in November 1993, which was based on Local Rules adopted and effective June 1, 1992. Those Local Rules were written after considering public comment and with participation of the Advisory Group. On January 16, 2002, the District of Colorado adopted new Local Rules of Practice, Civil and Criminal, which became effective April 15, 2002. These Rules continue to be amended.

On February 25, 2005, the District Court adopted Electronic Case Filing Procedures and they became effective June 20, 2005. These filing procedures were adopted in accordance with a provision in the new Local Rules-Civil.

Finally, the court adopted Rules of Professional Conduct on October 15, 2007, incorporating most of the Colorado Rules of Professional Conduct adopted by the Colorado Supreme Court on April 12, 2007. The court, however, did not incorporate certain provisions of the state court allowing for limited representation by counsel, believing they were inconsistent with the view of the federal judges concerning the ethical responsibility of members of the bar of the federal court.

#### *Deceased District Court Judges*

Since 1992, several judges have died. Consistent with the practice initiated in the initial

history of the circuit published in 1992, *THE FEDERAL COURTS OF THE TENTH JUDICIAL CIRCUIT: A HISTORY*, the biographies of these deceased judges, with information on their lives, careers, and contributions to the work of the federal courts, are presented here.

### **ALFRED A. ARRAJ<sup>2</sup>**

Alfred A. Arraj's father, Elias Arraj, was a Maronite Christian who immigrated to the United States from Lebanon with his brother and sister-in-law. After settling in Leadville, Colorado, Elias met Maryam (Mary) Dervis, an orphan of Syrian descent who was being raised by a Methodist minister and his family. Elias and Maryam married and had four children: Joe, Betty Ray, Alfred and Bob. When Elias' brother passed away, Elias and Mary raised his four children, Freda, Edna, Albert, and George Michael, as well.

Alfred Albert Arraj was born in Kansas City, Missouri on September 1, 1906. The Arraj family was living in Kansas City at the time because Elias was attending the Kansas City School of Law. Elias, however, never applied for admission to the bar and the family returned to Colorado in early 1907. Alfred lived in Colorado continuously thereafter, interrupted only by overseas military service in World War II. He spent most of his boyhood in Swink, just west of La Junta in southeastern Colorado where his father operated a store. As a small boy, he dreamed of becoming a prosperous farmer and driving a Buick. As a teenager, he picked berries and worked behind a soda fountain. He lost both jobs because he ate too much of the inventory. Later he and his older brother Joe, along with their cousin George Michael, started a bicycle repair shop. Having no discernible mechanical aptitude, Alfred was consigned to keeping the books and drumming up business. He skipped a grade in school and joined Joe at Swink High School. Together the Arraj boys comprised half of the graduating class.

The younger Arraj enrolled at the University of Colorado in 1923 at the age of sixteen

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<sup>2</sup> By Kathleen Nalty, U.S. District Judge John L. Kane and Shannon Brink.

and graduated in 1928 with an LL.B. degree. While a student in Boulder, he met two of the most significant people in his life – his lifelong friend, Gordon Allott, and his future wife, Madge Louise Connors. He met Madge at a sorority tea dance on the CU campus when she was a freshman.

Following his admission to the Colorado bar, Alfred took a position with a Denver law firm “earning a lavish \$15.00 per week.” It wasn’t enough, in his view, on which to get married so he headed back to Swink in the Model-T Ford he had named “The Blue Duke.” He found a job with a lawyer in Springfield, Colorado in the extreme southeast corner of the state for \$200 per month. Within six weeks the lawyer, D.G. Reynolds, made Alfred his partner. He and Madge then married on November 12, 1929, two weeks after “Black Tuesday,” the day of the greatest stock market drop in United States history. The following day the stock market reached its lowest level of the year. Arraj practiced with Reynolds and on his own for nearly twenty years. He also served as Baca County Attorney on a part-time basis from 1936 until he reported for military service at the start of World War II.

On Tuesday, December 9, 1941, two days after the Japanese attack on Pearl Harbor, Arraj and two of his closest friends, Gordon Allott and Jimmy Wagner, volunteered for military service. Arraj, then 35, enlisted in the U.S. Army Air Corps and served for 40 months, mostly in the China-Burma-India Theater with the Army Airways Communication System. He rose from First Lieutenant to Major and commanded the 129th AACCS Squadron, 1st Tactical Group. He was awarded three battle stars during that time.

Major Arraj returned to civilian life in 1946 and resumed his position as Baca County Attorney. Major Gordon Allott returned to Lamar, Colorado and was soon elected District Attorney of the Fifteenth Judicial District. Since Baca County was also in the Fifteenth Judicial

District, Arraj received an appointment from Allott as Deputy District Attorney. In 1947, the Arrajs' only child, Sally, was born. When Arraj confided in Allott that he wanted to be a judge, Allot advised him that the current district judge was going to retire. Colorado state judges were elected at that time and Arraj announced his candidacy before most people had heard of the upcoming vacancy.

Arraj ran against a popular state senator in the Republican primary and surprised everyone with his victory. He then won the general election in November 1948, becoming the only state district judge in the largest one-judge district in the state. The district was so large that in 1953 the Arrajs decided to move fifty miles north from Springfield to Lamar so that "the Judge," as he was ever after known, would be near the center of the district. By this time, Allott had been elected Lieutenant Governor of Colorado.

When Judge Arraj was elected, he as confronted with a serious backlog of over 300 pending cases, so he rolled up his sleeves and went to work. By the beginning of 1957 there were 132 matters on the docket and he had disposed of 2,762 cases.<sup>3</sup> His perseverance was also notable outside the courtroom. In May 1950, while driving from Springfield to Lamar to hear a case, he came upon a washed-out bridge. He returned home, picked up his hip waders, and instructed his court reporter to meet him on the other side of the stream. The Judge drove back to the stream, "donned his hip boots, hoisted his briefcase, suitcase and shoes over his head, forded the stream, and arrived at the courthouse on time for the trial."<sup>4</sup> Given the example he set, it is understandable that the Judge had little patience with lawyers and litigants who were late to court.

Arraj's reputation as a diligent, hard-working judge became known throughout the state

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<sup>3</sup> *Arraj Given Inside Track for Judicial Appointment*, Pueblo Chieftain, June 9, 1957; *Docket Crowded But Judge Has Answers Why*, Lamar Daily News, Sept. 4, 1952

<sup>4</sup> *Flood Waters Can't Hold Up Arraj's Court*, Baca County Banner, May 1950; Sue Lindsay, *30 years on bench honored*, Rocky Mountain News, Aug. 3, 1987, at 10; Robert J. Kapelke, *Six of the greatest: A Tribute to Outstanding Lawyers in Colorado History – Alfred A. Arraj*, 31 Colorado Lawyer 9 (July 2002)

due to his involvement in Republican politics and his work with the Colorado Bar Association. In 1954 he was elected Senior Vice President of the CBA and President of the Colorado State District Judges Association. Congress that year had created a new federal district court judgeship and Arraj's name was mentioned in the newspapers as a possible candidate. Jean S. Breitenstein, however, was eventually selected.

Not long after taking office as U.S. Senator in 1954 Allott began campaigning in Washington for a third U. S. District Court Judge for Colorado. By June of 1956 "the Judge" was again mentioned in the newspapers as a "strong candidate for the appointment in the event the bill creating the additional judgeship should become law."<sup>5</sup>

Although the bill failed to pass, in June 1957 Judge Breitenstein was appointed to the Tenth Circuit Court of Appeals creating a vacancy on the district court bench. On June 21, 1957, *The Denver Post* ran a story naming possible candidates to fill the vacancy. Included were Donald F. Kelley, the United States Attorney for Colorado, Duke Dunbar, Colorado's Attorney General, Harry S. Petersen, past President of the Colorado Bar Association, and Judge Arraj. The Post opined that Judge Arraj was the front-runner, but stated there was one factor working against his selection. Specifically, the Post said, it was Denver's "turn" to have a judge on the federal bench. The Post also predicted that the "[s]election of Breitenstein's successor won't come for months."<sup>6</sup>

Unbeknownst to the press and the public, in mid-May 1957 Senator Allott had already written to the Justice Department recommending Arraj, stating, "I believe him to be the best qualified District Judge in Colorado, a lawyer of indisputable talents with the widest possible

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<sup>5</sup> *New Judgeship Possibility Dims; Opens Way for 15<sup>th</sup> D.A. Race*, Lamar Daily News, June 25, 1956; see also *Chenoweth Bill Would Create New U.S. Judgeship in State*, Pueblo Chieftain, Jan 19, 1956.

<sup>6</sup> Hile Goodrich, *Four in Running for Federal Judge if Breitenstein Wins Promotion*, The Denver Post, June 21, 1957.

kind of experience which makes for good lawyers, and above all, I know him to be a person of unassailable integrity.”<sup>7</sup> The Justice Department and the American Bar Association had already begun their background checks on Judge Arraj.

The day after the Post article was published Senator Allott announced the selection of Judge Arraj.<sup>8</sup> Allott told the newspapers that President Eisenhower had said months before that he “desired to appoint men who are young but have legal capability and who are experienced on the bench.”<sup>9</sup> Judge Arraj, at age 49, fit the bill perfectly.

Support for the Judge was bipartisan and statewide. Prominent Democrats, including Colorado’s junior U.S. Senator John A. Carroll, U.S. Representative Byron Rogers and State Democratic Chairman Fred Betz all praised Arraj’s nomination. Without dissent he was recognized for his hard work on the state bench, his fairness, and his commitment to justice.

President Eisenhower nominated Judge Arraj on July 2, 1957. The nomination was confirmed by the Senate on August 5. His oath of office was administered on August 30, two days before his fiftieth birthday, by Chief Judge Orie L. Phillips of the Tenth Circuit Court of Appeals.

The swearing in ceremony was held in Courtroom A of what is now the Byron R. White Federal Courthouse. Morrison Shafroth presented the report of the American Bar Association, stating, “There was unanimity of opinion that he, Judge Arraj, possesses all of the prerequisites of an outstanding judge. In addition to being well versed in the law, he is known for his complete fairness, honesty, candor, and judicial temperament.”<sup>10</sup>

In a brief acknowledgment, Judge Arraj defined his mission throughout his life on the

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<sup>7</sup> Letter from U.S. Senator Gordon Allott to Deputy Attorney General William P. Rogers (May 15, 1957), Alfred A. Arraj Papers, Tenth Circuit Court Library, Denver, Colorado.

<sup>8</sup> Barnet Nover, *Arraj Federal Court Choice*, The Denver Post, June 22, 1957, at 1.

<sup>9</sup> *Allott Names Arraj for U.S. Judge Post*, Rocky Mountain News, June 23, 1957, at 10.

<sup>10</sup> Swearing in of the Honorable Alfred A. Arraj, Reporter’s Transcript of Proceedings, August 30, 1957, at 8, Alfred A. Arraj Papers, Tenth Circuit Court Library, Denver, Colorado.

bench:

“I embark on this new career with a sense of humility, but with a firm and steadfast resolution to administer justice punctually and impartially without regard to the race, the creed or the station in life of the litigants who may appear in the court over which I may preside. I hope that I can keep my sense of balance and I know that I must keep my sense of humor, that I shall try to do, gentlemen, and will always bear true faith and allegiance to the best of my ability to the Constitution of the United States and to this great Republic.”<sup>11</sup>

Judge Arraj started work in a temporary courtroom in the same building until a new, permanent courtroom was finished on the fourth floor later that year. According to the recollections of U.S. District Court Judge Fred M. Winner,

“It was beyond the comprehension in 1916 [when the Old Post Office Building was constructed] that Colorado would ever have two United States District Judges, and when a second judgeship was authorized in 1954, and Jean S. Breitenstein was appointed, there was no second courtroom. A few offices on the second floor of the Champa Street side of the building were thrown together to create a makeshift courtroom. Spectators’ and lawyers’ chairs were the gray metal chairs on which the government must own the patent, and gray metal tables served as counsel tables. The ‘bench’ was another gray metal table behind which Judge Breitenstein and, later Judge Arraj, sat.”<sup>12</sup>

Judge Arraj was quickly forced into a leadership position. He became Chief Judge on December 12, 1959 when Judge William L. Knous unexpectedly passed away. Arraj served as Chief Judge of the District of Colorado for more than sixteen years, until he took senior status on August 31, 1976, the day before his 70th birthday.

In 1964 Arraj was elected by the judges of the circuit as the District Judge representative for the Tenth Circuit to the Judicial Conference of the United States. He served on several committees of the Conference and as an instructor at seminars for newly appointed judges. From 1974 through 1976 he served on the board of directors of the Federal Judicial Center. He was appointed by Chief Justice Warren Burger as one of only ten judges in the nation to oversee the off-bench activities of all federal judges.

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<sup>11</sup> *Id.*

<sup>12</sup> U.S. District Court Judge Fred Winner, Preliminary draft of article regarding the history of the U.S. District Court for the District of Colorado, Tenth Circuit Court Library, Denver, Colorado.

When Judge Arraj took his oath of office, he promised to administer justice “punctually.” He had demonstrated success as a state trial judge in reducing the backlog of cases he had inherited and immediately set out to do the same in federal court. He worked efficiently, consistently and “punctually” from the onset. In 1966 he devised an ambitious plan to dispose of the backlog. He used all five district courtrooms in the new Byron Rogers courthouse during a six-week “intensive trial calendar.” At the time there were only three district judges; Hatfield Chilson and William E. Doyle were the others. Arraj arranged for six out-of-state judges to hear cases for one or two weeks each during the six-week session. This special session was an innovation in federal district courts. The “logjam” of cases was cleared and the Arraj plan was thereafter used in other districts.

By 1971 the press was hailing the U.S. District Court for the District of Colorado as a “model” for other courts to emulate.<sup>13</sup> The average wait for a criminal trial was thirty days from the time of arrest to the trial.<sup>14</sup> Arraj acknowledged that this short time period was due to the judges “pushing”, which did not enhance his popularity with the bar. The Judge, however, did not care if he was popular with the bar because, as he said, he was not “in a popularity contest.”<sup>15</sup> “Justice delayed was justice denied,” he opined. Later that year, when Chief Justice Warren Burger came to Denver for a judicial conference, he praised Arraj as a “strong chief judge” and the federal district court in Colorado as a “strong bench.”<sup>16</sup> By the time he took senior status in 1976 the district court was recognized as one of the most efficient in the nation. Among more than 90 federal courts, it was routinely near the top of the list in efficient use of jury time and in providing prompt trials in both civil and criminal cases.

The price for these achievements was unrelenting hard work. The Judge was so committed

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<sup>13</sup> *U.S. Court in Denver a Model*, The Denver Post, May 18, 1971, at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Peter Blake, *State Court are Highly Praised by U.S. Chief Justice*, Rocky Mountain News, Aug. 24, 1971, at 1; *Burger Praises Plan to Speed Trials*, The Denver Post, Aug. 24, 1971, at 24.

to the speedy and efficient administration of justice during his 35 year tenure on the federal bench, he took very little time off from work and, aside from devoted attendance at CU football games he participated in very few leisure activities. He was named one of the nation's most hard-working judges in *The Benchwarmers*, a 1974 book about federal judges.<sup>17</sup>

Once Judge Arraj took senior status he tried as many cases as before. He worked every day until two weeks before his death on October 23, 1992 at the age of 86. When state district court judge Zita Weinshienk was appointed to the federal bench in 1979 she asked the Judge how much vacation time federal judges were allowed. He replied, "As much as you want, I guess. I've taken seven days in the last fourteen years."<sup>18</sup>

Everyone who worked for and with the Judge enjoyed the experience like none other. In keeping with the promise he made at his swearing-in, he retained his keen sense of humor and the characteristic "twinkle in his eye." When presiding over a high profile case with highly paid out of town defense lawyers, he noticed from the window of his chambers that limousines would line up outside the courthouse to pick up the attorneys and their client at the noon recesses. One day he instructed his law clerk, Jim Scarboro, to retrieve his old Chevy Corvair from the parking garage in the basement, park it in front of the limousines and wait. Scarboro impersonated the chauffeurs by holding the door open in a grand manner for Judge Arraj. For the duration of the trial the limos were nowhere to be seen.<sup>19</sup>

Judge Arraj made a point of knowing everyone in the courthouse. He was personable and friendly to all. Whether dealing with other judges or employees of the court, he exuded an expectation of excellence to which everyone willingly aspired. As Judge Matsch later noted, Arraj

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<sup>17</sup> Joseph C. Goulden, *The Benchwarmers: The Private World of the Powerful Federal Judges*, 316 (Wybright and Talley, 1974).

<sup>18</sup> Sue Lindsay, *Fellow Jurists Roast, Applaud Judge Arraj*, Rocky Mountain News, Aug. 7, 1987, at 50.

<sup>19</sup> Kapelke, supra note 2, at 10.

was “a leader of the ‘follow me’ school. He did not proclaim, plea or placate. He relished the leadership role, and he used it to inspire by illustration, prod through precept, caution with humor and sometimes silently shame by comparison.”<sup>20</sup> An undated horoscope discovered among his papers after he died succinctly summed up his attributes:

September 1 --Born today, you have a tremendous amount of originality, inventiveness and ability. You have excellent executive ability and know how to get the full faith and cooperation of all those with whom you work. Your determination is undaunted and once you set your mind on something, you see that it gets done with dispatch.

Judge Arraj could become annoyed with attorneys who were unprepared or made fatuous arguments. Sometimes he handled the situation with humor; other times with thunder. Once, when a bumbling barrister ducked into the hallway during a recess, the Judge told his courtroom deputy to lock the door and keep him out. The press reported that “Johnny Carson would have envied the laugh.”<sup>21</sup> Lawyers knew they were in for it when the Judge Arraj’s face began to turn red. If the redness reached the top of his bald dome, a verbal lashing was the order of the day. For the most part, however, the Judge was known as a kind-hearted man who loved the law, the people he worked with and his family. Lawyers generally referred to him as “Triple A.”

Of the thousands of cases over which he presided in his 35 years on the federal bench, Judge Arraj pointed to two as highlights. The first was a highly publicized criminal case during the Vietnam War. In January 1969 Cameron David Bishop and three co-conspirators bombed a tower in Golden that provided power to the Coors Porcelain plant which manufactured nose cones for military missiles. Bishop fled the country and was not apprehended until March 1975. Michael E. Tigar, who later defended Terry Lynn Nichols in the Oklahoma City bombing case, represented Bishop.

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<sup>20</sup> Proceedings in Memoriam, Honorable Alfred A. Arraj – Judge, United States District Court, 855 F. Supp. At LXXXI-LXXXII (May 11, 1993).

<sup>21</sup> Mike Monroe, *Justice White Praises Arraj, Judicial Tenure*, The Denver Post, June 15, 1987, at 2B.

Following a trial in September 1975 Bishop was convicted of three counts of sabotage under the Federal Sabotage Act.<sup>22</sup> Judge Arraj had ruled that a national state of emergency declared in 1950 was still in effect at the time of the bombings. Congress had conducted extensive hearings in 1973 to determine whether the state of emergency declared by President Truman continued to be justified. Congress chose not to terminate the state of emergency and the Judge held that decision to be binding on the court. Therefore Bishop's motions to dismiss and for a new trial were denied. Judge Arraj sentenced Bishop to seven years. On appeal, the convictions were reversed in an opinion by Judge Breitenstein who ruled that Bishop could not have foreseen that a national state of emergency still existed and therefore his conduct could not have violated the Federal Sabotage Act.<sup>23</sup>

In 1978 the Judge received a rare opportunity of which he was particularly proud. He was appointed by the U.S. Supreme Court as Special Master in a dispute between the United States and the State of California that had been brewing since 1945. Both the federal government and the state claimed control over oil royalties from off-shore drilling along the California coast. The issue was whether the coastline followed the mean lower low-water line along the natural shore, or whether it followed the seaward edge of 15 piers and the Rincon Island complex projecting into the sea from the shore. After conducting hearings, Judge Arraj submitted his findings and recommendation of the former interpretation to the Supreme Court on August 20, 1979. The recommendations were adopted in their entirety by the Court.<sup>24</sup>

In 1969 it was reported in the press that Judge Arraj might be nominated for the Supreme Court. Senator Allott claimed he was "one of the finest judges in the United States," but

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<sup>22</sup> The Federal Sabotage Act, 18 U.S.C. §2151 et seq, was passed in 1918 during World War I. In 1940 § 2155 was added to make it a federal crime to sabotage the national defense in times of peace.

<sup>23</sup> *U.S. v. Bishop*, 555 F. 2d 771 (10<sup>th</sup> Cir. 1977).

<sup>24</sup> See *U.S. v. California*, 447 U.S. 1, 6 L.Ed.2d 681, 100 S.Ct. 1994 (1979).

acknowledged that at age 62, he might be too old to be appointed. In 1970 Arraj was mentioned as a candidate for the Court of Appeals when Judge Breitenstein assumed senior status. Judge Arraj declined to be considered, however, saying that his rightful place was on the trial bench. He was gracious in being acknowledged, but he found his true satisfaction in making life better for others.

In October 2002 work was completed on a new federal courthouse in downtown Denver. Named the Alfred A. Arraj U.S. Courthouse, it is a lasting tribute to this gentle servant of the law who was prized locally and praised everywhere.

### **FREDERICK M. WINNER<sup>25</sup>**

Likely the only District of Colorado judge to author an opinion entirely in verse, Frederick M. Winner served on the District of Colorado bench from December 18, 1970, to August 1, 1984. Effective September 1, 1976, Judge Winner followed Alfred A. Arraj as Chief Judge, and then served as Chief Judge until assuming senior status on April 8, 1982. Judge Winner resigned from the bench in 1984, returning to private practice where he remained until a few years before his death in 2003.

At the time of his appointment by President Richard M. Nixon, Judge Winner was described by a local newspaper as the “gallantly impish, frog collecting boy next door, fun-loving student of law, robust nemesis of fakers, quiet observer of explosive dangers, thoughtful respecter of the facts, unimpressed by the powers of the high and mighty, steady in skiing and reasonably secure in his inner emotions . . . .”<sup>26</sup>

Although Judge Winner was recognized for his intellect, diligence, broad knowledge of

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<sup>25</sup> By Senior U.S. District Judge John L. Kane.

<sup>26</sup> Gene Cervi, Editorial, *Mile High Observations*, Cervi’s Rocky Mountain J. (Denver, Colo.), Oct. 7, 1970, at 16.

legal principals and keen sense of humor, his judicial temperament was the subject of sharp criticism. He brought to the bench a background and reputation as a thorough, tenacious and contentious litigator and those who dealt with him said he could be a cantankerous judge with a tendency to insert himself in the case. Well aware of his reputation, he kept a sign on his bench that said “Patience, Patience, Patience – Keep Your Damned Mouth Shut.”<sup>27</sup> Even Judge Winner’s detractors, however, characterized him as evenhanded and hardworking. He presided over ninety-six jury cases in a single year, bested only by Chief Judge Arraj’s record of 100 trials in one year.<sup>28</sup> He was known to be outspoken and fearless when he sensed injustice or government abuse.

Frederick Morse Winner was born in Denver on April 8, 1912. He was raised by his grandparents from the age of six after his mother died in the 1918 influenza epidemic.<sup>29</sup> Following his graduation from East High School, Winner attended the University of Colorado at Boulder. In 1933, Winner received bachelors’ degrees in business and economics. He began his studies at the University of Michigan Law School, but he and his wife returned to Colorado for financial reasons. Winner then received his LL.B. from the University of Colorado School of Law in 1936.

During the Great Depression work of any type was scarce so Winner worked odd jobs during school, and after graduation he began his legal career as a process server. He also wrote the Colorado Annotations for the *Restatement of Agency* to pay the bills. He rented his first office space at 17th and California Streets in downtown Denver for \$12.50 a month. The colorful litigator Max D. Melville had an office just down the hall.<sup>30</sup> Melville soon noticed Winner’s

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<sup>27</sup> Sue Lindsay, *Judge Lays Gavel Aside After 13 Years*, Rocky Mountain News, Sept. 6, 1983, at 12.

<sup>28</sup> Interview by Michael Reidy with Fred Winner, *An Oral History: Fred Winner*, Colo. Law., Aug. 1997, at 43, 45.

<sup>29</sup> Zeke Scher, *Judge Winner Leaving Bench, but Not Law*, The Denver Post, Aug. 28, 1983, at 1B.

<sup>30</sup> Scher, *supra*.

work ethic and sharp mind, and invited him to move into his office “at the same rent.” This led to the association of Ellis, Melville & Winner, where Winner practiced for six years until he joined the U.S. Navy at the start of World War II.

Winner served on destroyer escorts in both the Atlantic and Pacific theaters. He also worked in the Office of Naval Intelligence, rising to the rank of Lieutenant Commander before his discharge in 1946. Upon returning to Denver, Winner and a partner formed Winner Foundries & Manufacturing, Inc. After four years making form castings, he sold his interest in the business, which continued with his name.

Winner then returned to his real passion of law. In the years prior to his judgeship Winner associated with many of the top lawyers in Denver. He earned a reputation as one of Colorado’s best trial lawyers and specialized in defending the First Amendment. Winner’s clients included numerous newspapers, United Press International, and the Associated Press. He was further recognized as an expert in condemnation matters and handled cases along the front-range, I-25 corridor, and west through the Vail Valley. He argued one case, a bankruptcy matter, before the United States Supreme Court.<sup>31</sup> He also taught civil procedure at Westminster Law School, now the Sturm College of Law at the University of Denver, from 1951 to 1954, and was proud that his students had a 100% first-time pass rate on the bar exam.<sup>32</sup>

As a U.S. District Judge, Winner presided with a strong belief that litigants deserved to have lawyers who were fully prepared and knowledgeable of the facts and the law. He gave short shrift to attorneys whom he believed were not properly prepared when they appeared before him. He charged that these lawyers were cheating their clients.<sup>33</sup> Lawyers described preparing for an appearance before Judge Winner nearly on the scale of readying for argument in

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<sup>31</sup> *Katchen v. Landy*, 382 U.S. 323 (1966).

<sup>32</sup> Scher, *supra* note 4.

<sup>33</sup> Lindsay, *supra* note 2; *An Oral History*, *supra* note 3, at 44-45; Scher, *supra* note 4.

the U.S. Supreme Court. His colleague Judge John L. Kane, Jr. quipped that when he appeared before Judge Winner as a public defender or in private practice, “he would have preferred ‘Marine boot camp or French Foreign Legion training’” to being unprepared.<sup>34</sup>

Arriving at his chambers no later than seven o’clock each morning, Judge Winner took pride in being prepared. He read all briefs, did his own research of the applicable law and authored many of his own opinions rather than relying on law clerks. Although known for his concise and well-reasoned writing, few knew that he typed most of those opinions himself with speed and accuracy.

Judge Winner expected attorneys appearing before him to be familiar with relevant cases issued by the Tenth Circuit Court of Appeals or the United States Supreme Court – even those released the day before the proceedings. Judge Winner’s wrath descended upon attorneys who were unprepared or who made arguments that lacked legal support. He was known to roll his eyes, toss pencils, feign indifference or drowsiness, turn around in his chair, or, worse, to pointedly castigate such attorneys’ performance and question their competence. In Judge Winner’s own words, he “[gave] unprepared lawyers a damn rough time.”<sup>35</sup>

Although he had no patience for baseless legal argument, Judge Winner did not hold lack of experience against counsel. Once, when Judge Winner believed that an attorney was failing to represent a client competently in his courtroom presentation, he declared a mistrial. Even the opposing counsel, who was benefiting from the other attorney’s ineptitude, had to agree that Judge Winner had acted properly.<sup>36</sup>

In addition to being famously well-equipped for trial, Judge Winner emphasized timeliness in his courtroom. Believing he must have been “born punctual,” any attorney even a

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<sup>34</sup> Lindsay, *supra* note 2.

<sup>35</sup> Scher, *supra* note 4.

<sup>36</sup> Scher, *supra* note 4.

few minutes late to court risked having Judge Winner rule before his or her arrival. He did not hesitate to command attorneys whom he perceived as being difficult, or who evidenced an inability to get along, to appear in his courtroom at 6:30 or 7:00 a.m. Judge Winner did not abide arrogance or injustice from government lawyers or bureaucrats, and he was particularly protective when the government bullied a small business owner. During his many years on the bench Judge Winner uncompromisingly followed his own compass and view of right and justice.

Judge Winner was aware of his reputation for being “the most controversial, powerful and feared judge” in Colorado.<sup>37</sup> When the Colorado Bar Association held its annual convention at The Broadmoor Hotel in Colorado Springs one year, an evening skit was performed spoofing Judge Winner and casting him as the villainous “Darth Vinner.” Unbeknownst to the crowd, Judge Winner changed places with the scheduled actor before the performance and the audience broke into great laughter when he removed his mask at the end.

Judge Winner was particularly vigilant when presented with evidence of government abuse or overreaching. Called by the *Rocky Mountain News* “one of the nation’s most ardent judicial watchdogs of the federal government,”<sup>38</sup> Judge Winner was praised for calling Department of Justice officials to appear to explain their conduct in a planes-for-Libya bribery case before him.<sup>39</sup> Attorneys and the press credited Judge Winner’s persistence as resulting in the Senate Judiciary Committee’s hearing and report sharply criticizing the Department of Justice and the FBI.<sup>40</sup> Knowing the power of the federal government and the damage that it may inflict, Judge Winner held United States Attorneys, as well as lawyers from other government

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<sup>37</sup> Anthony Polk, *Winner vs. U.S. a Classic Matchup*, *Rocky Mountain News*, October 26, 1980, at 5.

<sup>38</sup> Polk, *supra*.

<sup>39</sup> Lindsay, *supra* note 2; Polk, *supra* note 12. See generally *United States v. Winner*, 641 F.2d 825 (10th Cir. 1981) (denying the government’s petition for a writ of mandamus seeking the U.S. District of Colorado to vacate its orders in *United States v. Feeney*, 501 F. Supp. 1337 (D. Colo. 1980), which had commanded the presence of government officials in the pending criminal case).

<sup>40</sup> Lindsay, *supra* note 2.

agencies, to the highest standards.

Judge Winner was recognized as a “compassionate sentencer” though he did not hesitate to come down hard on nuclear weapons protestors or tax evaders. And though Judge Winner could be demanding towards attorneys, he never cited a lawyer for contempt of court. Judge Winner’s sole contempt citation was against air traffic controllers who went on strike during President Reagan’s administration. Although he issued the citation against the controllers – who violated an injunction and interfered with other workers – he did not impose punishment. Judge Winner agonized over those sentencing decisions where he believed the defendant acted out of stupidity or puerility, or while under the influence of controlling third parties, rather than with criminal intent. He vocally opposed the federal sentencing laws, believing that they wrongly denied him discretion to impose sentences he felt, based on the facts and the reports of the Probation Department, to be appropriate.<sup>41</sup>

Along with Clarence Brimmer, United States District Judge for the District of Wyoming, and Judge Kane, Winner spent many months sitting by designation on the bench in the District of Utah when Chief Judge Willis Ritter’s illness caused a backlog of cases there. There had been continuing conflict between Judge Ritter and the Tenth Circuit over Ritter’s biased conduct during some trials and Winner infuriated him when he slashed a long sentence Judge Ritter had given; where a hapless individual had been convicted of cutting a Christmas tree for his family which was, unknowingly, growing on land a few feet into federal property.

Judge Winner’s most polemical days surrounded his involvement in the federal mail-bombing trial of Francisco “Kiko” Eugenio Martinez. The defendant, a disbarred Colorado

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<sup>41</sup> See, e.g., *An Oral History*, *supra* note 3, at 45 (“I thoroughly disagreed with the idea of being ordered to impose a sentence fixed by someone who never even saw the defendant and knew nothing about the facts of the case, instead of allowing a judge to exercise his or her best judgment about sentencing an individual on which the judge had a full presentence report from the Probation Department.”).

attorney, was charged with multiple counts relating to unregistered explosives and the sending of explosives through United States mail.<sup>42</sup> As Chief Judge, Winner assigned the case to himself for a trial which commenced in Pueblo on January 27, 1981. On the second day of trial two jurors advised the court that they were uncomfortable with and intimidated by spectators wearing “Free Kiko” t-shirts, as well as a law student at the defense attorneys’ table who was wearing sunglasses in the courtroom. Jurors further complained that spectators wearing the t-shirts had stared at the jurors and made gestures with their fingers across their throats as if slitting them with a knife.<sup>43</sup> Judge Winner, however, denied the defense motion to replace the complaining jurors. Unknown persons had also made threatening telephone calls and visits to the families of court personnel. Due to threats made against his family, Judge Winner’s wife, daughter, and grandchildren were placed under the protection of the United States Marshal.

That evening, the judge held an ex parte meeting with government counsel and court personnel. Believing that some spectators were attempting to intimidate the jurors, Judge Winner proposed installing cameras in the courtroom to record their actions for potential future prosecution. Based on the actions of the Office of the United States Attorney in response to the meeting, the following day the court granted a joint motion for mistrial and a new trial was ordered.

When the defense counsel learned of the clandestine meeting, however, they filed a motion to dismiss all remaining charges against Martinez. Judge Winner recused himself, believing that he could be a witness in future proceedings. Martinez later filed a civil suit against Judge Winner, court personnel, members of the office of United States Attorney, numerous

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<sup>42</sup> *United States v. Martinez*, 667 F.2d 886, 887 (10th Cir. 1981).

<sup>43</sup> Lindsay, *supra* note 2.

government agents at the state and federal levels, and a television reporter.<sup>44</sup> The trial and appellate courts both ruled that Judge Winner’s actions were judicially immune from challenge, although the Tenth Circuit Court of Appeals characterized his conduct as “gross impropriety,” even if understandable under the circumstances he believed the court faced.<sup>45</sup>

In another matter Judge Winner changed centuries of legal precedent when he made an evidentiary ruling in a 1977 criminal case. Later claiming to have been only “about half awake” when the defendant’s objection was made,<sup>46</sup> Judge Winner ruled that the federal immunity statutes<sup>47</sup> did not bar the defendant’s wife from voluntarily testifying, under a grant of immunity, against her husband in a heroin-importation case.<sup>48</sup> Her testimony was limited to information about her husband’s actions and statements made in front of third parties; spousal communications between the two were precluded and so the spousal privilege did not arise. Both the Tenth Circuit and the U.S. Supreme Court affirmed Judge Winner’s ruling.<sup>49</sup> During a visit to Colorado after the opinion was published, U.S. Supreme Court Associate Justice Byron R. White, with whom Judge Winner had been friends since college, stopped by his chambers and teased that, in this ruling, her “had proven that trial judges could do in their sleep what it takes nine of us justices to do in a year.”

Judge Winner could also be playful, such as during the Chapter X reorganization of King Resources Company; the proceedings of which he oversaw for many years. The reorganization

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<sup>44</sup> *Martinez v. Winner*, 548 F. Supp. 278 (D. Colo. 1982).

<sup>45</sup> *Martinez v. Winner*, 771 F.2d 424, 436 (10th Cir. 1985), *aff’g in part & rev’g in part* 548 F. Supp. 278.

<sup>46</sup> *An Oral History*, *supra* note 3, at 45.

<sup>47</sup> 18 U.S.C. §§ 6001-6005 (2000).

<sup>48</sup> *United States v. Trammel*, 583 F.2d 1166, 1167 (10th Cir. 1978), *aff’d*, 445 U.S. 40 (1980).

<sup>49</sup> The Tenth Circuit ruling cited, primarily, *Hawkins v. United States*, 358 U.S. 74 (1958), in distinguishing *Trammel*, where a spouse who was an unindicted co-conspirator under grant of immunity gave voluntary testimony, from the long-standing rule prohibiting adverse spousal testimony without the defendant spouse’s consent. 583 F.2d at 1168. The Supreme Court reached even further back in time and referenced the “ancient roots” of the spousal immunity privilege as recognized in *Stein v. Bowman*, 38 U.S. (13 Pet. ) 209, 220-23 (1839), and the writings of Lord Coke in 1628 citing medieval jurisprudence to the rule. 445 U.S. at 43-44.

was the most complicated bankruptcy proceeding in its day. Attorneys in the case were Robert J. Kapelke, later a judge on the Colorado Court of Appeals, and Austen “Fuzzy” Furse, an Assistant Attorney General for the state of Texas.<sup>50</sup> King Resources missed a royalty payment on an oil and gas lease issued by the state of Texas, and Texas asserted that this default terminated the valuable property interest. Because the leased resources were under water in Texas, Judge Winner had to determine whether or not he had jurisdiction over the case, based on whether the trustee of King Resources had possession of the leased premises. In one brief on the lease issue, counsel for the trustee quoted the *Guinness Book of World Records* as authority; at a hearing before the court a paperback edition of *Alice in Wonderland* was the only exhibit admitted. Attorneys also filed briefs penned in the style of Samuel Taylor Coleridge’s “The Rime of the Ancient Mariner.” Judge Winner in the District Court and Judge Jean S. Breitenstein of the Tenth Circuit Court of Appeals followed suit in their rulings, with Winner writing an opinion in verse. Judge Winner ultimately ruled against the trustee.<sup>51</sup> At the appellate level, Judge Breitenstein issued an opinion – not for publication – admonishing Judge Winner to “ever refrain from efforts poetic.”

Shortly before his resignation from the bench, Judge Winner again made headlines for taking on a fight against the United States government. In the 1983 obstruction of justice case *United States v. Kilpatrick*,<sup>52</sup> the defendants were charged with conspiracy for the creation in mineral leases of false tax deductions for nonexistent advance royalty payments for investor-taxpayers. Judge Winner, however, accused the Internal Revenue Service of poor investigation and charged three government tax attorneys with improprieties in bringing and prosecuting the

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<sup>50</sup> Robert J. Kapelke, *Shut Out by a Shut-In*, Colo. Law., Feb. 1984, at 233, 233.

<sup>51</sup> *Id.*

<sup>52</sup> 575 F. Supp. 325 (D. Colo. 1983).

case at a level falling just short of prosecutorial misconduct.<sup>53</sup> Specific examples of alleged prosecutorial misconduct detailed by Judge Winner in his opinion included improper release of a subpoenaed witness, writing letters on Colorado U.S. Attorney stationery without the permission of the U.S. Attorney, unauthorized disclosure of grand jury testimony and intimidation of witnesses.<sup>54</sup> Judge Winner's opinion ordered a new trial for the defendants but did not dismiss the charges. Calling the opinion "slanderous" and unfairly critical, the U.S. Department of Justice asked Judge Winner to withdraw the opinion, or alternatively to redact the names of the government attorneys.<sup>55</sup> When Judge Winner refused, the government appealed to the Tenth Circuit, which in January 1984 issued a temporary injunction against West Publishing Co.'s including the opinion in the *Federal Supplement*. First Amendment lawyers and the American Civil Liberties Union angrily charged that the order constituted "blatant federal arrogance," "unshirtd censorship," prior restraint, abuse of power, and a violation of the separation of branches of the government.<sup>56</sup> Three weeks later the Tenth Circuit reversed its decision and vacated its order in light of precedential opinions "broadly banning prior restraints."<sup>57</sup>

Though Judge Winner was a self-proclaimed "grumpy, opinionated . . . grouch,"<sup>58</sup> for every detractor, there were more fellow judges, lawyers, and court staff who not only admired and respected him but counted him as a friend. In contrast to his stern behavior in court, Judge Winner was unpretentiously generous and gracious with staff and court personnel. He knew the name of every rose bush in his garden, from which he cut a daily bouquet for his longtime secretary. Surprisingly shy in many ways, one must speak with Judge Winner's family and

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<sup>53</sup> *Id.* at 326-42; *see also* Mark Thomas, *Court OKs Publication of Winner's Opinion*, Rocky Mountain News, Jan. 25, 1984, at 6.

<sup>54</sup> *Id.* at 329-34, 340; *see also* William R. Ritz, *Justice Department Tries to 'Gag' Judge Winner*, The Denver Post, Jan. 22, 1984, at 1A; Thomas, *supra* note 28.

<sup>55</sup> Thomas, *supra* note 28.

<sup>56</sup> Ritz, *supra* note 29.

<sup>57</sup> Thomas, *supra* note 28.

<sup>58</sup> *An Oral History*, *supra* note 3, at 46.

friends to glean details of his innumerable acts of kindness and benevolence. In one highly publicized matter Judge Winner assisted a young woman, who was convicted as a drug dealer in his court, in finishing college, attending law school and gaining admission to the bar. Judge Winner hired her as a law clerk, and she has practiced in Colorado with distinction for more than two decades.

Judge Winner regularly held court in the U.S. Courthouse in Grand Junction, and he was the primary force behind the restoration and preservation of the historic three story building, which was completed in 1918 and extended in 1938. On one trip to Grand Junction he was out for an early morning run when stopped by a local police officer. Having neither his wallet nor court identification with him, Judge Winner identified himself and the reasons for being out in the pre-dawn darkness. To this the officer replied, “Sure you’re a federal judge, and I’m Elliott Ness.” A call to Court Clerk James R. Manspeaker confirming Judge Winner’s identification caused the officer to blanch over the prospect that the matter would adversely affect his career. To the contrary, Judge Winner praised the officer for his diligence and dined often with the officer and his family on return trips.

Judge Winner ended his judicial career at age 72 and returned to private practice. When well into his seventies Judge Winner took to trial an eminent domain case concerning land to be used for Denver International Airport. His co-counsel believed this was the largest and most complex condemnation case ever tried in the United States, as it involved the acquisition of thousands of acres of land – complicated by the presence of water and gas wells on the various properties. During the prolonged trial Judge Winner’s mind and legal abilities were as sharp as they had ever been.

Judge Winner was married to Frankie Ransburger Winner for seventy years. He

continued to practice until his wife's ill health led them to move to Grand Junction in 2001 to be near family until her death in November of 2002. Judge Winner died at the age of ninety on January 22, 2003, in Grand Junction. He was survived by two daughters, nine grandchildren, and eleven great-grandchildren.

### **SHERMAN G. FINESILVER<sup>59</sup>**

At his swearing in ceremony on October 22, 1971, Judge Sherman Finesilver pledged his strength and energies “to run an efficient and orderly court in the highest and fairest tradition of the American Judicial System.”<sup>60</sup> Joining Chief Judge Alfred A. Arraj and Judges Hatfield Chilson and Fredrick M. Winner on this the small but exemplary bench, Judge Finesilver acknowledged the challenge ahead: the great potential to heal and encourage as well as “to demoralize and shatter the human spirit,” tempered by “the need for courtesy and patience.” Over the twenty-three years that Judge Finesilver served on the federal bench, including the twelve years he was Chief Judge, his judicial demeanor and jurisprudence, leadership and collegiality, courtroom style and chambers management, and teaching and mentoring were guided by these values.

The son of a railway clerk who “was not too proud to wear bib overalls” to work,<sup>61</sup> Sherman Glenn Finesilver was born on October 1, 1927, and grew up in west Denver, then a largely Jewish community. The youngest of four children, he attended North High School where he was a highly regarded football player. After graduating from the University of Colorado with a B.A. degree in 1949, he enrolled in its School of Law. However, due to low grades his first

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<sup>59</sup> By Doris G. Kaplan, former law clerk to U. S. Circuit Judge John C. Porfilio, with assistance from Catherine McGuire Eason, Deputy Circuit Librarian and former law clerks of Judge Finesilver.

<sup>60</sup> Ceremony of Swearing In of Sherman Glenn Finesilver as United States District Judge, October 22, 1971, Courtroom A., Denver, Colorado.

<sup>61</sup> Sara Burnett, *Finesilver Renowned as Jurist*, Rocky Mountain News, Oct. 13, 2006.

year he was not allowed back for the second year, an early lesson in failure which devastated his father and taught him “about the frailties of the human condition, and about the need to give people second chances.”<sup>62</sup> His second chance came when he was admitted to Westminster Law School. Its night program allowed its students to work during the day and Finesilver obtained a job as a clerk at the Denver City Attorney’s office. He received his law degree from Westminster, now the University of Denver’s Sturm College of Law, in 1952 and was admitted to the Colorado bar. He then began work as an attorney at the Denver City Attorney’s office. After three years, Denver Mayor William F. Nicholson launched Finesilver’s judicial career, appointing him to the Denver County Court. At twenty-eight, Finesilver became one of Denver’s youngest judges. Encouraged to run for a state district judgeship, Judge Finesilver easily defeated the incumbent in 1962, beginning a nine-year stint on the Denver District Court.

While on the Denver District Court Judge Finesilver taught evidence at the University of Denver School College of Law. Instead of selecting a text book he assigned drafts of the proposed Federal Rules of Evidence, correctly predicting the states would soon adopt them as well.<sup>63</sup> During that time he also authored three books published by Grosset & Dunlap. *Protect Your Life! In the Streets/In Your Home or Apartment/At School/While Travelling; Protect your Life: Wise words for Women;* and *Timely Tips When Disaster Strike* were practical guides drawing on his “broad judicial experience . . . as well as the experience of police officials and even criminals themselves.”<sup>64</sup> The books offered advice “to concerned citizens” on how to respond to the many manifestations of crime in daily life.

Anchoring these first years on the bench and many to follow was his wife Annette,

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<sup>62</sup> Sherman Finesilver, *The Day I Flunked Out of Law School*, Reader’s Digest, June 1995, at 26-28.

<sup>63</sup> The United States Supreme Court circulated drafts of the Federal Rules of Evidence in 1969, 1971 and 1972. The Rules became law on January 2, 1975, when the President Gerald R. Ford signed the Act to Establish Rules of Evidence for Certain Courts and Proceedings, Pub.L. 93-595, 88 Stat. 1926.

<sup>64</sup> Jacket Cover, *Protect Your Life*.

described as “my check in balance,” who might occasionally warn, “Sherm, don’t get too judgey,” or “Sherm, climb down off that bench.”<sup>65</sup> They had three children, Jay, Steve, and Susan, and eleven grandchildren. To each he imparted “you get out of life what you put into it.”<sup>66</sup> Judge Finesilver introduced his many law clerks to his family and entertained them in his home. He told his clerks when home crises arose, “you need to do what’s right for you and your family; let me worry about handling things here.”<sup>67</sup> Judge Finesilver was also active in the community, particularly in the Jewish community, and he and Annette were often seen at fund raisers, social gatherings and entertainment events.

Judge Finesilver was nominated for the federal bench by President Richard M. Nixon in September 1971 to fill the seat vacated by William E. Doyle. He was confirmed by the Senate thirteen days later and received his commission on September 22, 1971, becoming a member of “the dynamic quartet”<sup>68</sup> on the United States District Court, which included Alfred A. Arraj, Hatfield Chilson, and Frederick M. Winner. Judge Finesilver “began behind,” buried in the substantial backlog that had awaited his arrival. The docket spanned the range of issues arising under federal law, such as habeas corpus,<sup>69</sup> agency,<sup>70</sup> patent infringement,<sup>71</sup> and attorneys’ fees in the ongoing litigation over the desegregation of the Denver Public Schools.<sup>72</sup> In the early landmark case of *Foe v. Vanderhoof*, 389 F. Supp. 947 (D. Colo. 1975), Judge Finesilver held unconstitutional a Colorado law that required parental consent before an unmarried woman under the age of eighteen could terminate her pregnancy.

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<sup>65</sup> Remarks by Judge Finesilver, Swearing in Ceremony, Oct. 22, 1971.

<sup>66</sup> Remarks by Steve Finesilver, Portrait Presentation Ceremony Judge Sherman Finesilver, December 9, 1994.

<sup>67</sup> Michael Flanagan email.

<sup>68</sup> Remarks by Judge Zita Weinshienk, , Portrait Presentation Ceremony Judge Sherman Finesilver, December 9, 1994.

<sup>69</sup> *Hubbard v. Wilson*, 401 F.Supp.495 (D. Colo. 1975).

<sup>70</sup> *Oil Shale Corp. v. Morton*, 370 F. Supp. 108 (D. Colo. 1973).

<sup>71</sup> *Norfin, Inc. v. International Business Mach. Corp.*, 453 F. Supp. 1072 (D. Colo. 1978)

<sup>72</sup> *Keyes v. School Dist. No. 1, Denver, Colo.*, 439 F. Supp. 393 (D. Colo. 1977).

In 1974 the Judicial Panel on Multidistrict Litigation transferred to the District of Colorado and assigned Judge Finesilver his first complex case alleging violations of federal securities laws.<sup>73</sup> The *King Resources* litigation was followed by the Swine flu vaccine cases. These Federal Tort Claims Act cases were generated by the National Influenza Immunization Program of 1976. The program had been implemented to inoculate the country's adult population against the threat of a swine flu epidemic.<sup>74</sup> Because of a significant increase in cases of Guillain-Barre Syndrome, a neurologic disorder often resulting in paralysis, the program was suspended on December 16, 1976. Plaintiffs, all suffering from Guillain-Barre, alleged the United States was liable for their illnesses based on the causal connection between the vaccine and the illnesses. Judge Finesilver travelled to Salt Lake City, Oklahoma City, Tulsa, Topeka, and Santa Fe to try approximately 125 cases.<sup>75</sup>

In 1982 Judge Finesilver became Chief Judge of the District of Colorado, succeeding Frederick M. Winner who assumed senior status. Judge Finesilver then held the Chief Judge position until he retired in May 1994. From 1983 to 1986 he addressed the antitrust case in which Monfort of Colorado, then the country's fifth-largest beef packer, brought an action in Federal District Court to enjoin the proposed merger of Excel Corporation, the second-largest packer, and Spencer Beef, the third-largest packer.<sup>76</sup> Counsel from around the country were involved in the matter and it received a great deal of publicity. After a bench trial, Judge Finesilver enjoined the merger, a decision upheld by the Tenth Circuit Court of Appeals, although the U.S. Supreme Court ultimately reversed on a legal issue of what constituted

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<sup>73</sup> *In re King Resources Co. Securities Litigation*, 385 F. Supp. 588 (Jud.Pan.Mult.Lit. 1974).

<sup>74</sup> *See, e.g. In re (Swine Flu Immunization) Products Liability Litigation, Alvarez v. United States*, 495 F. Supp. 1188 (D. Colo. 1980).

<sup>75</sup> Correspondence with former law clerk, Robert W. Forman.

<sup>76</sup> *Monfort of Colo. Inc. v. Cargill, Inc.*, 591 F. Supp. 683 (D. Colo. 1983).

“antitrust injury.”<sup>77</sup>

In the case titled *In re: Air Crash Disaster at Stapleton Intern. Airport, Denver, Colo., on November 15, 1987*, Judge Finesilver was assigned numerous claims arising from the crash of a Continental Airlines DC-9 airplane en route from Denver to Boise, Idaho.<sup>78</sup> During take-off in a snow storm at Stapleton International Airport the plane crashed, killing 28, including the pilot, copilot and flight attendant and injuring 54 passengers. Plaintiffs, residents of Arizona, Colorado, Idaho, New Jersey, and Washington, claimed the crash was caused by pilot inexperience and poor training, Continental Airlines’ willful, wanton and reckless disregard for passenger safety, along with various deceptive trade practices. Despite the complexity of these claims as well as the magnitude of the loss and injury, Judge Finesilver resolved the cases within two years of the crash.<sup>79</sup>

Storage Technology Corporation’s petition for reorganization under Chapter 11 of the Bankruptcy Code soon followed.<sup>80</sup> Fifteen separate class actions alleging violations of federal securities law were added to the underlying bankruptcy action. After the consolidated securities litigation was settled in September 1990<sup>81</sup> undisbursed funds of approximately \$108,000 remained. With the approval of parties and counsel, Judge Finesilver ordered the funds distributed to various community groups, including programs to support programs for physical and mental abuse, infant screening and treatment, and legal services to the poor. In this settlement, Judge Finesilver demonstrated his reputation for innovation “in structuring

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<sup>77</sup> *Cargill, Inc., v. Monfort of Colo., Inc.*, 479 U.S. 104, 122 (1986).

<sup>78</sup> *In re: Air Crash Disaster at Stapleton Intern. Airport, Denver, Colo., on Nov. 15, 1987*, 720 F. Supp. 1433 (D. Colo. 1988).

<sup>79</sup> Remarks by Judge David Ebel, Portrait Presentation Ceremony Judge Sherman Finesilver, December 9, 1994.

<sup>80</sup> Headquartered in Louisville, Colorado, Storage Tech manufactured tape data storage devices and systems generating sales of over \$1 billion in 1982. Like the Swine Flu cases, this bankruptcy filing and securities litigation occupied Denver headlines.

<sup>81</sup> *In re Storage Technology Corp. Securities Litigation*, 1990 WL 260592 (D. Colo. 1990).

settlements in a way to provide the broadest possible public good.”<sup>82</sup>

Chief Judge Finesilver also organized, managed, and ultimately settled the Superfund cleanup of Denver’s Lowry Landfill.<sup>83</sup> Under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”), 42 U.S.C.A. §§ 9601 et seq., a settlement was required to reflect the dual purpose of achieving the prompt cleanup of hazardous waste sites and imposing the cost of cleanup on those responsible for the contamination. Over the course of one year the City and County of Denver and other landfill operators settled their CERCLA action against 75 defendants, reaching settlement agreements the court found to be fair and reasonable with “complete and justifiable terms.”<sup>84</sup>

In the meantime Chief Judge Finesilver oversaw the Rocky Flats grand jury proceedings.<sup>85</sup> In 1989 a Special Grand Jury was impaneled to investigate federal environmental crimes that may have occurred at the Rocky Flats Nuclear Weapons Plant in Jefferson County, Colorado. Upon its discharge in 1992 the Special Grand Jury submitted a report of its findings to the court, after which Rockwell International Corp., Rocky Flats’ corporate operator, and the Department of Justice entered into a plea agreement. Rockwell pled guilty to ten criminal charges of violating federal environmental laws in its operation of Rocky Flats and paid an \$18.5 million fine.<sup>86</sup> When the court sealed the report various media corporations then moved for the release of the special grand jury documents.<sup>87</sup> The court ultimately ordered the redacted report to

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<sup>82</sup> Remarks by Judge David Ebel, Portrait Presentation Ceremony Judge Sherman Finesilver, December 9, 1994.

<sup>83</sup> *City and County of Denver v. Adolph Coors Co.*, 829 F. Supp. 340 (D. Colo. 1993).

<sup>84</sup> Bill Scanlon, *Companies to pay bulk of landfill cleanup settlements apportion responsibility and cost among Coors, Syntex, others who used Lowry*, Rocky Mountain New, May 8, 1993.

<sup>85</sup> *Grant Rocky Flats Jurors Immunity and Let Them Speak Up*, Rocky Mountain News, Nov. 14, 1993; see also *Showdown at Rocky Flats: The Justice Department’s Negotiation of a Rocky Flats Settlement Leaked by Grand Jury*, Los Angeles Times, Aug. 15, 1993.

<sup>86</sup> *In re Grand Jury Proceedings, Special Grand Jury 89-2*, 1993 WL 24557 (D. Colo. 1993).

<sup>87</sup> *In re Grand Jury Proceedings, Special Grand Jury 89-2*, 813 F. Supp. 1451 (D. Colo. 1992).

be filed as a public record.<sup>88</sup>

This litany of only a few of the complex cases Judge Finesilver resolved and to which he brought his considerable skills of managing complex litigation and settling disputes are a template of his judicial philosophy and professional expertise.<sup>89</sup> Attorneys who appeared in his court often mentioned his tendency to request written briefs on matters before the court, sometimes on short notice and on subjects counsel considered small. Invariably polite with attorneys, these requests were always followed with “Please.” The number of briefs requested, however, led some to speculation as to the size of his “brief bank” and its eventual disposition.

Attorneys also groused that he was a persistent “arm twister” but “he sits you down well in advance and you better have a very good reason for not settling.”<sup>90</sup> A large man with a ruddy complexion, he viewed his judicial intervention in civil cases as appropriate and his push for settlements began early and he remained proactive until the parties either decided to settle or were deadlocked. In the latter event Judge Finesilver tried the case. “He worked as hard as the attorneys and researched the issues as much as if he were deciding summary judgment to fully understand the strengths and weaknesses of each party.”<sup>91</sup> “Judge Finesilver grasped a case on a macro level. He could see the overall picture while understanding a specific issue on a motion.”<sup>92</sup> From this perspective he worked to move the parties to the center, motivated by a true desire to see them reconcile.

Of his role in settling complex cases, a former clerk wrote, “First, Judge Finesilver's true passion as a jurist was in the area of mediation and settlement. This was long before early dispute resolution became a norm in litigation. He, as a matter of course, would call the litigants

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<sup>88</sup> *In re Grand Jury Proceedings, Special Grand Jury 89-2*, 1993 WL 24557 (D. Colo. 1993).

<sup>89</sup> The list is hardly complete. See, e.g. Joe Wheelan, “Neil Bust Settles Silverado Lawsuit he and 12 Associates to Pay \$49.5 million,” *San Francisco Examiner*, May 30, 1991.

<sup>90</sup> Sue Lindsay, *Lawyers Give Glimpse of Judges' Traits*, *Rocky Mountain News*, Sept. 22, 1991.

<sup>91</sup> Interview of Judge Jeffrey Bayless, May 6, 2009.

<sup>92</sup> Interview with Judge C. Jean Stewart, Presiding Judge of the Denver Probate Court, June 3, 2009.

together, insisting that clients with authority be present and with every intention of devoting as much time to the settlement process as was needed for resolution of the matter. Settlement conferences were not pro forma “in and out” activities, but were a commitment from which no one departed until the matter was resolved or true impasse was reached. During settlement discussions, quickly and forcefully moved past rhetoric into the heart of a claim or defense. Speeches were not welcome, kept to a minimum. He was a skilled reader of the people present, and exercised firm control to ensure that the settlement discussions remained focused and productive. In the end probably no one left happy, but each party left having made compromises to reach resolution.”<sup>93</sup> Judge Finesilver preferred to handle these settlement conferences himself, rather than assign them to a Magistrate, feeling that he could be more effective in achieving a resolution.

The view shared by many of his former law clerks was that Judge Finesilver was “ahead of the curve” when it came to working with litigants to facilitate settlements. They felt Judge Finesilver genuinely enjoyed trying cases – but also made every attempt to resolve cases without the parties having to spend the time and money on a trial. He routinely set cases for settlement conferences, bringing in both the lawyers and “decision makers” for each side. In advance of the conference he and his clerks would generate lists of the weaknesses in each side’s legal arguments. In commercial disputes particularly, he urged the parties realize to resolve disputes as business matters rather than through protracted trials.

During his tenure as Chief Judge Local Rules of Practice were drafted and became effective June 1, 1992. The objectives of the Rules were to reduce the cost of litigation and bring cases to trial sooner. They also provided for an early opportunity to explore settlement options, a

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<sup>93</sup> Christine Castellano, Associate General International Counsel, Corn Products International, Inc. Ms. Castellano clerked for Judge Finesilver in 1990 to 1991.

provision consistent with his long-held belief. The Rules discouraged unnecessary motions and filings. In accordance with the Civil Justice Reform Act of 1990, the court also created and adopted a Civil Justice Reform Act Expense and Delay Reduction Plan which became effective November 22, 1993. His collegiality during this process, fostering cooperation among the judges and chambers, was often extended by the delivery of bagels and cream cheese or his holiday bags of peanuts.

Judge Finesilver is credited with hiring the first woman to clerk for a federal judge in the District of Colorado. Each new team of law clerks, hired for two years, was initiated into the many routines of clerking – arriving at 7:30 each morning and working until 5:00 PM. Former clerks praised Judge Finesilver’s teaching and mentoring skills, not simply during the clerkship but long after as well. He offered advice on career choices and maintained contact with his former clerks, whether getting together for lunch or at clerk reunions. Judge Finesilver also officiated at law clerk weddings, called the delivery room to see how a clerk’s wife was doing during her labor, and regularly included his clerks in his own family gatherings. In 1993, Judge Finesilver assembled and distributed a Law Clerk Scrapbook at the reunion he organized that year. The book included photos, short updates – professional and personal – and reminiscences.

What Judge Finesilver imparted to clerks was “to the parties and litigants, this case is their case, their only case, and it may be their lives literally. The parties who appeared, whether they won, lost or drew ... they knew they had their say, that they had their day in this court, and this is what the value of our clerkship is in the wider scheme of things.”<sup>94</sup> Denver Probate Judge C. Jean Stewart credits Judge Finesilver as a model that shaped her own judicial career. “He was a wonderful example of how to be a judge – ‘be humble, work hard, that’s what people expect

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<sup>94</sup> Remarks by Tom Roberts, Portrait Presentation, December 9, 1994.

you to do, and do what's right," she quoted.<sup>95</sup>

Chief Judge Finesilver assumed senior status on May 31, 1994 then retired on December 31, 1994. His retirement was short-lived, however, for the following year he joined the Denver office of Popham Haik Schnobrich & Kaufman as special counsel, where he continued to work as an arbitrator and mediator. Judge Finesilver died on October 12, 2006, at the age of seventy-nine.

### **DANIEL B. SPARR<sup>96</sup>**

Judge Daniel B. Sparr began service on the United States District Court for the District of Colorado on April 25, 1990. He was the 18<sup>th</sup> judge to serve, filling the seat vacated by Judge John C. Porfilio who was appointed to the United States Court of Appeals for the Tenth Circuit in 1985. Since the position had been vacant for more than four years, a heavy caseload awaited him.

For twelve years prior to his appointment Judge Sparr was a trial judge on the Denver District Court. Prior to that, he practiced law for a dozen years, primarily with a litigation defense firm in Denver and for a corporate employer. At the time of his nomination, Judge Sparr received high praise from Chief Judge Sherman G. Finesilver, who said that he was "...amply qualified for the position by experience, intellect, maturity and judicial demeanor."<sup>97</sup> Judge John L. Kane, Jr., also of the federal bench, called his choice to join the court "...a splendid selection" of "an excellent judge..." Colorado Supreme Court Justice Joseph Quinn also said "You'd have to look long and hard to find a judge better than Judge Sparr. He's very bright, hardworking and

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<sup>95</sup> Interview with Judge Stewart.

<sup>96</sup> By Sandra Spencer.

<sup>97</sup> *Sparr Picked for Court Post; Bush Nominates District Judge to the Federal Bench*, The Denver Post, Jan. 13, 1990.

dedicated... We're losing one of our best.”<sup>98</sup>

During his twenty-eight years as a judge Sparr often lamented the loss of honor which was so important to him in the profession and in the attorneys who appeared before him. Still, Judge Sparr consistently maintained the calm judicial temperament and demeanor that lawyers and litigants experienced when they stepped into his courtroom. Judge Sparr's former staff, attorneys and litigants attested to the patience and attention he gave to those who came to his courtroom. Unfailingly cordial, Judge Sparr regularly invited friends, lawyers and a few news reporters who covered the court to “come up (to his courthouse office) and let's have coffee.”<sup>99</sup> His wife Sue recalled that he had as good a relationship with the persons who cleaned his office as he did with his staff and co-judges.

Judge Sparr often joked about “The Case of the Married Madam,” where he was co-counsel with the legendary defense lawyer “Perry Mason.” While on the Denver District Court, a movie production company had been allowed to use his courtroom as the backdrop for filming of a series of Perry Mason episodes. For one 1987 episode, Mason and his co-counsel, “Mr. Sparr,” represented a construction boss who was accused of murdering his beautiful new wife, an ex-madam doing public relations work for bank swindlers. Of course they succeeded in obtaining a dismissal of all charges.<sup>100</sup>

Although Judge Sparr was not able to play himself in the Perry Mason episode, because he was not a member of the Screen Actors Guild, he did become friends with the series' stars and various members of the production crew and staff. His inclusion in the script was a small tribute to him and in appreciation for the inconvenience caused by the filming.

A second generation Colorado native, Daniel Beattie Sparr was born in Denver on June 8,

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<sup>98</sup> Rocky Mountain News, Jan. 13, 1990.

<sup>99</sup> *Judge Sparr Dies at 75*, Pueblo Chieftain, Nov. 16, 2006.

<sup>100</sup> The “Perry Mason” shows were made for television and based on the detective fiction of Erle Stanley Gardner.

1931. He attended Denver's North High School where he was active in the Boy Scouts and obtained his Eagle Scout rank. His association with the Boy Scouts of America continued throughout his life and he served for many years as a Director of the Timberline District in the Denver Area Council.

Judge Sparr entered the University of Colorado on a swimming scholarship, and then finished his undergraduate degree in business at the University of Denver. He financed his college expenses through membership in the U.S. Army's Reserve Officer Training Corp (ROTC). Upon graduation in 1952, he was commissioned in the United States Navy. Because he wanted to fly, he was transferred to the Air Force and commissioned as a second lieutenant; rare for someone who had not attended an academy.

He married Virginia Sue Long, a native of Alamosa, Colorado, in 1952 and they had three sons: Stephen, who became a lawyer, Douglas, and Michael, a Colorado Springs physician. During his three years of active duty he served in Korea, and then transferred to inactive reserve. After being discharged as a Lieutenant Judge Sparr returned to Colorado where he joined Mountain Bell in Colorado Springs as a traffic chief, supervising and directing telephone operators. He also worked with Mountain Bell in Pueblo, traveling the Lower Arkansas Valley, before finally transferring to Denver.

Judge Sparr came relatively late to the legal profession. In 1963, at age of 32, Judge Sparr began the night program at the University of Denver College of Law. Despite working long hours at Cray Construction Company and Brad Wolff Construction Company to support his family and pay for school expenses, he carried a full class schedule and was one of a handful of students to graduate from the four-year night program in three years. His sons said they ate a lot of hot dogs and macaroni and cheese during those years. Upon graduation in 1966 Judge Sparr

received the Harry Davis award for the student “who has made the greatest progress during his course of law study, and who has most fully evidenced high qualities of mind and character by superior achievement in scholarship, and by those attributes which earn the commendation of the faculty.”<sup>101</sup>

Judge Sparr’s first legal job was with White and Steele, a Denver firm then specializing in insurance defense. In 1970, however, he returned to Mountain Bell as a supervisor in the Office of General Counsel. A year at Mountain Bell convinced him that he much preferred courtroom work to office work so he returned to White and Steele for three more years. In 1974 he joined the law firm of Wesley A. Doan in Lakewood and for the next year specialized in the defense of insured municipalities, which were often joined as parties in suits brought against police officers. In 1974 he was voted “Boss of the Year” by the Denver Legal Secretaries Association. In 1975 Judge Sparr once again returned to White and Steele, but for the next two years maintained an independent practice in their suite of offices.

Despite a heavy trial schedule, Judge Sparr served a three-year term as a trustee of the Denver Bar Association and was active for many years in the University of Denver College of Law clinical education program.

In February 1978 Judge Sparr was appointed to the Denver District Court by Governor Richard D. Lamm. Always well organized and prepared, his appointment to the bench was preceded by a methodical study of the Colorado Rules of Evidence and the Colorado Rules of Civil Procedure; rules which he would persistently observe while on the bench.

During his first term on the Denver court he presided over two high-profile murder trials; made more difficult by media demands to televise the proceedings. In the first, Afshin Shariati, an Iranian immigrant, was acquitted of shooting and killing a Denver man and wounding two

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<sup>101</sup> Reporter’s Transcript from the Investiture on April 24, 1990.

others who attacked his apartment in November 1979 in retaliation for the ongoing hostage crisis in Iran. In the second, Lewis Roger Moore, a paraplegic confined to a wheelchair, murdered his roommate in late 1979 and dismembered the corpse. He was apprehended while on the way to visit his parents for Christmas. With him was a suitcase containing body parts of the victim.

In 1984, while serving on the Denver District Court, Judge Sparr chaired the Colorado Supreme Court's panel on multidistrict litigation. From 1984 to 1987 he also served on the Executive Committee of the Colorado District Judges Association. During 1987 and 1988 he served on the Committee on Reduction of Delay in the Litigation Process in the Colorado courts.<sup>102</sup> He was a charter member of the William E. Doyle American Inn of Court, founded in 1986. He also served as treasurer of the American Institute of Courts.

Judge Sparr loved to fish and hike. He and his wife Sue were also avid water skiers and from their home in the Denver foothills they "sometimes hit the lake at 7 a.m."<sup>103</sup> He also snow skied and volunteered for the Copper Mountain Ski Area's Ambassador Program. Every five or six years he organized a reunion with friends from the Boy Scouts, plus monthly luncheons with friends from his college fraternity and weekly luncheons with his former Denver District Court colleagues.

An annual fishing trip to a 1918 family cabin along the Rio Grande River in South Fork, Colorado, brought together friends from Judge Sparr's early years as a practicing lawyer. At these gatherings prodigious fun was always accompanied by discussions and analysis of the law. According to Sue, even in leisure time, including during dinner, Judge Sparr was never far from the law and liked nothing better than to start a brisk discussion on his favorite subject.

Although he applied repeatedly for state appellate court positions, and was often "short

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<sup>102</sup> Investiture Transcript.

<sup>103</sup> *Judge Sparr Believed in Rule of Law, Fairness*, The Denver Post, Nov. 16, 2006.

listed” for the Colorado Court of Appeals and Supreme Court, Judge Sparr’s real interest and aptitude was at the trial level. On January 12, 1990, he received a call from President George H.W. Bush advising that his name was being sent to the U.S. Senate for confirmation for the United States District Court for the District of Colorado. The call was placed from Air Force One and Judge Sparr said “My knees were shaking so bad I thought I’d better sit down. But then I thought I couldn’t sit while talking to the President of the United States.” The confirmation process took four months and his investiture was held on April 25, 1990.

Judge Sparr handled the diverse criminal and civil cases which are part of a federal district court judge’s heavy caseload. In 1999 he presided over a constitutional challenge to the annual Christmas display on the steps of the Denver City & County Building. A group, calling itself Freedom from Religion, alleged that its right to free expression, free exercise of religion and the right to use a public accommodation was restricted when the City and County of Denver removed its sign from the holiday display. The display included many lights and Christmas decorations, as well as a large nativity scene. The group’s sign read, in part, that there are “no gods, no devils, no angels, nor heaven or hell” and that “the Christ child is a myth.” City officials removed the sign the next day. The group contended that this was a violation of the equal protection clause of the First Amendment asserting that the government may not give a forum to display recognized Christian religious symbols while denying the same forum to those whose views were less favored or controversial.<sup>104</sup> This was the second constitutional challenge by this same group handled by Judge Sparr. In 1991, they sought to have the motto “In God We Trust” declared unconstitutional based on the Establishment Clause of the First Amendment.

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<sup>104</sup> *Suit Filed Over Holiday Display. Atheist Group want City to Put Sign Back Near Nativity Scene*, The Denver Post, Dec. 14, 1999.

Both cases were rejected and affirmed on appeal.<sup>105</sup>

Judge Sparr also handled a sensitive discrimination matter, where the question was whether the plaintiffs were “disabled” as the Congress intended under the American’s With Disabilities Act of 1990. Plaintiffs, severely myopic twin sisters with uncorrected vision of no better than 20/200, were denied employment as commercial airline pilots with United Airlines. Their suit contended that the airline’s actions violated federal anti-discrimination laws. However, Judge Sparr found that the petitioners were not disabled within the meaning of the ADA and their complaint was dismissed. His decision was affirmed by both the Tenth Circuit Court of Appeals and the United States Supreme Court.<sup>106</sup>

In affirming the decision the Supreme Court said the District Court held that petitioners were not actually disabled under the disability definition of the ADA because they could fully correct their visual impairments. Further, the District Court determined that petitioners were not “regarded” by respondent as disabled under this definition. Petitioners had alleged only that respondent regarded them as unable to satisfy the requirements of a particular job, global airline pilot. These allegations were insufficient to state a claim that petitioners were regarded as “substantially limited” in the “major life activity” of working. Employing similar logic, the Tenth Circuit had affirmed the court’s decision. Judge Sparr’s analysis and the subsequent appellate court affirmations have been roundly criticized by disability advocates as being a “Catch-22” and protecting only those disabled persons who do not need protection.<sup>107</sup>

In 2000 Judge Sparr also presided over and dismissed a lawsuit by Colorado smokers whose smoking-related illnesses were being paid by Medicaid. The smokers argued that as

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<sup>105</sup> *Gaylor v. United States*, 940-S-1345, Memorandum Opinion and Order, December 1994.

<sup>106</sup> *Sutton v. United Air Lines, Inc.*, 130 F. 3d 893 (10<sup>th</sup> Cir. 1999); *Sutton et al. v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

<sup>107</sup> Jonathan Young JFA, Editor, American Association of People With Disabilities; Charles Lindner, Op-Ed, Los Angeles Times, June 2, 2002.

recipients of Medicaid benefits they were entitled to share in a \$2.9 billion tobacco settlement recovered by Colorado. In 1997 the state joined other states in suing the leading tobacco companies for antitrust, racketeering and violation of consumer protection laws.<sup>108</sup> Although citizens and media attacked the decision, the Tenth Circuit Court of Appeals affirmed the ruling.

Another intense attack by media and the public came when Judge Sparr invalidated a ballot initiative by the people of Denver entitled “Amendment 15.” At the general election held November 5, 1996, the Fair Campaign Practices Act, CRS §§ 1-45-101 *et seq.*, was repealed and reenacted resulting in the addition, relocation and elimination of sections and placing limits on campaign contributions.<sup>109</sup> The plaintiffs sought to have the act declared unconstitutional as violating the First and Fourteenth Amendments to the U.S. Constitution. They also alleged that it infringed on protected political speech and association and denied equal protection of the law under 42 U.S.C. Sec. 1983.<sup>110</sup> Testimony from prominent politicians and interested citizens consumed many days of hearing. When the Colorado legislature undertook to draft remedial legislation, Judge Sparr delayed issuing his ruling.<sup>111</sup> When the legislative fix stalled, Judge Sparr issued his decision on August 10, 1999. Thereafter the legislature amended the act resolving most of the constitutional challenges.

In December 1992 the Sparr family suffered an immense loss when thirty-four year old Douglas was found brutally murdered in his Denver home. Judge Sparr and the remainder of the family attended every day of the resulting criminal trials in the Denver District Court. The defendants were convicted and sentenced to long prison terms. During the trials, Judge Sparr continued to handle much of his federal court civil caseload, however the five remaining federal

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<sup>108</sup> *Colorado Smokers Can't Have Share, Judge Rules*, The Denver Post, July 29, 2000.

<sup>109</sup> *People's Choices Ignored*, The Denver Post, July 27, 2000; *It's Back to Reform School*, The Denver Post, Jan. 4, 2000; *Campaign Quagmire*, Editorial, The Denver Post, Aug. 26, 1999.

<sup>110</sup> *Citizens for Responsible Gov't State Political Action Committee v. Buckley*, 60 F. Supp 2d 1066 (D. Colo. 1999).

<sup>111</sup> *Id.* At 1099.

judges from the District of Colorado, along with Judge Clarence A. Brimmer from the District of Wyoming, took responsibility for Sparr's criminal docket until he could resume work full time.

Despite the family tragedy Judge Sparr resumed his full duties on the federal bench and remained genial, controlled and impartial. Even those who disagreed with the outcome of a case, or his ruling on a motion, never questioned that his rulings were thoughtful and based soundly on the law. Some counsel noted that when making an unfavorable evidentiary ruling he would take the time to clearly and succinctly state the reasons.

In November 1993 a Denver policewoman, Dorothy Monica David, whose pending suit alleged that she was the victim of sexual discrimination, charged that because of the success of the Denver Police Department in finding those responsible for the death of Judge Sparr's son and based on his earlier appearance as counsel in cases involving Denver Police officers, that he should recuse himself from her case.<sup>112</sup> Her motion was denied, as were similar motions in other cases.

Judge Sparr never lost his love for the courtroom and in his joy over being part of a great legal system. He held court in venues all over the state of Colorado. He was twice designated by the Chief Justice of the United States, pursuant to Article 142(f), Uniform Code of Military Justice, 10 USC § 942(f), to sit on the U.S. Court of Appeals for the Armed Forces. In *United States v. Radvansky*, 45 M.J. 226 (1996), Judge Sparr reviewed and affirmed a general court martial for wrongful use of methamphetamine, wrongful appropriation of an automobile and absence without leave. A key issue in the case was whether the mentioning of a possibility of command-directed urinalysis, if the accused did not consent, rendered the search "involuntary."

Upon turning 70, in 2001, Judge Sparr took senior status, thereby reducing his heavy

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<sup>112</sup> *Judge Won't Take Himself off Bias Trial; Patrolwoman Says Judge Prejudiced Because Denver Police Solved Son's Murder*, Rocky Mountain News, Nov. 27, 1993.

workload. He and Sue moved to Colorado Springs in 2003 and bought a home. Although he continued to hear cases when needed, he lamented that they were often minor matters and he relished the opportunity to hear the larger and more substantive matters. He continued to hear cases until he was hospitalized in 2006 for open heart surgery. Then, a cancer diagnosed fourteen years earlier also returned and claimed his life on November 9, 2006. Judge Sparr was buried at Ft. Logan National Cemetery, Denver.

### **PHILLIP S. FIGA<sup>113</sup>**

President George W. Bush nominated Phillip S. Figa to the United States District Court for the District of Colorado on June 9, 2003. His nomination was confirmed by the Senate on October 2, 2003. Tragically, Judge Figa's tenure was brief when he succumbed to an aggressive brain cancer, just four years after his confirmation.

After Judge Figa passed away his court staff found a small post-it note, attached to his reading glasses case, left on his judicial bench. He had written:

1. Be patient!
2. Be humane.
3. Be firm.
4. Be polite.
5. Give all fair, due process.

Phillip S. Figa was born in 1951 in Chicago, Illinois, the son of Holocaust survivors. His parents, Leon and Sara Figa, immigrated to this country in 1950 after meeting in a displaced persons camp in Berlin. Phil's father served as a partisan during World War II, hiding in the Polish forests and fighting as a guerilla against the Nazis. Phil's mother had been interned in a labor camp.

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<sup>113</sup> Authored by Julia M. Walker, Ramona L. Lampley, Jerry A. Mosley and Malcom E. Wheeler.

Along with his younger brother, Stewart, Phil was raised in Chicago until the family moved to Skokie, Illinois when he was twelve. He attended Niles East High School, graduating in 1969. During high school he worked as a golf caddy, and then was awarded a full-tuition scholarship to Northwestern University for students with strong academic records and financial need who had worked at a country club sponsored by the Western Golf Association.

Figa met his wife Candace (“Candy”) Cole at Northwestern during their freshman year, at an “ecology teach-out.” After their sophomore year, he and Candy went camping in Colorado and fell in love with the mountains, the wide open spaces, and the outdoor activities they offered. The following summer they returned to Colorado and worked in the Denver/Boulder area.

In 1973, upon graduating from Northwestern, they married and moved to Ithaca, New York, where Figa attended Cornell Law School. Candy, with her degree in English and secondary education, taught high school English to help with the expenses.

While Figa was in law school he and Candy found their way back to Colorado each summer. For the summer after his first year, Figa approached the law firm of Miller and Gray in Boulder. He volunteered his time at first but as the summer progressed and the lawyers saw the quality of his work, the firm began paying him. For the summer after his second year he secured a job at the Denver law firm of Sherman & Howard. That clerkship led to an offer for employment upon his graduation from law school.

After Figa graduated from law school in 1976, he and Candy moved to Denver and he began his law practice at Sherman & Howard. He then financed Candy’s education and she obtained a law degree from the University of Denver College of Law in 1978.

In 1980 Hugh Burns, one of the senior partners at Sherman & Howard, tired of large-firm practice and wanted to open his own firm. Impressed with Figa’s strong work ethic, professional

manner, and pleasant personality, Burns asked him to join him in forming the firm of Burns & Figa. Burns had one condition: that they would not add more lawyers. Figa agreed, and the firm opened its doors in May 1980. Soon thereafter, Burns suggested they make an exception to their agreement, urging that Candy be brought in as the third member of the firm. Figa agreed, and Candy joined Burns & Figa in 1981. Candy took time off after the birth of their two children, Benjamin Todd and Elizabeth Dawn, but then returned to practice law on a part-time basis.

In 1988 Hugh Burns was diagnosed with multiple sclerosis and had to reduce his practice to a part-time. The development required that more lawyers be added to the firm, so Figa hired two associates to help. They began looking for new space for the firm, and in the process met with Phil's future partner, J. Kemper ("Kemp") Will. In 1991 the law firm of Burns, Figa & Will, P.C. was formed.

The firm's practice at first focused mostly on environmental and commercial litigation. Figa and Will shared a common devotion to the utmost professionalism in the practice of law, both in how they trained the more junior lawyers at the firm and in dealings with lawyers outside their own firm. Figa periodically arranged field trips to Burn's home to introduce new associates and provide them with the opportunity to hear the same wisdom that had meant so much to him as a young lawyer. Figa always kept a framed photo of Burns in a prominent place on his office wall at the firm, and later in his courthouse chambers.

Judge Figa served on the Colorado Bar Association Ethics Committee from 1976 to 1993, including serving as chairman from 1984 to 1985. He developed a strong practice in legal ethics and attorney conduct, often representing attorneys before the disciplinary board. Clients also retained him as an expert witness to provide opinions on various issues related to the practice of

law, including disqualification, conflicts, and reasonableness of attorneys' fees. He developed a reputation as a national expert on ethics and professional responsibility.

Judge Figa participated in a wide variety of professional activities. He served as president of the Colorado Bar Association from 1995-96, on the Civil Justice Reform Act Advisory Committee from 1994 to 1997, and on the Colorado Commission on Judicial Discipline. He also taught at the University of Denver College of Law and the National Institute of Trial Advocacy. Prior to his appointment to the bench, he was one of the founding members of the Faculty of Federal Advocates.

Judge Figa felt strongly about giving back to his community. His longtime friend and colleague, Wiley Y. Daniel, who became Chief Judge of the United States District Court for the District of Colorado in 2008, explained, "One of Judge Figa's greatest gifts was his belief in unselfish kindness to others without the need for recognition."<sup>114</sup> Figa was actively involved with the Mountain States Region of the Anti-Defamation League ("ADL"), including serving as chairman during the years 1996 to 1998.

Judge Figa also volunteered his time to the Rose Medical Center Board of Trustees from 1987 to 1995, at which time the hospital changed ownership. Thereafter he offered his time to the Rose Community Foundation, one of the largest charitable foundations in Colorado, including serving as trustee from 2002-2003. While serving with the Rose Community Foundation he chaired the Jewish Life Committee, which was devoted to supporting efforts to creating and sustaining a vibrant Jewish community. According to Sheila Bugdanowitz, president and CEO of the foundation, Phil "saw this work as an extension of his work at the Anti-Defamation League, because providing equal access was important." His colleagues who

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<sup>114</sup> Chief Judge Wiley Y. Daniel, oral interview conducted January 9, 2009.

operated the foundation said that he “pushed for more transparency in the foundation” and that he insisted the foundation take particular courses of action “because it was the right thing to do.”

After twenty-five years of law practice Phil told some of his colleagues that, although personally and professionally satisfied with his career as a lawyer, he wanted a new challenge. He had long thought of becoming a judge, which he saw as the perfect opportunity to combine his love for the law and his love for public service.

In 2003, Figa was one of five names submitted to the White House by Colorado Senators Ben Nighthorse Campbell and Wayne Allard for appointment as a judge in the United States District Court for the District of Colorado. His interview in the West Wing of the White House was scheduled for President’s Day, the third Monday in February—when unfortunately a massive snowstorm struck the East Coast. Upon learning that his flight from Denver to Washington, D.C. had been cancelled, he took the flight he was told would get him closest—a flight to LaGuardia Airport in New York; then an Amtrak train to D.C. The following morning the White House scheduler was shocked to see that he had managed to appear on time; no one else had. His interview was therefore postponed for a day.

At Judge Figa’s investiture ceremony, on October 6, 2003, more than 1,000 well-wishers crowded into the new Alfred A. Arraj U.S. Courthouse<sup>115</sup> to pay homage to their friend, colleague, and mentor.<sup>116</sup> He excitedly offered personal tours of his new judicial chambers, grinning as he showed off the framed letters and congratulations of his confirmation. He was ecstatic, his happiness exceeded only by the pride of his immigrant parents, who kept asking, “Can you believe our son is a federal judge?”

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<sup>115</sup>The Alfred A. Arraj U.S. Courthouse houses the U.S. District Court for the District of Colorado is located in downtown Denver. Completed in October 2002, it is a 10-story tower with 14 courtrooms.

<sup>116</sup> Burt Hubbard, *Phillip Figa Brought Passion to Law*, Rocky Mountain News, Jan. 6, 2008.

Judge Figa was always mindful of the sacrifices that jurors were required to make for jury duty, and he treated each juror with the utmost respect. One his former law clerks recounted that Judge Figa was particularly stern with attorneys who were not respectful of the jury's time.<sup>117</sup> He strove to make each trial as efficient as possible to demonstrate to the jurors that he appreciated their service.

Judge Figa's opinions reflected the same recognition of the importance of juror service. In one decision involving a train accident in Nebraska he granted the defendant's motion to transfer because, among other reasons, he found that jury duty should not be imposed on the citizens of Colorado for an accident that had not occurred in this state.<sup>118</sup> In another decision he granted a defendant's motion to transfer the trial venue, over the plaintiff's expression of concern for regional bias, because the plaintiff could not demonstrate "why members of that jury pool would tolerate higher health services prices and fewer provider choices for themselves and their neighbors as a result of the alleged antitrust violations."<sup>119</sup>

He also paid careful attention to the appearance of judicial propriety, even when it meant giving up charitable work to which he was committed. After his appointment to the federal bench Judge Figa stepped down from his position as a trustee of the Rose Community Foundation. Although the foundation asked him to return as a voluntary trustee in 2006, he declined, believing that he should devote his time to his work in chambers and avoid the appearance of any conflict of interest. He also was mindful of the caseloads of other judges and did not want to have to recuse himself because of community affiliations.

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<sup>117</sup> Michel C. Walter, oral interview conducted November 12, 2008.

<sup>118</sup> *Bailey v. Union Pacific Railroad Co.*, 364 F. Supp. 2d 1227, 1233 (D. Colo. 2005).

<sup>119</sup> *Four Corners Nephrology Associates, P.C. v. Mercy Medical Center of Durango*, 464 F. Supp. 2d 1095, 1099 (D. Colo. 2006).

During his brief tenure on the bench Judge Figa authored 240 written opinions, 42 of which were published. Eight of his published decisions addressed civil rights issues or issues of constitutional law; seven addressed areas of employment law; five focused on the interpretation of contracts; and the majority of the remaining decisions addressed procedural matters intended to prepare the case for trial. His 198 unpublished opinions addressed a similarly broad array of legal issues: 28 addressed civil rights or constitutional law; 38 addressed employment law; 26 addressed contract interpretation; and another 52 focused on issues of federal procedure. Of the 240 written opinions, 24 were appealed. Of these, twelve were affirmed; four were affirmed through a denial of a certificate of appealability; three were affirmed in part; four were reversed; and one was dismissed for lack of appellate jurisdiction.

Judge Figa handled complex First Amendment cases with methodological tenacity. In *Mason v. Wolf*<sup>120</sup> he adjudicated the First Amendment rights of a pro-life/anti-abortion group. The plaintiffs asserted 28 U.S.C. § 1983 claims against the defendants, officials at the Auraria campus of the Auraria Higher Education Center, based on the defendants' refusal to permit the plaintiffs to demonstrate at a specific location on campus. Judge Figa undertook a detailed analysis of the applicable First Amendment precedents and made a personal visit to the site. He concluded that the site offered by the defendants provided an ample alternative channel of communication where "60 to 70 paces are all that is required to walk from the Plaza Building to the flagpole area," and "[a]ny person in the flagpole area could easily observe any demonstration occurring on the steps of the Plaza Building."<sup>121</sup> Nonetheless, he ruled for the plaintiffs because he found that the defendant's regulation was not narrowly tailored to serve a significant

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<sup>120</sup> 356 F.Supp.2d 1147 (D. Colo. 2005)

<sup>121</sup> *Id.* at 1161.

government interest. Holding that the plaintiffs' First Amendment rights had been violated by the school's unwritten policy, he awarded them nominal damages.<sup>122</sup>

One of the decisions Judge Figa liked to discuss was his first encounter with patent law. In *Barreca v. South Beach Beverage Co., Inc.*, 322 F. Supp. 2d 1186 (D. Colo. 2004), Judge Figa entered an order following a *Markman* hearing<sup>123</sup> in which he was called upon to construe the claims of the plaintiff's patent for an energy-related chewing gum. In a lengthy order Judge Figa parsed the patent claims and set forth the explicit limits of the patent. As is common with *Markman* decisions, the losing party promptly took an interlocutory appeal to the United States Court of Appeals for the Federal Circuit, the federal appellate court that specializes in patent and trademark appeals.

Judge Figa noted that he had been provided statistics regarding appeals of patent cases, and that more than 50 percent of all district court patent decisions were reversed in the Federal Circuit. But in an order entered on August 17, 2005, in *Barreca v. South Beach Beverage Co., Inc.*, 141 Fed. Appx. 912 (Fed. Cir. 2005), the Federal Circuit affirmed Judge Figa's *Markman* order with just a one-sentence opinion. Although a bit disappointed that the Federal Circuit had not elaborated, Judge Figa said he just figured that there was nothing more to add. His chambers personnel were also pleased: Judge Figa shared with them the bottle of high-quality champagne he had received from a friend at the time of his investiture, with the condition that it not be opened until he was affirmed by a higher court in a significant case.

The decision that garnered Judge Figa perhaps the most public attention of his judicial tenure was in a *qui tam* action brought by Bobby Maxwell, an auditor for the United States Department of the Interior, against Kerr-McGee Oil & Gas Corp. regarding underreported

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<sup>122</sup> *Id.* at 1161-62.

<sup>123</sup> A *Markman* hearing is a hearing in which the court construes the claims stated in a patent. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).

royalties.<sup>124</sup> Maxwell initially reported his findings to senior department lawyers and claimed that he had been instructed to “back off.” He later filed suit against Kerr-McGee as a private citizen.

Judge Figa initially denied Kerr-McGee’s motion for lack of subject matter jurisdiction, finding that the relator had satisfied the “original source” requirement and relying on the distinction drawn in First Amendment analysis between a government employee’s speech within the scope of his official duties and speech as a private citizen. Judge Figa found that “Mr. Maxwell was acting as a citizen in voluntarily telling the government, also his employer, that he intended to use the information he obtained to file this *qui tam* suit.”<sup>125</sup> At trial the jury returned a verdict of \$7,555,886.28, representing the amount of underpaid royalties.<sup>126</sup>

Judge Figa overturned the verdict; citing arguments made by Kerr-McGee before and during the trial, and found that Mr. Maxwell could not meet the original-source requirement because he provided confidential information to a state auditor, which he ruled constituted a public disclosure that barred a *qui tam* action. The New York Times reported that many big oil companies had warned that the case would “open the floodgates” to litigation if Maxwell was allowed to proceed.<sup>127</sup>

Judge Figa expected the attorneys who appeared before him to be prepared, because he did not want to waste anyone’s time or resources by making the case last longer than it should.

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<sup>124</sup> *Maxwell v. Kerr-McGee Oil & Gas Corp.*, 486 F. Supp. 2d 1217, 1220 (D. Colo. 2007). Note: A *qui tam* action is one brought by an informer, under a statute which establishes a penalty for the commission or omission of an act, and provides that the same shall be recoverable in a civil action, with part of the penalty to go to the person who brings the action.

<sup>125</sup> *Id.*

<sup>126</sup> 486 F. Supp. 2d 1217, at 1222.

<sup>127</sup> Edmund L. Andrews, *Verdict Backing Oil-Royalty Whistle-blower is Overturned*, The New York Times, April 3, 2007. On appeal, the Tenth Circuit reversed Judge Figa’s post-trial ruling based on its finding that no public disclosure occurred and remanded the case for further proceedings. *United States ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp.*, 540 F.3d 1180, 1186 (10th Cir. 2008).

To those who appeared before him, Judge Figa was always firm, but polite.<sup>128</sup> He did not allow friendships built throughout his years of practice, particularly in representing attorneys, to influence his decisions.<sup>129</sup>

Judge Figa took great pride in performing the naturalization oath ceremony for making immigrants citizens of the United States. At each ceremony he would tell the applicants a bit about his own background and that his own parents were naturalized citizens. The joy with which Judge Figa regarded the ceremony is shown in the additional naturalization oath he crafted:

Do you swear, affirm, or avow, as your principles allow, that on this day you freely choose to become a citizen of the United States of America, if necessary giving up your citizenship in, but not memories of or a sense of identity with, the land of your birth; will you cherish the freedoms which the Constitution and laws of the United States guarantee to all citizens, at the same time accepting the duties and responsibilities which the Constitution and law require of all of us; will you, to the best of your individual ability, do that which you can to support and defend your country in times of crisis and national emergency, bearing arms if called upon to do so; and, most importantly, identify yourself first and foremost as a United States citizen and treat all others with respect, fairness and dignity consistent with the democratic principles of this Republic for which so many died defending, including many new to this country? If, with a clear conscience and a heart filled with joy, you now are prepared to accept both the blessings and burdens of citizenship in the United States of America, please say "I do."<sup>130</sup>

Judge Figa was also an avid skier and bicyclist. His wife Candy often said he had no fear when it came to skiing, frequently treating out-of-town guests to expert level black runs. "Phil was always leading them to [difficult] places, like taking them down something called Tornado Alley." Judge Figa enjoyed organizing outings for the court staff; be they white-water rafting on

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<sup>128</sup> Bradley Levine, oral interview conducted January 7, 2009.

<sup>129</sup> *Id.*

<sup>130</sup> "Additional Naturalization Oath," J. Figa, provided by Lee Ross, Dec. 18, 2008.

the Arkansas River, climbing 14,000-foot mountains, or running as a relay team in the Denver Marathon.

When describing the position of judge, he often told others the description of the job that the late Judge Sherman Finesilver had given him.<sup>131</sup> Judge Finesilver told him that being a federal judge is like shoveling coal into a furnace. You get to the job in the morning and there's a big pile of coal. You shovel the coal all day long into the furnace. You go home. You come back the next morning, and there's another pile of coal waiting to be shoveled. That description may sound like a complaint, but for Judge Figa shoveling the coal was a job he loved. He often said he would like to do that job until he reached the age of 99, like Judge Wesley Brown of the District of Kansas.

Unfortunately Judge Figa's shovel broke all too soon. He was diagnosed with an aggressive brain tumor in March 2007, at the young age of fifty-five, after having served just four years on the bench. He died on January 5, 2008 at his home in Greenwood Village.

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<sup>131</sup> Judge Richman, eulogy written for Judge Figa, presented January 9, 2008.