

**United States District Judge Lewis T. Babcock:**  
Oral History Interview, September 3, 2020

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## **Major dates**

Born 1943 in Rocky Ford, Colorado

## **Education**

B.A. University of Denver 1965

J.D. University of Denver 1968

LLM University of Virginia School of Law 1988

## **Professional career**

1988 to present: Judge, United States District Court for the District of Colorado  
(Chief Judge from 2000 to 2007, before assuming senior status in 2008).

1983-1988: Judge, Colorado Court of Appeals

1978-1983: Chief Judge, Sixteenth Judicial District, Colorado

1976-1983: District Judge, Sixteenth Judicial District, Colorado

1973-1976: Part-time assistant district attorney, Sixteenth Judicial District, Colorado

1970-1976: Part-time city attorney for Rocky Ford, Colorado

1969-1974: Part-time city attorney for Las Animas, Colorado

1968-1976: Attorney in private practice

1968-1974: Colorado National Guard

## **Interview of Judge Lewis Thornton Babcock: September 3, 2020**

### **SPEAKERS**

James M. Lyons, Judge Lewis T. Babcock

### **James M. Lyons**

All right, we're on the record with Judge Lewis T. Babcock, Jr. It is September 3, 2020.  
Morning judge.

### **Judge Lewis T. Babcock**

Good morning, Jim.

### **James M. Lyons**

How are you?

### **Judge Lewis T. Babcock**

Ducky. How are you?

**James M. Lyons**

I'm ducky as well.

**James M. Lyons**

What we're going to cover today is your life, in terms of your biography, your various experiences throughout your career, particularly your judicial career. Your notable cases, from your career both at the district court, the Court of Appeals and here in the United States District Court. We'd also like your views on a number of things the State of the judiciary, what changes you've seen in your career, good and bad, what you see or foresee happening in the future, to the practice of law particularly, the trial practice. And any other thing you'd like to comment on in terms of the state of affairs in the world, as you'll see. We won't get into politics. We'll leave that out.

### **Born and Raised: Rocky Ford, CO**

**James M. Lyons**

So let's start with, let's start at the beginning. Where were you born and raised?

**Judge Lewis T. Babcock**

Born in Rocky Ford, Colorado, raised in Rocky Ford, Colorado. I am a fourth generation Colorado. I was raised in Rocky Ford.

**James M. Lyons**

How did your family happen to get to what Judge Matsch used to call the shortgrass country?

**Judge Lewis T. Babcock**

Well, yes, it's that and the melon capital of the world, former President Clinton notwithstanding and Hope, Arkansas.

**James M. Lyons**

Well, he was only speaking about watermelons, not cantaloupe, I don't believe. So how did the Babcock family happen to get to that part of the country?

**Judge Lewis T. Babcock**

My parental side's grandfather drove a dairy herd over to Rocky Ford area from the Trinidad area and established the Rocky Ford Creamery. That's how my grandfather came to be in Rocky Ford. My grandmother on my father's side, matriculated through Two Buttes in southeastern Colorado. Her family came eventually to Rocky Ford. My mother was born in

Rocky Ford, and raised in Rocky Ford and in Sacramento, California. Anyway she met my father in Rocky Ford. They married and had three kids, two older sisters and me.

**James M. Lyons**

Where are your siblings now?

**Judge Lewis T. Babcock**

My older sister is deceased. My other sister is in a nursing facility here in the Denver area.

### **Early Education: Rocky Ford, CO**

**James M. Lyons**

Tell me about your early education?

**Judge Lewis T. Babcock**

I began in grade school in Rocky Ford, Colorado, the Washington School. I went through grade school, junior high school, and high school in Rocky Ford. I graduated from high school in 1961.

**James M. Lyons**

So you are a Melloneer, right?

**Judge Lewis T. Babcock**

That's exactly right. They call them the Rocky Ford Melloneers as opposed, for example, to the Brush Beet Diggers.

**James M. Lyons**

How'd you do in high school, both academically and with extracurriculars?

**Judge Lewis T. Babcock**

Well, academically I did well enough to get into National Honor Society. I was student body president in my senior year, played football, did some wrestling. And I played on the high school golf team.

**James M. Lyons**

You left out your childhood sweetheart.

**Judge Lewis T. Babcock**

From the second grade at age seven. That means that we've known each other for now 70 years. We have been married 56 years. Our relationship thrives on give and take. She gives it and I take it.

**James M. Lyons**

What was Judy's maiden name?

**Judge Lewis T. Babcock**

Proctor.

**James M. Lyons**

What do you know about her family?

**Judge Lewis T. Babcock**

Her grandfather G.L. Proctor had two spouses, who both died. I think there were three kids born to the second spouse. And then he hit paid dirt with his third spouse. He had a total of nine boys and one girl. They were farmers. Her grandmother on her mother's side had three kids including Judy's mother, Elsie, and they were farmers also.

**James M. Lyons**

In Rocky Ford area?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

But you grew up in town?

**Judge Lewis T. Babcock**

I was a townie. Judy rode the number eight bus in from her rural home to school.

**James M. Lyons**

She sometimes rode her horse as I remember too.

**Judge Lewis T. Babcock**

Well she did. Occasionally after school she'd just throw on a bridle and ride bareback. She rode into town one time and tied her horse up on the backstop at my little baseball field. The horse scrubbed the bridle off the backstop. And so I had to pedal her home on my bicycle.

**James M. Lyons**

But you met in the second grade?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Love at first sight?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Would she say that too?

**Judge Lewis T. Babcock**

Yes. She better.

**James M. Lyons**

Other than high school, your studies, your extra-curriculars, your sports and Ms. Proctor. What were your interests as a kid?

**Judge Lewis T. Babcock**

Ms. Proctor. Other than her, I was interested in sports. I liked to read. I liked to play golf. Also I liked to hunt doves, ducks, pheasants. So I'd do that once in a while. I could walk from my home in town about a mile to a flight path for mourning doves. So I could go out in the afternoon and bring home a mess. With a 410 shotgun, one shot, single shot, and I had to pay for the shells. So I became a pretty good shot.

**James M. Lyons**

I seem to remember your father had an interest in archaeology.

**Judge Lewis T. Babcock**

He did.

**James M. Lyons**

And he passed that along to you. Tell me a little bit about that?

**Judge Lewis T. Babcock**

Well, my grandfather had a lumberyard and feed store called Wise and Green at that time. My grandmother's maiden name was Green. Anyway, my grandfather worked at a lumberyard, hardware store and grain and feed store, and eventually that became Green and Babcock. My father became instrumental in running that business. He was a great businessman. He thought he was going to be able to retire. He had a young man running the business but he was stealing from the business. Well Dad thought he could have time to indulge his interest in archaeology. He was taking courses from C.U. After he fired that young man he had to rebuild the business.

**Judge Lewis T. Babcock**

When I was about age 12 or 13, he took me down into the Four Corners area sandstone country where there were great archaeological sites including Mesa Verde, Canyon de Chelly, Chaco Canyon and Bandelier. We spent some time in Taos and Santa Fe. And he was interested in the petroglyphs out in the Canyon south country south of Rocky Ford. He spent some time doing that and authored a book about petroglyphs. That's why I got interested in that whole country down around the Four Corners, the Navajo Nation, the Ute Tribe somewhat, and the Hopi reservation.

**James M. Lyons**

Do you still have an interest in archaeology?

**Judge Lewis T. Babcock**

Well, I'm interested in it. I can't travel like I used to. I did take Judy camping for two weeks down in that country, but she allowed as how when she saw campers with air mattresses, that we were through camping.

**James M. Lyons**

It sounds like your mother and father were very significant influences in your life?

**Judge Lewis T. Babcock**

Sure.

**Teachers**

**James M. Lyons**

Growing up as I would expect. Were there other significant influences, mentors, role models other than your family?

**Judge Lewis T. Babcock**

Well, of course, I had some close friends. I don't recall having teachers at any grade level that particularly stand out, except 4th grade when Ms. Jones made me learn the multiplication tables.

**James M. Lyons**

Even in high school?

**Judge Lewis T. Babcock**

Even in high school. I did have one math teacher who taught me that math was not my subject. My English teacher, Fern Bacon, taught me to diagram sentences.

**Early Interest in the Law**

**James M. Lyons**

So when did you first become interested in the law?

**Judge Lewis T. Babcock**

When did they ran the television series, *Perry Mason*. Anyway, I was interested in watching that. Before I went to college, I talked to a couple of lawyers about it. When I entered undergraduate school, one of the first things I did when signing up for courses was talk to a Law Professor at the DU Law School, Thompson Marsh. I asked him what I should concentrate on. He said, concentrate on history, economics, the liberal arts. So that's what I did.

**James M. Lyons**

This is when you enrolled at the University of Colorado?

**Judge Lewis T. Babcock**

No, Denver University. .

**James M. Lyons**

How did you happen to select DU?

**Judge Lewis T. Babcock**

Undergraduate, I looked at CSU. I wasn't into riding bulls or horses. And I looked at C.U. A couple of my older classmates with really good scholarships went to C.U. And were home after a semester because they liked to party too much. And I kind of liked to party too. But I figured if I went to C.U., I was never going to make it. So I went to DU My father and I talked to one of the deans. So the fit felt good and that's where I went.

**James M. Lyons**

What about Judy?

**Judge Lewis T. Babcock**

She went to the University of Northern Colorado. Her brother was up in that neck of the woods.

**James M. Lyons**

Was it then still Colorado Teachers College?

**Judge Lewis T. Babcock**

At that time, yes. We got married in 1964, which would be late in our junior years in college.

**James M. Lyons**

You eloped as I remember.

**Judge Lewis T. Babcock**

Yes, with another couple. We drove to Pocatello, Idaho. Because you could get married without parental consent at age 18 to 20. And then we got married again, a second time, in Rocky Ford with a church ceremony.

## **Attending College at the University of Denver**

**James M. Lyons**

Tell me about your undergraduate experience at DU. What did you major in?

**Judge Lewis T. Babcock**

History. And I took a lot of social science courses, economics, I like geography. At the end of my first year in undergraduate school, I was approached by the Dean of the College of Arts and Sciences to inquire if I would accept enrollment in the Centennial Scholars Program. 1960, let's see, I graduated in 1965. 1964 was the hundredth anniversary of the University of Denver. They had a program called Centennial Scholars, I think there were about 20, who took an extra two quarter hours per quarter. The focus was on the study of the history and philosophy from ancient Greece to the present time. The last year would be a study of Far Eastern thought and philosophy. Because the program had lost four or five of the students, they were back-filling so to speak. You had to maintain a B average to keep a scholarship. And I asked the dean, I said, "I assume that this will provide a scholarship." "Well, no." He said, "No." I said "No way." I think I was about 18 at the time. I said, "No, wait a minute. DU hockey players have full privileges, apartments, free haircuts, and all sorts of perks. I think the DU ski team does too." I said, "In fact, even the gymnastics team has these perks. So certainly you

are not telling me that sports are more important than scholarship." He said, "All right I'll give you a scholarship."

**Judge Lewis T. Babcock**

Yeah. And that carried all the way through the DU Law School. But undergraduate school was academically and subject-wise, most enjoyable,

**James M. Lyons**

So you won your first case?

**James M. Lyons**

Was it challenging?

**Judge Lewis T. Babcock**

Yeah, it was challenging. What was nice about it was the macroscopic view of the world and history. But when I landed in law school, all that macroscopic perspective was vanished because I had to focus on how to read a case. Thompson Marsh taught me that.

**James M. Lyons**

Did you live on campus?

**Judge Lewis T. Babcock**

I lived in a fraternity house until I got married.

**James M. Lyons**

Okay, and then you and Judy got an apartment, I take it?

**Judge Lewis T. Babcock**

She commuted from Greeley to Denver on weekends for about a year. Eventually we took over the rental of a little house and we lived there. Actually, the spring after our marriage, we had a cabin up Bear Creek. There were some other fraternity brothers who also had cabins up there. We rented it. So we had weekends in that cabin until we eventually got the house to take care of.

**James M. Lyons**

So were you married the entire time you were in undergraduate school?

**Judge Lewis T. Babcock**

No. We married the junior year of undergraduate school.

**James M. Lyons**

All right. And then you had a commuter marriage for a year, it sounds like?

**Judge Lewis T. Babcock**

Just about. That wasn't very enjoyable. It wasn't too bad though because I looked forward to weekends.

**James M. Lyons**

So when you were in undergraduate school, did you have any teachers or professors who were particularly influential?

**Judge Lewis T. Babcock**

Yes. Professor Dean Edward Lindell and Professor Brush. They were both co-in charge of the Centennial Scholars Program. Professor Alfred Croft was a history professor who was very instrumental in my really engaging in history, and the history of the Far East. He taught the history of the Far East. I did some work with him my senior year.

## **Law School at the University of Denver**

**James M. Lyons**

Did you go directly then from undergraduate to law school?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

And when did you start law school?

**Judge Lewis T. Babcock**

1965.

**James M. Lyons**

Okay. And you mentioned before your interest in the law as a young man. Was there anything in your undergraduate experience which reaffirmed that interest, or enhanced that interest on your part?

**Judge Lewis T. Babcock**

Yes, Liberal Arts studies.

**James M. Lyons**

Raymond Burr?

**Judge Lewis T. Babcock**

That got my initial interest, but in terms of the ability to view history from the ancient Greeks, all the way to the present time, that consolidated my interest in law because I also focused on political science.

**James M. Lyons**

Okay. So you started law school in the fall of 1965?

**Judge Lewis T. Babcock**

Right.

**James M. Lyons**

You'd been married a year?

**Judge Lewis T. Babcock**

Right.

**James M. Lyons**

No children yet?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

Tell me about your first year of law school. How'd that go?

**Judge Lewis T. Babcock**

I was terrified. I basically consider the first year of law school as bending over and doing the coursework, or going to the classes, taking the exams, the dreaded Blue Book exams. I was just basically terrified. My first grade, it was from a course of legal research and writing. And a bunch of us sat around the bar after all of our exams were finished. We sent somebody up to the DU Law School, which was then at what is now a City and County building,

**James M. Lyons**

Across the street from the City and County Building.

**Judge Lewis T. Babcock**

To get grades as they were posted. I had a D plus.

**James M. Lyons**

A what?

**Judge Lewis T. Babcock**

D plus. It was it was the second highest grade in this class. As I went home, I thought, Gee, I'm just not going to be a lawyer, I guess. The next grade that was posted was in civil procedure. I got the A-1. I thought, well, maybe I'm gonna make it eventually.

**James M. Lyons**

Tell me about some of your classmates, who are to this day, still well-recognized lawyers in this town?

**Judge Lewis T. Babcock**

Gary Lozow is one. Joe Saint-Veltri is one. Fred Miles is one. Cliff Beam is one. Those are the ones that immediately come to mind.

**James M. Lyons**

I know you have remained friends with Gary. And I assume that's true with all of them?

**Judge Lewis T. Babcock**

Yes, all of them.

**James M. Lyons**

After that, "terrifying" experience?

**Judge Lewis T. Babcock**

First year was terrifying. It got a little easier after that.

**James M. Lyons**

Same questions I asked before. Were there any particular professors in law school that were influential?

**Judge Lewis T. Babcock**

Yes, Professor Bill Huff taught wills and trust. I loved his lectures and I loved the courses and the subject matter. Thompson Marsh, the man that I talked to initially when I was beginning undergraduate school. He looked like God. He would stand up at the front of the lecture hall and you could just see clouds rolling behind him. He had every student's name on these three

by five cards and he would shuffle them and eventually call on a student. Gary Lozow dropped out of that course the second day. That was exciting. But he was a true dedicated professor scholar. When Dean Yegge began his stewardship as dean of the DU Law School, he began integrating courses and professors with more sociological background like law and economics. Thompson Marsh wasn't going to have any of that. But he taught me the rule against perpetuities, which I can recite to this day. The foolish Colorado General Assembly did away with it.

**James M. Lyons**

He was also famous for color-coded pens, right?

**Judge Lewis T. Babcock**

Red, green and black. You want the black letter law. The green is the facts. Red is the issue. And all you want is what facts are necessary when applied to the law to give you the result, the black letter law.

**James M. Lyons**

Still a pretty good formula.

**Judge Lewis T. Babcock**

It's still good. That's right. It's ingrained.

**James M. Lyons**

Did you work at all when you were in law school?

**Judge Lewis T. Babcock**

I had a clerkship with Norman Berman and Molly Edison, my junior year. Maybe it was my senior year.

**James M. Lyons**

That was Judge Berman, later Judge Berman?

**Judge Lewis T. Babcock**

Judge Berman who I served with on the Court of Appeals. That's right.

**James M. Lyons**

And I'm sorry, who was the other?

**Judge Lewis T. Babcock**

Molly Edison. With Judge Berman, it took me a while to call him Norman. But he was an interesting person to clerk for because I would go in a little before noon, and he would show up after his lunch with Ralph Cole.

**James M. Lyons**

Senator Ralph Cole.

**Judge Lewis T. Babcock**

Yes, at the Profile Room where they would drink martinis. He'd come in and look at me and then go take a nap. Which is what he did on the Court of Appeals.

**First Job After Law School**

**James M. Lyons**

So you graduated from law school in 1968?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

And then you and Judy decided to go back to Rocky Ford?

**Judge Lewis T. Babcock**

Yes. We went back there. I looked at some law firms up here in Denver. I had spent a summer with a lawyer in Rocky Ford, Rex Mitchell, Rexford L. Mitchell. I liked that. I was not particularly enthusiastic about working in a big law firm. He was very happy to take me on as green as I was. He gave me a desk, put a file on the desk. And he said I want you to take care of this old army buddy, who had a bar in Pueblo and he had a note and deed of trust from Judge Cabibi in Pueblo. Judge Cabibi wasn't paying. So he said I want you to collect that note. That was kind of an interesting project.

**James M. Lyons**

From a sitting judge?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

This was Judge Cabibi, Senior, I take it?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Because there was a junior later who also served on the court there.

**Judge Lewis T. Babcock**

Anyway, I sent the demand letter. I got a check. It was about 12 cents short. So I sent the check back. I said, "You're 12 cents short." And I immediately thought that may be something called substantial compliance. So I got in the car, drove to Pueblo, checked about tax payments and insurance payments. And sure enough he was delinquent on both. Then I got the check. Right to the penny.

**James M. Lyons**

So you ultimately became partners with Rex Mitchell. Tell me about him and his background as best you remember it. He was something of a legend in that part of the state?

**Judge Lewis T. Babcock**

Yes, he was a Water Buffalo. He was one of the best water lawyers in Colorado.

**James M. Lyons**

You might explain what a Water Buffalo is for those reading this who don't know.

**Judge Lewis T. Babcock**

It's a society of lawyers who are particularly well-versed in Colorado water law. It's a subject all of its own. But he was a CU undergraduate. CU Law School. Civil Engineer. He was a patent attorney for Kodak in Rochester, New York. Snow got so deep there one winter he decided to come to Rocky Ford. His father had a collection agency. So Rex did that initial business work in Rocky Ford. He didn't make any friends doing that. But he was a tough trial lawyer, one of the best trial lawyers I think, ever walked the face of the earth. And he taught me a lot about trial practice. In civil cases if it was a personal injury case, I'd do the medical legal side, and he would do the liability side. We would double team it in a civil trial.

**Judge Lewis T. Babcock**

But it was a general practice with Rex. Kind of like out of "*To Kill A Mockingbird*." I did everything from examine abstracts to take court-appointed defense cases. I did my own cases. And some cases we worked together, as I say the personal injury cases. But for the first year

or so, I just basically followed him around: to the abstract company, to the clerk's office. And I learned what to do by just following him around. He liked to play golf. I liked to play golf. There was a small nine-hole golf course there. It was the kind of practice where I could go and stick my head in his office about three o'clock. I would say: "What do you think?" He'd say: "Ok, I'll meet you on the first tee in about 20 minutes." We'd play a round a golf. We were very, very close friends.

## **Military Service**

**James M. Lyons**

At some point along the way, you went in the military?

**Judge Lewis T. Babcock**

Yes. In 1968 when I graduated from law school, I had been requesting from the draft board a deferment to complete law school. Judy got pregnant in 1967 and I asked Ida Bride at the draft board whether I could have a fatherhood deferment. She said, "Oh no. When you requested a student deferment, you waived any further deferments." So there I am starting a law practice. Judy is pregnant. I can't get any deferments.

**James M. Lyons**

With Katherine?

**Judge Lewis T. Babcock**

With John. I got into the Army Reserve in Denver a week before I was due to get my draft notice. Then I went from the Army Reserve there to the National Guard in La Junta, an artillery battery. I was there for the full six years.

**James M. Lyons**

Did you serve on active duty?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

Where'd you do your basic training?

**Judge Lewis T. Babcock**

Fort Campbell, Kentucky.

**James M. Lyons**

For how long?

**Judge Lewis T. Babcock**

Forever, it seemed like. I suppose it was a good two and a half months. And then AIT at Fort Sill, Oklahoma. Artillery training. One of the best teachers I ever had was a teacher who taught the subject of how to orient and send the guns commands. You had to figure out range, elevation and deflection to begin adjusting the rounds as they are observed by a forward observer. He was really good.

**James M. Lyons**

You remember his name?

**Judge Lewis T. Babcock**

No, I don't. I know he was with Big Red One. And I was able, with his consent, to set Judy and John up with a little apartment there at Lawton, Oklahoma until I finished that AIT.

**James M. Lyons**

How long did that take?

**Judge Lewis T. Babcock**

Oh, I suppose another two to three months.

**James M. Lyons**

So all told you were in training of one sort or another for almost a year?

**Judge Lewis T. Babcock**

It wouldn't have been that long at Campbell and Fort Sill. No, not that long.

**James M. Lyons**

And in the meantime, you had taken a hiatus from the law practice?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Now when you came back to Rocky Ford, you then were assigned to a unit in La Junta, a National Guard unit?

**Judge Lewis T. Babcock**

Battery A, 157th Field Artillery. A battery of four eight-inch self-propelled howitzers. Fire direction control was the subject that I learned at Fort Sill. I was in the fire direction control section at La Junta. We would have summer camp for two weeks every year where Battery A, Battery B, and Battery C would convene for live fire drills. We did that until I eventually served my six years. I achieved the rank of E-6 and chief of that fire direction control section.

**James M. Lyons**

Where did you do your summer camps?

**Judge Lewis T. Babcock**

At Fort Carson, or Camp Guernsey in Wyoming.

**James M. Lyons**

And in the meantime, John is born?

**Judge Lewis T. Babcock**

He was born before I got to Fort Sill. Yes.

**James M. Lyons**

When did when did Katherine come along?

**Judge Lewis T. Babcock**

She came along two years later in December 1970.

**James M. Lyons**

So you were back in Rocky Ford then and practicing law.

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

When you were practicing law with Rex Mitchell, do you have any memory of any particularly memorable cases other than Judge Cabibi and his promissory note?

**Judge Lewis T. Babcock**

Well, that case was memorable in this respect. I eventually had a case in Pueblo before Judge Cabibi. And it was a client who fell off a loading dock. Judge Cabibi did not do me any favors. He denied the defense motion for summary judgment. And I had to take that case to trial on a

theory of the momentary forgetfulness rule. And that didn't fly with the jury. So that was a loser. No money involved. What I learned was, be careful of what you take.

**James M. Lyons**

You mean what cases you take?

**Judge Lewis T. Babcock**

Yes. I had I had a fairly interesting arson defense down in Lamar before Judge Statler. I won that one. But when I sent the defendant's brother a bill for my services, I didn't get any payment. Sent him another one, didn't get any payment. Sent him a third one. I called him. He said, "Who do you think you are? Perry Mason?" And he stiffed me.

**James M. Lyons**

Never paid any of the bill?

**Judge Lewis T. Babcock**

No. So I hired a lawyer, who sued him. The lawyer finally called me and said, "Well," he said, "I have some nominal amount." I said, "Okay, go ahead and take it and you keep it all." The lawyer called me back a few weeks later and said this guy went out on his motorcycle and killed himself. We're not even going to get that. But it was a good trial. I had pretty good trial success as a defense lawyer, and pretty good trial success as an assistant district attorney, which was a kind of a side deal.

**James M. Lyons**

So you could serve as an assistant district attorney and have a private practice at the same time?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Other than practicing law, raising your children, and regularly playing golf with Rex Mitchell, did you have any other interests outside of the law when you were practicing in Rocky Ford?

**Judge Lewis T. Babcock**

My wife and I, Judy and I, belonged to a dinner club called TNT, which originated some decades earlier as Thimble, Needle and Thread. However, TNT was a hard drinking group. That was kind of an outside interest. Otherwise, you know, it was play golf, do the legal work.

**James M. Lyons**

Were you involved in politics at all?

**Judge Lewis T. Babcock**

Not much. I was at that time a registered Republican. Judy was a registered Democrat. And they had a state assembly. And I went to that state assembly and Judy said, "Well, I'm going to go too." I said, "Oh, no, not as a registered Democrat." So she re-registered as a Republican so she could come to Denver and attend that assembly with me.

**James M. Lyons**

And did you ever hold or consider public office?

**Judge Lewis T. Babcock**

I ran for student senate when I was at DU undergraduate school, and lost and that was the last time I was interested in contested politics.

**James M. Lyons**

Did you take many pro bono cases when you were in private practice?

**Judge Lewis T. Babcock**

Sure. I would take some. A lot of the criminal appointments before we had a public defender system might as well have been pro bono, because they didn't pay anything at all. I would be appointed as a guardian *ad litem* in some cases. I would just do some across-the-desk pro bono work. One time I straightened out a title after a lady's husband died. She said, what do I owe you? I said \$5. She was very proud to give me \$5 for that legal work. So I did do some of that, yes.

## **Interest in Serving As A Judge**

**James M. Lyons**

Good for you. At some point you developed an interest in the bench?

**Judge Lewis T. Babcock**

I was interested in the bench, pretty much from the get-go.

**James M. Lyons**

From law school?

**Judge Lewis T. Babcock**

From undergraduate school. We initiated when I was a senior, a student court. Bob McWilliams, that great jurist from the Tenth Circuit, I think at that time he was on the Colorado Supreme Court, was our mentor guide in establishing that court. We didn't really do much with it. But I had an affinity for it. I was able to see both sides of a case, which at times made it hard to litigate one side or another. And I developed an interest in in the bench. Eventually I was able to go through the Colorado judicial selection process to get on the bench in the 16th Judicial District as a district judge. And that was in 1976.

**James M. Lyons**

That is when you became a district judge?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

So you would have been appointed by Governor Love, was he the governor then?

**Judge Lewis T. Babcock**

No, Dick Lamm was the governor.

**James M. Lyons**

That's right, Governor Lamm. Do you remember who the other two names were?

**Judge Lewis T. Babcock**

Durant Davidson was one. I don't know anybody else. Durant Davidson was a friend of Dick Lamm. I remember driving with Durant and his wife when Judy and I were going to some performance at Pueblo, and Durant said, "Yes. I'm think I'm going to apply," and his wife said, "Well, he's obviously the only qualified one down here." That piqued my interest. And Lamm appointed me.

**James M. Lyons**

Tell me about your interview with him. I assume he interviewed you?

**Judge Lewis T. Babcock**

I did not interview with him for the district court.

**James M. Lyons**

So how long did you serve on the District Court before you went to the Court of Appeals?

**Judge Lewis T. Babcock**

Seven years.

**James M. Lyons**

And did you have any memorable cases that you recall from that period of time?

**Judge Lewis T. Babcock**

I had a homicide case involving a lady whose frozen body was found in her car. She was last seen in the company of a man who became the defendant. That case went to trial. It was an interesting case to try. Justice Quinn in the Colorado Supreme Court reversed a ruling I made that admitted testimony from the deceased woman to the effect that, "Well, if you don't see me again, you'll find my body somewhere. You never know what that old fool will do." I can't remember the defendant's name. I should. Anyway, it came back and I tried it a second time and he was convicted.

I also had a receivership involving a couple hundred thousand acres of ranch land out south of Fowler and Rocky Ford.

**James M. Lyons**

Was this the Apishapa Ranch?

**Judge Lewis T. Babcock**

It might have been. Anyway, what was interesting was I had the ranch foreman who would come in and see me periodically. He was about six-seven or six-eight before his 10-gallon hat was on. He talked about cattle prices and grass and such until eventually I able to end that receivership. That was interesting. Otherwise I can't really think of anything particularly interesting.

**James M. Lyons**

You had a broad docket too. You had criminal, you had civil, you had domestic, probate, and you also sat as a water judge?

**Judge Lewis T. Babcock**

Yes for a little while. Just before I left the district bench and went on the Court of Appeals. I knew basically the difference between a faucet and a head gate. I had learned a little extra from Rex Mitchell, but I was not a water expert. I really didn't do a lot of water judging at all.

**James M. Lyons**

Well, that I assume would have issues related to the Arkansas River and its tributaries?

**Judge Lewis T. Babcock**

Right. And the wells.

**James M. Lyons**

We've been going about 50 minutes. You want to take a break?

**Judge Lewis T. Babcock**

Sure. [Break].

## **Interest in Running**

**James M. Lyons**

At some point in your life, you became interested in running. When did that happen? And how did that come about?

**Judge Lewis T. Babcock**

My wife Judy got up early one morning, went out and ran a jog. I don't know how long. She came back. She was pink and all excited about her run. She went back to bed. So I decided, well maybe I'll give that a try. And I did. But she didn't run again for 15 years. I became interested in running as an alternative to golf. So I matriculated from golf to running and became a very serious runner.

**James M. Lyons**

Which you still were up until recently?

**Judge Lewis T. Babcock**

Until recently. Things like Pikes Peak and some marathons. Recently, at a point in time when I became interested in biking, road biking, and spin biking, I kind of tapered off of running. Then I had a back problem, some back surgery and biking went on for a little while longer but I can't bike now. So now I do Pilates.

## **Seeking Position On Court Of Appeals and Move to Boulder**

**James M. Lyons**

So at some point, you decided to apply for the Colorado Court of Appeals. What motivated you to want to leave the District Court for an appellate court?

**Judge Lewis T. Babcock**

I got a call from Justice Neighbors. And I thought, well, it'd be interesting. Why not give it a try. And I did. And Governor Lamm again appointed me.

There was a selection committee statewide. I think they were just gonna throw me in as fodder. And I figured if I'm going to apply, I'm gonna go after it. I was successful in being one of three nominees for that position. For that one, I did not have to interview with Dick Lamm. I did interview with a group from the Women's Bar Association. They asked me what I thought about their process. I told them that their process of being a group of women lawyers, interviewing for the bench, was contrary to the statute and the Constitution of the State of Colorado that vest that process in a judicial selection committee and the Governor of the State of Colorado. So I came out third of that.

**James M. Lyons**

So you didn't get their endorsement?

**Judge Lewis T. Babcock**

I did not, but I was selected anyway.

Later when Senator Armstrong's committee interviewed me for the federal district court opening, they noted Governor Lamm had appointed me twice. I pointed out that that he appointed me once when he acting like a Republican and once when he was a Democrat.

**James M. Lyons**

How did Judy feel about moving from Rocky Ford to Denver?

**Judge Lewis T. Babcock**

Well, we moved to Boulder.

**James M. Lyons**

Why Boulder?

**Judge Lewis T. Babcock**

I had a couple good friends up there. Dick Dana. John Yeager. I knew something about Boulder and didn't know anything about Denver particularly. And so we moved to Boulder and Judy took on a teaching position in the Boulder Valley School District.

**James M. Lyons**

How did the kids feel about moving from Rocky Ford to Boulder?

**Judge Lewis T. Babcock**

I think okay, I think John particularly was very happy to get out of Rocky Ford. They picked on him a lot. Katherine, you could kick her out of the car anywhere. She'd bounce once or twice and she's gonna be fine. And so she was fine in Boulder.

**Service On Colorado Court Of Appeals**

**James M. Lyons**

Tell me about your early experiences, and what year are we talking about, that you went on the Colorado Court of Appeals?

**Judge Lewis T. Babcock**

It would have been 1983, for five years, to 1988. And I learned more about legal writing. from some of the Court of Appeals judges like Ned Van Cise, Chuck Pierce, and David Enoch.

**James M. Lyons**

So you overcame your D+, sounds like?

**Judge Lewis T. Babcock**

I really did. It was interesting work, but it was dull compared to the trial bench. So later I was very, very happy to have an opportunity to leave the Colorado Court of Appeals to this trial bench to the District of Colorado. It's like being born again.

**James M. Lyons**

The Colorado Court of Appeals during that period of time, 1976 to 1983, was still relatively small in size. Am I right about that?

**Judge Lewis T. Babcock**

It had just grown to 10, I think. It was 10 by the time I left. It was originally eight or nine.

**James M. Lyons**

Was it a collegial bench?

**Judge Lewis T. Babcock**

Yes, it was a collegial bench. We were all on the same floor. You'd circulate a draft of for publication, or not publication. Everybody got it. And we would feel free to come in and critique it. Either just simply an editorial comment or substantive comment about the reasoning or the result. Then if the opinion was to be submitted for publication, the full court would meet on Thursday and then we would go through the cases that were considered for publication. On

the Wednesday before that, the panel would meet and discuss the cases either to submit them for publication or to be unpublished.

**James M. Lyons**

Was there anybody particularly influential to you when you were on the Court of Appeals?

**Judge Lewis T. Babcock**

David Enoch, our chief judge was. Chuck Pierce was. Ned Van Cise was. Aurel Kelly was. Norman Berman was. Alan Sternberg was.

**James M. Lyons**

She was the first woman on the Colorado Court of Appeals?

**Judge Lewis T. Babcock**

Yes, she was.

**James M. Lyons**

Do you have any memorable cases from that period of time in your career?

**Judge Lewis T. Babcock**

Don Smith was also on the court then.

**James M. Lyons**

Judge Krieger's father?

**Judge Lewis T. Babcock**

Yes. We had a case involving someone who was injured when thrown from a horse. And they had to sign a release. The three of us agreed that the release should be honored. But I drew the dissent. So Don Smith and another judge wrote an opinion which did not honor the consent and release. I got to write a dissent saying that anybody who gets on a horse having signed a release, is stuck with that release, because it's an inherently dangerous beast. It went to the full Supreme Court and the Supreme Court reversed Smith, and affirmed me.

**James M. Lyons**

I think I remember that case.

**Judge Lewis T. Babcock**

Heil Valley Ranch, I think it was.

**James M. Lyons**

So, did you enjoy your time on the Colorado Court of Appeals?

**Judge Lewis T. Babcock**

Not much.

**James M. Lyons**

In what respect? You didn't like the work?

**Judge Lewis T. Babcock**

The work was okay. The collegiality was okay. It's just you're deciding things by committee. And I was more attuned to deciding legal issues by myself.

**James M. Lyons**

As you had done on the district court?

**Judge Lewis T. Babcock**

Right, and I missed the activity of lawyers and litigants appearing in court for cases. I missed that. It was a very secluded group. I mean, I would consider getting a hook. If somebody walked down the hall, not part of the judicial group, I would bring them in, just because I missed the activity and interaction with the trial bar and trial participants.

## **Applying To Become United States District Court Judge**

**James M. Lyons**

So is that in part what motivated you to apply for the United States District Court?

**Judge Lewis T. Babcock**

In part. I got a flyer in the mail about the vacancy, and I just threw it in a waste basket. I thought, there's no way. And then I got a call from Ray Friedlob.

**James M. Lyons**

Because this is 1982 or 1983?

**Judge Lewis T. Babcock**

It would have been about 1986.

**James M. Lyons**

Whose vacancy, or whose retirement created the vacancy?

**Judge Lewis T. Babcock**

I don't remember.

**James M. Lyons**

Was it Judge Arraj?

**Judge Lewis T. Babcock**

No, he was already senior.

**James M. Lyons**

Okay. So you got this phone call from Ray Friedlob, a prominent Republican lawyer active in Republican politics. Do you recall whose place you took on the court?

**Judge Lewis T. Babcock**

Judge Kane.

**James M. Lyons**

As he took, essentially a medical disability and senior status?

**Judge Lewis T. Babcock**

That's correct.

**James M. Lyons**

So you get this call from Ray Friedlob, what happened next? Did you know, Ray. How did he happen to call you?

**Judge Lewis T. Babcock**

Yes, I knew Ray from law school. There was an application form to fill out, which I did, and submitted it. I got an interview with Senator Armstrong. When I went in to see Senator Armstrong, I saw the GOP campaign wizard in Colorado, Dick Wadhams. I had done estate work for Dick Wadhams' parents from Las Animas. I interviewed with Senator Armstrong. And I can't remember exactly what happened next. I think Senator Armstrong went ahead and selected me to be his nominee at the White House. At that time the senior Senator of the state submitted a name to the Justice Department.

**James M. Lyons**

The Justice Department, the White House, or both?

**Judge Lewis T. Babcock**

The Justice Department because you had to go through the Office of Legal Policy at DOJ before there would be a submission to the White House. So I did that and interviewed at the DOJ. The next morning, Armstrong was calling to tell me that they weren't going to approve me. I said, "Okay, well, okay."

**Judge Lewis T. Babcock**

And some time went by. They couldn't get anybody really to get through to The Office of Legal Policy. There were a number who were being considered. I got a call from Senator Armstrong and he asked me if I would give it a second try. I said sure. And with the help of Senator Armstrong and Senator Wirth at that time too, the Office of Legal Policy, Stephen Markman, submitted my name to the White House. I was in a panel conference at the Court of Appeals when President Reagan called and inquired whether I would be interested in his nominating me to the federal bench. And I said, "Well, yes, Mr. President, I would." He said, "Well give your beautiful wife and children my regards." And he did.

**James M. Lyons**

By this point, you have gotten a master's degree from the University of Virginia?

**Judge Lewis T. Babcock**

I was in the process.

**James M. Lyons**

You were in the process. Tell me about that. What caused you to undertake that effort and what came of it?

**Judge Lewis T. Babcock**

I got a flyer in the mail, advertising this program at the University of Virginia for judges. There were some state judges and two or three federal judges. I think there were 30 in the class. I applied for it, and was accepted into the program, in residence at UVA for two summers. I neglected to read the fine print in the brochure that required some writing, meaning a full thesis with a substantial number of footnotes. So anyway, I did the thesis on the subject of AIDS and the right of privacy. Mr. Markman forgot to ask me about that subject before he submitted my name to the White House.

I was back in Washington for an Inns of Court meeting when I got a call from Markman's secretary who said. "Mr. Markman wants to know what are you doing here?" I said, "Well, I was listening to your boss, Mr. Meese." Well, she said, "Bring over your copy of your thesis." I said, "I don't travel with it."

When I got back, I FedEx'd it overnight. Then I got a call from Markman. He said, "Well, this is going to be a problem." I said, "I'm not sure. It wasn't a problem for Senator Armstrong and it wasn't a problem for Senator Wirth." He responded: "Well, okay," There wasn't anything he could do at that time anyway, because I had already been nominated by President Reagan.

**James M. Lyons**

But not confirmed?

**Judge Lewis T. Babcock**

But not confirmed. I later got that done.

**James M. Lyons**

What in the thesis did he find objectionable?

**Judge Lewis T. Babcock**

I think he found the subject of AIDS objectionable. I think he found the subject of the right of privacy objectionable. At that time, anybody who had AIDS was automatically branded homosexual and/or an IV drug user. It carried a huge stigma with it.

**James M. Lyons**

What attracted you to the subject in the first place?

**Judge Lewis T. Babcock**

I don't know. I was interested in the subject of right of privacy.

**James M. Lyons**

*Griswold vs. Connecticut?*

**Judge Lewis T. Babcock**

Yes. Because frankly Justice White couldn't find the right.

**James M. Lyons**

No. He dissented in *Griswold*.

**Judge Lewis T. Babcock**

He did. He did. And I wasn't sure there was such a right. That was kind of a dual investigation by me.

**James M. Lyons**

Justice Goldberg found a right in the penumbra of the Ninth Amendment as I recall.

**Judge Lewis T. Babcock**

Well, that was Justice Douglas, the penumbra theory. Justice Goldberg, I think found it in the Ninth or Tenth Amendment. Anyway, it was Douglas who found the penumbra doctrine. So it was an interesting subject from a legal standpoint as applied to a particular, at that time, an acute social issue.

**James M. Lyons**

What do you remember about your confirmation process?

**Judge Lewis T. Babcock**

They set a time for my Judiciary Committee hearing. And I attended, of course, with my wife Judy and my daughter Katherine. Senator Strom Thurmond and Senator Leahy were the two members of the committee, for the interview. There was a point in time when a senator from Pennsylvania also attended because his candidate was having a hard time. I think maybe there was also a senator from Utah for a time.

**James M. Lyons**

Senator Hatch?

**Judge Lewis T. Babcock**

I think he might have been there during part of the hearing. What I remember significantly is that I walked down the aisle, with Senator Armstrong on my right and Senator Wirth on my left. The two of them introduced me. It was significant I think that it was a Republican and a Democrat who did that.

**James M. Lyons**

At the time the Democrats were the majority in the Senate?

**Judge Lewis T. Babcock**

That's right.

**James M. Lyons**

So Senator Leahy would have been Chair of the Judiciary Committee?

**Judge Lewis T. Babcock**

That's right. I got a call from Leahy's office the night before the hearing, expressing concern about my having been a part-time city attorney for two cities, Las Animas and Rocky Ford, and a part-time state prosecutor. He was concerned about conflicts of interest. The aide said, "He's concerned about these conflicts." I said, "If there's a conflict, I'd find another lawyer." I said,

"And by the way if I recall, Senator Leahy was a lawyer in a small town. And he would understand this." So that was not an issue.

Just before the meeting or the hearing was convened, Stephen J. Markman, who was the head of the Office of Legal Policy, walked down the middle of the aisle. I was given to understand that was like putting a red flag in front of a bull in terms of Senator Leahy. He was not popular with the Democrats on that committee. So I thought, oh, pardon his expression. I thought, Oh shit. Will this be a problem. It wasn't. Mine was the last nomination to be addressed by the committee members there because that guy from Pennsylvania was kind of hung up. We got through it before the committee recessed and walked out. Stephen Markman was in the hall wearing a starched white shirt. He said, "I think it went all right. We'll have to see." And he had a pimple on his chin. It broke and blood just went down the collar of his white shirt. I didn't say anything at all. I thought that serves you right.

**James M. Lyons**

Did he speak at your hearing?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

He wasn't recognized by the panel or by the committee?

**Judge Lewis T. Babcock**

No, he left before the hearing convened. I remember that Senator Strom Thurmond before the hearing started, came down off the dais and got between my daughter Katherine and my wife, Judy, and put a hand on each arm. He said, "My, my, what lovely ladies." That's a good start.

**James M. Lyons**

And hopefully didn't go any further than that?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

He had somewhat of a reputation in that regard. So, as I recall, your vote in the Senate was part of a number of votes, or part of a vote taken on a number of applicants, literally at the midnight hour?

**Judge Lewis T. Babcock**

Well there were ten of us. It was supposed to be a voice vote. And the guy from Pennsylvania who had a problem kind of delayed the whole thing. So I got a call. I was in my chambers at the Court of Appeals. I got a call from Senator Armstrong. He said, "Well," he said, "I'm sorry, it's just not going to get done." And right after I hung up, I got a call from Senator Wirth. He said, "I'm calling them back." They cleaved off the guy from Pennsylvania. Then on that voice vote or whatever they call it, the nine of us were confirmed at the midnight hour. Well not literally midnight, but because the 100th Congress was ready to adjourn, if it didn't get done, I would have had to start all over.

**James M. Lyons**

Did Senator Wirth give you any indication about his support and why he was willing to support you?

**Judge Lewis T. Babcock**

Senator Armstrong had a committee that interviewed me. Senator Wirth had a committee that interviewed me. You were on it. I think you recused. Senator Wirth personally never did. Other than when I went back for the hearing and met with him on that chamber right off the floor. We talked a little bit and he said, "If you make it, you're going to have the best retirement of anybody." That may be worth a lot of money to you. He was interested in that. But otherwise I did not interview separately with Senator Wirth.

**James M. Lyons**

But you did an interview with his committee?

**Judge Lewis T. Babcock**

I did.

**James M. Lyons**

And you had strong support from both committees, from Senator Armstrong's committee as well as Senator Wirth's committee?

**Judge Lewis T. Babcock**

I believe I did.

**James M. Lyons**

Well, I know you did. So when did you receive your commission, hanging there on the wall behind us?

**Judge Lewis T. Babcock**

It is dated October 17, 1988. I received it rolled up in a tube. Right after I received it, I got a call from Mr. Markman's aide. His aide said Mr. Markman doesn't have a copy of your commission. Would you send it back to him so he could copy it. I said, "You tell Mr. Markman to read *Marbury v. Madison*. He's welcome to come out here and take a photograph of this commission, but I'm not going to send it back to him."

**James M. Lyons**

He later became a justice on the Michigan Supreme Court, did you know that?

**Judge Lewis T. Babcock**

I did.

**James M. Lyons**

I had occasion to deal with him at a retreat that the Institute for the Advancement of the American Legal System or IAALS, out at DU Law School put together, to examine from various viewpoints what were the ideal characteristics of a judge. And I can simply say, on a personal level, I was singularly unimpressed with Justice Markman's contributions to the discussion.

**Service as United States District Court Judge**

**James M. Lyons**

So when did you become active and move over to the district court and take up your new duties?

**Judge Lewis T. Babcock**

I don't remember exactly.

**James M. Lyons**

Would have been the fall of 1988?

**Judge Lewis T. Babcock**

Yes, I think it was in November, but I don't recall what date it was.

**James M. Lyons**

And when you joined the court in the fall of 1988, who were the other members of the court that you remember?

**Judge Lewis T. Babcock**

Hatfield Chilson was basically a senior member, but he didn't have a chambers and he wasn't carrying a caseload. Justice Arraj was senior, and he was still carrying some caseload.

**James M. Lyons**

Who was the chief judge then?

**Judge Lewis T. Babcock**

Judge Sherman Finesilver was Chief Judge. Dick Matsch was on the Court. Jim Carrigan was on the Court. John Kane came back shortly after I went active. Shortly after I was confirmed, Ed Nottingham and Dan Sparr were confirmed. And Zita Weinsienk was on the Court at that time.

**James M. Lyons**

And Jim Manspeaker was the Clerk of the Court?

**Judge Lewis T. Babcock**

Jim Manspeaker was the backbone of the Court. And he was kind enough to stay here while I was Chief Judge, for two years as Chief Judge. He kind of got me squared away.

**James M. Lyons**

So tell me about your initial years on the Court. Did it require a significant adjustment on your part from what you had been doing?

**Judge Lewis T. Babcock**

No, not really, because I had trial bench experience from the state court. But when I walked into my chambers, there were 430 civil case files on the floor.

**James M. Lyons**

Civil and criminal, or just civil?

**Judge Lewis T. Babcock**

Just civil. Judge Finesilver kept me out of the criminal draw for a period of time to let me get up to speed. So what I did was, on cases that had a magistrate judge assigned to the case, I did orders of reference for recommendations on dispositive motions, because I wanted to test who was had the ability to provide a reasoned recommendation. And I started doing docket calls. Or some judges would call them cattle calls. I would do that starting at 6:30 or 7:00 o'clock in the morning, once a week. I went through the cases until I knew where we were.

I had two good law clerks. We just started digging into them until we worked our way through them. And not too long after that, at a time when Judge Sparr was here, we were really behind. Three-year old cases, motions pending for more than a year. So we really went to work on those as a bench.

**James M. Lyons**

Who were your two law clerks. Do you remember?

**Judge Lewis T. Babcock**

Terry Epstein was with me on the Colorado Court of Appeals, and Robin Carey had been a clerk with Judge Van Cise on the Colorado Court of Appeals. They both came with me. My beloved secretary, Jeanne Thorne, came with me. See, I've only had two beloved secretaries. My second beloved secretary, Judy Poor, is sitting right over my right shoulder listening in.

Who is the judge who went senior before I got here, and was in a law firm?

**James M. Lyons**

Judge Winner?

**Judge Lewis T. Babcock**

Judge Winner took me to lunch at the U Club. This is going to be in the paper. I'll edit this just a little bit. He said I have a piece of advice for you. What he told me was in confidence and I will keep his confidence but I can say it was memorable.

**James M. Lyons**

He was no longer Chief Judge at the time?

**Judge Lewis T. Babcock**

He was no longer on the Court. He said take your secretary and don't let them [blank] you. He said Judge Matsch will be scrupulous with regard to how he will deal with some of your cases or not. Because you know, that's how they got the 430 cases. Each judge had the ability to peel off a number of cases for the new guy.

**James M. Lyons**

The expression for that I understood was "dump the dogs"?

**Judge Lewis T. Babcock**

They did. For example, in one file I found a yellow sticker that said, "Give this old dog to the new guy."

**James M. Lyons**

I won't ask you who wrote the sticker.

**Judge Lewis T. Babcock**

I won't tell you. I just remembered.

**James M. Lyons**

So in your initial years on the Court, were there any of your colleagues that were particularly influential for you?

**Judge Lewis T. Babcock**

Sure. Judge Arraj. You know, he's the gold standard. And Judge Matsch is the gold standard.

**James M. Lyons**

Did you know Judge Arraj when he was a state district judge in southeastern Colorado? That was before your time.

**Judge Lewis T. Babcock**

I did not. I appeared before him with Rex Mitchell a time or two. But he was such a legend. And he was very amenable to just sitting down and talking, giving advice. He had his secretary call Jeanne Thorne to get her up to speed.

**James M. Lyons**

How about Judge Matsch. Was he helpful to you in those early years or influential in those early years?

**Judge Lewis T. Babcock**

Yes but I was afraid of him. I didn't get around to calling him Dick until after I was the Chief Judge here. But yes, he was very influential because he was so scrupulous about his ethics.

**James M. Lyons**

Did you find the Court when you first got here to be collegial and cordial?

**Judge Lewis T. Babcock**

Not particularly. We had Judge Finesilver as the Chief Judge but we never had regular judges meetings, or maybe once or twice a year. When he left, and there were some issues, and Judge Matsch was sort of *de facto*, acting as a Chief. In order to work through those issues, I suggested that we have a judge's meeting once a week in order to be on the same page. And we did. We had a judge's meeting every Wednesday. It was, I think, helpful to creating some level of collegiality.

**James M. Lyons**

Was there much social activity among the judges at that point?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

Had there been on the court of appeals?

**Judge Lewis T. Babcock**

Yes. Well, I mean, it wasn't regular, but there was some social activity among the judges. That was before the Colorado Court of Appeals got to be so big.

**James M. Lyons**

And you were still living in Boulder?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

At the time. Commuting to Denver every day?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Did you take the bus, or drive?

**Judge Lewis T. Babcock**

Took a bus.

## **Memorable cases as U.S. District Court Judge**

**James M. Lyons**

All right. So let's talk about some of your memorable cases, both early on and up to date. I know, because we've talked about this before, a number that you do regard as significant. Let's talk about, first of all, the coal bed methane case on the Southern Ute Indian Reservation.

**Judge Lewis T. Babcock**

The Southern Utes.

**James M. Lyons**

Because that case ultimately went to the Supreme Court as I recall?

**James M. Lyons**

It did. The 1909 and 1910 Coal Lands Act withdrew coal from being treated as other minerals. The coal reverted then to the Southern Ute Reservation by federal statute. When they discovered methane gas microscopically trapped in the coal, there were a number of oil companies who contended that that gas was subject to development by the oil companies.

The tribe contended that they owned the gas. I wrote an opinion that held that the gas did not go with the coal when the coal was withdrawn from location. So that the Tribe did not own the gas. We had a great argument. Wayne Shipps from Durango was representing the Tribe and we had a dozen or so, blue-suited oil company lawyers sitting in the courtroom. And when Shipps stood up, he held up this big chocolate chip cookie, which illustrated the point of gas being in the coal. I started laughing. The lawyers are scribbling furiously on their notepads. What's going on here? The Tenth Circuit reversed me. And then the reversal was upheld *en banc*, before it went to the Supreme Court. The Supreme Court reversed the Tenth Circuit.

**James M. Lyons**

And affirmed your position?

**Judge Lewis T. Babcock**

Affirmed my position. It was significant because that rule about methane gas was not recognized throughout the United States. It was a multi-billion dollar issue. At a Tenth Circuit conference in Santa Fe, I was standing behind Justice Breyer. I introduced myself. "Oh," he said "I have an award for you." And while he was making his remarks about the Supreme Court treatment of cases, he said, "I'm going to award the Galileo of the Year award to Judge Babcock. He knows the difference between gas and a rock."

**James M. Lyons**

Did you have any other cases that went to the Supreme Court?

**Judge Lewis T. Babcock**

I just had one that came back from the Supreme Court involving a three-strikes rule for *pro se* litigants. You can't go *in forma pauperis* after three strikes. I can't recall any other US Supreme Court cases. I know, I had to deal with all of the Columbine shooting cases.

**James M. Lyons**

I was going to ask you about that next.

**Judge Lewis T. Babcock**

Whoever drew the lowest number got them all. At a judges meeting, Judge Matsch looked over to me, he just shook his head and said, "You've got them." So I had to deal with all of those.

**James M. Lyons**

Let's just stop there for a minute. Take a few minutes to describe the nature of the case or cases.

**Judge Lewis T. Babcock**

Section 1983 claims involving claims that school officials breached their duty to the student body by not dealing with Harris and Klebold effectively early on.

**James M. Lyons**

The two shooters at Columbine?

**Judge Lewis T. Babcock**

Yes. And the theory was that the law enforcement agencies who surrounded the school breached their duty to the students. First of all, the breach of duty theory was school officials should have recognized these two kids as potential killers. Second of all, first responders should have done something different during the siege. And they even ...

**James M. Lyons**

Meaning they should have gone in sooner than they did?

**Judge Lewis T. Babcock**

And that was the significance really of what I ruled, on motions for summary judgment, on a qualified immunity basis. After Columbine, it became a regular law enforcement standard.

**James M. Lyons**

So wait a minute Judge. So you found that there is qualified immunity, and therefore no liability?

**Judge Lewis T. Babcock**

With the exception of the teacher who was taken by the students up to a classroom, and who eventually died there. They held up signs saying come get him, he is bleeding to death.

**James M. Lyons**

The students held up signs?

**Judge Lewis T. Babcock**

Yes. And nobody went in to his aid.

**James M. Lyons**

So you found liability in that case for that teacher?

**Judge Lewis T. Babcock**

I denied summary judgment.

**James M. Lyons**

In other words, qualified immunity did not apply in that case?

**Judge Lewis T. Babcock**

Right. Qualified immunity is a big deal these days. The significance, I think of what I did, was it changed the tactic of law enforcement agencies in school shootings. Any kind of a shooting episode like we had at the theater here in Denver.

**James M. Lyons**

The Aurora theater shooting?

**Judge Lewis T. Babcock**

Yes. You go in. Don't establish a defensive perimeter.

**James M. Lyons**

Which they did in Aurora?

**Judge Lewis T. Babcock**

They sure did.

**James M. Lyons**

I seem to recall there were also some issues about depositions that occurred in that case, the Columbine cases, that were under seal. And a motion or effort to have those depositions released from seal. Do I recall that correctly?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

And what happened there?

**Judge Lewis T. Babcock**

They're still under seal. There were depositions of the Klebold parents, mother and father, and the Harris parents, mother and father. I read the depositions and determined that for a period of 20 years they should remain under seal.

**James M. Lyons**

So they are still under seal?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Was that ruling appealed?

**Judge Lewis T. Babcock**

No. I don't think so.

**James M. Lyons**

Did you appoint a special master in that?

**Judge Lewis T. Babcock**

I did. A special master. I had a magistrate judge working with me, and a special master in charge of the room where these depositions were being taken. The special master was in charge of all of the deposition materials and the depositions themselves. There were three complete transcribed depositions, and one, which is not yet transcribed.

**James M. Lyons**

So all four parents were deposed.

**Judge Lewis T. Babcock**

That's right.

**James M. Lyons**

Okay. And the special master as I recall was Chuck Kall?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Who was then with Holme Roberts & Owen as I recollect?

**Judge Lewis T. Babcock**

And he would report to me, in confidence.

**James M. Lyons**

So he sat through the depositions?

**Judge Lewis T. Babcock**

He did. He was in charge of the key to the room where they were taken and all of the materials in there. I do recall that he told me at one time, "Oh, Judge, it's radioactive."

**James M. Lyons**

You've read the deposition yourself. You agree with his characterization?

**Judge Lewis T. Babcock**

I do. It is one of the reasons that they are under seal.

**James M. Lyons**

Let me ask you about that. And then we'll move on. What persuaded you to seal these depositions. You clearly had the authority to do that. But what persuaded you to do that?

**Judge Lewis T. Babcock**

There was an application by the parents through counsel to seal them and maintain privacy. Plus, there was an agreement in writing signed by the parents and their counsel, that the depositions would remain private and sealed, absent an order to the contrary by me, the Court. So I upheld that agreement.

**James M. Lyons**

The agreement was with the plaintiffs, obviously, or plaintiff's counsel?

**Judge Lewis T. Babcock**

Right.

**James M. Lyons**

When does the 20 years expire? Do you know offhand? So you've had a chance to review the order of seal, and it expires in July of 2024?

**Judge Lewis T. Babcock**

I am looking at it now. The judge's order regarding these materials provided that all these deposition materials under the Special Master's hand, was to be disposed of at the end of the case.

**James M. Lyons**

Disposed of, meaning shredded?

**Judge Lewis T. Babcock**

We had to work through the Federal Records Act. We had a protective order that provided that all such materials, being the deposition materials, will be disposed of in accord with the terms of this order at the conclusion of this case, or as further ordered by the court. Because of the National Archive Records Act, because of that act, I sealed them instead of destroyed them.

**James M. Lyons**

So they have not been destroyed. They're still under seal?

**Judge Lewis T. Babcock**

Yes, correct. They have been digitized. Yes, that's correct. So they are still under seal, subject to review, on motion, or on my own motion, in 2024.

**James M. Lyons**

Okay. Well, let's move on. Other memorable cases that you recall during your time on the Court?

**Judge Lewis T. Babcock**

I had an interesting Ponzi scheme case involving Western Monetary Consultants, which was a Ponzi scheme, concerning investments in precious metals. Ten defendants went to trial. Only William Kennedy, the number one defendant, was convicted. The rest were acquitted. So the US Attorney's Office dismissed all of the indictments against the callers in the boiler room. That was a fairly interesting case because the lawyers were interesting.

**General Recollections**

**James M. Lyons**

If you care to comment or answer this, if you had to name the best lawyers that appeared before you, who would you put on that list?

**Judge Lewis T. Babcock**

Roger Thomasch. David Lane. Jim Allison, from the US Attorney's Office. Gary Lozow. James M. Lyons, of course. Judge Ray Moore practiced before me before he came to our bench.

**James M. Lyons**

Trial judges, in my experience, have mixed views about whether they prefer a jury trial to a bench trial. What about you?

**Judge Lewis T. Babcock**

The advantage of a bench trial is you don't have to do jury instructions. The disadvantage of a bench trial is that you have to write an opinion. So it's six of one, and half a dozen of the other.

**James M. Lyons**

So you don't have a preference, jury versus non-jury?

**Judge Lewis T. Babcock**

No. Although I will say that in my experience, I can probably fault a jury verdict in three or four cases. Otherwise, I might disagree with their factual determinations but I would not fault their verdict, because the factual determinations are for the jury.

**James M. Lyons**

Have you on occasion set aside jury verdicts?

**Judge Lewis T. Babcock**

I don't think so.

**James M. Lyons**

Ever?

**Judge Lewis T. Babcock**

Ever.

**James M. Lyons**

State district court or US District Court?

**Judge Lewis T. Babcock**

Either one. I thought about it a time or two, but I never got around to doing it, because of my respect for the common community wisdom collectively applied to the facts of a case under the instructions of the law. I have a tremendous respect for the jury.

**James M. Lyons**

When did you become Chief Judge?

**Judge Lewis T. Babcock**

2000.

**James M. Lyons**

And how long did you serve as Chief Judge?

**James M. Lyons**

Seven years.

**James M. Lyons**

And in addition to the administrative duties of the Chief Judge, you also had the responsibility for a major construction project?

**Judge Lewis T. Babcock**

That was given to me by Judge Finesilver in about 1991 or 1992. And that process began at that time.

**James M. Lyons**

And we're talking about the Arraj Courthouse across the street?

**Judge Lewis T. Babcock**

Right.

**James M. Lyons**

Tell me about your experience there being a supervisor of a major construction project? It was very time consuming?

**Judge Lewis T. Babcock**

I had to begin with working with the GSA. And in doing that, we had a partnership meeting with them. My whole approach was to stress the nature of a court of law and the courthouse, and what it does, and its community persona.

**James M. Lyons**

It's not just another federal building?

**Judge Lewis T. Babcock**

Not just another federal building. I got I really got GSA on board with that. And then we had to begin the design process with Anderson Mason Dale, and Gyo Obata's firm from St. Louis. I went through the whole partnering session, again with them, because what they design must express the nature of the judiciary, the rule of law and respect for that.

After we selected, and had on board, our design team, the architects, we went to bid, the original bid. While the design process itself was kind of complicated. We originally were going to go two courts per floor. Then the Oklahoma City bombing occurred at the Murrah Building. We had to step back and redesign the whole courthouse for blast protection, which included setting the courthouse up higher off the street level, and included what we call progressive collapse, where if there's a bomb go off in front, rather than pancake as happened with the Murrah Building, it would just simply come down in discrete pieces. So we went back and redesigned the courthouse with that in mind. Then GSA expressed an interest in green building design. So we stepped back, again, to incorporate some of the green building design functions of a courthouse, and any building actually. Sustainable architecture is what they call it. Eventually we got a design complete, went to bid, but had a \$10 million bid bust. So the architects, ...

**James M. Lyons**

What do you mean a \$10 million bid bust?

**Judge Lewis T. Babcock**

We couldn't award a contract because we needed an additional \$10 million to do it. We didn't want to go back to Congress. It was touchy enough as it was, at that time. So the architects, GSA, and I came up with a list of 100 items to separately bid. We could take them out of the equation. We got down to where we were almost to cover that \$10 million bid bust. But we were still about \$3 million short. So I just took off one floor, courtrooms and chambers. Once we took off that one floor, we were able to award the contract.

**James M. Lyons**

And how long did construction take?

**Judge Lewis T. Babcock**

Well, we moved in, in 2002. I don't remember when we went to contract. It took a couple years.

**James M. Lyons**

It took at least two years as I recollect?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

So, again, in addition to your administrative responsibilities as Chief Judge, you had this project to deal with?

**Judge Lewis T. Babcock**

Right. And we had a backfill project here at the Rogers courthouse.

**James M. Lyons**

As it was being renovated?

**Judge Lewis T. Babcock**

Yes. That started after we completed Arraj and were completely moved into Arraj.

**James M. Lyons**

When you stepped down as Chief Judge, you moved out of the new building into this building, correct? Or shortly thereafter?

**Judge Lewis T. Babcock**

Yes, I did. The theory was that senior judges would backfill into the Rogers courthouse. Judge Sparr didn't want to do it. Judge Kane decided he didn't want to do it. And Judge Weinshienk likewise decided she wouldn't do it. Somebody had to carry the flag. So I volunteered to move over here to these chambers where we sit now, where I can look over at the Byron White building, where it says, "If thou desirest rest, desirest not too much." I can look over the plaza for Arraj and watch the comings and goings. It worked out just fine.

**James M. Lyons**

And the magistrate judges are in this building too?

**Judge Lewis T. Babcock**

Two of them are.

**James M. Lyons**

Two of them. Yes. So you have plenty of capacity for more judges?

**Judge Lewis T. Babcock**

The theory was that we would need all of this judicial space. There is a formula that that the AO came up with.

**James M. Lyons**

The Administrative Office?

**Judge Lewis T. Babcock**

To anticipate Congress adding more judgeships.

**James M. Lyons**

Which has not happened?

**Judge Lewis T. Babcock**

Correct.

**James M. Lyons**

There has been no new judgeship created by Congress in this district since 1982 as I recall?

**Judge Lewis T. Babcock**

Correct. And that was Judge Weinshienk and Judge Carrigan.

**James M. Lyons**

And, from what I also recall, under metrics used by the Administrative Office and the Office of the United States Courts, given the docket and the growth in this district, we are entitled to two new judges?

**Judge Lewis T. Babcock**

Yes.

**James M. Lyons**

Two new Article III judges. And I do know that the senators have tried at various times to get at least one, if not both, of those judges, but have not been successful?

**Judge Lewis T. Babcock**

And you have worked on it. You have worked on it.

**James M. Lyons**

Yes. Do you think those two new judges are still needed?

**Judge Lewis T. Babcock**

Yes. I do.

**James M. Lyons**

Maybe more than two?

**Judge Lewis T. Babcock**

Under the AO's matrix, and whatever committee of the Judicial Conference looks at it, I think two should do it.

**James M. Lyons**

But not likely anytime soon, apparently?

**Judge Lewis T. Babcock**

It doesn't appear to be.

**James M. Lyons**

Until he died, Judge Matsch, you and Judge Kane, all senior judges, and Judge Daniel until he died, carried a pretty big load even though you are not required to do so as senior judges. Once you all retire or otherwise leave active service, that's going to put an additional stress on this Court?

**Judge Lewis T. Babcock**

Absolutely. We're probably stressed enough as it is. You know when we were beginning planning for the Arraj Courthouse, I said, "Judge Arraj isn't going to live forever." I was told, "We aren't going to hear anything about that. You're going to make that plan as though Judge Arraj is going to be alive and move into the courthouse." So that was not a consideration in planning. Judges are going to retire like Judge Carrigan did. Or die, like Judge Daniel did.

**James M. Lyons**

Did you enjoy being chief judge?

**Judge Lewis T. Babcock**

I did.

**James M. Lyons**

What did you like about it, and what didn't you like about it?

**Judge Lewis T. Babcock**

Well, what I liked about it was herding the cats. What I didn't like about it was herding the cats.

**James M. Lyons**

The cats being your fellow judges?

**Judge Lewis T. Babcock**

Yes, sure. It was a very rewarding experience for me.

**James M. Lyons**

Would you do it again?

**Judge Lewis T. Babcock**

Sure. Well, I'd have to think about that because the Court has changed somewhat.

**James M. Lyons**

In what respect?

**Judge Lewis T. Babcock**

We have different judges, different cats so to speak. I have to, at this point, give our Chief Judge Brimmer huge credit for the way he's dealing with this COVID-19 pandemic. That would not be something that I would enjoy or like to deal with. Very happy that I don't have to.

**James M. Lyons**

Jury trials have been postponed, at least civil jury trials?

**Judge Lewis T. Babcock**

Well, yes and no. At the time of this interview we had set up, Judge Brimmer has, a schedule of both civil, criminal and bench trials. There's a schedule of them. The theory being that they can try two cases a week. Start one on Monday, and one on Tuesday. They could probably add a case per week if they wanted to use my courtroom. They could use the adjacent courtroom for voir dire, so we could have spacing. It could be done. We could use facilities here to help. But that's how it's set up. And our Chief Judge, Judge Brimmer, is prioritizing cases that are likely to go to trial. He has each judge submit a case to go on the list. I think he hasn't missed covering like four to six weeks that will accommodate cases that are truly ready to go to trial. Two cases per week.

**James M. Lyons**

Civil cases?

**Judge Lewis T. Babcock**

Criminal too. Judge Jackson is trying a criminal case right now. And this is the second criminal case that he will have tried.

**James M. Lyons**

How do they space jurors in the courtroom for that? Or do they?

**Judge Lewis T. Babcock**

They have the jury panel in the jury assembly room. They do voir dire there. And once they get the jury selected, then they travel up to the courtroom where they're spaced. Maintaining space is tricky in the jury box if you have a jury of 12.

**James M. Lyons**

Right. Plus alternates, potentially?

**Judge Lewis T. Babcock**

If you have alternates. Yes.

**James M. Lyons**

And do jurors wear masks while they're in court? But the lawyer don't?

**Judge Lewis T. Babcock**

Oh they do. Yes. And the judge as well.

**James M. Lyons**

They're all masked?

**Judge Lewis T. Babcock**

Yes or no, depending on the judge. Because the spacing is adequate to protect the judge.

[As of the conclusion of my edits, we have put all trials, civil or criminal, bench or jury, on hold until January 2021.]

## **Judicial Philosophy**

**James M. Lyons**

I'd like to ask you about your judicial philosophy. And I preface that by saying I'm aware that Justice White when asked the same question said, "I don't have one, read my opinions." I'm not sure that that was a complete answer to the question, but it was his answer. And let me ask you about your judicial philosophy as a trial judge, state and federal, as a former appellate court judge?

**Judge Lewis T. Babcock**

I do have a philosophy. My philosophy is that I am not an all-knowing font of right and wrong, or justice. In other words, what I think may be a just result is obtained by the application of the rules of procedure, the determination of the facts, the determination of the law, the fair and impartial application of the law to the facts. And if that is carefully administered, the result would be a just result. And I think that is true both as a trial judge and an appellate judge.

**James M. Lyons**

Chief Justice Roberts of the United States Supreme Court famously said that the role of a judge is like an umpire to call balls and strikes. Do you see it that way?

**Judge Lewis T. Babcock**

That's an oversimplification. The role of a judge is to make decisions, but the decision should be driven by the procedure applied, fairly and impartially, by the determination of the rules of law that apply, fairly and impartially, determination of the facts, whether it's by the judge or the jury, fairly and impartially. And then out of that amalgam comes a just result. I don't think that's balls and strikes.

**James M. Lyons**

Looking back on your career as a judge, and as a lawyer, for that matter, what have you most enjoyed, and what have you least enjoyed?

**Judge Lewis T. Babcock**

I least enjoyed doing domestic relations cases. I most enjoyed, and do enjoy, trial work. When we're not under the constraints of this darn pandemic.

**James M. Lyons**

Trial work, civil, criminal?

**Judge Lewis T. Babcock**

Both.

**James M. Lyons**

Either.

**Judge Lewis T. Babcock**

It's human theater, human drama.

**James M. Lyons**

Do you have any regrets?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

Anything you would do differently in your life or career?

**Judge Lewis T. Babcock**

No.

**James M. Lyons**

Is there anything we haven't covered that you'd like me to cover?

**Judge Lewis T. Babcock**

I'm exhausted. I don't like talking about myself.

**James M. Lyons**

I know you don't, nobody does.

**Judge Lewis T. Babcock**

I think we've covered everything.