

Judge Wade Brorby
United States Court of Appeals for the Tenth Circuit (retired)

Oral History Interview, April 18-19, 2022, and March 19, 2024,
for the Historical Society of the Tenth Judicial Circuit

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Major dates*

Born May 23, 1934 in Omaha, Nebraska

Education

B.S. University of Wyoming 1956

J.D. University of Wyoming College of Law 1958

Professional career

1958-1961: Military service: United States Air Force.

1961-1988: Morgan & Brorby [and later names]: Private Practice, Gillette, Wyoming.

1963-1970: County Attorney, Campbell County, Wyoming.

1988-present: Judge, United States Court of Appeals for the Tenth Circuit

Nominated by President Reagan, August 7, 1987.

Received commission February 17, 1988 (successor to Judge James Barrett)

Senior Status, May 25, 2001.

Interview of Judge Wade Brorby: April 18-19, 2022

SPEAKERS

Circuit Judge Wade Brorby, Wyoming Supreme Court Justice Lynne Boomgaarden

Lynne Boomgaarden

Judge Brorby, I know you're making me call you Wade, which is difficult because you know as well as I do that once you've worked with a judge that person's first name changes to "Judge".

Judge Wade Brorby

Or Justice.

Lynne Boomgaarden

Now, in my case, Justice, thanks in good part to you. You are just such an important person, mentor, and friend. I am so glad that you're giving me the opportunity to visit with you and to get some of your important memories down. I know you are inclined to think nobody's going to give a whit. But they will.

Judge Wade Brorby

They won't.

Lynne Boomgaarden

I'm going to throw something back at you, that you once said. I have something in my notes here from the Epilogue to the barristers of Northeast Wyoming, the Chronicle of the Campbell County Bar Association, that you prepared in the late 1990s. You said this: "I believe each person has an obligation to preserve the past and to record the present for the benefit of future generations." That's what you hoped to accomplish with your chronicle of the Campbell County Bar. And now those words are coming back to bite you, aren't they?

Judge Wade Brorby

Yes, they are. No question about it.

Lynne Boomgaarden

I agree it's important that your experience, your perspective, and some of the things that you experienced, are preserved for future generations.

Formative Years, Education, and Military Service

Judge Wade Brorby

Okay. My full name is John Wade Brorby. I was born May 23, 1934, in Omaha, Nebraska. My parents were living at the time up in Wyoming, but my mother went back to Omaha because there was no hospital in or near Upton. I basically spent the next five years of my life in Upton, Wyoming.

Lynne Boomgaarden

What did your parents do?

Judge Wade Brorby

My father had a drilling rig, a cable tool drilling rig. And he was drilling, exploring for oil. But he spent all of his time traveling around selling shares in the well. It took several years to drill the well. It was a fairly deep one at the time, a few 1000 feet. But it was a dry hole. Then when my mother decided that schools weren't very good in Upton, Wyoming, she moved back to Omaha and took me with her. I attended kindergarten and first grade in Omaha, Nebraska.

Lynne Boomgaarden

I don't recall that you'd ever told me that. So, you're part Husker, but mostly a Wyoming cowboy?

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

And you have a younger brother, is that right?

Judge Wade Brorby

I do. And I'll tell you a little bit about him. But at any rate, I went to kindergarten and to the first grade at the Columbia School in Omaha, Nebraska. When we finished, we moved back to Wyoming, but in this case, we moved to Newcastle rather than Upton. We moved back there in the summer of 1941. And so, I started the second grade in Newcastle and went from the second grade through high school in Newcastle.

Lynne Boomgaarden

Were your parents from Wyoming?

Judge Wade Brorby

No. My mother was from Omaha. My father's father, my grandfather on his side, emigrated here from Norway. They lived for a while in Minnesota and then moved to North Dakota. My father was raised in North Dakota and got an eighth-grade education, which at the time was quite a bit. My mother had a high school education. She had four brothers and sisters, all of whom had college educations. But she was the oldest and worked and helped them get their college educations. She worked as a secretary before my father and she were married. She never worked after they married as far as I know.

Lynne Boomgaarden

But she kept the house, and she valued education and helped with your, and I'm sure your brother's, education.

Judge Wade Brorby

Correct. Once we moved to Newcastle we lived in the Chief Hotel apartments. We lived there for about 10 years before they built a home in Newcastle, which we moved into when I think I was a junior in high school. My brother was born in 1944. I was 10 years old when my brother was born.

Lynne Boomgaarden

What's your brother's name?

Judge Wade Brorby

Steven Lee Brorby. He was born May 31, 1944. He finished high school in Newcastle as well. Newcastle has changed significantly since I was living there. The high school I attended has since been torn down. The new high school was built several miles away from where the old high school was located. The grade school I attended was on top of a big hill in Newcastle. I

don't know if it's been torn down or not. There isn't a whole lot to tell you about those early years except for one thing. My parents were never wealthy or very well to do. Consequently, I started work in the sixth grade. My first job was in the Red Owl grocery store where I put out groceries on the shelves and marked their prices. A year later, I found a job washing dishes at a restaurant. I did that for a year. By that time, I was in the eighth grade, I was big—six feet two inches and weighed about 160 pounds. The same height as I am now but much lighter. Consequently, I could go to work in the oil fields and that I did, starting in the summer of eighth grade.

Lynne Boomgaarden

They didn't have much for child labor laws.

Judge Wade Brorby

No. They basically were nonexistent. So, from eighth grade on, my summers were spent working in the oil field. I worked on cleanout rigs. I worked on rotary drilling rigs. I worked for a trucking company which hauled oilfield equipment around. I had quite a bit of experience in the oil field.

Lynne Boomgaarden

So, did you do that after school hours and weekends and summers?

Judge Wade Brorby

Well, basically just summers. I earned enough money in the summers. I think I was paid, as I started out, \$1 an hour, and that was big wages at that time. So that was more than enough money to get me by for a year, working in the summer.

Lynne Boomgaarden

I bet you gained some important world vision and experience as a result of that work.

Judge Wade Brorby

No question about it. In my high school years, I was active. I played basketball and football. I wasn't very good at track; I was too slow. Now, interestingly, I decided I wanted to be a lawyer in the third grade. I can't tell you why or how I came to that conclusion. But that was something I always wanted to do. Probably due to the fact that one of my parents' good friends was a lawyer, who subsequently went on to become a judge and Supreme Court justice. His name was Rod Guthrie. At any rate, when I graduated from high school, my father tried to talk me into not going to college and to pursue a career in the oil fields. I decided I was going to go to college. Consequently, I had to pay my own way. I had accumulated a little money. I never had any scholarships or any help whatsoever with paying my college tuition and expenses.

Lynne Boomgaarden

Was your mother more in favor of you going to college? Or did she take a stand on that issue?

Judge Wade Brorby

She didn't really take a stand. But she thought college was a good idea. Because her four brothers and sisters all had college degrees.

Lynne Boomgaarden

Let me ask you to go back to Rod Guthrie, because he is well known for having a colorful personality. I can see if you were a young man that he could be a person of influence. What do you remember about him when he was your parents' friend, and you were starting to think about what to do with your life?

Judge Wade Brorby

Things I probably should not tell about him. He did like to drink.

Lynne Boomgaarden

And tell stories, I'm sure.

Judge Wade Broby

Oh, yes. And I just always liked him. I had no idea what lawyers did or didn't do. I just thought, well, he is quite a guy.

Lynne Boomgaarden

Did you have any teachers that had an influence on you?

Judge Wade Brorby

No, not really. I had one commerce teacher, a lady that talked me into taking up typing, which I was very thankful for her that I did. But that was about it.

Lynne Boomgaarden

I remember when I clerked for you how proficient you were at typing and preparing. At that time, we had word processing. It was sort of in its infancy. But your proficiency with that had not been my experience with other lawyers that were your contemporaries. In fact, I clerked at a law firm that insisted I learn how to use a Dictaphone.

Judge Wade Brorby

It was something I was always thankful that I had learned. I insisted both of our sons take typing for the same reasons.

Lynne Boomgaarden

We'll talk later about what an influence you were for the court in keeping up with the times on technology. But it's interesting to me that that started with a high school teacher who convinced you to take typing. Do you remember some of your friends from high school? Do you still keep in touch with any of your high school friends?

Judge Wade Brorby

Yes, I remember several friends and I stay in touch with one. Unfortunately, death has overtaken several of them. My class was not big in high school. If I remember right there were 19 high school graduates in my class. It was perhaps the smallest class ever out of Newcastle. I'm only aware of one who's still alive. There may be another one or two that I've lost track of.

Lynne Boomgaarden

So were they mostly your friends from the basketball team? Or did some of them work in the oil field with you?

Judge Wade Brorby

One did, and I was responsible for getting him a job in the oil field. He and his wife have since died. His parents were divorced, and he moved back to the state of Washington where his father had a theater or two. He never went to college.

Lynne Boomgaarden

Did any of your classmates head to the University of Wyoming with you?

Judge Wade Brorby

At least one did, but he only lasted one year. Then he went to the South Dakota School of Mines in Rapid City. Very few people went to college at that time.

Lynne Boomgaarden

So around Upton and Newcastle, was it mostly agriculture and mineral development?

Judge Wade Brorby

Yes, it was nearly all agriculture. The oil fields started developing in Osage, Wyoming, with shallow wells, and then they started exploring further out. Then the industry picked up a little bit in Weston County, Wyoming, which included Upton, Osage, and Newcastle.

Lynne Boomgaarden

I remember some of the earliest development in the state occurred in that area. If I recall correctly from my oil and gas law background, they had some mining seeps where the oil would actually come out of the rock at the surface.

Judge Wade Brorby

That's correct. There was an oil spring near Newcastle, as a matter of fact. It has since dried up, but I can remember very well seeing that spring.

Lynne Boomgaarden

My oil and gas law practice certainly did not provide me the field experience you had. You were exposed to the business side, and the risks and the employment side, of that industry at a very young age.

Judge Wade Brorby

No question about it. When the rotary drilling rigs started appearing, it wasn't long before I was a roughneck, and then a derrick hand. I even spent a few months as a driller, which was most unusual at the time.

Lynne Boomgaarden

I bet that gave you some particular credibility with your clients when you moved back to practice law in Gillette. Not every oil and gas lawyer would have had those insights.

Judge Wade Brorby

That's true.

Lynne Boomgaarden

So please tell me about your experience at the University of Wyoming.

Judge Wade Brorby

I attended the University of Wyoming in Laramie beginning in the fall of 1952. I enrolled in commerce and took accounting courses and related commerce courses. I did not particularly excel in grades. My grades were a few A's, a lot of B's, and a few C's.

Lynne Boomgaarden

You were putting yourself through school at the time?

Judge Wade Brorby

I was putting myself through school. And I did do some work during the school year. I joined a fraternity—Sigma Nu. I was active in the fraternity and moved into the fraternity house my second year of school; I was a hasher. In other words, I waited tables. Consequently, I didn't have to pay much money for food, if any.

Lynne Boomgaarden

That was a practical opportunity to take advantage of.

Judge Wade Brorby

Yes, it was. It took a lot of my time because I was busy waiting tables at noon and night. But it worked out fine and dandy.

Lynne Boomgaarden

Did you know even while you were studying your business courses that you still wanted to go to law school?

Judge Wade Brorby

Oh, yes. That was always there. And at the time, the University had a three-and-three program: three years of undergraduate and three years of law school. So, when I finished my junior year, I applied and was accepted into law school. So, at the end of my fourth year, I received a B.S. degree in commerce after completing my first year in law school. I married Miriam Call in my junior year. We were married December 19, 1954. When I started law school that fall, I worked as a night clerk at the Connor Hotel. I was the night clerk from 11 at night until seven in the morning.

Lynne Boomgaarden

Oh, goodness.

Judge Wade Brorby

So that was my first year of law school.

Lynne Boomgaarden

Did you sleep?

Judge Wade Brorby

I slept in the afternoons.

Lynne Boomgaarden

Most your coursework was in the morning?

Judge Wade Brorby

Courses were in the morning. They would go from roughly from 8 to 12 at the law school. Then I would go home and go to sleep until I started getting ready to work at 11 at night. So, I could sleep until eight or nine o'clock at night and then get up do a little studying.

Lynne Boomgaarden

You didn't participate in many study groups, I would guess?

Judge Wade Brorby

No. Study groups were not a big thing. I did have a friend or two that I studied with on occasion, on Saturday mornings. But those occasions were rare and far between.

Lynne Boomgaarden

Was Miriam in a sorority?

Judge Wade Brorby

Miriam was in a sorority when we were married. She was a Tri Delta. Once we got married, she started working too. She kept on going to school, but she worked part time. So, we were both working and going to school. She graduated the following year, in 1956, with a degree called business education. And then she went to work full time in the Home Economics Department as a secretary to the head of the Home Ec Department. She worked there while I finished law school. My last two years in law school I worked for the University's property department. I would spend the afternoons inventorying property and marking it and making records of it.

Lynne Boomgaarden

Did that give you some other practical experience that you were able to put to use when you represented businesses?

Judge Wade Brorby

A little bit, but not much. I quit the hotel and went to work for the cement factory during the summer. And then my last summer I worked again for the University. So that was my law school education. I did manage to graduate with honors, I had pretty good grades in law school.

Lynne Boomgaarden

Who were your most influential professors during law school?

Judge Wade Brorby

Oh, I liked them all. I don't know that anyone was the most influential. Dean Hamilton taught contracts. Frank Trelease taught torts. John Raines taught Business Administration or something similar.

Lynne Boomgaarden

Did you have any favorite courses in law school?

Judge Wade Brorby

Not really. I liked them all. I enjoyed all of my courses.

Lynne Boomgaarden

I'm curious how the three-and-three affected your first year of law school. So many people tell stories about the first year when you're trying to get to know your classmates and wondering if you can possibly know as much as the classmate that wants to speak out all the time. Was there a big transition that first year of law school?

Judge Wade Brorby

It was a big transition. Most of the law students that I recall had degrees and had served in the service and came back after serving their two-, three- or four-year term in the Army or Navy as the case may have been. So, most of them were a little older than I, and most of them had a degree. I can only think of one other classmate who was in the same situation as I was. There may have been more, but my recollection doesn't serve.

Lynne Boomgaarden

I hadn't thought about the fact that you'd have a lot of veterans that had come back and would be in law school at that time with stories to tell. Did they influence your decision to go into the JAG after law school?

Judge Wade Brorby

No. There was a draft at the time and to avoid the draft I took undergraduate Air Force ROTC courses. I originally thought maybe I'd be a pilot. But my eyesight was not good enough to pass the pilot exam. So, when I graduated with my B.S. degree, they gave me a waiting period to finish law school. When I finished law school, I was obligated to go into the Air Force where I served three years in the Judge Advocate General's Office as a Legal Officer. I was a Second Lieutenant. I went to Hill Air Force Base in Utah, which is roughly by Ogden, Utah. And that's where I did my legal work in the service.

Lynne Boomgaarden

Did you ever regret taking that path?

Judge Wade Brorby

No, I had no regrets. It gave me a lot of good experience. I tried a lot of cases—court martials—in the service. I tried them as defense counsel, and as a prosecutor. I was also involved in procurement law. I provided legal service to Air Force personnel and their dependents. The last year or two, I even served as a judge in some of the minor cases. I received both Top Secret and Q security clearances. I was honorably discharged as a Captain.

Lynne Boomgaarden

Was it expected when you went to law school in the late 1950s, that you would be a trial attorney? Was that just the norm? Or did you consciously choose a litigation track versus a transactional track?

Judge Wade Brorby

No, I don't think anything was the norm then other than just becoming a lawyer. Some lawyers got into litigation. Some didn't. That was never a decision that anybody that I knew made in law school. It was something that always occurred after graduation.

Lynne Boomgaarden

You were on the editorial board for the Wyoming Law Journal, which is indicative of being a good student, performing well academically. Do you have any memories from serving as an editor that you'd like to share?

Judge Wade Brorby

No, most of my memories were of correcting law journal articles. More of a proofreader than anything else.

Lynne Boomgaarden

I know that your law school achievements included the Dean's and President's lists, and book awards for the highest grade in various subjects. You were an honor graduate, and your class of 1958 was a pretty remarkable class. I'd like you to tell me about a few of your classmates and what it was like to work with them through law school and maybe how your careers crossed paths after law school?

Judge Wade Brorby

Well, it was a small law school class. I was good friends with everybody in my law school class. I'll mention a few names. Al Simpson and Dick Macy were members of my class. Al Simpson became a United States Senator and served for three terms. Dick Macy was a county and prosecuting attorney in Crook County Wyoming, and subsequently was appointed to, and elected to, the Supreme Court of Wyoming, where he served as a Justice for several years. Morris Massey became a partner in what at the time was the largest law firm in Casper.

Lynne Boomgaarden

I ran across Morris when I was State Land Director, and he was the consummate gentleman. But when something tripped his trigger, his language could turn as blue as anyone I'd ever known. Was he always like that?

Judge Wade Brorby

A little bit. He was very intelligent, an excellent student. Jim Applegate of Hirst Applegate in Cheyenne was also a member of the class. He went on to be a state legislator, State Senator, for a number of years.

Lynne Boomgaarden

Pete Mulvaney?

Judge Wade Brorby

Yes, Pete Mulvaney was a member of the class. He was with the AG's office for a number of years.

Lynne Boomgaarden

Mike Svilar?

Judge Wade Brorby

Yes. He practiced law in or around Lander, and his family had a bar in Hudson, Wyoming.

Lynne Boomgaarden

Yes! Everybody likes to go to Svilar's supper club in Hudson for dinner.

Lynne Boomgaarden

And John Lynch, I think he was an attorney in Cheyenne?

Judge Wade Brorby

John Lynch was another bright, intelligent lawyer who was a good attorney in Cheyenne.

Lynne Boomgaarden

So that was quite a distinguished class: a United States Senator, a Tenth Circuit Court of Appeals judge, a Wyoming Supreme Court Justice, a Wyoming legislator, and many distinguished Wyoming attorneys.

Judge Wade Brorby

It was.

Lynne Boomgaarden

There was one female that I see on my list, Mrs. Lisa Willie?

Judge Wade Brorby

I think maybe it's pronounced Why-Lee. I don't know whatever happened to her. She graduated from law school, and it was unusual for a woman to be in law school during those years.

Lynne Boomgaarden

Was she considered part of the group? Or was it just so unusual that she was isolated as the only woman?

Judge Wade Brorby

A little of both, partly isolated, and part of the group. The class was small enough that everybody was a part of the group.

Lynne Boomgaarden

So, you and Miriam were in Utah for your JAG years?

Judge Wade Brorby

Yes. We lived on the base. Both of our sons were born in Utah while we were in the service. The older son was born like a month after we entered the service. The younger one was born about two weeks before we left the service.

Lynne Boomgaarden

So you book-ended your service with young babies in tow. Your older son's name is Greg?

Judge Wade Brorby

Gregory Wade Brorby, and the younger son is Mark Alan Brorby.

Lynne Boomgaarden

I'm going to jump back a little bit because I know you have commented in other interviews that your name is John Wade Brorby, but you always went by Wade. Is there a story behind that?

Judge Wade Brorby

A little bit of one. My father's name was John. So, to avoid any confusion, I was never called John. I was called Wade. Everybody used my middle name. And that's always been the case with me. And that has caused some problems over the years because when you fill out a form, the form is usually last name, first name, middle initial. So, they look at the form and say, Hi, John. I didn't know who they were talking to.

Lynne Boomgaarden

You spent a lifetime correcting folks, I'm sure.

Judge Wade Brorby

I still do today.

Lynne Boomgaarden

We do share one thing in common. I bet Brorby is mispronounced as often, or more often, than Boomgaarden.

Judge Wade Brorby

I think you're right.

Lynne Boomgaarden

And what's the nationality of Brorby?

Judge Wade Brorby

Norwegian. My great grandfather, along with my grandfather who was young at that time, emigrated from Norway. They first moved to Minnesota. And then from there, my grandfather moved to North Dakota, where he was raised, and raised most of his family. My father had, I think, ten brothers and sisters. We were never very close to my relatives because none of them lived anywhere close to us.

Lynne Boomgaarden

Isn't that different now?

Judge Wade Brorby

Much different.

Lynne Boomgaarden

I know you FaceTime and have your contacts with your sons and grandsons in ways that we couldn't have imagined back in the day.

Judge Wade Brorby

That's right. I have a Brorby cousin. And we talk to each other on the phone maybe once a week still and he's 92.

Lynne Boomgaarden

That's wonderful. Where does he live?

Judge Wade Brorby

He lives now in Coldwater, Michigan.

Lynne Boomgaarden

That sounds like a cold place anytime.

Judge Wade Brorby

Better than North Dakota. He worked in the coal mines of North Dakota until he retired. He had an eighth-grade education, as did my father. That was the common thing with the Brorby's of that age and era.

Lynne Boomgaarden

How about your mom's side of the family? What was her maiden name?

Judge Wade Brorby

Her maiden name was Chamberlin. Her father was a University of Ohio professor in engineering. And he left that and became the head engineer for, I think, the federal government, building highway bridges in Nebraska. And then he moved to Omaha, he and the family. And so, my mother's two brothers and two sisters were raised in Omaha, and they all had college educations.

Lynne Boomgaarden

Did you stay in touch with that side of the family very much?

Judge Wade Brorby

Oh yes. Very much so. In fact, we used to have family reunions every couple of years. And we still are in touch with that side of the family.

Lynne Boomgaarden

Do I recall correctly that Miriam was from Torrington?

Judge Wade Brorby

Miriam was raised in Torrington. She, like me, was born in Nebraska because there wasn't a hospital in Torrington. She was born in Scottsbluff, but her father was a dentist in Torrington and she was raised in Torrington, went to grade school and high school in Torrington. She went to Cottey College before transferring to the University of Wyoming.

Lynne Boomgaarden

Does she still have any family in the Torrington area?

Judge Wade Brorby

No. Her sister has since died. Her sister had five children. Four of those children reside in Greeley, Colorado. The one son resides near Missoula, Montana.

Lynne Boomgaarden

Before we transition to your years in private practice, I'm curious whether you ever gave serious thought to staying in the service? Or were you really always expecting you would just fulfill your three-year commitment?

Judge Wade Brorby

No, I never thought about staying in the service. And I can't tell you why because I did enjoy my service. But I wasn't paid very much money. I guess that's what drove me out of the service.

Becoming an Esteemed Campbell County Lawyer and County Attorney

Lynne Boomgaarden

So, let's talk about your transition to private practice in 1961. What brought you to Gillette, Wyoming?

Judge Wade Brorby

Well, I started looking for a job when I had about a year left to serve in the service. The job in Gillette came up. Tom Morgan had a law firm there. He was the only one in the law firm. He wanted somebody to help him, so it turned out to be me.

Lynne Boomgaarden

Did you still have family in the Newcastle area, not too far from Gillette?

Judge Wade Brorby

Yes, my mother and father and my brother were still in Newcastle.

Lynne Boomgaarden

So that was nice to be able to be close to family.

Judge Wade Brorby

It was. But we moved to Gillette not because of the nearness of family, but because that was about the only job that was available.

Lynne Boomgaarden

Was Wyoming in an economic downturn during that time?

Judge Wade Brorby

It was not booming, I'll put it that way.

Lynne Boomgaarden

Did you know you wanted to come back to Wyoming?

Judge Wade Brorby

Oh, yes. I always wanted to come back to Wyoming, and I'm not sure I can tell you why.

Lynne Boomgaarden

Did you know Tom Morgan before you applied, or did you just send him your resume? Did you go to Gillette and interview?

Judge Wade Brorby

No, I never knew Tom. I had applied here and there and sent him my resume. I went to Gillette and was interviewed and hired.

Lynne Boomgaarden

And that was that. What were the logistics of moving with two young children from Utah to Gillette?

Judge Wade Brorby

They weren't too bad. Miriam went home to Torrington with the boys a couple of weeks before I got out of the service. Bear in mind the youngest was like two weeks old. And then when I got to Gillette, we found a place to live. We rented a place. In fact, we rented the place for a few years in Gillette.

Lynne Boomgaarden

And the boys were in preschool at that time. So, you didn't have school issues or anything like that?

Judge Wade Brorby

Right. They both started kindergarten in Gillette.

Lynne Boomgaarden

What was Gillette like at that time? Being from Cheyenne, I always just thought of the coal mines and the oil fields.

Judge Wade Brorby

Gillette was an agricultural town. There was a coal mine, but the only coal they produced went to the light plant there. There was no oil to speak of. If my memory is correct, the population of Gillette when I moved there in 1961 was about 3,100 people. It wasn't too long after that the oil business started developing. Gillette started growing. And then in the late 1960s Exxon opened the coal mine and the coal industry started in Campbell County.

Lynne Boomgaarden

There's not much for irrigated agriculture in Campbell County, is there?

Judge Wade Brorby

No, it was strictly ranchers: cattle and sheep.

Lynne Boomgaarden

Who did you first represent and what kind of work did you do?

Judge Wade Brorby

We represented the local bank. There was only one bank in town at the time. That was the Stockman's. I represented the school board. I was their attorney for a number of years. I represented some ranchers and a few businessmen.

Lynne Boomgaarden

So mostly a general practice?

Judge Wade Brorby

Very much a general practice. We did everything; a little probate work, a little trial work, a little bit of anything you can think of, I did.

Lynne Boomgaarden

Well, I know when I first met you, not too long after you were appointed to the Tenth Circuit, you had a very good friend from Gillette, Raymond Saunders. Was he part of the banking family?

Judge Wade Brorby

He started the second bank. Raymond started the First National Bank of Gillette. I don't remember the year, but I'm going to say it was 1968, 1969, 1970, something like that.

Lynne Boomgaarden

So, you were working with one of the best known lawyers in your community, and you're in general practice, and all of these folks are your clients and friends. Tell me what it was like to all be founding fathers of this growing community.

Judge Wade Brorby

Well, at the time, we didn't really realize what was going on. We knew there was some growth, happy there was some growth. But we always figured it would end next month because the growth didn't start out big or with great expectations. So, we just had good friends and enjoyed life.

Lynne Boomgaarden

What did you do for fun?

Judge Wade Brorby

Oh, what did I do for fun? I worked very hard. I worked probably 10 to 12 hours a day. I was a Mason. I was a member of the Masonic Lodge. I was Shriner. I did things with and for them. I did a little fishing. Many of my friends golfed but I never had the time to learn how to golf. So it was just basically a social life, working.

Lynne Boomgaarden

Did you have some card groups that got together regularly?

Judge Wade Brorby

We played bridge. We had I'll call it a group where we played a different couple every week throughout at least the winter months.

Lynne Boomgaarden

Are you any good at poker?

Judge Wade Brorby

I never played much poker. A little bit. I wouldn't say I was good at it.

Lynne Boomgaarden

How about cribbage? Rick and I have taken up cribbage during the pandemic in the evenings. Did you ever play cribbage?

Judge Wade Brorby

Oh yes, Miriam and I used to play cribbage quite a bit.

Lynne Boomgaarden

Well, we'll have to try that together sometime! Let's talk a little bit more about your law firm.

Judge Wade Brorby

Okay, well, when I was hired, I was not hired as an employee. I was made a partner to begin with. We practiced under the firm name Morgan & Brorby.

Lynne Boomgaarden

That's unusual—unheard of in today's world.

Judge Wade Brorby

Quite unusual. I had one-third of the partnership, and he had two thirds.

Lynne Boomgaarden

But you didn't come with any clientele?

Judge Wade Brorby

No.

Lynne Boomgaarden

Did you have to go develop your own clients? Or did Mr. Morgan have enough to help you get started?

Judge Wade Brorby

I had to develop my own and I didn't have much of a problem doing it for some reason. I always had more work to do than I had time.

Lynne Boomgaarden

Well, I think people trusted you and knew that you had been in the service and had that experience.

Judge Wade Brorby

A little maturity I guess, sure.

Lynne Boomgaarden

Do you remember how many attorneys were in Gillette at that time?

Judge Wade Brorby

I think there were six counting me.

Lynne Boomgaarden

In how many firms?

Judge Wade Brorby

Three.

Lynne Boomgaarden

So, there was Morgan & Brorby.

Judge Wade Brorby

Yes, and Illsley & Lubnau, and the Dunlap firm—where the old guy brought in someone to be a partner with him, but he never was in Gillette.

Lynne Boomgaarden

So not too many of you. Was everyone equally busy? Or did you have kind of a sweet spot in your law firm?

Judge Wade Brorby

I had kind of a sweet spot.

Lynne Boomgaarden

Tom Morgan's son Dan ended up joining the firm, didn't he?

Judge Wade Brorby

Yes, he did. He was the next one to come in. And I don't remember what year that was. I moved to Gillette in 1961, so I'm going to guess it was 1971 because I think he's about 10 years younger than me.

Lynne Boomgaarden

Dan ended up leaving to be a law professor in Oklahoma?

Judge Wade Brorby

Yes, he did. He left and taught at the University of Wyoming for a year, and then went to Oklahoma City University. He retired from there a few years ago.

Lynne Boomgaarden

I know that your law firm, Morgan & Brorby, was kind of an incubator for judges—you, Randy Arp, Mike Patchen, and Dan Price. Tell me about them.

Judge Wade Brorby

Our firm grew. After Dan Morgan came, we hired Dan Price. He became a partner of the firm. I don't remember how long we were together; it was quite a while. Then he became a district judge and has since retired. Then we hired Mike Patchen. I guess we hired Randy Arp next. They both became circuit judges, as I recall, and that kind of wiped out the firm.

Lynne Boomgaarden

Does the firm still exist under another name?

Judge Wade Brorby

No. When Price and Arp left, that pretty much ended the firm. I can't recall when Patchen left.

Lynne Boomgaarden

Was Tom Roberts with you for a while?

Judge Wade Brorby

Yes, he was with us, too.

Lynne Boomgaarden

Was he a partner or an associate?

Judge Wade Brorby

He became a partner. And he was with us I'm going to guess 10 years.

Lynne Boomgaarden

So, anything else about your law firm or practice that you'd like to mention?

Judge Wade Brorby

I tried a lot of cases. When I was going on to the bench I asked Dan Price, "Do you have any idea how many cases I've tried?" He said probably 2000. I doubt there were that many. But I did try a huge number of cases, both with and without a jury. And I'll brag a little and say I won most of them.

Lynne Boomgaarden

I have no doubt that you did. In looking through some of the written materials you had to provide for your confirmation to the Tenth Circuit, I saw that you outlined a number of those cases in great detail. It struck me that indeed you did win most of them. Tell me your sentiments about the benefits and risks of a jury trial versus a bench trial.

Judge Wade Brorby

Well, there's always a risk with a jury trial. You never know if you're going to have an, I'll use the term "outlaw" on the jury, somebody that's going to think differently than you ever thought he or she would think. So, with a jury trial, there's always a risk to it, always.

Lynne Boomgaarden

And what was your philosophy about advising a client when to settle and when to go to trial?

Judge Wade Brorby

If there was any weakness whatsoever in the case, my advice would be to settle. I would settle if there was no weakness only if it was a very favorable settlement. The more weakness, the more apt I was to settle.

Lynne Boomgaarden

That makes good sense. You represented a lot of public entities. I was a little bit dumbfounded about some of the school district cases that you had, where some reached the point that death threats were made against you.

Judge Wade Brorby

Oh, yes.

Lynne Boomgaarden

What do you remember about those cases?

Judge Wade Brorby

One of my first clients when I went to Gillette was the school district. And at that time, it was an elementary school district. The county had, I'm thinking, 10 elementary districts and three high school districts. One high school district was the City of Gillette, which at that time was very small. The same thing was true with the elementary district. We had no assessed valuation. And that was one of the cases I took a certain amount of pride in. To make a long story short, we ended up conglomerating all of these 13 school districts into one. That involved a lot of litigation and some pretty good attorneys. Bob Rose was one of the opposing counsel. He was helped for a while by Gerry Spence. The case went to the Wyoming Supreme Court, and we won. Campbell County has since been one unified school district that includes elementary and high schools.

Lynne Boomgaarden

Did you have any inkling when you were doing that just how much the county and community of Gillette would grow? As you know, their high school sports programs were dominant for

many years because of being consolidated and having lots of funding and some really terrific facilities.

Judge Wade Brorby

No, I had no idea that the county was going to grow to the extent that it did. I thought if there was to be any growth, that it would be very small annual growth. It turned out to be very favorable because of the growth. I think there are now two high schools in Gillette.

Lynne Boomgaarden

I think you're absolutely right on that. They're still a powerhouse because there is great wealth in that county, and good facilities and a lot of community support.

Judge Wade Brorby

Yes.

Lynne Boomgaarden

Do you think you can take a little credit with some of your colleagues in the law and business community for that really strong sense of pride the community of Gillette has today?

Judge Wade Brorby

Oh, I doubt it. There's a lot of people that could take some pride in what was accomplished. I'm not sure I would be entitled to it.

Lynne Boomgaarden

I think you're probably being very humble with that. But I appreciate your humility. So you were elected as county attorney in 1962 and again, in 1966—both contested races. Tell me about running for office and getting that position and talk a little bit about your criminal expertise.

Judge Wade Brorby

Well, I moved to Gillette in 1961. In 1962, the county attorney position became vacant, and I decided I would run for it. It never dawned on me that I would be elected. I thought, well, that's a good way to get known. So, I spent a lot of time campaigning, driving around the county, and talking to ranchers--that was mostly what I did. Much to my surprise, I was elected. I ran again four years later. I'm not sure why I did run the second time, because I was very busy. I'm sure the school districts had something to do with it. Two terms were more than enough, and I never ran again. I served for eight years. The work involved the prosecution of everything from drunk driving to first degree murder. In addition to prosecuting, I handled Campbell County's civil work—everything from tax collection to defending civil suits against the County.

Lynne Boomgaarden

Do you remember what the issues were when you were campaigning? What were the constituents' concerns?

Judge Wade Brorby

One of the big issues was the consolidation of the school districts. Because, generally speaking, the ranchers were against that. They had the money and assessed valuation to control things.

Lynne Boomgaarden

Was the County Attorney position part time, so you were able to continue your private practice?

Judge Wade Brorby

That's correct. I could continue my private practice and serve as a county attorney, which involved prosecuting criminal cases and advising the county officers.

Lynne Boomgaarden

What was the trend, if any, in the number and type of criminal cases during your tenure?

Judge Wade Brorby

They went up, but I didn't have to try a whole bunch of them.

Lynne Boomgaarden

When you were representing the county hospital, was that in your capacity as county attorney or private practice?

Judge Wade Brorby

I was hired to represent the hospital.

Lynne Boomgaarden

I recall during your confirmation hearing, which we'll get into in more detail, one of the few issues that the committee was curious about was some advice that you had given the hospital because there was a problem with some of the hospital employees using drugs. Apparently, Tom Roberts did some work on one side of it, and you had done some work. It didn't seem to amount to anything, but I wonder if you remember that tough time with the hospital?

Judge Wade Brorby

I barely remember that. Tom ended up, unbeknownst to me, representing one or two of those employees. When I found out about it, I put an end to it.

Lynne Boomgaarden

Those are always difficult things to work through with a client. With the growth of the community and the mining and oil and gas, did that bring a drug problem to Campbell County that hadn't really been there before?

Judge Wade Brorby

A little bit of one. Yes, it did. I'd kind of forgotten about that. But with growth came some drug problems.

Lynne Boomgaarden

And probably just more criminal activity, generally?

Judge Wade Brorby

Yes, no question about it.

Lynne Boomgaarden

Could you usually sit a fair jury for a criminal prosecution in Campbell County?

Judge Wade Brorby

I never had any problems whatsoever with that.

Lynne Boomgaarden

During your time in practice, you served on a number of bar and other committees, and you served on the Judicial Supervisory Commission for four years from 1981 to 1985. Do you remember much about that?

Judge Wade Brorby

I don't remember any of the particulars.

Lynne Boomgaarden

What is your philosophy about giving back to the State Bar and participating in your community?

Judge Wade Brorby

Every lawyer should serve the public in any way he can.

Lynne Boomgaarden

I am aware you had a wonderful reputation as a lawyer and helped many folks who could not afford to hire an attorney. Please tell me about that.

Judge Wade Brorby

That has always been the case that many people cannot afford an attorney. Attorneys by nature have to charge quite a bit to pay for their rent, to pay for their secretaries, to pay for their law books, and have little money for themselves. It becomes very expensive to provide legal services and we need to find the means to ameliorate that problem. You probably know more about it than I do. But some people absolutely cannot afford it. Some people, even though they can afford it wouldn't spend that much money to accomplish something that should be accomplished. We need to develop more ways than we have now to find a cheaper method of obtaining justice.

Lynne Boomgaarden

Did trial judges just call you and, say, hey, we need a pro bono defender for a client, you're appointed?

Judge Wade Brorby

Certainly. Sometimes I would take a case even without being appointed, knowing full well I was not going to get paid. Sometimes I would only charge a client say \$25 for what might have been \$2,500 worth of work.

Lynne Boomgaarden

You mentioned in the materials you provided prior to your confirmation hearing, that you would represent a lot of women, a lot of mothers who were in abusive situations, get divorces or take care of custody matters.

Judge Wade Brorby

Yes, that was a fairly common thing. I don't know if it still is or not, but it probably is. Or a poor woman who doesn't earn any money, but her husband beat the hell out of her. A solution needs to be found to try to make the husband pay their legal costs. But frequently the husband of that type doesn't have any assets either.

Lynne Boomgaarden

Did you feel like the work you did for those clients was well appreciated?

Judge Wade Brorby

Oh, yes and no. Some people knew what I was doing and appreciated what they received. Others didn't. They thought they were somehow entitled to what I gave them. That's life.

Lynne Boomgaarden

I also remember you telling me about how there always are people of different sexual orientations in our communities, and how you also represented those citizens when you were an attorney.

Judge Wade Brorby

I did. It's essential to recognize that some percentage of our population is going to act and think differently than you or I do. And just because they were born that way doesn't mean they should be treated differently. They're still entitled to fairness.

Lynne Boomgaarden

So, the thing that strikes me, and I just want you to know how much I appreciate, is that Wyoming is a very conservative state, and you are conservative in many of your philosophies, as am I, but you taught me that you don't have to be conservative at the expense of being compassionate.

Judge Wade Brorby

No, conservatism and compassion are two different things.

Lynne Boomgaarden

Thank you for being an example of compassionate representation in my life. Switching gears a bit, in the 1990s you decided that it was important to document the history of the Campbell County Bar Association. Whatever prompted you to take on that project?

Judge Wade Brorby

What prompted me to do it, I'm not sure. There was one older lawyer in town, his name was Earl Dunlap, who was never very close to anybody. Trying to talk to him about what had happened, trying to learn something from him, I think, is what motivated me to look into the history of the County Bar Association a little bit.

Lynne Boomgaarden

It took a fair amount of time and effort to put that together.

Judge Wade Brorby

Yes, it did.

Lynne Boomgaarden

And I believe you made it available to the county library, and the County Bar Association? I was able to find a copy without too much difficulty, and I probably should disclose, that I was recently in Gillette for the robing of the newest District Court Judge, Judge Castano. As you

know, they have three pretty new district court judges up there. I put a copy of the history you prepared in their inboxes. They expressed their appreciation.

Judge Wade Brorby

Well, thank you very much.

Lynne Boomgaarden

Hopefully, it will give all three of those judges a little history, a little foundation to work from.

Lynne Boomgaarden

Is it true there's a street named after you in Gillette?

Judge Wade Brorby

There is.

Lynne Boomgaarden

How did that come about?

Judge Wade Brorby

I don't know.

Lynne Boomgaarden

Is it Brorby Avenue or Brorby Street? Do you remember?

Judge Wade Brorby

Well, I think it may be Brorby Boulevard, but I can't remember for sure.

Lynne Boomgaarden

That sounds even better. I don't think you have boulevard named after you unless the community appreciates the service that you provided them.

Judge Wade Brorby

That's very nice of you to say that.

Lynne Boomgaarden

I think it's even more notable that there's a boulevard named after you when I'm aware of some pretty epic pranks that that you and maybe some of your colleagues and cohorts played in Gillette. Can you tell me a little bit about the infamous cannon?

Judge Wade Brorby

I had a cannon made. If you want to ask me why I can't tell you. I just thought it was a good idea. I had a lot of fun firing it. I'd never put anything in it to shoot it. I just used it to make noise. There are a lot of stories I can tell about it. One story is that the police finally told me to stop doing it in the city limits. And one time I talked to the then Mayor Mike Enzi, who subsequently became a U.S. Senator from Wyoming, who gave me permission on the Fourth of July to fire it in town. I served on the board of directors of KIML radio station which was beyond the city limits and I would take the cannon out there once in a while to fire it off a few times and just have a good time.

Lynne Boomgaarden

Now is it true that at one point you and Tom Lubnau Sr, or Ray Saunders, or maybe all three of you, would put your teenage sons up as decoys so that if law enforcement came to see what was going on, they would chase the kids instead of you?

Judge Wade Brorby

That's true. That was with the cannon, to have the boys run away when the cops came. So the cops would think they had something to do with it.

Lynne Boomgaarden

And then you'd load it back in the trunk. It fit in the trunk of your car?

Judge Wade Brorby

That's right. Put it in the car and away it goes.

Lynne Boomgaarden

So how did you ever determine the appropriate load of gunpowder to put in your cannon?

Judge Wade Brorby

Trial and error.

Lynne Boomgaarden

Were there ever any close calls?

Judge Wade Brorby

I don't think so. I started out with very little and kept adding to it. When I got it up to an adequate noise level, that's when I stopped adding more to it. I don't remember how much it was. It wasn't a whole lot of gunpowder.

Lynne Boomgaarden

And then we were just talking at lunch that one of the store proprietors on Main Street, the Ostlund family, didn't have their storefront appropriately painted.

Judge Wade Brorby

I think Ostlund Plumbing and Heating had been in business ever since Gillette had been a town. And they had this little frame wooden building on Main Street that I don't believe had ever been painted. So, to make a long story short, I talked some friends into the idea that we should paint it for them. And as luck would have it, I was called away from town on the day it was to be painted. I think it was Halloween, I can't remember. I was at the University of Wyoming to talk to the law school or something. But I oversaw the painters. And they were headquartered in the First National Bank, which was adjoining this property. After hours, I don't remember how many people, a dozen or so, took whatever paint they had left over at home and painted the building. The police came and finally took some, including my wife, to the jail. They weren't there more than a minute, though. The one policeman who didn't do anything, got docked a day's worth of pay. So, we raised money to reimburse him. The Ostlunds ultimately repainted their building, but then they built a new one out on the edge of town.

Lynne Boomgaarden

The sense of community in a small rural town is pretty special, isn't it?

Judge Wade Brorby

Oh, yes.

Lynne Boomgaarden

What was the best prank that was ever played on you?

Judge Wade Brorby

Oh, I don't know that they were ever played on me.

Lynne Boomgaarden

I bet people were afraid of retribution! You were too skilled at this. I think it was Dan Price who told me that there was a new lawyer in your law firm, and you put a noisemaker up in the ceiling above the conference room. Somehow you could trigger that noise maker just at the right time and it nearly drove the new associate to distraction. So you do have a reputation for being a prankster. Are there any other Gillette stories that I've not mentioned that you'd like to mention or talk about?

Judge Wade Brorby

Not really.

Tenth Circuit Appointment

Lynne Boomgaarden

You were a highly successful, highly respected attorney in Gillette. Then there was a vacancy on the Tenth Circuit.

Judge Wade Brorby

It's a funny thing, this vacancy occurred, and it never dawned on me to even think about it. Judges Johnson and Kerr came to me and said I should throw my hat into the ring. I thanked them profusely and declined. They came back a few weeks later and persuaded me to apply. I'm reluctant to tell you certain names here. Some senators had favorites. And I was not one of them. But I went through the nominating process. And it was quite a process. The American Bar Association had to talk to a minimum of 100 attorneys and judges about me. And they did. The FBI had to talk to—I can't remember this number for sure, but I'm going to say 200 or 250 people about me. And they did. The FBI went from door to door in our neighborhood inquiring about me. It was quite a process. There were a couple of times I thought about backing out of it. But I didn't.

Lynne Boomgaarden

Did you feel like it was an imposition on the people that were being contacted?

Judge Wade Brorby

Well, yes, for instance, I had a couple of friends call me up and say the FBI was here to talk about you today. And they were really upset that the FBI would be there talking to them about me. I don't know why, but it bothered them.

Lynne Boomgaarden

And you didn't have any way to let everybody know?

Judge Wade Brorby

No, I wasn't smart enough or knowledgeable enough at the time to know what was going on. But at any rate, to make a long story short, the senators who had other favorite sons ultimately came to back me, and I went through the nomination process without any problems.

Lynne Boomgaarden

I recall that Senator Simpson emphasized that this was a merit selection process. Was that because your appointment followed some of troublesome hearings like the Bork U.S. Supreme Court nomination?

Judge Wade Brorby

The Bork hearing was just before my hearing and there were some other hearings that were very political in nature. Simpson was one of the good ones who said this has to be on the merits.

Lynne Boomgaarden

I remember when I was working in your chambers you told me that had you known going into it what you knew after having gone through the process, you'd have to think long and hard about whether you would do it again.

Judge Wade Brorby

If I had to do it over again, I'm not sure what I would do.

Lynne Boomgaarden

Was it hard to manage your law practice during that time?

Judge Wade Brorby

It was very difficult because I had clients come to me and say: Will you be here for this? Will you be here for that? And I'd have to say, I don't know. Then they would ask, who should I go see? So, I lost clients during that process.

Judge Wade Brorby

Thankfully, the process in my case went fairly quickly, but it was still, I'm going to say, about a year.

Lynne Boomgaarden

Do you remember going back to DC for your Senate confirmation hearing?

Judge Wade Brorby

Oh, yes, I do.

Lynne Boomgaarden

Tell me that story. Did Miriam go with you?

Judge Wade Brorby

Miriam went with me. We went to the confirmation hearing. Not all the senators were there. The ones who attended asked very few questions.

Lynne Boomgaarden

I understand before you even got there, you had to submit some extensive written materials.

Judge Wade Brorby

Yes, both before and after. A couple of US senators that weren't there had questions for me that I had to fill out.

Lynne Boomgaarden

Just completing that took time away from clients?

Judge Wade Brorby

Oh yes, lots of time. That had to take first priority. So that year was really hard on the practice.

Lynne Boomgaarden

Was it hard on Miriam?

Judge Wade Brorby

Yes, it was because she would get feedback from friends just like I did.

Lynne Boomgaarden

Were you concerned about having to relocate?

Judge Wade Brorby

No, that didn't really dawn on me until after the fact. I really was hopeful that I wouldn't have to relocate but then it dawned on me that I needed to move to Cheyenne. It was a little bit of a hassle, but it was alright.

Lynne Boomgaarden

As you noted, it was an unusually quick confirmation, especially during the last year of the of the presidency. Were you aware that you went through more easily than others?

Judge Wade Brorby

Yes, I was, very definitely.

Lynne Boomgaarden

I had forgotten until I started looking back through these materials, Judge Ebel was confirmed and sworn in shortly after you.

Judge Wade Brorby

Very shortly after me. That's correct.

Lynne Boomgaarden

Do you feel like you had something in common with him just by virtue of what you had both gone through at a similar time and starting off together?

Judge Wade Brorby

Oh, a little bit, not a whole lot. I think he had a different situation than I did.

Lynne Boomgaarden

I know one of the things that they really focused on in the confirmation process was your judicial philosophy. And in reading some of the questions, it seemed they were grilling you about your position on judicial activism. Can you sum up what you told them as a general practitioner from rural Wyoming? What they should know about you?

Judge Wade Brorby

Well, I think all I told them was that what you have to do, is do what's right. You read the law, you apply the law as it is, and not as you wish it was. That's my recollection.

Lynne Boomgaarden

I think that's exactly what you said. You've always been known and respected for not using more words than are necessary to convey a message or a sentiment. Do you remember the call from President Reagan?

Judge Wade Brorby

I do. I remember that very much. I was at work. My secretary said President Reagan's on the phone.

Lynne Boomgaarden

That doesn't happen every day.

Judge Wade Brorby

It does not. I got on. Reagan was not on the phone. It was his secretary, but he came on just about instantly.

Lynne Boomgaarden

Did you have butterflies?

Judge Wade Brorby

Oh, yes. Very much so.

Lynne Boomgaarden

And do you remember what he said?

Judge Wade Brorby

It was a long time ago, but my recollection is that he said I have had very good reports about you. And I'm going to nominate you to be the circuit judge. And that was about it. It was a short, sweet, simple, nice conversation as I recall.

Lynne Boomgaarden

I can almost hear his iconic voice in my head. Did he sound like you thought he would sound?

Judge Wade Brorby

Yes, exactly.

Lynne Boomgaarden

Did he try to pronounce your last name?

Judge Wade Brorby

He must have pronounced it correctly, or I think I would have remembered it.

Lynne Boomgaarden

Would you have corrected him?

Judge Wade Brorby

Yes.

Lynne Boomgaarden

Then you had your swearing in, or I think they called it the "Investiture Ceremony" up in Gillette. Was that a surreal experience?

Judge Wade Brorby

Yes, it was. I felt a little guilty about having it because judges had to come a long way to a place they weren't used to coming. But I decided that's where it should be.

Lynne Boomgaarden

Was it at the CAM-PLEX?.

Judge Wade Brorby

Yes.

Lynne Boomgaarden

That's one of those wonderful facilities where Gillette put their money to good use.

Judge Wade Brorby

That's exactly right. I had something to do with that.

Lynne Boomgaarden

Well, you were one of a number of community leaders and business leaders that I'm sure people went to, to ask about that. It is still widely used.

Judge Wade Brorby

Yes, it is.

Lynne Boomgaarden

They have so many different events there. They've even had those giant RV gatherings and the National High School finals, rodeos.

Judge Wade Brorby

It's a big, big thing.

Lynne Boomgaarden

I believe the Chief Judge of the Tenth Circuit at the time was Judge Holloway. Did he preside at the ceremony?

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

Had you had any opportunity to meet any of the judges?

Judge Wade Brorby

No, that was my first time. You don't know these people well enough to know whether you could be lighthearted with them or not.

Lynne Boomgaarden

I believe the chief justice for the Wyoming Supreme Court was Stuart Brown?

Judge Wade Brorby

That's right.

Lynne Boomgaarden

Had you had much interaction with Justice Brown?

Judge Wade Brorby

Oh, not a whole lot. But I've known him over the years.

Lynne Boomgaarden

What little I knew of him, he had a pretty hearty sense of humor.

Judge Wade Brorby

Yes, he did.

Lynne Boomgaarden

Then coming all the way back to who influenced you as a young man to be an attorney, Retired Justice Rod Guthrie spoke.

Judge Wade Brorby

Yes.

Lynne Boomgaarden

Were you able to choose who you wanted to speak?

Judge Wade Brorby

Yes.

Lynne Boomgaarden

Tell me about your relationship with Larry Yonkee, another very well-respected Wyoming attorney. He spoke at your swearing in.

Judge Wade Brorby

Larry and I were good friends over the years. We had had a lot of cases against each other and together. It wouldn't be unusual if I needed another outside counsel, I would ask him, and he would do the same. We just were good friends and close.

Lynne Boomgaarden

Well, he was very complimentary in his comments, and you could tell there was a lot of mutual respect there. And Judge Guthrie made people laugh, as usual. And then Casper attorney Stan Lowe spoke. As I understand it, he spoke as delegate or representative for the ABA. I was intrigued because his comments went way back to the Book of Exodus, and where the justice system came from. And then you were given the last word, so to speak. You ended by

saying America is great because her people are great. Tell me why you feel so strongly about your country and communities.

Judge Wade Brorby

Well, country, county, and city are just as good as the people that are living there. Period. It's something I've always felt. It's a belief. I'm thinking of some of the county commissioners. Eric Oldman, Lynn Tarver, Bill Fitch. Good, solid ranching people that always did the right thing. They weren't political people. They were there to do what was right. And they did what they thought was right.

Lynne Boomgaarden

You needed leaders that didn't have personal agendas?

Judge Wade Brorby

That's exactly right. I look at so many of the politicians today. It just blows my mind. Some of the things lately. The politicians that I was used to weren't that way.

Work, Colleagues, Family, and Other Memories

Lynne Boomgaarden

Tell me what moving to Cheyenne involved and some of the sentiment or emotion, and just the logistics of wrapping up everything in Gillette and moving down to Cheyenne?

Judge Wade Brorby

It was very difficult. I made the decision I had to do it. So, I moved to Cheyenne and poor Miriam was left to wind things up in Gillette before she could move down. We had sold our house, but she had to make all those terrible decisions. It was a few months before she was in Cheyenne, too. So, I give her an awful lot of the credit for that.

Lynne Boomgaarden

There was probably a little bit of grieving for what you'd left behind.

Judge Wade Brorby

Friends. Good friends.

Lynne Boomgaarden

Did you convince many of your friends to come to Cheyenne and visit?

Judge Wade Brorby

Not very many.

Lynne Boomgaarden

We used to have some friendly discussions about the relative merits of Gillette and Cheyenne because Cheyenne is my hometown. But a number of people have said, if you're not from Cheyenne or not with the Air Force Base community, it can be a hard community to settle into. Was that your experience?

Judge Wade Brorby

Yes, a little bit.

Lynne Boomgaarden

Thinking back on it, how much of the difficulty was being in a new community and how much was just the fact that it's lonely being on the bench because your whole social life has to change?

Judge Wade Brorby

I think that isolation was a significant part of it.

Lynne Boomgaarden

Now, I know from Judge Alan Johnson, that when you moved down to Cheyenne, they didn't really have any room or chambers set up for you.

Judge Wade Brorby

That's right.

Lynne Boomgaarden

So how did you go about putting all that together?

Judge Wade Brorby

I ultimately ended up in some empty offices where I could get some more office space. That was just the way it was.

Lynne Boomgaarden

You selected Margaret Kelly as your judicial assistant. Margaret was a good hand, wasn't she?

Judge Wade Brorby

Yes, very good.

Lynne Boomgaarden

Did she help you navigate the General Services Administration process to get your furnishings and all of that?

Judge Wade Brorby

Basically yes.

Lynne Boomgaarden

The first colleague that you got to know would have been Judge Barrett. Did you know him very well, beforehand?

Judge Wade Brorby

I knew him very well.

Lynne Boomgaarden

From when he was Attorney General or before that?

Judge Wade Brorby

As an attorney and county attorney. He was a friend, and I used to see him a lot when he was Attorney General. I've just known Jim for a long time.

Lynne Boomgaarden

You've said before, he was one of your favorite people.

Judge Wade Brorby

Yes. He was low key. He worked hard.

Lynne Boomgaarden

I know in your confirmation hearing the committee asked you about a terrible backlog of cases at the Tenth Circuit. Were there some expectations that you would help alleviate the backlog when you started sitting as a judge?

Judge Wade Brorby

Yes. I knew there was this terrible backlog and I said, "give them to me."

Lynne Boomgaarden

Do you have any idea how many years it took to catch up?

Judge Wade Brorby

No.

Lynne Boomgaarden

I remember there was the oral argument docket and the order and judgment docket, and I believe you were able to clean up a lot of things through the order and judgment docket. Those were cases where there was no argument. You could decide them on the briefs.

Judge Wade Brorby

That's right. The O & J.

Lynne Boomgaarden

You would go back in your chambers and by the end of the day, you would have three or four orders and judgments cranked out. You were very knowledgeable and efficient. A lot of those were criminal cases, weren't they?

Judge Wade Brorby

Right.

Lynne Boomgaarden

Did you have any relationship with Judge Kerr?

Judge Wade Brorby

Not much of a one. We knew each other. I would go visit with him occasionally.

Lynne Boomgaarden

How about Judge Brimmer?

Judge Wade Brorby

Same.

Lynne Boomgaarden

Did you have a closer relationship with Judge Alan Johnson?

Judge Wade Brorby

Yes. We had more in common.

Lynne Boomgaarden

What did the Wyoming Tenth Circuit judges bring to the Tenth Circuit that was unique, different, or special?

Judge Wade Brorby

Oh, I'm not sure. The one thing I brought to the Court that was unique was a computer. When I came onto the bench, there were no computers. I asked, "where's my computer?"

Lynne Boomgaarden

Why do you think that was?

Judge Wade Brorby

I have no idea. They just hadn't gotten around to it. Steve Anderson bought his own computer. I refused to do that. But we got them fairly quickly.

Lynne Boomgaarden

Did most of your colleagues still dictate?

Judge Wade Brorby

Yes.

Lynne Boomgaarden

It makes my stomach hurt to think about dictating an opinion.

Judge Wade Brorby

Well, you wonder why they were so far behind.

Lynne Boomgaarden

So, it wasn't just the workload that you took on, it was the fact that you helped encourage automation?

Judge Wade Brorby

Right.

Lynne Boomgaarden

And Margaret was very, very proficient.

Judge Wade Brorby

Yes, she was. She knew what was going on.

Lynne Boomgaarden

I remember that you worked on the General Services Administration Space and Facilities Committee, and that was a committee where if a judge wanted new chambers or something new, there was a committee and it had to go through all of the regulations, or specifications. If

you were a circuit court judge, you got X number of square feet and dollars, and so on. Were you the person on that committee that made sure nobody exploited their new position or opportunities at the taxpayers' expense?

Judge Wade Brorby

You have a good memory. We had more than one occasion where a person thought because he was a judge, he was entitled to something extra.

Lynne Boomgaarden

It was important to have a watchdog, so to speak?

Judge Wade Brorby

No question about it.

Lynne Boomgaarden

Did you ever get any backlash for serving in that capacity?

Judge Wade Brorby

Yes.

Lynne Boomgaarden

But it didn't stop you?

Judge Wade Brorby

No.

Lynne Boomgaarden

Weren't you part of the group of judges that had to endure the renovation of the Byron White courthouse in Denver?

Judge Wade Brorby

I was, and it was something as I recall. The judges didn't have much say and it took a few years.

Lynne Boomgaarden

It turned out beautifully at quite some cost. But during that time, I recall you had to hold court and your office in a different building in downtown Denver.

Judge Wade Brorby

That's right.

Lynne Boomgaarden

I'm sure you got to meet Justice Byron White?

Judge Wade Brorby

Oh yes. I'll tell you one time that I spent a lot of time with him. He came and sat with us once. And to make a long story short, he and I were on the same panel, and we had lunch together, if I remember right, for a couple of days. So, I got to know him fairly well.

Lynne Boomgaarden

I know that Judge Ebel was very close to him because he had clerked for him. What impression did you have?

Judge Wade Brorby

He just was a nice guy.

Lynne Boomgaarden

Did he have a similar western or Rocky Mountain background and philosophy?

Judge Wade Brorby

Yes. He was very down to earth.

Lynne Boomgaarden

Was he still an impressive, athletic type of person?

Judge Wade Brorby

He still was in pretty good shape, better shape than I.

Lynne Boomgaarden

Did you have any panels of judges or colleagues that you particularly liked serving with?

Judge Wade Brorby

I enjoyed serving with all.

Lynne Boomgaarden

Do you remember your summer panels with the killer bees: Brorby, Barrett, and Baldock?

Judge Wade Brorby

You bet.

Lynne Boomgaarden

Tell me if I'm wrong, but the reason they called you the Killer Bees was if the Killer B panel was assigned there was nary a criminal defendant who was going to stand much chance if they didn't have a very meritorious appeal.

Judge Wade Brorby

I do remember that.

Lynne Boomgaarden

Do you remember Judge Wes Brown from Kansas, who sat with you by designation on occasion?

Judge Wade Brorby

Oh, I liked him. Why, he lived to 103 or something and was still pretty good on the bench!

Judge Wade Brorby

As we got started again this morning you asked if I had any flashbacks. I have a couple. I got to thinking about my investiture ceremony. It definitely was at the CAM-PLEX complex. I got to thinking I was on the committee that formulated and implemented the CAM-PLEX.

Lynne Boomgaarden

Tell me more about that. What kind of facility is it?

Judge Wade Brorby

Well, it's a little bit of everything. It's auditoriums, it's rodeo grounds. It's you name it, it's there. It's a large facility and very heavily used, and it attracts a lot of business to Gillette.

Lynne Boomgaarden

So, it was an important economic development initiative for the community?

Judge Wade Brorby

Oh yes, no question about it.

Lynne Boomgaarden

And tourists too, probably?

Judge Wade Brorby

I think so. Bear in mind, I haven't been there for a while. But I think from what I've read, there are various tourist attractions held there. Interestingly enough, thinking of my investiture ceremony at the CAM-PLEX, my recollection is that the judges who attended from the Tenth

Circuit flew up in a plane. And the mayor at the time gave a little speech, not to them, but afterwards, saying it was the most important thing that had ever happened to Gillette.

Lynne Boomgaarden

That's quite an honor. You had members of Congress and you had members of the Wyoming judiciary, you had members of the federal judiciary, and an ABA representative. That was quite a group of dignitaries to come to Gillette.

Judge Wade Brorby

Yes, it was.

Lynne Boomgaarden

I bet you never regretted that you pushed a little bit to be able to have the ceremony in your hometown.

Judge Wade Brorby

No, I did not regret it. As a matter of fact, I was happy we did it in my hometown.

Lynne Boomgaarden

Did anyone take any time to look around Gillette while they were there?

Judge Wade Brorby

Oh yes. I don't remember the particulars. But yes, they did, and they were impressed. This little Western town was and still is growing.

Lynne Boomgaarden

So, Gillette, as you mentioned yesterday, it started off as an agricultural community and then moved more toward the extractive industry culture. I remember you telling me stories about how the community leaders made conscious decisions to invest back in the community.

Judge Wade Brorby

Yes, they did. We were very fortunate to have some good thinkers as county commissioners and as city council and mayors.

Lynne Boomgaarden

You mentioned yesterday that so often politicians now have personal agendas. It sounds like the early Gillette leaders were a little more altruistic, thought a little more about what's good for the greatest number of people in Gillette.

Judge Wade Brorby

That's exactly right. My recollection is that they were always thinking about what is good for the community and what's good for the people in the community. That was very fortunate.

Lynne Boomgaarden

I know that Gillette recently got its own community college approved. I bet you've read those articles.

Judge Wade Brorby

Correct, I have read about it. They started out with Sheridan Community College, kind of doing a little work there. And Gillette to make a long story short ended up with their own community college district. That's all recent.

Lynne Boomgaarden

It's probably a good thing for workforce development in that area.

Judge Wade Brorby

Oh yes. It was a good thing for the community.

Lynne Boomgaarden

Did you have many opportunities in Gillette to enjoy the arts?

Judge Wade Brorby

Well, a little. There were several artists in Gillette. I mentioned one them, Bob Barlow. I bought a few of his paintings, which I still have. So, there was an artistic fringe to Gillette. Music maybe not so much except country music. The radio station played only country music and that kind of set the tone for the whole town.

Lynne Boomgaarden

If you had to go to a big city, was it Rapid City?

Judge Wade Brorby

Yes, Denver and Rapid City.

Lynne Boomgaarden

So, you were no stranger to windshield time?

Judge Wade Brorby

Oh no, we did a lot of driving. I don't know how often we went to Denver or to Rapid City, South Dakota, but it was not infrequently.

Lynne Boomgaarden

When you were practicing did you try cases all over the state of Wyoming?

Judge Wade Brorby

Pretty much. I tried cases in most of the counties, I think.

Lynne Boomgaarden

Did you ever charter planes for travel around the state?

Judge Wade Brorby

Oh yes, I chartered planes on occasion. It was usually quicker and easier to drive because of the weather. But on occasion I did charter small planes, single engine aircraft. Gillette was fortunate in that it had one good pilot; his name was Fulkerson.

Lynne Boomgaarden

Did you ever play any practical jokes on him?

Judge Wade Brorby

I don't think so. I don't recall. He was a pretty serious guy.

Lynne Boomgaarden

That might have been wise if you were counting on his skill.

Judge Wade Brorby

That's right.

Lynne Boomgaarden

After you moved to Cheyenne you had to travel down to Denver for a week every other month for oral argument, didn't you?

Judge Wade Brorby

Oh, yes.

Lynne Boomgaarden

Did Miriam often accompany you? Or did you go by yourself?

Judge Wade Brorby

She frequently accompanied me. It was a good opportunity for her to do a little shopping and things of that nature. So, it worked out nicely for both of us.

Lynne Boomgaarden

Did you socialize together with other judges and their spouses?

Judge Wade Brorby

All the time. We became very close to most of the judges.

Lynne Boomgaarden

Do you have any favorite things that you did when you were in Denver?

Judge Wade Brorby

No, I wouldn't say so. There were a lot of good places to eat. We enjoyed them all. I always enjoyed the company of the judges.

Lynne Boomgaarden

Let's talk about the judges a little bit since we're on that topic. You served with several. The court has certainly grown since you left. I don't even know all of the judges anymore.

Judge Wade Brorby

Nor do I.

Lynne Boomgaarden

I know from the time that I was able to work in your chambers that you and Judge Steve Anderson from Utah were office mates.

Judge Wade Brorby

That's correct. We shared an office in Denver, and Steve and I had a lot in common, and we were just very good friends.

Lynne Boomgaarden

Do you remember some of the things that you had in common?

Judge Wade Brorby

We both tried a lot of cases.

Lynne Boomgaarden

You called each other "pardners".

Judge Wade Brorby

That's right. A good Western friendship.

Lynne Boomgaarden

I remember him calling out your ham radio call number.

Judge Wade Brorby

Yes. I became a ham radio operator in Cheyenne. I am trying to remember I think my number was Kilo, Charlie, Seven, Echo, Zulu, Foxtrot, or something similar?

Lynne Boomgaarden

I think that's it. Hold on. I have it here. Yes, it was KC7EZF.

Judge Wade Brorby

That sounds correct.

Lynne Boomgaarden

I think Judge Anderson had a lot of admiration for you and your different interests.

Judge Wade Brorby

I don't know about that. But there were two things I did spend some time on in Cheyenne. One was the ham radio. The other was I decided I should do a little bit of research into my family, and consequently got involved in ancestry and building a family tree.

Lynne Boomgaarden

Did you discover any surprises as you were doing that?

Judge Wade Brorby

Not really. There was nothing really out of the ordinary.

Lynne Boomgaarden

So, tell me about Judge Porfilio. As I recall, when you started on the Court, he was known as Judge Moore, and then he changed his name to Porfilio after he discovered his birth parents.

Judge Wade Brorby

Your memory is excellent. My recollection of that is his mother remarried and changed his name. Once he found out about all that, he went through the process and changed his name from Moore to Porfilio, which was his natural born name.

Lynne Boomgaarden

Please tell me about Judge Ebel. I believe you both started at about the same time.

Judge Wade Brorby

We started about the same time. And Dave is still working on the Court. He's about my age. I will be 88 next month.

Lynne Boomgaarden

And then there's Bobby Baldock from New Mexico. We talked yesterday a little bit about how you would serve on panels with Judges Barrett and Baldock. You were known as the killer bees.

Judge Wade Brorby

Because we did lots of work, particularly during the summer months, when we were some of the unusual producers.

Lynne Boomgaarden

What other judges did you spend time with?

Judge Wade Brorby

Judge Seymour from Oklahoma, and Judge Tacha from Kansas, and another judge from Kansas.

Lynne Boomgaarden

Judge Jim Logan?

Judge Wade Brorby

Yes, Jim Logan. I was close to most of the judges, if not all of them. We had a good rapport with and between the judges. It was a very pleasant group to work with.

Lynne Boomgaarden

Was Judge Barrett helpful as far as making sure you had introductions to and had opportunities to get to know some of the others on the Court?

Judge Wade Brorby

Yes. Jim was another wonderful gentleman. He went out of his way to make sure that I knew what was going on, and that I knew the other judges. I owe Jim Barrett a large debt of gratitude. He also had some responsibility for me being on the court.

Lynne Boomgaarden

Encouraging you to apply?

Judge Wade Brorby

Yes.

Lynne Boomgaarden

You mentioned yesterday that you had practiced with him and were familiar with his work when he was Attorney General.

Judge Wade Brorby

That's correct. We had known each other for years.

Lynne Boomgaarden

Judge Holloway was Chief Judge when you took the bench, and he presided over your investiture ceremony. Do you have any particular memories of Judge Holloway?

Judge Wade Brorby

Judge Holloway was a very, very nice gentleman. I always admired him and thought he was a good, decent judge and a fine gentleman.

Lynne Boomgaarden

Now, there was another judge who was quite the personality on the court, Monroe McKay from Utah.

Judge Wade Brorby

Oh, my yes, Monroe was, I'm going to guess, six, seven years older than I am. He was a good Mormon. As a matter of fact, his brother had been President of the church at one time. Monroe had personality plus. We always had a good time together.

Lynne Boomgaarden

I remember he had the investiture to end all investitures when he became Chief Judge.

Judge Wade Brorby

That's correct in Provo, Utah. BYU as I recall.

Lynne Boomgaarden

United States Supreme Court Justice Byron White was in attendance. I remember that we all stayed in a Marriott downtown in Salt Lake City, and President Bush happened to be there at the same time. I was on the elevator with Marlin Fitzwater. It was a trip and investiture ceremony to remember. Judge McKay took in good humor the ribbing that some of you gave him for having a "coronation", I think you called it.

Judge Wade Brorby

Exactly right, a “coronation”. It was unique. I don't know of any other chief judge that had a ceremony for becoming the chief judge that would even come close to Monroe McKay's.

Lynne Boomgaarden

Do you recall when we went to Oklahoma City for term of court when they dedicated the memorial at the Murrah court building after the Timothy McVeigh bombing? I remember the powerful spirit of the group and the resilience following those horrible, tragic events.

Judge Wade Brorby

That's exactly right.

Lynne Boomgaarden

It was a very meaningful opportunity.

Judge Wade Brorby

That's a good description of it, Lynne. Rebuilding was what was involved. Because it was a terrible tragedy.

Lynne Boomgaarden

And then I think there are two other judges you served with that are still on the Court when you were in senior active status: Judges Tymkovich and Hartz.

Judge Wade Brorby

Yes. I knew them both very well. Two fine gentlemen. Harris Hartz and I were rather close, we had a good relationship.

Lynne Boomgaarden

Do you remember the summer that Judge Baldock came up for a killer bee conference, and my family hosted a milk can dinner?

Judge Wade Brorby

I remember that. Yes. Everybody was there—the whole federal court family.

Lynne Boomgaarden

I remember our girls made all the judges learn the names of all the sheep in their flock.

Judge Wade Brorby

Everybody had an excellent time.

Lynne Boomgaarden

Well, it was a lot of fun. Judge Johnson, Magistrate Beaman, and I believe Judge Brimmer came out.

Judge Wade Brorby

I still think of your girls as little girls. And of course they are not anymore. They're both married and mothers.

Lynne Boomgaarden

Judge this past month, they've turned 36 and 39.

Judge Wade Brorby

Oh my.

Lynne Boomgaarden

So, we don't age, they do, right?

Judge Wade Brorby

That's right.

Lynne Boomgaarden

It was a pleasure to get to know Judge Baldock and his law clerk at the time, Joel Carson, a little bit better that summer. When Joel was practicing down in Roswell, Judge Baldock hired a young graduate by the name of Lamar Jost, who had been my law student when I was teaching at the law school. Rick and I packed up all of our milk can dinner equipment and took it down to Roswell for a milk can dinner.

Judge Wade Brorby

Oh, for goodness sakes, I didn't know that.

Lynne Boomgaarden

The end of that story is that Joel Carson is now a good friend of ours and is one of the newer judges on the Tenth Circuit Court of Appeals.

Judge Wade Brorby

He's been on the circuit for a couple of years.

Lynne Boomgaarden

I bought my first horse from Judge Carson, and we went to his Investiture Ceremony down in Roswell. It's been really special to have met those folks through you and to be able to maintain those friendships over time.

Judge Wade Brorby

That's great. I didn't know you bought a horse from him. You still have the horse?

Lynne Boomgaarden

I still have the horse. He's the good old horse that we put all the grandkids on. Before we move off of talking about the different judges you worked with, didn't you overlap for a short time with then judge, now Justice, Neil Gorsuch?

Judge Wade Brorby

That's correct. He and I sat on a number of cases together. Another fine gentleman, nice guy, wonderful writer. He deserved to be on the Supreme Court.

Lynne Boomgaarden

I believe I told you that I've had an opportunity to visit with Justice Gorsuch. He was going to come and make a presentation on access to justice and help the University of Wyoming law school celebrate its 100th anniversary. But as with so many things, the pandemic interfered. Because he couldn't make it to Wyoming Justice Gorsuch recently wrote an article for the Wyoming Lawyer, congratulating Wyoming and taking a close look at some important reforms to improve access to justice.

Judge Wade Brorby

Well, he's a deserving guy to be on the Supreme Court. Interestingly enough, our thinking was very close to the same, at least on the cases that we sat on together.

Lynne Boomgaarden

He has a wonderful book, if you haven't read it, called [A Republic, If You Can Keep It](#).

Judge Wade Brorby

I have not read it.

Lynne Boomgaarden

It's one I would recommend because I think you would find it illustrates how your thinking was aligned on a number of issues.

Judge Wade Brorby

I undoubtedly would enjoy it.

Lynne Boomgaarden

Tell me how often did you find that oral argument was meaningful? And how would you approach oral argument to help you decide a case?

Judge Wade Brorby

Oral argument more often than not was not helpful. More often than not, the attorneys basically regurgitated their briefs in oral argument. Once in a while something would happen during oral argument that would change your thinking. But that was rare, not frequent.

Lynne Boomgaarden

Were the panels that you sat on what they call "hot panels"? Did you ask a lot of questions?

Judge Wade Brorby

It would depend a little bit on the case and the judges who were on it. I would say, generally speaking, we always had a few questions. I wouldn't say that we were what you have described as a hot panel. But it wasn't unusual on any case to have questions about various aspects of the case.

Lynne Boomgaarden

I know that you were very diligent and read all the briefs going into oral argument. Did you prepare a bench memo? Or did you have your law clerks prepare bench memos?

Judge Wade Brorby

Most of the time I did my own bench memos. I always wanted to read the briefs and get a good feel for the case. Once in a while, I would encounter some legal aspect that I would ask a law clerk to brief prior to oral argument.

Lynne Boomgaarden

I feel privileged to have had you as a mentor and teacher in how to efficiently and effectively manage your docket as an appellate judge.

Judge Wade Brorby

You're very kind.

Lynne Boomgaarden

Well, I get to use all of those tools that you taught me now. And I do things very similarly. I will occasionally ask my clerks to help with a particular fine point, but I also ask my clerks to write opinions. You let us write opinions.

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

As law clerks we weren't relegated to just drafting memos.

Judge Wade Brorby

Right.

Lynne Boomgaarden

Did you go into the position of appellate judge, knowing how you would manage your chambers, or did you figure out some things by trial and error?

Judge Wade Brorby

It was a learning process. When I started out, I wrote all the opinions. And it finally dawned on me that there were better ways to spend my time than writing opinions. So, I started asking my clerks to draft opinions for me, and that saved me a lot of time to think. So it was a matter of learning and coming to that way of doing business.

Lynne Boomgaarden

It works very efficiently. I remember you teaching us all, through the lessons you learned through private practice, that if you couldn't work eight hours a day, and get your work done, you probably weren't working very effectively.

Judge Wade Brorby

That's true.

Lynne Boomgaarden

That was a good philosophy to teach us. Of course, in private practice you can't always do that, and you can't always do that sitting on the court. For example, I remember there were a fair number of death penalty panels when I clerked for you.

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

We would work on those, and they would go up on petition for cert to the Supreme Court, and then we'd be on high alert for a few days.

Judge Wade Brorby

That's right. That's right, exactly. Something I was going to do and never did was to see how many of my cases were appealed. The cases I can recall that were appealed were affirmed by the Supreme Court. I don't think I was ever reversed. But that may be erroneous thinking, I can't remember.

Lynne Boomgaarden

Well, my law clerk pulled some of those statistics and I have a notebook with me. We don't need to go into the details in our conversation here, but you are correct there weren't very many appeals, and the vast majority were affirmed. Changing topics a bit, what kind of person or lawyer did you look for in your law clerks?

Judge Wade Brorby

Two things I looked for. One, somebody that wasn't afraid to speak up. Probably most importantly, somebody that was intelligent and knew what they were doing, knew the law. I wanted someone who would not be afraid to tell me I was wrong and I wanted somebody who could write and who had the intelligence to figure things out.

Lynne Boomgaarden

And you hired clerks from all over the country as I recall?

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

You had a good, diverse array of schools, backgrounds, gender, and even age?

Judge Wade Brorby

That's right; my very best clerk of all currently serves on the Supreme Court of Wyoming.

Lynne Boomgaarden

Thank you, Judge. You're too kind.

Judge Wade Brorby

That's the truth.

Lynne Boomgaarden

You occasionally had permanent clerks, but you also had some term clerks?

Judge Wade Brorby

Yes. Most of my clerks were term for one year.

Lynne Boomgaarden

Did you find that there was an advantage when you had a permanent clerk? Or did it just depend on the person?

Judge Wade Brorby

It depended on the person and became permanent if things were working well.

Lynne Boomgaarden

I remember you had a trick interview question. I don't know if you remember this, but you would put the fear of God in the young law students who were interviewing, because you would ask them if they were familiar with the author, Robert Service. Do you remember that?

Judge Wade Brorby

No. If I did, I wouldn't admit it.

Lynne Boomgaarden

I think the latter is probably most true. Robert Service was an obscure author and there was a poem he wrote that you would recite. I should have brought it with me or looked it up. But it was about the Yukon.

Judge Wade Brorby

Yes, I kind of remember.

Lynne Boomgaarden

So here are all these interviewees, and they're prepared. They know the most recent Tenth Circuit opinion that you've drafted and the most recent U.S. Supreme Court opinions that have been published, and you would ask them about Robert Service.

Judge Wade Brorby

Robert Service wrote, I'll call them, popular poems.

Lynne Boomgaarden

Not too many people we interviewed knew of Robert Service.

Judge Wade Brorby

That's true.

Lynne Boomgaarden

And the best interviewees were the ones that would admit as much.

Judge Wade Brorby

That's right.

Lynne Boomgaarden

Do you remember the time that you had the pen pal correspondence with the prison lawyer, the convicted prisoner at the Englewood, Colorado federal prison?

Judge Wade Brorby

Just a vague recollection.

Lynne Boomgaarden

Well, for purposes of getting this in in the record, there was a jailhouse lawyer at the Supermax facility in Englewood, and he could write a decent brief. Then he started helping some of his fellow prisoners write their briefs. You took note of this, if my recollection is correct, after he wrote you a letter and wanted some pointers on how to improve his skills even further. So you engaged in some correspondence with him thinking if he's going to write briefs from the prison walls, he might as well do a good job, because it makes the judge's job easier. So you shared some pointers with him and then arranged for you and I to go down and visit with him and some of the other prisoners. They put us in the chapel with prisoners who wanted to know more about brief writing and legal writing. It was a fascinating experience. There was one warden who stood in the back of the chapel and we just talked for an hour or so about legal writing.

Judge Wade Brorby

I have some recollection of it, but very little.

Lynne Boomgaarden

I think it shows you are a compassionate and pragmatic person who thought that we could be of some service. You made the arrangements, and, by golly, we did it.

Judge Wade Brorby

That's good of you to remember that.

Lynne Boomgaarden

I think we're getting close to wrapping up. And again, I'm just so thankful that you've spent some time with me the last couple of days to get some of your important accomplishments and memories down.

Judge Wade Brorby

I thank you for jogging my memory. I thank you for all the excellent work you've done.

Lynne Boomgaarden

It's been a labor of love—my privilege and pleasure. What made you decide to take senior status?

Judge Wade Brorby

Well, two things really. One, I decided I wasn't as mentally sharp as I once was. I can't tell you how I came to that conclusion. It was a little harder for me to think, I guess. And I decided the time had come to quit before it became a serious problem. So that was the main thing. The other aspect of it was that I decided somebody else should have the chance to be active on the Court, more active than I.

Lynne Boomgaarden

I think that was a philosophy that Judge Barrett had shared with you.

Judge Wade Brorby

Yes.

Lynne Boomgaarden

I know you have strong feelings about making sure a lot of good, qualified people have the opportunity, and that maybe people shouldn't hang on as long as some do.

Judge Wade Brorby

That's exactly right. My personal thinking is there should be term limits. Primarily for two reasons. One is to keep you from becoming mentally not as sharp as you once were. But it's more important that the younger person have the opportunity to do those things.

Lynne Boomgaarden

What would you describe as the most important attributes of the best judges that you've worked with?

Judge Wade Brorby

I think maybe two things. Good background or varied background, and the ability to work, to get your work done. And perhaps thirdly, the desire to do some thinking about what you're doing. Not to just say, "this is the way it is", but rather to ask, "is this the way it should be, and if so, why?" You don't have to set forth those things in an opinion. But to get to the right decision, I think you need mentally to go through that type of process.

Lynne Boomgaarden

What are the best attributes of the attorneys that you practiced with, against, or saw in front of you when you were on the bench?

Judge Wade Brorby

The best attorneys were the ones who knew exactly what the issue was and addressed it. And also, not only addressing the issue but addressing the opposing side of it—why the opposition was wrong. Too many attorneys would come in and argue their case and let it go at that. But it's something more than that. You need to persuade the judge and the jury that what you're doing is correct, and the only way you can do that is to delve into why it is correct. That perhaps oversimplifies it, but there it is.

Lynne Boomgaarden

In your experience, were attorneys who came to argue on appeal prone to giving you a jury argument?

Judge Wade Brorby

Yes. The most common fault of attorneys appearing before me was basically just reading their brief to me. The next most common fault was the inability to tell us why their result was the correct result. It's usually never quite enough to say the case of A versus B decides it. There needs to be a reason why A versus B is dispositive.

Lynne Boomgaarden

How do you want to be remembered as a distinguished member of the Tenth Circuit Court of Appeals?

Judge Wade Brorby

Oh, I don't really care how I'm remembered, I guess. What is important to me is that I am remembered for getting my work done, and most of the time it being correct.

Lynne Boomgaarden

You were honored in April of 2018, as a distinguished alumna of the University of Wyoming College of Law. You had every intention of being there to accept your award in person, but

some circumstances prevented that. I was honored to accept on your behalf.** What did that award mean to you?

Judge Wade Brorby

It meant a lot to me. I'm not so sure it was fully deserved. But it meant a lot to me personally.

Lynne Boomgaarden

You were honored with one of your classmates of 1958, Jim Applegate.

Judge Wade Broby

That's true. Sadly, Jim had passed away before he could receive that.

Lynne Boomgaarden

In accepting the award, you wanted the law school to think about being something more than the rankings in the U.S. News and World Report.

Judge Wade Brorby

I felt then and I still do that the University of Wyoming Law School is a good law school because it not only teaches the law, but it teaches the ability to think. That maybe doesn't accurately reflect it, but that's the best I can say. It's not enough to sit down and memorize legal principles. It's something far more than that. The University while I was in law school did that, and I think still does it.

Lynne Boomgaarden

Is there anything more about your journey as a man, as a lawyer, and as a judge that you'd like to record today?

Judge Wade Brorby

That's a loaded question, Justice. I have been very fortunate in my life in that things have gone reasonably well for me. I have been fortunate that the woman I married made life very much easier for me. I owe a large debt of gratitude to many people, including the Law School, including my law clerks, such as one Lynne Boomgaarden who was an extraordinarily fine clerk. And so that's really it. I just have been lucky.

Lynne Boomgaarden

Well, your humility perseveres. Your temperament, your skill, and your patience are all things that have served you well and set a good example for the rest of us.

Judge Wade Brorby

That's very kind of you.

Lynne Boomgaarden

Tell me more about your wife, Miriam,*** and your sons.

Judge Wade Brorby

Well, I met my wife, Miriam, when we were going to the University of Wyoming. We were sophomores when we met. I was hashing, that is serving tables at my fraternity. She was a guest and that's where we met. We ended up being married the following year. We were both juniors and we both worked thereafter. This December we will have been married for 68 years, this December 19, 2022.

Lynne Boomgaarden

Miriam has been a full partner with everything that you've done, hasn't she?

Judge Wade Brorby

Absolutely. I could not have done anything I did without her. Very fortunate.

Lynne Boomgaarden

Miriam strikes me as having that attribute that you mentioned you look for in for your law clerks. You didn't want a yes woman; you wanted a colleague—a trusted colleague who would tell you if she thought you were wrongheaded.

Judge Wade Brorby

That's very true. And she continues to do that to this day.

Lynne Boomgaarden

You mentioned that the birth of your sons bookended your service in the Air Force. What are Greg and Mark doing now?

Judge Wade Brorby

Okay, my first son, Gregory Wade Brorby, was born in 1958. I'm going to make a long story short. He went to the University of Wyoming and graduated with a degree in Electrical Engineering. He went to work for a public utility in Las Vegas, Nevada, and has since retired. During retirement, he earned an MBA and still does some consulting work. He's living in St. George, Utah. He had two sons. Garrett, the older one is about to start work on his MBA. He graduated in two and a half years with a degree in psychology. The younger one is just starting college this year in finance and accounting.

Lynne Boomgaarden

And the younger one is Grant?

Judge Wade Brorby

Yes, Grant is the younger one. My other son, the younger son, Mark Alan Brorby, was born in 1961. He was a CPA. He's had a varied career. He became the CEO, the CFO, and then the CEO of a large international company. He has since retired and is doing consulting work and is living here in Phoenix. He has no children.

Lynne Boomgaarden

You get to see him at least weekly, right?

Judge Wade Brorby

At least weekly. And thank God for that.

Lynne Boomgaarden

That's wonderful. There was a parental maxim you used to share with me. You used to always say, "I'm not going to take credit for what my children accomplish or take blame for their inevitable failures."

Judge Wade Brorby

It's important for all parents to know that.

Lynne Boomgaarden

Over the course of our friendship, I've come to think of you as a renaissance man and a lifelong learner. You have inexhaustible curiosity, and that's quite an inspiration. What do you think is the source of your desire to always learn and try new things?

Judge Wade Brorby

I have no idea Lynne, that's just part of me, I guess. I always wonder what's on the other side of the door.

Lynne Boomgaarden

And that continues, doesn't it?

Judge Wade Brorby

Yes, it does.

Lynne Boomgaarden

What's the latest thing that you've taken up—that you're studying or exploring?

Judge Wade Brorby

Well basically, it's iPhones and iPads.

Lynne Boomgaarden

I need to buy the book for Dummies, and you've got it mastered, I think.

Judge Wade Brorby

I don't know about that.

Lynne Boomgaarden

You have always liked technology.

Judge Wade Brorby

Yes, I have.

Lynne Boomgaarden

We talked a little bit yesterday about how you were one of the people on the Court that pushed the use of technology.

Judge Wade Brorby

Oh, yes, very much. I don't know how you could ever do any research without a computer. To do it accurately, I'll put it that way. I also don't know how you would ever get much work done without the benefit of a computer.

Lynne Boomgaarden

Aside from technology you used to study some eclectic musicians. One, I think, was a Norwegian Ragtime pianist. You also introduced me to Leon Redbone.

Judge Wade Brorby

That's correct.

Lynne Boomgaarden

Do you still listen?

Judge Wade Brorby

Not as much as I used to. Music is not a big part of my life anymore. I used to play the piano. But I gave that up.

Lynne Boomgaarden

I don't know that I knew that.

Lynne Boomgaarden

I recall you and Miriam have traveled quite a bit.

Judge Wade Brorby

We did for many years. We did quite a bit of traveling.

Lynne Boomgaarden

What were some of your favorite trips?

Judge Wade Brorby

We have been to every state. I think one of my most favorite trips was to Scandinavia, to Norway, Sweden, and Denmark. I can't tell you why in particular except that's my origin and maybe that had something to do with it. We also traveled in Mexico and Central America.

Lynne Boomgaarden

One of the things you taught me is to take your time and take the backroads.

Judge Wade Brorby

That's exactly right. That's far more important. We always tried to avoid the interstate as much as we could. We didn't want to be in a hurry, and we wanted to see whatever was there to see.

Lynne Boomgaarden

We discovered a year or so ago that you and I have a common interest in Liberty puzzles.

Judge Wade Brorby

Yes.

Lynne Boomgaarden

Describe what a Liberty puzzle is.

Judge Wade Brorby

A Liberty puzzle is made in Boulder, Colorado. They're wooden jigsaw puzzles. For the most part they are difficult. They can range in size from a few 100 pieces to a few 1000 pieces. It's a marvelous way to spend a few hours of time. I still will put one together every once in a while.

Lynne Boomgaarden

Well, this has been a marvelous way to spend a few hours of my time the last couple of days.

Judge Wade Brorby

It's been interesting for me too.

Lynne Boomgaarden

And you get the last word.

Judge Wade Brorby

I've been very lucky to have you as my clerk.

Lynne Boomgaarden

Well, it's a mutual admiration society. So, thank you, Judge Wade Brorby, for spending some time to record some of your history and recollection.

Judge Wade Brorby

You're quite welcome, Justice Boomgaarden.

*Resumé from 1986 attached.

**Comments of former law clerk and Wyoming Supreme Court Justice Lynne Boomgaarden, accepting the University of Wyoming Distinguished Alumni Award on behalf of 10th Circuit Judge, Wade Brorby, attached.

***Miriam Brorby passed away unexpectedly on June 1, 2022. Her obituary is attached.