

# William H. Erickson (1924–2010)

One of the Greatest

BY TIMOTHY M. TYMKOVICH

*This article is part of the “Six of the Greatest” series profiling outstanding lawyers in Colorado history.*

William H. Erickson was a great lawyer, judge, and person. But not in that order. To the dozens of us who had the privilege of clerking for him, great “person” comes first. Justice Erickson treated his clerks like family—he knew us as friends, he knew about our personal lives, and he knew us as fledgling lawyers eager to learn the craft.

So when I reflect on him as “One of the Greatest” for this series, I think first of the man who indelibly shaped my life and career. He was a mentor and confidant to me for the 27 years after my clerkship on the Colorado Supreme Court ended in 1983 until his death in January 2010 at the age 85 from complications of Parkinson’s disease. Like many Erickson clerks, I didn’t make a single major career or life decision without first consulting the Justice. It’s safe to say few jurists match Justice Erickson’s loyalty and dedication to his law clerk family.

Justice Erickson was a Colorado native through and through. Though he had many offers to leave the state as his stature and reputation grew, he stayed put—first as one of our greatest advocates and then as a jurist for 25 years.

But Justice Erickson’s greatness was defined by much more than his many professional accolades. Whenever Colorado asked something of Justice Erickson—whether it was representing an unpopular defendant, leading our state Supreme Court, or chairing the Columbine Review Commission—he always delivered. What made Justice Erickson one of Colorado’s greatest, then, was not just his tremendous



legal talent—it was his constant willingness to channel that talent toward the public good and our great state.

## Early Years and Education

Justice Erickson was born in Denver on May 11, 1924.<sup>1</sup> Lawyering was always in his blood. Erickson’s father Arthur, better known as Axe, was a leading Denver lawyer in the first half of the 20th century, partnering in law with former Governor George Carlson.<sup>2</sup>

Despite his father’s successful legal practice, Erickson followed a somewhat untraditional path into law. After graduating from Denver’s

East High School in 1942, Justice Erickson enrolled at the Colorado School of Mines.<sup>3</sup> His time at the Mines was briefly interrupted in 1943 when he served in the U.S. Army Air Force.<sup>4</sup> Justice Erickson thereafter returned to Mines and graduated in 1947 with a degree in Petroleum Engineering.<sup>5</sup>

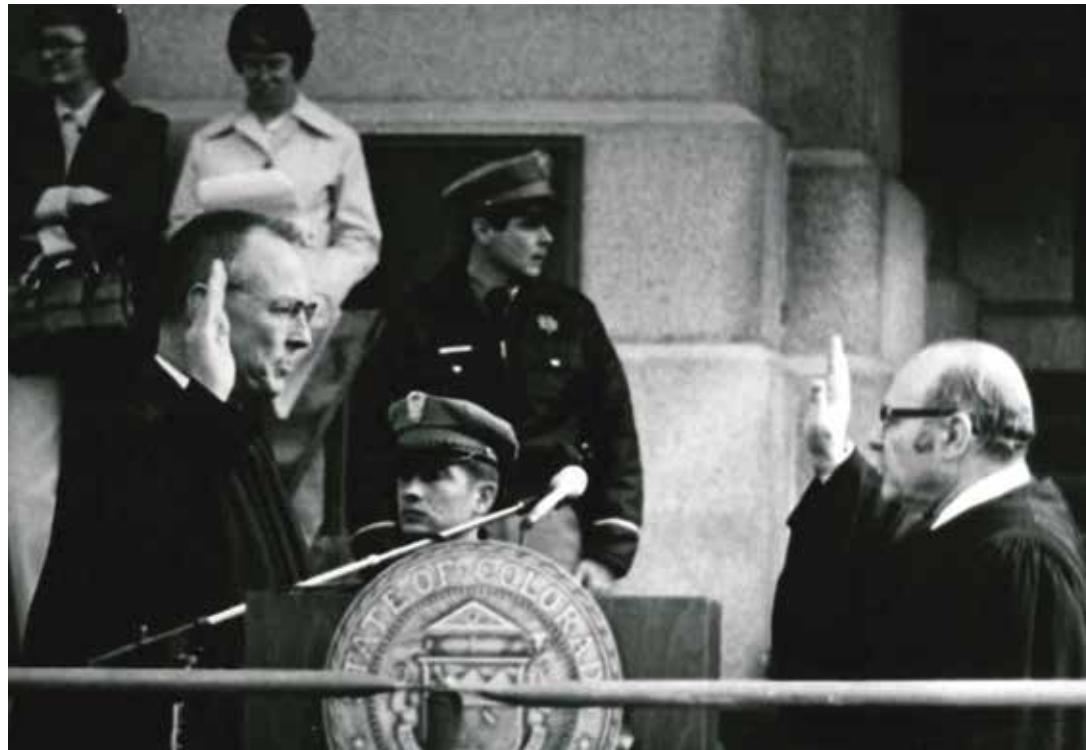
After graduation, Justice Erickson worked at Rangley Oil Field as a drilling engineer.<sup>6</sup> He quickly rose through the ranks and found himself in charge of six oil rigs.<sup>7</sup> But the lure of long, lonely nights in the oil patch quickly wore off. One night, after Justice Erickson had worked in the field until 3:00 a.m. setting casing on a new oil well, his father called him with a question: “When are you going to law school?”<sup>8</sup> The story is somewhat apocryphal, however, because Justice Erickson long planned to enter law.<sup>9</sup> Indeed, he attended Mines in part because he believed the analytical thinking fostered there would be an asset as a lawyer, and he knew oil and gas law would be a promising practice area in Colorado.<sup>10</sup>

Justice Erickson took his father’s advice and attended the University of Virginia School of Law.<sup>11</sup> He spent his second year of law school at the University of Michigan so he could take patent law and oil and gas law courses then unavailable at UVA.<sup>12</sup> Justice Erickson returned to UVA for his third and final year and graduated in 1950.<sup>13</sup>

## Private Practice

After graduation, Justice Erickson moved back to Denver and joined his father’s law office, in-

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**ABOVE:** Justice Erickson getting sworn in at the Capitol in 1971.

**RIGHT:** Justice Erickson and Chief Judge Tymkovich at a clerk reunion in the early 1990s.



tent on becoming a trial lawyer.<sup>14</sup> Practicing with his father proved immensely valuable for this, as Justice Erickson claimed to have “never learned more from anyone” than his father about how to try cases.<sup>15</sup>

Returning to Denver also led Justice Erickson to love. He met Dorothy Rogers on a double date with his roommate. Dorie lived across the street from Erickson while she began her elementary school teaching career. She grew to admire the young lawyer, who had his own car and a short-cropped, “World War II” style haircut, which was quite fashionable at the time (and which he never changed much).<sup>16</sup> The two married in 1953.<sup>17</sup>

Eager to gain trial experience and develop his skills, Justice Erickson took on as much pro bono criminal work as he could. His reputation as a tenacious advocate spread like wildfire, and before long federal judges began asking him to serve as defense counsel in important cases.

He accepted numerous appointments (many unpaid). He once received a call from Judge Alfred Arraj, who explained he had “a death penalty case” for which he wanted “to make certain the defendant had as good a defense as he could be provided.”<sup>18</sup> Justice Erickson accepted the appointment without complaint.

Erickson founded his own firm in 1958, known as Hindry, Erickson & Meyer. His father was of counsel to the firm as well, which grew by 1969 to what then was a large size of 22 lawyers.<sup>19</sup> Erickson left the firm in 1969 and practiced solo until his appointment to the Colorado Supreme Court in 1971.<sup>20</sup>

While in private practice, Justice Erickson became a “go to” lawyer in Colorado and the region, trying a flurry of blockbuster cases. None was more notorious than his defense of Joseph Corbett, Jr., the kidnapper and killer of Adolph Coors III. Coors, a member of the legendary brewing family and then its CEO and

chairman of the Board, disappeared on his way to work in February 1960 and was later found dead.<sup>21</sup> A nationwide manhunt located Corbett in Vancouver, Canada.

When Corbett’s father asked Erickson to handle the defense, he initially refused because many of his friends and clients were close to the Coors family. As the case proceeded, however, the trial judge handling the case asked Erickson



ABOVE: Justice Erickson and his wife, Dorie.

RIGHT: Justice Erickson's father, Axe.



to reconsider, because the solo defense attorney needed help in the high pressure glare of national attention. Erickson agreed and was appointed to the defense team. Though the jury ultimately convicted Corbett, Justice Erickson's defense received much well-deserved praise. And as a sign of how Erickson zealously yet fairly defended Corbett, when a seat later opened on the federal bench, Erickson's "strongest supporter for appointment to that court was Joe Coors, the brother of Adolph Coors III."<sup>22</sup>

That case also shaped Erickson's views about the rule of law. He thought Corbett was harmed by adverse pretrial publicity, a prosecution-oriented trial judge, and an unfavorable venue in Jefferson County near the Coors brewery and Coors family homes. Later, as a Bar leader, he became an advocate for numerous criminal justice reforms that advanced the co-equal roles of the prosecution, the counsel for defense, and the court. Any weakness in the three areas would impair the entire foundation of a free and fair trial.<sup>23</sup>

Erickson also worked on a number of high-profile civil cases. He was involved in the blockbuster case concerning *The Denver Post* in the late 1960s, in which control of the paper and millions of dollars were at stake. In that case he worked alongside former Supreme Court Justice and Ambassador to the United Nations Arthur J. Goldberg.<sup>24</sup> After rounds

of internal fights with highly paid East Coast lawyers, Erickson wrested control of the case, eventually winning in the Tenth Circuit.

In other cases he worked with such legendary lawyers as Louis Nizer, who handled some of the highest profile cases of his generation, and John Davis, one of the greatest appellate lawyers

Standards, the ABA's criminal law section, and a national commission established by President Ford on electronic surveillance. He also was director of the National Judicial College, president of the Denver Bar Association, and president of the International Society of Barristers. And he served as a fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers, and was on the Council of the American Law Institute. Indeed, it's hard to find a prestigious and respected legal organization Justice Erickson was not part of.<sup>25</sup>

As a further testament to how widely respected Justice Erickson became, he was one of just four people considered to be appointed as the Watergate prosecutor.<sup>26</sup> Justice Erickson did not accept the post because he "could not see how [he] could investigate the President and be subject to removal by the President"—an observation that proved prophetic.<sup>27</sup>

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of the 20th century. Erickson represented other notorious criminals, including Las Vegas's Ice Pick Willy and Eugene Smaldone, a member of one of Denver's best known crime families.

As Erickson's legal practice grew, so did his contributions to the bench and bar. He chaired the Colorado Commission of Criminal Justice

### Colorado Supreme Court

Justice Erickson was appointed by Governor John A. Love to the Colorado Supreme Court in 1971.<sup>28</sup> He served on the Court for 25 years, retiring in 1996 when he reached the mandatory retirement age of 72.<sup>29</sup> From 1983 until 1985, Justice Erickson served as the Court's Chief Justice.

In his quarter century on the Court, Justice Erickson's output was prodigious (as all of his

former clerks can attest). He authored 977 opinions, an average of 39 a year, and 130 dissents. This relentless work ethic did not go unnoticed. As Justice Luis Rovira testified, Justice Erickson was “the hardest-working judge” he had ever known.<sup>30</sup>

Erickson’s time on the Court also coincided with profound change—both on the Court and in Colorado. Newly appointed justices changed the Court’s demographic composition. Lou Rovira was the Court’s first Hispanic Justice, Jean Dubofsky the first woman Justice,<sup>31</sup> and Gregory Scott the first Black Justice.<sup>32</sup> In addition to these changes, Justice Erickson witnessed a decided change in jurisprudential philosophy as appointees of Governors Dick Lamm and Roy Romer donned their robes.

Justice Erickson authored many important opinions. In the area of criminal law, his opinions sought to “strike a balance between the rights of prosecution and the rights of the defendant.”<sup>33</sup> His opinions often “gather[ed] unanimous support,” as they reflected the Court’s “consensus on the issue.”<sup>34</sup> At the same time, Justice Erickson was not shy about writing separately when he thought his colleagues had taken a wrong turn. In *People v. Sporleder*, for example, the Colorado Supreme Court held the Colorado Constitution required the police to obtain a warrant before using pen registers to record the numbers dialed on private telephones.<sup>35</sup> Justice Erickson dissented, analogizing to the United States Supreme Court’s reasoning resolving the same issue under the United States Constitution.<sup>36</sup>

Justice Erickson identified *United States v. Denver* as one of his major opinions.<sup>37</sup> In that case, the Court unanimously held that federal reserve water rights must be adjudicated in state water courts and share priority with private water rights.<sup>38</sup> Up until then, the legal landscape was murky on how state and federal interests would be accommodated. The opinion established a framework of vital interest to the dry western “prior appropriation” states that relied on a first-in-time-first-in-right allocation scheme. After the opinion came out, the U.S. Department of the Interior, which lost most of its legal arguments, capitulated and adopted the reasoning of the opinion as the legal position of the United States.<sup>39</sup>

Similarly, in the area of free speech and libel law, Justice Erickson was an innovator. While the majority of the Colorado Supreme Court crafted a standard that made it difficult for private citizens to sue media companies for libel, Justice Erickson struck the balance differently. In his view, making it virtually impossible for private citizens to sue the media would encourage “irresponsible, inaccurate and unreliable journalism”—a statement as timely today as it was then.<sup>40</sup> That a number of other states subsequently adopted Justice Erickson’s approach exposes the persuasive power of his opinions and his large impact on the law both inside and outside Colorado.<sup>41</sup>



Justice Erickson’s view from his chambers at the Supreme Court.

Justice Erickson also wrote for a unanimous Court in *People v. Rodriguez*, a 154-page opinion upholding the death sentence for the murder of Lorraine Martelli in 1984.<sup>42</sup> And at least one of his opinions was such a model of legal reasoning that the ALR reporter chose it as the emblematic case discussing the “choice of evils” defense.<sup>43</sup> This statutorily created defense immunizes actions that would otherwise violate the law if the defendant acted because of an emergency that involved a grave risk of injury.

He didn’t dissent much, always preferring consensus. But two of his dissents are particularly noteworthy. His lone dissent in *Evans v. Romer* is notable given the national attention to the case.<sup>44</sup> The dissent exposed the flaws in the majority opinion, which had found that the law in question, Amendment 2, burdened electoral rights on the basis of sexual orientation. While the U.S. Supreme Court agreed the provision was unconstitutional, it rejected the Colorado Supreme Court’s approach criticized by Justice Erickson, instead applying an equal protection rationale.<sup>45</sup>

Similarly, Justice Erickson’s dissent in *People v. Connelly* is noteworthy because the U.S. Supreme Court largely adopted his approach.<sup>46</sup> In that case, the voice of God allegedly moved a man to tell the police he murdered someone. The Colorado Supreme Court concluded the man did not voluntarily confess because the confession was not the product of his rational intellect and free will. Justice Erickson dissented. In his view, confessions are only involuntary if the police extract them through questioning or coercion. And in that case, the man made an unsolicited confession. Justice Erickson therefore thought the confession was voluntary. The U.S. Supreme Court agreed. In reversing the Colorado Supreme Court, it largely adopted Justice Erickson’s view, holding only coerced confessions can be considered involuntary.<sup>47</sup>

Justice Erickson’s approach as a jurist reflected his role as a national advocate for legal reform. He took a cautious approach in each case, preferring a narrow holding to broad pronouncements. He was a strong supporter of the right to counsel and trial regularity. He also wrote opinions modernizing state tort and products liability law.<sup>48</sup> But he deferred to the legislative branches in areas like public school funding<sup>49</sup> and other state budgeting matters created by implementation of the 1990 Taxpayer Bill of Rights initiative.

## A Public Servant in Retirement

Many retirees wind down their days on the golf course or the beach. Not Justice Erickson. His commitment to Colorado and the rule of law remained, and he continued to serve the public long after leaving the court.

Justice Erickson continued sitting as a visiting judge on the Colorado Court of Appeals, engaged in arbitration and mediation, and maintained his active legal writing. And he continued writing a yearly summary of the U.S. Supreme Court Term, which by the year 2000 had become a multi-volume treatise published by Mathew Bender, *United States Supreme Court Cases and Commentary* (and still published by LexisNexis with his old friend Professor Jim George and yours truly as coauthors).

In 1999, Governor Bill Owens asked Justice Erickson to chair a commission to review the 1998 massacre at Columbine High School.<sup>50</sup> He led the Columbine Review Commission over the next few years as it took testimony and formulated a 174-page report on the tragedy. The Report included recommendations about how to avoid future Columbines, such as immediate engagement of active shooters; better

coordination among school officials, local law enforcement, and mental health professionals; and updating police technology to enable local, county, and federal law enforcement to better communicate during attacks.<sup>51</sup> Sadly, many of these recommendations are as relevant today as they were in 2001 when the Report was released.

In 2004 Justice Erickson and his wife Dorie established the William H. Erickson Distinguished Lecture Series at the Colorado School of Mines.<sup>52</sup> In honor of his father, Justice Erickson established an annual scholarship for the benefit of third-year students at the University of Denver Sturm College of Law.<sup>53</sup>

### Conclusion

Justice Erickson's career was as varied as it was successful. But one thing always remained constant—his commitment to Colorado and the

rule of law. It was one of the privileges of my life to clerk for one of Colorado's greatest. 

**The Honorable Timothy M. Tymkovich** is Chief Judge of the United States Court of Appeals for the Tenth Circuit. He has served on the court since 2003. He began his legal career as a law clerk to Justice Erickson from 1982 to 1983.

*Colorado Lawyer's "Profiles in Success"* column celebrates those individuals, living and deceased, whose contributions to the practice of law lend themselves to inspiring narratives. To suggest an article, contact Brendan Baker at bbaker@cobar.org.

### NOTES

1. Webster, "Minute in Remembrance," *ALI Reporter*, vol. 4, no. 2 at 13 (Summer 2010).
2. *Id.*
3. *Id.*
4. Downing, Jr., "An Oral History: William H. Erickson," 26 *Colorado Lawyer* 5 (Dec. 1997).
5. Webster, *supra* note 1. Erickson was awarded Mines's highest alumni award in 1990. *Id.*
6. Downing, Jr., *supra* note 4.
7. *Id.*
8. Webster, *supra* note 1.
9. Downing, Jr., *supra* note 4.
10. *Id.*
11. Webster, *supra* note 1.
12. *Id.*
13. *Id.*
14. Downing, Jr., *supra* note 4.
15. *Id.*
16. Webster, *supra* note 1.
17. *Id.*
18. Downing, Jr., *supra* note 4.
19. Tymkovich, "William H. Erickson," 63 *Denver U. L. Rev.* 11, 12 (1985).
20. *Id.*
21. *Id.* at 12-13.
22. Downing, Jr., *supra* note 4. President Reagan nominated Justice Erickson to the U.S. District Court for the District of Colorado on March 23, 1988. However, the Senate never voted on the nomination.
23. Erickson, "The Standards of Criminal Justice in a Nutshell," 32 *La. L. Rev.* 3 (1972).
24. Downing, Jr., *supra* note 4.
25. *Id.* Justice Erickson also chaired the Erickson Commission, a Denver-based advisory Commission appointed to recommend police procedures surrounding the use of deadly force. *Id.*
26. President Nixon named Justice Erickson to be the Chief Judge of the U.S. Court of Military Appeals, but Justice Erickson declined. And Deputy General Lawrence Silberman asked Erickson to serve as Assistant Attorney General in charge of the Department of Justice's Criminal Division, but he declined that post too. Downing, Jr., *supra* note 4.
27. Downing, Jr., *supra* note 4.
28. Webster, *supra* note 1.
29. *Id.*
30. Culver, "Erickson led state Supreme Court," *The Denver Post* (Jan. 14, 2010), www.denverpost.com/2010/01/14/erickson-led-state-supreme-court. Justice Erickson was also known for his competitiveness—both in the courtroom and on the tennis court.
31. Lundsgaard, "Judging Her Judicial Career: What Jean Dubofsky Learned on the Colorado Supreme Court," Super Lawyers (Apr. 13, 2012), https://blog.superlawyers.com/2012/04/judging-her-judicial-career-what-jean-dubofsky-learned-on-the-colorado-supreme-court.shtml.
32. Pankratz, "Coats to don Supreme Court robe," *The Denver Post* (Apr. 25, 2000), http://extras.denverpost.com/news/news0425b.htm.
33. Tymkovich, *supra* note 19 at 14.
34. *Id.*
35. *People v. Sporleder*, 666 P.2d 135 (Colo. 1983).
36. *Id.* at 146.
37. *United States v. Denver*, 656 P.2d 1 (Colo. 1982).
38. *Id.*
39. Downing, Jr., *supra* note 4.
40. *Diversified Management, Inc. v. Denver Post, Inc.*, 653 P.2d 1103, 1111 (Colo. 1982) (Erickson, J., dissenting).
41. Tymkovich, *supra* note 19 at 16.
42. *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996)
43. *Andrews v. People*, 800 P.2d 607 (Colo. 1990).
44. *Evans v. Romer*, 882 P.2d 1335 (Colo. 1994) (Erickson, J., dissenting).
45. *Romer v. Evans*, 517 U.S. 620, 623 (1996).
46. *People v. Connelly*, 702 P.2d 722 (Colo. 1985).
47. *Colorado v. Connelly*, 479 U.S. 157 (1986).
48. *Mountain Mobile Mix, Inc. v. Gifford*, 660 P.2d 883 (Colo. 1983).
49. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982) (Erickson, J., concurring).
50. Webster, *supra* note 1.
51. See generally Erickson, *The Report of Governor Bill Owens' Columbine Review Commission* (May 2001).
52. Webster, *supra* note 1.
53. *Id.*