

## Justice Gregory J. Hobbs, Jr., Honorary Member

### Keynote Speech

*CoALL's Annual Institute for Law Librarians and Friends, February 24, 2001, University of Denver School of Law*

Thank you for your invitation! Can't you feel the ground waking up? In this morning's mist you can hear how happy the birds are.

I love the name CoALL—Colorado, community, cooperation, all of us together. What a great acronym! Who thought it up? No matter, keep it. And continue living up to it! Our profession—I include all of us in this, lawyers, judges, you who help to find and disseminate the information. We are all necessary to the important work of locating that geography of scholarship and practicality which can animate each decision we are called upon to make.

The law is a reflection of the customs, morals, and ethics of a people. You help us locate the historic and legislative materials we need to know in understanding the context of the constitutions and the statutes. How did those who thought it up—and wrote it down—come to this particular formulation? In each case, we must look through the window of the facts before us to the landscape of the precedent, in order to have a clearer view in formulating resolution to a current disputation. So congratulations on your choice of a valuable profession!

And thanks for sending me to Philadelphia this past July for the national meeting of law librarians. People from other countries were there, too. During breaks, I was able to visit the home of the American Philosophical Society, where Thomas Jefferson conceived the idea of a great scientific mission of exploration into the unknown West. And to see the meeting house of the Pennsylvania legislature, where the Constitution was written, what a privilege!

At the national meeting I learned that many law libraries throughout the country are experiencing a decline in face-to-face patronage, as more and more lawyers and courts turn to electronic research. However, as we are finding with the Colorado Supreme Court law library, pro se patronage is more frequent. About fifty percent of our trial court matters involve people who have no lawyer. We all, CoALL, you all, need to be in the business of customer service to discover and meet the changing needs for information and the available ways to get and deliver it. The goal before us—always—is access to justice.

Of course you should not be expected to give legal advice, but the difference between providing information and giving legal advice is not all that clear cut. We should err on the side of giving information to those who need it. That's where you come in!

Our court has adopted an "unbundling rule" which allows attorneys to help those who are going to represent themselves draw up their pleadings. The problem and the fear of "ghostwriting"—the unidentified voice in the background— are resolved by requiring the pro se litigant to disclose the name of the attorney who assisted in writing the document. By assisting in this way, the attorney is not making an entry of appearance—and the attorney may not appear to argue in court—unless the client retains him or her for that purpose.

Due to the high cost of obtaining full legal counsel and the constitutional right of persons to proceed without a lawyer in court, if they choose, the experience of the Colorado judiciary is that some legal assistance, even if only in the background, is better than none. Our rule applies only in State courts and, even with it in place, many persons will not have any lawyer assistance at all. They will be looking to you to help them find what may help them. What a challenge! What a call to service!

Of course what information you can provide—in cooperation with each other—is essential to the ability of judges to do their jobs. Attorneys are advocates for a particular result on behalf of their clients. They must be as well prepared as they can be to help point the way. But, often it seems, they get caught up in arguing with each other, and so lose sight of their essential role to assist decision-makers in locating, amidst the landscape of the case, a sound judgment.

Appellate judges have the assistance of law clerks. Part of our job of mentoring is to teach the joy of research. I don't mean just the electronic research. The recent law school graduates come to us knowing how to do this, and they do it very well. I'm talking about using the books! Last night, thinking about what I wanted to say to you, I wrote this poem:

### **I LIKE THE FEEL OF A BOOK**

I like the feel of a book,  
The way it cradles in your palm  
And peels open to thumb  
And forefinger, I like turning  
Leaves, on every leaf engrained  
By some creator, a story of  
Discovery, I would dwell in a  
Forest of leaves, way up  
In the canopy, to see the river  
Traders pass below with coconut  
And crocodilians, or along the  
Route of caravans, perch in  
A lone acacia tree to spy  
A sway of camels conveying  
Silk to Byzantium, and why spiders  
Have so many eyes. I should like  
To hear the troubadours sing of  
Lost and gallant warriors falling  
In the train of Charlemagne or  
Sailing off beyond the Hesperides,  
And how to tie a caddis fly  
And set it gently down upon  
The spine of rising waters.

This book I am holding up to you is *A River Running West, The Life of John Wesley Powell* by Donald Worster. It's the new biography of the man who first ran the Colorado River and then became Director of the National Geological Survey and Director of the Bureau of Ethnology. The Powell biography that proceeded this is Wallace Stegner's great work, *Beyond the Hundredth Meridian*.

During the summer of 1867, Powell came to Colorado to collect specimens for the Illinois College where he was teaching. During a visit into Middle Park to Hot Sulphur Springs, he got into a conversation with a mountain man about the Colorado River—and thence conceived the idea of running the long-unexplored reach of it. Which of course he did, not once, but twice.

I love this wonderful passage:

If the test of a good manager is whether she or he can recruit first-rate talent and then allow that talent the freedom to do its best, then Powell met the test. He ought to have, for he had learned management the hard way by patching exploring parties out of anarchic fur trappers and frontier runaways, college students, pious, valetudinarian ministers, disgruntled military men, assorted family members, complainers, dabblers, dreamers—the standard American lot. (Worster at 329-30).

Don't we recognize that this collection of easterners transformed into westerners, just by the process of passing through here and then settling in—is yet—us?

Many of you have seen me in recent months and are wondering when you are going to get your books back. Our court has had a series of cases involving public land and water law. We have pulled on your resources to locate the geography of the legal issues presented. We've obtained government documents dealing with the Colorado River Compact and the Colorado River Storage Project Act at the Denver Public Library and the Colorado State Publications Library. We've checked out mineral and public land treatises from the University of Colorado and University of Denver law school libraries.

These materials, typically not cited in the briefs, helped us to formulate and reformulate our draft opinions— in combination with the briefs of the parties and the electronic research—as we worked our way through draft after draft to final decisions. A water case (Arapahoe County), an oil and gas case (McCormick), a tax case (Vail), these were cases involving issues tracing back to Colorado's creation out of the public domain resulting from the 1803 Louisiana Purchase and the 1848 Treaty of Guadalupe Hidalgo--and the need of Colorado citizens for water, minerals, and government revenue.

Colorado Territory was carved out of the Territories of Nebraska, Kansas, New Mexico, and Utah in 1861 when Kansas became a state. From the first territorial legislature to today, Colorado has depended on use of the public lands, much of which was patented into private hands through such Congressional legislation as the 1862 Homestead Act and the 1862 and 1864 Railroad Acts. Congress granted every other section of land along the railroad rights-of- way as incentive for track building to open up the country for settlement and commerce. These land grants have been decried as the most scandalous give-a-way in American history or as the cagiest way a sovereign could devise for making the land it retained even more valuable. Many a farm and town grew up on these railroad-granted lands, and mineral resources continue to be extracted from under them as a result of deed reservations retained by the railroad and exercised by its successors in interest.

Today thirty-six percent of Colorado is still public land, and the state depends upon it for open space and recreation, which has proved to be a treasure more enduring than the valuable resources mined from the mountains.

The Colorado courts will continue to get cases like this where the customs and laws grew directly out of our public land heritage and western experience. I like to help my law clerks see how the treatises and historical materials can illuminate the context of the legal issues presented. We are general practitioners practicing in somebody else's field of expertise, and we need to know what those who have studied the area have to say about it. And we need to trace what the state and federal legislatures have done about it. And we need to honor the constitutions the people wrote in assigning duties and responsibilities in community and preserving rights to individuals.

I love to take out and turn the leaves of the books in my chambers, the reports of court decisions going straight back to 1861 when that first territorial legislature began to grapple with the realities of settling into this vast and irregularly watered vista that makes up our state of the Great Divide. So this is where we all come in, to serve the community with scholarship and common sense. Our libraries are facing declining face to face patronage but the need for access to information by citizens who are struggling to know and vindicate their rights on their own is increasing. After the Philadelphia meeting we formed a Supreme Court Law Library alternatives study committee. It includes several of your members working in public and private law libraries.

The committee is urging the Court to consider opening the Supreme Court library on Saturdays from 10 to 4, because the Denver Public Library across the street gets citizen visits on Saturday, which would be referred to the Supreme Court Library were it open. The Committee also recommends extending the library hours from 5 to 7 p.m.; so lawyers and citizens after work hours can avail themselves of the library's collection. We are glad that our judicial contract for electronic research with Lexis includes use by the public in our library. This was an important part of our negotiation with Westlaw and Nexis when our Westlaw contract was nearing expiration and the future terms were up for bid.

The Committee suggests holding clinics in the library on nights or weekends for citizens, on topics such as family law contract rights and remedies, in cooperation with lawyers who are willing to provide pro bono instruction. Colorado ethics rules set forth an aspirational goal of 50 hours of pro bono service per year by each attorney licensed to practice law in the state. Can we match this energy with the need of citizens for legal information? Of course we'll try, but how much we can do likely depends on funding and readjustment of existing resources and continuing to build on your cooperation. But I know that our excellent staff—and we have heard constant praise of their attitude and expertise during our committee-initiated surveys—will rally to doing what we should be doing.

Thanks for your invitation.

We promise to get the books back!