

**THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO, 2009-2017**

by Timothy M. Zimmerman¹

The United States District Court for the District of Colorado is the federal district court with jurisdiction in the entire state of Colorado. The United States Congress organized Colorado as a judicial district on June 26, 1876, and authorized a single judgeship for the District Court. Over thirty years beginning in 1954, six additional judgeships were authorized, for a total of seven available judgeships. As of this writing in 2017, there are six active District Judges, with one vacancy pending confirmation. Each of the active judges has chambers in Denver. The District of Colorado serves more than 5.5 million people located across more than 104,000 square miles. It is the largest federal district without judicial subdivisions other than Alaska.² The District is a potpourri of people and cases, including urban issues along the Front Range corridor extending from Fort Collins to Pueblo (which includes numerous military bases and a large concentration of federal prisons), to rural land use issues on the Eastern Plains, and a variety of federal agency and Bureau of Land Management challenges from the Western Slope and mountain areas.³

Chief Judge Marcia S. Krieger was nominated by President George W. Bush on September 10, 2001, to fill a seat left by Daniel B. Sparr, who took senior status. Her confirmation on January 25, 2002 was unopposed in the Senate, and she received her commission on January 30, 2002. Krieger became the Chief Judge on January 1, 2013, when former Chief Judge Wiley Young Daniel took senior status. Prior to her appointment, she

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² Chief Judge Marcia S. Krieger, *A Federal Perspective*, Vol. 46, No. 11, Colorado Lawyer (December 2017).

³ *Id.*

worked in private practice, sat on the United States Bankruptcy Court for the District of Colorado, and taught as an adjunct lecturer for the University of Colorado.

District Judge Philip A. Brimmer, the son of Clarence Addison Brimmer, Jr., a former Federal District Judge in Wyoming, was nominated by President George W. Bush on July 10, 2008, to fill a seat left when Judge Lewis T. Babcock took senior status. Brimmer was confirmed by the Senate on September 26, 2008, and received his commission on October 14, 2008. Prior to his appointment, Brimmer clerked for Judge Zita L. Weinshienk of the United States District Court for the District of Colorado, worked in private practice, was an Assistant Denver District Attorney, and served as an Assistant United States Attorney for the District of Colorado.

District Judge Christine Arguello was nominated by President George W. Bush on July 10, 2008, when Judge Walker David Miller took senior status and left a vacancy on the court. She had been previously nominated to fill a seat on the Tenth Circuit by President William J. Clinton in the waning months of his presidency in 2000, but no hearings were scheduled for her confirmation, and President Bush chose not to renominate Arguello to the Tenth Circuit. Prior to serving as a federal judge, Arguello worked in private practice, taught at the University of Kansas School of Law, and served in the Colorado Attorney General's office.

District Judge William J. Martinez was nominated by President Barack H. Obama on February 24, 2010, to fill a vacancy left after Judge Edward Nottingham's resignation. Martinez was confirmed by the Senate on December 21, 2010, and received his commission the same day. Prior to his appointment, Martinez served as a staff attorney for the Legal Assistance Foundation of Metropolitan Chicago, worked in private practice in Denver, and served as an attorney for the Equal Employment Opportunity Commission.

District Judge R. Brooke Jackson was nominated by President Barack H. Obama on January 5, 2011, to fill a vacancy left by the death of Judge Phillip S. Figa. Jackson was unanimously confirmed by the Senate on August 2, 2011, and received his commission on September 1, 2011. Prior to becoming a federal judge, Jackson worked in private practice and served as Chief Judge for Colorado's First Judicial District, covering Jefferson County and Gilpin County.

District Judge Raymond P. Moore was nominated by President Barack H. Obama on November 14, 2012, following Judge Wiley Young Daniel's transition to senior status. Moore was confirmed on March 22, 2013, and received his commission on March 26, 2013. Prior to serving as District Judge, Moore worked in private practice, served as an Assistant United States Attorney for the District of Colorado, and worked as a public defender, ultimately serving as the Federal Public Defender for the Districts of Colorado and Wyoming.

The final vacancy, created when Judge Robert E. Blackburn took senior status, remains open. However, on October 2, 2017, President Donald J. Trump nominated Daniel D. Domenico to fill the vacancy. His nomination is pending. Mr. Domenico previously served as a law clerk to Judge Timothy M. Tymkovich on the Tenth Circuit, served as Colorado's Solicitor General, and worked in private practice.

In addition to the six active judges, six Senior Judges currently preside on the court. In order of length of tenure, the Senior Judges are: Richard Paul Matsch (appointed in 1974 by President Nixon), John L. Kane Jr. (appointed in 1977 by President Carter), Lewis Thornton Babcock (appointed in 1988 by President Reagan), Wiley Young Daniel (appointed in 1995 by President Clinton), and Robert E. Blackburn (appointed in 2002 by President G.W. Bush). Judge

David M. Ebel (appointed in 1988 by President Reagan to the Tenth Circuit Court of Appeals) sits as a Senior Judge both on the Tenth Circuit and the Colorado Federal District Court.

Finally, nine Magistrate Judges assist the District Judges. The Magistrate Judges are: Michael J. Watanabe, Craig B. Shaffer, Michael E. Hegarty, Kristen L. Mix, Kathleen M. Tafoya, Nina Y. Wang, Scott T. Varholak, David L. West, and Gordon P. Gallagher. These judges are essential to the functioning of the District Court and greatly enhance judicial efficiency.

The District of Colorado is one of the busiest federal districts in the country, placing it in the top 15% of districts nationwide using a caseload per judgeship weighting formula.⁴ Commentators have argued that additional judgeships (the last one was added in 1984) are necessary, particularly in light of the district's large geographic footprint, large amount of federal lands in the district, and unique business law filings as a result of numerous agencies being headquartered in Denver.⁵ These factors, combined with the fact that most of the court will retire or take senior status in the next five years, has led Chief Judge Krieger to assemble a working group to convince Congress to fund additional judgeships for the district.⁶ To date, no additional judgeships have been authorized, but work is continuing to convince Congress of the need for additional judges in the district.

In 2018, a new pilot project will be implemented to better serve southeastern Colorado, and will be known as the Pueblo Jury Division. This Division will extend from El Paso County south to the New Mexico border, and west from Kansas to Saguache County. The project will

⁴ Sean R. Gallagher and James M. Lyons, *A Call for Additional Federal Judges*, the Docket, December 28, 2015, <http://www.dbadocket.org/the-business-of-law/a-call-for-additional-federal-judges/>.

⁵ *Id.*

⁶ *Id.*

involve placing a full-time magistrate judge in Colorado Springs so that parties are not required to travel to Denver for adjudication of their matters. This follows numerous outreach programs over the last decade, which involved placing magistrate and district judges in various corners of the state, including in Colorado Springs, Durango, and Grand Junction.⁷ Under the Chief Judge's leadership, the District of Colorado has worked hard to serve all of its constituents in the various and varied parts of the District.

This update picks up where David Erickson's 1990 to 2009 history of Colorado's Federal District Court ended, and includes biographical sketches of the two former District of Colorado judges who passed away since 2009: Judges James R. Carrigan and Walker David Miller.

⁷ *A Federal Perspective*, *supra* note 2.

Jim R. Carrigan: A Lifelong Pursuit of Justice⁸

Judge Jim R. Carrigan left a legacy almost anyone would strive for. He was a learned professor, a competent judge, a lifelong advocate for justice, a respected and well-liked leader, and a devoted family man. He was not born in Colorado, but made Colorado his home. And for that, the people of Colorado owe him a debt of gratitude.

James R. Carrigan was born in Mobridge, a small town on the banks of the Missouri River in north-central South Dakota, on August 24, 1929. His birthday was exactly two months before “Black Thursday” and the start of the Great Depression. He spent most of his childhood in the town of Hallock, in far northern Minnesota, a few miles from the Canadian border. His father provided for the family by running a bakery, at which Carrigan worked as a boy. Shoveling snow, sugaring donuts, and wrapping up bread, he embraced at a tender age the work ethic of his father, whom he described as the hardest-working man he ever knew.⁹ The Great Depression hit his family hard, forcing it—a family of six—to share a basement for some time. Carrigan never forgot his humble beginnings, remaining a strong advocate for the disadvantaged and underprivileged throughout his career.

Carrigan excelled academically and socially. As an undergraduate at the University of North Dakota, he served as student body president and graduated Phi Beta Kappa with a Bachelor of Arts in philosophy. He returned to the University of North Dakota for law school, where he was Editor-in-Chief of the law review and graduated first in his class, earning the

⁸ Josiah Clarke, Associate Attorney at Gibson Dunn & Crutcher LLP in Denver, provided invaluable assistance in researching and drafting the profile of Judge Carrigan.

⁹ Boulder Public Library, *MROHP Interviews: James Carrigan*, YOUTUBE (Mar. 15, 2016), <https://www.youtube.com/watch?v=S1voZNEtG64>.

prestigious Order of the Coif honor.¹⁰ Despite these accomplishments as a young man, it's unlikely anyone could have predicted the long, varied, and successful career he would have in the law.

After spending a few years practicing oil and gas law with a small firm in Williston, North Dakota, Carrigan sought and obtained another degree—an L.L.M. in tax law from New York University. In an interview later in life, Carrigan claimed his motivation for moving to New York City was that he could not find a woman to marry in Williston and moved east in search of prospects.¹¹ He was not disappointed in this respect, as he met his future wife, Beverly Jean Halpin, in New York, and they remained together for life, enjoying a happy 58-year marriage.

The two married in Los Angeles in June of 1956, and soon moved to Colorado. Together they raised six children in their family home in Boulder, Colorado, which they built with the help of a friend in 1969. The home remains in the family today. The Carrigans loved to host gatherings at their home. These often brought together influential figures, movers-and-shakers from the community and beyond. Carrigan, nevertheless, could be found engaging with the catering staff and students in the kitchen, inspiring them and asking them about their lives.¹²

Carrigan moved to Colorado when former U.S. Supreme Court Justice Byron White, then working in Denver as a corporate lawyer, called an NYU law faculty friend and requested that he send over his smartest student. Carrigan declined a job with Justice White's firm, Davis Graham & Stubbs, opting instead to join a 2-man Denver insurance litigation firm named Long & Smart.

¹⁰ *Jim R. Carrigan: Obituary*, THE DAILY CAMERA (Aug. 20, 2014), <http://www.legacy.com/obituaries/dailycamera/obituary.aspx?pid=172155533>.

¹¹ *MROHP Interviews: James Carrigan*, *supra* note 9.

¹² Remarks by Jessica Brown, Judge Carrigan's Memorial Service, Aug. 28, 2014.

Exhibiting his humor and fondness for puns, he would make the joke that when people asked him the name of the firm he was joining, he would say, “It’s simple: Long & Smart.” To which, he reported, they would reply, “Oh wow! Looks like they already made you a name partner.”¹³ Over the years, Carrigan established himself as a premier personal injury attorney, including winning a landmark victory in Colorado for a victim of police brutality seeking damages for the use of excessive force.¹⁴

While practicing in Colorado he taught at the University of Denver Law School, eventually becoming a full-time professor, and teaching a variety of subjects, including tax law, property, and torts. Following his time as a professor, Carrigan became the Court Administrator for the State of Colorado Judicial Department, which afforded him the opportunity to travel around Colorado addressing judicial needs throughout the state. In this capacity, he helped develop the State’s judicial merit selection system, itself a national model.

Carrigan eventually settled in Boulder, where he became a professor at the University of Colorado Law School. While a professor, he earned an Honorary Doctor of Laws degree from the University and exhibited such influence that the school named a teaching courtroom after him, as well as a prestigious mock trial competition called the “Carrigan Cup.” The school became like a second *alma mater* to Carrigan, who even tried his hand at politics briefly before becoming a judge, running for—and being elected—Regent of the University in 1974, an achievement his son Michael would repeat in 2004.

Governor Richard Lamm appointed Carrigan to the Colorado Supreme Court in 1976, where he served until 1979. In one notable opinion Carrigan authored while serving on the

¹³ *MROPH Interviews: James Carrigan, supra* note 9.

¹⁴ *Id.*

Colorado Supreme Court, he upheld the constitutionality of the Colorado “rape shield” statute.¹⁵ The defendant, who was convicted of first-degree sexual assault, challenged the statute, arguing that the legislature was overstepping its function and impeding the judiciary in violation of separation of powers. Then-Justice Carrigan recognized the significant public policy of protecting rape victims who speak out against their attackers and allowed the statute (and the conviction) to stand.

On June 1, 1979, President Jimmy Carter nominated Carrigan to fill a new seat on the Federal District Court for the District of Colorado, and Carrigan was appointed over the objection of conservative senator Bill Armstrong.¹⁶ Carrigan served as a federal judge for 16 years, after which he retired from the bench and finished his long and illustrious career by serving as a mediator and arbitrator at the Judicial Arbitrator Group, helping litigants resolve cases out of court.

Carrigan regularly went out of his way to identify and address the needs of individuals who came into his courtroom. He did not see plaintiffs and defendants; he saw human beings. For example, a former law clerk tells the story of how Carrigan handled a consent decree between the government and a company responsible for polluting in Commerce City, an industrial municipality on the outskirts of Denver.¹⁷ Instead of simply granting the decree that the parties had agreed upon, he acknowledged Commerce City residents who had packed the courtroom, having taken the time to appear at the hearing. Knowing that many in the audience did not speak English, he called for an interpreter and required counsel for the parties to turn the podium towards the crowd and explain the agreed-upon consent decree. And never missing an

¹⁵ *People v. McKenna*, 585 P.2d 275, 276 (Colo. 1978).

¹⁶ *MROPH Interviews: James Carrigan*, *supra* note 9.

¹⁷ Remarks by Jessica Brown, *supra* note 12.

opportunity for mentorship, he asked his law clerk to face the crowd and said to her, “What you see out there is the face of America. I don’t want you to forget that face when you leave my chambers.”¹⁸

In another famous anecdote, Carrigan was tasked with sentencing a convicted bank robber who violated his probation by failing to pay court fees.¹⁹ When the man explained that he was unable to pay because he could not find employment, Carrigan offered the man a job—to tend the beautiful garden at his Boulder home. The man accepted the job, and the two became lifelong friends.

Carrigan never forgot the “face of America,” and stood up for the rights of the underprivileged. As a federal judge he was outspoken in his objection to federal sentencing guidelines which mandated long prison sentences for individuals convicted of possession of crack cocaine. He spoke out against prosecutors who sought more severe punishments for low-level crack dealers than they did for high-level powdered cocaine distributors.²⁰ Carrigan was “troubled” by this disparity, given that almost all of the crack defendants in his courtroom were people of color.²¹ He even cited the rigid federal sentencing guidelines as one reason why he retired from the federal bench instead of staying on as a senior judge.²²

¹⁸ *Id.*

¹⁹ Jesse Paul, *Jim Carrigan, 84, former U.S. district judge and CU regent, dies*, THE DENVER POST (Aug. 20, 2014), <http://www.denverpost.com/2014/08/20/jim-carrigan-84-former-u-s-district-judge-and-cu-regent-dies/>.

²⁰ Peter G. Chronis, *Judge seeks parity in drug sentencing: Seller gets lighter term than kingpin*, The Denver Post (Apr. 25, 1992), 1992 WLNR 5693452 (Carrigan reportedly objected to a prosecutor seeking a harsh punishment for a crack cocaine dealer by pointing out that when the defendants in an 1,800-gram cocaine case were “three white middle-aged yuppies on the Western Slope . . . your office recommended a sentence that was far less.”).

²¹ *Id.*

²² *MROPH Interviews: James Carrigan*, *supra* note 9.

Carrigan's passion for justice was on full display in the many opinions he wrote in favor of powerless individuals. In 1982, while on the federal bench, he was asked to rule on a motion for reconsideration by a group of plaintiffs hurt in automobile accidents, who were seeking damages from Ford Motor Company on the same design defect tort theory.²³ They were asking Judge Carrigan to reconsider an order from the Magistrate Judge that prohibited the plaintiffs, who were involved in separate accidents, from sharing discovery materials with each other as they brought their individual cases against Ford.²⁴ This order allowed Ford to coordinate its defenses against the many different plaintiffs, but significantly raised costs for plaintiffs and stifled the progress of litigation. Carrigan ruled that the Magistrate Judge's order "sweeps too broadly in attempting to protect Ford."²⁵ He called out the injustice in no uncertain terms: "Each plaintiff should not have to undertake to discover anew the basic evidence that other plaintiffs have uncovered. To so require would be tantamount to holding that each litigant who wishes to ride a taxi to court must undertake the expense of inventing the wheel."²⁶ In support of the effective administration of justice, and in the interest of arriving at the right result as efficiently as possible, Judge Carrigan granted the plaintiffs' motion.

In 1990, Carrigan addressed a "Catch 22" in state health care policy that barred individuals from any Medicaid assistance even where their incomes were too low to afford nursing home costs.²⁷ Plaintiffs were the legal representatives of four mentally incompetent women who were unable to afford their nursing home bills. Each side moved for summary

²³ *Ward v. Ford Motor Co.*, 93 F.R.D. 579, 579 (D. Colo. 1982).

²⁴ *Id.*

²⁵ *Id.* at 580.

²⁶ *Id.*

²⁷ *Miller v. Ibarra*, 746 F. Supp. 19, 19 (D. Colo. 1990).

judgment. Judge Carrigan granted plaintiffs' motion and denied defendant's, ordering that the plaintiffs be awarded Medicaid benefits as well as reasonable attorneys' fees and costs.²⁸

In appropriate circumstances, Judge Carrigan championed constitutional rights of individuals who appeared before him. In 1990, a man who had been charged with possession of cocaine appeared in Carrigan's court. The charge was based on evidence obtained from a pretextual traffic stop.²⁹ The defendant, a black man, was a passenger in a car with California license plates driving through Eagle County. The officer who stopped and searched the car had a history of profiling out-of-state cars for traffic stops, and particularly focused on blacks and Hispanics.³⁰ Carrigan found the officer's testimony that he stopped the car due to erratic driving not credible, and ruled that the stop was pretextual.³¹ He also ruled that the consent the officer obtained to search the car was coerced; any evidence obtained was inadmissible against the defendant as the search violated his Fourth Amendment constitutional rights.³²

Judge Carrigan put into practice on the bench the values he stood for. He viewed the legal system as the great equalizer, affording justice to all. He did not, however, use the legal system simply to balance the scales. He also understood the judge's responsibility to follow the law. For example, when an Hispanic woman claimed she was the victim of sex and race discrimination in an employment discrimination case, Judge Carrigan granted the employer's motion for summary judgment because the employer demonstrated that the plaintiff lied on her resumé about having a college degree to get the job in the first place and that it would have fired

²⁸ *Id.* at 35.

²⁹ *U.S. v. Laymon*, 730 F. Supp. 332, 332 (D. Colo. 1990).

³⁰ *Id.* at 335.

³¹ *Id.* at 338.

³² *Id.* at 342.

her for that reason independently.³³ He noted that the result was “harsh,” but that he had no choice but to follow Tenth Circuit precedent.³⁴

Carrigan also displayed a fondness for wordplay and humor in some of his more eloquent decisions. He never missed an opportunity to employ colorful language, and wrote with sharp disdain when he disapproved of counsel’s actions. For example, when a litigant moved for rehearing on a decision Carrigan had issued, but brought no new arguments to the table, Carrigan was irked at the waste of judicial resources.³⁵ He not only ruled against the litigant, but wrote acerbically, “A motion for reconsideration is not a license for a losing party’s attorney to get a ‘second bite at the apple’ by using a word processor to move around the paragraphs from a previously submitted brief, and file a retread of the old brief disguised as a motion for reconsideration.”³⁶ He sanctioned the attorney who brought the motion and granted the opposing party attorneys’ fees and costs associated with opposing the motion.

His eloquence and personality were on full display in *Henderson v. Times Mirror Co.*, where he ruled that a professional football player, nicknamed “Mouse,” did not commit slander when he called his former agent a “sleaze-bag agent” who “slimed up from the bayou.”³⁷ The opening line set the tone for the opinion: “This is the case of the mouse that roared invective.”³⁸ He recognized that the football player’s comments were an insult, but ruled they were not purported facts, the accuracy of which could be proven or disproven, and thus could not create

³³ *Bonger v. Am. Water Works*, 789 F. Supp. 1102, 1107 (D. Colo. 1992).

³⁴ *Id.*

³⁵ *Shields v. Shetler*, 120 F.R.D. 123, 125 (D. Colo. 1988).

³⁶ *Id.* at 126.

³⁷ *Henderson v. Times Mirror Co.*, 669 F. Supp. 356, 356 (D. Colo. 1987).

³⁸ *Id.*

liability for slander. “While it can be generally agreed that the terms ‘sleazebag’ and ‘slime’ do not rank as descriptive words one would prefer to have in letters of recommendation, their meanings in the context of Davis’ comments is so imprecise that they cannot be considered as asserting facts.”³⁹ He continued, recognizing that “it may not be a compliment to be called . . . whatever kind of sleaze-bag one may happen to be, the mere absence of complimentary affect does not render a statement defamatory.”⁴⁰ He added, “Nor does the mere description of one’s means of locomotion as ‘sliming’ rise to the legal status of slander, for the term is too slippery to be a fact one can grasp and hold up to the lamp of truth in order to test whether the defense of truth applies.”⁴¹ In addition to seamlessly weaving creative writing with accurate statements about the law, Carrigan cited a plethora of philosophers, recognized the “vigorous and colorful insult as an art form,” and lamented the loss of “creativity in the art of abusive epithet” in our culture.⁴² It is difficult not to laugh out loud when reading this opinion, which illustrates Carrigan’s ability to have fun while also rendering a serious decision.

Carrigan continued to seek justice for powerless community members after his retirement from the bench. As an arbitrator, he worked pro bono to apportion the limited funds available to victims and their families impacted by the violence at Columbine High School in 1999. He also objected to the City of Denver imposing a sales tax to fund the new Denver Broncos stadium. Never shy about criticizing the rich and powerful, he called the sales-tax “fundamentally immoral” and the stadium “rich man’s toys.”⁴³ He, in turn, strongly supported the deal allowing

³⁹ *Id.* at 359.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 361.

⁴³ Chuck Green, *Carrigan tells it like it is*, THE DENVER POST (July 20, 1997), 1997 WLNR 7631594.

a private group to name the stadium “Invesco Field at Mile High” because it reduced the burden on taxpayers.⁴⁴

In an interview late in his life, Carrigan reflected on his philosophy of justice and of life in general. On his role as a judge, he articulated that his “basic philosophy was one of allowing the greatest freedom that we can for people within a country like ours and enforcing that freedom, and being always on the guard for people who do not have the opportunity to defend themselves and their own freedoms.”⁴⁵ And more personally, he reflected that “I guess my philosophy of life is to try to do as much good as I can and to avoid harming other people as much as I can, to enjoy the beauty around us, the beauty of nature, the beauty of other people, and try to create and invigorate within the system, the whole social system, the whole political system.”⁴⁶ Given the mark he has left on Colorado through his family, his career, and his unswerving pursuit of justice, he clearly lived by those philosophies and left behind a great legacy.

⁴⁴ Cindy Brovsky, “*Invesco Field at Mile High*” Fund group would pay \$120 million for rights, The Denver Post (Jan. 23, 2001), 2001 WLNR 14207209.

⁴⁵ *MROPH Interviews: James Carrigan*, *supra* note 9.

⁴⁶ *Id.*

Walker David Miller: Focused on “Getting it Right”

Self-described and known to many as a “country lawyer,” Judge Walker David Miller was actually a man of many talents and interests, well-loved by those who knew him best, and a judge intensely focused on reaching the “right” conclusion in the cases over which he presided.

Judge Miller was among a long line of highly regarded Colorado attorneys, all proudly having received their legal educations at the University of Colorado Law School in Boulder.⁴⁷ Judge Miller’s father, David J. Miller, enjoyed a long and successful legal career, including stints in the Office of Price Administration (wartime rationing) during World War II, and as an attorney during the Nuremberg War Crime Trials. The elder Miller’s home was in Greeley, Colorado, where he and his wife Lydia raised three children and watched in awe as northeastern Colorado rapidly expanded over the last half of the twentieth century. He even did the legal work in developing Alles Acres, Greeley’s first rural subdivision, and Miller’s parents maintained a residence there for the rest of their lives.

Walker David Miller was born in Denver, Colorado on March 31, 1939. He grew up in Greeley and graduated from Greeley High in 1957. He went on to the University of Colorado for his undergraduate studies, and continued on to the University of Colorado Law School, graduating in 1963. The future Judge Miller graduated first in his law school class, was inducted into the Order of the Coif, and was a member of the Law Review. After graduation he received a Ford Foundation Scholarship to study at the University of Chicago Law School and the University of Freiburg (Germany), receiving a Masters of Comparative Law in 1965.

⁴⁷ See generally Univ. Colo. L. Sch., *Legacies*, Amicus, vol. XXIV, no. 1, Winter 2011, at 6–7, <https://www.colorado.edu/law/sites/default/files/attached-files/amicusspring2011.pdf>.

Young Walker Miller married his longtime sweetheart, Susanne Hauk, who he met in middle school. After law school graduation in 1963, Judge Miller and his wife moved back to Greeley and settled into his family's law practice, having turned down "offers from large law firms . . . [paying] \$550 a month."⁴⁸ But not for long, as Judge Miller moved to Lawrence, Kansas in 1966 to teach at the University of Kansas Law School whose young Dean was James K. Logan, later Tenth Circuit Court of Appeals Judge Logan. After several years, Miller returned to Greeley to practice as a "country lawyer" up until the time of his appointment to the bench. During his private practice days, Judge Miller worked on a number of local cases focused on regulatory issues and utilities, and he was even instrumental in helping the Monfort family bring the Colorado Rockies to Denver.

Following Judge Jim Carrigan's shift to senior status and subsequent retirement on August 19, 1995, a vacancy opened on the Federal District Court in Denver. Judge Miller's former college roommate, turned United States Senator for Colorado, Senator Hank Brown, first floated the idea that Miller might be a good fit for the vacancy after Colorado's Senators declined to move forward with a slate of other candidates that was created in 1995. On April 18, 1996, Miller was nominated by President William J. Clinton to the position.

Miller's nomination was not without a bit of controversy, likely due to some political hurt feelings over a local judge who some felt had been passed over for the nomination during the prior selection process.⁴⁹ The then-immediate past president of the Colorado Bar Association, Frances Koncilja, sent an open letter to Miller, the United States Senate, and the local media,

⁴⁸ *Id.* at 6.

⁴⁹ Editorial, *Judicial Politics: Stacked deck: but Miller should be confirmed*, The Denver Post, May 13, 1996, 1996 WLNR 486380.

stating that Miller was “unprepared and ill-equipped” for the job of federal district court judge. She accused Senator Brown of only raising Miller’s name for nomination due to their friendship.⁵⁰ Miller responded with his own letter, outlining his qualifications and experience in great detail. This prompted Koncilja to send a second, longer letter, with all of this playing out in the local press.⁵¹ Additionally, local Denver publication *Westword* ran a story detailing Miller’s previous representation of Senator Brown’s son in a civil tort suit filed against the younger Brown years earlier.⁵² The lawyer who opposed Miller in that case, and who initially filed the tort suit, felt compelled to respond that the case “had absolutely nothing to do with the reasons for Walker’s nomination to the federal bench.”⁵³

Despite the short-lived local controversies, Miller had strong support, both from those he had worked with previously—including former United States Attorney for the District of Colorado, Robert (Bob) Miller (no relation)—and from the Denver Post editorial board, which rejected the idea that Miller was nominated solely due to his friendship with Brown. The Post observed that Miller “boast[ed] an excellent legal reputation” and urged the U.S. Senate to confirm Miller’s nomination.⁵⁴ In addition, the American Bar Association, the Department of Justice, and a commission of Colorado lawyers rated Miller as “Qualified.” On July 11, 1996, Miller was confirmed unanimously by voice vote of the U.S. Senate, less than three months after

⁵⁰ Peter Blake, *Gutsy (Foolish?) Attorney Attacks New Federal Judge*, Rocky Mountain News, May 12, 1996, at 52A, 1996 WLNR 700487.

⁵¹ Peter Blake, *Judge Nominee Joins the Battle*, Rocky Mountain News, May 15, 1996, at 39A, 1996 WLNR 664621.

⁵² Michelle Johnston, *The Senator’s Son Was Indiscreet*, Westword, May 30, 1996, <http://www.westword.com/news/the-senators-son-was-indiscreet-5056357>.

⁵³ Richard K. Blundell, Letter to the Editor, *Judged and Found Wanting – Regarding Michelle Dally Johnston’s “The Senator’s Son Was Indiscreet,” in the May 30 Issue*, Westword, June 20, 1996, <http://www.westword.com/news/letters-5056430>.

⁵⁴ See *Judicial Politics*, *supra* note 49.

his nomination. Miller was welcomed by his new colleagues to the Federal District Court bench at a public investiture ceremony in early October, 1996.⁵⁵

Judge Miller was the first northern Colorado native to sit on the federal bench since Hatfield Chilson, who practiced for 25 years in Loveland and served on the federal bench in the 1960s and 1970s. Judge Miller never severed ties with his beloved northern Colorado, choosing to reside in Greeley and undertake the daily commute to Denver. Former United States Attorney Bob Miller, who was a close friend of the Judge's for years, and who also lived in Greeley despite working in Denver, joined the Judge in a vanpool from Greeley every day for more than ten years. Bob Miller recalled that he greatly enjoyed his daily rides with Judge Miller, and they passed the time riding together in the front seat of the vanpool when it was their respective turns to drive.

Walker Miller was humbled by reverence for his position as a federal judge. Once he took his place on the bench he refused to introduce himself as "Judge." All this came at a cost: former clerks recall that Judge Miller felt very isolated in the Denver legal community due to his concern over even the appearance of impropriety or conflict. As a result, his main connection to the Denver legal community was through deep relationships with his law clerks and courthouse staff.

Judge Miller's tenure on the Federal District Court bench included no shortage of challenging, high profile cases. Like his colleagues on the federal trial bench, Judge Miller's docket presented him with profoundly difficult decisions concerning competing values: from fielding recommendations for unusually lenient punishment of a guilty criminal, in support of law enforcement's effort to land a bigger fish; to weighing rights of the unborn against a

⁵⁵ *1st Federal Judge from Greeley*, The Rocky Mountain News, Oct. 12, 1996, 1996 WLNR 682796.

female's right to choose; to balancing preservation of pristine aspects of the environment against permitting its productive use.

Judge Miller's sentencing of former Qwest finance chief Robin Szeliga illustrates the complexity of the criminal trial judge's responsibility in overseeing a fair criminal process.⁵⁶ Szeliga pled guilty to a single count of insider trading for her role in a multi-billion dollar accounting scandal. Her charge carried a maximum possible sentence of ten years in prison and a one-million dollar fine. In addition to pleading guilty, however, Szeliga also assisted in the prosecution of former Qwest CEO Joseph Nacchio, who faced forty-two counts of insider trading in the context of many small shareholder/employees who had together lost hundreds of millions of dollars of retirement savings. Due to her assistance, federal prosecutors requested that Szeliga receive a lenient sentence. Judge Miller granted that request, sentencing Szeliga to two years' probation, six months of home detention, and a \$250,000 fine.

Judge Miller's notable opinion in *Planned Parenthood of Rocky Mountains Services Corp. v. Owens* placed him on the horns of the difficult right to life/right to choose dilemma.⁵⁷ In his opinion, Miller held that a Colorado law requiring parental notice prior to performing an abortion on a minor was unconstitutional. Unlike other parental notice statutes, Colorado's law did not contain a sufficiently broad exception to protect the mother's health. Miller noted that there was an exception to allow an abortion to avoid the mother's imminent death, but he ruled that it insufficiently protected the mother's right to an abortion when her health was in danger. Thus, Judge Miller concluded that the Colorado parental notice statute was unconstitutional and

⁵⁶ Sandy Shore, *Former Qwest CFO Spared Prison Time*, The Washington Post, July 28, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/07/28/AR2006072800352_pf.html.

⁵⁷ *Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens*, 107 F. Supp. 2d. 1271 (D. Colo. 2000).

unenforceable, handing a significant victory to advocates of constitutional rights of a woman to choose, at the expense of rights of the unborn. His decision was later affirmed by the Tenth Circuit Court of Appeals.⁵⁸

In another prominent opinion, Judge Miller weighed in on the debate surrounding the effects of sound pollution on the enjoyment of public lands and national parks.⁵⁹ In *San Luis Valley Ecosystem Council v. U.S. Fish and Wildlife Service*, Miller granted a preliminary injunction preventing the Canadian oil company Lexam from drilling two exploratory oil wells in the Baca National Wildlife Refuge. The decision to grant the injunction was based, in part, on the likelihood that noise from the drilling and operation of the wells would irreparably harm the “significant ‘sense of peace’ and quiet” in the Wildlife Refuge. A study by the National Park Service’s Natural Sounds Program showed that Great Sand Dunes National Park, where the refuge was located, was the quietest national park in the country. Miller found that the plaintiffs, who lived in close proximity to the drilling sites, had an interest in the solitude and quiet that the natural setting provided. Judge Miller’s decision to protect the plaintiffs’ interest in the quiet enjoyment of the park added to a line of court decisions recognizing the effect of sound pollution on the use and enjoyment of public lands.⁶⁰

Judge Miller’s opinions in both *Planned Parenthood* and *San Luis Valley* illustrate his attention to detail and commitment to reaching a thoughtful, reasoned result, even where arriving

⁵⁸ *Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens*, 287 F.3d. 910, 928 (10th Cir. 2002).

⁵⁹ *See San Luis Valley Ecosystem Council v. U.S. Fish and Wildlife Serv.*, 657 F. Supp. 2d 1233 (D. Colo. 2009).

⁶⁰ Scott Streater, *Solitude Becomes Exhibit A in Battle Over National Parks Management*, The New York Times, Oct. 8, 2009, <http://www.nytimes.com/gwire/2009/10/08/08greenwire-solitude-becomes-exhibit-a-in-battle-over-nati-69847.html?pagewanted=all>.

at a “right” outcome may have been an impossibility in any absolute sense, and even when it took a long time to rule on a matter.

Judge Miller took senior status on April 1, 2008, and took inactive senior status just over three years later in 2011.⁶¹ Miller took the same careful, considered approach towards his decision to retire as he did to his work on the bench. He felt that his father may have continued his legal practice for too long, and he wanted to make sure that he retired at an appropriate time. When he finally did retire, he hoped to spend more time with family and to focus on matters of importance to him beyond the law.

After taking inactive status, Miller and his wife built a large, eco-friendly cabin a “hop skip and a jump” from where Miller liked to fish near Granby, Colorado.⁶² According to his wife Susanne, “Walker’s always wanted a place where he could stay night after night so he could go fishing day after day.”⁶³ Motivated by their mutual love for the outdoors, the Millers utilized beetle-kill pine and other environmentally friendly design choices to minimize the home’s carbon footprint, while creating enough space for their three children and six grandchildren to come and visit.

Judge Miller spent the majority of his retirement fishing and with his family.⁶⁴ He also used the opportunity to rekindle his love of painting. According to his sister Lydia, a well-

⁶¹ *Senior U.S. District Judge Walker D. Miller Will Become Inactive on Aug. 1*, Law Week Colorado, June 17, 2011.

⁶² Joan Christensen, *Beetle-Kill Wood Gets Second Life in Mountain Cabin Integrating Environmental Sensibilities Into the Budget*, Grand County Living, Summer 2011, http://grandcountyliving.com/articles2011/summer/features11_BeetleKillSolar.html.

⁶³ *Id.*

⁶⁴ Dan England, *Fuzzy Memories: U.S. District Court Judge Memorialized in Bears for his Grandchildren*, The Greeley Tribune, Dec. 11, 2014, <http://www.greeleytribune.com/news/local/fuzzy-memories-u-s-district-court-judge-memorialized-in-bears-for-his-grandchildren/>.

known artist herself, Judge Miller “had an art gift” ever since childhood, “but he didn’t use it until he retired.”⁶⁵ Miller even hosted a watercolor camp at his Granby cabin for all of his six grandchildren to pass on his gift.⁶⁶ Above his love for fishing, painting, and watching University of Colorado football, Judge Miller loved spending time with his grandchildren. After he passed, his wife had special memorial bears made from Miller’s old clothes so that his grandchildren could keep a special reminder of him as they grew.

Judge Miller passed away unexpectedly on the steps of his Granby cabin in 2013, at the age of seventy-four, less than three years after taking inactive status.⁶⁷ He was reportedly in good health, so his passing came as a shock to his friends and family. He was survived by his wife Susanne; his three children, Sabina, David, and Randy; and his six grandchildren. The Chief Judge of the District of Colorado, Marcia Krieger, noted that Miller “was known as a very gentle and scholarly judge.”⁶⁸ Miller’s longtime friend, fishing companion, and former colleague, Stow Witwer Jr., said that even though he could come across as “severe” due to his dry wit, Miller was truly a “gentle person and kind person, as well as a person of high principles” and would be remembered fondly by his friends and family. Witwer reminisced that it was difficult to get Judge Miller to “leave the stream” on a fishing trip because, as Miller saw it, “[t]here’s always another fish around the bend.”⁶⁹

⁶⁵ Whitney Phillips, *U.S. District Court Judge, Greeley Native Walker Miller Dies at 74*, The Greeley Tribune, Mar. 30, 2013, <http://www.greeleytribune.com/news/local/u-s-district-court-judge-greeley-native-walker-miller-dies-at-74/>.

⁶⁶ England, *supra* note 64.

⁶⁷ Phillips, *supra* note 65.

⁶⁸ Tom McGhee, *U.S. District Judge Walker Miller dead at 74*, The Denver Post, Mar. 26, 2013, <http://www.denverpost.com/2013/03/26/u-s-district-judge-walker-miller-dead-at-74/>.

⁶⁹ Phillips, *supra* note 65.