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Chief Justice VandeWalle Celebration CLE and Dinner

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CHIEF JUSTICE VANDEWALLE CELEBRATION CLE AND DINNER

RAMKOTA HOTEL—BISMARCK, NORTH DAKOTA
AUGUST 21, 2008

(The following proceedings were had and made of record, Thursday, August 21, 2008, commencing at 1:30 p.m.)

MR. BOUGHEY: Good afternoon. Welcome. I'm Lynn Boughey, co-chair with Mike Wagner, and we're glad to have so many people here for the CLE.

Our cosponsor—where's Rachel? There she is. Rachel Sinness, the editor-in-chief of the North Dakota Law Review. Our function is whenever you don't have questions, we're going to throw some at our moderators—or at our panelists here.

Two-and-a-half years ago when we talked about having this event, the celebration for the Chief Justice, we, of course, asked the Chief if it would be all right and he said, well, what if I don't make it that long? And then I said, well, then, I guess it will be a wake and whatever else we would have and just a party celebrating. We do intend—this entire day, you're going to find, is intended to be a lot of fun, a lot of humor. It is a celebration.

To that end, the CLE will be substantive, but also hopefully very lighthearted. The topics we selected, we hope, are going to engender not only a discussion, but a fair amount of humor.

So we will begin with the first two trivia questions and then have a team ready and whoever wins this—put your names on the sheet. The winners will receive, each of you, a fabulous prize, which I'll disclose when you get it, and you will have a role in introducing the Chief when it's his turn to do the ethics CLE portion. I'm hoping this will work. Maybe not. Looks like I'm going to be stuck with the podium.

So the trivia question, No. 1—and, of course, I know the Attorney General is here and he does that part-time, Wayne, so he's the ringer. All right. No. 1 is, Although born somewhere else, Justice Vandewalle was raised in blank, North Dakota?

UNIDENTIFIED SPEAKERS: Noonan.

MR. BOUGHEY: And those of you who brought The Gavel with you, put it away, the last Gavel article. So that's No. 1. And then No. 2, Justice Vandewalle graduated from law school in what year?

UNIDENTIFIED SPEAKER: 1958.

MR. BOUGHEY: So those are the first two.

UNIDENTIFIED SPEAKER: 1958.

MR. BOUGHEY: You can't say it out loud. It's a trivia quiz.

All right. Our first presenter today—and, by the way, since our guest of honor has just come up, may we give the Chief a round of applause? (Applause.)

We are going to keep all the introductions very short and everything, the bios are in the programs. And so at this time I'm going to start with Mitch Armstrong, who is going to describe one of the Chief's—one of the cases that involves the Chief, why it's important, and then we're going to pepper him with questions after Connie does her section on the dissent.

So, Mitch, go ahead and grab a mike and please begin.

MR. ARMSTRONG: Thank you, Lynn. First, I'd like to start off by just saying it's a privilege to be here today to talk to—about the opinion the Chief has written in a dissenting case, *Bulman versus Hulstrand Construction*.

This is a wonderful event and, according to the brochure that the State Bar Association sent out, I'm supposed to provide a spirited review of the case, and when this brochure went out, I had a law school classmate of mine send me an e-mail that said that he's never seen me spirited, except for after I've had a few too many beers and then he says I curse too much. So I haven't had any beer before today, but I will try to make it as spirited as possible, but please keep your expectations low.

The *Bulman* case is a 1994 case, and it evaluated whether the doctrine of sovereign immunity for lawsuits against the State was constitutional under the open courts provision, Article I, Section 9 of the North Dakota Constitution. And this was an area of law that had been evaluated in many cases before, which are cited throughout the opinion.

The *Bulman* case was a traffic accident that occurred in December 1991 around Amidon, North Dakota, on Highway 85. The area was under a construction project. *Hulstrand Construction* was the general contractor. Their work was suspended for the winter. And the State had gotten summary judgment on sovereign immunity grounds. *Hulstrand* subsequently got a summary judgment because they did not have control of the project at the time. The summary judgment against *Hulstrand* was upheld because they didn't have control. The summary judgment against the State was reversed.

The majority ruled that sovereign immunity was not included in Article I, Section 9 of the North Dakota Constitution. This opinion—the reason I picked this opinion, first off, is because it shows some of the Chief's personality and some of, you know, his philosophy on these issues. And in

looking through the case, the majority opinion said it wasn't included. There was a long line of cases previously that had upheld sovereign immunity, and the Chief took exception to this and he wrote a fairly strong dissent. And when I first read it, I'm like, boy, those two justices must not have gotten along very well. I remember when I was clerking with the Chief, he was out in California or something and he mentioned that he was in—met with Justice Levine and had a fun time visiting her, and I could tell he was very fond of her and so I said, well, jeez, I read the Bulman dissent. He said, oh, no, that's just—you know, that's just business.

It was a good lesson because, I mean, it showed that, you know, you can have—you know, me as a young lawyer at the time, I was less than a year out of law school, it just showed that, you know, it's okay to disagree strongly with your adversaries. It doesn't mean it has to be personal.

It was a very good lesson to learn and to hear about that, because, you know, I don't know if some of you remember when you were out of law school, you were ready to start fighting right away and sometimes don't necessarily know the difference between the personal side and the professional side, so it was really nice to see that and show that, you know, you can have a strong disagreement without—with opposing counsel or with coworkers or with other judges and it doesn't necessarily mean that there's any personal animus there.

If you look at the Chief's dissent, it begins on page 12 of the—or 13 of the handout here. And, basically, you know, as I was looking through this, I went back and there were various cases cited previously and, actually, this overruled many cases and there was a lot of parts in here where they said we overrule our previous cases and there was actually a line of about ten cases that were cited as saying that sovereign immunity is protected under Article I, Section 9 of the—or was included in Article I, Section 9 of the Constitution, and as the Chief starts out, he says, "By the sleight-of-hand of reducing the constitutional provision prohibiting suits against the State to a "common-law doctrine" the majority arrogates to itself the authority to set aside the North Dakota Constitution. . . ."

And I was a little curious about this as I was reading this opinion. I noticed a case that was cited a lot was a case called Leadbetter, which was only three years previously, so I checked that case and I noticed that case did hold that sovereign immunity was included in Article I, Section 9 of the Constitution, and I was wondering—I was going, well, this is only three years later so I checked the two opinions against each other and I noticed that this time period, there was a fairly major change in the composition of the Court at the time. Leadbetter was Justice Erickstad, Gierke, VandeWalle, Meschke and Levine. Bulman, within three years, it was,

Justice Levine, Neumann, Sandstrom, Bert Wilson was the surrogate sitting for Justice Meschke, and Justice VandeWalle, so there was only two common judges between those two opinions, even though they were only three years apart.

And I was wondering, you know, what brought about this change, which was a pretty drastic change in North Dakota law. It overruled many cases. And, obviously, the Court had changed. And I was wondering, you know—I think part of the opinion here and part of the back-and-forth between the judges and the Chief's dissent, and I haven't talked to the Chief in detail about this, so most of this is just my speculation, you know, is—you know, in three years how do we overrule a part of the Constitution that's been upheld in, you know, 10 cases going back to, I think, 1916.

And I think, you know, the Chief, as I worked with him, he was always really big on separation of powers and those other cases had basically held that it was the Legislature's role to provide when the State can be sued and when it can't be, and then there was this shift here in the time period and I think, you know, maybe there was some concern on the Chief's part, you know, for the Court's—you know, the Court itself had changed a lot and possibly there was a concern of, you know, that doesn't mean all the law that was previous to this present Court now is different, and I think that's part of what comes across in his opinion and, you know, this had been a pretty hot topic in previous areas. Justice Meschke had written dissents previously and there was, obviously, a long line of disagreement in this area.

And there was previous cases, the Kitto case, which held that—was one of the cases that actually held that there was sovereign immunity for the State or mentioned it, anyway, but that there wasn't for political subs, which kind of elevated the State to a different level, which was also—you know that, I think dicta in that case would have been overruled by this Bulman case.

But the main thing about Bulman, you know, the part that I looked at the most is—it's on the bottom of page 14, the last paragraph, and that paragraph, I think, provides a little glimpse into the Chief's maybe judicial philosophy, if you will. You know, he talks about his view on stare decisis, and it actually indicates his personal belief is different than the law which he's citing and the opinion he's writing, you know, which I think shows that he prefers consistency in the law and feels it very important to follow previous decisions.

And I think really what the difference here, being that the Chief is indicating in his opinion that it's his personal belief that the Legislature should address it, not the Courts, is that maybe rather than overturning these

previous precedents, it would have been a better method to say, you know, this is—you know, maybe give a warning shot to the Legislature, this is something you're going to have to visit or we will, rather than judicially abolish it on the spot three years after the Court has ruled that there was sovereign immunity.

But—so I think that paragraph shows a lot about the Chief and how he looks at the case and I think—the main thing I took from the case is that it was my mistaken first impression that maybe, you know, there must have been some pretty strong personal animosity here when this was out, and I later came to realize that that just wasn't the case and it was just a disagreement on the law and that's all that it was, and it was a good lesson for me as a young lawyer to learn that working for the Chief.

MR. BOUGHEY: Next, we'll have Connie discussing the dissents as the Chief focused on both this case and the one that she has provided in the materials. So we have Connie Hofland.

MS. HOVLAND: Thank you, Lynn. Can you hear me okay? Maybe I'll pick it up. I feel more like a movie star when I hold it in my hand, too.

Actually, I want to talk mostly about Sigman and some more about dissents in general. I think same kind of thing, early on when you start clerking for the Chief when you come out of law school and you're reading, especially when you read a lot of U.S. Supreme Court decisions and there's all these dissents and you kind of get this feeling like, oh, I bet they love writing these dissents, you know, it's like you just get to get in there and say what you think. I think there was some case early on and I mentioned something about, you know, there will have to be a dissent and the Chief said—made very clear he didn't like writing dissents and that, you know, they meant to him that they were like a defeat because he hadn't gotten the majority to agree with him. And so, you know, he said that right off the bat, but yet also the way he used dissents was sparingly, but very—when he really needed to, and that's why I think when you read opinions of the Court and the Chief has dissented, that it's very meaningful and not done lightly at all.

The case I'm talking about today is *State Farm v. Sigman*, and it's an insurance coverage case. Actually, it's a coverage for insurance coverage dispute case. It starts out with a couple of high school kids in dispute over a girl. Robert Sigman is a junior and Brett Rudolph is a freshman and something was said about a girl. They get in a dispute and Robert strikes Brett and breaks his jaw. So then Brett sued Robert and then Robert's dad asked his home insurance, State Farm, to cover the liability, to indemnify and defend. And State Farm did. They stepped in and defended, but they reserved their right to contest coverage.

So State Farm filed a declaratory judgment action against Robert. They said they weren't obligated to defend and indemnify because the homeowner's policy excluded damages from willful and malicious acts, and this was an act where he actually struck him, or for damages expected or intended by an insured.

The other side, Robert said it was covered because he—striking Brett was not intentional and malicious, it was an impulsive reaction because he had learning disabilities, dyslexic learning disability, and he sometimes misinterpreted what he heard and saw.

So State Farm decided the cost of litigating the duty to defend would not be straightforward. The cost would be considerable, so they did settle with Brett the underlying claim and paid Brett \$17,000 for the liability and dismissed the lawsuit. So then they still have the dec action going, the coverage issue.

State Farm sought to have the coverage issue dismissed because they said the coverage issue was moot at that point and Robert agreed it was moot, but wanted State Farm to pay the attorney's fees that he had incurred for the coverage action. And so that's what this is all about.

The trial courts dismissed the coverage case, but awarded Robert, the Sigmans, attorney's fees and costs for a total of almost \$24,000. The trial court said that the policy language covered the costs incurred by Robert in defending the coverage issue because it was an expense incurred at State Farm's request.

(Discussion off the record.)

MS. HOFLAND: Okay. I'll never make it as a movie star, I guess. Can't get the mike to work.

So let's turn to page 32 of your handout and you can see what the trial court said. They really based it on the policy language and said under the policy language of all the case, the dec action caused defendants to incur attorney's fees and costs in defending the action so there was coverage under the policy for the costs. And they said that the policy language is ambiguous, so, of course, when insurance policy language is ambiguous, you have to interpret it in favor of the insured, and so they said that reasonable expenses an insured incurs at our request could include defending an action concerning coverage.

And I think really at the gist of it for the majority opinion is on page 35 when they say—it's near the front, the third paragraph, "The insured pays premiums to receive protection, not a lawsuit from an insurer."

They did it on the basis of the policy language, but they also did it on the independent grounds, and that was in the declaratory judgment action

Statute 32-23-08 that provides for supplemental review, so they had an independent ground as well for providing this relief.

So that's what the Court said. In summary, we conclude the supplemental relief may include recovery of attorney's fees incurred by the incurred in successfully establishing coverage.

Oh, let's go one step back. As you remember, they didn't go forward with the dec action, they instead dismissed it as moot, but the Court says in the paragraph, and this is stretch No. 1, I think we could call, they said, Robert's conduct was covered by the homeowner's policy—they are going to assume that because it had settled.

Well, the Chief didn't go for it. His dissent starts on page 37. And I'm just going to read the very first part of it. And that's what I like about the dissents, is you really get the Chief's real words. In clerking for the Chief, you didn't—he didn't have the clerks draft the dissents at all. And it was because, again, it was out of consideration for the clerks. He didn't want any animosity that came because of dissent to be reflected on the clerks. At least that was one of the reasons. I guess he wanted to take all the blame himself. So the good part is that you get his real words and great phrases.

So the first paragraph is, "I respectfully dissent. The majority's construction of the language of the insurance policy leads to a conclusion that State Farm agreed to pay Sigman for resisting State Farm's effort to prove there was no coverage under the policy. I cannot accept that contorted construction. The obvious purpose and meaning of the language in the policy is that Sigman will be paid expenses for assisting in trials and hearings involving, in this case, the Rudolphs, the third party. It defies belief that State Farm requested Sigman to assist in the declaratory judgment action or that Sigman aided State Farm in the investigation or defense. . . ."

He acknowledges that when an ambiguity exists in an insurance policy that it must be interpreted in favor of the insured, but he goes on to say, "I would not stretch that principle so far as to reach an absurd result." This is the language you love to hear when you're in insurance defense and you're wondering about a coverage issue or not and you're thinking, well, I suppose it could be ambiguous, and then to find someone that says, well, you know, maybe that only goes so far.

Then he makes a distinction that if you're really depending on the language of this policy, that you would have coverage whether or not you covered the underlying, whether or not the policy actually covered the liability for the underlying lawsuit or not, so he makes that distinction as a fly in the reasoning.

But since that, in 1995 there was a case *State Farm v. Estate of Gable* that clarified that, no, they would not be required—the insurance company would not be required to provide payment of attorney’s fees for a dec action if they found out there was no coverage, so that was later clarified by the Court.

Then he goes on to have some other nice, colorful language, talking about the statute. In his reasoning he talks about the statute that had previously said you can’t get a dec action, as I understand it, until the underlying lawsuit liability on that is determined and then the Legislature changed that and they said, no, these are two distinct things, you can do a dec action before the underlying suit is done to determine who has coverage and who doesn’t. So he’s saying the insurance company won that one, but he said—as far as getting the legislation changed, but he called it “a Pyrrhic victory,” which he was referring—I had to look it up. You guys probably know, but referring to King Pyrrhic, who after he had defeated the Romans in a battle, the defeat was so disastrous to his own troops that he said, “Another such victory over the Romans and we are undone.”

The Chief also recognized the equities if there is coverage for the underlying liability, and that if there is coverage for the underlying liability, you pay for the insurance, you had to now pay expenses to cover the case to defend that there was coverage. You can see there’s equities for that, but he said there’s no equities if there was no coverage in the policy itself.

And then, again, to illustrate that the Chief really had good reasons for his dissents, ultimately in this he said this could prove detrimental to the insured because insurance companies, if they know they are going to pay for they may have said that this was pretty slam dunk, there was no coverage, willful, malicious, probably striking someone in the face was, they wouldn’t defend at all, so actually the insured may be disserved by this majority opinion. As he says, “If the majority opinion appears favorable to the insured, I suggest that edge will be short-lived. The majority has done them no favor.” And that’s it for that dissent.

MS. SINNESS: The next cases up for discussion are *Damron v. Damron* and *Jacobson vs. Jacobson*, and Petra Mandigo and Carey Goetz will take the floor for those.

MS. GOETZ: I think we’re going to have to share like Donny and Marie.

MS. MANDIGO: Can you hear us? Can you hear me now? Carey and I are going to tag team just a little bit on this one. I am not a family law practitioner, Carey is, so she has a little more insight than I do for this.

For the record, Carey and I didn’t participate in this opinion at all when we were at the Court, either of them, clearly. The first one was in 1981. So

we did not—we didn't do any research on this one. We didn't help draft it. We certainly didn't draft the opinion because we never did draft opinions. The judges did that.

So our interest in the case at the time was basically that it was really very interesting. The ACLU did come and argue, which was unusual in our Court. I think that we all actually attended the oral argument and that wasn't something we did on a regular basis. So it was an interesting case for us and that's the majority of our interest in the case. Carey is going to tell you a little bit about the facts and the holdings specific to those two.

MS. GOETZ: Jacobson was decided in 1981, and it was a divorce action with custody involved. The mother had won custody at the trial court level. And the parties had divorced. The mother was—she was gay and she was involved in a same-sex relationship with another woman at the time of the entry of the divorce, and the husband appealed based on the homosexuality of the mother. And the Supreme Court in 1981 had noted the society, the mores of society at the time. And had noted that, well, you know, opinions and the mores of society may change over time. That certainly wasn't that day. And the North Dakota Supreme Court ended up ruling that the trial court had erred in finding that it was in the best interests of the child to live with the mother and overturned the trial court to award custody back to the father.

This was based on the evaluation of the best-interests factor, which for those of you who practice family law is 14-09-06.6 in the Code. And the Court seemed to be most focused on the fact that she actually was engaged in the same household living in a relationship with this woman. And also because of the lack of a legal relationship that this relationship had and legally could never have, at the time, anyway, that they foresaw. So they had returned custody back to the father.

Now, in *Damron v. Damron*, that was a 2003 case. This is a different case. This is a modification of custody case. The parties divorced and within a year the husband had decided to modify custody based on the fact that the mother was living in the same household in a same-sex relationship with her partner. And North Dakota Century Code has very specific provisions for modification of custody, especially within two years. You have to not only show it's in the best interests of the child, but under 14-09-06—I misquoted the best interests. Under 14-09-6.6(5)(b) you have to not only show the best interests of the children, but you also have to show that the child's present environment may endanger the child's physical or emotional health or impair the emotional development of the child.

The trial court ruled that—they kind of combined the best interests. They said it was not in the best interests of the children based on the harm that the children are suffering within the household.

So this went up to the Supreme Court. The mother appealed. And the North Dakota Supreme Court—the husband had argued that based on Jacobson, there was a per se rule created that stated that actual physical harm within the requirements of the Code is demonstrated as a per se rule according to Jacobson so custody should be modified to him.

The North Dakota Supreme Court overruled Jacobson to the extent that it could be read as being a per se rule of a finding of harm to the child. The trial court never found that there was any evidence of harm or potential harm to the child in this case. So the North Dakota Supreme Court found that they didn't satisfy the second requirement of the modification statute in showing that there was harm. There was no best-interests analysis in the Damron case. And I'll continue on, unless, Petra, do you want to?

MS. MANDIGO: Go ahead.

MS. GOETZ: Okay. What I was going to say, I think that the interesting part of these cases, you know, this is a hot-button issue. It tends to be hot button as it continues on. And there's a lot of pejorative terminology in the media today about activist judges. You know, the North Dakota Supreme Court, especially under the Chief's leadership, I think, looks at these issues and they look at them very narrowly and they decide the law.

Valerie Damron had appealed on constitutional grounds. That was not necessary in the determination of whether or not a motion to modify should go through. And the Court shows great restraint, I think, in deciding the issue that's properly before it, instead of using it as a political forum, which it is not meant to be. So I think that is one of the Chief's many, many legacies that he will leave.

MS. MANDIGO: One of the questions that I think comes up and is relevant to these—well, twofold. Did Jacobson establish a per se rule and, secondly, was it even overruled? And I think to number one, I don't think there was a per se rule established. Jacobson was an original child custody determination regarding the best interests of the child, and even in Jacobson the Court only states that they were not prepared to conclude that a gay or lesbian status was not a significant factor, but they don't actually go ahead and say it is a significant factor, and I think with our Court some of those intricacies are important.

In addition, the Court doesn't come out and say that flat-out the gay or lesbian status was the relevant factor. What they say the relevant factor was, was that they were living together in a same-sex relationship at the time. Now, is that kind of a distinction without a difference if you don't

take into effect the effect on the child? Maybe. But the Court doesn't quite go as far as to say even in *Jacobson*, that the gay or lesbian status is important or is a relevant or distinguishing factor. And then in *Damron* I think it doesn't really totally overrule *Jacobson*, except to the extent that they say to the extent *Jacobson* can be read to create a presumption, it's overruled.

Now, in my experience reading these opinions, I kind of think—and I don't know if Carey agrees with me—but that's the Court saying we never intended to create a *per se* rule, we didn't create a *per se* rule, but for the clarification of everybody, it's not a *per se* rule. So that's kind of why I think that was said. And the Court's actual holding is limited to modification of custody within two years. They don't actually address the best interests of the child or original custody determinations. It's probably reasonable to assume that their statement that gay or lesbian status alone in the absence of potential harm to the children is not determinative of custody, probably can be and will be applied in original custody determinations.

But I don't know that I think *Damron* was a true overruling of *Jacobson* or that it was a huge leap from *Jacobson*. I do think that the case shows a very interesting aspect of the law, which is the fact that it is kind of a living thing. Obviously, there are different judicial interpretations, judicial temperaments and in this area seems to be a place where the societal views and the societal norms affect the way that cases are decided over time. Now, whether that's an appropriate way to decide cases, I'm not going to comment on, but I think it's an interesting illustration of one and it's interesting also that the Chief happened to be involved in both decisions and they were decided over 20 years apart. And I think that's an interesting point for the Chief's longevity.

But—so in conclusion, it seems like right now gay or lesbian status is not determinative of custody and it is not grounds for modification in two years, but that's all we know. As to what the future holds, we don't know at this time.

MR. BOUGHEY: Well, I think we've got the mike figured out now so—and, Rachel, I don't know if you're able to turn the mike on back there? Do we have any questions for our panelists? I see the family law section over there. I'm sure they view a portion of this. What is the law now in reference in your view? How would the Supreme Court handle the gay and lesbian issues and selection of the child's parent?

MS. GOETZ: I don't know that the law has necessarily changed at all. I mean, I think that they're still looking at the best interest factors, which is what they did in *Jacobson*, and there's still the requirement under the statute that you have to show that there's an actual evidence—or evidence of actual or potential harm. I think, you know, the Courts are obviously still going to

follow the Code. They're still going to look at the law and follow that. So I don't know if either case really was determinative of a changing law necessarily towards them. And they both dissented on very specific facts.

MR. BOUGHEY: If all things are equal, does a person who is not gay win?

MS. GOETZ: I don't know if I would agree with that. It's hard to say, but—I don't know. That's my best answer, I guess.

MR. BOUGHEY: Mr. Martin.

MR. MARTIN: I don't do family law at all, but isn't there an argument now, based upon the constitutional amendment, that that's a relationship that can never have any legal standing in this state and can't you argue at that point that there is a moral—a bad moral influence on the children at that stage because there is no legally recognized relationship?

MS. MANDIGO: I think that's an argument that people will make. And there are various arguments that are made throughout the country on this issue. One of them is the legal status of the parents and whether their relationship can have legal status. It hasn't been very well litigated and hasn't been, in my opinion, a huge consideration, but it is one of the arguments made regarding the best interests of the child. And, obviously, they are still going to take into account the best interests of the child and that doesn't change by either Jacobson or Damron.

MR. BOUGHEY: I forgot to mention, when you ask questions, please state your name because as in the Bar convention, this is going to be typed up and published in The Law Review, so please present your question.

MR. PHIL JOHNSON: I see that The Law Review is being more actively read than it used to be. This is Phil Johnson. Just a couple observations. I have some familiarity with the Kitto case, which is cited by the Chief, and I might say I thought his analysis was brilliant in citing Kitto in relationship to sovereign immunity. But my other question would be whether we can turn to The Law Review as an example of how to deal with some of these family law issues. It may be that the change in leadership of the law school has led to these controversial Law Review articles, because I know under our previous dean nobody read The Law Review. (Laughter.)

MR. BOUGHEY: Dean Davis, would you like a rebuttal?

DEAN DAVIS: I know better than to open my mouth when Phil talks.

MR. BOUGHEY: One of the questions that was presented about Bulman, which has been a planted question, is everyone said that the Chief is such a nice guy, but this dissent indicates that he has some teeth in regards to arguments, and so I'm wondering if we could have a discussion of what is it like in chambers with the Chief Justice when he's telling you

you might have missed a case, and he's always very gracious, but if we could have some of you describe some of the interactions.

MR. ARMSTRONG: Well, I think Connie probably hit the nail on the head when she said, you know, the Chief doesn't like to dissent, but he's also not one that will pull punches. You know, he'll tell it like it is.

And as Lynn was talking, it kind of reminded me of kind of a funny thing that happened to me with the Chief one time when we were talking about opinion and I had done some research and he said, isn't there a statute on that? And I said, I don't think so. He says, I'm pretty sure there is, and he just reaches behind him, grabs a book off the shelf, opens it up right to the page the statute was on and said, it's right here. I don't know if he prepared before I came in there to do that or not. But if he did, it sure didn't look like it. It looked like he just opened it up right to the page and he was on the statute that pretty much answered the question that I had researched for about five hours and could have just looked at the statute.

MS. HOFLAND: I have a similar story to that. I think it was either for an opinion or maybe a dissent or something. The Chief did ask me to look up a case and he said, I think there's a case on that. And I had already looked at some, you know, and I'm like, I can't find it. He said, it has the word "ameliorate" in it. And so I went back, I thought, okay, ameliorate, I had written it down. I kind of kept on looking the way I was looking, couldn't find it and then I just searched "ameliorate" it jumped right up, exactly the case. Is there another question out there.

MR. ARMSTRONG: I think you had asked about, you know, everybody says the Chief is such a nice guy and I think what that kind of gets to, is, you know, in my working at the Court, when the Chief—the nicer—or the more the Chief disagreed with someone, it seemed like the nicer he was towards them, you know, for any particular issue. I mean, it was always—you never heard him say something, you know, personally bad about another justice or a lawyer's case or a lawyer's brief or something. You know, he might say, I don't understand the argument or I don't buy their point here or I'm not following their reason, but it was never personal and, you know, the stronger he disagreed with someone, the more it would change to, you know, like, you know, Justice So-and-So to first name. The stronger he disagreed, the nicer he was on a personal level, so I think it was just his diplomatic way of, you know, making it a pleasant working environment and, you know, dealing with issues that can cause strong disagreement.

MS. HOVLAND: So now I guess we have to be concerned when he's always been nice to you.

MS. GOETZ: I have kind of a funny sidebar, no pun intended, comment. Petra and I, when we clerked together, we had debated before Halloween whether or not we were going to actually wear our costumes to the Court. She was a jailbird Martha Stewart played in a DOC uniform, and I was Miss Kansas with a wig and a sash. And we did. We wore our costumes to work. And we ran into the Chief in the hallway. He went and got us candy for trick or treating.

MS. MANDIGO: But we didn't clerk for the Chief.

MS. GOETZ: No, we didn't, but he gave us candy and we were very happy.

MR. BOUGHEY: Do we have any other questions from the audience before we move on to our next panel?

I do have one question on Bulman and I see Justice Meschke is here. Judge Meschke, you recused yourself in the '93 one, but then took yourself off the '94 one and so you didn't get to write on the issue that is dear to your heart thanks to the Kitto case that you brought when you were in practice. I'd be glad to grab you a mike. We were talking and we were curious why it is you ended up being on the first one, but not the second one. I'll get you a mike.

JUSTICE MESCHKE: I have no recollection. (Laughter.)

MR. BOUGHEY: The answer was, "I have no recollection."

JUSTICE LEVINE: I have to add to that, I thought Justice Meschke wrote the Bulman case. (Laughter.)

MR. BOUGHEY: Is that what the word "recuse" means? Are there any other questions? Any other comments that anyone would like to make? All right. Well, we can thank our panel here. We're going to bring up the next panel. (Applause.)

While our panel of judges are coming up, I'll give you a few more of the trivia questions while we're working on this. No. 3, Justice VandeWalle served in what position on The North Dakota Law Review? When he was in law school, what was his position he served on The North Dakota Law Review?

UNIDENTIFIED SPEAKER: Editor-in-chief.

MR. BOUGHEY: Don't say it out loud. No fair. No. 4, Justice VandeWalle assumed his position on the North Dakota Supreme Court on what day?

UNIDENTIFIED SPEAKER: January 1st.

MR. BOUGHEY: While we're waiting—this is actually to give us some time while our distinguished judges get up here and be seated. In what year did Justice VandeWalle become Chief Justice VandeWalle? Now we're getting a little harder questions here. That was No. 5. No. 6,

many of you will know this, but Justice VandeWalle's mother's first name is what? And, lastly, No. 7 is, although Jerry VandeWalle had accepted a position at a Williston law firm immediately following law school, he was informed, indeed, directed that he would not be taking that position and he would work for the Attorney General for one year after graduation. Who informed him of this fact that changed his life? That's No. 7.

We now have four very distinguished judges and surrogate judges and a former justice, who we just discussed one of her cases and the dissent, and so as our program had said, the judges who agreed to be here agreed under two very important criteria; one, we won't have to prepare anything. Two, we can say whatever we like. And since they're judges, we, of course, were glad to do so.

So we have here on the panel—and we are going to start with Judge Olson, because he is prepared to kind of give a view of the change of administration of justice in the last thirty years while Chief Justice VandeWalle has been on the bench. So Nels Olson will begin and then we will go forward with the other judges. Judge Foughty is here with us, Judge Smith and, of course, former Justice Beryl Levine.

So if you'd begin, Judge Olson, we'd appreciate it.

JUDGE OLSON: Thank you, Lynn. First of all, I'd like to thank the previous panel for not including the cases where I was reversed in their materials. It did happen.

Lynn, in an e-mail to me, said that war stories were not only permitted, they were encouraged. I have some hesitancy about that because my view of war stories is that they are given for the purpose of self-aggrandizement and are somewhat fictionalized by the faulty memory of the speaker, so to the extent that any of my remarks are war stories, I'll apologize in advance.

My comments mainly relate to my experience in the Minot chamber, rather than an overall view of the North Dakota judicial system, and the changes that I've encountered over the years.

To place matters in context, I was elected to the district court bench in 1978. I think that was approximately the same year that Jerry was elected to the Supreme Court. The vacancy had occurred in the Williston chambers due to the retirement of Eugene Burdick. Another attorney was the only person to make the filing deadline for the primary. A number of attorneys wanted an alternative and I was encouraged to seek office. There were any number of other attorneys who were infinitely more qualified than I was to be a judge, but I was the only one foolish enough to undertake a write-in campaign.

Write-in campaigns were difficult because in larger areas like Minot they used voting machines and you couldn't use stickers because the dang

things would come off and get bungled up inside the voting machine. Fortunately, I gathered enough write-in votes in the home county of my opponent to qualify for the primary ballot.

In 1978 the various districts, through their presiding judges, I think had greater economy and operated on a much more informal basis than they do today. For example, when I was running for office, I had communication with Judge Beede. Ilvedson and Beede were the two judges in the Minot chambers at the time. I was running for a position in the Williston chambers. Well, Judge Beede and I agreed since my family was in Minot and he had been in Williston in private practice, that he would agree to accept reassignment to Williston. Well, shortly after the election, Judge Ilvedson cut an order assigning me to Williston—or assigning Judge Beede to Williston and me to Minot. He told me a short time later that he got a call from Chief Justice Erickstad, who reminded him that assigning judges to chambers was the exclusive province of the Supreme Court. Anyhow, Justice Erickstad did do an appropriate order and everyone was happy.

A word about the differences in case assignments is really quite interesting. In the Fifth Judicial District, as it was known in those days, we had arraignments at 8:30 Thursday mornings and the two of us and later three of us would take turns on hearing arraignments and whoever the judge was who took charge of the arraignment would generally follow that case through to its completion. And I don't really recall how the cases were come to be scheduled, but my best recollection is that the defense attorneys would be responsible so, you know, there was a good deal of obvious judge shopping going on under that system.

Civil cases, civil cases were rather interesting. When—one of my instructions from Judge Ilvedson—and I really appreciated working with both Beede and Ilvedson. Beede, before he left for his reassignment to Williston, had numerous notes. If any of you know Judge Beede or worked with him, he had all kinds of crib sheets and he went to the work of copying all those for me and putting them in book form, so even though we didn't have bench books at that time, I had my bench book compliments of Judge Beede.

Judge Ilvedson was a gracious and kind mentor. We had a good working relationship. And he said, Judge, you know, you're going to get some time on your schedule and when that happens, there's this file drawer in the clerk of court's office and in this particular drawer is where the clerk put the filings that had certificates of readiness. I don't know if they even use those anymore, but for the younger attorneys, when a lawyer had a case ready to go to trial, they filed a document known as a certificate of

readiness and through the process the judge would pick it up and eventually schedule it for trial.

He said, send your court reporter down there, grab a handful of files from the back of the drawer and send out your trial notices. And that was our method of assigning civil cases. Fortunately, we never got into a discussion about, you know, which court reporter had the biggest hands or that one court reporter might have bigger grasp than others.

In earlier years some judges utilized the call of the calendar. It was a system whereby the attorneys who had cases ready for trial would be invited to the courthouse for coffee and cookies and then they would visit with the judge about a trial date for their case. I thought it was a huge waste of time and I don't think I participated in any more than one or two calls of the calendar before I gave up on them.

The scheduling of cases has been greatly facilitated by court administration. I mean, people have different views on court administrators, and if you're a judge, it's mostly probably negative, but I think they really are very helpful. In the Ward County Courthouse, for example, we had two large courtrooms, both capable of jury trials, but at that time one of the courtrooms was the province of the county judge so that left the two or three district judges with use of one large courtroom and then we had another small hearing room. Well, see, at that time each judge did their own scheduling and you can imagine the confusion and problems when you have two or three judges each scheduling their cases and trying to maneuver in a particular courtroom. And some of the judges were very protective of their schedule. They would not reveal their schedules to anyone, including the other judges. And through court administration we finally convinced the judges that it was in their interests to give up some of their prerogatives.

Another area where judges—at least in Minot. Maybe it wasn't this way in other chambered cities—insisted on having their own jury panel. So, for example, when Holum and Berning and I were judges, we each had our own jury panel. Well, one day in the mail I get this questionnaire to be filled out and returned to the clerk, qualification for jury service, and I thought, well, you know, I can get out of this, but I'm going to have some fun with it, so I filled it out and sent it back because there's one chance in three that I'd end up on my own jury panel, and I thought that would be kind of funny. So, fortunately, the judicial system in Minot at least avoided some embarrassment because I ended up on Judge Holum's panel and he promptly excused me from service.

Another kind of advantage back then was that we had no summertime jury trials in Ward County because we didn't have air conditioning and I know Ilvedson was a great golfer and for judges who liked to golf it was

quite a benefit because they didn't have to schedule jury trials. Then some darn fool commissioners decided to put in air conditioning and now they have to schedule jury trials on a year-round basis.

Just a word about personnel before I conclude. The personnel system was in a real state of disarray and the Supreme Court attempted to address the issue by establishment of a personnel advisory committee. I initially served on that committee and I think Judge Backes, as I recall, was probably chairman. A lot of turf wars to battle with the judges and even with the Supreme Court Justices, but, finally—they did have two separate committees, one for the Supreme Court and one for the trial court and eventually cooler heads prevailed and those two committees migrated into one committee. I can say a lot more about committees, but I won't.

Court reporters were, I think, regarded as employees of their assigned judge and during the 1978 election, it kind of dawned on me that Gary Crum, who was Judge Beede's reporter, might be concerned about his future employment so I telephone him one day and said, "Hey, you know, if I'm elected, don't worry, you'll still have a job." Court reporters were expected to coordinate their vacation schedules with those of the judge for whom they worked. I spent quite a bit of time at the National Judicial College. I went a three-year—three-week term initially and then a year or two later went back for three years as faculty adviser and, of course, that was to the benefit of my court reporter. I had intended to go during my first year in office, but then I changed my mind at the last minute and decided, no, I want a year under my belt before going down there. I thought I would be of more benefit. That was the only time that Gary Crum, who was my reporter for the initial two years, expressed displeasure with me because he had already made elaborate plans for vacation that he had to give up.

There were no standard work hours. You know, we often ran into the evenings, occasionally even on Saturdays with jury trials and when that happened, I usually told the staff, come in late tomorrow or—you know, if the schedule permitted. It was handled on a very informal basis.

Okay. I'm about up with my time. In conclusion—one thing I've got to cover. Back in the '70s and probably in the '80s, I think the only money that the State spent on the system was probably judicial salaries. Everything else was budgeted by the particular counties that we worked in. And I was no more than a couple months into office when Judge Ilvedson handed me this file for Ward County and said, here's our prior year's budget, make up a budget for the next year. You can do it. Besides it will be good for you. Compare that with the budgeting process now.

Some of the things I enjoyed most about being a judge. I once commented to my faculty adviser at the Judicial College that I found

nothing more enjoyable than working a good jury trial where I had competent attorneys who came fully prepared and this judge, who was quite a bit senior to me said, and there's nothing more frustrating than to work a jury trial where you have two incompetent attorneys who come fully prepared. (Laughter.)

Several years ago Judge Kerian came across an old transcript of a disciplinary proceeding against a judge, who I think was thought to have too close of a relationship with the bottle. And at that time judges traveled from one area to another by horse and buggy. The examiner asked the judge whether it was true that he and his driver consumed a pint of whiskey en route, to which the judge replied, "We made do." So if asked about the system, how it functioned during my 24 years on the bench, my response would really be the same. "We made do."

MR. BOUGHEY: Thank you, Judge. Judge Smith, I think we'll move to you now. Let me get the mike over to Judge Smith. There you go. And you have a picture you want me to circulate?

JUDGE SMITH: Yeah. I gave you several copies of that, a picture that we are going to distribute through—copies through the room are from the 1956 group of the Phi Alpha Delta law fraternity and it's—the next trivia question is which one is Justice VandeWalle. And so, anyway, there are several of those copies. You can use them. And I want to say that although I'm a senior judge to our studious friend from Minot, I did not drive around from district to district court in a buggy or with a bottle. (Laughter.)

And it is an honor and a privilege to be asked to be a part of this program to honor Chief Justice VandeWalle. And when I looked out into the crowd, I started over in the corner and I didn't realize how many people were going to be here, but I'm so pleased to see so many attorneys and judges, former judges and federal judges, as well, here today and dean of our law school, retired dean of our law school, are here to do the same thing that I'm happy to do and that is to pay honor and homage, really, to Chief Justice Gerald W. VandeWalle, and I'm very happy to. I hope—nobody has given him a hand of applause yet. (Applause.)

I also want to thank Lynn Boughey and Michael Wagner for inviting me to be a part of this program. So I had written a letter a year ago now and this was originally scheduled to be done on the 15th, but there were other reasons, I understand, why it was moved until today, but I did write a letter to Michael Wagner thanking him to include me in the program. And I made some statements there which I'd like to repeat to you.

It has been my good fortune to have attended North Dakota School of Law from September of 1954 until graduation in 1957. Gerald VandeWalle came to UND in the fall of '55 as then a first-year law student. UND's law

classes were in the 25 to 30 member range during those years and so it was very easy to get acquainted along class lines.

During my last two years of law school, Jerry VandeWalle and I became good friends as we enjoyed the daily give-and-go of the law school. That friendship has lasted throughout the years.

My last year at the law school I was appointed as a recent case editor of The North Dakota Law Review with Fran Briedenbach as editor-in-chief. One of my assignments was to edit Jerry's first recent case submission. His recent case comment appeared in the January 1957 edition at 33 North Dakota Law Review, pages 122 to 124. The case under discussion was Amerada Petroleum Corporation versus Burline, which had been an opinion written and appeared in 231 Fed.2d, 862 from the Tenth Circuit in 1956. The title of the comments was "Constructive Trusts, Fiduciary Status of Corporate Employees and Officers." The case involved the plaintiff's claim that the defendant, as an employee of the plaintiff corporation, should be held subject to a constructive trust in favor of the plaintiff for any mineral interests that the defendant employee had purchased to his own account while employed by the plaintiff as a production manager in the oilfield operations in the Williston Basin where the disputed mineral acres were located.

And it's interesting that oil cases are still very much a part of the North Dakota scene. And as far as oil production, I think hardly any of us are unaware of some of the possible consequences of further production in the Bakken field. So, Jerry, as he was known in those days, was right on line and provided a very interesting recent case note.

In this early example of legal writing our future Chief Justice exhibited a maturity of language and style that have been shown over and over again in his early professional work as Assistant Attorney General and later in his many opinions as a Justice and Chief Justice of the North Dakota Supreme Court.

And I'm happy to say that in the next year, the year after I graduated, that Gerald VandeWalle was appointed as The North Dakota Law Review editor-in-chief. He served in that capacity in an excellent form. And I have brought some copies of some of those articles and I intend to present some of the things that I've gotten at the law school to the Chief when we finish here or at an appropriate time today.

And I also want to thank the staff at the law school including Rachel, who is here. Now your last name, again?

MS. SINNESS: Sinness.

JUDGE SMITH: I met her just two or three days ago, but she helped me and others helped me to get some of these Law Review article pieces

together. And I've left copies of these things with the staff here on the CLE program, so eventually you may get a chance to read some of these old recent cases.

And it's recently—well, it's hard for me to really describe the full relationship that we've had. On occasions while I was active on the district bench to come and be called upon to sit in the Supreme Court for one of the other justices who had recused themselves for whatever purpose or for whatever reason and on a number of times during my time when I've been a surrogate judge doing the same sort of work, and so it's been a pleasure for me to have some experience in seeing how the Supreme Court functions in actual operation. And earlier it was suggested possibly that somebody might say what was said in chambers, and I think I was told someplace along what's said in chambers stays in chambers.

JUSTICE LEVINE: You've got it.

JUDGE SMITH: I guess I'm still supported in that. I can only say I'm so delighted to be here. Delighted to have survived to see all of this and while I didn't come with a horse and buggy, I am a little senior to most of the other people here and even senior to the Chief by one year in law school. But we've had a wonderful acquaintance and friendship over these many, many years and I'm sure that my experiences are similar to those of all of you here and that's why you're here and that's why we're all here. Thank you very much. (Applause.)

MS. SINNESS: Thank you, Judge Smith. Justice Levine, would you like to speak next?

JUSTICE LEVINE: This could be an all-time bulletin. I'm almost 73 years old. I have never, ever in my whole lifetime appeared before a group of lawyers, judges or anyone else whom I respect, totally unprepared, without one written note and not unwilling, I guess, just unable to say what is in my heart and would be on my tongue if I had some notes. But Mike Wagner and Lynn Boughey assured me that my three colleagues at the table would say all that was necessary, but now that I'm here, I have to say a few things, but no notes and no speech. Just how pleased I am to be with you and to be with Jerry and, my gosh, I've been emotional and I'll try not to be, but there is a warmth that pervades the room and it emanates and I feel it. And I'm so happy to be here.

Now, I have a question for you. It's relevant, but it will ease my lack of preparation. Oliver Wendell Holmes said that the life of the law is not logic. It is experience. Think about it. What does that mean? Think, because I want an answer. I do. I've used that line. I love that line. Whose experience? Well, maybe the judge's, maybe the lawyer's, maybe the client's? Whose experience?

Well, for my purposes and to make up for my lack of preparation, I think, or I'm going to assume it's the judge's experience. So go to Jerry Vandewalle's 50 years of experience with the law, in the law, with the people of this State and the government of this State and consider that impact, his impact on the development of the law in this State. And if you're like me, and I know I'm biased, I know that, but I think it's objective. It's an objective truth to conclude that his impact on our law and our people and our government and our rights and our obligations is tremendous. I mean, Judge Smith touched upon some of his legal background as a practicing attorney in the Attorney General's office, with oil and gas. Jerry, I can't remember all of your jobs in state government or allied agencies.

I do know when you think about the Chief Justice's impact, you have to also think about a specific experience he had and brought to the Court that private bar attorneys don't really get, and that is the administrative law component of day-to-day life and day-to-day law. He had a tremendous understanding of how agencies work, how agency rules and regulations affect the law and us and he had a loyalty, he had a loyalty to those who plowed those fields. So when I heard—and I really did think Justice Meschke—I see him—hi, Herb. I really did think you wrote the opinion on sovereign immunity because you had written so much on it. I just went along with most of what you had said.

But when you consider the Chief Justice's background and his dissent in the Bulman case, you know where he was coming from. He was coming from a background of administrative law, of attorney general law, of upholding the traditional approach to what had gone before. And it makes sense to me, his dissent, from him. And the majority opinion makes sense to me, also. And I did ask the Chief Justice if the State had fallen apart because of that opinion and he assured me it hadn't. It was working fine. So that's that.

Anyway, I'm pleased to be here, and I warned Mike Wagner that I wouldn't have comments and he said, that's fine, you just come. I said, okay, I'll just be another pretty face. Thank you. (Applause.)

MS. SINNESS: Thank you, Justice Levine. Next, we have Judge Foughty from my hometown, Devils Lake.

JUDGE FOUGHTY: And I know Ms. Sinness, and if you ever get the opportunity for her to be in your law firm, I think you better take the opportunity. She's going to be an extraordinary attorney, I'm sure.

I have no clue why I was asked to sit on this distinguished panel. I have been on the bench for over 20 years and I don't think I've had any cases that had any broad policy implications up to the North Dakota

Supreme Court, except there was one case. Justice Levine was the dissenter, *State v. Hook*. If you want to comment on that, you may; otherwise, that was a criminal jurisdiction case so that's the only case I could think of that had any broad implication. All of the cases that I ever had as a trial judge over the past 20 years went up to the Supreme Court was because I fouled up, not because they were broad public policies. And I think the only reason Lynn asked me to speak today was because Lynn probably made a whole bunch of phone calls and he was getting fatigued and then he called me and I volunteered.

But it is a privilege to be here to speak for an extraordinary public servant, Jerry VandeWalle, what an extraordinary individual and public servant. It's certainly something we can all look towards and someone we can all respect. I also sat on the planning committee for the restructure and I like to call it the Neumann plan and, of course, Bill Neumann, as soon as he handed in the plan, he quit the Supreme Court. (Laughter.)

JUDGE FOUGHTY: The only other judge on the planning committee, the only other trial judge was Ralph Erickson and he had a president that was a friend of his, so he got another job, and so Justice Maring and I are the only two left that were judges and if we wanted to talk about that, we could a little bit, but I would have to call Sandy Tabor. I saw her over there and Justice Maring, if you wanted to talk about the planning committee.

I was a county judge for a number of years and maybe a discussion about the county courts you might find some interest in. That could be a—it was an interesting structure within the context of the county judges. When I became a judge, I was the county judge for Towner and Ramsey County and this was before the unification, which has been in place now for how many years, twelve years, something to that effect. But what happened with counties was, is they would negotiate to make agreements to have county judges and this negotiation was an ongoing negotiation because county commissioners were always looking to save a dollar. They weren't necessarily interested in what was, you know, justice or that broader concept idea.

And, in fact, when I became a county judge, the judge before me was running for district judge and that—actually, that was kind of an interesting election between Ron Dosch and Lee Christofferson, and that was quite an interesting election, but I digress. Anyway, I was really the beneficiary of that crazy election because when Judge Heen retired, he retired the same year that the county judge was up for election, so Ron Dosch had to give up his seat and some nice attorneys came to me and really thought I probably wasn't going to make it as a lawyer so they thought maybe I should be a county judge so they supported me and I was elected.

But what had happened within Towner 16 County, when Ron Dosch was the county judge, it was Nelson County, it was Towner County and it was Ramsey County. And when I ran for election, it was only two counties. What had happened was Nelson County negotiated with some other counties so they lined up with some other groups, so what happened was, this cost that was borne by the counties increased substantially to particularly Ramsey County at that particular time, because when Ron Dosch was the judge, Ramsey County paid 50 percent, Nelson County paid 25 percent and Towner County paid 25 percent. Once that other position went out, there were some very angry county commissioners in Ramsey County particularly. And politically, from a political standpoint, there was also a senator from our district—and I was so happy when Jack Traynor was elected because the previous senator really worked to lower—well, not lower the wages, but disconnect the salary of county judges from the district judge’s salary.

So what had happened was, is that once these counties—what had happened during that period of time was, is that they disconnected the salary of county judges from district judges which was 85 percent at the time. So there was a period of time when you were a county judge, you just didn’t get any kind of a raise in some counties and I was one of those groups. And that was because county commissioners were really angry about losing that one county.

So that was another impetus of why we went to unification because county judges were real happy to support unification and that’s one thing county commissioners and county judges agreed upon. The county judges didn’t want to be paid by counties and the counties didn’t like paying county judges, so from a political standpoint, that’s what occurred, is we started working towards unification during that period of time. And it eventually—it eventually worked out.

And there was a different dynamic, too, within the context of the district because, for instance, the Northeast District, there were three district judges. The Northeast District is eleven counties, sort of the northeast corner of the State, but there were actually six county judges serving in that district. Some of them were on the borderlines. For instance, Jim Bekken was a county judge and he had Benson County so he was in the Southeast District and the Northeast District. Nelson County was in the Northeast Central District, which was Grand Forks, so Ron Dosch was also a county judge in those two districts. He could be assigned by a district judge—by the presiding judge for cases either in the Northeast Central or the Northeast District and, in fact, Ron Dosch was actually assigned quite a bit over into Grand Forks for a period of time during those particular years.

But there was sort of an imbalance. It really wasn't a very efficient system, county judges, because much of the work trial judges do is very routine work. You know, we do domestic relations cases and we do criminal cases and then there's a percentage where you get something that has a little more interest, a little more broader policy implication, that type of thing, but much of the work we do at our trial bench is very routine, even within the context of trial work. And now I lost my train of thought, which is okay, too. Then I can shut up. (Laughter.)

But when we had that county and district court system, it was very inefficient because you'd have a trial judge go to a county to do a stipulated divorce and then you'd have the county judge show up to do all the misdemeanor crimes, and it wasn't very efficient. It wasn't an efficient system. In fact, when we unified, and I think at the time we unified to a district court, there were—we might have lost a county judge by that time, but essentially we started out with 54 judges, 27 district judges and 27 county judges. Of course, now we're down to 42 district judges with the referees, but I don't think we've added any referees. We might have added one or two referees to the whole mixture, but we actually have fewer judicial officers now than we did when we had the county court system.

And the other thing—the other thing great about—the one thing great about being a county judge, though, was is that you really were—and this is Ralph Erickson's analogy—we were a fiefdom, in the sense that the county judge was sort of out there on his own, you know, we had our own little castle and nobody bothered us, except when we got reversed or affirmed by the Supreme Court, but from administrative standpoints and all of those other things that we deal with now where we have systems we deal with, we were just sort of on our own. A county judge was the manager of the operation. We really didn't—although the Chief Justice was the administrative head, we really weren't answering to the Chief Justice or anyone else. We were sort of really independent judges at that period, during that period of time. And that dealt with management and all the other things. Of course, then you had elected clerks of court, too, so that could create an issue, too, and sometimes you had problems with clerks of court as a trial judge and you had to deal with those issues and they weren't, you know, in-line employees. They were elected officials and sometimes that created some problems. But it was a wonderful thing.

And the great thing that—and I'm going to stay on the bench until Judge Kleven retires because she's got a bottle of scotch that the last judge in the County Judge's Association that is working gets this bottle of scotch and I think she was the youngest judge at the time, so I know O.A. Schulz had it for many years.

CHIEF JUSTICE VANDEWALLE: He put colored water in it.

JUDGE FOUGHTY: No. No. He told Deb that he kept the scotch in it, but right now, my calculation is, is that if I can outlast Judge Kleven, that bottle of scotch is mine. And I just may stay in there long enough just to wait for her to retire.

But it's been a wonderful experience and as a county judge, you know, becoming a district judge was really kind of a blessing in many ways, but one of the great blessings was, is that when you were a county judge, I was on call 24 hours a day, seven days a week, because we did all the search warrants, we did all the preliminary criminal stuff. And when I became a district judge, I called up Judge Christofferson, I said, which month do you want to take? And that's the way we do it. We alternated months. Judge Christofferson will take a month and then I'll take a month and that's the way we alternate it back and forth, so at least there's one month out of—six months out of the year where I get to sleep. And in Ramsey County back in the old days, I was woke up quite a bit and it's a lot more peaceful now. So thank you. (Applause.)

MR. BOUGHEY: One of the reasons we were dealing with this section on the administration of justice is, obviously, the Chief carries or wears two hats. One is, of course, as an equal among the other four, as he describes it, and the second, of course, is now given this restructuring, his role as a chief administrative officer.

And so the one question I have for this group and the reason you were all invited is, is the process now, the administration of justice through, I guess, Bismarck and the way it's been restructured, do you—I was going to say three district judges, do you consider that something that is good or would you rather go back serving lawyers milk and cookies?

JUDGE SMITH: They didn't call it a calendar when I was working in Grand Forks and they didn't serve cookies and coffee. They just had the lawyers come in and they were told when to come and when not to go. I don't think we really want to go back to the call of the calendar. But I don't know if I'm really qualified to say how it is now because it's seven-and-a-half years since I retired from the daily—

JUDGE FOUGHTY: I'm qualified.

JUDGE SMITH: I think I'm qualified, but I'll defer to him for an answer, but the way it was when I was still on the bench, I liked it. So we'll leave it at that, as far as I'm concerned.

JUDGE FOUGHTY: I always liked being a judge. I mean, it's been a wonderful and extraordinary job, but I'll tell you what, we get a lot more work done because of the way we're doing things today. We get a lot more cases processed. You can look at the caseloads. We're operating more

efficiently. And the information is better. I mean, criminal records are monitored. We are working on collections, I mean, as far as criminal fines and fees. We do a lot better job than we did years ago. And it's because we're all better connected and I'm sure we're going to get better, too, because, you know, we're improving systems. There's not a—there's no doubt in my mind that we do a more effective and efficient job than we did 20 years ago.

MR. BOUGHEY: Are there any questions from the audience or any comments?

JUSTICE LEVINE: Whose experience is it?

MR. BOUGHEY: Justice Levine asked whose experience should apply when we're dealing with Holmes' famous quotation?

UNIDENTIFIED SPEAKER: Court administrators.

JUDGE SMITH: Surely you jest.

MR. BOUGHEY: They're clearly in charge now, I see. Well, I think what we're going to do then is I'm going to very quickly finish up the trivia questions. We're going to take a break and our next presenter, we all know, is Chief Justice VandeWalle. And so let me finish these up and then you'll need to put your names on them and pass them in so we can see who the winner is of these wonderful awards.

So No. 8, Jerry VandeWalle decided to put his name in as a justice because someone did what? What is it that was the catalyst to get the judge to put his name in to be a judge on the Supreme Court?

UNIDENTIFIED SPEAKER: Was he No. 8 in the photo?

MR. BOUGHEY: No, the photo isn't part of the trivia. No. 9, Justice VandeWalle succeeded which person as justice of the North Dakota Supreme Court? No. 10, who appointed Justice VandeWalle to the Supreme Court initially? And No. 11, what was the only year he ran for office for the Justice—ran, I should say, as a contested race for Justice? And the last one is a tie breaker in case we have somebody who knows all 1 through 11. As of midnight August 20, 2008, how many majority opinions are listed on the North Dakota Supreme Court web site as authored by Justice VandeWalle? So we'll see who can get as close as possible, how many opinions this man has his name on first.

We will now take a break. At 3:30 we will begin again. That will allow everyone to mingle and visit with the Chief for a half-hour. Thank you for coming. Thanks to our panel.

(Recess taken from 3:00 p.m. to 3:30 p.m., the same day.)

MR. BOUGHEY: All right. Looks like we're about ready to begin. I'm sure you're all waiting with bated breath as to the winner of our trivia, VandeWalle trivia contest. The individual who won clearly knows the

Chief well, only had one answer incorrect. At the end of this we can, I suppose, quickly go through what the answers were, but I'm going to get the Chief up here first and if he uses all the time, then I will be glad to tell you all the answers at a later point.

The winner is the person who is going to assist me in introducing the Chief. The person who knows him in the best of the trivia ended up being our own Justice Kapsner, so she's going to come up and introduce him.

UNIDENTIFIED SPEAKER: Rigged.

JUSTICE KAPSNER: In the interest of full and fair disclosure, it was rigged, because I have just been to Chicago and in Chicago at the Eighth Circuit Court of Appeals Conference, our Chief Justice was awarded the Professionalism Award by the American Inns of Court and, of course, as a part of that wonderful function his biography was reviewed, so in that sense, yes, it was rigged. I heard all this information very recently and, of course, I've heard much of it from the Chief himself.

It's my privilege to introduce the man who we're here to honor and who we all love and respect, Jerry VandeWalle.

(Standing ovation.)

CHIEF JUSTICE VANDEWALLE: Thank you. Thank you, Justice Kapsner. I'm going to try to hold this together a little bit. I may not. I told my law clerks at noon that part of the wet eyes is from the cornea transplant. The other is—the other is plain emotion.

One of the things—Justice Kapsner just told you about the Eighth Circuit award. The best part was getting there and finding my four colleagues there. We are going to get into this, but—so thank you all for coming. Frankly, I would have told you all this and not charged you for it. (Applause.) I don't know whether they would have given you any CLE credit.

I am so pleased to see the people that I worked with before, Justice Levine coming from California, Justice Meschke, Justice Johnson, where are you, sitting out there someplace. It's just a great delight to have those people here. The former trial court judges that I worked with that are here, thank you. Thank you all for coming.

I think most of you know one another. There is one person that I'd like to introduce to you, and that's my long-time good friend, Erica Moeser, the Executive Director of the National Conference of Bar Examiners. Erica, stand up so they can see you. (Applause.)

Erica's husband is a trial judge in Madison, Wisconsin, so she understood completely the trial judges that were sitting up here talking. She knew all about it. I hesitate to start introducing people because you always get into it, but she's an outsider, although she's been to Noonan and she

would have gotten the trivia pretty well, so she understands. Ross Espeseth complained because there wasn't more Noonan questions on it. (Laughter.)

I do want to comment—and I'll get to those and I will take some questions, but I do want to comment on a couple of things that were said before and one of them is the Hulstrand opinion, not for its content, but for what Mitch talked about. The relationship among the justices and what they say in the opinions, although I strongly advocate measured dissents, and that one may not have been as measured as I might have advocated, but it certainly doesn't reflect on the relationship among the justices, and I cherish the relationship I've had with Justice Levine and Justice Meschke and Justice Johnson and the other justices with whom I have served, Justice Kapsner, Justice Sandstrom, Justice Maring, Justice Crothers, all those people that I've served with have been very supportive and affirmative. I sometimes take that for granted and it's too bad because when I go out of state, I realize how very fortunate I am to be here in North Dakota.

But let me get back to some of the opinions. I got called out of the room when whichever of the panel was discussing Jacobson and I think, Beryl, the answer to your question of whose experience, is it's society's experience, because I think the subsequent opinion that reversed Jacobson is indeed an experience of society. When I wrote Jacobson, and it was—the trial court opinion was written by a very good friend and a very excellent trial judge, Jerry Glaser, and in the course of his opinion he, in essence, said, well, the child is going to have to suffer the blows of society. I forget what the words were. And I think that, more than anything, probably resulted in the reversal of the trial court in Jacobson. I think by the time the subsequent decision came along, society's—although certainly not 100 percent acceptance of that lifestyle had dramatically changed. And we've seen it's an evolving thing in some other states. Whether it will evolve more in North Dakota, I don't know. But to me, Beryl, I think the answer is society's experience, because we are products of our society. Sometimes we have to rule against society, but it's hard to say that we are not indeed the product of society.

Judge Smith, the one thing he didn't tell you about our relationship is—and the best thing that he and Joanie did was produce a son that was my law clerk, Jim. He's not here today. He's in D.C. but I've been grateful to Jim and Joanie for giving me Jim. The other thing I had to say is when I got into the Attorney General's office after having edited *The Law Review*, the first day I was told, we don't write like that in this office. So and, Kirk, it was, as you recall, a very stylized type of writing at that stage of the game. Kirk has given me some copies and I may have to go back and take a look at what some of those things were.

The other thing I'd like to comment on, that the panel discussed was the administration and I think just as I came in the door I heard Justice Maring talking with some of the people about administration. It is true that the Chief Justice is by Constitution the CEO, supposedly, on the administrative side. In my case I rely on my four colleagues and we have a motions conference every Wednesday morning and we have red dots, which are adjudicative matters, and we have blue dots, which are administrative matters, and they share, very frankly, in the responsibility of the administration.

I would like to ask the people that are here, Justice Levine, Justice Meschke, Justice Johnson and the sitting justices that are here whether or not they were surprised by the administrative load when they came to the Court, because I think it is a surprise for most. Most people don't understand that there is an administrative side that is a fairly heavy administrative load and one of the main complaints I heard, very frankly, from some of the newer justices is we didn't realize there was so much administration involved.

And it has increased because of the unified judicial system and I hope, Judge Foughty, that we are handling cases in a better manner. I loved those calls of the calendar. You never got anything done, but you got to talk to the other lawyers and you got out of the office, but nothing ever got done. You know, it wasn't. It was a very difficult system. It was a good social. And the certificate of readiness, no, we don't use those any more, Judge Olson, and they didn't really mean anything, either. So I think we have come a long way. Certainly, we have a larger staff. We now have the clerks of court and all the district court people under us, so the administrative side has grown. I certainly don't claim credit for the development of the unified judicial system. I think that must go to my predecessor, Chief Justice Ralph Erickstad. We implemented what he really had planned. We had to dismantle a little bit of what he had planned. He planned a little too much for North Dakota, but certainly many of the reforms originated with him.

For those of you that were there during the time when we had to cut judges, it wasn't an easy task. We were required by law to cut from 57 down to the 42 judges within 10 years and to do it by attrition, and we did and there are still some scars out there concerning the cutting of a number of judges and we still hear from some of the areas that, well, you took a judge away from us and we don't have this judge. So some of those things are very, very difficult to overcome. Those are my comments on what has gone before.

Because you do get some credit, as I understand for ethics on this, I do want to look at those rules. And, actually, Lynn Boughey several years ago gave me rules and I think there were about fifteen and I pared them down. I think some of them are very obvious, the first two or three. One of the changes that I have noted and some people will say a lack of civility may be a change. It's there, but I think we do pretty well in North Dakota, but the one thing that does concern me, and Bill Neumann did not ask me to give a pitch for this or Dave Maring, but No. 4, Attend Bar Association meetings and get active on at least one committee.

When I came into the practice of law, the Bar Association attendance was probably 4 to 500 lawyers at the annual meeting with probably about 12 or 1,300 lawyers licensed in the State. We now have about 1,800, maybe 1,400 of whom are licensed, and I don't know what the attendance is, but it's not nearly as large as it was at that time. And so I think that's too bad because I think there are all kinds of committees to be involved in in the State Bar Association. Not all of them involve the courts and that's—I keep hearing that from lawyers and say, well, we're transactional lawyers and it's really not that meaningful to us, but I think there are committees that do attract that type of lawyers, and I understand it's a societal thing again, that volunteering to serve on committees or joining service organizations is not that popular, but I urge you to do it. I really do. I think the Bar is so important, so significant to our profession and to the Courts, very frankly. This is not a selfless plea that I'm making to you. So I would urge you on No. 4.

No. 5, If you are faced with a rude or arrogant lawyer or judge, do not respond in kind. And I can't agree more. One of the things we've done, however, if you do get the rude or arrogant judge is we have the—what do we call it—judicial improvement process where within one year after election of a judge or reelection of a judge, there are questionnaires sent out to lawyers, litigants, staff people that evaluate that particular judge. Those questions are prepared by the University of North Dakota, one of the bureaus up there. They send them out. They compile them. They are given to a person the judge has selected. The judge never sees the responses. He selects one person to give the information to the judge and that person talks to the judge about the results of the questionnaires with the sole purpose of helping the judge. It's not—helping the judge to improve.

And the reason they don't see the questionnaires is to protect any identity issues of the responders. Now, the questionnaires don't have to be signed or anything like that, but, still, you could, I suppose, look at an individual questionnaire or answer to an individual questionnaire and say, well, I know who that is, that attorney lost in this case or something like 16

that. But it's more brought together. So, you know, you may get one he's a jerk out of 25 he's great. The jerk will probably be thrown out because it's someone that's just an unhappy loser. On the other hand, if you start getting a few more of those, then it's a cause for concern and those results are given to the judge by the person the judge chooses to give him that information.

And I've been on both ends. I've been on the receiving end and I've been on the other end and I think it's an interesting process. So I say to you, if you see the rude or arrogant judge and you get the questionnaire after the next election, tell that judge. Sometimes judges don't even know that they're being rude or arrogant. And I will—I think I've told you this before, but if I haven't, I'll tell it to you again. I was startled. This was several years ago. I don't sit well. I've got a back problem and so every once in a while, I lean back and I stretch back like that (indicating). This lawyer who knew me well was in court with his client and it didn't bother the lawyer, but he told me several months later that the client thought that I was being either arrogant or not paying attention or being bored by the argument. And the lawyer explained to him that it was a back problem, but I thought how easy it is to give a wrong impression to someone out there and we don't even know that we are doing it. So I, you know, try not to pick my nose. I do bite pencils during oral argument, and I try not to lean back too much, but I still do lean back.

No. 6, Don't be afraid to ask the clerk or a more experienced lawyer how it is supposed to be done. And I think all of us were concerned about doing that. I was brought up in the Attorney General's office and I just went up and down the hallways picking the brains of the assistants in the office and I never thought about it. When I came to the Court—and I wish she was here to hear this. She isn't. I expect her to be there tonight and I'll say this. It's a rather crude expression, but I'll say it anyhow, at least for my generation and the generation before and a few generations after, Lu Dunn wiped more of our butts than I'd like to think. I asked her time and time again of how to do something and how to do it and Lu was always very gracious and very kind and never critical. She very gently would correct you on what you have to do. And, frankly, Penny Miller and Colette do the same thing. And I know lawyers call and ask. And it's a good idea. I don't know about asking other lawyers. It's—some of us might be embarrassed to do it, but I expect most lawyers would be glad to help you, unless they're on the other side of the case and then maybe not.

Find out the truth and deal with it. And the last one, Recognize that your personal life reflects on your professional life, whether you like it or not. And I suspect—I can't talk about the rest of you, but I'll talk about

Ross Espeseth and myself grew up in Noonan and I think we knew that a long time ago. Hilary wrote the book *It Takes a Village to Raise a Child*. I knew that when I was five years old. I knew that if I did anything wrong, I would answer to my aunts and uncles and the people that ran the drugstore and everybody else in town, not because they were mean or malicious, but simply because they were interested in your welfare. And that, frankly, has stuck with me for a long time, that your personal life reflects on your professional life, whether you like it or not, and it does. There's just no two ways about it. And sometimes it's tough. You can't kick up your heels when you'd like to, but that's part of it.

I do want to leave some time for questions. I offer this—I used to do this at the Bar. I don't do it any more because it's so compressed now into the business meeting, the State of Judiciary speech, but I got very few questions, and you don't have to ask a question, but I'd be happy to try to answer any question, except about the cases that are pending. And I haven't read the briefs for September yet so it won't do you any good, but I'd be happy to answer any questions on what we have talked about or what we haven't talked about that you may have on your mind. So if you have any, fire away. Yes, Bob.

MR. BOLINSKE: How do we get our hands on those questionnaires regarding the judges?

CHIEF JUSTICE VANDEWALLE: Well, they're sent out by the Bureau of Governmental Affairs, and I don't—we don't know what the questions are. They design the questions.

MR. BOLINSKE: I'm more interested in the answers.

CHIEF JUSTICE VANDEWALLE: No, you don't get the answers. I should have told you. It's a good question, because the judges were concerned. Once the questionnaires come in and they're compiled, they are destroyed and the information that's sent out to the person that is doing the information for the judge must return that information to the University of North Dakota, so there is no—it's not—there is no record. And that was one of the reasons—it's not a ranking for election purposes or anything else. It's purely a personal help for that individual judge, to attempt to correct any problems that they may have. I mean, if the problem is really, really serious, of course, it's a Judicial Conduct Commission issue, but there are things that happen and it's intended for that purpose.

Yes, Bob.

UNIDENTIFIED SPEAKER: Do you see the pressure of the growing caseload increasing the number of the judges from the Legislature up from 42?

CHIEF JUSTICE VANDEWALLE: Did I hear you say “increasing caseloads”?

UNIDENTIFIED SPEAKER: Right. I think the caseload—I guess what I’m asking, do you perceive the Legislature creating more judgeships than the 42?

CHIEF JUSTICE VANDEWALLE: Well, there’s a couple answers to that. First of all, the—I’ll repeat the question. The question is, do you see the Legislature increasing the number of judges in light of the increasing caseload; is that a fair statement, Bob?

UNIDENTIFIED SPEAKER: Yes. Yes, it is.

CHIEF JUSTICE VANDEWALLE: I’m not sure that the premise that the caseloads are increasing is all that correct. There is an increase in caseloads, but you have to examine where it is and in what kind of cases they’re in. For instance, increases in minor traffic violations don’t—they result in a lot of administrative work, but they don’t result in much judge work. I will tell you that I do think that there is—the Legislature will increase the number of judges and we are contemplating asking for some increases, and that’s all I can say because it isn’t decided yet, but I suspect there may be a move to add some judges. Not as many as some people might like. We’re not going to be able to restore the number of judges that were cut, but there are some areas in which we will be looking at whether or not we ought to add judges.

And one of the issues, very frankly, on that is, do we add judges or do we add magistrates? Judges are elected by the populace. Magistrates are appointed and serve at the will—serve at our will, in essence. They’re paid less. I have a concern that the Legislature may take the cheaper way out and say, well, let’s use magistrates instead of elected judges and I think that would be too bad.

There are some advantages, however, to magistrates. We do not have in North Dakota a family court. The model is a family court where you have one judge for one family, where the judges rotate, we simply don’t have that, except in Grand Forks, which has a model family court program going on. But when you come to the magistrates, the closest thing we have to family courts are the magistrates because they do a lot of the family law work and so there are some advantages to magistrates in that regard, but those are all issues we’re wrestling with right now. Yes?

UNIDENTIFIED SPEAKER: Let’s go back to item No. 5. If you do have a rude or arrogant judge, if there was such a person, if they got a questionnaire and no one was to go over that with them, if that’s the case, then why would a rude and arrogant judge even care what anybody said? I

mean, where is the additional assistance, outside assistance to help that person change their behavior, alter their approach?

CHIEF JUSTICE VANDEWALLE: Why wouldn't they go over it with them?

UNIDENTIFIED SPEAKER: Well, I'm asking, does just the judge receive it, or is there someone in charge of reviewing it and offering this person some help?

CHIEF JUSTICE VANDEWALLE: Yeah, the person—I didn't explain it very well. The judge that's being—the judge on who the questionnaires are going out selects a person, selects a person to get that information and that person then talks with that judge. Yeah, that's the whole purpose of it. It would say, hey, look, Jerry VandeWalle, these questionnaires indicate that in court you've been interrupting lawyers during their appellate argument. Sorry about that. You've cut them off when their time is up when you shouldn't be and some things like that, and that is the whole purpose of it, yeah. That is—I mean, it's not just a pass-through of information. The person is to take the information and put it into a form that tells the judge you need some help in this area. You need to do something in this area, or in some instances, you're doing a good job in this area. It's not necessarily meant to be a negative all the way through, either.

MR. BOUGHEY: Dave, can I have you use the mike? We are—this is being taped so for those of you who are short on CLE credits and weren't here are going to be able to get this on disk and so there's someone in the back taping it. So if you do have a question, please come to the mike.

MR. MARING: And introduce ourselves?

MR. BOUGHEY: If you like.

MR. MARING: Dave Maring. Chief, over the last 30 years have the changes in technology made the job of judging harder or easier?

CHIEF JUSTICE VANDEWALLE: Well, once Justice Kapsner taught me how to use a computer—she did. She really did. In many respects, it's easier. I remember changes in opinions when they had to—in order to change a sentence in an opinion was a major task for the secretary. The word processors make it just—I mean, just those simple things have made it much easier. I think in more substantive ways the access to the record has become easier and it's going to become even better as we go along with electronic filing and some of those things and where the record will be available on-line to the judge without having to have the paper record in front of him. So to that extent I think it's made it easier.

Technology also has its own problems and it creates, it seems to me, a lot more business. I'll use this to illustrate and I'm not that far from wrong. It's not uncommon, because our e-mail addresses are on the web site, to get

an e-mail that says why don't you cut off your big, fat head. That was a terrible opinion. Most of the time if people had to write that down and put it in a letter, they probably wouldn't do it. They'd get it out of their system before they had to pay the postage on the letter. So there are some downsides to it, but I don't think we could handle the caseload without technology. I simply don't think we could.

We're putting in a new case management system, knock on wood, that—and so that's going to improve again our handling of cases. You know, I have to tell you this little aside. I ordinarily don't take any glee in someone else's bad luck, but there was an article in the paper a couple weeks ago that talked about how the Legislature was having problems with its new system and I thought, good, they'll be more tolerant of us if we have problems when it comes along. But we're going to be doing a new case management system. So I—you know, we have some gripes about it, David. I don't think we could ever go back without technology. You just have to handle it that way.

MR. LIFFRIG: Justice VandeWalle, Mike Liffrig. We've looked back in time here this afternoon and it's been delightful for those of us who haven't been so close to your practice and to the way that you've been spending your career, but I'm kind of curious about your views toward the future, maybe even more philosophically, what concerns you see looking down the road 25 or even 50 years, what concerns you about the direction of the Bar and the direction of our state?

CHIEF JUSTICE VANDEWALLE: Well, I don't know, Mike, if I'm qualified to talk on the direction of the State. Certainly, I see some changes coming, but I speak from only a layperson's view on that. Any one of you would have as good or better views and as good a basis for those views as I would.

With regard to the Bar, I do have concern about the unified Bar. I think it's absolutely essential in a state like North Dakota to have a unified Bar and, you know, there are highs and lows. I think the Board of Governors and just plain Bill are doing a good job right now. I'm fairly happy with the way things are going. I just want to see the participation. I really don't hear a lot of negative things. I remember when I came into practice, there were still some of the older lawyers that were challenging the constitutionality of the unified Bar and requiring that lawyers belong to the Bar. I don't hear that anymore, but apathy can be just as bad and it's the apathy that I would be primarily concerned about. From the Court standpoint, I think there are some substantial changes coming and not necessarily bad, but I think they are coming. The so-called problem-solving courts and we have some in North Dakota. Justice Maring has been a

strong advocate of teen drug courts. We have adult drug courts. Those are just a few of the courts that are going nationwide; the reentry courts, the mental health courts, all these types of problem-solving, therapeutic courts, whatever you want to call them, and I think they certainly do a good job, but—the experience and statistics show they do a good job.

My concern is—and some of my colleagues in the Conference of Chief Justices disagree with me. My concern is that the Courts will become a social service agency, rather than a—rather than a branch of government that solves the adjudicative problems. And so—and I certainly have been an advocate of that in some areas. I advocated the mediation project in family law and I think what we've seen so far indicates that it does help in Grand Forks and Bismarck and I plan on asking the Legislature for money to expand it other places in the State.

So I think we have to be careful in how we pick and choose what we're going to do. I think it's appropriate in some areas and in some areas it's not. I think the adversarial system works very good in some areas. I think we do a good job of trying those cases and I would not advocate anything other than the adversarial system. On the other hand, when you get into mental health issues and addiction issues and family law issues, the adversarial system may indeed not work very well and—but we should try something else. However, there's a danger that it will take over too much and that there will not be an adversary in those cases when there needs to be an adversary sometimes and that's a significant issue of do we treat, as an example, and we don't—there's an article out now about—I just read it. I haven't shown it to my colleagues yet on mental health issues and they really take issue with our law—with laws not in North Dakota, with laws that set up bans to using medications and I keep thinking, well, wait a minute, if we don't have those, where are we going to be in some of these cases? Will we be medicating people that don't need to be medicating and will we be institutionalizing people that don't need to be institutionalized?

You know, usually when we try to correct a problem—and you've heard me on this before, too—the pendulum—you've got a problem over here and so the pendulum starts to swing and it swings way too far the other way and now we've got a problem over here so the pendulum comes back and it swings.

Penology as an example, you know, in one decade we're going to save everybody. In the next decade we're going to lock everybody up and throw the key away. Well, both are extremes and the answer is someplace in the middle. So there are some concerns about where the Courts might be heading in that regard.

A lot of states now—we don't have them in North Dakota, but Delaware is developing a business court so they're becoming specialty courts. And I think they are expedient ways of handling them and you do have experienced judges sitting in those cases, but I don't know that the system the way I know it and the way I regard it is necessarily at work. As you know, jury trials are going down all over. I mean, it's not only in North Dakota. Every state the number of jury trials are reduced significantly, so it's a coming trend.

Whether we go too far, Mike, with the pendulum that way and we start coming back more to the adversarial system, I don't know, but we'll see what happens. Other questions?

MS. VOGELWEDE: Chief, Jane Vogelwede. In your involvement on the national level with the national state court groups or chief justice groups, have you sensed ways in which your experience in North Dakota has been notably different from other states and, secondly, what do you think you have been able to bring to those groups?

CHIEF JUSTICE VANDEWALLE: Well, they certainly have been notably different. One of the—I keep trying to get our judges, the trial judges to go out of state because they realize how good they have it when they get back here. But, yeah, certainly things are different. I will take judicial elections just as an example, Jane. I mean, you know, they are fairly much in North Dakota well done. They may cost some money, but they are not this type of election in which it's no holds barred. We don't have that. I hope it never hits here. And that's one of the things I've advocated on the national level with some of the states. It's very, very difficult to do.

I served on—as the chair of the advisory—Research Advisory Committee of the National Center of State Courts for several years. And Adam Fleischmann is here. Where are you, Adam? He's now with the Colorado court system, recent graduate of UND Law School, and Adam was with the National Center before he went to law school. But, hopefully, some of that research started to dwell a little bit on the rural courts and not all on the big city courts because they do dominate. Their issues dominate. But we have our own issues in the rural areas and so I hope I had some influence on the research that was being done in those areas.

I certainly have touted the collegiality of the courts to my colleagues and I'm scandalized, frankly, by some of the issues that go on between the justices of some of the courts in other states. Doesn't mean we don't have our disagreements. We do. But we—most of the time they are not personal disagreements. And so I think that's been a big plus. I don't want to see that happen in North Dakota. I think it would be a sad event.

So those are some of the areas that come to mind that I've talked with other people about. One of the other things I've advocated and they're now going to do it, it's too late and some of you may wish you had it. We don't. My long-time good friend Judith Kaye, retired—Chief Judge of the New York Court of Appeals is retiring at the end of this year, not because she wants to, but because she is 70 years old and their Constitution requires it. So I said, hey, get it out of your Constitution. They now have a proposition that will be voted on by the people of New York, but too late to help Judge Kaye.

She is an outstanding leader. So there are some things that we talk about. The one thing that none of them want to adopt, that I kind of like, frankly, is our system of selecting a Chief Justice. We are the only state in the Union in which the trial judges vote for the chief justice, and they just can't get over it. I spoke to the Indiana Judicial Conference on interstate compact and adult offenders a couple years ago and Chief Justice Shepard introduced me and in the introduction—and these are trial judges he's got before him and he's telling them about this and then he looks at them and says, forget it, it's not going to happen. And in Indiana the governor appoints the Chief Justice. I mean, those people have no understanding of separation of powers at all.

You know, so I don't know, Jane. Someone else would have to look at whether I've influenced anything on a national level. It's interesting being from North Dakota. They look at you. I mean, you get some notice simply because for some of them they've never seen anyone from North Dakota, which is an interesting thing itself. Even your good friends. Some good friends, you know, they were constantly telling me we had this jail amendment on the ballot in our state and I said, no, that's South Dakota and you could see that kind of glazed look on their faces, what's he talking about. So usually Dave Gilbertson, who is the Chief in South Dakota, and I would sit together so we could straighten them out.

Other questions? If not, do you have any closing comments that you want to make, Lynn?

MR. BOUGHEY: Not really. This is your show, sir.

CHIEF JUSTICE VANDEWALLE: This is your chance. They don't have to be questions. They can be comments, also.

MR. BOLINSKE: Bob Bolinske. A while ago there was a proposal that the Supreme Court judges go down and sit as district courts—or district judges, and I understand that that wasn't too popular with some of the judges on the Supreme Court. I'm curious as to your feelings about that, and to me it seems like it would be a good idea for the Supreme Court

justices to get an idea what it's like to sit on, you know, some of the hard things that they have to deal with that you then confer edicts about.

CHIEF JUSTICE VANDEWALLE: Really an interesting question, Bob, thanks for asking it. I'm going to give you my viewpoint and then I'm going to ask Justice Maring and Justice Kapsner. I don't know if Justice Sandstrom and Justice Crothers are here, if they have their own comments, because this is purely my viewpoint.

My predecessor advocated that. Judge Vogel advocated that. My position on it is simply—I think the experience would be good. I'm a little concerned about the collegiality that exists. If I go down and sit in the trial court and make a decision and in my case that decision is appealed, I will not, of course, be sitting on that appeal. One of the trial judges or one of the surrogate judges will come and sit, but my other four colleagues will be there and now they're going to overrule me and I just want to know where my collegiality is. It's one thing to disagree on this level. It's another thing to disagree on the perpendicular as opposed to the horizontal. I'm serious.

MR. BOLINSKE: How do you think we feel?

CHIEF JUSTICE VANDEWALLE: It is a concern of mine. The other side of the coin is—and we live or die on the appearance of impropriety. And if I make a decision sitting in the trial court and that decision is appealed and affirmed with four of my colleagues sitting there, the appellant is going to say, oh, yeah, that was the Chief Justice or that was Justice So-and-So that decided that case, no wonder they affirmed it. I mean, they probably talked about it with him. I mean, that's the type of thing that we get.

Justice Kapsner, Justice Maring, do you have any comments you want to make?

JUSTICE KAPSNER: I would say, Chief, that I agree with all of your comments and those are very good reasons why I wouldn't want to do it, either.

The first speech I ever gave after I was on the Court was how much I'm in awe of trial judges, having practiced 22 years before them as a lawyer and then being a person who has to review their decision. I don't think I could do it and I know I couldn't do it as well as most of them do. I get months to make my decisions and it's a very different kind of experience. So, Chief, I don't know that I could do the job well enough.

CHIEF JUSTICE VANDEWALLE: Justice Kapsner is very honest. I don't either. I'd be scared to death. I'm serious. Because you have to make a ruling on evidentiary objections immediately. You know, Justice Kapsner is right. We take our time. We are very different animals. We are very, very different animals. I think some of the trial judges that come up

and sit with us are probably perplexed by the fact that they have to listen to four other people, that they just don't decide the case themselves. So I suspect that's part of what goes on.

Justice Maring, do you have any comment?

JUSTICE MARING: No. I'll concur.

CHIEF JUSTICE VANDEWALLE: I'm not sure Justice Crothers or Justice Sandstrom may not feel that way. I don't know for sure.

DEAN DAVIS: I can't let this end without saying this. You brought up someone else can speak for what you've done outside the State and I can't—I won't speak to all of those many things, but I will tell you that in a former life I did a lot of traveling, and I used to love to go to professional meetings because no matter how bad my problems were at the law school where I was the dean, some other poor bastard had a tougher problem than I did.

I have to tell you that almost—and you were mentioning about saying you were from North Dakota and everybody says, wow, this is a real North Dakotan. Well, whenever it occurred, they would read my badge or something and see North Dakota, the first thing out of their mouth, whatever meeting it was, was do you know Jerry VandeWalle? Absolutely true. And I think, Erica, you could probably reinforce that. But Jerry VandeWalle has had an incredible professional life beyond the State of North Dakota and he's been an incredible resource to the American Bar Association, the Conference of the Chief Justices, to the Bar Examiners, to every element of our profession, and it's amazing to me that he's such a damn nice guy to boot. (Applause.)

CHIEF JUSTICE VANDEWALLE: Thank you, Jerry. Someone might say in response to that why isn't he staying home and getting the work done and I think that that's a fair question. I will tell you this, I couldn't possibly do what I'm doing without the support of my colleagues, past and present. I mean, it just simply would not have taken place.

I do have a soft spot in my heart for legal education. I have done some site inspection and accreditation work and I've chaired the council and I am very, very—and some of you have heard me on this, but I want you to understand the source of my feeling for it. We have one law school in the State of North Dakota. It produces, what, 90 plus percent of our lawyers and if we do not have good—and those are the lawyers that serve our people, the people on the streets in North Dakota. I have high respect for the Yales and the Harvards and the Stanfords, you know, of this nation. They are excellent law schools. They're not as good as they think they are, but they are excellent law schools, but they're not the ones that, for the most part, are educating the lawyers that serve the people in North Dakota.

It's the University of North Dakota that is. And unless we have good accreditation standards, I would be very concerned about the quality of our law school for a couple of reasons. No. 1, it deals with—the Legislature deals with funding and even internally it deals with the standards that the faculty themselves has to look at meeting, so I am very, very interested in that. It's pretty selfish, but that's my reason for my interest in that particular area. Thank you, Jerry, for those kind words. Are we ready?

MR. BOUGHEY: Any more questions?

CHIEF JUSTICE VANDEWALLE: Thank you, everybody. (Applause.)

MR. BOUGHEY: The social begins at 5:30, dinner at 6:30. Please enjoy the evening and thank you all for coming. Thank you, UND and the State Bar Association, for cosponsoring us.

(Recessed at 4:20 p.m., to 6:37 p.m., the same day. Proceedings continued as follows:)

MR. WAGNER: Welcome. Wonderful to see you all. Thank you all for coming. We're looking forward to a fantastic night.

A couple of years ago there was a couple people talking on the phone and, in fact, one of them said—it was Lynn Boughey who said, you realize that in a couple years Chief Justice VandeWalle is going to turn 75 and he's going to be on the bench for 30 years? I was like, wow, we can't pass that up, because what a fantastic celebration to have. And we had the law clerk lunch earlier today where all the Chief's previous law clerks got together and had lunch and we enjoyed some time together. What fun just that was and then the CLE this afternoon for all of those who attended and participated. It was just fun to see some of the judges there and the attorneys and those who have been around for 50-some years and those who are just graduating from law school and just starting a clerkship with the Court. So it's just been a fantastic time so far, and tonight is going to be even better.

And it's wonderful to see this fantastic turnout to honor our Chief. And, you know, we just can't put into words or meaning but, Chief, by the presence of all these people here, you know you are just so well-loved and respected in the State of North Dakota and even nationally, and we have a number of people who traveled from out of town. I'm not going to step into the land mine of introducing everyone, because by the time we got done, you would all be standing up, because I know that the Chief has a special place in his heart for each person here today and we really do appreciate you being here.

Some believe that a judge is to be a gowned robot, superhuman conduits through which the law flows uncontaminated and uninfluenced by

its prophets along the way. The courts have been referred to as a monastery of the intellect, the walls of which should not be penetrated by the experiences of one's own life. The last 30 years have shown us that a man need not be a robot in order to be an excellent jurist. And the courts need not be monasteries cutting off the judges from being part of the community which they serve in order to properly dispense justice.

On the contrary, Gerald VandeWalle is not only an excellent jurist, he's an excellent human being dedicated to justice, honor, integrity, service, and compassion. And I'm not telling you something that you don't already know. Justice VandeWalle has served his state and his country well for all of these number of years, 30 years on the bench, yes, but 50 years in the Capitol and still counting.

It's interesting when we sent out invitations and the responses that we got. A lot of us just refer to—or just think, I think, in terms of North Dakota and the North Dakota Supreme Court, and so forth, but we got comments from all over the country from people. Chief Justice John Roberts sent his regards and congratulations to the Chief, and Justice Alito I know sent a very nice, warm letter to the Chief, and we got comments from all over the world. We've got Erica Moeser here this evening, who will share a few words with us tonight.

So we've got a fantastic evening planned. Enjoy your meal. I'm going to call on Sister Thomas Welder to give the invocation and then we will be served. Sister Thomas.

SISTER THOMAS: Let us bow our heads. Gracious God, in the gift of August's bounty and in the spirit of this special evening of celebration in honor of Chief Justice Gerald W. VandeWalle, we bless You for Your goodness and length of days that number 75 years, and in the inspiration of 30 years of service on the bench in behalf of Your people and the common good, may Chief Justice VandeWalle harvest daily satisfaction and bountiful joy from his commitment to public service and compassionate justice.

We gather in gratitude, in tribute, and birthday wishes for the gift of one who brings alive something deep in our hearts. In the bounty of Your gracious goodness and in our thanks, we bless You for the food of this table, for the gifts of family and friends, and for the memories we each hold as we shine a light on Your servant leader who connects broadly within our state and our nation, who serves tirelessly and lives faithfully. In this tribute to Gerald VandeWalle, our spirits are nourished and our hopes inspired. Acknowledging Your presence, oh God, in this place and at this time, we say amen, amen.

(Meal served.)

MR. WAGNER: Okay. I trust you enjoyed your meal. We are going to get the program going. We are going to have some birthday cake in a little bit so save some room for dessert. A couple other announcements to make. We have a couple of unique guest books to sign in the back. They're actually books on North Dakota and some fantastic pictures, all of North Dakota places and that is the guest book, so you'll see the traditional guest book to sign in on. Those are the books. They're on the back table. There's pens there. Just make sure you stop by before you leave this evening and register that you're here and make a note to the Chief. We appreciate that.

The wine on the tables, I hope you've been enjoying that some. Save at least a drop because we're going to have a toast a little bit later on. And I think we've covered everything. If not, Darcy will let me know.

Can everybody hear me okay? Good. All right. We've got a list of fantastic speakers, ladies and gentlemen, and, again, thank you so much for coming. I bet this is at least the biggest birthday party you've ever had, if I'm not mistaken. And we've got a number of speakers, all who I'm sure you're familiar with, particularly the first one.

Governor Hoeven is here to make some remarks and, Governor, we'll call on you at this time. (Applause.)

GOVERNOR HOEVEN: Thanks, Mike. I appreciate it. Thank you for the nice welcome. Good evening. Welcome to all. Thank you for that warm, wonderful welcome.

Now, I hope you've all been well fed because I'm going to call—this is going to be kind of a participation thing and so I'm going to ask you to help me here just a little bit. Believe me, I do need help. I'm serious about that.

You know, I'd like to start off with acknowledgments, but I spent just a little time going around the room and you know how sometimes you're at a really nice dinner event and a speaker or an MC says, well, gee, I don't want to start acknowledging people because if I started, I would have to acknowledge everybody in the room, and sometimes that's just kind of a line because the guy doesn't really want to do that.

MR. WAGNER: Not true. I did. I did.

GOVERNOR HOEVEN: Oh, you did? You got everybody?

MR. WAGNER: I wanted to.

GOVERNOR HOEVEN: You know, as I go around the room, all of you, this is an amazing gathering in terms of people who have had such an impact on the State of North Dakota, not only having an impact now on the State of North Dakota, but who have had an incredible impact on the State of North Dakota for many, many years. And, of course, in this country we have the wonderful separation of powers, the brilliance of our founding

fathers, the legislative, judicial and executive. I'm a little partial towards the executive. But as I look around the room, you know, I see legislators, past and present. I see members of our Supreme Court and not only the state judiciary, but the federal judiciary. I see members of the executive branch. Governor Olson is with us tonight. All of you, I see esteemed lawyers from all over the State of North Dakota. I see business men and business women who are leading our state forward and have contributed so much over the years. I see educators, who are making such a difference for our young people and people of all ages. So I hope that you'll allow me, but that is my acknowledgement to all of you because there are so many of you, all of you that have contributed in so many wonderful ways to our state. And it is wonderful to have you here, but probably the greatest thing about it is the testament that that is to Chief Justice Jerry VandeWalle.

(Applause.)

How many individuals could have a birthday and have this type of gathering at their birthday party? Not many. Not many.

Now, as I said, participation activity. I guess I better ask this question first. Have you sung Happy Birthday to the Chief Justice yet, because if you have—

UNIDENTIFIED SPEAKER: No.

GOVERNOR HOEVEN: You haven't?

UNIDENTIFIED SPEAKER: No.

GOVERNOR HOEVEN: Well, it is his 75th birthday, is it not? Don't you think we ought to sing happy birthday to the Chief? Here we go.

(Singing of Happy Birthday.) (Applause.)

GOVERNOR HOEVEN: And you can all sing, too. Wow. Nice job.

You know, as I was going through this group, there's one other group I particularly want to mention. I think it's very important. And that's our military. And there is one individual I'm going to recognize because I see him every year and I mean this, I see him every, single year because he comes up to honor our military and with what's going on in the world today and the sacrifice of our men and women in uniform, and all of our veterans, I'm going to ask him to stand up as a way of recognizing all of our soldiers and all of our veterans, and that's Judge Sparky Gierke.

(Applause.)

Okay. Now, thirty years on the State Supreme Court, and we're going to hear from some people who worked with him and served with him and they're going to tell you about Chief Justice VandeWalle. What I would like to contribute to this evening's festivities is that I have issued a proclamation. This is a special day in North Dakota, not only celebrating

the Chief's thirty years on the bench of unparalleled service to the State of North Dakota, but also his 75th birthday.

Therefore, I issue the following proclamation: Chief Justice Gerald W. Vandewalle, celebration of service, August 21, 2008:

WHEREAS, this year marks impressive milestones in the career of Chief Justice Gerald W. Vandewalle as he celebrates his 75th birthday; 50 years as a licensed attorney and 30 years of service on the North Dakota Supreme Court;

WHEREAS, Justice Vandewalle was appointed to the North Dakota Supreme Court in 1978 and was elected Chief Justice effective January 1, 1993;

WHEREAS, prior to his appointment to the Supreme Court, Justice Vandewalle served 20 years in the North Dakota Attorney General's Office where he held several portfolios, including education, the North Dakota Industrial Commission, Oil and Gas Division, and the State Retirement System;

WHEREAS, throughout his career Justice Vandewalle has served on several national boards and associations and held prestigious positions, including President of the Conference of Chief Justices, an organization responsible for the establishment of the National Center for State Courts;

WHEREAS, in 2002, United States Chief Justice William Rehnquist formally inducted Chief Justice Vandewalle into the Warren E. Berger Society, honoring him for his exemplary commitment to improving the administration of justice through extraordinary contributions of service;

WHEREAS, North Dakotans are encouraged to recognize Justice Vandewalle for his distinguished career in service to the Courts and for the significant impact he has had on North Dakota law and the State's legal system;

NOW, THEREFORE, as Governor of the State of North Dakota, I do hereby proclaim August 21, 2008, a day to celebrate the prolific career and service of North Dakota Supreme Court Justice Gerald W. Vandewalle.

(Applause.)

Congratulations, Chief, and happy birthday.

(Standing ovation.)

JUSTICE LEVINE: Good evening. That is a hard act to follow, Governor. But friends of Jerry thank you from the bottom of their hearts.

I'm really happy to be here. You see, I'm recovering from surgery. That's why I look a little like Frankenstein's monster. And I sound a lot like Sylvester Puddy Cat. But my schlepping here to Bismarck, North Dakota to honor and salute my friend, Jerry VandeWalle, gives fresh meaning to the old saw, action speaks louder than words. My affection and admiration for Jerry eliminated any option for me to be a no-show. A no-show was simply a no-go. No way. So I hopped a plane and here I am with my written comments in hand, ready to praise VandeWalle, not to eulogize him. (Applause.)

You see before you a city girl from Winnipeg who bonded with this Noonan farm boy and learned from him the North Dakotan reverence for land, for faith, and for populism. I discovered that while I was no shirker from study and preparation, neither was Jerry. So for 11 years I served on the bench with him. We were friends. Ralph Waldo Emerson said that, A friend is one before whom you may think aloud. Jerry is a wonderful friend, a literal sounding board, an adviser, a teacher without peer. He is also a marvelous student, open to new ways of approaching things and recognizing the opportunity to learn from his colleagues, all with their diverse experiences and points of view. Almost every day I'd run to his office or vice versa to think aloud, he and I. To argue, cajole, explain, persuade, seek insight and meaning, plot and plan, gossip and kibitz, huff and puff and almost always encourage and support. We were, after all, friends thinking aloud.

We often shared stories of family and derived mutual pleasure from the feats of my husband and kids and his nieces, their husbands, his grand nieces, his grand nephew. Jerry's mother, Blanche, his Auntie Betty and Uncle Jack were frequent topics of conversation, along with a string of cousins, many of whom are here tonight. His devotion to family runs deep. And, of course, he knows everyone in North Dakota. So his vast network of friends, acquaintances and the public in general is a marvel. You get the picture, I trust.

My mother often advised me that I would be lucky if over my lifetime I made enough good friends to count on the fingers of one hand. Well, I count Jerry VandeWalle as one good friend I am lucky to have. Happy birthday, Jerry. Happy 30th anniversary, too. Love and cheers and congratulations from Lee, from me, from all your fans and P.S. David sends his love, too.

(Applause.)

JUDGE GIERKE: Governors Hoeven and Olson, honored guests, Chief Justice Jerry VandeWalle, his family, colleagues and many, many friends. It's great to be home. Since November of 1991, I've lived in Virginia for six years and nearly 11 years in Florida, but North Dakota will always be my home.

After I RSVP'd to attend this wonderful event, I received some good news and some bad news. The good news was that I would have the honor and privilege to make some remarks about our extraordinary honoree. The bad news was that I would be following Governor Hoeven and Beryl Levine to the podium.

First, thank you to those who are responsible for putting this event together and for affording me this privilege and honor. It is very special to me. Next, I want to just early on express my gratitude to Chief Justice VandeWalle for his friendship for 35 years. I also want to thank you, Jerry, for being a mentor in the early and mid '70s when I was a State's Attorney and the school board attorney in McKenzie County. I'm sure that I can speak for a number of my contemporaries who were similarly situated in rural counties. We could always count on prompt, excellent advice from Jerry, who was then, of course, serving in the Attorney General's office.

Our honoree with very hard work, extraordinary intellect, impeccable professionalism and true leadership has risen to the top in all endeavors of his life; UND undergraduate with honors, UND Law School juris doctor magnum cum laude; edited *The North Dakota Law Review* in his senior year; Order of the Coif; Attorney General's Office, rose to the First Assistant Attorney General in 1975; North Dakota Supreme Court Chief Justice for the last fifteen years; First Chair of the North Dakota Judicial Conference, President of the Conference of Chief Justices, Chair of the National Center for State Courts, and Chair of a number of high level ABA committees.

He has also received well-deserved, distinguished awards, too many to mention, but just a couple to mention perhaps. First of all, the UND Sioux Award, the highest award the University of North Dakota gives to alumni. And, secondly, in 1998 the North Dakota Bar Association bestowed upon him the Distinguished Service Award, again, the highest honor that the Bar gives.

The esteem in which Jerry is held by the people of our State is reflected in the fact that he has been elected four times to the Supreme Court by the people of our State and four times he has been selected by his colleagues to serve as Chief Justice. He is also extremely highly respected by the legal community of this entire country. He has brought great honor to himself, his colleagues on the bench of North Dakota and to our State. During the

23 years that I served on two appellate courts, I served with 14 colleagues. None was a better judge and colleague than Jerry VandeWalle.

(Applause.)

As a native of North Dakota, I want to thank you, Jerry, for all you have done for our State and for the rule of law across this great country of ours. Given the quantity and quality of your 50 years of service to our State, a very strong case could be made that there is no one who has given more service to our State and you're still going strong.

In closing, two personal comments. Jerry, I feel extremely blessed and am very proud to have had you as a friend for the last 35 years. Your friendship has greatly enhanced my life. And, lastly, I never had the privilege to meet your father, but I knew your mother very well, a great lady. Having observed your relationship with your mother, I am confident in saying that no mom ever had a better son. (Applause.)

I'm sure that your parents are both looking down at you this evening with great love and pride. Congratulations on the extremely well-deserved celebration in your honor. Thank you.

(Applause.)

GOVERNOR OLSON: I had the privilege of sitting on the Chief Justice's left hand and in the early part of the proceedings, he leaned over to me and said, Al, I'm going to be a little bit nervous and I said, Jerry, that's why all of us are here. It represents the incredible modesty that he has exhibited for 75 years. Jerry, is that true?

Well, like the others who were at the podium, I prepared some remarks. I'm going to refer to them just for a minute or two and I promised faithfully that I would stick to the maximum five minutes, but I want to just talk about what I thought about as I thought about our relationship over many years. The Chief Justice and I were personal friends long before we became professional colleagues in the AG's office of 1973. We go back to the late '50s at the University of North Dakota where we found ourselves members of the same fraternity. I was a freshman. Jerry was in law school. My first impression then hasn't changed much over the years. He remains a kind, a scholarly, a thoughtful man who cares first about family, friends and community and then about his State, nation and beyond. Defining these personal commitments has been his respect for the rule of law and its fair and reasonable application.

Now, for the extemporaneous remarks. Be careful. Beware. I was fortunate in 1975 after a few years under my belt as North Dakota's Attorney General to have as my first assistant, my friend and then colleague, Gerald VandeWalle. If you think about the history of North Dakota and I did, I had to because gambling was an issue that marked my

first term. I became an expert on it and had to understand that by the 1970s, the State had embedded in its Constitution an absolute prohibition about gambling and also referenced it in the statutes. Everything in North Dakota then was illegal, including flipping a coin for a cup of coffee.

Money was flowing in the State. Governor Hoeven, it was the first iteration of the fortunate and sometimes unfortunate amount of dollars that are flowing into the State and eventually into the State's coffers. In any event, there was lots of money out there and all kinds of private clubs were having what we would say lots of fun with what—over the years because we were discreet, we understood, Sister Welder, that occasionally that a Catholic parish might have a Bingo game in its basement. The American Legion might occasionally have a smoker to pay for its Legion program, and the Elks, David Nething, would pay for Camp Grassick through occasional illegal activities, but in the 1970's, those of you who will think carefully back, it had gotten out of hand, and I understood.

I had taken the oath of office, knew that my predecessors had a benign and gentle view of gaming in the State and I had for a year or two, but was facing this, what was becoming a problem for the State. I knew that both politically, personally and professionally I couldn't share my concern with anybody. I had decided to do something about it. Hadn't told my dear friend and colleague, the First Assistant Attorney General, friends or anybody else, but I received a note one morning from a student at Valley City about how he couldn't go to any place in Valley City without having a tip jar shoved at him and wasn't I the Attorney General, the chief law enforcement officer, and wasn't gambling illegal?

In any event, it gets to Jerry VandeWalle. I had decided we had to do something about it. I had engaged Evan Lips in a conspiracy to get the Legislature to put an amendment to the Constitution that would allow the Legislature to legalize charitable gaming, so I had a little bit of backup, but poor Jerry. One morning I said, Jerry, come in here and close the door and sit down and I said, Jerry, we're going to shut down gaming in North Dakota, and what blood was in his upper part of his body drained out. But I said, I think we can do it. We've got a plan. We talked about it. And here is the Gerald VandeWalle we all know. He was a personal friend who understood that we were challenging something that North Dakota accepted for many years and he knew the political issue that was probably out there, but he was also my friend and he was also a colleague and when we got done talking about it and how we might approach it, what I remember most is, "Al, you're doing the right thing." And that's what he was all about in a very, very stressful time in our lives as professionals in the State. I've carried that with me through the years.

Justice Levine, Winnipeg was my big city growing up. When Bud Grant coached the Blue Bombers, I knew every player on that team. We are a family of many backgrounds and differences and inspirations. We have guests from out of state. It is my privilege to come back and share the podium with all of those who will speak. But most of all, Jerry, I'm going to be 70 in two or three months, and in my family there are inferences and intimations that maybe this ought to be a special deal for "Boppa," as I'm known by my grandkids. I'm going to go back and I'm going to say, Call the organizers of VandeWalle's birthday party. This is what I want. (Applause.)

By the way, I don't know if you're on the program, but we came down here with another special fraternity brother and friend, the Marcils from Fargo. Jerry, you are blessed by family and friends. God bless you for the rest of your life and your career. (Applause.)

MS. MOESER: It seemed like such an easy assignment, just go fifth. They failed to mention I'm following "Boppa."

My name is Erica Moeser, and I'm from Madison, Wisconsin, and I think I'm here to represent the world outside of North Dakota that knows Jerry. It's a pleasure to be here with you and to share some of this evening with you and particularly to share it with Jerry.

It's an honor I'm always going to cherish to have been among those who were invited to offer remarks for Jerry VandeWalle tonight. I speak to all of you, but I think I speak for many of you when I turn to Jerry and say, Jerry, I admire you and I'm so happy that your law clerks had the wisdom to arrange this day and this evening for you. You're entirely deserving of the attention and the tributes.

Over the many years we've known—(Applause.) Over the years we've known one another, you've come to represent all the best that is North Dakota to me. You may not have walked with kings as Kipling wrote, but you've walked with many a Supreme Court Justice on the State and national levels and yet you've never lost the common touch. It's this special quality that sets you apart. I remember the magazine with the cover article by Ev Miller entitled "Call me Jerry." It was Senior Lifestyles May/June 1999 issue. You're a giant in the law and yet you still are quite endearingly our Jerry.

You bring the strong, solid values I associate with this great state to the work you do. Your devotion to the law, your integrity and your willingness to do hard work are admirable. And it is hard work to lead a branch of government, to sustain the day-to-day effort of keeping a branch going, to represent the branch in dealings with the executive and legislative branches. In a state like North Dakota with a judiciary lacking an intermediate

appellate court, I know that you and your colleagues are called upon to produce volumes of work from which many other state supreme courts are insulated. You've been tireless in getting the work done on a timely basis. I usually know where to find you on a Saturday, in your office.

I admire your leadership style and have learned so much from you. Of all the people I know, you are the nearest to perfect at being the embodiment of "if you can't say something nice, don't say it at all." Your temperament is exceptionally even and you lead quietly and honorably. You're gracious and respectful of others, willing to listen and you have a rare talent as a consensus builder. It comes as no surprise to me that the North Dakota Court prizes its collegiality because you set the tone. And despite your youth, you have an amazing depth of institutional memory. (Applause.)

Your values are evident and I believe they stem from the upbringing you had on your family farm in Noonan. That was a wonderful place to acquire what radiates from you today. You've opted for simplicity, not razzle-dazzle and your power derives from your honesty and your perseverance.

And so, dear audience, let me mention a few things to you about Jerry. I came to know Jerry through his involvement with the American Bar Association. There he led the entity with the ABA that deals with Bar admissions and legal education, including the national system of accreditation of law schools. This was just after he led the Conference of Chief Justices, which is the pinnacle for a Chief Justice in this country. At the ABA Jerry brought superb diplomatic skills to a fractious body at a very difficult time in its history. He was very effective in carrying out the mission. In all of his national activities he was and remains a great ambassador for North Dakota and he's used his volunteer time and experience to bring home many ideas that have been useful to North Dakota.

North Dakotans, you are fortunate to have someone leading your judicial branch who combines commonsense with alertness to the positive and the progressive he observes elsewhere. Not bending to the winds of change for change's sake, but willing to embrace ideas that improve upon the status quo. You're also fortunate to have the full force of Jerry's intellect, the charm of his Belgian straightforwardness and his seasoning in service to the citizens of your State.

We live in a world in which every day on the local, state, national and international level, we are reminded of the danger of lawlessness to a free and safe and just society. Jerry understands the importance of the rule of law in our society and the risk of taking life as we know it and law as we

know it for granted. I think it is important that we recognize that the law is made and interpreted by people who ultimately shape our society. So we need only the best. Imagine a United States of America or North Dakota without laws and lacking the people with the wisdom and the fortitude to interpret and apply them for our collective benefit.

Jerry has been a steadfast guardian of the law and he has had a decided impact on the development of law in your State. Along the way he has built a wonderful North Dakota life upon the foundations of family and faith and he has been a public servant in the truest sense of that term.

In closing, I offer all of you my opinion that your Chief Justice is a living legend and he is the gold standard against which other chief justices should be judged. For many of us our footprints in the sands of time will disappear with the next tide. Not so for Chief Justice Jerry VandeWalle. Jerry, on behalf of all of us gathered here tonight, I acknowledge our great debt to you. Congratulations on your 39th birthday. (Applause.)

And your 30 years of remarkable judicial service to the State and the nation. (Applause.) (Tribute video playing.)

MR. WAGNER: I think that we can clearly see that Chief VandeWalle has impacted not only all of us here in North Dakota, but all over the country. And I apologize for those of you who may not have been able to see the bylines underneath, but those were Chief Justices from the different states across the country just giving their well wishes to the Chief.

We have a number of people to thank. The National Center for State Courts for providing us with the video to put this together. My daughter, Mandy, who is in the back here, for putting this video project together. (Applause.)

The Chief said to me last week she doesn't realize that she is pretty well-known up around the Court the last few months. And just a few—there's a whole ton of people to thank and you know who you people are, but I just want to say a few things. The committee who put this all together, a lot of people put time and effort into this thing and I thank you so much. The Bar Association was active in getting this put together, the CLE, and Penny Miller at the Court and Kathy. There were just so many people that helped in so many different ways to make this possible.

Lynn Boughey and Stephanie at his office were instrumental in getting things put together. The symphony that played here this evening, and the list goes on. And I especially want to thank Darcy and Corrine of my office. They are just unbelievably invaluable in the things they do. They put all this stuff together. (Applause.)

And when this committee was first formed—I've got to tell you this and then I'll sit down—but one of our first discussions was, well, do we ask

for permission from the Chief before or forgiveness afterwards? And we all realized that being the nature that he is, that he just really wouldn't want this so we put things in motion so he couldn't stop it. And, Chief, we thank you for that, for allowing us to do this and we appreciate you so much.

Now I'll call on Honorable Myron Bright, the Senior Judge of the Eighth Circuit Court of Appeals to make some remarks. Judge.

JUDGE BRIGHT: Governor Hoeven, Chief Justice Jerry, fellow judges, distinguished friends and everybody else. What a wonderful, wonderful tribute. I'm here on behalf of my Court, the U.S. Court of Appeals to the Eighth Circuit, particularly myself and Judge Bye, who is from Fargo, to bring you greetings from the Chief Judge, Joe Loken, and all of our judges. I think I can say I bring greetings from all of the federal judges from North Dakota, most of them who are here. We say to you, Jerry, you've been a wonderful friend. We admire you. We wish you well. We say happy birthday and congratulations.

But I have one other statement to make. Jerry and I were talking outside about the North Dakota Bar. And he said every time he comes back from out of town to North Dakota he realizes what a great Bar we have in this State. And I've worked with lawyers all over the country as a Federal Circuit Judge for the past 40 years and I want to tell you something, this is a great Bar and I'm glad to be here. I wish I could be with you more, but I'm glad to be with you and I want to share that thought. You are a great body and you are dear people and great lawyers. And so for all of us I say thank you and, Jerry, many, many more years. (Applause.)

MR. SANDNESS: Looking at the crowd here tonight and thinking about you, Jerry, and thinking of the situation and thinking what do you give to the man who has everything? It's not friends because we've got a roomful of those tonight. Jerry, in one word, appreciation. Appreciation for all those who have been lucky enough and blessed enough to work with you through the years. Appreciation, too, within the gift we're about to give you, which is that embodiment of that gift, a legal eagle for the appreciation that you've done for all of us.

Connie, would you read the inscription on this, please?

MS. HOFLAND: I get the privilege of reading this on behalf of all of your law clerks.

In deep appreciation to our teacher, mentor and friend, all of your law clerks commend you on 30 years of dedicated service. Thank you for the opportunity to learn from a man of honor, integrity and patience, not only how to be a better lawyer, but how to be a better human being.

(Standing ovation.)

MR. SANDNESS: We also have one more present we'd like to give. As you may know, Justice VandeWalle has now entered the realm of those who own a house and with a house comes chores and, Justice VandeWalle, I'd like to present you with your first shovel and your first tool to have in the garage. (Applause.)

Well, I was number two on the list. We have number one with us, John Koenig, and we have 30 years worth of clerks. Well, not quite 30. I'm sure they're here in spirit. But at this time we would like to ask all of Judge VandeWalle's law clerks to please come forward and we're going to show a great singing ability we all have as we lead you in Happy Birthday to a very special man.

(Singing of Happy Birthday.) (Applause.)

MR. WAGNER: They're trick candles. You'll never get them out. We're going to take about five to seven minutes now and enjoy some birthday cake and then we'll have a few remarks from the Chief. Chief, we want you to enjoy a piece of birthday cake before you come up. So we'll be back here in five minutes. Just enjoy some cake and then it will be just a couple minutes.

(Enjoyment of birthday cake.)

MR. WAGNER: Let's all find our seats, and the Chief wants to say a few words. If you would all sit down, I'd appreciate it.

MR. BOUGHEY: Ladies and gentlemen, if you would please take your seats. We are hoping to finish this early so you can mingle and visit with the Chief and he can mingle with everybody.

The Chief has told me to go shhh, shhh, shhh. Apparently, that always works in conversation.

Ladies and gentlemen, if you would please charge your glasses to prepare for our next event. If you would all please charge your glasses and I guess we might as well have you stand as well and remain standing after the toast so you can greet our Chief Justice.

Ladies and gentlemen, I propose—Mike and I and all the law clerks propose a toast to our friend, mentor, colleague and the Honorable Chief Justice of the State of North Dakota, Gerald VandeWalle. Here, here.

RESPONSE: Here, here.

MR. BOUGHEY: And now would you please join me in welcoming the Chief Justice, Jerry VandeWalle? (Applause.)

CHIEF JUSTICE VANDEWALLE: Thank you. Thank you. What can I say? But I'm not going to say anything. Mandy, are you ready? We need to put this in perspective.

(Music of Mac Davis playing:

Oh, Lord, it's hard to be humble when you're perfect in every way.

I can't wait to look in the mirror 'cause I get better lookin' each day.
To know me is to love I me; I must be a hell of a man.
Oh, Lord, it's hard to be humble, but I'm doin' the best that I can.)
(Applause.)

I had to go back to my Noonan roots for the country music. Those songs always tell it like it is and that's the way it is.

I really don't know where to begin. And there are some people I want to introduce and this is really very, very dangerous. I wish that Earl Strinden and my predecessor Chief Justice Ralph Erickstad were here. They know how to handle this and I really don't know how to handle this. But I'm going to do it. You are all really special, but I really do thank you. I'd like to introduce my family and I may even miss some of them.

I don't see—oh, here they come. While I'm waiting for them to get seated, the video took me completely by surprise. I had no idea. You saw several of the Chief Justices on the film. There's one here in person tonight and I'd like him to stand and be recognized, my dear friend, Chief Justice David Gilbertson from South Dakota. David, can you stand, please? (Applause.) I'll going to tell you the Gilbertson story, however. This is my 50th year in graduating from law school and I have a good friend, Wally Gransing, who practiced in Sisseton, South Dakota, where David was born and raised and practiced law before he went to the Supreme Court. David took great delight in telling me that he was Wally Gransing's paper boy. I love that story.

I'm now going to go to my family who are here and if I miss some of them—I'm going to start with my cousins from Noonan, Joe Dhuyvetter, husband of my cousin, Theresa Dhuyvetter. I hope—please hold your applause until I'm done.

Darlene Grindel, the wife of my cousin, Bob Grindel; her daughters, Becky and Jeanne Tandy. And Peggy and Keith, where are you? You're over here. Marylou and Albert Dhuyvetter and their daughter, Marian Ringwall from Dickinson are here. My Godchild, Marylou's daughter, Karen, and Trevor Christenson now from—where is it—Cavalier, they moved to from Bottineau. I have to stop and think. I have some cousins—where are Char and Dick? There they are, from California. The California branch that are here. There were twelve VandeWalle cousins, eight of them raised in Noonan and four in California. Char represents the four that were born and raised and are true Californians. I'm quickly trying to spot the other people that are here. Did I cover all the cousins?

I want to get to my aunt and uncle, Betty and Jack Smith, from Dayton, Ohio. Betty is my mother's youngest sister, much more like my sister. They have always been there for me, and thank you for coming. Their

youngest daughter and the youngest, I think, of all the first cousins, probably Kathleen Baker, from California. My sister-in-law, Kathleen Kleven, from Bottineau. Kathleen, thank you for being here. My nieces from Indianapolis, Nancy Smyles and her daughter, Jenna, thank you for being here. My niece that lives in Bismarck, Mary, and her husband, Dan Kuntz, who really bear the brunt of what I have to have done and they are always there for me. There are two greats that are not here. Mary and Dan's daughter Brittany, who plays soccer for the University of North Dakota. Go Sioux. And she is with the soccer team. And Nancy's son and the only great nephew, who is in his very first day of orientation at the University of Indiana Law School in Indianapolis, Indiana, and he asked me, he talked to me, I'm going to go to orientation. I said, Go to orientation. You need to do that. So while I miss him, they're doing a great job of supporting me and I really appreciate it.

Did I miss some of the relatives I have? Oh, Ashley is here. I'm sorry. Ashley, stand up. This is the oldest of the greats and in one year will be Dr. Ashley Kuntz. She is in her senior year of dental school at the University of Minnesota. I'm very proud of her. Her husband has graduated as a dentist and he's working in Minneapolis in the emergency room of a hospital. And so it is just a tremendous pleasure to have my family here with me.

You're all very special. Those of you from North Dakota I'm not going to try to introduce, but there are others from out of state sitting at this head table. My friend, not first time in Bismarck, but I'm delighted he's here, Professor Michael Churgin from the University of Texas Law School. Michael, please stand up. (Applause.) And I can't really see that far. Peg and Franz, where are you? Peg and Franz, you are here someplace. Please stand up. (Applause.) Peg is the director of Bar Admissions for the State of Minnesota. Peg and Franz nursed me through a cornea transplant, fed me and housed me about two or three years ago and they're dear friends. I'm delighted they're here. I didn't think they were going to make it and they did.

There are so many of you that I really would like to introduce and I know I'm going to miss someone that I should have introduced and I apologize to you for not doing that. I'm trying to eyeball the crowd, but I can't see that far.

The speakers tonight were wonderful. The video surprised me. Mike is right, I probably would have stopped it. Wouldn't it have been a shame if I had done that, but I would have, probably for a couple reasons. I'm so happy that this took place. The law clerks did just a marvelous job. The only thing that bothers me is I pride myself in knowing what's going on, but

I didn't know about it. And so it's an interesting time. Governor Hoeven, I really appreciate your being here. This has been a great night. I am partial to the judicial branch, but I served in the executive branch so I'm partial to that, too. There is one thing, however, that I think I have. My life is complete. Just one little thing I don't have. And that's the title of doable, and I'll tell you I really—for those of you that don't understand that joke, ask the Governor and he'll tell you about that.

Judge Bright, thank you for your words, you know, years—I don't know if Judge Bright remembers, but years and years ago I was in the Attorney General's Office and Judge Bright was a brand-new judge in the Eighth Circuit Court of Appeals and Mark Andrews was a Senator, a U.S. Senator from North Dakota, and a professor from NDSU put this program together and we did it for two or three years and it was on education and Judge Bright would talk about federal cases and the Senator would talk—maybe it was at that stage about the federal legislation on education, and I was supposed to do the State stuff. Well, you can imagine being on a stage with Mark Andrews and Mike Bright. It was like I was a prop. Years later, years later, I did some programs with Judge Bright on appellate advocacy and I must tell you I still felt like a prop. He's great. And I share his views on appellate advocacy. I'm not sure that my colleagues share all those views yet, but you were right, Mike, you are absolutely right on oral argument and appellate advocacy.

For Earl and Sparky and Erica, what can I say? I really, really do appreciate it. All the good words for all of you that spoke. The truth of the matter is, I and my cousins that have known me since birth, Marylou and I are only three months apart. She's three months older, but she got to graduate a year ahead of me in high school, because she skipped a year in grade school. But I really am not—I really am not a self-starter. I am motivated by the energy that other people provide and you're the people that have provided me that energy, that support, and that's what drives me. It's not myself. It's your inspiration, your energy that really motivates me to do more.

It's not only the Bar, Judge Bright, that I appreciate. I appreciate the judiciary of this State. I've been blessed over the years to work with absolutely wonderful people from the time I came on the Court, and at that stage I was eleven years younger than the next youngest judge on the Court and now I'm more than eleven years older than the next youngest judge on the Court. But they were great to me.

I worked with Al in the Attorney General's Office and I couldn't have had a better boss. He was wonderful to me. I hated to leave. Someone said to me, Al, I don't know if I ever told you this, but we didn't know you were

unhappy in the attorney general's office, and I was startled. I really was hurt, because I was not unhappy. I mean, it was a different challenge and there were times and there are still times when I think that job was the best job in the world because I got to do the stuff and if there was any heat, Al had to take it. I can't imagine a better job.

I was blessed in working with great bosses, Al and two Attorney Generals that preceded him, Les Bergen and Elge Jons were very, very good to a young attorney that really didn't know all that much about what he was doing. It's been my pleasure to work with the governors. I'm very grateful, of course, to Governor Link. I saw him on the video. He's not here tonight. I wouldn't be here tonight if it weren't for Governor Link. He appointed me. And it wasn't all that easy for him. Even though I had been nonpolitical, I did come out of a Republican office. I know he took some heat from the Democrats, some of the Democrats on that appointment, and he stood it and I was very grateful for him for having made that appointment.

I had a very fine letter from Governor Guy, and that goes back to about like 1960 when he came in as governor and you would have thought the Capitol was in mourning. I was nonpolitical. I wasn't really that tuned in to what had happened when there was a change in the administration in the parties, and there was no legal assistant to the Governor. In fact, there were two secretaries and that was it, so he asked the Attorney General for some help and I was the newest kid on the block so I got sent over and I worked with the Governors from that time on. It was a great experience. Not once, not once in all those years did I—all these years, have I ever said I don't want to go to work. There's been some days when I've got there, I said, I've got this awful job I have to do when I get to work, but no days that I didn't want to go to work. And I really have been blessed. I couldn't have asked for more supportive people.

I told the group this afternoon, some of you were there, some weren't. And, again, I'm getting a little teary and I'll try not to, but when I received the Professionalism Award a week ago Wednesday at the Eighth Circuit, my four colleagues were there for me and that was very meaningful for me. The award was great. Their being there was greater.

So it's really—I have been blessed. Beryl Levine used to say, isn't this a wonderful job and to think they pay me for doing it. I'd say, shut up, Beryl, we need a salary. But I do understand what she means. When I accepted the Professionalism Award, I said it does seem odd and it just isn't right to accept an award for something you enjoy doing so much. An award ought to be for something that's really hard and difficult and overcome a lot of obstacles. I really haven't. I have not done that. So I accepted the

award and I accept everything that you said to me and have done for me tonight in the spirit of saying, Hey, I'm the one that ought to be giving you people awards because I've enjoyed everything that I've done.

So to my wonderful, wonderful law clerks I thank you. The law clerks have heard this speech before, many of you haven't, but the judges will understand that I don't let people except my colleagues get into my mind all that much. I'm sort of protective of that. My law clerks get right into my mind. They know exactly what I'm thinking and so when they leave, they really do take a piece of me with them and to think that there are now 31 out there just really terrifies me. I'm not sure there's anything left here. But I am so appreciative of the work they have done putting this on. Really, I'm appreciative of the work they did as law clerks. They were wonderful. I have not had a bad law clerk. They have been great people. They come in all sizes and shapes and the real problem is you have them for a year and they leave and when they leave, they take part of you with them and it's hard. It's hard every year when the old law clerks leave because it's like saying goodbye, at least for me, to a child in some respects. And so I'm so pleased at what they have done and so honored that they would do it for me. I don't know. Have I covered everything I should? (Applause.)

There's one thing I want to do before we leave. I look around. I see so many people. I would like to introduce Wally and Winnie Hankla sitting in front of me. Wally is a law school classmate, a long-time friend. I knew his wife long before he did. She was Winnie Bergen from Crosby, North Dakota. Her dad was my dentist, actually. So it's a small world. And all the people that have come, my colleagues from the federal bench, certainly the colleagues from the state bench, the trial judges. I'm very proud of our trial bench. I'm very proud of our North Dakota judiciary. There's 47 of us. Not a lot of us, but we're tough and we're strong.

There's one other—I knew this was going to happen. There's one other couple I want to introduce, and I'm trying to get all my couples that I want to introduce. I'm trying to get all the aspects of my life together. There were ten students that graduated from Noonan High School in 1951. There are five living and one of them is here tonight with her husband, Eleanor and Ben Haan. Eleanor, where are you? Oh, there they are, right in front of me. Stand up. (Applause.) Eleanor's parents farmed, what, about a quarter of a mile from where we were so I was over at their house a lot. Her mother made wonderful lefse, absolutely wonderful lefse. We had a good time.

The other one, and the Governor has already mentioned that he's here, is my good friend Bill Marcil and his wife, Jane, from Fargo. Bill and Allen and I were fraternity brothers. They were younger. They were the

younger bunch. And so I thought if they were going to come, I better have them at the head table so I knew what they were going to say. They can't say too much because they know what I know. It's a draw deal. I think we probably need to bring this to the end. But there's one more piece of country music that I'd like you to hear before I say my final goodbye. Now, the problem with this song is that you dwell on the first couple of lines when it's really the last line that I'd like you to hear.

Mandy, are you ready to play it?

(Music of Toby Keith playing: I ain't as good as I once was, I got a few years on me now, but there was a time, back in my prime when I could really lay it down. I ain't as good as I once was, but I'm as good once, as I ever was.)

Thank you. Thank you all.

(Standing ovation.)

MR. WAGNER: Thank you all so much for coming. What a fun evening. One thing I neglected to mention is the flag that flew over the Capitol is the flag you see right here in front of you. Judge, we'll have that in a box for you and that will be part of the package that you get. We also got a number of commendations and well wishes from people all over the country, Chief, and there were just too many to mention, and we've got those all in a package that we'll give you.

Again, thank you so much for coming, everyone. Good night.

(Concluded at 9:15 p.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Linda L. Gingery, a Registered Professional Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at Bismarck, North Dakota, this 21st day of September, 2008.

Linda L. Gingery
Registered Professional Reporter