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Michael T. Andrews

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## A LASTING LEGACY

MICHAEL T. ANDREWS\*

As Chief Judge Rodney S. Webb takes senior status it is entirely fitting that the law school he loves, and to which he and his wife Betty have contributed so much, pays tribute to his legacy of achievements. Judge Webb has had a remarkable career in the law. It has spanned six decades and has included stints as an attorney in private practice in Grafton, North Dakota; Walsh County State's Attorney; special assistant attorney general for North Dakota; municipal judge for Grafton, North Dakota; staff judge advocate for the North Dakota National Guard; United States Attorney for the District of North Dakota; and now federal district judge.

As his former law clerk, I can think of no higher tribute to Judge Webb than to say I think about him and all he has meant to me, every day. To be sure, I think about what an outstanding judge he is and, frankly, how those who have not had the benefit of working closely with him do not know the half of it. He is a tireless worker and a voracious reader. My fellow law clerks and I marveled that we could not keep up with him while managing only half his caseload. He loves the law, and loves watching lawyers work. He is always prepared, as those who appear in his court are well aware. His sole concern is getting it right.

Of course, to Judge Webb "getting it right" means doing right, and he has a deeply ingrained sense of fairness and justice. To my mind, a notable example was his decision in *Wiley v. Glickman*,<sup>1</sup> wherein he enjoined the Secretary of Agriculture and manager of the Federal Crop Insurance Corporation (FCIC) from amending *post hoc* the terms of a 1999 Durum Crop Revenue Coverage insurance policy to lower the minimum indemnity guaranteed therein by \$0.77 per bushel.<sup>2</sup> The policy at issue was actually sold by private insurance companies pursuant to reinsurance agreements with FCIC.<sup>3</sup> Consequently, the government argued that it was not contractually liable to the plaintiffs under basic contract formation principles and because of its status as a reinsurer rather than a direct

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\* Michael T. Andrews served as Chief Judge Webb's law clerk from 1998-2000. During his tenure he worked with Susan Bailey and Shanon Gregor. He is currently an associate attorney with the Vogel Law Firm in Bismarck, North Dakota.

1. No. CIV. A3-99-32, 1999 WL 33283312 (D.N.D. Sept. 3, 1999).

2. *Wiley*, 1999 WL 33283314, at \*4.

3. *Id.*

insurer.<sup>4</sup> Judge Webb's memorable response to these arguments was as follows:

Finally, the court notes that the United States Supreme Court long ago declared the rules of law whereby private insurance companies are rendered liable inapplicable to FCIC. Surely this cuts both ways. Just as FCIC may not be estopped by representations that subsequently prove inaccurate, it surely cannot seek refuge behind the technicalities of offer and acceptance unique to insurance law, nor the rules of liability governing common law reinsurance arrangements, in order to escape its obligations.

Moreover, neither the rules of law applicable to insurance contracts, nor the Supreme Court's conclusion that they do not apply, render FCIC (or defendants for that matter) immune from the principles of good faith and fairness. Quite the contrary; witness this passage from the Eighth Circuit Court of Appeals in a case featuring FCIC in the role of direct insurer:

The record . . . [reflects] . . . that the FCIC, in its transactions with the growers throughout this ordeal, have succeeded in leading the growers down a primrose path. . . . While we do not hold the government liable under an estoppel theory, . . . the factual background regarding FCIC's course of dealing with these growers must be considered under basic principles of good faith and fairness. One may have to turn 'square corners' when dealing with a government entity, . . . but this does not mean the government may operate so recklessly so as to put the parties dealing with it entirely at its mercy.

The court finds this passage applicable in this case.<sup>5</sup>

In my view, another notable example of Judge Webb's sense of fairness and justice was his decision in *United States v. Alaniz*.<sup>6</sup> In *Alaniz*, the defendant pleaded guilty to both drug and firearm charges.<sup>7</sup> The drug charges involved more than five hundred grams of methamphetamines and carried a minimum mandatory term of ten years imprisonment pursuant to 21 U.S.C. § 841(b)(1)(A).<sup>8</sup> The defendant possessed a firearm in furtherance of the drug crime, and the United States argued he was subject

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4. *Id.* at \*11-\*12.

5. *Id.* at \*13-\*14 (citations omitted).

6. 235 F.3d 386 (8th Cir. 2000).

7. *Alaniz*, 235 F.3d at 386.

8. *Id.*

to a consecutive minimum mandatory term of five years in prison under 18 U.S.C. § 924.<sup>9</sup> That section provided:

(A) *Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law*, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years[]<sup>10</sup>

....

(D) Notwithstanding any other provision of law—

....

(ii) no term of imprisonment imposed on a person *under this subsection* shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.<sup>11</sup>

The case involved a question of first impression in the federal courts—whether a consecutive minimum mandatory sentence under § 924(c) was nullified where the predicate drug crime carried a “greater minimum sentence.”<sup>12</sup> Based upon the foregoing language, Judge Webb concluded the consecutive five-year minimum mandatory sentence provided by § 924(c)(1) was indeed subsumed into the greater ten-year minimum mandatory sentence provided by 21 U.S.C. § 841(b)(1)(A).<sup>13</sup> Because a “greater minimum sentence” was applied and not that provided

9. *Id.*

10. 18 U.S.C. § 924(c)(1)(A)(i) (2000) (emphasis added).

11. *Id.* § 924(c)(1)(D)(ii) (emphasis added).

12. *Alaniz*, 235 F.3d at 386.

13. *Id.* at 389.

by § 924(c), the defendant was not sentenced “under that subsection,” and therefore the directive mandating consecutive sentences was inapplicable.<sup>14</sup>

In so holding, I recall Judge Webb registering his disgust with minimum mandatory sentences, particularly their intrusion upon his discretion as an Article III judge.

The government eventually appealed the 135-month sentence imposed upon the defendant, and the Eighth Circuit Court of Appeals reversed Judge Webb’s ruling. The court of appeals held the reference to a “greater minimum sentence . . . otherwise provided by . . . any other provision of law” applied only to the various types of firearm-related conduct proscribed in § 924(c)(1).<sup>15</sup>

Judge Webb also has an enormous sense of compassion. Some of my most vivid memories involve his handling of criminal defendants and juvenile delinquents, particularly his tireless work behind the scenes (in conjunction with his Probation and Pretrial Services Office) to learn as much about them as possible and afford them every bit of appropriate programming and treatment available.

I also think about what a wonderful public servant and member of the community Judge Webb is. He was the driving force behind the new Quentin N. Burdick United States Courthouse and all the technology therein. These efforts embody his belief that justice should be affordable and accessible to all. To my knowledge, he and his wife Betty remain the largest living benefactors of the University of North Dakota School of Law, and he routinely teaches and speaks there. His naturalization ceremonies are truly special and are the envy of the federal court system. He has even managed to remain involved with service organizations and, last but not least, his beloved Fighting Sioux (though he has been known to attend a Bison game on occasion).

I think about the generosity Judge Webb has shown me. An example came when he accepted an invitation to sit by designation on a panel of the Eighth Circuit Court of Appeals during my tenure.<sup>16</sup> Of course, this meant

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14. *Id.*

15. *Id.* at 386.

16. The panel included Judges Richard S. Arnold and James B. Loken. Judge Webb authored a couple of opinions of note. In the first case, *Jones v. Shields*, the panel held a corrections officer who used “capstun,” a pepper-based chemical spray, to restrain an inmate did not violate the Eighth Amendment’s protection against cruel and unusual punishment. *Jones v. Shields*, 207 F.3d 491, 495 (8th Cir. 2000). This opinion drew a dissent from Judge Arnold. *Id.* at 497. In the second case, *Ogden v. Wax Works, Inc.*, the panel unanimously affirmed the denial of a motion for JAML, or alternatively, new trial, following a jury verdict in favor of the plaintiff on her claims of unlawful employment discrimination. *Ogden v. Wax Works, Inc.*, 214 F.3d 999, 1010 (8th Cir. 2000). The opinion contains one of the Eighth Circuit’s first applications of *Kolstad v. American Dental Ass’n*, 527 U.S. 526 (1999), and its pronouncements with respect to

a substantial amount of work over and above his normal load. However, he gladly accepted the invitation so that my fellow law clerk and I could have the experience.

Judge Webb was incredibly generous with his time, and I often think about and frankly miss our daily interactions. We would sit down over coffee in chambers almost every day and discuss cases, politics, current events, etc. I especially enjoyed our trips to Grand Forks and our conversations on the drive there and back. (Occasionally we would even slip in a round of golf during these trips).

I think about Judge Webb's devotion to family, and how it is nearly equaled by his devotion to his "court family," including his irreplaceable administrative assistant Linda Haukedahl; his trusted friend and court reporter Doug Ketcham; his longtime courtroom deputy Darlene Jose; the outstanding members of his clerk's office; his current and former law clerks; and Judges Karen K. Klein and Alice R. Senechal and their respective staffs. I think about how lucky I am to be a part of this "family," and all the wonderful friends I have gained as a result.

Most of all, I think about everything Judge Webb has meant to me. Professionally, I simply would not be where I am today without him. Personally, suffice it to say that he came into my life at a time when I needed him most. I can never repay him for the kindness he has shown my wife Krista and me.

Indeed when all is said and done I believe Judge Webb's lasting legacy will be in the minds and hearts of the countless people like me whose lives he has touched and who think about him with fondness and gratitude every day.

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