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## IN TOUCH WITH THE PEOPLE HE SERVES

PAUL J. NOAH\*

One of the greatest benefits of being a law clerk to a district court judge is the opportunity to see and hear very good attorneys do what they do best in the courtroom. Judge Webb stressed that benefit during my initial interview, and looking back on my time as a law clerk, I would have to agree that he was right. I witnessed great advocacy during my clerkship, but perhaps the most striking memory I have of being in the courtroom with Judge Webb occurred when he was trying to save a young man's future and not when a lawyer was trying to make a point or argue a position.

"The Lecture" I best recall occurred during sentencing of a young criminal defendant who had pleaded guilty to a relatively minor drug offense. The defendant was being represented by a well-respected attorney who was also a former law clerk to Judge Webb. After each of the attorneys gave recommendations for sentencing, Judge Webb asked the young man to stand and what followed was something every young, wayward soul should have the benefit of hearing.

Judge Webb explained to the young man that he was taking his life down the wrong path and that he was wasting the potential he had been given. The judge stated that the young man could blame anyone he wanted, but responsibility ultimately rested with the person he saw in the mirror every morning. Judge Webb pointed out that once the young man recognized that fact, he could control his own future. While explaining this, Judge Webb emphasized that he believed the young man had the ability to make and could make the correct decisions on his own.

To illustrate this point, Judge Webb explained that he had some health problems years earlier when he used to be a smoker. His doctor suggested he quit smoking—to which the judge responded that he appreciated the advice and would look into limiting his smoking. At that point the doctor became more direct, saying something along the lines of "Rodney, you don't understand; if you don't stop smoking immediately, you won't have a lot of time left on this earth." Judge Webb explained that it practically took getting hit across the head with a two-by-four for him to "get" what his

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doctor was trying to say: if he did not change his ways, he would be dead soon. This same advice, explained Judge Webb, applied to the young man; if he did not change his ways, he would be in big trouble soon.

I had not heard a lecture like that for quite some time. Most significantly, after Judge Webb “broke down” the defendant, he “built him back up” by reiterating that it was not too late and that the young man controlled his own destiny even though the odds were against him. The choice was his. Judge Webb became somewhat philosophical as he tried to get the defendant to think of the big picture and the good he could do in the world. Judge Webb then asked a question I can hear as clearly today as I did then: “What is the rent you pay for the space you occupy on this earth?” I shared Judge Webb’s hope that the young man took it to heart. I know I did.

“The Lecture” captured so many of Judge Webb’s great attributes. His explanation in simple, forceful terms clearly laid before the young man the choices he had to make and the inescapable fact that he was at a crossroads in his life, and he had to decide which path to follow. Judge Webb recognized the limited role that the court played in the process and tried to empower the individual to make better decisions on his own. Certainly Judge Webb followed the rule of law, but what set him apart as a judge in that instance was his ability to relate to the individual and to show he cared.

Several other attributes set Judge Webb apart as a judge. Two that come to mind can be illustrated from a case involving a drainage ditch. *United States v. Sargent County Water Resource District*<sup>1</sup> was a civil action brought by the United States under the Clean Water Act wherein the government argued that the Sargent County Water Resource District needed a permit to perform work on a twenty-five mile long drainage ditch.<sup>2</sup> After a two-week bench trial and several hundred thousand dollars spent by the litigants, the court determined that the county’s work was “maintenance” and therefore exempt from requiring a permit under the Act.<sup>3</sup> I mention this case for two reasons—use of technology in the courtroom and Judge Webb’s pragmatic approach to the law.

Any attorney who has ever appeared in Judge Webb’s courtroom quickly realizes and appreciates the judge’s interest in technology. Judge Webb made it a priority that the new Quentin N. Burdick Courthouse have the latest technology so advocates could present their cases in the most efficient manner possible and juries could benefit from the use of that technology in observing witnesses and reviewing evidence. Although the

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1. 876 F. Supp. 1090 (D.N.D. 1994).

2. *Sargent County Water Res. Dist.*, 876 F. Supp. at 1091.

3. *Id.* at 1099.

new courthouse came after my time with Judge Webb, I did enjoy the benefit of the first “real-time” court reporting in his courtroom in *Sargent County Water Resource District*.<sup>4</sup> Due in no small part to the proficiency of his longtime court reporter Doug Ketcham, Judge Webb and I were able to follow what the witnesses were saying on our computer monitors and mark noteworthy testimony on the developing transcript. It was a great tool during the two-week bench trial, and it allowed Judge Webb to cite and quote previous testimony when questioning witnesses and issuing his decision.

While Judge Webb embraces technology and its ability to assist in the presentation of cases, he will not allow its use to make a mountain out of a molehill, and he will not refrain from chastising litigants when it appears they are wasting time and money. Judge Webb exhibited both in *Sargent County Water Resource District*. In *Sargent County Water Resource District*, sectional profiles and detailed drawings of various ditch elevations were presented, and Judge Webb thought each side went overboard and he let the parties know it by stating:

As a final note, the court must reiterate its dismay at how the parties handled this case. In the court’s view, this case was brought by the government as an opportunity to establish precedent, rather than to resolve a true controversy. That is wrong. It became a matter of principal for litigants on each side who expended tremendous amounts of effort, time, and taxpayer money preparing for trial. The information truly necessary to decide this case could have been prepared and presented much more economically.

The emotion involved was obvious. From witnesses with deep-rooted beliefs, to how the attorneys presented the matter, there was a righteous indignation permeating the trial. It is good to believe in a cause and it is good to believe in the job to be performed, but the conduct of governmental officials on both sides has been offensive. This litigation resulted from an inability to work cooperatively, and both parties bear some fault for the breakdown in communications. Both parties are governmental entities which have a duty to reasonably match the resources they expended on this litigation to its complexity and value. However, there was no serious assessment of the lawsuit by these governmental officials nor proper accountability to the taxpayer. In the court’s view, there was no effort to exercise good judgment in equating the

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4. *Id.* at 1095 n.1.

expense of the case with the possible results. The failure of the parties to prevent or resolve this dispute and their extravagant approach to trial preparation resulted in a significant waste of the taxpayers' money. This kind of conduct by governmental officials is simply offensive.<sup>5</sup>

I have many great memories of the two years that I served as a law clerk for Judge Webb. He and his longtime secretary, Linda Haukedahl, are special people who made my time with them extremely educational and tremendously rewarding. Judge Webb often engaged me in discussions about cases before the court and about world affairs in general. It was during these discussions that I gained a full appreciation for him as a jurist and an ever-increasing respect for him as an individual. We worked hard and it was fun.

The people of North Dakota have been fortunate to have such a strong and compassionate person as a federal judge in this district. The people Judge Webb has come into contact with, whether as litigants, plaintiffs, or defendants, have been treated with respect and each has been afforded full protection under the law. Judge Webb has never lost touch with the people, and this quality has contributed to his success as a jurist. Through his work and his example, Judge Webb has paid significant "rent for the space he occupies," and in my opinion, he has truly made the world a better place.

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5. *Id.* at 1103.