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Justice Meschke Tribute

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JUSTICE MESCHKE TRIBUTE

FORMER GOVERNOR GEORGE SINNER: I cannot tell you how heartwarming it is to be here today. If this was not the first thing I did, it was very close to the first thing I did, and I am really proud of it. Really proud of it.

Herb, but only thing, I did not know you were so old. My god. He turned seventy in March, I didn't turn seventy until May.

I have always thought that one of the most remarkable writings of all time was Jefferson's writing in The Declaration of Independence. It has always struck me that we always everyone remembers the famous line, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among those rights are the rights to life, liberty and the pursuit of happiness."

What has amazed me is that crowd after crowd that I have asked, remembers the next line. The next says, "And to secure these rights, governments are instituted among men."

That's all it's about. I mean, our Constitution does not say anything about profit, we do not worship profit, nor are we Neo-Pantheists who believe that God is in nature, that is not what we do. Our whole is to secure people's rights

And you—yesterday I spoke to a—the first North, North Dakota hunt set up by a group of people for the handicapped. And I thought, in preparing to talk to them, about not—it is not very long ago that we discovered we had to take care of the handicapped's rights. And the turmoil that we have gone through for gay rights and, and what a tur—what a growth this is in the society.

But today I thought about, it is the Court, it is this High Court that must be the final, the final protector. Obviously, the legislative role is great, the administrative role is great, but the final important role is the Court. If they do not do it, it does not get done.

And this man was almost unique, in the background that he brought to the Court both as a legislator, as a longtime lawyer and defender of people's rights, he came to the Court with a unique, unique background. But in addition to that, he brought unusual intelligence, incredible wisdom.

If you have ever worked with Herb Meschke, you know that if there is anything that he specializes in, it is wisdom. I do not know that, you know, in all the heated debates that I was involved alongside him, sometimes against him, I never heard him once hurt anybody.

He always seemed to know that you do not hurt people with the truth, you help them understand it, that the art of politics is the art of making the truth both understandable and acceptable.

He was a man of great dignity, always has been a man of great dignity. He brought hard work, compassion, and a love for human rights to the Court.

John Kennedy wrote once a piece that applies to few people like it applies to Herb Meschke. He wrote, "When at some future date the High Court of history sits in judgment on each one of us recording whether or not in our brief span of service we fulfilled our responsibility to the state, our success or failure in whatever office we may hold will be measured by the answer to four questions. First, were we truly people of courage, with the courage to stand up to our enemies and the courage to stand up, when necessary, to our associates?

Secondly, were we truly people of judgment of the future as well as of the past, of our own mistakes, as well as the mistakes of others, but enough wisdom to know what we did not know and enough candor to admit it?

Third, were we truly people of integrity who never ran out on either the principles in which we believed or the people who believed in them?

Finally, were we truly people of dedication, devoted solely to servicing the public good?

Courage, judgment, integrity, dedication. These are the historic qualities of a leader.

Congratulations, Herb, on great, great leadership and my thanks to both you and Shirley for a great life of service to all of us.

MR. GREENWOOD: Thank you very much. When I was preparing these remarks, I thought, at the outset, that one of the first things that I should do is acknowledge many people who are here, much as most people start out by saying, Governor or Lieutenant Governor this and that, Justices and Chief Justices of the North Dakota Supreme Court and down the list. And I have those remarks and as I got here today, I watched the many people enter the hall, I thought to myself, how am I going to do this?

We have three governors, we have current and past chief justices, we have many of the justices of the Supreme Court, present, past, and prospective, and I guess we have numerous legislators, trial judges and the like, and I cannot possibly acknowledge all of those, but I think, Justice Meschke, it does speak volumes for the respect that these people have for you.

It is indeed my distinct honor and privilege to represent the State Bar Association today at this reception in Justice Meschke's honor. In that capacity, I bring greetings to you from all of the practicing bar of the state of North Dakota and congratulations and best wishes for you.

Let me tell you that representing the 1800 some practicing lawyers in the state of North Dakota is an awesome and humbling responsibility, but I feel wholly inadequate at this time to express the depth and the breadth of the debt of gratitude which the and, for that matter, all of the people of state of North Dakota owe to you for your service on the Court.

While the work of the Court sometimes can—receives the serious consideration of the public through the press, it is my impression that too few people outside the judicial system truly appreciate or even understand the significance of the work of the Court to our society.

The decisions of the Supreme Court clearly impact those persons who are parties to the actions that appear before the Court; however, they also indirectly impact virtually all of the rest of us. Just like a pebble thrown in a pond it send ripples to all of the corners of the pond

Contributions of Justice Meschke to the law of the state of North Dakota will continue to serve and affect the practicing bar and the people of this state for many years after you depart from the Court and that contribution will be a legacy.

The way that Justice Meschke has conducted himself on the bench will also be a very important part of that legacy.

Certainly, there are many other lawyers who have a great deal more experience than I in appearing before the Court. Nevertheless, I have had some experience and from that I have had the opportunity to form my own impressions about Justice Meschke.

There are and have been justices who are masters of diplomacy, accomplished at making all of those who appear before them comfortable. There have been and are justices who are helpful in politely steering the attorneys towards the critical issues of the case. There have been or are justices who occasionally come to the aid of lawyers struggling with the legal theories by providing a loaded question that might allow the attorney to address the strength of the case, even though they may be few.

My impression of Justice Meschke is somewhat different. He seldom devotes much time to diplomacy, or tact, or that of making the attorneys feel comfortable. His questions have always been direct and pointed and focus immediately on the critical issues of the case as he understands them.

I think it is safe to say, much as Chief Justice VandeWalle has mentioned, that he has shown little patience for arguments that lack merit or which might be considered as balderdash.

Now I will have to digress at this point and tell you that I offered my wife the opportunity to read my comments, because she sometimes serves as means of telling me, "No, you have missed the mark." And she said, "Don't you think you're being a little harsh there?" And I said, "Harsh nothing, I meant it as a compliment."

Suffice it to say, that Justice Meschke has always been very serious about the business of the Court. It is my further impression that his attitude, his serious attitude has been evident in his opinions and his dissent. They have been clear and direct and based upon legal, good legal and logical argument. There is usually very little doubt where he stands on the legal issues before the Court.

Borrowing from the comments I intend to make to new attorneys to be admitted to practice next week, I will refer to one of my father's philosophies. He was sort of a working class philosopher who admonished me on many occasions that we cannot take credit for those gifts which our Creator has bestowed upon us, because we have done nothing to earn them, rather what distinguishes us as people is how we make use of those gifts.

It is clear that Justice Meschke has made good use of his gifts. By his work he has distinguished himself and brought credit to his family, he likewise, brought credit to the bar, to the Court, to the judicial system and to the state of North Dakota. And for that, Justice Meschke, I would like to extend the sincere thanks of the State Bar Association of the state of North Dakota.

We would like to congratulate you on a distinguished service in the bar and on the Court, we would like to join in your celebration of your retirement and wish you good things in your life after the Court. Thank you.

JUDGE ERICKSTAD: I thank you, Chief Justice. Before beginning my remarks today, I should and do thank Christine Hogan for agreeing to deliver my remarks, should I be unable to do so today.

On this 25th day of September, 1998, we gather to honor Herbert L. Meschke for his dedicated service to the Supreme Court and the entire state of North Dakota, especially during the past thirteen years.

I must confess, however, that I appear before you with mixed emotions as we will be losing Justice Meschke's insight as of October 1, of this year. when he will no longer be a member of this Court.

In preparing for today's program I reviewed the transcript of the investiture of Justice Meschke and Justice Beryl Levine. I found the transcript to contain testimony on the part of many friends of Justice Meschke and Justice Levine to their dedication to the law and their fellow humankind.

This is part of what his associate, Mark F. Purdy, had to say about Justice Meschke at that time. What kind of a lawyer is Herb Meschke?

"Well, this has been said before, but I think that, perhaps, the best definition . . ." and I am quoting him, ". . . would be to describe Herb as a lawyer's lawyer. We in our firm know Herb's intellect to be superior, ever probing, and analytical. His grasp of the great breadth and nuances of the body of law is truly remarkable. All of us in our firm would agree that when one of us encountered a duly difficult—truly difficult and perplexing legal issue, that it was naturally to Herb that we would go for his opinion and analysis. While he may not have been always right, I can assure you that he certainly always gave us the impression that he was right."

To all this and more, Justice Meschke responded with a quotation from Socrates, and I quote, "Four things belong to a judge. To hear courteously, to answer wisely, to consider soberly, and to decide impartially."

I think Justice Meschke has conscientiously tried to respond to that call.

I asked Justice Meschke to give me the legal citations to the ten most significant opinions he had written for the Court so that we could acknowledge them today and give proper credit.

Not to worry, he declined to do this in these words to me, and I quote him, "I don't feel that I can assess my most important opinion. That must be for others to do, because each opinion was important to the people involved."

He continues, however, as follows. "Perhaps I am proudest of my dissents against sovereign immunity of state government—for state government, mostly from your contrary opinions, if I recall correctly.

"While Justice Levine had the privilege of writing the landmark decision . . .," this is Justice Meschke speaking again, now, ". . . she had the privilege of writing the landmark decision, *Bulman v. Hulstrand Construction Company, Inc.*, and the *State of North Dakota, Supreme Court*, 1994, correctly interpreting the access to the Court's section of the North Dakota Declaration of Rights to repeal sovereign immunity."

And this is the justice still speaking, "I think my dissents help set the stage, along with my prior efforts, as a lawyer for the grieving mother

in *Kitto v. the Minot Park District*, that foreclosed governmental immunity for political subdivision.”

He continues on as follows, “Most gratifying, though, was that the people of this state agreed with us when they rejected in a 1996 election a constitutional amendment that the legislature had proposed to restore sovereign immunity.”

Now as I recall, and now I am speaking for myself, briefly, I joined in the majority in the *Kitto* opinion that was written by Justice Phillip Johnson, who, by the way, is here today with his bride, which abrogated the Doctrine of Governmental Immunity relating to subdivisions, but recognized the Doctrine of sovereign Immunity relating to the state.

Justice Meschke has obviously contributed in a large way to the demise of the Doctrine of sovereign Immunity in North Dakota. This has no doubt satisfied many persons injured by the acts of the state, because it has given them the right to sue the state where they had no such right under the previous decisions of the State Supreme Court, applying the doctrine of Sovereign Immunity.

In essence, they had no such right unless the legislature clearly approved such a suit through specific legislation or unless the suit was based on contract.

In 1989, Justice Meschke agreed, in addition to all his other Court and administrative work, to chair the constitutional celebration committee of the judicial system as the judiciary’s part in the state centennial celebration in that year.

In fact, in a recent letter to me, he told me that this position gave him the opportunity to write about the historic effort of the Northern Pacific Railroad to influence our state constitution. I quote a part of his letter:

The joint article about our constitution’s roots resulted when Larry Spear’s brilliant investigation in the archives of Harvard University and North Dakota’s Heritage Center turned up key historic documents. The locating, chronicling and publishing of the annotated forerunner of our North Dakota State Constitution and its Declaration of Rights was the greatest privilege that I could have hoped for in my legal career.

Having recently reread the article in Volume 65, number three, 1989, of the North Dakota Law Review, I recommend it to you for good reading. The article relates the story of Washington Pedrick, a lawyer for the Northern Pacific Railroad, a New York law firm, the pressures of time, and the misunderstanding of pressured work that generated the Pedrick Draft Number Two for the new North Dakota Constitution, and

its careful, dutiful table of authorities, which contains references to specific provisions of the constitutions of thirty-nine other states and proposed states.

The subsequent judicial interpretation of these provisions in these several states becomes of greater significance for the interpretation of our own constitution in the future.

In closing, I thank Justice Meschke for his challenging mind and the care he gave to our work together in service to the state of North Dakota.

Justice Meschke, it is my personal hope that your retirement will still permit us to exchange ideas on a professional basis, either as surrogate judges or as members of some committee of the Court or the State Bar Association.

Lois and I wish you and Shirley the very best. May God be with you always. Thank you very much.

