



1986

Hitch Your Wagon to a Star

Myron H. Bright

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Bright, Myron H. (1986) "Hitch Your Wagon to a Star," *North Dakota Law Review*. Vol. 62 : No. 1 , Article 1.
Available at: <https://commons.und.edu/ndlr/vol62/iss1/1>

This Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

“HITCH YOUR WAGON TO A STAR”

JUDGE MYRON H. BRIGHT*

My message to you is titled “Hitch Your Wagon to a Star.” While this imperative sentence might sound like a hit song from a Broadway musical, the lines come from the 19th century American writer, Ralph Waldo Emerson. He wrote in part:

Hitch your wagon to a star. Let us not fag in paltry works which serve our pot and bag alone. Let us not lie and steal. No god will help Work rather for those interests which the divinities honor and promote, — justice, love, freedom, knowledge, utility.

My discourse here relates to three stars or principles that have served me well, and to the people who taught me these lessons. The principles may be stated as follows:

1. Believe in yourself.
2. You don't need to be vexatiously oppressive to be a good advocate and trial lawyer.
3. Share the spotlight.

Each of these principles has a story that is autobiographical, and a superstar behind that story. I now share with you these significant events in my life.

* The Hon. Myron H. Bright is a Senior Judge of the United States Court of Appeals for the Eighth Circuit. This address was given at the University of North Dakota School of Law Commencement on May 11, 1985.

My professional career began in Fargo, North Dakota. I started the practice of law there in 1947. It is in Fargo that I introduce you to my first superstar, a lawyer, my first employer and later my partner, a man by the name of Philip B. Vogel. The blank looks on your faces tell me that the name may mean nothing to you. Yet, this man may have been one of North Dakota's greatest lawyers. Indeed, in my view, he qualifies as one of the finest lawyers that I have ever met. In appearance, tall, 6'1", and lean, he reminded one of a Marlboro man, but Philip was without the mustache. Philip was the renaissance man with knowledge in a variety of subjects — the law and its lore, music, literature, and the arts. He even possessed a most complete set of statistics on major league baseball players.

Philip Vogel sprang from humble beginnings in a rural setting at Perham, Minnesota, and graduated from this very law school fifty-one years ago. But Philip believed in the adage once enunciated by Justice Holmes: "Your education begins when what is called your education is over." My memory takes me back to my early days as a lawyer. Fresh out of law school, graduating in 1947, I thought I knew a lot of law. After all, I went to law school under a four-year program, not three as you have. Yet, crammed with knowledge, I knew not what to do with this stuff. I must have been the most uncertain of the uncertain lawyers. I seemed plagued with doubts as to how to answer the legal problems presented to me.

I watched Philip. He seemed so assured. He was almost always right — he won almost all cases that he tried. He won just about every appeal. When he settled, he settled on fair terms for his client. Why and how, I wondered. So, one day early in my career, I asked, "Philip, how do you do it?"

Let me share his wisdom. We were talking, as we often did, in his office. He explained his philosophy of advocacy, telling me:

Whenever I get a legal problem or a case, I study the problem and do extensive research. Then I make up my mind what I shall do, and do it. I'm usually right because I believe I'm right. I leave no stone unturned to prove I'm right, and ninety percent of the time, in the end, I win. Myron, believe in yourself.

Believe in yourself. Now, I grant you, this principle sounds easy. Does it work? I shall now prove to you that it does.

The year is 1955. The place is a farm near Elliot, in south-

central North Dakota. William Dick, a farmer, age forty-seven, married, a family man, dies a violent death from two blasts from his own double-barrelled, two-trigger, twelve-gauge shotgun. The gun had separately discharged twice, according to circumstantial evidence. The first shot was not fatal, striking him in the left side of the chest; the second blew off the left side of his face and head. The coroner's verdict said suicide and so did the coroner's jury.

New York Life Insurance Company carried life policies with double indemnity provisions on Mr. Dick. It refused to pay double indemnity benefits amounting to \$7,500 to the widow, Blanche Dick. Mrs. Dick asserted that her husband loved life and would not have taken his own. Philip Vogel, by referral, got the case. He carefully investigated the facts and law. Philip agreed with Mrs. Dick. He sued New York Life on behalf of Mrs. Dick seeking double indemnity benefits. Philip was right, at least at first. A North Dakota jury in federal district court ruled for his client, Mrs. Dick.

Not so fast, Philip. New York Life appealed that adverse judgment. Where? To the Eighth Circuit in St. Louis, the court on which I later served.

Can you guesstimate what happened? Three wise, but aged, judges heard that appeal in February 1958: Judge Sanborn, born in 1883 and then seventy-five years of age; Judge Woodrough, then eighty-five years old; and Judge Harvey Johnson, then a youngster of sixty-three. This panel reversed the case.

In their sage wisdom, the panel, through Judge Sanborn, said:

Mr. Dick's death cannot be reconciled with any reasonable theory of accident, and under the evidence the question whether death was accidental was not a question of fact for the jury. Judgment for New York Life.

Philip acted like lightning had hit. Like a boxer, he was bloodied and dazed, but still unbowed. His partners, including this speaker and his own brother, Mart Vogel, agreed that the Eighth Circuit must be wrong, but nothing more could be done. Sure, one might seek relief in the United States Supreme Court, but this case rested on the facts, and the Supreme Court had almost never, and for sure not in the last fifty years, taken a similar case. Indeed, no North Dakota case had reached the Supremes in the past twenty-five years. New York Life's attorney smiled in victory. But they did not reckon with Philip's belief in himself and his cause.

Philip drafted a short, strong, and appealing petition for writ of certiorari to the Supreme Court. It was eight pages in length, but every word bespoke the sincerity of the writer's belief in the justice of his cause and the injustice of the result of the Eighth Circuit. In essence, Philip asserted that under North Dakota law there existed a presumption against suicide and for accidental death, that presumption having affirmative weight as evidence. Thus, the Eighth Circuit had committed error in depriving Mrs. Dick of her constitutional right to trial by a jury. That petition moved the Warren Court. Wonder of all wonders, the Court granted the writ and called the case up for review. And Philip went to Washington to argue that case.

I pause for a vignette. Phil's associate, Donald Holand of Fargo, then of Lisbon, North Dakota, tells the story. Two young priests heard the argument, approached Philip and asked if he was the lawyer who argued the *Dick* case. Philip assured them that he was. One slapped him on the back saying, "God bless you. We'll say prayers for you tonight."

The prayers must have worked. On May 18, 1959, Chief Justice Warren delivered the opinion of the Court. "[W]e believe . . .," said the opinion, "that reasonable men could conclude that respondent, [New York Life] failed to satisfy its burden of showing that death resulted from suicide." The Eighth Circuit was reversed. It has been said that Chief Justice Warren carried a soft spot in his heart for widows, orphans, and railroad workers. It may be noted that Warren's father worked for the Southern Pacific Railroad.

So from my first superstar, Philip Vogel, I learned an important lesson. I share that principle with you. Prepare well. Believe in yourself and you'll be proved right most of the time. I learned by example. I have not been an uncertain lawyer for a very long time. Nor have I been, in my view, an uncertain judge.

For the second star to which you might hitch your wagon, I turn to another great North Dakota lawyer. He carried the unlikely name of Powless. Powless W. Lanier, Jr. But everybody called him just plain Bill. Born in Tennessee, he came to North Dakota at the age of ten, attended public school at Jamestown, and received his undergraduate education at this great University of North Dakota. Bill received his law degree at George Washington Law School in Washington, D.C. and served as a Marine officer in World War II. He practiced law in this state for more than forty years until his death late last year. Bill was Mr. Everything — a professional

baseball pitcher, a great singer, a consummate politician, an avid fan of the North Dakota Sioux hockey team, and most of all, a great trial lawyer and a wonderful human being.

It was my privilege and sometimes my regret to tangle with Bill many times in my career as a lawyer. We were opponents in the law, but always friends. He taught me a most valuable lesson in advocacy — one need not be a vexatiously oppressive lawyer to serve a client. Because this is a commencement speech, I use the somewhat restrained language of “vexatiously oppressive.” What I really mean is that a lawyer doesn’t need to be a “Horse’s A_____” to be a good trial lawyer or advocate.

I recall an incident early in my career that may prove the point. Bill and I had been haggling over a pending lawsuit scheduled for trial in the federal court. Bill represented the plaintiff and I the defendant. We could not agree on much of anything, particularly the settlement nature of that case. One day Bill came to my office for another meeting on the case. He offered an unusual proposal. His conversation went something like this:

Myron, I have an idea on how we might reach a settlement. I make this proposal to you because our past dealings have always been fair. I would not do it otherwise. I will put on a piece of paper before me the lowest figure I will recommend to my three clients in settlement of these claims for bodily injuries. At the same time, you put on your paper the highest figure you will recommend that your client, the insurance company, should pay. Then we’ll exchange papers.

After a pause, I agreed. Bill wrote his figures. I wrote mine. We exchanged. Bill wrote \$13,000. I remind you that was thirty years ago when \$13,000 might be like \$75,000 today. I had written \$14,000. “Well,” Bill said, “that’s easy. We’ll split the difference and settle for \$13,500.” And we did.

A few days before my friend Bill died last October, we visited. We recalled that incident of thirty years ago. I related that I had just lectured to a class in professional responsibility at the University of Minnesota School of Law and had talked about the good relationship that should exist between attorneys opposing each other. Once again, his voice boomed out. “Myron, I remember that incident well. You are so right. You don’t have to be a horse’s rear end to be a good lawyer.”

Let that lesson sink in.

I believe that the third star to which you may hitch your wagon, a principle I learned from a politician, will make for very successful interpersonal and professional relationships. That principle is “share the spotlight.” I learned this principle from a genuine superstar — a name that all here will instantly recognize — John F. Kennedy, thirty-fifth President of the United States. This principle stems from a true incident that happened in North Dakota four months before the 1960 presidential election. Let me set the scene.

The first time I met Senator Kennedy was in 1958 in Bismarck, North Dakota. We passed on a stairway just before he was to speak at a political meeting. I had left the meeting somewhat angry because the Democratic Party in North Dakota had refused to endorse my friend Quentin Burdick for United States Congress. He nevertheless received the nomination in the primary election.

My wife and I were about to pass by John Kennedy. The state Democratic chairman introduced us. We exchanged “How do you do’s” or something similar. After we passed by, my wife muttered, “Humph, he needs a haircut!” What a beginning.

Scene II: February 1960. Senator Kennedy and I met again, this time at Jamestown, North Dakota. At that time, John Kennedy had announced his intention to seek the Democratic nomination for President. After hearing his speech, I enthusiastically jumped on his campaign bandwagon.

Scene III: June 19-20, 1960. These were the greatest days in Fargo political history, for during those two days both John F. Kennedy and Richard M. Nixon came to Fargo to speak during a heated campaign for an upcoming special U.S. Senate election to be held June 28 to fill the vacancy caused by the death of the late Senator William Langer. Kennedy arrived first, on Sunday, June 19, to help celebrate a birthday party for the Democratic candidate, Quentin Burdick, whom I mentioned earlier. Burdick and John Davis, the Governor of North Dakota, a Republican, contested for the vacant senate seat. Burdick had been elected as a congressman two years earlier, the first Democrat from North Dakota elected to that office.

Because the North Dakota Senate election could be the bell-weather for the pending national presidential campaign, national interest focused on our race and on North Dakota. Senator Stuart Symington of Missouri, then a presidential hopeful, also came to Fargo for Burdick’s birthday party. Lyndon Johnson, then Senator

Johnson, and Senator Hubert H. Humphrey sent representatives. But John F. Kennedy had been chosen to speak at Burdick's birthday party.

On Sunday morning, June 19, 1960, Symington and Burdick appeared at a "joint" airport press conference. But the press addressed its questions only to Symington. Poor Congressman Burdick. There he sat like a silent bump on a log. No one asked him a question. Only Symington got the press and TV coverage.

The scene shifts to the afternoon, following a gigantic public birthday party for Quentin Burdick. Senator Kennedy and Senate candidate Burdick stopped at a Fargo home for refreshments before going on to another "joint" press conference.

My friend John Murphy and I reviewed the forthcoming press conference with our friend Quentin Burdick. The conversation went something like this:

Burdick: To hell with it. I'm not going. I'll look like a real Charlie McCarthy dummy. No one will ask me anything.

Bright: Quentin, you must go. It's your chance to make an impact.

Murphy interrupts: Hold it. Jack, Senator Kennedy, we need to talk to you.

Senator Kennedy walked over to our area. John Murphy explained Quentin's dilemma. John F. Kennedy's words, I now repeat. They have been etched in my memory:

Quentin, don't worry about it. You come with me and appear on that press conference. We shall work it out together.

And Quentin did attend the press event. I remember it well. Burdick and Kennedy faced the media. But the media people again questioned only Kennedy. Was another press fiasco in the making? The thought crossed my mind.

After initial questions, the farm issue surfaced. A reporter asked Senator Kennedy. "What can be done to raise farm prices?" The farmers then, as now, were in deep trouble under farm policies of the Eisenhower administration, embodied in the "agri-business" policies of the Secretary of Agriculture, Ezra Taft Benson. Agri-business, what does that mean? President Truman

once described those policies in a speech at Minot by saying: "Agri-business, that means they are giving the farmers the business."

Kennedy gave a short response to the question, then said this: "Congressman Burdick knows a lot more about farmers' problems than I do." He turned to Burdick, "Congressman Burdick," he said, "what do you think can be done to raise farm prices?"

My friend Senator Burdick rose to the occasion with a fine statement. From then on, the questions came rapid fire to both Kennedy and Burdick. Both performed magnificently. The press conference hit national television. Pictures of the Burdick birthday party with Burdick, Kennedy, and Symington riding together appeared in every daily newspaper in the country, even the New York Times. The affair later drew a double-page picture spread in Life magazine.

Kennedy left on Monday morning, just as Nixon arrived. We had the first traffic jam in Fargo history near the airport. About ten days later, the people of North Dakota voted for a new senator. By about one-half vote per precinct, about eleven hundred votes, Burdick defeated his opponent and entered the United States Senate. He is still there twenty-five years later.

There he was, John F. Kennedy, a national figure, fresh from his triumph in the Democratic Party primaries, the last one at the difficult West Virginia primary, sharing his spotlight with a little-known congressman from North Dakota. That incident emphasized an important principle in human relations.

That small incident in political history was captured by Life magazine in a photograph taken at that press conference. The photographer snapped his lens from the side, and the picture shows the back of Burdick's head with the elbow outstretched, but his hand on his forehead. Etched within the triangle made by the crook of his arm is the handsome face of John F. Kennedy. A print of that picture hangs prominently in my chambers in Fargo, as I often look at that picture and recall the Kennedy principle: "Share the spotlight with others." I have often reflected on that philosophy and have tried to follow it. It has served me well. I commend it to you.

There you have it. Three pieces of wisdom that have played an important part in my life, from Philip Vogel, Bill Lanier, and John F. Kennedy. All are now dead. Yet for me, those superstars still shine. I still try to apply their wisdom and principles here stated.

In a few fleeting moments, the class of 1985 of the University of North Dakota Law School, diplomas in hand, will march out of here. As you graduates march up these aisles, you represent a wave of lawyers of the future. For you I review these worthwhile principles:

1. Believe in yourself. Philip B. Vogel.
2. One need not be vexatiously oppressive — that is a horse's rear end — to be a good advocate and trial lawyer. Bill Lanier.
3. Share the spotlight. John F. Kennedy.

Ladies and Gentlemen, I suggest, "Hitch your wagon to a star."

