



1973

Special Session for the Purpose of Paying Tribute to the Late Honorable Alvin C. Strutz

North Dakota Supreme Court

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*In the Supreme Court
For the State of North Dakota*

SPECIAL SESSION

*For the Purpose of Paying Tribute
To the Late*

Honorable Alvin C. Strutz

SUPREME COURT CHAMBERS

State Capitol Building

Bismarck, North Dakota

September 10, 1973

11:00 A. M.

HONORABLE RALPH J. ERICKSTAD
— PRESIDING —

Bismarck, North Dakota
September 10, 1973

The Supreme Court of the State of North Dakota convened at 10 a. m. this 10th day of September, 1973.

Present: The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Obert C. Teigen, the Honorable Harvey B. Knudson, the Honorable Wm. L. Paulson, the Honorable Robert Vogel, Associate Justices; Luella Dunn, Clerk.

No the following proceedings are had:

JUDGE ERICKSTAD:

At this hour of 10:00 A. M. and on this day, Monday, September 10, 1973, we convene this Court in remembrance of Chief Justice Alvin C. Strutz. We ask that the Reverend Ira E. Herzberg, Bismarck, Judge Strutz's brother-in-law please lead us in prayer. Would you come forward Pastor Herzberg.

REVEREND HERZBERG:

Our Father who are in Heaven, it is not easy to put our thoughts into words at a time like this as we have gathered for this memorial service.

We thank Thee for the good example of thy servant, who having finished his earthly pilgrimage does now rest from his labors.

We do not pretend to know why one who still seemed to be needed so much should have been taken so suddenly. We are tempted to ask the question, "Why?" And then we remember Thy love, as it was revealed to us in Jesus Christ Thy Son. Also the compassion of Christ as He wept at the grave of Lazarus, and remember His power over

death at His glorious resurrection. Then too, we remember His words of encouragement, "I go to prepare a place for you"; I am the resurrection and the life"; and "Whosoever liveth and believeth in me shall never die."

Since it has pleased Thee to take unto Thyself the soul of Thy servant, Judge Strutz, grant that we who are still alive and about our work may be faithful to Thee our Lord in everything we say and do each day. That we may ever stand up for that which is right and pleasing unto Thee, so that we too shall be partakers of the inheritance which Thou has promised to Thy servants who have been faithful to the very end.

We thank Thee for the faith and the consecration of those nearest and dearest to Al. Give them continued grace to bring their sorrow to Thee, and may Thy words of comfort and blessing be poured out in them and upon them. May all of us who knew and loved Al, be challenged and inspired to walk worthy of the vocation to which we have been called.

Grant that we may follow Thee in faith, enabling us so to live, so to trust, so to serve that when our summons comes and we fall asleep peacefully in Thee that we may receive from Thee, our Father, our King and our Judge, this welcome, "Well done, good and faithful servant, enter into the joy of Thy Lord."

In Jesus name we pray. Amen.

JUDGE ERICKSTAD:

We welcome all who are present for this occasion and invite you to join us in the Conference Room at the close of this session so that we may meet and visit with you each personally. We are especially honored today by the presence of the President of the State Bar Association, Mr. Alan B. Warcup from Grand Forks, who will speak at this time on behalf of the entire bar association.

President Warcup, will you please come to the rostrum.

MR. WARCUP:

Thank you, Justice Erickstad, Members of the Court, Members of the Strutz Family and friends.

The late Chief Justice Alvin C. Strutz was born in Milbank, South Dakota on May 27, 1903. He was the son of the Reverend and Mrs. R. E. Strutz.

At an early age he moved with his parents to Jamestown, North Dakota. After attending schools in Bismarck and Jamestown, he graduated from Jamestown College in 1925. He taught school for two years at Edgeley before returning to school at the University of North Dakota from which he received his law degree in 1930.

Judge Strutz practiced law in Jamestown from the summer of 1930 to May of 1933 when he moved to Bismarck to purchase and assume the law practice of William Langer when Langer became Governor. Langer appointed Judge Strutz Attorney General in 1937 to fill a vacancy created when then Attorney General P. O. Sathre was appointed to the State Supreme Court. He was later elected to three two year terms as the Attorney General running on the nonpartisan league ticket.

After an unsuccessful attempt to gain the governorship on the Republican ticket in 1944, Mr. Strutz returned to private practice, founding the firm of Strutz, Jarsonius and Fleck. He practiced law with the firm until Governor John Davis named him to the State Supreme Court in February 1959. He filled the vacancy created by the death of Nels Johnson. In 1960 Judge Strutz was elected to the eight remaining years of the term and was re-elected in 1968. He was elected Chief Justice in 1971.

At the time of his passing, he had served on the Court for fourteen years and two months. Only seven of the 36 judges who have served on the Court have served longer than Judge Strutz.

Judge Strutz was a member of the First United Methodist Church, the Bismarck Lions Club since 1935, Masonic Lodge No. 5 and the Scottish Rite. He received an honorary degree from Jamestown College in 1963.

Judge Strutz was a devoted family man. He is survived by his wife Ina Vee; his son William A. of Bismarck; his two daughters, Donna Vee Scott of Beverly, Kentucky, and Judith Ann Gannon of St. Paul, Minnesota; eight grandchildren; three brothers and four sisters.

The North Dakota Bar lost a fine advocate and a dedicated jurist with the death on June 16th of 1973 of Alvin C. Strutz.

JUDGE ERICKSTAD:

Thank you, President Warcup. We are also today very fortunate in having the presence of an old friend who knew Justice Strutz in the many phases of his illustrious career. We welcome at this time William R. Pearce who has practiced 39 years before this Court and who is presently and for the last thirteen years has been a member of the State Bar Board which examines all candidates for admission to the Bar of this State. Mr. Pearce, would you come to the rostrum at this time.

MR. PEARCE:

May it please the Court, all the Members of the Strutz Family, friends, lawyers, other judges who are here. I'm not sure that there is any merit in being asked to deliver this type of talk. It implies that you're getting older and older and in consequence have known the people for a long, long time.

I would have been disappointed had I not been given the opportunity to say at least a few words about an old friend. I had the unique experience, I suppose, of practicing with, against and before Al Strutz and Judge Strutz before he was Judge, he was Al. Very, very few people I have heard call him Alvin. He asked me to come and be Assistant Attorney General and I took a little persuasion having established myself for awhile in Valley City and if I had not lost an election at that time I probably wouldn't have come which just goes to show that adversity sometimes is a blessing in disguise. I came to Bismarck to be Assistant Attorney General under Al the 1st day of May, 1941, and I stayed with him until February 1, 1944, at which time he was going to run for governor and thought it would be very fine if I should stay with him and also run for Attorney General and he said, "Just think, Bill, what we could do together."

Well, my presence on the ticket, I'm sure, wouldn't have helped him and he would have made a fine governor had he been elected. I practiced with him for those years and our client was the State of North Dakota and all of its officers, and all of the people in it and Al Strutz took his representation of those people just as seriously and just as much to heart as he took the interest of any client later when it was an individual practice.

I think the key factor that comes to mind when I think of Al Strutz is his impatience with any sort of sham or pomposity or make believe. He was a very serious man in his thinking. Not that he didn't have a delightful sense of humor. He was a man ready to laugh but he didn't laugh at people, he saw the humor in the ordinary situations that come along and he laughed but he was most interested in the genuineness of people and their feelings.

At this particular time when I was Assistant Attorney General with him and P. O. Sathre was also at that time. He had been Attorney General. He had been on this Court. He was off again and he would again be on this Court and Cliff Jansonius who became a judge. Clem Kelsch who became a judge. I seem to be the only remnant who hasn't made it in some way or another.

We were faced with a lot of unusual problems. The political situation in North Dakota was at its usual 211 degrees temperature. There was a lot of party factionalism then and then came the war and the war posed many unusual and different legal problems—things that could be done and things that could not be done.

We worked together as any partners would at that time. When I came the office of the Attorney General paid \$250 a month. Now, I got \$300 but Al couldn't get \$300 even if the legislature had been willing to give it to him because of the law that he couldn't have his salary increased during the term for which he had been elected.

I am sure that I knew men that would have been somewhat disgruntled at the idea of his assistant getting more than the boss. That didn't bother Al. We had some unusual legal problems. We had some unusual litigation. I can recall times discussing with Al what the fate of some case we had would be in the Supreme Court and he would discuss what he thought of some of the judges and what their attitude might be and I recall saying to Al, "Well, now, don't be too tough on those fellows. You may be one of them."

Still he was. Then after beginning in 1945 he practiced law in Bismarck and my association with him, of course, was of an entirely different kind. He was then on the other side of the table instead of my side. He was just as much a gentleman on the other side of the table as he had been on my side.

His word was as good then as it had always been and always was and those are the things that make dealing with other lawyers pleasant and then all at one time it wasn't Al Strutz. It was Judge Strutz and all those years I appeared here before him and he hadn't changed. His fundamental approach was exactly the same as it had been from the time I first knew Al Strutz.

Sometimes, you know, office and position change men and sometimes men change offices and positions and I think that Al Strutz made the Attorney General's office what it has been.

In a time of political turmoil and strife there is great pressure on the legal advisor of the State whose opinions are binding unless overturned by the Court and most of the day to day business of the State and many of its subdivisions and its agencies depend upon the Attorney General's opinion. There are several men in this room who realize to the fullest extent what I am saying. There is probably more temptation in that office than any other single place.

It is the easiest place in the whole of government to give way. It's the easiest thing to shade a legal opinion—to come down full footed on one side of a complicated question or the other side, not because of your legal beliefs and your legal conclusions but because of some other influence. That's why it's so easy and in many cases undetectable.

Al Strutz was very conscious of that fact. There was a tremendous effort at all the times that I was associated with him that no other influence could ever be in an opinion and I think perhaps he instituted this. Every opinion that went out was circulated throughout the office and for everyone's initials. Now everyone didn't agree but when it was threshed out just as I suspect he threshed out his opinions with his brothers on the Court when he became a judge, the whole concept was to do what is legally right and his reputation as an Attorney General was completely and absolutely untarnished.

It had to be because he was that kind of a man and it must have been a great change in life for Al to become a judge on this Court. Perhaps he shouldn't ever have been a district judge. It would have been very difficult for Al to sit aloof on the bench while fighting was going on in the arena before him but it must have been a change because the role of advocacy is over on the bench. You look at the record and you say, "Well, I might have done it differently but that's beside the point. Here is the record."

So I had the opportunity for all of those years to practice before him and I was as satisfied before him as I have been with him and I have been against him and so it was a full circle. His opinions were the same kind of an opinion as he wrote when he was Attorney General based upon what he believed the law to be and he was a good lawyer and that's all we can ask.

I've thought several times that Al Strutz's career typifies to me what is really the best in our system of government. The word politician, of course, has for many years had a rather bad connotation. It's not a term of great praise as it is used most of the time but Al Strutz was a politician. He had to be, he was elected Attorney General three times. He was imbedded in politics because he believed very, very firmly and very strongly that the side he was on, that was the side that was for the best interest of the people. He believed that and he acted accordingly and his actions bore out that. That was the basis of his political belief.

Now it stood him and it stood the people of North Dakota in good stead for a man that was active in politics which means being active in the system of government that we have. That's what it really means. He was immersed in the government and that helped him in his position as Attorney General which is an office, by the way, that is not appreciated by as many people as it should be. It is, in my opinion, probably the most important office in the State of North Dakota and I'm not excluding any other.

It aided him in what he could do for the people. It aided him and he aided the government to get closer to the ideal of a democratic government because in democracies people tend to let their government dangle. They don't pay enough attention to it. Periodically they get excited but day to day they don't pay enough attention to it and only men like Al who are in the government and occupying both those high positions, they are really the ones who are responsible and to whom the people can look for having done the best that can be done with the system that we have.

In all of his judicial career he was as fair as it is possible for a man to be. If he had any personal biases they never showed up in his opinions.

Al was an impatient man many times because he didn't like the things that were holding up the job that ought

to get done and again and again I must say it stands out in my memory as lack of pretense. He wanted nothing to do with the pretender, with the sham, or the pompous man. He was a real man, a real lawyer and a real judge and I miss him and I'm sure we all do.

Thank you, Your Honor.

JUDGE ERICKSTAD:

Thank you very much, Mr. Pearce. Before closing this session of our Court we wish to thank all of you who by your presence have made this session meaningful. We especially thank the Reverend Ira E. Herzberg, President Alan B. Warcup and William R. Pearce for their contributions this morning.

We wish to acknowledge the services of Mrs. Luella Dunn who made all the arrangements for this occasion and her reception committee Rosaleen Fortune who worked for Judge Strutz for fourteen years, Mary Austin, Eveleen Klautt, Irene Springan, Catherine Fox, Joan Eckroth, Mary Lee, Donna Fischer and Lorna Bender. We thank you all.

That these proceedings may be recorded and copies thereof forwarded to the Member of the Family I invite an appropriate Motion at this time.

JUDGE PAULSON:

Mr. Chief Justice, I move that the proceedings be spread upon the minutes of this Court and that a copy thereof be sent to the Members of the Family of Chief Justice Strutz.

JUDGE TEIGEN:

Mr. Chief Justice I second the Motion.

JUDGE ERICKSTAD:

The previous question has been called for. All those in favor signify by say aye.

(Response was unanimous)

All those opposed signify by the same sign.

(No response)

The Motion is carried unanimously.

Personally and on behalf of all the other members of our Court I extend our sympathies to you, Vee, and to your children, Donna, Bill and Judy and their families and to Chief Justice Strutz's many other friends and loved ones some of whom are here today and some who could not be present here today we extend our sympathies. It was a great privilege to serve with Chief Justice Strutz and we will miss him greatly.

We have, however, enjoyed a privilege not shared by others and for that privilege we are truly thankful.

Pastor Herzberg, would you lead us in the closing prayer.

REVEREND HERZBERG:

Our gracious Father we thank thee for these moments that we could be together here for this memorial service, a tribute to one whom we knew and whom we loved.

Help, oh God, those who are gathered here together this morning. Each one of us may resolve that we may need faith. That we may do what God wishes is right regardless and you are not to be forgotten for wisdom or strength so that we, too, might be found faithful in our service to our fellow man and unto thee.

In thy precious name we pray. Amen.

JUDGE ERICKSTAD:

The Court will now be in recess until 11:00 A. M.