

**A 58- YEAR LOOKBACK AT THE STORIED  
MINNESOTA SUPREME COURT LAW CLERKS OF 1955-56**

By: Allen I. Saks  
Leonard, Street and Deinard

It was the spring of 1955. **John Hetland**<sup>1</sup> and I were enrolled in the University of Minnesota Law School's so-called 2-4 Plan, which required two years of pre-law and four years of law school. Since we were about to embark on a less-demanding fourth year of law school, we both wanted to find a part-time job for the year. We had heard about clerkships at the Minnesota Supreme Court, but they were full-time positions (one clerk per justice). Using basic arithmetic, we went about exploring whether two part-time clerks might fill one full-time clerk position. We visited with Prof. Kenneth Anderson, who was known to be knowledgeable not only in taxation (which he taught) but in all things related to the courts and the judicial system. He informed us that Justice Theodore Christianson was in need of a new law clerk, and he promised to recommend each of us for a part-time position.

Justice Christianson was the son of former Minnesota Gov. Theodore Christianson, who had served in that office from 1925 to 1931. The justice had been appointed at the age of 37—then the youngest person ever appointed to the court. John and I learned that the justice was an extraordinary person. He had an outstanding scholastic record, had been a student leader, and had served as a navy officer in World War II. Among numerous other achievements, he had served as President of the University of Minnesota Alumni Association and had become a skilled trial lawyer prior to his appointment. He also had been rumored to be a potential Republican

---

<sup>1</sup> John Hetland is now living in California as a retired Professor of Law from the University of California Berkeley. His older brother Jim Hetland, a former Law Professor, was the first Chair of the Metropolitan Council and was involved in numerous civic activities in the metropolitan area. Jim passed away on May 23 of last year.

candidate for Governor or U. S. Senator. Prof. Anderson persuaded the justice to take us both on as his part-time law clerks for the year.

We found that the justice was all that he was touted to be and very much more. He not only sought our assistance on important issues, but at the same time seized the opportunity to educate us and explain to us how appellate cases might best be argued; how particular trial judges were regarded by the court; how appellate decisions were made; and how essential the character traits of integrity and impartiality were for judges in the appellate decision-making process.

### **A lesson learned**

John and I began work with the justice in the spring of 1955. I worked on memoranda for two cases before the court's summer break. In one of the cases,<sup>2</sup> the issue was whether the election of a county sheriff was valid when the evidence below reflected substantial and numerous violations of Minnesota election laws, but no actual fraud. My memorandum laid out the underlying law with emphasis on the precedents generally requiring a showing of actual fraud in the process in order to upset an election result. The cases I relied upon did not support the court's tentative decision in conference to invalidate the election. I took my dilemma to the justice. In a meeting I shall never forget, he walked me through the issues. Did I think an election in which there were substantial and numerous violations of Minnesota law should be sustained just because no actual fraud had been shown? Absent actual fraud, should the court's hands be tied even though a message would thereby be sent to the voters that the election laws need not be followed? The justice referred to cases from California and Colorado for the proposition that there was "no necessity of proving actual fraud in all cases," especially when "so great an opportunity of fraud exists as to impeach the integrity of the ballot."

---

<sup>2</sup> In re *Contest of Election of Vetsch*, 245 Minn. 229, 71 N.W.2d 652 (1955).

From our discussion, the justice developed the court's opinion *invalidating* the election.

Justice Christianson supplied the court's reasoning:

The foundation upon which an election system rests is the confidence which the electorate places in that system. The voter is entitled to have his vote counted fairly and honestly along with the votes of others. If his confidence in this procedure is undermined, there will necessarily be a loss of respect for the democratic system which is wholly dependent upon fair and honest election procedures.

\* \* \* \* \*

The purpose of the election laws is to assure honest elections. Such a wholesale flouting of the law cannot be tolerated when the result is to cast doubt and suspicion upon the election and impeach the integrity of the vote.

71 N.W. 2d at 660. Thus was the election for Sheriff of Houston County invalidated, and a young clerk's eyes opened to the workings of a Supreme Court.

### A special project for the Chief Justice

Roger L. Dell was the Chief Justice during my tenure as a law clerk. The Chief's law clerk was **Sherman Winthrop**.<sup>3</sup> I knew Sherm well because we had both been in the same University fraternity. And during our clerkships, we lived together with two other men in St. Paul, one of whom was the attorney and later prominent professional sports agent, Ron Simon.<sup>4</sup> (The four of us were able to find the only four-bedroom *furnished* apartment available in the Twin Cities in 1955.)

One Saturday morning as I was working on a project for Justice Christianson, the Chief stomped into my office. Sherm was not there that morning, and I could see the Chief was quite agitated about something. (Such an unexpected occurrence did not put me at ease!) He explained that one of the parties to a recently decided case had sent a telegram excoriating the Chief (whom I surmised had authored the opinion) with a number of vile, profane words that I

---

<sup>3</sup> After his clerkship, Sherm went to work at the Oppenheimer Law Firm in St. Paul. Some years later, he left Oppenheimer and founded the law firm of Winthrop & Weinstein. Sherm passed away in July of 2005.

<sup>4</sup> The author of *The Game Behind the Game; Negotiating in the Big League* (1993).

immediately recognized as very inappropriate for use in addressing a chief justice. (The Chief used much stronger words.) The Chief told me to drop what I was doing and research the question whether the court could hold the sender of the vicious telegram in contempt. I did what I was told, but in the process I found some First Amendment cases suggesting that the intemperate remarks were protected speech. I included those cases in my memorandum and recommended that the court take no contempt action. On Monday, the Chief called me to his chambers so that we could review my memo together. “Here we go again,” I thought. But to my delight, the Chief thanked me kindly for my work and informed me that no contempt citation would issue to the miscreant! Another lesson learned.

### **A tragedy beyond description**

During the court’s summer break, I worked in my father’s Bemidji clothing store. On September 19, 1955, I received a call at the store from my mother who had been at home listening to the news. She was sobbing – so much so that I had trouble understanding what she was saying. Finally, I did understand. *Associate Justice Theodore Christianson had died of a heart attack at age 42.*

Judge Warren E. Burger, who was then sitting on the D.C. Circuit Court of Appeals, presented a beautiful memorial to Justice Christianson at the Minnesota Supreme Court.<sup>5</sup>

Among many other tributes to the late justice, Judge Burger said,

His colleagues of this Court have expressed and recorded their unbounded esteem for Theodore Christianson as an individual, and as a lawyer and Judge. They were, themselves, refreshed by his fresh buoyant enthusiasm for his work, his warm and friendly attitude toward his fellow judges, and the fact that he never lost his feeling of kinship with the lawyers who appeared before this Court.

\* \* \* \* \*

His relationship with new young lawyers was especially close. No judge could have been more ready to help, to put them at ease, and to smooth over the rough

---

<sup>5</sup> 246 Minn. xvii (1956).

spots every young lawyer must encounter. Perhaps it was premature for a man barely 40 but he often said to his friends that he never wanted to lose his contact with younger men and their points of view. The life of every younger lawyer he worked with was richer for the contact.

And so it was with this young lawyer, as my brief but memorable work with Justice Theodore Christianson came to a sad and sudden end.

### **Continued clerkships with Justice Wm. P. Murphy**

Gov. Orville Freeman appointed William P. Murphy to fill the vacancy created by Justice Christianson's death. Justice Murphy interviewed both John Hetland and me in surprising depth and concluded that he would retain us both as his part-time law clerks through the spring of 1956 when we graduated from the University of Minnesota Law School.

### **The Mondale-MacLaughlin connection**

During my year at the court, **Walter "Fritz" Mondale** clerked for Justice Tom Gallagher, and **Harry MacLaughlin** clerked for Justice Frank Gallagher. I had gotten to know Fritz and Harry well when we worked together on the *Minnesota Law Review*. Even in law school, Harry had been an active Republican and Fritz an active Democrat. I witnessed innumerable "discussions" between them on the political issues of the day. But I can't recall a single such discussion being less than civil or in any way rancorous. In fact, many of us on the *Review* learned a great deal from those debates. And, as later history would demonstrate, my time on the *Review* gave me the singular opportunity to edit a Recent Case Comment written by a future Vice President of the United States!

The subject of Fritz's Recent Case Comment was the question whether an insurer or its policyholder would be entitled to unearned insurance premiums when the insurer became insolvent. Fritz was analyzing a recent case that had been decided by the New York Court of

Appeals.<sup>6</sup> Considering his future accomplishments, it is not surprising that I found his first draft to be extremely well written. Fritz's Comment raised some significant issues that resulted in its publication.<sup>7</sup> (I still retain my notes of my editing of Vice President Mondale's written work, with the remote hope that someday my grandchildren might be able to sell them as memorabilia on E-bay!).

### **The twists of fate, in alphabetical order**

In the early 50's, first year students at the law school were seated next to one another in alphabetical order. Since MacLaughlin and Mondale knew one another, Fritz asked a fellow named Ron Meshbeshier if he would be willing to change seats so Fritz could sit next to Harry. Ron said "yes," and the adjustment in seating was made. Years later (after serving a stint on the Supreme Court for which he clerked), Harry MacLaughlin became a federal district judge through a nomination by Jimmy Carter, whose V-P was Fritz Mondale. (I'm sure you can see the Mondale-MacLaughlin connection here!). In any event, Harry (now deceased) had a reputation for being fairly strait-laced and not prone to find much humor in the trial of most cases. As the story goes, Meshbeshier was defending a criminal case before Judge MacLaughlin in federal court. After a few witnesses had testified, Ron asked the judge if counsel could approach the bench. Up at the bench, the judge asked Ron if he wanted to make a motion of some kind, and if so, what? To which Ron responded, "No, I was just thinking as I examined the last witness that if I hadn't agreed to change seats with Fritz Mondale back in law school, I would probably be sitting up there as the judge and you would be sitting down here examining that last witness!" Judge MacLaughlin dropped his formal judicial mien and belted out a hearty guffaw.

---

<sup>6</sup> *Bohlinger v. Zanger*, 117 N.E.2d 338 (N.Y. 1954).

<sup>7</sup> See 39 Minn.L.Rev. 787 (1955).

### **Other supreme court law clerks in 1955-56**

Other law clerks who worked for the court that year included **Roger Pauly** for Justice Leroy Matson, **Gil Harries** for Justice Oscar Knutson and **Jack Engberg** for Justice Martin Nelson. I can say that all of us got along with each other so very well that knowing and visiting with any of them was always a great pleasure, then and for the next five-plus decades. Now, some 58 years later, it remains an honor to be counted among the storied clerking contingent from 1955-56.