CALL ME JERRY: A BIOGRAPHY OF GERALD W. VANDEWALLE, NORTH DAKOTA'S LONGEST-SERVING CHIEF JUSTICE OF THE SUPREME COURT

Tom Dickson*

Call Me Jerry is a book. It is a biography of the lifelong public service career of one of the most beloved people in North Dakota. The idea and substance of the book were initiated by Mike Jacobs, the retired editor and publisher of the Grand Forks Herald. The final work was brought to fruition by Cecile Wehrman, another experienced journalist and former editor of The Journal; the weekly newspaper which serves as the official voice of Divide County; the birthplace of Jerry VandeWalle. Both are outstanding journalists.

The book is the story of Jerry VandeWalle. Son of Divide County dairy farmers. He grew up on the VandeWalle farm outside of Noonan, North Dakota. A small town a few miles east of Crosby, the county seat of Divide County. He attended Noonan High School. Graduated as valedictorian in a class of eight. Accounting degree from the University of North Dakota. Law degree from the UND School of Law. Graduated with honors. Moved to Bismarck, went to work at the state capitol . . . never left. And so began a lifetime commitment serving the people of North Dakota.

First at the Attorney General's Office and later down the hall at the Supreme Court. He began his judicial career as an Associate Justice and then, for the next forty-five years . . . , as Chief Justice. This book and this story are essentially North Dakota's story. Small farm to small town school, to UND, to the state capital, and on to a career serving the people of the only state where he ever lived.

The initial part of the book, which chronicles growing up on the VandeWalle farm, is very familiar to any North Dakotan who grew up on a family farm in the 1950's. Get up early, do your chores, go to school, participate in every activity offered by the school, be polite to teachers, come home, do your chores, sit at a dining room table for supper, do your homework, go to bed. It was an everyday rhythm that was part of Jerry and his brother Virgil's youth.

But because this review is in a law review journal, I will skip Jerry's college years except to note that the Lambda Chi house was the home of some

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* I used the name Jerry to be consistent with the author's identification of the subject of the book. For the record, I never called him Jerry. He was always the Chief.
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very soon to be prominent North Dakotans. Allen Olson; future Attorney General and Governor of North Dakota. Bill Marcil; future owner and CEO of Forum Communications and brother of the distinguished and handsome Fargo attorney Jack Marcil. And of course, Jerry VandeWalle.

After graduating from law school in 1958, Jerry began his legal career at the North Dakota Attorney General's Office. The Attorney General's Office was quite small in those days. It was understaffed, underfunded, and the attorneys wore many hats. Jerry, because of his work ethic, talent, and incurable inability to say "No," wore many hats. He wore them well. So well that he caught the eye and attention of Governor Link when an opening on the Supreme Court became available. Governor Link was a Democrat and a proud Democrat. Then as now, a political calculation of party patronage enters into filling these positions. Jerry had been and still is notoriously nonpartisan, and other more partisan attorneys sought the job. The job, however, went to Jerry. And deservedly so.

THE APPOINTMENT

I was the Chairman of the Democratic NPL between 2000 to 2004. One of the most enjoyable benefits was meeting and spending time with former state officials. Remember, there was a time when North Dakota actually had Democratic state officials. Governor and Grace Link were two of the very best. They came to every event, every fundraiser, every pie sale. I got to know Governor Link well. He was always gracious and kind. One summer evening at an event in Sertoma Park, we were talking about the Supreme Court. I had known that Governor Link had appointed Jerry. The appointment was long before my time, but I was interested in his choice of Jerry.

Governor Link said:

"When a Governor asks a question, he is not looking for conversation. He is looking for an answer. Jerry always gave me an answer, and it wasn't a lawyer answer. It was simple, straightforward, and correct. Best appointment I ever made."

And so, Jerry became an Associate Justice of the North Dakota Supreme Court. Being an appellate judge is demanding and isolating work. Often involving hours and hours of reading, discussing the pros and cons of each case with their law clerks, preparing their questions and concerns for the oral argument, participating actively in oral arguments, and discussing the case in conference with their fellow justices. They have one eye on making sure the case is properly decided and one eye on the decision's impact in the future. An appellate judge is like the duck; exhibiting a calm, composed, serene, and contented persona while paddling like hell beneath the water.

THE NEW COURTROOM

The book also discusses the transition of the Court from its old courtroom to the one in the new judicial wing. At the time of the transition, writer Mike Jacobs wrote a withering criticism of the new courtroom. His criticism was universally shared by everyone who had seen both courtrooms. The contrasts between the new courtroom and the old courtroom were stark. The old courtroom, regal and stately, possessed tall, beautiful windows looking to the north. The new courtroom, small and ordinary, had no windows. It has the look and feel of a run-down movie theatre waiting for the cleaning crew after a weekday matinee. Notwithstanding the ever-flowing praise which pours through this book, lawyers do criticize the Supreme Court. After all, there was a losing lawyer on every one of those thousand opinions penned by Jerry. At the very least, lawyers do strongly criticize the Supreme Court opinions, if not the justices. When asked what could be done to improve the quality of the Supreme Court opinions, one colorful old-time lawyer quipped: "Put in some goddamned windows."

I began my Supreme Court clerkship in the Fall of 1981. We finished the Bar Exam in the end of July and immediately moved to Bismarck to begin work the next Monday. We arrived in the midst of the construction of the new courtroom. The justices' chambers had not been finished, and they remained chambered on the second floor near the old courtroom. We five law clerks were located in our offices in the new judicial wing.

That first morning we reported to the Supreme Court Clerk of Court, Luella Dunn. Luella (Lu) was the non-judicial force at the Court. We all adored her. She gave us her p's and q's and then sent us off to our assigned offices. I was Justice Vernon Pederson's law clerk. I went to my office and met Robin Sjaastad; Justice Pederson's out going clerk. He was packing up his personal effects in a cardboard box. As we chit-chatted, I finally asked him:

> Tom: What are they like?
> Robin: What is who like?
> Tom: The justices. What are they like?
> Robin: Four old men . . . and a Kid.
>
> Jerry VandeWalle was the Kid.

The book correctly notes that the age difference between Jerry and his four colleagues was not that great. But to us law clerks, Jerry always looked and seemed so much younger. He seemed to carry the light from the old courtroom with him wherever he went. He encouraged and fostered a very

collegial environment. Law clerks freely walked into every justice's chamber and chatted about just about everything. Sports, weather, work . . ., sometimes even the law. But mostly about the UND hockey team . . ., (which did win the National Championship in 1982). The new judicial wing also had a back stairway down to the cafeteria. A cafeteria which served excellent food. Law clerks, secretaries, and most of the justices went downstairs for coffee and breakfast every morning. The atmosphere in a workplace is set from the top down. Jerry's personality made the Supreme Court a great place to work. After practicing law forty-five years, being a North Dakota Supreme Court Law Clerk has been my favorite job. The book emphasizes the collegial nature of Jerry's leadership style. He had a very diplomatic way of quietly nudging people to get things done.

THE ROLE OF CHIEF JUSTICE

The Chief Justice of the Supreme Court is one of five when it comes to deciding cases. But the role is much more than a title. It is the most important administrative position in our state judicial system. The title comes with many, many never-ending responsibilities. Administering the statewide and now unified court system. Preparing a budget for the next legislative session. Explaining to legislators and the general public the needs and the workings of the judicial system. And last but not least, exhorting the State Bar Association to do more than play in a golf tournament once a year.

The book does not dwell on Jerry's many legal opinions. Their number is too great to be limited to one book. But it does talk about two extremely difficult and perplexing problems that the Court and its Chief Justice deftly handled during that time. Funding for public education was one of the two major issues at that time. The filing of a legitimate and potentially successful constitutional challenge in state court set up a potentially divisive separation of powers battle between the judicial branch and the legislative branch. The case brought by the Bismarck Public School District was assigned to one of our very best, smartest, and most fearless district judges.

He found the funding system unconstitutional, but his decision was ultimately not affirmed by the North Dakota Supreme Court. Jerry's experience and prescience in how he worded his partial dissent probably prevented a separation of powers battle royale between the two branches. Jerry had the uncanny ability to see beyond the opinion he was currently working on. He seemed to have the ability seemingly lacking in public discourse today. He had the foresight to answer the question: "And then what?" His partial dissent in the Bismarck School case allowed the legislature to finally adequately address the school funding issue.

The other difficult and painful issue of that time was the final unification of the court system. County judges became district judges, and the number of judgeships was reduced. Incumbent judges ran against incumbent judges for one judgeship. It was painful to watch. The Chief Justice probably felt the most pain. On this issue, the Buck stopped with the Chief Justice. And on that issue, it was truly a thankless job.

The book recounts the many accomplishments and achievements in those forty-five years. But a few others are actually hidden in plain sight.

First, the inclusion of women on the bench and the bar has been a quiet revolution. The days of walking into a North Dakota courtroom and being surprised by seeing a female judge or opposing counsel are long gone. The Supreme Court promoted and facilitated equality and opportunity, and the Bar followed suit. In 1981, there were twenty-six district judges. None of those judges were women. Today, after court unification, there are fifty-five district judges (eighteen of them women), and five judicial referees (three of them women). Without question, the inclusion of women in our legal system has enhanced the quality of legal services for the people of North Dakota. Jerry encouraged young mothers to bring their newborns to their workplace. Everyone was welcomed with open arms. It also brought a little joy and life to a sometimes stale work environment. Jerry promoted these changes. The truth is, he also enjoyed them.

Second, the North Dakota Supreme Court has been at the forefront of promoting recognition and respect of our many Tribal Courts in North Dakota. In 1990, the North Dakota Supreme Court, in a landmark decision, ruled that it would enforce a tribal court judgment. *See Fredericks v. Eide-Kirschmann Ford*, 462 N.W.2d 164 (N.D. 1990). Former Chief Justice Erickstad initially led the way and wrote the opinion. But the baton of mutual respect and recognition was carried by Jerry and the other members of the Court throughout the years.

Legislative enactments were changed, procedural court rules adopted, and Supreme Court committees were organized all to promote better working relationships between our state and tribal courts. Jerry VandeWalle oversaw all of these changes. But Jerry would publicly acknowledge that credit must also go to the other justices and to North Dakota's district judges who played important roles in the transformation of goodwill and mutual respect.

THE BAKKEN BOOM

The oil industry changed the face of North Dakota. Brought in new people, new ideas, new jobs, new wealth. Our state is better for it. But like production agriculture, it too is prone to boom or bust, feast or famine. The once feared Buffalo Commons has been replaced and repopulated by

Boomtowns. Watford City, Williston, Stanley, and New Town changed overnight. Our courts were on the front lines in these changing, exciting, and unsettling times. The rush of cases in our western counties was so sudden that a temporary courtroom was set up in a trailer house in McKenzie County. The Court personnel and judges handled exploding caseloads with efficiency and fairness. The challenges to our courts and their personnel were daunting. Courthouses were expanded. Personnel were added. Judges were added. That time was best described by a County Sheriff in the Bakken:

Tom: Sheriff, how are you doing?
Sheriff: Tom, everyone is drunk, high, and well-armed.

But the Courts responded well, and the dike did not break.

CONCLUSION

In North Dakota, there is a haunting remoteness due to the imposing distances between our communities. But unlike most states, there is less of a remoteness between our courts and our people. In a church, or in a basketball gymnasium, or on the golf course, they are just Benny, Donovan, Robin, or Bill. Outside the courthouse, justices and the men and women who wear judicial robes are a real part of our communities. The life and career of Jerry VandeWalle embodied that connection his entire life. In the courtroom, a judge sits high up, partially hidden behind a huge bench. But later that evening, he or she sits in the same pew, or on the same bleacher as everyone else.

Jerry is now ninety-two years old. He has dedicated his life to serving the people of North Dakota. To the hundreds of law clerks who had the honor of working at the North Dakota Supreme Court, he is the face of North Dakota. And this book is not a storybook. This is a real-life story. Small farm, small-town school, UND, the state capital, and later to other capitals across the country in his work on enumerable national committees and commissions. In the changing landscape of North Dakota, could this story possibly be replicated today? I don't know . . . but I certainly hope so. However, it appears that in North Dakota, lightning actually does strike twice. The new Chief Justice is from Minto, North Dakota. Population 608.