

PROCEEDINGS

In Memory Of

CHIEF JUSTICE SAMUEL B. WILSON AND ASSOCIATE JUSTICES CLIFFORD L. HILTON, JULIUS J. OLSON, AND THEODORE CHRISTIANSON.

On May 15, 1956, at 1:30 p.m., the Court being assembled in the courtroom in the State Capitol, Chief Justice Roger L. Dell said:

The Court recognizes the president of the Minnesota State Bar Association, Mr. John M. Palmer.

MR. PALMER then said:

May it please the Court:

This time has been graciously and appropriately set apart for proceedings to commemorate the lives, the characters, and the public service of four members of this Court who have passed away, namely:

Chief Justice Samuel B. Wilson,
Associate Justice Clifford L. Hilton,
Associate Justice Julius J. Olson, and
Associate Justice Theodore Christianson.

The Court has called upon the Minnesota State Bar Association as the representative of the Bar of this state to arrange for the presentation of memorials to perpetuate the memory of those distinguished members of the profession who served for many years on this Court. The Association is honored to respond to the call. It has designated these representatives of our profession to deliver the following memorials:

Mr. William C. Blethen of Mankato, who will deliver the memorial in honor of Chief Justice Samuel B. Wilson.

Mr. Cyrus A. Field of Fergus Falls, who will deliver the memorial in honor of Associate Justice Clifford L. Hilton.

The Honorable Oscar R. Knutson, Associate Justice of this Court, who will deliver the memorial in honor of Associate Justice Julius J. Olson.

The Honorable Warren E. Burger, Judge of the United States Court of Appeals for the District of Columbia, who will deliver the memorial in honor of Associate Justice Theodore Christianson.

CHIEF JUSTICE DELL then said:

The Court recognizes the Honorable Warren E. Burger, Judge of the United States Court

of Appeals, who will present the memorial for former Associate Justice Theodore Christianson.
ASSOCIATE JUSTICE THEODORE CHRISTIANSON

The Honorable WARREN E. BURGER then presented the following

MEMORIAL

May it please the Court:

The occasion for this sitting of the Court is to record permanently in its records what we designate as a memorial to one of the men who was a member of this Bar and a member of this Court, the Honorable Theodore Christianson.

Memorials are in a sense eulogies which recite the tributes of colleagues and friends, but our objective should be to give an appraisal, an evaluation, of the man—especially in relation to his work as a Justice of this great Court. And, since the whole man makes the judge, it is valuable to look back to see of what components the whole man was made.

In a country like ours, the people have many opportunities to see and evaluate the leaders of the Executive Branch and of the Legislative Branch. Most of the problems of the Executive Branch and of the law makers are close to our daily lives. But by tradition and by the very nature of the work of a court of last resort, its judges must work with tools and subjects not readily understood by the public generally and not such as to arouse public interest. So it is that as members of the Judiciary pass from the scene it is important that we take note in a special way of the lives and the character of the men entrusted with what Mr. Justice Frankfurter calls "the awful business of judging."

Seldom has this Court, or any court, numbered among its members a lawyer whose combination of talents fitted him so well for a life on the Bench as did the qualities of Justice Theodore Christianson. These qualities have been carefully discussed in other memorials of the Bar which have adequately covered his outstanding scholastic record, his activities as a student leader and later in public affairs, and his service as a Navy Officer in World War II. Rather than repeat what has been accurately and eloquently said by others, I would prefer on this occasion to look to some aspects of his life, his personality, his character and temperament, which in a special way explain him in the role he occupied as an Associate Justice of the Supreme Court of Minnesota—the youngest, I believe, ever to occupy that high place.

This man was reared in a tradition and an atmosphere of service to his fellow men. As a boy he went often with his father to hear him speak either as Governor of the state, or as one of its representatives in Congress, or in political campaigns. The excitement and the drama of hard-fought political debate was to him what the baseball field and fishing were to his contemporaries. That is not to suggest he was devoid of a love of sports and the outdoors but rather that, to the normal activities of boyhood which he enjoyed to the fullest, he added another experience. Early in life he learned that the glamour of public life and high political office has other aspects—of hard blows, of criticism and attack, and, for many, hard defeat. There could have been no better conditioner for a man who was first to test himself in the difficult school of trial advocacy and later in the exacting duties of an appellate court.

With some men, a close association with partisan politics and campaigns tends to make them narrow. Sometimes, but less often, such exposure may make a man completely philosophic or even cynical. With Theodore Christianson neither result occurred. He never lost his capacity to take sides and to be an ardent advocate for what he believed, but he was never narrow or sharp

or partisan. At times his willingness to see the other person's point of view irritated his more partisan friends, who in their calmer moments of reflection admired this capacity to keep his mind open. To him most issues, most institutions, and most human beings were like Voltaire's symbolic statue of Man—composed of base metals, mud, and clay, and of diamonds and rare jewels and the purest of metals. His readiness to see the diamonds and rare metals in every human being has been emphasized in every memorial to him—and happily it did not await the occasion of a memorial to call forth these observations. His friends often commented on this quality in his lifetime and many sought to emulate him.

As a trial lawyer he tried many cases, and inevitably, as all lawyers do, he lost some. Even when he felt deeply disappointed, it was not his custom to berate the judge or the jury or his opponent. His inquiry more often was a search for what he had done wrong or what he had failed to do to transmit his conviction on the case to the court or to the jurors. This critical self analysis aided in his very early development into an accomplished advocate.

This awareness of others and their views and their problems was perhaps the one trait which set him apart from most of his fellow human beings. His reaction to bad conduct of others was not to say "Look how he acts" but usually a thoughtful introspective query: "Why does he act that way?"

This sensitivity to the hidden and unseen in others, this search for good in everyone, is, of course, one of the highest and truest expressions of the Christian concept. And it was more than tolerance, which is passive; it was invariably an active search for the best aspect in every person and every situation. His mind seemed to have thousands of facets or pigeonholes for other human beings. It was not a cold or calculating study even though it was analytical. It had a warmth and compassion and a genuine urge to understand. I, in common surely with many of his other close friends, recall that he might on occasion pick up the thread of a conversation about another person discussed long before, when he would find some new link in the explanation of some act or some transaction or event concerning that person. His search was always for the best motives, for the best traits, and for the explanation most favorable to the other.

This concern for others manifested itself in many ways. He was constantly sensitive to opportunities to help advance others—to help them find occasions and opportunities where they could develop talents and abilities which he could see and which they often overlooked in themselves.

This warm and wonderful quality was one I personally observed on many occasions. Right today I can hear the very phrases he would use—"Now look, we've got to find some way to see that 'John' gets a chance to show what he can do." Often I found myself, on his urging, being one of the implements in this process—a consequence due primarily to his constant pressing of the point with all the warmth and vitality of his personality, operating in a way that permitted me no other course.

In his lifelong habit of speaking well of all men and of seeing the best in others, it might be suggested that our friend was heeding the gospel admonition of Matthew to "judge not" lest he be judged. But there was nothing negative in his attitude—his was, as I suggested, the positive desire of the prospector to find the rare metals and jewels in every person he knew.

The remarkable fact is that this quality did not prevent his being a highly effective advocate; it was a tempering as with fine steel, producing resilient strength rather than brittle weakness. It is fair to say that this resiliency of mind and sensitivity of spirit affected all his work as a lawyer and as a judge. In all these relationships the qualities I have mentioned not

only endeared him to allies and opponents alike but tended to lift him above the very conflicts and struggles in which he took part. When he came to this Court at 37 he was actually a mature, seasoned lawyer—more mature than many men 15 or 20 years his senior—and the maturity was of a kind which gave him the detachment and objectivity essential in a really fine judge.

I hope I may be indulged a personal reference which illustrates his own attitude toward judicial work. We had been very close friends for over 20 years and when I struggled with the decision whether to return to private law practice or go on the Bench, he was one of a very few friends in whom I confided. His reaction was prompt and it was documented and presented like a fine appellate argument. Among other things, he said he had concluded after seven years on this Court that active general practitioners accustomed to trial work made the best appellate judges. "Trial lawyers," he said, "learn to take sides and the essence of judging is to take sides; the difference is that a judge takes sides after hearing all the arguments and evidence."

He emphasized that while he found appellate work exacting it had less of the day-to-day pressure that he had encountered as a lawyer.

It is not a reflection on his fine legal mind and his intuitively sound legal judgment to say that he had to drive himself at times. He would sometimes say that he was essentially lazy and that his pride and conscience kept him at work. It is, of course, more accurate to say that it was his really strong passion for truth and facts and justice that supplied the drive.

These drives never altered his capacity for pleasure in the companionship of his contemporaries or in the simple common pleasures of life. In fact, he transmitted his feeling for competition and for recreation into his work and the solution of a difficult legal problem, or completion of a trying opinion, produced in him the same exhilaration which we would see when he caught the largest wall-eyed pike of the day.

His legal writing and his opinions as a member of the Supreme Court showed that he tended to be professionally and legally orthodox. He respected the limitations on scope of appellate review, partly no doubt because his wide trial experience taught him that cold records do not present the same picture which a trial judge sees. Likewise, he had a profound respect for the fundamental separation of powers and he felt that the durability of our system of government depended on having each coordinate branch respect the powers of the others. More than most judges, he was capable of judicial self-restraint.

One of the compensations which he felt came to him to offset giving up a career in practice far more rewarding in a material sense, was the freedom to be with his family while his children grew up. Although he worked long hours, he found that life on the Bench freed him from much of the nervous tension which seems to be the constant companion of the practicing lawyer. Within a week of his death I spent with him one of the best days we ever shared together fishing on the St. Croix with an expert guide. His enthusiasm for a catch of a limit of large wall-eyed pike was like that of a teenage boy on his first real fishing trip and he at once talked of taking his family out with this same guide.

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. He always remembered that lawyers do not act for themselves but for others. He considered that it was the responsibility of lawyers to advocate and of judges to decide and he expected partisan arguments rather than scholarly objective discourses. He knew the problems and burdens of the advocate and was always aware of the great disparity of power

between the lawyer on the court and the lawyer facing the court. Few things brought a reaction of irritation from him so much as the spectacle of a judge who treated lawyers in an overbearing or arrogant manner. 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 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.

The sudden and tragic termination of his life found him at the peak of his powers of mind and body, keenly enjoying companionship with his wife, Dorothy, and his two children, Sally and Theodore, at home and at ease with his work on this Court. He was often pressed to consider leaving the Bench for attractive opportunities in private practice and for pressing demands that he run for Governor or Senator, or accept a high post in the Executive Branch of President Eisenhower's Administration. The call of public service was a strong one for him, but I am confident that he had finally resolved in his own mind to devote his life to the Judiciary. He had found genuine happiness and deep satisfaction in that work.

Life, as we know on reflection, is measured in more dimensions than simply calendar years. What is given into it, what it gives off, the impact of a life on its environment—and surely the influence on other human beings—all these things are more significant than years or time alone. Judged by these more vital and meaningful dimensions, Theodore Christianson lived a rich, full, and significant life, and the product of that life has enriched his community, his state, and in a very special way, this Court and the law.

It is a record which any man would be proud to have as his own.

CHIEF JUSTICE DELL then said:

The Court recognizes Mr. John M. Palmer, president of the Minnesota State Bar Association.

MR. PALMER then said:

May it please the Court:

Before closing the memorial services, I ask leave of the Court to present and file a resolution of the Law Alumni Association of the University of Minnesota honoring the memory of Associate Justice Christianson. At the time of his death, Mr. Justice Christianson was the president of the Alumni Association of his Law School. That position, coupled with his many years of interest and service to the Law School or our State University, made it appropriate for his fellow alumnae to commemorate his memory by special resolution.

So it is, that I now ask leave of the Court to deliver and file the resolution which was enacted by unanimous and rising vote at a meeting of the Law Alumni Association on April 26 of this year:

"BE IT RESOLVED by the members of the Law Alumni Association of the University of Minnesota in meeting assembled this 26th day of April 1956, that the recent death of Associate Justice Theodore Christianson of the Supreme Court of the State of Minnesota, is a great loss to that Court, to this Association of which he was the President, and to the bench and bar of the entire state. He was an able judge whose brilliant mind, warm personality and application to the study of the law brought distinction to his Law School, to his profession, and to the bench of this

state.

"The Law Alumni Association of the University of Minnesota joins with the bench and bar of the state of Minnesota in honoring his memory and extending sympathy to his family and associates.

"Respectfully,
"Judge Walter F. Rogosheske, President
Law Alumni Association of the
University of Minnesota"

CHIEF JUSTICE DELL then said:

Members of the Bar:

It is indeed fitting and right that we should assemble here today in memory of the departed justices who served as members of this Court and to record the respect, esteem, and affection in which they were held by the Bench and Bar alike. That these men who we memorialize today have justly earned and richly deserve their place in the history of this state, has been most ably pointed out by the memorials presented here this afternoon. Their work is finished and finished well but our memory of them and what they have done will remain with us always.

In the early hours of September 19th last, tragedy visited this Court and took from us our youngest and most beloved member. I knew Justice Theodore Christianson since he was a boy. He worked each summer at Dunnvilla in my home county of Otter Tail. I watched him grow from a boy into a man, from a student into a lawyer, and from a lawyer into a judge. To know him was to love him. When he came to this Court he had only practiced law 13 years. When he died he had the complete confidence, respect, and admiration of every member of this Court. He was a tireless worker day and night and his opinions measure up to the best. Minnesota has lost a truly great judge and citizen. I want to here and now acknowledge my indebtedness to him and the indebtedness of all of the members of this Court who served with him, for his patience, his help, and understanding, and above all for his kindness in making life just a little easier and a little more pleasant for all of us. We have lost a true friend, a very fine justice, and we shall ever mourn his loss.

These proceedings will be spread upon the minutes of the Court.