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## A SENSE OF PLACE

JUDGE R.A. (JIM) RANDALL†

Peter Popovich, from Chisholm, Minnesota, has given forty-five years of service to the people of the State of Minnesota, first as a lawyer, then as the first Chief Judge of the Minnesota Court of Appeals, then as Associate Justice and now Chief Justice of the Minnesota Supreme Court. He has risen on merit to the pinnacle of success in our craft, our chosen profession. He is to be honored by many formal dinners yet to come in Minneapolis and Saint Paul. At those dinners, speeches will be given about his life and career as a lawyer and as a judge. But Peter is home tonight and I am going to leave those speeches and accolades for later dinners, knowing they are to come. I'm going to talk about Judge Popovich tonight as a man of the Iron Range, and about the values and ideals that being from here instilled in him, and which he has passed on to the State of Minnesota.

The Iron Range is a geographic place. Strangers can find it on a map or they can ask one of us for directions. But it is more than that—more than a collection of small towns running from Grand Rapids east and then north to Ely. It is a true community, rich in a proud cultural heritage, with a set of values that were literally scraped out of the hardpacked ground and shaped and fashioned by a desire to survive, a desire for life, and a deep belief that people should control their own destiny.

Peter was raised two blocks from where we hold this dinner tonight. Although he eventually went away to school and settled in the metropolitan area, like all Rangers, he never really left. We just live in a house temporarily away from home. He and I did not come here tonight on a vacation, we are back

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† Judge, Minnesota Court of Appeals.

Text of a speech given by Judge R. A. (Jim) Randall of the Minnesota Court of Appeals at the retirement dinner for Chief Justice Peter S. Popovich, of the Minnesota Supreme Court, sponsored by the Iron Range Bar Association at Valentini's Supper Club in Chisholm, Minnesota, on January 15, 1991.

home. When Peter is honored at dinners to follow in the Twin Cities, he will be there on a vacation.

About the most common question a person is asked when they meet somebody new is, "Where are you from?" You are asked that your first day in the service, your first day away at school, or your first day on a new job. I have been blessed by living in three wonderful small towns that I can call home. I was born and raised in Little Falls, where my parents still live in the same house that my grandfather and grandmother lived in before the turn of the century. I could say I am from Little Falls.

I have lived for the last six years in Center City, Minnesota, my wife's hometown. Her parents still run a dairy farm, as they have for the last fifty years, four miles south of us. Center City is a tiny town in the middle of a rural/agricultural area with many of the values we treasure on the Iron Range. Center City, is in the Eighth Congressional District, as Hibbing and Chisholm are. It is likely my last stop, so I could say I am from Center City.

But if you ask me where I'm from and say, "Randall, this isn't multiple guess like a bar exam and you only get one answer." I always say I'm from Hibbing, which is on the Iron Range, up in northern Minnesota. If you ask me why I choose Hibbing, I have objective reasons. I lived here for seventeen consecutive years, from 1967 to 1984, which is about as long as I have ever lived in any one place. All three of my children were born and raised here, so they, even more than me, have that red iron ore dust as an indelible mark in their genes. I always tell them, you have to remember where you are from, or you won't make it in a big city. Most of my close personal friends are Rangers, either living here or in the Twin City area. But I have a subjective reason. My craft, the way I earned a living for my family, is as an attorney. Everything I learned about law, being a lawyer, and the values that go into my decision-making process as a lawyer and as a judge, were learned here, shaped here, formed and polished by the people I worked with, my clients, and the friends and associations I made here. My law practice was both civil and criminal, but my real trade, my strength, was criminal defense and justice.

The origins of our civil law are pretty universal, and cut across all boundaries. The law of contracts is founded on the

universal belief that if a person gives their word, others may act in economic reliance thereon. The law of torts is founded on the universal belief that if you injure someone in their person and property, you ought to make them whole.

But the foundation of criminal law and justice is more specific. Our country's system of criminal law and sense of justice has its origins going back 750 years to the Magna Carta, and the following hundreds of years in which the English people struggled against the power of the crown for a right to be free. Our system of criminal law and justice evokes ancient and dusty memories from the long past. It conjures up the ghost of the English peasant fighting for his life against the power of the King and the King's standing army. It brings back the stark image of a serf struggling to save enough of his crops so that he could keep his family from starving in the winter, keep a part away from his nobleman landlord and his knights when they would come in the fall after the harvest to take the first share.

Children of Iron Range miners understand that. Peter is the child of an Iron Range miner. About sixty years ago his father was an Iron Range miner who had worked his way up to the level of a crew chief and had a few men under him. Every fall at election time, a mining company foreman or supervisor would stop by the Popovich house, chat with Peter's father, and then give him a list of candidates for the various elections, local and state, that the mining company wanted him to instruct his men to vote for. Peter told me about the year, when he was a little boy, the mining company supervisor came, gave his father, Peter Popovich, Sr., the approved candidates and, as he was walking out of the house said, "Now, Peter, don't you forget to vote for these people either." Peter's father turned to him and said, "Sonny, open the door." Peter said there was an edge to his father's voice and when he had that edge Peter did what his pa said without asking why. "I held open the door and my father took the supervisor by the coat and threw him out the front door and down the steps. As he closed the door behind the supervisor, he turned to me and said, 'Sonny, don't you ever let anybody tell you how to vote!'"

Peter's father lost his job and never worked for the mining companies again. Neither did Peter. All those summer jobs that normally went to the sons of crew chiefs and foremen when money was scarce and needed for school were forever

closed to him. Those experiences, and the values and ideals that he grew up with and learned from his parents and his parents' community, shaped an Iron Ranger who left his mark on this state.

We often hear the lofty quote, "We are a nation of laws and not of men." We often hear another lofty quote, "No man is above the law." If you attend Veteran's Day speeches and Memorial Day speeches given by those running for elective offices, these quotes are familiar and greeted with applause by all who hear. In the context in which they are said, they sound good. It is true that the same laws should apply to everybody. But in a very real and true sense, the quotes are backward. We are a nation of people, and not of laws. People are above the law in the sense that the people have a right to set the law, to administer it, to vote legislators in and out, and to be sure that the law serves and does not oppress.

Law is literally above all men in Iran, Iraq, Nazi Germany, South Africa, and old Stalinist Russia. There, law is used to control, to suppress, to suck the lives out of people, and to eventually crush them into submission. Real law is not on printed pages, but is in our hearts. A law is just a set of words written on the pages of dead trees. Counting the volumes of all the companies that print legal books and legal treatises and journals, and counting all fifty states and the entire federal system in America, there may be ten million, or is it one hundred million, books that claim to contain the law.

We know that not all judges read the same books and, even when they do, it is rare, on an important issue, for a majority decision of the United States Supreme Court, the Minnesota Supreme Court, or the Minnesota Court of Appeals sitting en banc, to be unanimous. If the printed word were the law, and nothing else but the printed word controlled, judges and presidents would look to our constitution and stop there. Our constitution remains identical, verbatim, period for period, comma for comma, for every judge and president. It is so short it could virtually be committed to memory. So, if the printed word is the law, then it should make no difference whether the president is John F. Kennedy or Richard Nixon, Ronald Reagan or Walter Mondale, or Michael Dukakis or George Bush. It should make no difference which nine people sat on the United States Supreme Court. Lawyers and judges

know better, and if you do not, go back to your law school and sue for a refund.

In the final analysis, presidents and judges analyze and make their final gut decision of what is right and what is wrong and what is best for people based on who they are; and who we are is a composite, not of typed words on a piece of paper, but of our origins, the color of our skin, our race, our religion, our ethnic background, and the values of our parents and the community we grew up in. Those intangibles, over the printed words, guide our final decision.

No judge in Minnesota, liberal or conservative, disagrees that the speed limit is fifty-five miles per hour on some highways and sixty-five miles per hour on others. We all agree that a burglary for which the printed law *says* the sentence is to be zero to five years means zero to five, and not zero to four or zero to six. But that is purely an administrative/clerical decision. If the printed word on sentences is controlled, you would have clerks with a schedule of fines and sentences who could do all our work. A judge, and only a judge, makes a decision whether to give an accused law breaker a scrupulously fair trial or just an average one, and a judge, and only a judge, makes the decision whether to fine and place an offender on probation or to put the offender in prison, a decision which could mean the loss of a job, which could perhaps wreck a marriage, which could perhaps wreck a career. In those forty states with a death penalty, of which I am proud that Minnesota is not one, judges faced with a conviction for murder in the first degree have the discretion to impose the death penalty or life imprisonment. That judge is a human being. No printed word ultimately ties his hands and forces him against his will to write death or life. Rather, the intangibles I enumerate filter through his gut up through his soul, and eventually out of his mouth, when he writes his final order.

Peter is a composite of the values and the culture that we hold dear on the Iron Range. For the last forty years he has owned a house in Saint Paul and, later, on the Saint Croix River just south of Stillwater. But that is his house. His home is here. There is an Iron Range imprint on the Minnesota Court of Appeals, of which he was the first Chief Judge and our virtual founding father. There is an Iron Range imprint on the Minnesota Supreme Court. Those imprints are indelible. They are permanent markers in the genes of the judiciary and

in the law that will forever permeate the State of Minnesota and us, its citizens.

The American cowboy had a short but colorful history in the nineteenth century. He has been immortalized on movie screen and TV. The American cowboy, for low pay and board and room, fought cattle rustlers, the elements, and a harsh land. An honorable cowboy was one who, when he signed on and received the owner's wages, did his job despite adversity. Louis L'Amour, the chronicler of that period in our history, said the ultimate compliment one cowboy would say of another is that "he rode for the brand."

A lesser-known but equally colorful chapter in history was written right here in these northern Minnesota woods by nineteenth century loggers who worked to cut trees out of these woods and ship them downriver to sawmills for lumber to build homes and offices from here to California. The north country logger in those days had a rough and tumble job. You did not inquire about another logger's past as he, like you, might be on the run from a sheriff or an angry boyfriend. You did not ask about his tomorrow as that was none of your business. Your only concern was that the man next to you could hold up his end of the saw, lift his end of the stick, and do his job so that you did not have to watch your back. Logging was dangerous in those days. Loggers would cut trees all winter when the ground was frozen and, with horse and brute strength, skid them out to the banks of frozen streams and rivers to await the spring thaw. When it came, they would tumble those logs into the water and form a raft of floating logs held in place by logs chained together across the river, which was called a boom. When all the logs were in place, pointing downstream, men in hobnailed boots and iron-tipped poles called pikes stood on those logs keeping them pointed downriver until a signal would be given by the foreman and the boom would be cut and the logs set adrift with men riding on them headed downstream toward the sawmills.

One of the most dangerous parts of this dangerous industry was riding those logs downriver, keeping them pointed straight, and breaking up log jams. Men would fall off and be mangled or killed by the tons and tons of logs that would float around them, over them, and sometimes crush them and keep them from coming to the top so they drowned. So, if you were on a log, you wanted the man behind you, to the right of you,

and to the left of you to do his job to help protect your life. When loggers would sit around the fire at night and swap stories, and when the talk would turn to a logger who had passed on to another camp or died, the ultimate compliment would be for some grizzled veteran of a hundred deadfalls and a hundred rides to look into the fire and say, to nobody in particular, "Well, I heard old John Brown passed on. Now, take old Brownie, there was a good man to ride the river with."

Peter, you were a damn good man to ride the river with. The State of Minnesota and its people are going to miss you. The Bench and Bar are going to miss you, and I'm going to miss you.

As you move on to new careers where you will again serve honorably and well, *vaya con Dios*, go with God. As I said, you have other honors yet to come in other towns, but tonight you are home.



