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PATRONAGE: HISTORIES AND BIOGRAPHIES OF NORTH DAKOTA'S FEDERAL JUDGES

ARDELL THARALDSON, THE NORTH DAKOTA BRANCH OF THE HISTORICAL SOCIETY OF THE UNITED STATES COURTS IN THE EIGHTH CIRCUIT AND THE NORTHERN LIGHTS, ND PRESS, 2002

REVIEWED BY JEFFREY B. MORRIS & MAUREEN FITZGERALD*

Ardell Tharaldson's study of North Dakota's federal judges is a significant addition to the literature of the federal courts in America's heartland.¹ It belongs on a shelf with books and booklets devoted to the other districts in the Eighth Circuit.²

I. THARALDSON'S BOOK

After a ten page chapter on the judges of the Dakota Territory, Tharaldson presents sketches averaging about thirteen and one-half pages of all ten men appointed to the United States District Court for the District of North Dakota through the year 2000.³ Tharaldson presents the background of each judge and explains the politics of their appointment and confirmation.⁴ As the late Richard S. Arnold pointed out in his Foreword, the tenures of North Dakota's district judges have been long, averaging almost sixteen years, giving stability to the law and to the expectations of North Dakotans.⁵ For most of the judges, Tharaldson gives the reader an idea of the significance of the judges' work in North Dakota and makes clear that at

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1. ARDELL THARALDSON, *PATRONAGE: HISTORIES AND BIOGRAPHIES OF NORTH DAKOTA'S FEDERAL JUDGES* (2002).

2. All the district courts in the Eighth Circuit have short histories or a collection of biographies other than Arkansas's two districts, the Eastern District of Missouri, and the District of Nebraska. PEGGY J. TESLOW, *HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA* (1991); DIANE E. MURPHY & MARGARET H. CHUTICH, *HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA* (1989); KENNETH G. OWENS & JACOB DIM, *HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA* (1976); RICHARD W. PETERSON, *THE COURT MOVES WEST* (1988); GEORGE MILLS & RICHARD W. PETERSON, *NO ONE IS ABOVE THE LAW: THE STORY OF SOUTHERN IOWA'S FEDERAL COURT* (undated); FRANK J. MARGOLIN & EDWARD J. MCMANUS, *HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA 1882-1987* (1987). *See also* LAWRENCE H. LARSEN, *FEDERAL JUSTICE IN WESTERN MISSOURI* (1994) (offering an example of a book that integrates the judges into the history of the major work of the district).

3. *See generally* THARALDSON, *supra* note 1.

4. *Id.*

5. Richard S. Arnold, *Foreword* to THARALDSON, *supra* note 1, at vi-vii.

least two, Charles Amidon (district judge from 1896 to 1928)⁶ and Ronald S. Davies (1955-71), have a claim to national importance: Amidon for his handling during the First World War of prosecutions brought under the Sedition and Espionage Acts and Davies for his role in the desegregation of Little Rock's schools.⁷

Tharaldson has little to say about Alfred Delavan Thomas (1890-96), North Dakota's first district judge, who served only six years before his death.⁸ Prior to his appointment, Thomas, an expert in mineral law, had been legal counsel for the Home Stake Mining Company as well as for the mining interests of George Hearst in California.⁹

Tharaldson has much more to say about the most important of the judges, Charles F. Amidon, judge from 1896 to 1928.¹⁰ Amidon read law in Thomas's office.¹¹ He was confirmed as district judge, even though he was the appointee of a lame duck President.¹² Amidon left a sizeable heritage, with over one thousand district court opinions and more than 150 opinions sitting by designation on the United States Court of Appeals for the Eighth Circuit.¹³ Amidon must be among the very few (if any) federal judges for whom a county seat was named (Amidon, Slope County, North Dakota).¹⁴

Amidon was a progressive judge, among the first federal judges strongly sympathetic to civil liberties.¹⁵ He strongly advocated the "harmless error" rule, which reduced the likelihood of reversals by appellate courts.¹⁶ He was an expert on Native American land title cases, trying them all over the circuit.¹⁷ He developed the prototype labor injunction, simple and readable, but limited the ability of corporate lawyers to have them issued on affidavits without full hearings.¹⁸ Amidon also prevented railroad interests from blocking the creation of an Industrial Commission that was to manage the state-owned bank, flour mill, and elevator, which were important parts of the Non-Partisan League (NPL) program.¹⁹

6. The dates given after the first mention of each judge are those of regular, active service.

7. THARALDSON, *supra* note 1, at 17-27, 61-82.

8. *Id.* at 11-14.

9. *Id.* at 12.

10. *Id.* at ix, 17-27.

11. *Id.* at 19.

12. *Id.* at 20.

13. *Id.* at 22.

14. *Id.*

15. *Id.* at 20-21.

16. *Id.* at 21.

17. *Id.* at 23.

18. *Id.*

19. *Id.* at 24.

However, Amidon's legacy today rests primarily on his strong defense of civil liberties during the First World War.²⁰ While an overzealous United States Attorney in North Dakota gave the state the highest number of loyalty prosecutions per capita in the nation at a time of super-patriotism, Amidon did his best to limit the harm caused by the Espionage and Sedition Acts.²¹ For this, Amidon was ostracized by his fellow-citizens, as J. Skelly Wright would be some forty years later for his work in desegregating the New Orleans schools.²² Not until his retirement in 1928 did the bar make amends.²³ At a dinner in his honor, one speaker stated, "Whatever the limits of free speech . . . the principle stands that the right of free men are not lost in time of war, that the truest service to our country demands that we do not violate the principle in fighting this foe."²⁴

Andrew Miller, judge from 1922 to 1941, seems to have been North Dakota's most political district judge.²⁵ Before he came on the bench, Miller had been close to the Republican machine of "Boss" Alexander McKenzie and an advocate of the interests of Standard Oil and the Northern Pacific Railroad.²⁶ For that, his nomination originally was opposed by Republican progressives and the NPL.²⁷ Ultimately, though, Miller was confirmed with the support of leading NPL members Senator William Ladd and William Lemke.²⁸

It was Miller who presided over the first trial of Governor William Langer in 1934.²⁹ When Langer was convicted for obstructing the lawful administration of federal law by soliciting federal funds for political purposes, Miller said he was "delighted and pleased" with the verdict.³⁰ After remand by the Eighth Circuit, Langer filed an affidavit of prejudice against Miller, which led to Miller's removal as the presiding judge of the second trial.³¹ Miller then had Langer charged with perjury for what he had

20. *Id.* at 23.

21. See also ZECHARIAH CHAFEE, JR., *FREE SPEECH IN THE UNITED STATES* xiv, 50, 69, 70, 77 (Harvard U. Press 1948) (1941).

22. See generally LIVA BAKER, *THE SECOND BATTLE OF NEW ORLEANS: THE HUNDRED YEAR STRUGGLE TO INTEGRATE THE SCHOOLS* (1996).

23. THARALDSON, *supra* note 1, at 27.

24. *Id.* (quoting FARGO FORUM, June 6, 1928). See also KENNETH SMEMO, *AGAINST THE TIDE, THE LAW AND TIMES OF FEDERAL JUDGE CHARLES F. AMIDON, NORTH DAKOTA PROGRESSIVE* 187 (1928); ELWYN B. ROBINSON, *HISTORY OF NORTH DAKOTA* 260 (1966).

25. THARALDSON, *supra* note 1, at 31-41.

26. *Id.* at 33.

27. *Id.* at 34.

28. *Id.* at 37.

29. *Id.* at 39.

30. *Id.* at 40 (quoting ROBINSON, *supra* note 24, at 410).

31. *Id.*

said in the affidavit.³² Langer received a directed verdict in the perjury trial and was ultimately acquitted in the third trial of the obstruction charge.³³

Miller was succeeded by a particularly able jurist, Charles J. Vogel, who served as district judge from 1941 until 1954, when he was appointed to the United States Court of Appeals for the Eighth Circuit, the only North Dakota District Judge to be elevated.³⁴ Vogel's appointment was as politically complex as that of Miller's.³⁵ A Democrat, Vogel had run against Langer and Lemke for the United States Senate in 1940; Langer won.³⁶ With a Democratic President in the White House, the judgeship appointment appeared to be between Vogel and P.W. Lanier, the United States Attorney.³⁷ However, Lanier's baggage was too heavy, for he had been the United States Attorney who had prosecuted Langer in the conspiracy and perjury cases.³⁸ Vogel also was assisted by Langer when a Republican President elevated him to the Court of Appeals.³⁹

Tharaldson is rather stingy in his portrait of George S. Register, the first native-born North Dakotan (born in Bismarck) to serve as a district judge in the state.⁴⁰ For Register to be appointed as a district judge, Langer had to be outmaneuvered.⁴¹ As a district judge, Register presided over seven three-judge district courts and over the first federal prosecution for violation of civil rights in North Dakota in 1956.⁴²

Ronald N. Davies (1955-71) was the only North Dakota judge to receive international recognition.⁴³ At five foot one inch tall, Davies graduated from Georgetown Law School and practiced in Grand Forks.⁴⁴ The first choice of the North Dakota Bar Association for the judicial vacancy he filled, Davies undoubtedly benefited from his friendships with Langer and other NPL leaders.⁴⁵ As with many North Dakota district judges, the relatively light caseload of the district permitted Davies to be assigned elsewhere in the country to deal with case backlogs.⁴⁶ Assigned

32. *Id.*

33. *Id.*

34. *Id.* at 45, 52.

35. *Id.* at 48.

36. *Id.*

37. *Id.* at 48-49.

38. *Id.* at 49.

39. *Id.* at 52.

40. *Id.* at 57.

41. *Id.* at 62.

42. *Id.* at 64.

43. *Id.* at 74.

44. *Id.* at 70.

45. *Id.* at 72.

46. *Id.* at 74.

for that purpose to the Eastern District of Arkansas in 1957, Davies found himself in the middle of the Little Rock school desegregation case as it reached its critical stage: Governor Orval Faubus's defiance of the federal courts and President Eisenhower.⁴⁷ With no small amount of courage, Davies faced down Faubus, and ultimately, President Eisenhower had to send troops to enforce the court order.⁴⁸ Davies' role in Little Rock made him famous throughout the world.⁴⁹ Although the Little Rock case overshadowed Davies judging in North Dakota, Tharaldson suggests that he handled notable products liability,⁵⁰ tort⁵¹ and Federal Tort Claims Act cases.⁵²

The relationship of Paul Benson (1971-85) to Senator Milton Young clearly played a major role in his appointment to the district bench.⁵³ Young was Benson's uncle by marriage, and Benson had worked for him as staff director in Washington.⁵⁴ Tharaldson relied upon the ALMANAC OF THE FEDERAL JUDICIARY for a characterization of Benson as pro-business, pro-prosecution, pro-defense (in personal injury cases), and as a strict interpreter of the law.⁵⁵ Benson presided over the second trial of Native American activist Leonard Peltier for the murder of FBI agents, making important rulings hostile to the defense and sentencing Peltier to two consecutive life terms.⁵⁶ Nevertheless, Benson several times struck down North Dakota's abortion laws⁵⁷ and held that the display of the Ten Commandments in a classroom was unconstitutional.⁵⁸

After an active career practicing law in Minot, Bruce M. Van Sickle, who also had served in the state legislature for two terms, was appointed to the District Court by Richard Nixon.⁵⁹ Perceived as politically conservative when he went on the bench, Van Sickle's career, like that of J. Smith

47. *Id.*

48. *Id.* at 75.

49. *Id.* at 76.

50. See generally *Stromsodt v. Parke-Davis & Co.*, 257 F. Supp. 991 (D.N.D. 1966).

51. See generally *N.Y. Life Ins. Co. v. Dick*, 252 F.2d 43 (8th Cir. 1958), *rev'd*, 359 U.S. 437 (1959).

52. See generally *Merchants Nat'l Bank & Trust Co. of Fargo v. United States*, 272 F. Supp. 409 (D.N.D. 1967).

53. THARALDSON, *supra* note 1, at 83-84.

54. *Id.* at 85-96.

55. *Id.* at 88-89 (citing ALMANAC OF THE FEDERAL JUDICIARY, EIGHTH CIR. 73 (1997)).

56. See *United States v. Peltier*, 585 F.2d 314, 318 (8th Cir. 1978). Benson also presided over remanded matters. *E.g.*, *United States v. Peltier*, 609 F. Supp. 1143 (D.N.D. 1985).

57. See generally *Leigh v. Olson*, 385 F. Supp. 255 (D.N.D. 1974); *Leigh v. Olson*, 497 F. Supp. 1340 (D.N.D. 1980); *Valley Family Planning v. North Dakota*, 475 F. Supp. 100 (D.N.D. 1979); *Valley Family Planning v. North Dakota*, 489 F. Supp. 238 (D.N.D. 1980).

58. THARALDSON, *supra* note 1, at 89.

59. *Id.* at 104-05.

Henley in Arkansas, demonstrates the transforming effect of responsibility for the powerless on a district judge.⁶⁰ In litigation involving treatment of the developmentally disabled at several state institutions, which were overcrowded, understaffed, and under funded, Van Sickle certified a class of institutionalized, developmentally disabled persons; limited the use of medication on patients; stopped the use of corporal punishment; created proper feeding programs; and ordered the hiring of additional personnel.⁶¹ In litigation that lasted almost fifteen years, Van Sickle ultimately granted a permanent injunction against the state and held that the developmentally disabled residents of state institutions had a federal and state constitutional right to treatment in the least restrictive appropriate setting.⁶² He appointed a monitor to observe implementation of his orders and special masters to judge compliance.⁶³ Tharaldson concluded that ultimately the North Dakota system for treatment of the developmentally disabled was transformed into a recognized national leader.⁶⁴ Van Sickle has indicated that this was "the most satisfying of his cases during his active career."⁶⁵

Mention should also be made of Van Sickle's role in litigation involving farm liquidations. When the Farmers Home Administration (FmHA) was bringing an increasing number of farm liquidations without giving advance notice to the farmer or any opportunity for a hearing prior to the liquidation, Van Sickle certified a national class action and ordered the protections of due process.⁶⁶ Van Sickle's ruling in *Colman v. Block*⁶⁷ exerted a major impact on the manner in which the FmHA would handle its borrowers, and Congress enacted his requirements into law.⁶⁸

Tharaldson's treatment of the two regular judges sitting when he was writing his book omits discussion of their work on the bench, but offers instead a fuller discussion of the personality of one and more detail about the appointment process of the other. Patrick Conmy (1985-2000) had specialized in personal injury cases as an attorney.⁶⁹ He also served five terms in the North Dakota House of Representatives and one term as

60. *Id.* at 105.

61. *Id.*

62. *Id.* at 107.

63. *Id.* at 105-07; see also *Ass'n of Retarded Citizens of N.D. v. Olson*, 713 F.2d 1384, 1388 (8th Cir. 1983); *Ass'n of Retarded Citizens of N.D. v. Olsen*, 561 F. Supp. 473, 475 (D.N.D. 1982).

64. THARALDSON, *supra* note 1, at 107.

65. *Id.*

66. *Id.* at 107-10.

67. 580 F. Supp. 194, 210-11 (D.N.D. 1984).

68. THARALDSON, *supra* note 1, at 109; see also *Agricultural Credit Act of 1987*, Pub. L. No. 100-233, 101 Stat. 1568 (1988); *Colman v. Lyng*, 864 F.2d 604 (8th Cir. 1988).

69. THARALDSON, *supra* note 1, at 116.

President of the North Dakota Bar Association, heading the list of eight names recommended by the Bar Association for the judgeship.⁷⁰ Tharaldson, gently and not maliciously, discusses Conmy's "style of dress," "love of motor vehicles," and irreverent personality.⁷¹

Rodney Webb (1987-2000) practiced law in Grafton and served as a state's attorney and special assistant attorney general.⁷² Active in the Republican Party, Webb's work for Ronald Reagan led to his appointment as United States Attorney.⁷³ Although it appeared that Webb would be the runner-up for the judgeship, the defeat for re-election of Republican Senator Mark Andrews coupled with the Democratic Party regaining control of the United States Senate meant that the favorite, United States Bankruptcy Judge William Hill, suddenly became unconfirmable, and Webb was nominated in his stead.⁷⁴

From Tharaldson's study it is apparent that involvement in the politics of the state and close connections to a political party or a wing of that party has been virtually essential in attaining a seat on the federal bench in North Dakota. The key "judge-maker" in the state was Senator William Langer who exerted exceptional influence over the appointments of four of the ten judges.⁷⁵ Senator Milton Young was decisive in the appointment of Benson.⁷⁶ Tharaldson also points to the influence of retiring judges on the appointment of their successors.⁷⁷

II. THE WORK OF FEDERAL DISTRICT JUDGES

Ardell Tharaldson's book offers a series of interesting sketches of the lives and appointment processes of North Dakota's district judges. If only he had added more about the ability of the judges in practicing their craft. Trial judging involves more than generalized demeanor and the ability to avoid mistrials and reversals. There are a number of points during which a federal district judge can affect the efficiency and fairness of a trial. In criminal cases, this includes rulings at suppression hearings, on objections to the introduction of evidence, on the content of the charge, with the handling of the voir dire, and of juries who claim to be deadlocked. Over most of the past two decades, judges have varied in their willingness and

70. *Id.* at 116-17.

71. *Id.* at 119.

72. *Id.* at 124.

73. *Id.* at 125.

74. *Id.* at 126.

75. *See id.* at 52.

76. *Id.* at 83-85.

77. *See id.* at 41.

creativity at escaping from the strait jacket of guideline sentencing. The opportunities for a trial judge to influence the result of civil suits are usually greater because civil opportunities not only include some of those occurring in criminal trials, but also include the supervision of discovery, rulings on motions for summary judgment and judgment as a matter of law, dealing with the greater quantum of evidence permitted in a bench trial, and the treatment of findings of fact.

There are, though, additional ways in which a district judge affects "justice:" the breadth or narrowness with which he or she approaches issues of jurisdiction; when and whom he or she appoints as counsel in habeas cases; and the treatment of settlement negotiations. Of course, judges vary as to how they control their calendar. Does the judge move cases along, simplify the issues to be tried, or intervene to protect a poorly represented party? Judges also differ in the way they use United States Magistrates, in when and how they employ special masters, in the clarity of the record they make for rulings, in the speed with which they rule on motions, in their facility for giving oral opinions, and in their philosophy for handling attorneys fees.

Judges of unusual ability can do more. They may shape cases rather than relying on lawyers to do so, sometimes transforming a small dispute into a potentially important precedent. Judges not only differ in the number of opinions they choose to publish, but as to whether they make use of their opinions to shape the law or to educate fellow judges. Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York can, and often does, use an opinion to write a mini-treatise on novel procedural issues.⁷⁸ Judges differ in their ability to tailor findings of fact and rulings of law to escape reversal. They differ in their willingness to risk reversal. They may differ in their willingness to order the intervention of state or federal governments into a case. The big political case poses particular challenges in maintaining order when there are unruly defendants and lawyers as well as in dealing with the press. Judge Warren Urbom of the District of Nebraska so impressed the attorneys in some of the prosecutions coming out of the Wounded Knee Massacre that both sides wanted him to preside over the rest of the prosecutions⁷⁹. Judge Gerhard Gesell of the District of Columbia was a past master in the handling of the press during trials, such as those coming out of Watergate and the Iran-

78. See, e.g., U.S. *ex rel.* Thurman v. Mancusi, 275 F. Supp. 508 (E.D.N.Y. 1967) (habeas corpus—guilty plea); Dolgow v. Anderson, 43 F.R.D. 472 (E.D.N.Y. 1968) (class actions); King v. Conde, 121 F.R.D. 180 (E.D.N.Y. 1998) (magistrate judge handling of discovery).

79. See Jeffrey Brandon Morris' forthcoming history of the Eighth Circuit (on file with author).

Contra affair.⁸⁰ Of course, class actions have special requirements. Very few district judges may make a significant impact while sitting by designation with the Courts of Appeals. Tharaldson suggests Amidon did.⁸¹ Finally, one should never gainsay the significance of the manner in which the judge presents the face of justice to the general public in both ordinary and extraordinary times.

Unfortunately, the literature on the work of district judges is extraordinarily skimpy compared to that devoted to the Supreme Court and rarely goes into detail with matters of craft. To be sure, the process of appointing district judges has attracted scholarly attention.⁸² So has the success or failure of structural-institutional litigation⁸³ and class actions.⁸⁴ But, the literature does not go far beyond these areas.

There have been only a few biographies of district judges and even fewer have attempted to deal in a rounded way with how the subject acted as a trial judge.⁸⁵ Although trial judges have written reminiscences or put out anthologies of their opinions, essays, and speeches, less than a handful have been published recently.⁸⁶ Some things can occasionally be gleaned from memorial proceedings published in Federal Supplement and from publication of ceremonies dedicating the portraits of retiring judges, as well as from tributes by colleagues and former law clerks published in law

80. See JEFFREY BRANDON MORRIS & CHRIS ROHMANN, CALMLY TO POISE THE SCALES OF JUSTICE: A HISTORY OF THE COURTS OF THE DISTRICT OF COLUMBIA CIRCUIT, 259-62; 273-74; 359-62 (2001).

81. THARALDSON, *supra* note 1, at 21-22, 27.

82. See generally JOEL GROSSMAN, LAWYERS AND JUDGES (1965); HAROLD CHASE, FEDERAL JUDGES: THE APPOINTING PROCESS (1972); SHELDON GOLDMAN, PICKING FEDERAL JUDGES (1997).

83. See generally GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (1991); JUSTICE AND SCHOOL SYSTEMS: THE ROLE OF COURTS IN EDUCATION LITIGATION (Barbara Flicker ed., 1990); PHILLIP J. COOPER, HARD JUDICIAL CHOICES (1988); DONALD L. HOROWITZ, THE COURTS AND SOCIAL POLICY (1997). In an earlier era, there were studies of district court compliance with the Supreme Court's desegregation decisions. *E.g.*, J.W. PELTASON, 58 LONELY MEN (1961).

84. *E.g.*, PETER H. SCHUCK, AGENT ORANGE ON TRIAL: MASS DISASTERS IN THE COURTS (1987).

85. *E.g.*, FRANK R. KEMERER, WILLIAM WAYNE JUSTICE: A JUDICIAL BIOGRAPHY (1991); WILLIAM E. NELSON, IN PURSUIT OF RIGHT AND JUSTICE: EDWARD WEINFELD AS LAWYER AND JUDGE (2004); JACK M. BASS, TAMING THE STORM: THE LIFE AND TIMES OF JUDGE FRANK M. JOHNSON, JR. AND THE SOUTH'S FIGHT OVER CIVIL RIGHTS (1993); GERALD GUNTHER, LEARNED HAND: THE MAN AND THE JUDGE (1994); RONALD J. BACIGAL, MAY IT PLEASE THE COURT: A BIOGRAPHY OF JUDGE ROBERT R. MERHIGE, JR. (1992); TINSLEY E. YARBROUGH, A PASSION FOR JUSTICE: J. WATIES WARING AND CIVIL RIGHTS (1987).

86. *E.g.*, JOHN E. KNOX, A JUDGE COMES OF AGE (1940); CHARLES E. WYZANSKI, WHEREAS: A JUDGE'S PREMISES (1965); MERRILL E. OTIS & ALEXANDER MOORE MEYER, IN THE DAY'S WORK OF A FEDERAL JUDGE: A MISCELLANY OF OPINIONS, ADDRESSEES AND EXTRACTS FROM OPINIONS AND ADDRESSES (1937); JACK B. WEINSTEIN, INDIVIDUAL JUSTICE IN MASS TORT LITIGATION (1995).

reviews, but the selections are few. Somewhat more helpful are the occasional law review articles about the contribution of a particular judge to a particular body of law.⁸⁷ Judges also undertake oral histories, but they too often emphasize non-judicial matters.⁸⁸ Perhaps the most helpful of all have been the distinguished histories of particular districts published since 1991.⁸⁹

Of course, there are particular challenges in writing about the work of trial judges. Many important decisions are given orally during the trial and not set down on paper. Further, even when a judge has written an opinion, he may choose not to have it published. Also, district court opinions are even less amenable to scaling by political scientists than the opinions of Circuit Courts of Appeals. Circuit court opinions usually deal with one narrow slice of the trial. Furthermore, appellate opinions reviewing the work of trial judges ordinarily are limited to a few aspects of the case below. No one has yet sliced through the Gordian knot by demonstrating how to portray the craft of a trial judge without spending an enormous amount of time observing in his or her courtroom. The alternative to this is relying on interviews with not entirely objective sources: the judges themselves, former law clerks, court personnel, repeat player attorneys, and the occasional party. A further difficulty for those, like Tharaldson covering lengthy periods of time, is the absence of detailed primary or secondary sources from the period prior to 1950.

87. See generally John G. Koelt & Frank M. Tuerkheimer, *Judge Weinfeld and the Criminal Law: The Keogh-Kahaner Trial—A Case Study in Criminal Justice*, 50 N.Y.U. L. REV. 1008 (1975); Martha Minow, *Judge for the Situation: Judge Jack Weinstein, Creator of Temporary Administrative Agencies*, 97 COLUM. L. REV. 2010 (1997).

88. The manuals published by the Federal Judicial Center do provide a skeletal outline of a federal district judge's job, while the statistics compiled and published by the Administrative Office of the United States Courts are invaluable for an overview of the work of the federal trial tier. See Fed. Judicial Ctr. website, at <http://www.fjc.gov> (providing information on its publications); Admin. Office of the U.S. Courts website, at <http://www.uscourts.gov> (offering links to statistical information).

89. See generally TONY FREYER & TIMOTHY DIXON, *DEMOCRACY AND JUDICIAL INDEPENDENCE: A HISTORY OF THE FEDERAL COURTS OF ALABAMA* (1994); KERMIT L. HALL & ERIC W. ROSE, *FROM LOCAL COURTS TO NATIONAL TRIBUNALS: THE FEDERAL DISTRICT COURTS OF FLORIDA, 1821-1990* (1991); CHARLES L. ZELDEN, *JUSTICE LIES IN THE DISTRICT: THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS 1902-1960* (1993); CAROLYN M. BUAN & CAROLYN P. STOEL, *THE FIRST DUTY: A HISTORY OF THE U.S. DISTRICT COURT FOR OREGON* (1993); PATRICIA E. BRAKE, *JUSTICE IN THE VALLEY: A BICENTENNIAL PERSPECTIVE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE* (1998); RICHARD CAHAN, *A COURT THAT SHAPED AMERICA: CHICAGO'S FEDERAL DISTRICT COURT* (2002); JEFFREY BRANDON MORRIS & CHRIS ROHMANN, *CALMLY TO POISE THE SCALES OF JUSTICE: A HISTORY OF THE COURTS OF THE DISTRICT OF COLUMBIA CIRCUIT* (2001).

III. "DISTRICT CULTURE"

There is at least one important area, however, in which scholars like Tharaldson might be able to illuminate without an inordinate amount of further research; that is "district culture." As a result of geographic and demographic factors, among others, different districts have different markets for judicial services. One district may have, for example, an important port of entry for illegal narcotics. Another may have a long border with another country through which illegal immigrants are smuggled. A third may be a major center for the media. Some may be in states with an unusually clean or an unusually corrupt political system. Some may have a critical mass of fundamentalist religious believers. Another may be in a state where capital sentences are given. Thus, the mix of cases differs from district to district. Furthermore, the density of lawyers in districts varies as do judicial expectations and treatment of lawyers.

Someone, like Tharaldson, who has spent much time inside a district court, would be able to address the ways that the district might differ from other districts. Such a study would, of course, profit from knowledge of another district so that differences and similarities could be drawn. The weekly news compendium put out by the library of the Court of Appeals for the Eighth Circuit,⁹⁰ which provides a rich canvas of the work of the district courts in the Circuit by simply reprinting articles of local newspapers in each of the districts, would be tremendously helpful in such a study.

Meanwhile a few suggestions might be made of the district culture of the District of North Dakota. First of all, the population of the district is small and the population density less than almost any other district in the United States; thus, the caseload is also low compared with other districts.⁹¹ This has made it possible for North Dakota's district judges to lend a hand to districts around the country with heavy backlogs.⁹² Then there are categories of cases not unique to North Dakota, but when taken together distinguish it from many other districts. Tharaldson, for example, mentions cases involving lignite mines, the Garrison Diversion Water Project, and farming.⁹³ For a few weeks in the spring of 2004, Minnesota sued North Dakota in the North Dakota District Court for barring out-of-staters from

90. Eight Circuit Library website, at <http://www.ca8.uscourts.gov/library/library/html>.

91. THARALDSON, *supra* note 1, at 72.

92. *Id.*

93. *Id.* at 105-07.

the early weeks of the duck and pheasant hunting season,⁹⁴ while the court also confronted cases involving farm fraud.⁹⁵

Then, there is also the relatively large number of significant cases involving Native Americans. In the mid-1990's for example, the District Court for the District of North Dakota heard a dispute between Native Americans of the Fort Berthold Indian Reservation over whether the Indian tribes had the right to tax oil companies doing business on Indian land.⁹⁶ The same year the district court ducked the question of whether Indian tribes have the power to regulate electric utilities on reservations, but the circuit court then ordered the district court to decide the issue.⁹⁷ Two years later, the court was involved in deciding an intra-tribal dispute brought by members of the Turtle Mountain Band of Chippewa over alleged denial of constitutional rights.⁹⁸ Just this spring the District Court heard cases involving the power of Indian tribes to prosecute members of other tribes for crimes committed on their reservation.⁹⁹

Now that Mr. Tharaldson has introduced us to the judges of the United States District Court for the District of North Dakota, let us hope that he will continue to produce literature about that court.

94. Kevin Duchscher, *Crying Foul Over Hunting Laws*, MINNEAPOLIS STAR TRIBUNE, Mar. 10, 2004, at 1A.

95. Jeff Zent, *Huber Fights USDA*, THE FORUM (Fargo), Mar. 19, 2004, at A1; Jeff Zent, *Feds Target Huber's Assets*, THE FORUM (Fargo), Apr 15, 2004, at A8.

96. The District Court held that the tribes could not, but the Court of Appeals held that this was a matter for a tribal court. See Dale Wetzel, *Court Sides With Tribe in Oil Tax Dispute*, THE FORUM (Fargo), June 9, 1994, at B1.

97. John MacDonald, *Judge Ordered to Decide Issue*, THE FORUM (Fargo), July 2, 1994, at A7.

98. *Tribal Members File Law Suit*, THE FORUM (Fargo), Jan. 30, 1996 (on file with author).

99. Linda Greenhouse, *Court Upholds Tribal Power It Once Denied*, NEW YORK TIMES, Apr. 21, 2004, at A12.