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Steven R. Jensen

Janine M. Kern

Mary Campbell McQueen

Lee Schoenbeck

Natalie Damgaard

See next page for additional authors

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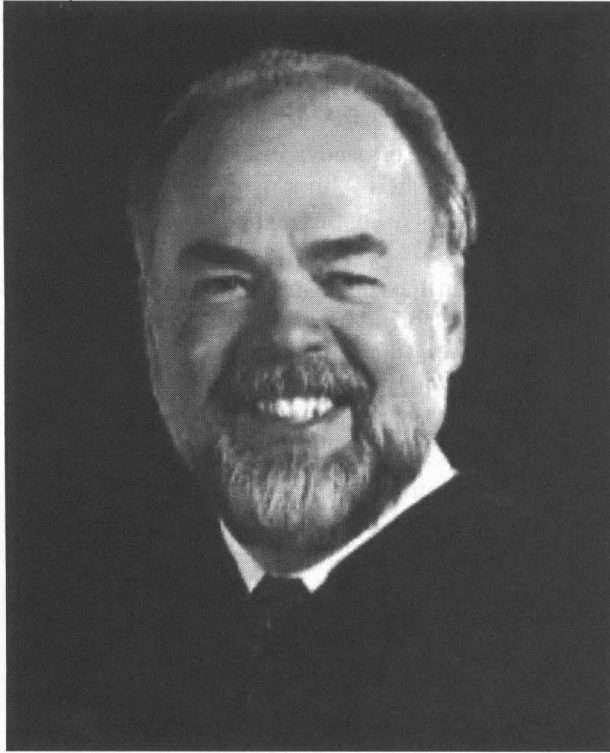
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**Joint Dedication to Chief Justice David Gilbertson & Professor Emeritus
Jonathan Van Patten**

Authors

Steven R. Jensen, Janine M. Kern, Mary Campbell McQueen, Lee Schoenbeck, Natalie Damgaard, Patrick Garry, Chris Hutton, Thomas E. Simmons, and Charles Thatcher



CHIEF JUSTICE DAVID GILBERTSON

The Board of Editors of the *South Dakota Law Review* is pleased to dedicate Volume 66 to Chief Justice David Gilbertson of the South Dakota Supreme Court.

Chief Justice Gilbertson grew up in Sisseton, SD. He received his undergraduate degree from South Dakota State University in 1972, and his Juris Doctorate from the University of South Dakota School of Law in 1975. After law school, he worked in private practice until he was appointed to the circuit court bench in 1986. He served as a Circuit Judge for the Fifth Judicial Circuit from 1986 until his appointment to the Supreme Court in 1995.

Chief Justice Gilbertson was first elected to a 4-year term as Chief Justice by the members of the Supreme Court in September 2001. Members of the Supreme Court subsequently re-elected the Chief Justice to serve four more terms. Voters retained the Chief Justice in the 1998, 2006, and 2014 statewide retention elections. When he retired on January 5, 2021, Chief Justice Gilbertson was the longest serving Chief Justice in the history of South Dakota.

Beyond the courtroom, Chief Justice Gilbertson has provided leadership at the local and national level and has received various preeminent awards. Chief Justice Gilbertson was the first South Dakotan to serve as the President of the Conference of Chief Justices for the 2015-16 Term. He previously held the positions of Board Member, First Vice President, President-elect, and chaired

various committees. Chief Justice Gilbertson served as the sole state court representative to the Criminal Rules Committee of the United States Courts from 2010 to 2016 after being selected by United States Supreme Court Chief Justice John G. Roberts, Jr. He was the recipient of the “Grass Roots” Award by the American Bar Association in 2014 for his defense of judicial independence and developing programs to increase attorneys in rural areas of South Dakota. In 2015 he was selected as a Distinguished Alumnus of the University of South Dakota and in 2016 he was selected as a Distinguished Alumnus of South Dakota State University.

Chief Justice Gilbertson has been instrumental in shaping South Dakota’s legal landscape. He led the effort to create various specialty courts including the drug courts, DUI courts, mental health courts, and veteran courts. Recognizing the need for legal services in rural South Dakota, the Chief Justice worked with the State Bar and members of the State Legislature to create the Rural Attorney Recruitment Program. He has served as the President of the South Dakota Judges Association. He also served on the Judicial-Bar Liaison Committee of the State Bar Association and has served as a Court Counselor for South Dakota Boys State since 1995.

Chief Justice Gilbertson and his wife, Deb, have four children. He is a member of the South Dakota Bar Association.

STEVEN R. JENSEN[†]

Chief Justice David Gilbertson

Chief Justice David Gilbertson retired this past year from the South Dakota Supreme Court after serving as a justice for twenty-five years and as Chief Justice for twenty of those years. As the administrative head of the judicial branch in South Dakota, Chief Justice Gilbertson led with vision, a steady hand, and humility. Just a few of his many accomplishments as Chief Justice include establishing nineteen problem-solving courts, starting the rural attorney program, overseeing criminal justice reform, and moving our courts from paper filing to an electronic filing system. Perhaps one of Chief Justice Gilbertson’s most significant but intangible contributions was the collegiality and goodwill he fostered both inside and outside the court system during his time as Chief Justice.

Chief Justice Gilbertson’s leadership reputation also extends well beyond the boundaries of South Dakota. He was elected as President of the Conference of Chief Justices and appointed to serve in other national judicial leadership positions. A couple of years back, I visited with a highly respected federal circuit judge at an appellate judges’ conference. He had served with Chief Justice Gilbertson on a national committee. This judge told me during our conversation that every state should have a chief justice like David Gilbertson because he had

[†] Chief Justice, South Dakota Supreme Court.

never met another judge who modeled the humility, dignity, and service demonstrated by Chief Justice Gilbertson.

In addition to his administrative responsibilities, Chief Justice Gilbertson maintained a full case load as a member of the Court. He participated in nearly 6,000 decisions issued by the Court; 2,933 of these decisions resulted in written opinions. Of the 2,933 written opinions issued during his time on the Court, Chief Justice Gilbertson authored nearly 700 of those opinions. His concise, thoughtful, and common-sense opinions will continue to impact the jurisprudence in this State for years to come.

As a colleague, I have spent many hours with David Gilbertson. I can attest he is the same man in private as he is in public. He is kind, patient, and considerate. He is truly a man of character and integrity. Further, his fairness and sense of justice is deeply embedded in the fabric of his being and has been demonstrated throughout his career as a lawyer, judge, and justice. I know I speak for all the members of the Court who have worked with David Gilbertson, past and present, when I express how much I appreciate his friendship, collegiality, and mentoring.

At his retirement, the Court had Chief Justice Gilbertson's name stenciled onto one of the ceiling tiles in the Supreme Court Law Library in the State Capitol. He is the first modern justice on the South Dakota Supreme Court to have his name inscribed on the law library tiles. The name "Gilbertson" joins a distinguished list of names already on the library ceiling tiles such as Dighton Corson, Alphonso Kellam, John Bennett, Philemon Bliss, Charles Whiting, and other early justices who served on the Supreme Court of Dakota Territory and the South Dakota Supreme Court.

The tributes to Chief Justice David Gilbertson's career through letters on stone tile and the pages of the *South Dakota Law Review* are well deserved, and it is only fitting that the legacy he has left on the court system and the State of South Dakota should be recognized by South Dakotans for generations to come.

JANINE M. KERN†

Chief of the Chiefs

It is a privilege and a pleasure to join you in celebrating Justice David Gilbertson's remarkable legacy of service to the people of this great state as a circuit court judge, associate justice, and Chief Justice. Appointed to the circuit court bench in 1986 by Governor Janklow and to the Supreme Court in 1995 by Governor Rounds, he has charted the course of South Dakota's judiciary for more than thirty-five years while serving as Chief Justice for the last twenty years. The Chief Justice, as leader of the Unified Judicial System and its 659 employees, has

† Associate Justice, South Dakota Supreme Court.

transformed the system in many remarkable ways. Caring deeply about people and policies, the Chief Justice led South Dakota through criminal justice reform in the adult and juvenile dockets, created nineteen specialty problem-solving courts, spearheaded development of a rural attorney program to improve access to justice in rural areas currently impacting twenty-seven counties, moved the judicial system to electronic filing and access to court documents, led the restoration of the Supreme Court Library, and supported South Dakota's only law school at every turn. Always looking for practical solutions to difficult problems, he recently partnered with the Helmsley Charitable Trust to pilot a virtual crisis care program, which will provide online access to mental health providers so that they may better help individuals encountering the criminal justice system in areas where such care is not immediately available.

A dedicated jurist, he has participated at the time of this writing in 2,953 decisions resulting in a written opinion, while authoring a staggering total of 699 opinions, not including special writings or dissents. He has been a strong defender of the federal and state constitutions. Chief Justice Gilbertson's knowledge of the law, common sense, and commitment to justice has formed our jurisprudence in a remarkable way.

As the nation's longest currently serving Chief Justice, he is widely known and respected at the national level, having served as the Chief of the Council of Chief Justices and Chairman of the Board of Directors of the National Center for State Courts.

To say we will miss his friendship, wit, and steady hand at the wheel is an understatement. On a personal note, I will miss the kindness he has shown to me as a mentor and friend. The Chief is fond of quoting his father who was a Lutheran minister. His father once said in a sermon that "it is a humbling thought for the vast majority of us, that if we had never been born, the world could have gotten along quite nicely without us. It was the few, the very few, who made such a significant difference that the world would have been a poorer place without them." The Chief has made the world a more just and hopeful place, and the people of the State of South Dakota are richer for his life of service.

MARY CAMPBELL MCQUEEN[†]

South Dakota Chief Justice David Gilbertson

Court leaders with whom I have worked know I often look to our Founding Fathers for inspiration. When I reflect on Chief Justice David Gilbertson's legacy, the words of John Quincy Adams come to mind: "If your actions inspire others to dream more, to learn more, to do more and to become more, you are a leader."

Chief Justice Gilbertson is a true leader for our nation's state courts.

[†] President, National Center for State Courts.

A member of the Conference of Chief Justices (CCJ) since 2001, Chief Justice Gilbertson served as CCJ president and as chair of the National Center for State Court's (NCSC) Board of Directors from 2015 to 2016—the only South Dakotan to hold these offices. But he had earned a national reputation for his leadership skills years earlier through his relentless work defending judicial independence in opposition to the Jail for Judges movement. His efforts not only contributed to its defeat in South Dakota but helped stop it from spreading to other states. NCSC presented Chief Justice Gilbertson with its Distinguished Service Award in 2006 for this remarkable work.

In 2010, Chief Justice of the United States John G. Roberts, Jr., selected Chief Justice Gilbertson to be the sole state representative to the U.S. Supreme Court's Advisory Committee on Criminal Rules.

As president of CCJ and chair of NCSC's Board, Chief Justice Gilbertson raised the court community's awareness about the challenges facing rural courts, which struggle to find enough jurors and lawyers to provide adequate access to the courts. He received the ABA's Grassroots Award for his work to organize a South Dakota program that incentivizes attorneys to practice in underserved rural areas. This program became a model for the nation and has been studied by many other states.

Chief Justice Gilbertson is the longest serving chief justice of any state in the nation. He has served as chair of its Tribal Relations Committee and chair of its Task Force on Politics and Judicial Selection/Compensation. We at the National Center for State Courts have benefitted greatly from his guidance, his leadership, and his friendship.

LEE SCHOENBECK[†]

Hard to explain a friendship with South Dakota, and America's longest serving Chief Justice, when you tell people it started with, "I was eating the fries off of this guy's plate at the Blue Denim Bar in Eden." But it sets the table for understanding the Chief. You need to know that this preacher's kid is about right and wrong. You need to know that this Sisseton volunteer fireman is about community service. You need to know that Deb's husband and Erick, Kristin, Rachael, and John's father is about family. And after all of this, this man of the bench, as you know—is about the Rule of Law.

The Chief and I spent every Wednesday together on Court day in Day County for many years. His kids were older than mine by a few years, so between hearings or at the end of the day, I got tutorials in parenting and staying happily married. He told me to save every month for my kids' college and think about inflation—all of which was pretty heady for a broke young mechanic's kid's attorney.

[†] J.D., 1984, University of South Dakota School of Law.

There are two times when he memorably mentored this young lawyer towards a happy life. One day in Brown County after a pretrial was over, we went to lunch. On the way back, he needed to stop at a jewelry store where his watch was being fixed. I was looking at the diamond case and he asked what I was up to. Told him I'd just met this special young lady (three weeks before) and I was thinking about getting a diamond. He grabs me and says, "Let's get out of here." We go up to his office and he says, "I know this guy in Sacramento that I buy rare coins from and sometimes he has great stones!" He dials 1-800-USA-Coin and makes a deal for a heart-shape-cut stone to be delivered to me in Webster. How good is the Chief at what he does? You can still see that stone on that young lady's hand over three decades later.

Next thing we're having kids and I ask him about whether we should video the birth. His exact words to the young attorney: "God gave women the ability to endure unbelievable pain in the birth of their child . . . and forget it. Why the hell would you want to video that and remind her?" There is no video.

During all the Chief's years on the bench, I tried many trials before him. He was, unfortunately, always fair. There were no bonus points for being a friend. Everybody was treated fairly in the Chief's courtroom.

Years later as his state senator, I had the opportunity to be involved in his securing the appointment to the bench. You knew it was a good pick because forever after that, Governor Janklow took umbrage if anybody suggested that the discovery of this justice was anything but the sole work of the good Governor.

Many times, I have argued before the Chief. Neither in those arguments nor the written product would the observer be able to tell that we both mark the calendar for our once-a-year beer on my deck that is so filled with inside stories that my wife won't sit there and listen to us.

Dave and I are products of the Coteau. A simpler place where life isn't too complicated, and Lake Wobegon is just across Travis or Big Stone. Dave never forgot the good people and the simple life that formed him. His strength as a jurist was wrapped in and dug down deep in his roots. The person proudest to see Dave on the bench was Reverend Gilbertson. I know—he wrote me. He was proud of the honorable son he raised. South Dakota has been the better for the Reverend's good work.

For the rest of the story, it was the inaugural gathering of the Glacial Lakes Bar Association, which the three northeast South Dakota counties formed for the sole purpose of getting David Gilbertson a spot on the circuit bench. Some Protestant organized it in a restaurant, over dinner, on Ash Wednesday. Good Lutheran that the Chief is, he didn't mind watching this young Catholic lawyer fast—but he did let me sneak a couple of fries.

REV. DAVID B. ZELLMER[†]

Micah 6:8

He told you, O Mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?¹

Beginning in 1995, it was my privilege to be the pastor for Justice Gilbertson and his family when they moved to Pierre as he began his service on the Supreme Court. Because my office window looked out over the west lawn of the State Capital, I observed Justice Gilbertson walking to and from work every day, both in the morning, normally at lunch, and in the evening. No entourage or added security accompanied the justice. Just a man going to and from work, but my how he worked.

Throughout my life, I've paid close attention to how people live out their promises or oaths of office. As a parish pastor and in my times as bishop, much of my work was dealing with the carnage from broken promises and oaths. It has been a gift to watch Chief Justice Gilbertson live out his oath of office.

As I witnessed through the years, here was a man who spent most days looking for ways to make the justice system work more efficiently, transparently, with hope for outcomes that better served the people of South Dakota. It was groundbreaking work to pilot "drug courts," particularly with many state legislators stuck in a "punishment mode" of incarceration. But today we can see the benefits of those specialized courts and what they have provided to the lives of the participants, their families, and to the State. Through Justice Gilbertson's leadership, we have moved from a "punishment" model with its inherent shortcomings and significant recidivism rate, to a model where individuals who have violated the law can take responsibility for their actions, work toward dealing responsibly with their underlying issues, and be supported in their healing process, while working and supporting their families.

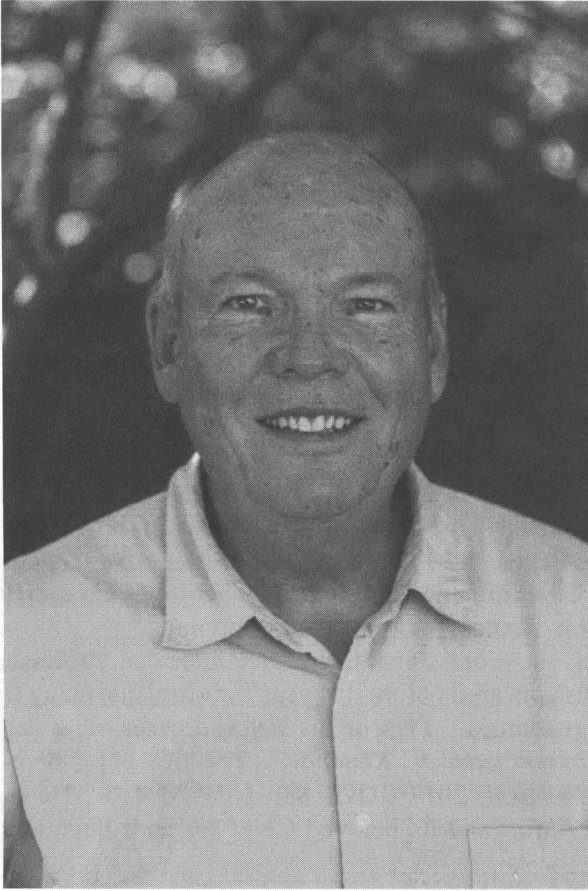
Living in a rural state has meant that Chief Justice Gilbertson has had to respond to the significant number of retirements of attorneys and judges, with the accompanying issue of young attorneys not wanting to serve in counties with only small communities. In his 2011 State of the Judiciary Address, the Chief drew attention to this growing problem, and his call to arms led to the development of Project Rural Practice. This program that forgives student loan debt for lawyers serving in rural counties has been successful. Attorneys that had never imagined themselves living in a small county seat community have discovered that they can make a living and have a place to raise a family.

During Justice Gilbertson's nineteen years of serving as Chief, he invited me to bring the invocation before his State of the Judiciary Address on the second day of session, and I was able to provide the invocation eighteen times. I noticed that each report to the Legislators contained a citation from Scripture. I thought it

[†] Bishop Emeritus.

¹ *Micah 6:8* (New Revised Standard Version).

appropriate to provide the same in my comments. We hear from the prophet Micah how to live a good life. It has been my observation of David that he has done so and done so admirably. He has fulfilled his oath of office, he has upheld the Constitutions, and he has well served the Unified Court System and the people of South Dakota. Well done.



PROFESSOR EMERITUS JONATHAN VAN PATTEN

The Board of Editors of the *South Dakota Law Review* is pleased to dedicate Volume 66 to Professor Emeritus Jonathan Van Patten.

Jon Van Patten was born in Los Angeles, California, in 1949. He attended UCLA for both his undergraduate degree and his law degree. After teaching law in Southern California for six years, he made the life-changing move to the University of South Dakota School of Law, where he taught and wrote for thirty-eight and a half years. After a brief attempt at retirement, he is currently enjoying the practice of law with the Appellate Division of the South Dakota Attorney General's Office.

Professor VP's career was shaped by many wonderful mentors, among them especially Carroll Hinderlie who taught him how to read texts as if the truth mattered; Professors A.J. Slavin and George Fletcher of UCLA exposed him to the disciplines of critical thinking and writing; Robert Willard, a Southern California trial lawyer, taught him countless lessons in lawyering; Bankruptcy

Judge Peder Ecker enabled him to love the practice of law; and Dean and Professor Mike Driscoll became his most important mentor on just about everything. It should be noted that none of these mentors could possibly be described as conservative and the same would be true for the great majority of his colleagues. Yet, VP learned much from those who thought differently. And then there were the amazing, talented, interesting students. VP received more than he gave. As a result, he grew up in the classroom. He also grew up as a lawyer. And he grew up as a writer, through advising the USD Moot Court program and conducting the writing retreats. He owes the *South Dakota Law Review* a special debt for giving him the freedom throughout his career to publish articles, whether they be Constitutional Law articles, legacy pieces on writing and storytelling, or his series on famous trials. His own “Inns of Court” program through cooking and conversation with students and faculty became a source of great joy as well.

VP participates as a part-time sous chef and yard boy at Normarke Farm Bed & Breakfast, a joint venture with his dear wife, Diane, in Nemo, South Dakota. Diane has been a rock of support that has allowed him to flourish. VP is also the proud parent of Katy, a pathologist at North Memorial Hospital in Minneapolis, Christa, a lab scientist at a medical testing company in Stillwater, MN, and Emily, a missionary in Papua New Guinea. Diane and VP together have fifteen grandchildren. VP’s influence at the Law School was exceeded at times by his darling companion, Bianca, the Law School mascot.

In South Dakota, professional paths often intersect. Professor VP would like to note that he has appeared before this year’s co-honoree many times, some even with successful outcomes. Two of his favorite cases were authored by Chief Justice Gilbertson—*Veeder v. Kennedy*, 1999 SD 23, 589 N.W.2d 610 and *Mendenhall v. Swanson*, 2017 SD 2, 889 N.W.2d 416. He thanks the South Dakota Supreme Court and its beloved Chief for their devotion to the cause of justice.

NATALIE DAMGAARD[†]

As Professor Jon Van Patten would say, “a housekeeping matter” to start this dedication. It is my honor to be asked to write a dedication to my friend, VP, for the *South Dakota Law Review*.

VP is a contradictory and complex character. He grew up working in his parents’ paint factory in Los Angeles, CA. Early on, his attire went from a painter’s expendable white to wearing a Jackson Pollock by the end of the workday. He later started a career in academia wearing a suit and tie and ended it in his characteristic Hawaiian shirts.

VP is a modern-day renaissance man. If he finds an area of the law or life interesting, he will immerse himself in that area and make it his own. Whether it

[†] South Dakota Circuit Judge.

is marathon running, cooking at home or for the annual Hog Roast, running a Bed and Breakfast in Nemo, livestock predator control, wine, or writing.

VP loves stories about the human spirit and overcoming adversity. While he knew he could never run like Prefontaine, who VP watched run while at UCLA, VP found enough inspiration to run a sub-3-hour marathon. His hips paid the price for it later in life, but you will never hear VP complain or express any regrets. Justice and overcoming adversity is a common theme of VP's life and scholarship, which is put on full display in his article, *The Trial and Incarceration of Andy Dufresne*.

He is known by most of us as a teacher, but by those of us that know him well, as a voracious learner. We know VP loves a good theme, but if you were looking for one in VP's bookshelves you would not find it. His shelves include White & Summers, Wright & Miller, Collier, Bryan Garner, Stephen Hunter, Bobby Flay, Roy Yamaguchi, Myron Mixon, and a bible on California wine.

VP and I share a love for good dogs, good wine, good food and good movies. As our advisor for Moot Court, VP encouraged us in our legal writing and advocacy skills, but he also helped us grow to conduct ourselves as well-rounded professionals rather than law students. VP taught me a ton about classic cooking, and some of my favorite recipes I use today are ones he taught me. His love of movies can be gleaned from the subject of Torts papers, like 12 ANGRY MEN or THE VERDICT, and law review articles involving The Shawshank Redemption. His love of dogs is evident from his faithful sidekick, Bianca, accompanying him to school.

VP has now retired and has left the law school devoid of his loud and bright shirts and his quiet but bright personality. He once again has evolved from law professor to appellate lawyer. However, I am not convinced VP is done teaching. Just ask him sometime about secured transactions, torts, constitutional law, writing, running, sports, music, cooking, wine, family, friends or any other subject in which he has experience. I am even less convinced that he is done learning, but I think the most profound thing he taught us is that we can all teach and learn—if we are willing to work and listen.

Of course, my favorite evolution when it comes to VP is the evolution from law professor, to moot court advisor, to my dear friend. So now I am going to, as VP would say, “declare victory” and end this dedication with this—congratulations on your retirement, best of luck on your new endeavors and thanks for being my friend.

PATRICK GARRY[†]

Dedication to Professor Van Patten

Jon had a way of bringing out sides of students that never came out inside the walls of the law school. When Jon hosted one of his infamous and highly coveted dinners, the student guests never seemed like students. They seemed like happy, excited, talkative, engaged people. When they walked into Jon's house, they threw off their guardedness along with their coats.

I may have been one of the few people at the law school to refer to Professor Van Patten as *Jon*. To everyone else, he was *VP*. Students and faculty were unified in their affectionate and admiring references to *VP*. I am tempted to describe Jon as an institution, because he was a pillar of the Law School for decades. On the other hand, institutions are often seen as static, unchanging and aloof from everyday life. And Jon was certainly anything but static and aloof.

Countless students nourished their beaten-down egos and starved appetites with dinners at VP's house. To receive an invitation to a VP dinner was to relish in the promise of a meal unequaled by any five-star restaurant. But it was more than that. Because once you sat down at VP's table and began sampling the exquisite food, you found yourself pulled into a conversation during which interruptions were the norm. Jon made sure the food was only the sidelight, that the conversation took center stage. And the waves of those conversation would ripple on for days, prompting ideas of a new article or fresh insights into contrary opinions.

No one was ever denied a spot at the table in Jon's dining room. You could be in complete disagreement with Jon's views, but that would not disqualify you from an invitation. Jon harbored deeply informed views, but he welcomed collegiality and civility more than he wanted unanimity of opinion. The only requirement of a dinner invitation at VP's was the willingness to speak your mind.

If VP was an institution at USD, he was a dynamic and ever-changing institution. He began as a published scholar of constitutional law and bankruptcy law and ended up as one of the most creative writers in the legal academy. Jon may be the only scholar to ever publish in a legal journal a fictional short story about a criminal law case. It was a gripping, engaging story that could easily form the foundational hypothetical for an entire course in criminal law.

Jon may also be the only legal scholar to use fictional trials like the one of Tom Robinson in *To Kill A Mockingbird* or the trial of Andy Dufresne in *Shawshank Redemption* to teach and illustrate the art of litigation and the impact of law. His articles were among the most widely read works of the USD faculty, primarily because of the sheer pleasure of reading them—but also because of the way Jon's writings related to the practice of law. Articles like *Twenty-Five Propositions on Writing and Persuasion*, *On Editing*, and *Metaphors and Persuasion* have become go-to classics for the practitioner.

[†] Professor, University of South Dakota Knudson School of Law.

At the top of Jon's priorities were his students. He did more than teach them; he mentored them. Jon was an after-hours professor: his teaching rarely ended at five o'clock. And he seemed to know how to connect with students in ways that most resonated with each student. He guided students to new territories in their education, as when he hosted his Black Hills writing retreats for the Moot Court teams.

Because of Jon's dedication and generosity, he will have a long legacy within the legal profession in South Dakota. Generations of lawyers and judges will call him teacher and mentor. And I, like many others, will call him friend.

CHRIS HUTTON[†]

Introductions—February in South Dakota. On a cold, dreary day, I interviewed for a position on the faculty of USD School of Law. Jon Van Patten, a transplant from California, welcomed me to his office. It was filled with books spilling off the shelves onto the floor and classical music in the background. We had a lengthy discussion—about running. We went back and forth about distances, times, injuries, and races, and it was quickly apparent that Jon was a real runner. As time passed, I found he had an impressive record reflecting speed and talent. How ironic that his running career came to an end, while I was able to plod along. Often he expressed his delight that I was still able to run every day. That's Jon—a supporter of others who is pleased when they succeed.

Jon's metamorphosis—In his early years at USD, Jon had the reputation as a brilliant teacher and scholar who was sometimes in the ether, and for many years, that was an apt description. He taught Constitutional Law and Commercial Law subjects and challenged his students in every class. It's fair to say his students thought of him as exceptionally bright if also a bit straight-laced. I sat in on several of his Legal History classes, which he took over from our mutual friend, Professor John Hagemann. He was so well-read and eager to engage with all in the class! He is a true scholar who wrestles with ideas and theories and loves to speak and write about them.

Over the years, Jon made some unconventional changes. One day he came into my office to see if I had time to talk about trial preparation. He had joined with Professor Bob Ulrich, the Trial Techniques teacher, and was preparing for his first criminal trial. This was most unexpected, although it was not unexpected that Jon was meticulous in his preparation. We talked about Criminal Law, Procedure, and Evidence, and Jon had a blast when he went to court. He handled many criminal and civil cases after that, made little or no money on too many of them, and shifted his professional outlook considerably. The world of law practice prompted him to transition into teaching Torts and Discovery Practice, and

[†] Professor Emerita, University of South Dakota Knudson School of Law.

students in recent years know him as the professor who came to class in Hawaiian shirts.

At some point, Jon's professional writing also took a detour from analysis of Bankruptcy and Commercial Law to storytelling, as he tackled troubling aspects of justice. *BREAKER MORANT* and *THE SHAWSHANK REDEMPTION* found their way into his writings as he used stories to convey some simple truths—justice can be elusive, merit is not a guarantor of success and fair treatment, sometimes the powerful denigrate the powerless. Jon is intrigued with human nature and its subtleties and learns something new about people daily. He is a gifted storyteller.

Jon's creativity—Jon developed into the Julia Child of USD Law School. He absorbed her theory that care in the selection and preparation of food can create a warm and welcoming atmosphere. His skill in the kitchen became legendary. He started by cooking ribs for the Student Bar Association's annual get-together, and over time, a large group of students would volunteer to be in the kitchen with him to make a full-course meal for the student body, faculty, and guests. Of course, there was conversation, and that seemed to be the impetus for many students to join him. Ribs gave way to elegant dinners with innovative dishes and ingredients. Jon cooked for law school fundraisers, for small gatherings of faculty and students, and for candidates for faculty positions who realized the potential bonus in being hired and invited to more of Jon's feasts. He single-handedly raised hundreds of dollars for the Public Interest Network by auctioning off dinners for small groups. At the same time, he created an atmosphere of warmth and collegiality. He made an effort to look for students who might need a boost, particularly if they were far from home.

Jon and I were in adjoining offices for most of our time at USD. Our close proximity made it possible to speak frequently, and neither of us hesitated to visit the other's office to discuss a law school issue, the law, sports, and our mutual disdain for a particular university in California. I feel very fortunate to have become friends with Jon. To some, it was a surprising friendship, given our differences in upbringing, politics, and experience. But I realized I could speak honestly to Jon about pretty much anything, and he is a good listener. I value the insights and opinions he has given me. I also value his dedication to the Law School and legal profession. Jon's contributions are immeasurable, and as a community, we are grateful.

DEREK NELSEN[†]

I first met Professor Van Patten in Torts during my first semester at law school. His style was, from the start, casual. He always wore a Hawaiian shirt, khakis, and comfortable shoes. His presence was commanding but not overbearing. He even preferred that students call him VP instead of more formal titles. Throughout that year, VP presented every new case by telling a story. This teaching format was effective at conveying the legal principles embedded throughout the casebook. There was a lightness to his approach, which was a welcomed relief during that trying and stressful first year when everything was new and heavy and overwhelming. His classes were approachable and fair. So, naturally, Torts was my lowest grade in law school.

Why, then, have I been asked to write a dedication for VP? That requires that I tell a story.

During my 2L year, I attended VP's writing retreat near Nemo, South Dakota. At that time, VP was the Moot Court advisor. I showed up to the writing retreat not knowing exactly what to expect. I already fancied myself a legal writer at that time, and I thought the materials VP would be presenting would be remedial and dull. I was wrong. At the outset, VP highlighted certain attributes of truly good legal writing. He presented material from a Law Review article he had written, affectionately known as "The 25 Propositions." As a testament to VP's writing and editing skills, this article succinctly explained all the ways my writing had been, and was, deficient. That writing retreat opened my eyes to just how far I had to go to become a competent legal writer. But, fortunately for me, over the next two years, VP had the patience and perseverance to continue to work with me (and any others willing to put in the time) to get better at this foundational legal skill. It is no overstatement to say that VP taught me how to be a significantly better writer. And that opened doors to me that would eventually change my life.

But my education from VP didn't stop there. Over the years VP's influence has extended well beyond legal doctrine and better writing. VP's roles in my education have come to include historian, philosopher, theologian, trial-theory consultant, culinary savant, sounding board, literature and movie buff, occasional political sparring partner, mentor, and most importantly, friend.

Reflecting now, I am convinced that VP's greatest gift to others is his ability to listen. VP is one of the few people that does not simply wait for others to stop talking so he can resume. He actually listens. He reflects. Then, and only if he has something worth saying, he responds. That ability, of course, is rare. And I, like so many others, am a better student, lawyer, and person because of it. Thank you, VP, for your contributions to my education—legal and otherwise.

[†] Mr. Nelsen is an attorney at Fuller, Williamson, Nelsen & Preheim, LLP, in Sioux Falls, South Dakota. He graduated from the University of Nebraska, Lincoln, in 2006 and the University of South Dakota School of Law in 2009.

THOMAS E. SIMMONS[†]

Listening to a Listener

I have enjoyed the unique privilege of knowing Jon Van Patten both as my teacher and as my colleague.² Others, I'm sure, will speak of Jon's warmth, his bottomless generosity, his culinary gifts, his steely advocacy, his brilliant wit, and his remarkable erudition.³ I wish to share a humble story which I think reflects on his abilities as a teacher—a teacher who knows how to instruct and to listen.⁴

Jon is a master of narrative, and I hesitate to undertake a narrative under his watchful eye, knowing his innate editorial prowess will perceive shortcomings in my prose.⁵ Have I adhered to the fundamental principle that the paragraph is the unit of composition?⁶ Have I followed his cautions about adverbs?⁷ Am I insensitive to word choice?⁸

Pushing those worries aside, here is my sketch:

When I was a 3L at the USD law school in the spring of 1998, Jon was not “Jon” to me. He was “Professor Van Patten,” and he was the long-serving faculty advisor to the *South Dakota Law Review* when I was an editor. I had run into some troubles with the law review and had either made an appointment to visit with him or simply dropped by his office in the faculty suite. I needed to elucidate the dilemma and account for how I intended to fix things. I needed his advice.

I closed the door, sank into one of the comfortable chairs facing his desk, and proceeded to outline the problem. The nature of the problem is unimportant. It was a sticky one with delicate nuances requiring a cautious navigator.

After unfolding the issues and updating Professor Van Patten on several particulars, I related my own view of the problem and how I thought it should be approached. Then I paused, taking a breath, waiting for his reaction.

[†] Professor, University of South Dakota Knudson School of Law; J.D., 1998, University of South Dakota School of Law.

2. I attended the USD School of Law between 1995 and 1998 and returned to campus to teach in 2013.

3. Speaking to Jon's skills as an advocate is difficult without compromising confidentiality, but I recommend Jonathan K. Van Patten, *At the Sturgis Rally: A Story*, 64 S.D. L. REV. 383 (2019). In it, the reader will find perhaps the finest description of how the practice of law feels—and ought to feel—when carried out with the mind and the heart of a lawyer.

4. See Jonathan K. Van Patten, *Twenty-Five Ways to Say No*, 63 S.D. L. REV. 337, 345-46 (2018) [hereinafter Van Patten, *Twenty-Five Ways*] (counseling attentive observations of the attitudes and listening to the words of an opponent).

5. See Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 276 (2012) (asserting that “[s]tories allow you to find a common ground with the listener in a non-threatening way”).

6. See Jonathan K. Van Patten, *On Editing*, 60 S.D. L. REV. 1, 2-3 (2015) (citing WILLIAM STRUNK, JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* (4th ed. 2000)) (explaining that “[n]ot only is ‘the paragraph is the unit of composition’ fundamental for composition, it is by far the most useful diagnostic tool for editing”).

7. Jonathan K. Van Patten, *Twenty-Five Propositions on Writing and Persuasion*, 49 S.D. L. REV. 250, 269 (2004) (proposition number nineteen). Modifiers—adverbs as well as adjectives, Jon explains, “tend to be opinion” and therefore are more likely to “generate sales resistance” from the listener (e.g., from the fact finder). *Id.*

8. *Id.* at 267.

He maintained eye contact and allowed silence to occupy our shared space. His eyes were intelligent and respectful. They examined me patiently. He waited.

The silence amplified itself in my head until I began blurting out a clarification, a re-emphasis, a further rationalization for my conclusions. Professor Van Patten continued to hold my gaze.

The urgency of filling the silence overcame me a second time. I babbled on anew, justifying several points. Again, he listened and waited. I could feel my mouth open a third time, but at that moment, I took note of the professor's technique. By simply listening and speaking less, he was gleaning additional information.⁹ As he listened and waited, I continued to supplement and increase my word output. The more uncomfortable and defensive I felt myself becoming, the more information he gathered.¹⁰ As we all know, "Information is power."¹¹

The importance of listening for everyone, and particularly for lawyers, is difficult to exaggerate. Jon knows the power of a listening ear and has developed his pair of receptors into exceedingly sensitive instruments. "It is important to listen carefully to what is said, and also to what is not said, and to discern what may be underneath whatever is on the surface[.]" he once wrote.¹²

To law students, he has cautioned:

Listening is an essential life skill Students must listen at least as much as they speak in order to keep up with the conversation. Listening is not the period of silence when you are not talking. An effective listener must really listen to what the other person has to say Listening is classic multi-tasking. . . .

. . . .

. . . Development of your listening skills and consideration of different viewpoints offered by colleagues is part of the maturation process. Working well together becomes its own reward. It will make you a better professional. The journey in learning one's craft is a lengthy one. Find a good mentor, if not in law school, then thereafter, and continue to learn.¹³

9. Writing about listening skills in an adversarial setting, Jon points out: "It is important to listen and respond accordingly. Like body blows in boxing, the cumulative effect may wear down the other side. Getting the other side to talk more is generally a good thing." Van Patten, *Twenty-Five Ways*, *supra* note 4, at 345-46.

10. This was not the last of my mentoring events in Jon's office. Some fifteen years later, when I took over from Professor Jo Pasqualucci as faculty advisor to the *South Dakota Law Review*, I found myself in one of Jon's comfortable chairs on more than one occasion, seeking advice on sticky issues.

11. Van Patten, *Twenty-Five Ways*, *supra* note 4, at 346.

12. Jonathan K. Van Patten, *Themes and Persuasion*, 56 S.D. L. REV. 256, 261 (2011).

13. Jonathan K. Van Patten, *Skills for Law Students*, 61 S.D. L. REV. 165, 194-95, 200 (2016). Jon also quotes an important passage:

Listening is the most underappreciated requirement of becoming a good storyteller. But it is never taught in law schools. Perhaps because [it] is antithetical to the temperament and habits of most lawyers. Listening is how we gather information. It is how we make sense of the world. What we hear is the source of our story material, the foundation of all storytelling. Yet just listening is not enough. We also have to be open to what people are telling us and write our stories based on what we hear, not

Without even trying to, Jon taught me a particular skill and a much deeper lesson that day in his office and, I'm fairly certain, without even knowing it. What finer teacher can one find than one who teaches so naturally? Jon is that sort of teacher—a teacher who models; a teacher who listens and who can teach his students to listen with greater care; a master of the power of silence.

CHARLES THATCHER[†]

Professor Jonathan K. Van Patten was the quintessential example of a practical theoretician on the faculty of the University of South Dakota School of Law. He was a memorable instructor in the classroom, where he always exuded a deserved sense of confidence and calmness. I often visited his class. His insistence that students first master and be prepared to articulate all the material facts of the cases under discussion was especially noteworthy. He was adept in blending treatment of policy and practice. Jon literally practiced what he preached, as he maintained a restricted law practice throughout his teaching career. Students in the many courses he taught over the years have profited from Jon's philosophical and practical bent. Those courses include (but are not limited to) torts, debtor-creditor rights, negotiations, deposition practice, conflict of laws, secured transactions, agency, advanced bankruptcy, and constitutional law. Jon applied his considerable practical and analytical skills to help achieve success as faculty advisor to the South Dakota Moot Court team. His extensive scholarship also reflects these practical and theoretical perspectives.

Jon may fairly be described as a renaissance man extraordinaire—teacher, scholar, practitioner, public servant, advisor, colleague, musician, chef, actor, hotelier, jogger, and raconteur. He has devoted his recent scholarship to the re-imagining of famous trials, such as that of Tom Robinson in Harper Lee's *To Kill a Mockingbird*. I remember visiting Jon at his home many years ago and seeing a harpsichord and a woodwind recorder on display. He could play both instruments, and it doesn't get much more renaissance than that. I saw Jon play the role of Joe Hardy in a Sioux Falls theater production of *Damn Yankees*. Jon and his wife still own and operate a superb bed and breakfast in the Black Hills. For years Jon cooked and served his incredibly tasty ribs at various student functions.

Jon was my colleague for four decades on the Law School faculty. More importantly, he was a friend whom I frequently consulted for his wise and calming counsel. We enjoyed rattling each other's cages regarding faculty matters. (I seem to recall Jon quoting Henry Kissinger's remark that the reason university politics are so vicious is because there is so little at stake.) I appreciated Jon's wry wit,

what we think we hear or want to hear. Bad listeners are always miscast as storytellers.

Id. at 195 n. 90 (quoting JONATHAN SHAPIRO, *LAWYERS, LIARS, AND THE ART OF STORYTELLING—USING STORIES TO ADVOCATE, INFLUENCE, AND PERSUADE* 33-34 (2014)).

[†] Professor Emeritus, University of South Dakota Knudson School of Law.

and he tolerated my more (uh) “exuberant” sense of humor with mild and deserved condescension that was doubtless attributable to his being several months older than me. We disagreed on a variety of legal and political topics, but we always respected each other’s opinions. Jon was generous with his time. For more than a decade before I retired, he would come to my last conflict of laws class each fall semester and participate in a debate with me over the most defensible choice of law theory. The students always seemed to enjoy watching the two of us butt heads. (I should probably rephrase that.)

The law school community will sorely miss Jonathan K. Van Patten (a/k/a V.P.). As a member of that community, I know I will.

