

# South Dakota Law Review

---

Volume 65 | Issue 1

---

2020

## Joint Dedication to Professor Emeritus Frank Pommersheim & Justice Steven L. Zinter

Matthew L.M. Fletcher

Alex M. Hagen

Chris Hutton

Michael McKey

Danelle McQuilen

*See next page for additional authors*

Follow this and additional works at: <https://red.library.usd.edu/sdlrev>

---

### Recommended Citation

Matthew L. Fletcher, Alex M. Hagen, Chris Hutton, Michael McKey, Danelle McQuilen, Stephanie E. Pochop, Angela R. Riley, Michael P. Roche, Mark Barnett, Ronald A. Parsons Jr., Bobbi J. Rank, Charles P. Schroyer & Lori S. Wilbur, *Joint Dedication to Professor Emeritus Frank Pommersheim & Justice Steven L. Zinter*, 65 S.D. L. REV. i (2020).

Available at: <https://red.library.usd.edu/sdlrev/vol65/iss1/5>

This Dedication is brought to you for free and open access by USD RED. It has been accepted for inclusion in South Dakota Law Review by an authorized editor of USD RED. For more information, please contact [dloftus@usd.edu](mailto:dloftus@usd.edu).

---

## Joint Dedication to Professor Emeritus Frank Pommersheim & Justice Steven L. Zinter

### Authors

Matthew L.M. Fletcher, Alex M. Hagen, Chris Hutton, Michael McKey, Danelle McQuilen, Stephanie E. Pochop, Angela R. Riley, Michael P. Roche, Mark Barnett, Ronald A. Parsons Jr., Bobbi J. Rank, Charles P. Schroyer, and Lori S. Wilbur



### PROFESSOR EMERITUS FRANK POMMERSHEIM

The Board of Editors of the *South Dakota Law Review* is pleased to dedicate Volume 65 to Professor Emeritus Frank Pommersheim.

Frank Pommersheim was born in Queens, New York City, in 1943. He graduated from Colgate University in 1965, where he also played four years of basketball. Professor Pommersheim went on to earn a J.D. from Columbia Law School in 1968, as well as an MPA from Harvard University in 1984. Upon graduation, Professor Pommersheim served in the VISTA (Volunteers in Service to America) program in Alaska as a volunteer and volunteer leader from 1968-1970. He also worked for the New York City Department of Consumer Affairs in East Harlem from 1971-1973.

After acquittal as part of the Camden 28, a non-violent, anti-war group, Frank moved with his family to South Dakota in 1973. For the next ten years, he lived and worked on the Rosebud Sioux Reservation as a faculty member at Sinte Gleska University and as Director of Dakota Plains Legal Services.

Professor Pommersheim joined the faculty of the University of South Dakota School of Law in 1984 and served in that capacity for thirty-five years until he retired in 2019. During this time, he served on numerous tribal appellate courts throughout Indian country, including more than twenty-five years as the Chief Justice for the Cheyenne River Sioux Tribal Court of

Appeals and Associate Justice on the Rosebud Sioux Supreme Court. As an appellate justice, he has written more than 130 opinions.

Professor Pommersheim is also an accomplished scholar in the field of Indian law. He has written five books including *Braid of Feathers* and *Broken Landscape*, as well as more than 40 law review articles. In addition, Frank is also a published poet, whose most recent chapbook is entitled *Local Memory and Karma (The Buddha Correspondence, Vol. 2)*.

In addition, Professor Pommersheim has also received several teaching awards, including the Belbas-Larson Award for Excellence in Teaching and the John Wesley Jackson Award as Outstanding Professor of Law. Outside the Law School, he has received the South Dakota Peace and Justice Center Reconciliation Award and the South Dakota Council for the Humanities Distinguished Achievement Award. In 2019, he was awarded an Honorary Degree from Sinte Gleska University.

Frank continues to listen carefully to Bob Dylan and to pay close attention to the beauty and grace of the birds that fill the sky.

\*\*\*

MATTHEW L.M. FLETCHER†

**Buddha, Felix Cohen, and Nanaboozhoo Walk Into a Bar:  
A Tribute to Frank Pommersheim**

I met Frank Pommersheim in Rapid City, South Dakota, in 2004, a few months before I was to begin teaching law students at North Dakota. We were presenting at a pipeline program for Native high school and college students, trying to show them that they could go to law school, too. Frank was to conduct a mock law school class, teaching *Johnson v. McIntosh*<sup>1</sup> and showing them the Socratic method.

I never took Federal Indian Law in law school, so I had never even seen an Indian law class before. I learned that a Frank Pommersheim class is an incredible performance. His deep voice seemed to both calm the stu-

---

† Professor of Law & Director of the Indigenous Law and Policy Center, Michigan State University College of Law. Portions of this paper appeared in my entry in the Frank Pommersheim symposium we organized for Turtle Talk in May 2019. *Frank Pommersheim Symposium – Matthew Fletcher*, TURTLE TALK (May 31, 2019), <https://turtletalk.blog/2019/05/31/frank-pommersheim-symposium-matthew-fletcher/>; *Frank Pommersheim Symposium – John Petoskey [the elder]*, TURTLE TALK (May 30, 2019), <https://turtletalk.blog/2019/05/30/frank-pommersheim-symposium-john-petoskey-the-elder/>; *Frank Pommersheim Symposium – Angela Riley*, TURTLE TALK (May 29, 2019), <https://turtletalk.blog/2019/05/29/frank-pommersheim-symposium-angela-riley/>; *Frank Pommersheim Symposium – Gloria Valencia-Weber*, TURTLE TALK (May 28, 2019), <https://turtletalk.blog/2019/05/28/frank-pommersheim-symposium-gloria-valencia-weber/>; *Announcement – Frank Pommersheim Mini-Symposium*, TURTLE TALK (May 23, 2019), <https://turtletalk.blog/2019/05/23/announcement-frank-pommersheim-mini-symposium/>.

1. 21 U.S. 543 (1823).

dents and command their attention. I was mesmerized. I had read *Johnson v. McIntosh* for my law school property class and wrote a short article about that experience,<sup>2</sup> but listening to Frank teach, I realized I knew absolutely nothing about that case. Frank had total command of the material. He deftly used the Socratic method — on kids, no less — and guided them through one of the most difficult cases in the canon just by calmly asking questions. By the end, these teenagers knew the foundations of American property law and how those foundations rested on the tired and broken backs of Indian people. They looked inspired—inspired to climb the hill and use the law to take it all back. I know I did.

I also knew I had no business teaching a law school class. I knew nothing about *Johnson v. McIntosh*. I knew nothing about how to teach. Before I got to Grand Forks, I had a lot of work to do. My first Indian law class was taught by Frank Pommersheim, and I still aspire to be like the teacher he was that day.

\*\*\*

Buddha,<sup>3</sup> Felix Cohen,<sup>4</sup> and Nanaboozhoo<sup>5</sup> walk into a bar. They order drinks and settle in. “Tell us a joke, Nanaboozhoo,” Buddha says, knowing Nanaboozhoo is a jokester. “*Aho*. Here’s a transcendental non-sense joke for you lawyers:”

A man walks into a bar, orders a drink. A second man, who has a guide dog, walks into the bar, tries to order a drink. The bartender says, “No dogs allowed.” The man with the dog says, “This is my guide dog. You can’t deny entrance to a man with a guide dog.” The bartender agrees and gives a drink to the man with a dog. A third man walks into the bar. He also has a dog, but it’s a Pug, and the man

---

2. See Matthew L.M. Fletcher, *Listen*, 3 MICH. J. RACE & L. 523 (1998) (describing “the experience of legal education from an outsider law student’s perspective.”).

3. See Frank Pommersheim, *Buddha Visits a Neighborhood Farmers Market*, 59 S.D. L. REV. 431 (2014) (displaying a short poem written by Frank Pommersheim).

4. “[I]t is necessary to acknowledge the huge debt that practitioners and scholars of Indian law owe the late Felix Cohen. The Herculean efforts of Professor Cohen in researching, synthesizing, and writing his seminal 1942 *Handbook of Federal Indian Law* cannot be praised enough.” FRANK POMMERSHEIM, *BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE* 51 (1995). Lucy Cohen, Felix’s spouse, deserves as much praise, having authored two chapters of the original handbook. Lucy Kramer Cohen et al., *Felix Cohen and the Adoption of the IRA*, in *INDIAN SELF-RULE: FIRST-HAND ACCOUNTS OF INDIAN-WHITE RELATIONS FROM ROOSEVELT TO REAGAN* 70, 70 (Kenneth R. Philp ed., 1986).

5. See John Borrows, *Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education*, 61 MCGILL L. J. 795, 824 (2016) (“There is a creation story epic. There is an extended chronicle of Nanaboozhoo and his travels. There is a cycle of stories connecting Nanaboozhoo to his brother and broader family. There are also stories about Nanaboozhoo that contain standards about how non-humans should relate to the natural world, and to one another. Some of these stories are about how the winds, rocks, plants, birds, and animals counselled and interacted with humans in a time before time [*mewizha*]. These stories are often called *aadozookaanak*.”). *Id.*

is carrying it. “Hey,” the bartender says. “No dogs, except guide dogs.” The man with the pug looks at the bartender and says, “Well, I’m blind and this is a guide dog.” The bartender shakes his head and says, “That’s not a guide dog. That’s a pug. A lap dog.” “What?!?!?” the man with the pug exclaims. “They gave me a pug?”<sup>6</sup>

Buddha chuckles. “Poetry is blood; law is water.”<sup>7</sup> He turns to Felix Cohen. “How about you?” “Well, I’m not known for my jokes, but how about this one?” “A scientist and her husband are walking on a country road. The husband says, ‘Look, those sheep have been shorn.’ The scientist says, ‘Yes, on this side.’”<sup>8</sup> Buddha chuckles again. “Poetry and law are both reports on human experience; reports from different angles with different means.”<sup>9</sup>

\*\*\*

I knew Frank Pommersheim before I met him in Rapid City. I had been a lawyer for seven years before I left practice to become a law teacher. I read Indian law articles voraciously while in practice. Because I had not taken Indian law in law school, I had a lot of catching up to do.

Frank Pommersheim was my Indian law professor. Everywhere I turned for guidance on an Indian law topic, Frank’s work was there. Trying to incorporate Indian law in your federal court class? Frank explained how, and more importantly, why.<sup>10</sup> Trying to explain the tribal court exhaustion doctrine to business partners of the tribal enterprise? Frank wrote the book on the tribal court exhaustion doctrine.<sup>11</sup> Trying to learn about tribal customary and traditional understandings of due process? Frank wrote tribal court opinions using Lakota custom and tradition to interpret the due process clause of the Indian Civil Rights Act.<sup>12</sup> Frank helped write the book on tribal civil rights law, too.<sup>13</sup>

---

6. Cf. THOMAS CATHCART & DANIEL KLEIN, *PLATO AND PLATYPUS WALK INTO A BAR. . . : UNDERSTANDING PHILOSOPHY THROUGH JOKES* 62 (2007).

7. Frank Pommersheim, *Poetry, Law & Poetry: Some Notes Toward a Unified Theory*, 9 TRIBAL L. J. 1 (2008-2009).

8. CATHCART & KLEIN, *supra* note 6, at 57.

9. Pommersheim, *Poetry, Law & Poetry*, *supra* note 7.

10. See Frank Pommersheim, “*Our Federalism*” in *the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts’ Teaching and Scholarly Community*, 71 U. COLO. L. REV. 123 (2000) (explaining how to incorporate Indian Law into a federal court class and discussing why it is important to do so); Frank Pommersheim, *Tribal Courts and Federal Courts: A Very Preliminary Set of Notes for Federal Courts Teachers*, 36 ARIZ. ST. L. J. 63 (2004) (explaining why members of the federal courts scholarly and teaching community should include Indian Law in their textbooks).

11. See FRANK POMMERSHEIM, *BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE* (1995) (discussing the tribal court exhaustion doctrine).

12. *E.g.*, *High Elk v. Veit*, 6 Am. Tribal Law 73, 2006 WL 5940784 (Cheyenne River Sioux Tribal Ct. App. 2006).

13. See FRANK POMMERSHEIM & ANITA REMEROWSKI, *RESERVATION STREET LAW: A*

\*\*\*

Buddha sips his beverage. “Felix Cohen, you’re the architect of modern tribal governance. This project of self-determination. How do you think it’s going?” Felix Cohen answered with a parable:

Some [one hundred forty] years ago a great German jurist had a curious dream. He dreamed that he died and was taken to a special heaven reserved for the theoreticians of the law. In this heaven one met, face to face, the many concepts of jurisprudence in their absolute purity, freed from all entangling alliances with human life. Here were the disembodied spirits of good faith and bad faith, property, possession, *laches*, and rights *in rem*. Here were all the logical instruments needed to manipulate and transform these legal concepts and thus to create and to solve the most beautiful of legal problems. Here one found a dialectic-hydraulic-interpretation press, which could press an indefinite number of meanings out of any text or statute, an apparatus for constructing fictions, and a hair-splitting machine that could divide a single hair into 999,999 equal parts and, when operated by the most expert jurists, could split each of these parts again into 999,999 equal parts. The boundless opportunities of this heaven of legal concepts were open to all properly qualified jurists, provided only they drank the Lethean draught which induced forgetfulness of terrestrial human affairs. But for the most accomplished jurists the Lethean draught was entirely superfluous. They had nothing to forget.<sup>14</sup>

Buddha nods. “Poetry is your mother; law, your father.”<sup>15</sup> He turns to Nanaboozhoo, who is several drinks deep into his cups. “And you, *Whiskey Jack*?”<sup>16</sup> Nanaboozhoo says, “I will tell the story of the council of dogs.” He burped. An *innini* [man] living in a village with no *ogema* [chief or leader] decided to invite the *inniniwaag* [men] of the village to a council. At that council, the *innini* decided, the *inniniwaag* would select an *ogema*. He decided to make a piece of fry bread and bring it to the council. The new *ogema* would ceremonially eat the fry bread to conclude the council. But the *innini* was no good at making fry bread, and he didn’t want to ask his relatives who were good cooks – who tended also to be *kwewaag* [women] – because he didn’t want them to know about the council. So his fry bread was near-black, greasy, cold on the inside, and hard as a rock.

The *inniniwaag* who came to the council agreed that it was right to

---

HANDBOOK ON INDIVIDUAL RIGHTS AND RESPONSIBILITIES (1979) (discussing tribal civil rights laws).

14. Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 809 (1935).

15. Pommersheim, *Poetry, Law & Poetry*, *supra* note 7.

16. NEIL GAIMAN, *AMERICAN GODS* 400 (2001).

have a council to pick a new *ogema*. The one who organized the council and brought the fry bread assumed that since he was the only one with foresight enough to call a council and bring a piece of fry bread, that the council quickly would choose him to be the new *ogema*. He was wrong. The others began nominating each other. And they began arguing.

“Let *Odiyaash* be *ogema*.”

“No! He is a fool. We should select *Gichi Nemaab*.”

“Not that one. He is *bagandizi* [incompetent].”

And so on.

The *inniniwaag* argued and argued. The one who brought the fry bread despaired. His plan was falling apart. As the others argued, they stood. It was apparent they would soon come to blows. Some of them were already growling.

The man who brought the fry bread jumped up and rushed to the middle of the council with the bread in his hand. “So it is decided,” he said, though of course no one had decided anything. “I accept the nomination to be our next *ogema*.” As the other *inniniwaag* gasped and shouted, the man who brought the hockey puck fry bread opened his mouth to eat.

But another *innini* knocked the bread out of his hand, and the bread fell to the ground. Several of the *inniniwaag* pounced on the bread, believing that whomever ate the bread would then become *ogema*. They scrambled for the bread, growling and clawing at each other. But as any *innini* controlled the bread long enough to put it in his mouth, another would grab the bread with his teeth and they would both be chewing on the greasy, black, rubber-like bread. Others would join in. In the end, no one was made *ogema* that day.<sup>17</sup>

Buddha nods again. “Poetry gathers what has been scattered. Law scatters what has been gathered.”<sup>18</sup>

\*\*\*

When I began my law teaching career, I needed to find an identity for my scholarship. Was I going to focus on tribal economic development, Indian gaming, taxation, and the like? Was I going to focus on tribal environmental and natural resources law? Was I going to write about cultural property? No. I liked thinking about tribal courts, and I liked thinking about the Supreme Court.

---

17. *Why Dogs Fight, and Why People are Envious*, in 2 WILLIAM JONES, OJIBWA TEXTS 755-57 (Truman Michelson ed., 1919).

18. Pommersheim, *Poetry, Law & Poetry*, *supra* note 7.



I decided to become like Frank Pommersheim.

I believe I picked the best role model. His scholarship on tribal courts and the Supreme Court is the best there ever was on those subjects. It was direct and to the point, and it was correct. Frank sees through the technocratic writing of the Supreme Court on the first reading. He gets there before anyone else does and sits patiently waiting for everyone to catch up.<sup>19</sup> Frank made it seem easy when it was anything but.

\*\*\*

“Benevolent cannibals,” Nanaboozhoo whispers, voice wavering a little.

“What?” Felix Cohen says.

“Huh?” Buddha says.

“The good *windigo*,” Nanaboozhoo says, louder this time. “My old enemy the *windigo*.”<sup>20</sup> “I have known a *windigo*; he was my cook in the tundra. He made excellent bread, but I cared less for his meat sauces.”<sup>21</sup>

Felix Cohen responded: “That reminds me of something Sam Deloria once said. To paraphrase. One day the Indians won, and all the white people had to return to Europe or wherever they came from. But a few Indians chased the boats full of white people as they sailed away.” They shouted, “Come back here and fulfill your trust responsibilities!”<sup>22</sup>

Buddha nods wisely. “Poetry is knowledge when knowledge is understood as truth. Law is knowledge when knowledge is understood as power.”<sup>23</sup>

\*\*\*

---

19. E.g., Frank Pommersheim, *Lara: A Constitutional Crisis in Indian Law?*, 28 AM. INDIAN L. REV. 299 (2004); Frank Pommersheim, “New” Directions in Indian Law Scholarship: An Afterword, 32 AM. INDIAN L. REV. 157 (2007-2008).

20. See Catherine L. Evans, *Heart of Ice: Indigenous Defendants and Colonial Law in the Canadian North-West*, 36 LAW & HIST. REV. 199, 202 n.8 (2018) (discussing the definition and alternative uses and spellings of “windigo.”).

21. HADLEY LOUISE FRIEDLAND, THE WETIKO LEGAL PRINCIPLES: CREE AND ANISHINABEK RESPONSES TO VIOLENCE AND VICTIMIZATION 20 (2018) (quoting Jean-Jacques Rousseau in Morton Teicher, *Windigo Psychosis: A Study of a Relationship between Belief and Behavior among the Indians of Northeastern Canada*, in PROCEEDINGS OF THE 1960 ANNUAL SPRING MEETING OF THE AMERICAN ETHNOLOGICAL SOCIETY 80 (Verne F. Ray ed., 1960) (emphasis added)).

22. See Matthew L.M. Fletcher, *Failed Protectors: The Indian Trust and Killers of the Flower Moon*, 117 MICH. L. REV. 1253, 1266 (2019) (reviewing DAVID GRANN, *KILLERS OF THE FLOWER MOON* (2017)).

23. Pommersheim, *Poetry, Law & Poetry*, *supra* note 7.

A few years back, Frank created a website to house the tribal court opinions he had written.<sup>24</sup> I knew about a bunch of them: the Crazy Horse malt liquor case,<sup>25</sup> the Saginaw Chippewa disenrollment case,<sup>26</sup> the Long Family Land and Cattle Company case,<sup>27</sup> and the Dollar General case.<sup>28</sup> But the sheer number of opinions blew me away. An entire academic career could be built on reading exclusively from this corpus of tribal law. His impact on the development of tribal law is far beyond any one, two, or three other judges or scholars. His name appears in nearly every single chapter of my tribal law casebook (I just checked to see), and usually a half dozen times a chapter or more.<sup>29</sup>

I wanted to be a tribal judge so I could be more like Frank Pommersheim.

\*\*\*

Nanaboozhoo wanders over to a booth by the pool tables in back and falls asleep. Felix Cohen and Buddha continue talking at the bar. Nanaboozhoo dreams about an *adizookaan* [sacred story] he heard once long ago when he was in Michigan, playing drums for Floyd Westerman's band on the *Custer Died for Your Sins* tour.

There was a murder in southwest Michigan. The *Anishinaabek*<sup>30</sup> built the largest lodge anyone had ever seen to conduct the trial. Dozens of Indians filled the lodge when it was complete. All of the *ogimaag* sat on the western side. The victim's family and supporters sat on the southern side and the murderer's family and supporters sat on the northern side. Those on neither side sat near the eastern door to make sure no one left. Finally, when everyone was settled, the *ogitchidaa* [warrior] charged with beginning the trial reached for the *opwaagan* [pipe] and the *semaa* [to-

---

24. See UNIV. OF S.D. SCH. OF LAW, *Tribal Justice: 25 Years as a Tribal Appellate Justice—Frank Pommersheim: Tribal Justice Frontispiece*, <http://libguides.law.usd.edu/c.php?g=744258> (displaying tribal court opinions authored by Frank Pommersheim).

25. *Estate of Tasunke Witko v. G. Heileman Brewing Co.*, 23 Indian L. Rep. 6104 (Rosebud Sioux Supreme Ct. 1996).

26. *Snowden v. Saginaw Chippewa Indian Tribe of Michigan*, 32 Indian L. Rep. 6047 (Saginaw Chippewa Indian Tribe App. Ct. 2005).

27. *Bank of Hoven (Plains Commerce Bank) v. Long Family Land and Cattle Co.*, 32 Indian L. Rep. 6001 (Cheyenne River Sioux Tribal Ct. App. 2004).

28. *Doe v. Dollar General Corp.*, No. CV-02-05 (Mississippi Band of Choctaw Indians Supreme Ct. 2008), [http://libguides.law.usd.edu/ld.php?content\\_id=36906952](http://libguides.law.usd.edu/ld.php?content_id=36906952).

29. See MATTHEW L.M. FLETCHER, *AMERICAN INDIAN TRIBAL LAW* (2011); MATTHEW L.M. FLETCHER, *AMERICAN INDIAN TRIBAL LAW* (2d ed. 2020) (showing how often Frank Pommersheim's name appears in the textbook).

30. "For generations, the Potawatomi, the Odawa, and the Ojibwe (Chippewa), collectively known as the Anishinaabek or Three Fires Confederacy, have thrived in what is now known as the Great Lakes region of the United States and Canada." Kirsten Matoy Carlson, *Judge Murphy's Indian Law Legacy*, 103 MINN. L. REV. 37, 43 (2018).

bacco]. She turned to the oldest of the *ogimaag* [chiefs or leaders]. “Touch the *opwaagan* and I will light the *semaa* to start the ceremony.” The *ogema* turned his back on the *ogitichidaa*. The *ogitichidaa* turned to the next *ogema*. The next *ogema* also refused to touch the *opwaagan*. And the next and the next. There were dozens of *ogimaag* and they all turned their backs.

The *ogitichidaa* was taken aback. If no one touches the *opwaagan*, we cannot hold the opening ceremony. If we cannot hold the opening ceremony, we cannot hold the trial. If we cannot hold the trial, the death of our relative will be left unsettled. If the death of our relative is left unsettled, there will be a *jiibay* [ghost] in our midst. If we have a *jiibay* in our midst, we will have failed our ancestors. We will not have *mino-bimaadiziwin* [the act of living life in a good way].<sup>31</sup> Our community will die.

The *ogitichidaa* next took the *opwaagan* to the victim’s family. One by one, they turned their backs and refused to touch the *opwaagan*. The *ogitichidaa* next took the *opwaagan* to the murderer’s family. One by one, they turned their backs and refused to touch the *opwaagan*. The *ogitichidaa* next took the *opwaagan* to the people near the eastern door. One by one, they turned their backs and refused to touch the *opwaagan*. No one would touch the *opwaagan* and begin the trial.

The *ogitichidaa* was beside herself with anger and shame. As she was about to speak and admonish the *Anishinaabek* again, a young mother with a *benodjhen* [child] in a cradleboard on her back came into the lodge. “I’m so late! I’m so sorry.”

The *ogitichidaa* presented the *opwaagan* to the young mother. The young mother noticed that everyone had turned their backs on the *opwaagan*, and so she did too. As she turned, the *benodjhen* in the cradleboard faced the *ogitichidaa*, her face a half-inch from the *opwaagan*. The *benodjhen*, arms, legs, and torso tightly bound in the cradleboard, nodded, touching the *opwaagan* with her nose. And so the trial began.<sup>32</sup>

\*\*\*

---

31. “[H]uman rights norms in *Anishnaabe* culture could draw upon the concept of *bimaadiziwin* (living the *Anishnaabe* life; the good life) and the Seven Grandfather Teachings, which identify *nbwaakaawin* (wisdom), *zaagidewin* (love), *mnaadendiwin* (respect), *aakde* ‘win (bravery), *gwekwaadsiwin* (honesty), *ddadendizwin* (humility), and *debwewin* (truth) as principles that should guide all of our interactions with one another.” Wenona T. Singel, *Indian Tribes and Human Rights Accountability*, 49 SAN DIEGO L. REV. 567, 617 (2012) (emphasis added).

32. HOWARD WEBKAMIGAD, HOW THE ANISHINAABE USED TO CONDUCT TRIALS, IN OTTAWA STORIES FROM THE SPRINGS (ANISHINAABE DIBAADJIMOWINAN WODI GAA BINJIBAAMI-GACK WODI MOOKODJIWONG E ZHINIKAADÉK) 265-79 (2015).

A while back, I received a poem of Frank's in the mail titled *Buddha Sends a Hunter-Gatherer Poem to Prof. Pomm's Indian Law Class*:

Cut complicity  
gather reason  
seek balance  
show respect  
find spirit  
pour it  
all out<sup>33</sup>

I have a binder full of poetry and art Frank has produced. There is a space on my bookshelf next to my green ceramic Buddha with Frank's books of poems.<sup>34</sup>

The man is amazing. 'Nuff said.

\*\*\*

### North Coast

Cold and far  
winds swirl  
snow:  
Nothing lasts  
except this . . .<sup>35</sup>

\*\*\*

### ALEX M. HAGENT†

Frank Pommersheim strides like a colossus across the field of Indian law. His formative influence stems both from the originality and rigor of his scholarship and the authenticity of his voice and stature in the field. Frank is not an armchair academic. He has lived out his ideas and values as a lawyer and jurist in Indian Country, and that commitment underwrites the indelible imprint he has left on Indian law and the immeasurable good works he has performed on behalf of Indian people. In addition to being a

33. Frank Pommersheim, *Buddha Sends a Hunter-Gatherer Poem to Prof. Pomm's Indian Law Class* (n.d.), reprinted in Frank Pommersheim, "I Was So Much Older Than I'm Younger Than That Now": *Valedictory Notes and Collage*, 64 S.D. L. REV. 183, 198 (2019).

34. E.g., FRANK POMMERSHEIM, *LOCAL MEMORY AND KARMA: THE BUDDHA CORRESPONDENCE* (Vol. 2) (2015); FRANK POMMERSHEIM, *SMALL IS BEAUTIFUL: THE BUDDHA CORRESPONDENCE* (2011); FRANK POMMERSHEIM, *North Coast*, in FRANK POMMERSHEIM, *EAST OF THE RIVER: POEMS ANCIENT AND NEW* (2008); FRANK POMMERSHEIM, *HAIKU FOR THE BIRDS (AND OTHER RELATED STUFF)* (2002).

35. Frank Pommersheim, *North Coast*, in FRANK POMMERSHEIM, *EAST OF THE RIVER: POEMS ANCIENT AND NEW* 4 (2008).

† J.D., 2010, University of South Dakota School of Law.

peerless scholar and jurist, Frank is also a great teacher. I count him as a friend and mentor, and above all, he has been my teacher. And I submit that Frank's contributions in the classroom are perhaps more difficult to register, but equally important.

Legal scholar Grant Gilmore advises that: "Great teachers should be hunted down and shot." The problem with great, inspiring teachers is the way in which their greatness can overshadow the primary purpose of the classroom experience: for the student to learn specific skills, including learning how to learn and learning how to think. Great teachers can impede this process by transforming the classroom into a cult of personality. They collect acolytes and inspire belief in the idea that their words are the gospel truth.

Frank never succumbed to the temptation of letting his ego rise to the occasion of his students' adulation. He has been deeply committed to meeting students on their own terms. He did not shrink from the hard work of teaching material he knew by heart in a fresh, accessible manner – not by dumbing it down, but by showing its enduring vitality. Frank was always up to the challenge of connecting a given case or subject matter to the life of a practicing lawyer, and this habit of focusing on practical and concrete questions helped his students commit to the time-consuming task of learning how to think, act, and speak like lawyers.

One characteristic of being able to think like a lawyer is being able to carve the world up into conceptual categories. Justice Holmes famously observed that the life of the law has been one of experience, not logic, but before the law student can adequately appreciate what that means, he or she must understand what legal reasoning consists of. And I believe that Frank was particularly adept at helping students of all backgrounds and intellectual abilities work toward that understanding.

Frank begins by asking his students a short question: "Is this a that?" It is the type of question that one can imagine asking a two-year old – is this animal in front of you a dog? – but Frank illustrated how that simple premise can unlock the pattern of logical analysis and reasoning by analogy that every law student must internalize. Is this statement by the defendant proof of wrongful intent? Is this statement admissible? Is this person a tribal member and, if so, so what? With this simple question, Frank gave students a palpable sense of what legal reasoning looks and feels like and how it incorporates logic, comparative analysis, and deductive and inferential reasoning. Frank teaches students how to make those analytic moves and develop and refine their own understanding of how asking the right questions is part and parcel of coming up with defensible positions and persuasive arguments.

Frank is rigorous and thorough in teaching the elements, doctrines, and modes of thinking out of which every law student builds the necessary mental scaffolding to understand and then become adept at legal reasoning. That rigor was married to a capacious empathy for his students. He understands that learning to think like a lawyer could be a difficult, alienating experience. He uses his humor, warmth, and abundant personal charisma to help diffuse the anxiety and disorientation to which law students often succumb. To the greatest extent possible, Frank works to create a classroom environment that facilitates the open, but respectful exchange of ideas.

Generations of USD law students stood to benefit from Frank's mastery at teaching the fundamentals of legal reasoning. But Frank made clear that practicing law would require more than logic and dispassionate formalism. His coursework on Indian law was suffused with a rich sense of how history, culture, and power politics can shape legal doctrine or, in some of the uglier instances, ignore it completely. Particularly in the upper level classes that he taught, Frank would elucidate what gets lost if legal analysis stops and ends with carving the world into conceptual categories and if students accept at face value law's claim to being internally consistent and unfailingly coherent.

I am struck, above all, by the humanistic foundation of Frank's scholarship and teaching. Law is a humanistic enterprise because it is practiced and embodied by unctuous, unpredictable, and utterly fallible human beings. Consummate humanist that he is, Frank made sure we did not miss the poetry and pathos in the law. Frank's teaching has always been enlivened with a very basic acknowledgment that law can be marshaled as a lever to bring about positive change or as a deadening agent that permits prejudice and injustice to calcify. He taught students how to think, not what to think. Above all, Frank showed what an ethically engaged outlook on the law looks like – what it demands and what it offers by way of reward. He made this clear by his own example: the sensitivity of his thought, the abiding sense of ethical responsibility that sits at the heart of his worldview. I suspect that most of Frank's students have become familiar with the process of trying to determine if *this* is a *that*, but many who are now lawyers and judges continue to wrestle with this more ineffable aspect of his teaching: his insistent challenge to students to keep faith with their humanity and to resist cheap, knowing cynicism.

I will close on a more personal note. Part of my friendship with Frank subsists on a shared love of, and fascination with, language. I was privileged to work with him in editing *Broken Landscape: Indians, Indian Tribes, and the Constitution*. In the course of that process, I had a first-

hand look at how hard Frank works to say what he means and mean what he says. And, occasionally, we would set down the red pencils and leave off talk about the law to discuss literature and poetry. In those conversations, too, Frank was my teacher.

I am lucky to be on the receiving end of poem cycles that Frank sends out on a quarterly basis. I will close with a poem that I wrote in honor of Frank's seventy-fifth birthday:

Frank finds for us ponds  
in which we find reflected  
widening ripples

In my legal practice and in my life, I continue to feel the ripples of Frank's influence. I understand that to be true of practitioners of Indian law throughout the United States, and I know that to be true of many practicing lawyers and presiding judges in South Dakota.

CHRIS HUTTON†

### I. The Expected—and so much more

Professor Frank Pommersheim joined the faculty of the University of South Dakota School of Law in Fall 1984; I arrived at USD Law at the same time. Although he had grown up in New York with a working class, Catholic background, Frank had lived on the Rosebud Sioux Reservation for a decade before becoming a law school professor. He brought his friendships, insights, and love of Native culture with him to USD. He taught Indian Law every year starting in 1984, and given the enrollment in his classes, that adds up to over 1,500 USD Law students. Classroom work was only part of what he did. Every year, he took his class to the Rosebud Sioux Reservation on the Indian Law field trip for a firsthand experience of tribal courts, and many students told him this was their first time visiting a reservation. He also spearheaded the effort to include an Indian Law question on the South Dakota bar exam, thus requiring attorneys seeking to practice in the state to have at least some familiarity with tribal courts and Indian Law. What an immeasurable impact he has had!

Frank's influence on the legal profession is unparalleled. From his earliest days at USD, he has served as an appellate judge on numerous tribal courts, and has produced persuasive, scholarly opinions. His scholarship in Indian Law has been remarkable. He has been innovative in addressing the intricacies of Indian Law, and also prolific, with his articles having been downloaded by other researchers thousands of times. Few legal scholars can claim comparable dissemination of their work. As an aside, it is hu-

---

† Professor Emerita, University of South Dakota School of Law.

morous when prospective students who are aware of Frank's reputation visit the Law School, and demand "selfies" with him before leaving.

For decades, Frank and I taught Criminal Law & Procedure, and we collaborated closely. Frank suggested early on that we have the 1L Criminal Law students express their views about justice on the first day of class. That gave us and them a focus for the semester and set the tone we wanted. It allowed them to speak to each other, out loud, comfortably. The serious matters of justice and public service (note the sketch of Dorothy Day of the Catholic Worker Movement on Frank's office door) permeated our class discussions. He was eloquent in speaking of justice and equally eloquent in emphasizing using the law with a good heart. There was levity, too. At the end of each semester as we drafted the Criminal Law & Procedure exams, Frank developed some pretty odd hypotheticals and packed into a phrase what I needed a page to describe. If students chuckled while taking the exam, that was fine with us.

Serving as a faculty member at USD School of Law involved more than teaching class, which Frank understood. The two of us attended graduation celebrations, award ceremonies, competitions, and funerals of students and alumni. We mourned together for our students who experienced loss. We tried to identify students who needed assistance and to find resources for them. More than once, Frank left an envelope with cash in a student's mailbox anonymously. At faculty meetings, Frank didn't say much. Bureaucratic minutiae bored him. Reflecting his Catholic background, his priorities were making sure the Law School was leading in issues of justice and in serving students and the public. It was his idea for USD to develop the Indian Law Fellow program, the Indian Law Symposium, and to apply to host the pre-law Native students program. He did the everyday work the school needed, whether on a law school committee or with a student organization. He fielded many phone calls over many hours from people seeking help and did what he could to provide them assistance. He spent hours counseling students and colleagues. When I was frantic or ranting, Frank came to my office with a sports update or classroom anecdote to calm me down and make me laugh. He showed his own good heart every day.

## II. The Unexpected: Basketball, Buddha, and Bob

Apart from the serious business of serving as a faculty member, Frank brought the unexpected to the law school. Basketball—*res ipsa hoops*—was an intramural tournament the law school held for several years. Most students were unaware Frank had played NCAA Division I basketball at Colgate. When they saw him on the court, they clamored to be on his



team. They scrambled out of the way as he drove to the basket, and anyone with the temerity to try for a steal regretted it.

On the opposite end of the spectrum, students didn't expect their law professor to be a poet. Frank's class preparation included selecting a poem to begin each session. Usually it was one of his own, and in recent years, many were his Buddha poems. Craft, language, discipline, insight, hard truths, beauty – he endeavored to incorporate these attributes into his poetry. It was not lost on students that they could do the same in their own work, even with a routine brief. His poems also opened the way for discussion, and Frank was not afraid of raising tough social justice questions with students. He also was not afraid of throwing F-bombs in class, which were shocking to students before they understood the point. Although the F-bombs weren't poetry, they weren't thoughtlessly spoken; they conveyed meaning and intensity, and were part of his craft.

Poetry and craft are some of the reasons “Bob” was a central figure of Frank's years at the law school. Bob, of course, is Bob Dylan. Bob appeared daily in Frank's classroom hypos. Bob appeared in every Criminal Law exam, often with a Bob Dylan CD having been stolen (allegedly) by a hapless defendant. Students grew to appreciate Bob Dylan's craft and language, and even wisdom, just as they appreciated Frank's.

This is just a glimpse of Frank's dedication and his contributions to USD School of Law for thirty-five years. The gratitude of the Native community, his students, and his colleagues—especially me—is immeasurable. As one student remarked to Frank and me at a graduation party, “I came to law school as an ignorant ass and you made me into a thinking, caring lawyer.” Not bad for a working-class, Catholic kid from New York.

\*\*\*

MICHAEL MCKEY†

**Thoughts on the further wanderings of a Bodhisattva**

Granite with time and pressure and the happenstance of geography  
 Thrust upward through the crust  
 Jutting forth  
 An insolent middle-fingered fuck you to its surroundings  
 Knowing full well that time is and  
 Weather does  
 The invariability of the outcome preordained in the explosion of a  
 star

Knowing this and standing just so in the circles and revolutions

---

† Senior Lecturer, University of South Dakota School of Law.

A guide for those lost in their journey  
     Shelter at times  
 Staring wordlessly at the stars studying their patterns  
     Noting the wind and grass passing  
     Light and dark  
 His foreign nature in the vastness giving purchase to his view  
  
 And before him I sit cross-legged and tearful watching the shadows  
     Elongate with the setting sun's diminishing arc  
     Lengthening encompassing  
 Knowing the beauty I have witnessed and that beauty passes  
     One form to another never destroyed or created  
     Waiting always  
 To appear again before us unknown and beautiful in truth

\*\*\*

DANELLE MCQUILLEN†

Know right now that I am amending my résumé with a notation that someone actually let me write this dedication. Just under two decades ago, I attended about fifteen minutes of my first law school class during a tour of the University of South Dakota School of Law. That class was taught by Frank Pommersheim. In the fall of 2000, Frank was a godsend to the school's largest incoming class of Native American students. He was our sounding board, champion, and inspiration. We unabashedly loved him and hung on his every word. And why not? He was sought after to serve on tribal courts of appeal, a nationally recognized author and lecturer, and co-author on the updates to the treatise of treatises, Felix Cohen's *Handbook on Indian Law*. We sought his presence for the same brilliance that made him so sought after nationwide.

One of the best things I learned from Frank was serious work and serious topics did not preclude a healthy dose of humor. As a matter of fact, they required it. From a law exam question featuring the theft of a Bob Dylan record collection to a snarky speech laced with new vocabulary words every week, Frank kept us engaged and entertained. In Indian Country, teasing a new acquaintance is a sign of acceptance into the circle, and good-natured teasing was the mainstay of our interactions. We all looked forward to class as the highlight of the week because of Frank's signature teaching style. I wish I could still attend every week.

The gift Frank brought to me personally was perspective. My favorite Pommersheim perspective-shift was a moment where, as a result of the

---

† J.D., 2003, University of South Dakota School of Law.

briefest interaction with a very decisive government employee, I realized my second-year externship was going to be in the U.S. Attorney's Office. I walked straight to Frank's office and expressed my unease in joining a team prosecuting crimes in Indian Country. This should tell you a lot about the raw material he was helping to turn into lawyers. He asked me if I thought my destiny in life was to fight for justice for Indian defendants and told him I could see myself doing that, but not prosecuting fellow tribal citizens. He briefly appraised my distress and, with that droll tone we all know and love, remarked, "Dani, if that is really so, then don't you think it would be wildly fascinating to spend an entire summer studying the enemy camp?" I had no idea how my education would be enriched by that paradigm shift or the impact justice for tribal member victims would have on my understanding of the multi-faceted complexities of crime in Indian Country, but Frank knew and resolved my angst and misunderstanding with one of his classic one-liners.

I also learned from the perspective he gave to others around me. One requirement for our Indian Law class was travel to the Rosebud Sioux Tribe's tribal court for a day of service as either tribal court prosecutors or tribal court public defenders. Some of my classmates had never been on a reservation for any significant length of time, much less worked in any institution for a day. You could see the experience overwhelming a couple students. On the way home, one of those students described the insecurity she experienced in the unfamiliar role of a minority person for the first time in her life. She noted that it was the first time she had any sort of sense of what it must be like for Native Americans coming into white majority communities and receiving a negative reception. It was a powerful lesson in perspective for every student in the van resulting from Frank's commitment to creating the space for powerful, impactful learning.

A few years ago, I was asked to fill in on a panel at the law school discussing the Indian Child Welfare Act (ICWA). On the same panel was an attorney who represented a family attempting to circumvent or undermine ICWA so they could adopt an Indian child and avoid the ICWA's preference for Native American homes. The presenter had very strong opinions about the ICWA's application to children who did not have significant prior contact with Indian Country. I had the last word and pointed out that many Indians lacked contact with Indian Country today due to a history of actions and policies designed to reduce or eliminate that contact. My delivery, thankfully, was a very concise and cogently argued zinger. Dream of dreams, I got to deliver it in front of Frank Pommersheim. He approached me at the conclusion of the panel and gave me a wonderful compliment on my closing. I told him, "Of course it was good, I was taught

by the best.” And he is the best. Frank made me a better person and a better attorney. Hundreds of other students can say the exact same thing. I am beyond honored to have this opportunity to celebrate that legacy.

\*\*\*

STEPHANIE E. POCHOP†

Pomm Nation stories:  
A card from that Buddha guy  
and the beat goes on.

I was proud to be asked to contribute my remarks about Frank Pommersheim for this well-deserved honor from the *South Dakota Law Review*. It sounded like an easy task: after all, Frank is a nationally recognized scholar, a leader in Indian Law, and a powerful force for change within the South Dakota Bar. Synthesizing my sentiments about him into a few paragraphs proved far harder than I imagined. Frank has done so much for so many, including me. What can be said about him that will not sound like an echo?

Frank is brilliant, curious, and honest. He has an impish spirit and an elegant manner of expression. He keeps faith, peace, and justice at the center of his life. He openly expresses love and support for his family. He is fundamentally kind but should never be described as mild-mannered. He has some sharp edges, though he takes care not to unnecessarily jab anyone – with a notable exception relative to his participation on the USD Law intermural basketball league.

Frank is passionate about the law and its tremendous power to heal, to protect, and to make right. Advocacy comes naturally to him and there is an electric authenticity to his delivery: he knows how to spark knowledge and he shares the flame.

Can I share a favorite image of Professor Pommersheim? He is at work in the well of the large classroom at USD Law. The room is populated by first-year law students, so the atmosphere is charged by a kaleidoscopic mix of fear, bravado, and ambition. He is wearing his hallmark leather vest. Despite the gravity of the subject matter, he maintains a playful, animated tone. The communication occurring between the students and their professor is reflex: they each give and they each receive. Frank’s eyebrows punctuate a response to a student’s recitation and a lesson is learned. Another time, he strategically places a f-bomb to accentuate his meaning. Even for those students who have made a study of silence, there is not a passive moment during the class. The group moves – sometimes lithely and

---

† J.D., 1991, University of South Dakota School of Law.

sometimes awkwardly – toward an understanding of the exhausting effort that will be required to defend Justice. After the class, a circle of students seeking further illumination forms around him.

As a student, I both loved and dreaded this challenging classroom atmosphere. It proved to be excellent preparation for the relentless pressure I feel when working with my clients and when seeking justice in a courtroom. Frank's mentoring elevated how I view my role in the profession as well as my role as a good person seeking to do right in the world. I met Frank when I was his student; as my friend, he continues to inspire me to think about justice creatively and expansively. I cannot sufficiently express my appreciation for this invaluable gift.

I believe the most important component of Frank's legacy as a law professor is his effort to advance the opportunities of first-generation law students, particularly Native American students and lawyers. It is a labor of love, rooted in his own experiences and his commitment to the cause of justice. Frank clearly recognized how invaluable the presence and the perspective of lawyers from diverse backgrounds is within the justice system. Because of him, countless lawyers across the nation have found their footing in law school and their pathway into the legal profession. The State Bar of South Dakota Bar has directly benefited from his efforts as our Bar continues to evolve into one that better represents the communities and the individuals that we serve.

Frank has been able to carry this out because he has a rock star quality. Thankfully, he uses his star power to inspire people to become good lawyers. Indeed, he has a fan club comprised of grateful students. We call it Pomm Nation. It's a real thing.

I must also laud Frank for being an exceptional writer. He has authored an incredible body of work including essays, texts, and articles that cement his status as law professor whose work has a national reach. His dedication to educating lawyers about Indian Law and the power and possibility of tribal sovereignty has changed both how and why Indian Law is taught in law schools. As an example of his ability to influence progressive change, South Dakota became the first Bar in the nation to include Indian Law as a topic on its Bar exam. For an apt example of his scholarly work, I recommend his article, *The Reservation as a Place: A South Dakota Essay*.<sup>36</sup> Every South Dakotan should read this beautiful essay.

Frank has also authored several lovely books of poetry. For me and many others, Frank's Buddha-inspired poetry continues to encourage and to provoke. Admittedly, when I think of ways to connect with others,

---

36. Frank Pommersheim, *The Reservation as a Place: A South Dakota Essay*, 34 S.D. L. REV. 236 (1989).

haiku poetry does not immediately spring to mind – except that when Frank writes in haiku, it seems really cool. It is ironic that a person with a virtuoso's command of his vocabulary would select this most challenging, spare form of poetry as his genre. There is definitely something very Frank Pommersheim-ish about that choice.

Permit me, please, another favorite image of this amazing person. As a favor to Eric Schulte and me, Frank agreed to participate in a joint poetry reading at the South Dakota Bar's annual meeting. The format required him to share the stage with Freya Manfred, another venerated poet. It was a big ask, in no small part because the two poets had not previously met or rehearsed how to mesh their very different styles into a workable reading. Yet they riffed and performed the classiest version of a poetry slam that the South Dakota Bar has ever experienced. It was magical. Frank's eyes sparkled through the whole reading. The room was packed and people were leaning forward in their chairs to listen. Once again, Frank made me dream big about writing, creating, and sharing. And once again, when it was over, I found myself standing in a circle of people gathered around Frank, seeking further illumination.

How have I deserved such a marvelous friend? Even better: What's next?

\*\*\*

ANGELA R. RILEY†

I'm not certain of the first time I met Frank, but one of my earliest memories of him is from an Indian law mentoring event at Lewis and Clark Law School, likely around the year 2005. That workshop, which included Frank as well as other luminaries in the field, was organized by Bob Miller to identify and mentor junior scholars. (I was so inspired by it, in fact, I copied the model years later at UCLA). This was undoubtedly one of the turning points in my career. I was a junior scholar, and, while I had benefited from some professional guidance, I had not received much guidance around being an Indian law professor to that point. I presented a rather embryonic version of the article that would ultimately turn into my (*Tribal Sovereignty and Illiberalism*)<sup>37</sup> piece and aid in securing my tenure. I had not yet figured out how to refine my ideas through writing, and I remember conveying them in a somewhat convoluted muddle. Instead of harsh criticism, however, the senior colleagues gathered there were encouraging and

---

† Professor, UCLA School of Law and Director, Native Nations Law and Policy Center.  
37. Angela R. Riley, (*Tribal Sovereignty and Illiberalism*), 95 CALIF. L. REV. 799 (2007).

thoughtful, while pushing for better, clearer ideas, crisper arguments, and deeper thinking.

Frank made a lasting impression on me at that first encounter, one that has stayed with me many years later. I recall Frank very clearly – tall and reserved, his very deep voice, his stylish Western vest, his humble and unassuming demeanor. He had a way about him: earnest and kind, but always with a quiet humor percolating just beneath the surface. He never took himself too seriously. I was wowed and intimidated by him in those days, until eventually I found my footing and we became peers and, later, friends. When he published his book, *Broken Landscape*, I poured through it. Shortly thereafter, I wrote a review of the book, which my friend and colleague, Matthew L.M. Fletcher, graciously reprinted on Turtle Talk<sup>38</sup> when Frank announced his retirement.

Among the many things I admired about *Broken Landscape*, and which I highlighted in my review, was his unwavering optimism and sense of hope. I recognized at the time how essential that mindset was to continue working in a field like federal Indian law – where Indian rights are literally under siege at times – and I feel it even more acutely today. For this and other reasons, I still assign *Broken Landscape* every time I teach my Good Native Governance seminar, introducing students at UCLA, Harvard, and Montana to Frank's work. My perspective on the book has not changed since I wrote my review in 2011, excerpted in part here:

Broken Landscape is a comprehensive, beautifully crafted, ambitious work that courageously breaks from the swarm of contemporary critique of the Supreme Court's Indian law jurisprudence. From my vantage point, the most promising thing about Broken Landscape is that it is a beginning, not an end.<sup>39</sup>

From that point, Frank became a trusted colleague. I moderated the panel at Fed Bar when he discussed his ideas – alongside the inimitable Carole Goldberg and Rebecca Tsosie – and have referred students to his scholarship countless times. And, although I love *Broken Landscape*, I'm grateful that Frank continued to break new ground in his career as well as in his writing after that time. I have long admired his work as a tribal court judge, analyzing and assigning his opinions, which so brilliantly mix contemporary federal Indian law and tribal law in a way that is truly path-breaking. So it is no surprise that his dedication to tribal courts is perhaps where he has made the greatest impact in his career. And he drew on those experiences for his next book.

When Frank sent me *Tribal Justice: Twenty-Five Years as a Tribal Ap-*

---

38. TURTLE TALK, <https://turtletalk.blog/> (last visited Feb. 8, 2020).

39. Angela R. Riley, Book Review, GREAT PLAINS Q. 424 (Spring 2011).

*pellate Justice* a few years later and asked me to blurb it, I was deeply honored and thrilled to oblige. I recall clearly the plane I was on, flying from Los Angeles to Oklahoma, when I read it. And my words that appear on the back cover are from the heart and as genuine as any I've ever written:

Only a poet could so seamlessly intertwine memoir, practical how-to, and grand vision in one remarkable book about law and life in Indian country. *Tribal Justice* is deeply compelling, taking the reader on a more than quarter-of-a-century ride through an extraordinary career devoted to tribal law and the people from which it springs.<sup>40</sup>

I have to say, I felt a little forlorn that Frank did not allow an event to celebrate his greatness and his mark on Indian country when he announced his retirement. So I was delighted and honored when Matthew Fletcher told me he would be putting a collection together on Turtle Talk (where an early version of this essay first appeared) to honor Frank and asked if I want to contribute. I jumped at the chance.

Though there are volumes of things one could say to honor Frank, I'll say this. Frank is a poet, a dreamer, a visionary, a teacher, an intellectual, a pragmatist, and a friend. But of all of his remarkable qualities, I have probably been most influenced by one characteristic that stands out above all others to me. That is respect. As his entire career – and certainly his work with and for tribal courts – reflects, Frank holds enormous respect for the world around him, for his place on the planet in relation to other living beings and things, and, most of all, for Indian people. In conversations and in his writing, Frank always speaks of Indian people, of reservation life, of tribal justice systems, of indigenous (and other) cultural and spiritual commitments, with the deepest respect. In my experience, that is the foundation for the understanding and connection in this oftentimes fragmented and disassociated world that keeps us so lacking in empathy and gratitude. Frank *taught* respect by *showing* respect. He is a model as a social justice advocate, as a professor, as a scholar, as a jurist, and as a human being.

Like *Broken Landscape*, this chapter of Frank's journey undoubtedly is a beginning, not an end. I will follow that journey with rapt attention. And I extend my deep respect to Frank himself, and I thank the Creator who made him. Jagenagenon.

\*\*\*

---

40. See FRANK POMMERSHEIM, *TRIBAL JUSTICE* (2016) (featuring praise from Angela R. Riley on the back cover).



## MICHAEL P. ROCHE†

Teacher, father, friend  
 we walk that Road together  
 in shit and sunshine!<sup>41</sup>

Years ago, Frank Pommersheim wrote this poem in my honor. Now it's my turn to shine this verse back on him with great reverence and love. Of course, Frank has had immeasurable impact in his roles as a son, brother, husband, activist, athlete, scholar, tribal judge and more, but I will leave it to others to more specifically address his everlasting influence in each of those regards. The most profound experiences we have shared in shit and sunshine have come on the road we walked as teachers, fathers, and friends. Therefore, I feel best prepared and obliged to venerate Frank in each of these capacities.

## I. Teacher

The first extended period I spent with Frank was when we both attended the week-long Harvard Law School Program of Instruction for Lawyers in the summer of 1978. I was in the early stages of my career here at USD and Frank was teaching at what is now Sinte Gleska University on the Rosebud Sioux Reservation. I was struck by his brilliance, seriousness, unwillingness to be intimidated by the surroundings, commitment to justice, and unfailing propensity to call bullshit whenever he detected it.

The next time Frank and I crossed paths in any meaningful way was when he accepted a position with the USD School of Law in 1984. Frank, Anne, Nick, and Kate took up their abode at 205 South Pine in Vermillion while Laura, Vince, Thad, and I were just a couple of blocks up at 205 North Pine. Since television viewing was limited in both of our households, we began devoting time to gathering together in various combinations.

One of my earliest memories of such an outing involves an evening when Frank and I attended a movie together. When I returned home later, I remember telling Laura something to the effect of: "He's not much of a talker, but he sure as hell liked my popcorn!" At the time, I wasn't sure if Frank's taciturn demeanor was rooted in a life-long disposition, life experiences, or a combination thereof. Over time, we became very comfortable with each other and each other's families. I did feel curious, however, as to how Frank's presence would be received in a law school classroom.

---

† Dr. Roche is a Professor of Political Science/Criminal Justice at U.S.D. He wishes to acknowledge the loving support and suggestions provided by Laura, Vince, Thad and Annie during the completion of this dedication.

41. Frank Pommersheim, *Haiku for Mike Roche to be Published in the South Dakota Law Review*, 51 S.D. L. REV. i, xxvii (2006).

It wasn't long before bits of information about Professor Pommersheim started to filter back to me from former students who were enrolled in the Law School. There was unanimous agreement with regard to his extreme intelligence, fierce commitment to justice, integrity and character – especially when it came to his readiness to speak truth to power. However, it was also true to say that few could envision themselves mustering the courage to visit Frank in his office or spend time with him in any out-of-school context. He was a larger-than-life force of nature to most students, and even though they were extremely grateful to be learning from him, most found him to be an intimidating presence.

Then something shifted. I began to hear from former students not only about some astoundingly complex legal analysis Frank had delivered, but also about stories concerning his family, his love of basketball, his poetry and, of course, Bob Dylan. In his own words, Frank began to “push the envelope of heart and mind within the classrooms of the law school.”<sup>42</sup> He wanted and encouraged students to “pour it all out,” and they did so with insight, intensity, and integrity. In my view, a great part of the explanation for why Frank's students have become more and more capable and willing to “pour it all out” over the course of his career has to do with his willingness to allow the door to his own heart to open OUT in sharing deeply with students regarding his own very personal hopes, dreams, fears, and sufferings – in other words, he has poured it all out to them. Just as importantly, Frank has also very consciously chosen to enable the door to his own heart to swing IN and thereby allowed his heart to be touched and expanded by the intimate details of the lives of his students.

From those early beginnings at the Law School and over the past thirty-five years, Frank has accumulated numerous awards for his teaching and is recognized university-wide as a master teacher. Perhaps his greatest accomplishment as a teacher has been his evolution in allowing the door to his heart to swing both out and in.

In his classic book entitled “The Courage to Teach,” Parker Palmer declares that “Who is the self that teaches . . . is the most fundamental question we can ask about teaching and those who teach – for the sake of learning and those who learn.”<sup>43</sup> In other words, Frank's greatest gift to his students may be the indispensable and arduous work he has done to become who he is.

---

42. Frank Pommersheim, *I Was So Much Older Then/I'm Younger Than That Now: Valedictory Notes and Collage*, 64 S.D. L. REV. 183, 184 n.6 (2019) (internal quotation omitted).

43. PARKER PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE* 7 (1998).

## II. Father

### A Short Prayer from a Young Daughter

My father  
is always there;  
Under his wing,  
I have no care.<sup>44</sup>

These are the first verses in an early book of poems Frank authored in 2002. Their prioritization and content speak volumes about the significance Frank places on his role as a father. (It should also be noted that there are a considerable number of additional poems scattered throughout this book and others dedicated to and/or concerning Nicholas, Kate, and Hannah, individually or as a group.) Sometimes, I ask my students to tell me five things they know to be true about themselves. I have little doubt that if Frank were to be presented with such a question, his first response would be: “I’m a dad.” I have observed the fruits of such a commitment first-hand in particularly notable instances such as when, in the summer of 1991, my son Thad and I accompanied Frank and his daughter Kate to attend a week-long program for families sponsored by the University of Notre Dame. While Frank and I attended workshops with titles like “Non-violence in Everyday Life” and “The Power of Stories: A Call to Transforming Encounter,” best eight-year-old buds, Thad and Kate, busied themselves in age-appropriate workshops in story-telling and arts and crafts as well as with recreational outings at the nearby lake. Then, there was the summer trip Frank and I took to Guatemala in 2004 with our daughters and best fourteen-year-old buds, Hannah and Annie. We traveled in conjunction with the Sharing the Dream organization, and the intimate ten days we spent together with the Guatemalan people left us with stories and memories that we continue to revisit.

However, in order to understand Frank as a father, what matters most are not those particular highlights, but rather the infinite number of times and ways he has found to get outside of himself for the love of his family. Annie Dillard said, “How we spend our days is how we spend our lives.”<sup>45</sup> For more than thirty-five years, I have watched Frank and Anne engage in an all-encompassing mission of love and devotion to their children, Nicholas, Kate, and Hannah, and now also to their grandchildren, Sylvia and Sophie. Frank has always acknowledged and expressed the vital role that he and Anne’s partnership has played in this decades-long joint ven-

---

44. FRANK POMMERSHEIM, *HAIKU FOR THE BIRDS (AND OTHER RELATED STUFF)* 2 (2002).  
45. ANNIE DILLARD, *THE WRITING LIFE* 3 (1989).

ture. In fact, he poignantly articulated his sentiments in the following poem:

Mother's Day  
 (Anne, 1997)  
 Steady,  
 steadying hand;  
 Without it:  
 Neither compass  
 nor heart  
 For the journey.<sup>46</sup>

The final thought I have to offer on the continuity of life and the consequences of how Frank has spent his days as a father and family member is to say that the love he has experienced and expressed in the familial realm has been the single most important factor in paving the way for him to evolve into the open-hearted teacher he has become.

### III. Friend

Ralph Waldo Emerson said: "Go often to the house of thy friend, for weeds choke the unused path."<sup>47</sup> There are no weeds on the path between Frank's house and mine – and he has traveled that path in shit and sunshine, in grief and gladness.

A few glowing examples from a lengthy potential list should suffice. In sunshine, Frank served as Godparent (along with Anne) at the baptism of our son, Thad. Much later, he was the officiant at Thad and Meghan's wedding in 2014. He helped coach Annie and Hannah's youth basketball team, and I will always cherish the phone messages he left for Annie in 2007 after each of the three victories that produced a state championship in girls' basketball for the Tanagers.

Basketball also plays an important part in another memorable example of Frank in action as a friend. Over the decades, our families have gathered together to celebrate an abundant number of holidays. For a number of those years, our Easter festivities involved a basketball confrontation between Frank and me and my sons Vince and Thad. Needless to say, as the years progressed, the potential for Team Frank and Mike to reign supreme in these contests diminished considerably. On one particular occasion, as best as I can recall on Easter Day of 1997, Frank and I battled with great intensity on the court at his country home but, once again, victory eluded us. There was nothing unusual about the result here,

46. POMMERSHEIM, *supra* note 4, at 4.

47. Attributed to Ralph Waldo Emerson but also as a Scandinavian proverb.

and even though Thad was the primary influence in determining the outcome, what was unique was that Vince, well-aware of Frank's love for poetry, memorialized the contest by authoring the following poem:

As the shots rattle  
through the hoop,  
Mike trips over the  
wood pile

Youth clashes against  
experience,  
Frank yells "Fuck"

It echoes off the  
trees, budding on  
Easter Day

Gandhi would be proud<sup>48</sup>

As for Frank's credentials as a companion who has had my back when the shit on the path was deep and the postings along the way ominously read "sickness," "death," "grief," "crying," "fear," "anger," "despair," "confusion," and the like – there is no need to go into great detail. Let it be enough for me to say that Frank (and his family) has been present in ways and with a force that few can rival. On the heels of one particularly horrendous shit storm along the path, Frank sent us a note that began: "Dearest Friends, in our hearts, we must always give grief its due and solitude. But there is also solidarity across the silence."

#### IV. Conclusion

A few years ago, Frank sent along the following poem for my birthday.  
Buddha Celebrates  
Longstanding Friendship

I too  
grow old  
brother

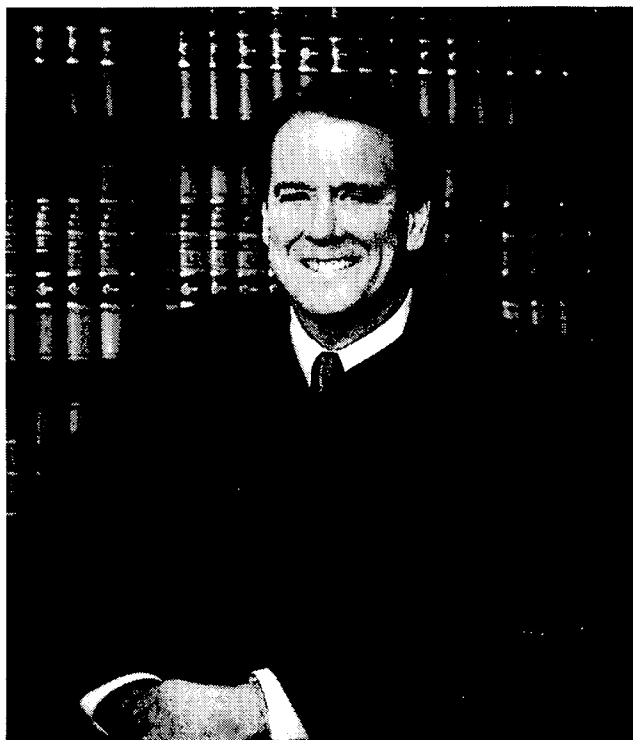
Take  
this gift  
from me<sup>49</sup>

Thank you, brother Frank, for 40 years' worth of enduring gifts that keep on giving.

---

48. Unpublished. Used with permission of the author. And, for Frank's analysis of the use of the word "fuck" in other settings, please see Pommersheim, *supra* note 2, at 192.

49. Unpublished. Used with permission of the author.



JUSTICE STEVEN L. ZINTER

The Board of Editors of the *South Dakota Law Review* is pleased to dedicate Volume 65 to the late Justice Steven L. Zinter of the South Dakota Supreme Court.

Justice Zinter grew up in Sioux City, Iowa, and later attended the University of South Dakota where he graduated with a Bachelor of Science degree. He graduated from the University of South Dakota School of Law in 1975. Upon graduation, he served as an Assistant Attorney General for the State of South Dakota for three years until he joined the law firm of Schmidt, Schroyer, Colwill, Zinter & Barnett, P.C.

In 1987, Governor William J. Janklow appointed Zinter to the Sixth Judicial Circuit where he served as Circuit Judge for fifteen years, the last five of which as Presiding Circuit Judge. In 2002, Judge Zinter became Justice Zinter upon his appointment to the South Dakota Supreme Court by Governor Janklow. Justice Zinter served on the Supreme Court until his death in 2018.

Justice Zinter and his wife, Sandy, have two daughters, Sarah and Kelly, and five grandchildren. He was a member of the American Bar Association, the South Dakota State Bar Association, and a former president of the South Dakota Judges Association. Justice Zinter was also a trustee of the South Dakota Retirement System.

\*\*\*

MARK BARNETT†  
SMILING EYES

If you knew Steve, then you have a clear mental image of Steve's smiling eyes. It may well have been the only way you ever encountered him. He could get serious at oral arguments, or at a meeting of the state retirement board where he served for many years. But the minute work was done, that smile instantly returned.

If you accompanied Steve (and his partner in life, Sandy Zinter) to a restaurant, it always took twenty minutes to get seated. People simply would not miss the opportunity to greet Steve and Sandy and revel in their shared joy for life.

FRIENDSHIP

We are all rightly impressed with Steve's accomplishments as a lawyer, Circuit Judge, and Supreme Court Justice. He inspired countless judges, justices, lawyers, and law clerks. He had a great love for the law and great depth in trial and appellate work. He worked seven days every week.

However, he was even more impressive in the art of friendship. My sons and I lived next door to the Zinters for twenty years. They were an inseparable team who consistently went above and beyond to bring joy and laughter into the lives of others. On countless occasions, my phone would ring. "Mark, what are you doing over there? C'mon over and bring the boys!" The next thing we knew, Sandy had dinner going and Steve was entertaining my sons, teaching them to love pro wrestling . . . and subliminally teaching them joy for life. And that is the way the Zinters treated one and all. I was once asked "who were Steve's best friends?" The answer is, YOU WERE. If you knew Steve, you were treated as his best friend.

MODESTY

Many years ago I made the mistake of greeting some other Justice as "Judge." I was immediately corrected with "It's *Justice*; I think I've earned it." Ok, the Justice was correct, and I wouldn't make that mistake again! Years later, by contrast, I called over to Steve's Supreme Court office and got his voicemail. The greeting on his voicemail said "This is *JUDGE* Zinter; please leave a message." The emphasis in his voice was there if you listened for it. This may have been partly due to his prior service as a

---

† Retired Judge, Sixth Judicial Circuit Court.

Circuit Judge. But I also believe he didn't want anyone to think he had "taken on airs" as a member of the high court.

### HUMOR

Steve and I had been law partners. We shared twelve years on the bench. Any time we got together after work, legal "arguments" were sure to break out. We would correct each other with such phrases as "Oh, what would you know about it?" or less charitable remarks, but all amidst laughter. If Chief Justice Gilbertson was with us, he would gang up with me to give Steve a verbal beatdown on the legal issue, all of which Steve took in great humor, giving as good as he got. Don't think we were picking on him; he was an inveterate "button pusher." He knew what to say to get his friends revved up. And if we thought Steve was starting to win the argument, we could always yell out "Henry Blackwell!"<sup>50</sup> This was our version of "So there!"

### GRIT

I had the privilege on countless occasions of seeing how well Steve would deal with the many challenges common to his disability. Without exception, he would confront them with great humor. I never once heard a complaint. He saw every challenge as just another adventure in the story of his life. And the story of Steve Zinter was humor, optimism, and joy for life.

### WHAT ARE WE TO CONCLUDE?

We were blessed with the rarest of treasures: Steve Zinter.

### ROLL THE CREDITS

Steve deserves immense credit for countless accomplishments. But as someone said at Steve's prayer service, "For all his amazing accomplishments, he couldn't have done the half of it without his friend, wife, and partner. . .Sandy." If you see her somewhere, be sure to thank her for sharing this amazing man with us for so many years.

\*\*\*

---

50. See *City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581.



## DAVID GILBERTSON†

I am pleased to offer a few of my personal thoughts about my late colleague and friend, Justice Steven L. Zinter. I was privileged to know him and work beside him for many productive years, going back to the day we both started law school at the University of South Dakota in 1972. A third classmate was future Justice Glen Severson.

Our lives had very similar paths. We both graduated from USD Law School in 1975. We both engaged in private practice and got trial experience quickly through criminal prosecutions. We both became Circuit Judges at the same time. In 1995, I was appointed to the South Dakota Supreme Court. Justice Zinter joined me a few years later. We both were selected by Governor William J. Janklow. While on the Supreme Court, we worked in offices next to each other and had daily conversations.

Not too long after law school graduation, Justice Zinter suffered an accident that would rob him of the use of his legs and inhibit the use of his arms for the rest of this life. Most people would have probably given up or become bitter when life dealt such a disastrous blow. Instead, Justice Zinter maintained a positive outlook, the likes of which I have never seen in anyone else. He always had a smile on his face, and routinely astonished those who knew him by what he would undertake and successfully complete. He simply ignored what he could not do and focused on what he could do. Clearly, this accident was a defining moment for Justice Zinter. It completely changed his lifestyle. If one were to measure, however, his lifetime of accomplishments, it is clear he accomplished much more after his accident than he had been able to before.

Justice Zinter was blessed with one of the most brilliant legal minds I have ever encountered. That was matched by a work ethic that would accept nothing short of perfection. He worked tirelessly on cases assigned to him. He was not satisfied until he was convinced the opinion was the best possible work product he could author. This often required a seven day a week work schedule. He did not back off from that for the sake of convenience or a quick exit.

Justice Zinter had the unique ability to take a complex case and focus on what was really the most relevant legal issue that needed to be addressed. That was most clearly shown in his questions to counsel during oral argument.

If you knew him, you liked him. If we were going out to eat, I knew it would take a half an hour to get from the front door to our table since Justice Zinter knew everybody in the restaurant and would talk to each one

---

† Chief Justice, South Dakota Supreme Court.

as he met them. He had the rare ability to make each person think they were the most important person he would talk to that day. At his funeral, I told Bishop David Zellmer, also a close friend of Justice Zinter, that I had lost my best friend. Bishop Zellmer smiled and said, "You are the twelfth person to tell me that today."

Justice Zinter had a delightful sense of humor. While we took our judicial positions very seriously, we did not always take ourselves that seriously. He never did figure out how when he took a Chinese fortune cookie out of its sealed wrapper, his fortune read, "Gilbertson is always right." With a straight face I informed him, "Two billion Chinese have figured it out, how about you?"

His devotion to the law was only exceeded by his devotion to his wife Sandra, his daughters Sarah and Kelly, and his grandchildren. As an example, he bought a boat that he could drive so his daughters could water ski. It was simply another example of his positive attitude. What he wanted to do, he would accomplish.

Justice Zinter authored hundreds of opinions for the South Dakota Supreme Court. He participated in the consideration of thousands more. To him, each one was important and deserved his meticulous professional attention. I am confident that now and into the future the observation, "It's a Zinter opinion," will add to the precedential weight of that case.

Justice Zinter was taken from us all too soon. He died at the height of his legal career. However, his legacy to the citizens of South Dakota, who live under the rule of law, is special and permanent.

I close with a personal note: "Thanks, Steve, for everything—from Gilley."

\*\*\*

RONALD A. PARSONS, JR.†

One of the greatest fortunes in my professional life is that my time as an appellate lawyer in South Dakota corresponded closely with Steven Zinter's storied tenure on the South Dakota Supreme Court. As a law student and young attorney, I was familiar with his reputation as one of the state's best circuit judges, including his mastery of administrative law cases that so often crossed his bench as the presiding judge in Pierre. But I never had the privilege of appearing before him at the trial court level.

In 2002, Governor Janklow elevated Justice Zinter to the Supreme Court. About the same time, I was beginning to focus my practice on ap-

---

† United States Attorney, District of South Dakota.

peals. One morning, Russ Janklow, a partner at the Sioux Falls law firm where I spent my career in private practice, asked me and Judy Wehrkamp, both of us new associates at the time, to hop in the car with him to drive up to Justice Zinter's investiture.

That was the first time I met Justice Zinter. It seemed like the entire population of Hughes County had lined up in the Capitol Rotunda to shake his hand. When my turn finally came, I nervously mumbled some words of congratulation. I distinctly remember how friendly and unassuming he was, as he graciously inquired about my background and practice. Justice Zinter was one of those expressive souls who seemed to smile with his entire being, especially his eyes.

And he was brilliant. He saw the big picture of the law like few others, intuitively recognizing when a seemingly small case – like the proverbial flapping of a butterfly's wings that produces a hurricane on the other side of the globe – might have a much larger impact on the legal universe than even the lawyers presenting it understood. I've never argued before a judge more consistently and comprehensively prepared for oral argument—one who seemed to never have an off-day. It was a given that he knew the case law better than the attorneys appearing before him, but you also got the feeling that he knew the relevant facts of your case better than you.

And the really special thing about how he exploited that superior vantage over attorneys is that he *didn't*. Most every oral argument before him had what I called "The Zinter Moment." It typically occurred during the argument of the side that would eventually lose, during the latter half of that attorney's presentation. Justice Zinter patiently waited for the right time to focus that attorney's attention on what he viewed as the true crux of the case. If that attorney was you, when that moment arrived, Justice Zinter would gently secure your attention with a formal recitation of your name, as in: "Mr. Parsons, I have a few questions along those lines." When you heard those words, framed in his dignified, slightly whispering voice, you understood your case was about to enter the crucible.

You also understood that it was your *case* that was about to be tested, not you. The series of questions from Justice Zinter that would follow were carefully designed to elicit one logical admission after another, until the attorney gradually realized why the law required a result that was different than the one being advocated. But he never took the kill shot. He was much too kind and gracious for that. His questioning was Socratic in the truest sense, never adversarial or demeaning. He never tried to force an attorney to admit that a client should lose. Instead, he took you to the brink, showed you a glimpse of the abyss, and then guided you back to

safety before your time expired. The fate of the case would not be unsealed until the written decision arrived. And if that decision was authored by Justice Zinter, it would be a *tour de force*.

I believe the last time we spoke was at the retirement reception for Justice Wilbur. I had been nominated for my current position and was awaiting confirmation. It meant that I would not be appearing before the South Dakota Supreme Court for the foreseeable future. Justice Zinter's own mandatory retirement date was only a few years away. We spoke at some length, perhaps the most we ever did, each understanding, I think, that we were saying goodbye. In a much deeper way than I could imagine, that turned out to be true.

It is a tragedy that we were not gifted with more time with Justice Zinter. But there is nothing about his joyous, abounding life about which to be sad. He was great man; he was a kind soul; he was a happy intellectual warrior. His name will always be legend among South Dakota lawyers and jurists. I am forever grateful that I was privileged to appear before him throughout his time on our state's highest court. And I will always reflect on his distinguished service and say: There were giants on the earth in those days.

\*\*\*

BOBBI J. RANK†

During my third year at the University of Nebraska School of Law, I was at a crossroads. On one side was an associateship offer from a large law firm in Lincoln. On the other side was a one year clerkship offer from Presiding Judge Zinter of the Sixth Circuit. I called my friend and mentor, Stan Whiting, and told him that I was leaning toward the law firm, which offered more security and better pay. Stan told me, in no uncertain terms, that if I turned down an opportunity to observe and learn from Judge Zinter, then Stan would have to reassess my IQ. So, I ended the call with Stan, dialed Judge Zinter, and accepted the clerkship. It was the best decision of my life.

Judge Zinter, who was later elevated to Justice Zinter, was the epitome of what a jurist is supposed to be. He was so smart it was scary. He was always prepared. He was fair, calm, kind, and modest. He knew how to make a clear and complete record for both the persons before him and the appellate court. Every lawyer and litigant who walked into his courtroom received his full attention and a well-reasoned decision, regardless of the outcome.

---

† Presiding Judge, Sixth Judicial Circuit Court.

He was also a patient and gifted teacher, and that was invaluable to a baby lawyer just delivered from law school. He always took time to explain what he was doing and why he was doing it, regardless of the length of his docket. He dissected good lawyering, so I could see and understand the strategy within. His teaching, conduct, and example consistently reinforced the traits required of good lawyers: be prepared, be honest, and be respectful and professional to everyone involved in the legal system.

In 2016, I was lucky enough to be appointed to the Sixth Circuit bench by Governor Daugaard. It was a challenging interview process, but I do remember being asked one easy question: to name the judge that I respected the most.

Because of the respect that I hold for Justice Zinter, I find myself asking the same question every time I put on the judicial robe: “What would he do?” Unfortunately, I fear that I often fall short of that standard. But aspiring to that goal, even if unreachable, is the only way I can think of to honor his legacy.

\*\*\*

#### CHARLES P. SCHROYER

Justice of the Supreme Court of South Dakota, Partner, Neighbor and above all, a Friend.

The invitation to contribute remarks to the *South Dakota Law Review* volume dedicated to the memory of Justice Steven L. Zinter brought with it a dilemma: should those comments concentrate on his service to the Bar, his dedication to our system of justice and his keen intellect in crafting decisions that are likely to shape the law in South Dakota for decades, all in an offering worthy of inclusion in such a scholarly publication? Or should they be a reflection of Steve Zinter, the man? The Steve Zinter who, upon his appointment as a Justice of the South Dakota Supreme Court, was asked how he should be addressed, answered “Judge,” or occasionally, a more earthy term. Here, the focus will be on Steve, the man, who, while younger than many of his friends, was considered more like an older brother by many.

It is said that a Judge is a lawyer who once knew a Governor. With Steve, it was more the reverse. It was an Attorney General who became Governor who once knew a young lawyer with a keen zest for life and adventure who, recognizing that young man’s inherent ability to be fair and considered in temperament, made the appointments that likely will influence the law in South Dakota for the next century.

During his school years, Steve worked the kind of jobs that connected

him to a whole different side of life. Work in a Sioux City packing plant and as a railroad brakeman gave him an appreciation for common working people and the ability to be friends and communicate with those from all walks of life. Steve arrived in Pierre with a newly minted law degree to become an Assistant Attorney General and later a law firm partner assuming the role of part-time Deputy Hughes County State's Attorney. In 1980, he was elected Hughes County State's Attorney. He was in love with the outdoors and relished hunting, fishing, water, and the other outdoor opportunities of the area. As a lobbyist, he enjoyed watching the political drama that surrounded state government and throwing the neighborhood children into the air. A private pilot, Steve and his wife Sandy enjoyed travel—the freedom of a young couple yet without children and with two incomes and the resulting ability to control their schedule.

Steve Zinter's life took an abrupt 180-degree turn when, on July 3, 1982, he sustained a severe injury in a diving accident and was destined thereafter to live with what for many would be a devastating and career ending disability. Not Steve the man. When the team from the Colorado rehabilitation center that would become his home for many months described in graphic detail the limitations that he could expect to encounter for the remainder of this life, his comment was simply, "how soon can we leave?" Upon his return he was greeted with a standing ovation at a Governor basketball game and simply never looked back at what might have been. He returned briefly to Denver to learn to drive and thereafter became as independent as anyone with such a devastating handicap could ever be. Reelected as State's Attorney, he served until 1987 when he received an appointment to the Sixth Circuit Court. In 2002, as then-Presiding Circuit Judge, he was appointed to the Supreme Court. During this transformation, Steve Zinter the man, continued to relish life. He and Sandy were joined by two daughters and a raft of grandkids that became a principle focus of his attention. Two generations of dance recitals!

Had it not been for his handicap he may not have become a judge and the State would not have benefited from his keen intellect and significant contributions to the law. Perhaps in part due to his injury his sense of taste and smell bloomed and he developed an appreciation for good food, fine wine, and a rare cigar. With family and friends, he traveled regularly to engage in ski trips, Sturgis for the Rally, Oshkosh for Air shows and vacations. He continued participating in pheasant and deer hunts, the year-around discharge of fireworks of questionable origin, and he regularly attended weekend gatherings at the local pub. As a member of the board and an astute investor in his own right, he was a force in maintaining the

outstanding record of the South Dakota Retirement System as one of the best in the country.

Those who knew Steve the man can identify with a recent article in the *Wall Street Journal* in which the author makes an observation about a close old friend who passed away. Every so often he would see, hear, or observe or otherwise come to know some bit of news that instantly made him want to call his friend to tell him about it. But that person was gone, the only one who would truly understand and appreciate the news. It happens more often as one grows older. We have friends who die, and something comes up that you want to share with the only other person in the world who would truly understand and appreciate it, but that person is no longer there. With those who knew Steve, it might be as simple as seeing the current price of a bottle of favored cognac, pinot or port; the arrival of the first purple martins; the number of train crossing whistles heard last night; the latest on Missouri River runoff outlook; the exploits of former compatriots or reflecting on past events that had taken on embellishments evolving them into legend among friends. So it was with Steve Zinter. As the article concludes: "It's such a quiet and universal part of the cycle of life: As the years pass, for the seemingly small things you most yearn to say, there's no one left to tell. This in itself catches you by surprise. Because no one ever told you about it."<sup>51</sup> You just read about it here.

We are all better for the privilege of knowing the man, Steve Zinter, as a friend.

\*\*\*

LORI S. WILBUR†

How fitting, this recognition of someone who has contributed significantly to the jurisprudence of our state. His service as a lawyer, judge, and justice tells much about how he lived his life. Dean Fulton speaks often of excellence, service, and leadership. Those attributes describe Justice Zinter's career perfectly. Ask any lawyer who clerked for him or any judge who sat in conference with him to discuss an opinion. Lawyers enjoyed appearing in his courtroom because of his thorough preparation and insightful questioning – which many times in Supreme Court sessions extended the time for argument.

Justice Zinter was a walking encyclopedia on a variety of topics, covering diverse topics such as the proper method to measure tire tread or the

---

51. Bob Greene, *The Calls That Don't Get Made*, WALL STREET J. (Sept. 17, 2019), <https://www.wsj.com/articles/the-calls-that-dont-get-made-11568760645>.

† Retired Justice, South Dakota Supreme Court.

domestic dangers of salt domes to the amanuensis doctrine. He played an important role with the South Dakota Retirement System, where he served on the Board for many years. He explained its complicated formulas and their history simply and frequently to his constituents. In addition, Justice Zinter led the Unified Judicial System in important efforts regarding the elderly, equal justice, and technology. We have a more excellent court system because of Justice Zinter.

Justice Zinter's devotion to the law mirrored his devotion to his family. As a circuit court judge, he referred to certain court days as "Hug Your Kid Day." On those days he needed to hurry home to hug his girls after dealing with hard family situations in the courtroom. Nothing was better, though, than watching the joy Justice Zinter found playing with his grandchildren.

We are fortunate to have had this caliber of person making decisions that impact our property, children, and freedom. Justice Zinter made a difference in this world. I am grateful for his work and friendship. Thank you, *South Dakota Law Review*, for recognizing Justice Zinter.