

LEGISLATIVE CAREER

With reference to my early legislative career, I had begun practice in my hometown of Sauk Rapids following graduation from the University of Minnesota Law School in 1939 and passage of the bar after that. I was admitted to the bar in January 1940 and finally set up practice in my hometown in the early part of 1940. I was an independent practitioner, but I officed in the Village Hall of Sauk Rapids where J. Arthur Bensen, an older lawyer who for many years had been the County Attorney of Benton County, also officed. The county seat was in Foley, but J. Arthur used to have his office in East St. Cloud, then decided to move over to Sauk Rapids in the Village Hall, and he arranged for some space for me in one of the back rooms, where I practiced.

The elderly legislator from this House district, which consisted of all of Benton County and two wards in East St. Cloud in Sherburne County, had died (his name was Mike Riley, he had been an auctioneer), so that the office was wide open. I filed in the primary election and my opponents I cannot remember, but I know one of them was the Mayor of Foley. I won the primary (there were more than two candidates), and the Mayor was my opponent in the general election. I won the general election. It must be remembered that during these years the legislature was not party designate, however, I had been active in the Young Republican Party and I made no bones about being a Republican. I cannot remember that the Mayor had any particular party affiliation. I was elected and, of course, at that time I was 28 years old.

I attended the first legislative session of my career in 1943. The sessions at that time were every odd numbered year, and the laws limited the sessions to 90 days. They usually extended beyond that time, although not by very much. The way the legislature went beyond the 90 days was to cover the clock.

I don't know that the 1943 session was very eventful. The House, as well as the Senate, was controlled by what were designated as Conservatives. The House was

overwhelmingly controlled by Conservatives. Roy Dunn of Pelican Rapids was the majority leader, and my friend, a lawyer from St. Cloud, Lawrence Hall, was the Speaker of the House. That friendship with Lawrence Hall counted, I believe, in many ways to my rapid involvement in legislative matters.

World War II had begun and, of course, every able-bodied male was going to be drafted. I intended to go into the service, and although Dorothy and I had our first child, I enlisted following the session in 1943. I tried to get a commission in the Navy and would have been successful had I put on some weight. I was disqualified by being underweight, so I went into the Army via the draft. It was an unfortunate mistake in many ways, because I was in the older group of draftees in the Army sent to Camp Lee, Virginia, for basic training, which was a six-week period. I spent four six-week periods in basic training. During that period of time, I applied for a commission in the Judge Advocate General's Department of the Army, but I was reelected in the general election of 1944 to a second term in the legislature without opposition, and legislators as a class were deferred. I had waived my deferment to enlist in the Army. I was offered a commission in the Judge Advocate General's Department, but I rejected it, applied for a release, and obtained it and returned to the 1945 session.

In 1944 we did interim committee work with the committees recommending some rather vast changes in the administrative structure of state government.

The 1945 session was a very interesting session—problems that were brought on from the war, which was then winding up. One of them was the problem of many private vocational schools being established over the state. These had started right at the beginning of World War II, and many of them were simply fronts for enlisting enrollment by young men who wanted to acquire a vocational skill, such as a plumber, electrician, heavy equipment operator, or many other skills, that would enable them to get into war industries and, therefore, be deferred from the draft. Many of these schools were simply

frauds and so the legislature with the leadership of the Vocational School Board, headed by Harry Schmid as its executive director, presented what was called the Area Vocational School Bill. Since Harry Schmid had been my coach in high school and knew me well, he wanted me to author the bill. I did not know a great deal about the subject matter but of course accommodated him. I undertook to learn its purpose and what the bill would do. The general educational leaders were wary of the bill, because its original provisions permitted a high school student to enroll in an area vocational school in his third year in high school. That meant that he would get a very abbreviated general high school education, and the general educators feared that that was too brief for any high school education, since it would leave the student very deficient in the fundamentals of education such as English, grammar, history and mathematics. They resisted the bill on that ground. Nevertheless, we adhered to that provision although I don't remember all the reasons. I do remember that in order to become acquainted with the problem of vocational education Harry Schmid arranged for me to meet periodically with Dr. C. A. Prosser, who was then the head of Dunwoody. Dr. Prosser was a nationally recognized leader in vocational education, having served as the head of the vocational education division in the United States Department of Education. He was a rather elderly man at that time. Dunwoody, of course, was known nationwide as an outstanding vocational school. They had limited industrial skills, primarily carpentry and perhaps some others, and, surprisingly, they were very enthusiastically in favor of the enactment of the Area Vocational School Bill. I would go regularly to the Minneapolis Club and meet with Dr. Prosser, who answered my questions and educated me on the ramifications of our vocational education and the desirability of passing that bill. I suppose that of all of my involvements in my legislative career this was the most satisfying, because Minnesota is an outstanding area vocational school state and many young people now enroll in the schools and, of course, enrollment is, as it should be, after high school.

I was then reelected for a third term in the legislature to be eligible to serve in the 1947 session. That '47 session was when Luther Youngdahl became Governor, and his address to the legislature after it convened in January 1947 could have been entitled, "We've Got to Launch Out, We Don't Have to Come Back," a phrase that he used repeatedly in his speech. He recommended that gambling should be abolished in Minnesota, and his recommendation was directed at eliminating slot machines. Slot machines could be found in every beer tavern, corner grocery store, saloon and night club, particularly up in the resort area. Every resort had slot machines and it was suspected that many of the machines were owned by people who were really professional mobsters. That was demonstrated by the many anonymous phone calls and threatening letters received while the legislature considered the bill. The bill was referred to a House committee then known as "General Legislation," and I was the chairman of that committee. The bill was deliberately referred there because of the lobbying against it, and we had some very unusual meetings where the members of the committee, and particularly the audience, would get very exercised about the ramifications of this bill. The bill, of course, added to the penalties for possessing a gambling device. Prior to that it was a misdemeanor to possess a slot machine or to own and operate a slot machine because it was gambling, but the law was not enforced. The proposed law added to the penalties the provision that anyone convicted of having such a gambling device on his premises was subject to losing all of his licenses, which included the milk license, the beer license, the liquor license, the cigarette license; so the sanctions were severe enough, and proved so after enactment.

These gamblers were so disappointed—I guess that is a mild word—with me because when the bill was being considered before the General Legislation Committee, a lot of the members of the committee had introduced bills legalizing gambling—legalizing horse racing and what not—and so the committee was not a very favorable committee to pass

out that bill. It was anticipated that if the gambling element could kill the bill in the House committee, they would have been successful, because the Senate was waiting on the House committee's action. Well, it turned out when the bill came up for recommendation to pass in the General Legislation Committee, the vote of the committee members was a tie and that required the chairman to vote. The chairman only voted to break ties, and I, of course, had no other inclination but to vote in favor of recommending the bill to pass, which I did, and that, I suppose, provoked more animosity. Also, when the bill was on the floor of the House, one of the interesting amendments to the bill was to exempt veterans' service clubs from the operation of the bill—that is, the American Legion Clubs and Veterans of Foreign Wars Clubs—and I had to get up and speak against that in order to defeat that amendment. That added to the animosity of proponents of the bill.

As one would suspect, those interested in maintaining those gambling devices took a very active part in the 1948 general election, particularly against me. My practice was increasing. My activities in the legislature—particularly serving on interim committees—interfered so much with my practice that it was very difficult to go out and campaign among the voters in my district, and by necessity I chose simply to write a general letter. I did, however, as I had regularly done and enjoyed doing, go hunting in North Dakota. I prepared the letter and sent it to the printer which was a union shop in St. Cloud—I believe it was the St. Cloud Times newspaper printing office—and then went hunting. While I was hunting, my wife Dorothy called me and asked if I was aware of what the salutation on the letter was, and I said it was "Dear Friend." She told me over the phone that that was not the way they printed it. They printed "Dead Friend." I was distressed about that; many of the people who received the letter called it to my attention in a very embarrassing way. On top of that, on the Sunday before the general election—I had opposition by a friend of mine who was a railroad worker in the car shops in St. Cloud—

these people who were distressed over the abolishment of the gambling machines apparently dragged up a dodger entitled "Rogosheske For the Gestapo." They put that dodger under the windshield wipers of every car at every church service in my district. Needless to say, it had a dramatic effect, apparently, because I lost the election by 60 votes. Although there were some factors about the election, particularly some erasures in the election records in the two precincts in East St. Cloud where one of the persons who campaigned against me was an election judge, I never followed up a contest of the election. The contest had to be done before the House Committee on Elections and by that time my chances for seeking to become the Speaker of the House had been eliminated. (Lawrence Hall retired as speaker in 1948 and that is why the speakership was vacant.) The Conservatives had elected my dear friend from Owatonna, John Hartle, as Speaker. They had nominated him and expressed their agreement before the '49 session began, which was the process by which the majority group in control, or the majority party in control as it now is, selects the legislative leadership.

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AREA VOCATIONAL SCHOOL BEGINNINGS

In early 1943, during World War II, when the National Youth Administration (N.Y.A.) was being phased out by Congress, the National Association of State Directors of Vocational Education set up a committee of three to study ways of strengthening the State Vocational Systems of Vocational Education to prevent a direct federal system envisioned by the National Youth Administration.

This committee was comprised of Directors: George Fern of Michigan, Marion Adams of Arkansas, and Harry C. Schmid of Minnesota.

Four states; Oklahoma, Massachusetts, Wisconsin, and Nebraska had been using separate State Boards to administer General Education and Vocational Education.

After study, the committee of three recommended using one board of education to administer both general education and vocational education. A format and guide lines were developed for writing legislation to establish State wide Area Vocational Schools that would serve many districts in the states. Since state laws differed, each state would work out laws according to their own State laws and Constitution. Many Minnesota vocational educators and some academic educators backed the 1945 drive for Area Vocational-Technical School legislations in Minnesota. (See attached law

121 - 21 May 1945) The bill was first introduced and passed in the House of Representatives. Walter F. Rogosheske was Chief sponser of the Area Vocational bill. It was

In the State Senate it was a committee bill ^{edited and researched by Harry C. Schmid} that carried the chairman's name (Almen). The real promoters in the Senate were: Senator Dalquist of Thief River Falls, Senator Irm of Mankato, and Senator Leo Welle of Albany. Judge Rogosheske, then a representative, was the prime mover and spokesman in the House of Representatives and met to promote the bill with the influential Senators.

Harry C. Schmid was State Director of Voc. ED.
From 1940 to 1957 and W. F. Rogosheske Coach 28-31

METROPOLITAN AIRPORTS COMMISSION

After my defeat and the disappointment of many of my friends, particularly my father, I was pretty dejected as I sat in this little law office in Sauk Rapids, but rationalized that maybe it was a benefit because I could now get to really practicing law, which I dearly wanted to do. I hadn't done very much practicing because of the interference of my legislative involvement. Not long after that (I think it was sometime in April or May of 1949), Governor Youngdahl called me and asked if I would accept the chairmanship of the Metropolitan Airports Commission. The commission was established during the 1943 session, and the problem in aeronautics at that time was where to locate the major airport in the metropolitan area, a very complex problem. The task was given, I think, finally to the Metropolitan Airports Commission. The commission was composed principally of the mayors of the two cities, Minneapolis and St. Paul, and other public officials from both these cities, appointed, I think, by the councils of these cities and not by the governor. The first chairman of the commission was A. J. Lobb, who was the business administrator, I believe, of the Mayo Clinic. His term was ending in January 1951 and he announced to the Governor that he declined appointment, and so the Governor was searching for a successor. He told me when he called me that he wanted to appoint Mr. Zinsmaster from Duluth—Mr. Zinsmaster was the head of that large bakery—but he declined. My first reaction was, of course, that I had little interest in the problem of aviation. We had a leader from Minneapolis in the legislature who was extremely interested in that, and my only qualification was that I lived outside the metropolitan area and was a lawyer and at least wasn't very controversial in this area. I remember saying to Governor Youngdahl during our phone call that I was afraid of airplanes, and he simply laughed that off and urged me to accept the appointment, which I did. I was sworn in as chairman of the commission on June 13, 1949. It was a very interesting activity. The Airports Commission met frequently; there was no per diem allowance for it, just

reimbursement of expenses, and I would have to travel to Minneapolis often. The first day I came to the Cities, the executive director of the Airports Commission, Bob Aldrich, drove me out to where the Minneapolis-St. Paul airport is now located, but which was then just being developed. They had a little red car that had radio contact with the tower, and while we were riding around the runways not in use, the tower was warning an airliner to avoid crashing with a small private plane, a very hair-raising danger; I thought they were going to crash right above our little red car. They missed each other by what seemed to me feet; that was a pretty startling introduction to this assignment. I remained in that office until I was appointed District Judge by Governor Youngdahl in March of 1950.

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DISTRICT COURT APPOINTMENT.

Governor Youngdahl had a process by which he determined appointments to the District Court. It consisted of asking the lawyers to conduct a plebescite in the judicial district where a vacancy occurred. I, of course, was in the Seventh Judicial District which extended from Moorhead over to Fergus Falls and Alexandria and Detroit Lakes down to St. Cloud, Stearns County and Benton County. I didn't know many of the lawyers except as they might have appeared with legislative matters. I hadn't tried very many cases, nor did I know the judges very well. The vacancy was created by Judge D. M. Cameron, who had to retire under a law requiring compulsory retirement of district judges at age 70, but those who had been serving on the bench prior to 1949 could continue in office until their 73rd birthday, and that was Judge Cameron's situation. He had to retire, so there was a vacancy. Governor Youngdahl provoked a plebescite and I announced that I would be involved in it after having consulted with some of my dear friends, notably Lawrence Hall and some attorneys in St. Cloud, particularly Mr. Ray Quinlivan, who represented the beer interest before the legislature and was also an outstanding trial lawyer in St. Cloud. They encouraged me, even though I was only 36. I announced for the plebescite, and what I did I suppose was contrary to what would now be professional ethics. I drove around the district. It was a large district, of course, 10 counties, and I stopped and met some of the lawyers so they could question me as to why I was asking to be appointed. I don't suppose one ought to campaign for appointment to a judicial office, but I was unaware of the type of restriction and no one seemed to object. However, before the plebescite was held, I had learned that one of the famous trial lawyers in Minnesota, Roger Dell from Fergus Falls, who later was appointed to the Supreme Court and then later appointed Chief Justice of the Supreme Court, was interested in being appointed. One of his dear friends, Rol E. Barron, who was one of the four judges of the district, encouraged him. He had sent down some lawyers from Fergus Falls, one

particularly who let me know about Mr. Dell's interest, and I, of course, said that if Mr. Dell wanted that appointment he was, of course, qualified way beyond my capacity and that I would withdraw. Well, to my surprise—I later became well acquainted and a dear friend of Roger Dell's—he came to my little office in Sauk Rapids and walked in; he always wore a double-breasted suit, and one of his mannerisms was to flap the two flaps over his double-breasted suit and he always wore a hat. After he met me, he said, "Why do you want to be a judge?" and he let me speak to that without interruption. He cross-examined me and, to my astonishment, when the interview was concluded, he got up and said, "I think you should be the judge." And that, along with other dear friends who felt that although I was pretty young and not very experienced my legislative career was a substitute for that, encouraged me. I won the plebiscite and Governor Youngdahl appointed me to the district bench in March 1950. My family and I moved to Little Falls from Sauk Rapids and were accepted by the community very rapidly.

After I began my service on the district bench, you can imagine my consternation about brooding on evidence and charging the jury. I can remember my first term of court in Moorhead. It was an experience that caused me to do a lot of studying. Fortunately I inherited Judge Cameron's court reporter, Eugene Diercks, who had been a court reporter for 22 years. He was a great help, and this was a very delightful office to perform.

Another teacher I had was beyond any expectation. . . Judge Rol E. Barron. He had been a great plaintiff's trial lawyer before he became judge. He had run for Congress, I believe, one time. He and his wife, Louisa, lived in Wadena. They became great friends of ours. Our family got to know all the children. Barron always used to stop at the house, and he would hand out silver dollars to the little children. He was that kind of a fellow. And any time I had a problem, he was right at my beck and call to teach me how to be a trial judge. There is no one in my judicial career who helped me more and to whom I am more indebted.

Well, as we went on and because I enjoyed this office so much, I worked hard at it and I performed in a way that appeared to be very satisfactory to the trial lawyers who had cases before me. The state association of district judges up to that time met annually but never took any part in addressing what improvements could be made to district courts and the manner in which a judge performed. That started to change when I got on the bench, because of compulsory retirements that had taken place and the number of new and younger judges that Governor Youngdahl and his successors had appointed. So the annual meetings of the district judges became very interesting. Of course, the principal problem was always to try to get salary increased. When I became district judge, the salary for that office was \$8,500 a year, which wasn't too bad, but as the earnings of lawyers in practice increased we fell way behind, so this was an urgent problem; and because of my legislative background I readily was named to the committee, along with other judges who had legislative backgrounds, such as John Weeks of Hennepin County and Mark Nolan of Duluth, both of whom had been legislators or staff of legislators. We also had Harold Rogers on the committee. I think I served most of the time as chairman of the committee. The activity of trying to get our salary increased gave me some standing among my brother judges, and in 1958-59 I also served as president of the District Judges.

During the course of my service in the District Judges Association, it was also proposed that we send delegates to the American Bar Association. The ABA had a standing committee on the judiciary. It wasn't called Judicial Administration as it is now called, but the judges of the ABA would meet together, and that was a very profitable thing. We nominated, I believe, five judges who were our delegates to these meetings. Well, we learned that district judges in our state had no widow's benefits. We had retirement benefits for the judge himself, and when he retired he could draw one-half of his salary for the balance of his life, provided he didn't practice law. The old judges would say that the legislature was disbaring them, but it wasn't a problem because most of the

judges when they retired were in their mid-seventies and had no desire to re-enter practice of law. That was not so with reference to a lot of states where that limitation on accepting retirement did not exist. Our committee went forward with the proposal to give a widow's pension. The proposal was that if a judge died during retirement the widow would receive one-half of the retirement benefits that the judge received. We had to put a limitation on it that made a wife ineligible to receive benefits if she hadn't been married to the judge for as long as three years prior to his death, which was one of those legislative suspicions that an old judge who lost his wife as soon as he was ready for retirement would marry someone else and make her eligible for that "magnificent" pension. With the help of some great leaders in the legislature, particularly Senator Rosenmeier from Little Falls, we were able to accomplish the enactment of that statute in 1959.

During the 12 years that I served as a district judge, Professor Harry Clayburn (I think that was his name) from the University of Chicago wanted to determine how efficacious a jury's performance was. Were juries simply the tool of oratory, or did they really decide cases that reflected proper justice? He sent to a large number of trial judges over the United States a questionnaire—a whole box of questionnaires—which required the judge, if he agreed to participate, as I did, to fill out for each case he tried (this was limited to civil cases) the name of the case and what it was about. The critical part of the questionnaire was that before the jury retired or returned with its verdict the judge recorded how he would decide the case if it had been tried to him alone. I faithfully did that. Then when the jury returned its verdict the judge recorded what the jury's verdict was; there was also a part for an explanation of any divergence. To my astonishment and reassurance, in those places where there were divergences, with few exceptions the jury's verdict was better than mine. Where the jury went wrong could easily be traced to inept performance of one or both counsel at the trial, or to a complicated jury instruction that I hadn't made clear to the jury.

Being involved with this study helped me immeasurably to revise jury instructions and I think in many ways was one of the provocations for the District Judges Association appointing a committee to draft jury instructions. The committee had an awful time knowing what to call those pattern jury instructions. We finally settled on Jury Instruction Guides, or abbreviated we would call them JIG. We met at the committee members' lake cabins, such as Judge Ted Knudsen's cabin. We met at those cabins for two or three days working on this project, and it was finally finished. Professor James Hetland was our staff, and I think he worked for nothing. We had no funds, I believe. Maybe we had some funds to reimburse for expenses, but it was a great contribution and a great help to the lawyers who were newly appointed to the court. The Criminal Jury Instruction Guides were drafted after I went on the Supreme Court.

During my career also as a trial judge, I began to preside over Moot Court at the University of Minnesota Law School. It was a required course in which each student and a partner had to try two civil cases—one to the judge alone and one to a jury comprised of freshman law students. The requirement was that in his senior year the student had to try these cases, so there were two students on each side representing the plaintiff and the defendant. My friend, Professor David Louisell, was in charge of teaching practice at that time, so he enlisted Judge Paul Carroll of Hennepin County. I think he was doing it before I started. And another friend of his, a lawyer by the name of Paul Spooner. The three of us divided the load—it was nonburdensome, and we tried these Moot Court cases. This was very helpful in improving my performance as a trial judge, because in ruling on evidence and in instructing juries, all of those things were subject to being explained to the students who tried the case, to their classmates who attended, and to the freshman law students who were jurors. It was a very edifying experience and I enjoyed it very much. I continued with this service as the enrollment increased, and even though, I think, during the mid-sixties or a little later when it was no longer a requirement for senior law

students to take practice court, there was plenty of work. Professor Hetland, who had succeeded Louisell, and I think Professor Dave Graven enlisted a lot more district judges to help out so that the load would not be burdensome. I continued doing that even after I went on the Supreme Court in February of 1962. I think I continued until the late sixties or '65. I was still doing some of it when Harry MacLaughlin was appointed to the Supreme Court. I encouraged Harry to take on some of those duties, and I remember after he did so, I think with great enjoyment, I withdrew from that activity.

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SUPREME COURT APPOINTMENT

One of the great judges who helped me learn how to be a trial judge was Judge E. R. Selnes from Glenwood. Incidentally, Judge Selnes was asked if he would accept appointment to the Minnesota Supreme Court in 1962, or maybe it was in 1961, at least it was when Lee Loevinger went to Washington and a vacancy occurred and Justice Otis was appointed. Judge Selnes' involvement was, as I remember, to the extent that he had called me and I had learned that my friend, Jim Otis, was seeking the appointment; and of course I would have nothing to do with that. Judge Barron was urging that I try to get appointed to the Supreme Court. I remember one time when we were in St. Paul and he was visiting with Chief Justice Dell. On our way home he told me that I ought to stand for appointment to the Supreme Court to fill the Loevinger vacancy. Governor Elmer L. Andersen was approaching the appointment by having the district bar presidents in for a conference in St. Paul to get their recommendation as to whom he should appoint to fill the Loevinger vacancy. On our way back to Little Falls, Judge Barron chastised me for not being interested, and I remember so well I said, "No way would I contest Otis' seeking the appointment because of our friendship and my admiration of him." That sounds like magnanimity but it really wasn't. I had no real aspiration to be on the appellate court. I enjoyed the trial court so much, I enjoyed where we lived, and I never had any desire to move to the Twin Cities. All of those factors explain my response to Judge Barron. I really did think Jim was an excellent appointment, but surely with all those concerns I was not going to compete.

It was in 1962, when Roger Dell resigned from the court and Oscar Knutson was named Chief and there was a vacancy, that I was appointed to the Supreme Court. When I arrived at the Capitol to be sworn in as a Supreme Court Justice we didn't have the kind of ceremonies we have now where the Governor appears and it is in the rotunda and then there is a reception afterwards. I simply had my wife hold the robe, and the rest of the

members of the Bench—there were then six others—were sitting in their chairs in the formal hearing room of the court. I stood up and Oscar stood up. I was administered the oath, my wife put the robe on me, and after a few remarks, the Chief called the first case. Well, before that happened, I had stopped by the court, I think it was only two days before, and the Chief, Oscar Knutson, handed me my first case. Cases were assigned in those days by rotation. In other words, they were just numbered in series, and when your turn came up for that case it was just in rotation. The case I got was entitled Cederstrand vs. Lutheran Brotherhood. Cederstrand had been discharged by Lutheran Brotherhood and she was suing the Brotherhood for back pay and damages. The record in the case, as I remember it, probably was about four or five volumes, each one about two inches thick, so if you mounted them on top of a desk, they stood up to about a foot and a half. The briefs were very lengthy. That is what he assigned me as the first case. We didn't hear it that first day when I was sworn in, but I don't think very many days passed before we did hear it.

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