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A Tribute to Douglas K. Amdahl

James F. Hogg

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DEAN JAMES F. HOGG†

I congratulate the William Mitchell Law Review and its editorial board on their decision to dedicate this issue of the Review to Chief Justice Douglas K. Amdahl. He has provided truly inspiring and effective leadership for the Minnesota Supreme Court and the entire state court system.

In addition to providing intellectual leadership, the Chief Justice has responsibility for effective administration of that system. In his seven years as Chief Justice, Douglas Amdahl has compiled a remarkable record as an administrator. Early on he saw all too clearly the problems of case overload and the consequent deterioration of a primary role of the court—that of selecting areas of the law ripe for reform or restatement. He devoted his remarkable energies to the process of persuading the legislature and the citizens of the state that a new intermediate appellate court was required. And he was successful. He then turned to the problem of the physical needs of the Supreme Court and the state judicial system. Here we all see the results as the new Minnesota Judicial Center rises next to the state capitol. In judging the success of this achievement and his efforts, we should remember that the first request for funding for this building was made to the legislature some seventy-five years ago!

His administrative skills have had an impact and are widely recognized nationally as well as at the state level. He is currently the Chair of the American Bar Association Committee on Standards of Judicial Administration; he is a member of the American Bar Association Committee on the Revision of the Standards Relating to Criminal Justice; he is the Chair of the Conference of Chief Justices' Committee on Authorization or Withholding of Medical Treatment; Chair of the National Center for State Courts' Delay Reduction Advisory Committee; and a member of the Conference of Chief Justices' Special Committee to Study the Problems of Civil Jurisdiction within

† President and Dean of William Mitchell College of Law.

the Exterior Boundaries of Indian Country. He is the past Chair, Conference of Chief Justices' Committee on the Procurement of Insurance for Judges' Liability and a member of the American Bar Association Committee on the same subject. He is a present member and former regent of the International Academy of Trial Judges and a member of the National Board of Trial Advocacy.

The smoothly running and effectively operating state judicial system is a great tribute in itself to Chief Justice Amdahl. At the same time he has had a powerful hand in the opinion work of the Supreme Court, shaping our law and legal system.

Constitutional law is an ever-present background or backdrop to the regular business of judging. Clear constitutional issues, however, are a more rare phenomenon in the Minnesota Supreme Court's practice. Chief Justice Amdahl, writing for the court, has dealt with at least two such cases of note. In *Thompson v. Estate of Petroff*,[1] the issue presented was whether Minnesota's survival statute violated the equal protection clause of the state constitution. This statute permitted an action sounding in negligence to survive against the estate of a wrongdoer but did not permit similarly the survival of an action based on intentional tort. The facts of *Thompson* indicate there was an assault, following which the plaintiff shot and killed the wrongdoer and was found to have acted in self-defense. She then sued the wrongdoer's estate.

Chief Justice Amdahl, writing for the court, traced the origin of the rule against survival of intentional torts back to medieval English common law, where the purpose of civil as well as criminal law was to punish a wrongdoer. Following the death of the wrongdoer, according to the old logic, there was no further purpose in pursuing punishment. Demonstrating a practical point of view, Chief Justice Amdahl concluded, "[S]ince compensation rather than punishment is now the essential purpose of any tort cause of action, there seems to be little reason to exclude only those [causes of action] that evolved from the punitive, quasi-criminal trespass writs and the even more ancient appeal of felony."[2]

The court then found the statutory distinctions on survivability of claims to be "arbitrary in light of the develop-

1. 319 N.W.2d 400 (Minn. 1982).
2. *Id.* at 405.

ment of modern tort law,"[3] and violative of the equal protection provision of the Minnesota Constitution. At the same time the court concluded that punitive damages should not be recoverable in such a situation since "[t]he purpose of punitive damages is to punish the tortfeasor where the act is malicious or willful, and to deter him from repeating the wrongful act."[4] This opinion provides an early illustration of the Chief Justice's clear, crisp and concise style—explaining choices and policy considerations while relating them to the facts.

Another constitutional issue was presented four years later in *Minneapolis Star & Tribune Co. v. Schumacher*.[5] Using the same clear and crisp style, Chief Justice Amdahl wrote for the court: "The narrow question presented by this case is what legal standard applies when a party seeks to restrict access to settlement documents and transcripts that are made part of a civil court file by statute."[6]

This case involved the sealing of records relating to the settlement of five cases arising out of the Galaxy Airline crash in Reno, Nevada in 1985. The newspaper intervened in the proceeding and was unsuccessful at the trial level in persuading the judge to unseal the records. Arguing before the Court of Appeals, the paper sought to have the trial judge's order sealing the settlement documents and related transcript overturned: "They maintained that Judge Schumacher erred in applying a common-law standard and asserted that a constitutional standard based on the first amendment freedoms of speech and press was the proper standard to apply in this case."[7] The Court of Appeals reversed the trial court and accepted this argument. The Supreme Court restored the trial court's order. Emphasizing the narrowness of the question presented, the court concluded, "[N]o first amendment right of access exists in the settlement documents and transcripts sealed by the court."[8]

The basis for this decision was found in the strong public policy of encouraging settlement. Providing access to such sealed records would discourage settlements rather than en-

3. *Id.* at 406.
4. *Id.* at 408.
5. 392 N.W.2d 197 (Minn. 1986).
6. *Id.* at 200.
7. *Id.* at 201.
8. *Id.* at 204.

courage them.[9] Applying the rule as enunciated, the court found that the trial judge had not abused his discretion in denying access to the documents in question. Mindful of its responsibility to teach, the court then went on to explain the propriety of proceeding in such a case by writ of prohibition rather than by direct appeal.

Two other decisions, each authored by the Chief Justice, illustrate the role of the court in shaping and developing new legal standards. In *Hubbard v. United Press International, Inc.*,[10] a discharged employee brought suit for, among other things, intentional infliction of emotional distress. The Supreme Court made new law by finding such an act to be the basis for a cause of action under Minnesota law. In this interesting case, the court changed the old policy, made new policy, articulated the reasons for the change and the new standard with clarity, and provided guidance for future application of the new rule. At the same time, the court reversed the trial court's findings of fact and corrected the lower court's errors.

In adopting this new tort, the court wrestled with the danger that emotional injury might be faked or over-dramatized. Speaking of the old policy and rule the court said, "The requirements that the mental distress be accompanied by physical injury or be the natural result of some other actionable tort provide added assurance that the alleged emotional injury actually occurred and was intentionally inflicted."[11] Striking out for new ground, the court further stated, "[W]e no longer feel that a rule requiring physical injury or an underlying tort is the most effective way to promote this policy."[12] Recognizing the need for caution in pursuing this new tort, the court required the plaintiff to meet a very high standard of proof. In conclusion, the court held, on the instant facts, that the trial court erred in submitting the relevant claim to the jury.

Once again, we see the Chief Justice articulating in a very clear, precise opinion the reasons for adopting the new policy, and the need for restraint based on the prior policy and concern for the risk of manipulated claims. While the case makes

9. *Id.* at 205.
10. 330 N.W.2d 428 (Minn. 1983).
11. *Id.* at 438.
12. *Id.*

new law, the plaintiff "struck out" since the Supreme Court reversed the trial court on the facts.

In the second case, *Lewis v. Equitable Life Assurance Society*,[13] the court faced a new issue of defamation by self-publication. The plaintiffs were terminated as employees of the defendant company on grounds of "gross insubordination." In seeking subsequent employment, they were forced to disclose to prospective employers the fact of their previous termination and the assigned reason. In the opinion written by the Chief Justice, the court broke new ground under Minnesota law in finding a basis for a defamation action against the defendant company notwithstanding the fact that the defamatory words were published by the plaintiffs.

In so shaping Minnesota law, the court reached out to precedent in a few other states but not without a dissent from one member of the court. Justice Kelley, noting that "[v]ery few courts of this nation have recognized this exception,"[14] concluded, "Now, the only way an employer can avoid litigation and the possible liability for substantial damages, is to cease communicating the reason it felt justified the termination, not only to third persons, but even to the employee himself or herself."[15] In addressing this concern, the majority found that the employer may have a qualified privilege in self-publication cases but since the jury found actual malice in the case before them, this qualified privilege was lost on the instant facts.

The court took the opportunity to exclude punitive damages from any recovery in compelled self-publication cases: "Even with the qualified privilege, the risk of punitive damages may prove too great. As a result, the employer may refuse to state a reason when discharging an employee. As indicated above, such a result would not serve the interests of the public."[16] Reversing the Court of Appeals, the Supreme Court found the trial court's inclusion of compensatory damages for future harm to be proper.

They also disagreed with the Court of Appeals on an issue of trial procedure. The appellate court had refused to consider an erroneous jury instruction because no objection was made

13. 389 N.W.2d 876 (Minn. 1986).
14. *Id.* at 895.
15. *Id.* at 896.
16. *Id.* at 892.

during the trial. The Supreme Court explained that its previous opinion to that effect did not extend to an objection raising a potentially fundamental error of law. In such case the error is reviewable, explained the court, as long as the instruction was assigned as error in the motion for a new trial. Having made its point for the lower courts, the Supreme Court concluded that the particular error in this case was not prejudicial to the defendant. The court found another jury instruction on the duty in employment contracts to exercise good faith to be erroneous, but again found no prejudice in the instant situation.

In other cases, Chief Justice Amdahl, writing for the court, has shown great concern for process and procedure at the trial and appellate levels and has emphasized the importance of a full and complete record. *Auge v. Auge*[17] involved the right of a custodial parent to remove a child from the State of Minnesota. More precisely, the issue was the circumstances under which a trial judge must hold an evidentiary hearing regarding the removal of a child from Minnesota.

This opinion reflects the Chief Justice's writing style of full explanation of applicable policy and how that policy relates to the facts of the case. The trial court had adopted the referee's findings. The Supreme Court found important substantive and procedural defects and took the opportunity to provide clear guidance for future trial courts on how the legal standard was to be applied. The ruling also illustrates a profound concern for the child's best interests. The court concluded that removal should not be denied solely to maintain existing parental visitation patterns. The court then established and defined a new procedure to be followed in custody removal cases. In going beyond the facts of the instant case, the court sought to give broader guidance to the lower courts.

In *Moylan v. Moylan*,[18] Chief Justice Amdahl, writing for the court, addressed another issue of first impression—holding that the statutory child support guidelines applied to all child support awards including modifications. Disagreeing with the Court of Appeals, the Supreme Court went on to hold that all such awards must be supported by detailed findings of fact. The trial court had made no express findings of fact regarding

17. 334 N.W.2d 393 (Minn. 1983).
18. 384 N.W.2d 859 (Minn. 1986).

the mother's expenses or the needs of the dependent child. The Court of Appeals noted this fact but found that express findings were not required because the mother's expenses and the child's needs were adequately shown in the record.

In this case the Supreme Court had to exercise its skills to patch up less than masterful legislation: "The problem with this statutory scheme is it implies that a court need not make findings of fact unless it orders child support in an amount below the figure recommended in the guidelines."[19] The court rejected this implication, asserting the separate and necessary role of the court: "We therefore require that in all child support cases not involving public assistance, the trial court must make specific findings of fact as to the factors it considered in formulating the award."[20] The Supreme Court then reversed the Court of Appeals, holding that "[w]hile the record may support a trial court's decision, it is nevertheless inadequate if that record fails to reveal that the trial court actually considered the appropriate factors."[21] The court then went on to provide helpful advice to the trial judge concerning the nature of the hearing required by reason of the remand.

In this cross-section of Minnesota Supreme Court decisions written by Chief Justice Amdahl, we see the hand of the master—with long personal experience as a trial court judge himself. He is ever mindful of the teaching and guidance function of the Supreme Court; and ever concerned for those affected or likely to be affected by the decision. He is humane, insightful and concerned to explain and communicate both the policy and the specific application of that policy to the facts before the court—a consummate writer of clear and concise opinions. Behind these opinions is a man of formidable appearance—brush-cut hair—with a remarkable inner sensitivity and concern for people. He also has a driving energy, a marvelous sense of humor and a love of his fellow beings. Chief Justice Amdahl is a great chief justice and we are all the richer for his dedication and service.

19. *Id.* at 863.
20. *Id.*
21. *Id.* at 865.