Stephen D. Easton
Attorney at Law
[redacted]

July 19, 2015

Ms. Kari Reichert, Chair
Dickinson State University Presidential Search Committee
c/o Dr. James H. McCormick, Senior Consultant
AGB Search
1133 20th Street N.W., Suite 300
Washington, DC 20036

RE: DSU Presidency Application

Dear Ms. Reichert, Dr. McCormick, and Members of the Search Committee:

Please consider this letter and its enclosures my application for the Presidency of Dickinson State University.

BACKGROUND

My interest in the DSU Presidency stems from a lifelong passion for DSU, not a lifelong desire to be a university president. For four generations, my family has benefitted from this cherished institution. My grandmother attended Dickinson Normal and then taught in one-room and other schools in southwestern North Dakota. My father attended Dickinson State Teachers College, then pursued a career in teaching and, later, community college administration, including the presidencies of five community colleges. I attended Dickinson State College, graduating with a B.A. in Business Administration/Accounting, then pursued a Juris Doctor degree at Stanford and a legal practice and, later, a teaching career in North Dakota, Missouri, and Wyoming. Our son, Nathaniel, is about to start his senior year at Dickinson State University studying Business Administration and his second year as the President of the Student Senate.

My decision to attend Dickinson State was one of the best in my life. As I have often said, of all the teachers at all of the fine educational institutions that I was fortunate enough to attend, my best, including Mr. Richard King, Dr. Lee Skabo, and Ms. Jean Waldera, were at Dickinson. For me, Dickinson State was the right size, as I was able to participate in student government, theater, athletics, and other extracurricular activities, even though I was far from a star in any of them. It is hard for those outside my family to understand just how crucial Dickinson State has been to my family and me.

Now I see our beloved institution at a crossroads. The past half-decade has been a tough one, with the controversy regarding granting (and then, appropriately, withdrawal) of unearned degrees, tragic accidents claiming the lives of treasured student athletes, and financial difficulties for a foundation that has been a key resource for the University. However, there are also signs of hope on the horizon, including the very real

possibility of a presidential library on campus and substantial growth in the size of Dickinson and much of the rest of western North Dakota.

After being encouraged to apply, I drilled down to determine the realities for my alma mater. I have discovered a faculty and staff that includes many who are the kinds of teachers that highlighted my time as a student, a vibrant community with an economic base as diverse (with agriculture, manufacturing, retail, and energy as major players) as any in North Dakota that is eager to support the University, and political leadership that has worked hard for the University in its difficult times and looks forward to a bright future. Thus, while there are substantial enough challenges that no one should apply for the DSU Presidency with unopen eyes, I am convinced that DSU can regain its footing and then build into a future even brighter than its admirable history. With my background of over a decade and a half in higher education (including earning local and national teaching awards), service as a leader of a government agency (as U.S. Attorney), a private business (as a partner of a leading North Dakota law firm), and two law schools (as a dean and a Policy Committee member), and extensive scholarship (including two solo-authored books and two co-authored books), I believe I can provide the creative leadership DSU needs to build for its second century.

VISION FOR DSU

As one of the youngest institutions of higher education in North Dakota, Dickinson State is only three years from its centennial celebration. All of us who love DSU need to spend the next three years building toward the centennial, then use that celebration as a springboard toward an even better second century.

In this section, I will briefly outline my vision for DSU. I do so with no small measure of reluctance, as I am, though very much a fan of DSU and one who watches it closely, not a person who is currently working at DSU. Thus, it is rather bold for me to outline a vision, especially when there are those already at DSU who are working on these initiatives and who have already done so much to get us past the recent trouble. But you have the difficult job of evaluating those who would lead the institution, so I believe you deserve some sense of potential initiatives from candidates.

Students, Students, Students Dickinson State must be an institution that has student success as its primary focus. During my career in higher education, I have attempted to live by a philosophy borrowed from a friend (UND Law Professor Randy Lee): "Whenever possible, do what is best for the students." [This does not always mean "do what the students want," though student views should always be considered.] Because student access is critical both to DSU and the system as a whole, tuition and fees should be kept as low as possible. Because retention is important, we should develop programs that promote student success, especially in the critical first semester that sets the pattern for college performance. Because students must be our focus, class schedules must be arranged so students can take key courses and still participate in other activities.

Enrollment Speaking of students, we need more of them. If hired as DSU President, I would make student recruiting a top priority of all, including faculty and staff, but also alumni and other supporters. As someone who was able to hold a law school's enrollment steady during a time when the number of people applying to law schools nationwide dropped by about 50%, I would take a lead role in the effort to recruit new students and, then, to retain them. As a first, but critical, step, DSU needs to again become the "go to" school for southwestern North Dakota and a high ranking alternative for eastern Montana and other nearby locations.

Theodore Roosevelt Library and Museum The State of North Dakota has provided initial funding for a presidential library. A presidential library! That is an asset only a few other universities have. And this one is for perhaps the most interesting president (if not the most interesting person) in our nation's history, Theodore Roosevelt. In my view, we should do everything we can to bring this amazing resource onto campus, by providing both an academic and a physical home for the library and museum. Going one step further, we should even consider renaming the University "Theodore Roosevelt State University at Dickinson." With his varied interests in science, history, business, ranching, the West, politics, writing, etc., Theodore Roosevelt is the perfect person to put at the center of a university. I would wholeheartedly embrace this opportunity. It can provide us the means to build a University that, in addition to being a magnet for students from the area, also attracts strong students from elsewhere in the nation and the world.

Partnerships with Area Businesses and Other Institutions At first blush, some might think of the energy-fueled growth of Dickinson as a challenge, because the ready availability of high paying jobs makes it harder to convince potential students of the value of a higher education and higher housing prices make faculty and staff recruiting difficult. While there is some truth to this, Dickinson's growth also presents opportunities that many other small colleges would love to have, if we approach them with an entrepreneurial spirit. We should partner with area businesses to arrange part-time employment for students that will allow them to graduate from college debt free. Also, let's consider providing technical training, through certificate programs of significantly shorter duration than the programs leading to bachelor's degrees, for those who do wish to work in the energy industry (perhaps via cooperation with Bismarck State, which has taken the lead in this area, and partnerships with oilfield service companies).

Integrity Supporting these and other initiatives, there must be a foundation of integrity. We must be honest, even when it hurts. We must be who we say we are. As in any human enterprise, there will be difficulties and bad days. But we will not be anything less than honest when the news is bad, if I am at the helm.

CONCLUSION

There is so much more for the undersigned to learn and so much more to be done. Of course, the President of the University, alone, can do very little. But there are good people at Dickinson State and in southwestern North Dakota who, with the right leadership, stand at the ready to build the future of this special University.

Thank you for considering my candidacy. If there is any additional information that would assist you, please contact me and I will be pleased to provide it.

Sincerely,

Steve Easton

Stephen D. Easton

Enclosures: Resume and Professional Reference List

STEPHEN D. EASTON

[redacted]

UW Office: (307) 766-2274; Cell ([redacted]

July 19, 2015

Experience

2009-present **Dean** (2009-13) **and Professor** (2013-present)**, College of Law, University of Wyoming**, Laramie, WY

- Classes: Prosecution Assistance Clinic; Evidence; Criminal Procedure; Trial Practice; Summer Trial Institute; Professional Responsibility

1998-2009 **Professor, University of Missouri School of Law**, Columbia, MO

- Classes: Professional Responsibility, Trial Practice, Criminal Law, Criminal Procedure, Criminal Justice Administration, Evidence, and Famous Trials (and co-teaching of the Damages seminar and Legal Reasoning)
- Associate Professor in 1998. Tenure in 2002. Full C.A. Leedy Professorship in 2006. Curators Teaching Professor in 2008.

Primary Research Areas: expert witnesses; trial advocacy; civil procedure; professional responsibility; evidence; and law practice and practitioners

1984-1990 and 1993-1998 **Attorney (and Partner), Pearce & Durick Law Firm**, Bismarck, ND

- Trial attorney in product liability and other civil litigation
- Youngest North Dakota lawyer with Martindale-Hubbell's highest rating (AV)

1990-1993 **United States Attorney for the District of North Dakota**, Fargo, ND

1983-1984 **Law Clerk to The Honorable Joseph T. Sneed**, Ninth Circuit, San Francisco

1981/82/83 **Summer Law Clerk** (ND Attorney General; Phoenix firm; Pearce & Durick)

1980 **Accountant, Eide, Helmeke & Co., CPAs**, Dickinson, ND

1978 **Intern/Aide, U.S. Senator Wendell R. Anderson** (MN), Washington, DC

Education

1980-1983 **Stanford Law School** (J.D.) (estimated class rank: top 15%)
President, Stanford Law Forum; Assoc. Managing Ed., *Stanford Law Review*; Kirkwood moot court semi-finalist (best petitioner's brief); mock trial attorney; chair of Stanford University Newman Center board

1978-1980 **Dickinson State University** (B.A. *summa cum laude* in Bus. Administration/ Accounting; Pol. Sci. minor) (4.0 GPA on 4.0 scale) (LSAT: 99th percentile)

1976-1978 **Northland Community and Technical College** (A.A.) (4.0 GPA on 4.0 scale)

College activities: football, baseball, and golf letterman; actor in college plays; Spanish Club President; Student Senate Treasurer; newspaper columnist; Phi Theta Kappa honor society; speech team; multiple academic scholarships; work-study library assistant; co-chair of Catholic Student Association; Who's Who Among Students; dance marathon and other fundraising activities

Other Background Information

Certified Public Accountant (licensed in North Dakota, but not a current practitioner in accounting) (passed entire CPA exam in first sitting, 1980)

Bar Memberships (partial list): Wyoming, Missouri, North Dakota, and Montana (inactive) bars; Oglala Sioux Tribal Bar; Albany County Bar Association; Eighth Circuit; U.S. Supreme Court

National Awards: Pound Civil Justice Institute Richard S. Jacobson Award for Excellence in Teaching Trial Advocacy (2006); Who's Who in America (starting with 60th ed. 2006); American Inns of Court First Annual Warren E. Burger Prize (for blind judged national writing contest on attorney professionalism and civility) (2004)

University of Missouri Awards: Kemper Fellowship (awarded by the university for outstanding teaching) (2006); Shook, Hardy & Bacon LLP Excellence in Research Award (awarded annually by the law school to the faculty member who publishes the law review article deemed the most excellent) (2003); Board of Advocates Faculty Achievement Award (2003 & 2006); Excellence in Education Award (2002); Golden Chalk Teaching Award (2002)

Other Awards: Rhodes Scholarship finalist; Stanford Law School Hilmer Ohlmann Award (for outstanding research and writing); Dickinson State commencement speaker, "Young Hawk" Award, and Alumni Fellow; Minnesota State Community College Board Outstanding Alumni Award; Northland Community College Alumnus of the Year; North Dakota Peace Officers' Association Distinguished Service Award; other awards from law enforcement agencies and crime victims groups

Teaching and Learning Innovations

Creator and Director of Summer Trial Institute With the assistance of the American College of Trial Lawyers and the American Board of Trial Advocates, launched a two week "boot camp" version of trial advocacy class using volunteer trial attorney faculty members. The program is now one of the most popular at the University of Wyoming College of Law, despite the heavy workload for students.

Video Lectures for Evidence "Flipped Classroom" Started new system of video lectures for Evidence class. Because students are assigned to watch these lectures before class, class time is devoted primarily to application of Evidence law doctrine and rules to in-class demonstrations of problems, where students assume the roles of attorney and witness.

Creation of Famous Trials Course Created a new course for University of Missouri Honors College seniors and Law School students to study policy implications and practical lessons from historically significant trials.

Classroom Voting Instituted mandatory voting by students on issues being discussed (such as whether an attorney should be disciplined, in Professional Responsibility, or whether evidence should be suppressed, in Criminal Procedure), to encourage active learning by the entire class rather than only the one or two students participating in class discussion.

Point/Counterpoint Applied the "real world" forum of disciplinary hearings to Professional Responsibility classes, by assigning two students to present the case for disciplining an attorney and two other students to defend the same attorney, then allowed and encouraged students to use creative alternative formats such as videos, game shows, and melodramas.

Attorney Day Adopted the student presentation format to Evidence class, by assigning students to argue for and against in the admission of disputed evidence as if objecting and responding

in trial.

Video Trial Files for Trial Practice Created a video trial file whereby "witnesses" are allowed to watch the events in question, to create a more realistic trial experience (with witnesses struggling with their own gaps in observation and recollection) than that resulting from the traditional injection of a fictional "memory" into the witness's brain via review of paper instructions outlining recollections. Presented lecture about this innovation at University of Missouri Teaching Renewal Conference.

Other Trial Practice Initiatives Established an internet feedback program where students receive feedback from experienced trial attorneys from several states. Created a website (soon to be available nationally) with video presentations and demonstrations for Trial Practice courses at UW and other law schools.

Technology Adopted assorted technology into teaching, including some "innovations" (like being one of the first to use PowerPoint slides and making extensive use of video) that have now become commonplace.

Historical Trials Invention of what has become an annual event at two law schools, the historical trial. In these trials, outstanding trial advocacy students are paired with experienced trial attorneys (including professors) as attorneys in trials based upon historical events. The events are outlined in trial files written by students under editorial supervision (including the trial of Meriwether Lewis for allegedly stealing a canoe from the Clatsop Tribe (2007), the trial of Governor Thomas Crittenden for allegedly hiring a hit man to kill Jesse James (2008), and the trial of Al Capone for allegedly ordering or approving the Valentine's Day Massacre (2009)). At the University of Wyoming College of Law, the Spence Law Firm Historic Trial series launched with the Johnson County Cattle War trial (2014), which featured former Senator Alan Simpson playing the role of the defendant, Wyoming Supreme Court Justice Kate Fox serving (with a student) as part of the prosecution team, and former Governor and Ambassador to Ireland Mike Sullivan (with a student) as part of the defense team.

Founding of Inn of Court and Student Membership Initiated and organized the creation of the Elwood Thomas Inn of Court, headquartered at the University of Missouri School of Law, with law students, young and experienced attorneys, and judges from Boone and Cole Counties. At the University of Wyoming College of Law, coordinated the effort to add student members to the Ewing T. Kerr Inn of Court in Cheyenne.

Service at the University of Wyoming College of Law

Fundraising Initiatives

Judge Clarence Brimmer Scholarship (endowed scholarship awarded to outstanding second year student for payment of expenses of third year attendance). *See* http://www.uwyo.edu/foundation/our-donors/ds-brimmer.html

Kepler Fund for Professional Education (fund supporting clinical and other experiential education). *See* video at http://www.uwyo.edu/foundation/impact-of-your-gift/impact-on-students.html

Center for International Human Rights Law & Advocacy (including the International Human Rights Clinic) (new program funded almost entirely from private gifts)

Bob Golten Fellowship (fund allowing hiring of junior faculty member to assist with International Human Rights Clinic and other teaching)

Spence Law Firm Historic Trials Program. See descriptions at http://www.uwyo.edu/law/news/2014/10/spence%20trial.html and https://www.uwyo.edu/uw/news/2014/10/uw-college-of-law-hosts-spence-law-firm-historic-johnson-county-trial-oct.-29.html

Estate Planning Practicum (new program with non-faculty expenses funded from private gifts)

Richard E. Day Client Counseling Competition (funding for student program)

Hirst Applegate Mock Trial Competition (funding for student program)

Davis & Cannon Energy and Natural Resources Competition (funding for student program)

Judge James Barrett Judicial Chambers and Scholarships (scholarships defraying a portion of the expenses for student participation in Summer Trial Institute). See video at https://www.youtube.com/watch?v=ctx1WrsGhAs and written description of program at http://www.uwyo.edu/law/news/2014/08/sti.html

Doubling of annual scholarship budget during tenure as dean

William Brimmer Legal Education Center (completion of fundraising for building addition that was initiated and largely executed by previous dean)

Creator and coordinator of student, faculty, staff, and alumni fundraising events, including College of Law golf tournament, NCAA Final Four student fundraiser, annual tailgate party, and telethon

Other Initiatives
(partial list)

Summer Trial Institute (innovative program bringing 75 top trial attorneys, judges, and court reporters to campus for intensive "boot camp" teaching of trial advocacy to third year students) (creator and director)

"Easton Rule" creation and implementation (for more equivalent distribution of teaching load among faculty)

Abraham Lincoln National Historic Trials Competition presented by Hirst Applegate (forthcoming 2016)

Curriculum revision

2020 strategic planning initiative

Environment and Natural Resources Clinic

Natural Resources Law and Policy Institute

Center for Law and Energy Resources in the Rockies

Center for the Study of Written Advocacy (recognized as a top 15 legal writing program nationwide)

Annual alumni tailgating event

Alaska Summer Trial Institute (forthcoming 2016)

Other College of Law Service

Organization of successful re-accreditation application, through campus site visit

Faculty supervisor of Richard E. Day Client Counseling Competition and coach of regional client counseling teams

Brimmer Scholarship Committee (chair and member)

Admissions Committee

Honor Council (assorted duties)

Curriculum and Assessment Committee

Bar Exam Preparation Course presenter (as one of several faculty members sharing in this duty)

Building and Technology Committee

Admitted Students Day speaker

Orientation speaker

Town Hall (student feedback event held every semester)

Potter Law Club (student government) faculty sponsor (attending weekly meetings)

Coach of mock trial team

Judge for assorted UW College of Law Board of Advocates competitions

Brief grader for National Moot Court regional competition

Selected by students as hooder for 2014 graduation (but unable to serve due to family commitments)

Participant in numerous mock trial exercises for students in College of Law clinics

Advisor on professional responsibility and other issues for the College of Law's clinics and clinic students

Co-director of summer program for students researching energy, environment, and natural resources issues

Organizer of presentations at College of Law (including lectures on Athenian justice system and trial of Socrates, distinguished alumni events, trials and hearings in moot courtrooms, Wyoming Supreme Court and Tenth Circuit oral arguments, grand opening of building addition, etc.)

Independent Research Project sponsor (usually two to three per year)

Formal advisor (for approximately six students per class) and informal advisor (especially for students interested in trial-based careers and those seeking guidance on professional responsibility and litigation issues)

University of Wyoming Service

Organizer and master of ceremonies for United States Supreme Court Justice Antonin Scalia's presentation to the University of Wyoming, the College of Law, and student organizations, including those from other universities

Deans Council

Deans and Directors Council

International Education Steering Board

Athletics Planning Committee (NCAA mandated faculty committee)

University of Wyoming WICHE ICE Review Committee (concerning delivery of distance education)

Panelist for UW Debate Team Open Debate on Legalization or Decriminalization of Marijuana

Outside (non-Psychology Department) member of Master's Thesis Committee (Caitilin M. Barrett, "Sexual Assault Victimization and Prospect Theory: Providing a Theoretical Framework for Understanding Sexual Assault Victim Decision-Making" and "Self-Concept and Trauma: The Bidirectional Relationship Between Trauma and the Self")

Bar Service

Merit Selection Panel for Full-Time Magistrate Judge, U.S. District Court for the District of Wyoming (chair)

Wyoming Supreme Court Rule 1 Initiative Task Force

Wyoming Rules of Professional Conduct Ad Hoc Committee (which reviewed the Wyoming rules in a series of weekly meetings over approximately eighteen months and made recommendations for proposed changes that were ultimately adopted by the Wyoming Supreme Court)

Annual presentation on the law school and legal education to Wyoming State Bar convention

Columnist for bimonthly editions of THE WYOMING LAWYER

Wyoming Supreme Court ad hoc group studying Wyoming Bar Exam (which ultimately recommended conversion to Uniform Bar Exam)

Author of Professional Responsibility outline and co-author of Evidence outline for Wyoming Educational Component of Wyoming bar admission process

Speaker on Evidence for Wyoming Educational Component of Wyoming bar admission process

Volunteer advisor on professional responsibility issues for Wyoming attorneys

Community and Other Service

Liberty Day teacher (of fifth grade civics classes)

Mock interviewer for Climb Wyoming (career initiative for single mothers)

Volunteer attorney for Albany Country Pro Bono program

Volunteer Income Tax Assistance faculty supervisor and participant

Volunteer officiant for students' wedding

We the People judge and host/speaker for state championship team

Wyoming state high school mock trial keynote speaker and judge

Speaker at Naturalization Ceremony, U.S. District Court for the District of Wyoming

External scholarship reviewer for candidates for tenure and promotion at the University of Missouri and Southern Illinois University

Service at the University of Missouri Law School

Student Advising

Faculty advisor and "coach" for several student teams representing the law school in regional and national competitions, including the Regional Trial Competition team, the National Criminal Trial Competition team, and the Regional and National Client Counseling Competition team (which won the regional competition in both 2002 and 2003 and won the 100+ law school national competition in 2003)

Faculty advisor (with other advisors) for the Board of Advocates

Faculty advisor and director for the 2003 Regional Trial Competition

Faculty advisor for the Black Law Students Association, the Historical and Theatrical Trials Society, and other student organizations

Academic advisor for approximately six students from each law school class (including special luncheons with first year students to discuss law school exam taking techniques)

Sponsor of independent research projects and law review writing projects (usually about five students each year)

Informal career advisor for many students and former students (particularly those interested in or practicing in small law firms, criminal justice careers, or public service, due primarily to fifteen years of experience in these endeavors)

Pro bono advisor on professional responsibility issues for students and former students facing these issues in the law school's clinics, particularly the Domestic Violence Clinic, and in their public

interest and other work outside the law school

Advisor for struggling students (as guest lecturer on Outlining and Criminal Law) in Legal Reasoning classes and in informal meetings with students

Other Law School Service

Member (selected by blind vote of colleagues) of Law School Policy Committee charged with assisting the Dean on law school policy

Chair, Student-Faculty Relations Committee

Chair, Student-Faculty Honor Committee (responsible for directing a study of take-home exam and other cheating concerns, 2003, and for rewriting the Honor Code, 2005)

Member, Board of Advocates, Standards and Readmission, Strategic Opportunities, Courtroom Technology, and Clinical and Skills Committees

Judge for several Board of Advocates competitions, including the first year moot court competition, the regional moot court competition practice round for our regional qualifiers, the negotiation competition, the mediation competition, and the Jessup international moot court competition and practice rounds for our team

Speaker for Open Houses for Prospective Law Students, Law School Family Days, Law School Roberts Scholars/Honors College Days, Law School Orientations (for First Year Students), and other recruiting events

Law School speaker for Missouri Scholars Academy

Fellow, Center for the Study of Dispute Resolution

Commencement speaker, Fall, 2004

Member of teaching team for Damages course (multi-specialty course based upon the litigation and settlement of a medical malpractice action, the book exploring this case, and the case's effects on the parties and attorneys)

Presentation to first year students on Outlining

Guest lecturer for Assistant Dean Pavlick's Career Explorations: Exploring the Law undergraduate Honors College class

Discussion moderator for Professionalism Lunch for First Year Students

Presenter (with Prof. Tracey George) of Career Services Office program for students entitled "Things We Wish We Had Known Before Our First Law Jobs"

Creator of computer slide presentation including Law School and University history, trivia, and anecdotes for Family Day and Law Day

Organizer of fundraising golf tournament

Auctioneer for Women's Law Association charitable auction

University Service

Volunteer (i.e., no compensation or reduction of regular law school teaching and research load) teacher of (In)Famous Trials: An Introduction to the American Criminal Justice System for undergraduate Honors College students

Member, University Grievance Hearing Panel

Member, Curators Teaching Professorship Application Review Committee

Member, Student Fee Capital Improvements Committee

Alternate, Campus Committee on Tenure

Presenter of "My Last Lecture" for Newman Center Last Lecture series (jointly sponsored by the Law School)

University News Bureau source consulted, quoted, or featured by several news media outlets regarding legal issues, including NPR's All Things Considered, the Saint Paul Pioneer Press, Science, the Austin American Statesman, the Raleigh News & Observer, the Columbia Missourian, the Columbia Daily Tribune, the St. Louis Post-Dispatch, the Springfield News-Leader, the Joplin Globe, the Kansas City Star, KRFU radio, KMIZ television, and KOMU television

Coordinator of "Goldilocks" trial for University Club's summer camp

Legal Profession Service

Member, Missouri Supreme Court Committee on Procedure in Criminal Cases (also known as the Criminal Instructions Committee)

Member, Awards Committee, National Association of Former United States Attorneys

Faculty Member, Missouri Organization of Defense Lawyers Trial Academy

Continuing legal education lecturer, National Association of Former United States Attorneys

Member of panel moderated by Harvard Law School Professor Arthur Miller on *The Gatekeeping Role of Judges as a Result of the* Daubert *Decision* (1998 Five-State Judicial Conference in Medora, ND (Idaho, Montana, North Dakota, South Dakota, Wyoming))

Numerous other presentations to bar groups

Member of the Board of Directors of the North Dakota Bar Foundation

Member of the North Dakota Attorney Standards Committee/Joint Commission on Lawyer Discipline and Admissions

Member of the State Bar of North Dakota Ethics Committee

Co-Chair (with North Dakota Attorney General) of the North Dakota Law Enforcement Coordinating Committee

Member of North Dakota Civil Justice Reform Act Committee

Member of the North Dakota Federal Practice Committee

Member of the Local Rules Committee of the United States District Court for the District of North Dakota

Guest lecturer (on trial advocacy and professional responsibility) and advocacy competition judge at University of North Dakota School of Law

Special Assistant Attorney General in North Dakota and volunteer Special Assistant Attorney General in Missouri

Member of (and Counselor, i.e., program organizer for) Bruce M. Van Sickle Inn of Court in Bismarck, North Dakota

Author (as law school student) of paper and bill (ultimately introduced by state senator who also served as a law professor, passed by the legislature, and signed into law) regarding California income tax treatment of parents with joint custody

Community Service

(partial list)

Douglass Little League baseball coach

Speaker to elementary, junior high, and high school classes regarding the Bill of Rights and trials

Member of the Board of Directors for the Abused Adult Resource Center, Bismarck, ND

Member of the Board of Directors of the Dickinson State University Foundation

Vice President (and Acting President) of the Federal Executives Association

Fundraiser/participant in Trail to a Cure AIDS fundraising Ride/Walk/Run and MS 150 cycling event

Faculty fundraiser for "It's My Mizzou" campaign; participant in Tim Heinsz memorial 5K Run/Walk; initiator of "Hun's Hundred" event to honor faculty colleague with 50 years of teaching experience with an endowed scholarship in his name

Publications and Presentations

Books

PROBLEMS, CASES AND MATERIALS IN PROFESSIONAL RESPONSIBILITY (3d ed. 2004, with JAMES R. DEVINE, WILLIAM B. FISCH & ROBERT H. ARONSON, and 4th ed. 2013, with JAMES R. DEVINE & WILLIAM B. FISCH) and related Teacher's Manual, PowerPoint slides, and websites for students and instructors

MATERIALS IN TRIAL ADVOCACY: PROBLEMS & CASES (7th ed. 2011 and 8th ed. 2015, with THOMAS A. MAUET & THE HON. WARREN D. WOLFSON)

ATTACKING ADVERSE EXPERTS (American Bar Association Litigation Section 2008 and 2d ed. forthcoming 2016)

HOW TO WIN JURY TRIALS: BUILDING CREDIBILITY WITH JUDGES AND JURORS (ALI-ABA 1998)

Law Review Pieces

Why Teach Trial Advocacy . . . When There Are "No" Trials?, UNIV. OF SAN FRANCISCO L. REV. (forthcoming 2015)

"And Bad Mistakes? I've Made a Few": Sharing Mistakes to Mentor New Lawyers, 77 ALBANY LAW REVIEW 499 (2014) (with Julie A. Oseid)

The Trump Card: A Lawyer's Personal Conscience or Professional Duty?, 10 WYO. L. REV. 415 (2010) (with Julie A. Oseid)

Peeking Behind the Wizard's Curtain: Expert Discovery and Disclosure in Criminal Cases, 32 AM. J. TRIAL ADVOC. 1 (2008) (with Kaitlin A. Bridges)

That Is Not All There Is: Enhancing Daubert *Exclusion by Applying "Ordinary" Witness Principles to Experts,* 84 NEB. L. REV. 675 (2006)

"Toto, I Have a Feeling We Aren't in Kansas Anymore": Using The Wizard of Oz *to Introduce Students to the Skills of Witness Examination*, 12 CLINICAL L. REV. 283 (2006) (author invited to present this paper at the Sixth International Conference on Clinical Legal Education and Scholarship sponsored by UCLA School of Law and the University of London Institute of Advanced Legal Studies in October, 2005)

My Last Lecture: Unsolicited Advice for Future (and Current) Lawyers, 56 S.C. L. REV. 229 (2004) (winner of first annual American Inns of Court Warren E. Burger Prize)

Turning Criminal Law Students into Prosecutors and Defense Attorneys (at Least for One Day), 48 ST. LOUIS UNIV. L.J. 1217 (2004) (in SLU's Teaching Criminal Law symposium)

DAMAGES: The Litigation Environment, 2004 J. DISP. RESOL. 57

DAMAGES: Expert Witnesses, 2004 J. DISP. RESOL. 37

Dealing with Draft Dodgers: Automatic Production of Drafts of Expert Witness Reports, 22 REV. LITIG. 355 (2003) (with Franklin D. Romines II)

Irving Younger's Ten Commandments of Cross-Examination: A Refresher Course, with Additional Suggestions, 26 AM. J. TRIAL ADVOC. 277 (2002)

"Red Rover, Red Rover, Send That Expert Right Over": Clearing the Way for Parties to Introduce the Testimony of Their Opponents' Expert Witnesses, 55 SMU L. REV. 1427 (2002) (winner of Shook, Hardy & Bacon LLP Excellence in Research Award)

Everybody Knows It, But Is It True? A Challenge to the Conventional Wisdom that the War on Drugs Is Ineffective, 14 FED. SENTENCING REP. 132 (2001-2002)

Can We Talk?: Removing Counterproductive Ethical Restraints Upon Ex Parte Communication

Between Attorneys and Adverse Expert Witnesses, 76 IND. L.J. 647 (2001), *reprinted in* 51 DEF. L.J. 1 (2002)

Ammunition for the Shoot-Out with the Hired Gun's Hired Gun: A Proposal for Full Expert Witness Disclosure, 32 ARIZ. ST. L.J. 465 (2000), *reprinted in* 50 DEF. L.J. 421 (2001)

The Truth About Ethics and Ethics About the Truth: An Open Letter to Trial Attorneys, 33 GONZ. L. REV. 463 (1997/1998)

"Yer Outta Here!" A Framework for Analyzing the Potential Exclusion of Expert Testimony Under the Federal Rules of Evidence, 32 U. RICH. L. REV. 1 (1998)

Whose Life Is It Anyway?: A Proposal to Redistribute Some of the Economic Benefits of Cameras in the Courtroom from Broadcasters to Crime Victims, 49 S.C. L. REV. 1 (1997)

No Pay, No Play: Trial Broadcast Fees Are Constitutional, 49 S.C. L. REV. 73 (1997)

Lessons Learned the Hard Way from O.J. and "The Dream Team" [review essay re: CHRISTOPHER A. DARDEN, IN CONTEMPT], 32 TULSA L.J. 707 (1997)

Native American Crime Victims Deserve Justice: A Response to Jensen and Rosenquist, 69 N.D. L. REV. 939 (1993)

Note, *Doe Defendants and Other State Relation Back Doctrines in Federal Diversity Cases*, 35 STAN. L. REV. 297 (1983)

Chapters in Multi-Author Books

Foreword and Chapter Introductions for THE IRVING YOUNGER COLLECTION: WISDOM & WIT FROM THE MASTER OF TRIAL ADVOCACY (ABA Litigation Section 2010)

Questions To Ask Yourself Before Objecting, in ALI-ABA'S PRACTICE CHECKLIST MANUAL ON TRIAL ADVOCACY (2001); *originally published in* THE PRACTICAL LITIGATOR, Sept., 1998, at 19; *also reprinted in* IOWA STATE BAR ASSOCIATION SECTION ON LITIGATION, THE LITIGATION NEWSLETTER, 2001 (1st ed.), at 9, and ALI-ABA CLE REVIEW, Dec. 25, 1998, at 5

A Defense Attorney's Guide to Building Strong Relationships with Jurors, in DEFENSE RESEARCH INSTITUTE, WINNING THE DEFENSE VERDICT (1999), at 45

Destroying the Credibility of a Professional Products Expert, *in* DEFENSE RESEARCH INSTITUTE, DEFENSE PRACTICE NOTEBOOK (1996), at 139; *originally published in* FOR THE DEFENSE: THE MAGAZINE FOR DEFENSE, INSURANCE, AND CORPORATE COUNSEL, Oct. 1995 (Products Liability Annual Issue), at 27

The Door to Open Government in North Dakota, *in* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, TAPPING OFFICIALS' SECRETS (1989 and with Jon Sanstead, 1997)

Bar Journal Articles

Professor Easton's Response (in *How One Lawyer Can Make a Difference* pieces), WYOMING LAWYER, April 2015, at 18

Bimonthly column (re UW College of Law) in WYOMING LAWYER, 2010-2013

Changes in Disclosure and Discovery Regarding Expert Witnesses, WYOMING LAWYER, June 2010, at 16

A Lesson from Oz, STUDENT LAWYER (an ABA publication), December 2006, at 19

Book Review of THOMAS A MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION, THE FEDERAL LAWYER, July 2006, at 52

Award-Winning Advice, STUDENT LAWYER, May 2006, at 33

Give Back (Because You Can and You Should), LAW PRACTICE, Sept. 2005, at 30

Get a Life! Advice for Living an Honorable and Reasonably Happy Life as an Attorney, THE BENCHER—THE MAGAZINE OF THE AMERICAN INNS OF COURT, Mar./Apr. 2005, at 16, *reprinted in* MISSOURI LAWYERS WEEKLY, March 6, 2006, at 17, 20 M.L.W. 241

Everything Your Fact Witnesses Need To Know, But Were Afraid To Ask, TRIAL LAWYER'S GUIDE, Spring 1999, at 81

Cashing in Your Credibility During Final Argument, FED. LAW., Mar./Apr. 1999, at 30

Building Strong Relationships with Jurors, 21 THE TRIAL LAWYER—JOURNAL OF STRATEGY, TECHNIQUE & CASE MANAGEMENT 290 (1998)

The Power of the Truth: An Attorney's Guide to Winning Jury Trials in a Dishonest World, WASHINGTON STATE BAR NEWS, Oct., 1998, at 20; *also published in* INSTITUTE OF CONTINUING LEGAL EDUCATION AND THE LITIGATION SECTION OF THE STATE BAR OF MICHIGAN, MASTERS IN LITIGATION SERIES: WINNING AT THE MASTER'S LEVEL: NEW TECHNIQUES AND NEW THINKING FOR A NEW AGE (2001), BAR JOURNAL [OF THE STATE BAR OF NEW MEXICO], Fall, 1998, at 38, TEXAS BAR JOURNAL, March, 1999, at 234, and NEW HAMPSHIRE BAR JOURNAL, June, 1999, at 26, and *cyberpublished in* OREGON LAW JOURNAL, May 2001, <http://www.orlj.com/recent_cases.html#may01.rc.2>

The Seven Deadly Sins of Trial Attorneys, TRIAL, Oct. 1998, at 92

A Guide to the Care and Feeding of Judges, THE PROSECUTOR, July/Aug.,1997, at 36

Dynamite Use of Experts in Product Liability Trials, PRODUCT SAFETY & LIABILITY REPORTER, Feb. 14, 1997, at 164

Truth in Trial: Overcoming Jurors' Mistrust, BENCH & BAR OF MINNESOTA, Oct. 1996, at 23, *reprinted in* OREGON STATE BAR BULLETIN, July 1997, at 25

Hidden Gems in the Federal Rules of Evidence, THE FEDERAL LAWYER, July 1996, at 14

Turning the Tide in Jury Trials, FOR THE DEFENSE: THE MAGAZINE FOR DEFENSE, INSURANCE AND CORPORATE COUNSEL, June 1996, at 26

Trial (and Error!): Surviving Your First Few Trials, BARRISTER, Summer 1996, at 15

The Five Fundamental Characteristics of Civil Defense Attorneys, TRIALS & TRIBULATIONS, Winter 1996, at 3

The Real World Rules of Evidence, THE PRACTICAL LITIGATOR, Jan. 1996, at 49, *reprinted in*

TRIALS & TRIBULATIONS, Summer 1996, at 3

Losing Your Appeal, THE FEDERAL LAWYER, Nov./Dec. 1995, at 24

Continuing Legal Education Presentations (with Written Course Materials)
(partial list)

Revisiting the 10 Commandments: A Contemporary Update of Irving Younger's Classic "Credibility & Cross-Examination" (2015 Michigan; 2015 Pennsylvania; 2014 Nebraska; 2014 Ohio; 2014 Saskatchewan; 2013 Georgia ICLE; 2013 New Jersey; 2013 Minnesota; 2013 Manitoba; 2012 New Jersey; 2012 Nebraska; 2012 Georgia; 2012 Ohio State Bar; 2012 Pennsylvania Bar Institute; 2012 Illinois Trial Lawyers; 2011 Minnesota; 2011 Chicago; 2010 New Jersey; 2010 Cleveland and Columbus, Ohio; 2009 Vancouver, British Columbia; 2008 Arkansas; 2008 Pennsylvania; 2008 Ohio; 2007 Virginia; 2007 Atlanta; 2007 Charlotte and Cary, North Carolina; 2006 Cleveland, Columbus, and Cincinnati, Ohio; 2006 Philadelphia, Harrisburg, and Pittsburgh, Pennsylvania; 2006 Cumberland School of Law, Samford University; 2006 Portland, Oregon; 2006 State Bar of Wisconsin; 2006 ICLEF, Indianapolis; 2006 Thomas, Thomas & Hafer LLP (in Las Vegas); 2005 Atlanta; 2005 Reno and Las Vegas, Nevada; 2005 New Jersey; 2005 Bangor & Portland, Maine; 2005 Philadelphia, Harrisburg, and Pittsburgh, Pennsylvania; 2004 Charlotte and Cary, North Carolina; 2004 University of Nebraska Law School; 2004 and 2005 The Continuing Legal Education Society of British Columbia; 2004 Little Rock; 2004 Cincinnati; 2003 Oklahoma City and Tulsa; 2003 Memphis; 2003 Columbus and Cleveland; 2003 Michigan; 2003 North Carolina Bar; 2003 Wyoming State Bar Convention; 2003 Commercial Law League (in Chicago, Illinois); 2003 Illinois Trial Lawyers Association (in Las Vegas); 2003 Hennepin County Bar Association; 2002 New Jersey ICLEA; 2002 State Bar of New Mexico Center for Legal Education)

Evidence for Trial Lawyers (with video clips from Professor Irving Younger) (2014 New Jersey ICLEA; 2013 Pennsylvania Bar Institute; 2013 Manitoba; 2012 Illinois Trial Lawyers; 2011 New Jersey; 2011 Cleveland and Columbus, Ohio; 2011 British Columbia; 2010 Arkansas Bar Association; 2009 Cleveland, Columbus, and Cincinnati, Ohio; 2009 New Jersey; 2009 North Carolina; 2008 Philadelphia, Harrisburg, and Pittsburgh, Pennsylvania; 2008 North Dakota Bench & Bar Seminar)

The Ethical Advocate: Understanding and Using the Rules to Thrive in Your Practice (2014 New Jersey ICLEA; 2013 Radnor, Pennsylvania; 2012 New Jersey; 2011 Cleveland and Columbus, Ohio; 2008 Wealth Counsel Estate Planning Conference in San Antonio; 2007 New York City; 2007 North Carolina; 2006 Los Angeles)

Dynamite Handling of Expert Witnesses (2013 Minnesota; 2007 Pennsylvania; 2007 National Academy of Elder Law Attorneys; 2007 Minnesota CLE; 2004 Illinois Bar; 2004 Arkansas Association of Defense Counsel; 2003 Atlanta; 1998 Cumberland Law School (Samford University) Expert Testimony seminar; 1996 Upper Missouri Bar Association)

Evidence: Review of Wyoming Law for Wyoming Educational Component of Bar Admission (2014)

Expert Witnesses (2014 and 2012 Radnor, Pennsylvania; 2011 National Association of Former United States Attorneys, Santa Fe, New Mexico; 2010 Wyoming Trial Attorneys annual convention; 2008 Pennsylvania; 2008 North Dakota Bench & Bar Seminar)

Crash Course in Cross (2009 Wyoming Prosecutors Annual Meeting; 2009 North Dakota State Bar Convention; 2009 Radnor, Pennsylvania; 2008 New Jersey)

Any Questions? A Trial Attorney's Guide to Witness Interrogation (2011 Radnor, Pennsylvania)

Expert Witnesses in Criminal Cases (2008 presentation to Missouri Trial Judge's Annual "College" in St. Louis and Kansas City)

Direct Examination Skills Camp (2015 Ontario; 2010 Pennsylvania; 2008 New Jersey; 2007 National Association of Former United States Attorneys in Miami)

"Would You Like Fries with That?" and Other Sentences You Want to Keep Out of Your Professional Vocabulary (presentation on professional responsibility) (2006 Boone County Bar Association; 2006 Maslan, Edelman, Borman & Brand Law Firm, Minneapolis; 2006 Cargill, Inc., Minnetonka, Minnesota; 2006 New Jersey; 2006 Missouri Attorney General; 2006 University of Missouri School of Law; 2005 Louisville; 2004 National Association of Former United States Attorneys in Asheville, North Carolina; 2003 Louisville)

Thinking Inside *the Box* (2015 ICLE in Georgia; 2014 New Jersey ICLE; 2006 Michigan; 2003 Illinois Trial Lawyers Association; 1999 Missouri Attorney General's Office; 1999 University of Missouri School of Law; 1999 Baker Sterchi Cowden & Rice Law Firm), presented as *Building Strong Relationships with Jurors and Judges* (1999 Legal Services Program of Northern Indiana)

Presenting the Truth: Credibility, Evidence & Experts at Trial (2002 Oklahoma Bar Association; 2002 State Bar of New Mexico Center for Legal Education; 2001 Pennsylvania Bar Institute; 2001 ICLE in Georgia; 2000 State Bar of Nevada; 2000 Environmental Protection Agency in Atlanta, Georgia)

Evidence Law Overview (2007 Kentucky appellate judges conference)

Turning the Tide—Overcoming Sympathy for Injured Plaintiffs (2002 Defense Research Institute Damages Conference; 2001 and 2002 Missouri Organization of Defense Lawyers Annual Trial Academy)

The Truth, the Whole Truth, and Nothing But the Truth: New Keys to Powerful Advocacy (2000 ICLE in Georgia; 1999 Cumberland School of Law, Samford University; 1999 Springfield (Mo.) Bar Association; 1999 South Carolina Bar Association; 1999 Oklahoma Association of Defense Counsel; 1998 Pennsylvania Bar Institute; 1998 Kentucky Bar Association Annual Convention; 1998 Ohio CLE Institute)

Do the Model Rules Really Say That? (1999 Missouri Bar Law Practice Management Committee; 1999 Polsinelli Law Firm)

1996 North Dakota Tort Reform Outline (1996 North Dakota Claims Seminar)

The Truth, the Whole Truth, and Nothing but the Truth: Building Credibility with Jurors and Judges (1996 Annual Meeting of the State Bar Association of North Dakota)

The Law of Interrogation: A North Dakota Perspective (1991 North Dakota Law Enforcement Coordinating Committee program)

Other Continuing Legal Education, Academic Conference, or Other Presentations
(without written materials other than those listed above) (partial list)

The Professional Practice of Law--Duties Owed to the Client, Duties Owed to the Public, Duties Owed to the Legal System, and Duties Owed to the Profession (Pathways to Professional Practice seminar with Bar Counsel Mark Gifford and Judge Richard Lavery, as part of 2015 Wyoming State Bar Convention)

Model Rules Paralegals Should Know (and Love?), American Alliance of Paralegals, Inc. (2015 annual national webinar)

A Mad Dash Review of Evidence Law for Trial Lawyers (2015 Wyoming Trial Lawyers Association annual meeting)

Judicial Ethics (2015 Wyoming Municipal Judges annual meeting)

Just Do It: Trying Cases While Serving as a Trial Advocacy Instructor, 2015 EATS (Educating Advocates: Teaching Advocacy Skills) Conference at Stetson Law School, Gulfport, FL.

"And Bad Mistakes? I've Made a Few": Sharing Mistakes to Mentor New Professionals, with Julie Oseid, 2014 Mentoring Conference, University of New Mexico Mentoring Institute, Albuquerque, NM

Where Do We Go From Here?: Establishing, Nurturing, and Expanding the Impact of Advocacy Programs, 2014 EATS Conference

Thorny Ethical Issues, University of Wyoming College of Law, Denver, CO, November 7, 2013

Things I Wish I Had Known Before I Started Practicing Law, Young Lawyers Section of the Wyoming State Bar (via conference call), October 1, 2013

The Current State of Legal Education and UW College of Law's Opportunities, Wednesday Lunch Group Service Club, Jackson, Wyoming, September 4, 2013

The Intersection of Ethics and Trials, American College of Trial Lawyers 10th Circuit Regional Meeting, July 19, 2013, Cheyenne, Wyoming

Why Teach Trial Advocacy? (as panelist discussing "Developing a Superior Advocacy Teaching Methodology and Managing an Advocacy Program"), Educating Advocates: Teaching Advocacy Skills seminar (Stetson Law School, Gulfport, Florida, 2013)

The Ethical/Moral Compass (co-presenter, with one other primary presenter), Ewing T. Kerr Inn of Court, April 4, 2013

Direct Examination at the Intersection of Law and Literature, Law and Literature Conference, January 11, 2013, Laramie, Wyoming

Questions & Answers: Techniques and Rules for Direct and Cross, Illinois Trial Lawyers Association (Las Vegas, 2012)

A (Ridiculously Short and Therefore Woefully Incomplete) One Hour Course in Trial Advocacy (2011 Wyoming Federal Public Defender's Meeting, Estes Park, Colorado)

Member of Panel discussing amendments to Rule 26 regarding expert witness discovery, ABA Litigation Section Annual Meeting (New York City 2010)

Controlling Hard to Control Witnesses on Cross-Examination, 2015 UW College of Law Clinic seminar

Theories of Punishment: What is "Justice"? and Panel Presentation at Wyoming Humanities

Council's "Saturday U," Winter Term (Jackson, Wyoming 2010) (at one time, reported to be the second most viewed of all Saturday U programs on UW Saturday U archive website)

The Use of Historic Trials in Legal Education, Mid-America Association of Law Librarians, Columbia, Missouri (October 15, 2009)

Neuroimaging, Pain, and the Law, Stanford University Center for Law and the Biosciences, Stanford Law School (December 4, 2008)

American Constitution Society Supreme Court Series: Criminal Procedure (2008 debate/discussion at the University of Missouri School of Law with Professor Rod Uphoff regarding U.S. Supreme Court decisions concerning criminal procedure and implications for defendants' constitutional right to a jury trial)

Panel Discussion on *The Joys and Pitfalls of Book Publishing* (2008 University of Missouri School of Law)

The Wisdom (or Lack Thereof) of the Despised: Life Lessons from America's Most Hated Profession, 2006-07 Kemper Lecture Series (November, 2006), University of Missouri

Student Presentations (2006 Gonzaga University Institute for Law School Teaching, Illinois Institute of Technology: Chicago-Kent College of Law, Chicago)

Debate participant (with Professor Rod Uphoff) for American Constitution Society forum on *Judicial Nomination and the Criminal Justice System* (November 16, 2005)

My Last Lecture (presentation of lecture described in 2004 South Carolina Law Review article listed above) (2007 Polsinelli Law Firm; 2005 National Association of Former United States Attorneys; 2005 University of Missouri School of Law and Newman Center)

Panelist on *Taking Simulations Further* (2005 Sixth International Conference on Clinical Legal Education and Scholarship sponsored by UCLA School of Law and the University of London Institute of Advanced Legal Studies)

Panelist on American Constitution Society Panel Discussion on *Federal Sentencing after* U.S. v. Booker (2005 University of Missouri School of Law)

Controlling an Expert or Other Obstreperous Witness on Cross-Examination (2010 Wyoming Federal Public Defender's Meeting, Black Hawk, Colorado; 2009 Albany County Bar Association; 2006 National Association of Former United States Attorneys, Chicago; 2004 Shook, Hardy & Bacon Law Firm, on behalf of the University of Missouri School of Law; 2004 Boone County Bar Association)

Competing Philosophical Justifications for Criminal Punishment (2003 University of Missouri Newman Center Faculty Group)

Don't Press Your Luck: Ethical Obligations for the Young Attorney (2003 Rocky Mountain Young Lawyers Regional Conference)

Panelist for *Is the Drug War De-Escalating?* (Criminal Justice Section panel discussion at 2002 Association of American Law Schools national convention)

The Real Rules of Evidence: The Things Your Evidence Professor Forgot To Tell You (1998 Defense Research Institute Trial Techniques seminar)

Injuries in the Workplace—Examining the Workers Compensation Process (1997 National Business Institute North Dakota Labor and Employment Law seminar)

The Real World Rules of Evidence (Trial Tactics and Techniques Committee Meeting at 1997 Defense Research Institute National Meeting)

Turning the Tide in Jury Trials: Overcoming Sympathy for Injured Plaintiffs (1997 Defense Research Institute Trial Techniques Seminar)

Federal Evidence Law (1996 National Assoc. of Former U.S. Attorneys Annual Meeting)

Federal Sentencing Law (1992 Attorney General's Advocacy Institute and 1992 United States Attorneys' National Seminar on Sentencing)

Attorney Reporting of Attorney Misconduct (1991 UND Law School panel discussion)

Sentencing Guidelines (1991 North Dakota Federal Practice Seminar)

The Role of the United States Attorney's Office (1990 Seven-State Indian Law Conf.)

Health Care Fraud and Abuse (1990 HHS Regional Conference in Fargo, ND)

Selected Writing Outside Professional Publications

The Triple Golf Challenge—Plus Two: Family Finds Links on North Dakota Greens, N.D. HORIZONS, Summer 2009, at 14

THAT Is Why We Love Sports, THE BOOTLEG MAGAZINE (2004) (re Stanford basketball)

North by Northwest in North Dakota, N. D. HORIZONS, Summer 2003, at 8 (with Nathaniel Easton) (re cycling and camping trip with son)

My Two Cents' Worth: A Fan's Perspective from Omaha, THE BOOTLEG MAGAZINE (2003) (re College World Series)

Got Game?, STANFORD MAGAZINE, Nov./Dec. 2002, at 124 (re sports fandom)

The Little Team that Couldn't, MINNEAPOLIS STAR AND TRIBUNE SUNDAY MAGAZINE, Dec. 8, 1985 (re community college football team)

Fewer Lawyers? Try Getting Your Day in Court, THE WALL STREET JOURNAL, Nov. 27, 1984, at 30 (re comparison of Japanese and U.S. concentrations of lawyers)

Four compensated op-ed columns in USA TODAY

Other op-ed and sports articles in the ATLANTA JOURNAL-CONSTITUTION, the GRAND FORKS HERALD (covering a light heavyweight championship fight in Las Vegas), and other newspapers

Winner (with co-author) of 1997 Monterey (CA) County Film Commission screenwriting contest, which drew over 300 entries, for SHUT OUT (a screenplay about Satchel Paige)

Litigation Experience

Appeals

Hust v. North Dakota Workers Compensation Bureau, Civil No. 970236, 574 N.W.2d 808 (N.D. 1998) On behalf of the Bureau, I argued (as a Special Assistant Attorney General) that the claimant's injuries resulted from alcohol impairment due to his voluntary consumption of alcohol. The administrative law judge, the district court judge, and the North Dakota Supreme Court agreed.

United States v. Desormeaux, Nos. 92-1695 & 92-1742, 4 F.3d 628 (8th Cir. 1993) In an earlier appeal, the Eighth Circuit had held that the trial court had erred in departing downward from the Sentencing Guidelines in sentencing the defendant. On remand, the trial court again departed downward. Because the trial court and the United States Attorney's Office were clearly in conflict on this case, I believed it was important for the United States Attorney (rather than an Assistant United States Attorney) to handle this appeal, so that the trial court would know that any wrath directed to the Office should be directed to the United States Attorney (who was insisting upon adherence with the law as stated in the Sentencing Guidelines), not to an Assistant (who was merely following the orders of his supervisor, which were in turn based upon the policies of the Department of Justice). On appeal, the Eighth Circuit again held that the trial court had erred in departing downward and "once again remanded to the district court for resentencing." *Id.* at 631.

United States v. Lester, No. 92-1086, 992 F.2d 174 (8th Cir. 1993) On behalf of the government, I successfully argued that double jeopardy did not apply because the tribe and the federal government are separate sovereigns and that the Department of Justice's "*Petite* policy," requiring Department of Justice approval of a federal prosecution after a state prosecution, does not create enforceable rights for the defendant and does not apply to a tribal (as opposed to a state) prosecution. The Eighth Circuit reversed the trial court's dismissal of the federal prosecution.

United States v. Yankton, Nos. 92-1404 & 92-1482, 986 F.2d 1225 (8th Cir. 1993) (see below for description of trial) At the district court level, I had argued that the rape victim's pregnancy either (a) could be considered a "bodily injury" that justified a two-level increase in the Sentencing Guidelines offense level or, if it could not be so considered, (b) could be the basis for an upward departure (i.e., greater sentence) from the Guidelines range. After the trial court rejected both arguments, the Eighth Circuit affirmed it on issue (a), but held the trial court could consider departing upward due to the victim's pregnancy. [On remand, the trial court did indeed increase the defendant's sentence, by a year (if my recollection is correct).]

United States v. Yagow, No. 91-2319, 953 F.2d 423 (8th Cir. 1992) (see below for description of trial) After his conviction, the defendant appealed on sufficiency of evidence grounds. The Eighth Circuit affirmed his conviction after finding that the evidence was sufficient to establish that the defendant acted corruptly.

Trials

(partial/representative list)

United States v. Maria Vega (fictional name), Sergeant, U.S. Marine Corps, General Court-Martial, Navy and Marine Corps Trial Judiciary, Southern Judicial Circuit, Marine Corps Recruit Depot, Parris Island, South Carolina (December 5 to 18, 2014). In this general (i.e., felony) court martial trial, I served as pro bono lead (civilian) counsel, pursuant to the request of two former students, now JAG officers, who asked me to assist them in the defense due to the size of the case—i.e., the large number of allegations and witnesses and the mass (over three hundred pages) of the Command Investigation of the accused. This jury ("members" in military parlance) trial lasted two

weeks, with the government listing 45 witnesses and calling additional witnesses not on its pretrial list. Our client, a Drill Instructor, was accused of over twenty counts ("charges and specifications"), including alleged physical and other abuse of recruits, falsification of official records, disrespect to officers, conspiracy to obstruct justice, etc. According to a pretrial brief by the prosecution, this was a "case involving over 15 eyewitnesses who will each independently corroborate the accused's misconduct" where the defense was allegedly claiming that "somehow the circumstances of the Command Investigation caused nearly 40 individuals to en masse invent allegations against the accused." Actually, we presented the testimony of an expert in memory, who explained the many limitations of human memory, but we did not assert that the witnesses against the accused were lying, though we did allege that they were mistaken. After motions to dismiss, twenty counts went to the jury (members). Although guilty verdicts, which can be returned in court-martial trials with only a two-thirds majority, are common in general court-martial trials, the members returned not guilty verdicts on all twenty charges and specifications.

In the Matter of the Care and Treatment of Larry Benboom, Circuit Court of Boone County, Missouri, Probate Division, Case No. 08B7-PR00260 (August 5 to 7, 2009) In this sexually violent predator case, I served as co-counsel, with a former student, for the plaintiff/petitioner (the State of Missouri) as a volunteer Special Assistant Attorney General. In so doing, I became perhaps the only current dean of a law school to try a jury trial while serving as dean. My trial work included voir dire, a lengthy cross-examination of the respondent (who had been diagnosed as a psychopath and, therefore, a pathological liar), and final argument. The jury returned a verdict finding that Benboom was a sexually violent predator.

In the Matter of the Care and Treatment of Matthew King, Circuit Court of Buchanan County, Missouri, Probate Division, Case No. 08BU-PR00012 (June 9 to 13, 2008) In this sexually violent predator case, I served as lead counsel for the plaintiff/petitioner (the State of Missouri) as a volunteer Special Assistant Attorney General. The Missouri State Public Defender's Office called two psychologists to the stand—a Department of Mental Health expert appointed by the court and a psychologist retained by the Public Defender's Office on behalf of the respondent. Both testified that they did not believe King qualified as a sexually violent predator under Missouri law. The State had only one witness, a retained expert who testified that he believed King was a sexually violent predator under the Missouri statute. The jury returned a verdict finding that King was a sexually violent predator.

Yeoman v. General Motors Corporation, United States District Court for the Northern District of Iowa, Civil No. C92-2005 (February 13 to 27, 1995) In this product liability crashworthiness case, the plaintiff alleged that the seat belt system in his car was defectively designed, because the belt system allegedly allowed the inadvertent introduction of excess slack that increased the force with which his torso hit the belt during a one car accident that he admitted was entirely his fault. Along with lead co-counsel, I represented General Motors, which asserted that the plaintiff was not wearing the seat belt. I cross-examined the plaintiff's impressively credentialed bioengineering/ accident reconstruction expert, a football coach expert, and other plaintiff's witnesses. In response to the first interrogatory on the special verdict form, the jury found that the plaintiff was not wearing his seat belt.

Cooperative Power Association v. Westinghouse Electric Corporation, United States District Court for the District of North Dakota, Civil No. A1-90-150 (October 18 to 22, 1993) In this commercial litigation case, I served as lead trial counsel for Westinghouse, particularly on technical issues (though another attorney in our firm was lead counsel for this client for matters before and after trial). A power cooperative sued Westinghouse, claiming that the electrical transformer that Westinghouse sold breached its warranty and caused several million dollars' worth of damage to its power plant. In its verdict, the jury found that the transformer was not defective. Other claims were dismissed via post-trial motions, and the Eighth Circuit affirmed the dismissal of the case

against Westinghouse. *See* Cooperative Power Association v. Westinghouse Electric Corporation, 60 F.3d 1336 (8th Cir. 1995).

United States v. Alonzo, United States District Court for the District of North Dakota, Criminal No. C3-92-80 (March 4 to 8, 1993) In this narcotics prosecution, I served as co-counsel for the government, with an Assistant U.S. Attorney. Following a trial that included expert chemical testimony, the jury found the defendant guilty of all three counts of distribution of marijuana and related conspiracies.

United States v. Doll, United States District Court for the District of North Dakota, Criminal No. C1-91-38 (February 3 to 12, 1992) In this trial, I served as co-counsel for the government, with an Assistant U.S. Attorney. Despite the absence of any actual drugs to introduce as evidence and the court's ruling allowing the defendant to introduce problematic polygraph test results concerning the key prosecution fact witness, the jury returned guilty verdicts on drug trafficking, money laundering, and tax charges. Our case was based primarily upon accounting expert testimony regarding increases in the defendant's net worth.

United States v. Yankton, United States District Court for the District of North Dakota, Criminal No. C2-91-17 (November 18 to 21, 1991) (see discussion of appeal above) In this "acquaintance" rape case, I served as co-counsel for the government with an Assistant U.S. Attorney. The jury found the defendant guilty despite the teenage victim's testimony admitting that she had been drinking and smoking marijuana with the defendant, that she had voluntarily entered the defendant's vehicle, and that she had initially lied to police about the extent of these activities. I cross-examined the defendant, who presented a consent defense.

United States v. Chapman, United States District Court for the District of North Dakota, Criminal No. C1-91-03 (May 20 to 22, 1991) In this homicide trial, I served as lead counsel for the government, with help from an Assistant U.S. Attorney. After consultation with a nationally known hypnosis expert and cross-examination of a defense psychologist who hypnotized the defendant to "enhance" her memory, we persuaded the judge to exclude the expert's testimony about the defendant's (allegedly) hypnotically enhanced memory. The jury returned a verdict of guilty on the voluntary manslaughter charge.

United States v. Yagow, United States District Court for the District of North Dakota, Criminal No. C3-90-107 (April 2 to 4, 1991) (see discussion of appeal above) In this case, I served as co-counsel with an Assistant U.S. Attorney. The jury found the defendant, a "tax protester" who filed IRS forms falsely claiming payments to government officials and other individuals and entities, guilty of all counts, including fraud and corrupt interference with internal revenue laws. The trial featured testimony from a handwriting expert.

United States v. Littleghost, United States District Court for the District of North Dakota, Criminal No. C2-90-68 (December 17 to 20, 1990) In this vehicular manslaughter case, I served as lead counsel for the government. Three days before trial, the defendant served a copy of a report from an accident reconstruction expert who concluded that the decedent, not the defendant, was the driver of the vehicle. Given the lateness of this disclosure, we were forced to rely solely upon cross-examination of this mechanical engineering Ph.D. and upon the contrary conclusions of a highway patrol officer. Following one hour of deliberation, the jury returned a guilty verdict.

United States v. Moffit, Strehl, Groppe, and Cummings, United States District Court for the District of North Dakota, Criminal No. C3-90-63 (September 21 to 24, 1990) I served as lead counsel for the government in this bank robbery trial. Moffit and Strehl, two Canadian males with substantial criminal records, pleaded guilty to armed bank robbery and possession of an unregistered firearm. When these males left the vehicle to rob the bank, the two females they had met a few days

earlier, Groppe and Cummings, remained in the back seat. Following over twelve hours of deliberation, the jury retuned not guilty verdicts on the aiding and abetting charges against Groppe and Cummings.

Nelson v. Hogue, South Central Judicial District Court, McLean County, North Dakota, Civil No. 12459 (May 16 to 24, 1988) I served as lead trial counsel for the defendant Hogue, with the assistance of an associate from our law firm, in this case arising out of a crash between two trucks on a rural gravel road. After a seven-day trial that featured accident reconstruction and other expert testimony where the key issue was whether the point of impact in the accident was on the plaintiff's or the defendant's half of the road, the jury returned a verdict assigning 60% of the fault for the accident to the plaintiff and 40% to the defendant. Under North Dakota's modified comparative fault system, this was a defense verdict.

Cummins Diesel v. Cash Hill Ranch v. Cummins Engine Co., Southeast Judicial District Court, Stark County, North Dakota, Case No. 62CV85 (May 8, 1987) I represented the third party defendant in this commercial litigation case. Following a bench trial, the court ruled that the third party defendant's warranty limited recovery and excluded the Uniform Commercial Code's implied warranty of merchantability. The court further ruled that the defendant/third party plaintiff could not recover consequential damages from my client, the third party defendant.

Kavon v. Hoburka, Northwest Judicial District Court, Williams County, North Dakota, Civil No. 17,080 (November 18 to 20, 1985) This was my first jury trial as lead (in this case, solo) counsel. I was hired by an insurance company to represent the driver employed by the insured small business. The defendant driver, who was intoxicated at the time of the accident, crossed the center line of a highway and struck the plaintiff's vehicle head-on. We admitted liability, so the only trial issue was damages. The contested issues involved the extent of damage to the plaintiff's custom designed mechanic's truck and the extent of plaintiff's Post Traumatic Stress Syndrome. The jury returned a verdict of $24,808.

American Family Insurance v. Polensky v. Anfinson's Inc., Stark County Court, North Dakota, Case No. CV84-242 (December 13, 1984) This bench trial was my first as lead (in this case, solo) counsel. The case originated as a subrogation case where an insurance company sued a driver to recover the amount it paid under a comprehensive policy to compensate an insured driver for damages to her vehicle in an automobile crash. The defendant in the original subrogation case brought a third party complaint against my client, Anfinson's, which repaired her vehicle. She claimed that Anfinson's had done a poor job of repairing her brakes. The judge found that the defendant was 95% responsible for the accident, the plaintiff was 5% responsible, and my client was not responsible.

This list is representative, not exhaustive, as I have tried other bench and jury trials. [Each of the cases I have excluded had a successful result for my client. In fairness, I thought my list of representative trials should include both of the trials I would classify as losses, U.S. v. Groppe/Cummings, and Kavon v. Hoburka.]

In addition to the cases that went to trial, I handled many other cases, first as second chair (early in my career) and later as lead (or solo) counsel. I often represented the defendant in civil cases and the government in criminal cases, but I also represented plaintiffs in personal injury and other civil cases (including some pro bono matters) and, on fewer occasions, the defendant in criminal cases. Some of these cases settled via mediation. Others settled via traditional negotiation. One was resolved in a week-long arbitration.

Administrative Hearings

I also handled about two dozen (if my recollection is correct) administrative law judge hearings in Workers Compensation cases from about 1995 to 1998, as a Special Assistant Attorney General representing the North Dakota Workers Compensation Bureau. The vast majority of these hearings were one day proceedings where the claimant and the Bureau contested one or more factual issues, such as the work (v. non-work) cause of the claimant's condition, the extent of the claimant's injuries, the claimant's rehabilitation efforts, etc. The results were mixed. [My best recollection is that we won about two thirds of these hearings.]