

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRANSCRIPT OF PROCEEDINGS HELD
IN MEMORY OF THE LATE
HONORABLE ALBERT G. SCHATZ,
UNITED STATES DISTRICT JUDGE.

Time: 2:00 o'clock P.M.
June 23, 1986

Place: Courtroom Number 1
United States District Courthouse
Omaha, Nebraska

(Judges, dignitaries and other appearances noted within.)

Jack M. Fitch
Official Court Reporter
Omaha, Nebraska

MARSHAL O'HARA: The Honorable Judges of the United States Courts, hear ye, hear ye, hear ye, the United States District Court for the District of Nebraska is now convened in ceremonial session. God save the United States and this Honorable Court.

PRESIDING JUDGE BEAM: It is the custom in the District of Nebraska to set aside a time to honor the memory of a departed member of the court. We are here today for that purpose in remembrance of United States District Judge Albert G. "Duke" Schatz. We welcome each of you and specially the members of Judge Schatz' family and their special guests. We are honored by the presence of Monsignor Robert P. Hupp, Executive Director Emeritus of Father Flanagan's Boys Home, who will give the invocation. Father Hupp --

MONSIGNOR HUPP: Let us pray. Heavenly Father, God of justice and mercy, we thank You for the many good citizens we have who are responsible for administering justice in our society and who do so with great understanding and compassion.

Today we gather here to honor the memory of one of Your faithful servants, His Honor, Judge Albert "Duke" Schatz, whom we presume to say, if we may adapt the words of the Biblical scholar and author, Sirac, "He was indeed

beloved of God and man."

It is seldom easy to blend the precise dimensions of the law with an open and sensitive evaluation of circumstances and human shortcomings, but this was his life. As we hold in deepest respect his ability in this regard, his loyalty and his humility, we ask you to keep him forever in Your peace and rest.

Bless especially the members of his family as they live in the shadows of his memory. May they and all of us who felt the warmth of his friendship be better for having known and associated with him.

These things we ask in Your goodness and mercy.
Amen.

PRESIDING JUDGE BEAM: After acknowledging the presence of the judges of several courts who will be introduced to you during the course of this proceeding, I wish to note that the events of today were planned by and in the capable hands of a committee of long-time friends and close associates of Judge Schatz.

I now recognize the Committee Chairman, Robert "Bob" Mullin, Sr., who will be our Master of Ceremonies.

MR. MULLIN: Thank you, Your Honor.
Judge Beam, members of the Judiciary, both federal and state, Mrs. Schatz, members of the Schatz family, friends of Judge Schatz and friends of his family, and my fellow

lawyers:

I feel it to be an honor for me to be present today as a long-time friend of Duke Schatz and of his family and to act as Chairman of this Memorial Ceremony Committee. We appreciate the efforts that the family and friends of Duke have made to be with us today. Some have come from far away. One daughter is here with a son from Massachusetts. Donna Schatz' son, Mike, is here from Massachusetts. Duke's friends, and relatives, I should say, are here from Iowa. We even have one visitor with us from Louisiana. And we have grandchildren. We welcome each and all of you this afternoon.

It may interest you to know that Monsignor Hupp, who just gave the invocation, happened to be the individual who married Donna Kennedy and Duke Schatz and we thought it was fitting that he would be with us today to give the invocation and benediction.

These proceedings in their entirety will be taken down by Court Reporter Jack Fitch, who sits to my immediate left, and at his voluntary offering will be transcribed by him into a written transcript and will eventually be presented to Donna Schatz and all the family relatives, and in order that our record may be complete in that respect, I ask your brief indulgence in briefly acknowledging for the record the various judges

and dignitaries who are with us today.

First, from left to right behind me, as all of you face the bench and it would be on your left, Donald P. Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit.

Lyle E. Strom, Judge of the District Court for the United States Court of Nebraska.

C. Arlen Beam, Presiding Judge of the United States District Court for Nebraska.

Warren K. Urbom, Judge of the United States District Court for Nebraska.

And, finally, Donald R. Ross, Judge in the United States Court of Appeals for the Eighth Circuit.

Now, if you will, over here to my right in the jury box, starting in the front row at the seat nearest to me, I will complete the federal family, so to speak. We have Judge Richard E. Robinson, Senior Judge for the United States District Court; Robert Van Pelt, Senior United States District Court Judge for Nebraska; Judge Richard C. Peck, United States Magistrate; Judge David L. Piester, United States Magistrate who works in Lincoln; Judge Timothy J. Mahoney, United States Bankruptcy Judge; James Hewitt, President of the Nebraska State Bar Association; and Harry L. Welch, an attorney from Omaha whom I shall introduce later.

And then moving to the back row, John T. Grant, Justice of the Nebraska Supreme Court; Jim Fitzgerald, an attorney in Omaha, Nebraska, who will be introduced in a short moment or two; Presiding Judge Stephen A. Davis of the Douglas County District Court; Senator Roman Hruska, who represented Nebraska as the United States Senator and as a long-time member of the Senate Judiciary Committee; Ronald D. Lahners, United States District Attorney for Nebraska, who comes to us today from Lincoln; Keith Frederick, an attorney in Omaha, Nebraska, and William P. Mueller, attorney, Ogallala, Nebraska, better known as Rocky Mueller.

To my left -- I have already made reference to Jack Fitch who for years served as the faithful court reporter for Judge Schatz and is the present court reporter for Judge Strom. Next, in the middle, William L. Olson, Clerk of the United States District Court for the District of Nebraska. Bill is kind of like a right hand to me in helping me make the arrangements for this proceeding and in working with our Committee of which he is a part and in helping set up the courtroom as it is today. And on the next left, next to Mr. Olson, is Barbara Campbell, the Deputy Clerk of the District Court who for years served as Courtroom Clerk for Judge Schatz. On your far right, against the wall, we have Thomas O'Hara,

the United States Marshal for Nebraska, and his Deputy in charge of the Lincoln sub-office, William H. Storm.

Those are the people -- I hope I haven't missed anybody -- but those people are all with us today and we thank them for coming.

I would like to make a personal expression of appreciation to Judge Beam. He and I have worked closely in preparing for this ceremony and I appreciated his wisdom and his help.

I would also like to express a very personal thanks from our entire committee and from the court to the Barristers Club of Omaha who provided the ushers who are here today.

And, finally, I would like to thank the members of our Ceremony Committee, most all of whom are good friends of Duke Schatz. I thank them for their help. In addition to Jack Fitch and Bill Olson, they are the following: Joni Kerr, an attorney in Omaha, is president of the Barristers Club. Richard A. Knudsen, an attorney from Lincoln, has served on our Committee. Thomas P. Leary, an attorney from Omaha, has served as a member of our committee. In addition, there are Francis P. Matthews, Harry B. Otis, and Eugene Welch, all members of our Committee. And, finally and certainly not least, Jean Roeder, who is sitting with the family today and who has

served -- right here in front of me -- has served for many years as Duke's faithful secretary.

So, our expression of appreciation goes to all these people.

And now our program begins. We open with Judge Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit. During their years in the practice of law before either ascended to the bench, Judge Lay and Duke Schatz were customarily representing clients on opposite sides of the counsel table. After both became federal judges, their friendship grew and blossomed as they dispensed justice for litigants in the midwestern part of the country. It is a pleasure to introduce Judge Donald P. Lay.

CHIEF JUDGE LAY: Thank you, Bob. We are here today to honor Albert G. Schatz as a judge in the United States District Court for the District of Nebraska. I would say I'm coming on now to my twentieth year on the Court of Appeals and during that twenty years I do not recall, other than on one occasion, of ever writing or talking to the United States Senator or to the Justice Department about the appointment of any candidate. That is kind of a "hands off" area for existing judges. The appointment of judges is, of course, the executive and legislative process. The appointment is made by the

President, with the advice and consent of the Senate.

But when the opening was occasioned here, I immediately thought of one person who, in my judgment, as I wrote to Senator Hruska, was the most qualified lawyer in Nebraska to assume this position. I knew that Judge Schatz had not been very active in politics and that if he was to be appointed it was going to have to be on merit alone. Because of my close association with him and my great friendship with him, I felt that on this one occasion I was going to make an exception and write to the Senator and express my high regard for Judge Schatz. I did that and now I tell the story that few know. It turned out that during that course of time that politics was such that probably, at least if you could believe The World Herald, there was a front runner and it wasn't our friend, Duke, and another candidate was well-qualified and was being considered by Senator Hruska's office that was deemed his appointment, and I recall one Saturday morning picking up the early morning paper, about 7:30 in the morning, to read at breakfast, and I noticed on the front page that Senator Curtis had come out and endorsed another candidate for this office, and I knew that this wasn't Senator Curtis' prerogative, to make recommendations for this office because this was up in Omaha, and in my own mind I felt that this was Senator Curtis' way of

saying that he didn't necessarily approve of the front runner, and I immediately called my friend, Al Schatz, and I said, "Duke, you're in!" and he said, "What do you mean?" and I said, "Read the paper." I said, "You're in!" Well, he called me back and he said, "Well, I want to come down and talk to you on Monday morning. I've decided to withdraw my name."

He came down, and I think Senator Hruska will remember some of these events, and he said, "I don't like being a compromise candidate and I don't think I want to have my name go in, and I'm going up to see Senator Hruska and I'm going to tell him that."

"I said, "Don't, don't do that. What is important is the best qualified person gets this job, and that's you," and I said, "Think of how many Presidents of the United States were compromise candidates."

"Well," he says, "I'm going to go talk to the Senator." I've never been privy to the Senator and what happened in that conversation, but Duke told me later, he said, "Well, I went up and I told the Senator I was going to withdraw my name, and his response was, 'Duke, you can't do that to me now.'" And that's a little story behind the story of the appointment of a great judge.

I honor Judge Schatz, not as a friend, not as a great human being, but as a great judge, at this moment.

A judge, in my mind -- and everybody has many definitions of greatness -- but a judge, in my mind, must exhibit three things, and I think most judges have two of them, and that is he must be a pragmatic lawyer; he must, secondly, have common sense and good legal judgment, and there is no question that Judge Schatz had these two characteristics. And then there's a third characteristic that I think is the most difficult for all judges to attain, and I would say very frankly from my point of view very few judges obtain this third characteristic, and that is to have compassion and understanding of his fellow man. And here is one area where I think Judge Schatz excelled.

Now, I'm not talking about what is oftentimes looked at in the press as being soft-hearted, the coddler of criminals. I'm talking about the person who understands the frailties of human nature, who understands the common philosophical thought, "There but for the grace of God go I," or the Biblical sense of "Judge not, lest you judge yourself." Judge Schatz had that unusual balance but he knew and understood human nature and he knew the frailties of human nature, and he applied those in making his balanced judgment.

I think this perhaps is best exemplified in Judge Schatz' life by a passage that I'm sure you have all

read, from Shakespeare, from "The Merchant of Venice."
This is where Portia, who is pleading on behalf of Antonio who has borrowed money from Shylock, and the covenant was if the money was not paid in time, Shylock would demand his pound of flesh, and it goes like this:

"The quality of mercy is not strained. It droppeth as the gentle rain from the heaven above upon the place beneath. It is twice blessed. It blesses him that gives and him that takes. 'Tis mightiest in the mightiest. It becomes the throned monarch better than his crown. His scepter shows the force of temporal power, the attribute to awe and majesty wherein doth sit the dread and fear of kings. But mercy is above this scepter's sway. It is enthroned in the hearts of kings. It is an attribute to God himself and earthly power doth then show likest God's when mercy seasons justice. Therefore, Shylock, though justice be thy plea, consider this: that in the course of justice none of us should see salvation. We do pray for mercy and that same prayer doth teach us all to render the deeds of mercy."

I am confident that Judge Schatz is sitting there on high, looking down on us at this moment, is sitting there with his whimsical smile and tapping his

finger and saying, "Yes, I'm in full accord."

MR. MULLIN: Thank you, Judge Lay.

Our next speaker is also a Judge of the United States Court of Appeals for the Eighth Circuit. Although he regularly performs his work and sits on the bench in St. Louis, and also up in Minneapolis, his office is right down the corridor and for a number of years he and Duke were, you might say, close neighbors. I think their friendship went back for many years before that. It is my pleasure to call upon Donald R. Ross, Judge of the United States Court of Appeals.

JUDGE ROSS: Thank you, Bob. Fellow Judges, family, and friends: this Memorial Service is a fitting tribute to our colleague and our close friend, Duke. The attendance of all of you today is a good indication of the affection and respect we all had for this man. He wasn't just a friend. He was a special friend.

I knew Duke for forty-six years, having entered the University of Nebraska with him in 1939. During all of this period I was proud to be his friend. He had my complete respect as a lawyer and as a judge and as a person.

Duke was a quiet, gentle man with a ready wit and a wry sense of humor. He was a patient, kind and caring person who was intensely loyal to his family, to his friends,

and to his staff. His friends felt that Duke was in a class by himself.

His favorite sport was baseball and he once said that his greatest ambition was to become Commissioner of Baseball. His other great ambition was to shoot a hole in one. The fact that he accomplished neither of these deeds didn't diminish his great love for these two sports.

One of the tests of a good judge is the respect and affection accorded him by his staff. Over the years Duke had many law clerks, all of whom held him in the highest esteem. He was a father figure to many of them and they loved his wit and his patience and his understanding. Many of them are here today, including some who have traveled long distances to be here. He helped them become the good lawyers that they are today.

As a judge, Duke had the respect of the litigants, the lawyers and his fellow judges. He was fair to everyone and he was practical in his interpretation of the law. He was a good scholar, but, more than that, he was compassionate in his dealings with those unfortunate people who sometimes appeared before him. Sometimes when Duke left the office he said he was going to "run his traps." I can only say that no man ever ran the traps better than Duke. Our lives have all been made richer by this very special man.

MR. MULLIN: Thank you, Judge Ross. Come back now, if you will, with me to the early years in the legal life of a rather thin, young man with the unlikely name of Duke. Early in his legal career he entered a law firm known -- and I shan't quote all names in the firm now, the firm name -- as the Gross, Welch, Vinardi law firm, and he remained with them for many years and became a leading trial lawyer for that firm.

Dan Gross cannot be with us today because he is no longer on this earth, but Harry Welch, a senior partner in the Gross, Welch, Vinardi law firm, has graciously consented to come and say a few words today concerning his contacts and relationships with this young lawyer.

Harry, would you come around to the speaker's podium? You can either come through here or go around the middle aisle, whichever is easiest for you, Harry.

MR. WELCH: Distinguished members of the bench, Donna and family, friends of Duke Schatz, ladies and gentlemen: it is indeed an honor for me to come before you and pay tribute to a dear friend and a former law partner.

Duke started in our office as an associate, having come down from the office as a clerk with Judge Joseph Woodrough. It did not take us long to realize that we had a very capable and ambitious and downright tenacious young trial lawyer. He had profound legal ability, great

integrity, a high degree of excellence, patience, fairness, and to all a quiet sense of humor. He experienced the long days and nights of hard work, of clear and careful thinking, all of this many times at the expense of his family or friends and for the single purpose of serving his clients well. He was with our firm for twenty-three years.

Justice Felix Frankfurter speaking at a commencement said, "In every lawsuit and in every important matter under consideration, a lawyer must at some point in the solitude and privacy of his office make big decisions. He cannot seek help from others and he may not always find the answer from the books, but yet he must take the sole responsibility for those actions."

Duke certainly had the ability to do that. Schatz was a very good lawyer, financially and professionally. He was a Fellow in the American College of Trial Lawyers, a member of the International Association of Insurance Counsel, a member of the American Bar Association, the Nebraska State Bar Association, and the Omaha Bar Association. He was an extremely competent lawyer, public servant and judge. He was a dedicated attorney and a great gentleman and he is a real model for young attorneys.

I am reminded of a case that Schatz was defending for us in which a lady had been injured in an automobile accident. Schatz had offered her \$7500.00 to settle the

case, but she, thinking that she was entitled to far more than that, scoffed at the offer and went on to trial. The jury returned a verdict for the defendant. The distraught plaintiff fired her attorney and paid a personal visit to Schatz, at which time she informed him she had reconsidered and now would accept the settlement offer of \$7500.00.

(Laughter.) Duke, very cautiously and graciously, told her that the money was no longer on the table. Thinking she had some sort of right of appeal in our office, she came to me in my office and proceeded to tell me that Schatz had turned her down on the settlement and my response to her was, "If Schatz said, 'No,' I say 'No.'" (Laughter.)

Duke thoroughly prepared his cases. He knew the facts inside and out, knew exactly what his witnesses would say, and one of his strongest attributes was his keen insight into people. He always seemed to know what a witness was going to say or how another lawyer might react in a particular situation. Duke has always tried to be fair in dealing with clients, other attorneys and litigants. He was a dedicated attorney and a great gentleman. He is a real model for young attorneys.

I was just visiting a little bit one time with him when he had had his school cases and he made the observation, "If they want to keep prayer out of schools,

they'd better ban the final exams." (Laughter.)

MR. MULLIN: Thank you very much, Harry. We appreciate your remarks.

Even as a young lawyer getting started in the practice, Duke was subjected to the same temptations that all lawyers must face, whether young or old. He occasionally liked to sneak out to the golf course and take a day off. I hate to tell you this, Harry. (Laughter.) One of his golfing buddies with whom he played a lot of golf at that time practiced in Omaha and now does trial work in Ogallala, Nebraska. He has been kind enough to come today to share this occasion with us. When he played golf with Duke in Omaha, at that time he was a young lawyer also and a former star running back for the University of Nebraska. I refer to William P. "Rocky" Mueller. Rocky --

MR. MUELLER: May it please the Court, Donna, members of the Schatz family, ladies and gentlemen. When Bob Mullin called and told me that Donna had suggested that I be a part of this memorial to Duke, I was honored and extremely flattered. As some of you know, Duke and I started out in the private practice at approximately the same time. I have been asked to limit my remarks to three to five minutes, which will be extremely difficult because there were so many incidents that I was involved in with Duke and with many of you who are gathered here.

Duke and I really got to know each other when we started playing golf at the Field Club. Our foursome would generally include Don Lay. But Duke and I were both being paid so much at our respective law offices that we had to share a locker. (Laughter.) I might say that Don Lay was in a much different, higher category as he could afford to pay for his own locker. (Laughter.)

I will always recall an incident involving Duke and Skip DeLacy, who was my mentor. Mr. DeLacy was always making up his own nicknames for various lawyers here in Omaha, such as "Georgie DeBole," George Boland; "Denial," Dan Gross; even Bob Mullin, "Baby Face Assassin." (Laughter.) Even when he was serious, why, Mr. DeLacy had trouble, or he appeared to have trouble, saying the right name of a person. I will always recall an incident when Melvin Belli tried a lawsuit here in Omaha which Mr. DeLacy was involved in, and DeLacy insisted on calling him "Mr. Belly," and Mr. Belli didn't like to be called "Mr. Belly" and it was so bad that Judge Stauffer, who was the trial judge, told Mr. DeLacy it was "Belli" and DeLacy said, "Yes, Your Honor, Mr. Belly," (Laughter) and he would go on.

The same thing was true with Mr. DeLacy and Duke Schatz. For some reason, Mr. DeLacy insisted on calling him "Mr. Shantz." Now, at that time, why, there was a fine baseball player by the name of Bobby Shantz

and he was playing for the Philadelphia A's, and he was the pitcher, and he also played in the minors, in Lincoln, but, in any event, either that was a fixation in Mr. DeLacy's mind or whatever, but anyhow, Duke Schatz became "Mr. Shantz." He always formally called him "Mister." So, from that time on, I started calling Duke "Bobby," and every time I would see him I'd say, "How are you, Bobby?" and "How is your arm doing?" -- "Oh, fine, Bill." (Laughter.) But anyhow, we really had a wonderful relationship. I could go on and on, as many of you could. We all hold these memories dear to us and of course they come back to us more vividly in a situation such as this, a little more than a year after the death of a very fine man, a great trial lawyer, and an excellent Judge. Thank you.

MR. MULLIN: Thank you, Rocky. I should mention, so that Rocky won't feel that he was singled out, that I asked everyone to limit their remarks. (Laughter.) Right or wrong, we felt it best to have a greater number of Duke's friends have an opportunity to express their regards than have two or three or four longer presentations, so that's the format we've adopted, and thank you again, Rocky.

Time passed and our young lawyer matured and prospered and his golf game got better, I am certain. He was, as has been mentioned, honored by invitation for

fellowship in the American College of Trial Lawyers. This is an organization which is restricted by member to only one per cent of the practicing lawyers in the United States.

Duke fast became known as one of the most capable trial lawyers in eastern Nebraska, with particular expertise in the defense of civil cases which were tried to civil juries.

And then there came an opening on the federal bench and Judge Lay has chronicled for you the history of that opening and how Judge Schatz was proposed, drew the overwhelming support of lawyers in this area, had the help of Senator Hruska, who was then a member of the Judiciary Committee and a Senator from Nebraska and who recognized Duke's talents, and it was not long before Lawyer Schatz became Judge Schatz.

He may have been an experienced trial lawyer but when he came to the bench he had the same problem that any lawyer has when he makes the transition from being an advocate for a party to having to dispense justice fairly to two sides now. Fortunately, there was a highly experienced trial judge, highly regarded in this building, who took Duke under his wing, and Donna Schatz tells me that Duke often referred to this, and tried to help Duke with his new responsibilities. Judge Denney also helped, but Judge

Schatz I think would say that no one treated him like a father down here in federal court any more than Richard E. Robinson, now serving as a Senior Judge. We are fortunate to have Judge Robinson with us today.

SENIOR JUDGE ROBINSON: Members of the Court, Bob Mullin, Donna and your family, fellow lawyers and friends; I hope I can stay within the time limit.

Mr. Mullin, I do thank you for this opportunity to offer brief remarks in tribute to our good friend and beloved colleague, Albert G. "Duke" Schatz, who passed away just over a year ago. It's an honor for which I am grateful

Duke, as has been indicated, was born in Omaha, Nebraska, received his undergraduate degree from the University of Nebraska at Lincoln. During the Second World War he served with distinction as a Marine Corps officer in the Pacific. At a young age, he experienced the horror of war as only those who participate in combat can.

Upon his return to Omaha he entered the Law School at Creighton University. Following graduation, as Harry has already indicated, and for the next twenty-five years, Duke engaged in private practice where he achieved great success. He won and merited the respect of all of us who were privileged to come in contact with him -- fellow lawyers, clients, judges, and others. To know Duke

was to be his friend. At the same time, he was able to raise and enjoy a wonderful, large family. For him, this was properly the higher priority.

In 1973, Duke was appointed as a judge of this court. He rapidly and successfully made the transition from one side of the bench to the other. His all too few twelve years of service with us were outstanding. Duke was a trial judge and a trial judge is what he was meant to be. His instincts were those of a litigator and he wanted to deal with the facts as well as the law, but more importantly, I think, he wanted to deal directly with the people because it was people that he truly liked and understood. He did all of the things that a trial judge has to do. He listened. He was patient. He was courteous. He analyzed. He reasoned. He deliberated. And, most importantly, he decided. I'm sure he realized that his rulings might be right or they might be wrong but he had the moral courage to do what he thought the particular situation required. He was able, fair, conscientious, and dedicated. His integrity was beyond question and he was a gentleman at all times.

But his actions and his life speak better than anything I might say of his qualities as a human being and of his fairness and eternal belief in God and justice. Suffice it to say that he served his family, his country,

his community, his profession, and this court exceptionally well.

We are all in his debt. Each of us here has their own reason to be grateful for Duke's example and for his friendship. Personally, I very much miss his warmth, his generosity, his intelligence, his thoughtfulness, his sense of humor, and his sound common sense.

A few short years ago, on a similar occasion, Duke spoke in tribute to the late Judge Robert Denney. In describing Bob, Duke quoted from General MacArthur's eloquent farewell address to the cadets at West Point on the value of duty, honor, country. I can't help but think and believe that in so doing Duke was telling us that these were the ideals that guided him. Perhaps we shall never know, but I am personally convinced that Duke Schatz embodied these ideals in full measure. Thank you very much.

MR. MULLIN: Judge Robinson, all of us thank you for those remarks.

I like to think that in the course of his advice to the new judge, Judge Robinson also advised him that one of the wisest things he could do would be to get himself a good law clerk. For those who are unfamiliar with the duties of law clerks, they assist the federal judges, they research the law, they help prepare

instructions to juries, and a good one is worth his weight in gold. And so it was that there happened to be a new graduate from the Creighton University Law School who had earned himself extraordinary grades in Law School and who applied for a job as law clerk with Judge Schatz. That young man served well as a clerk. He is now a successful lawyer with the McGrath, North law firm here in Omaha, and he is with us today to speak on behalf of not only himself but all former and present law clerks. Jim Fitzgerald --

MR. FITZGERALD: Thank you. I am honored to be here with such a distinguished group of judges and dignitaries and Donna and family. It's a pleasure to be here.

I had the opportunity to work for Judge Schatz and to be his law clerk in the early years. As a law clerk, we were able to see a side of the judge that few people see. We could see the public side. We could see the side that the judge would display when he was conducting trials or hearings or proceedings on motions or where he was sentencing a criminal defendant. But we could also see a more private side, a side where he was deciding the case. We could see how he would analyze the evidence and how he would apply the law to that particular evidence. We could see this in all types of cases, whether it was from a complex type case, like the Omaha desegregation case, to the more routine motions. We could see the

compassion and the sympathy that he had for criminal defendants as he decided what type of sentence to issue. But what impressed me most and what I best remember the judge for was his patience and his compassion to all of the people who were around him. Whether they were lawyers or parties or litigants or witnesses, he had an understanding that is not common.

He had a special patience for young lawyers, not only his law clerks but for the young lawyers who were before him. We always didn't deserve that type of patience, but it was always there when we needed it. We were trying to do our job, these young lawyers were trying to do their job, and sometimes we were in over our heads and he would take the time to teach us how to practice law and no matter how busy he was, he would always find the time to explain some of the finer points of trial strategy. Without being critical, he would explain to us how something could be presented more effectively.

I think the world is a better place because of Judge Schatz and his patience. We will miss him and we will always remember him, and if we can learn from his patience, I think we can make the world a better place. Thank you.

MR. MULLIN: Thank you, Jim, for being with us and for your remarks.

Although Duke's day-to-day work activities mainly involved his contacts with the judges in Omaha, in ascending to the federal bench for the District of Nebraska he joined a select group of judges which included two superior, outstanding, highly recognized judges from Lincoln, Nebraska. Like Judge Schatz, both of them had distinguished trial careers before they became judges. Both were honored with Fellowship in the American College of Trial Lawyers before they became judges, and to this day both of them continue to dispense justice in Lincoln with fairness and wisdom and great talent.

It is my pleasure to call upon both of them separately for remarks. First, the Honorable Warren K. Urbom, United States District Judge for Nebraska.

JUDGE URBOM: Thank you, Bob, Members of the bench, Donna, members of the family of Judge Schatz, and friends: Duke Schatz believed devoutly, loved happily, praised freely, mingled easily, laughed readily, thought carefully, listened intently, considered objectively, reacted cautiously, decided firmly, spoke softly. He was a good judge because he was a good man who judged well.

MR. MULLIN: Thank you, Judge Urbom. The second judge from Lincoln is undoubtedly as revered as is Judge Robinson here in Omaha. He now serves as a

Senior Judge. For twenty-five long years I have been going to federal court seminars around the middle part of the country -- next month we go up to Minneapolis -- and for those twenty-five years Judge Van Pelt has reviewed every single case, to my knowledge, each year that the Court of Appeals has handed down the preceding year. His brief seminar in that connection, as you might imagine, is packed with lawyers waiting to hear his words,

It is my pleasure to introduce Robert Van Pelt, Senior United States Judge from Lincoln,

SENIOR JUDGE VAN PELT: Thank you, Bob.

Mrs. Schatz, I first would recognize you and salute you and the members of your family and of Duke's family for the valuable contribution that you have made to the life of this man that the lawyers and judges have been telling you about, a much more important contribution in my mind than any of us as lawyers or judges could make to him.

What do I say about a man who some fifteen years ago, just less than that, took an oath dedicating himself to the administration of justice without respect to persons, promising to do equal right to the poor and to the rich and who at all times kept that promise?

When I was trying to think about that I ran onto a short item in the newspaper. I don't know who it referred to, but I thought of it, as I read it, that it

refers to Duke Schatz also. It said of this man that he was hard-headed, but not hard-hearted. He was tough but charitable. He was competent but cheerful.

I have been pleased to note the cheerfulness of the things that have been said here by the other speakers. Sometimes I ask, "Can you hear me?" I was broken of that habit because some fellow in the back row or almost to the back row says, "Well, if I can't hear you, I'll move outside." (Laughter.)

Whether or not we honor Duke Schatz in molded bronze or in sculptured stone, we must remember that we can recall in our memory our reverence and our love for him at all times, and he will be kept alive for us in the future if we do that. So I say that perhaps it is enough for me to say to his family and to his friends that each of you can be proud of him, and it is my opinion that Dan Gross, my long-time friend and his long-time partner whom I regarded for many years as Nebraska's leading trial lawyer, has already told him of his pride in the judicial activities of this man who was once his junior partner. With that in mind, I doubt if anything else needs to be said by me.

I extend to the family my sincere sympathy and I borrow from my predecessor, John W. Delehant, in closing saying, "Requiescat in pace."

MR. MULLIN: Thanks ever so much, Judge Van Pelt.

The president of the Nebraska State Bar Association has come from Lincoln today to express his regard for Judge Schatz. To those who may feel that his face looks familiar, you may recall him as the long-time moderator of "Ask A Lawyer" on Public Television -- Mr. Jim Hewitt from Lincoln.

MR. HEWITT: May it please the Court, I think that anybody who has ever served as president of the Bar Association comes around very quickly to the belief that most Nebraska lawyers, individually and collectively, have a passionate belief in and a very passionate regard for our system of justice, and as a result those lawyers demonstrate strong feelings of respect and regard for those who work to prove the efficacy of the system and to raise it in public esteem.

Personally and professionally, I very much regret the death of Judge Schatz which gives rise to this occasion, but as a representative of the 4900 members of the practicing bar of the State of Nebraska, I am grateful for the opportunity to pay our tribute to the work of Judge Schatz.

His career, both as a lawyer and as a judge, brought luster to every aspect of our judicial system.

As a practicing lawyer, as a great trial lawyer, Duke Schatz left scars on lawyers all over the State of Nebraska -- I suspect even some up there on the bench. But those scars were administered deftly and cleanly and openly and anyone who entered the arena against Duke Schatz knew exactly what to expect -- an enthusiastic, energetic, superbly prepared opponent. But he was also an opponent who would work with other lawyers, who was fair and honest and cooperative, and who did not seek to take unfair advantage of anyone.

Duke was an exemplar to all our trial lawyers and his efforts spurred many on to higher levels of professionalism and achievement.

When Duke Schatz became Judge Albert Schatz he did not shed his character or his personality as he donned his robe. He brought the same diligence and energy and intellectual honesty that he had shown in his role as an advocate to his new role as an arbiter. He focused his efforts to see that justice was done. He required of lawyers the same standards that he imposed on himself. He required of litigants and jurors and witnesses a dedication to truth and a respect and an awareness for courtroom propriety. I think everyone left his court with a higher regard for the judicial system than they had when they entered.

Anyone caring for the work of the courts and their work must appreciate the career of Duke Schatz. He truly left his footprints on the sands of time. I think his efforts made the practice of law a higher calling. They raised the resolution of disputes to a true art and they reflected credit upon us all.

The life and work of Judge Schatz earned the enduring gratitude of Nebraska's lawyers, in his memory we will continue to enjoy it.

Thank you for the opportunity of saying so.

MR. MULLIN: And thanks to you, Jim.

It is comforting to know that Judge Schatz has been succeeded by one of his long-time friends in the practice of law and by another lawyer whose appointment to the federal bench enjoys the almost unanimous support of the lawyers of Omaha. I refer to Lyle E. Strom, United States District Judge. Lyle --

JUDGE STROM: Thank you, Bob. Members of the bench, and particularly Donna, members of the Schatz family and of the Kennedy family, and any other guests, visitors, and friends of Duke: a memorial service, by its very nature, is tinged with sadness and yet I note here, as others have and as I think we all find, a real joy in remembering our colleague, Duke. As a matter of fact, I wouldn't be surprised if he were sitting up there

on the ninth tee of that celestial golf course sort of chuckling to himself and thinking, "Well, I got even with Strom, he's stuck with my staff and with my docket."

(Laughter.)

How many of you remember some of the things that Duke used to say to us? "Rise above the principle and get to the economics of the matter." (Laughter.) How often we who were active in the trial bar during Judge Schatz' service on this bench must surely remember that remark of his. For me it has certainly taken on a new significance. It typifies one of the most important judicial attributes, all of which Judge Schatz carried so well. This attribute of practicality was in a sense the very essence of the way in which he approached the resolution of the work of the United States District Court. While dealing fairly and equally and certainly very compassionately with all parties, nevertheless he insisted that we always remain practical in our approach to the disposition of the particular case before the Court.

I think one of the best tributes that we could each pay to Judge Schatz would be for all of us, both the bench and the bar, to continue to work together to effect the prompt and fair resolution of the disputes pending both in this court and in other courts, even if we must

occasionally rise above the principle and get to the economics of the case.

Judge Schatz' service to the law and to this bench have been well recorded here today and I think well sum up that which made up the man, Duke Schatz.

MR. MULLIN: Thank you, Judge Strom. Duke's closest friend, I believe all would agree, for sure during his final years of life, was neither a lawyer nor a judge. He was a doctor who was honored by election to the office of president of the American Academy of Ophthalmologists in 1983. He had previously served as president of the Omaha Medical Society. His contributions to our community have been recently significantly recognized by Ak-Sar-Ben. He and Duke were like brothers, according to Donna, and he has graciously consented to be the only non-judge, non-lawyer participant on our program today.

It is my pleasure, my very real pleasure, to call upon Stanley M. Truhlsen, M. D., for his remarks.

DR. TRUHLSEN: Donna, Greg, Mary, Ann, Jane, Mike Kennedy, all of the judges and friends all of Duke, it is a pleasure to be asked to come here today to take part in these ceremonies.

Duke Schatz -- I never called him Albert in all the time I knew him and he preferred it that way. We first became friends as fraternity brothers in Lincoln,

the Sigma Nu house, in 1939. This initiated a personal friendship that involved our lives, our family, our vacations, many, many rounds of golf and many, many games of pitch.

Others have dealt with his integrity and his high standards, his love for the profession of law, and his universal acceptance as a man of high moral standards. Gene Welch said he had charisma and I say with a capital C.

When my ten-year-old sister came to Lincoln during our college days, she met my fraternity brothers. However, her subsequent correspondence with me during those years always ended with the question of how was Duke.

Duke had an ability to attract and retain friends. He was a loyal, supportive friend and one with whom you could enjoy and share many mutual experiences. It is said that a friend is someone that you can do nothing with and enjoy it, and Duke was that kind of a friend. Many is the time that I've thought while traveling or in other environments that I must remember to tell Duke about this when I get home, and I must confess those thoughts still enter my mind.

I can't talk about Duke without mentioning the Tigers. Duke loved the Tigers. They were formed as a golfing group about thirty-five years ago for the sole purpose of traveling to Lake Okoboji each fall for golf

and good fellowship. He never missed an outing in all those years even though it meant on occasion flying back from Washington from a judicial conference and driving through the night to get there in time for the tee-off early in the morning.

Duke was also somewhat innovative. I recall once we came in from the lake and it was decided that we would have a martini before lunch. A review of the stock showed that we were getting a little low, and, as you know, Duke liked a vodka martini and I preferred a gin martini. Duke said, "Leave this to me, I'll take care of it," whereupon he devised a new drink in which he mixed half vodka and half gin -- maybe it wasn't half, but there were proportions, with a lemon peel and an olive, and he said, "Now we've got a new one."

A short time later Duke and I approached the bartender. Duke, in his usual friendly manner, told the bartender, "Now, I want you to listen carefully. I've got a drink I want you to mix for us." He proceeded to give him the recipe, told him how to go about it and what to include. The bartender gave him a quizzical look and said, "Oh, you want a Charlie Brown." Duke's face fell. (Laughter.)

As mentioned by Judge Ross, Duke loved baseball. As I cleaned out my locker recently at the Country Club,

I came across a strip of paper that he had written down the names of our last bet. Each March or early April we would sit down, flip a coin, and started guessing on the outcome of the Eastern and Western Division of the National and American Leagues, and this was a ritual. As a matter of fact, people would ask us, "Have you guys made your bets yet?"

We had a lot of fun, oftentimes came out even, and thoroughly enjoyed it. As Don Ross said, baseball was something that Duke turned to the sports page every day for during the season.

Duke could get more mileage out of a "Humm" or a "bully" than anybody I ever saw and I never knew quite what it meant. (Laughter.) It could mean something good or it could mean something bad, and (laughing) I see Jean smiling.

Those of us that were close to Duke loved and appropriated and collected what we called "Dukeisms." As a matter of fact, today on the golf course when I'm playing with friends, we refer to these and I will give you a few as I proceed here, and I will try to highlight them for you.

When I was first asked to give this presentation I was pleased "but a little convoluted" (Laughter) as to how to restrict my presentation about this "Old Dog" who was really "big potatoes" in his chosen profession.

He was "a man of perspicacity" who loved the game of golf even if he occasionally got into "a modicum of trouble," which tended to depress him to the extent that he thought "the whole town's under water" (Laughter) or expressed the opinion that "This was a fight they'd have to stop" (Laughter.) Nevertheless, a good little drive quickly brought his spirits back because he had seen "sicker cats than that get well."

Duke, if a ball bounced correctly or he sank a long, difficult putt, would respond, "Well, the sun shines on every dog's tail some time." (Laughter.)

If he was having a bummer of a game, he showed it, but he recuperated rapidly and his great personal charm emerged even if he "lost a little glue."

He played the nineteenth hole about as well as anyone I've ever known. He was a raconteur par excellence. His stories were wonderful.

He enjoyed a short game of pitch and if in the course of that pitch game a libation was in order, he had a little privity with the bartender, ending with the admonition, "And a little spillage, please." (Laughter.)

Duke Schatz enriched my life. He added zest and fun to it. As a matter of fact, he is responsible for my meeting my wife, Dottie. I say, for all of his many friends gathered here and also for many who were unable to be here,

we all miss the Duker. Thank you.

MR. MULLIN: Thank you for a great job, Dr. Truhlsen, and if I may be permitted, Stanley, you would have made a terrific lawyer. Where did you go astray? (Laughter.)

Our final speaker is also a long, long-time friend of Duke's from almost childhood, I believe. Their lives were almost parallel the way they went along. They both became practicing lawyers and tried cases. They both became judges, and it is my very real pleasure to introduce the Honorable John T. Grant, Justice of our Nebraska Supreme Court, who I purposely saved for the end because he always has a light touch.

JUSTICE GRANT: Donna, all you Schatzes, Father Hupp, Fellow Judges and Lawyers and Friends: it is kind of a tough group of acts to follow but they always drop me in there pretty heavy.

Today I do speak not only for myself but all the members of the Nebraska Supreme Court, all the members of the State bench, and we all join with Judge Schatz' friends and colleagues to add just a note of our respect and admiration for Judge Schatz as a lawyer, a judge, and a man.

My own feelings run somewhat deeper than that because I know that Duke Schatz did able, fine work in a

very difficult field, and as I've been following him along, I know it's tough and I know he did a good job.

But I come here today also as a friend. Not to get the best of Stan Truhlsen, but the first fellow never has a chance and I knew Duke Schatz at Creighton Prep almost fifty years ago, as much as I hate to say those kinds of numbers, but that's the truth. We remained friends from that time on, which I think is a great tribute to Duke's long-suffering and my thick skin. He continued and he went just ahead of me. He was a law clerk for Judge Woodrough just ahead of me, and I followed him in that job. We both loved that. We both had fond memories. We both spoke at his memorial service up in St. Paul.

When that ended, it seemed like we litigated for several hundred years, following a pattern that Duke would always settle the cases that I should win, and, by some strange coincidence, I always tried the cases that I lost. But out of all of that what I remember now are a lot of items of fun and I want to leave a couple of them with you because I can still see in my mind Duke tactfully disengaging my client, who was an awfully nice lady but of somewhat more than ample size, from an office chair of the kind you folks are seated in (laughter) which had arms on it and it arose as she arose (laughter). Jack Fitch was taking that deposition. He later was Duke's court reporter

and he witnessed this extraordinary event (Laughter) and he was as impressed as I was with the savoir faire with which Duke approached this problem (laughter). I can tell you that Miss Manners would have been proud of him.

(Laughter.)

The other thing that I still remember is the story that I told here in this very place when Duke was sworn in and I am going to tell it again because I've got a hold of the lectern and nobody can get it away from me for a minute (Laughter). This is a story concerning what I consider one of the finest lines entered in a trial and in spite of it going my way, I lost the case. It involved my client who went to the premises of Duke's client to have dinner, and while awaiting he dallied a little too long at the bar and he went to the rest room. He went down the hall where there were two doors, each of them marked. One went to the basement and one went to the room he sought. Over the rest room door was a sign standing out from the wall at right angles that gave the appropriate information, but, obviously, when he approached the door, the sign at right angles conveyed no information. My client selected the wrong door and fell down the basement steps, breaking his ankle and shattering his pride. I established all of these remarkable things. Duke subjected him to severe cross examination

in the following fashion.

"Well, now," he said, "was there a hand rail on the steps?"

My client said, "Yes."

"Well, now, did you see the hand rail?"

My client said, "Yes."

"Did you use the hand rail?"

My client said very clearly, "No, sir, not on the way down." (Laughter.)

Bear in mind with that lead-in, I had blown this case anyway, although I did hold him to a ten-to-two for over six hours. Well, anyway, it was kind of a moral victory.

Now, the only reason I tell those nutty stories is not to make light in any way of these important proceedings, but to emphasize to all of us that Judge Schatz was not only an outstanding judge and a lawyer. He spent a lot of years in public service. He was also a good friend and a fun person and I intend to remember him like that all these years.

MR. MULLIN: Jack, thanks a million. I would like to close this program by quoting verbatim some words which Duke Schatz spoke eight years ago in an address to the Omaha Bar Association. He said at that time, "It has long been evident to me that our present jury system provides the best justice yet developed by man. My experience

as a prosecutor, defense counsel, trial judge, and appeals judge has convinced me that juries generally perform their tasks with extraordinary conscientiousness and accuracy."

Like an Irving Berlin melody or a Nat King Cole lyric, Duke Schatz' words linger on.

Judge Beam, I return the program to you.

PRESIDING JUDGE BEAM: In a moment we will ask Deputy Marshal Bill Storm to announce the closing of the Court and this proceeding.

First, we again thank you, Donna, and members of the family, for honoring us with your presence here today. We thank all of you for coming. We express our deep appreciation to you, Bob, and to your fine committee for the arrangements for this memorial proceeding. A special thank-you to each of you who has participated in a special way here today.

There is a great hymn that is based on the Ninetieth Psalm in which the hymn writer said, "Time, like an ever rolling stream, bears all its sons away. They fly forgotten as a dream at the opening of day." Although our friend, Duke, has indeed been borne away from this earthly frame, through you and many others who could not be with us here today I believe that he will never be forgotten for his service to his God, to his family, to his country, and to this honorable court.

Monsignor Hupp, will you announce the benediction for us?

MONSIGNOR HUPP: Let us pray. Heavenly Father, as we now depart with thoughts of this occasion lingering in our minds, see us safely to our destinations. May Your blessing, Lord, be with us all the day, always, all of our days. These things we ask through Your goodness and mercy. Amen.

PRESIDING Judge Beam: Mr. Storm --

DEPUTY MARSHAL STORM: Court is in recess.

(END OF PROCEEDINGS)

REPORTER'S CERTIFICATE

I, Jack M. Fitch, Official Court Reporter for the United States District Court for the District of Nebraska, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that to the best of my knowledge the foregoing is a true and correct transcript of the Memorial Service proceedings held on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Dated this _____ day of July, 1986,

Jack M. Fitch