

Transcript of November 14, 2006 Program in Honor of the Opening of the Justice Byron White Exhibit at the Tenth Circuit Byron White Courthouse in Denver

a. Introductory remarks by Tenth Circuit Judge Neil M. Gorsuch

Welcome and thank you for coming this evening to share this wonderful milestone with us. My name is Neil Gorsuch. I'm one of the newer members of the Tenth Circuit. As someone who admired Justice White enormously – and Marion – and treasures the year I spent with them, I'm honored that the Historical Society asked me, the new rookie, to be with you here tonight. We are here to celebrate what may be the most unique, Twentieth-Century American life. Byron White, who grew up in Wellington, Colorado, a town of 350 souls, was appointed to the Supreme Court at the age of 44; was top of his class in high school, in college, and in law school; served in the Pacific Theater during World War II, and in the Kennedy Justice Department during the beginning of the Civil Rights movement; and went on to serve 31 years on the Supreme Court – that's the eleventh longest tenure in our history. And during that time, he wrote 475 Supreme Court majority opinions, 320 dissents, and 130 concurrences. That's over 900 Supreme Court opinions. And who at the same time was the highest paid NFL football player of his day; led the NFL in rushing; and held the NCAA football record for all-purpose yards in a game for nearly 50 years, a record now held by Barry Sanders. And no wonder that record stood for so long – Justice White averaged a remarkable 246 yards per game.

The exhibit that's been put together will teach you all of these facts and figures, and, I am sure, inspire visitors to our court for years to come. Justice Byron White continues to inspire those of us who were lucky to know him. It teaches how fully a life can be lived. I think the exhibit, as you'll go through it – and I hope you will take some time to meander through it – reminds us not just of the facts and figures of Justice White's life, remarkable though they are. For anyone who spends even a few minutes here, lessons about character and integrity emerge, lessons about a self-made man whose hands forever bore the marks of physical work in the beet fields of northern Colorado. He was someone who took life seriously and excelled at both scholarship and athleticism. And he was someone who believed passionately in public service; someone who implored those of us in private practice to get our rear ends back in public service. He also passionately believed in human equality: the dignity of all persons and civil rights. And a lesson I think you will find about humility, and the one that strikes closest to home to me, he was someone who always, in encouraging a novice law clerk to express a view that the Supreme Court might have got it wrong, would say: "Two heads are better than one." He always wanted to know what someone else thought. He never thought he had a purchase on the truth.

It means the world to me that I come to work every day in a building named after Justice White. It is a very great thing to know that this exhibit will be here for years to come, to inspire young people who visit this building, happen upon this exhibit, and consider modeling their lives on this man.

On a lighter note, I must confess that there are two things I can't walk past every day without smiling. One is the putter you will see in a glass case now forever memorialized. Justice White

was a ferocious competitor. He had a golf course that went around chambers every day and you'd have to bet with him – gamble with him on putting. Now that putter is there forever, and that just tickles me. The other thing is the bust of Justice White, now in bronze. I happened to be lucky enough to be there on the day that the artist brought the clay mold into chambers for his approval. And he walked over to it, kind of grunted at it disapprovingly, and said: "My nose never looked that pretty. I've broken it too many times." And then – and I think the artist was just about to lose it – when he started putting his finger up on the nose and pushed a dent into the nose. This fellow had spent I don't know how many hours working on that thing, and that dent is on that bust's nose.

So, at any rate, let me begin by recognizing the remarkable job done by the folks who made this exhibit happen. Tamara Hasenkamp designed everything that you're going to see. David Pachuta, exhibit designer and project manager for 28 years at a local museum, figured out the final design of what's laid out there. Jared Thomson, a graphic designer for 10 years at a local museum, designed all the labels and the signs. Cathy Eason of the Tenth Circuit library chose the objects and artwork that you see displayed; wrote all the text; did the preliminary arrangement of the items; and supervised the installation. Judge Ebel, this project was really his inspiration, and it is his determination that made it happen. Greg Kerwin, Judge Logan, and the Historical Society helped organize all this and made this event possible. But most of all, we owe our thanks to Mrs. White, to Barney, to Nancy and Linda, Judy and Ken Caughey, Barbara and Rike Wootten, and the entire White family, for sharing these materials, and making it possible for people to have a sense of this man for years to come.

I'm also delighted to recognize the enduring White-Stearns connection to CU. With us tonight are professors from the Byron White Center at CU. Professor Richard Collins and Pierre Schlag and the student on the Byron White scholarship funded by his former law clerks and other admirers: Elliot Charles Dickenson.

Now I'd like to introduce to you our speakers. First, tonight, is the Chief Judge of the Tenth Circuit, Deanell Tacha. She has, I very quickly learned, the most difficult job on this court, trying to convince a dozen independently minded judges to get to yes on everything from court cases to carpeting. And thanks to her, this place manages to function somehow, and function very efficiently and effectively. And thanks to her, this project was funded and organized.

Chief Judge Tacha:

b. Remarks by Chief Tenth Circuit Judge Deanell Reece Tacha

Thank you so much, Judge Gorsuch. We feel so privileged to have two new judges on this court: Judge Holmes and Judge Gorsuch, who have just joined us and it's a great privilege to work with them.

Mrs. White, I promise you we won't sing and dance tonight. When we dedicated this courthouse and put the name Byron White on it, and very proudly did so, we didn't act very judgely one of the evenings and we were a lot younger and maybe a lot sillier 12 years ago than we are tonight. But I think I will never forget the great laughter that emanated from Justice White as he saw all these, what had been rather staid, Article 3 judges performing in the Phantom of the Courthouse

that night. Now we aren't about to do that again, but when I think of that magnetic grin that he had, I remember so well that evening as he sort of enjoyed the spoof, if you will, on the judges and on the naming of the courthouse.

Before I begin to talk about Justice White, I want to thank all of you for being here. Because in many ways, we are all Justice White's family. For he claimed us, along with his Rocky Mountain roots, and he claimed us along with Colorado. We were truly his circuit, and the fact that the Historical Society has sponsored this evening's program, and even more important been the inspiration behind this remarkable exhibit, is simply testament to the fact that he did claim us as part of his family. So thank you all so much for being here, and thanks to the Historical Society for all you have done to make this evening possible.

I would be remiss indeed if I didn't recognize, yet again, a very important inspiration for this exhibit. You know, our law clerks are very special, but there is something different about the White law clerks. The White law clerks are joined at the hip. And principal among them was the judge who really made this exhibit possible, and even pushed on a certain chief judge from time to time when the funds could have gone to other things. I want Judge Ebel to stand up and be recognized for this remarkable place. [applause]

Judge Gorsuch has already recognized Marion White and the White family, but without you and this remarkable, remarkable exhibit, we would not have made this courthouse all about Byron White. And we are so proud now that this exhibit really does make it all about Byron White, and his life, remarkable career – really legendary proportions in everything that he did. So to each of you, our deepest thanks for what you have done.

I was telling Mrs. White earlier that I had the great privilege to do a sneak preview last night and took a group of young people – some of them young lawyers and a lot of them young professionals from Denver – through the exhibit, and you know it's something when I get choked up about the legacy that Byron White left not just to us, who are judges, but the legacy to Denver and to Colorado and to the Tenth Circuit. Because there in those artifacts and wonderful exhibition pieces, stands a life that will speak to generations far, far beyond his own life and what he led here in Colorado and Washington. And among those young professionals who didn't know Byron White, but certainly knew of his legacy, it was underscored when they saw this great exhibit. So our thanks to all of you.

Now I want to talk a bit about Justice Byron White as our Circuit Justice, because he is not only a Justice of the United States Supreme Court that authored all those hundreds of opinions. He was not only a Washington guy, who worked in the Justice Department and did all the things that Judge Gorsuch has told you about, he was I believe, in his heart, a Rocky Mountain guy. He was a man, a person, a human being who identified with all that we love: the natural beauty of this place; the wonderful, wonderful natural resources that we have; the people who love sports and families and ties to the earth. He was that kind of man. And that's why I believe he was such a remarkable Circuit Justice for the Tenth Circuit. When one goes back in the history of appointment of Circuit judges to circuits, not much is written about why justices get appointed to individual circuits, but it was obvious where Justice White would be appointed, because although he was appointed in March of 1962, very little grass grew under the feet of the Chief Justice before Justice Byron White was assigned to the Tenth Circuit Court of Appeals. The first

official designation of that came in October – actually October 15 of 1962. So he served as our Circuit Justice – actually as our Chief Circuit Justice – for all that time from 1962 until his retirement in 1993. So a very, very long and distinguished time.

But it isn't really the tenure that counts, it's the tenor that counts. It is the way in which he served us, for he felt, I think, along with Mrs. White, very much a part of the Circuit. They came to all our conferences, some good and some a little tedious. He brought to those conferences and to every meeting to which he came, the force of his intellect, the magnetism of his personality, and the inspiration of his life story. During that remarkable span of time, and I know Mrs. White will remember many of these circuit conferences, he was always called on for remarks. And I never asked him about this, but I suspect it wasn't his favorite assignment, to get up there and talk about what had gone on in the Supreme Court in that particular term. And in the early years, he operated from a text and we sort of went through the cases, and I think he didn't find it the most interesting thing that he had ever done. So one year we decided to change the format, and I remember very clearly Judge Seymour and I talking to him, and we said "How about if we start asking you questions and you answer them with respect to what went on in the Supreme Court?" Well, from that day forward, the Justice Byron White presentation of the United States Supreme Court term thanks entirely to his droll humor, his great humility, and his quick reminiscences about the cases, made for one of the best circuit conference programs that we ever presented. So from that day forward I think he actually enjoyed them more in that repartee, and in some ways, that sort of characterized his personality. He much preferred the interchange with people than he did, sort of being the talker up in front of everyone.

Another thing we all remember was that he attended many, many bar meetings throughout the circuit. And I'm sure there are a lot of stories about those bar meetings, but perhaps the best of those occurred at the Utah State Bar meeting. When the Justice was getting up to give his speech and a man came out of the audience as if to serve papers on the Justice but instead delivered quite a powerful punch to Justice Byron White. Now the way I hear the story was that Judge McKay was in the line of fire and so he tackled the gentleman who had delivered the punch to Justice Byron White. Well, Fred Graham of CBS was in the audience with a camera and captured Judge McKay and Justice Byron White in this great tackle in which Judge McKay split his suit coat down the back on national television. Now the postscript to this story is that Justice White did not miss a beat. He got up and made his speech, and did not refer at all to the gentlemen who delivered the punch. But I'm told someone in the audience said it's sure a good thing that Byron White didn't have a chance to see that guy because he would have knocked his blankety-blank head off. So, the bar meetings were anything but boring when he went.

It was not only the official activities that Justice and Mrs. White participated in, and I have to say this is entirely hearsay because I never went on these expeditions. But Judge Ebel and Judge Baldock were known to have gone very far into the wilds of Colorado and Wyoming, urged on, I am told, by Justice White who always wanted to go to where the most fish possibly could be, the farthest away from civilization. And I am told that on many occasions, Judge Ebel and Judge Baldock got tired, wet and cold, but not Justice White; he was out there fly fishing for the longest time with the most endurance. Well I think that, too, characterizes him. So he did much with us that was unofficial as well.

The first recorded conference remarks that the Justice made were in 1971 but I am quite clear that it must have occurred earlier and simply wasn't recorded. As I have said in 1994, this building was dedicated to him and Justice Ruth Ginsburg was here in attendance the day of that dedication. It was a high moment for this court and the day that I would say that this court said that this is the house and the court that Justice Byron White brought the most leadership and actually built for us.

He attended our conferences through the year 2000 and then in the year 2001 our conference was canceled and, of course, that was the last one prior to his death. So the one we all remember as the most recent one was down in Colorado Springs at the judges-only conference when I can still see that very tall frame walking across the lobby down in Colorado Springs at our judges-only conference.

Now he not only came to our conferences, and not only went fly fishing, and not only went to all the bar meetings, but he also sat with the Circuit. As soon as he had retired from the Court, we were the first Circuit that he sat by designation with, and Judge Ebel will remember this, he and I had the privilege of sitting with Justice White on, I think it was the first day he sat with the Circuit. And by total happenstance, and you all know we do this by computer draw randomly, by total happenstance, a couple of the cases dealt with religious discrimination in the work place. Now if you know anything at all about Justice White's jurisprudence, you know that he wrote some of the seminal cases in this area. Well, we got back into conference after hearing these cases and the Justice, as Judge Gorsuch has pointed out, had some pretty clear views about what he had written and pretty clear views about what Supreme Court precedent was, and Judge Ebel and I had to sort of quietly remind him that the Tenth Circuit had put our gloss on those Supreme Court cases and so the outcomes might be slightly different from what the Justice had anticipated when he wrote those opinions. And without quoting him directly I will just say that he was not very happy with the gloss that the Tenth Circuit had put on those opinions and thought we had not read them correctly at all and my memory is, wrote some dissents in those cases. When he sat with us in that time, he sat on 27 cases and authored eight of our opinions. He also sat with other circuits and was on approximately 54 panels and authored approximately – we're having a little trouble getting this all right on Westlaw – but approximately 18 other opinions for courts of appeals. But when I think about sitting with Justice White, and I know my colleagues who also had that privilege would say, I remember that I was not treated like the younger, least-senior judge but instead, in characteristic Byron White fashion, I was treated with the utmost respect. He conferenced and interacted with us with great good humor and with the kind of collegiality to which every judge, every bench, every bar should aspire.

So we are so, so grateful for this exhibit and so grateful for our roots in the Byron White tradition, and to carry the name – not just for the courthouse – but I believe during that 30-year span this was the court and the house that Byron White built. [applause]

[Judge Gorsuch:] Our next speaker is Judge David Ebel. Judge Ebel served as Justice White's law clerk during the 1965 term and, as you've heard, without him this project simply would not have gotten done. In addition to that, and in many respects, this sprawling White law clerk family which includes about 100 very diverse personalities consider him, I think, the dean of the White clerkship family. So it's my honor to present to you Judge Ebel.

c. Remarks by Senior Tenth Circuit Judge David M. Ebel

I want to talk a little bit about the exhibit itself. First let me show you this picture that was drawn by Bob Olson who is one of Colorado's own artists, one of our most premiere artists who is doing the official portrait for Governor Owens for the Capitol as well. This was commissioned for this event and it will be hanging in the exhibit and it seems to me that this picture captures Justice White as well as anything ever has. Because it isn't particularly fancy and the Justice hated things that were fancy. And if you got too much gold or too much crimson or too much perfection he would poke a hole in the nose and say that wasn't me. This, with its kind of minimalistic drawing and with its black and white, I just think the Justice would have been pleased. So Bob Olson and his wife Sandy are in the audience – would you stand so the people can recognize you. [applause]

I want to say again how grateful we are to the White family for allowing us to have some of your husband's and father's and nephews' and uncles' and brother-in-laws' materials. He really was a Justice for the West. And it is so wonderful that you have allowed us to have some of these precious things so that all of the West, particularly, can enjoy them. We are very grateful that you have done that.

I want to encourage you to go out and look at that Exhibit. When the Justice had retired from the Supreme Court, he and Marion packed up all of their personal memorabilia and shipped it out here to Denver. And I have such vivid memories, Marion, of you and the Justice coming down day after day and we would get one box or two boxes and unwrap things and each thing had been carefully wrapped and with each thing unwrapped there was a story to tell. Now what we have displayed is only a small part of what we have, and there's going to be some more of this exhibit that over the next several years will be expanded. As you go into the corridor you will see there's an anteroom and in that anteroom there's a bunch of additional pictures from the Justice's collection. We're going to convert that anteroom into an interactive room where all of the Justice's opinions will be, all of the law review articles about his jurisprudence will be there, and there will be televisions with videos of all of the recorded speeches and football games that he has played. So that you can go to that room, push a button, and on the television there will be pulled up his various games, his various speeches, so that he will virtually come alive to you. And then behind that room, behind the door that you are not in right now, can't get into, we are going to have one more office that's going to be redecorated exactly like his Supreme Court chambers. So with all the exact same pictures that he had on the wall when he was a Justice, the same furniture and everything so that you will be able to go in and see exactly what his office looked like when he was a Justice. And it was a modest office. In fact, it's always been a little embarrassing to me because whenever he came into my office, he would always say "Wow, I never had anything this opulent." And, it probably was true. He had a very modest, but very Colorado office.

You will see when you go into the corridor that we've divided that corridor into four segments of the Justice's life. The first segment is his education and what an education it was. First in his high school class of five students. First in his college class at CU. First in his class at Yale Law School and Rhodes Scholar. With his brother, Sam, also a Rhodes Scholar, and Marion you can correct me but I think it's the only siblings that have ever been selected as Rhodes Scholars in the history of that program. So it's a phenomenal academic education that he got. And

education to him was the most important thing you could do because he believed that it was education that could take somebody from Wellington, Colorado and give him the opportunity to be a Justice of the Supreme Court. And so his jurisprudence often very strongly spoke out that everyone had an equal right to education.

One picture you will see in this education section is a photograph of his law school fraternity. Now his law school fraternity was only about 40 people. So how famous could you get of people in a small 40-person law school fraternity in one law school in one fraternity during one year. You think about your own law school fraternities and most of my law school fraternity people you would have to look at horizontal on the floor, which is their more natural position. You look at his photograph – in that one photograph there is Cyrus Vance, Secretary of State of the United States; Walter Lord, author; Gerald Ford, President; Peter Dominick, Senator; Raymond Shafer, Governor; Sargent Shriver, founder of the Peace Corps; William Scranton, Governor; Stanley Resor, Secretary of the Navy; and Potter Stewart, a second Justice of the Supreme Court – all in one law school fraternity. So look at that picture –you will enjoy it.

The second segment is sports: his athletic career, and what an athletic career he had. Nine athletic letters in CU, an all-American, the most famous football player of his time. He also played baseball and basketball. I asked him, “Well, how did you do in baseball?” and he said, “Well, not too bad.” And I said, “What does that mean? – What is your batting average?” and he said it was .450. And then basketball: Captain of the team that went to the National Invitation Tournament. You will see, more importantly in that athletic part, what a range of athletic interests he had: football, golf, basketball, skiing, fly fishing, racquetball. This was not a uni-dimensional person. In fact, he wasn’t uni-dimensional in football either as he not only played running back and he passed and he was the punt returner and the punter and he played offense and defense. So, the man could do a lot of things athletically. You will see the Pro Football Hall of Fame book which is a bronze book that is the only Supreme Court Justice – this will come as a shock to you – but the only Supreme Court Justice ever admitted to the Pro Football Hall of Fame.

And then the third category is his family life. And there you will see pictures of his parents, his children, Barney and Nancy, and you will see one of the very early pictures that the great aspiring artist, Nancy, wrote. One of my strongest memories of Justice White is all year long when I was there, he would have some of the pictures that Barney and Nancy had drawn with crayon or with colors of various kind and he had them taped up to his desk as if they were Rembrandts. So we captured one of those pictures of Nancy that he had displayed and you will see that. You will see also a wonderful picture of his granddaughter, Emily, planting an apple tree in front of this court house. Now the story of that is, you know, apples don’t fall far from the tree and like Justice White was a leader and Marion was a leader and like Nancy is a leader – Nancy, by the way, was selected for our Olympic team in field hockey which was canceled because of the Russian invasion into Afghanistan. But Nancy’s daughter, Emily, had won the award for leadership – was it Junior High School, Nancy? – Sixth grade – and they gave her an apple tree. And she said, “I’d like to plant this apple tree in the building of my grandfather who is the greatest leader I know.” And so, that apple tree is planted right out here in the west and you will see a picture of Emily planting that. You will see an oil picture of some of the buildings from Wellington – so that’s his family life.

And then if you continue, you'll see his public life. And what a public life it was. Thirty-one years on the Supreme Court, only a few years shy of the longest serving justice ever, and he specifically stepped down because he did not want to claim that record from other justices. You will see there his original appointment to the Supreme Court by Jack Kennedy. You will see the letter of Bill Clinton accepting his resignation from the Supreme Court. You will see his appointment as Deputy Attorney General, signed by Bobby Kennedy, and you will see a picture of the eight other justices autographed who served with him when he first came on the court. And what giants those justices were. It was probably the greatest court ever in the history of our country. There was Byron White, there was Hugo Black, Tom Clark, William Brennan, Arthur Goldberg, Potter Stewart, John Harlan, William Douglas and Chief Justice Earl Warren.

Then in the center of the room you will see a large display holding a large scrapbook. That scrapbook was first kept by his mother and then by Marion recording all of the times that Byron White appeared in the newspaper. And you can see quickly why he eventually disliked publicity and why he became so modest. Because he realized that fame was so fleeting and so superficial. He had had so much fame and so much publicity. That book was just one of about 20 books that we have. And so we turn those pages periodically and as you come back time after time, look at that exhibit and you will see different things about him. In the center of that exhibit you will see Justice White's chair which is the actual chair that he used on the Supreme Court. When the Justice retires, they always give the Justice the chair that the Justice sat on while at the Supreme Court and this is actual chair. In the main corridor you will see the robe that he wore and many more pictures including a very poignant picture of Justice White and those other Justices marching in the street at President Kennedy's funeral.

One other case focuses on his military memorabilia where he received the Bronze Star while serving on two aircraft carriers that were hit with kamikaze pilots. And then there's many other things. So, it is a rich exhibit, it will get richer. But please look at it, enjoy it, tell your friends to come because so many buildings in our country have the name of someone and people don't know who that person was. This is the so-and-so building, well who was that person? That won't happen here. When they come here, they'll know who that person was, for whom this building was named. And for that we owe thanks to the White family. Thank you. [applause]

[Judge Gorsuch:] And that's why we consider him the dean of the White clerkship family. Finally, I have the honor of introducing Barney White. It's only because of the generosity of Barney and Nancy and Mrs. White that we're actually all here tonight and able to share a little bit of this man with a lot of other folks for a long time to come. And they've given us the gift of sharing these memories of the man that they knew best who was very private, and who loved him a great deal. And it's a great honor to be able to introduce Barney White. [applause]

d. Remarks by Charles B. White

David, I love that painting. I think that's wonderful, thank you. Thank you, Judge Gorsuch and Ebel and Tacha for your remarks. Welcome to the other members of the Court of Appeals and District Court and to other fellow members of the Historical Society and other guests. It's an unusual privilege for me to speak after three Court of Appeals judges have said their peace. Usually, they get the last word. But I'll hope they'll indulge me, because I'm here really to turn the tables and to express our appreciation – the White family's appreciation – for all that you

have done to make a home for my father's memory and all of his artifacts and papers. It is really a terrific exhibit and a wonderful way to remember my father's life and to use his legacy to educate and inspire people who did not have a chance to meet him. Now, I can say that because it's my sister's sixth grade painting that's on the wall over there, not mine. But truly, we are all very grateful to you.

And in particular this memorial is a testament to David Ebel's persistence and dedication and the mutual affection between him and the members of our family. David, I hope you appreciate how much we respect you and are grateful for what you have done. He and Cathy Eason, who is really the curator of this collection, have done a fantastic job of displaying the material, presenting it in a very engaging way. I can only hope that as the exhibit matures, my sixth grade pictures will find their way into the basement where they belong. I do need to warn Judge Gorsuch that if he plans to carry on Judge Ebel's relationship with the White family, the Justice has six grandchildren and they are approaching their twenties and showing every sign of having large families. So, watch out, I'm sure that their children will want to come in and hear as many stories as possible about the Justice.

The question that I often get about this memorial is would my father have approved of it in view of his often-noted modesty and penchant for privacy. Fortunately, I don't have to speculate, because he enthusiastically supported it and worked hard with David Ebel in the early stages to make it possible. I think there are several reasons why he did that, and why he would be pleased with the way it turned out.

First, he recognized – he was a practical man – that he'd acquired a lot of artifacts and papers and memorabilia and he didn't want to burden his family with the task of taking care of them. I guess it's a good thing for you all that he hadn't discovered eBay back then or none of this would be here. So, on behalf of my mother and my sister and myself, thank you, thank you for keeping all of this stuff out of my garage.

Second, it's in Denver. As Judge Tacha said, Denver was always a huge part of his life, from the time that he left. While his official papers are in the Library of Congress, this was always his home. He often said how happy he was practicing law here. After he moved, he relished each chance to return, each opportunity to come to the Circuit Conference and explain those cases. I think he really did enjoy that. He enjoyed visiting with all of you and all of his other close friends on and off the bench. I think most of all he just enjoyed walking down 17th Street and remembering what it was like to practice law there. It was just as though he had never left town. And he did have a special affection for this building, dating back I'm sure to his days of practicing law just a few blocks away. I can say that he still has a special affection for the building. If you go look at Emily's tree today, you will see that it's the only tree in all of Denver that still has green leaves on it.

Third, this memorial is not just about him. There's an enormous amount of history in this collection. A lot of the story of his life is the story of America in the 20th century. He was a history buff and I know he would have appreciated the historical value of the exhibit.

There's another reason why he would like it that I want to get to in a minute.

But first, I want to share with you some of the items that Judge Ebel did not tell you about that are part of the collection but are not on display. First, not just one, but three volumes of *Truly Tasteless Jokes*. As Cathy says in her index, the title is an understatement. I can only assume that his law clerks gave him those. But they're there. There is a key to the gate of the St. Vrain Ranch which is, or at least 50 years ago, was a fishing ranch on St. Vrain Creek. We're keeping that key hidden. There's a beer can unopened with the photo of the Pittsburgh Steelers from Super Bowl 1979 when his beloved Steelers beat the Dallas Cowboys. Cathy, I think we better hide that one, too. There are notebooks full of his handwritten definitions of thousands of unusual words, organized by letter of the alphabet. For example, under Z, you can find *zikkurra* and *zinnwaldite* – yeah, I just made those up. But really, there are lists and lists of words that he kept. I think the reason he did was so that he could beat me at Scrabble, which we all loved to play. He probably had some help from my mother. I think really he did it to keep his mind sharp and improve his vocabulary for those dissenting opinions when he became a Circuit Justice. There are law clerks' albums put together by my mother during each term of court with photographs of all the law clerks and all the things that they did together, really as a family. As more and more of them join the bench, it may be entertaining to go look at pictures of them when they were young and trying to catch a football thrown at 70 miles an hour. I'm sure that Neil Gorsuch caught his pass. I found it was good practice for being a lawyer, actually.

On a more serious note, there are many items, such as a history of World War II in the Pacific Theater and a book about the Bunker Hill, which was the aircraft carrier that he was on when it was struck by kamikazes. Again, a lot of history there.

I want to just talk a little bit about what this memorial can teach us. In addition to providing some insight into my Dad's judicial philosophy, I think there are four aspects of his life that stand out. First, as often noted, and as noted again by Judge Ebel, the value of hard work. As we all know, he worked in sugar beet fields as a kid -- part of the legacy of the Depression. But I like the way that he said it in the interview with *Sports Illustrated* magazine that's in the exhibit. He said, "When the whistle blows, you have only a limited amount of time to do what you have to do. You either do it then or you don't do it at all."

The second thing that you will learn in the exhibit is the importance to him, anyway, of political involvement. He believed that every citizen has an obligation to engage in the political process. The exhibit reflects his broader commitment to service in many different forms, but I think it was that need for individual political activity, at least before President Kennedy locked him in that oak-paneled room, that stands out as being one of his central beliefs. That may explain his willingness to defer to the legislative branch in many of his opinions. I think that view is all the more important today as the government becomes less connected with people outside of Washington. It was very important for him throughout his professional life.

Third, as we all know, is the benefit of athletics. As he said in his Rhodes Scholar application, which you can read in the collection, athletics taught him about the necessity of sacrifice and helped him learn self control and tolerance. But I found it interesting that he also said, "My only regret is that I failed to use even a trace of moderation in athletics." A little tongue-in-cheek maybe, but I think that moderation was an important factor in his life and in his makeup. While he appears to have gone full tilt for 85 years, in fact, he lived a very balanced life. Fishing, skiing, golf, art galleries, symphony, the ballet, the waltz group with my Mom, and to use his

favorite term, just “plain old horsing around” were very essential to his world view and his enjoyment of life. I think the “horsing around” may reflect the influence of his brother, Sam, who first showed him how to tip over outhouses when they were growing up in Wellington. And I should acknowledge Andy Mair, an old Wellington friend of his – Andy, will you stand up? [applause] Andy, did you ever tip over outhouses in Wellington with my dad?

[Andy: Yes, we did. And he almost fell in. He was good at anything he did, including dumping outhouses.]

I knew that to be true, actually. Anyway, that may also explain why when we all went on skiing trips in Aspen he would look for those empty intersections and show us how to do 360s in the rental car, which he also enjoyed.

I think the fourth factor that you will see is the importance of having broad experiences in life. As he said in the *Sports Illustrated* interview, “The more things you try, the better you know yourself and the more interesting people you will meet.” His parents supported him in every endeavor without trying to steer him in one direction or another. As he put it, “My parents wanted me to be what I wanted to be.”

The advice he gave me when I went to college was a little more prosaic. He wrote, “Buy yourself enough clothes to move in more than one circle at a time and keep them clean.” I don’t know if I did a very good job of that. If you look at his life, I think you see the fruits of that in the incredible diversity of his friends and his insatiable curiosity about what people do. He was infamous for cross examining waiters and store clerks and finding out everything that he could about them, their jobs, what they thought about what was going on. He just loved to learn about people.

So, all of this suggests that maybe he would recognize another benefit of this exhibit, in spite of his modesty. There is a clue in his Rhodes Scholar application, at the end, in explaining why he wanted the scholarship. He said, “A success in this quest for something I could never touch elsewhere would be with the determination to be a satisfactory example of America’s young men.” Well, that was a classic understatement. But I think that’s really what this memorial is all about -- to serve as an example and an inspiration to others. I think he would appreciate how important that is.

The challenge for the Court and the Historical Society, and for our family as well, will be, over the years, to find a way to keep this memorial fresh and interesting. I know that the judges and Cathy Eason will try very hard to do that and the family will do what we can to help. The deed of gift from the family says that: “Reasonable provision shall be made for loans of the material to educational, governmental and non-profit institutions,” and I hope that happens. There are opportunities to work with the Byron White Center at the Law School, other departments of the University, other courts, other universities, and to involve the White Scholars in the program. I’d like to encourage the Society and the Court to find ways to broaden the exhibit, to put my Dad’s life in an historical context and to relate it to the events and other people who were his contemporaries. I think the display on Charles Frankel, for example, is a good example of how this could be done. I think there are a lot of opportunities there.

Finally, our family wants to acknowledge a very important person without whom this exhibit would not have occurred, and that's Cathy Eason. Cathy, could you come up here, if you don't mind. [applause] So, we want to thank you for everything you did and all those long spread sheets and phone calls and everything else. We have a personal memento for you from one of my Dad's collections of pins and medals that he kept on his dresser. It's going to be your job, as it always has been, to find out what it is and where it came from. But, we hope that you enjoy it. [Cathy: Thank you.] We also have a photograph of him that is in a sealed envelope. We're giving it to you so that you don't lose your sense of humor when the great-grandchildren show up. You just have to promise that it never goes on public display. [Cathy: Thank you.]

Anyway, thank you so much. Judge Ebel, thank you again. Truly, we are the grateful ones here. You've done a terrific service to my Dad and to my family and we thank you. And thank all of you for coming today to make this dedication a great success. [applause]

[Judge Gorsuch:] Well that completes our program with two minor notes. First, Barney, I'm fine with you sending your kids around for a chat. But I want their law clerk applications. And second, if there are pictures of me playing catch with the Justice, they are probably like that and I'm going to exercise one judicial prerogative about things that aren't going on display. But other than that, please go take a look. It's a wonderful display. Thank you so much for coming. It's been such a pleasure to have you here tonight.

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