

Minnesota Trial



INSIDE

Wyeth v. Levine

Plaintiff's Right to Recover the "Gap"

Guzman v. US West is Bad Law

Bankruptcy? Now What?

Miles Lord: A Warrior Fighting
for Justice

JOURNAL OF THE MINNESOTA ASSOCIATION FOR JUSTICE

SUMMER 2009

The Truth
About Justice

27th Annual Convention

August 13 - 15, 2009

Arrowwood Resort, Alexandria, MN

see pages 18-19 for details

MILES LORD: A WARRIOR FIGHTING FOR JUSTICE

By Mark D. Streed

This is the fourth in a series dedicated to advocates whose extraordinary efforts on behalf of tort victims have truly made a difference. For over sixty years Miles Lord, in his work both as a lawyer and judge, has been a voice for the powerless victims of corporate misconduct.

"Mr. Robins, Mr. Forrest, Dr. Lunsford you have not been rehabilitated by the punitive damage awards that have been made so far...Under your direction, your company has, in fact, continued to allow women, tens of thousands of them, to wear a device – a deadly depth charge in their wombs, ready to explode at any time...you have taken the bottom line as your guiding beacon and the low road as your route. This is corporate irresponsibility at its meanest."

- Excerpt of 02/29/84 courtroom speech delivered by Judge Miles W. Lord, directed to the three top executives of A.H. Robins, Inc., manufacturer of the Dalkon Shield IUD.

Growing up on Minnesota's Cuyuna Iron Range in the 1920s and 1930s, young Miles Lord developed an intense distaste for "bullies and roosters". Even now, nearly 90 years old, Lord says, "I feel the pain of people who don't have power."

The eighth of Frank and Rachel Lord's nine children, Miles was a scrapper who regularly found himself embroiled in fights, sometimes verbal but, more often, of the physical nature. Why would he stand up to and fight these "bullies and roosters"? Back then it was a reflexive, gut instinct that drove young Miles Lord's actions. Decades later, with the insight provided by age and experience, Lord believes he challenged those who took

advantage of, and mistreated, the weak and powerless, "because what they stood for was wrong, morally wrong."

All of his life Miles Lord has relied on his instincts to guide his actions. While Lord eventually became a law school graduate, a lawyer, a federal prosecutor, Minnesota's Attorney General, a U.S. Attorney and a United States Federal District Court Judge, he never stopped standing up to "bullies and roosters", and protecting their victims.

GROWING UP ON THE IRON RANGE AND MAXINE

Frank Lord's growing family did not have much money to go around. So young Miles began delivering the St. Paul Dispatch and



the Minneapolis Star on his bicycle when he was just seven years old. Miles recalls noticing a "cute younger girl" whose parents lived on his paper route. The girl's name was Maxine.

Several years later Maxine and Miles were the stars of a local theater production (Miles' favorite extracurricular past-time in high school was seeking – and usually getting – the lead role in his high school plays). Miles became quite infatuated with his co-star. Later they became regular partners in the jitterbug dance contests across central and northern Minnesota.

"We had a lot of fun dancing. In those days I could throw Maxine up over my head and down through my legs. We actually won a few of those contests."

In 1940, that cute little neighbor girl became Maxine Lord. Their marriage and relationship was a remarkable one full of love, respect and support for each other. They eventually had four children – Priscilla, Miles, Jr. ("Mick"), Jim and Virginia. For sixty-nine years, until her passing in April of 2009, Maxine was always at Miles' side.

Miles recalls that early on his mother-in-law was not so sure of him, "She thought I was too cocky and full of myself. Maybe I was. One night she was listening to the radio broadcast of my Golden Gloves Middleweight Championship Fight. I kept getting hit by the other fighter and the announcer would report that I was smiling and laughing after each time I was hit. Maxine's mother thought that confirmed my arrogance." While he lost the championship bout, and broke his hand in the process (both of which essentially ended his boxing career), Miles eventually won over his mother-in-law.

After serving in the United States Air Force and having some minor success (and failure) running the Excel Café in Crosby, Minnesota, Miles worked numerous odd jobs including stints as an arc welder and a road construction worker, while he also attended classes to achieve his under-graduate degree.

During these years, Miles became the only one of the nine Lord children to graduate from college. He recalls his mother encouraging him to go on to law school. Wanting a different way of life than most of his extended family, many of whom were working as iron miners, loggers, etc., Miles took his mother's advice. The young couple moved to Minneapolis so Miles

could enroll at the University of Minnesota Law School.

While attending law school, Miles always worked one or two jobs to pay the bills and to support his growing family (two of the Lord children were born during law school and the third arrived the year following Miles' graduation). He worked many odd jobs including post office clerk, night watchman, janitor and welding anchors for U.S. Navy ships. Before graduating with a law degree in 1948, Miles met another law student, Orville Freeman (who later became Minnesota's governor and served as Secretary of Agriculture during President Kennedy's administration). Through Freeman, Miles Lord met many "players" in the newly formed Democratic, Farmer and Labor (DFL) party. Among those was a young man running for mayor of Minneapolis: Hubert H. Humphrey.

MWL AND HHH: A LIFELONG FRIENDSHIP

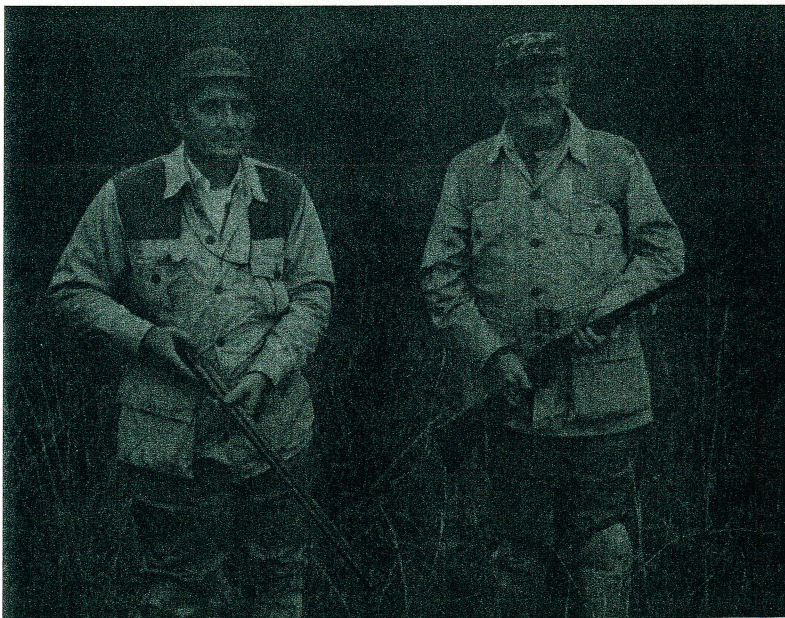
Miles recalls attending a Humphrey mayoral campaign meeting with Freeman and another law school friend, Don Fraser (Fraser later became Minneapolis mayor and a U.S. Congressman). Miles became acquainted with Humphrey during this mayoral campaign and after Humphrey won the election, he asked Miles to testify at a legislative hearing regarding rent control issues for returning veterans. This was the beginning of a

lifelong friendship.

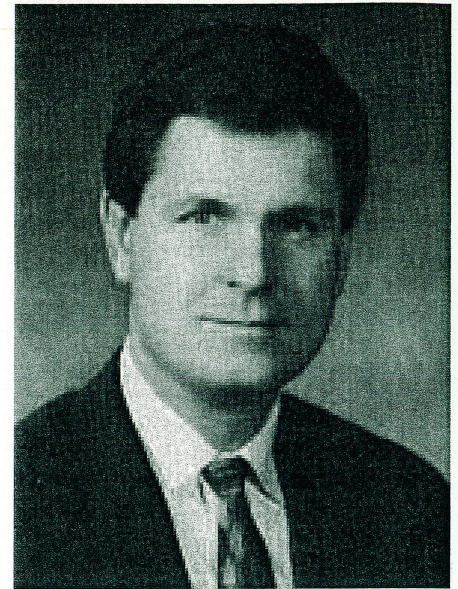
Miles Lord has always been a fighter. Whether in the courtroom or on the campaign trail, his penchant to aggressively "mix it up," combined with his uncanny ability to make strong, lifelong connections with upwardly mobile politicians, undoubtedly contributed to his career rise. In fact, years later it was Senator Humphrey who encouraged President Kennedy to name Miles as U.S. Attorney for Minnesota. In 1966, the efforts of then Vice-President Humphrey helped to get Miles nominated as a U.S. District Judge by President Johnson.

While Lord and Humphrey worked hard to support each other's careers, the two families also became genuinely close. The Humphrey and Lord families spent many holidays together, the two couples and their children all becoming close friends. Looking back on those years, Miles recalls his friend Hubert as a man who accepted "odd ducks as friends, and I was certainly one of them."

The closeness of their friendship is



illustrated by how comfortable Miles was at playing practical jokes on Humphrey,



***MARK D. STREED** is a partner at Meshbesh & Spence, Ltd. He currently serves on the MNAJ Board of Governors, Executive Committee, Legislative Committee and is Chair of the Publications Committee. Mr. Streed is certified as a Civil Trial Specialist by both the MSBA Civil Trial Certification Council and the NBT.*

often at the expense of the latter's ego. Between 1954 and 1960, Miles served as Minnesota's Attorney General while Humphrey was serving his first term as a United States Senator. Miles recalls one summer afternoon where he and Maxine were on a boat on the St. Croix River. Also on the boat were Hubert and Muriel Humphrey. Before too long, the two men began playfully debating which of the two was the most popular political figure in Minnesota. Unbeknownst to Humphrey, Miles had plastered a large sign on the boat that read: "Miles Lord on board - Say Hello to Miles!" As the two men continued their good-natured discussion

continued on page 36

along the side of the boat, Humphrey was confronted with passing boaters continually shouting, "Hello Miles!" or "Go Get 'em Miles Lord!," etc. Humphrey could not believe what he was hearing and was actually quite relieved when Miles finally pointed out the sign attached to the side of the boat.

Another example of Lord's ability to get under the skin of his close friend occurred during a Humphrey political campaign. One day the campaigners found a bus full of senior citizens. Miles came onto the bus to meet and greet the crowd and warm them up for Humphrey's arrival. Surprisingly, when Humphrey came onto the bus a few minutes later, even his best campaign rhetoric was met with complete silence. Finally, Humphrey asked one of the senior citizens, "What is going on here? Don't you know who I am?" One of the seniors responded by saying, "You have a hell of a lot of nerve. That young fellow who was just in here said there would be a guy like you coming on this bus impersonating Hubert Humphrey. He said

you were a good impersonator but to give you the cold shoulder. The young man's name was Miles Lord. He was a real nice young fellow."

When President Lyndon Johnson appointed Miles to the Federal bench, among the many supportive comments Humphrey shared with the media were these prescient words: **"He will be a people's judge."** Hubert could not have described his friend's work as a Federal Judge any better.

THE PEOPLE'S JUDGE

"Rehabilitation involves an admission of guilt. A certain contrition, an acknowledgement of a wrongdoing and a resolution to take a new course toward a better life. I find none of this in the instance of you and your corporation. Confession is good for the soul, gentle-men. Face up to your misdeeds. Acknowledge the personal responsibility you have for those who work under you. Rectify this evil situation.

Warn the potential future victims and recompense those who have already been harmed."

"The policy of delay and obfuscation practiced by your lawyers has made it possible for you and your insurance company to delay the payment of these claims for such a long period of time that the interest you earn in the interim covers the costs of these cases...Another of your callous tactics is to force women of little means to withstand the onslaught of your well-financed team of attorneys...**your worst tactics were reserved for the meek and the poor.**" - Id.

Judge Miles Lord served as a Federal District Court Judge for the District of Minnesota from 1966 to 1985. For 20 years he was a warrior for justice, a people's judge to the core. At his home recently, Lord explained some of what guided him during his years on the bench, "I had a voice. What happens to those who don't have a voice? Their fondest dreams can be crushed by those who are not held accountable for their actions." Over the years Lord used his voice and power to balance the litigation playing field as best he could.

In the view of his daughter, local attorney Priscilla Lord Faris, her father's work as a judge and as a lawyer was such that he would "take a stand not to be popular but because it was right. In those situations, where he sees issues that violate his innate sense of right and wrong, he had the courage to step up and say what he felt needed to be said."

As a judge, Miles Lord was often guided by his instincts and this included his hiring of law clerks. Judging by the roll call of his former clerks, Judge Lord's excellent instincts guided him well. Among those former clerks are Mike Steenson, Lew Remele, Peter Thompson, Roberta

Need help with a case?

**These Member Only
Services can help!**

Mock Trials

test your case out on a jury

Focus Groups

get answers on problem areas of your case

Case Evaluations

get insight from a panel of experts on your case

Call Minnesota Association for Justice for the help you need.

612-375-1707 ■ 800-898-6852 ■ rpeyton@mnaj.org

continued on next page

Miles Lord - Cont.

Walburn, and Keith Halleland, all of whom have gone on to become very successful lawyers in the Twin Cities legal community.

Roberta Walburn was Judge Lord's clerk during the Dalkon Shield litigation. She feels her 18 months with the judge were "the equivalent of ten years of legal experience." Walburn recalls:

"Miles believes to the very essence of his core in the concept of 'Justice'. This is what drove him and it was an amazing experience for me to work with someone who was so passionate about justice and to see how that passion can become a reality in the courtroom."

Walburn goes on to explain:

"I had been a newspaper reporter for 9 years before going to work as Judge Lord's clerk. I was not some naive kid. I thought I'd seen a lot, but I really had my eyes opened up as to what can be accomplished in a courtroom and how justice can be delivered."

Hamline Law School Professor Peter Thompson clerked for Judge Lord in the early 1970's. He likened his experience of working with Judge Lord as "like taking a running start and jumping on a roller coaster." Thompson reflects, "The Judge had deep respect for the law, but where the law was unclear he could be quite creative in fashioning an answer that resonated with his strong sense of justice and practicality."

Torts expert and William Mitchell Professor Michael Steenson clerked for Judge Lord in the mid 1970's. Like Walburn, Steenson feels the year he spent clerking for Judge Lord was "the equivalent of 5+ years of legal experience."

During his two decades on the federal bench, Judge Lord presided over early environmental law cases (Reserve Mining

and restrictions on motor usage in the BWCA), a complex antibiotic antitrust litigation, and even a landmark, pre-Title IX case in which some high school girls challenged the Minnesota State High School League (MSHSL). The MSHSL had denied the girls' requests to compete on the boys' swim team since their high school did not have a girls' swim team. Upon hearing testimony from the MSHSL experts as to how girls' bodies "were not suited" for such strenuous competition, Judge Lord could not believe what he was hearing. He proceeded to inject himself into the cross-examination of the MSHSL experts. Judge Lord ruled in favor of the girl athletes and granted them the right to participate and compete on their high school's boys' team.

Ironically, over 35 years later, Lord was able to enjoy the sight of two of his

granddaughters competing freely as high school hockey players with the complete sanctioned support of the MSHSL.

During his 20 years on the bench, Judge Lord's most lasting legacy will be his efforts while presiding over two remarkable cases – Reserve Mining and the Dalkon Shield/IUD litigation.

RESERVE MINING

In the 1970's newspaper headlines regularly reported developments in the controversial case, The United States of America v. Reserve Mining, Inc. Reserve Mining Company, based in Silver Bay, Minnesota, was one of Minnesota's largest employers. Jointly owned by ArmCo and

continued on next page

CAPITAL PLANNING, INC.

"Providing Quality Service for Over 27 Years"

Structured Settlement Consultants Specializing in:

- ◆ **Settlement Consultation and Planning**
- ◆ **Structured Settlement Payments**
- ◆ **Direct Settlement Conference Support**
- ◆ **Settlement Valuations**

Jerry C. Lothrop, CLU, CSSC
Christine D. Phillips, CSSC, MSCC
Kimberlee S. Cooke
AJ Faleck

2051 Killebrew Drive, Suite #640
Bloomington, Minnesota 55425

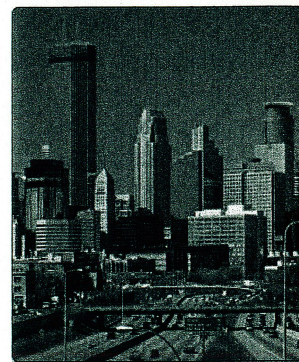
www.capitalplanninginc.com

Phone: (952) 541-9464

Fax: (952) 541-9490

Toll-free: (800) 328-3862

Member of the National Structured Settlement Trade Association



Miles Lord - Cont.

Republic Steel Companies, Reserve Mining was a political powerhouse partly due to the fact that it directly paid the bills for thousands of Iron Range families whose primary breadwinners worked there. Unfortunately, Reserve Mining, Inc., was also a long-time massive polluter of Lake Superior, dumping millions of tons of taconite tailings directly into the lake.

Reserve Mining and its experts claimed all of the tailings settled to the bottom of the Great Lake, causing no harm to the environment. However, environmental scientists presented studies that revealed the dumped taconite tailings actually were contaminating the Lake Superior basin (much of the region's drinking water came directly from the lake). Later studies showed the processed taconite tailings contained cancer-producing asbestos fibers. The presence of asbestos in the tailings increased the environmental concerns to include not only the taconite tailings themselves but also the air polluted by the Reserve Mining's smoke stacks. In fact, one of the most serious health concerns was the increased risks to area residents of developing an extremely deadly form of cancer – mesothelioma – which has been directly linked to exposure to asbestos fibers.

Ultimately, the EPA gave Reserve Mining

90 days to comply with the Water Pollution Control Act. When Reserve did not comply, the United States filed suit and the case was assigned to Judge Lord.

Judge Lord immediately took control of the case. He ordered Reserve's owners, ArmCo and Republic, be specifically named as co-defendants, something they fought strenuously. The Judge became actively involved in discovery to help move the litigation along and minimize Reserve's numerous delay tactics. When he ordered certain critical documents, which he deemed essential to the government's case, be produced by Reserve Mining, he threatened to fine Reserve \$60,000 a day (the estimated amount of Reserve's daily profits) if they did not produce the documents.

The case went to trial. In April, 1974, after 134 days of trial and no end in sight, Judge Lord's concerns about the ongoing health hazards, created by years of Reserve's dumping an estimated 67,000 tons of taconite tailings every day, compelled him to take drastic action.

In a move that ultimately caused him to be removed from the case by the Eighth Circuit Court of Appeals, Judge Lord issued an injunction, completely shutting down Reserve Mining's operations. The injunction, while putting a stop to the

ongoing pollution, essentially put over 3,000 workers out on the street without a job. In his Order, Lord wrote:

"In essence, defendants are using the workforce at Reserve's plants as hostages...In order to free the work force [to continue to work for Reserve], the Court must permit the continued exposure of known human carcinogens to the citizens of Duluth and other North Shore communities. The Court will have no part of this economic blackmail. The defendants are daily endangering the lives of thousands of people...This court cannot honor profit over human life and, therefore, has no other choice but to abate the discharge."

Ultimately, the Eighth Circuit removed Judge Lord from the Reserve case, concluding that he "seems to have shed the robe of a judge and assumed the mantle of an advocate."

Thirty-five years later, Lord still feels strongly about the deadly health hazards created by the dumping of taconite tailings. He passionately believes that there will be a steady increase of diagnosed cases of mesothelioma, particularly with Northeastern Minnesota citizens, directly

continued on next page

Reward yourself.

The Minnesota Association for Justice Platinum Plus® MasterCard® Credit Card With WorldPoints® Rewards.

Earn rewards with every purchase and enjoy the world-class service our members deserve. **The Platinum Plus® MasterCard® credit card with WorldPoints® rewards** lets you earn points you can redeem for cash, travel, merchandise and once-in-a-lifetime experiences. Best of all, there's No Annual Fee.

* For information about the rates, fees, other costs, and benefits associated with this credit card program, please call the phone number listed above.

This credit card program is issued and administered by FIA Card Services, N.A. The WorldPoints program is managed in part by independent third parties, including a travel agency registered to do business in California (Reg. No. 2036509-50); Ohio (Reg. No. 87890286); Washington (6011237430); and other states, as required. WorldPoints is a registered trademark of FIA Card Services, N.A. MasterCard is a registered trademark of MasterCard International Incorporated, and is used by the issuer pursuant to license. Bank of America and the Bank of America logo are registered trademarks of Bank of America Corporation.

©2009 Bank of America Corporation AR62192-101508

MISC-09-07-034.WP.1

Request yours today.

Call Toll-free

1.866.438.6262

Use Priority Code FAA84F

Bank of America



due to their exposure to the asbestos fibers in those dumped taconite tailings. To this day he makes no apologies for the aggressive way he handled the Reserve Mining case. He felt he needed to say from the bench what his gut instincts told him was morally right, i.e. "Enough of this. Stop it. People's lives are at stake. You can't do this for profit any more."

A. H. ROBINS AND THE DALKON SHIELD LITIGATION

"If a judge were to wait until all the cases were over before he spoke out on the evils he sees inherent in the system and in your trial tactics, then no one would ever speak out. There is a time when measures must be taken, when steps must be taken to see that fair play and ethical standards apply to the disposition of all the cases...Were these women to be gathered together with their injuries in one location, this matter would be denominated a disaster of the highest magnitude. Here we have thousands of victims, present and potential, whose injuries arise from the same series of operative facts. You three gentlemen have made no effort whatsoever to locate them and bring them together to seek a common solution to their plight...You've got lives out there; people, women, wives, moms - and some who will never be moms. Can't you move in on this thing now? You are the people with the power to recall. You are the corporate conscience. Please, in the name of humanity, lift your eyes above the bottom line...You can't get hung up in that corporate thing; you can't worry about whether or not the stocks were going to drop."

- Continuing excerpt of Judge Lord's courtroom speech to the three top executives of A. H. Robins, Inc.

Many books and articles have been written about the Dalkon Shield, an intra-uterine device (IUD) owned and marketed by the A. H. Robins corporation in the late 1960's and early 1970's. The device was developed at a time when studies had revealed serious side effects associated with oral contraceptives. The A. H. Robins company recognized the market was ripe for an alternative form of birth control. When they were approached by the doctors who had developed the Dalkon Shield IUD, the A. H. Robins company was quick to purchase it. It then began a massive and aggressive marketing campaign.

Over the course of three years the nickel-sized Dalkon Shield IUD became an incredible source of revenues and profits for the Virginia-based corporation.

Unfortunately, the Dalkon Shield was a fundamentally flawed and dangerous product. It was rushed to market and not properly tested. Then, when certain test results revealed increased pregnancy rates and increased rates of serious infections and permanent gynecological damage to Dalkon Shield wearers, those studies were hidden and not reported.

By 1983, litigation surrounding the Dalkon Shield IUD had been going on for approximately ten years. The multi-district litigation (MDL) judge in Kansas had presided over discovery for several of those years. That year approximately 40 Dalkon Shield cases were assigned to Judge Miles Lord's docket. Perhaps the most significant move Judge Lord made was his decision to reopen MDL discovery. This allowed an aggressive team of lawyers, led by Mike Ciresi and Dale Larson, to begin pushing A. H. Robins to produce additional, previously hidden and undisclosed, documents.

Having the benefit of the record, developed over 10 years of

litigation, which showed the crystal clear corporate conduct of A. H. Robins and its lawyers in stonewalling and delaying cases, Judge Lord took an aggressively active role in overseeing the re-opened discovery. Simply put, Judge Lord perceived the tactics of the A. H. Robins company as an intolerable abuse of the legal system at the expense of innocent, damaged victims.

Roberta Walburn was Judge Lord's clerk during this period of time and she recalls: "When the Judge took an active role in the discovery process, he began seeing, firsthand, the tactics used by the A. H. Robins lawyers." In the end, those tactics represented the very "bully and rooster" traits that violated the very core of Miles Lord's sense of decency and justice. Recognizing their tactics for what they were, Judge Lord pushed them to disclose more and more documents and come clean about their corporate misdeeds. When A. H. Robins tried to push back the Judge would not back off. He ordered the highest

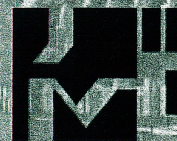
continued on next page

28 Years Experience in Forensic REPORTS & EXPERT TESTIMONY A Century of Family Service to Building Design & Construction

Fellow:
National Academy
of Forensic Engineers
&
American Society
of Civil Engineers

Certified Forensic
Engineer by the
National Council of
Engineering Specialty
Boards

- Trip, Slip & Fall
- Means of Egress
- Life Safety
- Soils & Foundations
- Stairways, Ramps & Balconies
- Construction Failures & Mishaps
- Residential Investigations



JAMES R. McDONAGH, P.E.
Consulting Forensic Engineer
501 Blair House
165 Western Av North
St. Paul, MN 55102

651.222.8139 <> 651.353.8139 cell
eMail: jamesr@mcdonagh.com

** Cathedral of St. Mary: Built by my grandfather, c 1903*