

**MINNESOTA SENATE**  
**SUBCOMMITTEE ON ETHICAL CONDUCT**

**CONDUCT  
OF  
SENATOR DEAN E. JOHNSON**

**HEARING ON COMPLAINT  
MARCH 24, 2006**

**Transcribed September 13, 2006**



1 Proceedings held on the 24<sup>th</sup> day of March, 2006, before the Minnesota Senate Subcommittee on  
2 Ethical Conduct, Room 318, State Capitol.

3  
4 Subcommittee Members:

5  
6 Senator James P. Metzen, Chair

7 Senator Dennis R. Frederickson, Vice Chair

8 Senator Wesley Skoglund

9 Senator Thomas M. Neuville

10  
11 Subcommittee Staff:

12  
13 Peter S. Wattson, Senate Counsel

14 Faye E. Sparks, Committee Administrator

15 Brian Martinson, Legislative Assistant

16  
17 **A P P E A R A N C E S**

18  
19 Senator Michael McGinn

20 Senator Claire Robling

21 Ellen Sampson



1 STATE OF MINNESOTA )

2 ) ss.

3 COUNTY OF RAMSEY )

4  
5  
6  
7 **CERTIFICATE**

8  
9 I, Brian Martinson, an employee of the Minnesota Senate, do hereby certify that the  
10 foregoing is a true and accurate transcript of the proceedings as taken by me on the dates and  
11 times stated, in the matter of the conduct of Senator Dean E. Johnson.

12 

13 Brian Martinson

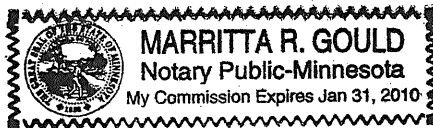
14  
15 Dated: 9/29/06, 2006.

16  
17 Subscribed and sworn to before me this 29th

18 day of September, 2006.

19 Marritta R. Gould

20 Notary Public



1 Subcommittee discussions regarding the conduct of Senator Dean Johnson.

2  
3 SENATOR METZEN: The background here is that the complaint was filed March 22,  
4 2006, and Senator Moua is in the hospital, so the Subcommittee on Committees appointed  
5 Senator Skoglund to be the second member of this side of the table. The Senate counsel  
6 consulted with both parties about the proceedings, and they consent to proceed at this time, and  
7 their right to appear with counsel, and their right to present witnesses if they so desire. They  
8 have this right to question witnesses from the other side. So this is all agreed upon beforehand.  
9 What we're gonna do today is a presentation by the complainants, Senator McGinn, Senator  
10 Robling, questions from the subcommittee, cross-examination by Senator Johnson or his counsel,  
11 and that's how we're gonna proceed. I think what we're gonna do is have all the witnesses at  
12 one time stand and be sworn in. So whoever is going to talk, to testify today, stand up.

13 [UNKNOWN]: Senator Metzen, would you like me to be sworn in as well?

14 SENATOR METZEN: Yes, I believe so — yeah. Raise your right hand. Do you  
15 solemnly swear that the evidence you shall give, relative to the cause now under consideration,  
16 shall be the truth, the whole truth and nothing but the truth, so help you God?

17 WITNESSES: I do.

18 SENATOR METZEN: Senator McGinn, and Senator Robling, you may proceed.

19 SENATOR MCGINN: Thank You. Mr. Chair, Senator Robling and I would like to begin  
20 with some opening statements, and then what we'll do is we're going to do is present our case by  
21 going through each of the items listed in the complaint, and then we'll offer supporting  
22 documentation for each of those points. In some cases, there may be one document that  
23 addresses more than one point in the complaint, and we'll try and point that out as we go along.  
24 With that, I'll let Senator Robling make her opening statement.

25 SENATOR METZEN: Senator Robling.

1 SENATOR ROBLING: Thank you Mr. Chair and members of the committee, I am here  
2 this morning to explain the ethics complaint filed Wednesday against Senator Dean Johnson by  
3 five of my colleagues and myself. First, however, I want to thank you for your prompt attention  
4 to this matter. I don't believe any of us find this a pleasant set of circumstances. I know I  
5 receive no joy in proceeding with this complaint, but I believe it is something that must be  
6 addressed by the Senate and this is the proper venue to do it. Over the past years, our chamber of  
7 the Legislature has put into place a process by which other members of the Senate can bring  
8 complaints when they believe a colleague has violated a standard set in Senate Permanent Rule  
9 56.3. This rule defines improper conduct as that which violates accepted norms of Senate  
10 behavior, that betrays the public trust, or that tends to bring the Senate into dishonor or disrepute.  
11 It appears that Senator Johnson has violated the standards of the Senate, and we are using this  
12 venue, the Ethics Committee, in an effort to hold him accountable for his actions. It is our belief  
13 that Senator Johnson knowingly betrayed the public trust and thereby dishonored the reputation  
14 of the Senate when he spoke to a group of pastors and fabricated a story involving the Minnesota  
15 Supreme Court justices, apparently to influence his audience, and change their reaction to  
16 legislation which is before the Senate. We do not believe this is acceptable behavior for a  
17 senator, and we feel we must stand up and say so. The public expects us to be truthful with them  
18 and with one another. Indeed, when one of the members of our Senate does not tell the truth in  
19 order to achieve a desired end, it feeds the public perception that all politicians are dishonest.  
20 This hurts everyone in the body. We are all too often painted with the same brush, and it hurts  
21 all of us. And an even more serious consequence is that it hurts the people's trust in the  
22 democratic process. That is why we come to this committee today, seeking a full understanding  
23 of the events that transpired. And if those events occurred, as we now believe, Senator Johnson  
24 should be held accountable for his actions, and there should be consequences, so we can attempt  
25 to restore the public's trust in the Senate, and in this case, also the Minnesota Supreme Court's,

1 whose members' integrity has also come into question because of comments made by Senator  
2 Johnson. We seek a fair and expedient review of this complaint. We also seek the truth and  
3 redress for the harm we feel has been done to the public's trust and the reputation of the Senate.  
4 Thank you.

5 SENATOR METZEN: Senator McGinn.

6 SENATOR MCGINN: Mr. Chair, members of the committee, it is a very difficult thing  
7 that we do here today. I absolutely agree with Senator Robling. However, it is the right thing to  
8 do. If you know that something is right, and you don't do it, that's the ultimate cowardice. So, I  
9 think we have a duty to ourselves as well as to the Senate, to bring this matter before this  
10 committee. There is no other forum at this point that can adequately address this issue and  
11 somehow restore public trust. To just leave it fester would be a far worse thing to do.  
12 We're here today to bring to account the conduct of a member and a leader of the Minnesota  
13 State Senate. Unfortunately, that conduct, in our opinion, has dishonored and impugned the  
14 integrity of the Senate. In addition, members of the public and the judicial branch have been  
15 harmed, and we must find a way to somehow remedy the harm that those people and that entity  
16 has suffered. As I said, this is an especially difficult task for me as Senator Dean Johnson has  
17 been a friend, a colleague and often a mentor. I certainly view him as a leader in the numerous  
18 capacities in which he serves the Senate, his congregation, and the Minnesota National Guard.  
19 Perhaps that's why this betrayal of trust seems even more egregious. The most important task  
20 before you today, however, is to review the facts of this complaint in which we allege that  
21 Senator Johnson intentionally used false and deceptive statements to influence support or not  
22 support of legislation currently under consideration or pending in the Minnesota State Senate. In  
23 furtherance of this deception, he brought into question the impartiality and the integrity of the  
24 Minnesota Supreme Court by underscoring his familiarity and frequent discourse with members  
25 of the court. He boasted this position by stating that he has assurances from them that they



1 would not take action on the state statute in question. In conclusion, we ask that you fairly and  
2 impartially consider the evidence being presented, that you will impose appropriate discipline to  
3 rectify the abuse of power and position and to restore the dignity and public trust of the  
4 Minnesota State Senate.

5 SENATOR METZEN: Any questions at this time?

6 ELLEN SAMPSON: Mr. Chair, Senator Metzen, I have some questions for each of the  
7 senators. Would you like me to ask them now or after they are done with their presentations?  
8 Are they going to present their evidence?

9 SENATOR METZEN: Are you through at this point?

10 SENATOR MCGINN: Mr. Chair and counsel, what we'd like to do after giving our  
11 opening statements is go through each of the items in the complaint.

12 SENATOR METZEN: Well then, I think it's the appropriate time to continue on.

13 SENATOR MCGINN: Item number one in the complaint, Senator Dean E. Johnson  
14 addressed a gathering of clergy from New London and Spicer Minnesota in the City of New  
15 London, Minnesota on January 19 of 2006. At this meeting, Senator Johnson spoke to the issue  
16 of a proposed amendment to the Minnesota Constitution defining marriage as a union between  
17 one man and one woman. This Constitutional Amendment has been and is an issue that will be  
18 considered by the Minnesota Senate in the 2006 Legislative Session. As part of the discussion at  
19 this meeting, Senator Johnson was heard to state that he has had conversations with three justices  
20 of the Minnesota Supreme Court, naming one of them specifically. Senator Johnson, without  
21 qualification of any manner, asserted that those justices assured him that they would not find the  
22 current Minnesota Statute that defines marriage to be unconstitutional. The supporting evidence  
23 for this statement is found in a transcript of that tape dated January 19 with the title of "New  
24 London-Spicer Ministerial Association Meeting with Senator Dean Johnson." We have a clip of  
25 that if the committee would like to hear the actual tape. You will find on page 5 of the transcript,

1 it's actually on the bottom of page 4 and continuing onto page 5, in the bolded sections, are the  
2 actual statements that pertain to the specific issue.

3 SENATOR METZEN: I think we can all read what's on the...

4 SENATOR MCGINN: Okay.

5 ELLEN SAMPSON: Mr. Chair, if I could speak now, I would assert that the document  
6 that's before us, the complaint, speaks for itself, that there's no reason to read every item in the  
7 complaint to the record yet again.

8 SENATOR METZEN: I agree with that.

9 SENATOR MCGINN: OK

10 SENATOR METZEN: It is in writing and —

11 SENATOR MCGINN: With that Mr. Chair I'd like to —

12 SENATOR METZEN: Before that. Excuse me, Mr. — Senator Neuville.

13 SENATOR NEUVILLE: Mr. Chair, normally, at least in the last one or two that we've  
14 had, maybe this is a procedural matter, we've had a determination of probable cause and that's  
15 supposed to happen in private, in closed session. Just as a technical matter, has probable cause  
16 been admitted, or has there just been a waiver of the right to have a private hearing?

17 ELLEN SAMPSON: Mr. Chair, it's my understanding from my discussions with Peter  
18 Wattson yesterday that unless three members of the subcommittee move to close this proceeding,  
19 the proceeding is open, and as I understand by my review of the rules, and Peter please correct  
20 me, once the public testimony is finished, then there is a private meeting to determine probable  
21 cause, but I could be wrong about that.

22 SENATOR METZEN: Mr. Wattson would you —

23 PETER WATTSON: Mr. Chairman, the usual case in these complaints is that they're  
24 first announced to the media and then sometime later they're filed with the committee. Now,  
25 there have been a few cases where the complaint was made privately, and the committee

1 considered the complaint before there was any public notice about it, and determined probable  
2 cause in closed session. In this case, there has not been a move to close the session in view of  
3 the fact that it's been a rather open complaint. But at any time, the senators could decide before  
4 they have found probable cause, to go into executive session session. Excuse me, on the issue  
5 about going into executive session after finding probable cause, we really haven't done that. The  
6 rule doesn't provide for that. Once there is a finding of probable cause, the further proceedings  
7 on the complaint are open.

8 ELLEN SAMPSON: It's my assertion whatever — however you want to treat this, that  
9 Senator Johnson is not conceding probable cause. He absolutely asserts that there is no probable  
10 cause for this disciplinary proceeding, and he would be more than happy to continue this  
11 discussion in private, if that's the will of the senators.

12 SENATOR NEUVILLE: Well, Mr. Chair...

13 SENATOR METZEN: Senator Neuville.

14 SENTAOR NEUVILLE: If there's no admission of probable cause yet, it might be  
15 premature to start getting in to all the evidence that the — that the complainants are going to be  
16 presenting. It might be most appropriate first to decide if there's probable cause. Would you like  
17 a motion —

18 SENATOR METZEN: Senator Frederick—

19 SENATOR NEUVILLE: I'll move that we go into executive session solely on the issue  
20 of probable cause. Unless you want to concede probable cause; then we can go ahead with the  
21 presentation of evidence.

22 ELLEN SAMPSON: Absolutely not. Senator Johnson will not concede probable cause.

23 SENATOR NEUVILLE: I think that should be done first, Mr. Chair, before we move  
24 further.

25 SENATOR METZEN: That's a — senator? That's a motion?

1 SENATOR NEUVILLE: Yes, sir.

2 SENATOR METZEN: Discussion on that, Senator Skoglund?

3 SENATOR SKOGLUND: On this motion, when we're in executive session, is it the  
4 majority vote of the committee, then, to determine probable cause?

5 [inaudible]

6 SENATOR METZEN: Three votes.

7 SENATOR METZEN: Further discussion on the Neuville motion. All in favor, signify  
8 by saying aye.

9 SUBCOMMITTEE MEMBERS: Aye.

10 SENATOR METZEN: Opposed. The motion prevails. We'll take about a five-minute  
11 break to clear the room and the sergeants will —

12 [RECESS]

13 SENATOR METZEN: McGinn and Robling, McGinn and Robling, If you want to  
14 continue on?

15 SENATOR MCGINN: I'm not sure what we do with the probable cause phase of this, so  
16 I'm open to the committee's suggestion.

17 SENATOR METZEN: Counselor, what do you think that — should he continue on with  
18 the reasons why and — Senators McGinn and Robling?

19 ELLEN SAMPSON: Senator and members of the committee, I think everyone  
20 understands what's in the complaint. Everyone's read the paper and understands the interviews.  
21 I think the question is, would the committee in executive session like to hear from Senator  
22 Johnson, or we can skip that and I can talk to you a little bit about my analysis of previous  
23 charges filed by this committee and what kind of discipline has been meted out in the past and  
24 what the issue here appears to be and how at least in my mind it differs from anything else this  
25 committee has done and why it doesn't give rise to a probable cause that the Senate has been

1 dishonored. I'm concerned about the judiciary piece. But I would tell you that discussing the  
2 judiciary is not within the purview of this Ethics Committee. If the judiciary has or has not done  
3 something, that is not for the Senate to address. So, you know, Senator Johnson will tell you that  
4 he made an inaccurate statement. There are reasons why that statement was made. He will tell  
5 you that. He will also tell you that he had conversations with more than one Supreme Court  
6 justice. We have no intention, unless forced to do so by subpoena, of naming those justices. If  
7 the committee tells us to name them, we will name them, and we will call the witnesses who  
8 were in those meetings and heard those conversations. In some of the meetings, there were two  
9 or more people present, and at least one of those people was at one point from the court, and we  
10 don't, not a justice, and we don't want to drag them into it. It is not Senator Johnson's intention,  
11 but he will say to you, he should not have said what he said on the tape. He can explain to you  
12 how in the emotion of the moment, the wish became the father of the thought. This is speech.  
13 Everything else that this committee has dealt with has been action. You dealt with a person who  
14 misused Senate employees and Senate equipment. You have dealt with cases of the telephone  
15 abuse. You have dealt with issues of behavior outside of the Senate, dealing with everything  
16 from drunken driving to domestic abuse. You've dealt with conflicts of interest, in one case  
17 involving a potential conflict of interest between a senator and his spouse. You've dealt with  
18 situations where senators have been accused of inappropriate gain from business transactions  
19 outside their role in the Senate. The vast majority of these complaints have been dropped just  
20 before the hearing began. In the ones that went forward, apologies have been accepted. Senator  
21 Johnson has already apologized. In a couple of cases where there were money transactions  
22 involved, restitution has been made. I believe in one case there was a reprimand. I went through  
23 all of these, all of these last night to try to figure out what was going on here. There's something  
24 different about every one of those activities. Those all involved action. This involves speech.  
25 It's a really tricky thing for the Senate of the State of Minnesota to start disciplining a person for

1 speech. I hardly think there is a senator who has never made an inaccurate remark. And that is  
2 one of the questions that I will ask the senators here making this charge. Has anyone ever said  
3 anything wrong in a piece of campaign literature. Ever said anything wrong in the heat of a  
4 debate. Ever said anything wrong when pressed by constituents. Ever in the heat of emotion on  
5 the floor. It was done. It was wrong. There's no ifs, ands, or buts about it. And, unfortunately  
6 for Senator Johnson, someone was taping it unknowingly. I don't know how many of us could  
7 stand up to the scrutiny of a tape recorder in every meeting we had with constituents, especially  
8 on hot-and-heavy issues like gay marriage. And I also wonder, if it wasn't gay marriage, if this  
9 whole thing would be here at all. I'm curious to know what organizations outside this committee  
10 have been egging this complaint on to try to get what they want behind the door of the legislative  
11 process. Be that as it may, it's speech. I think this committee needs to be really careful before  
12 you start disciplining your members for speech, no matter how inaccurate or how intemperate.  
13 This is state action falling under the First Amendment. Freedom of speech is a really important  
14 bedrock concept in the United States of America. At least, I always thought it was. Senator  
15 Johnson didn't yell fire in a crowded theater. He didn't make any comments that were, terrorist.  
16 He didn't make any comments that were treasonous. He, based on some discussions that he had,  
17 he developed an opinion as to how he thought the court would rule. If he had said to these  
18 ministers, who were pushing and pushing and pushing, "in my opinion, the court would not have  
19 done this," you wouldn't be here. But the way he phrased it was inaccurate. He's not gonna run  
20 away from that. He will talk to you about that if you wish. It was inaccurate. It was a statement.  
21 It was speech. We have free speech. And I would like to remind, to quote for you what former  
22 Gov. Arne Carlson had to say about this case. He said, quote, he believed the ethics complaint to  
23 be "personal, political and vindictive. If every politician who exaggerates is put on trial, we will  
24 have very, very few who won't be in a courtroom on either side of the aisle."

1 And if Gov. Carlson is not sufficiently persuasive, last night...now I will confess to you all that I  
2 am Jewish, but my husband is Episcopalian, and I've had the privilege of spending a fair amount  
3 of time with him in church. And one of my favorite passages comes from John, and it is the  
4 story of the prostitute. The men bring the prostitute to Jesus, and they say that Abraham, from  
5 my part of the Bible, says that the proper punishment for this kind of bad behavior, adultery is  
6 stoning, and Jesus doesn't pay any attention and he wrote on the ground. And then they kind of  
7 try to rev him up again, and then he looks at them and says, "Let he who is without sin cast the  
8 first stone." And all the rest of the people wander away, and the two people left standing are  
9 Jesus and the accused. And I would say to you that to punish someone for an inaccurate  
10 statement is way beyond the senate's duty and this committee's obligation. I think you should  
11 find there's no probable cause and dismiss this complaint. Thank you.

12 SENATOR METZEN: Senator — Oh, identify yourself for the record.

13 ELLEN SAMPSON: Oh, I'm so sorry.

14 SENATOR METZEN: I missed it.

15 ELLEN SAMPSON: This is probably the last place in the Capitol where I appear that  
16 people still know who I am. My name is Ellen Sampson and I am an attorney with the law firm  
17 of Leonard Street and Deinert. In the interest of full disclosure, I was at one time a committee  
18 administrator for the House of Representatives and, from the mid 1980's, and I also worked in  
19 the Executive Branch. I was the Acting Director of the Ethical Practice Board. And for about 10  
20 years, I spent a fair amount of time lobbying for clients, including the Science Museum of  
21 Minnesota and many others, so I'm familiar with the rules of the process and the procedure. I've  
22 known Senator Johnson for a long time. He's an honorable man. He misspoke. And I'm proud  
23 to be his lawyer.

24 SENATOR METZEN: Senator Robling you may respond.

1       SENATOR ROBLING: Quite frankly, I, this isn't something that occurred just between  
2 private parties because Senator Johnson was at the meeting as a senator, and so it becomes a  
3 public action. And he was representing the position that he holds, and he actually was working  
4 to persuade people to stop action, political action, by something that he was, appears to me, he  
5 was telling them intentionally was untrue. And this is not personal. I have nothing against  
6 Senator Johnson. It is not political, or — or vindictive. That isn't who we are and what we're  
7 here for. We're here because we believe that the reputation of the Senate is — has been  
8 tarnished, and — and we need to have a way to redress that. And it's so hard sometimes for us  
9 who are in political office that we — we are all viewed to be as the ones who stand out in the  
10 press are portrayed to be and, unfortunately, that portrayal has not been good lately because of  
11 Senator Johnson's actions. And it reflects badly on all of us, and so its — I kind of take it  
12 personally, that it damages all of our reputations. But more importantly, it damages the trust in  
13 the institution, and it discourages people's active involvement, and I guess that that is why I felt  
14 it was appropriate and this was the appropriate venue to come with this complaint.

15       SENATOR METZEN: Senator McGinn.

16       SENATOR MCGINN: Mr. Chair and members of the committee, Claire makes a good  
17 point in terms of Senator Johnson's status not only as a leader of the Senate, but a member of the  
18 Senate, and acting in that office. At the time that he was making these statements, he wasn't a  
19 politician running for office, he wasn't advocating for his own candidacy, that type of thing, and  
20 you know, it's one thing to get caught up with the passion of the moment, to make a mistake, to  
21 make a misstatement, however in this case something that was not necessarily true was  
22 underscored with something that was blatantly false, and that was a conversation. He used the  
23 members of the Supreme Court who he allegedly spoke with to underpin and enhance the  
24 statement that this would never be considered by the court. I think that's a central part of that  
25 statement. I think that makes it even more egregious. If he would have approached that



1 assertion as an opinion, it would be far different. But he couched it as a fact and then used his  
2 discussions with the...his alleged discussions with members of the Supreme Court to validate  
3 that. So I think that goes beyond just the misstatement. It goes beyond the free-speech  
4 argument. I think that it was an intentional deception, and I think that far from bringing honor to  
5 the Senate, it does dishonor us. In terms of the precedents that we've had here in this committee,  
6 I'm certainly not familiar with all of them — but words have consequences, they have meaning,  
7 and they can do harm. And that's — everything — you can't just blurt out anything and have it  
8 covered under free speech. The fire argument is a quite often cited one, but we also have other  
9 laws that prohibit aspects of speech. And I certainly don't believe that this is under that  
10 protected area. If we do nothing, if we say that there is no probable cause here and we announce  
11 that to the public, I think we've compounded the problem. My feeling on it is let's go through the  
12 evidence, let's find probable cause, let's go through the evidence and let's put this issue to rest  
13 once and for all. If you do not find probable cause, if you do not allow this proceeding to go  
14 further, I think that there will be a cloud hanging over the Senate, Senator Johnson and it will just  
15 fester for, for — whatever. So I would just as soon have this over and done with today.

16 SENATOR METZEN: Just an observational point on the complaint. We've heard  
17 testimony from Ms. Sampson that on issues 3, 4 and 5 that there was discussion with the judges.  
18 Now, I suspect that we're all honorable people and, Mr. Johnson, I'm making a judgment here  
19 but he probably didn't lie when he made that statement that they talked to him, and Counselor  
20 Sampson is talking a little bit about not bringing in the court system, and I kind of on the surface  
21 agree with that but that's an opinion I guess I'm making but — So how do we get — they  
22 testified that he did talk to some judges so how do you — and that's a big thrust of your stuff  
23 here. And if we want to get further into that I don't know.

24 SENATOR MCGINN: Mr. Chair, that does — that does certainly bring up other  
25 consequences, but I think it's important to Senator Johnson that everything be on the table, and

1 | you know what if it involves somebody from the courts, then I sincerely believe that should be  
2 | discussed here. And I think it's only fair, for Senator Johnson as long as that question remains,  
3 | will never be cleared of that, that will always be there, that question will continue to haunt us.  
4 | So I think that's an important question to be answered. And I think it would be wrong. Now, as I  
5 | said in our — my opening statement, to know what the right thing is, and not do it, is the purest  
6 | form of cowardice. And I don't think anybody here wants to be considered cowardice — be  
7 | cowards.

8 | SENATOR METZEN: Senator Frederickson.

9 | SENATOR FREDERICKSON: Mr. Chairman, a couple thoughts. First of all, to Ms..  
10 | Sampson and Senator Johnson, in the transcript of this speech being made, Senator Johnson said  
11 | that he had talked with justices and they had indicated to him that they would not take up the  
12 | constitutionality of our DOMA law. Does Senator Johnson acknowledge that he made that  
13 | statement?

14 | ELLEN SAMPSON: Mr. Chair and Senator Frederickson, [inaudible] the statement in  
15 | the transcript you mean?

16 | SENATOR FREDERICKSON: Yes.

17 | ELLEN SAMPSON: Yes. The transcript speaks for itself. He said what's in the  
18 | transcript. And he can easily talk for himself. Would you like to hear him talk about this?

19 | SENATOR FREDERICKSON: Mister —

20 | SENATOR METZEN: I think we'll —

21 | SENATOR FREDERICKSON: I have a different question then. We have media  
22 | statements from Supreme Court justices that they never made statements like this. We have not  
23 | accepted reports in the media before this committee before. Whenever there's been a difference,  
24 | a factual difference, we've asked the individuals to come before this committee so we could sort  
25 | out what was true and what wasn't, and, in fact, I think in the past we have subpoenaed people to

1 | come before this committee. How do we sort that out when we're dealing with the Supreme  
2 | Court. There are a couple of issues in my mind. I don't know. Could we ask them to come  
3 | before the committee, and would they, or could they, through the separation of powers of  
4 | government, the three equal branches of government, say "we're not coming."

5 |       SENATOR METZEN: That's a question of Mr. Wattson. I am not sure — if we ask  
6 | would they show up?

7 |       PETER WATTSON: Mr. Chairman, to put the subpoena power in context, the  
8 | Legislature has had subpoena power forever, but legislative committees have rarely found it  
9 | necessary to issue a subpoena, because in talking with witnesses, they're always able to make  
10 | some kind of arrangement. People find it is in their interest to come and talk to the Legislature.  
11 | This committee, I think, issued one subpoena about 1996 in relation to the Finn case, but the  
12 | matter the person was subpoenaed about was taken care of before the time of his testimony came  
13 | up, so he never appeared. So let's assume that the committee could subpoena a member of the  
14 | Supreme Court. It would take a vote of three of the four members of the subcommittee to issue  
15 | the subpoena. If the justice decided not to appear and to contest it, then we would be in court.  
16 | Then we would ultimately find from the courts whether we have that subpoena power or not.  
17 | But in most cases, we have been able to work things out, so that might be appropriate if the  
18 | subcommittee wanted to hear from members of the court, and we were to inquire from them in a  
19 | more informal way about their availability before going the subpoena route. I leave that up to  
20 | the subcommittee.

21 |       SENATOR METZEN: Senator Skoglund.

22 |       SENATOR SKOGLUND: Mr. Chairman, Mr. Wattson, so if the committee itself, three  
23 | of the four wish to have the right to subpoena, Ms. Sampson would have to request that we  
24 | subpoena somebody as would Senator McGinn and Senator Robling. And if it weren't for three  
25 | votes, then that person, this witness, wouldn't be able to appear.

1 PETER WATTSON: Mr. Chair, Senator Skoglund, that's correct.

2 SENATOR FREDERICKSON: Mr. Chair.

3 SENATOR METZEN: Senator Frederickson.

4 SENATOR FREDERICKSON: As we proceed, I think it's important we have as factual  
5 of information as we can, and if people are alleged to have said things to us, that they appear  
6 before us and we hear it from them and not just from the media.

7 PETER WATTSON: Mr. Chairman, further on Senator Frederickson's point. It does  
8 seem to me rather out of the ordinary for a legislative body to be subpoenaing a member of the  
9 court. I have been in court a number of times in Minnesota on the issue of legislative immunity,  
10 the independence of the Legislature, the inability of the courts to subpoena a member of the  
11 Legislature and force them to testify about something they did, within the sphere of legitimate  
12 legislative activity, so I'd stress the importance of the independence of the three branches. I  
13 would feel a little reluctant to tell the courts that the Legislature is independent but the courts are  
14 not. On the other hand, in those legislative immunity cases, they usually come down to whether  
15 the conduct was within the sphere of legitimate legislative activity, and if we applied the same  
16 standard to the conduct of a member of the court, there might be a question, well, was this in  
17 connection with a case that was pending before the court, or not? Was it in a judicial setting or  
18 not? Maybe in this case, if the conversations were hallway, casual, not conducted with any  
19 particular piece of litigation, maybe that would make compelling a justice's testimony on that  
20 issue appropriate, I don't know. The authority of the Legislature over the conduct of judges  
21 flows from the constitutional provision providing for impeachment of members of the court. But  
22 the sole power of impeachment is vested in the House of Representatives. The Senate is only  
23 there to try an impeachment. I don't think that the impeachment power gives this committee or  
24 any committee of the Senate authority to question the conduct of a member of the court. The  
25 Constitution provides for the Legislature, by law, to provide a procedure for questioning the

1 conduct of a member of the judiciary, and pursuant to that, we've created the Board of Judicial  
2 Standards, which considers complaints against judges. We're not the Board of Professional  
3 Conduct — Judicial Standards, so I don't see how we can do that. So there are a number of  
4 questions, legal questions about whether this subcommittee has the ability. But if the  
5 subcommittee votes to issue a subpoena and move forward, we will get those questions answered  
6 in court.

7 SENATOR METZEN: Senator Frederickson, did you?

8 SENATOR FREDERICKSON: Mr. Chairman, I believe that Ms. Sampson said in her  
9 remarks that there are other individuals that had heard the justices, one or more justices make  
10 similar comments to the comments that Senator Johnson reported. Is that accurate, or am I  
11 taking something out of context?

12 SENATOR METZEN: That — that is what she said, I —

13 SENATOR FREDERICKSON: Mr. Chair, I'd like to hear from her.

14 SENATOR METZEN: I'll — I'm chairing the committee. But I'm just remarking that I  
15 heard it, so you can tell him that, that's what she said — she doesn't —

16 ELLEN SAMPSON: Mr. Chair and Senator Frederickson, what I said and what Senator  
17 Johnson will tell you is there were a few, a couple, several lawyers, I think three actually, in his  
18 office with a member of the Supreme Court, at which other individuals, in addition to Senator  
19 Johnson and the justice, were present. The issue of gay rights was a part of these discussion.  
20 There were also a couple of less-formal interactions, one of which in which there were no  
21 witnesses, and one of which there was another party present, who has a vivid memory of the  
22 discussion. What's important to remember is that none of the judges said "we will uphold  
23 DOMA." None of the judges said that to Senator Johnson. He is not disputing that. That's what  
24 the judges are saying, "we didn't say that." They are right, they did not say that.

1 This arose in the context of discussions between people who knew each other. It's part of the  
2 legislative give-and-take. Justices come to senators' offices to talk about all kinds of matters,  
3 many of them have known each other for years, topics come up. This issue was discussed in  
4 general terms, and Senator Johnson took from these discussions his opinion that the Supreme  
5 Court, at least based on what he had learned from these judges, would not overrule DOMA.  
6 Also based this on independent review of information, from the DOMA law, and of previous  
7 litigation here and in other states. He presented all this information to the ministers of that  
8 meeting, but they did not tell him that they would uphold DOMA. He's not alleging now that  
9 they did. He admits that he said they did, the tape speaks for itself, and he's apologized for that  
10 comment.

11 SENATOR METZEN: Senator Skoglund.

12 SENATOR SKOGLUND: Mr. Chair, Ms. Sampson, one of the things I noticed, and this  
13 is not an official transcript, it's from the Minnesota Family Council, but Senator Johnson, in this  
14 case he's described as Pastor Johnson, and the question calls for a guarantee that the definition  
15 will not change in the next five years. Johnson says, "I'll never guarantee anything in the  
16 Legislature." He goes through and talks about "they all stand for election every six years, and  
17 that should deter them from overturning DOMA," but that's not the improper statement for  
18 anybody to make, I don't think. Actually in my letters that I write and Senator Johnson writes, I  
19 use the word 'doubt,' that the Supreme Court will look at the issue since they've already dealt  
20 with it. And then it says, so I can't guarantee anything. "I'm just telling you what," and then  
21 he's interrupted. He's not able to complete the sentence. What should I infer by that? Should I  
22 infer that Senator Johnson was going to further clarify his previous remarks but was interrupted  
23 and not allowed to finish his sentence? Or do I just leave it at that?

24 ELLEN SAMPSON: I would assume that he had further things to say, and that he was  
25 cut off. I mean, obviously, the transcript itself, which — and one of the questions I have for the

1 senators is whether this is a coordinated effort with the Minnesota Family Council or any other  
2 group, but I will save that for the proper time and place, when I get the chance to ask that  
3 question. But sure, he was cut off in the middle of a sentence and was never able to get back to  
4 that topic. But Senator Johnson is running around — the transcript, it is what it is, it was said. It  
5 was too bad he took an opinion and turned it into an assurance. It was an error. He's  
6 apologized. It was speech. It was speech when he was being called a pastor, not a senator. He  
7 was talking with people he'd worked with and known for years, and it's unfortunate. But I don't  
8 think it rises to the level of bringing dishonor on the Senate or the court or anybody else.

9 SENATOR SKOGLUND: One of the things I — I got this transcript this morning. I  
10 would like to have got it before so I could read it more carefully, but in my perusal, I don't see  
11 any place else in the transcript where he was not able to complete his thought. I may be wrong,  
12 but —

13 ELLEN SAMPSON: Mr. Chair, Senator Skoglund, I don't know. I mean, do I know whether  
14 Senator Johnson noticed that one of the pastors who has a reputation of being a very conservative  
15 pastor, very active in the anti-gay marriage movement had a backpack on the table. Did this guy  
16 come with his tape purposely to entrap Senator Johnson? I don't know. I mean, I'm not going to  
17 sit here and make those kinds of accusations, and certainly Senator Johnson isn't going to make  
18 them, and he doesn't want me to make them. You know the transcript speaks for itself. He  
19 made a comment he wishes that he could take back, that he shouldn't have made, and they cut  
20 him off in the middle of it, and the rest, as they say, is history.

21 SENATOR METZEN: Senator Skoglund

22 SENATOR SKOGLUND: Ms. Sampson, I'm assuming you haven't had a chance to read  
23 [inaudible]

24 ELLEN SAMPSON: No I have not.

1 SENATOR SKOGLUND: Does he, in this transcript, in any other place, does he talk  
2 about the courts?

3 ELLEN SAMPSON: Umm

4 SENATOR SKOGLUND: [inaudible]

5 ELLEN SAMPSON: Mr. Chair, Senator Skoglund, I know he distributed an eight-page  
6 series of documents, which he always distributes. This was the second pastors' meeting he had,  
7 and that has reference to statutes and court decisions, but I don't think that there was any other  
8 discussion of the Minnesota Supreme Court or how our court would react, except in this one  
9 place. But Dean, please correct me if I'm wrong.

10 SENATOR JOHNSON: Mr. Chairman, to my recollection, Ms. Sampson has described  
11 it accurately.

12 SENATOR METZEN: Senator McGinn.

13 SENATOR MCGINN: Thank you, Mr. Chair. One of the things I want to point out is  
14 that, as I read this highlighted, this bolded-portion of the transcript, I don't believe that Senator  
15 Johnson was speaking of the Defense of Marriage Amendment as it would be put into the  
16 constitutional question. I believe that his references in regard to the court and that sort of thing is  
17 that, you know, they wouldn't touch it, and what he was talking about was existing marriage law,  
18 the law that was passed in, I think it was 1997. So, it would be the law, the statute that is already  
19 on the books, and I believe what he is saying is that the court would not take up a challenge of  
20 that particular law, which is what...that type of thing, challenging that law, is what prompted so  
21 many of the constitutional efforts.

22 SENATOR SKOGLUND: I don't think the states, like Massachusetts, that have  
23 legalized same-sex marriage through their courts, passed a DOMA law. I may be wrong, but my  
24 question is, have the states that passed a DOMA law, had it overturned? Have there been  
25 challenges to it?



1 ELLEN SAMPSON: I don't understand how that's relevant to this.

2 SENATOR SKOGLUND: Maybe I should explain. The reason I posed that [inaudible]

3 SENATOR MCGINN: I think Senator Skoglund is very accurate that it would be fine for  
4 someone to say "in my opinion" and "from what we've seen nationwide, that doesn't look like  
5 that would be the case." But the real crux of the thing here is that the argument is bolstered by  
6 an ostensibly factual statement based on an alleged conversation with members of the court.  
7 And, that moves it into a different category than just that opinion-type of situation.

8 SENATOR METZEN: Senator Neuville.

9 SENATOR NEUVILLE: We're here to discuss probable cause and not try the case or  
10 determine what the appropriate sanctions should be. Forget that one. The reason that I asked to  
11 go into Executive Session, we couldn't be having this discussion with all these cameras in the  
12 room, and Senator Johnson, we can get to the heart of this matter and the truth of the matter  
13 easily without TV cameras in this room. I'm dismayed that you're challenging probable cause,  
14 and I would like to suggest that there's a way to resolve this without having the TV cameras  
15 come back, but it would have to mean that you'd have to admit probable cause. With the rule, as  
16 I evaluate probable cause, all we have to do is determine that the complaint sets forth facts  
17 which, if true, we don't have to evaluate if they're true now, but we have to ask ourselves, if  
18 these are true, assuming these are true, the alleged facts, which would violate our standards,  
19 either our rules or our code of ethics, and the rule that I'm looking at is Rule 130 Code of Ethics,  
20 "you must avoid situations that could be disrespectful to the institution of the public," and one of  
21 the specific points is, "you must act honestly, fairly and openly so others can rely in good faith  
22 on your words and actions." The complaint right now alleges, at least in addition to the  
23 transcript, at least three other specific conversations that Senator Johnson had that were all  
24 different. First, he alleges that there was a clear meeting with three justices and they made  
25 assurances. Then on March 16, it's alleged, on public radio, that a justice definitely assured him

1 the court wouldn't overturn the law, and so he basically still stuck to that. And the next day, then  
2 he changed his story to the Star Trib. and said I embellished it to say the judiciary didn't seem  
3 too interested in it. Then on the same day, in a briefing with reporters, then he said it wasn't a  
4 meeting, it was a chance encounter. And when you compare that with the complaint allegations,  
5 that there's a clear denial by the Supreme Court justices that, number1, that they said it, but  
6 number 2, that there was any meeting at all, at least on its face, that's probable cause to believe  
7 there was a dishonest statement. Now, here's the dilemma. The dilemma is I'm not so sure you  
8 weren't telling the truth in that transcript. I think that a Supreme Court justice might very well  
9 have said that to you. And maybe you didn't realize the ramifications of saying that publicly.  
10 Our goal here should also be to try to get to the truth of the matter. We can't do that with these  
11 TV cameras here. We're all dedicated to trying to protect the integrity of the Senate. It's going  
12 to be hard to do if we start asking Supreme Court justices to come in here and ask them to  
13 basically say they violated their oath by making these statements. Now I've talked to Supreme  
14 Court justices a lot too — This is being taped right?

15 PETER WATTSON: It's being taped, Mr.Chairman.

16 SENATOR NEUVILLE: I've talked to Supreme Court...

17 PETER WATTSON: If it's being taped and if there is a finding of probable cause, the  
18 tape and this transcript will become public.

19 SENATOR NEUVILLE: Alright, well —

20 SENATOR METZEN: Do you want to erase the tape Nixon?

21 SENATOR NEUVILLE: Let me just say, I think it is possible that Supreme Court  
22 justices could make the statements as you alleged to that group of pastors. That puts us in quite a  
23 dilemma.

24 SENATOR METZEN: I think it's about time that Senator Johnson would like to make a  
25 brief statement.

1 SENATOR NEUVILLE: Mr. Chairman, let me just finish my point. My point is, it  
2 might be appropriate for us to turn the mics off and negotiate. We can come up with an  
3 admission of probable cause and a more formal apology. And then we wouldn't have to go  
4 through a contested hearing before TV cameras, and if you're interested in that, I would suggest  
5 that the parties negotiate.

6 SENATOR METZEN: Senator Frederickson, did you —?

7 SENATOR FREDERICKSON: Well, Mr. Chairman, I am very uncomfortable about  
8 excluding media, excluding cameras, and having sessions without the tape recorder on. With all  
9 due respect, Senator Neuville, I've been in public office for 34 years, I can say anything in front  
10 of cameras that I would say in a private meeting.

11 SENATOR METZEN: That's a fair statement.

12 SENATOR NEUVILLE: Well then, Mr. Chair, I'll move that there is probable cause  
13 [inaudible] probable cause.

14 SENATOR SKOGLUND: Mr. Chairman, I assume it's certainly a debatable, not a  
15 motion, but [inaudible]. But first I have to ask Mr. Wattson, state what probable cause, state  
16 what probable cause is.

17 PETER WATTSON: Mr. Chairman, Senator Skoglund, the question before the  
18 committee on a probable cause finding is whether the statements alleged in the complaint, if true,  
19 would constitute a violation of any Senate rule or policy or norm of Senate behavior. It's not the  
20 point of the probable cause determination to weigh the evidence and see whether the facts  
21 alleged might be disproved, but on its face, does it allege a violation.

22 SENATOR METZEN: Well that's the issue, if it's true? The alleged violation.

23 SENATOR SKOGLUND: So, if that's probable cause, then any allegation is probable  
24 cause. What is probable cause? An allegation shouldn't be probable cause.

25 PETER WATTSON: Mr. Chairman

1 SENATOR METZEN: Mr. Wattson.

2 PETER WATTSON: Mr. Chairman, Senator Skoglund, I think Ms. Sampson's point was  
3 that even if the allegations are true, that Senator Johnson did not tell the truth, in his various  
4 statements, taken together, that is not a violation of any Senate rule or policy because it relates to  
5 a matter of free speech. I'm not sure if she made this distinction between speech to other  
6 members of the Senate versus speech to constituents, but that's another point on which our rules  
7 are important, and our rule on false statements, its false statements to the Senate, not false  
8 statements to constituents.

9 SENATOR SKOGLUND: My question, Mr. Chair

10 SENATOR METZEN: Senator Skoglund.

11 SENATOR SKOGLUND: Again what constitutes probable cause? Senator Johnson  
12 agrees he met with the clergy on January 19 and said someone on the court made a statement,  
13 said it wouldn't happen, the Supreme Court wouldn't overturn DOMA. That, to me, isn't  
14 probable cause of anything. It seems to me that probable cause has to move beyond allegations  
15 of wrongdoing and I would like to know, beyond the allegations, what constitutes it, what's the  
16 threshold?

17 PETER WATTSON: Mr. Chair and Senator Skoglund, it's just the allegation. All we're  
18 looking at is whether there are sufficient allegations that some Senate rule or policy or standard  
19 has been violated. And, Senator Skoglund, we have had complaints that did not, on their face,  
20 allege a violation of any Senate rule or policy, and they have been dismissed, essentially.

21 ELLEN SAMPSON: Mr. Chair, Senators, Mr. Wattson has officially restated my point,  
22 that we are asserting here that there is no probable cause. Senator Johnson did not make an  
23 untruthful statement to the Senate. This happened in a meeting with constituents, and even if —  
24 and the other statements that were made, none of them were made on the floor of the Senate, and  
25 there just is no probable cause under the Senate rules. And we would request that you find there

1 is no probable cause and bring this matter to an end. Before we continue, I'd like to have about a  
2 five-minute recess to talk with my client.

3 ELLEN SAMPSON: Let's see if there's a place where the media isn't rounded up.

4 [RECESS]

5 SENATOR METZEN: Subcommittee on Ethical Conduct will come to order.

6 ELLEN SAMPSON: Thank you, Mr. Chair, and members. If this were an ordinary  
7 circumstance and the other side were represented by counsel, I would ask to speak with their  
8 counsel. But given these rather unusual circumstances, I would like to make a proposal. And I  
9 understand that what I say is now going on the record and so does Senator Johnson. Senator  
10 Johnson does not —

11 SENATOR METZEN: Wait a second

12 SENATOR SKOGLUND: Excuse me, excuse me, the tape is rolling right now and so it  
13 may or may not be on the record [inaudible] you should realize that.

14 ELLEN SAMPSON: Okay, well whatever. It doesn't matter.

15 SENATOR METZEN: I do think it is, yes.

16 ELLEN SAMPSON: But I understand that I may be. Senator Johnson does not think  
17 that he violated any rules of the Senate. As I just said, he did not make an untrue statement on  
18 the Senate floor. He made an inaccurate statement in a constituent meeting. He does not think  
19 that it rises to the level of probable cause. He also, however, did make an inaccurate statement at  
20 a constituent meeting, and some of the explanations that followed were also not accurate. He  
21 doesn't dispute that. The words speak for themselves. He is not particularly interested in  
22 dragging the court into a crisis with the Legislature, and into lining up in the courthouse with  
23 subpoenas. And he has a proposal to make. He is prepared to concede for the purposes of this  
24 committee's action that you might make a finding of probable cause. And if you were to make

1 that decision or agree to that, he would request that...he is prepared to offer to make an apology  
2 to the Senate on the Senate floor and bring this matter to a fair and speedy conclusion.

3 SENATOR ROBLING: Do you want a response from us? Would that be appropriate?

4 SENATOR METZEN: That would be in order.

5 SENATOR ROBLING: Mr. Chair and members, we do believe that we do have probable  
6 cause. In the Minnesota Senate Subcommittee on Ethical Conduct, Standards of Conduct 1.30  
7 Code of Ethics, it does say you must act honestly, fairly and openly so that others can rely in  
8 good faith on your words and actions. And we believe that that has been violated, so we  
9 would...we agree, we don't want to extend this. We don't want to bring the judiciary in and  
10 make it a media circus; that was never our intent. Our intent is to make sure that the public  
11 knows that when someone does not give them honest information, that they are going to be held  
12 accountable for it. And that upholds the integrity of the Senate, so that hopefully in the future, it  
13 sends a message to our members and to the public that if standards are not met, there are  
14 consequences. And we really need to uphold those standards, it just is so critical. And I believe  
15 that an apology would be appropriate, but maybe not just to us, but also to the pastors, and  
16 maybe a letter to the judges because they have — perhaps that their integrity is under question  
17 because of the comments as well. And I guess that's — that would be sufficient for me but I  
18 better let Senator McGinn speak for himself.

19 SENATOR MCGINN: Mr. Chair, members, Senator Johnson, Ms. Sampson, I agree with  
20 Claire. You know, at a very minimum, that's what we were kind of hoping for, is that there  
21 would be more of an apology other than just a comment in the newspaper. And, unfortunately,  
22 that's where — that's why our [inaudible] so to speak comes from the newspaper article. We  
23 didn't want to bring a bunch of people in, and I think we can have this done right away with the  
24 appropriate apologies. And we would like you to apologize to the court and the pastors in  
25 addition to the Senate.

1        SENATOR NEUVILLE: Is this the proposal, that we're willing to concede probable  
2 cause but not beyond — am I correct, or — is it kind of like a *nolo contendere* type of thing or  
3 — is that what your asking?

4        ELLEN SAMPSON: Oh my goodness — Mr. Chair, members, I think Senator Neuville  
5 and Mr. Wattson and I, are we the only lawyers here? No, it's not —

6        SENATOR METZEN: That's enough.

7        ELLEN SAMPSON: That's enough? Great.

8        SENATOR NEUVILLE: So you're not prepared to admit there's a violation, but you're  
9 willing to admit probable cause, is that what you're proposing?

10       ELLEN SAMPSON: Yes. We're willing to admit that there's probable cause. Senator  
11 Johnson is willing to make an apology on the Senate floor. I do not think Senator Johnson  
12 should be required to write a letter to the court. The court interfered by speaking for themselves.  
13 What the court thinks is the court's business, and there's a separation of power. If you want  
14 Senator Johnson to send a letter to the person who convened the meeting about that statement  
15 and apologize for that statement, I think that's a doable thing, and if that pastor wants to pass it  
16 out to everyone else who was at the meeting, that's fine. I don't think that's necessary. It's  
17 going to be in the public record. You can copy it off the Senate Journal and do whatever you  
18 want with it. But he's certainly prepared — yes. Am I clear now, Senator Neuville?

19       SENATOR NEUVILLE: Was the person who called the meeting the one who taped as  
20 well?

21       SENATOR METZEN: I don't know.

22       SENATOR MCGINN: I don't know who that was.

23       ELLEN SAMPSON: No. It was two different people.

1 SENATOR METZEN: Well, just to speak for myself, I think Senator Johnson has made  
2 a big concession, to be on TV and stand up and have to do this. It's not an easy task. So I think  
3 he's going — pretty strong out there.

4 SENATOR MCGINN: Mr. Chair, I'm just a little confused then. Once the probable  
5 cause is allowed, what happens from there? Do we come to an agreement and then we're done?

6 SENATOR METZEN: That's the way I understand it. Mr. Wattson?

7 PETER WATTSON: As I understand this proposal, it is that when the committee goes  
8 into the open session, there will be a statement that the committee has found that the complaint  
9 states probable cause to believe that the standards of the Senate have been violated, that Senator  
10 Johnson — does not concede that he was —

11 ELLEN SAMPSON: in violation of Senate rules.

12 PETER WATTSON: That the complaint states probable cause to believe that there was a  
13 violation, Senator Johnson does not concede that he violated the rules, but that Senator Johnson  
14 has agreed to make an apology to the Senate and by letter to the persons who convened the  
15 meeting at which he spoke. And upon the delivery of the apologies, the complaint be dismissed.

16 SENATOR METZEN: Senator

17 SENATOR SKOGLUND: Mr. Chair, can we take a little break? It's been a couple  
18 hours. We need a little break. (Pause) Like a five-minute break?

19 SENATOR McGinn: Everybody understands that if we take a break, we can't disclose  
20 what we're talking about.

21 UNKNOWN: We're not going out in the hall.

22 SENATOR METZEN: The Subcommittee on Ethical Conduct will be in recess for six  
23 minutes.

24 [RECESS]



1 SENATOR METZEN: The Committee on Ethical Conduct will come back to order.  
2 Senator Frederickson, did you have a —

3 SENATOR FREDERICKSON: Mr. Chair, we have before us a written document  
4 prepared by Senate Counsel. We have looked at it and there's some discussion about the one  
5 "whereas," the third line, I believe.

6 SENATOR METZEN: That is correct.

7 SENATOR FREDERICKSON: And, the suggestion is that as I'm reading this and  
8 having, [inaudible] it reads "whereas Senator Johnson does not concede that his conduct did  
9 violate Senate rule 56.3," there's a suggestion that we add a phrase to that. Mr. Wattson, would  
10 you —

11 PETER WATTSON: Mr. Chairman, Senator Frederickson, I believe you would insert  
12 after Johnson "does not admit that the complaint states probable cause and"

13 SENATOR FREDERICKSON: Mr. Chair

14 SENATOR METZEN: Senator Frederickson

15 SENATOR FREDERICKSON: Instead of admit might the word be, agree?

16 PETER WATTSON: I think in a court setting it's usually, as to a complaint, you either  
17 have admit or deny the allegations in the complaint.

18 SENATOR METZEN: Senator Neuville did you have a —

19 SENATOR NEUVILLE: I did. I was going to suggest that we use the word deny, that  
20 "Whereas" could just say, "Senator Johnson denies that his conduct violated Senate rules." I  
21 think that's simple enough.

22 ELLEN SAMPSON: Well, what — we still want the phrase that he does not admit or  
23 agree that there is probable cause and denies that his conduct did violate Senate rules and with  
24 that it's fine.

25 SENATOR NEUVILLE: Well, Mr. Chair. Is that what the apology is going to say too?

1 ELLEN SAMPSON: No.

2 SENATOR NEUVILLE: Then it shouldn't be in here. If you deny that there's even  
3 probable cause, then how can you do an apology?

4 SENATOR METZEN: Senator Skoglund.

5 SENATOR SKOGLUND: They've been candid all along, and we'd be asking them to  
6 change their candor. I trust Senator Johnson will apologize before the Senate. With this  
7 language included, (inaudible) I think we can have a unanimous vote (inaudible).

8 SENATOR METZEN: Senator McGinn.

9 SENATOR MCGINN: Mr. Chair and Ms. Sampson, what would the, Now I certainly  
10 know that words count and that they have meaning, but what would that extra language do?  
11 What does it add — does it add that much to the denial?

12 ELLEN SAMPSON: Mr. Chair, Senator, it does because it separates; it says you know  
13 the committee has decided that the facts of truth constitute probable cause but that Senator  
14 Johnson doesn't happen to agree with that finding. It states for the record that he doesn't agree  
15 with it, that he doesn't concede that his conduct violated the rules, but that regardless, he's never  
16 denied that that was an inaccurate comment and that he's prepared to apologize on the Senate  
17 floor and send the letter. So that's all it says.

18 SENATOR MCGINN: It seems, Mr. Chair, Ms. Sampson. It seems as though it's a little  
19 bit redundant. It's kind of overkill.

20 ELLEN SAMPSON: Well, Mr. Chair and Senator, I don't think it's redundant and we'll  
21 leave it to the discretion of the committee whether they want to accept our suggestion or not.

22 SENATOR MCGINN: Mr. Chair I — I — I do believe that there's a great deal of  
23 redundancy in — in doing that. The denial, or the does not concede, would certainly indicate he  
24 doesn't agree, so I think it's a little bit of overkill in the — the statement.

1 PETER WATTSON: Mr. Chair.

2 SENATOR METZEN: Mr. Wattson.

3 PETER WATTSON: If I can make one more change on that line it would be that delete  
4 "did violate" and insert "violated" and then reread the clause to read "Whereas Senator Johnson  
5 does not admit that the complaint states probable cause and denies that his conduct violated  
6 Senate Rule 56.3." Is that the will of the committee?

7 SENATOR METZEN: That's what I understand.

8 SENATOR NEUVILLE: Mr. Chair, before we vote on this, may I ask, if I vote in favor  
9 of that resolution, will you give us your assurance that when you give your apology you will not  
10 question the good faith of the people filing the complaint alleging it was for political purposes?  
11 I'm not saying you have to say that it wasn't, I just don't want you to be accusing, questioning  
12 the motives, if you're not going to admit probable cause. I don't want you to be questioning  
13 publicly after the fact the motives of the people who brought the complaint. If you're willing to  
14 give us your assurance on that, I will vote in favor of the language here.

15 SENATOR JOHNSON: Mr. Chairman.

16 SENATOR METZEN: Senator Johnson

17 SENATOR JOHNSON: Without having given too much thought, I certainly should have  
18 written something down, that would not be my intent. My intent would be a straightforward  
19 apology to the Senate, and perhaps something about I, along with maybe the body, has learned a  
20 lesson and now it's time to move on with the business that's before us, something of that nature  
21 on first blush. Now, I'd ask some liberty and flexibility over the weekend to develop my  
22 statement. If you're asking if I'd be finger-pointing, the answer is no.

23 SENATOR NEUVILLE: I — I just — we're trying to come to a resolution that works  
24 for everyone and doesn't create a conflict for the courts and I — I — its just inherent in this, I

1 don't want the motives of the Republicans who brought this complaint to be questioned as a part  
2 of this — as a part of this understanding or agreement.

3 SENATOR ROBLING: Chair.

4 SENATOR METZEN: Senator Robling.

5 SENATOR ROBLING: For the record, and knowing that we're still under oath here, I  
6 want to make it clear that there were no outside parties that brought this to us and requested that  
7 we make an ethical complaint. This was something that we decided among ourselves, the Senate  
8 Republicans, and the Republican Party. The Family Council, or the groups that are supporting  
9 the marriage amendment, did not contact us. I know that is absolutely true for me, and I'll let  
10 Senator McGinn speak for himself. We did it because we really believe that we need to uphold  
11 the integrity of the Senate.

12 SENATOR MCGINN: And I'll agree with that statement. We were not contacted by  
13 anybody to bring these charges forward. We did it on our own.

14 SENATOR NEUVILLE: Mr. Chair.

15 SENATOR METZEN: Senator Neuville

16 SENATOR NEUVILLE: I should probably state for the record, too, that because I'm on  
17 the leadership team on the Republican caucus, I had — it goes without saying that I participated  
18 in none of this. I recused myself from all — any meetings that the leadership team had so I  
19 didn't see the complaint sooner, nor did I have discussions leading up to it. I did not see it any  
20 sooner than you did. The only other thing, this tape will become public record, right?  
21 Afterwards? The only other thing I want to say is I kind of — regret that there will be questions  
22 still hanging and so I just want to say that it appears that there was some misunderstanding and I  
23 want to say that I have confidence in what the court people said and was telling the truth too.  
24 But I think it's also possible that statements were misunderstood between the judges and Senator

1 Johnson, so while I regret that we can't get to the truth of the matter, I just want it understood for  
2 the record that I don't question what the Supreme Court justices have said publicly either.

3 SENATOR METZEN: Senator Skoglund.

4 SENATOR SKOGLUND: We're going down a very slippery slope, and for those of you  
5 who are running for reelection, it's only going to apply to incumbents, when you defeat your  
6 challengers you may very well be facing the same committee because very hurt and sometimes  
7 bitter people are going to be saying Senator Smith said this to such and such a group and it was  
8 false just to get votes. This could become a full-time committee as you work through those  
9 complaints, that's why I'm—I very, very, very reluctant — reluctantly will support this probable  
10 cause finding provided it has the language that counsel read to us. And last, I just have to repeat,  
11 perhaps if Senator Johnson had been able to complete this sentence, he may have been able at  
12 that time to clarify and rectify his earlier statement. But he was cut off in mid-sentence and  
13 that's what the Family Council transcript says and who amongst us hasn't that happened to. All  
14 of us have said something where we've been stopped in mid-sentence and left our words  
15 dangling. It can happen to any incumbent running for reelection. This is a very dangerous  
16 precedent.

17 SENATOR ROBLING: Mr. Chair.

18 SENATOR METZEN: Senator Robling.

19 SENATOR ROBLING: There always are ample opportunities afterwards to make  
20 corrections before it comes to this point. I know that Senator Johnson has earlier acknowledged  
21 that some of the statement may have been inaccurate, but I do believe that his acknowledging  
22 that to full Senate and to the people that he was speaking to is very important and that we, as a  
23 body, understand that this is something we can't do, we can't misinterpret other people's  
24 statements and have no consequence. And so, I just think it's really important, it — it will help  
25 in the future I think so that people don't make statements that would end up here.

1 SENATOR SKOGLUND: Well, Mr. Chair.

2 SENATOR METZEN: Senator Skoglund.

3 SENATOR SKOGLUND: I remember one time one of my campaign [inaudible]  
4 repeating something a clergyman had told her [inaudible] and the clergy member was very much  
5 attacked by his congregation, actually [inaudible] and her congregation for statements they made  
6 to me and for their own survival they said it didn't happen. It related to abortion, and they  
7 weren't toeing their church's line. And I don't blame them for saying — things differently and I  
8 apologized, but they really said it — in private, they really said it. It's gonna happen. And I  
9 learned, never quote anybody else. That's a rule.

10 SENATOR METZEN: Alright I think we're pretty much in agreement. On the —

11 SENATOR JOHNSON: Mr. Chair.

12 SENATOR METZEN: Senator Johnson.

13 SENATOR JOHNSON: Could I...I didn't get that full statement. I think it's the third  
14 paragraph. Could we just have counsel repeat that, so I might write it — just write it down?

15 PETER WATTSON: Mr. Chairman, it would say, "Whereas Senator Johnson does not  
16 admit that the complaint states probable cause"

17 SENATOR JOHNSON: Ok.

18 PETER WATTSON: "and denies that his conduct"

19 SENATOR JOHNSON: Ok

20 PETER WATTSON: "violated Senate Rule 56.3."

21 ELLEN SAMPSON: Did you want to speak? Yeah, can Senator Johnson speak?

22 SENATOR METZEN: Yes, Senator Johnson.

23 SENATOR JOHNSON: Mr. Chairman, just a clarification. Maybe counsel can look in  
24 here at the message, if you will — of paragraph two, "The committee makes a statement"— and  
25 then in paragraph three, "I do not admit." Is that, in effect, kind of neutrality? Committee said

1 one thing, I say another, and because of that, I will make a formal apology plus write a letter?  
2 I'm trying to figure out, if you will, the net effect, or the message, and it has to be in legal  
3 interpretation put into lay terms.

4 SENATOR METZEN: Senator Neuville, did you have some advice?

5 SENATOR NEUVILLE: What it means is that an allegation was brought and you denied  
6 the charges, basically, denied the allegations. And we found — we made a finding that you  
7 disagreed with. And you still deny that it's a violation. So it's not exactly neutral. Under this  
8 language, the committee is making a finding that there is probable cause. And you're denying  
9 that there's probable cause. And you're denying that you violated any conduct.

10 ELLEN SAMPSON: Mr. Chair, Senator Neuville, I think, though, that it's important to  
11 note that the committee found that the complaint states facts that, if true, constitute probable  
12 cause. And we're not making a finding. If I understand this correctly, you're not making a  
13 finding as to the truth of these facts. All you're saying is that in the event the facts were to be  
14 true... but you're deciding that, rather than undertake a full-blown investigation and call  
15 witnesses about determining that the facts are true. You're going to accept the fact that if they  
16 were true, they would constitute cause, and Senator Johnson is saying, "I deny them, I don't  
17 concede it, but I'm prepared to apologize in any case."

18 SENATOR JOHNSON: Mr. Chairman. Mr. Chairman.

19 SENATOR METZEN: And then, after the two apologies, the complaint is dismissed,  
20 that's very important. Also — the number three — Senator Johnson, did you have a —

21 SENATOR JOHNSON: Just looking out in the future, if this is adopted, I'm thinking  
22 about three different avenues. One, could this be legitimate on campaign material, that Dean  
23 Johnson was found in violation of da da dada — and probable cause, period. And, point two, I  
24 am thinking about it more in light of the military, and I am coming to the end of my career, but  
25 prior to my last promotion, I went through extensive, extensive investigation. You receive a top-

1 secret investigation. I'm gonna have to tell you I was asked questions I never thought I'd have  
2 been asked in my lifetime, and things were okay. But let's just say in the future, I was given the  
3 opportunity to be promoted again, is this something that could come forward and be a negative  
4 within my resume? And that leads me to the third issue. If I were to apply for a job at  
5 corporation, company XYZ, that this document would reflect in a negative way in any of those  
6 — I'm looking into the future.

7 PETER WATTSON: Mr. Chairman, the document does not say that the subcommittee  
8 finds that you violated Rule 56.3. It says that the complaint alleges you violated 56.3, and you  
9 denied that you violated it. It says that you have agreed to apologize, and with that apology the  
10 complaint will be dismissed. But as to what use might be made of this document in a political  
11 campaign, that's really more in your province than mine.

12 SENATOR METZEN: Senator Skoglund.

13 SENATOR SKOGLUND: That's the problem with probable cause. It says, "if true", "if  
14 true," but reporters aren't going to report "if true." They're going to report that probable cause  
15 was found, and that's guilt. Like a grand jury indictment. That's guilty.

16 SENATOR MCGINN: Mr. Chair.

17 SENATOR SKOGLUND: that's why jurors [inaudible]

18 SENATOR METZEN: Senator McGinn did you have something —

19 SENATOR MCGINN: I think somebody would use this at their peril in a political  
20 situation because it is a dismissed charge. So I — I — it would be very reckless to use that in a  
21 political brochure.

22 SENATOR METZEN: That's my feeling. It's dismissed, once

23 SENATOR MCGINN: Yeah.

24 SENATOR METZEN: after Monday. [inaudible]. Senator Neuville.



1 SENATOR NEUVILLE: Well, Mr. Chair, I know that the resolution says, "if true," but  
2 it is under oath. The complaint states facts under oath. And I didn't hear that there was any  
3 denial of the facts, and the defense that there's no probable cause that you argued goes more to  
4 the point that it's free speech, and that even if true, doesn't constitute a violation of any  
5 particular rule on free-speech grounds. So I haven't heard that there's been a denial of any facts  
6 that are included in this complaint.

7 ELLEN SAMPSON: Mr. Chair, Senator Neuville, that's not — excuse me, but that's not  
8 quite correct.

9 SENATOR NEUVILLE: Which fact are you disputing?

10 ELLEN SAMPSON: Well, the complaint states facts reported by the Supreme Court, by  
11 the justices, and we would say to you that the information in those paragraphs provided by the  
12 Supreme Court are not true. So, in reality, it's true that the justices said them, but our underlying  
13 argument in the horrendous event that this would be pushed into a public debate, would be, "isn't  
14 it true that you met here on such and such a date." So that's my concern about truth. I mean,  
15 you know, in reality, if this thing goes further, there is going to be a debate about the truth.  
16 There is no debate that no justice of the Supreme Court told Senator Johnson, "we'll vote this  
17 way" or "we'll vote that way." Didn't happen. But there is debate about discussions, so in that  
18 sense, truth is at issue here.

19 SENATOR NEUVILLE: Okay. Mr. Chair, that is a fair point. So the disputed fact is  
20 the allegation of what the Supreme Court justices have said.

21 ELLEN SAMPSON: Absolutely.

22 SENATOR NEUVILLE: And that makes the "if any" very relevant here.

23 SENATOR METZEN: Further discussion? We need to approve the resolution.

24 SENATOR NEUVILLE: I would move approval of the resolution that has been prepared  
25 by Senate Counsel,

1 SENATOR METZEN: As amended

2 SENATOR NEUVILLE: as amended, with the understanding that the parties state for the  
3 record that they approve it as well. If the parties state that they approve this, then I would move  
4 it.

5 SENATOR METZEN: Senators McGinn and Robling?

6 SENATOR MCGINN: We approve it.

7 SENATOR METZEN: Senator Johnson or counsel or both?

8 ELLEN SAMPSON: Senator Johnson approves it.

9 SENATOR NEUVILLE: Then I move the resolution.

10 SENATOR METZEN: Senator Neuville moves the resolution. The clerk will take the  
11 roll. Who's the clerk today? Brian, you're the clerk. Call the list. Call on the members.  
12 Senator Metzen votes aye.

13 BRIAN MARTINSON: Senator Neuville?

14 SENATOR NEUVILLE: Aye.

15 BRIAN MARTINSON: Senator Frederickson?

16 SENATOR FREDERICKSON: Aye.

17 BRIAN MARTINSON: Senator Skoglund?

18 SENATOR SKOGLUND: Aye

19 SENATOR METZEN: On a 4 to — on a unanimous 4 to 0 vote, the resolution, the  
20 motion is adopted. [gavel] Okay, here's what we're gonna do. We're gonna take a five or 10  
21 minute recess and get the public and come back in and then we'll get this motion typed up. Take  
22 a recess for 10 minutes.

23 ELLEN SAMPSON: Will there be any discussion in the public hearing?

24 SENATOR METZEN: I don't believe — I don't think so. I don't know.

1 SENATOR FREDERICKSON: Just what the discussion was, that we did find probable  
2 cause, and Senator Johnson and everybody agreed,

3 SENATOR METZEN: Everybody's agreed

4 SENATOR FREDERICKSON: and that we do have a resolution to conclude the matter.

5 SENATOR METZEN: I don't think we're gonna go into — no, we don't have to go into  
6 a —

7 SENATOR SKOGLUND: I think we do need to stress the words, "if true."

8 ELLEN SAMPSON: Yes.

9 SENATOR SKOGLUND: As a lay person, my — and I know — I probably know more  
10 about probable cause than most lay people, but the impression that lay people have is that  
11 probable cause is [inaudible] and that's not what we decided. We decided that, if true —

12 SENATOR METZEN: And that will be in the resolution, but we'll make note of it.

13 SENATOR SKOGLUND: We need to orally — you can

14 SENATOR METZEN: I can do that. I can read those two paragraphs that define, or  
15 that's in there that defines it better.

16 SENATOR JOHNSON: Mr. Chairman.

17 SENATOR METZEN: Yes.

18 SENATOR JOHNSON: Senator Neville made reference that I would, in my remarks,  
19 not make [inaudible] remarks. I guess I would ask the same consideration.

20 SENATOR METZEN: That's good. That thought crossed my mind, too.

21 SENATOR JOHNSON: From the members of the body, you know, it goes both ways  
22 and —

23 SENATOR METZEN: And that includes — I don't know, what's gonna be said going  
24 out in the halls, but — stay cool.

25 SENATOR MCGINN: We — we —

1 SENATOR METZEN: We've made our decision here. It's not political.

2 SENATOR MCGINN: We've said what we had to say here, and that's all we've got to  
3 say. The committee — the case was put before the committee and that's it.

4 SENATOR METZEN: The decisions were made, and that's the way it is. If anything  
5 might be said — it's Frederickson and I — might address this thing and that's it.

6 SENATOR FREDERICKSON: We're going to need to make a statement though.

7 [RECESS]

8 SENATOR METZEN: Conduct — back to order. As you know, we met in executive  
9 session for over an hour and the committee, on a unanimous vote, has come up with a resolution  
10 to this issue. We did find probable cause, but this does not admit to guilt. And there's a couple  
11 of paragraphs here, you can read them yourself, but one of them says, "Whereas Senator Johnson  
12 does not admit the complaint states the probable cause denies that the conduct violated the rule"  
13 And it goes on to talk about that Senator Johnson will apologize next Monday on the Minnesota  
14 Senate floor and he will apologize — written apology to the person that I guess delivered the  
15 written — or that Spicer — that filed the — that convened the meeting out there. So, there are  
16 two apologies to be given by the senator and upon delivery of the two apologize the complaint  
17 will be dismissed. It was a unanimous vote on that resolution. Senator Skoglund?

18 SENATOR SKOGLUND: Mr. Chairman, I wondered if counsel could define probable  
19 cause for the press.

20 SENATOR METZEN: Senate Counsel.

21 PETER WATTSON: Mr. Chairman, the purpose of probable cause determination is to  
22 asses whether the complaint, if true, states facts that would constitute a violation of the rules. It  
23 doesn't mean that the facts are true. It only means that if the facts are true, the complaint is  
24 adequate to state a violation. The purpose of the initial probable cause determination is for the  
25 subcommittee to decide whether they should move forward on the matter at all. There have been

1 other cases where a complaint was filed and even on the face of the complaint, even if true, it did  
2 not allege a violation of the rules. This complaint, on its face, alleges a violation of the rules.  
3 The subcommittee has not made a determination that the facts alleged in the complaint are true.

4 SENATOR METZEN: Any further comments or questions from the committee?

5 SENATOR FREDERICKSON: Mr. Chairman, I'd just like to make just one other —

6 SENATOR METZEN: Senator Frederickson.

7 SENATOR FREDERICKSON: just one other comment to explain how we arrived at the  
8 resolution. In the course of discussing the probable cause, there became apparent a way to  
9 resolve this without further hearings or without subpoenaing people or asking people to come  
10 forward before this committee. And that's what we have before us here is a resolution of the  
11 matter in an expedient manner.

12 SENATOR METZEN: Well spoken. Alright, with that the Subcommittee on Ethical  
13 Conduct — oh yes. I would be remiss if I didn't say that both parties agreed to this resolution.

14 The subcommittee is adjourned.

15 [gavel]

## ROLL CALL VOTE

Date: 3-24-06

Senator Metzen requested a **Roll Call Vote** on:

1. adoption of \_\_\_\_\_ amendment
2. passage of \_\_\_\_\_. F. No. \_\_\_\_\_
3. X adoption of resolution motion \_\_\_\_\_

SENATOR	YES	NO	PASS	ABSENT
Jim Metzen	X			
Tom Newville	X			
Dennis Frederickson	X			
Wes Skoglund	X			
TOTALS				

There being 4 Yes votes and 0 No votes the Motion:

Prevailed X

**Did Not Prevail** \_\_\_\_\_

**January 19, 2006**  
**New-London Spicer Ministerial Association**  
**meeting with Senator Dean Johnson**  
***as transcribed by Minnesota Family Council***

Pastor: Let's pray, Lord we lift up this time and we thank you for this special guest that we have here and we pray a blessing on the food Lord and we pray too that you'd give us some good understanding on what we face here and we pray your blessing on Dean and safe travel and all of us as he continues on his way. Thanks for this time here and we pray these things in your name Jesus. Amen

Dean Johnson (Dean) Shall I begin?

Dean: Don't worry about me. I'm fine, don't worry about that, I'll just have something to drink... whatever...fine fine  
(talking about food?)

Dean: I know some of you but not all of you. Could you tell me what church, synagogue, hospital or whatever you're from  
My name is Paul Anderson...

Blake, we've known each other a long time. David

I'm Brent Waldermarsen from Harvest in Willmar

Mark Olson from the Harbor in Spicer

Dave Olson from the Harbor

Don Goodman from the Harbor

Jack Marsh Our Lady of the lakes

David Elk from Living word Lutheran here in Spicer

Matt

Richard Young from Green Lake Lutheran

Dennis Iyer, Raleigh

Dean: Bill asked me to come by and visit to you about a number of things but most poignantly about the proposed constitutional amendment on the gay marriage issue facing the legislature. I put together some info for you and I apologize for the over flow of paper, but it's the best way on communicating on this issue.

Dean: Let me briefly go through some of the issues. Get out the constitutional amendment; it's a one-page sheet of paper.

Minnesota's Constitution, which has been with us for over 150 years, has had amendments from time to time. The Amendments can only take place in the following way: number one the legislature absent the governor. The governor has no footprints, no fingerprints whatsoever on constitutional amendments. It is up to the legislature to put an initiative on the ballot and we are faced from time to time with voting, the house and the senate, on placing a ballot question before the people. Second of all, the ballot question can only appear on a general election, it cannot be a ballot question on a primary, it must be every 2 years on the 2<sup>nd</sup> Tuesday after the first Monday on odd number of years and that is written into law.

Thirdly, a significant way we differ from other states on a ballot question is this. The majority of those voting must vote in the affirmative in order for the constitution to change. Let me give you an example: let's say 100 ppl vote and 48 people vote in the affirmative and 52 people vote in the negative or don't vote. You're thinking well it passed 48-40...it must pass. a non-vote is a No vote. And that's why on Point one here...an extraordinary majority requirement. It must be a majority of those voting.

And what we see in patterns in MN voting behavior is this, many people just get tired. You have typically the president, governor, US Senate, member of Congress, state rep...judges, water conservation board, as you drop down there is typically about 7% drop off from people who actually started. You know what I'm late, I gotta go pick kids up, or I go to work, its just voting behavior. Constitutional amendments appear in the ballot, it's by law where they are placed, so that's just a fact of life. So it must be a majority of those who are voting in order for the constitution can be amended. I've been asked 'when was the last time the constitution was amended?' I'll tell you, the folks of MN voted to change the constitution on 2 gambling questions, they voted for para-mutual betting and they voted for the lottery. It is in the constitution of MN,

Prior to that, folks voted in the affirmative to change the constitution in regards to getting \_\_\_\_\_ from environmental trust funds. They are constitutionally dedicated until 2022. 60% of those funds, we can't touch them, the legislature, governor can't touch them. It's in the constitution, its locked and loaded. It's just the way it is. That's the kind of example if you will of changing. Constitutional amendments typically, don't pass. Now in this coming yr. there's already a ballot question and as I've been meeting with folks and visiting, I ask them 'what is the constitutional question before you?' and I get a blank look You're going to be asked a transportation funding question. And its simply this: 60% of transportation funds be used for transportation and 40% used for transfer. Its obvious, it's already passed on the ballot.

Over view of same-sex marriage in the US. Let me preface my remarks as it has theological overtones, spiritual, civil union, political, it has all kinds of overtones. There's also another version.

Let me go through what other states have encountered. 19 states have constitutional amendments banning same sex marriage. 42 states statutorily define marriage as between one man and one woman. Let me jump to MN law which in 1997, under Gov. Jesse Ventura MN statutes 517.01 describes very definitely marriage in MN that is it is between one man and one woman, period. Two points to be made: one, its never been challenged in the courts. And #2 it is the most strictly written law, closely written law when compared nationally. Other states have it a man and a woman in under certain circumstances and other language. Minnesota, marriage is defined between one man and one-woman period. Its never been challenged in the court of law on either side of it. So that's good info to have

4 states have civil unions or domestic partnerships. What are civil unions? That 2 ppl would have legal authority to be able to say to find out info on health conditions. Or maybe it's a pension cond. Or maybe things of legal privacy that would be available.

3 of 4 states that have civil unions or domestic partnerships still define marriage as b/t one man and one woman once they have allowed same sex marriage. I've described to you MN law. Let's



drop down to a recent court decision that really got this discussion going, which happened in MA. MA really is set-up quite differently in its constitutional amendment than we are in MN. You can read how they do it here in MA. And what inspired this discussion was in fact a judge, a judge, using a poorly written statute in MASS said and overturned the statutes in MA and said that it is legal, it is constitutional in MA for ppl of same sex to be civilly to be civilly married in the state of MA. Again, you can read the details in that regard. What we have in the next couple of pages are the ballot questions and you can see that all of them are different ballot questions in their respective states. They do it a little differently, the end results I expect is they define marriage as between one man and one woman. I think in 1 state for anyone selling a marriage license to a same sex couple is guilty of a gross misdemeanor or perhaps a misdemeanor, and you can read those things for yourself.

Let me get then to some of the other issues that are described and you as being local... 100% of my constituents have every right to ask me questions on why I think the way I do. Let me go back to a couple of experiences: In 1993-94, when I was still with the MN army national guard, and this is all public info. I worked and this is all public info, with a woman by the name of Pam Miff, and Pam Miff was a captain and I knew that her civilian job show worked as a social worker for the dept of corrections. In the military, I as a captain, and she as a social worker, we worked together on a number of family issues and soldier issues, dealing with suicides and so on and so forth. One day, Pam came to me and very tearfully said, "Dean, I'm going to be leaving the guard." I said, "you are, what from?" that's when the discussion was don't ask don't tell issue came up. She looked at me and said, 'Dean, she said I'm a lesbian and I have to, I'm going to be honest about it and I have to submit my papers and the \_\_\_\_\_ general, has said that you will be dismissed and lose your commission. "To be really honest with you, I had never thought about Pam Miff and what her sexuality was, we worked together as 2 officers, she was a captain and I was a major and we just tried to help soldiers and their families. And it did bother me some that because she was because she was honest, honest about whom she was that she left the guard. She still works today for the MN dept of corrections. I see her occasionally and she still has sadness in her heart about what happened to her.

Then we get to the issue that I've been in discussion with the medical community in regards to our sexuality. I understand this is controversial. I understand it is an opinion. Ok. I believe our sexuality, the good Lord gave to us, is in fact, much genetic. I really believe that. We are genetic creatures of our heavenly Father. But also some of our sexuality is learned behavior. It's learned from our parents, siblings, environment, by society. There are many things about our sexuality, its not clear cut, uh if you will. So you have that issue. Then if I may, uh, as we struggle with this. People write to me and have discussions and I give presentations and so they almost always refer to Scriptures, rightly so. Leviticus 18 and it says this, "you shall not lie with a male as with a woman, it is an abomination," I understand that, but here's where I struggle folks, right before that in verse 20 it says, "You shall not lie carnally with your neighbor's wife and defile one another." The point I'm making here is, you cannot use the scriptures for our own and own advantage. Now, we all represent different denominations, different theological training, different biases, I understand...especially as a military chaplain, I represent 180 denominations and sometimes I scratch my head and say what is that you said again, what is it that you believe? But I as an America, as a soldier as an officer, I must respect it, I don't have to agree. The point is if we use the scriptures to base our public policy or our or try to persuade someone, there will

be some pitfalls in that regard as well, and thus we have before us in MN the proposal backed by Sen. Bachmann in regard to the banning of same sex marriages and potentially a constitutional amendment. We have in the Senate, There will be a hearing in the senate judiciary committee as we do with most bills let the public come forward, let folks vote, and work it through the process like we would any other bill.

I cannot talk about this issue unless I talk about the politics of it. There are political overtones like many things else, you know we have our religious avenues and we have our public policy avenue and we have our political avenues. Uh, I have very good friends; I have very good friends who work in the white house. And, they have told me repeatedly a couple things, 'Dean, this is the one issue, and I will, I know this becomes partisan, this is the one issue that is able to divide people and get people to the polls.' And its evident by the last presidential election and uh we in uh Ohio for instance, uh 1000 every right to do this, conservative churches, uh uh kinda gathered an army around this issue, got to the polls, and while they were there voted for our president, and that's fine, all legal, but it it energizes if you will, the more conservative base of the populace. I understand that, we're all Americans and folks have a right right to vote. So, in in my job is as majority leader, which is an impossible job I might add, but it's a very interesting job. Folks say to me, "Dean, what are we going to allow to move forward for the election process and what are we not going to allow and so on and so forth." Quite honestly, among my constituents some folks say 'put it on the ballot' others say, "do not even think about it." And I remain caught in the middle. If you will and understand that because that's how it is with many of the issues that we deal with if it can be raising the drinking age to 21 it can be raising the gas tax or whatever you're caught in the middle and that's the nature of of the uh job. So um I go back then and I entertain your question, the fact our law is so stringent and straightforward since 97 and I take seriously what I would say the sacredness of our constitution that that we should not be able to change, without strong and long and strategic deliberation, change our constitution. Laws, yes, we meet annually, laws change they ebb and flow based upon time, place and circumstances what we should put into law; and therefore the constitutional issue becomes, uh controversial, problematic and honestly I can't predict where it might go at this point in time. That's kind of uh a uh bill uh, 20 minutes of a lot of information but it gives us a framework for our discussion and any other issue that you might want to ask about please do so and I'm uh honored to be here. OK So

Female: "I have a question about California. There, people who were gay are married, when they all went to the one um judge... But as far as the state is concerned, it's not like its legal there, right? How does that work"?

Dean: "No, it was found un-const. Both marriages were invalidated...all of them were invalidated, legally legally invalidated as far as the legality of what we constitute as marriage, but marriage... they were invalidated.."

Female: so it was just to make a point?

Dean: 'yeah, right, right'

Pastor: "So Dean, can you guarantee that laws regarding marriage, the DOMA law, will not change the definition of marriage in the next 5 to 10 years?"

Dean: Ok, I never guarantee anything in the legislature, but I'll say this: Ok, the Supreme, members of the supreme court, I know all of them, I have had a number of visits with them about, you know, about our law. And all of them, every one of them including the lady who just stepped down, Kathleen Blatz, was my seatmate for 4 years, she was the chief justice, you know what her response was? "Dean, we all stand for election too, every 6 years," she said, "we are not going to touch it." That's what she said to me. I have talked with Justice Anderson and other Justice Anderson, "Dean, we're not going to do this, you know, we're not going to do this." So, I can't, you know, I can't guarantee anything, I'm just telling you what...

Pastor: "But wouldn't it be better to guarantee it by letting the people vote? That would guarantee it other than a superceded..."

Dean: "right...that's assuming that the people would vote for it."

Man: We have statistics of Minnesotans, which would uh would tend to make us believe that the entire state would vote for it. That um (other woman interjected something I couldn't hear)...right. Certainly that would be part of your constituency as well and it looks like it'd be a higher number there.

Dean: I understand, I understand polls, but we also have polled and asked it a different way. You know, we look at polls all the time and how you ask the question is the answer you know, the answer you get. Do I believe that people generally oppose same sex marriage? Yes. I do. I believe that, I believe that kinda go in place of business if you ask an average person, but at the same time I also believe that the law that we have is so stringent that uh and I I do I do have a responsibility that I make sure things have an orderly process. I mean that I mean that's that's part of my job um.

Now there's also a couple other, 2 issues inside of this, there's the issue of marriage, as we understand it in the theological, spiritual sense, I don't think we have a disagreement about that. The issue gets into this civil unions stuff, and that's where two people have a right as I referenced earlier, in the pension right and what is this portability of insured and um all of those things. Now you could get into that and argue, well, you can have within your legal standing of your will, you can have those. But a will is only good when someone upon their death so while someone is living there's issues too.

You know about, I don't understand, o.k. I uh don't understand, the gay and lesbian lifestyle. I serve with a couple people with friends and we've talk about it. And you know what? I conclude, they are who they are and I am who I am. And allow folks just to live in privacy as long as they don't cross the line and offend society or public safety, you know of other people. Uh, I, I don't understand it.

Pastor: "But, isn't the issue here is that gay/lesbian community is not happy with what you just said there, they're trying to re-define marriage which indeed is offending a good majority of Minnesotans. And, do we want that? I guess that's my question, why don't you let the Minnesotans decide and get it out of your committee?"

Dean: What happens in that committee, I don't know.

Pastor: But aren't you the majority leader?

Dean: But they still will vote as they vote.

Pastor: right

Dean: what we voted on last time between procedural motions to simply pull it out of committee before the hearing took place. Those votes were taken before the hearing took place.

Pastor: But is it true that if we don't have it out of committee this year then we wait two more years like you said earlier?

Dean: Yes, then you would be in 0; any constitutional question that is not, lets see yes, 2008

Pastor 2: Dean, what happens if a couple that are married in MA legally there, moved to MN, and demand the same rights here, isn't that a cause for legal action?

???: ...They do, under MN law, and I've asked that question like they're not recognized, they are legal but can't they take that to the court based on the basis of legal protection laws?

Dean? Uh they could I suppose, and its not been tested

???and it wouldn't be in the state court, so wouldn't be in the supreme court of Minnesota, would it? Wouldn't it be taken to a fed court?

Dean: I think you raise a good point and having said that, I think that this very issue is ultimately going to be resolved in the highest court in the land, called the Supreme Court

Pastor: I think your state law is a good law, but the problem is that its only good in an ideal world where the courts don't legislate and the courts haven't legislated in so many cases and so many places across throughout our the country. But that would be my concern is that the courts are going to step beyond what their normal boundaries or constitutional boundaries are suppose to be. So a constitutional amendment would then prevent them or at least restrict them in a better way than just a state law. How would you respond to that?

Dean: I'm thinking of it from different points of view and that is your original question about someone married in another state and then comes here. I uh, I couldn't predict what a court would do with this, I don't know, I don't know.

Pastor: ...They're going to keep trying and try and try until they find some court that's going to listen to them and rule in their favor

Dean: We speak about this issue, and then my mind goes to what about all the other issues we have with marriage and domestic abuse. And I again, I know, I appreciate and know that folks

have strong feelings about this, no doubt about it. I have strong feelings about domestic abuse within the confines of marriage b/t one man and one woman.

Pastor: That's another issue.

Dean: But I don't hear I don't hear folks clamoring for that. I have strong feelings about people that do not have health insurance. I just met with a family this morning and they don't have health insurance they are probably going to bankrupt. I feel strongly about that. In fact, I think that should be in a constitutional amendment, universal health care.

Pastor: Maybe you should bring it up; you have strong support from the church on those issues.

Dean: Um, so you don't assume anything, I don't know how this is going to go. I do not know how this is going to go in the 2006 legislative session. We go on a retreat on next Feb. 1, we go into session on the 1<sup>st</sup> of March and as always, folks will show up and deliberate. And vote and I do not know how it will come out.

Pastor: But you do have some say and clout, as majority leader.

Dean: I have a vote, I cannot under rule 21, no its not rule 21, it's a rule in the senate any member of the senate that brings forth a bill out of a committee and the majority of those voting determine that. They have the right; the body has a right to overrule the majority leader. Yes, I've been given responsibilities and a place of honor and I have those 21 rules that govern what I do. And one of those is, the majority leader shall determine which bills shall be voted on in a given day. You're right, but there's also a rule that the body can say, I don't agree with you. I forget the rule.. and lets vote and that happens, that happens

Pastor: How does that happen? I mean, As I'm listening...if someone is against you, how many does it take?

Dean: it takes the majority of those voting. ..well, there are 67 members, but in that case, the majority of those voting. Most of the time in the senate we have high voter participation. Many times it's 67 out of 67. But on that particular vote, it depending upon whose there...it may be 33-31 in favor and then it's placed before the body for discussion and a vote.

Pastor 3: I speak for myself, I'm not so naïve to believe that politics is squeaky clean and that's not to point fingers at anybody. But I understand...none of us are perfect including myself. Do you believe, going back to the spiritual issue, that God opposes the marriage amendment?

Dean: I think that as I understand the Scriptures, God has a whole list of sins that He has laid out for us and none are worse than any others.

Pastor: In fact I talked to you this one time on a Bush trip in Montgomery and you talked to us at the Capitol and we brought up adultery, yeah, lets do something about that too. You didn't have an answer, but maybe you do today. I say lets address it all...we want to make our society that best it can be and be that shining beacon as president Ronald Reagan used to say.

Pastor: According to MN law right now Dean, uh people would want to come and be married. Didn't you say that according to MN law, that couldn't happen?

Dean: its illegal, it's not recognized

Pastor: what I don't understand is that there are gay couples that are adopting children

Dean: Dave, I guess they are adopting children without marriage licenses.

Dave: Well, there are certainly some rights to the parents...gay and lesbian couples have all sorts of civil rights that they don't have to be married to have. Health records, things that you were talking about, there are other means to those ends other than re-defining marriage.

Pastor: We all represent the constituencies. I can tell you that the church I'm a part of, the Covenant church, which is a little more conservative usually, is very upset about your position, your perceived position of this. It's so good that you're here to develop an understanding. And I respect you. My own church is very frustrated on this issue and its not because I was telling them to be frustrated (laughter) seriously.

Pastor: if the MN law, as you say, it reads well. Next week Outfront is coming to Willmar for a marriage equality meeting. Their whole purpose is to be pushing for the approval of gay marriage and that's coming up on the 24<sup>th</sup>. It's being advertised all over the place. So they have eyes set on challenging MN law. So if there's not a chance for it to happen, why would they pushing for it? They're doing these rallies very similar to the marriage rallies that are taking place around the state. They are also conducting rallies around the state. I follow along with Paul that if we are dead set and convinced that marriage should just be one man and one woman then this should be able to come to the people for the vote. You said that you're one vote, but you are the Senate majority leader and you can bring this to the floor. Didn't you say that anybody could bring any bill to the floor?

Dean: Through passage of a committee, you know passes X committee, and based on the majority vote, comes up to the floor, its recorded and we vote 2x...the other is, I'm forgetting which rule it is, but any member can stand up and say, 'Mr. President, I move under the Rule, I forget which one it is, that we take up for immediate consideration Senate File 22.' And the person explains what the bill is, if there's no debate, you vote yes or you vote no, or you don't vote.

Pastor: Do you need to be recognized by the Senate majority leader?

Dean: No

Pastor: What happened with Michelle Bachmann? She was trying to get a voice on the floor and was ignored?

Dean: that, that I can explain that very accurately, we were coming to the end of the legislative session. It was a constitutional deadline at midnight, you can't cover the clock. And if you were to watch us there's literally all kinds of bills that come in at that last hour that we need to vote on to get them done because its 12:01. Unconstitutionally. And Michelle at about quarter to twelve attempted to get recognized and we had 6 other bills to go. The president, Jim Metzen did not recognize it, that's what happened.

Pastor: Dean, can I ask you what were some of these so important bills?

Dean: One was a budget bill funding our schools, one was a pension bill, one was an environmental bill...you could criticize waiting up to the last minute.

(Laughter) (something about an ATV bill???)

Pastor: My point is that there are some things more important than money... I like money, need it to live, we have a lot of things to worry about down here...but there are some things more important. God tells us to store up treasure in heaven.

Pastor: I don't know how other people feel about you brought up the fact that this is the great divider among the state. I don't know if polls indicate that. Someone showed you the Mason-Dixon Poll and I know you are familiar with that. 78% doesn't look like a division. It looks like a whole bunch of people that are unified with one thing in mind. Yeah there are a million other things that can be taken up. We would all agree with that There's a whole lot of issues with marriage in general: spousal abuse, divorce, you name it but that's not before us. Nobody's challenging that, yet the definition of marriage is being challenged. And when you have said that the people are always right, you listen to your constituents. 78% Dean are saying they want to have a voice, they want to be able to vote. And that's what we're asking for. And as our legislator we are counting on you to speak our voice and we just want that ability.

Pastor: What would a constitutional amendment question look like to address this? I mean, I haven't heard, I'm not very up on it. How would it read?

Pastor: It looks like our existing DOMA law that defines marriage as between one man and one woman?

Dean??: To answer to your question, Senator Bachmann's bill and there's 4 or 5 other version, uh the constitution question she would pose is quote "any, um, amendment brought forth defines marriage as between one.. Should, Minnesota constitution be amended to define marriage as follows between one man and one woman and prohibits civil unions. So it's really two-pronged in her question and that she had. Now some states say that marriage should be defined between one man one woman period, but she added and civil unions.

Pastor: and I think because civil unions are kind of an incremental a step towards marriage. I would gather why she added that there... The question I have though is that **you said earlier a couple times that you can't predict what judges will do. Although you said you can predict**

because of personal relationship with the MN Supreme Court and with how they would rule on this.

Dean: the present membership

Pastor: yeah

Dean: the present membership

Pastor: yeah, the present membership. like you said you can't predict how the court would do this, but obviously this is a real threat to the gay/lesbian community, this particular bill, or they wouldn't be going around having 10 regional training sessions and if, if, I would encourage you to go to the Outfront MN website. Have you done that? It's a great website

Dean: I guess a long time ago, I haven't been

Pastor: But they will specifically say that the purpose of these 10 regional training sessions, one happening in your back yard in Willmar, is to defeat the marriage amendment initiative. So they must think it's a threat, right? Why, why would they be doing that? So I think that they think it's a threat because it's getting in the way of their agenda. You can see that.

Dean: Well, one, I haven't read it, number 2 I...

Pastor: But I'm telling you that I have and I'm telling you and they specifically say this is why we're meeting to defeat the marriage amendment initiative, so why does it need to be defeated if its not needed? I think that's a question that needs to be asked. (long pause) They must know something that you don't know, perhaps, and I certainly don't know.

But I am concerned about the definition of marriage being susceptible to political action. Its not a Republican/Democrat issue.

Pastor: it's the foundation of society, really. I think that's why it's so important.

Marriage...when you change the definition of marriage, you change the foundation of society and that's why it's so important. It seems to me if you can eliminate the question by having an amendment then that would be a way to do it. Right now we have questions about whether or not our law is being attacked for overturnment and if we can eliminate those questions by having an amendment. Let's at least vote on it.

Pastor: Is it possible that you know how slow and angry the caucus works and you're wondering if it's worth putting all that energy and time into it when you know the outcome already? ...**As it stands with the present judges that its not necessary?**

Dean: Um, we'll be in session well, about 10-12 weeks, its what we call our short session with a whole series of arrangements...we have to do the work that's required of us and there may be constitutional amendments before us as well as I mentioned universal health care...wetland preservation and other amendments



Pastor: What committee does it have to come out of?

Dean: ...uh, its senate judiciary committee, I believe its 9 members in that committee. 9 in the committee at the present time.

Pastor: you obviously face a lot of pressures... which do you, listen to the best, given that you're here (laughter) is it the party or is it the people that you represent?

Dean: I'm starting my 30<sup>th</sup> year in elected office and I'm grateful for that and I'm still up breathing and going to meetings. I've often answered that question 3-fold: #1 anytime we vote what is best for the people of Minnesota in the long term, which I think is a reasonable public people and helps the greatest number of people. #2 the people that sent me to public office, all the constituents in Senate District 13. and ultimately the more tougher one lately, is one's own conscience dictates and moral and spiritual and political values. And sometimes there is some tossing and turning about that, I'll give you an example: I remember vividly when we were going to raise the drinking age to 21, I had a 25,000 constituents in Stearns county, good hardworking German people. A farmer told me 'Dean, I'm going to vote for you but I want 2 things: don't kill our babies and don't tell me what age kids should drink at, that's my agenda.' I said 'Ok' and he smiled and I smiled. That particular day we voted without the... Stearns county bar owners, I knew in my heart of hearts that in matters of public safety and health that it was in good policy to raise the drinking age. And Dale met me outside the Senate chambers, and we went to a meeting room and we sat down and talked... life goes on and not all were happy, but I gave a reason, I give people reasons for why I vote... There's always party pressures, constituent pressures, public policy pressures. I'm ordained in the Lutheran church, I can't walk away from 32 years of ordination and theological training... all of those, there's 2800 Lutherans sitting in the pews. and all kinds of opinions. We have families who have with gay children and they're never going to say anything... you can understand confidentiality. So, I have uh sort of a rhetorical question that I struggle with: If we do nothing on this issue, how will Minnesota change? Good, bad or indifferent? Will there be any changes?

Pastor: Can I bounce off that?.. With this question, lets just say IF this would come to a vote the amendment and the general public would vote on it to be an amendment to the constitution. Is it locked in until death do us part, if that gets put on the constitution? Is there any way that can be removed off of there?

Dean: another ballot question which would be by vote of the people which would rule in the same process or a federal case...

Pastor: So my thought is that when we consider generations to come, and grandchildren and great-grandchildren down the road. Is there is something we can do now to make life a little bit easier for them. It seems that there are challenges to lots of different laws, especially moral issues... I think that's why we're so concerned, because we see what's happening around the nation around the world, it seems like things get eroded away a little bit. There's things happening and moral issues that you know 25 years ago wouldn't have happened, so we're watching this, so if you go down the road another 25 years, how will the next generation or the next generation deal with this issue when it comes to the plate again, wanting to legalize same

sex marriages, and if that is probably going to be the case, is there something we can do now to help the future generations? so they don't have to wrestle this issue that I think we all feel there is some very serious words about it in the Word of God. So I guess I'd like to, not just as a pastor but just as a parent, I'd like to see Minnesota get the opportunity to vote to make an amendment to the constitution b/c maybe it could really make a difference to my children and grandchildren down the road after we're all dead and gone... they maybe could look back and say, 'Man, I'm sure glad the citizens of Minnesota put that in place when they see the battles go on...' maybe we could save them some pain and some challenges down the road for the future... right now it doesn't seem to be a threat based on what you shared with us about the one and I really appreciate you sharing that with us, I did not understand that before. But where will we be? Where will we be when these Supreme Court people that you have full confidence now, are gone? When the next group, say the next group, which will be years down the road. So maybe you could do something now to benefit some years down the road. Do you understand what I'm saying?

Dean: I do

Pastor: ...I have another concern to go along with what Mark was saying, that it's it unnerves me that by not doing something, which is always an option. We would run the risk of repeating what happened in Canada. Where they did nothing. They were told straight up by their government officials that 'we have no intention of allowing this to happen.' And now we can see what has happened there and it's not just a matter of having same sex couples, now there's the whole issue of hate speech and that ball starts rolling downhill in a real quick hurry. Um, and that's another concern that we may not feel, but like you were saying Mark, our kids and grandkids will be faced with that. So...

Pastor: (soft)...I've had, like yourself...compassion, I've had acquaintances that are homosexual, and I do have compassion for them, but I don't believe it's genetic, I believe it's behavioral and behavior can be helped ...there's places like, what is it? Exodus?... Exodus an organization that helps homosexuals come out of that lifestyle and come into what God is doing with sexuality. So, I have compassion, I don't hate them. God help me if I did. I understand...I have concerns for them for their health, not just their physical health, but their spiritual health, the trick is to understand.

Dean: So, let's think in a larger context. I think this is my 17<sup>th</sup> meeting with constituents this week and it's only Thursday...

Pastor: has this topic come up at the other 16<sup>th</sup> meetings?

Dean: no it hasn't.

Pastor: really?

Dean: and we just did another statewide poll... generally 2 questions: are you a registered voter? Are you intending to vote in the next election? Because they hang up on you or say no. you know, go do what you're going to do. This was commissioned not by Democrats or

Republicans, but by 800 registered voters in MN. And All of these questions from taxes to you know what, this issue ranked 22<sup>nd</sup> among the general population. Say Dean, don't waste your time. You have a lot, move on. Fix our roads, better our schools, health care is a concern. And then they'll go on to say; those are spiritual, religious, theological issues for the churches/synagogs ought to take. And that's why I really come down there with the indictment that we as churches sometimes don't want to wade into the water regarding these things because we like to be liked. We like our parishioners to like us, we want to be respected, but sometimes we need to have the faith within the confines of our workplace about these matters. It's very very difficult; it's very difficult to do that. Its easier to kinda talk the, you know the, I listen to Sunday mornings about...(laughter)

Pastor: are those polls available to us?

Dean: sure, I'll get you a copy... this was the poll that we used for 2 special elections in Minnetonka, Plymouth and what I consider fairly conservative Stearns county and St. Cloud.

Female: When you talk about debating in the Church... We were all asked to study it in the ELCA... at Peace we had meetings to talk about it and it was almost right down the middle on both sides, so can we still be a worshiping body and have a range of disagreement? It was very respectful to one another...they found a way to let go of church differences (hard to hear)

Pastor: ...When we talk about the issue it seems to be pretty split down the middle people on both sides...But as a whole, um I think our congregation when we've talked about it, there are bigger more important issues facing our church um and we don't want to be divided over the issue of sexuality and we can move forward in faith as a congregation and do our mission and ministry in the world and continue to do that

Pastor: Our friend is an Episcopalian Bishop in Ohio...a highly respected individual. And after the Episcopalian church allowed ordination of gay and lesbians I asked the Bishop from Columbus, Ohio...what was the flavor, what happened to your parish. He said half of the people just stayed home and didn't join another church they just plain went home...

Pastor: in other words, what was he saying, that they weren't coming to church any more because they were frustrated?

Pastor: they wanted to be Episcopalian but they didn't agree with the stance the church took so they just stayed home.

Pastor: See I believe that the general assembly voting when the other way, there would have been a lot of covenant pastors that would have went the other way...

Dean?: I agree with you, I agree with you.

Pastor: Another problem Dean, is that if we don't impact society, society then comes in and impacts the church... a Lutheran pastor in Sweden went to jail because of what he was saying within the church, because their laws are so strict. He was saying something against

homosexuality that God had made clear.... and it was a "hate-crime" situation he ended up in jail. So, and that same thing is happening in Canada... So we can't just say sit and say 'lets sit inside of our churches and we'll be safe there' because it won't happen. Society will come into the church; the secular realm will come into the church and will prevent us from doing what we need to do inside the church. And it's already happening; That's where I see as one of the greatest dangers that we won't be able to practice what we believe. Their agenda is to not just have equality; it's to take over.

Dean: That, I don't agree with that if you will. This still is America; we still have freedom of expression, freedom of religion, freedom to live where we want to, and to work, and all of those other things.

Pastor: the key word is 'still'... Dean I preached a sermon, I don't know if you heard it on the radio, but I preached about Sodom and Gomorrah, and I don't care what country you're talking about whether its our or some third world country, I truly believe that if we let this thing get out of hand, we're going to have eventually, I don't know how long it would take, but we're going to have chaos, we're going to have Sodom and Gomorrah. If you read the account of Sodom and Gomorrah, it says that all of them came out to have relations, sexual relations with the visitors... it was chaos that description there in the Bible shows chaos and it shows utter corruption and depravity. I truly believe in my heart of hearts as the Lord as my witness that that is what you're going to have and that's what I don't want my kids, grandkids, my great-grandkids or however long it takes to have that happen to them where they have to live in that type of environment... If you believe that that account was just a fable, a story, as some theologians may believe... I believe the Bible cover-to-cover, it is infallible, it is inerrant, it is perfect, it is God's word and it shall last forever, when all of us are gone...

(further talk about Sodom and Gomorrah)

Pastor: what I'm saying is that that's the ultimate picture if we don't take care of the matter... if we don't get serious about it and keep putting it off. I appreciate the comment you made about us sharing a passion for biblical worldview... I think what Dean was saying is that we can't, in public policy, we can't expect to force our worldview on the public...

Pastor: in the end Christ is going to set-up the perfect government.

Pastor: ..I know for sure that we are one of the voices, as a church, in the public forum, I will never give up that voice and whether one succeeds in a vote or not, we better throw out ideas in the public forum and it can be based on the Bible... I believe this issue in the state of Minnesota put in the public forum, with the church, maybe split somewhat in this issue, but nevertheless. I don't believe all that the 78% of the people in this poll are all conservative, fundamentalist Christians. I believe there are a lot of Lutherans, and Episcopalians, and whoever in that poll. because, there aren't that many conservative Christians, evangelicals in the state of Minnesota... If we just let the state of Minnesota speak to this issue, I don't have any problem that is going to fall for biblical worldview. I think the issue is are we going to let the state of Minnesota speak to the issue and if we other important things to do, why don't we get done with this by putting it out to the people right away. It's fairly easy to expedite this and just say o.k.

lets vote on this...wouldn't it be easy to just get it out of committee and let the legislature vote on it and get on to bigger, more important things?

Dean: You should sit in my office for a day; I invite you to do it. Folks coming in every 15 minutes saying, do this, do that. Understand that you ultimately have to make certain decisions...Point too, I just came from AZ, a very conservative state...that same poll was done in AZ, a year ago in AZ, and they just re-did it and there was a 22% change in one-year not to change the constitution...

Pastor: see that gives me incentive to change the constitution this year instead of two years from now  
(laughter)

Dean: I'm just saying it was a see change in AZ in one years time under the Mason-Dixon poll...22%

Pastor: what's the down side of you supporting this?

Dean: Uh, lets see...I'm not sure there's a down side. I think a bigger, take this issue off the table, I have always been very consistent... constitutional, I think the constitution was written in pretty good form with this exception, I thought it was just foolishness that they voted on paramutual lottery (?) and all of that, we should just put it into law so we can just change it with the law. I think to amend constitution, you have to give a very very good reason to amend the constitution...Compelling reasons number one. Number 2, yes, I'm a majority leader and the vast majority of the ppl I represent in St. Paul are opposed to the constitutional amendment. Number 3 they're very quiet out here in west central MN...there is quite a group of folks that say we do not need a constitutional amendment...and ultimately we have to weigh it out...I'm not afraid of controversy, its dialogue. I've learned some of your passions and theology. I want to be respectful...but like I said before, what is best for this state in the long term?...I think, again, that our sexuality relies heavily on genetics...they try, they're just inherently, genetically that way.

Pastor: do you acknowledge any of the science that supports that?

Dean: Alan Spear, is a university professor who is brilliant in the matter of history, and with tears in his eyes he said, "I tried, I tried, I tried, I wanted to fall in love..."

Pastor: I think we need to be careful that we don't blur the line of what this discussion is suppose to be, its not about whether someone is homosexual or not. That's a whole other issue in itself. This is about defining marriage. The bigger picture down the road for MN what's going to be best is, if nothing is done now? Same sex marriage comes in even under the guise of civil unions, which they've seen in other states as a stepping-stone to it being on the same par as marriage. Which then is going to open the door for other groups like polygamy. You open that door, and nobody can guarantee its not going to happen here in MN. We can't say that. If we're really going to be concerned about the well being of our state for our children and grandchildren, we need to make a bold move now. If our laws are so strong, then lets really strengthen it. Lets

really put it to the point where it won't be able to be challenged, no question. I think that's what would be best for Minnesotans.

Dean: I don't disagree with you looking at; I said earlier this issue is going to be like Roe vs. Wade... and go to the highest court in the land, agree, disagree. It will be at that level someone will take it there and say here is the law of the land...

(ended with a brief conversation about the slippery slope of laws...talked about the other issues that ranked high on people's minds- access/cost of health care, transportation for elderly...)

Closed in prayer.

**Minnesota Public Radio, 3/17/06**

My point to them was, I don't think that we have to be so fearful about this same sex marriage occurring in Minnesota.

## **Chief Justice Russell Anderson's Statement**

"On Friday, Senator Dean Johnson apologized to Minnesotans for suggesting that a justice or justices had provided private assurances of the Court's intent regarding a 1997 law.

"On behalf of the Minnesota Supreme Court, I formally accept Senator Johnson's apology and thank him for publicly verifying what the Court has said since the outset: that no member of this court or my predecessor, Kathleen Blatz, ever made a commitment to Senator Johnson about this matter or any other likely to come before us.

"Contrary to Senator Johnson's original assertion, and any speculation by commentators since then, there have been no discussions by former Chief Justice Kathleen Blatz or any current member of the Supreme Court with Senator Johnson about the Defense of Marriage Act, let alone any assurances given in regard to that law. It never happened.

"In the wake of these attacks on the integrity of court members and this institution, Senator Johnson's apology should help reassure citizens of this state that their judiciary is an impartial institution made up of men and women who faithfully perform their duties in a fair and nonpartisan manner.

"This incident has served as a timely example of the dangers posed by a politicized judiciary. It is a glimpse into how the public's trust in their courts would be eroded if judges actually did pre-judge cases without the benefit of a hearing, or publicly or privately pledged to rule one way or another. It is my fervent hope that the discussion that has taken place over the last week has helped underscore for all Minnesotans the importance of maintaining a fair and impartial judiciary."



Star Tribune  
3-21-06

# 'Embellishments' brouhaha grows

COURT FROM A1

Anderson's statement puts Johnson in the position of having to defend what some are calling an outright fabrication rather than what he had termed an "embellishment" of a conversation he said he'd had with a justice.

A tape that surfaced last week revealed Johnson telling a group of pastors in January that he had talked with at least three justices and received assurances that they would overturn the state's marriage law to allow same-sex marriage.

Supporters want to put a constitutional amendment to ban same-sex marriage and civil unions on the November ballot because they say "activist judges" might legalize such unions unless the amendment is passed.

As the week wore on, Johnson recanted many of the claims in the recording, saying Friday that he had talked with only one justice about the state's marriage law in a chance encounter in the Capitol rotunda late last year. But Johnson never backed off his assertion that a conversation had occurred.

Anderson said Monday that he was "incredulous" when he learned of Johnson's assertion that justices had disclosed how they might handle an upcoming legal matter.

Calling from an out-of-state family vacation, Anderson told reporters emphatically that "I have talked with every member of my court, including the former chief justice, and we have had conversations with Dean Johnson about DOMA [Defense of Marriage Act] or he might decide any matter relating to it. This just never happened."

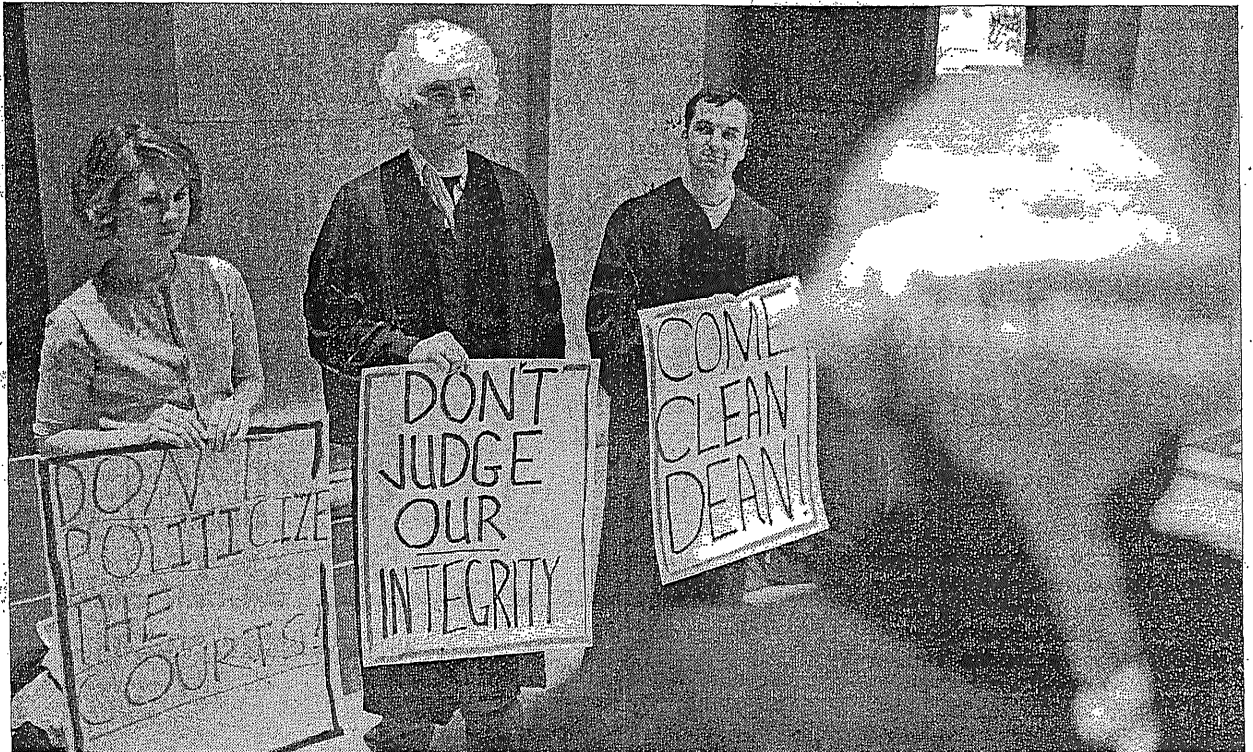
Anderson said that the need to maintain absolute impartiality is "ingrained" in judges, and that even in social settings and casual conversations, judges do not talk about issues that might come before the court.

"I have been a judge for 23 years and I have never been approached by a legislator, county commissioner, mayor, township officer, member of a city council or anyone, school board, asking me for a commitment or even a conversation about a matter that is before the court or that might come before the court," Anderson said.

## Moving on

Johnson said Monday that he would let his Friday statement stand and intended to "move on." On Friday, Johnson had apologized for his taped remark saying he had "sanded off the truth" and asked for "a second chance."

The incident has created a firestorm around Johnson at a time when he had hoped to focus his caucus squarely on



Minnesota College Republicans stood outside Senate Majority Leader Dean Johnson's office Monday in judicial robes and powdered wigs to protest Johnson's claims that state Supreme Court justices had assured him they would not overturn the Defense of Marriage law.

JEFF WHEELER • jwheeler@startribune.com

## IN HIS OWN WORDS

**What Sen. Dean Johnson has said about his discussions with state Supreme Court members. At a meeting of clergy members in New London in January:**

"[Members of the Supreme Court, I know all of them. I have had a number of visits with them about our law. All of them, every one of them, including the lady who just stepped down, Kathleen Blatz. You know what her response was? 'Dean, we all stand for election, too, every six years.' She said, 'We are not going to touch it.' That's what she said to me. I've talked with Justice Anderson, and another Justice Anderson. 'Dean, we're not going to do it.'"

**In a statement released Wednesday, March 15:**

"I have at no time ever received any promises or commitments regarding any potential judicial cases from any member of the state Supreme Court."

**In an interview with Minnesota Public Radio, Thursday, March 16:**

"I asked one of the judges, 'What do you think about the Minnesota law regarding same sex marriage, put in place in 1997?' The justice thought about it, said, 'I think the law is pretty good and probably something we're not going to take a look at.' And you know, kind of as a matter of fact, said, 'You know, we stand for election, too.'"

**In a news conference, March 17:**

"After a discussion about the wind and weather and relatives and the Legislature, I simply said, 'Any thoughts on the '97 DOMA law?' And the person shrugged their shoulders and said, 'Yeah, we have a law.' That was it."

**To reporters, March 20:**

"I apologized. Now we're going to move on to other issues. I made my statement."

bread-and-butter issues such as health care and education.

Supporters of a constitutional marriage amendment have made a Senate floor vote on the issue a priority this session and have become a near-constant presence at the Capitol. Senate DFLers have kept the issue from coming to the floor for more than two years, saying the state's existing law banning same-sex marriage affords sufficient legal protection.

Since the tape was released last week by Minnesota for Marriage, a group advocating for the ban, amendment supporters have taken out radio and newspaper ads calling for both a vote and Johnson's resignation as caucus leader.

On Monday, GOP Party Chairman Ron Carey unveiled [www.sandingoffthetruth.com](http://www.sandingoffthetruth.com), a

website that he said would help Minnesotans keep track of the controversy.

"I think Dean Johnson lied," Carey said. "I hope Dean Johnson's DFL colleagues will take a look at this site and see for themselves the staggering dishonesty and unethical behavior their leader has demonstrated."

"Senate Majority Leader Dean Johnson has been both a moral leader and a friend to Minnesota throughout his life," said Minnesota DFL chair Brian Melendez. "One unguarded comment in a private discussion with his fellow clergy cannot undo his 36 years of valued

service."

Assistant Senate Majority Leader Ann Rest, DFL-New Hope, said that Senate DFLers are united behind Johnson and took the confidence vote as a means of putting to rest any questions about Johnson's continued leadership. Rest said that "differing recollections" of conversations notwithstanding, "we voted unanimously and enthusiastically to support our majority leader now and in the future."

## Ethics complaint possible

But moving on may not be easy.

Senate Minority Leader

Dick Day, R-Owatonna, said that he has already asked a staffer to look into the basis for a possible ethics complaint against Johnson.

"I'm not a fellow who likes to pile on," Day said. "But I have members coming to me saying we just can't stand for this. The whole thing troubles me. I'm trying to be above the fray, but we have to look into this." Day said that while any senator could file a complaint, he would not do so unless leaders in his caucus agreed.

House Speaker Steve Sviggum, R-Kenyon, who has long been at odds with Johnson, said Monday that he was relieved at Anderson's strong denial of conversations about legal issues.

"Chief Justice Anderson's statement should be comforting to the entire state," Sviggum said. "The worst damage that could have come out of this would have been to have the integrity of the Minnesota Supreme Court called into question. Now that integrity has been preserved."

However, Sviggum said, it also "calls into question Sen. Johnson's integrity a little bit more. He didn't embellish. He didn't 'sand off the truth.' He told constituents things that weren't true, things that never happened. He needs to acknowledge that."

Gov. Tim Pawlenty had no comment, said press secretary Brian McClung.

Staff writer Pat Doyle contributed to this report.

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