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THE CLERK OF THE UNITED STATES DISTRICT COURT

WILLIAM GRAF, *Chief Deputy Clerk of the District Court of the United States for the District of Colorado, offers the following observations with relation to the Bar and Clerk.*

AT THE Tenth Annual Meeting of the Federal Court Clerks' Association held at Chicago, Illinois, the Honorable James H. Wilkerson of the United States District Court for the Northern District of Illinois, sitting at Chicago, had the following to say in addressing the convention:

"The clerk is so closely connected with the court and with the work of the court, that I feel, and I think we really all feel, that you are a part of the official family. The clerk is the instrument through which the court communicates with the outside world. The court may talk a good deal from the bench, and deliver opinions, but it is only through the clerk that we have our real communication with those who have business to transact in the courts.

"You record for all time not only the good things that we do, but you crystallize and perpetuate our errors as well. The clerk is the recording angel of the court, so to speak, although, quite unlike the poetic recording angel, it is impossible for you to drop a tear when the court commits an error, and blot it out forever.

"The business of the courts has grown to such an extent during the last decade, and the work of the clerk's office has so increased, that you have a real problem of business efficiency on your hands. The proper assembling and keeping of the files, getting them in such shape that the public may have easy access thereto, the prompt and accurate recording of documents received, the arrangement of the dockets in such a way that the business of the court may be expeditiously handled—all of these things are matters which call for executive ability. So the problem of the clerk's office now is *not* merely a matter of going around to the judge and getting his advice, as they used to do in the old days, but it is a matter of running an up-to-date business office. You cannot decide our cases for us. we have to make our own orders; but you can handle the

great volume of business in such a way that there is as little friction as possible between the court and those who have business in the court.

“As I say, it is primarily a matter of business organization, the same that any business office has, to transact the business of the office with as little waste energy as possible, and have the work done as accurately as it is possible to do it, and then have it as freely accessible to the public as it is possible for it to be.

“I have no particular suggestion to make to you. I think that the judges could do a good many things, if they would exercise their authority, to relieve the clerks of a good deal of unnecessary work. But as I say, that is our problem. I think the whole system of court records, which is an ancient and antiquated system carried down through the centuries, could be revised and remodeled in such a way that the volume of the court records would be very materially reduced.”

And in this connection the Honorable Benjamin P. Merrick then addressed the meeting upon the subject:

What the Bar Expects of a Clerk's Office

“At the outset of these very general remarks I must take some liberties with the topic assigned to me. That topic implies either that the bar—that notoriously individualistic group, which seems so prone to disagree from habit—has formulated its collective expectations of the clerk's office into some sort of code which I must lay before you; or it implies that, in the absence of such a code I am to indulge in the presumptuous effort to say what are the undisclosed thoughts of thousands of lawyers upon the subject.

“So far as I know, the bar has never formulated its views of what should be its relations with the office of the Clerk of a Federal Court, or of any other court, for that matter. In the absence of such a collective expression by the profession I am as impotent to voice it for the bar as I would be to proclaim the bar's expectations in respect to, let us say, the 18th Amendment.

“Not being a clairvoyant, and not having been able to resort to laborious research—or a sort of Literary Digest poll

—to learn the views of the bar upon the subject assigned to me, I must disclaim all spokesmanship, and confine myself to my own very general opinions, NOT as to what the bar EXPECTS, but what it may reasonably expect, of the office of Clerk of a Federal Court.

“Having in one respect thus narrowed the topic, I propose, by your leave, to broaden it in another. The topic is one-sided. It omits, perhaps through courtesy, any reference to what the clerk and his assistants may reasonably expect from practitioners who deal with the office. The subject matter is, however, essentially one of mutual relationship; and hence some slight reference later to the proper attitude of the attorney to the clerk may not be irrelevant.

“The clerk of a court of justice is an officer of the court, entrusted with the custody and proper use of its seal and with the keeping and custody of its records. He is charged with highly important duties in furtherance of an orderly and efficient operation of the machinery of justice. The fact that most of his duties are ministerial does not lessen their importance, which has been recognized as vital since the earliest days of the English courts. The calling of a clerk of a court of importance is a HIGH calling, a fact which may helpfully be borne in mind by clerk and attorney alike.

“The foregoing applies peculiarly to the members of this association, for not even the most zealous advocate of States’ Rights would deny that the courts of the United States are of first importance in our judicial system.

“Moreover, owing to the manner of your appointment, you are individually something more than a ministerial appendage thrust upon the court by the fortunes of the ballot box. Deriving your office from the bench itself, you may justly feel yourselves to be an integral part of the Federal judicial system, and as sharing in the honorable responsibility which participation in the working of that system implies.

“In discussing what practitioners at the bar may reasonably expect of the Federal court clerk, it is, I fear, much easier to contribute truisms and self-evident platitudes than constructive ideas.

“Thus, it may be obviously expected of the clerk that he shall live up to his oath of office: ‘truly and faithfully to

enter and record all the orders, decrees, judgments and proceedings' of the court, and 'faithfully and impartially to discharge and perform all of the duties of his office according to the best of his abilities and understandings.' The traits of accuracy, fidelity and impartiality emphasized in this oath are taken for granted as part of the basic equipment of the clerk. And, as suggested in the oath, he is expected to handle the job not PERFECTLY, but according to the best of his abilities and understanding. Perhaps, however, it is not unreasonable to expect the clerk of court to strive somewhat POSITIVELY (that is to say, over and beyond the absorption of day-to-day experiences), to increase those abilities and that understanding, so that his BEST will become steadily better. Please believe that this is not said paternally. The observation is largely selfish, for the candid lawyer will admit that in countless ways he relies upon the technical knowledge of the clerk and his staff, and the wiser they are about their own job, the fewer the pitfalls into which the practitioner will tumble—always assuming a human and generous attitude on the part of the clerk in the matter of helpful suggestion. Of course there are lawyers who know it all; but there are many who don't, QUITE, when it comes to details of Federal practice in the clerk's office; and with these I should say that increasing proficiency and learning on the part of the clerk bulks very large as evidence of fitness.

"Another axiomatic requirement of the office is that it should be efficiently organized and operated. If I am charged with being trite on this point, I cheerfully admit it. 'Efficiency'—that much overworked and rather elastic term—is what we all strive for more or less successfully; and I have no doubt that the body represented here could give the great majority of law offices many a lesson in efficient office organization and operation, on the purely mechanical routine side. Take the matter of the files, say in a voluminous equity case of long duration. Generally speaking, I would gamble on the clerk's file being in better order than the files of counsel in the case at any given moment; that is, unless the clerk's file had been recently disarranged by visitation of some lawyer bent on research. But granting, as I think we lawyers should, that we can teach the modern clerk's office NOTHING about or-

derly keeping of records and files, the fact remains that for the practitioner who consults them, well-kept files promote saving of time, economy of effort and accuracy of work, to say nothing of the calming effect they have on the nerves, and the solid impression of competency which they create.

"Promptness in handling matters, where time is precious or of the essence, is another self-evident requirement of the clerk's office, upon which little need be said. You all appreciate it. Where prompt action, **ON THE DAY**, must be gotten at the price of overtime work, and the matter is urgent, I think lawyers commend the office which performs the task regardless of the clock. In many emergent matters the lawyer cannot regulate his own time schedule. Resort to the judicial machinery must be had quickly, even if the sun is setting. In crises of that sort, he appreciates mightily co-operation by court and clerk's office. This spirit prevails in the District Court at Denver to a marked degree.

"At the further risk of being trite, I may mention, as one of the traits which members of the bar may justly expect to find exemplified in the clerk's office, and usually do find, is **COURTESY**. There is no reason why it should not be universally prevalent (and on **BOTH** sides of the counter) in the dealings between men, each of whom is an officer of the court. Each is oftentimes working under pressure and is tempted to fall into shortness of manner which is nine times out often only skin-deep. Each should be quick to recognize the other's harassments and keep the dealings upon the plain of mutual respect, consideration and good-will.

"The acid test of courtesy is found when total strangers meet, for **COURTESY IS AN ASSET**. No man deserves eulogy for being nice to his friends. But let a visiting attorney, in a strange city, apply to a court clerk for some information or service and the social qualities of each—the innate courtesy or lack of it will at once appear.

"The office of clerk should, and I venture to say usually does, somewhat match, or reflect, the degree of dignity possessed by the particular court to which it is an adjunct. In a lesser, but still measurable way, the pitch, or general tone, of a clerk's office is determined by the importance of the matters passing through the court and the general type or calibre of

the persons who come into contact with the office. Invidious comparisons between courts of low and high degree are not here remotely intended. My point is that one usually finds that the atmosphere of the office of the clerk of a given court partakes of the atmosphere of that court. I think that this should be so; and that it is one of the earmarks of the competent clerk, that he maintains his office upon a plane of dignity and courtesy comparable with that of the court which he serves, coupled with the right admixture of simplicity and informality. I think it may be true that the conditions favorable to the existence of this atmosphere of which I speak are perhaps more often to be found in the vicinity of the appellate courts than elsewhere. And I realize that the mere fact that the District Courts of the United States are co-ordinate in rank with each other does not make the environment and clientele of the several clerks' offices homogeneous. It does not take more than one visit to the office of the clerk of the District Court in a large city to observe, not merely how greatly the over-counter demands on the office exceed those in a small city, but how different are the types of persons—members of the bar—having business with the office. Undoubtedly the big-city clerk has problems of relationships with the BAR found only in great centers of population with a multitude of lawyers of every kind of character and every degree of reliability. Owing to volume of business, contacts must be delegated to a host of clerical assistants; and personal acquaintance with the business visitor, which inevitably makes for smooth dealing, must be relatively infrequent in the big-city office as compared with the small-city office where the clerk and his few assistants soon get to know personally the greater portion of the lawyers in his district whose practice brings them to his office.

“But notwithstanding the difficulties inherent in the big-city problem, the clerk will be entitled to much praise if, so far as humanly possible, by careful selection and training of his subordinates, he keeps the tone of his office comparable with that of his court, so that counsel who is a stranger within the gates, for example, will feel as comfortable in dealing with his office as he feels in appearing before the equally strange court in the next room.

"I fear that I have not been able to offer much of concrete value in these few general observations. My excuse is that I do not feel at all competent to present a technical manual to those who know far more about how to improve the service than I can ever hope to learn.

"Neither have I said as much as might be about the part the bar can and should play in co-operating for that improvement. Lawyers vary, at least as much as other humans. Their technique, in matters coming within the ken of the clerk, is far from uniform and too often, no doubt, a bit slipshod. Often this is due to a lack of understanding of the local practice. They should be quick to recognize the desirability of a certain uniformity in matters of detail, and not be too quick to attribute to arrogance what is after all but a reasonable insistence upon rules and customs which experience has shown to make for accuracy and smoothness of operation of the judicial machine.

"Mutual understanding, forbearance and respect are the keys to the problem of relationships between clerk's office and the bar. Both the clerk and the attorney at the bar are officers of the court. That fact of itself imposes, I like to think, the obligation upon each to eliminate from their relations with each other all that is petty, all that is hypercritical, all that is beneath the dignity of the court which they serve."

OLD AGE FUND—COLORADO BAR ASSOCIATION

The last issue of the Legal Aid News Letter publishes the following item:

A FINE MEMORIAL

Alfred B. Benedict, who died recently in Cincinnati, left a will in which the following residuary provision occurs: "To the Cincinnati Bar Association one half ($\frac{1}{2}$) thereof, the principal to be kept as a permanent endowment and the income only to be used for the purpose of the Association for the relief of needy lawyers of Hamilton County, Ohio, past sixty years of age, and for providing legal aid for the poor and for promoting the cause of justice among men."

The Old Age Fund established by the Colorado Bar Association three years ago is now actively operating under the direction of a Board of Trustees consisting of Edward Ring, William E. Hutton and Wilbur F. Denious.

Contributions of one dollar or more are asked from every Colorado lawyer and may be sent to the Treasurer, Wilbur F. Denious, 832 Equitable Building, Denver.