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SOME COMMENTS ON THE LAWYER IN COURT

*By Judge Charles C. Sackmann of the District Court
of the Second Judicial District*

SITTING upon a slightly elevated position upon the bench, with a broad birds-eye view of the court room and all its contents, I am asked to give my views out of an experience of four years with the attorneys who appear before the courts, as to their general conduct and attitude toward the court and their aptitude in handling their clients' business.

All courts, of course, must observe the look of utter astonishment that comes across the face of counsel at times because of the utter absurdity of the court's position in the mind of that counsel to whom the decision is adverse; the pained surprise and plain sympathy for the judge, from those who realize at certain stages of the argument that the court is just incapable of digesting and assimilating the profound argument being presented, sometimes for the first time known to man.

But, jesting aside, all courts, I am sure, love and appreciate the fine broad fraternalism and comradeship of the bar and the fine gentlemanly courtesy that comes from the lawyers at the bar to the court.

Arising, I am sure, from that fundamental, ingrown respect that every good American citizen has for the courts of our country, one immediately feels upon being elevated to the bench that atmosphere of respect, courtesy and desire to do honor to the judge, exuding not only from the lay citizenship but even more so from the members of the bar practicing before the court.

A finer, more gentlemanly, more scholarly, more humane, more lovable body of men than are found in the bar of America can be found in no other profession.

By no more impressive means can a judge be made to feel the responsibility and honor of his position than by the eagerness with which the younger practitioner in the courts waits upon his advice and explanation of his decisions. With the enthusiasm of youth, oftentimes disagreeing with the conserva-

tive attitude of the court, but, nevertheless, respectful of its decisions, eager to have its own viewpoint recognized and affirmed, but seldom sulky if such results are not obtained.

One finds a little unintentional forgetfulness sometimes as to the ethics of trying to discuss with the court, in the absence of counsel for the other side, some point that must later be decided by the court, but never, I am sure, with the deliberate intention of taking any undue advantage of the other side or imposing on the court.

In fact, I have found the finest sort of cooperation on the part of the bar in overlooking mistakes of judgment on the part of the court, and a whole-hearted attitude on the part of lawyers to blame the mistakes of the judge upon his lack of brains rather than to any ulterior or unscrupulous motives, which is, of course, always appreciated by any judge. The greatest compliment that can be paid to any judge by the bar is a sincere belief in his integrity—respect for his ability, if any, being a secondary consideration.

In the unbiased criticism of the handling by the lawyers before the courts of their cases much may be said.

Of some it may be said that the court is made to wonder what possibly could have called the attorney to the bar as a profession, there seeming to be such an utter lack of any of the usually looked for attributes that make for the successful lawyer. This class—a small one, to be sure—inflict on the court the greatest punishment of any, raising questions that have never before been heard of and on which there are no decisions of the higher courts because of their very absurdity.

Then there is the bright, self-sufficient lawyer who, having worked on his case for a month and having it at his finger tips, proceeds on the basis that every one else is as well informed, the court included, presents his points with a short snappy statement that presupposes a full grasp of the entire situation on the part of the court, which is usually a violent presumption, and leaves the court entirely in the dark as to "how, when and where". To these, I plead, be patient with the court; he probably does not think as fast as you do; present your point simply in words of one syllable, as to a child, and the court, no doubt, in time will come to your viewpoint.

Then there is the attorney who, taking it for granted that

the court has a poor memory, reads from a Colorado case that portion which fits his argument, forgetting to read the next line or paragraph which does not. Attorneys should be especially careful as to this, as it might mislead the court, and, of course, no lawyer would desire to do that as the courts make mistakes enough without any undue assistance to that end.

Also there is the attorney who stands upon the broad principles of the law, with no particular application to the question to be decided, and presumes the court to be possessed of divine attributes that will assist him in making his decision without authority or precedent. This is also a violent presumption as many judges are not good church members and it is very doubtful if they receive any divine assistance or know how to ask for it.

Again there is the attorney who really prepares his case, who has learned that the successful lawyer must work day and night, who presents his facts and his legal arguments like a general marshaling his forces, who makes even a sleepy judge sit up and take notice and leads him to a correct decision of the point involved because of the masterly manner in which the argument for it is prepared and presented and backed up by research and authority.

Then there is the attorney who has heard at some time about rules of the court, but has never seen a copy or really believed that any existed, and is really rather hurt when the court calls the same to his attention and enforces them. There really are printed rules of the District Court, which may be obtained for the asking; they were prepared by the judges en banc after considerable thought, and are considered of some importance by the court.

If I were to make any criticism of the handling of cases in court by attorneys, I would say: be sure that you are a court lawyer to start with; become familiar with the rules of court; have a fair knowledge of the provisions of the Code; prepare your argument and back it up with good precedent, or at least logic; then present it on the hypothesis that the court knows nothing about the point, simply and in apt language, and the court will be apt to follow you and decide correctly.