

Dudman A. Leiper

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Memorial
to
Hon. Ferdinand A. Geiger
Presented to
The United States District Court
for the
Eastern District of Wisconsin
by
Milwaukee Bar Association
Response by
Hon. Evan A. Evans

OCTOBER 9, 1939

In Memoriam

HONORABLE FERDINAND A. GEIGER

At a session of the United States District Court for the Eastern District of Wisconsin, held at its courtroom in the City of Milwaukee on October 9, 1939, before the Honorable F. Ryan Duffy, Judge of said court, the Honorable Evan A. Evans, Senior Judge of the Circuit Court of Appeals for the Seventh Circuit, the Honorable James H. Wilkerson, Judge of the District Court for the Northern District of Illinois, and the Honorable Patrick T. Stone, Judge of the District Court for the Western District of Wisconsin, the following proceedings were had:

Judge Duffy:

Twenty-seven years of faithful public service is a great accomplishment in the life of any man; but to serve for that span of years as a distinguished and outstanding member of the federal judiciary, is an achievement which has been given to very few in the entire history of our nation.

For twenty-seven years the late Judge Ferdinand A. Geiger presided over this court. He left an indelible impress, and made a very important contribution to the development of the law and its impartial administration. The great value of his judicial labors will be recognized more and more as time goes on. It is, therefore, eminently fitting and proper that in this court all business should be set aside in order that a permanent record be made by the bench and bar of the high esteem in which this great judge was held.

The Milwaukee Bar Association, under the leadership of Mr. Ralph Hoyt, its President, has appointed a committee of three of its members to prepare and present a memorial. The members are Edwin S. Mack, Louis Quarles, and William A. Hayes. The chairman, Mr. Mack, is unable to be here today because of the necessity of a trip to California. Mr. Quarles, a close personal friend of the late judge, has been selected to present the memorial, and I call upon him at this time.

Louis Quarles, of the Milwaukee bar:

The Milwaukee Bar Association has appointed us a committee to present to this court on its behalf a memorial of the late Judge Ferdinand A. Geiger.

Ferdinand August Geiger was born at Cassville, Wisconsin, on the banks of the Mississippi, October 15, 1867, and died at Milwaukee, on the shore of Lake Michigan, July 31, 1939.

He attended the Cassville schools until he entered the University of Wisconsin at the age of seventeen. He spent six years at the University—four in the College of Letters and Science, and two in the College of Law. The degree of Bachelor of Arts was conferred on him in 1888, and the degree of Bachelor of Laws in 1890.

He then served a brief apprenticeship at Madison in the office of John M. Olin, a scholarly and forceful lawyer of marked ability. This was followed by employment in the office of Miller, Noyes & Miller, now Miller, Mack & Fairchild, where he found special opportunity for thorough research, orderly thinking and candid expression of opinion. In 1894 he formed a partnership with John F. Burke and Nathaniel Robinson. In 1895 Burke withdrew, and the partnership continued as Robinson and Geiger until 1896. For sixteen years thereafter, Mr. Geiger practiced alone.

In 1912 he was appointed Judge of this court by President Taft. His predecessors, Andrew G. Miller, Charles E. Dyer, James G. Jenkins, William H. Seaman and Joseph Very Quarles, had given to the court an exceptionally high rank.

Because of illness, Judge Geiger resigned May 22, 1939.

Judge Geiger was married on June 8, 1897, to Kathryn L. Mayhew, daughter of George W. Mayhew, a Milwaukee pioneer. They were favored with five children, one of whom died in infancy. George is in business in Milwaukee. Josephine is an employee of the Milwaukee Public Library. Ferdinand is a physician, living at Syracuse, New York, and Katherine, now Mrs. Morrison Mills, is living in Philadelphia. One grandchild, Ferdinand August II, son of Ferdinand, is named for his grandfather.

The Judge's father and mother came from Germany. They came from places not far apart—the father from Hannau, to the southeast of Frankfort; the mother from Weisbaden, to the northwest of that city. In that region every school of thought in government, religion, education, science, philosophy, poetry and art found its masters. From that district went forth to all the world men and women of character. Many came to Wisconsin, and among them the parents of Judge Geiger. With such a background in mind, the character of Judge Geiger may be readily understood.

The Judge, although apparently short (he was actually five feet eight inches tall) was possessed of a well-proportioned physique. He had a finely shaped head, crowned with an abundance of hair; a clean-shaven and colorful face, and keen, quick, piercing eyes. His movements were quick, yet he be-

trayed no haste. He was always well but conservatively dressed. On the bench, he was keen, quick and sometimes sharp; but on the street, at the club, and in his home, he was quiet, generous, warm, and friendly. He conversed in a well-modulated voice, and patiently listened, even when he did not approve. His sense of humor was keen and penetrating. He was never a "joiner." At times he declared himself a Democrat, yet he affiliated with no political party, no church, and no fraternal organization. He neither owned nor operated an automobile.

He found in his spacious and attractive garden exercise for the body and relaxation for the mind. Almost every day from April to October he could be seen at work there. Vegetables, fruits and flowers were there in abundance. He did all the work and derived great satisfaction from the quality and quantity of the product.

His recreational readings further reveal the character of the man. Chief Justice Marshall, Abraham Lincoln and Chief Justice Ryan of our own Supreme Court are characters whom he greatly admired, and whose writings he industriously read. He found in them a deep and enduring philosophy. His trust in them and their work and his devotion to their teachings were evidenced in his administration of the law during the twenty-seven years he was on the bench.

His taste for poetry was marked, although not publicly expressed. Poe, Wadsworth, Shelley, Tennyson, Byron and Burns held for him a special charm. In their writings, he found reflected kindred souls.

Unpretentious in everything, his character was fully revealed only to his family. His helpful suggestions and kindly deeds went unpublished. He frequently bestowed gifts on those in the old home neighborhood less fortunate than he. Such deeds reveal a character which all right-minded men call noble.

Judge Geiger showed early in life his outstanding characteristics of keen analysis, dispassionate logic, unremitting industry, steadfast courage and unshakable independence. He quickly won the respect and confidence of his fellow members of the bar, but although he was well known, his close friendships were few. His elevation to the Bench brought with it a feeling of the necessity of detachment. He was scrupulous in avoiding any contact or association that could tend to influence him in his judicial duties. He cared nothing for the trappings of authority. His sole purpose on the bench was to seek the truth and to bring about justice. To that end he would

join in the examination of witnesses, bring out arguments that counsel may have overlooked, and likewise, with relentless logic, bring counsel to the realization of unsoundness in their positions. All suitors were alike in his court; and all lawyers, young or old and no matter what their personal relation to him, stood alike before him. Their causes rested solely on the soundness of their position. He had no patience with chicanery or sharp practice. He insisted on counsel and witnesses going directly to the issue and he sought to expedite and simplify proceedings by holding counsel to the essential points and speedily ruling out all non-essentials. He ran his court with great solemnity and decorum, albeit this did not prevent his indulging in or enjoying to the utmost a joke that was pertinent to some matter on trial before him. Although when he first was appointed to the bench he had but little experience in trademark matters and practically none in patent matters, through hard work and keen analysis he became one of the best known and most respected patent judges in the country. Some of his decisions stand out as pioneers in the issues involved. He always ruled promptly and decisively in the conduct of a trial. He rarely wrote opinions, but when he did they were carefully phrased and well considered.

His innate sense of justice and ethics was unique, and, if anything, extreme. He believed his duty to be the enforcement of right and justice and he did not conduct his court as an umpire supervising a game played by counsel, but when he was satisfied that one side or the other was right he lent the whole weight of his ability and position to enforcing his point of view. This fact, coupled with the circumstance that he made up his mind very quickly in the trial of a case and possessed an unparalleled dialectic, led him to be both admired and feared by the members of the bar.

His high sense of ethics can best be illustrated by his constant refusal to permit the criminal process in his court to be used for the settlement of civil matters. He could not countenance criminal proceedings in his court to be used as a collection agency. When a railroad strike was settled that did not for him eliminate the necessity of considering and going through with contempt proceedings that had been previously initiated for violation of an injunction. He was personally opposed to the policy of the Prohibition Amendment, but when it became his duty to enforce it, he acted without hesitation. Many of the public were critical of his action in carrying out the so-called Padlock Law enjoining the use of premises where

liquor had been sold, but he steadfastly held to the law as he judged it should be interpreted. This attitude reached its climax in his refusal to permit an Assistant Attorney General of the United States to bargain with automobile finance companies for the entry of a consent decree in a civil action under threat of an indictment under the anti-trust law. His courageous stand brings to mind the parallel of Lord Coke and his refusal to be dictated to by King James. Like Lord Coke he felt that, "It was a sin for a man to go against his own conscience, . . . unless his conscience be first informed and satisfied," and he applied under American conditions Lord Coke's doctrine that "the judges are sworn to execute justice according to law and the custom of England." His steadfastness and fearlessness in this matter brought him a national reputation.

With his growing experience on the bench he acquired increasing learning, and for many years before his death he was outstanding among federal judges for his knowledge of substantive law and procedure and for his well-written, convincing opinions. He came to a court of high judicial standards, marked by the learning, independence and force of its judges. He well carried on the tradition and he has left a record that honors the court.

He was at all times a firm believer in the constitution and the fundamentals of our government and of the proper limitations of the three branches thereof. He constantly reverted to first principles as a basis for and check on his reasoning in current cases. He many times expressed his complete belief in the provision of our bill of rights in our state constitution, which provides:

"The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

EDWIN S. MACK,
LOUIS QUARLES,
WILLIAM A. HAYES.

Judge Duffy:

This memorial will be accepted, for this court and on behalf of the judiciary, by the able, distinguished, and much-beloved senior Circuit Judge. For more than a quarter of a century Judge Evans and Judge Geiger were closely associated, and were brought close to each other by ties of mutual esteem and warm, personal friendship. No one could be more eminently qualified to make the response than Judge Evan A. Evans.

Judge Evans:

Because of my long and intimate acquaintance with Judge Geifer, Judge Duffy has asked me to respond for the court, to this memorial of the Bar.

It is both difficult and distressing for me to realize that these services are in memory of one who filled such a large and prominent part of my official life and such a tender spot in my memories. Twenty-three years ago last May, I took my seat on the bench at Chicago. My associates that day were the late Judge Anderson and Judge Ferdinand Geiger. A close friendship existed between these two judges, into which I was welcomed. The privilege and the pleasure of that friendship grew more and more intimate, more valued, and more valuable to me, each succeeding year. In addition to the intimacies of associate official work, I was permitted the rarer privilege of close personal relationship with both of them.

On this occasion, it is not easy to disassociate the influence of the friend from that of the public official. I shall not try to do so for two reasons, one being that I cannot if I would,—the other, that, official life must, to be truly measured, be viewed from a human—normal man's viewpoint, and friendships are life's most potent influences.

In giving thought to what I should say today, I am guided by the fact that he, whom we attempt to honor, would wish no extravagance of eulogy. Plain speech—unadorned facts—no claim of superiority—these were Judge Geiger's most characteristic qualities. We all know him so well that I need not dwell on his dislike of pretense, of the assuming of an "holier than thou" attitude, of feigning a wisdom which did not exist. Judge Geiger disliked hypocrisy and insincerity more even than most of us. How often and well did he pierce by pointed question the sham behind which, occasionally, and sometimes frequently, parties and witness, and even counsel, concealed themselves.

I know of no better way to pay him tribute than to analyse those qualities which made him outstanding and which aroused our admiration and respect for him.

Foremost, Judge Geiger had unusual analytical powers. He reasoned closely. He looked at all phases of the problem and avoided none. The simple and easy method of evading a difficult question in a case by answering another issue so as to avoid the more difficult one, was never open to him. His was an honest mind and a legal question necessitated an honest approach, a candid consideration of all its angles, and a direct

answer. To him the legal and factual issues were everything. Personalities were nothing. He may have appeared to be no respecter of persons. He wasn't. The parties were A. and B. The counsel were merely voices advancing arguments pro and con. Reason and reasoning dominated his decisions, as they did all things in his life. Where reason led him, he went,—the entire distance. He was not influenced by personalities nor policy. Expediency was foreign to his nature and absent in all his mental processes.

I have no doubt you sometimes thought him stern—a severe taskmaster. He was. That was due to the absence of compromise in his nature. He so delighted in his work of analyzing and in reasoning out difficult questions, and his mental processes became so engrossed in this task that he knew not the meaning of compromise, either of thought or in his attitude towards a wrongdoer.

But my friends, stern as he may have seemed, it was in self-discipline that he was truly uncompromising. He established for himself ethical standards which few judges could live up to. I am not now speaking of ethical ideals which were or are but theoretical pronouncements. I refer to no abstract code of judicial ethics. I refer to living ideals,—to ideals that were practiced here every day, in every case,—always. Here our friend was superb. Here was evidenced the self-discipline which so early challenged my admiration and awakened my ever-increasing respect.

As an invaluable aid to close reasoning, Judge Geiger became the master of accuracy in his speech. It is impossible to overestimate the value of an accurate vocabulary. To the judge it is what well-chosen, sharp tools are to the skilled mechanic. Generalities may satisfy the needs of the publicist but for the logician, more is required. You may admire the ready vocabulary of the orator, the extensive vocabulary of the writer or lecturer, but if you desire sound conclusions, if you would excel in the law, then cultivate precision and accuracy in your vocabulary.

Very few trial judges could charge a jury like Judge Geiger—without manuscript—aye without notes. His success was due to his analytical mind, coupled with the accuracy of his vocabulary.

When I came on the bench, fresh from active courtroom work, I wrote down the five leading and most desirable qualities of a satisfactory judge, and in the order of their importance. Each five years I have checked that analysis to ascertain whether I would change the order of their importance. Assuming, of course, the existence of integrity, without which

justifiable respect is impossible, the five qualities of my ideal judge, first recorded were: (1) industry; (2) intellectual ability; (3) patience; (4) habits of regularity and promptness; (5) ability to promptly decide and dispose of litigation.

As the first, second, third, and fourth five-year periods rolled by, I have been compelled to recognize that work in different courts calls for emphasis on different qualities. The trial court work, the most important of all judicial work, for example, calls for a larger emphasis on patience and open-mindedness, ability to give a sympathetic hearing to litigants who may be both dumb and stubborn, and yet sincere in their disputes.

I have also found that two qualities, originally omitted, must be added,—courage, to which I have given increasing importance in my list of essential qualities, a quality which Judge Geiger possessed in such splendid abundance; and, second, the existence of a sympathetic and appreciative understanding of the average man's judgment. Call it common sense, good horse sense, or fairness, or what you will, the absence of the last-named quality cannot be filled by any other.

No judge can possibly enjoy all these qualities. At least not all of them in perfect quantities. The Bar could never endure one with so many virtues.

Like players in other fields, rating must be based on averages. Studying the twenty-seven years' record of Judge Geiger, we find his batting average is indeed extremely high. For twenty-seven years he sat on this bench, day after day, handling all kinds of cases, and you observed him in every phase of his wide judicial activities, and during each of said twenty-seven years our confidence in him deepened, our respect for him and the quality of his justice grew, our satisfaction in his continued display of courage increased, our admiration of him, both as private citizen and as a public official became more and more complete.

Courts are human institutions—created to try disputes and controversies between ordinary individuals—or individuals just humanly selfish. Judges should understand this, and thus better appreciate the motives, the convictions, and the prejudices of ordinary, everyday folks. The further the trial judge separates himself from the normal citizens, the less able is he to understand or decide their problems. Without an understanding of the motives that underlie human mistakes, a judge is as handicapped as he would be if he were without sympathy or without a sense of humor. It is quite impossible to expect perfection in judicial work from one who assumes

perfection. Only one who appreciates the existence of his own limitations can pass intelligent judgments on the conduct of others.

It is no criticism of a judge to say that he was better qualified for appellate court work than for the trial work in nisi prius court, or vice versa. While I think the qualities necessary for trial court work are more exacting and more numerous than those of an appellate court, I know it is a debatable subject. I have always thought Judge Geiger's qualities best fitted him for appellate court work. Certainly he possessed a mental equipment which would have brought wide recognition in the appellate court field.

Whether Judge Geiger should have allowed lawyers a freer hand at the trial and in the examination of witnesses will doubtless be a disputed question. He thought not. I thought otherwise. I have an idea that best results are obtained when the lawyers are given a wide latitude in the conduct of the trial. Yet obviously there is a limit. Judge Geiger always sat deep in the saddle. Modest he was, quiet of voice, but always firm and in full control of the situation. The important fact which I wish to emphasize is that I could frankly and freely discuss the subject with him, just as he with equal frankness said to me on the next to the last visit I had with him here in Milwaukee, "Van, I think you are entirely wrong in the opinion you wrote in the ----- case the other day. Your opinion is too academic. It doesn't fit the facts of that case." To the last, he was alert, his reasoning processes, active, still exercising independent judgment on all kinds of questions.

I am loath to close. How clearly he appears to me even now—dignified but modest, learned, yet not assertive, firm yet quiet of voice. How becoming was his modesty when coupled with his outstanding ability. His ever alert mind was the more attractive because of his rare sense of humor.

I am personally deeply indebted to Judge Geiger. His fine ideals, his loyalty, his sympathy in the hour of affliction, his friendship,—all these I have witnessed at close range.

Fervently I join with you in paying a tribute to him. Your memorial will be transcribed on the records of this court, a fitting testimonial of our regard for and appreciation of him.