

In the
United States Circuit Court of Appeals
for the Seventh Circuit

Presentation of Portrait
of the
Honorable Albert B. Anderson

November Third
One Thousand, Nine Hundred and
Thirty

Presentation of Portrait
of the
Honorable Albert B. Anderson
by
the Members of the Bar
of the
**United States Circuit Court of Appeals
for the Seventh Circuit**

Proceedings had on the third
day of November, one thou-
sand, nine hundred and thirty.





AT a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago in said Seventh Circuit, on the seventh day of October, 1930, of the October Term, in the year of our Lord one thousand nine hundred and thirty and of our Independence the one hundred and fifty-fifth.

On Monday, November 3, 1930, the court met pursuant to adjournment in the court room of the United States Circuit Court of Appeals for the Seventh Circuit in the City of Chicago, and was opened by proclamation of crier.

Monday
November
3rd, 1930

Present:

- Hon. Samuel Alschuler, Circuit Judge, presiding;
- Hon. Evan A. Evans, Circuit Judge;
- Hon. William M. Sparks, Circuit Judge;
- Hon. George T. Page, Circuit Judge;
- Frederick G. Campbell, Deputy Clerk;
- Henry C. W. Laubenheimer, Marshal.

Present
with the
Court

There were also present and sitting with the court :

Hon. Ferdinand A. Geiger, United States District Judge for the Eastern District of Wisconsin;

Hon. George A. Carpenter, United States District Judge for the Northern District of Illinois;

Hon. Louis H. FitzHenry, United States District Judge for the Southern District of Illinois;

Hon. James H. Wilkerson, United States District Judge for the Northern District of Illinois;

Hon. Walter C. Lindley, United States District Judge for the Eastern District of Illinois;

Hon. Charles E. Woodward, United States District Judge for the Northern District of Illinois.



Proceedings upon the presentation of a portrait of Honorable Albert B. Anderson, United States Circuit Judge, retired; by the members of the Bar of this court, the committee in charge being as follows:

Portrait
Committee

GEORGE T. BUCKINGHAM,
Chairman

ALFRED AUSTRIAN,
BENJAMIN V. BECKER,
CHARLES A. BROWN,
CHARLES S. CUTTING,
GEORGE I. HAIGHT,

JAMES M. SHEEAN,
SILAS H. STRAWN,
ROY O. WEST,
JOHN M. ZANE.

EDWARD M. HOLLOWAY,
Secretary.



Address by Col. George T. Buckingham
Col. George T. Buckingham addressed the court as follows:

MAY IT PLEASE THE COURT:

On behalf of the Bar of the Seventh Circuit, represented here by a committee for which I am now speaking, I beg to offer a resolution unanimously adopted by the committee, and to pray that it may be spread upon the permanent records of this court.

The resolution is as follows:

RESOLUTION.

WHEREAS, the Honorable Albert B. Anderson, long a Justice of this court, and prior to that, a Justice of the District Court of Indiana, has retired from judicial activities and hereafter will be identified with this court as a member of its "judicial reserve," and

WHEREAS, this transition from active to reserve duties presents to the Bar an opportunity and occasion to formally signalize its deep appreciation of the services which have been rendered by this distinguished lawyer and justice to the bench, to the bar, and to the public.

NOW, THEREFORE, BE IT RESOLVED that the Bar of the Seventh Circuit, now here assembled and represented, presents to the court, a portrait of Judge Albert B. Anderson, and moves the court

that this likeness be preserved in this courtroom as a permanent memorial to the honorable and outstanding career of a great jurist; and also that future generations of lawyers may be here reminded that Albert B. Anderson, as a Justice of this court, and as a private citizen, commanded the admiration, respect and esteem of his contemporaries of the bench and of the bar.

Address
by Col.
George T.
Buckingham

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JOHN M. ZANE,

Committee

EDWARD M. HOLLOWAY,

Secretary.

Your Honors, the portrait to which the resolution refers, and which is here present, is not only a permanent testimonial to a great jurist, but it is in itself a notable work of art. It is the creation of Mr. Leopold Seyffert, one of America's greatest artists, who was chosen by the committee, from a large field of eligibles, after careful consideration, for this artistic task. As a likeness, and as a work of art, it is beyond praise.

Its presence reminds us that this is the second product of Mr. Seyffert's genius to enrich these walls. The first was the portrait of Judge Francis E. Baker, which hangs yonder. This also reminds us of the essential fact which differentiates this portrait from its predecessor, and particularly dif-

Address
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ferentiates this dedication from its predecessor occasion.

Then, the atmosphere was of sorrow and obituary, for a friend who was gone forever from our lives, and whose portrait was painted from photographs after his departure.

In marked contrast to that occasion, the atmosphere now is that of felicitation—the commemorative marking of a milestone in a conspicuous and progressive, judicial career—for a friend who is alive—aggressively and vitally alive, whose portrait has been painted from life—a life which is now in the softened radiance of mid-afternoon, and which we here fervently hope may be prolonged for many years to a distant, and well-earned sunset.

The committee has selected as its spokesmen, two distinguished members of this bar, who by reason of their eminence in our profession, their long contacts with this court, and their intimate acquaintance and consequent affectionate friendship with Judge Anderson, are deemed to be peculiarly qualified for this pleasant duty.

I now have the honor to present the first of these—Mr. George I. Haight of the Chicago Bar.

Mr. George I. Haight made the following remarks on behalf of the members of the bar of this court.

Address by
Mr. George
I. Haight

There is much of symbolism in the law which greatly aids in making judicial determinations. This symbolism is applied to the realities of life. It is a great jurist who can so definitely perceive the realities as to invariably apply the symbols to the facts of existence. For instance—the labors of a judge require acquaintance with a wide variety of men—men whose being is fairly definitely known and yet who are never really seen. Among these are the reasonable man, the man of good repute, the man engaged in the more serious affairs of life, the presumptively innocent man and many others similar who are almost discernible in their gossamer clothing in the field of the criminal law.

Then there are the reasonably prudent men, the grossly careless men and all their kin, who make their symbolic appearance in the law of torts.

There is the ordinarily careful man, the man exercising the highest care and the one of slight care in the law of bailments.

There is the ordinary investor in the field of public utilities, and the ordinary purchaser in that of unfair competition.

There are extraordinary and ordinary men, each with his own attributes and in many other legal fields. We should not forget the man of inventive thought and that other man sometimes of striking family resemblance—the man of mere mechanical skill in the realms of the patent law.

Address by
Mr. George
I. Haight

These mythical men of whom we have suggested but a few examples, assume their idealistic form, proportion and being only as they are placed in a background of facts—human facts—facts which more often than not find their genesis not in the rational but in the emotional of mankind. Therefore, when judges deal with men's relationships in terms of rights and invasions of rights, they must be capable of using the symbols of the law not as realities but as tools to measure realities.

Due to innate qualities and to his experience both as lawyer and as judge, Judge Anderson has been and is a genuine realist. We say—"due to his innate qualities and to his experience". We know that among American lawyers there have been two theories as to the functioning of a judge—the mechanistic theory and the one of free legal decision—the first a child of the English Common Law—the latter of the Civil law. Under the former it is assumed that the judge discovers principles immutable and subject to no variation which he can apply as a touchstone to any state of facts and bring forth correct conclusions. Under the latter the training and experience of the judge—the conditions of the social order, economic and otherwise, are the roots from which judicial opinions spring. Judge Anderson has not in his work been an extremist for either theory. His opinions show that while he has given sufficient place to the mechanistic theory—that this is a government of laws and not of men—he has also recognized that the judge must, as a judge, fit into his determinations his experience as he has gained it

of men, of times and of the whole social order of the present.

Address by
Mr. George
I. Haight

It is almost trite to say that in constitutional questions the judge must himself be a statesman, and also in our system, where precedent has real place, he must often, in making precedent, be to a degree a legislator. The truth of this will at once be recognized from the suggestions that emanate from the phrase "judge-made laws". Constantly we find that precedent gives only partial aid. For instance, if it becomes a question of law, as it sometimes does, as to what is reasonable conduct under a given state of facts, here within a limited field of legislation, the judge needs knowledge as well as judgment.

Judge Anderson, when he came to the District Bench in 1902, and to this Bench in 1925, brought knowledge with him—knowledge gained in part in an extremely active practice at the Bar, where he dealt with men—all sorts of men—and their various problems of living. He has used that knowledge not as a thing apart—not as a tool to rust in judicial hands—but as a part of himself—undivested by the donning of judicial robes.

He brought, too, and has used, a real scholarship. We do not mean mere bookishness. Scholarship requires acquaintance with books—but knowledge of books does not of itself make scholarship. Scholarship requires the vision and the judgment to make application and use of knowledge. The Code of Hammurabi, written 2250 years B. C. is dull when imagination fails to associate with it the life of its time. So, too, the laws of today, as rules

Address by
Mr. George
J. Haight

of action without the vitality that the action affords the rules, are mere mummies of thought. Judge Anderson has always been known as a good lawyer—which, among other things, means that his high scholarship is a living one, tempered by and applicable to the society and the time in which it is used.

He has always been a judge of high courage—unafraid of the urges of opportunism or of the calls for sudden change. A single example of the many that could be selected is the opinion given in District in 1921, in the Borderland Coal Corporation case (275 Fed. 871), where the coal operators and the mine workers were enjoined from using funds in furtherance of a combination and working arrangement to destroy competition in the coal business in contravention of the Sherman Law.

Another characteristic of his is the one of decision. The law is, of course, a science, but necessarily an inexact one. Among the many interesting illustrations is the doctrine of *stare decisis*—a most highly necessary and salutary one in our law, as it makes for stability and security. Yet when its application makes too strongly true that humorous definition that *stare decisis* is the doctrine under which a court making a mistake is required to perpetuate it forever, the doctrine has been required to yield, because its yielding rather than its observance has better accomplished the result that is the reason for its being. When the uncertainties inherent in the law—in its application to life—are multiplied by uncertainty of decision, or by indecision, the results are oftentimes disturb-

ing. Some one has said (and with a considerable degree of truth) that fifty per cent of a court's task is to decide and that the other fifty per cent is to decide right. Judge Anderson has been willing always to make positive decision without sparing of those brief words too often dulled—"yes" and "no". We sometimes find merriment in accounts of trials by battle, by ordeal and by the swearing of witnesses as they existed in the English law, even after trials by jury began. Generally as modes of trial, however, they had one great merit. They were decisive. Certainty of decision and promptness of decision have been two of Judge Anderson's great merits in his long service upon the Bench—both in District and here.

Address by
Mr. George
J. Haight

Judge Anderson, too, has always been a believer in the art of fair controversy. Controversy is the soul of the English and American law even in the methods of pleading, designed as they were to bring the contest to the sharp determining ultimates of a dispute. No better method of reaching conclusions has been devised, or perhaps ever will be, than the honest advocacy of opposing views.

We are much indebted to those who serve upon the Federal bench. That they may serve involves much of sacrifice—sacrifice of lucrative professional practices, sacrifices of many enjoyable contacts and fields for experience. The public and the bar are grateful to Judge Anderson for his long and able service, employing the qualities we have so briefly sketched—and all illuminated by a keen intelligence and by quickness of perception. It is hoped that he may from time to time, as he wills,

**Address by
Mr. George
J. Haigh**

come from his retirement to join again his colleagues on this Bench. Whether here or away, the good wishes of the Bar for a long and happy life are with him. The knowledge of a true appreciation of his services and of the existence of this genuine sentiment of good will is one of the jewels of true success that Judge Anderson may carry with him always.



Colonel Buckingham: It is now my honor, on behalf of the committee, to present that eminent barrister, Mr. William H. Thompson, of the Indiana Bar.

Mr. William H. Thompson of Indianapolis, Indiana, a member of the bar of this court addressed the court as follows:

Address by
Mr. William
H. Thompson

I am very glad to be able to say a few words in appreciation of the character and attainments of Albert B. Anderson, whose almost living likeness is before us today.

He was for more than twenty years Judge of the United States District Court for the District of Indiana. It is as the former Judge of that Court that he is known and admired by practically every citizen of Indiana. To us his earlier successful career as a trial lawyer and prosecutor and his later useful work as a member of this Court mark but the beginning and end of his career—a career characterized by unusual and distinguished public service as a trial Judge.

What are the qualities which are essential to the successful conduct of judicial office?

They are, as I believe, courage, intellectual honesty, common sense, the ability and willingness to decide cases promptly, and a mind sufficiently alert to analyze questions of fact and law.

These qualities are homely ones and therefore somewhat rare. That Judge Anderson possessed all of them in an unusual degree, no one will deny.

Address by
Mr. William
H. Thompson

To these qualities he added a real desire to administer justice fairly and promptly and an abhorrence of unfair conduct on the part of either litigant or lawyer.

To him a court room was not a place where a prize was to be awarded to the keenest lawyer, but it was a forum where the rights of parties litigant were to be determined,—it is true—by certain definite standards of conduct, but to the end that ultimately rules of law should coincide with fair play and equity. Perhaps one of the best answers which we have to the present widespread criticism of both lawyers and judges in the administration of the law, is to be found in the fact that men of Judge Anderson's type have been in the past and are now willing to serve upon our courts, usually at a great personal sacrifice to themselves.

I would be wholly unwilling to close what I have to say without referring to another characteristic of this man, and that is his remarkable sense of humor. It prevented him from taking either himself or others too seriously.

It is difficult to appraise fairly the character of any man, especially if that man be living; to avoid, on the one hand, undue praise, and on the other unjust criticism. I think it may be said with entire candor that Judge Anderson measured up to the highest standard of judicial conduct.

I express the hope joined in by his many friends in Indiana and elsewhere, that in the evening of his rest he may find many consolations and compensations which were denied to him in the noon-day of his toil and responsibility.

On behalf of the Court, Honorable Samuel Alschuler, presiding judge, responded as follows: **Response
by Judge
Alschuler**

What has here been said of Judge Anderson meets with the whole-hearted concurrence of the members of the Court. Comment on the qualities and characteristics of this colleague comes more appropriately from those whose relations with him have not, like our own, been of the intimacy which is so closely akin to that of the family relation.

After more than twenty-two years' judicial service in the Federal District Court, he came to this bench in January, 1925, to sit in the place made vacant by the death of that ideal judge and master mind Francis E. Baker, who had himself been preceded in Indiana's representation in the Court by an unbroken lineage of eminent judges—Woods and Gresham. In Judge Anderson the high standard of that representation has been fully maintained.

He was the first of the Federal judges of this circuit to become qualified for retirement under the recently enacted statute permitting it, and when, in June of last year, he exercised his option of retirement, we who had been his colleagues from the time he had joined this Court were most loath to part with one whose excellent judicial equipment had been so potent a factor in helping to carry the heavy burdens of the Court, and whose delightful personal qualities had so greatly endeared him unto us.

However excellently has been filled the vacancy

Response
by Judge
Alschuler

upon this bench made by Judge Anderson's retirement, his large place in our hearts will never be vacated.

But bar and Court are pleased to know that he has not completely withdrawn himself from judicial duties. When at the beginning of the present session we found ourselves confronted with by far the heaviest calendar of the Court's history, Judge Anderson, as well as Judge Page, who retired last month, promptly, cheerfully, and effectively responded to our call for assistance.

This wonderfully true and fine portrait of Judge Anderson will reflect its cheerful glow within the court room of this Court long after each of us in his turn shall have taken leave of judicial office; and the good influence of his long and splendid judicial career will survive while our country endures as a government of laws.

The Court, with its thanks to you who honor this occasion with your presence, and to those who have so generously and fittingly presented it, gratefully receives and accepts the portrait, and directs that it be suitably placed and kept in the court room; and the Court joins the bar in the earnest wish that good health, contentment, and much happiness will long attend Judge and Mrs. Anderson.

It is ordered that the resolution offered by Colonel Buckingham on behalf of the committee of the bar of this circuit be filed and spread upon the records of the court.

In further testimony of our deep appreciation of the presentation and addresses, the Court will recess until two-thirty o'clock this afternoon.

LIST OF CONTRIBUTORS.

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