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TRIBUTE TO A DISTINGUISHED CLERK

BY JUDGE WALTER K. STAPLETON*

I.

A judge's professional life is filled with problems — real, human, often intractable problems. These problems are to be resolved on the basis of information contained in often voluminous records and by reference to often voluminous bodies of potentially relevant precedent. Moreover, these problems are to be resolved in isolation from the outside world. Finally, these resolutions are to be explained in writings published for all who wish to critique.

I find it difficult to imagine what it was like prior to the close of the last century when judges were required to "do their thing" in chambers where they were their own sole resource.¹ Dockets were considerably lighter, however, and perhaps judges even had time to talk to one another about their problems. But whatever judging was like in those long ago times, it could not have been as productive or satisfying as judging in an era when one is privileged to work each year with a fresh set of very bright, highly motivated law clerks.

Law clerks play a very important role in my life. With today's case loads, no matter how many hours I logged, I could not alone master each record and each universe of potentially applicable law, fashion a sensible resolution, and articulate a persuasive justification. In short, without law clerks, all the work simply would not get done. More importantly, however, the portion that did get done would not be of the same quality. As I tell my new clerks at the commencement of their clerkship, the most important chambers function they will perform is a "foil" function. Their presence in chambers provides my only

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¹Justice Horace Gray of the Supreme Court of Massachusetts is generally credited with conceiving the idea of law clerks. He hired his first clerk, at his own expense, in the summer of 1875. He brought the tradition with him to the Supreme Court of the United States in 1882. JOHN BILYEU OAKLEY & ROBERT S. THOMPSON, *LAW CLERKS AND THE JUDICIAL PROCESS* 10-11 (1980).

opportunity for testing ideas, and an untested idea, no matter how inspired it may seem to the conceiver, is an unreliable and unsatisfactory basis for resolving any problem.

My purpose here, however, is not to demonstrate the utility of law clerks. I write of the functions that we perform together only to provide to the reader background for understanding that which follows. My friend, Judge Patricia Wald, put it best when she wrote that the "judge-clerk relationship is the most intense and mutually dependent one I know of outside of marriage, parenthood, or a love affair."²

Every hard case is an arduous adventure. In the beginning, the ultimate destination is unclear and the way to it uncertain. There are likely to be a number of false starts and numerous subsequent occasions when one fears that the path along which one has labored at length is the wrong one. Ultimately, however, the problem gets resolved and, after a dozen or so drafts, one begins to develop confidence both in the "rightness" of the resolution and the effectiveness of its explanation. Issuance of the opinion is truly a peak experience in the landscape of one's life.

When the travails and rewards of such an arduous adventure are shared with another, a marvelous bonding process ensues. While bonding occurs whenever people are confronted with a common challenge that, with hard work, is successfully met, I believe the bonding between a judge and a law clerk has a special intensity because of the character of the challenge. As I have noted, the problems to be resolved are human problems that are always of great importance to the parties actually involved and often of great importance to many others. Because one knows that the work matters, because of the isolation in which it is done, and because the debate invariably reveals a great deal about the personal life experience and perspectives of the debaters, a relationship develops that, as Judge Wald suggests, is not unlike familial intimacy.³

Those who have gone through this bonding process tend never to forget it. I know I do not. Like a proud parent, I try to keep track of all of my former law clerks and I take great pride (far more than is warranted, I confess) in each of their many accomplishments during their post-clerkship lives. Indeed, there can be few parents whose pride in their offspring exceeds the pride that I take in the accomplishments of the former clerk to whom this issue of the *Delaware Journal of Corporate Law* is dedicated.

²Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152 (1990).

³See *id.* at 153-54.

II.

Way back when I first went on the bench, federal judges interviewed law clerk applicants in the fall of their third year of law school. In the fall of 1971, when I had been on the bench a little less than a year, I received a clerkship application from a student at the Law School of the University of Texas. The resume was impressive. In addition to having received excellent grades, the applicant was serving on a learned law journal and had been selected by the faculty as the student representative on the Law School Admissions Committee. The writing sample was a law review note on a terribly esoteric point of international law. It had something to do with a protective tariff for non-rubber footwear. I remember that I first tried to read it one evening and quickly decided I would have to save it for perusal earlier on another day.

The young man came for an interview on a Saturday morning and we talked for a couple of hours. I was impressed. I can remember being particularly impressed with his sense of humor and with the breadth of his non-legal interests. He ultimately accepted my clerkship offer and worked with me from June of 1972 to August of 1974. Those two years turned out to be truly delightful ones for me. The young man's name was William T. Allen.

In early February of 1972, several months before Bill was to start his clerkship, he called from Austin to inform me that he had been stricken with an arthritic disease. The doctors were unsure of both the etiology and the prognosis. Bill confessed that he was not operating "on all cylinders" and did not know whether he would be back to normal by June. He assured me that he would understand if I wished to make alternative arrangements for a clerk. We ultimately agreed that we would go forward as planned. Although the arthritic condition did not go (and has not gone) away, and although Bill suffered a level of pain throughout his clerkship that frequently made it difficult for him to concentrate, I have given thanks on many occasions for our decision to proceed.

I regard the relationship that Bill and I developed during his clerkship and in the years that have followed as a paradigm of the judge/clerk relationship I have described. In addition to those I have identified, there was another important factor in Bill's case that contributed to our bonding process. Given my brief tenure on the bench before his arrival, I knew little more about the art of judging than did he. We learned to judge together. It was a somewhat scary process for both

of us,⁴ but sharing the learning process contributed greatly to the fastness of the bond.

I cannot claim to have predicted during Bill's clerkship that he would so distinguish himself in the practice of law, on the bench, and in academia. I can say that I recognized an extraordinary intellect and that it was a joy to watch that intellect gain confidence in its power. I can also say that I knew from the wit, sensitivity, insight, and humility of this young man that one could have no better friend.

III.

As must be apparent, our relationship makes it impossible for me to write objectively about the contributions of Chancellor William T. Allen. I am undeterred, however, because even a biased witness can establish an indisputable proposition and I regard Chancellor Allen's extraordinary command of the art of judging as beyond serious dispute. Moreover, objective or not, I could not possibly decline this opportunity to pay tribute to my friend and to his truly awesome judicial tenure.

The qualities that have made Chancellor Allen an extraordinary judge appear as hallmarks in virtually every opinion he has written. Of those hallmarks, four stand out in my mind: integrity, synthesis, precision of expression, and grace.

The first thing that strikes the informed reader of a Chancellor Allen opinion is the integrity with which it is written. The purpose of a judicial opinion is to win acceptance of the court's resolution of the dispute before it and to build confidence in the court as an institution. It is far easier to write persuasively, however, if one fails to perceive or acknowledge the difficulty of the problem one is addressing, a path I fear is too often taken. Every Chancellor Allen opinion, from the exposition of the facts through the concluding paragraph, candidly acknowledges the difficulty and the subtlety of the problem to be resolved. All of the

⁴We survived tender offer battles, see *Elco Corp. v. Microdot Inc.*, 360 F. Supp. 741 (D. Del. 1973), and prison riot; see *Johnson v. Anderson*, 370 F. Supp. 1373 (D. Del. 1974). We struggled with a number of then cutting-edge issues: whether Delaware's sequestration statute violated the Due Process Clause, *U.S. Indus., Inc. v. Gregg*, 348 F. Supp. 1004 (D. Del. 1972); whether a habeas petitioner had been denied due process of law by being subject to trial at a time when psychogenic amnesia had deprived him of any recollection of events occurring on the evening of the crime, see *United States ex rel. Parson v. Anderson*, 354 F. Supp. 1060 (D. Del. 1972); whether there is an implied private cause of action under § 13(a) of the Exchange Act, see *duPont v. Wyly*, 61 F.R.D. 615 (D. Del. 1973); whether Delaware's three year durational residency requirement for service in its General Assembly violated the Equal Protection Clause, see *Walker v. Yucht*, 352 F. Supp. 85 (D. Del. 1972).

considerations and precedents that might possibly lead a rational mind to a contrary conclusion are scrupulously addressed and accounted for in the course of a thoroughly persuasive explanation of what has led the court to its ultimate conclusion. To insist on this degree of candor and, at the same time be persuasive, a judge must have a thorough and confident command of the record, of the potentially applicable precedent, and of human nature. Chancellor Allen has that thorough and confident command.

Like all good opinions, Chancellor Allen's explain how the court's resolution of the particular dispute involved fits consistently into the legal matrix formed by resolutions of previous disputes. His explanations have a wondrous way of combining often diverse conceptions into a coherent whole. Even those most knowledgeable in the particular area being addressed are likely to find those explanations less of a "review" than an experience of discovery. Chancellor Allen has an uncommon ability to see relationships between seemingly unrelated legal precepts and to synthesize the law in the pertinent area in a way that enables the reader to achieve a fresh and helpful perspective. Even more uncommon is his ability to see relationships between legal precepts and precepts of other disciplines and to achieve an insightful synthesis that adds new dimensions to one's understanding and appreciation of legal doctrine. In Chancellor Allen's opinions, the economics of the matter at hand are explained in a way that adds new dimensions of understanding even for those of us who received our legal education long prior to the ascendancy of law and economics.

It is one thing to understand the subtlety and complexity of a problem and its resolution; it is another thing entirely to communicate that subtlety and complexity to others. Chancellor Allen has an awesome command of the English language. Time and again he comes up with exactly the right word or turn of phrase necessary to capture the precise content and texture of his thought. His perspicuity, to use an "Allen" word, is legendary. The reader is left with no uncertainty about the scope of the thought or that of the ultimate ruling of the court.

Finally, Chancellor Allen's opinions, like everything about the Chancellor, are graceful — seemingly effortless and filled with charm, humility, humor, and consideration for his fellow human beings. I will not embarrass him by elaborating at length on this thought. Anyone who knows Chancellor Allen or who has read one of his opinions will understand my point. I will simply close with a brief anecdote that will give my reader some inkling of the charm, humility, humor, and thoughtfulness of which I speak.