

MEMORIAL COMMENTS TO THE IOWA JUDGES ASSOCIATION

JUNE 18, 1997

On May 27, 1997, the son of a lawyer and a judge, the brother of a lawyer, and the father of a lawyer, left this life.

Judge Tom Nelson, who served on the District Court Bench in the First Judicial District from 1964 until 1985, followed by three years on the Senior Judge program, was synonymous with justice in Northeast Iowa. His approaches were practical and innovative. Sometimes he was a man ahead of his time.

In 1971, Judge Nelson delayed sentencing a defendant for one year and placed him on probation. In 1972, he started deferring entry of judgment on selected defendants, placing them on probation. On January 1, 1978, deferred sentences and deferred judgments became part of Chapter 907 of the Iowa Code.

In the late 1960's and early 1970's, judges were advised of plea bargains in chambers by the County Attorney and defense attorney. Seldom did a mention of that bargain occur in open court at time of plea. In 1972, Judge Nelson advised the then-County Attorney, who stands before you now, that he saw no reason why plea bargains should not be done in open court before the public and press. His rule was, "If you're not willing to say it publicly and stand behind it, it's probably something I should not be interested in". Six years later, in 1978, the

newly enacted Rules of Criminal Procedure made plea bargaining an open court process.

Tom loved to tweak the noses of appellate courts by citing what he felt to be weak or outdated decisions and applying them to facts in front of him, no matter how strange the result. This caused two things to occur: First, he received his fair share of reversals; Second, he made the appellate court modify, expand, explain, and sometimes reverse its earlier decisions.

Tom Nelson would have been equally comfortable being a philosopher. He was a deep thinker who spoke in simple terms. Events on the Bench and in life were learning experiences for him. In his later years on the Bench, he wrote an unpublished manuscript entitled Memo. These are a few of the excerpts:

SELF-IMAGE

I was on the Bench pretending to be writing an Order setting the Defendant's bail. His attorney was in front of me standing close to the Bench and I said out of the corner of my mouth,

"There are two of these fellows that are brothers. One's a pretty nice guy and the other is no damn good. Which one is this?"

I hadn't noticed that the Defendant was standing right next to his lawyer and he spoke up, "I'm the one that's no damn good."

There is a school of thought to which I belong, that the reason he was there was that he thought he was no good. People drew comparisons when he was young, and he was always last. Crime provides the solution. That is, it does if you get caught. I used to think they got caught because they were stupid, but now I see that when you're in jail (for no good reason except a stupid cop and a crooked lawyer) then no one can blame you for not being the success everybody told you you would never be."

PACIFIST

You can make what you want of this, it is true, but it may not be typical.

I was at a party that included a lot of people I had never met before. One of them was sitting next to me at dinner. When he found out what I did for a living, he discussed the terrible way the law was dealing with the burglars from soup to dessert.

I kept pointing out that my hours were from nine to five just like

his so why didn't he let me eat in peace and write a letter to the editor, but I couldn't stop him.

On and on he went. "I better not catch one of them in my house," he said, "I'll kill him."

"Come on. You don't mean that." I said.

"Yes, I do! I've got a gun in every room in the house and if I catch one of those S.O.B.'s, I'll kill him."

"Have you ever killed a man?"

"No, but--"

"Not even in combat?"

"I don't believe in war," he said.

So I, like the pig in the poem, got up and slowly walked away.

A Lieutenant Commander in the Navy during World War II, Tom recalled his legal/military experience with this unpublished piece.

Marbury v. Madison

At a place such as Dutch Harbor, there wasn't much use for an Intelligence Officer so I did whatever I was told to do. Consequently, when a legal problem arose, the Captain called for me.

"Nelson," he said, "you used to be a lawyer, didn't you?"

"Yes, sir," I said.

I wanted to say, I still am a lawyer, but why argue with the Captain, especially when you can't win.

"Well, here's a letter from the U.S. Commissioner over in Onalaska. Write him and tell him he's wrong." He handed me the letter.

I read it over and when I finished I turned to the Captain and said, "I think he's right."

The Captain said, "I didn't ask you what you thought, I told you to write telling him he was wrong."

Like they say, you don't argue. You just do as you're told, and get along.

The Commissioner was complaining that when one of our civilian employees died one night, the Navy had a Board of Inquiry and they went ahead and buried him without saying anything to the Coroner about it. As ex officio Coroner for the area, he felt he should have been notified. I thought so, too, but what I thought didn't make any difference. So I proceeded to write the letter the Captain told me to write.

Only bartenders know what the law is. Lawyers have to look it up. But the only law library I had was a single volume that the Navy had put out for Navy bases. There wasn't anything there to help, so I had to make something up. However, I was able to find a citation to a decision of the Supreme Court of the United States and felt I should use that as the basis for my argument since neither reason nor logic was on my side. I wrote the Commissioner that we recognized his position was valid in peace time but under the authority of Marbury v. Madison, (1803) 5 US 137, 2 L Ed 60, a United States Commissioner has no jurisdiction over naval reservations in time of war. (Later I looked up Marbury v. Madison, and found out that it actually had to do with whether the President can remove a Justice of the Peace of the District of Columbia without cause.)

The following week I got a reply from the Commissioner saying, "It had been some time since I have read Marbury v. Madison, but, as I recall, it had to do with a member of the Navy who died, while your case involved a civilian."

From that, I concluded that the United States Commissioner didn't know any law, either, so I stopped worrying about it.

I have posted on the bulletin board in the lobby a copy of Judge Nelson's obituary, which contains all of the information in regard to his birth, his Notre Dame Law School graduation, his years of practice, and his surviving family.

While his first choice would have been that nothing be presented to this august body, his second would have been that it be his ideas and philosophy that recall him to us.

Judge Nelson never forgot he was a judge, but he always remembered he was a lawyer. He was ever respectful of lawyers and of the lawyering craft. There were no favorites in his court but all who appeared there were either parties or officers of that court. All were uniformly awarded an even-handed justice. He was a most honorable man and honored the Bench upon which he served.

I move the adoption of these comments and their placement in the records of this Association as a permanent record and for distribution to the immediate family of Judge Tom Nelson.

Judge Thomas H. Nelson

Services for Judge Thomas H. Nelson, 86, of Luther Manor, formerly of 626 Bradley St., will be at 10 a.m. Friday at St. Patrick's Catholic Church.



Thomas Nelson

Burial will be in Mount Olivet Cemetery, Key West, Iowa, where there will be a flag presentation by the American Legion Post 6, of Dubuque. Friends may call from 3 to 8 p.m. today at Ed Siegert-Al Didesch Colonial Funeral Home, 390 N. Grandview Ave., where there will be a parish wake service at 4:30 p.m.

Judge Nelson was born on Nov. 13, 1910, in Dubuque, son of Judge Patrick and Marie (Harrington) Nelson. He died at 4 a.m. Tuesday, May 27, 1997, at Luther Manor.

He married Serena Kemp on Aug. 9, 1948, in the Log Cabin Chapel at the University of Notre Dame.

Tom graduated from Loras College and received his law degree from the University of Notre Dame in 1934. He served in the Navy during World War II, retiring in 1945 with the rank of lieutenant commander.

Tom practiced law in Dubuque and Port Angeles, Wash., prior to the war. He was appointed to the Iowa District Court Bench in 1964, retiring as senior judge in 1988.

Tom was a member of St. Patrick's Catholic Church and its Holy Name Society, and also served as a lector. He was a life member of the Knights of Columbus; served as state and local commander of the Veterans of Foreign Wars Post 508; was a former member of the 330 Club; and was a former grand regent of the Elks Club.

Surviving are his wife, Serena (Kemp) Nelson; four sons, Peter (Mary) Nelson, of La Crosse, Wis., Patrick Nelson, of Milwaukee, Timothy Nelson, of Alma, Mich., and Andrew (Nancy) Nelson, of Decorah, Iowa; a daughter, Laura M. Nelson, of Lansing, Mich.; and four grandchildren, Andrew and Susan Nelson and Sarah and Nicholas Nelson.

He was preceded in death by a daughter, Mary Winifred; a son, Thomas Michael; a brother, John J. Nelson; and a sister, Mary H. Nelson.

Memorials may be given to St. Patrick's Catholic Church and Wahlert High School.