

IN MEMORIAM

Honorable James A. Donohoe

*Conducted by the United States District Court,  
for the District of Nebraska, at Omaha, Nebraska,  
October 16, 1956, under the direction of a committee  
appointed by the Court, composed of the following  
members of the Bar:*

J. A. C. KENNEDY, Chairman  
FRANCIS S. GAINES, Vice Chairman

OSCAR T. DOERR	W. R. ROUSE
RAYMOND M. CROSSMAN	W. W. WENSTRAND
DANIEL J. GROSS	HARRY E. GANTZ
GEORGE N. MECHAM	H. E. SACKETT
RAYMOND G. YOUNG	E. A. COUFAL
GEORGE B. BOLAND	EARL LEE
JAMES J. FITZGERALD, JR.	HERMANN G. WELLENSIEK
A. V. SHOTWELL	WILBER S. ATEN
WILLIAM GRODINSKY	EARL M. CLINE
JOHN W. DELEHANT, JR.	WILLIAM I. AITKEN
ROMAN L. HRUSKA	ROBERT VAN PELT
PAUL L. MARTIN	FREDERICK M. DEUTSCH
EDSON SMITH	ROBERT H. BEATTY
JOSEPH T. VOTAVA	JULIUS D. CRONIN
JAMES G. MOTHERSEAD	

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JAMES A. DONOHUE

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Honorable JOSEPH W. WOODROUGH, Judge, United States Court of Appeals for the Eighth Circuit.

Honorable HARVEY M. JOHNSEN, Judge, United States Court of Appeals for the Eighth Circuit.

Honorable JOHN W. DELEHANT, Chief Judge, United States District Court for the District of Nebraska.

Honorable RICHARD E. ROBINSON, Judge, United States District Court for the District of Nebraska.

WHEREUPON the following proceedings were had and entered of record, Judge Delehant presiding:

JUDGE DELEHANT: Ladies and gentlemen: Promptly upon the restoration of this court to its statutory complement of judges, one of the earliest acts of the court was the setting aside of this day and this hour for the holding of services in memory of the late Chief Judge of this District, the Honorable James A. Donohoe. In pursuance of that order we are now assembled for the memorial.

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On this occasion a committee has been selected from among the members of the bar of this court, under

whose general guidance and direction the services are to be held. Of that committee the vice chairman will now present, first, an appropriate memorial resolution, and, secondly, certain observations of his own, upon the career of him in whose memory we are gathered.

It is my privilege to present Mr. Francis S. Gaines of the bar of this court. Mr. Gaines.

MR. FRANCIS S. GAINES: If Your Honors please, Mrs. Donohoe, members of the Bar, and guests, I have the honor to present a resolution prepared for this occasion in respect and affectionate tribute to the memory of Judge James A. Donohoe:

BE IT RESOLVED: That this tribute honoring Judge James A. Donohoe and in recognition of his devoted service to the legal profession and his country, be included among the permanent records of this Court.

Judge James A. Donohoe passed away on February 26, 1956, after nearly twenty-three years of service to his community and to his government, in the position of United States District Judge. He took the oath of office on May 1, 1933, and assumed his responsibilities with deep humility, a thorough appreciation of his obligations, and a resolve to discharge his duties ably, efficiently, honestly, and with dispatch. He fulfilled to the last degree the requirements of this resolution. All who knew him or practiced in his court recognized, and without exception admired, his conscientious administration of his office, and he will long be remembered for his fairness, his willingness to give all a hearing, his consideration, his patience, and his dignity. Judge Donohoe was well prepared to serve in the position which he occupied by reason of his long and successful years of practice of law in Holt County, and his service as a member of the Nebraska Constitutional Convention, in which he assumed a prominent role and which service undoubtedly strengthened his strong belief in our institutions. He was convinced beyond ques-

tion that the foundation of our freedom and the cornerstone of our form of government depended upon the proper administration of justice in our courts and he devoted himself religiously to doing his part in that regard. His service as Judge was further marked by his ready acceptance of precedural changes and his innovation of pre-sentence investigation in criminal cases, and a new method of calling jurors. He was ever on guard to eliminate delay and save his government all expense possible consistent with good administration. Every detail connected with the administration of his office was important to Judge Donohoe and received his concentrated attention. Such matters as admitting young lawyers to practice or foreign-born people to citizenship were not functions which he considered trivial and to be performed in a perfunctory manner, but ceremonies of dignity, designed to create a deep and lasting impression upon the participants, and Judge Donohoe so conducted them.

Judge Donohoe did not confuse material gain or material things with the happiness that comes from the performance of that duty that every man owes to give his best to the task before him. He dedicated himself devotedly to the advancement of justice under the law and development of respect for and confidence in our courts and of respect for the law by our people, and he set a noble example of faithful service to these objectives. The following statement appeared in a local newspaper at the time of his death: "If all public officials would meet the challenges of office as did Judge Donohoe, the level of public service would be high indeed. His death was a great loss." I am sure this sentiment is shared by all judges with whom he served, by all members of the Bar, and by all who knew or came before him. His death is indeed a great loss but his memory will live in the hearts of those who knew him and those who worked with him, and in the best tradition of our Bar.

May it please Your Honors, I move that this Reso-

lution be made a part of the permanent records of this Court.

JUDGE DELEHANT: Without objection, it is so ordered.

MR. FRANCIS S. GAINES: Now with Your Honors' permission, in addition I desire to add these few comments:

I knew Judge Donohoe well, both in court and outside of court, and my observations are based not only upon his public record but upon my own personal impressions. Judge Donohoe was a kindly man with a jovial disposition, liked companionship, and I shall never forget his broad smile of welcome and handshake when I had occasion to visit him in his chambers or meet him socially. On these occasions we talked of many things and I learned to know the man underneath the black robe and separate and apart from the judge. He was a great American and a stout believer in our institutions. He was well aware of the misery, fear, hopelessness and loss of all dignity and ambition of the people living in the police states, and while he was always willing to accept change and progress he was convinced that certain fundamentals of our government are just as true and important today as when our ancestors fought, bled, and died on the battlefields of the Revolutionary War. He did not share the view of some that our Constitution is an outmoded instrument, but he believed in it implicitly and thoroughly, and he was disturbed, and I might say somewhat alarmed, by the attitude of some of our leaders who would apparently seek to avoid its provisions and its protection of individual rights. Judge Donohoe, while sometimes seemingly austere, was a man of warmth and with a deep sense of sympathy, and although he did not hesitate to impose a severe sentence in certain cases and when circumstances so demanded, in others he sought ways to help rather than punish the offender and he jealously

guarded the constitutional rights of all accused persons brought before him.

Judge Donohoe was deeply reverent and religious and possessed of a profound philosophy of life and a definite attitude towards death that can be expressed no better than in his own words. In 1927 he addressed the graduating class of St. Mary's School and in his closing remarks he said: "Now, in closing I want to especially leave with you two thoughts: First, that it is not what other people say, or what other people do, that injures or affects you, it is the things you do and the things you say, or the things that you fail to do, that will affect or injure you; And second, that the only real happiness that comes in this life is the happiness that comes through unselfish service. May God bless you and guide your footsteps down the pathway of life and when your race is run may He take you to the realms that He has prepared for those who serve Him faithfully here upon earth."

Again, in his remarks at the memorial service in honor of Judge Munger, he said: "In a little while, those of us who are gathered here too will be called, and when that time comes, I confidently expect to find on the other shore, not too far away, the friends of my life, and among them and foremost shall be Judge Munger, and that in the will of God I may have the pleasure and privilege of going on with them in association and companionship throughout eternity."

I believe these two statements from his own lips completely describe Judge Donohoe's philosophy of life and his attitude toward the Hereafter, and I am sure he approached the end with confidence that death was not the end and with the deep and abiding satisfaction that he was leaving this earth with his house in order and his work well done.

Your country and mine has been fortunate and is today, in having many jurists of his high caliber, and Judge Donohoe's name will go down in history in a high place among those who have served with honor

and distinction and passed from this earthly scene.

**JUDGE DELEHANT:** Most appropriately, as we believe, the chairman of the committee for these services who has been selected was a friend, almost through his lifetime, of the late Judge Donohoe, a veteran member of the bar of this court and of the courts of Nebraska, and a distinguished leader of the bar of the United States, Mr. J. A. C. Kennedy. Mr. Kennedy.

**MR. J. A. C. KENNEDY:** May it please the court, Mrs. Donohoe, members of the bar:

Sunday, February 26, 1956, Judge James A. Donohoe quietly entered his final rest. Mercifully, no lingering illness nor torturing disease marred his final hours. It was a peaceful and painless passing, justly accorded to a truly christian man. God's finger touched him, and he slept.

Judge Donohoe was born August 9, 1877 on a farm in Holt County, Nebraska, which his immigrant parents from Ireland had homesteaded. Measured by the accidents of life, the parents were of the humbler class where thrift and frugality governed; but God and Nature had richly endowed them with sturdiness of character and body, and which, happily, they transmitted to their distinguished son. Throughout his life time Judge Donohoe was devoted to his parents, and in their passing years gave to them the fullest measure of respect and love.

As a boy young Donohoe attended the public schools in O'Neill, Nebraska. During his early manhood he taught in the rural schools of Holt County for Twenty-five dollars per month; and out of this meager stipend he saved enough to attend the Fremont Normal School (now Midland College), where in 1896 he graduated.

Again, young Donohoe had to earn his way, and which included assistance to his then widowed mother and younger brothers and sisters. In this work field he became assistant to the Holt County Treasurer.



Ambitioning to become a lawyer, our friend studied law at night and was admitted to the Bar in 1905. He started without material or monetary aids, but with those things which contribute more certainly to success, quiet courage, and the willingness to give, in all the tide of time, unstinted effort to every task assumed.

The then Lawyer Donohoe, known to his friends as "Jim", practiced his profession for the succeeding twenty-eight years in all levels of courts, and in all phases of litigation throughout northwest Nebraska, with his home in O'Neill. Always Lawyer Donohoe seemed to have striven more earnestly for the clients of the humble homes, than for those in the halls of the rich.

In 1911 Jim married Florence Lowrie, of O'Neill, Nebraska, who has survived him, and with whom he enjoyed an ideal and ever gracious home life.

In 1933, after a successful and impeccable career at the Bar, our friend was called to the Federal Bench, to serve the United States District Court for the District of Nebraska, succeeding the Honorable Joseph W. Woodrough, who had been advanced to the Eighth Circuit Court of Appeals.

The Judge has been credited with having originated Pre-sentence Investigation of offenders against the federal laws, and which is now the universal federal practice. Before any sentence, Judge Donohoe insisted upon ascertainment of the offender's background, previous offenses and the motive of the immediate transgression. Some of his friends thought the Judge too lenient, but we all knew that his governing concepts were punishment to fit the criminal, rather than the crime, and rehabilitation of the offender, rather than measured punishment. In short, the Judge's treatment of those in distress could well be described in the paraphrased words of a great orator:

"If each to whom the Judge did a kindness  
Dropped a flower upon his grave  
He would lie beneath a mountain of fragrance."

Judge Donohoe was one of the first of the Federal Judges to enthusiastically accept, and effectively integrate the pre-trial practice, a procedure now universal in federal trial conduct, and aimed to expedite and ensure justice.

In his welcoming and instructing prospective jurors, Judge Donohoe manifested his finest traits, and, by common consent, through his sincerity, earnestness and eloquence, transmitted to the jurors respect for our courts and government, appreciation of the part they might perform in the processes of Justice, and firm resolves to accomplish just dealings of men with each other.

Those who practiced before Judge Donohoe realized that no matter how strongly their position might be buttressed with judicial precedents, their labors were heavy if the equities of the situation balanced against them.

In epitomizing the Judge's career as a lawyer and as a Judge, it could well be said, "Some men gain honor from their profession, but others bring honor to their profession." To the latter class did Judge Donohoe belong. It can further be said that Judge Donohoe was endowed by nature with the great quality of being just, and never lost it.

It was shortly after the turn of the century that I became acquainted with Jim Donohoe, in a friendship that grew with the succeeding decades.

Judge Donohoe in the truest sense was a self-made man, but one who grew in culture as he grew in stature. He was extensively read and widely traveled, and combined the unusual characteristics of success in the battles of life, with a steady adherence to the christian precepts received at his mother's knee, and which, throughout his life time, he unfailingly practiced. And while he was a man of great force of character, he was exceedingly modest, and always courteous, just and fair to his fellow man. He truly reflected the Bard's picture:

“A Prince once said of a King struck down,  
Taller is he in death,  
These words hold good now as then,  
Tis after death we measure men.”

The Judge in his early life was active in political affairs, but always staunchly for the betterment of his country and his party. Partisanship, however, was as foreign to the Judge's habits of mind as all other narrow convictions. In 1908-1909 our friend served from Holt County, Nebraska, as State Senator, and in 1919-1920 as a member of the Nebraska Constitutional Convention, and the members of both legislative bodies deeply respected his industry, clear thinking, and love of his country.

In his active and serviceable career the Judge had opinions and convictions on all important public questions, and was ever ready to stand forth in their defense; and his constant search for the truth, and right, ran like a scarlet thread through every effort in the practice of his profession, and in his service as an administrator of justice. In support of his ideals and convictions he gave his all, and sought no special merit for having given in full measure.

No lawyer in his generation did more, by personal conduct and character, to uphold the honor of the Bench and Bar, or to exemplify the high ideals of American citizenship, than did James A. Donohoe.

While those who knew him only as Judge may have pictured our friend as a robed, dignified and somewhat austere magistrate, those who knew him in his home life will remember him as a kind and thoughtful friend.

Like the great naturalist, Thoreau, the Judge loved the outdoors. Those who visited in his home found comfort and charm in the domicile, but radiant beauty in its outdoor environment. In his home grounds, where he spent most of his spare hours, the Judge grew, and personally attended to many varieties of rare trees and shrubs, and found great and constant pleasure in observing and pointing out their progress to his friends.

Judge had a great capacity for friendship, the instinct and ability to attract and hold men to him, and an unfeigned and uncommon interest in all whom he met, whether of high or low degree.

In visiting with those close to him the Judge was always broadly tolerant and considerate in his attitude; and to his friends, in his easy and gracious manner, he was always helpful, as well when the clouds were lowering as when the sun shone brightest. His name is written large upon the memory of his friends and upon the annals of the Bar.

To his widow we can only say:

“Christ has made of death a narrow starlit strip  
Between the companionship of yesterday  
And the reunion of tomorrow.”

And as members of the Bar, our last tribute to our friend may well be expressed in the quatrain:

“While memory bids me weep thee,  
Nor thoughts nor words are free,  
The grief is fixed too deeply  
That mourns a man like thee.”

**JUDGE DELEHANT:** The judge, carefully appraising his day by day service, will be the first person to acknowledge the enduring indebtedness of the judiciary to the bar. It is fitting, therefore, that on this occasion a brief tribute be offered by and in the name of the bar of the State of Nebraska and of this court; And for that purpose we are all honored by the presence of of the president of the Nebraska State Bar Association, Mr. Wilber S. Aten. Mr. Aten.

**MR. WILBER S. ATEN:** May it please the court, and Mrs. Donohoe:

I deem it an honor to appear before you on this occasion as a representative of the Nebraska State Bar Association, and to participate on behalf of that association in this tribute to the memory of the late James A. Donohoe, long a distinguished Judge of the United

States District Court for the District of Nebraska.

Before Judge Donohoe became a member of this court, his strict adherence to the ethics of his profession, his vast knowledge of the law, his acute insight and his boundless energy, had made him an outstanding figure at the bar of our state. He ascended the bench with all the qualifications that go to make an eminent judge, namely legal training, wide experience in the practice of his profession, an exact sense of justice and a charm of personality that had won a host of friends for him.

His record while serving as a judge of this court is well known to all who are here assembled to pay him tribute. I need not elaborate upon it.

True, he is gone and the one we held in such high esteem will no longer grace this chamber, yet in affectionate memory he is still with us. His exemplary life and his long years of service to the people of our state and nation, and to the profession which he loved, have left with us a memory more lasting than any monument or memorial we could erect for him.

JUDGE DELEHANT: Because those of us who are on the bench of the district necessarily emerge from the bar of this state, admitted to practice before the Supreme Court of the State of Nebraska, we have appropriately invited an expression on this occasion from the judiciary of Nebraska, and for its presentation are honored to have with us the Honorable Fred W. Messmore, Associate Justice of the Supreme Court of Nebraska. Justice Messmore.

JUSTICE FRED W. MESSMORE: Members of the federal judiciary here assembled; members of the bar; and Mrs. Donohoe:

While the duties of a federal district judge and the justices of the Supreme Court of this state are dissimilar to the extent that close contact between the two is and would be rare indeed as to their respective official duties, we, as justices of the Supreme Court of this state, of

course know through reputation and some degree of acquaintance, the judges of the United States Courts, especially of the United States District Court in Nebraska.

In Judge Donohoe's case, for the great number of years that he occupied the high position of United States District Judge, his integrity was beyond reproach, his prompt attention to his duties and his independence of mind marked him with distinction.

The justices of the Supreme Court of this state deem it an honor to pay their respects to the memory of Judge Donohoe and his widow, family, and many friends.

To those who knew him best he was a just judge and a Christian gentleman.

**JUDGE DELEHANT:** It is a privilege next to invite for a brief response on this occasion the gentleman who has so recently succeeded to the position vacated by the death of Judge Donohoe, the Honorable Richard E. Robinson, Judge of the United States District Court for the District of Nebraska. Judge Robinson.

**JUDGE RICHARD E. ROBINSON:** Your Honors; Mrs. Donohoe; members of the bar; ladies and gentlemen:

We pay tribute this afternoon to the memory of the late James A. Donohoe, the Judge who presided for so many years—and so ably—over this very courtroom. I address you as his successor, and, in my mind, my role is limited to exactly that. It would be difficult, and indeed highly presumptuous, for me to think of myself as anything more. A seasoned, scholarly, hard-working, and humane judge is rare to come by, and almost impossible to replace.

Judge Donohoe was called to the bench after working many years in the general practice of the law. We lawyers—and judges—are prone to lay great emphasis on such a fact, possibly to the bewilderment or consternation of our friends outside of the bar. But we

do so sincerely, and for a very real purpose. It is commonly recognized by the brethren of the bar that the experience gained through an active general practice contributes uniquely to the education of a lawyer. Here primarily the difficult task of relating human nature to approved patterns of social conduct is squarely faced. The scholar may treat the law philosophically. The lawyer must approach it practically. Yet in the person of Judge Donohoe there is exemplified a rich blend of both attitudes. In serving well the needs of his client, he never lost sight of, or even momentarily obscured, the proper ends of justice.

And so it was during his long tenure on this bench. Here, admittedly, his duty was larger. It demanded even more exacting insights and the greatest measure of tolerance. But Judge Donohoe was dedicated to the law, and in that spirit served it well. As all of us know who practiced before his court, he was a keen jurist and always a gentleman. I have, as do all of you who are members of this bar, a fine precedent to follow in the late James A. Donohoe.

**JUDGE DELEHANT:** We have heard this feeling testimony from the successor of Judge Donohoe. It is now my unique privilege to present, as the next speaker in the ceremony, Judge Donohoe's immediate predecessor upon this bench, now a veteran and distinguished member of the United States Court of Appeals for the Eighth Circuit, Honorable Joseph W. Woodrough. Judge Woodrough.

**JUDGE JOSEPH W. WOODROUGH:** If your Honors please:

I used to sit here in this room when I was predecessor to Judge Donohoe and it was so noisy if you opened the windows that you couldn't hear anything. And it was so dark up here that I always had to wear spectacles. But Judge Donohoe wouldn't stand for things that weren't orderly and right, and he never did, and he was

troubled for I don't know how many years before he got these things remedied. I never knew how he did it, but he stayed with it through disappointments and all, and finally got the courtroom lighted. And he also got a machine that helped out the air in the courtroom when it worked.

In the passing of Judge Donohoe I lost a very dear friend. Over the years of our association he was kind, generous and helpful to me and so constant in friendship that I always felt that no chance or circumstance would ever change the abiding trust and confidence between us. He and Mrs. Donohoe opened their beautiful, hospitable, dignified home to my wife and me and we spent many happy hours to remember there. They put so much of themselves into that home. The Judge was a wonderful host. It has been a great blessing and privilege to have the friendship of such a man, and I am deeply grateful. But if you live longer than the biblical span, it must happen that some go on before you—some of the loveliest and the best that rolling time has from her vintage pressed—and so it is with that dear friend.

The public memorial is mostly to memorialize the public services of the honored one and you would hardly bear with me to try and detail Judge Donohoe's many, many good qualities. But I will not pass on without a word about one wonderful and blessed personal faculty that our brother, Judge Donohoe, had far above the run of us—the gift of tact. He always had the sympathetic perception of what was appropriate to do and to say in all his intercourse with others. He always had the timely and helpful word and act to generate reasonableness and good will leading to the better course. His was the wise and reasonable word that turned away wrath. I often marked it in him on different occasions and in different companies. In his public talks and every private intercourse, he always said and did the right things because his heart was right and he was so profoundly understanding of us all.



But he was a judge for nearly a quarter of a century and how well we know that in that function the leanings and longings of the kind and generous heart can seldom be the basis of judicial action. We have some cases in court we call law cases and some we say are in equity, but in all of them there are inexorables for the judge on the bench. The man in the black robe has taken an oath and we have to follow what the books say whether the verdict goes for the congenial person that we admire and like or not.

We sat in so many cases together. But I am taking just one as an instance that comes to mind. The first case we were together in, we were called on to try a big lawsuit down in St. Louis. I think the third member of the court was the late Judge Charles B. Faris of Missouri, who, the same as Judge Donohoe and I, used to be a democrat before he was a judge. The suit was to recover an attorney's fee of about a million dollars for one of the most beloved statesmen the Democratic party ever had in our time, and that was United States Senator James A. Reed of Missouri. A man of glorious talents and charm, and a champion beyond compare, and besides he was a tower of strength for us in the Congress on behalf of the interest of the judges, and on the other side was about the biggest oil company there ever was. Such a one as, it was argued, would never miss a mere million. After the trial, any trial was exciting with Reed in it, I assigned the case to Judge Donohoe to write the opinion. There was a case, I think, where the longings and leanings of us three men went all one way—hard to find one more so—but Judge Donohoe wrote the opinion—I haven't thought of it for twenty years, but I opened the book to it before I came in here. There is nothing in that opinion but the cold rules and inexorable reasoning of the law—which allowed no recovery at all to Senator Reed and not a penny to pay by the oil company. That was the way the law read, and that was the way Judge Donohoe applied it, and I am sure that he would be the last one to want

any credit just for doing his duty instead of what was pleasant—he did that through all the years he was on the bench—he earned the respect we accorded him and that we pay to his memory today. It is:

“Only the actions of the just  
Smell sweet and blossom in their dust.”

Of course everybody, as well as judges, is called upon to meet the obligations of duty and I think this first old case that I sat in with Judge Donohoe came to my mind for its connecting up with a great and dear friend of ours—the late Arthur F. Mullen—whose friendship and confidence in Judge Donohoe and in me so greatly affected the course of both our lives. The inexorables of the law constrained Judge Donohoe, Charles Faris and me to disappoint Senator Reed in his great pecuniary interest, but not far from the same time Arthur Mullen felt he had to disappoint him in his greatest ambition to be nominated for President of the United States. He was qualified—Senator Hitchcock told me Reed made the greatest speeches heard in the Senate—but Mullen was a statesman who always acted with informed understanding of both state and national affairs and with profoundly conscientious sense of the obligations his position of influence imposed upon him. He thought Reed's nomination was not for the best interest of the country at the time, and told him so together with his reasons.

Calls of duty come to all of us louder and more compelling by far than some mere pleasure at the moment. I have had glorious privilege to have friendships with such men.

The good book says that if any man desire to be first, the same shall be last of all and servant of all. To those who come and go before the court, those who plead or testify, and those who are subject to the judgments, the judge appears always to be the first. He has the top place, but it is ever an anxious seat, and there can be no joy in it except for that servant of all who gives his best with a pure heart and clear con-

science. I think that Judge Donohoe did all of that.

**JUDGE DELEHANT:** For a substantial interval of time an eminent member of the bar of this court and state, and briefly a Justice of the Supreme Court of Nebraska, and more recently, and now, an esteemed Judge of the Court of Appeals for the Eighth Circuit, the Honorable Harvey M. Johnsen will next respond. Judge Johnsen.

**JUDGE HARVEY M. JOHNSEN:** Judge Delehant; Mrs. Donohoe:

A word about Judge Donohoe's judicial work, from appellate observation, may perhaps not be amiss to this occasion.

Those of us, to whom the trial courts' work comes in appellate flow, acquire, I think, whether consciously or unconsciously, a cumulative impression of the character of each trial judge's efforts and performance.

I must confess that personally, during the time I have been on the Court of Appeals, I have deliberately engaged, beyond my appellate responsibility of determining whether or not error has been committed in a particular proceeding, in the hobby or avocation of scrutinizing the work of each trial judge, as it has come before us, for the purpose of comparing and evaluating it with that of the other trial judges in our seven-state circuit.

I have an interest, of course, in the capacity which each judge initially brings to the bench, when he is appointed. Necessarily, men vary in their capacity, just as each thing in nature differs from another, but it has been my observation that all appointees to the federal bench are in general capable lawyers. For this reason, more than in their initial capacity, I am interested in noting how much each judge grows in his judicial stature, in his legal horizons, and in his sense and quality of justice during the course of his judicial career.

If as the years pass, he becomes no different or

better judge than when he began, he must be marked down as not truly having been a success in his judicial career. You who are lawyers know that there are judges who never rise above their starting level in the judicial field. You know also that there are others who commence to climb but then stop at an early plateau. And I believe you will agree that only those who have kept themselves moving forward, with continuing growth and added dedication in their work, are looked back upon by the bar as memorable judicial figures. Judges are remembered for what they are at the close of their judicial career, and not for what they were when they began, or what they may have been at some intermediate point along the way.

It is an inexorable law of nature that for a plant to continue to flower, it must continue to grow. There is a joy in observing anything which continues to grow and so continues to flower. My personal and professional interest lies in seeing the administration of justice bloom. There is therefore for me no sweeter fragrance than that which comes from the flowers in our judicial system of judges who continue to grow.

From my observation of Judge Donohoe's work through the years, he was a judge who continued to grow in his tasks. He rose above the level from which he started. Nor did he cease his progress at an early plateau. His work seemed to me to continue to gain in quality and stature throughout his years upon the bench.

I do not mean by this that there came to be any brilliant preeminence about his work. Only as to a very few judges could such a claim properly be made. For the rank and file of judges, the test for measuring the success or noteworthiness of their career is to be found, as it is for all other men, in the biblical parable of the talents. You will recall that the standard by which the Master judged the accomplishment of each of his servants there was not the number of talents with which each had been entrusted but the extent to which

the individual servant had made use of and multiplied those which had been given him.

I would, upon this sound basis, note and pay the tribute to Judge Donohoe on this occasion that he was a judge who grew and continued to grow in his work and performance. I emphasize again that I regard it as one of the noteworthy facts of any judge's career. I repeat that it is something for which a judge is entitled to be recalled by the members of the bar and of the bench. I desire to record the fact hereof, as related to Judge Donohoe's judicial career, in the annals and the memories of this proceeding.

JUDGE DELEHANT: It was our hope and expectation that, at this point near the close of the program, we would be honored by the presence of a distinguished member of our bar, the Honorable Roman L. Hruska, United States Senator. Senator Hruska has found it impossible to be present, but he has entrusted to one of his very good friends, another member of the bar, the pleasant task of presenting the thoughts which he has himself committed to writing.

I, therefore, have the pleasure of introducing for that purpose Mr. Raymond E. McGrath. Mr. McGrath.

MR. RAYMOND E. McGRATH: May it please the Court; Mrs. Donohoe; Honorable members of the Judiciary present; Fellow members of the bar; and ladies and gentlemen:

This is a tribute by the Honorable Roman L. Hruska, United States Senator, to the late Honorable James A. Donohoe:

"It is with deep regret that I find it impossible to attend the memorial services given this day for the late Honorable James A. Donohoe, Chief Judge of the United States District Court. Meetings of the Committee on Public Works in the Northwest scheduled for the latter part of this week make my presence necessary elsewhere.

“The contribution of Judge Donohoe to the administration of justice was noteworthy. His many years in the general practice helped make him a sound jurist. His experience as a lawyer was reflected in the understanding and sympathy with which he approached the problems of his great office.

“For several years I have been engaged in legislative work on a national basis. My colleagues and I are very much concerned with the proper phrasing of the statutes which are enacted or amended. Especially those of us who have engaged in the practice of law before becoming legislators are keenly aware of the fact that the chief significance of any law lies in its proper interpretation and application.

“We take a great deal of pride that, with the constant demands made on the courts throughout the years, they have persistently understood and correctly applied the important meanings which lie sometimes in the strict letter of the law, othertimes with its spirit. We are very much aware of the subtleties inherent in the application of general statutes to particular facts and local problems.

“It has been gratifying to me to note the confidence expressed by members of Congress, both in the House of Representatives and in the Senate, that the laws they pass will be truly and well administered. This expresses a great compliment to the Bench and to the Bar. Such confidence was certainly warranted in the case of Judge Donohoe, who personified so well the best principles of judicial character. I know of this fact because of my presence in his court, my observation of the trial proceedings over which he presided, and my personal acquaintance with him from the time he assumed the office of United States District Judge. It is well that we pause to commemorate this fine gentleman. His consideration and almost invaluable service shown to those who appeared before him in his court will always be remembered. I am glad that I had the privilege of knowing him.”

JUDGE DELEHANT: Before I add a final word in behalf of the court may I read two communications which have come to Judge Robinson. The first is addressed to both of the judges of this court and proceeds from one of the brothers of Judge Donohoe in Detroit, Michigan:

"Honorable Sirs: I regret previous engagements make it impossible for me to be present with you on October 16 at two o'clock P. M.

"To Judges Delehant and Robinson for your order entered in your court, and to the members of the Nebraska Bar for the memorial services in memory of the late Judge James Donohoe, brings great joy and happiness to the hearts of all my brothers and sisters and to myself.

"Thank you so much and God bless you all.

"Respectfully, Eugene G. Donohoe."

And from a member of the committee for this occasion, altogether unavoidably absent, is this letter, addressed to Honorable Richard E. Robinson, United States District Judge, Post Office Building, Omaha, Nebraska:

"Dear Judge: I regret very much that because I am engaged in a trial in the District Court in Council Bluffs, that I will not be able to attend memorial services today in honor of the Hon. James A. Donohoe, late Chief Judge.

"I would appreciate it if you would also make mention for the reason of my absence to Chief Judge Delehant.

"Yours sincerely, Raymond M. Crossman."

And now, Mrs. Donohoe, and ladies and gentlemen generally, and especially my brethren of the bench and bar:

May I assure you of my fidelity to the example of brevity that has been set for me by the gentlemen who have already spoken. I am sure that it has the approval of him in whose name and honor we are assembled, for he had little patience with prolix or purposeless talking.

It is not inappropriate, in closing these services, summarily to recall all of those jurists who have served this court in the years since the erection of the district. Quite interestingly, there are those among us who have lived contemporaneously with all of them, though no one, I should think, who has practiced at the bar before each of the judges of the district. Elmer S. Dundy, William D. McHugh (who, however, served only briefly as a recess appointee), William H. Munger, Thomas C. Munger, Joseph W. Woodrough (still happily in our company) and James A. Donohoe, whom especially we honor today. Merely to mention them recalls to us as members of their bar their notable stature as lawyers and jurists, their acknowledged excellence as men. And I associate Judge Robinson with myself in testifying to the high honor that our country has conferred on him and me by allowing us in our time to serve upon the bench which they all so worthily graced.

And Judge Donohoe fitted admirably into their common pattern of judicial stature. He was altogether a product of the state and district which they served. The first native of the district to be elevated to its court, he was wholly reared and educated within its area. He knew and loved its people, shared in their thoughts, their disappointments, and their hopes, and sympathized with their perplexities. And he was able naturally to carry forward the program of even justice which had matured under the guardianship of his predecessors.

If, in the fourteen years during which I shared this bench with the Judge, one impression of him has been left more firmly with me than another, I should hold it to be his direct pursuit of actual justice in the litigation that came before him. He was, indeed, a genuinely good lawyer in the scholarly sense of that expression, and he could draw a fine legal distinction as accurately as any judge. But he never yielded to the temptation to serve the cause of legal exhibitionism. On the contrary, he sought and endeavored to come, as directly



and as surely as possible, to the result which, his practical mind concluded, served the cause of concrete justice in each case.

Only one other of his qualities I presume to mention, out of the many that an enlarged allowance of time would permit. And that is his familiar attribute of charity, of broad generosity towards his fellow men. It was, I venture to think, his outstanding characteristic. He loved those among whom he lived and with whom he worked; and, only under the spur of stern necessity did he ever arrive at an unfavorable conclusion touching any of them. That is not to say that he invariably agreed with them, for he did not. It was easy enough for him to disagree, even very strongly, with his friends and his associates. But this was probably the truest measure of James A. Donohoe, that once a disagreement occurred and was resolved, the incident was put aside, and, under the influence of his unfailing charity, life and work proceeded on their way unbothered by what, in a smaller man, might have engendered resentment. I gladly acknowledge, on this memorial, my own occasional indebtedness to that exalted virtue which he possessed in abundance. He was endowed with, and practiced, and lived the charity towards which too many of us only strive, and so frequently strive all too falteringly.

Let us, therefore, as this hour draws to its close, take inspiration and resolution from our reflection upon the career of an upright citizen, an eminently competent lawyer, a distinguished jurist. But let us treasure especially the memory and example of the human personality, the gracious friend and associate, the thorough gentleman who was James A Donohoe.

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Finally, when the Marshal announces the adjournment of court, we shall stand adjourned.