

NEWSLETTER

Spring 2021



Judge Bye with clerks and former clerks at a reunion event in 2016.

Honoring Judge Bye

Longtime Eighth Circuit Judge Kermit Bye passed away on March 20, 2021. One of Judge Bye's former clerks, Adam Hansen, remembers Judge Bye for his kindness and sense of humor. – Page 2

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“Humility, grace, and good humor”

A former law clerk remembers Judge Kermit Bye

By Adam Hansen

The Honorable Kermit Bye, who served on the Eighth Circuit Court of Appeals from 2000 through 2016, died on March 20, 2021. He was 84.

Judge Bye exemplified a life full of service and character. While on the court, Judge Bye served on the United States Judicial Conference Advisory Committee on Appellate Rules and on the Eighth Circuit Judicial Council. His approach to judicial decision-making reflected his pragmatic, plainspoken style. He believed deeply in making the court—and its decisions—accessible to all. Judge Bye approached his work without fear, favor, or agenda. Every case was important to him, and so were the litigants who appeared before him. In Judge Bye’s courtroom, pro se litigants and death row inmates received the same careful treatment as everyone else.

Judge Bye always treated his colleagues and staff like family. Even when crafting sharp-elbowed dissents—one of Judge Bye’s favorite pastimes—he remained committed above all to civility and decorum. The occasional healthy disagreement, in Judge Bye’s view, made the court—and the legal system—better and stronger. And while Judge Bye took his work seriously, he never took himself too seriously in the process. Humility, grace, and good humor—those were Judge Bye’s *modi operandi*. And in case you didn’t know Judge Bye, the Kermit the Frog doll wearing a black robe that greeted you when you entered his chambers gave you a pretty good preview.

The many law clerks who spent time in Judge Bye’s chambers in Fargo will remember a kind and considerate mentor, role model, and

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friend. Judge Bye regularly gathered his former clerks for reunions. He rarely stopped smiling hearing about his clerks’ growing families and developing careers.

Judge Bye was a role model in so many other ways. He was a lifelong student of photography and an avid sports fan. (One of Judge Bye’s decisions was covered in-depth on ESPN’s SportsCenter—a surreal experience for any sports enthusiast.) Over the course of his career, he volunteered his time extensively with a wide range of philanthropic, charitable, educational, and religious organizations. He was a dedicated husband, father, and grandfather.

We miss Judge Bye terribly. But we feel so fortunate to have known and worked with such a remarkable person.

Adam Hansen served as Judge Bye’s law clerk from 2009 to 2010. Adam founded Apollo Law, LLC, in 2016 to help advance the rights of employees and consumers in appellate litigation.

CLE: Six Tips for the Record that All Appellate Lawyers Should Know

By Eder Castillo

The Eighth Circuit Bar Association presented a panel about the record on appeal on May 19. Adam Hansen of Apollo Law and Kyle Kroll of Winthrop & Weinstine moderated the CLE. Circuit Judges Ralph R. Erickson and David R. Stras, as well as Michael Gans, the Clerk of Court, provided six tips.

1. Use the addendum to highlight key parts of a transcript

Judge Stras pointed to his iPad, calling it his “bible.” For each case, the iPad contains copies of the record on appeal, the briefs, the addenda, and the Judge’s bench memorandum. The bench is “moving sharply toward digital,” said Judge Stras. Since the addendum is always available to the judges in electronic form, Judge Erickson and Judge Stras recommend including the key parts of a transcript in the addendum. Mr. Gans added that the Court is considering a rule that would require parties to file an electronic version of the appendix along with the paper version. This new rule would not go into effect without a 30-day public comment period, which is likely to occur in 2022.

2. Correct the record as soon as possible

“The final prep for argument week gets pretty hectic,” said Judge Erickson. The Court prefers timely corrections or additions, preferably by stipulation from both parties. Additions to the record may be required when an important trial exhibit that was presented to the district court was not uploaded to PACER. To supplement the record with an exhibit in your possession, order the transcripts that show the exhibit being received by the district court and submit the transcript and the exhibit to the Clerk’s Office. If trial counsel is anticipating an appeal, Judge Stras advised leaving trial exhibits with the district court. Judge Erickson recommended asking the district court to upload paper exhibits into PACER to avoid delay and maintain the exhibits’ integrity. If you are supplementing the record with a video exhibit, Mr. Gans suggests sending three copies of the video in a common format on thumb drives or CDs.

3. Don’t include briefing that was submitted to the district court in your appendix

The members of the panel agreed that including briefing from below is strongly discouraged, unless preservation of an argument is an issue on appeal. On

a separate note, the judges only expressed a slight preference for a joint appendix over separate appendices from each party.

4. Graphics help the judges visualize the facts of your case

“Some people may say, ‘[Including graphics] is condescending to the judges. The judges can figure it out.’ We could, but it’s going to take us a long time,” said Judge Stras. Graphics can be used effectively to establish a location, and charts can be used to illustrate financial aspects of your case. However, any drawings made for the purpose of the appeal, , will be ignored unless both parties have stipulated to them. Judge Stras advised that you should place your graphics in the facts section; just don’t make your brief “a picture book.”

5. The Court has a high threshold for sealing records and closing arguments to the public

Don’t redact information that judges need to see to decide your case. Judge Erickson recommended using initials or generic labels when redacting names. If you are requesting an oral argument that is closed to the public, Mr. Gans advises that you wait until you know the panel of judges that will hear your case. The panel will decide whether to close the courtroom. If the panel denies your motion for a closed argument, the Clerk’s Office may offer to move your argument until the end of the day when the courtroom tends to be empty.

6. When you cite a case, a hyperlink to the case is automatically created

The Court looks forward to a future when citations to the record result in automated hyperlinks. For now, Judges have to open and scroll through the appendix to find your record citations. Proper case citations, however, are automatically hyperlinked. Therefore, brushing up on your Bluebook skills will ensure that a judge can move efficiently between your argument and the cases you cite.

Eder Castillo is a prosecutor at the Hennepin County Attorney’s Office in Minneapolis, practicing white-collar prosecution and post-conviction litigation. He graduated from the University of Minnesota and received his law degree from the University of St. Thomas.

Colleague, Friend, Mentor

A colleague remembers Judge Laurie Smith Camp, who passed away in 2020

By the Hon. John Gerrard

Honorable Laurie Smith Camp—judge, colleague, friend, mentor, mother, grandmother, lover of arts, historian. These descriptors only scratch the surface of a life that defies a nutshell description. But the legacy and memories that this judge left in the District of Nebraska, and elsewhere, are a tribute to a judicial life well lived.

In one of her [most revealing speeches](#), Judge Smith Camp quoted Rudyard Kipling's *Law of the Jungle*: "For the strength of the Pack is the Wolf, and the strength of the Wolf is the Pack." In her speech, Judge Smith Camp reviewed what she referred to as "wolfpack ethics." She invited us all to "get in touch with our inner wolf" by taking care of ourselves and achieving our potential.

Judge Smith Camp unequivocally lived this advice in her own life. She reached the pinnacle at every step of her career, from her education to her confirmation as the first female United States District Judge for the District of Nebraska in October 2001. Judge Smith Camp's efforts to reach her potential continued throughout her life. Even after serving on the bench for nearly two decades and solidifying her gold standard as a jurist, she always prepared thoughtfully and thoroughly for each matter before her.

Judge Smith Camp embodied her advice to "take care" of oneself. She was an avid reader. She passionately advocated for women's rights and the rights of other disadvantaged groups. Judge Smith Camp was a dedicated amateur historian and often used what she learned to make a difference in the causes she furthered. But her favorite form of self-care was to work in her own magnificent backyard. She looked forward to fall and spring cleanup when she would line lawn and leaf bags along her front curb as trophies of her hard work.

Much has been rightly celebrated about these professional and personal successes throughout Judge Smith Camp's life. But *she* would hope that



The Hon. Laurie Smith Camp

her legacy extends well beyond her own accomplishments. Laurie's career law clerk, Robert Stark, noted that throughout her life as a judge, mentor, and friend, she encouraged others to live out her counsel to take care of themselves and achieve their potential.

Every law clerk and friend who was touched by Judge Smith Camp consistently noted that she was wholly and sincerely interested in others. And she was an outstanding mentor and friend because she was a good listener. She was invested in her friends' and her staff members' lives both inside and outside the courthouse. Each day as staff arrived for work, she greeted them with questions about their families and hobbies. She would ask about specific relatives and follow up when family members had health trouble. Her

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questions were always genuine and intentional. Laurie began a monthly tradition of brown bag lunches for all Omaha and Lincoln law clerks, where guest speakers would educate, mentor, and regale the clerks with courtroom war stories. The sessions were a hit, and Nebraska's Federal Practice Committee is now beginning a series of educational seminars named in her honor.

Judge Smith Camp's interest in others was not feigned, and it extended even to those she only met briefly. During job interviews, where many judges or employers might have asked about greatest strengths or five-year plans, Laurie Smith Camp always asked about something from the candidate's resume that appeared to be a passion. In response to these questions, candidates

would light up with the opportunity to engage with a distinguished federal judge who was interested in the candidate as an individual. Invariably, even candidates who were not ultimately selected for a position left the interview encouraged by the interaction.

Judge Smith Camp believed that the success of one member of the Court family was a success for everyone. Whenever news of someone's accomplishment was spread among Court employees, Laurie was one of the first to pass along her congratulations. (And not just through “reply all” emails.) Since her passing, countless Court employees have described individualized notes, emails, and calls of encouragement and congratulations from Judge Smith Camp. In a lesson to us all, such specific praise coming from a sincere friend and federal judge meant so much to so many.

We were all saddened by Laurie Smith Camp's sudden passing. But to quote Benjamin Mays (Dr. Martin Luther King, Jr.'s spiritual mentor): “It isn't how long one lives, but how well.” Because Judge Smith Camp lived so “well,” we all are her beneficiaries and may carry on her spirit of grace and selflessness in both our private and professional lives.

The Hon. John Gerrard is Chief Judge of the U.S. District Court for the District of Nebraska.

Coming soon: be ready to renew your Eighth Circuit Bar Association membership for the 2021-2022 year!

Association restructures membership categories

In order to better reflect its current and future membership, the Eighth Circuit Bar Association recently restructured its membership categories as follows:

- **Judicial Officers and Staff Members: free.** This category includes federal judges, their law clerks and employees, and employees of the federal court clerk's offices, among others.
- **Government and Public Interest Members: \$25 per year.** This newly created category includes prosecutors, public defenders, other government lawyers, legal aid lawyers, and law school employees, among others.
- **Private Practitioner Members: \$50 per year.** More details about each membership category are available on the Association's website.

As always, Joining the Association brings several benefits, including:

- Complementary CLEs, like the annual "Supreme Court Term in Preview," which previews, each fall, the high-profile cases scheduled to be decided during the Supreme Court's upcoming term;
- [Monthly updates](#) about Eighth Circuit cases, featuring current *en banc* cases, Eighth Circuit cases pending before the Supreme Court, and notable oral arguments;
- [Quarterly newsletters](#), with tips for appellate practice and feature articles; and
- Mentorship and networking opportunities with other appellate lawyers and judges through CLEs and other events.

Please reach out to any of the officers of the Association if you have any questions about membership or these membership categories.



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Eighth Circuit Judicial Conference

"LAW IN A TIME OF CRISIS"

October 27-29, 2021 – The Broadmoor – Colorado Springs, CO

Registration open this summer – For more information contact JudConf@ca8.uscourts.gov