

Alumni Judges in the News:

Gergen ('42) and Orton ('31)

In Spring 1984 the Honorable Henry Gergen, Jr., and the Honorable Richard W. Orton were separately singled out to honor their long records of public service to Wisconsin.

The two were in some respects quite similar. Both had been state Circuit judges from essentially rural areas: Judge Gergen on the Circuit Court for Dodge County in the south central Wisconsin and Judge Orton from Grant County in the southwestern part of the State. And both were widely known and respected as in-charge judges, fully in command of their courts.

But there were differences, too, and not the least in their temperament and outlook. That much is suggested in the separate accounts about the two which follow.

The first of the two accounts consists of the statement by U.W. Law Professor Frank J. Remington at a dinner June 2, 1984, in Beaver Dam, Wisconsin, honoring Judge Gergen on the eve of his retirement after 35 years on the bench in Dodge County. The second account is that of Professor Bill Foster, spelling out his pleasure over the decision of the Wisconsin Law Alumni Association to confer upon Judge Orton its 1984 Distinguished Service Award.

Judge Henry Gergen, Jr.:

A Statement of Appreciation

By Professor Frank J. Remington

Those of us who have been privileged to know Henry Gergen have come to appreciate him—not only as a friend—but as a truly great trial judge. Sitting, as he has in this county, where there have been located the major correctional and mental health institutions, he has kept the door of his courtroom open to even the least worthy among us. And when a person comes into his court, he finds a judge willing to give him a full opportunity to be heard. He is probably the only judge in history who was sued by a public defender who objected that the Judge wanted too many prisoners to have the help of a capable lawyer. Because the door of his court is always open does not mean that he is an easy judge to impress. Like other good trial judges he has the capacity to make up his mind, to decide the case, and his confidence in his own ability is not shaken by an occasional reversal by an appellate court which, when it happens, he accepts with his usual good grace.



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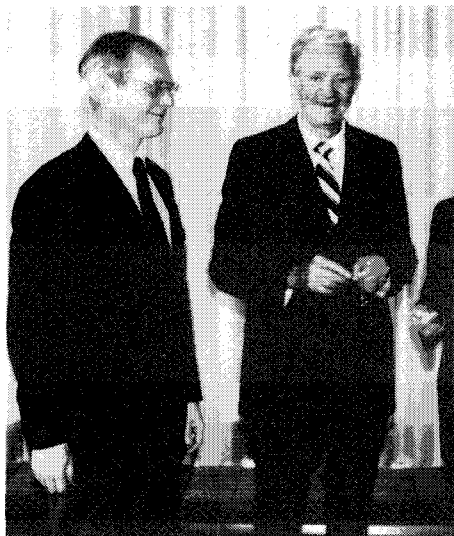
His reputation for fairness is reflected in a statement of a member of the Supreme Court who was heard last week to say that if she were accused of wrongdoing, she would want to be judged by Henry Gergen. His competence is reflected in the fact that he is one of the few trial judges who has had his memorandum decision accepted as the subsequent opinion of a unanimous Supreme Court [Coulson v. Larsen, 94 Wis. 2d 56 (1980)].

If there were nothing more to be said about Henry Gergen, he would obviously be known as one of Wisconsin's outstanding trial judges. But there is more—he not only runs a good court; he also devotes generously of his time to improve the justice system. He is the acknowledged leader of the Criminal Jury Instructions Committee. In the important work of the Committee he is always willing to listen to ideas whether the ideas are expressed by judicial colleagues or by the non-judge members, whether the idea comes from the old or the young, the experienced or the inexperienced. He has the great gift of being able to consider ideas on their merits, regardless of whose ideas they are.

At the Law School we have long taken pride in the Wisconsin Idea. We say that the boundaries of the campus are the boundaries of the State and, as Henry Gergen would say, "That includes Dodge County, don't you know?" What many may not realize is that the Wisconsin Idea is a two-way street: the University contributes whatever it can, but it also relies upon many who contribute in turn to the University. This is what Henry Gergen has done by devoting a couple of days a month for the last 25 years to one of the most important and successful programs of the Wisconsin Law School—the Criminal Jury Instructions Project, which is of great benefit to the undergraduate law student and the graduate practitioner alike.

I welcome this opportunity to say, on behalf of the Wisconsin Law School, thanks to Henry Gergen—who will happily continue to work with us.

Thanks also to Eileen, without whom I don't think Henry would have even been invited to be a member of the Jury Instructions Committee.



Five years in retirement haven't in the slightest degree dulled his acute and bellicose views toward changes in The Law across the half century and more since he finished Law School here at Wisconsin.

The Honorable Richard W. Orton:

*A Salute from a Fond Admirer
By Professor G. W. Foster, Jr.*

Its 1984 Distinguished Service Award was conferred on the Honorable Richard W. Orton by the Wisconsin Law Alumni Association. The occasion was the noon Alumni Luncheon during the Law School's annual Spring Program on Saturday, May 5, 1984.

There were many reasons—and a lot of good ones—for honoring Dick Orton for his long record of contribution to the State. For myself, there is one very special reason for singling Judge Orton out for praise: in my more than a third of a century as an adopted Wisconsinite, I can think of no lawyer who has more forcefully—and predictably—defended the past values of The Law in the face of any proposal for change.

Having Dick Orton on an advisory committee charged with considering law reform has afforded assurance to the public that attention would be thorough: Every case for the status quo and every possible flaw in any proposal for change would have to be faced and considered in the process of adopting reform. Now and then he could be a real pain, but there was always the larger comfort that any arguments for leaving things as they were would have a full hearing with Judge Orton on hand.

My closest contacts with Judge Orton were connected with the development of the Wisconsin Long-Arm Jurisdiction Act, now a part of Chapter 801 of Wisconsin Statutes. The Wisconsin Judicial Council in 1955 had asked me to take on the job of serving as Reporter for the project. Two years later I had examined a number of thousands of opinions written after the 1945 decision of the U.S. Supreme Court in *International Shoe v. Washington*, 326 U.S. 310, and had produced some tentative drafts of possible grounds for personal jurisdiction in Wisconsin over nonresident defendants. Margo Melli, then Executive Secretary of the Judicial Council (and now a faculty colleague), thought it time to ask the State Bar for help in naming an advisory committee to assist in the shaping of proposed legislation. (I've always suspected Margo played an important role in achieving two results when the Advisory Committee was selected: First, in seeing to it that Judge Orton was named as a member and, second, having the Committee stacked in such a way that he couldn't stall the enterprise altogether.)

In any event, Dick Orton was named to the Committee and an initial meeting was scheduled at Lake Delton during the Convention of the State Bar in Summer 1957. In advance of the meeting, copies of my drafts and supporting comments were sent out to Committee members. I first met Judge Orton shortly after arriving at the Bar Convention when he introduced himself, explained he had been named to the Advisory Committee, and then added: "Professor, I've looked over that stuff you've sent and, frankly, I think it's . . ." (People who know Dick can do a reasonably accurate job of filling in the blanks. What he said in substance was that the Wisconsin Legislature would never be crazy enough to adopt anything remotely like the stuff I'd sent him.)

Yet despite that insalubrious beginning, Judge Orton really did his homework on the project and I don't recall that Dick missed a single one of the day-long, monthly meetings of the Committee over the period of a year and a half or so that we met. He was the Devil's Advocate—and sometimes simply the Devil himself—but he forced us all to think things through. And the Wisconsin Long-Arm Statute was a very much better product because of Dick.

In the final Committee vote on the measure we intended to offer the Legislature, Judge Orton voted against two rather important provisions. But having been voted down on both points, he then voted to support the draft as it stood and his support was a critical point in the Wisconsin Legislature's decision to enact the Long-Arm Statute.

This, then, is the account of my special reason for cheering the decision of the Wisconsin Law Alumni Association to honor Judge Dick Orton with its 1984 Distinguished Service Award.

I didn't hear Judge Orton's speech accepting the Award, but I have read a typescript of what he said and it is vintage Orton. Five years in retirement haven't in the slightest degree dulled his acute and bellicose views toward changes in The Law across the half century and more since he finished Law School here at Wisconsin: Changes wrought in the name of procedural and substantive Due Process, cheered in other quarters, have in his view left administration of criminal law in a mess. The complexities of modern product liability litigation create burdens for courts and parties that seemingly outweigh all justifications grounded in social policy for making the litigation effort. And the very thought of lawyer advertising lies so far beyond the pale as to warrant only the observation that it's something he doesn't want to talk about.

Yet for all the growling, the Judge looked great and seems, as always, to appear happiest when growling. And having made that a way of life, he's learned to live with it very well.

So, from me at least, four cheers (one more than the customary three) for the Wisconsin Law Alumni Association's decision to honor Judge Orton in 1984.