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CIVILITY, DECORUM, AND RITUAL IN THE JUDICIARY

U.S. Magistrate Judge Steven E. Rau†

The following is an edited version of the remarks given by U.S. Magistrate Judge Steven E. Rau at his Investiture Ceremony at William Mitchell College of Law on March 18, 2011.

Thank you Chief Judge Davis, members of the District Court, and fellow Magistrate Judges. I want to thank our District Judges and the Merit Selection Panel for asking me to serve as a Magistrate Judge for the District of Minnesota. It is not a secret to anyone here that I am thrilled to have this opportunity to serve my country, my community, and this court.

As Chief Judge Davis said earlier, I now sit in the “Nelson Magistrate Judge’s Seat.” What a huge responsibility! To Judge Nelson, who has served me as a mentor since the day I was notified of my selection, and in other ways even before, I owe a special thanks. You have been inspirational and generous of spirit, time, and self.

I want to express my gratitude to Dean Janus and the William Mitchell community for its hospitality in providing a venue and in hosting this event. This is, for me, the home of practical wisdom. It is even more appropriate because my most influential legal mentor, Douglas K. Amdahl, was an alumnus of this institution and renowned for his practicality.

Being here on this stage is nostalgic because this stage used to be part of the law library. In fact, on this very spot, in a study carrel, I struggled with the Palsgraf case, Professor Michael Steenson’s Federal Jurisdiction class, and Professor Neil Hamilton’s Administrative and Antitrust Law classes. Moreover, the past is

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present because my undergraduate institution is also well represented. Dean Janus is a proud Carleton College alumnus, and Father Kevin McDonough has Carleton roots as well. In addition, I believe a large constituency of Carls is in the audience, much to the chagrin of my St. Olaf friends.

When preparing for today, I tried to research the origins of investiture ceremonies. The Eighth Circuit librarian advised me that she could find little information written, or otherwise, about the ritual. What little information she did find suggests that its origins are in the livery of seisin.

Some of you may know that the “livery of seisin” was the means by which land was conveyed. Frequently, it was a ceremony wherein a symbolic piece of the land—a clod of dirt or twig—was physically handed to the grantee. Later, when clothes became indicia of rank, status, and position in society, titles and offices were passed on in robing ceremonies.

A monograph that the Federal Judicial Center publishes on the process of becoming a new judge suggests that the investiture ceremony is a ceremony or ritual that familiarizes the public with the new judge and provides an opportunity for the new judge to articulate his or her judicial philosophy to the public.

As for judicial philosophies, it would be presumptuous of me to pretend that two months after leaving twenty-six years of private practice I possess a fully formed, mature, judicial philosophy. I know I aspire to be the kind of judge I used to want to appear in front of: kind and compassionate, patient and fair, without an overinflated sense of importance.

Investitures involve civility, decorum, and ritual. Each of these concepts is an integral part of our judicial system—they are interrelated. Why are civility and decorum important? What function do they serve? Do they inspire? And what inspiration or charge will I take from this particular ritual or ceremony today?

As I said earlier, Chief Justice Amdahl did not consider himself to be special as a person simply because he was a judge. In fact, Chief Justice Amdahl held the view that “Courts shouldn’t be some sort of mysterious, magic sort of a thing . . . . It’s ordinary people doing ordinary jobs. That job just happens to be judging.”

Those of us who knew him, though, knew that he was special. He

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1. Grant Moos, *Amdahl is Just a Common Fellow*, ROCHESTER POST-BULL., Jan. 31, 1989, at 3A.
remained down to earth, regular, and was always a practitioner of civility—a value that he held in high regard. He also valued tradition or ritual.

Our courts and legal systems operate by and pursuant to ritual and operate best when conducted civilly and with decorum. These concepts are all designed to level the playing field and to accomplish our stated goal of equal justice under law. Accomplishing equal justice under law requires accommodating a diversity of interests and recognizing and honoring those diverse interests. According to Judge Sarah Evans Barker, of the Southern District of Indiana and author of an article entitled “Ritual & Civility: What Difference Does a Good ‘Oyez’ Make?”, civility, decorum, and rituals transcend and give deeper meaning and significance to the day to day work of the courts. Each of these concepts remind us of what it is we must do, how we must do it, what is at stake, and the values of that particular pursuit.

For example, in the courtroom we adhere to formalities of title. Undue familiarity does not accord respect to all involved and, at times, may make participants view our court system as an insider’s game. Parties and participants are expected to wear formal attire emphasizing the importance of the process and the formality of the occasion. Courtrooms are stylized and laid out to afford protection and dignity to all participants. The use of an oath or affirmation is required and people seek the court’s permission to speak. Witnesses are excused, juries are charged and discharged, and all arise in the courtroom when the jury enters. These represent just a few of the rules of civility and decorum that are part of the fabric of our system of justice. These rules apply to all litigants and lawyers. The rules and traditions of civility and decorum also apply with equal vigor to judges—there is no room in our system for intemperate judges.

The ultimate purpose of all of these rules and rituals is to assist the participants, the officers of the court, and judges, in arriving at a fair, truthful, and just decision. Philosophers say that the right kinds of forms and rituals improve the legitimacy of a process and create credibility that enables people to trust the results. These are the building blocks of a fair judicial system. To use a sports analogy: they are the fundamentals.

Ultimately, the rules of civility and decorum and the rituals of the law help each of us sublimate our individual personality to function; they assist in creating an atmosphere of detachment, objectivity, respect, order, and justice.

Civility, decorum, and ritual can also, if engaged in mindlessly, serve only as artificial shells disguising prejudice, disdain, and contempt. The forms can be elevated over substance with disastrous effects.

Civility, decorum, and ritual are held in contempt as much as they are held aloft. In nearly every such instance that contempt stems from the use of civility, decorum, and ritual as a disguise for an abuse of power.

Thus, civility, decorum, and ritual are only safeguards for our judicial process if those practicing those virtues do so with compassion and an appreciation for the meaning and purpose. Civility, decorum, and ritual are meaningless if the mindless practice them.

Today I accept this robe as this Court’s charge to me to participate and assist in providing “Equal Justice Under Law” in this ritual. In the words Judge Nelson used recently, “[o]ur courts are where the people meet the promise of this nation.” I hope to keep my mind focused and concentrated on what I am doing, to understand and remember the purposes of civility, decorum, and ritual. I will endeavor to adhere to the rituals of the office, but not rigidly, and to keep my mind and heart open to wisdom and compassion in the pursuit of justice.

Thank you, and God bless America and God bless this Court.

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