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The Honorable Russell E. Smith

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U.S. District Judge

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IN MEMORIAM

The Honorable Russell E. Smith

1908—1990

The bench and bar have lost a friend, colleague, and dedicated public servant with the passing of United States District Judge Russell E. Smith. For twenty-four years this man served the federal court with distinction. That exemplary service should be remembered.

Russell E. Smith was born in Butte in 1908, later moving to Billings where he was graduated from high school. He was active in high school debate where he was coached by William B. Jameson, who was later to become a revered federal judge. Rusty graduated from the University of Montana School of Law with high honors in 1931. After graduation, he worked as a law clerk and marshal at the Montana Supreme Court until 1933 when he entered private practice in the firm of Ford and Smith in Cut Bank. Judge Smith moved to Missoula to practice law with Walter Pope in 1935. During World War II, he worked in the Office of Price Administration and as an attorney in the United States Navy. He returned to private practice in 1945 as a partner in the firm of Pope and Smith. In 1949, when Walter Pope was appointed to the Court of Appeals for the Ninth Circuit, Judge Smith practiced with William T. Boone. The firm was later known as Smith, Boone and Rimel until Jack Rimel's untimely death in 1958, after which it became Smith, Boone and Karlberg. Sam Haddon joined the firm shortly after Russell Smith became a federal district judge and the firm became Boone, Karlberg and Haddon.

I first knew this man when, at age 14, I worked as a busboy in the coffee shop of the Florence Hotel in Missoula. Rusty, a prominent lawyer, was a regular patron, and I saw him there often. Neither of us then knew the many ways in which our paths would later cross.

Judge Smith's is a history of service. As an attorney in private practice, he worked for a variety of clients and the profession, serv-

ing as president of the Montana Bar Association, and as chairman of the Montana Board of Law Examiners. He also taught evidence, torts and legal writing, at different times, at the Montana law school. At one point, he refused a teaching salary increase and instead directed the dean to use his share to bolster the salary of younger instructors who needed the money more than he. I was one of those fortunate enough to have studied evidence in Professor Smith's class.

President Lyndon B. Johnson appointed Russell E. Smith to the office of United States District Judge for the District of Montana in 1966. He assumed this office with enthusiasm, becoming a fair-minded and even-tempered judge. He was a thoughtful jurist, but one who would rule with accurate certainty from the bench. While strict and formal in open court, his compassion was obvious. These qualities earned him widespread respect among lawyers and his peers, who described him as brilliant, courageous, and scholarly.

Judge Smith developed a professional and efficient court staff. His late wife, Todd, was a constant companion, and the two of them were as family with the staff.

The Montana federal workload was somewhat lighter then than now, and Rusty served extensively in other jurisdictions. One year he was away from Missoula for 185 days. He sat twice a year on the Ninth Circuit Court of Appeals until becoming chief judge in Montana, and at least once a year afterward. He also sat on circuit panels in Boston, New York, Philadelphia, Minnesota and Guam. In 1978, Judge Smith was honored when he was chosen to open the federal court system in the Mariana Islands Commonwealth.

A gifted writer, Rusty wrote in 1949 of his evolving self-perceptions as an attorney. The piece was characteristically introspective and somewhat self-deprecating. Rusty portrayed himself initially as a "knight in shining armor," who used the law to champion justice; next, he viewed himself as an "economic parasite" who, as an advocate, placed his clients' needs above whichever party he believed was the rightful winner of a lawsuit; and, finally, he viewed himself as an "oil can"—an integral part of a flawed but necessary legal system, reducing social friction.

Russell E. Smith was the kind of judge who makes our federal system work: honorable, bright, hard-working, dedicated and humble. Visitors in his chambers were reminded of this humility by a plaque which prominently displayed Oliver Cromwell's words of August 3, 1650—"I beseech you, in the bowels of Christ, think it

possible you may be mistaken.”

Judge Russell E. Smith is missed; he will be remembered.

—U.S. District Judge Charles C. Lovell

