

Urban Law Annual ; Journal of Urban and Contemporary Law

Volume 52 *Tribute to Judge Theodore McMillian*

January 1997

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Recommended Citation

Pamela H. Bucy, *Tribute to Judge Theodore McMillian*, 52 WASH. U. J. URB. & CONTEMP. L. 45 (1997)

Available at: https://openscholarship.wustl.edu/law_urbanlaw/vol52/iss1/10

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TRIBUTE TO JUDGE THEODORE MCMILLIAN

*PAMELA H. BUCY**

“Now, what are your husband’s plans?” The year was 1976 and I was a second year law student. This was the question I was most frequently asked by the lawyers from the larger St. Louis law firms who came to Washington University School of Law to interview prospective summer clerks. Having grown up in small towns in Texas I had never met a lawyer until these interviews, so it wasn’t until the fourth or fifth interview that I realized this question was not just friendly small talk. At first, I would dutifully explain my husband’s career plans (medical school and training for the ensuing eight to ten years). By the last few interviews, I had somewhat mastered moving the topic of conversation away from my husband’s plans to my own. Even so, one interviewer was especially persistent. At the end of that interview, I wrote down a number and handed it to him. The interviewer looked puzzled, then surprised, when I explained that I was giving him my husband’s telephone number so he could interview him directly.

With hindsight, this interview experience confirmed my belief that bad things have a way of working out well. Despite the fact that my grades, extracurricular activities, and other objective qualifications were better than most of my fellow law students who were asked back for second interviews, I was not. That led me to Judge Theodore McMillian.

My interview with Judge McMillian was, in contrast, a breath of

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fresh air. For the rest of my life, I will recall how wonderful it was to go into the interview room where Judge McMillian was sitting (as well as Judge Smith, Judge Gunn and Judge Dowd—all of the Missouri Court of Appeals). Their questions focused on me and my goals. It was a pleasure to be accepted at face value. At this interview I never felt like I had to convince anyone that I really wanted to practice law. I never had to overcome any unspoken view that I was not worth hiring and training because I would probably move or quit work to have babies once my husband finished his training.

I began clerking for Judge McMillian in January, 1977—during my second year of law school—and continued through the next summer and fall. Various friends and professors told me throughout this time period that I should apply to clerk for a federal judge after graduation. It was more prestigious, they all said. I toyed with the idea only briefly. I could not imagine leaving Judge McMillian, so when he offered to continue my clerkship for the year after my graduation, I jumped at the chance. As fate would have it, President Carter appointed Judge McMillian to the United States Court of Appeals for the Eighth Circuit soon thereafter, so I ended up clerking for a federal judge after all.

When I look back I am astounded at the impact Judge McMillian has had on my life. I am also incredibly thankful that he was the person who served as my mentor during the crucial years when I was deciding how I would practice law.

The first summer I worked for Judge McMillian, a high profile public corruption trial was taking place in federal district court, across the street from the courthouse where the Missouri Court of Appeals had chambers. Judge McMillian came in one morning, told us about the trial, and said, “You really ought to go over and watch it. Come back and tell me about it.” So, a bunch of us law clerks went. We took notes, and at noon and at the end of the day I came back and gave Judge McMillian a running account of the trial. I was surprised to learn that Judge McMillian knew just about everyone in the case—the prosecutors, the defense attorneys, even the defendants (high level elected officials). Of course, I soon learned that Judge McMillian knows everyone.

The few days we attended the trial and the discussion of it with Judge McMillian probably provided me with the best single educational experience I've had in my life. Judge McMillian explained the nuances of the trial that had made no sense to us, entertained us with stories, and suggested (usually accurately) what was going to happen next. During these discussions, I kept wishing I could have seen Judge McMillian when he had been a prosecutor. I bet he was terrific. Shrewd, smart, absolutely charming. Not someone to have on the other side.

During one of these discussions, Judge McMillian told me something that changed my life. Referring to the federal prosecutors, he said, "That's the best job in town." I was surprised since in my absolute ignorance about the legal profession, I had assumed all government lawyers were the same—boring, dull civil servants. However, because of Judge McMillian's advice and the fun it had been to watch that trial that summer, I signed up for a clinical internship at the United States Attorney's Office in St. Louis during my third year in law school. For a variety of scheduling reasons, accepting the internship meant I could not serve on the editorial board of the law review of which I was a staff member. My professors and friends in law school counseled me not to forego the opportunity to be on a law review editorial board, certainly not for "just a clinical course." Fortunately, I followed Judge McMillian's advice.

I had the time of my life serving my internship. As soon as I started, I was put to work on two cases—drafting a trial brief for the prosecution of several businessmen who, through a Ponzi scheme, had defrauded several physicians, and drafting various documents for the prosecution of a nationally known rock-and-roll star for a Mann Act violation. These were the juiciest, most exciting cases I had yet seen, certainly more interesting than anything in law school. Every day when I worked on these cases instead of spading some author's law review article, I silently offered my thanks to Judge McMillian for his advice.

Throughout my two and one-half years of clerking for Judge McMillian, I learned a lot about the legal profession and about being

a good lawyer. For most of one week each month, Judge McMillian and his fellow judges heard oral arguments. Before each argument, Judge McMillian discussed the upcoming cases—and the lawyers. After the lawyers' arguments, he critiqued them to us, pointing out what was effective and what was not. Sometimes he told us about the discussion the case had engendered among the judges. Later I realized what a better lawyer I was because of these discussions. Somehow, I never learned in law school how the real world of lawyering worked. From these discussions with Judge McMillian I saw that the practical impact a decision would have, far more than precedent, determines the outcome of each case. It was astounding to me to realize that most precedent could be distinguished away, and was, if following it did not make practical sense.

Judge McMillian also told us lots of stories—mostly about the lawyers who appeared before the court. Judge McMillian forgot nothing. Most of these stories described something the lawyer had done five, ten, even twenty years before, when the lawyer had been an attorney opposing Judge McMillian or had appeared before him previously (usually when he was a St. Louis circuit judge). From these stories, I learned that a lawyer's reputation means everything, and, that reputation is, to a large degree, fixed from the first day a lawyer begins practice. This reputation will help, or hurt, a lawyer for the rest of his or her professional career. From these critiques, I learned that the best lawyers are rarely the flashy, the bombastic, or the entertaining ones. Rather, those who are prepared, honest about their case, and believe in what they are doing are much more effective. Later, when I became a trial lawyer and had precious few female role models, it was these lessons from Judge McMillian that I aspired to follow.

Perhaps the paramount thing I absorbed from Judge McMillian during my clerkship days was how much he loved the practice of law. Judge McMillian gleefully told stories about his practice and the cases he encountered; he felt empathy for the people whose lives were wrapped up in the cases; he took pride in lawyers who did a good job; he found joy in the everyday details of practicing law and being a judge. From this, I unconsciously came to assume that I, too,

would practice law in a way that meant something to me and gave me joy.

During the last year I clerked for Judge McMillian, after my graduation from law school, I began the interviewing circuit again. Either the law firms had decided they should not ask female applicants about their husbands, or I was a savvier interviewee—probably some of both—but things went better this time. The topic of my husband's career plans never came up.

I received a couple of offers and accepted an associate's position with a large St. Louis firm. My friends, who were mostly lawyers, thought it sounded terrific. I received all kinds of congratulations, except from one person. Judge McMillian just smiled when I told him the firms I was considering, and again when I told him which firm I had gone with. Unlike my other friends, he said, "I'm not sure you're going to like it."

Judge McMillian was right. The people at the firm could not have been nicer. To this day, many are still good friends. But, I soon learned what it is like to be at the bottom of a very tall pecking order. I was supposed to be a litigator. After two months of never meeting a client, never going to court, never leaving the library, and serving as the fourth or fifth lawyer on a case that had been going on for five or ten years, I decided I was not a very good cog in a wheel. Two months after starting at the law firm, I called Judge McMillian, talked to him and decided to call the U.S. Attorney's office to see whether there were any jobs open.

Fortuitously, the day I called an additional District Court judge had been named for the Eastern District of Missouri which, in turn, created two additional positions for Assistant U.S. Attorneys. Robert Kingsland, the United States Attorney, who had seen how relentlessly I had worked on the cases involving the Ponzi scheme artists and rock and roll star, offered me a job. Within six months after leaving Judge McMillian, I was back in the federal courthouse, now as an Assistant United States Attorney.

Today, it is fairly common for attorneys to make lateral moves from law firms to a U.S. Attorney's Office. In 1977, however, almost everyone thought I was crazy. My friends and the lawyers at my firm,

though supportive, clearly thought I was throwing away a good salary, a prestigious position, and a certain track to affluence and power. Because I had had so much fun at the U.S. Attorney's office as an intern, the decision to leave the firm was not hard for me but, given the chorus of disdain and disapproval, it was reassuring to have Judge McMillian's support.

The next seven years of my life were the most thrilling, exciting, and fun years anyone could ever hope to have. Often, I would wake up at 4:30 AM, look at the clock and think, "Oh boy, another hour and I can get up and go to work!" I loved trying cases, getting cases ready for trial, working with the agents, and best of all, getting to know the wonderful people who were my friends and colleagues at the U.S. Attorney's office. One of the greatest benefits of the job was that I was back in the same building as Judge McMillian, whom I saw often, usually in the elevator or parking lot. As always, he was ready with a greeting and a story.

During this period, I argued about 30 cases before the Court of Appeals for the Eighth Circuit. It was always a little awkward to argue in front of Judge McMillian. Mostly, I was concerned I would lapse into our usual, informal patter: "Aw Judge. You know that can't be right." However, with one exception, I maintained my composure. The one lapse occurred during the first argument I had before a panel which included Judge McMillian, barely one year after I had completed my clerkship. The case was a routine drug conviction, with few issues on appeal. As soon as the attorney for the appellant took his place at the podium, Judge McMillian asked in a most serious tone of voice, "Now, Mr. _____, has Ms. Bucy been picking on your client?" Not knowing that Judge McMillian knew me, this attorney stood up straighter and spoke louder and more vehemently, clearly with more optimism than he had previously felt. He got so involved in his argument that he did not notice I was beet-red and all three judges on the panel were smiling like Cheshire cats. (Despite his raised expectations, his client did not prevail on appeal.)

When I moved from St. Louis to Alabama, where I was most fortunate to join the faculty at the University of Alabama School of Law, I left friends, a town, and a job I loved. I also left the best

mentor a person could have. Although Judge McMillian and I still talk and visit whenever our travels permit, I miss seeing him regularly, and I miss hearing his friendly greeting and his latest joke or funny story.

Yet, as I close my tenth year in law teaching, I realize that I have never left Judge McMillian because he is always with me and with generations of my law students at Alabama. I try very hard to treat my students as Judge McMillian treated me in our first encounter, at face value and without any preconceptions. I try to convey to my students some of the lessons I learned from Judge McMillian—that the practice of law is a profession; that their reputation and integrity are the most important assets they have as lawyers; that good lawyers understand the practical and personal impact of their arguments, not just the precedent. Perhaps the most important thing I try to communicate to my students is that the practice of law should be personally rewarding, that it can be for each and every one of them, and that they should not settle for less. Like Judge McMillian did for me, I try to let my students know that if they do not find a rewarding practice of law in the obvious places, they should keep looking, and they will find it. For these reasons, this tribute is not just from me, but from generations of law students from Alabama who, I hope through me, have benefited from Judge McMillian's good sense, good humor, and kind heart.

