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In Memoriam of Hon. Joseph M. McLaughlin

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**IN MEMORIAM OF
HON. JOSEPH M. McLAUGHLIN**

*Hon. Cathy Seibel**

So here's a dirty little secret about judges. Some of them, once they are given the robe, tend to become full of themselves. Perhaps because of the respect they are given, or perhaps because of the power, they become convinced that they are superior beings—the smartest, the most knowledgeable, with the best judgment. Perhaps because everyone laughs at their jokes, they become convinced they are the funniest and most charming. They forget where they came from, and they forget about what it was like to be an everyday person, and they lose touch with the concerns of ordinary people.

I'm here today to talk about a judge who was the total opposite of what I've just described, a judge who never got a swelled head, who never forgot where he came from, who—even as he climbed to the upper reaches of the judiciary—not only never lost touch with the concerns of everyday people, but beyond that, really delighted in the lives of those people.

At a memorial for Judge Joseph McLaughlin held at the Second Circuit in December,¹ the judges of that court all referred to him as “JMCL.” Among his law clerks, who I represent here tonight, he is known simply as “Himself.” I had the great good fortune to clerk for Himself from 1985 to 1987 in the Eastern District of New York. Before that I was a student intern. The law clerks at that time were Ed Tighe, who is here tonight, and Larry Noyer, may he rest in peace, both graduates of Fordham Law School. One evening toward the end of my semester as an intern, they invited me out for beers. We hit several of Brooklyn Heights's finer watering holes, ate in one of its finer diners, just across the park from the courthouse, and late that night made our way to the subway and home. I was able to keep up with Ed and Larry because of the fine training in beer consumption that I received at Princeton University and Fordham Law School. I did not realize it at the time, but that night of carousing was my clerkship interview. The next time I came to chambers, the Judge offered me the job. I realized that Ed and Larry had been assigned to make sure that I would be the right

* United States District Judge for the Southern District of New York. She delivered these remarks as part of a tribute to the Honorable Joseph M. McLaughlin on February 4, 2014 at Fordham Law School.

1. The Memorial to the Honorable Joseph M. McLaughlin was held on December 11, 2013, at the Thurgood Marshall U.S. Courthouse in New York. The full text of the remarks are published at 757 F.3d xxvii (2014).

fit. Now that I hire law clerks of my own, I take to heart what I learned from that experience: that there are plenty of young lawyers who are smart enough to do the job, but the unique and wonderful relationship between judge and law clerk is a personal one, and it works best if you really enjoy each other.

This is but one of many lessons I learned from Himself that I try to apply now that I'm a judge myself. He set such a marvelous example in how he treated the people in his courtroom. We all know he was hilarious. At the same time, he really listened to the arguments. He didn't lose his patience. It didn't matter if you were a solo practitioner or a partner in a big firm. He let the lawyers say their piece. When he ruled against you, he didn't rub your face in it. He explained his reasoning. He understood how important the cases were to the parties themselves, whether everyday people or big corporations. He delighted in the facts of the cases and the stories of the people involved, and it was usually the humble people who made the biggest impression on him. When a woman from India was the plaintiff in a trip and fall case, and the defense was that she had tripped because of the complicated regalia she wore, he delighted in learning the proper Indian terms for each article of clothing. When the big perfume companies sued an entity that was allegedly counterfeiting their products, he loved Randy, an uneducated and totally straightforward guy who testified how he sat in a back room with giant taps of various liquids and a recipe book, and waited for one of his bosses to tell him, "Randy, whip me up some Polo" or Chanel No. 5 or whatever.

He delighted in these humble people and he never considered himself above them. We used to eat lunch at an extremely humble establishment called the By George. It was basically a bar with a red-sauce Italian menu right across from the old St. George Hotel. It was our go-to place on Fridays. No menus were necessary, as we were all required to order spaghetti and meatballs. The first round of drinks was a martini for Himself and Heinekens for the law clerks. The second round was Heinekens for everyone. There was a whole cast of characters in the By George and the Judge delighted in them. The owner of the place was Richie. Richie had been shot under murky circumstances and still had the bullet in his belly. We never asked too many questions about how or why he was shot, but he loved to show the Judge exactly where the bullet resided, and the Judge loved being shown. The Judge had nicknames for the regulars at the bar; some of his favorites were Pinhead, The Saint, and Blanche DuBois. I always marveled at this man who could have such a good time eating and drinking in this dive with these characters and then an hour later would be in his chambers reading something in Latin.

Speaking of Latin, Ted Normand tells me that the hardest he ever saw the Judge laugh was one day when the Judge was presiding in the circuit and a lawyer, seeking an injunction, kept repeating, with unintentional redundancy, that he was merely seeking "to preserve the status quo now." The Judge was a master of the strategic deployment of Latin in his

opinions. In *United States v. Cutler*,² a contempt case arising out of extrajudicial comments of a criminal defense lawyer in violation of a gag order, Himself wrote: “We are not unaware that it has become *de rigueur* for successful criminal defense lawyers to cultivate cozy relationships with the media. . . . As Seneca once observed, ‘*quae fuerant vitia mores sunt.*’”³ He helpfully translated for the non-Latin speakers among us: “What once were vices are now the manners of the day.”⁴ He probably was unaware that the Doobie Brothers translated it slightly differently for the title of their 1974 album “What Were Once Vices Are Now Habits.”⁵ Anyway, unfortunately for the criminal defense lawyer at issue, the Judge went on to observe that his case now stood “as a caution that enough of the ‘old ethics’ survive to bar flouting the Canons of Professional Conduct.”⁶ And just to make sure everyone got it, he concluded, with his typical flair, as follows: “Trial practice, whether criminal or civil, is not a contact sport. And its tactics do not include eye-gouging or shin-kicking.”⁷ Thanks to Mark Coyne for pointing me to that gem.

The Judge’s humility and connection to everyday people were never better on display than when he had naturalization duty. He would swear in the new citizens and then tell them his own story: that his parents were immigrants and here he was a federal judge and how in this great country you can be anything you set your mind to.

That same ethos was on display when he sentenced a defendant who had been the head of the Teamsters Union at JFK Airport. He had been convicted of racketeering and extortion for essentially getting into bed with the Mafia by agreeing not to enforce aspects of the union collective bargaining agreement if the employer paid off the wiseguys. The Judge was usually a bit of a soft touch at sentencing, but I had never seen him as dead serious as he was in this case. He told the union leader about how his father was an immigrant and got a job as a trolley car conductor, how the union movement enabled his father to support his family, how one of his father’s proudest days was introducing his son the federal judge to the legendary union leader Mike Quill, and how one of the worst things you could do was sell out working people in order to line your own pockets. By the time the Judge finished, the Teamsters leader was probably not surprised to get, if I remember correctly, a sentence of twelve years.

Another sentencing that I’ll never forget involved two unrelated cases that happened to be on for the same date. One defendant was a young man who had repeatedly threatened the President. He was a wimpy, awkward, lonely kid who never did anything to harm anyone but seemed to make the threats just to get attention from the Secret Service. The other defendant

2. 58 F.3d 825 (2d Cir. 1995).

3. *Id.* at 840 (quoting L. Annaeus Seneca, *Epistulae ad Lucilium*, Epis. xxxix, at ¶ 6).

4. *Id.*

5. DOOBIE BROTHERS, WHAT WERE ONCE VICES ARE NOW HABITS (Warner Bros. Record, Inc. 1974).

6. *Cutler*, 58 F.3d at 840.

7. *Id.*

was a muscular guy who owned a gym on Long Island. At some point he had stopped putting money in his postage meter but kept printing postage. Over a ten-year period it added up to something like \$100,000. The Judge recognized the seriousness of the conduct in both cases, but he didn't really want to put either of these defendants in jail. He came up with what he, and we clerks, thought was a brilliantly Solomonic sentence: both were sentenced to probation, on the condition that the wimpy kid work out regularly with the gym owner. There were other conditions, including a curfew for the wimpy kid and restitution for the gym owner, but the main idea was to make a man of the wimpy kid so that he would stop threatening the President and for the gym owner to pay his debt to society by helping the wimpy kid.

Himself was quite pleased with how it all worked out until one morning a few months later. He came in to work and told us that, the night before, he had been on the subway on the way home from teaching at this law school when he recognized, but could not immediately place, the person sitting across from him. By the time he got to Queens, however, he figured out that it was the wimpy kid, riding the subway well past his curfew. With some reluctance the Judge informed the probation officer and had to admit that maybe his experiment had failed. But to me it showed not only the Judge's creativity but also his tremendous humanity.

Another of the Judge's favorite criminal defendants was a woman who was accused of spying for East Germany.⁸ Many such cases historically were resolved with a trade for someone the other country was holding as a U.S. spy, and this case was no exception. After some super-secret proceeding at JFK Airport, the Judge's defendant was sent home and an accused American spy came back here. Although the case was resolved essentially through diplomatic channels, for some reason the defendant believed that the Judge was really the one responsible for her liberation, and she was immensely grateful. He was delighted to receive annual Christmas cards from her and was convinced that somewhere in East Berlin there was a square in his honor called McLaughlinplatz.

I realize that I keep using the word "delighted." I'm not sure I have ever met a man who was so delighted by so many people and so many things. Whether it was the stories he heard from agents, Marshals, and CSOs, or the movies he loved, or the dives he frequented, he took such delight in so many things. First and foremost, however, was his family. He appreciated, and never tried to hide, his complete dependence on his wife Fran; how lucky he was to have her; and how much he loved their life together, and their children.

When I clerked, the Judge's daughter, Mary Jo, was a newlywed, and with each accomplishment and each grandchild he would just about burst his buttons. As Joe and Matt made their way in the law, he would be thrilled. I remember his enormous pride when Joe made partner at Simpson Thacher and when Matt tried his first case.

8. *See United States v. Michelson*, 607 F. Supp. 693 (E.D.N.Y. 1985).

My favorite story of the McLaughlin kids, however, involved the youngest, Andrew, who was a boy of maybe ten when I clerked. One day the Judge came in and told us that he had spent the previous evening in the emergency room because Andrew had broken his arm. Apparently there had been an awkward moment when the nurse asked Andrew how he had hurt himself and Andrew said something about his daddy. Naturally some stern questioning of the daddy ensued, but the Judge was able to convince the hospital staff that Andrew had broken his arm accidentally while they were playing. Unfortunately, this required him to confess that they had invented a game they called “Freddy Kreuger.” Many of you will remember Freddy Kreuger as the villain in the *Nightmare on Elm Street* movies.⁹ I don’t remember the details of the game, but it involved the two of them chasing each other around the darkened basement. To me it was but another example of how this brilliant judge never forgot that he was just a regular guy.

The Judge also delighted in his clerks’ lives. I remember meeting him for lunch one day and telling him I was engaged to be married. He asked about my husband-to-be, who has an unusual name: Barron. When I told the Judge his name, he roared with laughter and said, “That’s a dog’s name!” After that, whenever I saw him, he would ask after my husband by saying, “How’s Fido?” or “How’s Rex?” or “How’s Spot?” He also let it be known at that lunch that he was available to perform the wedding. I told him that although I would truly love it if he could do so, my in-laws were insisting on a rabbi. After a second he replied, “You could tell them I’m Judge Weinstein.”

That same idea arose again years later when he was sitting on the circuit. A somewhat notorious and very prolific pro se litigant was arguing one of her countless appeals. She was known not only for her many meritless lawsuits, but also for then suing the judges who ruled against her or the court clerks who processed her paperwork or the lawyers who represented the other side. In the course of making her appellate argument she referred to Judge McLaughlin as Judge Weinstein. When asked afterward why he did not correct her, the Judge said, “She sues every judge she appears before; let her think I’m Judge Weinstein!”

Not that long ago I was doing some research on the circumstances under which consent to search by the owner of a house was sufficient to permit the admission of evidence against the occupant of a room in the house. I came across *United States v. Davis*,¹⁰ which was the appeal of a drug defendant named Content. The evidence against him had included some of the contents of a footlocker that the agents had searched with the permission of a guy named Cleare, who said he and Content shared the footlocker. According to the opinion, Cleare testified at the suppression hearing that he kept various personal items, including photos of present and

9. See *A Nightmare on Elm Street*, IMDB, <http://www.imdb.com/title/tt0087800/> (last visited Feb. 23, 2015).

10. 967 F.2d 84 (2d Cir. 1992).

former girlfriends, in the footlocker. The footnote to that sentence reads as follows: “Cleare, an accomplished Lothario, testified that he kept a complete collection of his girlfriends’ pictures in the footlocker so that, on a moment’s notice, he could retrieve the appropriate photograph to be prominently displayed for the evening’s festivities.”¹¹ Immediately upon reading this I knew it had to be a McLaughlin opinion, and sure enough it was. Not only is it the first reported use of the word “Lothario” in the Second Circuit, but it both shows what a wonderful writer he was and typifies the delight he took in the details and stories of the everyday people whose lives give rise to so much of the work of our courts. *United States v. Davis* happens to be my most recent example, but anybody who does legal research and knew Himself has had the same experience of coming across a wonderful turn of phrase and immediately recognizing whose work it was.

One more example. Hat tip to Joe DeSimone for this one. In *Giano v. Senkowski*,¹² the circuit addressed whether the plaintiff, a prisoner named Giano, had a constitutional right to possess nude or semi-nude photographs of his girlfriend. The court held it proper to defer to the informed discretion of prison officials who felt such photographs to be inimical to sound prison administration. But the Judge showed that he understood where Giano was coming from: “We intend no moral aspersions on Giano’s preferred means of expressing his emotional bond with his paramour, recognizing, as we do, that one man’s pornography may be another’s keepsake.”¹³

Finally, before I sit down, I have a confession to make and a record to clarify. When I was sworn in as a district judge, I asked Judge McLaughlin to administer the oath. I don’t know which of us was more proud. Using the occasion to joke, as I knew he would, the Judge pointed out to the assembled multitudes that I was the first law clerk to get him reversed by the Second Circuit. He later reminded me that now that I was a district judge and he was a circuit judge, he was in a position to return the favor. At the Second Circuit memorial in December, Ed Tighe spoke and confessed that he in fact had been the first law clerk to get the Judge reversed by the Second Circuit. Now, in fairness to Ed and Himself, I must confess that I was the first to get the Judge reversed by the Supreme Court.¹⁴

It had long been the tradition in the Eastern District of New York that magistrate judges picked juries, even in criminal cases. To our surprise one day, the defendant’s lawyer objected to this procedure. I did some quick research and concluded that it was okay as long as any of the magistrate judge’s rulings were reviewed de novo by the district judge. The magistrate judge went ahead and picked the jury, and when Himself asked if defense counsel wanted any of the magistrate judge’s rulings reviewed, the answer was “no.”¹⁵ We thought we were going to be golden on appeal, and indeed

11. *Id.* at 86 n.2.

12. 54 F.3d 1050 (2d Cir. 1995).

13. *Id.* at 1056.

14. *Gomez v. United States*, 490 U.S. 858 (1989).

15. *Id.* at 860.

the Second Circuit affirmed, albeit two-to-one.¹⁶ The Supremes took the case and, in a closely contested decision, reversed nine-to-zero. So that is my major contribution to the McLaughlin legacy.

But I will be forever grateful for his contributions to my life, as a judge and a person. I learned so much from him about the law, but that I could have learned from a lot of people. But he uniquely, by his example, showed how to have an important job without being self-important; how to be scholarly without being snooty; how to make decisions affecting people's lives without becoming superior; and how to take the job seriously without taking oneself seriously. Kipling wrote of the man who could "talk with crowds and keep [his] virtue," who could "walk with kings nor lose the common touch."¹⁷ Joseph McLaughlin was such a man. I am honored to have known him. I can only hope to reflect in some small way his thoughtfulness, his humanity, his humor, and his delight in the world around him and in other people.

16. *United States v. Garcia*, 848 F.2d 1324 (1988), *rev'd sub nom. Gomez*, 490 U.S. 858.

17. Rudyard Kipling, *COMPLETE VERSE: DEFINITIVE EDITION* 578 (1989).