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DEDICATION TO THE HONORABLE PHYLLIS A. KRAVITCH

Scott E. Sundby[†]

Few requests are more intimidating than being asked to write a tribute for someone whom you greatly admire. You do not want to simply gush out superlatives so that the dedication sounds overly sentimental and lacks credibility, but, at the same time, the fear arises that if you simply recount accomplishments and bestow the standard verbal accolades, the tribute will sound formulaic and unconvincing. All of which is why I feel some trepidation in trying to express the debt I feel to Judge Kravitch for being a legal mentor and friend, while also communicating the reasons that her tenure on the bench has left a lasting and impressive mark on the course of the Eleventh Circuit. When I clerked for the Judge in 1983-84, I realized from the limited perspective of a clerk in chambers that a clerkship with the Judge was a very special experience. Now, having read more judicial opinions than I can recall and having appeared before a number of judges, I am aware that the Judge's service on the Court is truly what the citizenry is entitled to expect when someone is given a lifetime appointment to the federal bench.

Trying to define what makes a great jurist can be a bit like a parlor game. One can offer up clues—intelligence, experience, independence, compassion, courage—as to whether any one person will be a great judge, but until that person dons the robe, it really is a guessing game. There is a certain intangible quality which goes into the making of a great judge, a quality which enables the great judge to walk that narrow tightrope of seeing how the law can make the world a better place while still knowing the law's limits. And perhaps because that quality is so difficult to articulate, it often is easier to list examples of whom we consider to be outstanding judges rather than grasp for abstract words that describe judicial greatness.

Judge Phyllis Kravitch belongs on any such list. One can begin with a long (but still incomplete) recitation of her accomplishments as a lawyer and a judge: the first female trial

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lawyer in Savannah, a trial attorney in groundbreaking civil rights cases, a key member of the Board of Education in eliminating sex- and race-based discrimination among teachers and students, the first woman to serve as a Superior Court judge in Georgia, the first woman appointed to be a federal judge in the Southeast, and only the third woman in history to be appointed as a United States Court of Appeals judge.

Such a list, though, is at best a superficial description of the person wearing the judicial robe and deciding the cases. The judge whom I came to know and admire is someone with an unfailing optimism in the Constitution and the law, who believes that a judge must stand firm against the prevailing political winds and ensure that every person who comes before the Court has a fair and equal opportunity to be heard.

One of my first impressions when I started clerking for the Judge was her amazing recall of past cases on which she had sat as a panel member. At first, I simply attributed this to a prodigious memory, but soon realized that it also was a reflection of her general approach to judging. To the Judge, an appellate case coming into chambers was not just a sterile stack of filed briefs bound by a rubberband, but represented an event in the litigants' lives, often a momentous event, and it was incumbent upon the judicial system to hear their voices. Facts mattered, and when the judge was recalling a prior case, it was not just a ruling she remembered, but an effort to fairly resolve issues affecting peoples' lives, issues that for them—whether it be a seaman seeking damages for a debilitating injury or a death row inmate seeking a last-minute stay—were of tremendous importance.

That Judge Kravitch should view her judicial role as one of trying to make the legal system work for the people of all races and social status comes as no mystery to those who know of her past. Her first role model in the law was her father, a man who by all accounts was the Atticus Finch of Savannah. A civil rights lawyer before such a role was popular, Aaron Kravitch willingly accepted pro bono representation of poor blacks and challenged the institutions of segregation. When Judge Kravitch received the James Wilson Award for Service to the Legal Profession from the University of Pennsylvania Law School, she dedicated the award to her father's memory, recalling that despite the hostility from the local bar and political establishments for his representation of unpopular causes and clients, "This did not seem to bother him. He considered Law an honorable profession, not a business,

and being admitted to practice law a privilege of the highest order." Anyone who has been around the Judge for any period of time knows well that she has carried on her father's reverence and belief in the law as an honorable profession.

Thankfully, the Judge also inherited her father's optimism that the law and society can change for the better, because, as her list of "firsts" indicates, she often has had to be the one bringing about the change. Despite graduating second in her class and being an editor on the University of Pennsylvania Law Review when she graduated in 1944, the big-city law firms would not interview her because she was a woman. She had an interview with a Supreme Court Justice, but he declined to hire her because he was worried how it might appear to have a female clerk. Consequently, at a time when women were not even allowed to sit on juries in Georgia, she returned to Savannah to become the city's first female trial lawyer and begin practicing with her father.

As always, though, she did not view the job situation as a defeat but seized upon her new practice as an opportunity to begin work on cutting-edge civil rights cases and to develop a reputation as an articulate and effective advocate; and succeed she did—pursuing an active criminal and civil practice, while also working to change the discrimination that dominated Savannah and the south at the time. Some of the changes she helped bring about were through groundbreaking civil rights challenges, such as a suit to allow blacks to vote in the all-white Democratic primary; other changes were more subtle, such as addressing black witnesses as Mr. or Mrs. rather than, as was the southern custom, addressing them by the witness's first name.

Prior to the Judge's election to the Superior Court in 1976, no woman in Georgia had served in so high a judicial position. Once again, though, the breakthrough only came because the Judge was willing to go against the status quo. She had come to command the respect of Savannah's legal community—she was elected the first female president of the Savannah Bar Association in 1975—but when a position opened on the Superior Court bench, two sitting judges immediately announced their candidacy. Perhaps spurred on by some lawyers' comments that "she would be the ideal candidate if she wasn't a woman," the Judge decided to enter the race as well. She ran a grassroots campaign, refusing contributions or endorsements from attorneys

to avoid any appearance of impropriety. An appreciative citizenry, remembering her fights for equality as a member of the School Board and her willingness to represent those who otherwise would have had no voice in the legal system, rallied to her cause and elected her to the position. It did not take the Judge long to place her mark on the Superior Court. One Savannah lawyer recalls that before the Judge went on the bench, the Superior Court was "chaos, absolute total chaos," but with the Judge's election "came the first real semblance of professionalism."¹

Even the Judge's appointment to the Eleventh Circuit may not have occurred if the traditional channels of selection had been followed. Fortunately, though, when Jimmy Carter was elected President, he instituted U.S. Circuit Judge Nominating Commissions to identify and screen potential judicial appointees in an effort to move to a more merit-based system of selection. The Judge, who was not well-connected with the political establishment, benefitted from the change and her name was forwarded to the President. Thirty-five years after she had first found the doors of law firms closed to her as a woman, she was appointed to the Eleventh Circuit Court of Appeals.

Perhaps what makes all of these accomplishments most remarkable is that they were done without any sense of bitterness or with any marks of bearing a grudge. After hearing how the Judge has continuously overcome obstacle after obstacle, one who did not know her might picture a Joan of Arc figure, brandishing a sword of revenge against all who stood in her way. Instead, what one would find upon meeting her is a person with a ready laugh, razor-sharp mind and a belief in reason and hard work as the greatest catalysts for change. Likewise, the Judge's judicial opinions steer clear of unnecessary Grand Pronouncements, but are models of judicial restraint—clear, tightly reasoned opinions that provide guidance for future cases while limiting themselves to the facts of the case.

I find it wonderfully fitting that Judge Kravitch was one of the inaugural members of the Eleventh Circuit when it was created in 1981, a Circuit which has uniquely carried on the legacy of the "Old Fifth Circuit" from which it was carved while forging its own character as a new circuit. The Judge herself always has

1. *The Private Judge*, FULTON COUNTY DAILY REP., July 17, 1987, at 29.

struck me as someone who has uniquely combined the traditional and the new. She has a great respect for precedent. Every law clerk has seen the Judge decide cases where the outcome was contrary to her personal beliefs but the caselaw or statute required the result, and then heard the Judge explain the importance of judges not overstepping their proper roles. She also has great admiration for judges who were on the bench before her, judges like Elbert Tuttle, Frank Johnson and Irving Goldberg. At the same time, she has not been stymied when the Constitution has called for applying the Bill of Rights to new situations, so that all people may benefit from its protections, the politically weak as well as the strong. As was noted when the Judge was named one of the first recipients of the ABA's Margaret Brent Women Lawyers of Achievement Award, "[o]n the United States Court of Appeals, Judge Kravitch continues as an intellectual force dedicated unswervingly to equal justice."

I trust that the reader now has some impressions of the Judge as a figure on the bench hearing cases. A former law clerk's dedication, however, would be incomplete if it did not also recount the day-to-day enjoyment of working in the Judge's chambers. While the Judge set a rather imposing example of hard work—indeed, she may be the hardest working person I have ever been around—the hard work was interspersed with laughter and hijinks. The Judge sees the humor in situations, even those that come at her own expense, and knows that the seriousness of the work need not rule out moments of levity. I still find remarkable the enthusiasm with which I looked forward to going to chambers every day (I used to say that clerking for the Judge was the apex of my legal career and everything has been downhill since, but lately have found it disconcerting at how quickly my colleagues agree).

Judge Kravitch's life is a story of one individual's belief that, through the power of discourse and reason, barriers can be superseded and opportunities made. She has made that journey with a courage to persist and an unshakable belief in what is right, spiced with a sense of humor that has allowed her to withstand slights and setbacks. She has carried those attributes onto the bench, and her opinions form a foundation for future generations of lawyers and judges to build upon in making the law a more just and fair system. Fortunately, the Judge is not retiring but only taking Senior status, which, if I know the Judge, will mean that her briefcase still will be bulging at the

end of the day with slip opinions to read and briefs to peruse. For the Judge, who has dedicated her life to the Law, there always will be a next case, a next opinion, a next group of litigants who need to be heard, and we are all the better for it.