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A TRIBUTE TO JUDGE PHYLLIS A. KRAVITCH

Jennifer Arlen[†]

In two decades on the bench, Judge Phyllis Kravitch has struck a remarkable grace note, combining a forthright judicial character which honors individual and civil rights with a deep devotion to precedent. Indeed, during a time of great social and legal transition in the South, she has embodied the best of the region that nurtured her, and of the law she serves, often at great personal cost.

In her actions on the bench and in her personal life, Judge Kravitch has expressed a very classical view of the practice of law: its practitioners must embody the highest virtues of the state. Her judicial character mirrors her personal probity. It is the fate of all too many Southern federal judges to become outcasts by adhering to the Constitution and the individual and civil rights it embodies. Judge Kravitch certainly has paid a price for her civic virtue, both in her relationships with her fellow townspeople in Savannah and, on occasion, in her dealings with some members of the Bar. She so cherishes the South, and so loves the law, that it has been a sacrifice of the heart.

Born in 1920 in Savannah, Georgia, Judge was introduced to the law by her father, Aaron Kravitch, a prominent local lawyer. Mr. Kravitch believed deeply in the right of every individual to adequate representation. He regularly volunteered to serve as a court-appointed defense lawyer in criminal cases. He particularly distinguished himself by his willingness to represent black defendants in capital cases. He also took numerous civil rights cases. As a girl, Judge watched her father argue in court, sneaking into the balcony reserved for African-Americans and hiding so the trial judge would not know she was there.

Although virtually no women in the South practiced law, Judge Kravitch decided to become a lawyer. In 1941, she entered the University of Pennsylvania Law School, one of only two women in her class. At the time she applied, many prestigious law schools did not even accept women students. At the end of her first year of law school she was in the top of her class and was

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elected to the Board of Editors of the Pennsylvania Law Review. She was one of the first women to serve on the board. She graduated second in her class in 1943.

Despite her stellar record, Judge was unable to obtain either a clerkship with a federal judge or a position in a local law firm. Virtually all rejected her application because she was a woman; the others rejected her, sometimes explicitly, because she was Jewish. Judge returned to Savannah and entered law practice with her father. She was one of the first women to practice into litigation in Georgia.

Judge Kravitch shared her father's view that lawyers must make a difference. In the South, this meant defending those whom others would not defend and fighting to protect people's constitutional rights. Among the cases she brought with her father was a suit to allow black citizens to vote in the then-all-white Democratic primary. As it happens, one of the named plaintiffs in that suit was the uncle of Drew Days (former Solicitor General under President Clinton and currently a Yale law professor). The Judge and her father also sued to allow Georgia teachers to exercise their First Amendment rights to form a Teachers' Association.

The Judge's efforts to improve conditions in Savannah went beyond filing lawsuits. In 1949, she became a member of the Chatham County Board of Education. At the time, "separate but equal" was the rule governing the schooling of black and white children in Georgia. Schools were certainly separate; but they were anything but equal. Judge toured the schools designated for black children and found many to be in appalling condition, unfit for children. She worked to force the school board to stop using sub-standard buildings for schools for minority children. She also fought to eliminate sex- and race-based salary discrepancies.

Judge Kravitch was instrumental in helping establish the Savannah Area Family Emergency Shelter (SAFE) for battered women, as well as the Savannah Rape Crisis Center. She worked with the League Women of Women Voters, speaking on issues such as the Equal Rights Amendment.

Judge also worked to further the legal profession. In 1975, local lawyers recognized her efforts by electing her president of the Savannah Bar Association, making her the first woman to hold this position.

The next year, she ran for and was elected a Superior Court Judge, the first woman Superior Court Judge in Georgia. Despite

a heated campaign, Judge refused to accept campaign contributions from lawyers, believing that accepting such contributions creates the appearance of impropriety.

Throughout her life Judge has been an exemplar of the idea that the struggle for individual rights and human decency often is conducted in the smallest ways and on a daily basis. For example, one of her first acts as Superior Court judge was to end a long-standing practice of discrimination in state court hiring: Judge hired Princess Mason to be her secretary. Ms. Mason was the first, and for a long time the only, black secretary in the Chatham County courthouse. Hiring Ms. Mason, Judge is quick to point out, was the right decision: Ms. Mason was by far the best qualified candidate and is a truly remarkable person. Yet hiring her was also far from the obvious decision. Up to that point (1977), no judge had hired a black secretary. Indeed, no blacks worked in the courthouse as anything other than janitors. Discrimination was so entrenched that initially the state court personnel office tried to discourage Judge Kravitch from even interviewing Ms. Mason. For years after Judge hired Ms. Mason, other state court judges, secretaries, and many lawyers made both the Judge and Ms. Mason feel their displeasure.

On the state court bench, Judge Kravitch heard numerous family law cases and saw the crying need for reform in that area. She instituted numerous reforms in her own court designed to improve family law cases. She also assisted the Georgia legislature in revising family, juvenile and child abuse laws that were not gender neutral.

In 1979, President Carter appointed Judge Kravitch to the Fifth Circuit, making her the first woman to be appointed a federal judge in the Southeast and the third woman ever appointed to the United States Court of Appeals. Judge became a member of the Eleventh Circuit in 1981, when the Fifth Circuit split into the Fifth and Eleventh Circuits. Ms. Mason was Judge's secretary for most of Judge's tenure as an active judge on the Eleventh Circuit.

On the Eleventh Circuit, Judge Kravitch continued to work to uphold the principles she believes the law stands for. She has fought to prevent inmates sentenced to death from being denied the opportunity to have federal courts hear their claims. She has consistently reminded the courts that often these people had poor lawyers at trial and in their initial appeals and that this should not result in their being denied the right to have their claims

heard by a federal court on the eve of their death. Indeed, in one case, after the panel Judge Kravitch was on granted habeas to a condemned man less than twenty-four hours before execution, the state later released him, admitting that there was insufficient evidence to demonstrate he committed the crime.

Although she often fought to protect people's rights, Judge has been anything but ideological. If she concluded a defendant in a capital case did not have a claim, she did not stay the execution. In those cases where she did grant the defendant's petition, she would stand by her position despite any criticism.

This is not to say that death cases have been the primary cases that Judge has worked on. But, as a former judicial clerk, the capital cases remain the most vivid. And these were the cases where there was the most pressure—from local residents, the local press, lawyers, and sometimes other judges—to simply let the state have its way. Judge Kravitch would not do so, even though it cost her dearly around Savannah.

Judge Kravitch also had numerous other high profile cases. For example, in 1983, Judge wrote a majority opinion holding that the government could not discriminate based on national origin in parole evaluations of Cuban and Haitian refugees, and ruling that there was clear evidence the government had done so.¹ She stood by this position notwithstanding considerable criticism from the public and some members of the bench.²

Judge Kravitch has received national recognition for her outstanding service. She serves on the prestigious Standing Committee on Rules of the Judicial Conference of the Federal Courts and has been on the board of visitors of the University of Chicago Law School, Emory University School of Law, and Georgia State University College of Law. She was awarded the Margaret Brent Award, given to women lawyers of achievement by the American Bar Association, in the first year the award was given. The University of Pennsylvania gave her the James Wilson Alumni Award for distinguished service. She has served as a judge for moot court competitions at Harvard, Yale, New York University, Cornell, University of Southern California, Duke, Virginia, and numerous other law schools.

1. *Jean v. Nelson*, 711 F.2d 1455, 1483-85 (11th Cir. 1983).

2. *Id.* at 986-89 (Kravitch, J., dissenting in relevant part).

In her time on the bench, Judge has left her mark not only on the law, but also on the almost sixty people who have clerked for her, and on their families. Judge Kravitch has strengthened many of her clerks' resolve to follow more public spirited careers. Certainly, she influenced me. Judge convinced me that if there is something you want to do, you should do it now. With her constant encouragement, I applied to be a law professor and got a job as an assistant professor at Emory Law School. Her support over the last ten years has been invaluable. She has had a similar effect on many others. Judge has former clerks teaching at Vanderbilt, Indiana, Illinois and Washington and Lee. Other former clerks are assistant United States attorneys, lawyers for Legal Aid, or work for firms doing defense work in capital cases. My former co-clerk decided while clerking for Judge to get a rotary fellowship to study in Australia; he later spent two years as an assistant attorney general to Palau.

Judge Kravitch also has given her clerks another gift: each other. Judge's former clerks are a remarkable group of people. Judge has worked hard to transform this network of clerks into an extended family. Many of us know each other. Others we know only through stories, but stories so rich that the people become real.

Judge Kravitch has taught her clerks the importance of dignity, and of remembering what you are fighting for, and what you are not. Repeatedly when I clerked for her—and also in the years that followed—I watched her suffer discrimination, not only from relative strangers in Savannah but also from some members of the Bar and bench. Judge never stepped back from such insults. She would look the person in the eye and make it clear that what they were doing was wrong, but she did so while avoiding a pointless confrontation. Her energy was better spent on other things. This ability to both confront and then move on has made Judge very effective.

We should all be thankful that Judge Kravitch, in taking senior status, is not retiring from the bench. The federal bench benefits greatly from her presence; the law benefits; future clerks will benefit; and, more important, the country will benefit from her continued presence as a voice speaking for what is right.