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WADE H. MCCREE, JR.

*Sara Sun Beale **

I clerked for Wade McCree from 1976-1977. In retrospect I have often marvelled at my good luck. When I applied, I knew little more than the fact that the Judge's chambers were within commuting distance of Ann Arbor, where I was living while my husband was in graduate school. During and after my clerkship I learned what an exceptional man the Judge was, what a warm relationship he established with his clerks, and how much he could and did teach them. He was a wonderful mentor and friend.

The Judge had an unusually close relationship with his clerks. In one sense, the closeness was a matter of physical proximity. When I began my clerkship I was surprised to observe that even though the Judge had a large private office he frequently worked at one of the small tables in my office or that of my co-clerk. The Judge liked this arrangement because he was a gregarious pack rat. Working in one of our offices had the dual advantage of permitting the Judge to keep up a stream of comments to one of us, and providing the Judge with an uncluttered working surface not to be found in his own office. Every available surface in his office was covered with piles of correspondence, news clippings, and God knows what else. The Judge took great pride in being able to retrieve whatever he wanted quickly. He never explained his system, but I concluded that it bore some resemblance to the use of drill cores by geologists. The Judge burrowed down experimentally in a number of piles, pulling out samples, until he found something from approximately the same date; then he leafed through rapidly until he found what he wanted. The papers were like sediments that eventually become rocks; they were simply preserved in the order they fell to the table and were pressed down under other newer layers. The Judge's system worked, but by the time I came along he was running out of room. I was a little worried when he began opening his mail in my office and leaving the beginning of new piles on my desk, since I could see where that could lead.

The Judge also had an unusually close and productive intellectual relationship with his clerks. Because the Judge liked to think out loud and to test his ideas on us, we had a rare opportunity to learn what

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influenced him and how he arrived at his decisions. Before oral argument he read all of the briefs and then discussed his initial view of the case with one of the clerks. Discussing these cases and watching the Judge during arguments was an education in itself. I learned how much a novice like me missed in reviewing the briefs. The Judge knew what he wanted to look for in particular types of cases, and he often ferreted out things that were not immediately apparent. My favorite illustration comes from a social security disability case in which the claimant was challenging the denial of benefits. Although the claimant did not press this point, the Judge was immediately suspicious of the expert testimony supporting the finding that there were available jobs for which this claimant was qualified. As he pored over the appendix in the case, the Judge explained that he had found that the expert testimony in these cases was often unreliable because the experts gave virtually the same testimony in every case, without regard to the individual claimant's history or ability. The Judge soon discovered exactly that had occurred in the case in question: the expert had testified that the claimant was qualified for restaurant jobs such as busboy and dishwasher, even though the medical records indicated a recent history of tuberculosis. When the Judge raised this problem at the argument, it was clear that he already knew more about that case than either party's lawyer.

A McCree clerk's education continued when the argument ended. The Judge wanted his opinions to be well researched, well reasoned, well organized, and well written. Once the clerk produced a draft that was acceptable in its broad outlines, the Judge went over it line-by-line and word-by-word with the clerk. It was a wonderful, though humbling, learning experience. As an undergraduate English major, I particularly appreciated the care with which the Judge crafted his opinions. He was an elegant writer and a connoisseur of language. He wanted to use exactly the right word or phrase to convey a precise shade of meaning. He was always interested in words, and not infrequently he would put aside the opinion he was working on to look up the origin of a word or phrase that interested him. Given the care with which the Judge wrote his opinions, I was not surprised to learn recently from a colleague that she uses one of the Judge's opinions as a model for her first-year writing students. I think that would have pleased Judge McCree.

As we worked on individual opinions with the Judge we also learned about his values. The overriding concerns reflected in his opinions were the fairness of the process and respect for the dignity and rights of individuals. He once said that the social imperatives of a

large country should not encroach upon individual rights and freedoms any more than necessary. This concern was most evident in the Judge's treatment of criminal cases, which reflected his view that the government must be scrupulously fair in the investigation and trial of a criminal case, and generous rather than grudging in the interpretation of constitutional protections.

He was true to these values even when his own safety was at issue and pressure to deviate from these values came from his colleagues on the bench. During my clerkship, the judges of the district court ordered that metal detectors be installed and security guards be stationed at the elevators that gave access to the district court chambers and courtrooms, Judge McCree's chambers, and Senator Robert Griffin's office. Judge McCree was extremely distressed; he felt that there was no justification for limiting the general public's access to important government offices. When the argument was made that a large number of weapons had already been confiscated from persons who had been subjected to a search in the federal building, he replied that even more weapons could be confiscated if we set up checkpoints on the street corners, but obviously there was no justification for doing so. For the entire time the checkpoint was in place the Judge refused either to identify himself or to submit to a search. He hoped to be arrested so that he would have standing to challenge the legality of the searches. He never got a chance to do so; the guards immediately learned who he was, and new guards were warned to let him pass without incident.

Law clerks were treated like members of the Judge's family. He liked to share his bag lunch with us, and we often talked about topics other than the law. Sometimes we were treated to displays of the Judge's remarkable memory. He was proud that he could still recite verses and oratory that he had learned as a boy, and that he could still speak the Italian he had learned in Italy during the Second World War. He occasionally shared some of the poetry he had written. And he sometimes spoke of the racial discrimination he had suffered. The Judge was not bitter, but he was determined that the dignity of every individual should be respected. He applied that standard to every person with whom he came in contact. He was as courteous to the elderly woman who cleaned his chambers as he would have been to the Chief Justice.

The Judge took an interest in everything his clerks did, professionally and otherwise. He knew us well and had a good sense of what we were ready to do when we finished our clerkships. He discouraged me from going immediately into teaching, though he encouraged me to

enter it a bit later. He was right on both counts, and I was grateful that I had taken his advice.

Judge McCree's clerks remained members of his extended family after their clerkships ended and they scattered across the country. We called to talk to him about the professional challenges we were confronting. We brought our spouses and children to visit him. His wise advice and warm support extended across the miles and the years.

A few pages are not adequate to reflect what the Judge meant to me and to his other clerks. I feel very fortunate to have had the opportunity to work for such a warm, brilliant, and highly principled man who taught me so much, both personally and professionally. I loved and respected him, and I will miss him.