
TRIBUTE TO JUDGE THEODORE
MCMILLIAN: FORERUNNER AND HERO

*HON. DAVID C. MASON**

Historians, journalists, and archeologists are more accustomed than I to the task of explaining why one person's past is important to everyone's future. Through exhaustive research, experts such as these enlighten us as to the often subtle linkage between the past acts and omissions of notable figures and present circumstances. They battle over who gets the blame and credit for all that is good or bad today. Cognizant of this, contemporary "leaders" struggle with journalists to assure a positive historical legacy. There are those precious few, however, who by nothing more than their commitment to excellence, dedication to service, and professional competence, secure a historical legacy that cannot be altered by spin doctors or politically motivated revisionists. The Honorable Theodore McMillian is such a person.

I am proud that my law school has honored Judge McMillian in this prestigious journal of law. As a black American of African descent, I am fully aware that my success was not born exclusively of my legal education and professional performance. To be black in our country is to carry the blame for every crime, indiscretion, and indignation that every white person has ever suffered at the hands of any other black person. We are prejudged by the lowest common

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dominator among us until we prove otherwise. Judge McMillian shouldered this burden for me and every other black judge in Missouri. Every racist warning of what the black lawyer or black judge could not do was washed away in a tide of judicious and scholarly opinions. By his example, Judge McMillian picked the racial locks on the judge's chambers in this state. It was a lot easier to pull myself up by the bootstraps that Judge McMillian had so painstakingly laced.

I was born in 1956, the year Judge McMillian was appointed to the St. Louis City Circuit Court. By the time I graduated from Washington University School of Law, he had advanced to the Missouri Court of Appeals and on to the Eighth Circuit Court of Appeals. I first encountered him at my first Eighth Circuit argument in 1984. When I entered the courtroom, I was well aware of Judge McMillian's reputation. For some reason, lawyers like to portray all judges (especially federal judges) as crusty, raucous, and impatient with youth. However, within minutes after the session opened, it was a wise, nurturing father who welcomed me to the Eighth Circuit bar. His questions were more an admonishment than a challenge, more a lesson than a criticism. This judge was no self-righteous, liberal extremist using sarcastic and demeaning commentary to embarrass a young Assistant Attorney General; McMillian was a patient jurist, who by his conduct reassured a confident, yet insecure, young turk that he had the Court's respect. To know that this local legend, who was surely on some list of potential Supreme Court nominees, cast me in the same light as my prominent and aged opponent was enough to erase all the warnings that my "conservative" arguments had no hope with this "liberal" judge. Each time thereafter that I saw Judge McMillian sitting at the bench as the bailiff proclaimed, "God save the United States and this honorable Court," I said, "Amen!"

While Judge McMillian has attained almost heroic status with me and other black lawyers, he is a role model for all who seek the high and honorable calling of the judiciary. He is a case study in the benevolent exercise of power, the ethical conduct of a true public servant, and the honor of the legal profession. He has breathed life into the Bill of Rights and never retreated from his commitment to

ensure that the court remain mindful of the interests of the oppressed, discriminated, imprisoned, and impoverished. If the truth be told, dictionary publishers need not use words to define "objectivity," "fairness," "competence," "compassion," or "tolerance" for a simple photo of Judge McMillian will do just fine!

It is said that imitation is the sincerest form of flattery. Rather than writing more words, I will flatter Judge McMillian by seeking in my life to imitate his courage, competence, compassion, tolerance, integrity, and perhaps some of his opinions. I have no delusions of grandeur that I will be completely successful. Some may think that I am too laudatory. Well, I have as much of a right to a hero as anyone else.

