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In Memoriam

Remembrance of Judge Diana E. Murphy

Michael J. Melloy[†]

I first met Judge Diana Murphy in 1992 when I was a young, newly confirmed district court judge. I succeeded Judge David Hansen who had been appointed to the court of appeals. I was the second judge in a two-judge district. A few months after my appointment, Chief Judge Don O'Brien took senior status, making me chief judge, with three months' experience. A few months later, I attended my first chief judges' meeting, not knowing hardly anyone there. One of the other new chief judges was Diana Murphy of Minnesota, who had considerably more experience than I did as a district judge. We immediately formed a bond, and from that point forward Judge Murphy became a lifelong friend, mentor, and confidante.

We did not remain district judge colleagues for long. In 1994 President Clinton appointed Diana as the first woman on the Eighth Circuit Court of Appeals. This is one of just many firsts in Judge Murphy's distinguished career. Others have recounted those many accomplishments. However, there were a couple areas of particular interest to Judge Murphy that I especially admire and would like to reflect upon.

The area that comes to mind most immediately is her interest in gender equality. Judge Murphy and I served together on the Eighth Circuit Gender Fairness Task Force. Judge Murphy was a driving force behind the creation of the Task Force. Like any organization with which she was involved, Judge Murphy gave one-hundred percent of her time and commitment to the work of the Task Force. The study and work that went into compiling the data and writing the Final Report became a monumental task. Judge Murphy was there advising, prodding, and working every step of the way. Perhaps more importantly, Judge Murphy was determined the Report would not be prepared and then filed away, never to be heard of again. She led the effort to make sure

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the Final Report of the Task Force was followed by an implementation strategy with accountability for acting on the Report's recommendations.

Judge Murphy's passion for gender equality extended to her jurisprudence on our court. She authored numerous opinions and dissents affecting minority and women's rights. I particularly recall her passion for promoting legal protection for women and minorities from sexual and racial harassment. Her rulings have ensured that women are adequately compensated for long-term pervasive sexual harassment and racial discrimination,¹ that women are compensated for harassment that rises to the level of a constructive discharge,² that women are protected from abusive conduct by law enforcement officers,³ and that men are also protected from harassment based on sex.⁴ I greatly admire Judge Murphy's commitment as a vocal advocate for the most vulnerable in our society and her championing of the legal rights of minorities and women.

Judge Murphy's concern for disadvantaged and marginalized populations also extended to her keen interest in the rights of the Native American populations in the Eighth Circuit. The Eighth Circuit and Judge Murphy's home state of Minnesota are home to some of the largest number of Native Americans and most extensive Indian lands of any circuit. Judge Murphy was greatly concerned about the poverty, discrimination, and legal rights of the Native Americans in our circuit. As both a district and circuit judge, she wrote some of the most significant opinions of the past twenty-five years affecting Native Americans, including cases involving: treaty rights of the Mille Lacs Band of Chippewa Indians to fish, hunt, and gather in Minnesota;⁵ Indian gaming rights;⁶ jurisdiction of tribal courts;⁷ and ownership of tribal lands.⁸

1. See *Madison v. IBP, Inc.*, 257 F.3d 780 (8th Cir. 2001), *vacated*, 536 U.S. 919 (2002).

2. See *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568 (8th Cir. 1997).

3. See *Rogers v. City of Little Rock*, 152 F.3d 790 (8th Cir. 1998).

4. See *Quick v. Donaldson Co.*, 90 F.3d 1372 (8th Cir. 1996).

5. See *Mille Lacs Band of Chippewa Indians v. Minnesota*, 861 F. Supp. 784 (D. Minn. 1994).

6. See *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536 (8th Cir. 1996).

7. See *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 491 F.3d 878 (8th Cir. 2007), *vacated*, 554 U.S. 316 (2008).

8. See *Yankton Sioux Tribe v. Podhradsky*, 577 F.3d 951 (8th Cir. 2009), *withdrawn per curiam*, 606 F.3d 985 (8th Cir. 2010).

Judge Murphy was also committed to educating herself and her colleagues about the many problems facing Native Americans in our circuit. She chaired the Committee on Tribal Affairs for the Eighth Circuit Judicial Council for virtually her entire tenure on the court. She helped organize many programs dealing with Native American law and chaired the Eighth Circuit Conference that is devoted largely to issues affecting Native American populations. During her term as Chair of the United States Sentencing Commission, she also advocated strongly for the study of the effect of federal criminal law and sentencing on Native American populations and necessary sentencing reforms.

Finally, on a personal level I can't help but recall what a wonderful, kind, and funny friend and colleague Judge Murphy was to me. As I mentioned previously, she was a wonderful mentor. I could always call her for advice, counsel, or just a friendly chat. Over our more than sixteen years together on the Eighth Circuit, the highlight of any St. Louis court week was dinner with Judge Murphy and our fellow judges at Tony's, a St. Louis institution. She loved good food, a glass of wine, and wonderful companionship with her court family.

I recall with sadness and affection our last dinner together at Tony's. It was a couple of years before she died. Travel had become increasingly difficult for Judge Murphy, and she had decided to quit traveling to St. Louis and to sit exclusively in St. Paul. At that dinner, Judge Murphy knew she was likely on her last trip to St. Louis. We sat and reminisced about all the great times on the court, the many wonderful judges with whom she had served, and the fact that she knew her time on the court was drawing to a close. It is a memory I will cherish. I will miss her greatly, as I know will all the members of our court.