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In Memoriam

Remembrance of Judge Diana E. Murphy

Rubén Castillo[†]

I am the current Chief Judge of the U.S. District Court in Chicago, where I have served as a trial judge for twenty-four years. My first interaction with Judge Diana Murphy occurred in 1994 when I was sent to what is lovingly and affectionately referred to as “baby judges’ school.”

At the first week of baby judges’ school, newly appointed federal judges—which at that time consisted of about fifteen newly-appointed Clinton nominees—meet with an experienced mentor volunteer judge. Judge Diana Murphy volunteered to be our mentor judge. She was at that point the Chief Judge of the District of Minnesota and awaiting confirmation to the U.S. Court of Appeals for the Eighth Circuit.

During our meetings with Judge Murphy, we would run through various scenarios of what it was like to be a trial judge both in the courtroom and in chambers. All of us, I think it’s fair to say, were searching for answers. We were looking to the experienced volunteer mentor judge to give us answers. We had done our research. We knew that Judge Murphy had become a judge a mere two years after graduating from law school. We knew that she had served on the bench for twenty years. We quickly sized her up as a judge’s judge—smart, decisive, capable, ahead of her time. That’s what all of the new judges felt.

So we thought Judge Murphy would have answers. That’s what we really wanted—answers to take back so that we could emulate her when we started our new careers as judges. But answers are exactly what we did not receive. When we asked Judge Murphy, “How should we handle X?” or, “How should we handle Y?” invariably she would respond, just like a teacher or a good psychologist, “What do you think?” I realized even then that she

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had a vision of what she wanted to accomplish. She wanted us to start thinking like judges. She would praise our good answers, and would gently—and I emphasize *gently*—critique the potential problems with some of our less than desirable answers. But we learned a lot. I learned right then and there what a great mentor she was and I thought to myself that one week with Judge Diana Murphy was just not enough time. I hoped that would change sometime in the future, and I was fortunate because it did.

In 1999, I was part of a group of seven persons—five of them judges, including Judge Diana Murphy—appointed by the President to the U.S. Sentencing Commission. I could call it the then-existing Sentencing Commission, but that would not be entirely accurate because there was no functioning Commission at the time. It's not that it didn't exist, but that it had been allowed to languish. In fact, all of the appointments to the Commission had been left to expire without any new nominations for an entire year.

Now you might be asking yourself, rightly, why this happened. It happened because the prior Commission had decided—in what can be seen as an ill-timed and badly-divided vote—to try to lower some of our drug law penalties, in particular the penalties for crack cocaine offenses. This was very controversial, especially at that time. So a contentious vote had occurred that was soundly rejected by both parties to the point that the Commission essentially ceased to exist. In fact, cries went out from all over the country: Why even have a Sentencing Commission? The problem was that the Commission's purpose was to establish federal penalties, and new legislation was being passed every day by Congress that depended on the Commission to set those penalties. Yet, there was no Commission to be had. So the President and the country needed a volunteer—someone special and dynamic to chair the Sentencing Commission that had been allowed to languish—someone who would restore its credibility.

I am proud to say that person was found in the Eighth Circuit. The perennial volunteer, Judge Diana Murphy, agreed to fill this very, very difficult place in our nation's history. She became the first female Chair of the Sentencing Commission. But I knew Judge Murphy well enough to know this: with her, it was not important to be first. What was important was not to be the first and only, and I can tell you she wasn't the first and only in any of her positions. Instead, she created this great opening for other people to follow her. Judge Murphy's appointment to chair

the Sentencing Commission was similar to the other firsts Judge Murphy had already conquered—first female district judge in Minnesota, first female Chief District Judge, and first female judge appointed to the Eighth Circuit Court of Appeals.

I could go on at length about all that Judge Murphy accomplished during the five years I served together with her on the U.S. Sentencing Commission, but my space is rightly limited, so I will focus on three things that she managed to do during that period.

Number one, with this new group of commissioners she managed to build consensus. Let me say that the Sentencing Commission has built-in political division because four members are appointed by the party that holds the presidency, and three members are automatically appointed by the other party. So we were divided politically right off the bat four to three. But I can tell you as a Democrat, even fellow Democrats didn't necessarily agree with each other. Two of us, myself included, had prior law enforcement experience. Two Democratic members did not. One, in fact, had been a criminal defense attorney all his life.

Despite this initial lack of consensus, Judge Diana Murphy, in her careful way, using research and scholarship, together with the very considerable deliberation skills she brought to the table, managed to gain consensus over and over again from these seven different individuals, myself included. Part of her success stemmed from the fact that every single sentencing increase was carefully justified, and every single sentencing decrease was similarly justified and vigorously researched. Everything was carefully planned in accordance with Judge Murphy's dictates to create an environment of true scholarship at the Sentencing Commission.

That leads to the second point. As she repaired the credibility of this vital institution, more work was produced by the Sentencing Commission during this five-year period than ever before. That was just the industrious nature of Judge Diana Murphy. More reports were generated, and they were all well-researched and carried a lot of credibility. I would sit next to her at meetings and ask myself, "Where does she get this incredible energy to travel all over the country, to testify before Congress, to be questioned by members of Congress sometimes in a hostile and offensive manner, but nevertheless hold her demeanor at every stage of these proceedings, to meet with the Department of Justice and regain our credibility in that vital arena, to meet with criminal defense attorneys and to become known as fair and

evenhanded?” Fair and evenhanded. Everyone in Minnesota already knew those words to describe Judge Murphy, but her national reputation was built on that foundation as well.

Her outreach to the public was also second to none. For the first time, the Sentencing Commission started holding public hearings outside of the D.C. Beltway. We went to places like Rapid City, South Dakota and held hearings close to the Native American lands. For the first time, we established advisory groups for Native Americans and others who were interested in what the criminal justice system was doing so that we could obtain their input.

Judge Murphy had—and this is my third point—a vision. All of the work she did for the Commission was in addition to her duties on the Eighth Circuit. I cannot count the number of times I watched her preside over the Sentencing Commission with that vision of hers while at the same time drafting judicial opinions. She had incredible, incredible energy. I had never seen anything like that then, and probably will never see it again.

Judge Murphy had a vision like a battlefield general. She could tell how the battle would begin and where it would end. The best example of that was her work on the controversial crack cocaine issue, because her vision was that much work needed to be done. Those penalties were too high. There were too many minority men and women in federal prisons serving lengthy sentences. We were losing the drug war. She knew that, but she also knew that reducing drug-related sentences would require building a foundation before reaching a point where policy change could actually happen. She knew that it was going to take consensus-building and report-writing, and she endeavored to do that during her five years chairing the Commission. Happily, the drug policy did change. It took longer than we all would have liked, but it got done because of the groundwork that Judge Murphy laid during her tenure at the Sentencing Commission.

All I can do is be thankful to Judge Murphy for mentoring me and all the others she also quietly mentored. All we can do to repay this huge debt is try to emulate her outstanding public service to this dear country.