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## Tribute to Judge Theodore McMillian

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## TRIBUTE TO JUDGE THEODORE MCMILLIAN

*NORMAN S. LONDON\**

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Much has been said and written about Judge McMillian in his roles as trial judge and appellate judge, the positions he has held for some forty years. I believe, however, his accomplishments before he was elevated to the bench are perhaps even more noteworthy than those which have occurred since he became a judge.

When I first met Ted McMillian, he was not yet a judge and was serving as an assistant circuit attorney for the City of St. Louis. Over my forty-plus years as an attorney, both opposing him in court and appearing before him numerous times, I have come to know Ted McMillian, not only as a judge, but also as an individual and a friend. In order to understand and appreciate Judge McMillian today, I feel it is necessary to go back to his beginnings.

Judge McMillian is the oldest of ten children, the son of a factory worker, the grandson of a laborer, the great grandson of slaves. He was educated in the then fully segregated schools of St. Louis. In order to reach his school, he had to walk a considerable distance which took him past two uncrowded, well-equipped modern white schools in order to reach his overcrowded, run-down "separate but equal," black school. This was thirty-five years before *Brown v. Board of Education* outlawed school segregation in 1954.

Many might have become disillusioned with that experience, but for Ted McMillian it only encouraged him to work harder and enabled him to finish high school in three years and be elected to the

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National Honor Society. He wanted to go to college as a pre-med student, but was denied admission because of race and economics. Again, he could have become disillusioned, but instead went to Lincoln University in Jefferson City, Missouri—a black school—where he received his degree in 1941, with majors in chemistry, physics and math. He also received a Phi Beta Kappa key.

World War II took him to France and Germany and he returned in 1945, an Army Lieutenant ready to pursue his medical studies. The Army solved his educational economic problems with the G. I. Bill, but it could not change the color of his skin. He was advised that, under the existing quotas, he could not get into medical school for four to five years. He again could have become disillusioned, but instead accepted an opening that existed for an African-American at St. Louis University Law School. He finished first in his class and was the first African-American ever elected to the National Jesuit Honor Society.

He once again could have become disillusioned when, after all of these achievements, he could not get a job in the then all white legal community of St. Louis. Instead of giving up, however, he and his friend Al Lynch, another young black attorney, hung out their shingle and opened up an office to practice law. During his years in law school and the early years of his practice, he needed to supplement his income in order to support his wife and son, and he therefore held various jobs, including bus boy and waiter on a railroad dining car, movie projector operator, and janitor—the type of jobs routinely available to a member of his race at that time.

Race, however, has never been an issue with Judge McMillian. When I recount the racial obstacles he overcame, I am in awe. He, however, sees it only as a part of life. I was in his chambers one day when he referred to someone as colored. I laughed and said “Judge, you’re giving your age away—‘black’ is in, ‘colored’ is out.” He looked at me thoughtfully for a moment and said, “I’ve been called black, colored, nigger, coon, spade and a lot more I can’t even remember. They’re just words.” No, race has never been an issue with him, only a part of life.

Fortunately for all of us, in 1953 Ed Dowd, Sr., hired Judge McMillian as an assistant prosecutor for St. Louis, the first African-American to hold the position. In short order he was the leading trial attorney on the staff, handling most of the major cases. His performance was so noteworthy that in 1956 Governor Donnelly selected him to be a circuit judge—the first African-American to be so honored in Missouri. In 1972 he was elevated to the court of appeals by Governor Hearnes—the first and only African-American to serve as an appellate judge in Missouri until 1986. In 1978, President Carter named him to the Eighth Circuit bench. Again, Ted was the first and, to date, only African-American so honored.

Judge McMillian is the epitome of civility. His questions from the bench are searching, but expressed in a way to make the advocate— young or old—feel comfortable. He is not only respected by all who have come in contact with him; he is revered by those who have had the opportunity to know him well. His students, law clerks, and proteges—African-American and Caucasian—number among the finest lawyers in Missouri and elsewhere, and serve on every court in our state and federal district.

If he were alive today, his old friend and colleague, Thurgood Marshall, Sr., would be writing the lead article for this edition, for his relationship with Judge McMillian went back even further than most of us who know him today.

I have opposed Ted McMillian in the courtroom, and I have tried many cases before him, including his first jury case after his first judicial appointment. I have argued numerous appeals before him in the state and federal courts. There may be judges who rise to his level, but none who can rise above him.

