

Stories of a Judge: Remembering Robert Merhige Jr.

Whatsoever a great man does, the very same is also done by other men. Whatever the standard he sets, the world follows it.

We have lost a great one. On Feb. 18, Robert Merhige Jr., who for 31 years served as a federal district judge in Richmond, died at the age of 86. He leaves his wife, Shirley, their children and grandchildren.

In the 1970s, I spent many a day doing battle in Title VII class actions in his courtroom. A better trial judge, a better human being, I've never known. And for me, he was also like a second father.

We all know—or should know—the stories of Bob's valor in opposing the massive resistance against desegregation of Virginia's public schools. By ordering integration, Bob literally put the lives of himself and his family on the line. The stories of the Ku Klux Klan's efforts to intimidate him are legion, and although he was the sitting federal district judge in Richmond, the Main Street establishment largely shunned him—even at his club. Despite it all, he enforced the law with common sense and compassion for the underdog.

For these acts alone, Bob Merhige gets a free pass through the Pearly Gates. But there is more, much more that can be said about him. I'm Irish, so forgive me, we are storytellers. Here's a few personal Bob Merhige stories.

When I was a very young lawyer (back in the 70s), I had a virtual easement on I-95 from Baltimore to Richmond as the plaintiff's attorney in employment discrimination cases. One morning, I woke up and counted the class actions on my docket—17 of them. Most were in Bob's court. One day, I was arguing a motion before him on an issue that I can no longer recollect, and he ruled against me. Being a brash young man with a titanic temper, I yelled at the judge in open court, shouting that what he had just done was "the most unjust thing I had ever seen."

He was, of course, angered by my conduct. He stomped off the bench into his chambers where he could be heard taking my name in vain, repeatedly. At which point, it occurred to me that I had gone too far . . . way too far.

After about a half-hour, one of the judge's clerks came out into the corridor and intoned, "The judge wants to see you in chambers, now." With great trepidation, I entered his chambers, fully expecting to be held in contempt.

Instead, I encountered a kindly man who talked to me as though he were my dad, trying to teach me a lesson based upon our ugly

encounter that would help me in the future. That was vintage Bob Merhige, sitting at his desk with a fire crackling in the fireplace, helping young lawyers learn how to be good advocates.

There came a time when Richard Nixon was president, and he appointed a second judge to sit in Richmond—D. Dortch Warriner. Judge Warriner had defended the school district in a famous Virginia school busing case. He was the polar opposite of Judge Merhige. Needless to say, there was little affinity between the two of them.

One afternoon, sitting in Bob's chambers chatting, I asked how the random case assignment system worked. Bob responded, with that twinkle in his eyes, that he had the random assignment system in his desk. Whereupon he pulled open a drawer, took out an old coffee can, and passed it to me. Inside, there were black and white marbles.

Bob looked at me and said, "And, Fitz, you know who is the white marble." Vintage Merhige.

In the late 80s, when he was handling the Dalkon Shield case, Bob appointed me as a trustee for one of the victim compensation trusts. One day, he requested that the two other trustees and I visit him in chambers to discuss our compensation. When we emerged from that meeting, he had our enthusiastic agreement to a 40 percent reduction in pay. Trust me, only Bob Merhige could dramatically reduce your pay and still send you away with a smile on your face. Vintage Merhige.

I last saw Bob in Richmond for lunch at his club. He was fighting cancer and had just been through chemo. Even though he shouldn't have gone to the office that day and shouldn't have felt obligated to take me out to eat, he was there, the consummate gentleman. We had a wonderful lunch where I enjoyed needling him about his hourly rate at Hunton & Williams—as for years, he had remarked on fee applications that the Potomac River was "wide and deep," that is, rates in Virginia were much lower than in D.C. Vintage Merhige.

Bob, we'll miss you dearly. I salute you for all you did for Virginia and your country.

And, Bob, if you are reading this—as undoubtedly you are—yes, that verse at the start is from the Bhagavad Gita.

—Robert B. Fitzpatrick
Washington, D.C.