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IN HONOR OF JUDGE LESLIE H. SOUTHWICK'S 10TH ANNIVERSARY ON THE FIFTH CIRCUIT COURT OF APPEALS

*Judge T. Kenneth Griffis**

Judge Leslie Southwick loves a good quote to insert in a case at a critical moment to prove his conclusion, and use it as a point of emphasis. I can think of nothing better to use several quotes to honor him as we celebrate his tenth anniversary on the Fifth Circuit Court of Appeals.

When I think of Leslie Southwick, I am reminded of W.C. Fields' famous quote: "If you can't dazzle them with brilliance, baffle them with bull."

Leslie Southwick's service to the State of Mississippi, and on the Mississippi Court of Appeals was brilliant. He gave his very best in every case to the litigants, their lawyers, his colleagues, the supreme court, the trial bench, and the bar of Mississippi. There is no doubt that Mississippi jurisprudence is better off because Leslie Southwick served with honor, integrity, and dedication as a Judge on the Mississippi Court of Appeals.

Actually, very few people get to become a judge, much less an appellate judge, and are able to sit on two different appellate courts. Though, Leslie Southwick was not a reluctant judge. Leslie Southwick wanted to be an appellate judge, and he charted the course of his career in a fashion to give himself that opportunity.

When the State of Mississippi created the Court of Appeals, Leslie ran, not once, but twice for the same position in the same year.¹ Judge Southwick's campaign message endeavored to portray him as a "common man" by his actions of personally walking the district. Although questionable for a political message, it sufficed to coin his nickname "Walkin' Les."² There is a reason that most candidates don't use messages as nicknames as it presents a slippery slope for the image of the person attached; especially in terms of maintaining the respect of voters. It is very hard on the candidate to balance respectability when dabbling in publicity stunts. Still, I am not sure whether the voters felt sorry for Walkin' Les, or that they thought he would make a good appellate judge. Nonetheless, Mississippi improved with every step that "Walkin' Les" took. In 1995, as a result, Walkin' Les became "Judge Southwick."

At the court's investiture, Chief Justice Armis Hawkins opened the ceremony and said, "Welcome to the Christening of ten little baby judges."³ Chief Justice Hawkins was renowned for his judicial humor, and his sharp wit.

* Presiding Judge, Mississippi Court of Appeals.

1. Leslie H. Southwick, *The Mississippi Court of Appeals: History, Procedures, & First Year's Jurisprudence*, 65 Miss. L.J. 593, 618-22 (1996).

2. Leslie H. Southwick, *The Nominee* 53 (2014) ("It was hard and sweaty work, perhaps making me appear a little foolish, but likely giving me a more human image. The nickname tried out for a while was 'Walkin' Les.' It did not catch on, unsurprisingly, other than for one friend who still uses it.").

3. Leslie H. Southwick, *The Mississippi Court of Appeals*, 65 Miss. L.J. 593, 629 (1996).

Nevertheless, this led to an auspicious start for these “baby judges” and this “baby court.”

There were other indications that the supreme court lacked confidence in this new court and these “little baby judges.” Publicly, the justices of the supreme court welcomed the new appellate court to help reduce the overwhelming workload. On the other hand, a few justices often repeated their concern for the damages these “baby judges” might inflict on the state’s jurisprudence. In fact, the supreme court initially did not allow the court of appeals’ decisions to be published or cited as authority.⁴

Despite the concern of some supreme court justices, Judge Southwick and his new colleagues were ready for the task. The Mississippi Bar asked Judge Southwick for his initial goal for the court, he said “My goal was that, after a year of service, the court would be perceived by the bench, bar, and average citizen – and there would be substantial evidence to support the perception – as ‘playing a significant role in improving the quality of justice in Mississippi.’”⁵ The Mississippi Court of Appeals is now a respected entity, twenty-plus years later, because our first appellate judges focused on the court’s reputation for justice, for fairness, and for excellence.

Although I was not Judge Southwick’s colleague as an original member, I was honored to serve with him for many years. I was fortunate that Judge Southwick saw me not as a “baby judge,” but instead as a contemporary; an equal. He wanted to help me be the best judge on the Mississippi Court of Appeals that I could be. Leslie invested his time, his attention, and his wisdom in me, and every other judge willing to make the same investment in him.

Judge Southwick led this court through countless and significant decisions. It is remarkable that the decisions he authored more than ten years ago are often cited as the leading legal authority on certain issues. Nevertheless, I want to honor Judge Southwick by talking about the more important legacy that I believe he left to the Mississippi Court of Appeals.

There are no instruction manuals or books on how to be a good appellate judge. There are not even many law journal articles on this subject. As we judges find guidance and instruction in many places. One such source is a quote attributed to Socrates that says, “Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.”⁶

What does it mean “to hear courteously?” As lawyers, we are taught to argue. As judges, we must hear. Appellate judges must purposefully listen as both lawyers and as judges to make their complete argument or discuss an issue. It is difficult, for judges especially, to avoid that irresistible urge to interrupt someone with a brilliant observation or conclusion. Judge Leslie Southwick’s presence gave great example of how “to hear courteously.” In an en banc discussion, while others may interrupt often, Judge Southwick is patient. He

4. *Id.* at 594, 626.

5. *Id.* at 640.

6. Fredric I. Lederer, *Judging in the Age of Technology*, *The Judge’s Journal*, 53 *Am. Bar Ass’n* 4 (2014), https://www.americanbar.org/publications/judges_journal/2014/fall/judging_in_the_age_of_technology.html (quoting Franklin Pierce Adams, *F.P.A. Book of Quotations* (1952)).

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sees, and he is silent. He allows others to have their say without interruption or to his commentary.

"To answer wisely," Judge Southwick would always be prepared for the discussion. He would read the cases cited, at least the important ones, and he would be prepared to discuss the cases that favored his argument and yours. He wouldn't ask you to research points of law and get back with him. He would do the research, print and highlight the cases, and help you with your analysis, even if he didn't agree.

"To consider soberly," Judge Southwick doesn't respond with emotion or desperation to win the argument. He is a great example of how you can have a civil conversation on a difficult topic. Some issues that come before the Mississippi Court of Appeals are important, and judges have feelings too. Judge Southwick would never raise his voice or throw a snide comment out about an argument, a party, or another judge; even though other judges may not return the favor. I was always concerned about my position in a case when Judge Southwick would come to my office a week later, and he would start with "now Kenny, have you considered . . ." At that point, I knew I was wrong, and he had significant authority to destroy any opinion I may ultimately decide to write.

"To decide impartially" was not just a rule, but was very important in every case. The Code of Judicial Conduct was not a document to be referred to when you were not sure. With Judge Southwick, it was a document that should be on a judge's desk (or computer), it should be consulted regularly, and it should be followed to the letter. If you had to consider whether something was an "appearance of impropriety," he would often tell you that you might consider that you already knew the answer to your question.

Judge Southwick had a knack for finding nuggets of gold in judicial opinions. There is one quote I use in every presentation when I try to explain to people what appellate judges do. When I use this quote before trial judges, they will laugh out loud because it is accurate. In a dissenting opinion Judge Southwick stated that "appellate judges watch from on high the legal battle fought below, and when the dust and smoke of battle clear they come down out of the hills and shoot the wounded."⁷

This was a difficult and complex case for our court. Judge Southwick did not use this quote solely for humor; instead, he used it to emphasize the importance of the trial and define the proper role of the appellate court. He continued:

Though there is humor in that phrasing, I do not suggest that this case is anything but heart-rending. Some errors were made below. If the errors likely affected the result, then our duty is to reverse. The majority in exercising its judgment finds the need to do so. I find, though, that within the bounds of the possible, at this trial the battle was fairly fought. This suit concerned whether Jennifer was in the front seat because of a defect in the

7. *Palmer v. Volkswagen of Am., Inc.*, 905 So.2d 564, 609 (Miss. Ct. App. 2003) (Southwick, J., dissenting) (quoting *Black v. State*, 723 S.W. 2d 674, 677 n.1 (Tex. Crim. App. 1986) (Onion, J., dissenting)).

warnings that were given or that her injuries were worsened because of a defect in the design of the air bag. Each side presented its case with reasonable completeness and without unreasonable prejudice. We should affirm.⁸

Judge Southwick's work ethic and writing ability were second to none. If needed, he could simplify the most complex issue and make it simple. He devoted time to his craft, and he enjoyed helping others.

I am glad that I had the opportunity to work with Judge Leslie Southwick. I treasure our friendship. He answered every question I ever asked. He took the time to share with me the court's history, the difficult early decisions, and the discussions that allowed the court to earn the respect of the supreme court, the trial bench, and the members of the Bar.

I'm glad Leslie is my friend. I'm glad that he has had an opportunity to serve the people of the United States for ten years now. Thank you for your service to our country as a soldier and a judge. May God bless you and keep you, my friend.

8. Id.

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* Jim Rouse
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