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## In Memoriam

### Remembering Judge Myron Bright

Jane Kelly<sup>†</sup>

In September 2013, I sat as a judge on the Eighth Circuit Court of Appeals for the very first time. It was in St. Louis and Judge Bright was there too, scheduled to hear cases with another panel. Early in the week, one of his law clerks contacted me: Would I like to join Judge Bright and his staff for dinner? I answered without hesitation: *Of course*. To this day, I am not sure whether I had already made other plans. I just thought how fortunate I was. My tenure on the bench would begin by having dinner with Judge Myron Bright.

I sat with Judge Bright on five occasions during our shared time on the court. Sometimes in person, other times using video conferencing when he was unable to travel. Either way, he was always engaged, asking questions that seemed to get right to the heart of the issue before us. I always learned something about the case from Judge Bright during oral argument, and again during conference. I had reviewed and studied the issues myself extensively—or so I thought, but he almost invariably had insight that enhanced my understanding of the case and informed my vote. It is no secret that he was a true fan of oral argument. But it was also clear that he thoroughly enjoyed participating in the process. He could draw the lawyers into lively and productive conversation about both the law and the facts, and have fun doing it. Judge Bright had great appreciation for good advocacy, and I am confident the lawyers who appeared before him sensed that. I certainly did.

During our time on the bench together, Judge Bright was the most senior, and the oldest, judge on the court; I was the most junior, and the youngest. But Judge Bright's age did not define him. Of course, his wealth of experience gathered over more than four decades as a judge set him apart; and by the time I presided with him at oral argument, his physical mobility was

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more limited than he would have liked. Yet, his approach to cases was ageless. I had to remind myself that when Judge Bright was appointed to the bench by President Johnson in 1968, the Vietnam War still raged; the Civil Rights Act had been signed into law only a few years prior; and *Hair* had just opened on Broadway. Even so, when we heard a case about young people sharing a hookah pipe at a bus stop,<sup>1</sup> or one that involved an arrest of a man for allegedly driving a Segway while intoxicated,<sup>2</sup> Judge Bright didn't bat an eye. One secret to Judge Bright's continued ability to fully engage in cases, I think, was how he continued to fully engage in the world around him. He seemed to relish in the novel fact patterns presented, and he was able to apply the law to those cases as well as anyone. He was truly interested in the challenging legal issues as well as the stories and people behind them. These are admirable traits that I will always remember.

Many have spoken about Judge Bright's contributions to Eighth Circuit jurisprudence, his support of legal education, and his commitment to equal justice. His achievements are worthy of all the accolades he has received. As a former assistant federal public defender, however, it is the importance of his role as vocal commentator on the federal sentencing guidelines and statutory mandatory minimums that I know best.<sup>3</sup> I don't think Judge Bright ever practiced criminal law, but his opinions nevertheless reflected an appreciation for the unique challenges it presents. Numerous times, he recognized the impact that lengthy sentences for non-violent offenders had, not only on the defendant, but on families, communities, and taxpayers. He reviewed criminal cases with a keen awareness of how the court's decision affected an individual person who, no less than any other litigant,

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1. Peterson v. Kopp, 754 F.3d 594 (8th Cir. 2014).

2. Greenman v. Jessen, 787 F.3d 882 (8th Cir. 2015).

3. See, e.g., United States v. Hiveley, 61 F.3d 1358, 1363–66 (8th Cir. 1995) (Bright, J., concurring) (describing both mandatory minimum sentences and then-mandatory sentencing guidelines as “unwise . . . policies which put men and women in prison for years, [and] not only ruin lives of prisoners and often their family members, but also drain the American taxpayers of funds which can be measured in billions of dollars”); Letter from Myron H. Bright to Patti B. Saris, Chairperson, U.S. Sentencing Comm’n (Jan. 10, 2012), [https://www.usssc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120216/Testimony\\_16\\_Bright.pdf](https://www.usssc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120216/Testimony_16_Bright.pdf) (expressing concern over Commission recommendations to Congress that “move the current guidelines much closer to the previous mandatory system struck down by the Supreme Court” in *United States v. Booker*, 543 U.S. 220 (2005)).

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was entitled to the full protections of the law and a careful consideration of her case. In doing so, he gave voice to a system more complex and susceptible to inequity than many people understood.

Judge Bright hit, head-on, issues of sentencing disparity based on race, the inflexibility of mandatory minimum sentences, and lengthy sentences imposed on non-violent offenders. His opinions educated the public about issues that deeply affect us all, highlighting both the strengths and the weaknesses of our efforts to address them, and calling out for reform. As a practitioner, I spent a great deal of time speaking to people about the federal criminal justice system, doing my best to explain the often hard-to-understand statutes and sentencing guidelines to clients and their families. Judge Bright got it. His contributions to the conversation about justice in federal criminal law were bold, invaluable, and enduring.

Judge Bright once said to me, as we were walking to the bench, that it was work that kept him going. Given the heart and soul he put into the cases before him, I can understand how that was true. My time on the court with Judge Bright was far too short. But his enthusiasm for judging, his love of the law and the people it governs, and his passion for justice continue to guide me. For that, I am grateful.