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President's Letter

Sarah Riley Howard, President
Federal Bar Association, W.D. Michigan

I'm excited to take the helm of our FBA chapter, and I thank Andy Portinga for his leadership of this organization last year. We enjoyed a great start to the year at our annual meeting in the fall, featuring Scott Bearby, General Counsel of the NCAA, and Kevin Lennon, Vice President of NCAA Division I governance, talking about federal litigation issues in collegiate athletics.

The athletic focus of the event caused me to mourn my mentor, Judge Richard Alan Enslin, even more. His recent passing was a great loss to our Court. I clerked for Judge Enslin in 2001-02, when he heard and decided the *Communities for Equity* case – better known as the Title IX decision which ordered the change of several girls and boys high school sports seasons in Michigan. In many ways, the case was a fitting metaphor for his distinguished legal career.

Judge Enslin was a recipient of this Chapter's Service to the Profession Award, our highest honor. In many ways, I like to think that the ambitious projects on our agenda this year would have made Judge Enslin proud. We have begun studying ideas to streamline trials. For years, bench and bar alike have lamented the decline in trial skills because trying a case has become so expensive that almost no one does it anymore. Very few, if any, become legendary trial lawyers like Richard Enslin was. It also has not escaped anyone's attention that the other purposes of public trials suffer when so few have an actual "day in court."

We are also revamping our FBA scholarship program for law students in recognition of the escalating costs of law school. Judge Enslin often spoke of the tragedy of school loan debt of new lawyers, a problem that has only spiraled even further out of control in the



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President's Letter

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15 years since I graduated. He was deeply troubled that it led to lesser happiness in the profession, and choked off the supply of attorneys who could afford to serve the poor and oppressed. I had no doubt, then or now, that he was correct. I smile to think about how, in quintessentially blunt Judge Enslin fashion, he asked me in a casual conversation soon after I started how much I owed in student loans. But he never let me pay for my own lunch again after that.

Finally, we are thinking about ways of addressing implicit racial and other biases in the administration of justice. For example, we are planning an educational session on effectively addressing the subject in voir dire with potential jurors. Racial justice was a subject about which my mentor was particularly passionate. He was well-known for litigating many battles in this Court where he railed against racial inequality. He continued to be interested in the ways in which the concept of race and justice evolved over the decades of his career (or where they didn't) and implications for the legal system.

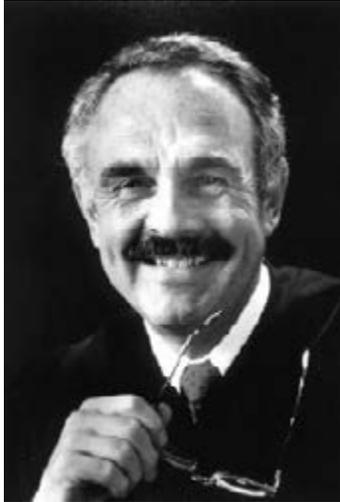
As an organization, I believe our FBA chapter should be open to examining difficult questions and what we need to do about them. We have been very fortunate to inherit the legacy of those like Judge Enslin, and I am pleased to take my turn with the duties of continuing it.

—Sarah Howard



Celebrating the Extraordinary Life and Career of U.S. District Judge Richard Alan Enslin (1931-2015)

This issue of *Bar & Bench* is dedicated to Judge Richard Alan Enslin, who died peacefully at home, surrounded by his family, on February 17, 2015 after a long illness. He was 83 years old. The pages that follow contain the tributes paid to Judge Enslin at the court's official memorial service held at the Kalamazoo Federal Courthouse on May 7, 2015, and eulogies from Judge Enslin's funeral service held at St. Thomas More Catholic Parish on February 28, 2015.



Judge Enslin was born in Kalamazoo in 1931 and called it home for virtually all of his life. He entered Kalamazoo College in 1949, but interrupted his education to join the Air Force in 1951 and served during the Korean War. He resumed his education upon his return, earning an LL.B. degree in 1958 from Wayne State University and an LL.M. in 1986 from the University of Virginia.

Judge Enslin practiced law with several firms in Kalamazoo from 1958 through 1965, then leaving practice to serve as the Director of the U.S. Peace Corps in Costa Rica. Upon his return to West Michigan in 1968, Judge Enslin served for a year as Judge of the Kalamazoo Municipal Court and for one additional year as a Michigan District Judge. He resumed the practice of law in 1970, practicing with the law firm of Howard & Howard and later as a partner with the law firm of Enslin and Schma until his appointment to the U.S. District Court in 1979.

President Jimmy Carter nominated Judge Enslin to the Court on November 30, 1979, and he was confirmed by the United States Senate on December 21, 1979. Judge Enslin served as Chief Judge from 1995-2001, and assumed senior status four years later, on September 1, 2005. He retired in 2009. ■

Eulogy by Jamie Geary at Judge Enslin's Funeral Service Held at St. Thomas More Catholic Parish in Kalamazoo, February 28, 2015¹

Richard Alan Enslin was a Kalamazooan. He was born here. He graduated from Kalamazoo Central High School. He became a student at Kalamazoo College before leaving to join the Air Force, serving from 1951 to 1954. While at Mountain Home Air Force Base, from which, he said, you could not see any mountains, he watched courts-martial on his own time. A charismatic defense lawyer representing some airmen, a few of whom were acquitted, impressed him. That was a turning point for him. He decided to become a lawyer.

Richard studied at Western Michigan University, leaving for law school before graduating. He loved Western, which honored him with an honorary degree and its Distinguished Alumnus Award in 2006.

In 1958, he graduated 13th in his class from Wayne State University Law School and returned to Kalamazoo. He quickly became well known for his courtroom skills, his willingness to take cases others would shy away from, his commanding courtroom

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presence, and his ability to tell his clients' stories passionately and convincingly.

In addition to the mundane cases all lawyers handle, Richard advanced the causes of those whom he felt America and its legal system had overlooked. The thread running through his life was his belief that America needs to be a country in which everyone is equal before the Law – a country in which there is justice and fairness for everyone, not just the powerful, the well-connected, the well-spoken, the rich or the privileged.

In 1964, Richard and several other lawyers from Kalamazoo agreed to represent civil rights workers who had been arrested in Mississippi for peacefully demonstrating. Although he characteristically downplayed his role in the civil rights movement, his act, and the act of his fellow Kalamazoo lawyers, in plunging into the heart of the civil rights battle, in a state where people were being murdered for agitating for desegregation, was an act of courage. He lost all three cases he tried in Mississippi. He was quoted in a *Kalamazoo Gazette* article as saying: "A lawyer who is not willing to make enemies doesn't deserve to be called a lawyer."

Things were going well for Richard Enslin in the mid-sixties. His law firm was prospering. He was a contributor to the community. Along with Jack Peterson, he began the Big Brothers program in Kalamazoo. He was a co-founder of the Kalamazoo Foundling Home. He was a co-founder of the Douglass Community Center. He was involved in many other community organizations and civil rights organizations. He was in demand as a trial lawyer.

But he wanted to make a bigger contribution to what he saw as America's role in the world. At the age of 34, he quit his practice in Kalamazoo and accepted a position as director of the Peace Corps in Costa Rica, overseeing 150

other volunteers from 1965 to 1968. While still in Costa Rica, Richard became a candidate for municipal court judge in Kalamazoo. He won the election *in absentia*.

He returned to Kalamazoo with his family, which now included six children, in 1968 and he assumed the judgeship to which he had been elected. As with everything else he tried, he didn't just "do his job."

He began a program called "Opportunity Kalamazoo" with no budget. He persuaded Borgess Hospital to open a ward for alcoholics. He couldn't sentence people to the ward, but he could put them on probation and let them know it was a good idea to go there.

Through the court, he paired up youthful misdemeanor defendants with adult mentors. He spoke to police officers in training sessions to teach them basic legal principles about police work.

In 1970, Richard was the Democratic candidate for the U.S. House of Representatives, speaking out against the war in Viet Nam. He campaigned hard, but lost the election handily.

In 1971, neighborhoods in Kalamazoo were racially segregated – not through statute or governmental action, but segregated nevertheless. School attendance was based on where you lived. As a result, Kalamazoo's public schools were segregated.

The school board decided to integrate the schools. It voted for a plan to assign students to schools using many factors and not just where they lived. The school board decided that busing students to their newly assigned schools would be necessary.

A majority of Kalamazoo's voters were outraged and the school board members who voted for the



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desegregation plan were quickly recalled. An exodus of white families to the surrounding suburbs began. Almost all of the candidates to replace the recalled board members vowed to cancel the desegregation plan and the busing that went with it.

Richard and his partners at Howard & Howard took up the representation of the families of minority students and the N.A.A.C.P. in Federal Court to uphold the desegregation plan. Their legal business suffered some, but they waged a battle several-years long and eventually prevailed.

I first met Richard during the trial of that case. I was clerking for the Hon. W. Wallace Kent, a federal appeals court judge who was as conservative as Richard was liberal. But Judge Kent admired good lawyers. Judge Kent told me that there was a lawyer, Richard Enslin, trying a lawsuit across the hall and that I ought not to miss the opportunity to see him in action. Judge Kent told me to spend the afternoon in the courtroom. I did. I wanted to be a lawyer like that. A year later, Richard hired me to my first job as a practicing lawyer and became my mentor.

He taught me the basic things you don't learn in law school, like when to stand up and when to sit down. He said that most lawyers had a good idea of when to stand up, but few knew when to stop talking and sit down.

He was not merely at ease in court, he thrived on trials. I asked him how he remained totally unfazed no matter how high the stakes were in the trial. He said that in civil cases, you just had to remember, "it's not my money." He admitted, that in criminal cases, at the end of the trial someone might go to prison. "Just make sure it's not you," he said.

Whenever Richard tried a case in Kalamazoo, productivity in the law office went down. Half the firm went to the courtroom to watch. If it was a criminal case, assistant prosecutors who had the time would come in as spectators. *The Kalamazoo Gazette* usually sent a reporter.

After he was nominated to be a federal judge, but before he was confirmed, I watched his closing argu-

ment in the last criminal case he tried. When he finished, two of the jurors were crying. I spent 37 years in courts and I never saw anything else like it.

In the late '70s, he and his firm contracted with Kalamazoo County to represent one-half of the indigents charged with felonies in the County for a fixed annual fee. The prosecutor believed there would be no incremental cost to the County for appointed lawyers if he got "tough on crime." He announced a policy of refusing to plea bargain with anyone he decided to charge with armed robbery.

Richard told defendants that they couldn't do any *worse* than pleading to the charge if they went to trial with no defense and lost, so we took them all to trial.

You can't ethically present evidence for a defendant whose guilt you are certain of. Many of the trials didn't amount to much. However, making the prosecution prove its cases at trial took time. If the prosecutor's office wouldn't bargain to save that time, Richard would make them spend it. When the Court had to add two judges to handle the backlog created, the prosecutor quietly ended his no plea bargain policy.

Richard's firm lost lots of money on the contract, which meant he lost lots of money personally. But he told us to represent every client "zealously within the bounds of the Law," the command of the Disciplinary Rules.

"Zealously" never meant being uncivil for him. It meant being passionate and effective, while treating everyone with dignity. Opposing lawyers became his friends.

In 1979, President Jimmy Carter appointed Richard Enslin to the federal bench. By today's standards, his nomination sailed through the Senate, taking about two months.

In well over twenty years on the bench, Judge Enslin handled many difficult cases. He made landmark decisions. He made tough calls and kept making them even when he received enough death threats from his rulings in criminal cases that the U.S. Marshal's office felt

obliged to assign a plain clothes marshal to walk around with him whenever he left the courthouse. That only lasted a few weeks because Richard cheerfully introduced the marshal as “my marshal” to everyone he met.

The difficult civil cases he dealt with, in a court overburdened with cases, led him to advocate alternative methods of dispute resolution. He learned that if he could get litigants to agree on a resolution early in the process, without the expense and strain of protracted litigation and trial, they were more satisfied with the court system and, coincidentally, the court’s backlog dropped.

Now, in large measure as a result of his ideas and initiative, and with the enthusiastic contributions of his fellow judicial officers, the Court has a model system of alternative dispute resolution.

Judge Enslen told me once that, unlike engineers, architects, artists or others who make things, lawyers deal in ephemera – pushing paper and talking. Nothing they do lasts or can be seen by the public. That was one thing he was wrong about. What Richard Enslen did will be with us for decades to be seen in the courts and community in which he gave his all for Justice.

May he rest in peace. ■

Endnote

- 1 Jamie Geary is a retired attorney with Howard & Howard Attorneys in Kalamazoo, and a longtime friend and colleague of Judge Enslen.

Eulogy by Bill Schma at Judge Enslen’s Funeral Service Held at St. Thomas More Catholic Parish in Kalamazoo, February 28, 2015¹

I can’t help but reflect on the fact that Dick *only* had six federal judges at his investiture ceremony. The presence of the entire bench of the Western District, as well as half a dozen state judges, bespeaks of the lives he touched and the respect he garnered during his judicial service.

I recognize that most everyone who has talked today has spoken of “Richard” Enslen. I’ve never known him as other than “Dick.”

Dick’s religious principles were firmly held and fervently practiced. He was deeply religious and motivated by the most ardent spiritual sentiments.

Art Sills, former *Kalamazoo Gazette* columnist, reflecting on Dick’s investiture ceremony in 1979, thoughtfully pointed this out. Art remembered his 1970 congressional race when he once discussed agriculture issues with Sills. He said Dick shook his head as he poured over a book of information on the issue and told Sills: “I just don’t understand farm policy.” Sills explained why he believed that was, writing:

“there were no people in these issues. And always for Richard Enslen there must be people.”

Complex a person as he was, Dick placed the simple, straight-forward principle of helping people at the center of his religious belief and his personal and legal practice. People in need: the poor, the dispossessed, those deprived of their rights, the persecuted.

That spiritual notion was deeply integrated in his personality and a part of who he was. He was one with it, and in that— I believe—is the secret to his success.

Dick was fond of quoting Revelation 3:16: “you are neither cold nor hot...Since you are neither, but only lukewarm, I will spit you out of my mouth.”

He was intolerant of those persons he called the weak-kneed and slack jawed, and his piety was grounded in social gospel. Dick devoted his life not to talking

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about caring, but acting on it. This was his strength and this is his legacy.

No question about it, Dick was hardly pious in the traditional sense. In fact, he could be delightfully profane, and we loved and respected him for it; it was the way in which he exposed hypocrisy and uprooted fraud -- his ardent enemies.

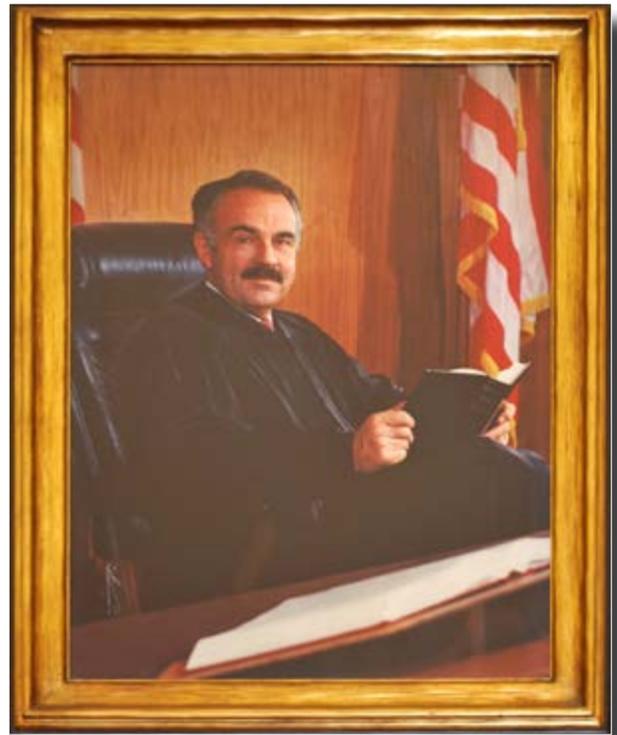
I think of Dick when I consider Dietrich Bonhoeffer, a German author and theologian imprisoned by the Nazis during the Second World War. Bonhoeffer frequently railed against what he labeled “cheap grace,” rejecting a path of comforting religious practices designed to make one feel good and righteous, and demanding instead a path of sacrifice and concrete action.

Bonhoeffer offered the following principle, which could be not only a statement of Dick’s legal and judicial philosophy, but a mantra for any lawyer or judge: he said: “we must be ready to allow ourselves to be interrupted by God. God will be constantly crossing our paths and canceling our plans by sending us people with claims and petitions.”

I offer the following anonymous poem in memory of Dick’s life:

About Ben Adhem (may his tribe increase!) awoke one night from a deep dream of peace, and saw, within the moonlight in his room, making it rich, and like a lily in bloom, an angel writing in a book of gold. Exceeding peace had made Ben Adhem bold, and to the presence in the room he said “what writest thou?” The vision raised its head, and with a look made of all sweet accord, answered “the names of those who love the Lord.” “And is mine one?” said About. “Nay, not so,” replied the angel. About spoke more low, but cheerily still, and said “I pray thee, then, write me as one that loves his fellow men.” The angel wrote, and vanished. The next night it came again with a great wakening light, and showed the names whom love of God had blessed, and lo! Ben Adhem’s name led all the rest.

As we are now about to conclude this religious service and depart for fellowship at Western Michigan



University, I’d like to tell you a story of how Dick managed to even integrate his religious practice with his personal daily life and devotion to Western.

It comes from Dick Burke, a former dean and vice president at WMU and great admirer of Dick Enslin, and like Dick, a long time Bronco fan: “Dick was a very special human being and a brilliant attorney and jurist. And a Bronco fan. We sat behind him at [one of] your daughter’s wedding. Dick had an earplug and was listening to a Bronco game. Well, he could do many things at the same time.”

Indeed, Dick could do so, and for that and all his gifts he shared with us we are grateful. May he rest in peace. ■

Endnote

- 1 Bill Schma is a retired judge of the Kalamazoo County Circuit Court and a longtime friend and colleague of Judge Enslin.

Proceedings and Tributes From Judge Enslens Memorial Celebration Held at the Kalamazoo Federal Courthouse, May 7, 2015

The Western District of Michigan celebrated the extraordinary life and career of U.S. District Judge Richard Alan Enslens at the Kalamazoo Federal Courthouse in May 2015. Numerous members of the bar and bench paid tribute to Judge Enslens at the event, including former friends and colleagues Chief Judge Paul Maloney, Judge David McKeague, Judge Robert Holmes Bell, U.S. Attorney Pat Miles, Fred Dilley, and Assistant U.S. Attorney Andrew Birge.

Transcripts of those speakers are reprinted below.

CHIEF JUDGE MALONEY: Thank you, Madam Clerk, for opening court this afternoon at the Kalamazoo Federal Courthouse as we gather to celebrate the life of our departed colleague United States District Judge Richard Alan Enslens and to recognize and honor his judicial service to the citizens of the Western District of Michigan, his humanitarian endeavors in this country and abroad, and his devotion to the legal profession.

On behalf of all assembled, I welcome the family of Judge Enslens who are in attendance here this afternoon. A warm welcome also is extended to Judge Enslens former law clerks and chambers staff, distinguished members of the practicing bar, court staff past and present.

Born in 1931, Judge Enslens graduated from Wayne State Law School in 1958 having interrupted his undergraduate studies to enlist in the United States Air Force during the Korean War.

After a distinguished career in private practice and a three-year directorship of the Peace Corps in Costa Rica among other accomplishments, he was confirmed by the United States Senate as a United States District Judge on December 21, 1979, succeeding the Honorable Noel Fox.

He served as Chief Judge of this court from 1995 to 2001, took senior status in 2005, and retired after nearly 30 years of service in 2009.

Those broad strokes on a canvas of his life do not do justice to the entirety of his service to the administration of justice, this court, and his community. Our speakers this afternoon no doubt will highlight many achievements of our colleague's truly distinguished career.

The record should reflect the presence of many members of the federal and state judiciary who by their attendance here today attest to the high esteem that Judge Enslens has held among the judiciaries.

It's my honor to introduce the members of the judiciary that are present here today: The Honorable David W. McKeague, former district judge of the Western District of Michigan and now a judge of the Sixth Circuit Court of Appeals.

Of the Article III judges of the Western District bench, the Honorable Robert Holmes Bell, former Chief Judge of our Court; the Honorable Robert J. Jonker; the Honorable Janet T. Neff; the Honorable Gordon J. Quist; two of our active magistrate judges are present -- Judge Carmody sends her regrets, but she is working in Grand Rapids right now -- the Honorable Hugh W. Brenneman and the Honorable Phillip J. Green, active United States magistrate judges, and retired United States Magistrate Judge Joseph G. Scoville.

Our entire bankruptcy court is here this afternoon. The Honorable Scott W. Dales, Chief United States Bankruptcy Judge; the Honorable James W. Boyd, United States Bankruptcy Judge; and the Honorable John T. Gregg, United States Bankruptcy Judge.

And in addition to that we have a number of judges from Kalamazoo County who have also joined us to honor Judge Enslens here today: The Honorable Curtis Bell, the Honorable Stephen Gorsalitz, the Honorable Tiffany Ankley, the Honorable Christopher Haenicke, and Retired District Judge Ann Hannon.

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Ray Kent, the Federal Public Defender, is also present, as well as the Clerk of Court Tracey Cordes who gaveled us to order here this afternoon. And Rebecca Howell, the Chief United States Probation Officer for this district, is also present. Andy Portinga of the Federal Bar Association is also in attendance.

I want to thank each and every one of you for coming. In addition, I saw the Marshal. I believe the United States Marshal is here. Pete Munoz is also present this afternoon.

We have a number of speakers who wish to share their thoughts with us regarding the service of Judge Enslin, and for that purpose I'll call on Judge McKeague. Judge McKeague.

JUDGE McKEAGUE: Thank you, Chief Judge Maloney. It's an honor to be able to speak with you today.

Richard was my colleague for 13 years when I was on the district bench, and more importantly he was my friend.

This courtroom was so identified in my mind with Richard from 1979 to 2005 that it really seems odd to be back here today and not see Richard sitting at the bench rather than looking down on us as he is in that fine portrait on my right.

Ironically, as those of you who were here for Richard's portrait dedication back in December of 2005 already heard me say, we didn't care much for each other at the beginning. He was a left-wing Peace Corps-loving democratic candidate for Congress and basically the supporter of all liberal causes and everything else that I thought was wrong in the world.

I was a right-wing conservative nut, a captive of the religious right, and worst of all I think in Richard's mind, I was a friend of John Engler.

So we kept our distance at first. We valiantly tried to be nice and basically to ignore each other. And it ended up taking a sentencing institute at Duke for our views of each other and our relationship to change. Richard was actually interested in sentencing issues. I, on the other hand, simply wanted to see Duke at government expense.

One of us had a car, and as it turned out we both wanted to see the University of North Carolina and the Bull Durham minor league stadium in Raleigh, so off we went.

The highlight of this merry adventure was the Dean Dome named after Dean Smith, and along with Cameron Arena at Duke sort of a shrine for all things college basketball at the time. Unfortunately, we got there late and it was locked when we arrived, and there was no one on-site that might be able to let us in.

Richard claims that we, meaning I, broke in. I say we simply took advantage of the opportunity that was presented by a very tall guy with a basketball under his arm and a gym bag over his shoulder who happened to come through the door we were standing next to trying to figure out how to get in and he was not particularly interested in locking it behind him. So we got to stand at center court in a darkened arena, and we actually got to see the inside of Dean Smith's private office which was also unlocked. Ironically, Dean Smith died about one week before Richard, also at the age of 83.

Not only did we enjoy this adventure, we also started to reconsider our views about each other. It's surprising what a common criminal bond can produce between two people. Soon thereafter I looked upon Richard as a close and trusted friend -- still misguided, of course -- but a cherished friend nonetheless.

Which brings me to reflect upon why did I reconsider my original view of Richard apart from our now criminal bond?

After 25 years of being a federal judge, I'm still asked if I miss private practice. And the stock answer that I give when I'm asked that question is "I only miss it on December 31st when they distribute the bonus checks." The real answer of what I miss about my prior life is my then involvement in politics, but perhaps not for the reason that you're thinking. Lawyers in private practice are dedicated to their clients and to their profession, and it's certainly a noble profession at that, but the many politicians and their supporters that I was privileged to work with are marked by a passion and a conviction that you

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don't see often in private practice or in judging. Perhaps, at least in judging, with good reason. Passion and conviction are exactly what I think about when I think about Richard Enslin.

Passion and conviction marked every single aspect of Richard's rather remarkable life.

You've read about a number of the things that he's done in this well-written booklet for today, and Paul mentioned them briefly earlier as well, but these items of passion and conviction include being a staff sergeant in the Air Force during the Korean War and fulfilling his patriotic duty, service as a director of the Peace Corps in Costa Rica. The election in absentia, which I think is pretty remarkable, to the state municipal court while he was still serving in Costa Rica back in 1964. Certainly a loving husband and father. A fan of all things Western Michigan University Broncos and Detroit Tigers.

And lastly, and certainly marking Richard in my mind, he was simply an avid defender of the underprivileged or the little guy, whether it was helping to register African-Americans to vote in Mississippi during the Freedom Rider summer of 1964, filing suit on behalf of the NAACP to desegregate the Kalamazoo Public Schools, which resulted in his own children being bused, the upholding of the rights of Native Americans to use gill nets on the Great Lakes under a treaty going all the way back to 1836, imposing oversight over the Michigan Department of Corrections to force improvement in the treatment of prisoners, and finding that the Michigan High School Athletic Association scheduling practices for women's sports violated both the equal-protection clause of the Fourteenth Amendment and Title IX and requiring the realignment of most high school sport seasons in Michigan.

Now, you may have disagreed with Richard, maybe even perhaps with some of these decisions, as I often did, but you simply couldn't ignore the passion and the conviction that he brought to literally everything that he did.

Richard was a true student of the Constitution and the author of a Constitutional Law textbook. He fully understood that the role of the Constitution is to

protect the minority against the tyranny of the majority, and he lived that principle every single day of his life.

I would like to think and hope that Richard's passion and conviction has rubbed off on all of us in some way and will continue to do so after his passing.

He was simply one of the most caring, genuine people that I've known, and I'm so blessed to have been his colleague for 13 years and to have become his friend. It was a privilege to have known and served with Richard. The court and society are better off because of him, and may he rest in peace.

CHIEF JUDGE MALONEY: Thank you, Judge McKeague. Attorney John Allen of the Varnum Law Firm is a long-time friend of Judge Enslin, both hailing from Kalamazoo.

Attorney Allen, you are recognized, sir.

JOHN ALLEN: May it please the Court, Chief Judge Maloney, Circuit Judge McKeague, judges and magistrate judges of the federal court, judges of the state courts, colleagues, friends, family, Gennady, Pam.

First of all, a bit of an early Happy Mother's Day to Pam who has her mother here today too. So at the reception if you have a chance, say hello to both of them.

It's a special honor and privilege to be here today to remember and honor our deceased colleague Richard Enslin. In many of my remarks I shall refer to him as Dick. And not out of any lack of respect to his splendid career as both a state and federal jurist but rather because my most vivid memories of him are during that interregnum of years between his service as a state judge and a federal jurist. When Dick was quite simply the best trial lawyer I ever saw. Immediately upon my arrival in Kalamazoo in 1972, my first and best mentor and soon-to-be law partner and still friend Charles Martell gave me a list of Kalamazoo lawyers down one side of the page, and next to each name was a particular area of the law, and this was intended to be those persons to whom I could refer or with whom I could consult

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whenever I had an issue in their field of expertise. Next to Dick Enslen's name was written just one word: "Trial."

Long before that, Dick had distinguished himself as an able litigator in criminal defense, personal injury, commercial work, civil rights litigation, virtually anything else that found its way into a courtroom.

I was not alone among those local bar members who, when hearing that Dick was going to try a case, cleared their calendar to visit the courtroom and watch this master at work. It is usually a futile task to attempt to divine out the sources of these skills. First, it was obvious to anyone observing him that Dick was really, really smart. Of course he knew the law backwards and forwards, but much more importantly, he knew people. He possessed an uncanny ability to draw out those traits most admirable in a friendly witness in order to establish a greater credibility in their testimony and likewise to drill down to the core to define that one weakness, no matter how tiny, that exposed the adverse witness as somehow less believable.

I watched Dick do many trials, and what stands out most in my mind is that I never saw him use a note. Not in an opening, not in a closing, not in a direct, not in a cross, nothing. Nothing written on a piece of paper. Nothing read from a book. Instead somehow he memorized it all. He knew the facts better than anyone else in the courtroom. And although documents might have been less frequent then, he knew the content of each exhibit so much so that he could quote from it accurately without looking at it. This was very disconcerting to both witnesses and adversaries.

Later when observing His Honor Judge Enslen on the bench, the same skills, well-honed by many years of development, served him well as a jurist, and those same skills were equally disconcerting to those advocates who appeared before him. If you were going to challenge Judge Enslen on the law or the facts, you had better be prepared.

Others will document well the histories of his most famous cases both as a lawyer and a judge, but I remember him most as being a pioneer, both as an advocate and a jurist.

As an advocate he gave us all so many examples of an unmatched commitment to representing those most in need of a lawyer's services even if they could not afford it. Together with equally committed colleagues like Richard Howard and James Geary, Dick -- we're back to those nonjudicial years again -- Dick set the example by pioneering a contractual arrangement for the first time ever with the County of Kalamazoo for the defense of indigent accused felons. And that still is more or less the method that is used today, not only in Kalamazoo County but in most other counties here in Michigan.

Of course, he also led the fight as a lawyer for the full integration of the Kalamazoo Public Schools when busing was truly a dirty word to many in this community. Such true examples of professional courage deserve to be remembered and honored forever.

As a jurist, His Honor Judge Enslen, to me pioneered the use of alternative dispute resolution mechanisms. Not only here but pretty much everywhere else, and here before they were anywhere else. Judge Enslen was ADR before ADR was cool.

I confess I was one of the ones initially very resistant to what was then quite generally regarded as an unconscionable invasion of the right to jury trial, but in the course of a year or so, and with his usual relentless energy of persuasion, His Honor Judge Enslen brought us over from the dark side and taught us the virtues of case resolution by arbitration, evaluation, mediation, mini trial, mini jury trial, and just about any other method you can think of that would bring a case reasonably to an end.

Like Henry II who originated the idea of bringing his court out into the countryside to resolve disputes and to persuade his nobles from not resolving them by combat, His Honor Judge Enslen was most effective by giving example after example after example of actual cases in which the parties grew to be better satisfied with results of their own choosing rather than those handed to them be it by a judge or by a jury of their peers. His professional accomplishments were indeed great.

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Frequent were our unplanned phone calls seeking some advice from one another on our client files, or before those daily email alerts that we all get now pointing the other to a newly issued and interesting appellate court opinion. But my most vivid and enjoyable memories of Dick -- we're back in the nonjudicial phase again -- come from those years during which we practiced law together here in Kalamazoo and regularly met for lunch at a little hamburger joint down the street here on Michigan Avenue near the mall called Christopher's with a few friends. There most every day we would gather from noon to about usually 1:15 or 1:30 to discuss and hopefully resolve all the problems of the nation and the world. All of them were discussed; not all of them were resolved.

And possibly, as Judge McKeague related, those of you who both knew Dick and also know me also know that on the political spectrum we were, to say the least, a long way apart. Active in two different parties, we were almost always on the opposite sides of almost every election contest, be it national, statewide, or local. And philosophically we were from distinctly different camps. Those differences led to spirited lunchtime discussions on almost every topic. The exchanges were both entertaining and informative. Most times Dick would persuade me over to his position, and much less often I would do the same with him to mine.

What I regard as most significant, and regrettably not as commonly now encountered, is that we always engaged in these discussions as friends, and much more importantly always departed from the discussions as friends. Forceful advocates, committed to our views and positions, but always valuing our shared respect and friendship as much, much more important. For that I shall always remember him. Your Honor, Judge Enslin, Dick, we shall miss you. Thank you.

U.S. ATTORNEY PAT MILES: Chief Judge Maloney read the following statement from United States Attorney for the Western District of Michigan, Pat Miles, who was unable to attend the service in person:

“On the occasion of this court’s memorial service to celebrate the earthly life and work of the Honorable

Richard Alan Enslin, as United States Attorney I am honored to offer some words of remembrance and tribute, even though travel commitments do not allow me to join you in person. Judge Enslin’s life work clearly demonstrates a love of others and a commitment to justice. The result of love and justice is peace, and peace was Judge Enslin’s passion and work. Walt Whitman once wrote, “Behold I do not give lectures or a little charity. When I give, I give myself.”

Judge Enslin exemplified giving of oneself to a greater cause. From the start of his career he had the heart of a public servant and a soulful desire to help those in need. After four years as Peace Corps director in Costa Rica, he returned to his native Kalamazoo to don the robe of a municipal judge. After an unsuccessful bid for Congress, he returned to private law practice where he eschewed lucrative work to represent almost any defendant charged with a crime who came through the door. He earned a positive reputation defending constitutional rights through civil rights cases. He traveled to Mississippi as a young lawyer to encourage African-Americans to register to vote and then represented them in court when their rights were denied. He represented the local branch of the NAACP in a successful suit to desegregate the Kalamazoo Public Schools.

Both as a lawyer and a judge, he never viewed the law simply in the abstract. He always focused the light of the law on the way it affects people.

As a judge he supported Native American tribal treaty-based fishing rights, imposed oversight of the Michigan Department of Corrections to ensure appropriate prisoner treatment, and perhaps most famously he found that the Michigan High School Athletic Association sport schedules violated girls’ Title IX rights, a decision for which he was affirmed on appeal.

Judge Enslin was also an innovator in the law. Like many attorneys who pursue justice and peace, he recognized it often takes more creativity to resolve a dispute mutually rather than to simply decimate an opponent. He put that wisdom into effect by pioneering alternative dispute resolution mechanisms in the Western District of

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Michigan. He was a nationally known proponent of ADR in the days before such approaches were widely accepted.

We all hope to make a lasting mark through our lives and careers. Few can claim a legacy the likes of the Honorable Richard Alan Enslen. According to Robert Louis Stevenson, “Don’t judge each day by the harvest you reap but by the seeds you plant.” Judge Enslen planted many seeds, and we reap his harvest of peace.

We, of course, are thankful for his many years of service to the Western District of Michigan on the bench as well as his service to our nation, but we owe the judge a debt of gratitude for his passion and peace in the legacy of his work. We are a better district for it.”

Respectfully, Patrick A. Miles Jr., United States Attorney for the Western District of Michigan.

CHIEF JUDGE MALONEY: Now I’ll call on Andrew Birge. Mr. Birge is the First Assistant United States Attorney for our district, but Mr. Birge in an early portion of his career was a law clerk for Judge Enslen. Mr. Birge, you are recognized, sir.

ANDREW BIRGE: Thank you, Your Honor. Your Honors, Pam, Gennady, all of our guests. I’m grateful and I’m, frankly, humbled by this opportunity to talk to you a little bit about my experiences with the judge which span both my time working at his elbow as his law clerk many years ago but also as a practitioner in front of him.

Yes, I am a federal prosecutor; the First Assistant U.S. Attorney. From quizzical looks through the years and even now I know what you’re all thinking: There must be some mistake. Fortunately, Judge Enslen would probably say after the fact that he made no mistake, but he did accidentally hire at one point someone who was a future prosecutor. But he was very supportive of my career interests. And that’s actually testimony not only to his integrity but also to his principles. He understood that, as a prosecutor, I would get into court a lot more, and he also understood that the motives of a prosecutor are very high indeed: To seek justice; to make our community safer. And he also knew that

prosecutors actually are on the front line of defense for a lot of our constitutional rights. This just happens behind closed doors when a federal agent meets with a prosecutor and the prosecutor says, “You need a warrant for that. You don’t have probable cause. It’s not going to happen.” No one knows but the prosecutor and the agent, but the constitutional rights are defended all the same and before any harm is done.

So why would someone who was going to be potentially a prosecutor in the future choose a clerkship with Judge Enslen? Well, he was a distinguished jurist even then, and not just in the sense that he had been on the bench for a long time and he had a prior career as a brilliant defense lawyer. He also thought differently. He didn’t think according to the conventional wisdom at the time, although in a lot of ways the conventional wisdom has come around to his way of thinking, such as with ADR, consent decrees and sentencing guidelines. So an experience with Judge Enslen had all the hallmarks of being a thrill. It could be a clerkship like I might have elsewhere, only more fun. The same ride, but with the top down.

The judge was famously proud of his Kalamazoo roots, but he wasn’t provincial in his thinking by any means. And I’m a beneficiary. I’m not originally from the West Michigan area. I had some ties to West Michigan but not a lot. I had gone to law school out East, at Columbia. But some [of the judge’s clerks] were from the area and had gone to law school in Michigan. Others came from far and wide. My predecessor graduated from NYU Law School. My successor graduated from the University of California Hastings Law School. My co-clerks: the University of Southern California, the University of Michigan and the University of Notre Dame law schools. We’ve all gone off to do different things. I’m a prosecutor. One of my co-clerks is an Assistant Federal Defender. Some went on to labor and employment practice. Some to civil rights practice. Some to civil defense.

The judge really enjoyed the breadth of life experiences and perspectives we brought to the chambers.

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We had lunch as a group -- staff, attorneys, the judge -- at least once a month and talked about the law, current events, Kalamazoo history, sports, really anything that came to mind. He didn't treat us as mere employees. He gave everyone a Christmas gift every year. He always gave the law clerks books. I still remember the ones he gave me: biographies on Frederick Douglas and Eleanor and Franklin Roosevelt. Makes sense, right? And then one on Michigan buildings. Like I said, he was very proud of his local heritage.

The judge treated his law clerks as his lawyers. That's a particularly important distinction from employee. He respected what we thought. He didn't want us to just research cases and statutes. He wanted our advice. And it actually took me a while to adjust to this responsibility.

In my first week on the job. I was back in one of the offices at his chambers toiling through patent litigation pleadings when Babs Herman, his secretary, called to tell me that the judge needed me in his chambers. He had been presiding over a trial that was on the other law clerk's docket, and an issue had come up. I was about to experience what I now like to call "Clerkship Jeopardy." This involved the judge posing a question to a law clerk cold, based on something that had just arisen at a hearing or trial. It could be just a novel issue that wasn't critical to the case. It could be a very important issue. It could be evidentiary. It could be procedural. It could be anything. The judge will have already heard from the attorneys, heard from the other law clerk, thought about this himself, and now he wants to know what I think and to discuss further. While I call it Clerkship Jeopardy as if it was a game, he was looking sincerely for the advice and impressions of a trusted lawyer. The first time this happened I thought, "*This is awesome.*"

Then I realized I didn't know what I thought; I didn't know the answer. I eventually spit-out something of an answer, and he responded along the lines of "That's what I thought ... sort of." Fortunately, I did well enough to survive for other rounds. As intense as those experiences seemed for me, they made the clerk-

ship exciting. The judge knew this. And he enjoyed them too. And it was great preparation to be a litigator, to be able to stand up in front of a judge and be asked and be able to answer a question cold.

Although he was on the bench, the judge remained very much a trial lawyer at heart. He loved the drama of a trial. He also was not above injecting a little drama into a trial himself. I have personal experience: early in my years as a prosecutor, I co-tried a murder case in front of him. We succeeded on a pretrial motion to admit excited utterances over a hearsay objection. This would be my witness. Later, at trial, as I proceeded through the foundation for the excited utterance testimony, opposing counsel stood up. So I paused. Counsel says, "Objection. Hearsay, Your Honor, pursuant to our pretrial motion." A very perfunctory objection, so I perfunctorily responded, "Your Honor, pursuant to your pretrial order, it's admissible as an excited utterance." I was about to proceed with my questioning when he ruled, "Objection *sustained.*"

At this point sweat just started to bead up all over my body. I'm thinking to myself, "He could change his mind. He could change his ruling." But it occurred to me that maybe, maybe there was a piece of foundation missing. So I just went ahead as if he hadn't ruled and asked my next question. Defense counsel stood up and objected again, but I got the judge to allow the witness to answer this one little question. The judge allowed it, so I again declared firmly and confidently, "It's admissible, Your Honor, as an excited utterance." The judge paused and looked at me and asked, "What rule number is that?" *What rule number?* The judge knew, as every trial lawyer knows, excited utterances are exceptions to the hearsay rule. Just before scrambling to find my rule book, I managed to pull from the folds of my brain: "Rule 803(2), Your Honor." In very dramatic fashion he turned, opened a book, flipped to a page, read it to himself, and declared "Objection overruled." Now I swear at the next break in the trial five or ten minutes later, he had an expression sort of like he has in that portrait up

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on the wall here in this courtroom as he walked off the bench. And that's a grin.

The other reason I wanted to bring up the story of this trial was that a number of months later, after we had secured a first-degree murder conviction, the judge called and complimented me on my closing argument. I really appreciated the call, because he was this great, great trial attorney and had presided over many trials as a judge. But he asked me, "Now, when did you prepare that closing?" I had to confess to what I thought was a fairly unflattering, unplanned process. It had been a dramatic case, so I explained that as soon as it landed on my desk, I knew what our narrative was going to be. I knew what the theme of the case was going to be. I knew what key evidence we were going to rely on. I knew the ironies in the case. I knew how I was going to close that case. I even rehearsed parts of it in my head on drives home over the months before the trial. But I didn't write much down and didn't complete it until the night before delivering it. He hardly paused before responding with a tone of glee, "That's just the way I did it." He explained that he always, with every case, started with the close. But for his willingness to share this insight, I would not have realized that my haphazard, never-to-be-repeated approach was actually something to refine.

I also appreciated the way he responded to my answer. He accepted it as confirmation that his approach must be the right one because my closing was good. But I also got the feeling that if I had said I hadn't thought about the closing until the night before, he would have laughed about such a crazy method and the different ways of doing things. For it was clear from the conversation that he really considered me another lawyer and not a former law clerk; another trial lawyer with whom he was happy to share insights. And looking back, this was when I first realized that this was always the way he thought of his law clerks. We were always fellow lawyers. Lawyers he respected.

I hope by telling you some of my stories that you got a feel for what it was like to work with the judge, because when we talk about so many of the great things he did, I worry that he might seem a little out of reach – someone so defined by his large exploits that he is

actually hard to know. I feel fortunate to remember my own small experiences working at his elbow and practicing in front of him that I think define him as well as those well-publicized landmarks in his life. I got to see firsthand that he really strived to make the world a better place. He valued excellence and demanded it. He appreciated those with high aspirations and supported us. He loved a quick mind and repartee. He loved the theater of a trial even as he focused above all on its fairness. He had a wry and mischievous sense of humor. He sought fresh perspectives and frequently embraced them. He valued fearlessness and determination in himself and others. So it *was* awesome to clerk for him and to practice in front of him. And it was fun. Thanks.

CHIEF JUDGE MALONEY: Thank you. Our next speaker is Attorney Fred Dilley of Foster, Swift, Collins & Smith. Mr. Dilley.

FRED DILLEY: Thank you, Your Honor. May it please the Court. He had a passion for justice, and I think he was the most passionate judge I ever knew. That was my impression in 1992 when I tried the second of two pretty complicated civil rights cases in this courtroom. And I made a note in my trial notebook, and in preparing these remarks I stumbled across that very note. Right here (showing). It says, "His energy and passion are exemplary and contagious. He creates in jurors an aura of the importance of their task, and he encourages their commitment to doing justice."

I've seen some pretty extraordinary things both as an observer and occasionally as a participant in my legal career, but I have to say in reflecting on Judge Enslin's career, probably some of the most stirring and indelible moments occurred right here in this courtroom after someone said, "Draw near, give attention, and you shall be heard." And in this courtroom those words were sort of a clarion call to me. Sometimes they evoked the reverence of a call to worship, sometimes maybe the clang of the bell before a prizefight. Other times, to some I'm sure, the waving of the wand and spreading of the

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pixie dust. You never knew exactly what was going to take place in the courtroom. But one thing you knew for sure was that Judge Enslin was going to take it very seriously. It was going to be the most important thing going on in the whole world when his court convened. And that was because of his deep sense of commitment to justice. It was what he lived his life for and what he related to all of us in the courtroom every time he took the bench.

Driven by that passion, he demanded much of himself, but he also demanded much of the lawyers who appeared in front of him. And he demanded much of his staff as we've heard. But he never demanded anything of others that he wasn't prepared to give himself. It was not unusual during a trial for him to work as hard or harder than the lawyers every night, and just as hard as his staff reviewing briefs, or asking for a brief to be submitted by 8 p.m. so that he could look at it before convening the next morning. These were not unusual things, because he was driven by his passion for justice.

I always thought one of the most impressive features of his resume, at least to me, was what's already been alluded to: His service along with other lawyers from the National Lawyers Guild in what became known as the Mississippi Freedom Summer in 1964 registering African-American voters and then defending the cases brought against them for doing so. All of this occurred in what must have been the most hostile of legal circumstances. It's hard to imagine as a lawyer facing a more contentious and difficult task inside and outside the courtroom, as he must have in those days. And there in Mississippi he lived out events that most of us only saw in black and white newsreels or later in documentaries. That was his passion for justice.

Indian fishing rights, prison reform, gender equity, Title IX, Walter Bergman's Freedom Rider trial and the Grand Rapids Public Schools shared time case, affirmed in the Supreme Court five to four, thank you very much. These were things that he was especially passionate about. These were things that affected the Bill of Rights and civil liberties. These were his real passion.

And unlike Judge McKeague and John Allen who regarded themselves as perhaps political or social op-

posites, maybe I can share a different perspective, which I wasn't going to. The perspective of someone who regarded him as sort of a social soulmate, a political hero, a legal hero.

It's no surprise to many here that he and I shared a prodigious bias in favor of civil rights and civil liberties and an equally prodigious disdain for those who might abuse those rights. So when I tried civil rights cases in this courtroom, someone picked the wrong judge, and it wasn't me. So Grant Gruel, bless your soul, I hope you're listening.

We tried a case here in 1992 and after the second of three directed verdicts for the plaintiff that Judge Enslin entered, people in Grand Rapids were asking, as these things were reported in the news, "What the hell is going on down there, Grant?" And he would say, "Well, I'm getting my ass kicked by the law firm of Enslin & Dilley." It didn't bother me a bit. I was very proud to have practiced law with Judge Enslin.

It was a joy for me to practice in his courtroom. Especially in cases like that. It was like a playground. It was dream-like. And I could not have enjoyed my time as a lawyer more than I did in a couple of those cases and some others that I appeared in here. He truly was a hero of mine.

I guess the other thing that occurs to me and that I'll share with you, I think this is a surprise to no one: his pursuit of justice was so critical to him and his thinking. Criminal sentencings often posed a particular dilemma for him. I was in his courtroom several times when he would lament the requirement under what were then the mandatory sentencing guidelines to sentence a young Benton Harbor drug dealer to a lengthy, crushing sentence, and maybe even the same day or close to it then have a white-collar criminal in front of him who he would scold and even excoriate for having squandered all of the advantages that that person had to resort to criminal activity. Those were the kinds of things that really bothered him.

On a personal note I wanted to say, Pam, that your love and support for your husband was never more

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evident than it was in the years just passed with the cruel irony of his debilitating medical condition and the ironic robbing of the faculties that so distinguished him and made him really extraordinary in his professional career. We thank you for that. I commend to all of us Judge Enslens's passion for justice.

CHIEF JUDGE MALONEY: Thank you, Mr. Dillely. It's now my pleasure to recognize the former chief judge of our court, the Honorable Robert Holmes Bell. Judge Bell.

JUDGE BELL: I thank you. As your last speaker it is my privilege to add a few remarks about my dear colleague and friend. I recall meeting Judge Enslens for the first time in the summer of 1987 at an invitation by Judge Hillman to meet my new colleagues before being sworn in. As you might recall, these were intense partisan times with Judges Hillman, Gibson and Enslens being Jimmy Carter appointees and me, a lone Reagan appointee. I "broke the ice" by relating that Senator Don Riegle, who I had been with at the recent Senate Judiciary Committee hearing, related, "Be sure to tell my three friends in Grand Rapids, Doug, Richard and Ben, I send my best to them."

The four of us became good friends. Richard Enslens and I became close friends with great respect for each other.

We learned much from each other, often sending thoughtful printed articles to each other on topics from history, politics, theology and psychology. Richard was a very bright man; well-read and very earnest in his every endeavor. He really wanted his community and this Court to be an agent of change for those who came before it.

The 1980's and 1990's was a period of innovation in procedures and approaches to the vexing issues in civil and criminal jurisprudence. The wide variety in sentences became the "battle cry" for more uniformity in sentencing, resulting in the Federal Sentence Guidelines in early 1988. Variances were for only exceptional cases and the graph's yield of a numerical score dictated a sentence. Judge Enslens was alarmed. He spoke forcefully in favor

of "safety valves" to those defendants deserving of downward consideration. He was at the vanguard of those discussing better approaches to rational sentencing.

Judge Enslens was an innovator. He was not content to merely sit "judging." He wanted to make a difference and learned how far he could go in affecting a change. Making a difference was a driving force in his life. He would probably add to that comment, "doing good!"

The sometimes slow pace of civil litigation meant that after a complaint and its resulting answer, the case wasn't heard from for months - even years, unless the lawyers got together to praecipe the court for a hearing or trial. In 1992, Senator Biden announced he was to hold a hearing in the Senate Judiciary Committee designed to eventually require civil cases be moved expeditiously toward a disposition. Immediately Judge Enslens sprang into action, writing the Senator relating his support and ideas. Within weeks Judge Enslens was testifying before the Senate Committee and becoming part of an ad hoc group of judges conferring regarding pretrial processing guidelines. This was no easy task because the majority of the federal judges held the view that their cases were being processed by the lawyers and litigants, who were the most familiar with the cases. Who was the Legislative Branch to tell the judiciary the pace it had to keep in disposing of cases?!

Nevertheless, Differentiated Case Management arrived in federal courts in 1992 with each case receiving a number designation from 1 to 5. One was an easy case; five was a difficult, complex case. Each case received its own "track." Judge Enslens organized staff to systematize the "road maps" of the track each case was assigned.

Judge Enslens never "put his finger to the wind" to determine if his ideas would be popular. He thought hard and insightfully about litigation matters and came up with seminars to address many issues. Differentiated Case Management had many national seminars he lead. He became a leading spokesperson for alternatives to the long jury trial in summary jury trials and ADR with neutral arbitrators. Much of the way this court approaches case management is attributable to the foresight of Judge Enslens.

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From 1996 through 2001, Judge Enslin ably served as chief judge. He undertook the chief judge responsibilities with enthusiasm and purpose. His stewardship of the role was marked by his desire to seek a consensus and be well informed on matters of governance to all the stakeholders. He would announce beforehand where he thought we ought to be and explain why we needed to get there. He left no details out of his thorough understanding of the issues, listening carefully and thoughtfully.

I recall nearly twenty years ago being present where Judge Enslin presented a speech for a new citizens naturalization ceremony. His presentation was something none present will ever forget because he had a gift of exploring the relevance of our Constitution to everyone in the audience. He obviously revered the document as a “gift to us from the ages.” He explained with a passion and conviction of a citizen’s rights, freedoms and privileges.

Judge Enslin loved everything about the City of Kalamazoo. A special treat was a Richard Enslin guided windshield tour of the city; truly an exceptional experience. One didn’t exceed the speed limit but proceeded down streets with a vivid narrative of the people, businesses, schools, churches, and events he knew so well. His love of Western Michigan University and its athletic teams is legendary. He knew the players on all the teams and even attended games throughout Michigan and the Upper Midwest.

Sitting—I often think of this—sitting as a federal judge in the City of Kalamazoo, surrounded by landmarks, old friends and family, is about as good as it gets. Kalamazoo does well to be very proud of one of its own very distinguished former citizens.

CHIEF JUDGE MALONEY: Thank you, Judge Bell. I want to acknowledge the members of the committee who did such a masterful job doing all the work to organize this event. Magistrate Judge Hugh W. Brenneman was the chair of the committee, assisted by Kim Briggs, Christina Cavazos, Ashley Mankin, Faith Webb, and Rick Wolters. Let’s give all of them a round of applause.

Everyone is invited to a reception in the jury assembly room right down the hallway after we recess court. The reception is sponsored by the Federal Bar Association.

As chief judge I have the privilege of the last word. I had the distinct honor to serve with Judge Enslin in this courthouse from 2007 until his retirement. As his successor in office, the judge welcomed me to the Court, provided his sound advice as I acclimated to my new role as a United States district judge. I will be forever grateful for his wise counsel. I wish we had more time together.

Judge Enslin served with true distinction. Always with a steadfast resolve to serve justice with respect to all persons who come before the court. He will be greatly missed.

Pam, on behalf of all the judiciary who are here as well as the assembled here in the courtroom, which is full with standing room only, we extend our condolences to you and your family.

Now I’m going to invite Gennady Enslin to step forward and express any sentiments that he wishes to and then take the gavel from Ms. Cordes and adjourn court.

GENNADY ENSLIN: I would just like to thank you all for coming today. My father would be honored to have you all here today, and he loved you all. Court is adjourned.

(Court adjourned at 4:03 p.m.) ■

**Past issues of *Bar & Bench*
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New Court Fees Are Effective December 1, 2015¹

Several changes to U.S. Courts' Miscellaneous Fee Schedules, including two bankruptcy fee adjustments, took effect December 1, 2015, under amendments approved last September by the Judicial Conference of the United States.

Changes to the Bankruptcy Court Miscellaneous Fee Schedule include:

- A \$50 increase, from \$157 to \$207, in the fee assessed when a direct appeal from a bankruptcy court is accepted by a Court of Appeals. The new fee brings parity to the fees assessed for other methods of appealing bankruptcy rulings to a Court of Appeals.
- A new \$25 per-case filing fee for a motion to redact information from previously filed records in a bankruptcy case. At the same time, another change clarifies that no additional fees will be charged to reopen a closed bankruptcy case where the only purpose for the reopening request is to remove personal identifiers.

In addition, two other clarifications that do not result in additional fees will go into effect:

- The District Court Miscellaneous Fee Schedule will state that the processing fee for a petty offense charged on a federal violation notice is \$25. Such a fee already was being charged, but had not been included in the fee schedule.
- A new item in the Court of Appeals Miscellaneous Fee Schedule clarifies that a statutory fee of \$5 will be charged in addition to a \$500 docketing fee, for a total filing fee of \$505. That amount already was being charged, but had not been explicitly stated in the schedule.

The miscellaneous fee schedules for federal appellate, district and bankruptcy courts can be found at the Forms & Fees page: <http://www.uscourts.gov/FormsAndFees.aspx> ■

Endnote

- 1 This article originally appeared in the *Third Branch News*, November 19, 2014, and is reprinted here with permission.

James C. Duff Returns as Director of the Administrative Office of U.S. Courts ¹

Chief Justice John G. Roberts, Jr. has appointed James C. Duff as Director of the Administrative Office of the U.S. Courts, effective January 5, 2015. Duff succeeds Judge John D. Bates, who will return full-time to the U.S. District Court for the District of Columbia. Duff previously served as AO director from 2006 to 2011. Since 2011, he has served as president and CEO of the Freedom Forum and CEO of the Newseum and Newseum Institute.

Below is the U.S. Supreme Court press release announcing Mr. Duff's appointment:

FOR IMMEDIATE RELEASE, NOVEMBER 4, 2014

Chief Justice John G. Roberts, Jr., today announced the appointment of James C. Duff as the Director of the Administrative Office of the U.S. Courts, effective January 5, 2015. . . .

The Director of the Administrative Office is the chief administrative officer of the federal courts. He

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serves under the direction of the Judicial Conference of the United States, the principal policy making body for the federal court system. The Chief Justice is the presiding officer of the Conference, which is composed of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Chief Justice selects the Director.

In announcing his selection, the Chief Justice noted, "Judge Bates has done a superb job in supporting the needs of the Judiciary in a challenging budgetary environment. As much as I appreciate his invaluable service, I understand his desire to re-dedicate his considerable energy to judicial service. On behalf of the Judiciary, I thank him for his leadership. I am delighted to welcome Jim Duff to succeed Judge Bates. Jim earned the full confidence of the Judiciary during five years of exceptional service between 2006 and 2011, and we are very fortunate that he has agreed to return."

Judge Bates reflected on his service with gratitude, stating, "I thank the Chief Justice for the opportunity to serve as Director. Thanks to the tireless efforts of judges, court staff, and AO personnel, we have successfully weathered several difficult challenges over the past eighteen months. It has been a privilege to be part of that collective effort, and I look forward to continuing to serve the public and the Judiciary in the future. And, I am thrilled to leave the AO in the extremely capable hands of my friend, Jim Duff."

Mr. Duff will be responsible for the management of the Administrative Office, which has approximately 1,000 employees, and for providing administrative support to 2,400 judicial officers, and nearly 29,000 court employees. He will serve as liaison for the judicial branch in its relations with Congress, including working with congressional committees to secure the Judiciary's annual appropriation and executing the Judiciary's budget.

In accepting this appointment, Mr. Duff stated, "I am very grateful to Chief Justice Roberts for the privilege of working with our federal Judiciary again. I

gained a deep respect for the outstanding men and women who serve in the judicial branch in my first job in Chief Justice Burger's chambers nearly 40 years ago and it has only grown over the years. It is an honor to follow the excellent service of Judge Bates and Judge Hogan, and I hope my recent experience at the Newseum of educating the public about our Constitution will enhance my ability to serve the Judiciary."



James C. Duff

Mr. Duff has extensive management, legislative, and litigation experience and has served under three Chief Justices. Prior to his leadership of the Freedom Forum and the Newseum, Mr. Duff served as the Director of the Administrative Office for five years. He was managing partner of the Washington, D.C., office of Baker & Donelson from 2000-2006, representing clients in various legislative, corporate, and litigation matters.

Mr. Duff was Chief Justice William H. Rehnquist's administrative assistant from 1996-2000, serving as the chief of staff at the U.S. Supreme Court, and as liaison to the other two branches of government on behalf of the Chief Justice. He began his career as an office and courtroom assistant to Chief Justice Warren E. Burger, while attending law school. After graduating from the Georgetown University Law Center in 1981, Mr. Duff became an associate and then a partner at Clifford & Warnke where he practiced in antitrust litigation and legislative matters until 1991, when most of the firm merged with Howrey & Simon.

Mr. Duff graduated from the University of Kentucky Honors Program in 1975 where he was Phi Beta Kappa, and received a J.D. from the Georgetown Law Center in 1981. He has taught constitutional law at

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Georgetown University, and he has served on several boards, including the Capital Hospice Foundation, the Supreme Court Historical Society, Freedom House, and the Lawyers' Committee of the National Center for State Courts. He was appointed to the Georgetown Law Center's Board of Visitors in 2014 and was named to the University of Kentucky Arts & Sciences Hall of Fame in 2012.

Mr. Duff is married to Kathleen Gallagher Duff. They have three children, Matthew, Kaitlin, and Scott. ■

Endnote

- 1 This article originally appeared in the *Third Branch News*, November 4, 2014, and is reprinted here with permission.

