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Solomon Oliver Jr.

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THE JUDGE AS GUARDIAN: A TRIBUTE TO JUDGE FRANK J. BATTISTI

THE HONORABLE SOLOMON OLIVER, JR.¹

Shortly before I joined the United States District Court in Cleveland in May of 1994, Judge Battisti had reduced his caseload by taking senior status after nearly thirty-three years of distinguished service on the court, twenty-one of which were served as Chief Judge. I inherited a substantial number of his civil cases and follow-up work on his prior criminal cases such as probation or supervised release violation hearings. In reviewing the sentences of the people who come before me in this latter category of cases, I am struck by how much he sought, within the range of discretion, to tailor the sentences of individual defendants to their particular crimes, needs and circumstances. Regrettably, our period of overlap on the court was cut short by his sudden death.

As a lawyer, however, I both knew of, and knew, Judge Battisti for many years. I first came to know of him when I arrived in Cleveland in 1976 to serve as an Assistant U.S. Attorney. That was the year of the *Reed v. Rhodes*² decision, the Cleveland school desegregation case for which he will be forever known. I grew up in the South and attended segregated public schools there. Consequently, I had a natural and keen interest in any decision which sought to eradicate discrimination and its pernicious effects in any sphere, as well as any judge who had the courage and commitment to make a difficult decision of this type.

When I first appeared before him as an Assistant U.S. Attorney representing the United States, I learned that he never viewed any individual case as routine. The fact that most people who sued the Social Security Administration for denial of benefits lost their cases did not deter him from giving full scrutiny to the governmental action being challenged in the case before him. The fact that it was legally difficult to prevail on motions to suppress evidence seized pursuant to a search warrant in criminal cases did not deter him from thoroughly reviewing the challenged governmental action under applicable standards to ensure that it was lawful. And his decisions demonstrate that, when justified, he would declare governmental action to be unlawful.

His manner and approach dissuaded persons from thinking that any group of litigants or lawyers would be preferred in his courtroom. I know this was true of government attorneys.

Judge Battisti understood the importance of an independent judiciary in a democracy. He knew that the founders intended that the judiciary serve as a

¹Judge, United States District Court for the Northern District of Ohio.

²422 F. Supp. 708 (N.D. Ohio), *stay granted*, 549 F.2d 1046 (6th Cir.), *stay vacated*, 549 F.2d 1050 (6th Cir. 1976), *aff'd in part*, 607 F.2d 714 (6th Cir. 1979), *cert. denied*, 445 U.S. 935 (1980).

check on the executive and legislative branches as well as an impartial tribunal in all cases. He knew of the special role of the courts in ensuring individual rights and as a guardian³ of the Constitution, that fundamental document which must be protected from the ill winds of the moment.

There are surely some important judicial lessons to be learned from his legacy.

³Alexander Hamilton refers to judges in Federalist No. 78 as having a duty to be "faithful guardians of the constitution." THE FEDERALIST, NO. 78 (Alexander Hamilton).