

## Judicial Profile

CARRIE LYNN RICHARDSON

# Hon. Neal P. McCurn Senior U.S. District Judge, Northern District of New York

*Justice cannot be for one side alone, but  
must be for both.*  
—Eleanor Roosevelt

Day in and day out for the past 33 years, Judge Neal P. McCurn has embodied this vision of justice. Since his 1979 appointment to the bench by President Jimmy Carter, Judge McCurn has presided over a diverse array of lawsuits. Whether addressing a utility's claim involving roughly \$88 million resulting from the allegedly faulty construction of a nuclear power plant, or an insured's claim that her health insurance provider wrongfully denied her coverage for cancer treatment, Judge McCurn approached each lawsuit in the same way. A man of unparalleled integrity, Judge McCurn has been a thoughtful jurist, treating all people with dignity, respect and compassion, while never forgetting that his decisions can impact people long after the gavel sounded and court adjourned for the day.

Litigation is inherently adversarial and often emotion-laden for the parties, lawyers, and witnesses. Judge McCurn understands this dynamic all too well. As a civil litigator for 27 years with the Syracuse, N.Y., law firm Mackenzie Hughes, Judge McCurn thoroughly enjoyed trials, relishing the "excitement" and sometimes contentious give-and-take. As a judge, however, Judge McCurn views trials and lawsuits differently. Rather than focusing on confrontation and division, Judge McCurn recently explained that he viewed nearly every lawsuit as an opportunity to get to know people, to try and understand their differences, and, above all, to help them resolve their disputes by forging a middle-ground.

Perhaps that is why, more often than not, after hearing both sides of an argument in a civil lawsuit, Judge McCurn requires the lawyers, and sometimes their clients, to retreat to the less formal setting of his conference room. Inevitably removing his robe and rolling up his sleeves, Judge McCurn gets down to the business of "judging" as he sees it. In a candid, objective and forthright manner, Judge McCurn outlines his view of the parties' legal positions. Of equal importance to Judge McCurn, and he makes sure the parties understand this, is that there are times when the human costs of a trial can be even greater than the monetary costs.

Judge McCurn describes one of the most rewarding aspects of his years on the bench as resolving disputes



in this way, and ensuring that "hardship and prejudice did not result to any of the litigants." Judge McCurn's effectiveness at dispute resolution is in part attributable to the decade he spent as president of the Syracuse Common Council. There, Judge McCurn honed his skills at consensus building as he brought opposing political parties together to govern the city. When compromise was not viable, Judge McCurn quickly turned his sense of justice to another setting—the courtroom—where he combined a sharp intellect and dry wit with patience, respect, and pragmatism. Over the years, Judge McCurn presided over a number of trials, garnering much attention from the media and the public.

Those trials ran the gamut from the drug-related killing of an undercover police officer to the claim that New York state had wrongfully dispossessed the Cayuga Nation of its 64,000-acre ancestral homeland. Regardless of how high the litigation stakes and how tense the situation might have been, Judge McCurn's "even and steady demeanor, coupled with a real down-to-earth sense of humor enhanced justice and put all at ease," as Senior Judge Thomas J. McAvoy recalls.

Judge McCurn's treatment of pro se litigants epitomizes his ability to "enhance justice and put all at ease." Patiently listening, and only occasionally interrupting when necessary to preserve decorum, Judge McCurn would consider the oral argument of every pro se litigant. Often those litigants were reading from prepared scripts with trembling hands or making immaterial

points. Invariably telling each litigant that they had done a fine job, typically Judge McCurn would not render a decision from the bench. Instead, he would explain that the issues required more time for his consideration and that a written decision would follow on a later date.

More than one former law clerk has heard Judge McCurn's rationale. Especially if the pro se litigant did not prevail, Judge McCurn wanted each to have the benefit of a written explanation to read and study. Also, by not ruling from the bench, Judge McCurn avoided placing the pro se litigant in the awkward and embarrassing situation of an announcement in open court that they had just lost their lawsuit. In Judge McCurn's courtroom the atmosphere was always one of genuine mutual respect. Judge McCurn's ability to put all at ease stems in part from his open and candid manner, coupled with his oft-times self-deprecating sense of humor.

As a veteran civil litigator, Judge McCurn came to the bench with no criminal law experience. Edward Z. Menkin, a Syracuse, N.Y., criminal defense attorney, thinks back with bemusement to one of his first trials before the judge. Prior to a multiple defendant drug conspiracy trial, Menkin recounts Judge McCurn calling the lawyers into chambers. All counsel, including Gary L. Sharpe, currently the chief judge for the Northern District of New York, were smart and experienced criminal trial lawyers. Anticipating a discussion about the usual pretrial matters, Menkin was completely taken aback by what happened next. Turning to the lawyers, Judge McCurn candidly said, "Boys, I want you to know that I've never tried a criminal case, so I'd appreciate it if you went easy on me. I'll do my best to move us along." Given that Judge McCurn is a Fellow in the elite American College of Trial Lawyers, and because he proved to be a very quick study, it is not surprising, as Menkin reports, that "Judge McCurn pretty quickly got the hang of things and *nobody* had to 'go easy' on him."

Judge McCurn never takes himself too seriously, but he has always taken his work as a judge very seriously. Industrious and well prepared, Judge McCurn holds lawyers to the same exacting standards to which he holds himself and his law clerks. At the same time, having been a busy litigator and serving on the Executive Committee and as chair of the Litigation Department while at Mackenzie Hughes, Judge McCurn never forgot the pressures of being a lawyer with multiple clients and constant demands upon his time. Judge McCurn's understanding of what it was like "to be in the trenches," as he descriptively referred to trials, also explains why lawyers constantly praise his wonderful courtroom demeanor and great judicial temperament. On the rare occasion when he would become exasperated when a lawyer could not answer a question or did not have a mastery of the record, Judge McCurn simply would make a mental note. With the robing room door closing behind him, Judge McCurn quickly began explaining to his law clerk what could be learned from what had just happened in court. Eagerly sharing his

vast legal knowledge, and drawing upon his experience as a highly successful trial lawyer, Judge McCurn would explain why and how a situation could be handled differently when, as he put it, a lawyer was "winning the case but losing the jury." Other times, he would explain how a lawyer was doing a "great job in trying to salvage a lousy case." These lessons and insights were invaluable but, learning by example, Judge McCurn's law clerks took away a far more valuable lesson—what it means to serve the legal profession by being a decent, principled, and gracious person, who unfailingly treats all with fairness and respect.

Judge McCurn's sense of justice encompassed giving generously of his knowledge and time, not just to his law clerks, but to all with whom he came in contact. Holding jurors in very high esteem, Judge McCurn was respectful of their time and sensitive to the sacrifices of jury duty. During a trial, he would include jurors in the process, explaining why a sidebar was necessary, why a recess had taken longer than anticipated, or why they had to be excluded from the courtroom. And, regardless of the length of the trial, at its conclusion, Judge McCurn would take the time to meet with the jurors, answering their questions, and thanking each personally for their service. Because of Judge McCurn, countless jurors have been educated about the vital role juries play in our legal system.

Judge McCurn's mentoring extended to his fellow judges as well. In 1986, the Northern District of New York had an overwhelming docket, consisting of thousands of civil cases and a substantial number of criminal cases. "Even in the face of this tremendous burden," Judge McAvoy, who had then just been appointed to the bench, is grateful to Judge McCurn for sharing his "thorough understanding of the substantive and procedural prongs of federal litigation." Others have similarly benefitted as Judge McCurn helped ease the transition from bar to bench by selflessly giving of his time to mentor and advise those new to the federal bench. Even at the end of long trial day, or after an emotionally draining sentencing, Judge McCurn was always available to his colleagues—to provide legal advice, moral support, or simply to share a story and a laugh. Over the years, including during his tenure as chief judge, Judge McCurn could be counted on for his "sage advice," acknowledges U.S. District Court Judge Norman A. Mordue. "Drawing upon his years of experience on the bench, and his depth of knowledge of the Northern District," according to Judge Mordue, it was not uncommon for Judge McCurn, during a judges' meeting, to raise an issue or point out a fact others had not considered. More often than not, due to Judge McCurn's unique and invaluable insight, his fellow judges followed a path they might not otherwise have chosen. Ultimately though, it would prove to be the path which best served the people and the interests of the Northern District of New York.

Judge McCurn's commitment to justice and dedication to public service long preceded his appointment

to the bench. During World War II, he served in the U.S. Maritime Service, and later served in the U.S. Naval Reserve. Obtaining a B.A. from Syracuse University in 1950 and a L.L.B. from Syracuse University College of Law in 1952, Judge McCurn enthusiastically served as president of the Syracuse University Alumni Association, president of the Syracuse University College of Law Association, and as a member of the College of Law's Board of Visitors. While practicing law, Judge McCurn also was actively involved in an impressive array of legal, charitable, and civic activities. As a life-long resident of Syracuse, N.Y., Judge McCurn devoted untold hours to improving the quality of life in his community. Among the many civic positions he held, he was director of the Urban League of Central New York, vice president of the Cultural Resources Council of Central New York, and vice chair of the Syracuse Urban Renewal Agency. Representative of Judge McCurn's compassion for others is his service as chair of the New York State March of Dimes, member of the Onondaga County United Way Board of Directors, and of other similar organizations.

Growing up in a devoutly Catholic and staunchly Democratic family, fundamentally Judge McCurn has always been, as he puts it, "interested in the common person" and "helping people at the bottom of the ladder." Thus, with the encouragement of his family, including his father, a justice in the New York state courts for many years, Judge McCurn also became active in politics. In 1967, Judge McCurn proudly served as an elected delegate to the New York State Constitutional Convention, whose stated purpose was to "loosen restraints that prevented state government from responding promptly to the needs of the people." Gaining local political prominence in 1970, Judge McCurn ran unsuccessfully for the U.S. Congress.

Judge McCurn's family and community were the ultimate victors in that defeat. With a twinkle in his eye, Judge McCurn says, "I might have lost the election, but I gained a son-in-law." Driving the McCurn campaign bus was Michael J. Byrne, now a Syracuse attorney. A few months after the election, he married Sue McCurn, one of the judge's daughters. Also, if history had treated Judge McCurn differently, the Northern District of New York would not have had 33 years of distinguished service from a man who worked with tireless devotion for the equal advancement of justice.

Nicely capturing that devotion, the Court of Appeals for the Second Circuit "recognized and applauded" Judge McCurn's "thoughtful and painstaking efforts" over more than 20 years of presiding over the Cayuga Nation and other related land claims in upstate New York.<sup>1</sup> Judge McCurn did so "with fairness and due regard to the rights and interests of all parties, as well as with a keen appreciation of the complexities of the subject matter and the relevant law."<sup>2</sup>

Throughout his career, Judge McCurn gave those same "thoughtful and painstaking efforts" to thousands of cases whose names have faded into history. This is what made him an exemplary judge. Judge McCurn's legacy, far greater than his illustrious legal career, is his family.



Judge McCurn and his family.

Almost before the question is asked, Judge McCurn leaps in with the answer—his proudest accomplishment is his family. That family includes his wife of 63 years, Nancy Irving McCurn, whom he considers his best friend. Together they raised five daughters and one son, and now have 13 grandchildren and 11 great-grandchildren. He is fiercely devoted to them, as they are to him. One has only to look around Judge McCurn's chambers to see the pride and joy he takes in his family. Family photos are prominently on display. Many were taken at the family's summer camp in the Adirondack Mountains. Judge McCurn loves nothing more than presiding over family gatherings there. Annually, Judge McCurn invites his law clerks and staff to join in the festivities. The scene is usually the same, grandchildren playing at water's edge, and Judge McCurn, at the helm of his speed boat, good-naturedly coaxing law clerks to water ski despite the frigid waters. For the less adventuresome, there is a boat ride around the lake with Judge McCurn telling the history and lore of this special place. After a spending such a day, it is easy to see how Judge McCurn was able to keep up such a rigorous and demanding legal career for 60 years. Always he knew that at the end of a day, he would be going home to a loving and supportive family.

Judge, to you and your family, as the Irish say, "Beannacht Dé leat"—God's blessing be with you! **TFL**

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*Carrie Lynn Richardson is a career law clerk to Senior United States District Court Judge Robert C. Broomfield in the District of Arizona. She previously served as Judge McCurn's career law clerk for approximately 20 years.*

#### Endnotes

<sup>1</sup>*Cayuga Indian Nation v. Pataki*, 413 F.3d 266, 280 (2d Cir. 2005), cert. denied, 547 U.S. 1128 (2006).

<sup>2</sup>*Id.*