



Judicial Profile

by Ruth A. Moyer

Hon. Gerald A. McHugh, Jr. U.S. District Judge for the Eastern District of Pennsylvania

The phrase “Philadelphia lawyer” originally denoted a wise, learned, and honorable attorney.¹ Historians often cite Philadelphia attorney Andrew Hamilton, who successfully argued in 1735 that truth was a defense against charges of seditious libel, as a possible inspiration for the phrase. During the next two centuries, however, the phrase unfortunately acquired a less-than-commendatory meaning. As *Black’s Law Dictionary* explains, the phrase “can have positive or negative connotations today, but when it first appeared (in colonial times), it carried only a positive sense deriving from Philadelphia’s position as America’s center of learning and culture.”²

The Hon. Gerald Austin McHugh, Jr., evokes the original meaning of the phrase “Philadelphia lawyer.” On Aug. 1, 2013, President Barack Obama nominated Judge McHugh to serve as a U.S. district judge for the Eastern District of Pennsylvania. On March 26, 2014, the U.S. Senate confirmed Judge McHugh. In June 2014, he heard his first case, a civil rights suit brought under 42 U.S.C.A. §1983. At a well-attended Sept. 26, 2014, ceremony, Judge McHugh was publically sworn in as a federal judge.

In his remarks on the Senate floor in support of confirmation, Sen. Robert P. Casey (D-Pa.) explained, “[Judge McHugh] is a lawyer’s lawyer. ... He has been a great leader in the bar, but also someone who has been a strong advocate for those who need a voice, often serving as a lawyer for those who wouldn’t have an advocate absent his involvement in a case.”³ He added that Judge McHugh “would bring to the court a passion for justice and a sense of outrage in the face of injustice.”⁴ Likewise, Sen. Patrick Toomey (R-Pa.) noted Judge



McHugh’s “very keen intellect, with a great commitment to public service.”⁵

Born in 1954, Judge McHugh has lived his entire life in the Cedar Park neighborhood of West Philadelphia. After his graduation from St. Joseph’s Preparatory High School, he attended St. Joseph’s University on a scholarship. A member of the debate team, Judge McHugh

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majoring in theology. As he later explained, he found theology fascinating because “it dealt with the meaning and purpose of life.”

Even in college, Judge McHugh’s commitment to public service was evident. While at St. Joseph’s University, he volunteered in the Philadelphia prisons, teaching problem-solving skills. Based on his experiences, he wrote two books on prison ministry. Although no longer in print, the books are still quoted.

Following his graduation from college *summa cum laude*, Judge McHugh attended the University of Pennsylvania Law School, where he continued his commitment to public service. His participation in a legal aid clinic that represented low-income Philadelphia residents developed his interest in legal services for the economically disadvantaged.

A member of the law school honor board, Judge McHugh also served as an associate editor of the *University of Pennsylvania Law Review*. During his last semester of law school, he clerked part time for the Hon. Edmund B. Spaeth of the Pennsylvania Superior Court; the experience provided him with valuable exposure to state appellate practice. In 1979, Judge McHugh received his J.D. *cum laude*.

Following graduation, he served as a law clerk for two years to the Hon. Alfred L. Luongo of the U.S. District Court for the Eastern District of Pennsylvania. As Judge McHugh fondly recollects, his federal clerkship was a “marvelous experience.”

Judge McHugh became a civil litigator because he wanted to “have individuals as clients. And I wanted to do trial work. And so that led me to personal injury litigation, where I [could represent] very seriously injured people.” From 1981 to 2004, Judge McHugh practiced civil litigation at the Philadelphia law firm of Litvin, Blumberg, Matusow, and Young.

Beginning in 2004, Judge McHugh continued his civil litigation career at the Philadelphia law firm of Raynes McCarty. In three decades as a “Philadelphia lawyer,” he successfully represented clients in a broad range of tort matters, including product liability, workplace injury, wrongful death, civil rights, and medical malpractice. In a 2005 magazine article, Judge McHugh explained, “I am happiest when you get that moment of ‘a-ha.’ ... It could be in discovery, it could be on cross, [it] could be when you are going over the engineering blueprints for the fourth time ... then you get it, and that’s when the time and energy and sacrifice start making a difference.”⁶

During his 30 years of practice, Judge McHugh acquired a reputation as one of the best civil litigators in Pennsylvania. He was elected as a fellow in both the American College of Trial Lawyers and the International Academy of Trial Lawyers; on three separate occasions *Best Lawyers in America* named him a lawyer of the year. Judge McHugh has lectured extensively on civil litigation and trial advocacy at continuing legal education programs, bar associations, and law schools. He has written numerous articles and editorials for bar associa-

tion publications.

For much of Judge McHugh’s career, distinguished Philadelphia civil litigator Gerald Litvin has been a valuable mentor. In 1996, Litvin asked Judge McHugh to collaborate with him in writing a book that would provide a much-needed overview of Pennsylvania tort law. Their efforts resulted in *Pennsylvania Torts: Law and Advocacy*, a two-volume work that has become a definitive resource for civil litigators practicing in Pennsylvania courts. For the past 18 years, Judge McHugh has assisted in updating the book with new legal authority.

Judge McHugh has been actively involved in many professional organizations, including the Pennsylvania Trial Lawyers Association, the Philadelphia Trial Lawyers Association, the American Inns of Court (University of Pennsylvania Chapter), and the Philadelphia Bar Association. As a member of the American Law Institute, he recently assisted in the drafting of the *Third Restatement of Torts* by providing guidance about intentional torts.

Judge McHugh explains that, “There is a great emotional satisfaction in feeling you are accomplishing something important and helpful ... in being an advocate and dealing with meaningful issues.”⁷ He cautions, however, “You won’t see me on the radar a lot in terms of results. ... You have to put ‘victory’ in quotes because of the adversity of the families and the tragedies. That doesn’t sit real comfortably with me.”⁸

One such tragic case was *DeJesus v. U.S. Dep’t of Veterans Affairs*.⁹ On March 22, 1999, a Department of Veterans Affairs (VA) treatment facility released from its care a patient suffering from serious mental health problems. Although aware that the patient had the potential to act violently, the VA failed to arrange for his placement in another mental health facility. Later that day, the patient shot to death four children before committing suicide. Arguing that the VA acted with gross negligence, Judge McHugh represented the children’s mothers in a federal tort claims action.

The Hon. Paul S. Diamond of the U.S. District Court for the Eastern District of Pennsylvania presided over the non-jury trial. Given the difficulty inherent in satisfying the gross negligence standard, Judge Diamond initially suspected that the case would result in a defense

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verdict. Yet, Judge McHugh persuaded his now colleague “through a brilliant effort that the [VA] had acted with gross negligence. ... It was all Jerry.” The case involved an extensive amount of complex testimony by expert psychiatric witnesses. As Judge Diamond recalls, however, “Jerry has the ability to make things very simple and easy to understand. He’s brilliant, well organized, articulate, and hardworking.” Judge Diamond concludes, “He lived up to his reputation. Many lawyers don’t. He did.”

Although Judge McHugh primarily represented plaintiffs, he was an equally skilled defense counsel. In 2002, the widow of an Abiocr artificial heart recipient sued the Drexel University College of Medicine. The medical school’s general counsel asked Judge McHugh to defend the school in the suit. At the time, Judge McHugh explained, “The realities of practice tend to divide us into the categories of plaintiffs’ lawyer or defense lawyer. That’s unfortunate because it can lead to the mistaken impression that trial lawyers are hostile to physicians or the health care system. ... To me, this case is a welcome opportunity to offer my skills to a health care provider.”¹⁰

In December 2013, Judge McHugh tried his final case in front of the Hon. Shelley Robins New of the Philadelphia Court of Common Pleas. Judge McHugh represented a young man who had sustained serious injuries, including partial paralysis, as a result of an automobile accident. The jury awarded a verdict in favor of Judge McHugh’s client.

Judge Robins New recalls that Judge McHugh was one of the “finest lawyers” that she has ever encountered. She explains, “He knew the law; he understood how to communicate about a complex matter; and he cared about his client. He’s a gentleman and a genuinely nice guy, and that shows in the courtroom.” Judge Robins New added, “Sometimes trial lawyers forget the jury is there. He is the exact opposite. He focuses on things that are truly important. He can see beyond the minutiae.” With considerable disappointment, she noted that Judge McHugh “will never appear in front of [her] again.”

Not only did Judge McHugh practice extensively in both state and federal courts, but he also gained familiarity with international law. He successfully represented the widower of a woman killed in the 2004 Terminal 2E collapse at Charles de Gaulle Airport in Paris, France. Likewise, he assisted in representing the family of one of the 1988 Pan Am Flight 103 bombing victims. Based on his experiences with other nations’ legal systems, Judge McHugh explains that the “American system of justice places much more trust in the wisdom of juries.”

Reflecting on what makes one a successful advocate, Judge McHugh emphasizes, “Credibility is the single most important factor. Never overstate any position that you take. Never try to stretch the truth. Also, the best lawyers can seamlessly blend the law with the facts.” He advises young attorneys to “be yourself and adopt a style of lawyering that takes into account your personal

strengths and weaknesses. Don’t try to project a professional personality that isn’t really you. A low-key lawyer can be every bit as effective as a dramatic lawyer. So be yourself.”

During his more than three decades as a “Philadelphia lawyer,” Judge McHugh worked with the Pennsylvania General Assembly in drafting significant tort legislation. On six occasions, he received the ceremonial pen that the governor used to sign the bill. Applying his legal acumen and inherent sense of fairness, he helped to craft reasonable statutory solutions that accommodated the interests of both plaintiffs and defendants.

Judge McHugh’s legislative work included reforming medical malpractice litigation in Pennsylvania, providing immunity for volunteer physicians, granting improved access to the courts for low-income families, and modifying the tolling period for claims by minors. Through his legislative efforts, Judge McHugh was proud of helping “to do something good for the law and the people of Pennsylvania.” As Judge McHugh explains, “[G]ood statutes are a product of getting quality input from the individuals who are actually being affected by the laws being passed. In the case of civil justice reform, talk to the lawyers actually trying cases to see what the right approach would be.”

To illustrate, he helped write a 1995 amendment for the Pennsylvania wrongful death statute, 42 Pa.C.S.A. § 8301. Under the previous version of the statute, if a lawsuit seeking damages for tortious conduct was filed while the decedent was alive, a wrongful death claim based on the same tortious conduct was consequently barred. The statute inequitably failed to provide any exception for instances in which the initial lawsuit was still pending at the time of the decedent’s death. The revised legislation permitted recovery under a wrongful death claim “if no recovery for the same damages claimed in the wrongful death action was obtained by the injured individual during his lifetime, and any prior actions for the same injuries are consolidated with the wrongful death claim so as to avoid a duplicate recovery.”¹¹ Judge McHugh’s solution not only effectively protected the rights of a decedent’s family but also ensured that a defendant would not be unfairly subject to “double” damages.

A 1998 Philadelphia *Legal Intelligence* article quoted Judge McHugh as urging, “We must re-emphasize that the law is not just a business but a profession. ... As professionals, we have to realize that we have an impact on society. And trial lawyers have a particular role to play in that mix.”¹²

Unsurprisingly, Judge McHugh has been active with numerous public interest causes. For seven years he chaired the board of the Pennsylvania Interest on Lawyers’ Trust Accounts (IOLTA). He also served as president of both the Pennsylvania Legal Aid Network and the Philadelphia Bar Foundation. To encourage new attorneys interested in serving the economically disadvantaged, he founded and funded a public interest law fellowship for University of Pennsylvania Law

School graduates. Judge McHugh was also instrumental in creating the Philadelphia Landlord-Tenant Help Center, which furnishes legal representation and other resources for Philadelphia tenants who are financially unable to afford counsel. In 1982, Judge McHugh led the funding and development of Hospitality House, a North Philadelphia halfway house and drug treatment center for released offenders. In conjunction with Hospitality House, he also helped create a thrift store that sold “safety-standard” children’s merchandise and provided employment experience for ex-offenders.

When standing on the front porch of his Cedar Park house, Judge McHugh can see his 48th Street and Baltimore Avenue childhood home where his father ran a real estate office. Establishing a community flower garden and leading anti-crime efforts, Judge McHugh has remained active in his neighborhood. As a life-long Philadelphian, Judge McHugh believes that the keys to the city’s future are “good-quality public education and schools.”

Judge McHugh has been married to his high school sweetheart, Maureen, for more than 30 years. Their four grown children work in the nonprofit sector. A connoisseur of California wine, Judge McHugh enjoys body surfing and running kayaks in his spare time.

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A joint tortfeasor release presents the same challenges to the civil litigator as nuclear waste does to an engineer. A joint tortfeasor release is a necessary byproduct of a complex and dangerous process—litigation. It must be carefully handled and contained. It has a long half-life, and unless properly negotiated, is capable of causing strange mutations in the future life of your case.¹³

As a young practitioner, it never occurred to Judge McHugh that someday he would become a judge. He adds, “Over the years, people often remarked to me, ‘You should be a judge; you should go on the bench.’ I was happy practicing law. But then I reached an age when I realized that if I were ever going to be a judge, I would have to do it now.”

As a practitioner, Judge McHugh gained adjudicatory experience through his service as an arbitrator and mediator in civil matters as well as a Pennsylvania Supreme Court Disciplinary Board hearing officer. Judge McHugh imparts that “integrity, courtesy, and fairness are important qualities for a judge.” He adds, “Success as a trial lawyer depends very

much on your ability to know what facts and what issues are important. I hope those instincts that I honed as a trial lawyer will help me as a judge to get to the heart of a case. ... Hopefully, that will make me a wise decision-maker.” He believes that the most pressing current challenge for the legal system is “balancing efficiency with quality.” As Judge McHugh explains, “The courts are under tremendous pressure to move cases and keep dockets current, which is an important goal. But we can’t overlook the fact that some cases really do require more extensive investment of judicial time in order to reach a just result.”

When asked what he looks most forward to as a federal judge, Judge McHugh responds, “being able to devote myself to public service full time.” Concomitantly, however, he will “miss the excitement that comes from being an effective advocate for [one’s] client.” Judge McHugh adds, “It’s bittersweet because I’m leaving longtime colleagues who are also my friends. [Many of these] relationships span 33 years.”

As a practitioner, Judge McHugh continued the great tradition of the “Philadelphia lawyer.” Judge McHugh will now serve as a U.S. district court judge at the James A. Byrne Federal Courthouse, which sits only one block away from Independence Hall. Incidentally, it was “Philadelphia lawyer” Andrew Hamilton who helped design Independence Hall—the simple and dignified colonial brick structure in which the framers developed a government, including a federal judiciary, for the young nation. Throughout America’s history, the federal judiciary has played a crucial role in protecting the ideals on which the nation was founded. As Judge McHugh aptly concludes, the law is a “moral force,” and the “power of the judiciary remains vital to a democracy.” ☺

Endnotes

¹William Safire, *Philadelphia Lawyers*, N.Y. TIMES, Oct. 13, 1996, available at www.nytimes.com/1996/10/13/magazine/philadelphia-lawyers.html.

²BLACK’S LAW DICTIONARY 1183 (8th ed. 2004).

³160 CONG. REC. S1679, 1687 (daily ed. Mar. 24, 2014) (statement of Sen. Casey).

⁴*Id.* at 1688.

⁵160 CONG. REC. S1679, 1687 (daily ed. Mar. 24, 2014) (statement of Sen. Toomey).

⁶G. Patrick Pawling, *The Saint*, PENNSYLVANIA SUPER LAWYERS, June 2005.

⁷Pawling, *supra*.

⁸*Id.*

⁹*DeJesus v. U.S. Dept. of Veterans Affairs*, 384 F.Supp.2d 780, 782 (E.D.Pa. 2005), *aff’d*, 479 F.3d 271, 273-74 (3d Cir. 2007).

¹⁰Laurie Stewart, *Plaintiffs’ Lawyer to Defend Drexel*, THE LEGAL INTELLIGENCER, Nov. 26, 2002, at 8.

¹¹42 Pa.C.S.A. § 8301(a).

¹²Michael R. Riccardi, *McHugh Makes Access to Courts, Service Priorities of Presidency*, THE LEGAL INTELLIGENCER, July 14, 1998, at 1.

¹³Gerald A. McHugh, Jr., *Joint Tortfeasor Release: Negotiating the Maze*, 62 PA. B. ASS’N Q. 180, 187 (1991).