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## TRIBUTES

### A TRIBUTE TO JUDGE JOHN TINDER

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On a Friday afternoon this past November, retired Indiana Supreme Court Justice and fellow Indiana University Robert H. McKinney School of Law professor, Frank Sullivan Jr., invited me to attend his class on Law and the Administration of Justice scheduled for the next Monday. In the brief time since his retirement from the Court, I was aware that Justice/Professor Sullivan has become a very popular teacher with an enthusiastic following among his students. This would have been reason enough to accept his invitation to attend his class, but he added another inducement by asking me to introduce to the class recently retired Seventh Circuit Court of Appeals Judge John Tinder. As a former FBI Special Agent who years ago worked on the first rung of the federal law enforcement ladder, I have for many years admired Judge Tinder as he progressed through his career from Assistant U.S. Attorney to U.S. Attorney to Federal District Court Judge to a member of the Seventh Circuit Court of Appeals.<sup>1</sup>

Over the weekend prior to his scheduled speech, I reflected on what I might say in introducing Judge Tinder. During the same time, word had spread informally in the larger community that Judge Tinder would be speaking to students in Professor Sullivan's class at the McKinney School of Law. Lawyers and judges from the community apparently were interested in hearing from their good friend and respected colleague as he stepped down after eight years as a member of one of the nation's most prominent appellate courts. By Monday afternoon, the classroom was packed with students, judges, and lawyers.

Judge Tinder's comments on that occasion were enlightening, inspirational,

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1. That was reason enough to participate in this class with Professor Sullivan and Judge Tinder, but, again, there was more. I have had the pleasure of meeting and working with both of their very talented spouses. I had the pleasure of working with Frank's spouse, Cheryl Sullivan, a multi-talented leader who did outstanding work in an important university and community position as IUPUI Vice Chancellor for External Affairs. This was while I was IUPUI chancellor. And I served as a faculty member when Judge Tinder's spouse, Jan Carroll, was a student at the Indiana University Robert H. McKinney School of Law. I have watched with pride as she developed an outstanding career at Barnes & Thornburg LLP, one of the leading Indianapolis law firms. Cheryl and Frank and Jan and John are among the most prominent couples in Indiana.

and highly relevant to the students' study of important legal issues, many of which find their way into litigation and onto the dockets of federal appeals courts. The students responded to his presentation with resounding and appreciative applause. This written tribute to him, intended for inclusion in the *Indiana Law Review*, is an outgrowth of that afternoon's lecture by Judge Tinder and the result of Professor Sullivan's request. It is a distinct honor for me to have been tasked with this assignment.

Judge John D. Tinder's life in the law reflects the influence as well as the lessons he learned years ago from his lawyer-father, John G. Tinder. "Honest John Tinder," as he was dubbed at the height of his auspicious career, built a reputation for dedicated, effective public service as well as unshakable integrity as the Marion County Prosecuting Attorney. For a few years, the two John Tinders practiced law together in a small family firm in Indianapolis. Some who knew them both say they see the indelible mark of the father on the son's work and temperament and values. A plaque located near the library circulation desk at the McKinney School of Law gives witness to John Sr.'s remarkable contributions and stature in the legal community, as it reads: "Dedicated to the memory of John G. Tinder who studied at the McKinney School and graduated in 1938 to serve others as a vigorous and effective advocate and a highly respected member of the bar in Indianapolis for 60 years."

Clearly inspired by his father's example, John D. Tinder also chose to enter the legal profession. After completing his undergraduate work at Indiana University-Bloomington in 1972, he enrolled in the Indiana University Maurer School of Law, from which he graduated in 1975.<sup>2</sup> During law school, John worked as an intern in the U.S. Attorney's Office in Indianapolis.<sup>3</sup> His alma mater has demonstrated its pride in Judge Tinder's remarkable career and professional accomplishments by electing him into membership in the Distinguished Academy of Alumni Fellows.<sup>4</sup>

John began his practice of law by serving as a public defender in the Marion County Criminal Courts.<sup>5</sup> He later became Chief Trial Deputy for the Marion County Prosecutor's Office.<sup>6</sup> In 1984, at the youthful age of thirty-four, he was appointed by President Ronald Reagan to serve as the U.S. Attorney for the Southern District of Indiana—the first of three federal presidential appointments he would ultimately hold over the course of his legal career.<sup>7</sup>

Two years later, in 1986, U.S. Senators Richard Lugar and Dan Quayle convened a merit selection committee to interview candidates for two vacancies on the Southern District bench and make recommendations as the best nominees to fill them. Of the five names sent forward by the committee, John was one of

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2. *University Honors and Awards*, IND. U., <https://honorsandawards.iu.edu/search-awards/honoree.shtml?honoreeID=6209> [<https://perma.cc/WE4S-4BGH>] (last visited May 10, 2016).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. 153 CONG. REC. S15,888-01 (2007).

the two selected. On March 31, 1987, President Reagan telephoned John to ask if he would accept an appointment to the Southern District in Indianapolis. About that conversation, John noted the President's call came the morning after IU Basketball standout, Keith Smart, had made the buzzer beating basket to win the NCAA Championship over a very talented Syracuse team. No true blue Hoosier will ever forget that moment of victory.<sup>8</sup> After assuring the President he would accept the nomination to the court, John compared the President asking him to become a federal district court judge to asking Coach Knight if he wanted Keith Smart to take that last-second shot the night before. President Reagan, according to John, picked up immediately on John's reference and enjoyed the humorous comparison. Judge Tinder's nomination was confirmed by the U.S. Senate on August 7, 1987, a brief twelve years after he had graduated from law school.

Over the next twenty years, Judge Tinder served with remarkable skill and dedication, with fairness and insight and wisdom as a district court judge. Many lawyers and even a few litigants who appeared before him have shared with me their positive assessments of the manner in which he handled their cases. They have remarked on his knowledge of the legal process and his sustained efforts to improve the ways in which justice was administered; they appreciated his patience, especially with litigants who were unfamiliar with the judicial process; and they admired his pragmatic, sensible, businesslike approach to resolving the problems of a case. Where his confidence might have waned or his knowledge proved incomplete, Judge John did the hard work necessary to overcome those deficiencies. These are the qualities of all good judges, of course, but in him they were present in special ways and in fulsome measure.

His disciplined congeniality as a judge contributed to the formation of a wide circle of friends on the bench, in the legal profession, and in his two favorite pastimes: golf and baseball. I understand the attraction of these activities. First, golf is a game governed by a complex web of self-enforced rules, which are a comfortable surrounding for those of us who have studied law. I've enjoyed the game although as an advanced stage septuagenarian I have succumbed to the temptation of a "mulligan" on the first tee, and an occasional conceded putt to "keep up with a good pace of play." Having never played golf with him I don't know if Judge Tinder has adopted these practices, but from afar I would guess that he would decline any such deviation from the Rules of Golf which I think he learned in a CYO golf league.

His other avocation is baseball, another sport popular within the legal profession. I understand this, too. I've been involved in baseball as a fan and recreational player to the point where, along with the IUPUI leadership, friends in the community held a baseball themed retirement party for Jean and me.<sup>9</sup>

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8. See *Keith Smart 1987 "The Shot,"* YOUTUBE (Oct. 16, 2006), <https://www.youtube.com/watch?v=2dgmikdVM8> [<https://perma.cc/4PC9-NPKS>].

9. This was in 2003 in what was then the new Marriott Hotel in downtown Indianapolis. Former Governor Frank O'Bannon joined in the fun and former Indiana Supreme Court Chief Justice Randall Shepard created a poetic story about my retirement using the model of Casey at the Bat. And the wonderful Judge Sarah Evans Barker organized and led a group of singing nuns to lift

Judge Tinder's interest in baseball should cause him to read columns and books by George Will—one of my favorite observers of the game—who has written about the national pastime, its players, and even its ball parks.<sup>10</sup> Because George Will's writing tends toward the cerebral and the Republican side of the political center, I would think that Judge Tinder would be an avid Will reader. Unfortunately, George Will is a dedicated fan of the Chicago Cubs, a team that plays in the same league as Judge Tinder's favorite team, the Los Angeles Dodgers. I understand that John Tinder once attended the Fantasy Camp during spring training of the Los Angeles Dodgers and that, on another occasion, he was listed in an Indianapolis Star box score for a Dodgers game showing that one John Tinder had one hit in one at bat. If validated, he would be the only player to have a lifetime perfect major league batting average of 1000.

A judge's law clerks are a judge's closest confidants and collaborators. Working side by side to resolve the disputes entrusted to them, the relationship engenders a trust and affection, an appreciation and a friendship that typically lasts a lifetime. Judges prize these relationships, as do the clerks. Judge Tinder has benefitted from a particularly talented and dedicated cadre of law clerks, whose devotion to him has on occasion been revealed in online disclosures after the clerks' terms have ended. Judge Tinder was interviewed once for a publication entitled Article 3 Groupies, or A3G, by an admiring reporter who referred to him as the "Magnificent Judge John D. Tinder."<sup>11</sup> The article recounted that his former clerks "raved about their fabulous clerkship experiences with (him), giving (him) props for being an extremely nice and easy going person with a great sense of humor."<sup>12</sup> This is high praise, indeed, especially when it comes from the people who were most closely associated with him in a daily context.

Along with his commitment to justice, Judge Tinder's goal was to create an excellent learning experience for his clerks, much as a professor seeks to establish with his students. For this result to occur, the clerks must be given enough responsibility to make the experience deeply meaningful, allowing them to understand factual intricacies, to wrestle with legal complexity, to embrace a certain level of ambiguity, and to produce just results. In response to the questions asked of him during the A3G interview, Judge Tinder explained his pedagogy in this way:

I suppose that the role of a law clerk is comparable to that of an associate in a law firm working with a partner on a project. We work as a team in

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and temper some of the frivolity. I will be ever grateful to her as a co-chair and leader of the event and proud to be her friend.

10. See, e.g., GEORGE F. WILL, A NICE LITTLE PLACE ON THE NORTH SIDE: WRIGLEY FIELD AT ONE HUNDRED YEARS (1<sup>st</sup> ed. 2014).

11. *Questions Presented: Judge John D. Tinder!!! (Part 1)*, UNDERNEATH THEIR ROBES (Mar. 4, 2005), [http://underneaththeirrobes.blogspot.com/main/2005/03/questions\\_prese.html](http://underneaththeirrobes.blogspot.com/main/2005/03/questions_prese.html) [<https://perma.cc/SG56-A4S8>].

12. *Id.*

trying to find the best solutions to the cases before the court . . . A clerkship won't teach a young lawyer everything he/she needs to know about litigation to become a capable litigator, but it would be difficult to leave a clerkship without some significant insight into the litigation process. Regardless of the area of law that the clerk goes into, I hope they leave a clerkship with me with a useful sense of how and why difficult decisions are made in litigation.<sup>13</sup>

When Judge Tinder was under consideration for appointment to the Seventh Circuit Court of Appeals, he appeared for his confirmation hearing before the Senate Judiciary Committee escorted by two incomparable supporters and statesmen, Senators Richard Lugar and Evan Bayh. These senators developed a judicial selection process marked by careful review, expeditious processing, and bipartisan collegiality—for which they were frequently complimented by the Chairman of the Judiciary Committee, Senator Patrick Leahy, as a model of statesmanship and senatorial leadership.<sup>14</sup> At the hearing when Judge Tinder's nomination was under consideration by the Committee, these words of introduction were spoken by Senator Lugar:

[L]ast year, Circuit Judge Dan Manion [an IU McKinney alumnus] informed me of his decision to assume senior status after a distinguished career of public service. Given this upcoming vacancy and the need for continued strong leadership, I was pleased to join with my colleague Evan Bayh in commending John Tinder to President Bush. This selection was the product of a bipartisan process and reflective of the importance of finding highly qualified Federal judges to carry forward the tradition of fair, principled, and collegial leadership. As the Founders observed when our Constitution was drafted, few persons “will have sufficient skill in the laws to qualify them for the station of judges” and “the number must be still smaller of those who unite the requisite integrity with the requisite knowledge.” Judge Tinder embodies the rare combination that the Framers envisioned. I have known John for many years and I have always been impressed with his high energy, resolute integrity, and remarkable dedication to public service . . . Throughout John's career, his reputation for personal courtesy, fairness, decency and integrity was equally well-earned and widespread among colleagues and opposing counsel alike and on both sides of the political aisle. The Senate has already unanimously confirmed him twice [as U.S. Attorney and Judge in the Southern District of Indiana], and it is not surprising that news of his Circuit Court nomination has been well received by stakeholders in the legal community and the public. I am also pleased with John's experience and professionalism were recognized by the American Bar Association which bestowed their highest rating of “well

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13. *Id.*

14. 153 CONG. REC. S15,888-01 (2007).

qualified” for his nomination.<sup>15</sup>

Then Senator Lugar introduced Senator Bayh who said:

Thank you, Mr. Chairman. I would like to associate myself with the very appropriate and thoughtful comments of my friend and colleague, Senator Lugar. I won't take the time to re-cover all of that ground; I don't think, in this case, it is necessary. But I would like to make three points. First, Dick, I'd like to thank you for your courtesy. Mr. Chairman, you should know that Senator Lugar reached out to me, sought my counsel and advice about this nomination. He did not have to, as you know, but he did. Perhaps it is the Hoosier way, trying to work things together, but I wish it was more of the Senate way as well. So, I want to thank him for that courtesy. It's always a pleasure working with Dick Lugar. Secondly, in this case it was an easy decision, Mr. Chairman. I have known John Tinder and his wife Jan, who is with us today, for more than 20 years, professionally and socially. My wife Susan and Jan used to practice law together some time ago. I have seen John have an exemplary career, first as a prosecutor. John, I can't believe you were all of 34 years when President Reagan selected you for that position. Of course, then some people were surprised I was 33 when I was elected Governor. Maybe that is a Hoosier trait as well. He has gone on to be an outstanding, not only individual attorney in private practice, but on the Federal bench, as Senator Lugar was saying. He is the embodiment of good judicial temperament, intellect, and even-handedness. He has been praised from both sides of the political spectrum for his service in the Southern District of Indiana, and I am confident will receive those kinds of reviews as well on the Seventh Circuit. So, he enjoys my wholehearted support, Mr. Chairman. Finally, just let me say that if we had more nominees like John Tinder we'd have less fighting around this place. He's a good judge. He's a good lawyer. He's thoughtful. He's nonpartisan. I hope that, going forward, perhaps others of a similar mold will come before us so that we can do our duty with a minimum of acrimony. Having said all that, I give my highest endorsement and strong support to this nominee.<sup>16</sup>

Judge Tinder was confirmed by the U.S. Senate on December 18, 2007 by a 93-0 vote<sup>17</sup> and he served as a distinguished, productive, beloved member of that tribunal for seven years, until he reached the age of sixty-five and was eligible

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15. *Id.*

16. *Confirmation Hearings on Federal Appointments Before the S. Comm. on the Judiciary, 110th Cong. 2-3 (2007)*, available at <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg47206/html/CHRG-110shrg47206.htm> [<https://perma.cc/RRL4-SLHP>].

17. *U.S. Senate Roll Call Votes 110th Congress - 1st Session*, U.S. SENATE, [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=1&vote=00442](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00442) [<https://perma.cc/72TJ-6H85>] (last visited May 10, 2016).

for retirement. At that time, in 2015, he decided to step down from the Seventh Circuit at a time when he could still devote himself to other activities and opportunities that awaited him in his later years.<sup>18</sup> Not wanting to call attention to his decision to retire before an official announcement was made, he attempted to proceed quietly towards that time of transition. Secrecy proved elusive when, in response to a clerkship applicant, he candidly mentioned that he would be leaving the court in 2015 and thus would not be in a position to hire any additional clerks. Somehow this letter reached the attention of the blog *Above the Law* and Judge Tinder's hand was tipped.<sup>19</sup> He explained he had "wanted to give clerkship applicants some guidance about (his) future plans while holding off on a public announcement for a little bit longer. But it looks like (the blog) found out—as you always do—and here we are!"<sup>20</sup>

His departure from the Seventh Circuit was greeted by his colleagues' expressions of regret in having to say farewell, in losing him as a part of the court, and no longer being able to enjoy his daily companionship and collegiality. And there were expressions of appreciation, admiration, and affection for him. Judge Frank Easterbrook wrote, "We'll never forget both your wisdom and generosity in our mutual work."<sup>21</sup> Judge Richard Posner wrote, "Yours is the ideal judicial temperament, sagacity, and graceful expression."<sup>22</sup> Judge Diane Sykes wrote, "I'm grateful for your friendship and will miss your quick brilliance and wit."<sup>23</sup> These moving and generous assessments of John's judicial service capture qualities that have been associated with his career from beginning to end.

These collegial expressions of his fellow judges were made a part of a display commemorating and celebrating Judge Tinder's career which was installed in the main corridor of the first floor of the Birch Bayh Federal Building and U.S. Courthouse in Indianapolis.<sup>24</sup> The display also included a collection of awards, photographs, presidential commissions, and other tributes, which were intended to remain in place until at least August 15, 2015.<sup>25</sup> This was a celebration of his eight years on the Seventh Circuit since 2007, his twenty years of service on the U.S. District Court for the Southern District of Indiana, and his

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18. David Lat & Staci Zaretsky, *Rejection Letter of The Day: You Can't Clerk for Me Because...I'm Quitting!*, ABOVE LAW (Mar. 3, 2014, 6:31 PM), <http://abovethelaw.com/2014/03/rejection-letter-of-the-day-you-cant-clerk-for-me-because-im-quitting/> [<https://perma.cc/GU3L-WUBS>].

19. *Id.*

20. *Id.*

21. Dave Stafford, *Tinder Departs 7th Circuit*, IND. LAW. (Jul. 29, 2015), <http://www.theindianalawyer.com/article/print?articleId=37799> [<https://perma.cc/JH3B-4LA7>].

22. *Id.*

23. *Id.*

24. *Display Celebrates Judge Tinder's Career*, U.S. DISTRICT CT. FOR S. DISTRICT INDIANA (June 23, 2015), <http://www.insd.uscourts.gov/news/display-celebrates-judge-tinders-career> [<https://perma.cc/BD26-QCJ5>].

25. *Id.*

service as U.S. Attorney for the Southern District of Indiana from 1984 to 1987.<sup>26</sup>

One tribute came from another excellent native of Indiana who overlapped and followed Judge Tinder on the U.S. District Court and the Seventh Circuit: Judge David Hamilton. Judge Hamilton, a highly regarded jurist, spoke admiringly about Judge Tinder's work. He said that when Judge Tinder

sought and accepted those positions he understood that he was agreeing first and foremost to carry out duties on behalf of the public. The work was not about him. He did his work quietly, without calling attention to himself, letting the work speak for itself. He modeled leadership and truly public service.<sup>27</sup>

Judge Tinder preceded Judge Hamilton on both courts. As a longer serving member of these courts, Judge Tinder shared his time and advice, making the transitions easier and smoother for Judge Hamilton. On matters they decided jointly, both in the district court administration and in appellate cases, Judge Hamilton said they did not always agree, but "where [they] did not agree [they] listened to each other and often found common ground. Judge Tinder was especially helpful in Fourth Amendment cases and other judges often gave special weight to his thinking on the subject."<sup>28</sup> Judge Hamilton noted that "Judge Tinder's experience as both a prosecutor and a defense lawyer gave him an almost instinctive feel for the issues and the problems."<sup>29</sup>

When Judge Tinder was installed as a member of the Indiana University Maurer School of Law Academy of Alumni Fellows, then Law Dean Lauren Robel captured the significance of his work as a lawyer and judge in these words: "he epitomizes integrity, humility, and the recognition of the equal dignity of all citizens; and he is known for his unfailing respect of all litigants as well as scrupulous care and fidelity to the legal principles that inform his decisions."

Now years later, from her vantage point as Indiana University Executive Vice President and Chancellor of the Bloomington Campus, she commented further in a way that provides a fitting end for this tribute. She said Judge Tinder's stewardship, including his contributions to the rule of law, to improvements in the administration of justice, to the fair and just and effective process of judicial decision-making, along with his mastery of personal disciplines—patience, diligence, kindness, modesty, collegiality which are the very definition of a wise and learned judge—have created a legacy of which he can be exceedingly proud and which will inspire future generations of lawyers and judges who come to know of him and may follow in his footsteps. It has been a great privilege and an enduring pleasure for me to have been his admiring companion over these many years of his remarkable career.

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26. *Id.*

27. Email from David F. Hamilton, Judge, Seventh Circuit Court of Appeals, to Gerald Bepko, Chancellor Emeritus, Indiana University-Purdue University-Indianapolis (Mar. 17, 2016, 12:24 PM) (on file with author).

28. *Id.*

29. *Id.*