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IN MEMORIAM: THE HONORABLE JUDGE PHILLIP S. FIGA

(1951-2008)[1]

When a righteous man dies, he dies only to his own generation. It is like the parable of a man who lost a pearl: wherever the pearl is, it is still a pearl—it is lost only to its owner.[2]

President George W. Bush nominated Phillip S. Figa to the United States District Court for the District of Colorado on June 9, 2003. The nomination "breezed" through the Senate,[3] and confirmation occurred on October 2, 2003. Tragically, Judge Figa's tenure came to a premature end when he succumbed to an aggressive form of brain cancer on January 5, 2008.

After Judge Figa passed away, his court staff found a small post-it note, attached to his reading glasses case, left on his judicial bench. On the post-it note, Judge Figa had written the following:

1. "Be patient!"

2. "Be humane."

3. "Be firm."

4. "Be polite."

5. "Give all fair, due process."

Lawyers and clients hope that all judges before whom they appear will adhere to those five simple principles. That Judge Figa gave himself a constant reminder of them as he sat on the bench shows what he expected of judges when he was a practicing lawyer and his resolve to fulfill those expectations himself.

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Phil Figa was born in 1951 in Chicago, Illinois, the son of Holocaust survivors. His parents, Leon and Sara Figa, immigrated to this

1. The Historical Society of the Tenth Judicial Circuit has commissioned this biographical memorial, which can be found in its entirety on the Events and Projects page of the Society's website, www.10thcircuithistory.org, and which will be republished in whole or in part in an updated print history of the Federal Courts of the Tenth Circuit. The authors of this article are Mal Wheeler, Julie Walker, Ramona Lampley, and Jeremy Moseley of the Denver law firm Wheeler Trigg Kennedy, LLP.

2. Talmud, *Tractate Megillah* 15a.

3. Burt Hubbard, *Phillip Figa Brought Passion to Law*, ROCKY MOUNTAIN NEWS, Jan. 6, 2008, *available at* http://www.rockymountainnews.com/news/2008/jan/06/phillip-figa-brought-passion-to-law/.

country in 1950 after meeting in a displaced persons camp in Berlin. Phil's father had served as a partisan during the war, hiding in the Russian forests and fighting a guerilla war against the Nazis. Phil's mother had been interned in a labor camp. Phil's parents' history had a profound positive impact on his overall view of what was important in life, including his devotion to his family, his faith, his community, and his profession.

Along with his younger brother, Stewart, Phil was raised in Chicago until he moved to Skokie, Illinois, at the age of twelve. He attended Niles East High School, graduating in 1969. One of his major activities during his high school years was to work as a caddy at the Evanston Golf Club. In his senior year he was awarded the Evans Scholarship, a full-tuition college scholarship sponsored by the Western Golf Association for high school students with strong academic records and financial need who have worked at a country club. Later, in response to frequent remarks that he must be an excellent golfer, Phil would chuckle and say, "Playing golf and carrying another person's golf bag are not the same skills by any means." To ensure that the scholarship would remain available for other needy, hard-working students, Phil made financial contributions throughout his life to fund it.

Phil attended Northwestern University, where he met his beloved wife, Candace ("Candy") Cole Figa, during their freshman year "ecology teach-out." After spending the night listening to lectures and folk singers in support of the movement that later resulted in Earth Day, Phil walked Candy home. It was the beginning of a lifelong relationship.

After their sophomore year at Northwestern, Phil and Candy went camping in Colorado and fell in love with the mountains, the wide open spaces, and the outdoor activities they offered. In the summer after their junior year, they returned to Colorado for summer jobs in the Denver/Boulder area.

In 1973, upon graduating from Northwestern, Phil and Candy married and moved to Ithaca, New York, so that Phil could attend Cornell Law School. Candy used her degree in English and secondary education to obtain a job teaching high school English to help put Phil through law school. They lived in the back half of the second floor of a widow's house five blocks from the law school. It was small, and their budget was tight, but they were happy.

While Phil was in law school, he and Candy found their way back to Colorado each summer. For the summer after his first year, Phil approached the law firm of Miller and Gray in Boulder. He volunteered his time at first, which the firm accepted. As the summer progressed and the lawyers saw the quality of his work, however, the firm began paying him. For the summer after his second year, he secured a job at the Den-

ver law firm of Sherman & Howard. That clerkship led to an offer for employment upon his graduation from law school. He accepted.

After Phil graduated from law school in 1976, he and Candy moved to Denver, and he began his law practice at Sherman & Howard. Just as Candy had worked to help finance his law school education, he helped finance hers: she obtained her law degree from the University of Denver School of Law in 1978.

In 1980, Hugh Burns, one of the senior partners at Sherman & Howard, told Phil he was tired of large-firm practice and wanted to open his own firm. Having noticed Phil's strong work ethic, professional manner, and pleasant personality, Hugh asked him to take the leap with him and form the firm of Burns & Figa. Hugh had one condition: they would not add more lawyers. Phil agreed, and the firm opened its doors in May 1980. Soon thereafter, Hugh approached Phil about making an exception to their agreement, urging that Candy be brought in as a member of the firm. Phil agreed, and Candy joined Burns & Figa in 1981.

A few months later, Phil and Candy discovered they were expecting their first child. Benjamin Todd Figa was born on May 10, 1982. Their second and last child, Elizabeth Dawn Figa, was born on March 29, 1984. Candy took time off after each child, returning to practice law on a part-time basis, in addition to her involvement in various government positions including serving on the Greenwood Village City Council from 1993 to 2001.

In 1988, Hugh Burns was diagnosed with multiple sclerosis and had to reduce his practice to a part-time practice. When that untoward development relieved Phil of the agreement not to add more lawyers, he hired two associates, Geoff Anderson and Dana Eismeier, to help him. They began looking for new space for the firm, and in the process met with Phil's future partner, J. Kemper ("Kemp") Will. In 1991, Phil and Kemp formed Burns, Figa & Will, P.C. When they began, the firm had eight lawyers. In January 2009, the firm continues to thrive with twenty-eight lawyers, including both Kemp Will and Candy Figa as senior partners.

The firm's practice at first focused mostly on environmental and commercial litigation. Phil and Kemp shared a common devotion to the utmost professionalism in the practice of law, both in how they trained the more junior lawyers at the firm and in dealings with lawyers outside their own firm. While Hugh Burns was alive, Phil periodically arranged field trips to Hugh's home to introduce new associates and provide them with the opportunity to hear the same wisdom that had meant so much to Phil as a young lawyer. Phil always kept a framed photo of Hugh in a prominent place on his office wall at the firm, and later in his courthouse chambers.

As the firm grew, so did Phil's reputation in the Colorado legal community as someone passionate about the law and the profession. He

served on the Colorado Bar Association Ethics Committee from 1976 to 1993, including serving as chairman from 1984 to 1985. He developed a strong practice in legal ethics and attorney conduct, often representing attorneys before the disciplinary board. Clients also often retained him as an expert witness to provide his opinion on various issues related to the practice of law, including disqualification, conflicts, and reasonableness of attorneys' fees. He eventually developed a reputation as a national expert on ethics and professional responsibility.

Phil was extremely outgoing and participated in a wide variety of professional activities. In addition to serving on the Colorado Bar Association's Ethics Committee, he served as president of the Colorado Bar Association from 1995 to 1996, on the Civil Justice Reform Act Advisory Committee from 1994 to 1997, and on the Colorado Commission on Judicial Discipline. He taught at the University of Denver College of Law and the National Institute of Trial Advocacy. Prior to his appointment to the bench, he was one of the founding members of the Faculty of Federal Advocates. He also is credited with the development of the Colorado Bar Association's very successful and still instrumental Pro Bono Mentoring Program.

Phil described his personal philosophy of public service in an article he wrote as president of the Colorado Bar Association in 1995. He explained the motivation of an attorney in the public sector as follows:

> Money is not how government lawyers keep score of professional success. The currency of public sector practice is professional excellence, client service, justice achieved and recognition for hard work ably performed.[4]

In addition to his passion for the law and his law practice, Phil felt strongly about giving back to his community. His longtime friend and colleague, Wiley Y. Daniel, who became Chief Judge of the United States District Court for the District of Colorado in 2008, explained, "One of Judge Figa's greatest gifts was his belief in unselfish kindness to others without the need for recognition."[5] Phil was actively involved with the Mountain States Region of the Anti-Defamation League ("ADL"), including serving as chairman during the years 1996 to 1998. Bradley Levin, a close friend who worked with Phil on behalf of the ADL, recalled that Phil always brought the right balance of humor and graciousness to each matter he oversaw as chairman, even those that were controversial or widely unpopular. Phil was known for using his eloquence and engaging demeanor to encourage and inspire others to fight against prejudice and bigotry.

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4. Phillip S. Figa, *Colorado Bar Association President's Message to Members: Government Lawyers and the Bar Association*, 24 COLORADO LAWYER 2687, 2688 (1995).

5. Interview with Chief Judge Wiley Y. Daniel, Colorado District Court (Jan. 9, 2009).

Phil also volunteered his time to the Rose Medical Center Board of Trustees from 1987 to 1995, at which time the hospital changed ownership.[6] Thereafter, Phil offered his time to the Rose Community Foundation, one of the largest charitable foundations in Colorado, including serving as trustee from 2002 to 2003.[7] While serving with the Rose Community Foundation, Phil chaired the Jewish Life Committee, which was devoted to supporting efforts to creating and sustaining a vibrant Jewish community. According to Sheila Bugdanowitz, president and CEO of the foundation, Phil "saw this work as an extension of his work at the Anti-Defamation League, because providing equal access was important." His colleagues who operated the foundation said that he "pushed for more transparency in the foundation" and that he insisted the foundation take particular courses of action "because it was the right thing to do."

In 1994, Phil instituted a sabbatical policy for partners at the firm, and he was the first one to take advantage of it. During his sabbatical, he traveled with Candy and their children, then ages 10 and 12, to Israel and France for the first couple of weeks and then to Hawaii for several weeks. He returned a week before the rest of his family to teach at the National Institute for Trial Advocacy. A few years after the sabbatical program had been in effect, Phil commented about it, "I think you come back refreshed, energized to do whatever your priority is—and it may not be the same as before. It gives you the opportunity to see that law isn't the be-all and end-all of existence. No one has had any regrets."

After twenty-five years of law practice, Phil told some of his colleagues that, although personally and professionally satisfied with his career as a lawyer, he wanted a new challenge. He had served his clients and his profession well, and had been honored in many ways as a result; for example, he had been elected to the International Society of Barristers (membership limited to "600 outstanding trial lawyers dedicated to excellence and integrity in advocacy"), the American Bar Foundation (membership limited to 1/3 of 1% of each state's bar), and the Colorado Bar Foundation.[8] He had long thought he would eventually like to be a judge. He saw it as the perfect opportunity to combine his love for the law and his love for public service. To those who knew him well, it was the perfect fit.

In 2003, Phil Figa was one of five names submitted to the White House by Colorado Senators Ben Nighthorse Campbell and Wayne Allard for appointment as a judge in the United States District Court for the

6. Interview with Sheila Bugdanowitz (Feb. 5, 2009).

7. Rose Community Foundation: 2007 Annual Report (In Memoriam tribute to Judge Figa noting that he served as trustee in 2002 & 2003).

8. U.S. Rep. Diana Degette, Tribute to Phillip S. Figa, United States District Court Judge, 154 CONG. REC. E25-01, 2008 WL 150171 (Jan. 16, 2008) [hereinafter Tribute].

District of Colorado. His interview in the West Wing of the White House was scheduled for President's Day—unfortunately, the same day a 100-year snowstorm struck the East Coast. Upon learning that his flight to Washington, D.C., from Denver had been cancelled, Phil took the flight he was told would get him closest—a flight to LaGuardia Airport in New York. He then took an Amtrak train to D.C. and a van to his hotel from the train station. On the following morning, the White House scheduler was shocked to see that Phil had managed to appear on time; no one else had. Phil's interview was postponed for a day.

During the confirmation process, Phil's friends, family, and associates praised him as "one who brought passion and integrity to the field of law," "a humble and gracious man who genuinely cared about helping other people," "even handed," and "a great jurist."[9] Sheila Bugdanowitz, former colleague to Judge Figa on the Rose Community Foundation, recalls that during the confirmation process,

> I was questioned, and whoever was doing the questioning just blurted out, "There must be something about this man that people don't like." But there was nothing about him that people didn't like, and that was that.

At Phil's investiture ceremony, more than 1,000 well-wishers crowded into the federal courthouse to pay homage to their friend, colleague, and mentor.[10] "He was like a kid in a candy store," offering personal tours of his new judicial chambers and grinning as he showed off the framed letters and congratulations of his confirmation. He was ecstatic, his happiness exceeded only by the pride of his immigrant parents, who kept asking, "Can you believe our son is a federal judge?"

Although Judge Figa's tenure on the bench was short, he took to the role with the same passion and professionalism that he applied to everything else. Senior United States District Judge John Kane, Jr. remarked after Judge Figa's death:

> He went with the law. It wasn't a question of whether he thought it was a good law or not, and that was the devotion he had—that the law itself governs. He was a fine judge, and the public has been deprived a great many years of his service.[11]

On the bench, Judge Figa's continued commitment to the highest standards of professionalism in the practice of law was apparent. In one matter involving an attorney's lien of less than five thousand dollars, Judge Figa held a hearing at which he required the attorney seeking

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9. *Id.*

10. Hubbard, *supra* note 3.

11. Manny Gonzales, *Judge Figa Mourned as Fair Role Model*, DENVER POST, Jan. 7, 2008, *available at* http://www.denverpost.com/search/ci_7902809.

payment to submit detailed invoices and testimony.[12] Judge Figa reduced the amount of the lien, even though the plaintiff had signed a retainer agreement that did not require expenses to be reasonable. Judge Figa instead cited the Colorado Rules of Professional Conduct, which required attorneys' fees to be reasonable. Judge Figa concluded, "[N]o attorney's lien should be permitted where the amount of fee or expense reimbursement sought is not reasonable in light of the circumstances under which the services were rendered."[13]

In another matter, Judge Figa considered whether an attorney should be disqualified from representing his client based on the client's social contacts with the opposing counsel's paralegal.[14] The defendant argued that plaintiff's counsel should have acted to "undo the taint" that the relationship placed on his client's case.[15] Relying on an ethics opinion issued by the Colorado Bar Association Ethics Committee, Judge Figa pointed out that the defendant's counsel arguably could have been subject to disqualification under this same rationale because he was responsible for supervising his assistants to prevent any violations of the ethical standards.[16] Thus, Judge Figa found that defense counsel's position lacked merit and appeared more likely to be an effort to argue disqualification only as a litigation tactic. Judge Figa declined to disqualify the plaintiff's counsel, finding that disqualification would "severely impinge" on the plaintiff's right to retain an attorney of her choice.[17]

Judge Figa was always mindful of the sacrifices that jurors were required to make for jury duty, and he treated each juror with the utmost respect. Michel Walter, one his law clerks, recounted that Judge Figa was particularly stern with attorneys who were not respectful of the jury's time.[18] He strove to make each trial as efficient as possible to demonstrate to the jurors that he appreciated their service.

Judge Figa's opinions reflected the same recognition of the importance of juror service. In one decision involving a train accident in Nebraska, Judge Figa granted the defendant's motion to transfer because, among other reasons, he found that jury duty should not be imposed on the citizens of Colorado for an accident that had not occurred in this state.[19] In another decision, he granted a defendant's motion to transfer the trial venue, over the plaintiff's expression of concern for regional bias, because the plaintiff could not demonstrate "why members of that

12. Apa v. Qwest Corp., 402 F. Supp. 2d 1247 (D. Colo. 2005).
13. *Id.*
14. Carbajal v. Am. Fam. Life Ins. Co., No. 06-608, 2006 WL 2988955 (D. Colo. Oct. 18, 2006).
15. *Id.*
16. *Id.* at *2.
17. *Id.*
18. Interview by Michel C. Walter with Phillip S. Figa, U.S. Dist. Judge (Nov. 12, 2008).
19. Bailey v. Union Pac. R.R. Co., 364 F. Supp. 2d 1227, 1233 (D. Colo. 2005).

jury pool would tolerate higher health services prices and fewer provider choices for themselves and their neighbors as a result of the alleged antitrust violations."[20]

He also paid careful attention to the appearance of judicial propriety, even when it meant giving up charitable work near and dear to his heart. After his appointment to the federal bench, Judge Figa stepped down from his position as trustee of the Rose Community Foundation. Although the foundation asked him to return as a voluntary trustee in 2006, he declined, believing that as a public servant he should devote his time to his work in chambers and avoid any appearance of any conflict of interest. He also was very mindful of the caseloads of other judges and did not want to have to recuse himself because of community affiliations. After Phil's death, Sheila Bugdanowitz remarked, "Phil brought us a sense of humor, and a joy, that it was even possible to do things, and a unique sense of integrity about what we did and how we did it."

During his brief tenure on the bench, Judge Figa authored 240 written opinions, 42 of which were published. Eight of his published decisions addressed civil rights issues or issues of constitutional law; seven addressed areas of employment law; five focused on the interpretation of contracts; and the majority of the remaining decisions addressed procedural matters intended to prepare the case for trial. His 198 unpublished opinions addressed a similarly broad array of legal issues: 28 addressed civil rights or constitutional law; 38 addressed employment law; 26 addressed contract interpretation; and another 52 focused on issues of federal procedure. Of the 240 written opinions, 24 were appealed. Of these, twelve were affirmed; four were affirmed through a denial of a certificate of appealability; three were affirmed in part; four were reversed; and one was dismissed for lack of appellate jurisdiction.

Judge Figa handled complex First Amendment cases with methodological tenacity. In *Mason v. Wolf* he had to adjudicate the First Amendment rights of a pro-life/anti-abortion group.[21] The plaintiffs asserted 28 U.S.C. § 1983 claims against the defendants, officials at the Auraria campus of the Auraria Higher Education Center, based on the defendants' refusal to permit the plaintiffs to demonstrate at a specific location on campus. Judge Figa undertook a detailed analysis of the applicable First Amendment precedents and made a personal visit to the site. He concluded that the site offered by the defendants provided an ample alternative channel of communication where "60 to 70 paces are all that is required to walk from the Plaza Building to the flagpole area," and "[a]ny person in the flagpole area could easily observe any demon-

20. Four Corners Nephrology Assocs., P.C. v. Mercy Med. Ctr. of Durango, 464 F. Supp. 2d 1095, 1099 (D. Colo. 2006).

21. 356 F. Supp. 2d 1147 (2005).

stration occurring on the steps of the Plaza Building."[22] His comments appear to reflect his own personal observations made during his site visit. Nonetheless, he ruled for the plaintiffs because he found that the defendants' regulation was not narrowly tailored to serve a significant government interest. Holding that the plaintiffs' First Amendment rights had been violated by the school's unwritten policy, he awarded them nominal damages.[23]

One of the decisions Judge Figa liked to talk about arose from his first encounter with patent law. In *Barreca v. South Beach Beverage Co., Inc.*,[24] Judge Figa entered an order following a *Markman* hearing[25] in which he was called upon to construe the claims of the plaintiff's patent for an energy-related chewing gum. In a lengthy order, Judge Figa parsed the patent claims and set forth the explicit limits of the patent. As is common with *Markman* decisions, the losing party promptly took an interlocutory appeal to the Untied States Court of Appeals for the Federal Circuit, the federal appellate court that specializes in patent and trademark appeals.

Judge Figa noted to his chambers that, at a Federal Judicial Center training class, he had been provided with statistics regarding appeals of patent cases, and the numbers reflected that more than 50 percent of all district court patent decisions were reversed in the Federal Circuit. But in an order entered on August 17, 2005, in *Barreca v. South Beach Beverage Co., Inc.*,[26] the Federal Circuit affirmed Judge Figa's *Markman* order with just a one-sentence opinion. Although a bit disappointed that the Federal Circuit had not elaborated, Judge Figa said he just figured that there was nothing to add to what he had written. His chambers personnel were pleased with the result for another reason: Judge Figa shared with them the bottle of high-quality champagne he had received from a friend, at the time of his investiture, with the condition that it not be opened until he was affirmed by a higher court in a significant case.

The decision that garnered Judge Figa perhaps the most public attention of his judicial tenure was in a *qui tam* action brought by Bobby Maxwell, an auditor for the United States Department of the Interior, against Kerr McGee Oil & Gas Corp. regarding underreported royalties.[27] Maxwell initially had reported his findings to senior department lawyers, and he claimed that he had been instructed to "back off." He later filed suit as a private citizen.

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22. *Id.* at 1161.
23. *Id.* at 1161-62.
24. 322 F. Supp. 2d 1186 (D. Colo. 2004).
25. A *Markman* hearing is a hearing in which the court construes the claims stated in a patent. *See* Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996).
26. 141 Fed. Appx. 912 (Fed. Cir. 2005),
27. 486 F. Supp. 2d 1217, 1220 (D. Colo. 2007).

Judge Figa initially denied Kerr McGee's motion for lack of subject matter jurisdiction, finding that the relator had satisfied the "original source" requirement and relying on the distinction drawn in First Amendment analysis between a government employee's speech within the scope of his official duties and speech as a private citizen. Judge Figa found that "Mr. Maxwell was acting as a citizen in voluntarily telling the government, also his employer, that he intended to use the information he obtained to file this *qui tam* suit."[28] At trial, the jury returned a verdict of $7,555,886.28, representing the amount of underpaid royalties.[29]

Judge Figa overturned the verdict, citing arguments made by Kerr McGee before and during the trial, and found that Mr. Maxwell could not meet the original-source requirement because he provided confidential information to a state auditor, which he ruled constituted a public disclosure that barred a *qui tam* action. The *New York Times* reported that many big oil companies had warned that the case would "open the floodgates" to litigation if Maxwell was allowed to proceed.[30]

Judge Figa was a generous man who expected hard work from others, but gave even more of himself in return.[31] His goal was to provide efficient justice to the parties who appeared before him. His former law clerk Michel Walter recalled that he "wanted to see justice done," and "it was very important to him to keep his docket moving efficiently."[32]

Judge Figa expected the attorneys who appeared before him to be prepared, because he did not want to waste anyone's time or resources by making the case last longer than it should. To those who appeared before him, Judge Figa was always firm, but polite.[33] He did not allow his many friendships built throughout his years of practice, particularly in representing attorneys, to influence his decisions.[34]

Judge Figa received widespread recognition as a jurist during his few years on the bench. The Colorado Supreme Court honored him for "outstanding leadership of the Coalition for the Independence of the Colorado Judiciary." In January 2006 he was named one of the Leading

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28. *Id.*

29. 486 F. Supp. 2d at 1222.

30. Edmund L. Andrews, *Verdict Backing Oil-Royalty Whistle-blower Is Overturned*, N.Y. TIMES, Apr. 3, 2007, *available at* http://www.nytimes.com/2007/04/03/business/03royalty.html?_r=1&scp=2&sq=figa&st=cse. On appeal, the Tenth Circuit reversed Judge Figa's post-trial ruling based on its finding that no public disclosure occurred and remanded the case for further proceedings. *United States ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp.*, 540 F.3d 1180, 1186 (10th Cir. 2008).

31. Interview with Michel C. Walter (Nov. 12, 2008); Interview with Judge Richman (Dec. 5, 2008).

32. Interview with Michel C. Walter, former law clerk to Judge Figa (Nov. 12, 2008).

33. Interview with Bradley Levin (Jan. 7, 2009).

34. *Id.*

Judges in America by *The Lawdragon*.[35] As those who knew him best could attest, Judge Figa's time on the bench reflected those principles set out on the post-it note found at his bench.

Judge Figa's sense of honor in the judicial office was nowhere more evident than when he performed the naturalization oath ceremony for making immigrants citizens of the United States. According to Judge David Richman, who was a career clerk and former law partner of Judge Figa's before becoming a judge on the Colorado Court of Appeals, these ceremonies were one of Judge Figa's favorite aspects of his position, and he took pride in learning the personal stories for each citizenship candidate.[36] Judge Figa's heritage as the son of immigrant survivors of the Holocaust became a cornerstone at these proceedings, as he sought to make each applicant aware of the opportunities and obligations inherent in American citizenship. At each ceremony he would tell the citizenship applicants a bit about his own background and that his own parents were naturalized citizens. According to Judge Figa's assistant, Lee Ross, he would instruct the applicants with the same words of wisdom given to his father after becoming a citizen, "Always pay your parking tickets."[37] The joy with which Judge Figa regarded the ceremony is apparent in the oath that he himself crafted:

> Do you swear, affirm, or avow, as your principles allow, that on this day you freely choose to become a citizen of the United States of America, if necessary giving up your citizenship in, but not memories of or a sense of identity with, the land of your birth; will you cherish the freedoms which the Constitution and laws of the United States guarantee to all citizens, at the same time accepting the duties and responsibilities which the Constitution and law require of all of us; will you, to the best of your individual ability, do that which you can to support and defend your country in times of crisis and national emergency, bearing arms if called upon to do so; and, most importantly, identify yourself first and foremost as a United States citizen and treat all others with respect, fairness and dignity consistent with the democratic principles of this Republic for which so many died defending, including many new to this country? If, with a clear conscience and a heart filled with joy, you now are prepared to accept both the blessings and burdens of citizenship in the United States of America, please say "I do."[38]

Phil was also active outside the courtroom as an avid skier and bicyclist. Candy often said he had no fear when it came to skiing, frequently treating out-of-town guests to expert black runs. "Phil was al-

35. *See* Tribute, *supra* note 8.
36. Interview with Judge Richman (Dec. 5, 2008).
37. E-mail from Lee Ross to author (Dec. 18, 2008).
38. Judge Figa, Additional Naturalization Oath, (Dec. 18, 2008) (provided by Lee Ross, former assistant to Judge Figa).

ways leading them to [difficult] places, like taking them down something called Tornado Alley. In fact, one of our friends from Chicago brought him a button to wear that said, 'Trust me.'"

He also liked to bike over mountain passes. One of Phil's long-time friends was quoted as saying, "When we were up in the mountains together, I'd say 'I'm going for a walk,' and he'd say, 'I'm going to ride over Vail Pass.'"

A persistent team player, Judge Figa loved to organize chambers outings for the court staff. Be the outings white-water rafting on the Arkansas River, climbing 14,000-foot mountains, or running as a relay team in the Denver Marathon, the judge was always eager to include everybody, participate himself, and include his family in the adventure.

From the moment he was appointed to the bench, Judge Figa loved being a judge. Chief Judge Wiley Y. Daniel recalled, "He had a passion for being a judge and was a thoughtful, clear legal thinker."[39]

When describing the position of judge, he often told others the description of the job that the late Judge Sherman Finesilver had given him.[40] Judge Finesilver told him that being a federal judge is like shoveling coal into a furnace. You get to the job in the morning and there's a big pile of coal. You shovel the coal all day long into the furnace. You go home. You come back the next morning, and there's another pile of coal waiting to be shoveled.

That description may sound like a complaint, but for Judge Figa shoveling the coal was a job he loved to perform. He loved arriving every morning, moving the cases along, getting the cases to trial, and getting results for the litigants. That is what he strove to do. He often said he would like to do that job until he reached the age of 99, like Judge Wesley Brown of the District of Kansas.

Unfortunately, Judge Figa's shovel broke all too soon. He was diagnosed with an aggressive brain tumor in March 2007, at the young age of fifty-five, after having served only a few years on the bench. On January 5, 2008, he lost his short battle with cancer.

On January 16, 2008, Congresswoman Diana Degette paid tribute to Judge Figa in the United States Congress. She recounted his numerous accomplishments and his praises from family and friends, and lamented:

> Judge Figa lived a life that is rich in consequence, and our country is a better place because of his labors. Truly, we are all diminished by the all too early passing of this remarkable gentleman . . . ."[41]

39. Interview with Chief Judge Wiley Y. Daniel (Jan. 9, 2009).
40. Judge Richman, Eulogy for Judge Figa (Jan. 9, 2008).
41. Tribute, *supra* note 8.

Shortly thereafter, on February 4th, 2008, the Anti-Defamation League presented Judge Figa with the Distinguished Community Service Award "for his commitment to human rights and dignity and his dedicated service to his community, state and nation."[42] The Colorado Bar Ethics Committee recognized Judge Figa with the Don W. Sears Ethics Award, and the Colorado Judicial Institute also honored him posthumously.

42. *Id.*