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# THE HONORABLE JOHN P. MOORE, UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

DORIS G. KAPLAN\*

In its innocence, the “P” interposed between John and Moore offers no particular insight into the bearer’s identity. Unmasked, however, the “P” stands for Porfilio, the essential link to John Moore’s heritage, the essence of his character, and his love of good food and music. More importantly, it explains his otherwise cryptic musing that if he hadn’t been a judge, he would have sung opera at the Met.

While one can only speculate about his operative career, concrete and enduring accomplishments mark his tenure with the federal judiciary. To the Tenth Circuit Court of Appeals’ bench, he brings experience from private practice, state government, the United States Bankruptcy Court and the United States District Court. As if this were not sufficient, his presence is an amalgam of all those straight paths and turns in the process of his personal growth.

Born in Denver, Colorado, on October 14, 1934, John Carbone Porfilio was raised by his mother, Caroline, after his father, Edward, a pharmacist, died suddenly before John’s sixth birthday. In 1948, his mother married Robert M. Moore, who adopted John and ostensibly hybridized his Italian heritage with that of the fair nation of Ireland.

Moore graduated from the Colorado Military Academy in 1952 and attended Stanford University, majoring in chemistry in anticipation of a career in medicine. In 1954, however, after transferring to the University of Denver, where he graduated with a Bachelor of Arts degree in chemistry with minors in physics and zoology, two events changed his direction.

Dr. Zeiner, a member of the Zoology Department and his advisor, summoned Moore during the Spring quarter of his senior year and forthrightly counseled his student that he was not “dedicated enough” to finish medical school and should step aside for another who was. As Judge Moore recalls, “I was blessed with an advisor who was smarter than I and who knew me better than I knew myself.”

The second event, according to Judge Moore, was enrolling in Dr. Otto Freitag’s course, The Constitution and American Government. Intrigued by both the subject matter and the professor, Moore recognized his career plans had been permanently altered. To this day, Judge Moore credits these two teachers with redirecting his course from one for which he was purportedly unsuited to one destined to be the perfect fit.

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Moore entered the University of Denver Law School in 1956, having not even taken the LSAT until after he matriculated. Graduating from D.U. in 1959, where law school was "one of the most enjoyable experiences of my life," Moore began practicing law with his uncle, Arthur S.W. Carbone, and Henry Walsmith, both of whom were D.U. graduates. He learned quickly that the practice of law was whatever walked in the door. Their general practice, emphasizing wills and estates, real property, and agricultural and commercial law, also brought him into the justice courts for collections work, "great courtroom training, but a job for which my nature betrayed me." His reluctance to force debtors into payments, he recalls, cost the firm a substantial client and resulted in his assignment to other areas of the practice.

In October 1962, Attorney General Duke Dunbar hired Moore to fill a temporary position in the legislative reference office where he drafted legislation at the request of members of the General Assembly. Soon after, Attorney General Dunbar, concerned with the influx of criminal appeals, offered Moore a permanent position he created to represent the State in these criminal appeals. For the next six years, Assistant Attorney General Moore appeared before the Colorado and federal appellate courts and the United States Supreme Court. This considerable exposure to appellate practice confirmed his law school interest in one day becoming an appellate jurist, Judge Moore acknowledges.

These responsibilities were extended further when Duke Dunbar appointed Moore Deputy Attorney General in 1968. In that capacity, he represented the State on diverse matters before courts throughout Colorado. When Attorney General Dunbar died in 1972, Governor John Love appointed Moore to fill out the term. Defeated in his first and only political race to retain the office of Attorney General, Judge Moore found himself "looking at an uncertain future which, fortunately for me, turned out far better than I expected."

As he explains, in the early 1970's Colorado's bankruptcy court faced one of its periodical spurts in the growth of its case load. "Unbeknown to me and others," Judge Moore recalled, "Judge Arraj, who as Chief Judge was responsible for the appointment of bankruptcy judges, had squirreled away a position which he did not fill for a number of years. The serendipity of need and availability worked to my advantage." On January 15, 1975, the late Chief Judge Arraj administered the oath, and United States Bankruptcy Judge Moore began a career on the bankruptcy court, often guided by hectic on-the-job training, and always, he would say, filled with many lessons in human nature. "I learned more about life as well as the craft of judging as a bankruptcy judge than at any other time in my professional career."

This experience became the foundation for Judge Moore's subsequent appointment to the United States District Court for the District of Colorado on July 2, 1982, where the cases and questions before him instantly expanded to fill the entire plate of federal jurisdiction. On the district bench, Judge Moore was respected for conducting proceedings ef-

ficiently and fairly, courteous to attorneys appearing in his courtroom, but always direct with those in need of guidance.

His many decisions span a range of issues. In *Helminski v. Supreme Court of Colorado*,<sup>1</sup> Judge Moore struck down Colorado's residency requirement for admission to the bar on the ground it improperly discriminated against nonresidents in violation of the privileges and immunities clause of the United States Constitution. When plaintiffs James Brady, Timothy McCarthy, and Thomas Delahanty, who were shot and seriously injured in the attempted assassination of President Reagan, sued John Hinckley's psychiatrist in the District of Colorado, Judge Moore had to decide whether Colorado law permits third parties to sue a psychiatrist based on a legal duty arising between the patient and therapist.<sup>2</sup> Judge Moore reluctantly concluded, "[u]nless a patient makes specific threats, the possibility that he may inflict injury on another is vague, speculative, and a matter of conjecture."<sup>3</sup> He observed, "[Plaintiffs'] plight as innocent bystanders to a bizarre and sensational assassination attempt is tragic and evokes great sympathy. Nevertheless, the question before the Court is whether Dr. Hopper can be subjected to liability as a matter of law for the injuries inflicted upon plaintiffs by Hinckley."<sup>4</sup>

In *Ayala v. Joy Manufacturing Co.*,<sup>5</sup> Judge Moore held the heirs and representatives of fifteen miners killed in a mine accident near Redstone, Colorado, could properly assert a claim for breach of warranty under the Colorado wrongful death statute against the manufacturers of mining equipment. Later, he concluded in *Reighley v. International Playtex, Inc.*<sup>6</sup> that the children of a woman who died of toxic shock syndrome could maintain an independent claim for loss of parental consortium and companionship under Colorado law.

Two and a half years after joining the district court, President Reagan nominated Judge Moore to the Tenth Circuit Court of Appeals where he has served since his investiture on May 14, 1985. In stark contrast to his daily interaction with litigants and their litigators in the trial court, life on the appellate bench is marked by long hours of record and case study, careful attention to written opinions destined to fill volumes of the Federal Reporter for years to come, and the camaraderie of his colleagues on the Tenth Circuit. In each area, Judge Moore brings his daunting intelligence and judicial experience, his sense of fairness and belief in the adversarial system, his insight into human behavior, and his grand sense of humor. While he may quip, "I may not be right but I'm never in doubt," and "experience has taught me when not to make the same mistake twice," on the bench, he is steadfastly motivated by his deep sense of commitment to the public he serves. "I don't write for the law reviews," he will say,

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1. 603 F. Supp. 401 (D. Colo. 1985).
  2. *Brady v. Hopper*, 570 F. Supp. 1333 (D. Colo. 1983).
  3. *Id.* at 1338.
  4. *Id.* at 1339.
  5. 580 F. Supp. 521 (D. Colo. 1984).
  6. 604 F. Supp. 1078 (D. Colo. 1985).

convinced that direct, readable legal prose that resolves the problems before him best assists the "real people" whose lives are affected on the other side of the decision.

To date, Westlaw lists 381 decisions, published and unpublished, which Judge Moore has authored on the Tenth Circuit Court of Appeals. His decisions in criminal appeals reflect his concern that the rights of criminal defendants are assured under the Constitution. For example, in *United States v. Padilla*,<sup>7</sup> in response to defendant's contention he was improperly permitted to proceed *pro se*, Judge Moore underscored the court should conduct a meaningful inquiry to assure a criminal defendant has knowingly and intelligently waived his Sixth Amendment right to counsel.

In *Dowell v. Board of Education of Oklahoma City Public Schools*,<sup>8</sup> Judge Moore revisited one of the central issues in desegregation litigation, what a school board must show in order to dissolve the injunctive decree governing a school desegregation plan. Although the Supreme Court reversed that decision, applying newly articulated principles of injunctive remedies,<sup>9</sup> Judge Moore believes his analysis under settled injunctive principles properly preserved the rights of the plaintiffs and held the defendant school board to its duty under the Constitution. In *Melton v. Oklahoma City*,<sup>10</sup> Judge Moore held when the allegedly stigmatizing statements are true, a public employee does not establish a violation of his liberty interest. He wrote, "In structuring the parameters of constitutional guarantees, we must be mindful that our zeal for the protection of individual right does not lead us to absurd conclusions."<sup>11</sup>

In addition to his service on the bench, Judge Moore participates on several national committees involved with the federal judiciary. For example, as a member of the Automation and Technology Committee of the Judicial Conference of the United States, he has overseen the many technological advances implemented in the federal courts. He also served on the Chief Justice's Ad Hoc Committee on Cameras in the Courtroom, which created a pilot program for allowing news cameras into the federal courts.

Judge Moore and his wife, Terri, currently live in Evergreen, drawn not only by their love of the mountains but also the golf course, which increasingly fills their summer leisure. By his admission, they are avid, if not able golfers. Together, they enjoy four children, Edward, Joseph, and Jeanne Moore, and Katrina Smith. His mother, Mrs. Caroline Moore, who attended each of Judge Moore's investitures to the federal bench, remains his most loyal fan. At home, few recipes have escaped his creative flair in the kitchen. There he enjoys relaxing while concocting Italian dishes inspired by childhood memories of his grandmothers' cooking.

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7. 819 F.2d 952 (10th Cir. 1987).

8. 890 F.2d 1483 (10th Cir. 1989),

9. 498 U.S. 237 (1991).

10. 928 F.2d 920 (10th Cir. 1991).

11. *Id.* at 932.

Except for his culinary virtuosity, Judge Moore insists he manages his judicial duties and the many difficult decisions he faces by not taking himself too seriously. In truth, he has secured a sure place for himself in the federal judiciary through his commitment to public service and devotion to the law. His jurisprudence shall continue to mature, reflecting his solid legal scholarship and broad understanding of the human experience.

