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## *A Tribute To The Honorable Charles C. Lovell*

The Honorable Beth Baker

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## A TRIBUTE TO THE HONORABLE CHARLES C. LOVELL

**Justice Beth Baker\***

In April 1985, I was approaching graduation from the University of Montana Law School with no job lined up when the President appointed a new judge to the federal bench in Montana. It was a brand-new position for the District of Montana,<sup>1</sup> and Professor Martin Burke told me the Judge was looking for a law clerk. I got a phone number and dialed it. After many rings, the call was picked up, and then a long pause. “Hello?,” said a man’s voice slowly. It was the Judge himself! Scrambling to gain composure, I explained who I was, told him that Professor Burke had recommended me, and inquired whether the Judge was looking for a clerk. We arranged for an interview, he offered me the job, and I served as his clerk for the next four years.

Charles C. Lovell was, proudly, a product of Montana public schools. After graduating from high school in Missoula, he received a business administration degree in 1952 from the University of Montana. Following several years of active duty with the United States Air Force, he returned to earn a law degree from the University of Montana Law School in 1959.<sup>2</sup> He entered private practice and was with the Great Falls, Montana, law firm of Church, Harris, Johnson & Williams until his appointment to the bench. During that time, he served for several years as Chief Counsel to the Montana Attorney General. As a lawyer, Judge Lovell represented individuals, corporations, and—at one time or another—all three branches of government.<sup>3</sup>

When he assumed the bench, Judge Lovell was assigned a steady criminal docket and hundreds of civil cases, part of the District of Montana’s

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\* The Author is a 1985 graduate of the University of Montana School of Law. She served four years as a law clerk for the Hon. Charles C. Lovell and over eleven years as an Assistant Attorney General for the State of Montana. She spent the next ten years in the private practice of law. She was elected to the Montana Supreme Court in November 2010 and was reelected in November 2018. The Author thanks the lawyers and former Lovell law clerks who contributed to this article.

1. On July 10, 1984, the third judgeship for the District of Montana was authorized by 98 Stat. 333, marking the first new judgeship for this District since 1922. See *District of Montana History*, U.S. DISTRICT COURT: DISTRICT OF MONTANA, <https://perma.cc/X8MB-B4ZW> (last visited Feb. 27, 2022).

2. See *Hon. Charles C. Lovell Chambers*, U.S. DISTRICT COURT: DISTRICT OF MONTANA, <https://perma.cc/RYL4-JVBQ> (last visited Feb. 27, 2022).

3. In 1969, for example, Judge Lovell represented the Montana Supreme Court in a challenge to the “diploma privilege” for admission of University of Montana Law School graduates to the Bar. *Goetz v. Harrison*, 462 P.2d 891 (Mont. 1969). In another noteworthy example, Judge Lovell represented the Governor in defending a challenge to voters’ approval of the 1972 Montana Constitution. The Supreme Court of Montana agreed with his arguments and upheld the ratification, securing the new Constitution as the fundamental law of Montana. *State ex rel. Cashmore v. Anderson*, 500 P.2d 921 (Mont. 1972).

sizeable civil caseload.<sup>4</sup> Assigned to handle cases from the Helena, Missoula, and Butte Divisions, he was driven to return the State's federal courts to the timely resolution of legal disputes but also careful to ensure his decisions were thorough, well-reasoned, and right by the law. His conduct on the bench and his firm but measured administration of the court and its caseload taught his law clerks and the lawyers who practiced before him not only about trial practice, rules of procedure, and evidence, but about the lawyers we should strive to become. Among the most important lessons: that lawyers are officers of the court and must endeavor to keep the court from error; that all lawyers, litigants, and other participants in the court deserve to be treated with dignity and respect; and that lawyers should be held to the highest standards of professionalism and to the expectation that they come to court prepared in every way. And those who have the great privilege to serve on the bench must use measured judgment, model the professionalism we expect to see in our courtrooms, and always act beyond ethical reproach in our personal and professional lives.

Judge Lovell's former law clerks describe their time with him as formative in their professional lives and among the highlights of their careers. Former clerk Jeremiah (Jay) Weiner described as one of his memorable moments receiving word that the Ninth Circuit Court of Appeals had largely affirmed Judge Lovell in a complicated appeal. The case began with a spate of evidentiary disputes over hundreds of proposed exhibits, proceeded through dueling sets of proposed jury instructions, and wrapped up with a contentious and drawn-out trial the Judge conducted over several weeks and a fee-shifting request from the prevailing party.<sup>5</sup> Although the Ninth Circuit remanded on a narrow issue regarding punitive damages in a trade secrets case, the panel rejected all of the defendant's arguments on appeal.<sup>6</sup> Weiner was much relieved, explaining that the Judge did not take it lightly on the infrequent occasions when the Circuit reversed him: Judge Lovell "worked hard to get the law right in his decisions" in the first place. Weiner's recollection also betrays the Judge's dry sense of humor. He recalls the Judge once describing an appellate court this way: "The appellate judge sits high on the hill while the battle rages below. At the end of the day, as the smoke and dust begin to clear, he rides down and shoots the wounded."

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4. Records from the District of Montana Clerk of Court show that Judge Lovell was assigned 267 civil cases during the first eight months after he took office. The Judge received an additional 352 civil cases in 1986, 358 in 1987, and 314 in 1988. Clerk of Court Tyler Gilman says, "Relatively speaking, this is a huge amount of work for an Article III chambers. For comparison, in recent years we have averaged 217 civil filings per Article III judge per year."

5. *Yeti By Molly, Ltd. v. Decker Outdoor Corp.*, 259 F.3d 1101 (9th Cir. 2001).

6. *Id.* at 1111–12.

True to Weiner's description, I recall the Judge's great satisfaction in one case when the United States Supreme Court overturned the Ninth Circuit's ruling that had reversed his interpretation of an important constitutional issue.<sup>7</sup> Though I don't see appellate judges in the same circumspetive light, I have no doubt that my experience in his chambers influenced my commitment to the standards of review that call for deference to the trial court and to give respectful consideration to the court's determinations.

Federal Defender Michael Donahoe tried his first felony case in Judge Lovell's court. The first day of deliberations ended without a verdict, and the Judge asked counsel to confer and be prepared in the morning to discuss whether the court should give an *Allen* charge.<sup>8</sup> Donahoe, having no idea what the Judge was talking about, stayed up that night to research the law (before the days of Lexis and Westlaw made that an efficient process), and his readiness the following morning earned Donahoe Judge Lovell's lasting respect for his professionalism and skill as an advocate. Donahoe handled cases before Judge Lovell for the next three decades, "sometimes with success and sometimes not; but the expectations and standards that I learned from Judge Lovell in that first ever federal jury trial never changed: *Know your case—know the law—be brief—and keep the court from error.* Judge Lovell instilled that these are not only 'courtroom skills'; they are the very stuff of Justice."

Donahoe says he was blessed to have been able to practice before Judge Lovell for more than thirty years. "Judge Lovell did not just want me to be a better lawyer. He also expected me to try each day to be a better person. For him, there never was, or ever would be, any distinction between those two goals."

One of Judge Lovell's most enjoyable experiences in the courtroom was the naturalization of new citizens in dozens of ceremonies over which he presided. The Judge's open welcome to new citizens and the words he imparted demonstrate palpably his love for this country and the treasure in which he holds our Constitution and democracy. In a 2008 ceremony, for example, Judge Lovell remarked, "I'd like to pause to recognize the fact that we reside and are privileged to be in the greatest country on earth today. We have been blessed many times over by the . . . accident of birth,

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7. *Printz v. United States*, 854 F. Supp. 1503 (D. Mont. 1994), *rev'd sub nom. Mack v. United States*, 66 F.3d 1025 (9th Cir. 1995), *and aff'd*, *Printz v. United States*, 521 U.S. 898 (1997).

8. *Allen v. United States*, 164 U.S. 492, 501 (1896) (holding that it is not error to charge the jury, on their return for further instructions, that it is their duty to decide the case, if they can conscientiously do so; that they should listen to each other's arguments with a disposition to be convinced; that, if much the larger number are for conviction, a dissenting juror should consider whether his doubt is a reasonable one; and that, if a majority is for acquittal, the minority should consider whether they may not reasonably doubt their judgment).

and by those who join us in the naturalization proceedings.”<sup>9</sup> In another, the Judge encouraged the new citizens to participate fully in their communities, by voting, by sitting on juries, and by paying taxes. “The privileges that come to each of us as citizens of this country do carry responsibilities,” Judge Lovell said. “I hope you also will consider bringing something from your own culture to add to the culture of the citizens of the United States, some factor that will somehow improve the situation here and improve our culture to some degree.”<sup>10</sup>

The Judge loved trying cases and held this nation’s jury system in highest regard. As former law clerk Mike Fanning remarked, “Those seated in a jury were American civil royalty; I remember being instructed to see to their needs in every way possible.” The Judge reflected this respect for the jury system and for those who served by showing commensurate intolerance for those who ignored their jury summonses. Fanning recalls that, after every jury trial, Judge Lovell would order the United States Marshals Service to round up those who had disregarded their summonses. Then followed a hearing in open court for a lesson on the demands of a functioning democracy and our system of justice. Those citizens inevitably left the Court that day with a commitment to heed any future call to serve.

Judge Lovell presided over many nationally prominent and legally significant cases during his thirty-six years on the federal bench—too numerous to catalogue in one short tribute.<sup>11</sup> But when I told the Judge I had been asked to author this Tribute and asked what he would want *Montana Law Review* readers to know, he responded that his “most important case ever” is the one in front of him at the time. His advice to members of the legal profession? “Civility under trying times is critical to our humanity.”

I would fall short in any tribute if I did not mention Judge Lovell’s devotion to his family, ever present during my time with him. The Judge’s daughter—among three of his four children who became lawyers—was visiting chambers one day with her young daughter, whose presence always

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9. Eve Byron, *Nation’s Newest Citizens*, HELENA INDEP. REC., Dec. 19, 2008.

10. Eve Byron, *Welcome, Citizens*, HELENA INDEP. REC., May 20, 2009.

11. Some examples include: *United States v. Kaczynski*, No. 6:96mj06-CCL (D. Mont. 1996) (issuing a search warrant for the property of Ted Kaczynski, the Unabomber); *Ridgeway v. Mont. High Sch. Ass’n*, 633 F. Supp. 1564 (D. Mont. 1986) (ruling in one of the country’s first Title IX lawsuits that the Montana High School Association discriminated against girls in athletics). Judge Lovell also presided over decades of litigation involving Yellowstone National Park bison. *See, e.g.*, *Fund for Animals v. Hodel*, No. 85–250–BU (D. Mont. 1985) (no published opinion); *Fund for Animals v. Lujan*, No. CV-90-0142-M-CCL (D. Mont. 1991); *Greater Yellowstone Coal. v. Babbit*, 952 F. Supp. 1435 (D. Mont. 1996); *Intertribal Bison Coop. v. Babbit*, 25 F. Supp. 2d 1135 (D. Mont. 1998); *State of Montana and Fund for Animals v. USDO, USDA, and Royal Teton Ranch* (2001); *Cold Mountain, Cold Rivers v. Garber*, No. CV-01-00027-CCL (D. Mont. 2003); *Western Watersheds Project v. Salazar*, No. CV 09-159-M-CCL, 2011 U.S. Dist. LEXIS 24153 (D. Mont. Mar. 10, 2011); *Alliance for the Wild Rockies v. USDA*, 938 F. Supp. 2d 1034 (D. Mont. 2013).

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delighted him. The girl—about four years old at the time—ran to sit at his secretary’s desk, which then was the only one with a computer. One of us asked her if she might become a lawyer one day. She responded immediately, “Nah, that’s a *girl’s* job.” That girl now has her own successful legal career and, as with all of his grandchildren, the Judge could not be more proud.

Judge Lovell embodies every quality we expect from a United States District Judge. His hard work, careful study, adherence to the rule of law, and judicial independence, together with his humility and dignified treatment of all who appeared in his Court, set the standard to which all judges—federal and state—should aspire and be held. I was privileged to call Judge Lovell my first boss as a new lawyer, later my teacher and mentor, and now my friend. But I will forever call him “Judge.”

