

THE FULL CHARACTER OF THE MAN

My experience with Judge Holloway began in the fall of 1968, shortly after I graduated from law school and passed the bar. My uncle, a tax attorney in Oklahoma City and a former law professor, had invited me to join his practice, and I eagerly anticipated doing so. Plans change, of course, and when Judge Holloway was appointed to the United States 10th Circuit Court of Appeals and asked if I would like to be his first law clerk, mine did. Frankly, the idea of being a clerk rather than a practicing attorney generated mixed emotions; but everyone, including my uncle, who was probably secretly pleased he wouldn't have to educate a novice attorney who just happened to be the son of his brother-in-law and closest friend, insisted being Judge Holloway's clerk would be a "tremendous" opportunity and one I just "couldn't turn down." Besides, my mother, who had gone to grade school with "Bill," kept telling me how smart he was, while other attorneys described the new judge as a careful, highly effective attorney who commanded everyone's respect and admiration. So, with some reluctance and to my uncle's relief, I accepted the position of clerk and reported for duty.

To my surprise and delight, Judge Holloway officed on the same floor as Judge Alfred P. Murrah, the Chief Judge of the 10th Circuit. One of Judge Murrah's clerks was Dan Little, a close friend and classmate from law school. Because he was the Chief Judge, Judge Murrah had two clerks, the other being Richard Coulson, and eventually Von Creel, another friend and law school classmate. As clerks, we spent a good deal of time together in the library on the 5th floor of the federal courthouse building, a shared experience which only deepened and refined an already genuine friendship.

Judge Holloway, of course, was every bit the intellect his reputation suggested. I will never forget the first case he assigned to me, though "assigned" might be too flattering a verb. Perhaps, "tested" would be a more accurate choice as I was not asked to draft an opinion or even to offer a thought on its correct conclusion, but rather to find authority for various legal points the Judge wished to assert. The case was a criminal

matter, as were the majority of the cases brought to the 10th Circuit at the time. While most could be dismissed with a short summary ruling, Judge Holloway was a new judge and an extremely careful and deliberate one. He was not yet completely comfortable with how the judges worked with one another or the speed with which opinions were expected to be issued. And so, even mundane matters were sometimes subjected to a scrutiny and review that the experience of later years would make unnecessary. "I would like to have supporting authority for each sentence in an opinion," he told me, and I spent a good part of the first week of my clerkship finding published cases affirming even basic constitutional principles. The practice immediately told me that the Judge was not only a careful person, but an inherently fair one who would insist the rights of every person, no matter the offense, be fully respected. I already had a very high regard for Judge Holloway, but only one week into my clerkship, I knew that regard did not begin to embrace the full character of the man.

I particularly recall one case that came before the court after I had been a clerk for no more than three months. A former law enforcement official filed a writ of habeas corpus seeking release from prison on the ground he had not been advised of his constitutional right to remain silent by an undercover agent who sat next to him in a bar, listening to the defendant describe his elaborate system for delivering moonshine. The complaint insisted the undercover agent also had a constitutional duty to identify himself as a law enforcement official, which perhaps wasn't too surprising as a review of the conviction indicated the prisoner had been quite open about his position as an officer of the law when delivering untaxed alcohol to his customers. At last, I thought, a proposition of law so obvious it would need no supporting authority. Naively, I informed the judge the decision was obvious. No need to spend much time with this one, I announced. Judge Holloway was not impressed, suggesting he would be "just a little more comfortable" if I could find a case or two on point. On point? How on earth was I going to find a published case that concluded an undercover agent didn't have to inform a criminal he was a law enforcement agent and, in addition, advise the "suspect" not to say or do anything incriminating in the presence of the agent? Well, as luck would have it, one of the secondary authorities I reviewed actually mentioned such a case, or one sufficiently similar that I thought at least something of value might be contained in its wording. Unfortunately, the case was an Illinois decision handed

2015]

The Full Character of the Man

67

down before the Civil War and not found in any reporter systems I could access. Judge Holloway suggested I write to the Supreme Court of Illinois, which I did, and a week or so later, the opinion arrived with the supporting language. Truthfully, I don't recall how supporting the language actually was, but I do remember Judge Holloway being quite pleased with whatever I delivered and the quest ended successfully. Never again would I assume even the most basic of legal propositions should be advanced without supporting precedent, an ingrained attitude that served me well throughout my legal career.

To describe William J. Holloway, Jr., the Judge, would be to describe the public William J. Holloway, Jr., a very intellectual and distinguished person to be sure. But those of us who were fortunate to be his clerks saw the private William Holloway, a man who preferred friends to call him "Bill," was unfailingly gracious, considerate, thoughtful, and fair, and who never seemed to have an unkind word to say about anyone or anything. I suspect a more tolerant person has never lived. He was also impeccably honest, always affixing a postage stamp to every piece of personal correspondence rather than using the government frank. The first time I went to Denver with the Judge for a session of the 10th Circuit, one of Judge Murrah's clerks, Dan Little, went along as well. When we arrived at the Brown Palace Hotel, Judge Holloway lingered outside to pay the taxi driver while Dan and I proceeded to check in. We selected rooms in the newest addition, which we found to be quite comfortable. The next morning at breakfast, Judge Holloway mentioned how small his room had been and that he hadn't slept well. When I asked where his room happened to be, he said it was in the older part of the hotel, which had not then been renovated. "I just didn't think it would be right to charge the government to stay in the new section," he remarked. Dan and I ate silently.

I have had the good fortune to meet a number of persons over the years who have had a major impact on my life, but none whose lessons have had a greater effect on my professional life than those I learned from Judge Holloway. I will always be grateful for the experience of my clerkship and that at its conclusion, I was not only able to call him "Judge" but also "friend." Pretty hard to beat that.

Dee A. Replogle, Jr.
Shareholder, McAfee & Taft
Clerk for the Honorable William J. Holloway, Jr., 1968–1969