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Memorial Service: Judge James T. Foley

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**MEMORIAL SERVICE
JUDGE JAMES T. FOLEY
DECEMBER 5, 1990, 11:00 A.M.**

Chief Judge McCurn; Judges of the Northern District on the Bench; Federal and State Judges and Justices in the audience; Eleanor Foley and Mary Jude; Members of the Bar; Ladies and Gentlemen:

This is the first time I have sat in this courtroom with the full Northern District Bench without Jim Foley being present, and it is a strange feeling indeed. The Judge always was happy to participate in ceremonial sessions of the court and added much wisdom to each occasion. For Jim Foley was a wise man -- wise in the law, wise in his understanding of people, and wise in the ways of the world. He brought patience and compassion and absolute fairness, as well as knowledge, to the art and science of judging. He always will be the star by which we seek to guide our courses as judges, for he was the quintessential judge. He never met a person he didn't like, but it must be said that certain lawyers would cause him some annoyance on very rare occasions. His human qualities set him apart and made him a great judge, not just a good judge. The famous Learned Hand, who served as Chief Judge of the Second Circuit during Jim Foley's tenure as a district judge, described Foley as a man "totally without vanity." We all know that to be true, although Jim often quoted Eleanor as saying that Hand didn't know him very well. Jim Foley had a great sense of humor, and we often joked about the fact that Learned Hand became famous as a judge in New York

City because he could not make a living as a lawyer in Albany.

One of the leading restaurants in Washington, D.C. is known by the name of its owner, Duke Zeibert. When I first ate there some years ago, I reported that fact to Jim Foley, who proceeded to tell me that Duke was a local boy whom he knew as Davey when they played high school basketball together. On my next trip to Washington, I sought out Zeibert and brought him regards from Judge Foley. "Charcoal," he explained, "how is he?" This was the first time I learned of Jim's nickname, by the way. I think it had something to do with the fact that he had a part time job delivering charcoal in his younger days. At any rate, some time during the discussion Zeibert said: "Foley must be a top-notch judge because he is a top-notch guy."

Jim Foley was top-notch throughout his entire life and in everything he did. He was dedicated, hard working and committed -- as a student at Troy Catholic Central High School; at Fordham College; and at Albany Law School, from which he graduated in 1934; as a lawyer in private practice and in partnership with Abraham Goldstein in Troy commencing in 1935; as assistant legal counsel for the New York State Constitutional Convention in 1938; as a law clerk to Supreme Court Justice William H. Murray from 1939 to 1942; as an apprentice seaman who rose to the rank of lieutenant senior grade during World War II combat service in the Atlantic and Pacific theatres from 1942 to 1945; as a practicing lawyer and law clerk to Justice Murray once again after his return from military service; and finally as a United States

District Court Judge, where he found his fulfillment, his joy, and his life's work.

When Edward S. Kampf resigned from the office of United States District Judge for the Northern District of New York in 1948, after two years of service, the general assumption in Albany was that his successor would be appointed by President-to-be Thomas E. Dewey, who was favored to beat Harry S. Truman in the election of that year. Legend has it that certain capital district Republican Leaders already had settled on a name of a man they wished to recommend for the position. That man was not James Thomas Foley. Nevertheless, as the Scottish poet said: "The best laid plans o' mice and men gang aft a-gley." Truman was elected in an upset and soon thereafter received a telephone call from one of his staunchest supporters and political allies, Daniel P. O'Connell, the Albany County Democratic leader. O'Connell was pleased to recommend for appointment to the Northern District vacancy a man whom he regarded as highly qualified for the position -- James T. Foley. Truman was happy to accept the recommendation, and a brilliant judicial career was launched. The judge often said that O'Connell, whom he revered and quoted until the end of his days, asked him for only one favor, and that was at the very beginning: "Jim," O'Connell said, "be a good judge!"

And so Jim Foley became only the third judge to serve in the second judgeship that was created in the Northern District in 1927. The first was Frederick H. Bryant of Malone, and the

second was Edward Kampf, who was referred to previously. When Kampf was appointed to replace Bryant, he had served as an Albany Police Court Judge for about five years. He resigned his federal judgeship after two years, when he found that it was not at all like police court. Kampf's resignation brought about the vacancy that Jim Foley filled.

For all the time that Jim Foley spent in this courtroom, his investiture ceremony was not held here. It was held at the Rensselaer County Courthouse in Troy at 11:00 a.m. on February 16, 1949 at Judge Foley's request. He wanted it to be in Troy because he was born there, because he practiced there and because his friends and neighbors and colleagues were there. And what a great day it was in Troy! The first native son of that city was being sworn in as a federal judge, and the old Rensselaer County Courthouse was packed. Supreme Court Justice Donald S. Taylor adjourned the trial term of the Supreme Court in order for Chief Judge Stephen W. Brennan of the Northern District to convene an extraordinary session of the district court for the investiture of Judge Foley. After Jim was sworn, robed and escorted to the bench, many of those present rose to extol his virtues: Justice Francis Bergen, then a member of the Appellate Division, Third Department; Justice Taylor; Irving J. Higbee, United States Attorney; Matthew Dunne, President of the Rensselaer County Bar Association; Attorneys Maurice Isenbergh, Henry S. Bayly and William Murray, son of the judge for whom Jim Foley clerked. Judge Brennan, whom Jim always held in the highest esteem, and

whose photograph always occupied a prominent place in his chambers, said to him on that occasion: "I hope that you will be able as time goes on to look over your service in this Court, with a good deal of satisfaction and to look over also the friends that you may make and the satisfaction that comes to any man with the knowledge that he has made an effort, the best effort he is able to make, to administer justice to those who come before him." The man to whom Judge Brennan addressed those remarks fulfilled those hopes in the highest measure.

Most interesting was the speech that Jim Foley gave on that occasion 41 years ago. Here he was, at the age of 38, the youngest federal judge in the nation. His beloved mother was present in the courtroom, along with all his friends and colleagues and all the dignitaries assembled for the occasion. He had taken the unusual step of requesting the ceremony to be conducted in a state courtroom. And he had the vision and the foresight then and there to give a speech that set the course for his next 40 years. After the usual thank-yous and historical reviews and humorous comments, he said: "I approach the responsibility of this with sincere humility. My nature will never change and I can only assure Judge Brennan that I shall strive to see the right and then follow that right fairly and impartially and honestly. I shall try to obtain the oft expression of an impartial judgment, although I think I will be mixing it at times with the warmth of human kindness. I want to be patient, tolerant and fair."

Jim Foley lived by those words during his entire term of dedicated and outstanding service. He was fair and impartial and honest. He was patient and tolerant. And he did mix human kindness into every decision he ever made. I have located what I think is Judge Foley's first published opinion. It is Paper Stylists Inc. v. Fitchburg Paper Co., decided March 25, 1949, and it is found at Vol. 9 page 4 of the Federal Rules Decisions. It is vintage Jim Foley. The plaintiffs were represented by a firm known as Carroll, Amyot & Darling of Albany, and the action was one for breach of contract. The case had been removed from the Supreme Court, Saratoga County to the Northern District, and a timely jury demand was not made in federal court. It seems to me that this was a fairly typical case of a state practitioner being unfamiliar with federal rules, which call for a much earlier filing of a jury demand. At any rate, the plaintiff moved to be relieved from its failure to make a timely demand. The motion was opposed by Ainsworth & Sullivan of Albany. They still are involved in opposing motions of this type. Judge Foley decided to grant the motion, holding that "[m]istake, error, omission or inadvertence should be corrected in instances where reasonable explanations are presented and where important rights may be destroyed." As I read his decision, I was not so sure that there was a "reasonable explanation," but the judge found one in "office mistake" occasioned by a "maze of legal procedure." The decision included these words: "Blackstone said that trial by jury is the glory of the law. It is my thought that the right to

seek the glory should not be hampered by unreasonable obstacles." I say that this first decision was vintage Foley because it applied the compassion, kindness, mercy and lenience for which he was known. He always sought to accommodate the human factor in the justice equation -- the foibles of men and women and the human condition. Sentencing always was a traumatic experience for him, and he spent many long hours with his friend, Frank Waterson, the Chief Probation Officer, agonizing over an appropriate sentence. Waterson always said that Judge Foley didn't want to send anybody to jail. Jim had that special sense of human nature that set him apart. He was the conscience of the court as well as one of its judges.

Jim Foley's sense of humanity is apparent in all his decisions. His marriage to Eleanor Anthony after he was on the bench expanded that sense, because Eleanor always has had a special concern for her fellow men and women and especially for those less fortunate. If Jim was the conscience of the court, Eleanor was Jim's conscience and Mary Jude is very much in the same tradition.

It is just a question of reading history and court decisions to chronicle the forty-one eventful years that Jim Foley served the nation as a United States District Judge and as Chief Judge of the Northern District. He would say: "Why don't you read about it?" He was an avid reader of everything, and would always admonish young lawyers to keep up on their reading. He always gave the same admonition to his fellow judges, but they didn't

seem to listen as well. The nation has seen great changes since the day Jim Foley took his oath of office. When he first went on the bench, he told me, he was idle from time to time for lack of work. He would then go to the Southern District or to the Eastern District to help out. Then came the explosion in civil litigation -- the civil rights cases, the habeas petitions, the new statutes such as those directed against employment discrimination, and many, many others. There was an increase in criminal cases as Congress defined more and more crimes as federal offenses. Today, with the new judgeship just created, the Northern District will have five active judges, still hardly enough to cope with its burgeoning caseload.

Jim Foley was at the cutting edge of all these changes, and his decisions in many of these areas will be studied, referred to and quoted by generations of lawyers to come. His work in improving the efficiency of the court in the Northern District also produced some landmarks in judicial administration. As Chief Judge from 1963 to 1980, he instituted many administrative and procedural changes in the interest of securing the just, speedy and inexpensive administration of every matter to come before the court. After he took senior status at the age of 70, he continued to hear a wide variety of cases, and he maintained his interest in the Court until the very end. At the time of his death on August 17, 1990, he was the senior federal judge in the nation in point of service. As judges, as lawyers and as citizens of this great nation, we are most fortunate that he

passed among us.

It is typical of Jim Foley that when he was honored by the dedication of this courthouse in his name on October 23, 1988, he accepted the tribute on behalf of all district judges. The dedication plaque, which now is mounted in the vestibule of the southern entrance to this building, includes these words of William Kennedy describing Jim Foley: "A Warm and Enduring Presence in this Capital City of Albany." Those words are right on the mark. Jim Foley remains with all of us who knew him as a warm and enduring presence. I loved him very much, and I miss his daily telephone calls, our lunches, our conversations about law, politics and world affairs and about people. I miss his description of Saratoga in the summertime and his consistently erroneous assessments of the horses that ran there. I miss his footsteps in the hallway, his sense of humor, his knowledge of history and his gentle advice to consider the human factor in judging. But because I miss him every day, I know that his spirit is here. And I also know that as long as justice is done in this James T. Foley United States Courthouse, Jim Foley will be a warm and enduring presence here.

Thank you.