



Hon. Phillip J. Green

Magistrate Judge, U.S. District Court for the Western District of Michigan

by Craig T. Liljestrand



Craig T. Liljestrand, a partner at Hinshaw & Culbertson LLP, Chicago, has extensive experience in toxic tort, product liability, and mass tort litigation. He is recognized for his litigation and trial skills in the areas of asbestos, silica, welding fumes, lead paint, chemical, and occupational disease claims. He has successfully defended a vast array of industrial product and equipment manufacturers, distributors, contractors, and premises owners in numerous toxic tort cases throughout the country. Liljestrand was also a judicial law clerk to the Hon. Doyle A. Rowland in the U.S. District Court for the Western District of Michigan.

Every time Magistrate Judge Phillip J. Green makes his way to the bench, he passes a picture of a baby girl. Her name was Evelyn. And from her perch, baby Evelyn reminds Judge Green why service is his calling.

Born in Denver, Judge Green grew up as one of eight children. His father was a farmer in Illinois before serving in World War II. After the war, injury forced his father off the farm and into the civil service, where he worked as an accountant for the Department of Defense. When Judge Green was 5 years old, his father's job brought him and his family to Southern Illinois where he attended Catholic schools. Before graduating from high school in 1974, Judge Green enlisted in the U.S. Navy, and less than a week after graduation—and during the height of the Cold War—he was in boot camp at Great Lakes Naval Station in Northern Illinois.

After boot camp, Judge Green trained in Memphis, Tenn., to be an antisubmarine warfare operator. He learned to analyze acoustic signatures and identify the type and kind of Soviet submarines patrolling the East Coast of the United States. He underwent intensive survival training where he was deprived of food, water, and sleep—all while having to evade capture. He was also water boarded; the purpose of which, he later learned, was to break his will. “Everybody breaks,” he said. “That’s OK,” he continued, “this will happen but then you will have to fall back and regroup and learn how to deal with it.” Judge Green’s grueling POW simulation ended when the U.S. Marines came to save the day. He maintains a deep appreciation for all those who have served, particularly the Marines; and as far as he is concerned, “The Marine Corp can do no wrong.”

Judge Green’s active duty naval service ended in 1976 after a six-month deployment to Japan and the Far East. He then enrolled in Southern Illinois University, majoring in engineering, but calculus scuttled his engineering ambition. It was about that time he explored the possibility of a vocation to the priesthood, and he transferred to Saint Meinrad Seminary



& School of Theology, a college run by Benedictine Monks in Southern Indiana. Judge Green left Saint Meinrad to spend a year at St. Joseph’s Abbey, a Trappist monastery in Spencer, Mass. Judge Green returned to Saint Meinrad and graduated in 1982. After graduation he spent a year at the School of Theology in St. Louis before becoming a parochial school teacher. For four years, Judge Green taught fifth through eighth grade. It was during this time that he became engaged, and in 1985 he was married.

Judge Green loved teaching, but his salary would not pay the bills. Having a philosophy degree without a market for philosophers meant he had to go back to school. Judge Green did not come from a family of lawyers. He did not know much about the law at all, but it seemed interesting to him. He asked around about how one gets into law school and learned about a test called the LSAT. And so he wandered into a testing center without any preparation and walked out in tears, convinced the disastrous exam would keep him from going to law school. He would have to figure something else out—or so he thought.

Much to his surprise, his LSAT score was good enough to get into law school, but his options were

limited. He and his wife had a home in Belleville, Ill. His wife was working, so he stayed close to home and decided to attend Saint Louis University.

As much as Judge Green hated the LSAT, he loved law school—he excelled. By his last year, he was editor-in-chief of the law journal and graduated first in his class. After graduation, Judge Green accepted a clerkship with Hon. Theodore McMillian, who sat on the U.S. Court of Appeals for the Eighth Circuit. It would change his life.

In 1949, Judge McMillian had been the first African-American to graduate Saint Louis University. He played baseball in the Negro Leagues, served in World War II, was the first African-American prosecutor in St. Louis, the first African-American to be appointed to the Missouri Court of Appeals, and the first African-American to be appointed to the Eighth Circuit. Judge Green remembers Judge McMillian fondly, saying, “He was such a wonderful man who taught me so much about humanity, as well as the law.”

Judge Green recalls a time when, as a clerk, Judge McMillian asked him for a rare personal favor. Judge McMillian’s car had been stolen, and he asked his young clerk to come along to recover it. Passing through a neighborhood worn by crime and poverty, they pulled over next to an old, boarded up and abandoned brick schoolhouse. Judge McMillian told his young clerk that he had seen this school being built. He described the beautiful playground that used to be there, and explained that he would watch the kids play from the other side of the fence. The young clerk naively asked why he watched instead of playing. Judge McMillian reminded his young clerk that it was an all-white school. He then turned his young clerk’s embarrassment into a teaching moment saying, “I am only telling you this because as you become a lawyer and practice law, you have to think about the people you are representing, what they go through in life, and have compassion for them.” Those words, spoken to him as a young clerk, continue to guide Judge Green.

In 1991, as his clerkship with Judge McMillian was ending, Judge Green applied for and was offered a position as an honors program trial attorney with the civil division at the U.S. Department of Justice (DOJ). The job was in Washington, D.C. Neither he nor his wife was thrilled about the move, but the opportunity outweighed their lack of enthusiasm. Over the three-year commitment, he and his wife came to love living in Virginia and working in D.C. In 1994, Judge Green finished his time with the DOJ and entered private practice at Bryan Cave LLP.

Private practice lasted 11 months, 22 days, 7 hours, and 12 minutes. Judge Green learned that private practice was not for him. “It wasn’t enough to be a good lawyer,” he said. “You also have to be a good business person.” His wife suggested he call to see about getting his old job back at the DOJ.

In 1995 Judge Green returned to the DOJ, and in

October 1998, the U.S. attorney for the Western District of Michigan hired him as the deputy chief of the criminal division. Judge Green, his wife, and their three children moved to Michigan where they fell in love with Grand Rapids. The move required that Judge Green, a career civil attorney, learn the ropes of criminal prosecution. And so he did.

In 2001, following the resignation of the U.S. attorney, Judge Green was appointed interim U.S. attorney, and later served as the first assistant U.S. attorney until January 2005 when he requested to step down so that he could return to the trenches as a line prosecutor. He is a trial attorney at heart. He loved trying cases. And at this point in his life he never gave much thought to being a judge and watching other attorneys try cases.

As a trial attorney with the DOJ, Judge Green handled a broad swath of cases. One cutting-edge case was *Free Speech Coalition v. John Ashcroft*, which involved a challenge to the constitutionality of the Child Pornography Prevention Act of 1996 that criminalized, among other things, computer-generated child pornography. Green obtained a favorable ruling at the district court, but did not get to handle the appeal; the case was eventually lost at the Supreme Court.

Judge Green also secured convictions in several high-profile cases. One involved the kidnapping and presumed death of a local recluse who had amassed a life savings of some \$500,000. This case was unusual because there was no body, no crime scene, no murder weapon, and no DNA or other forensic evidence. By piecing together travel, phone, and computer records, two people were convicted for kidnapping. Then there was the Holland Latin Kings’ case. The Latin Kings gang plagued the Holland, Mich., community and caused a variety of problems. Assistant U.S. Attorney (AUSA) Green charged 31 members in racketeering conspiracy in a single indictment. All were convicted.

Being a trial attorney is not easy. It can be consuming. In his 50s with five children to put through college, AUSA Green began to contemplate retirement. He lives with his family on a farm of sorts. They have several horses. Maybe he would drive his tractor or return to teaching. But in 2013, the possibility of becoming a judge presented itself. Figuring his odds long, he threw his hat in the ring.

In July 2014, he was appointed to the position of U.S. Magistrate Judge for the Western District of Michigan, and he assumed his duties on Aug. 1, 2014. Judge Green was now no longer trying cases. His name was no longer Phil, and it took some getting used to his new one: “Judge.” While on the bench, he watches others. He evaluates arguments. These arguments are often made by attorneys who are his friends, some of whom are going to be disappointed by his ruling. He is involved in a great many cases of significance. Some cases stand out, others do not. But as a prosecutor, or as a judge, it is the case of baby Evelyn that Judge Green will never forget.

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who—all things being equal—will not have leanings one way or the other about the case at hand.

Both of these approaches, as well as the myriad other ways to pull out and combat implicit bias through voir dire, take creative thinking from lawyers, as well as time and patience from judges on the bench. As the research around implicit bias becomes more readily known, lawyers and judges will hopefully take (and be given) creative license in voir dire to ensure fairness to all participants in a trial. ☉

Endnotes

¹To take a test to learn more about your own implicit biases, visit PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html>

(last visited Apr. 8, 2019).

²Lisa Blue has recovered \$350 million in jury verdicts (and hundreds of millions more in settlements) and is a leading expert on jury selection—something she credits to her background, which includes two master’s degrees and a Ph.D. in psychology.

³06 – Lisa Blue – A Psychologist’s View on Jury Selection, TRIAL LAW. NATION (2018), <https://triallawyernation.com/episode/06-lisa-blue> (last visited Apr. 8, 2019).

⁴Cortez v. HCCI-San Antonio Inc., 159 S.W.3d 87 (Tex. 2005).

⁵Jury Analyst, Get in the Game Podcast - Bruises Matter in Court with Keith Mitnik - Trial Lawyer and Educator, YOUTUBE (Sept. 6, 2018), <https://www.youtube.com/watch?v=B7B5ts-8ewg>.

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18SAO15842AD, Re: Closed Investigation (Feb. 8, 2019), <https://www.jacksonville.com/assets/pdf/staugustine/LK2010212.PDF>.

²²Fla. AGO 71-191.

²³Inf. Op. to Markham, Sep. 10, 1996; Inf. Op. to Green, Dec. 11, 1998; *Roscow v. Abreu*, No. 2003 CA 01833 (Fla. 2d Cir. Ct. Aug. 6, 2004); cf. *Brown v. Denton*, 152 So.3d 8 (Fla. 1st Dist. 2014) (finding that certain collective bargaining negotiations were not subject to the Sunshine Laws).

²⁴Since 1995, 269 exemptions to the Sunshine Law have been approved. Gray Rohrer, *Florida’s Renowned Sunshine Laws Took Another 12 Hits from the Legislature This Year*, MIAMI HERALD (Apr. 10, 2018, 6:06 PM), <https://www.miamiherald.com/news/politics-government/state-politics/article208393214.html> (updated Apr. 11, 2018, 6:43 AM).

²⁵Inf. Op. to Nelson, May 19, 1980.

²⁶*Freeman v. Times Publ’g Co.*, 696 So.2d 427 (Fla. 2d Ct. App. 1997).

²⁷Fla. AGO 2009-19.

²⁸*Canney v. Board of Pub. Instruction of Alachua Cty.*, 278 So.2d 260, 264 (Fla. 1973).

²⁹Fla. AGO 05-03.

³⁰Matt Vautour, *Robert Kraft Prostitution Charges: Potential Release of “Extremely Graphic” Video Tied Up After Motion*, MASS LIVE (Feb. 26, 2019), <https://www.masslive.com/patriots/2019/02/robert-kraft-prostitution-charges-potential-release-of-extremely-graphic-video-blocked-after-motion-from-defense-attorney.html>; *John Doe, Jane Doe v. The City of Jupiter Police Dep’t et al.*, Filing No. 85425813 (Fla. 15th Cir. Ct. Feb. 25, 2019) (Complaint for an Emergency Declaratory Judgment) (case number pending as of submission).

³¹The response to the Parkland massacre was codified by CS/CS/CS/ HB 165 (Ch. 2018-128) and the relevant subsections appear in Fla. Stat. §§ 16.555, 20.15, 30.15, 121.091, 394.463, 394.495, 397.6760, 790.065, 790.0655, 790.335, 794.056, 836.10, 921.0022, 938.085, 1002.32, 1006.04, 1006.07, 1005.12, 1006.13, 1011.62, 1013.64.

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¹National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (1986) (codified as amended at 42 U.S.C. §§ 300aa-1 to -34).

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Baby Evelyn was 15 weeks old when she was sexually assaulted by her father. She died in the process. This, recalls Judge Green, was probably the most emotionally and factually difficult case he prosecuted. He remembers presenting the case to the grand jury leaving most of them sobbing. The same thing was true at trial. Baby Evelyn’s mother was only 22 years old when she had to testify. She was brave, and Judge Green maintains great respect for her. Throughout the course of the investigation, they learned of other victims. Baby Evelyn’s father is where he belongs, in prison, serving a life sentence without the possibility of parole.

The words of wisdom Judge McMillan spoke to his naïve clerk all those years ago are woven into the fabric of the robe Judge Green wears today. He is a man of great faith. He is a devoted husband, father of five, and he is a judge. Every time Magistrate Judge Phillip J. Green leaves his chambers, he looks at baby Evelyn’s picture and a poem written for her, which hang next to the door that leads to his courtroom. She reminds him that his call to serve means he has to think about the people, consider what they go through, and have true compassion for all. ☉