

ARTICLE

THE ACCIDENTAL JURIST

*Judge Gray H. Miller**

A lot of people have asked me over the last seven years if being a judge was always my plan.

The answer is “No.” In fact, looking back on my life, I have always followed the advice of that sage philosopher, Yogi Berra: “When you come to a fork in the road, take it.”

All of us have different opportunities and experiences on our path through life. Some are planned, many are not. That is why Yogi Berra’s advice is so important—not just for those of you who know where you are going, but also for the many people who are not sure and for those who *think* they know, but it turns out they *don’t*.

I became a federal judge by following a very unorthodox path. As Jimmy Buffet sings, “the best navigators are not quite sure where they are going until they get there, and then they’re still not sure.”¹ It was never my ambition to become a judge and I did not know I was on the path to becoming a judge until I became one. Let me illustrate my point by telling you a little about my background. I grew up in a middle class family in Houston. My Dad was a journalist and the news director of a local TV station.² He never obtained a college degree, but he knew the value of a good education and was determined that I would get one.

I was in the third graduating class of Strake Jesuit College Prep in 1967. In high school, I spent six months in Washington, D.C., working as a page in the House of Representatives. I was

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1. JIMMY BUFFETT, *Don’t Chu-Know*, on BAROMETER SOUP (MCA Records 1995).
2. See Interview by Jane Ely with Ray Miller, former News Dir., KPRC-TV (Mar. 12, 2008) (transcript available at <http://digital.houstonlibrary.org/oral-history/ray-miller.php>).

the first student from Strake Jesuit to attend Texas Boys State. I was elected Governor and then attended Boys Nation and was elected President. I also did a lot of speech tournaments and acting. But, I had no idea what I wanted to do—I thought about going into politics, but my Dad advised being successful at something else before running for election. I also thought about an acting career, but ultimately I decided on a career at sea.

My Dad had been in the Navy in World War II, so I first thought about Annapolis. But, my eyes were not good enough to get in.

So, I did some research in the library (this was well before the Internet) and discovered that in addition to West Point, Annapolis and the Air Force Academy, there are two other federal service academies: the Coast Guard Academy and the Merchant Marine Academy at Kings Point, New York, which was established in 1943 to train officers for all the merchant ships being built to carry cargo to Europe in convoys and across the Pacific.³ And, I could meet Kings Point's vision requirements.

The curriculum included the first year at the Academy, a second year at sea, and then the final two years at King's Point. You graduated with a B.S. Degree in Marine Transportation, a Coast Guard license as a Third Mate or Third Assistant Engineer, and a commission as an Ensign in the U.S. Naval Reserve. You also had an obligation to sail as an officer in the U.S. Merchant Marine for seven years to pay back the Government for your education.

This all sounded much better than the Navy. I would be working as a civilian, sailing around the world, and getting paid well.

So, I decided I would make my career at sea and become a ship's captain. I secured a nomination to the U.S. Merchant Marine Academy at Kings Point, New York. This was my first—but not my last—fork in the road.

I spent my plebe year at the Academy, and then in my second year, I went to sea as a Deck Officer in Training. My first ship was a new freighter that sailed around the world and carried twelve passengers. The officers and crew were all well-trained professionals who were interested in my training. It was an incredible experience and I enjoyed every minute of it.

My next ship was an old World War II vintage tanker that carried gasoline from the Shell Deer Park Refinery on the Houston Ship Channel to San Pedro, California. The crew, like the ship, was old, pretty rough, and many were drunk much of the time.

3. *USMMA History*, U.S. MERCH. MARINE ACAD., <http://www.usmma.edu/about/usmma-history> (last updated Jan. 23, 2013).

The American merchant fleet was in a steep decline at this time⁴ and I realized that *this* old tanker—not the sleek new freighter—represented my future. Most jobs at sea were unionized, and as a recent graduate, I would be at the bottom of the seniority list.

I realized that I had made a big mistake. So I quit the Academy and returned to Houston. I then married my high school sweetheart and started to look for a job. The Galleria was just opening, and I got a job selling clothes at Neiman Marcus. My wife, Joanne, worked at Joske's. We lived in a one-bedroom apartment on the other side of Loop 610 from the Galleria and walked to work because we did not own a car.

Then we learned that we were expecting, and I began to look for a job that would pay a better salary and allow me to finish college.

The Houston Police Department was hiring at this time and offered a plan to pay for college for officers who wanted to earn a degree. For each year they paid for college, you had to remain an additional year on the police department.

Another fork, and I took it.

I never intended for law enforcement to be a career. But I spent a total of nine years as a Houston Police Officer. I attended classes at the University of Houston in the morning and worked the evening shift at the department. I majored in history because I found it interesting, but I had no idea what I would do with a history degree.

As I approached my graduation, after five years of undergraduate classes—you would be surprised how few credit hours had transferred from the USMMA—my Dad suggested law school. He reminded me that Houston was a major port city and that with my experience at Kings Point, I might consider being a maritime lawyer. Sometimes, your parents *do* give you good advice.

So I took the LSAT and applied for night law school at the University of Houston. I thought I would have a better chance of being admitted to night school. And I could change my hours at the police department to day shift.

I was admitted and began law school in 1974. It took me four years to graduate. Along the way, I took the one admiralty course they offered and found I liked it. So I decided to interview with firms that had an admiralty practice.

At that time Vinson & Elkins, Baker Botts, and Fulbright & Jaworski all had a maritime practice. In addition, Royston

4. See, e.g., Victor G. Hanson & John V. Berry, *The Diminution of the Merchant Marine: A National Security Risk*, 74 U. DET. MERCY L. REV. 465, 470–73 (1997) (providing a detailed discussion of the decline's causes and symptoms).

Rayzor Vickery & Williams was the oldest maritime law firm in Houston. I applied to interview with all of them.

The story of how I was able to sign up with all those great firms is interesting. Normally, night students were not high on big firms' lists, but I had done my undergraduate work at University of Houston, and my student number had followed me to law school. I had the lowest student number of any law student, and that was how they determined who could sign up for on-campus interviews. Just a stroke of good luck that I took advantage of. Otherwise, I might never have gotten any interviews.

Baker Botts decided not to interview me.

V&E interviewed me, but did not offer me a job.

Royston Razor did not interview me, but offered me a job in Galveston, which I declined because Fulbright interviewed me and offered me a job in the admiralty department. It was my experience at the USMMA that helped me get that job offer. So, here I am, a guy who set out to be a ship's captain, who then became a police officer and a night student at University of Houston, and now I was an associate at Fulbright & Jaworski.

I was working for one of the largest and most respected law firms in Houston, run by former Watergate Prosecutor Leon Jaworski. I felt very fortunate to have been hired by Fulbright and never seriously considered leaving. And certainly I never even dreamed that one day I would be a United States District Judge.

I spent a total of twenty-eight years at Fulbright, made partner, and later became the head of the admiralty department and then a senior partner. But at age fifty-five, there was another fork in the road coming up.

I always assumed that I would stay at Fulbright until I retired at age sixty-five. But as the maritime practice had contracted,⁵ our admiralty department grew smaller and was absorbed into one of the litigation teams. I began to think about doing something different. Then I heard that U.S. District Judge David Hittner was taking senior status and that would mean that we would have a new federal judge in Houston for the first time in ten or eleven years.

After talking it over with my wife—because the job would mean a big pay cut—I decided to apply. We were lucky. Because we had had our children early, they were both out of school, married, and off the payroll. We had sold our big house and we did not have any debts.

5. See George J. Koelzer, *Should We Trust Juries with Admiralty Cases?*, 34 J. MAR. L. & COM. 159, 162 n.9 (2003) (accounting for some of the reasons behind the national drop in the number of maritime cases).

For district court openings, when the President and the senators are both members of the same party, the President usually lets the senators recommend someone for the opening. Senators Hutchinson and Cornyn had set up a committee of lawyers to evaluate judicial candidates. I filled out a long, detailed application for the senators' Judicial Evaluation Committee, made the cut to interview with the committee, and was rated in the top three applicants with a state appellate judge and a former U.S. Attorney.

All three of us went to Washington D.C. to interview with Senator Hutchinson and Senator Cornyn. Then we waited to see who the senators would recommend to President Bush. Unfortunately, they did not recommend anyone. Judge Keith Ellison moved from Laredo to Houston and filled the opening.

I was disappointed—all three of us were. At age fifty-five, I knew that I was getting a little old to be appointed, and I was not sure when—or if—there would be another opening in Houston.

So, I waited. Then in 2004, Judge Ewing Werlein announced that he would be taking senior status. The three of us who had made the final cut assumed that one of us would be recommended by the senators to the President. Unfortunately, the senators decided to start the process over. So we all had to fill out a new application and interview with the committee again. After all of that, the same top three emerged with one addition, a state district judge. All of us interviewed with the senators, this time in Dallas.

The day after the interviews with the senators, Joanne and I were flying to Vancouver for a little vacation. As we were waiting at the gate, I got a call on my cell phone. It was Senator Hutchinson and Senator Cornyn calling to tell me that they were going to recommend me to the President as Judge Werlein's replacement. I am convinced that my nine years of law enforcement is what set me apart from the other well-qualified candidates.

For weeks, I had lain awake at night, worried that I was not going to get the job. Now, I began to lie awake at night and worry that I *was* going to get the job!

But, the recommendation of the senators was only the first step on a long road—the senators released a statement to the press that they had recommended me for the federal judgeship.⁶

6. *E.g.*, Kay Hutchison, *Senators Hutchinson, Cornyn Recommend Miller for Federal Judge and DeGabrielle for U.S. Attorney for Southern District*, PROJECT VOTE SMART (Aug. 31, 2005), <http://votesmart.org/public-statement/121239/senators-hutchison-cornyn-recommend-miller-for-federal-judge-and-degabrielle-for-u-s-attorney-for-southern-district#.UjTSasafhMy>.

A few weeks later I went to the White House for the next step in the process, an interview with the White House Counsel's office and the Department of Justice.

During that interview, I learned that the White House was unhappy that the senators had publically announced their recommendation. It would prove embarrassing if the President did not agree with their recommendation.

I had talked with other judges who had recently gone through the White House interview, so I knew what to expect—questions on why I wanted to be a judge, judicial philosophy, whether I had ever hired an illegal alien, whether I had paid my taxes, or ever done or said anything that would embarrass the President.

After all those questions, the Deputy White House Counsel excused the others and with just the two of us in his office, he asked me the final question—Was there anything in my background that he had not asked about, but that he should know?

“Why, yes, there is,” I answered. He leaned forward, picked up his pen, and I continued, “I don't know if this is important, but I have dual citizenship—U.S. and Ireland.”

The Deputy White House Counsel Bill Kelly—on leave from Notre Dame Law School—looked at me and asked, “How did you get that?” I explained that my maternal grandmother had been born in Ireland. He took notes as I explained the process to him and advised him to check with the Embassy of Ireland. I don't know if Mr. Kelly ever got his Irish citizenship, but I thought the interview ended well!

I decided that I had passed muster with the White House when, before I left, they asked me to complete forms to begin the FBI background check and to release my tax returns.

The longest six months of my life then began as friends, acquaintances, and neighbors all began conversations in the same way—“I just finished talking to the FBI about you . . .” A little disconcerting, especially when you are out in public and other people overhear it.

As things were progressing, one day Joanne said, “I think we need to discuss the finances of this new job again—I am not sure we can afford it.”

I was stunned, we had already gone over all the numbers and concluded that it would be tight, but we could do it. I said, “We have already had this discussion and you agreed we could afford it!”

“Yes,” she said, “but I never really thought you'd get this job!”

Well, neither did I, but we both ultimately concluded that it was something we could do and should do.

All turned out well and President Bush finally nominated me to be a U.S. District Judge on January 25, 2006.

After that, more forms to fill out for the Senate Judiciary Committee and the ABA Evaluation Committee.⁷ The Judiciary Committee waited until the ABA evaluation came out to set a Confirmation Hearing before the Committee. I was fortunate to receive a rating of “well qualified” by a substantial majority of the ABA Evaluation Committee.⁸

For the hearing on March 14, 2006, my family and several good friends accompanied me to Washington, D.C.

The day of the hearing, we arrived at the hearing room early. Senator Sessions was the only senator present and, as acting chair, he called the hearing to order. But before we could be asked any questions, Senator Sessions announced that he would have to recess the hearing so he could return to the floor of the Senate for a vote. Luckily, another member of the Judiciary Committee, who had already voted, Senator Orrin Hatch of Utah, agreed to come in and reconvene the hearing so that all four of us could be considered.

Senator Hatch only asked me one question, “How will your twenty-five years as a lawyer make you a better judge?” To this day, I have no recollection of my answer, but my former law partner, Steve Roberts, who was in the audience, called my answer “totally incomprehensible.” None of my family contradicted him. But, despite that, I was approved by the Judiciary Committee and my nomination was sent to the full Senate.⁹

On April 25, 2006, the Senate scheduled my nomination for a roll call vote—somewhat unusual for a District Court nominee, many of whom are confirmed on voice votes or by unanimous consent. I later discovered that this was what was called a “bed-check” vote—a vote scheduled for the day senators were due to return from Easter break—and the roll call vote was designed to make sure they were back to work.

The roll call vote lasted a couple of hours, and I was

7. The committee, formally known as the American Bar Association Standing Committee on the Federal Judiciary, provides a professional assessment of potential federal judges. See generally *Standing Committee on the Federal Judiciary: What It Is and How it Works*, AM. BAR ASS'N (2009), http://www.americanbar.org/content/dam/aba/migrated/2011_build/federal_judiciary/federal_judiciary09.authcheckdam.pdf.

8. The other possible ratings are “Qualified” and “Not Qualified.” *Id.* at 6.

9. For a full transcript of the hearing, see *Confirmation Hearings on Federal Appointments Before the S. Comm. on the Judiciary*, 109th Cong. 421, 468 (2006), available at <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg38736/pdf/CHRG-109shrg38736.pdf>. To access a more detailed account of the nomination timeline, see S. Rep. No. 109-369, at 126 (2006), available at <http://www.gpo.gov/fdsys/pkg/CRPT-109srt369/pdf/CRPT-109srt369.pdf>.

confirmed by a vote of 93–0 (clearly not *all* the senators made it back from Easter recess!).

President Bush appointed me on that day and signed my commission. That date was significant to me in other ways as well. April 25 is celebrated in Australia as ANZAC Day—their armed forces’ memorial day immortalizing the ill-fated invasion of Gallipoli in World War I by Allied forces including the Australia and New Zealand Army Corps or ANZACs.

My mother was from Australia and her father, Christopher Gray, was a member of the Australian Imperial Force and fought at Gallipoli. Luckily, he survived the war, but died in 1952, four years after I was born. I never got to meet him, but I honor him and all other ANZACs on April 25 of each year, as I celebrate the anniversary of my appointment.

I have been a U.S. District Judge now for almost seven years. I have found the job to be much more interesting than I imagined. I handle a docket of about 220 civil cases and about 60 criminal cases. The civil cases include personal injury cases, contract cases, admiralty cases, labor cases, overtime cases, tax cases, environmental cases, securities cases, civil rights cases, mortgage foreclosures, cases under the Fair Debt Collection Act, the Hague Convention on Abducted Children, Social Security appeals, bankruptcy appeals, and federal and state habeas cases.

The criminal docket is mostly drugs and illegal immigration, but I do have a few felon in possession of a firearm, bank robbery, credit card fraud, and Medicare fraud cases.

I have a great staff to work with—my case manager, three law clerks, interns, a Magistrate Judge and a staff attorney.

I get to swear in new lawyers, swear in new citizens, and perform weddings.

Public service is a privilege and I am honored to be able to end my career as I began it—as a public servant.

As I get older, I look back on all the forks in the road that brought me to this place at this time. I could never have imagined as a young police officer riding the streets of Houston that I would one day be a federal judge. Interestingly, my partner from those days is also a judge. The same year I was appointed, he was elected as a Justice of the Peace in Houston County, and he asked me to swear him in.

So, looking back on this story, what lessons have I learned from this?

First, I know I would not have been interviewed or hired by Fulbright as an admiralty associate without my time at the Merchant Marine Academy.

Second, my nine years as a Houston police officer set me apart from all the other qualified applicants for this job.

So, those forks in the road were worth taking and they took me to a place I did not even know I was destined for.

What can you learn from this story? I think the answer is this: take advantage of every opportunity and experience that presents itself to you and seek out new experiences and opportunities, even when you think they may not lead you where you want to go. Because where you *want* to go may not be where you are meant to go!

And finally, this advice from my Dad, which also helped me get where I am today:

Stand up straight.

Look people in the eye.

Smile.

And *always* be prepared and be polite.

Armed with all this advice, who knows where the forks in the road will take you?