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FRED MOSS— A PERSONAL REMINISCENCE

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WE all have that friend, or sometimes just an annoying acquaintance, who reminds us of something we are alleged to have said years ago. Very seldom is the attributed comment supposed to have been made as long as thirty-two years ago. Fewer and fewer of us can even claim to remember that far back. Fewer and fewer of us have friends to remind us of something we are supposed to have said from that long ago. But the rarest kind of reminder is the reference to a comment we made that is even truer today than it was when we were supposed to have said it. That, however, is exactly what recently occurred to me. I was having a conversation with someone I knew when I taught at SMU when I was reminded of something it is claimed that I said in 1978 during a friendly argument with a then-colleague regarding one of our newly hired faculty. I was quoted as having said, "the better you get to know Fred Moss, the more there is to like about him." I only vaguely remember the circumstances in which it was claimed that I said this, but I hope I did because I think it is as true today as it was when I am reported to have said it. That I don't fully remember the circumstances in which it was said will not necessarily stop me from recalling the events as best I can nor from claiming credit for having said it.

I was hired some years prior to 1978 to teach Trial Advocacy, among other courses, because the regular Trial Advocacy instructor was on leave at another law school. I had been asked to substitute for the universally popular Professor Jim McElhaney who was on leave to Cleveland State University, a leave from which he did not return by his decision (but that is another story). I was asked by the Dean, John Galvin, to teach the Trial Advocacy course both semesters, along with other assigned teaching responsibilities. I had already modified the Trial Advocacy course to more closely meet my own skills and was extraordinarily gratified by the support the course and I received from the Dallas Bar and the Dallas Judiciary (both state and federal), but this double teaching assignment was otherwise limiting the types of course I could teach in what was my preferred substantive area. Dean Galvin, as astute a judge of character and ability as anyone and one of the best deans in the country, much less one of the best deans (perhaps the best) Southern Methodist University ever had, recognized the virtue of hiring an additional Trial Advocacy Professor. Dean Galvin identified (with the assistance of the Faculty Executive Committee) a candidate to teach the second Trial Advocacy

Course. At the time, the candidate was receiving his LL.M. from Harvard University. That he was a teaching assistant for Professor Robert Keeton (later Judge Robert Keeton), one of the founding organizers of the National Institute of Trial Advocacy was itself a valuable recommendation, but the candidate came with other credentials as well, including a stint as a prosecutor in the District of Columbia. That candidate was Fred Moss.

I had the opportunity to work with Fred for six years when we were both on the Southern Methodist faculty and we alternated semesters teaching Trial Advocacy. We cosponsored and cocoached the Southern Methodist University Mock Trial teams and the school mock trial competition. I spent many Saturday mornings with Fred and the various team members preparing for the state and national mock trial competitions. I do not think the students ever realized we did this without additional compensation or that our time and energies were donated. Certainly Fred would never have mentioned it. We co-authored a chapter on expert evidence for one of the books I edited on Product Liability for Matthew Bender, and he was, I believe, instrumental in recommending me as a faculty member to the National Institute of Trial Advocacy. The only reason I do not say it was a certainty that Fred influenced my association with NITA is that Fred has never taken credit for recommending me (or was it blame?). Our association as the Director and Team Leader for the National Institute of Trial Advocacy, Southern Regional Basic Trial Skills Program is illustrative of the kind of person Fred Moss is.

When the Southern Regional Basic Trial Skills Program for the National Institute of Trial Advocacy was relocated to Dallas, Fred and I were going to split the duties for the regional. As the senior and most responsible member of our NITA team, it was his decision to decide which of us was going to be the Director and which of us would be a NITA team leader. Fred chose to be the Director, basically, an administrator. He gave me the showiest, easiest, and much less tedious assignment of being one of the Team Leaders. The Director contacts faculty, sets the schedule, arranges classrooms, makes sure exhibits and students are in the right rooms, makes sure faculty show up (it is, after all, a volunteer activity), pays the bills, and generally sees to it that the program runs smoothly. While it was a waste of Fred's considerable teaching talents, I think everyone who participated in the courses during the years that he ran it would admit Fred did a superb job as Director. He tolerated and supported the volunteer faculty, who could, and frequently were, a handful. They were after all trial lawyers, most in active practice, some law professors, and judges; and, all were fun to be around. The more fun they were to be around meant they created more headaches for the Director.

Following his tenure as the Director of the Southern Regional Basic Trial Skills Program and long after I had left SMU and returned to practice, Fred turned the Directorship of the Southern Regional Basic Trial Skills Program to Renee McLellan. He then proceeded to bring the

NITA's Southern Regional Deposition Program to Dallas and run it. The volunteers who taught in that program were not surprised to find that it ran as smoothly as had the trial program as Fred's administrative skill was once more on display. This is not an attempt to "compliment" Fred the way General Douglas McArthur complimented Dwight D. Eisenhower ("He was the best damn clerk that I ever had."); it is quite the contrary. It is an effort to illustrate how diverse Fred's talents are. While Fred frequently taught in these NITA courses or demonstrated some of the techniques that were being taught in the courses to the lawyers who attended them, it was principally his organizational skill, good humor, and resilience that was on display to those of us who taught in or attended the courses. We received the benefits of his hard behind-the-scenes work and efforts. Organization is one skill of a good trial lawyer; while we were fulfilling our one assignment, he organized it all. Because I never knew Fred when he was with the United States Attorney's Office, I never saw him in active practice, but I did see what kind of professor he was. Being able to communicate and educate is another skill that most every good trial lawyer has.

That Fred was a good teacher and a good communicator is evidenced from the manner in which the students applauded and rewarded his teaching efforts. Others who taught with him for longer periods or were in his classes can describe in greater detail his academic skills and accomplishments. This is, after all, a personal reminiscence. In addition to our joint teaching efforts in NITA and with the school mock trial team I did, however, have the assignment, or rather the opportunity, as the chairman of his tenure committee, of formally reviewing Fred's substantive law teaching technique and ability. As chairman, I was expected to (and did) attend his classes and report (along with the other Tenure Committee members) our opinion of Fred's ability as an instructor of SMU's law students. Though certainly different from the manner in which I taught, I was not surprised when I attended his classes. He was as good a teacher as I expected and the attitude, enthusiasm, and participation of his students reflected that fact. He was as good as we thought he would be.

And that may be the hallmark of Fred Moss. He is the kind of person you expect him to be when you meet him. There are no surprises there. He is totally without pretense and, despite his accomplishments in many legal fields, almost embarrassingly modest. He is a devoted husband and parent. It has been said that a woman measures love by how much she loves another, while a man measures love by how much he is loved. I do not claim to know if that is true, but if it is, Fred can be content that he is truly loved by Martha Moss. Her devotion and attention to him, especially during the period of his bypass operation was a warm and caring display of affection and a clear example of how much he is loved by her. He, of course, has that same level of devotion to her. Of course it is difficult not to like Fred. He has few faults.

In fact, the only shortcoming I have witnessed is his apparent lack of temper or mean-spiritedness. While his wife's beloved turkey stuffing was destroyed at the hand of another, I personally witnessed not anger in him but instead abject disappointment on his face as he recognized his loss (weeks or at least days of turkey stuffing supplemented meals) as well as the apparent total lack of remorse on the face of the miscreant. He did not even banish the perpetrator from his house (though I did witness that on subsequent Thanksgivings Fred never let him handle the plate containing stuffing again). Fred is considerate to a fault, and it has been reported that he would not even waken an annoyingly loud snorer, despite the fact that the snorer was depriving Fred of his own well-deserved night's sleep.

Considerate to a fault, Fred is as consummate a friend as he was an excellent colleague. He never carps or nags despite what he may feel, and I have never heard him say "I told you so." He is always dependable, a quality much neglected and often overlooked. A scholar, teacher, parent, husband, friend, I believe it is worth repeating to say that the better you know Fred Moss, the more you like him.

Essay


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