

A TRIBUTE TO CHIEF JUDGE EDWARD E. CARNES

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It is an honor and privilege for me to write a tribute to my friend and colleague Chief Judge Ed Carnes. Chief Judge Carnes was appointed to the United States Court of Appeals for the Eleventh Circuit by President George H.W. Bush on September 10, 1992, two years after my appointment to the court. For twenty-five years, I have had the privilege of serving on the court with him where we judge together, work together, and travel together. Additionally, we socialize together and even have hiked together in the Smoky Mountains outside of Gatlinburg, Tennessee. I know Ed well and can say without reservation that he is a man of impeccable character. He has written many opinions that will make a lasting impact on the law of the circuit, and that will secure his place as one of the best federal judges in the United States.

When I think about Chief Judge Carnes and his long and distinguished judicial career, several defining characteristics come to mind. The first is intelligence. Ed is one of the most brilliant federal judges in the nation. In addition to the prolific scholarly opinions he has written, he has taught seminars on legal writing and oral advocacy for many years. He has a distinctive style to his writing and uses anecdotes and even song lyrics for emphasis. Stated simply, he is one of the best writers I have ever known.

The second characteristic is leadership. When I stepped down as Chief Judge of the Eleventh Circuit in October 2013, Ed became Chief Judge. To date, he has served in this capacity for four years. During his tenure, the court has undergone many dramatic changes, such as the addition of new judges and changes in court personnel. Ed's leadership skills enabled him to guide the court through difficult times.

It is no easy job being chief judge of a circuit court of appeals. The responsibilities are overwhelming, and the different personalities, not only of the judges but also of other court personnel, can be daunting. Ed has gained the respect of his colleagues and of court personnel across the circuit because of his outstanding leadership skills.

The third characteristic is fairness. Over the years, I have participated with Ed on hundreds of oral argument panels. He asks probing and

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challenging questions at oral argument, but his inquiries are pointed and meant to hone in on the heart of the case. He is respectful to the lawyers and the litigants and of the views of his colleagues as well. On occasion, when convinced he was wrong, I have seen him change his mind in an attempt to reach the right result in a case.

The fourth characteristic is courage. All the cases we hear in the Eleventh Circuit are important, but the death penalty cases are the most difficult. I always thought it unfortunate that during Ed's confirmation process some of the senators thought Ed would be an ideologue, especially in the death penalty cases. He is not! I share an illustration to support that truth. When I was a young United States District Judge, I heard a death penalty case in which John Gibbs and Ed Carnes, both with the Attorney General's Office, represented the respondents, the State of Alabama.¹ After conducting an evidentiary hearing and ordering extensive briefing, I granted the petition for writ of habeas corpus and ordered a new trial. Ed Carnes, on behalf of the respondents, appealed to the Eleventh Circuit. Months later, I received an order from the Eleventh Circuit granting a motion to dismiss the appeal based on the respondents' concession that I correctly issued the writ on at least one ground. Attached to the order was a letter written to the court by Ed Carnes conceding the error. That letter took courage and left a favorable and lasting impression on me about the kind of character Ed Carnes possesses. In my twenty-seven years on the court, I have never seen Ed decide any case based on ideology. He reviews each case on its own merit, reads the parties' briefs and the record, and applies the law to reach the best, and most accurate, result.

I would be remiss in this tribute to Chief Judge Carnes if I did not mention his wife, Becky, and their daughter, Julie. Although individuals who are appointed to federal judicial positions sacrifice much, so do their families. Becky and Julie have supported Ed over these many years, and their love and support enable him to perform effectively his professional duties and responsibilities. In a very real way, Becky and Julie also serve the federal judiciary and the nation.

Ed is an exceptional jurist, but more importantly an exceptional person. For twenty-five years, Ed has been a leader for the cause of justice, the rule of law, and the fair administration of our judicial system. On a recent trip to New York City, I saw a plaque containing multiple sayings by our late President Theodore Roosevelt. One of them said: "Courage, hard work, self-mastery, and intelligent effort are all essential to a successful life. Character in the long run is the decisive factor in the life of an individual and of nations." That encapsulates the life of Chief Judge Ed Carnes. It has

1. See *Daniel v. Thigpen*, 742 F. Supp. 1535 (M.D. Ala. 1990).

been an honor for me to serve with him as his colleague, but it is an even greater privilege to call him my friend.