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WYOMING
GOWNGIRL'S

PATH TO THE BENCH

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ILLUSTRATION BY AGATA NOWICKA

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he theme of my talk this morning is that you never know where you are going to end up. I look out at all of you and try to imagine many years ago when I sat in your place. I never imagined that I would end up as a federal court of appeals judge. Most of my classmates probably didn't either. I reflect on how so many things in my career were shaped by serendipity. Of course I had the great fortune of having a few wonderful role models, and I worked hard, but there wasn't a lot of scripting involved because I was clueless about what could lie ahead.

I want to talk today about some of the points in my career that were part of the serendipity of how I ended up on the federal bench.

The following article is excerpted from an address Judge McKeown delivered at the Law School on February 22, 2016.

HOT-FUDGE SUNDAES AND THE SENATE

I grew up in Wyoming and was very active in the Girl Scouts. I had an opportunity one summer to go to Washington, DC, to meet with government officials and learn about what they did.

I was told to write to Wyoming's senators. Senator Clifford P. Hansen wrote me back and invited me to visit him at his office.

When I arrived, the first thing he said to me was, "Would you like to see the Senate dining room?" I was thrilled and impressed. First of all, the silverware was really heavy and it was actually silver, and the room was filled with white tablecloths.

It was about three o'clock in the afternoon; we sat down, and he bought me a hot-fudge sundae. He explained how the laws were made—and I was fascinated. What appealed to me was the intricacy of the process.

I said, "I would love to work here!"

He told me I had to wait until I was in college.

Before graduating from high school, I was accepted at Cornell's medical school. Cornell gave me a scholarship but not a full scholarship.

My father said we couldn't afford the school. To be honest, we were not particularly sophisticated about academic matters, so we never thought to go back and ask for more money. Instead, my father said, "You know, if you go to the University of Wyoming, you can actually make money because you will receive so many scholarships."

On my first day at the University of Wyoming I wrote to Senator Hansen: "I'm in college now. Can I come work for you?"

I didn't hear back right away, but I wrote again and again and was pretty persistent. Finally he responded and offered me an internship. Working there was a wonderful experience because instead of having



a hot-fudge sundae and hearing about the law-making process, I was part of the experience.

It was the 1970s, and there were "boy interns" and "girl interns." The girls were sent downstairs to work on the Robotype machine, a precursor to the word processor. It was a massive typewriter that deafened anyone working on it for too long. We used it to send form letters—for example, writing to the Wyoming newlywed couples who were potential voters. However, I soon realized that the male interns were writing memos while I was typing up bride-and-groom letters.

I finally got up my courage and said to Senator Hansen, "Do you think I could write some of those memos and do some of the research? It seems like only the boys are doing that."

He said, "Really?" It hadn't occurred to him. So he invited me upstairs to write memos. That was the beginning of my seeing law in action.

Senator Hansen hired me all of the summers of my undergraduate years, and during my last year in college I worked as one of his Wyoming representatives. I owe a lot to Senator Hansen. He stuck with me as a mentor for many years. Personal relationships were important to him: he knew people's names, he knew the staff, and he talked to everybody—from the elevator operators to the president and the vice president.

I went to Georgetown University Law Center, funded in large part by my work for the United States Senate. I had the opportunity to work for a trial judge for four months, and I spent much of my time working as a criminal investigator, interviewing witnesses and police officers, serving subpoenas, and going to heroin dens to scout out witnesses. I learned an important lesson in the law: facts matter.

A THOUSAND MEATBALLS AND THE MOUNTAIN

I am a westerner at heart, and though I did interview at some New York law firms, I realized that my nature and my attachment to the land meant that I should go west. I needed water and mountains because I wanted to continue hiking and climbing.

I had offers from California Rural Legal Assistance and Perkins Coie in Seattle. Although I accepted the California offer, my gut told me that I should have made a different decision. I called back Perkins Coie the next day and said, “I hope you haven’t given that offer away, because I would like to come to Seattle.” They were gracious enough not to wonder why they were hiring someone who would turn them down one day and offer to show up the next day. It turned out to be a serendipitous and wonderful choice.

The first day was perhaps not my best day. Keep in mind that I went to law school in the 1970s. I had really long hair and long bangs that went right across my forehead. I looked like Joan Baez in a business suit.

I was standing in the copy room when a partner came by and asked, “Are you the new Xerox operator?”

“No,” I said. “I’m your new associate. But I’d be happy to copy your papers for you.”

There were no women role models, but there were others who guided me. If I were to write a book it would be called *Lean Down and Lift Up*. Lawyers, professors, and judges have an obligation to help new lawyers and others in the community—to lift them up, provide them support, and expand their horizons. I was a beneficiary of that largesse and guidance from many lawyers.

Serendipity struck again when I was a fourth-year associate with the “fourth-year itch.” I loved what I was doing, even though I had gone on a little detour back to Georgetown to interview as a law professor. It was then that I realized that I was a litigator at heart, not a professor. But I was looking for something different.



I remembered the White House fellows from the time I had been with Senator Hansen. It’s a program that brings young leaders to Washington, DC, for one year to work at a high level in the executive branch. I applied and became a fellow in the transition year between President Jimmy Carter and President Ronald Reagan, working in both Democratic and Republican administrations. I was special assistant to Cecil Andrus, President Carter’s Secretary of the Interior, and then I worked as special assistant on domestic policy at the White House.

I had told the law firm that I was going to be applying for the fellowship, and I hoped they would understand that I wasn’t trying to escape the firm but that I was looking for some additional opportunities—especially in public service.

The firm said, “We’re sorry you might be leaving, because we want you to open the Washington, DC, office.” As it turned out, the White House fellow application cycle is about a year, so I went to Washington along with a partner to open the firm’s new office. I call this period of my life the year of a thousand meatballs because of all the receptions and business lunches I attended. Just before I left the White House, I learned that the firm had voted to offer me an early partnership.

That same summer, on a mountain-climbing expedition, a friend introduced me to a Seattle lawyer who was going to climb in Tibet, which was at the top of my list for travel. One of the climbers had dropped out, so he offered the place to me. Again, it was total serendipity. I signed up and sent my climbing credentials, as thin as they were, to China. I was not a beginner, as I had spent many weekends over many years climbing all of the major peaks in Washington and some in Oregon.

There were several professional climbers from Colorado, a doctor, and two lawyers from Seattle who went, along with me. We were the first American team to climb Mount Shishapangma, along with a team that was climbing Mount Everest from the China side. It was the first time since the Revolution that Americans were allowed to climb in China. I was the only female on the expedition.

Arriving in those mountains was amazing. I thought Wyoming looked vast. When you get to what is called “the roof of the world,” you see nothing for miles and miles and miles. We ran into a few yak herders here and there. We traded our chocolate for some of their things and started up the 26,000-plus-foot peak.

To acclimate, we had many ups and downs—up 4,000 feet and then down to sleep at a lower elevation, again and again. On one of these forays, we reached about 22,000 feet. As we came down the mountain, we turned around barely in time to see an avalanche barreling toward us and soon to envelop us. Still roped together, we ran, or at least we thought we were running. It was like navigating in a river of concrete. The climbers below at our camp at 19,000 feet thought we had been killed. Obviously I survived, but that frightening life-and-death experience has never left me.

A Renaissance Lawyer

DEAN JAMES R. RASBAND

I first met the Honorable M. Margaret McKeown when I was a newly minted lawyer at the Perkins Coie law firm in Seattle. Judge McKeown was already a legend there. She was the first woman partner, she had founded the firm's technology/intellectual property law practice, and she was the firm's lead antitrust and constitutional litigator. She was a superstar and I was a newbie, yet she was always kind and gracious in our interactions, just as she was when I invited her to come as a jurist in residence.

Judge McKeown is originally from Casper, Wyoming. She is in the first generation of her family to attend college and has been a trailblazer and a pioneer throughout her life. After studying Hispanic studies at the University of Madrid, she graduated from the University of Wyoming and then obtained her law degree from the Georgetown University Law Center.

In addition to all of the high-profile clients and cases that she handled at Perkins Coie, she was constantly involved in pro bono litigation, particularly in civil rights litigation. She served as lead counsel in a challenge to admit women to Seattle's Rotary Club, and she filed an amicus brief in the related case before the United States Supreme Court.

Continuing that trailblazer theme, Judge McKeown was not only the first female partner at Perkins Coie but also the first woman on the firm's executive committee and the first female managing director. She was the founder and first copresident of the Washington Women Lawyers association and the first woman to serve as president of the Federal Bar Association of the Western District of Washington. She was even part of the first American ascent of Shishapangma, which is one of the fourteen 8,000-meter peaks in the world. That is about 26,000 feet—more than double the height of Mount Timpanogos. I am in awe.

Judge McKeown has done just about everything one can do in a lawyer's life. She has been a White House fellow, a Japan Society fellow, a special assistant to the Secretary of the Interior, the founder of the ABA's Immigration Justice Project, and now, after her 1998 appointment by President Bill Clinton, a federal judge. She teaches Constitution and Internet law, lectures around the world, and serves as an adjunct professor at Georgetown and at law schools in San Diego, where she lives. Her legendary energy that I first observed 25 years ago at Perkins Coie has not abated one bit.

Judge McKeown is also a longtime member of the national board of the Girl Scouts of the USA, and she was given their Cool Women award. Today I introduce you to one cool woman—an extraordinary lawyer, a distinguished judge, and a path-breaking pioneer. It is a great honor to have her at BYU.

I came back to Perkins Coie in Seattle. Because I had been in DC and had taken several years off, I really didn't have much of a practice remaining. I tried to figure out what would make sense and what would be interesting.

This was at the beginning of the digital revolution. Microsoft had barely started and other startups were taking off. I wondered why intellectual property, generally the province of patent lawyers, should belong to only those lawyers. I started a nascent intellectual property practice, but because we weren't patent lawyers, we combined it with antitrust and competition law.

My big break came when Boeing, one of the firm's major clients, asked another partner and me to head key litigation on the intersection of trade secrets and antitrust. I was involved in a trial that ultimately took two and a half months.

The trial started in May, and I was scheduled to get married in late June. My idea was that I would take a couple of weeks off, my mom would come out, we would have the wedding, and then Peter and I would go on an extended honeymoon.

As we moved closer to the wedding date and the trial still dragged on, I panicked. I was doing a lot of the wedding planning during the recesses and in the early mornings and working on witnesses late at night. I realized that the case was not going to end before the wedding day.

On the day of the rehearsal dinner—the wedding was the next day—the judge said, “This case has gone on way too long, so we're going to meet tomorrow and do the jury instructions, and then we'll come back on Monday.”

“Excuse me, Your Honor,” I said. “I'm getting married tomorrow.”

The judge asked, “Is this your first marriage, Miss McKeown?”

I said, “Yes, it is, Your Honor. My partners and my colleagues would like to come to the wedding.”

The judge replied, “Then we'll resume on Monday morning.”

We did resume on Monday morning, and my husband, who is an academic, waited and waited for the trial to end. He had some interviews that he was going to do in Europe combined with our honeymoon, and he had to leave without me.



Finally the jury was out. I left not knowing the verdict and flew to France to meet my husband. We won that case, and I was notified of the result by telegram in a small French town.

I was so fortunate to be in an emerging area of the law. I had no plans to leave that endeavor.

While I was sitting at dinner with a federal judge one night, he asked, “Are you interested in being a judge on the Ninth Circuit? Your name is in circulation.”

And I replied, “No, I hadn't thought of it. What would I need to do?”

I took a napkin, wrote some notes, and stuck it in my purse. A few weeks later people were still asking if I was interested. I thought about it, but I really loved the practice of law, my partners, my clients, and working with the young lawyers. But when I had appellate cases, what I really loved was the luxury of reading and thinking and writing. You often don't have that luxury in trial law because you are moving all the time.

Before I was nominated, I was sent in a big limousine from the White House to see Senator Orrin Hatch, and I felt like it was the biggest job interview of my life. My husband counseled me, “Why don't you just go in there and be yourself?”

I arrived, I went in, and I talked to him lawyer to lawyer. I could tell Senator Hatch had been a trial lawyer. We had a great conversation.

When we were done, I thanked him and said, “It is Girl Scout cookie week, and because my girls can't sell cookies on federal property, I brought you some cookies.”

The next day Senator Hatch called the White House and said my nomination was good to go.

I never could have engineered the nomination. It was serendipitous in so many respects—coupled with a lot of goodwill and support from so many people along the way. I was confirmed in 1998. I have been on the court for almost 18 years, and I have had more than 75 clerks, which is really one of the most rewarding aspects of my job—along with my colleagues and the cases. The judges in the Ninth Circuit know and care about each other, their families, and their personal lives. We have an incredibly collegial court. We may disagree from time to time, of course, but the dissents are gracious and well taken.

It has been a privilege to serve on the court and an honor to be at BYU with my former colleague Jim Rasband. [cm](#)