

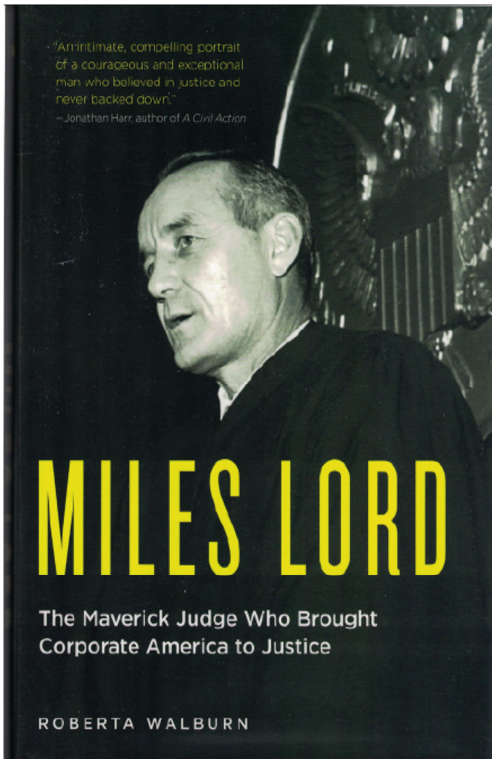
# Joyful Judicial Pugilist

## MILES LORD: THE MAVERICK JUDGE WHO BROUGHT CORPORATE AMERICA TO JUSTICE \*

by Roberta Walburn

Reviewed by Michael A. Wolff

Senator Eugene McCarthy stopped by to see Judge Miles Lord one day in the Fall of 1970, when I was the judge's law clerk. While the judge finished up some business in his office, McCarthy "confided" to me that his support of Lord's appointment to the bench was one part of his two-part plan to solve the problem of judicial workloads. "I figured with Miles on the bench, no one



would be crazy enough to try their cases," the senator said. And if they did, the second part of the senator's plan was to put Jerry Heaney on the Court of Appeals because "no one would be dumb enough to appeal."

The senator's plan – spoken with tongue planted firmly in cheek – did not work. Miles Lord proved to be a wily and dedicated fighter for justice, managing and trying a fascinating array of ground-breaking cases. And the Court of Appeals with Judge Heaney got plenty of interesting business from Lord's courtroom. Lord and his reviewers in the Court of Appeals were wary of one another, to put it mildly.

The appeals judges were not his biggest fans. I could give you citations, gentle reader, but this is not a scholarly review and you can Google for yourself. But a story Judge Lord gleefully told me may suffice: Shortly after he left the bench in September 1985, Joan Kroc, recently widowed wife of

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McDonald's founder Ray Kroc, was in the Twin Cities and wanted to consult with Lord. They dined at the Lexington, a fancy restaurant in Saint Paul and as they left the restaurant, Lord was greeted with overflowing but perhaps insincere warmth by a few of the judges of the Court of Appeals who were in town for oral arguments: Miles, it's great to see you – what are you doing these days? They asked. "Well, boys," Lord said, "I told you when I left the bench I would be helping widows and orphans – meet one of the widows, Joan Kroc." Helping widows and orphans was a theme of his, of course, but not the wealthy kind.

Roberta Walburn has captured Judge Lord's spirit and historical significance in her very readable biography, *MILES LORD: THE MAVERICK JUDGE WHO BROUGHT CORPORATE AMERICA TO JUSTICE*. Walburn, who clerked for Judge Lord in 1983 to 1985, intersperses chapters of Lord's life story with stories of his most prominent cases. It is an effective technique because, especially in Judge Lord's case, his life story is an essential part of his judicial decision-making. He grew up hardscrabble poor in Crosby and Ironton, Minnesota, the second youngest of nine children in a house with no indoor plumbing in a community especially hard-hit by the Great Depression. In his young life he excelled in golden-gloves boxing and theater, and throughout his life he was a fighter and a bit of a showman.

Lord married young, eloping with this high-school girlfriend, Maxine, stayed married and they raised four children. Walburn recounts Lord's working his way through law school and his early entry into DFL politics where he was elected state attorney general in 1954 and became very close friends with Hubert Humphrey and later, with Eugene McCarthy. When he quit the attorney general position in 1960 after a dispute with Governor Orville Freeman, he lobbied for his able assistant, Walter Mondale, to succeed him. McCarthy and Humphrey were steadfast in their support of Lord to become United States Attorney in 1961 and his appointment to the federal trial bench in 1966.

Walburn had access to Lord's personal papers; they are a treasure-trove of Minnesota history of the 1950s and 1960s when these DFL politicians ascended to the heights of national political life. Miles remained friends with McCarthy even when McCarthy and Humphrey fought for the Democratic presidential nomination in 1968.

In fascinating detail, Walburn recounts Miles' efforts to reconcile his two friends in 1968, proposing that that Humphrey and McCarthy form a ticket

for president and vice-president after the assassination of Robert F. Kennedy. The judge – and remember he was a judge – joined both candidates in their campaign travels. Even before the RFK assassination, Miles urged Humphrey to take on Kennedy in Oregon and went there to help him campaign. Kennedy – with whom Lord had worked to convict Teamsters' president Jimmy Hoffa when Lord was U.S. Attorney – was astonished to see Judge Lord with Humphrey in campaign mode in Oregon in 1968.

Miles attended the disastrous 1968 Democratic convention in Chicago, where he took a rifle butt to the head from a national guardsman and was knocked down again by protester. During the convention Miles continued his peace-making efforts, trying to get his friend McCarthy to endorse the Humphrey ticket. McCarthy refused to do so at the convention and played hard-to-get for most of the campaign, though Miles continued to try to get McCarthy on board. Toward the end of the campaign, McCarthy did announce that he would vote for Humphrey – too little too late as Humphrey lost to Nixon by a surprisingly small margin.

Although Miles took some steps to hide his political involvement it was fairly well known by campaign workers and some of the press. Walburn's access to Lord's papers fills in a colorful picture. It probably is difficult for contemporary readers to imagine that the press and the judicial ethics enforcers today would let pass this level of political activity. But from reading Walburn's account, Miles was so committed to doing what he considered the right thing that he would have quit his judgeship to accomplish it.

The tumult of the 1968 campaign was largely about the Vietnam War – McCarthy's run as an antiwar candidate and Humphrey's support of President Johnson's policies right up until near the end of the 1968 campaign. Miles Lord's early visceral support of the war came to an end during that campaign, and Walburn's book describes it well.

Early draft resisters regularly received prison sentences of two to five years in Judge Lord's court. Shortly after I came to work for him in 1970, the Court of Appeals affirmed the conviction of a draft resister whom Lord in 1968 had sentenced to two or three years in prison. He had remained free on bond during the appeal, and when the order came affirming the conviction, Judge Lord was given 60 days to alter the sentence. "Cut him loose," he told me. I prepared the order, which he signed, changing the prison sentence to probation. The draft resister, we later learned, was astonished when he received the order – he apparently was preparing to report to prison. During

my year with Judge Lord 1970 -1971, few were convicted, and those who were convicted received sentences of three years' probation with a requirement of two years' community service.

The two cases that are the centerpieces of Walburn's book are the Dalkon Shield intrauterine device (IUD) lawsuits and the Reserve Mining Co. litigation that involved the dumping of 67,000 tons of taconite mining tailings daily into Lake Superior. In both cases, Judge Lord stretched the role of the trial judge to an extent that made him a champion of justice to his fans and an outlier to his critics, some of whom were judges of the Court of Appeals for the Eighth Circuit.

In the Dalkon Shield cases, during Walburn's clerkship in 1983, the judge enabled an expansion of pretrial discovery because he was persuaded that the IUD maker, A.H. Robins Co., was concealing crucial records from the plaintiffs' lawyers. The judge himself travelled to Richmond, Virginia, to preside over pre-trial deposition testimony and to order production of company documents. He employed two special masters to continue the document review process and empowered his law clerks, including the author, to do the same. The records and testimony that were gathered under his direction broke open the cases, resulting in substantial settlements for women who claimed they suffered loss of reproductive organs from infections transmitted via the multi-filament string that was attached to the IUD to facilitate its removal.

When A.H. Robins agreed to settle the cases before Lord, he ordered three top officers of the company to come to his Minneapolis courtroom to sign the agreement. In open court, Judge Lord delivered a speech that was, to say the least, scorching in its Biblical scorn, accusing the company and its officers: "... your company, without warning to women, invaded their bodies and caused them injuries by the thousands.

"You exposed these women and ruined families and reputations and careers in order to intimidate those who would raise their voices against you," he continued. "You introduced issues that had no relationship whatsoever to the fact that you planted in the bodies of these women an instrument of death, mutilation, and disease."

"The speech," as Walburn calls it, brings Judge Lord the disapproval of the Court of Appeals, to which A.H. Robins had appealed, and a judicial misconduct complaint that eventually was dismissed. It also was followed by

an unapologetic Judge Lord being grilled by correspondent Mike Wallace on CBS' *Sixty Minutes*.

In the earlier case, Reserve Mining, the Eighth Circuit had a few occasions to review Lord's orders, the first of which came when he ordered immediate shutdown of the taconite plant after months of testimony during which he determined that the company officials had not told the truth about a plan for depositing the tailings on land. The Court ordered the closing lifted and directed the judge to hold more hearings. Judge Lord's oft-stated concern was that the tailings were polluting Lake Superior. The final time was when he again ordered the plant closed, and Reserve sought the help of the Court of Appeals, arguing that Lord should be removed from the case for bias.

I believed in 1975 that judges who are "respondents" in writ cases never appear to argue on their own behalf – that is a task for the party seeking to uphold the judge's order. From my fairly new position at St. Louis University law school, I noted the case of "Reserve Mining vs. Honorable Miles W. Lord" on the Eighth Circuit docket and I was curious enough to go to the court room to see what the parties and the Eighth Circuit judges were saying about my old boss. To see Lord himself in the courtroom was amazing enough. But when he came forward to add his own argument to his own case, astonishment would be an understatement except that those who knew him well over the years had come to expect surprises.

Walburn gives a vivid account of Judge Lord arguing his own case that day. His argument, as I recall it, started strong with careful distinction between the "bias" a judge acquires as a result of hearing evidence and arguments in the court room and "bias" that a judge brings into the case from past experience and pre-conceived notions. While he spoke, the several judges who were the en banc court spent the whole time looking down at their notes, none making eye contact. When Lord concluded, he asked the judges if there were any questions. There were none. Well, he said, I have a few things to add and launched into a "stump speech" of his grievances with the mining company that included the judge recounting warnings from friends that he ought to avoid the case because Reserve and its corporate owners "will ruin you."

When the argument was over, I joined Judge Lord and his clerk Peter Thompson in an elevator of the St. Louis federal courthouse. The judge said to me: "Peter here is pissed at me – what did you think?" I stammered that I thought the first part of his argument was well done, but the "stump speech"

seemed to undercut his careful dissection of "bias" in the first part. Oh well, he said.

The Eighth Circuit did remove him. And Judge Edward Devitt, the opposite of Miles Lord in views and temperament, took over. Devitt reached the same result as Lord did, but with a few years more of extensions. There is a lesson on judicial behavior in there, somewhere. But in the end, after eight years of litigation, the result Judge Lord demanded years earlier came to pass. As Walburn notes, many credited Lord with saving Lake Superior.

What was not saved, of course, was his reputation with the Court of Appeals. As he expected, his subsequent cases would receive an added level of scrutiny from his appellate brethren. That scrutiny would be well displayed years later in 1984 when Judge Lord brought the corporate leaders of A.H. Robins Co. to his courtroom and lectured them about the damage their Dalkon Shield intrauterine device (IUD) had done to thousands of women. Judge Lord's actions in the case forced from the company's files many documents about the bacterial wicking effect that the string on the device produced in many women, causing serious infections in their reproductive organs.

The judge's lecture occurred when the cases in his court were pending settlement. His condemnation of the corporate actions brought a rebuke from the Court of Appeals when the Robins Company sought relief. Another major case of national significance, another resolution that satisfied the public's thirst for justice, and another rebuke from the Court of Appeals, which found his methods a bit short on due process.

Judge Lord, as Walburn notes, was unapologetic about his treatment of the Dalkon Shield makers. On the CBS program *60 Minutes*, correspondent Mike Wallace reads to the judge from the lecture to the Robins executives: "If one poor young man were, without authority or consent, to inflict such damage upon one woman, he would be jailed for a good portion of the of the rest of his life."

"And that's the truth," Judge Lord told Wallace. "They go to jail but these people can sneak up and plant something in their womb that'll poison them, kill their babies, give 'em retarded babies, and that's in the name of profit, and that's America?"

While Walburn's book focuses on two main cases, Reserve Mining and the Dalkon Shield, she also recounts groundbreaking cases that came from his sense of right. They included an opinion about the constitutional deficiencies of Minnesota's school financing scheme, which helped to produce a change in the law to increase funding for public education; a landmark case allowing a two girls to play on their high school tennis and track teams; a major sex discrimination case against the University of Minnesota. These were cases whose decisions were brilliant strategically and made lasting changes in Minnesota law and society.

Judge Lord, who left the bench in 1985, was a fighter, a highly perceptive advocate, who saw himself as a champion of the people. When he scolded he was biblical in his severity. But in his day-to-day dealings in dispensing his brand of justice, he often was joyful with a splendid sense of humor. In Walburn's biography, both sides of him are colorfully on display.

In my lifetime there have been hundreds of men and women who have served as federal judges. I fear no contradiction – from those of us who miss him and those who most assuredly do not – when I say there was no one like him. In *MILES LORD: THE MAVERICK JUDGE WHO BROUGHT CORPORATE AMERICA TO JUSTICE*, Roberta Walburn has given us a fascinating account of the life and times of a judge who really mattered.

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