

The Honorable Boyce F. Martin Jr.

By
Grace M. Giesel

On Oct. 1, 1996, Judge Boyce F. Martin Jr. became the Chief Judge of the United States Court of Appeals for the Sixth Circuit after 17 years of service as a member of the court. During his years on the federal bench, Judge Martin has fulfilled a prophesy made near the beginning of his judicial career by a newspaper editorial endorsing his candidacy for a state judgeship. The editorial, which appeared in the *Louisville Courier-Journal* on Oct. 20, 1976, noted that Judge Martin "has the training, ability and determination to become an outstanding jurist."

Judge Martin certainly is an outstanding jurist. Yet, he has achieved that status not by antiseptic edict and application of the law, but by a constant consideration of the law in light of the people and communities the court's decisions affect. In so doing, Judge Martin never loses sight of what he might call simple common sense, but actually can be described as wisdom in the intellectual search for ultimate justice. Nor is he inclined to sit silently when he believes more needs to be stated to move toward that goal.

Since 1979, when Judge Martin joined the Sixth Circuit Court of Appeals appointed by President Carter, he has been the author of hundreds of majority opinions and more than a few dissenting and concurring opinions. Judge Martin's distinctive style of no-nonsense jurisprudence is obvious in them. A recent example is the case of *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F. 3d 219 (6th Cir. 1996), in which he concurred with Judge Merritt's majority opinion. Judge Merritt and Judge Martin lifted a publication ban that a district judge had placed on *Business Week*, recognizing the ban as an unconstitutional prior restraint. Judge Martin stated in his concurrence: "In entering the permanent injunction, I do not believe the district court even came close to justifying its action in light of Justice Stewart's statement that a prior restraint upon publication is improper absent proof that publication 'will surely result in direct, immediate, and irreparable damage to our Nation or its people.' *New York Times Co. v. United States*, 403 U.S. 713, 730 ... (1971). It is thus clear to me that the permanent injunction that remains in effect is a prior restraint that logically falls within that group of cases capable of repetition yet evading review. I therefore join Chief Judge Merritt in holding that the injunction violates the First Amendment and must be set aside." And in characteristic fashion, Judge Martin concluded his opinion, by noting

that "the greatest concern in my mind is that a reading of our decision in this case could be an additional chapter in Philip K. Howard's book, *The Death of Common Sense: How Law is Suffocating America*."

Many of Judge Martin's opinions are notable not only for the law and ideas they state, but also for how those ideas are stated. For example, in *International Insurance Co. v. Stonewall Insurance Co.*, 86 F.2d 601 (6th Cir. 1996), he wrote of a conflict of laws issue, stating: "Resolving a choice of law issue is not an exact science, but an art form. As our opinion makes clear, these cases are frequently fact-driven, and each case has to be analyzed within its own factual context. Here, we reach the same



conclusion as did the district court, although we use fewer colors on our canvas."

This interest in the craft of writing and the value of the word can be traced to Judge Martin's undergraduate days at Davidson College in North Carolina. After graduating from Davidson, he worked for several years in banking

before pursuing a law degree at the University of Virginia School of Law. Judge Martin then accepted a clerkship with Judge Shackelford Miller Jr., of the U.S. Court of Appeals for the Sixth Circuit, and returned to Louisville, Ky. After the clerkship, he worked in the U.S. Attorney's Office. Following several years in private practice, Judge Martin became a trial court judge in 1974 and the Chief Judge of the newly created Kentucky Court of Appeals in 1976. The tap from President Carter for the Sixth Circuit position followed in 1979.

Judge Martin has always been active in the community and beyond. His intellectual inclination is obvious from his service on the Board of Visitors for Davidson College and on Davidson's Board of Trustees. He has served also as vice chair of the Board of Trustees of Hanover College in Hanover, Ind. One who enjoys the outdoors, Judge Martin has devoted much time to serving as the chair of the Board of Trustees of the Isaac W. Bernheim Foundation, a foundation responsible for the operation of the Bernheim Forest located near Louisville.

Perhaps one of the best indicators of Judge Martin's

stature and unselfishness is reflected in the fondness and respect his former clerks have for him. Lawyers who have clerked for him have scattered into all parts of the country and have chosen a variety of careers. Some are in private practice, some are in government, some are judges, some are professors. Many of these clerks look upon their clerkship with Judge Martin as an absolutely wonderful experience and continue to count him as a trusted advisor and friend. Mark Anderson, a professor of law at Temple University School of Law, relates a memory of being told by a former clerk that working with Judge Martin was a superior experience. Anderson recalls his own elation when he realized that the former clerk was correct. Anderson says that the clerkship "made me realize how attractive an intellectual approach to the law could be." He continues, "I probably never would have considered teaching as an option if I hadn't clerked and had such a wonderful time doing it." ■

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