

Hon. John Minor Wisdom

By
Adrienne O'Connell

Honor, courage, compassion, justice, imagination, and wisdom. These are the six words describing Judge John Minor Wisdom which are etched into the stained glass windows in the room at Tulane Law School that was dedicated in 1998 to hold the judge's extensive collection of legal and historical books and papers. These six words describe qualities that have permeated the entire career of Judge Wisdom, a senior judge on the federal Fifth Circuit Court of Appeals, who is renowned for his opinions on civil rights matters in the 1960s.

Judge Wisdom was born in 1905 in New Orleans. He graduated from Washington and Lee University in 1925 and spent about a year studying at Harvard before returning to New Orleans to attend Tulane Law School. He graduated first in his class in 1929 and went on to establish a successful law practice in New Orleans with his friend and law school classmate, Saul Stone. In fact, the firm they founded continues to exist as one of New Orleans' pre-eminent law firms. As a practicing lawyer, he was involved in many "cutting edge" cases. For instance, his successful argument before the U.S. Supreme Court in the case of *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951), ultimately led to an end of "fair trade" under a Louisiana law that allowed price-fixing arrangements.

He was also involved in drafting various Louisiana laws and was active in his community as, among other things, president of the New Orleans Council of Social Agencies and a director of the New Orleans Urban League. He joined the Federal Bar Association in 1956 and has been a member ever since. In addition, he has been active in the New Orleans and the Louisiana Bar Associations, as well as the American Bar Association. He also found time to teach classes in the Louisiana Code and trusts at Tulane Law School for several years. During World War II, he served in the Army Air Forces Operational Intelligence Division in Washington, D.C., as a legal advisor on property and contract matters. He rose from the rank of captain to lieutenant colonel and received the Legion of Merit and the Army Commendation Ribbon. In the 1950s he played an active role in the Republican party. He helped establish a two-party system in Louisiana and championed a winning fight at the 1952 Republican convention to seat Eisenhower delegates, which helped Eisenhower obtain the presidential nomination.

President Eisenhower appointed Judge Wisdom to the

Fifth Circuit Court of Appeals in 1957 (after the judge turned down an earlier nomination in 1953). At that time, the Fifth Circuit encompassed the states of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas and was the largest circuit court in the country, in terms of both geography and caseload. (It has since been split into the Fifth and Eleventh Circuits, in a move that Judge Wisdom strongly opposed.) Judge Wisdom joined the court shortly after the U.S. Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Brown v. Board of Education*, 349 U.S. 294 (1955), which ordered the implementation of school desegregation with "all deliberate speed." It was a difficult time to be a federal judge in the South, but Judge Wisdom did not falter in making unpopular decisions that he knew were right, and he is viewed as being one of the leaders of the Fifth Circuit during this tumultuous time.

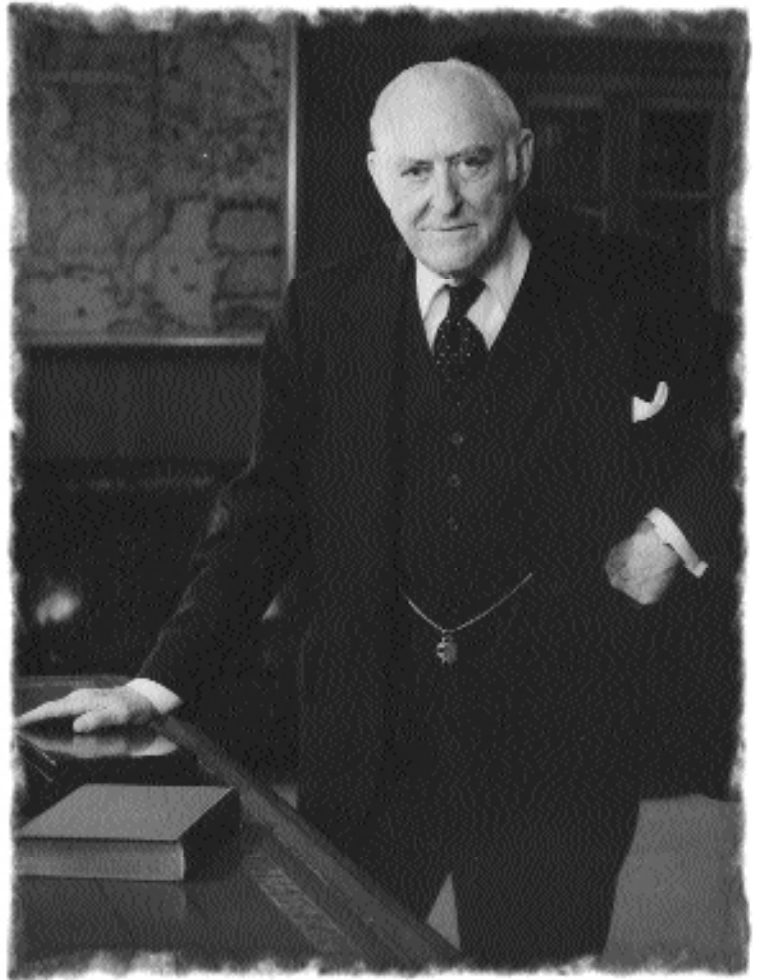
In addition to his activist decisions in the field of civil rights, Judge Wisdom is also known for the craftsmanship of his opinions. He is widely viewed as the "scholar" of the Fifth Circuit, incorporating history and literature into his thoughtful and detailed opinions. In their book *Let Them Be Judged: The Judicial Integration of the Deep South*, Frank Read and Lucy McGough describe the "Wisdom Opinion" as "a characteristically long, detailed exposition of historical development and legal precedent, with particular attention to factual detail adding local color, all set in highly articulate prose." Read at p.57.

Judge Wisdom's most famous opinions in the area of civil rights include the following:

- *Meredith v. Fair*, 298 F.2d 696 (5th Cir. 1962) and 305 F.2d 343 (5th Cir. 1962), two opinions which culminated with the admission of the first black student, James Meredith, to the University of Mississippi. In no uncertain terms, the court took judicial notice that Mississippi maintained a policy of segregation in its colleges. Judge Wisdom stated: "This case was tried below and argued here in the eerie atmosphere of never-never land. Counsel for appellees argue that there is no state policy of maintaining segregated institutions of higher learning and that the court can take no judicial notice of this plain fact known to everyone. ... We take judicial notice that the state of Mississippi maintains a policy of segregation in its schools and colleges." 298 F.2d at 701. Meredith was admitted, but only after four attempts by Judge Cameron (who was not a member of the panel which issued the *Meredith* opinion) to stay the panel's order, only after Gov. Ross Barnett of Mississippi personally obstructed his registration in violation of a Fifth Circuit order, and only after a riot in which federal troops and tear gas were used to maintain order.

- *United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963), a seminal case in the area of voting rights, struck down the “understanding” or “interpretation” test whereby voting registrars could require a potential voter to explain any provision of the U.S. or the Louisiana Constitutions. Judge Wisdom wrote: “A wall stands in Louisiana between registered voters and unregistered, eligible Negro voters. The wall is the State constitutional requirement that an applicant for registration ‘understand and give a reasonable interpretation of any section’ of the constitutions of Louisiana or of the United States. ... We hold: this wall, built to bar Negroes from access to the franchise, must come down.” 225 F. Supp. at 355-356.
- *Singleton v. Jackson Municipal Separate School District*, 348 F.2d 729 (5th Cir. 1965), where, in holding that the court would “attach great weight” to the standards for desegregation plans set by the Office of Education of the Department of Health, Education and Welfare (HEW), Judge Wisdom stated, “The time has come for footdragging public school boards to move with celerity toward desegregation.” 348 F.2d at 729.
- *United States v. Jefferson*, 372 F.2d 836 (5th Cir. 1966), *aff’d per curiam* 380 F.2d 385 (5th Cir. 1967), in which the court placed an affirmative duty on states to integrate formerly de jure segregated public school systems by incorporating the HEW standards as the minimum requirements for a school desegregation plan. Judge Wisdom wrote, “*The only school desegregation plan that meets constitutional standards is one that works.*” 372 F.2d at 847 (emphasis in original). He called for “the conversion of the still-functioning dual system to a unitary, nonracial system — lock, stock, and barrel,” 372 F.2d at 878, and concluded, “[t]he clock has ticked the last tick for tokenism and delay in the name of ‘deliberate speed.’” 372 F.2d at 896. This case, by setting forth an affirmative duty to integrate school systems, has had a tremendous impact on school desegregation.

Needless to say, at the time, the decisions of the Fifth Circuit and Judge Wisdom in the area of civil rights were strongly opposed by many. Judge Wisdom, Judge Elbert Tuttle of Georgia, Judge Richard Rives of Alabama, and Judge John Brown of Texas, were disparagingly labeled “The Four” by Judge Ben Cameron who saw their decisions as destroying the Southern way of life. Others agreed and resorted to personal attacks against Judge Wisdom — snakes were placed in his backyard, his dogs were poisoned, his family received crank calls in the middle of many nights, and boxes of hate mail were sent



to him. Yet, he says, throughout it all, he never lost a friend.

In addition to his renowned opinions in the field of civil rights, Judge Wisdom has authored many other opinions, with the aggregate number approaching 1500. Other opinions which have had a significant impact on the development of our country's law include:

- *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959), a Jones Act case about the definition of a seaman.
- *Dallas County v. Commercial Union Assurance Co.*, 286 F.2d 388 (5th Cir. 1961), which dealt with the admissibility of a newspaper article and is the basis for the catchall provision on hearsay in the Federal Rules of Evidence.

The Fifth Circuit is not the only court on which Judge Wisdom has served as a judge. Since 1975, Judge Wisdom has been one of three judges on the Special Court for the Regional Reorganization of Railroads, and he has been presiding judge since 1986. He was also a judge on the

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Multi-District Litigation Panel from 1968-1979 and presiding judge from 1973-1979. In 1977 Judge Wisdom took senior status on the Fifth Circuit, continuing for many years thereafter to carry a full caseload, in addition to sitting as a visiting judge in other circuits.

Judge Wisdom has received many honors and awards. In 1996 he received the highest honor given by the American Bar Association, the American Bar Association Medal "for conspicuous service to the cause of American jurisprudence." The U.S. Court of Appeals Building in New Orleans was renamed The John Minor Wisdom U.S. Court of Appeals Building in 1994. Judge Wisdom received the President's Medal of Freedom from President Clinton in 1993. In addition, in 1991 he received the Lewis F. Powell Award for Professionalism and Ethics given by the American Inns of Court and the first ABA Section of Litigation Public Service and Professional Award, which has since been renamed the John Minor Wisdom Award for Public Service. He also was the co-recipient with Judge Elbert Tuttle of the 1989 Devitt Distinguished Service to Justice Award.

No profile of Judge Wisdom would be complete without mentioning his wife of 68 years, the effervescent, well-read, French speaking, Shakespearean expert, Bonnie. Together, the judge and Bonnie raised two daughters and a son. They also have a large extended family, consisting of almost 100 law clerks.

On their first day of work, the clerks are handed a list titled "Wisdom's Idiosyncrasies" which sets out rules for writing opinions, including,

- "One idea to a sentence."
- "Beware of metaphors. ... An admiralty case does not call for a reference to the court's 'steering its way through the muddy waters.'"
- "No puns, no witticisms at the ex-

pense of a litigant."

In later years, his clerks have driven Judge Wisdom to and from the courthouse, providing valued time to discuss opinions and get to know the judge better. Judge Wisdom is a mentor and role model to his clerks, and their devotion to him is immeasurable. Former clerks come from all over the country to attend reunions which are held approximately every two years in either New Orleans or Washington, D.C. Indeed, one former clerk even named his son after Judge Wisdom.

In the printed materials commemorating the dedication of Judge Wisdom's collection at Tulane Law School, Judge Martin Feldman of the U.S. District Court for the Eastern District of Louisiana — Judge Wisdom's first law clerk — describes the judge as "the Complete Man," saying: "He has brought to life, politics, statecraft, and the judiciary, humanism, history, philosophy, literature, and a steely firmness of belief and goal. But, as always at the same time, he never lost sight of the judge's struggle to be fair and impartial."

Off the bench, Judge Wisdom's life encompasses many varied interests. He likes his scotch, is an avid bridge player, a Shakespearean expert who attends Shakespeare festivals throughout the country, and a collector of legal and historical books, as evidenced by his donation of more than 2,000 volumes comprising his personal library to Tulane Law School. In fact most of the historical information used in writing his opinions came from his personal library. He and his wife are well-respected members of New Orleans' society. Although Judge Wisdom stopped riding on Mardi Gras floats once he became a judge, he never gave up his membership in his private clubs. In an article that highlights the *fun* Judge Wisdom has with life, former clerk Lamar Alexander describes an outing in which Judge Wisdom cajoled the entire U.S. Fifth Circuit Court of Appeals into the

front row of Your Father's Moustache, a Bourbon Street bar, to hear Lamar play the washboard. Lamar says, "Whether the other judges had fun, I have no idea, but I could tell Judge Wisdom did." See L. Alexander, "An En Banc Hearing At Your Father's Moustache," 60 Tulane Law Review 240, 241 (1985).

As Jack Bass describes Judge Wisdom in his book *Unlikely Heroes*:

With a zest for life, an insistence on uncompromising intellectual integrity, a passion for the law, a novelist's feel for the written word, an advocate's feisty combativeness, a scholar's depth, and a politician's manipulative skills, John Minor Wisdom can best be summed up by the term ... *sui generis* — one of a kind. Bass at pp. 49-50.

Postscript

On May 15, two days before his 94th birthday, Judge John Minor Wisdom passed away in New Orleans. This article was written prior to his death and is being published as a tribute to his life. ■

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