

Judge Wisdom, the Great Teacher and Careful Writer

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Without a doubt, history will remember Judge Wisdom primarily for his strength and courage in leading the Fifth Circuit and the lower federal courts to end racial segregation in the South. That is as it should be. Judge Wisdom's work in civil rights cases conferred upon millions of Americans the full stature of equal citizenship, and made him a giant of the law and a hero of the nation.

I write, however, to praise some other outstanding characteristics of this kind and gentle man, in particular his genius as a teacher and his devotion to careful writing.

Judge Wisdom excelled at everything he did. As a practicing lawyer he tried and won important cases in both Louisiana and federal courts, including the Supreme Court of the United States.¹ He was instrumental in bringing the common-law concept of trusts into the civil law of Louisiana,² and thereafter taught trusts and estates to generations of students at Tulane Law School. He was a scholar of Southern social and political history and of the Louisiana Civil Code, and assembled an important and unparalleled collection of rare books in both of those fields.³ He was the founder of the modern Republican Party in Louisiana. In 1952 he had the imagination and foresight to use national television as a political tool in arguing (successfully) that his Louisiana Eisenhower delegation should be seated at the Republican National Convention. He was a wizard at bridge, and regularly cleaned his friends' clocks in their weekly game at the Louisiana Club. In all this, he had an exuberant spirit, an irrepressible *joie de vivre*, that pervaded all he did. As his colleague Henry Friendly wrote in 1985,

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1. See, e.g., *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951).

2. See, e.g., John Minor Wisdom, *A Trust Code in the Civil Law, Based on the Restatement and Uniform Acts: The Louisiana Trust Estates Act*, 13 TUL. L. REV. 70 (1938).

3. Judge Wisdom donated his collection of rare books, as well as his judicial papers, to Tulane Law School. They are now housed as the John Minor Wisdom Collection at the Tulane Law Library.

"We admire him for his wisdom but we love him for his courage and good humor, for the quick smile and the warm hand of friendship."⁴

The Judge was the consummate teacher. Dean Barry Sullivan was certainly correct when he wrote:

For generations of young lawyers, Judge Wisdom has been the great teacher. I do not mean only his clerks, but also the friends of his clerks, the clerks of his friends, the spouses and children of his clerks, his students at Tulane, the students he has taught at all the other law schools with which he has been associated, his students at seminars for new judges, young lawyers who have argued before him, and young lawyers who have met him on the street, at plays, at concerts, at the opera, in museums, and in all the other places that he and Bonnie frequent. He has taught us all so many things. He has taught by his example that one can live a life of rectitude, that one can follow [high] principles, . . . that one can believe in the duties of citizenship, and that one ought to care about the quality of the lives that others lead.⁵

I was fortunate to serve as Judge Wisdom's law clerk from August 1966 through August 1967, and to have profited from his teaching not only during the year of my clerkship but also for thirty-two years thereafter.⁶ Judge Wisdom taught all the time.

Judge Wisdom taught his law clerks to think. He taught us to write with precision and clarity. He taught us the value of thorough research. But his teaching went far beyond the tools of legal craftsmanship. The Judge taught us to have the courage of our convictions, to persevere to achieve what is right, and to have due regard for the humanity of all people, whether they are similar to or different from ourselves.

The Judge and Bonnie lived in an elegant antebellum mansion in the Garden District of New Orleans. There, they gently taught the law clerks manners and social graces appropriate to a lifestyle most of us had never known, but to which we quickly came to aspire. They also taught us how to enjoy life to the fullest. By word and example, the Judge showed us how to have a good time. Brandon Bradkin, who clerked for the Judge in 1992-1993, tells of the time he and a group of visiting judges' clerks were

4. Henry J. Friendly, *From a Fellow Worker on the Railroads*, 60 TUL. L. REV. 244, 255 (1985).

5. Barry Sullivan, *To See Life Steadily and To See It Whole: For Judge Wisdom in His Ninety-First Year*, 53 WASH. & LEE L. REV. 3, 7 (1996).

6. Clerking for Judge Wisdom was, I am sure, unique. The Judge and Bonnie (his beloved wife for nearly 68 years) graciously accepted his law clerks almost literally as members of the family. As a consequence, the relationship and the teaching did not end with the clerkship, but continued on. I am convinced there is no such thing as a "former" Wisdom law clerk. See Allen D. Black, *John Minor Wisdom: A Tribute and Memoir by One of His Law Clerks*, 69 MISS. L.J. 43, 53 (1999).

planning to go to dinner at a New Orleans restaurant renowned both for excellent food and for reputed ties to the Mafia. One of the visiting judges insisted that his clerk not go, because the judge was worried about the Mafia rumors. When Brandon asked Judge Wisdom what he should do, the Judge responded: "Brandon, the question isn't whether you should go; the question is what you should order."

On a more serious note, perhaps the most important aspect of Judge Wisdom's teaching was his determination to write opinions in a way that would teach basic principles of democracy, equal protection of the laws, and constitutional federalism to lawyers, government officials, and the general public, so that all would better understand the reasons behind the court's decisions.

Judge Wisdom was well known for the clarity and precision of his writing. His spare yet elegant style was well-suited to the task of explaining firmly and clearly the court's reasoning in reaching what were often unpopular results. One good example from among many is the opinion in *United States v. Jefferson County Board of Education*,⁷ in which he crafted practical instructions to guide the lower federal courts in desegregating hundreds of school districts in six states. Judge Wisdom stated the court's holding simply and in practical terms: "*The only school desegregation plan that meets constitutional standards is one that works.*"⁸ He then explained:

Brown erased *Dred Scott*, used the Fourteenth Amendment to breathe life into the Thirteenth, and wrote the Declaration of Independence into the Constitution. Freedmen are free men. They are created as equal as are all other American citizens and with the same unalienable rights to life, liberty, and the pursuit of happiness. No longer "beings of an inferior race"—the *Dred Scott* article of faith—Negroes too are part of "the people of the United States."⁹

Another great and famous example comes from the opening paragraphs of Judge Wisdom's opinion in *United States v. Louisiana*:¹⁰

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. . . . Considering this law in its

7. 372 F.2d 836 (5th Cir. 1966), *adopted per curiam*, 380 F.2d 385 (5th Cir. 1967) (en banc).

8. *Id.* at 847.

9. *Id.* at 873.

10. 225 F. Supp. 353 (E.D. La. 1963), *aff'd*, 380 U.S. 145 (1965).

historical setting and considering too the actual operation and inescapable effect of the law, it is evident that the test is a sophisticated scheme to disfranchise Negroes. The test is unconstitutional as written and as administered.¹¹

No one could possibly have misunderstood the Court's holding in either of those cases, or why the Court reached the result it did.

As Judge Elbert Tuttle observed some twenty years later, Judge Wisdom's

writings are eloquent without being flamboyant or exaggerative. He is a man of directness with no superfluity of expression. . . .

... [H]is style, which exhibits eloquence, intellect, classical learning, pith and vigor, not only ornaments every opinion, but becomes an essential part of it. . . . Judge Wisdom's opinions are works of art in that they play upon the theme of the decision with all the skill of an artist.¹²

Judge Wisdom was unduly modest in describing his own writing. In 1993 he wrote an essay entitled *How I Write* in which he said, "I am not so foolish or pretentious as to hold myself out as a great writer."¹³ I, and many others, believe he was wrong. But his essay did describe accurately some of the central attributes of his splendid style.

"I like lean, lucid prose," he said, "with an occasional, really only an occasional, metaphor. . . . I am committed to short and simple declarative sentences. This leads to choppy writing, but tends to avoid the ambiguity and difficulty in following a long sentence with subordinate clauses."¹⁴

He commented also on the need to find precisely the right word to do the job at hand. After noting that English has far more words than other languages (500,000 as compared with 200,000 in German and 100,000 in French), Judge Wisdom observed:

The large number of English words is both a boon and a detriment to lawyers and judges. The unskilled writer can easily find a word that may seem good enough at first blush, but by critical standards is just not the right word. The skilled authors of the King James

11. *Id.* at 355-56.

12. Elbert Tuttle, *Foreword to In Tribute to John Minor Wisdom*, 60 TUL. L. REV. 231, 231, 235 (1985).

13. John Minor Wisdom, *How I Write*, 4 SCRIBES J. LEGAL WRITING 83, 84 (1993).

14. *Id.* at 84-85.

Bible, with a great treasury of words to draw from, carefully selected only 8,000 words.¹⁵

Finally, Judge Wisdom extolled the value of rewriting and polishing: "There are a few rare individuals who can get it right the first time. . . . Not I. I have to rely on my three indispensable rules of writing: (1) rewrite; (2) rewrite; and (3) rewrite."¹⁶

During my clerkship with the Judge we did rewrite a lot, even in those days of IBM Selectric typewriters. It drove the secretarial staff crazy, but it was well worth the effort. Not only did the rewriting improve the clarity and usefulness of the product, but it also enhanced the aesthetics of the opinions and provided an excellent tool for the Judge's use in teaching his law clerks about careful writing.

I am sure every one of his ninety-five law clerks learned a lot about careful and precise writing from Judge Wisdom. He would refer each new clerk to Strunk & White's *Elements of Style* and Theodore Bernstein's *The Careful Writer*. Sometimes he would explain at the outset some fine points of his personal stylistic tastes. But mostly we learned from watching his example—as he wrote and rewrote his own drafts as well as ours—and from our discussions with him about the various drafts. I have many fond memories of debates with the Judge about whether it should be "which" or "that"; whether this was one of the rare occasions on which it would be acceptable to use a "weasel word" such as "very" or "quite"; or whether an antecedent was clear. He was death on split infinitives and split verbs. A sentence such as "The burdened vessel was slowly proceeding down river at the time of the collision" would never survive.¹⁷

In later years, Judge Wisdom wrote down his style tips for law clerks. With characteristic humor and modesty, he called them *Wisdom's Idiosyncrasies*. Quickly, they became a legend among law clerks throughout the Fifth Circuit. I love them for two reasons: (1) They provide excellent and concise advice about good writing style; and (2) Judge Wisdom's warmth and wit sparkle through them. They convey a good sense of the man who knew the value of fun, while keeping sight of the serious purpose at hand.

Because Judge Wisdom loved good writing, and because he loved to teach, I know he would be delighted to share his *Idiosyncrasies* with a

15. *Id.* at 83.

16. *Id.* at 86.

17. The Judge's eye for precision in writing stayed with him right up to the end. At the time of the Judge's funeral, one of his law clerks gave me a copy of the instructions the hospital had issued to the Judge just a week or so earlier. "You may only take Tylenol for minor muscle aches or headache," the paper said. Ever the editor, the Judge had circled "only" and moved it so the sentence read, correctly and with greater clarity: "You may take *only* Tylenol for minor muscle aches or headache."

wider audience of legal writers. For that reason, with the permission of his widow, Bonnie, and his daughters, Kit and Penny, they are published here as an accompaniment to this brief remembrance. I hope you will enjoy and learn from them as much as I have.