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To See Life Steadily and to See It Whole: For Judge Wisdom in His Ninety-First Year

Barry Sullivan*

When Judge John Minor Wisdom spoke to the graduating class at the Law Commencement exercises on May 21, 1995, he began by telling the members of the class that he would "do something different" in his commencement address: "I shall talk longer than I was supposed to talk, that's not different, but I promise I shall not bore you with vapid generalities purporting to serve as guidelines for your future success in life and in law."¹ Instead, he promised, he would give "a serious talk" about an important case in American history, namely, the case of *Plessy v. Ferguson*.² To talk seriously about an important case might be something different for most commencement speakers, but it certainly was not something different for Judge Wisdom. Those who know Judge Wisdom undoubtedly suspect that he has been talking seriously about diverse and important matters, including the American Founding, Southern history, French literature, Shakespeare, Greek and Irish mythology,³ philosophy, American party politics,⁴ judicial administration, and the Napoleonic Code,⁵ as well as important cases, for most of his ninety-one years.⁶

* Dean and Professor of Law, Washington and Lee University School of Law.

1. Honorable John Minor Wisdom, Commencement Address at Washington and Lee University School of Law (May 21, 1995), in WASHINGTON AND LEE ALUMNI MAGAZINE, Summer 1993, at 5, 6.

2. 163 U.S. 537 (1896).

3. See, e.g., Barry Sullivan, *Dedication: For Judge Wisdom on His Eighty-fifth Birthday*, 64 TUL. L. REV. 1341, 1347-49 (1990).

4. See generally Joel W. Friedman, *John Minor Wisdom's Battle Against the Political Bosses to Create a Two-Party System in Louisiana*, 69 TUL. L. REV. 1439 (1995); Joel W. Friedman, *Judge Wisdom and the 1952 Republican National Convention: Ensuring Victory for Eisenhower and a Two-Party System for Louisiana*, 53 WASH. & LEE L. REV. 33 (1996).

5. See, e.g., John M. Wisdom, *A Trust Code in the Civil Law, Based on the Restatement and Uniform Acts: The Louisiana Trust Estates Act*, 8 TUL. L. REV. 70, 70 (1938) ("If there is anything more interesting than that famous chapter on snakes in the Complete History of Ireland, it is a trust code in a civil law jurisdiction.").

6. Certainly, the breadth and depth of the conversation in Judge Wisdom's chambers

Before proceeding with his talk, however, Judge Wisdom reminisced for a few moments about some of his family's many connections with Washington and Lee. Judge Wisdom spoke of his father, Mortimer Wisdom, who studied at Washington College during the presidency of General Lee, marched in General Lee's funeral procession, graduated with the Class of 1873, and later served as a Trustee of the University. Judge Wisdom also recalled memories of his childhood in New Orleans, particularly of those occasions when his father's college friends, many of whom had served under General Lee's command, would spend the evening sharing reminiscences about General Lee and the War in the parlor of the Wisdom house. Judge Wisdom also could have talked at length about his brothers and the lodgings they shared at The Pines during the 1920s, about his own service as a Trustee, or about his wife Bonnie's forebears who studied at Liberty Hall. But Judge Wisdom chose to focus on his father and his father's friends, and the acquaintance he gained with General Lee through the testimony of those who knew them both. The quiet of the Front Campus was striking as Judge Wisdom shared these recollections on that late spring Sunday afternoon.

Having been asked by the editors of the *Law Review* to contribute a few words in tribute to Judge Wisdom, I take my cue from him. I will not subject my audience to "vapid generalities," but I will say a few serious words about a man who figures prominently both in the hearts and thoughts of his friends and in the history of his country.

There was a time during the 1950s and 1960s when the fate of the nation seemed to rest in the hands of a few Southern judges who were responsible for enforcing the Supreme Court's decision in *Brown v. Board of Education*.⁷ It was a time in which many people were caught up in a revolution of rising expectations and were hopeful about the possibilities of change, while those of a different mind stood intransigent in their opposition

always has been similar to that which John Quincy Adams described in the office of his mentor, Theophilus Parsons, with whom he apprenticed in 1787-1788. Adams wrote that the intellectual inquiries in Parsons's office neglected no "useful branch of science," and included "[l]aw, Physic, History, poetry, religion, and politics, by turn." JOHN Q. ADAMS, 2 DIARY OF JOHN QUINCY ADAMS 321, 326 (David G. Allen et al. eds., 1981).

7. 347 U.S. 483 (1954); see generally JACK BASS, UNLIKELY HEROES (1981); FRANK T. READ & LUCY S. MCGOUGH, LET THEM BE JUDGED: THE JUDICIAL INTEGRATION OF THE DEEP SOUTH (1978); SOUTHERN JUSTICE (Leon Friedman ed., 1965); John M. Wisdom, *The Frictionmaking, Exacerbating Political Role of Federal Courts*, 21 SW. L.J. 411 (1967); Note, *Judicial Performance in the Fifth Circuit*, 73 YALE L.J. 90 (1963); Barry Sullivan, Book Review, 35 SW. L.J. 1111 (1982) (reviewing JACK BASS, UNLIKELY HEROES (1981)).

to the smallest alteration in the status quo.⁸ Black veterans had returned from foreign lands eager to experience the freedoms they had fought to protect.⁹ They joined forces with others who saw the need for fundamental change, as well as new opportunities for bringing about that change. That provoked confrontation with those for whom the Second World War had changed nothing. The Supreme Court added constitutional weight to one side of the argument when it decided the *Brown* case. But the Executive Branch of the national government was at first tepid in its support for the Court's decision, and Congress also was unpersuaded that change was necessary.¹⁰ The Supreme Court could speak in majestic generalities, but the real burden of implementation rested with the federal judges who sat in the district and circuit courts.¹¹

For many years, the end of summer was signaled by the renewal of rituals aimed at delaying any progress in the desegregation of the schools until at least the following school year. For many who are old enough to remember those times, the beginning of a school year will forever be associated with memories of black children, either being guarded by policemen as they sought simply to go to school, or being attacked by other policemen, dogs, and firehoses. These scenes, which were filmed and replayed for millions on television, were as much a part of the end of summer as falling leaves, shortening days, and cooler nights. Efforts to frustrate desegregation in other areas, the broadening of the franchise, and demands for equality in other areas of life were less cyclical or regular but no less serious or persistent.

The judges of the lower federal courts were themselves threatened, harassed, and vilified by those who opposed the dismantling of segregation. Judge Wisdom was one of those judges. He and his family received that

8. See generally TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-63* (1988); J. HOPE FRANKLIN, *RACIAL EQUALITY IN AMERICA* (1976); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975).

9. See *United States v. Louisiana*, 225 F. Supp. 353, 377-78 (E.D. La. 1963) (three-judge court) (Wisdom, J.), *aff'd*, 380 U.S. 145 (1965); see also Barry Sullivan, *The Honest Muse: Judge Wisdom and The Uses of History*, 60 TUL. L. REV. 314, 333 (1985).

10. See C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* 238-41 (3d ed. 1993); Sullivan, *supra* note 7, at 1114.

11. See HARVEY C. COUCH, *A HISTORY OF THE FIFTH CIRCUIT: 1891-1981*, at 75-139 (1984); Wisdom, *supra* note 7, at 418-21; see generally J.W. PELTASON, *FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION* (1961); John M. Wisdom, *A Southern Judge Looks at Civil Rights*, 42 F.R.D. 437, 453-62 (1966); John M. Wisdom, Book Review, 14 COLUM. HUM. RTS. L. REV. 175, 177-81 (1982).

treatment too. The Wisdoms' dogs were poisoned; rattlesnakes were thrown into their garden; abusive telephone calls sometimes came throughout the night; the daily post brought crude and hate-filled mail.¹² At the same time, Judge Wisdom held to the course to which he was committed, both by respect for the oath he had taken and by his own sense of honor. He provided much of the intellectual leadership and moral courage that was needed if the judiciary were to play its part in accommodating the change that was necessary for us to move beyond that period.¹³ Indeed, Judge Wisdom's work during those years would have earned him a place among the greatest appellate judges even if he had not continued, as he has, to hear cases for another thirty years, writing hundreds of landmark opinions in diverse areas, from the law of admiralty and evidence to securities regulation.

Judge Wisdom's public life has been meaningful and exemplary. He was steadfast; he has stayed the course; he has written masterly opinions, in flawless prose and informed by a deep sense of history that have become classic statements of constitutional principle. So many of the positions he took during that period seem so obviously correct or inevitable to us today that we tend to forget the strength of the opposition he faced or the strength of character that it took to say what he said then. Perhaps that is true because of his deep and abiding devotion to the basic principles upon which our government rests. For he, like James Madison, has always acted on the belief that: "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."¹⁴ That has been the polestar by which he has steered his public course. In another sense, Judge Wisdom's public life is but a reflection of his private virtues, as his friend Judge Henry Friendly recognized when he wrote of him, "John has truly exemplified Judge Learned Hand's definition of wisdom. He is 'wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill-will.'"¹⁵ Judge Wisdom truly has exemplified that person of honor and duty on whom General Lee placed high hopes for the future of our country.

12. See, e.g., READ & MCGOUGH, *supra* note 7, at 56-57.

13. See, e.g., BASS, *supra* note 7, at 172-200; Philip P. Frickey, *Judge Wisdom and Voting Rights: The Judicial Artist as Scholar and Pragmatist*, 60 TUL. L. REV. 276 (1985); Frank T. Read, *The Penman of the Court: A Tribute to John Minor Wisdom*, 60 TUL. L. REV. 264 (1985).

14. THE FEDERALIST No. 51 (James Madison).

15. Henry J. Friendly, *From a Fellow Worker on the Railroads*, 60 TUL. L. REV. 244, 255 (1985) (quoting Learned Hand, *Mr. Justice Cardozo*, in THE SPIRIT OF LIBERTY 132 (1952)).

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 the principles for which this University stands, that one can believe in the duties of citizenship, and that one ought to care about the quality of the lives that others lead.¹⁶

Judge Wisdom has taught us what it is to be human, and what it means to say that nothing human can be foreign to us. He has taught us to love life, to see the humorous in life (and in ourselves) as well as the serious side of things, to be open to all the possibilities that life brings to us, and, finally, to have faith in ourselves and in what each of us can accomplish in a world that often seems hostile or indifferent to the values that light our way. He has sought to see "life steadily and [see] it whole,"¹⁷ and he has taught us to do that too. Above all, he has taught us to believe that the profession of the law can be a great and noble one. The debt that we owe to him is one that we can never begin to repay unless it be by aspiring always to meet the standard he has set by his example.

16. One can say without exaggeration that "Judge Wisdom's judicial work stands as a sturdy testimonial to the continued importance of liberal learning in adjudication and to the view of adjudication as an exercise in intellectual and moral excellence." Sullivan, *supra* note 9, at 321. Indeed, one cannot reflect on Judge Wisdom's life and work without thinking of Ludwig Wittgenstein's account of "the use of studying philosophy":

I then thought: what is the use of studying philosophy if all that it does for you is to enable you to talk with some plausibility about some abstruse question of logic, etc., & if it does not improve your thinking about the important questions of everyday life, if it does not make you more conscientious than any . . . journalist in the use of the *dangerous* phrases such people use for their own ends. You see, I know that it's difficult to think *well* about 'certainty,' 'probability,' 'perception,' etc. But it is, if possible, still more difficult to think, or *try* to think, really honestly about your life & other people's lives. And the trouble is that thinking about these things is *not thrilling*, but often downright nasty. And when it's nasty then it's *most* important.

NORMAN MALCOLM, LUDWIG WITTGENSTEIN: A MEMOIR 39 (1980).

17. Matthew Arnold, *To a Friend*, in 1 THE WORKS OF MATTHEW ARNOLD 4 (1903); see also E.M. FORSTER, HOWARDS END 266 (Oliver Stallybrass ed., Edward Arnold 1973) (1910) ("In these English farms, if anywhere, one might see life steadily and see it whole, group in one vision its transitoriness and its eternal youth, connect — connect without bitterness until all men are brothers.").

