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John Minor Wisdom: “O Rare”

Robert B. Barnett†

John Minor Wisdom was buried on May 17, 1999, on what would have been his ninety-fourth birthday. His death was front-page news in New Orleans. His obituary covered half a page in the New York Times. His intellect and his legal prowess were legendary. He had been immortalized in history books, won the Presidential Medal of Freedom and countless other awards, received numerous honorary degrees, and even had a federal courthouse named after him. But none of those celebrations of the “Public Man” really did justice to the complete John Minor Wisdom.

He was brilliant without ever being arrogant. He was courtly without ever being condescending. He was a judge who was never judgmental. As Judge Henry Friendly once put it, “He is wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill-will.”¹ To be chosen to be one of his law clerks was to be admitted into a sphere of noble benevolence.

So, while others may detail and analyze the Judge’s legal rulings, I would like to provide some personal reflections. And, as I struggle to find the right words to memorialize this great man, I keep coming back to an epitaph that is inscribed in Poet’s Corner in London’s Westminster Abbey. Amid the lengthy and flowery testimonials glorifying illustrious men and women of British letters is the plain but powerful tribute to Ben Jonson. It reads simply, “O rare.”

John Minor Wisdom was not afraid to stand against his community and his times. He was a pillar of the New Orleans establishment, someone who had never personally experienced racial or religious prejudice. He believed that the U.S. Constitution guaranteed equal protection to every citizen, and he could not condone public policy that allowed anything else. In presenting the Medal of Freedom, President Clinton called him “a son of

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the old South who became an architect of the new South." 2 His rulings made a profound difference to the lives of millions of people in the contexts of voting rights, jury selection, employment, schools, jails, public parks, playgrounds, hotels, restaurants, bars, sports facilities, and even adoptions.

Judge Wisdom unabashedly believed in affirmative action and in muscular remedies to deal with the effects of past discrimination. His civil rights decisions made him and his family targets of pranksters and miscreants. For years, his phone would ring from 2 A.M. until 4 A.M. Two of his dogs were poisoned and rattlesnakes were thrown into his back yard. But, in typical Wisdom fashion, he shrugged them off. "They were small rattlers," he told us.

He was always up for adventure. On the day after Mardi Gras, my co-clerk Jack Weiss and I talked him into going out to lunch with us to Buster Holmes, a hole-in-the-wall joint in a somewhat sketchy area of the French Quarter. When we walked in, we discovered that we were the only white folks in the establishment that day. Jack and I always considered the Judge a hero, but we had no idea just how many others agreed. It seemed that almost every person in Buster Holmes stopped by to pay his respects to the Judge that day, and the Judge took the time to chat with each one. He was presented with the biggest plate of red beans and rice that I have ever seen, a meal that the management wanted to put "on the house." The Judge declined the offer, but was clearly touched by the reception.

Despite all the accolades, Judge Wisdom had a great sense of humor about himself. When I first came to New Orleans, he told me that he was generally not referred to as "Judge Wisdom," but rather as "that G— D— federal judge." That was the least of his worries. What he feared most was another description. Though he loved Mardi Gras and delighted in riding the floats, at a certain point in his career he decided to discontinue the practice. The problem, he explained with a grin, was that if he ever fell off, he would forever be known as "that drunken federal judge." 3

He did love to have a good time. Dinner at Commander's Place with the Judge was an unforgettable experience of food, drink, debate, and laughs. But asked once if he considered himself a "bon vivant," he replied,

I am not really a bon vivant, because a bon vivant I think of as a connoisseur of wines. I am not a connoisseur of wines. I am a connoisseur of Scotch whiskey . . . and try to inculcate it in my law

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clerks so that they won’t get too involved with musty volumes of law.\textsuperscript{4}

And there were plenty of law clerks to tutor in the fine art of Scotch and so many other things. During his forty-two years on the federal bench, Judge Wisdom had more than 125 law clerks. Each of us became an honorary member of the Wisdom family. The Judge and his elegant wife, Bonnie, a Shakespeare scholar, opera buff, and preservationist, invited us into their home and into their hearts. We all got to know their children, John, Penny and Kit, and to see how the Judge and Bonnie made marriage into a fine art. Their discussions, perhaps best described as “intense,” ranged over everything, from politics to law to art to theater to literature, with special emphasis on bridge. They were always each other’s biggest fans. “Marry an intelligent, attractive woman,” the Judge would advise his clerks; and each year, on their anniversary, he would toast Bonnie by saying: “[However many] years and never a peaceful moment.” She would stand and respond, “Peace is so boring.”

No wonder that the clerks would find any excuse to hang out with these two. The annual clerks’ reunion was always a sellout. A typical party, in an upstairs room at Antoine’s or Commander’s Palace, featured former Wisdom clerk, Governor of Tennessee, and presidential candidate Lamar Alexander on the piano, while other former Wisdom clerks such as Federal Judges Martin Feldman and Nora Manella and former FDIC Chair Ricki Tigert Helfer belted out parodies of Broadway tunes. “76 footnotes give the Judge a smile / With 110 law clerks to write them down,”\textsuperscript{5} we sang. One year, we decided to skip the songs and opt for more dignified entertainment. “But I like the songs,” the Judge admonished us. After that there were so many songs we put together a Wisdom Family Songbook.

As the years passed and his reputation grew, Judge Wisdom retained his modesty. One spring, when he came to Washington to attend a black-tie dinner, he discovered that he had forgotten his tuxedo. Always a master at improvising, he decided to wear the white suit he had brought with his formal shirt and tie. When he entered the grand ballroom of the Mayflower Hotel, he received a standing ovation. Later, he told my wife and me that he was pleased with the positive reaction, because he had feared that when people saw his costume, they would think he was “stunting.”

The Judge did, however, have a knack for making the most of a moment. Once, he found himself co-honored at a New Orleans senior citizens’ event with local burlesque queen Chris Owens. Some judges might have worried that such a scene would diminish their judicial dignity. Not

\textsuperscript{4} Id.
Judge Wisdom. When Owens started dancing around him, the Judge raised his cane and waved it at the cheering crowd.

But he was always serious about his work. We law clerks arrived at the chambers in New Orleans thinking that we were the Lord's gift to the workings of the federal judiciary. In the presence of Judge Wisdom, we soon realized how much we had to learn. The Judge took us under his wing and treated us like the "assistant judges" that he frequently called us. But, make no mistake, although he always gave us our say about the issues in the cases, and even allowed us to prepare first drafts of opinions, every decision was the Judge's, and every word of every opinion had his final approval. In fact, he had an uncanny ability, by changing a word or a phrase, to transform pedestrian, law-school-inspired drafts into memorable, lyrical prose.

In addition to his job on the Fifth Circuit, Judge Wisdom was a member of the Special Court under the Regional Rail Reorganization Act, a court that was appointed to sort out the complex legal problems that accompanied the evolution of the nation's rail system, and of the Judicial Panel on Multidistrict Litigation. Since those courts frequently sat in Washington, Judge Wisdom would often stay with us when he was in town. Late into the night, he would be going over briefs, taking notes on yellow legal pads to prepare for the next day's arguments.

He was always being asked to speak on one of his favorite topics, federalism. He never tired of preaching the gospel that "states' rights are fine in their proper place, but the crowning glory of the Constitution is the protection of the individual against all governmental improprieties and deprivations." But the Judge could never quite bring himself to give a stock speech, and he would spend hours laboring over special remarks for each individual audience.

Judge Wisdom prided himself on being one of "The Four," the liberal judges of the Fifth Circuit, a group that included Richard Rives, John Brown, and Elbert Tuttle. Judge Wisdom believed that the court had a responsibility to come up with civil rights decisions that would be upheld by the Supreme Court and thus speed desegregation in the entire nation. He was justly proud when the Supreme Court adopted his view that the only desegregation plan that is constitutional is "one that works." But the Judge could never quite bring himself to give a stock speech, and he would spend hours laboring over special remarks for each individual audience.

Judge Wisdom remained a member of the court, with senior status, until his death. Indeed, his last opinion was rendered only a few days before he died. Once, during an interview, the Judge was pressed to say how he would like to be remembered. He answered, "As one who attempted to

6. Interview, supra note 3.
judge according to his conscience and the law and was influential in bringing about an improvement in the social life of this country."\textsuperscript{8} There is no doubt that he succeeded in fulfilling that wish.

His work will live on in his eloquent opinions and in the profound and permanent changes that he helped to bring about in our society. But he has left another legacy as well, in the grace and generosity he demonstrated to all of us who were lucky enough to have had him touch our lives. If we can follow in his path, and influence others as he influenced us, we will indeed be true to the soaring spirit of John Minor Wisdom.

\textsuperscript{8} Interview, \textit{supra} note 3.