

REMARKS OF JUDGE JOHN MINOR WISDOM, MAY 8, 1989

I. INTRODUCTION

The Edward J. Devitt Distinguished Service to Justice Award is presented annually to the article III judges who, by their extraordinary dedication and meritorious professional contributions, have brought integrity and respect to the federal judiciary. On May 8, 1989, this illustrious honor was bestowed jointly upon Senior Judge John Minor Wisdom of the Fifth Circuit, and Senior Judge Elbert Parr Tuttle, formerly of the Fifth Circuit, now of the Eleventh Circuit. It is with great pleasure that the Texas Tech Law Review pays homage to the accomplishments of Judge Wisdom by publishing his comments on receiving the Devitt Award.

Judge Wisdom has served the Fifth Circuit for over thirty-two years, receiving his appointment to the federal bench in 1957, and becoming Senior Judge in January of 1977. A noted scholar, Judge Wisdom's impressive achievements, writings, and honors speak of a man dedicated to his profession and to the federal judiciary. During his expansive career, Judge Wisdom has participated in more than 4,600 decisions and has published more than 950 majority opinions, without including the unnumbered per curiam and unpublished decisions he has authored.

The immense respect Judge Wisdom has garnered over his lifetime is evidenced most recently by this receipt of the Devitt Award. We are honored to present the following comments which were made by Judge Wisdom at the award ceremony which took place at the Joint Conference on the Fifth and Eleventh Circuits on May 8, 1989.

II. REMARKS

Justice Powell, Justice White, Justice Kennedy, Chief Judge Clark, Chief Judge Roney, Judge Feinberg, Judge Devitt, Mr. Opperman, President Verkuil, Judge Tjoflat, distinguished guests, and friends.

I appreciate deeply the honor conferred upon me. I thank the Devitt Committee, Justice O'Connor, Judge Feinberg, Judge Devitt, and, of course, Mr. Opperman of West Publishing Company. I thank

my friends who were kind enough to second my nomination. I especially thank Albin Rubin, who made the formal nomination. Judge Rubin would grace any bench; nomination by him is praise from Sir Hubert.

Jeremy Bentham, an English legal philosopher whom I admire, made an observation that impressed me deeply, one that I have repeated many times in many different contexts, contexts never contemplated by Bentham. He observed that in judging it is not the judge alone who decides cases; it is "Judge and Company." That observation is particularly applicable to our court of the late fifties, the sixties, and seventies — and of the eighties, no doubt, but I speak of the past, especially of the fifties and sixties. In receiving the Devitt Award today, I accept it with humility because I see it not just as an award to me but also as a symbolic award to Judge and Company. I was only one member of a very fine company.

It is fitting that Elbert Tuttle and I should stand together. We have stood together before — for many years and on many issues. He is a great judge and was a great chief judge when we needed a person of his character and ability. I sat on a panel with him Saturday. He was the same vigorous, clear-headed, decisive judge he has always been.

I feel keenly the unseen presence of Richard T. Rives, an outstanding member of our Court, especially in cases involving criminal law and procedure, civil rights, and civil liberties.

I am strongly aware of the actual presence of former Chief Judge John R. Brown, a top admiralty lawyer in private practice who as a judge, mastered many fields in the law and leavened his high sense of justice with wit and verve.

I am conscious of Homer Thornberry's solid contributions; he was on the panel with me in the Jefferson case, and together we went over that opinion line by line. The public as well as all lawyers and judges are indebted to Irving Goldberg for his brilliant, vibrant pen, and strong sense of justice. All of us know and agree that John Godbold was a worthy successor to Dick Rives; that is saying a lot.

These were the core members of Judge and Company in the old Fifth Circuit, who were later joined by Bryan Simpson and Reynaldo Garza, two unusually rugged and seasoned district judges before they came to our Court.

All of the judges I have mentioned were appointed in the fifties and sixties and are now senior judges. They have been on the bench from twenty-three to thirty-five years during a time that severely

tested the strength of the federal system and the durability of the Constitution.

I call your special attention to these six — I describe them as “active” senior judges who continue to serve the federal system, justice, and their country. I include Judge Tuttle because he served on the court from 1954 until 1981 when the circuit was divided. Each carries a fair and reasonable share of the bench-load and sits in other circuits as well. I calculate, without the benefit of a computer — computers came along too late for me — that these six senior circuit judges have served a total of almost one hundred years beyond the point where they were eligible for retirement. This means that the average senior judge on our Court has been active on the bench for sixteen years beyond the time when he could have locked the door to his office, never returned, and still received his salary.

I emphasize the activities of our senior judges because some members of Congress seem to be unaware of the extent of the contribution senior judges are making to the federal system. Several senators have referred, not always fairly, to senior judges who receive salaries without working. For example, they point to Judge Harold Medina of the Second Circuit. He is unable to work now, but he was a highly respected judge who sat on the bench well past his retirement age. Judge Medina is 101 years old. The senators did not refer to Judge Elbert Tuttle who has served thirty-five years and is ninety-two. He still sits — and often.

There are others I should like to mention. Alvin Rubin was appointed in 1966; he has not taken senior status. Frank Johnson was appointed in 1955; he has not taken senior status. These two judges have done so much beyond deciding cases, in countless judicial or law-related activities, that they have paid their dues to the United States courts twice over. Suppose that they decide to take senior status. If Judge Rubin should wish to teach full time or if Judge Johnson should feel the urge to spend more time on his hobby of cabinet-making or if they should feel comfortable just sitting on the porch and rocking and reading, who is so bold as to say that they must spend a certain amount of their time on the bench — if they are to receive full retirement benefits?

Again, I express my gratitude for this great honor extended to me. I accept it, as I have said, not just as a compliment to me, but also as an honor extended to Judge and Company, the United States Court of Appeals for the Fifth Circuit.

I would be remiss if I did not acknowledge the great debt I owe to my loyal, supportive, and long-suffering wife, who has had to carry heavy burdens I placed on her shoulders in the last thirty-two years of our fifty-eight years together. And I thank my extended family — sixty-eight law clerks, many of them now distinguished teachers and lawyers. My first clerk, Marty Feldman, sits on the District Court here in New Orleans. Another, Brock Hornby, who is here today, sits on the Supreme Judicial Court of Maine. Tom Susman of Washington, D.C., and Allen Black of Philadelphia are also here today, although I blew no bugles.

Ladies and gentlemen, I thank you.