

WILLIAM WAYNE JUSTICE
1920 - 2009

It is again time for those of us in the middle of the mystery of life to confront the mystery of death. As with every funeral, there is a sense of loss. But never before have I felt not just a sense of loss, but such a sense of loneliness. He was the ever-burning fire at the base of our camp. It was to his flame that we were all drawn for warmth. It was to his light that we looked for inspiration. Now, the fire has gone out. We are left in the cold, in the dark, and all alone.

Those who knew him best will miss him most. But, our country will miss him most of all, especially now. No one else cared as much, no one else did as much, no one else mattered as much as William Wayne Justice. We are left with no one like him. I fear we will not soon see anyone who even puts us in mind of him. Wayne strapped to his slender back all that was best in our system of laws and in ourselves, and pushed upwards, through sunshine and shadow, towards a higher and finer concept of justice, justice that had for too long eluded our society. Shakespeare anticipated Wayne when he wrote, what “can [I] say more/ Than this rich praise – that you alone [were] you.”

Wayne knew in every cell and membrane that, to show compassion for an individual or a people, without concern for the legal structures that make them an object of sympathy, is just watery sentimentality. It is not a responsible understanding of the law. He knew also that those who prefer injustice to disorder generally produce more of both. And, he likewise knew that those who are bold enough to advance before the age

must learn to expect censure. In enforcing constitutional mandates, he learned that there would be a horrific price to pay. But, he always reached for the check, and he paid it to the very last penny.

All of us have often heard of the crucibles in which Wayne was torched and burned, how the ingot was stamped with the hallmark, and the ashes blown away. But, with some crucibles and some hallmarks, we must always tell the story. Because we send him to the immortality of history, we tell the story. Because we must remind ourselves of, and remain scared of, what humanity can do to itself, we tell the story.

Wayne took the bench in 1968, two months after Dr. King's murder. Fourteen years had passed since *Brown v. Board of Education*. Nonetheless, African-Americans were still being denied a desk in the school room, a place at the lunch counter, a moment in the voting booth, a seat at the front of the bus, a job at the factory, and a home in the neighborhood.

Cometh the hour, cometh the man. Many people contributed to the long, vexed, and continuing struggle to change all that. But, within Texas, no individual, and no group of individuals, did remotely as much as Wayne. He stands alone among all the others. Whoever is in second place is not even close.

The case of *United States v. Texas*, for example, resulted in Wayne's imposing a desegregation order on all public schools at all levels throughout the State of Texas. This was an order on behalf of the hundreds of thousands of black children in Texas who, although not even grown up, were already being ground down. Wayne's ruling was upheld by the Fifth Circuit, but the State sought a stay from Circuit Justice Hugo Black. Justice Black wrote: "The District Court's opinion and order are comprehensive and well

reasoned. In my judgment the facts found by the District Court, which do not appear materially disputed by the applicants, fully justify the order.”

Wayne’s contribution to the rights of the incarcerated was similarly profound. In the wake of Iraq and Abu Gharib we have all been made sickeningly familiar with prisoner abuse and even torture. I quote from a national magazine: “The footage is not easy to watch. In one clip, a prisoner screams as an attack dog mauls his leg; in another, a prisoner with a broken ankle gets zapped in the buttocks with a stun gun because he’s not crawling along the floor quickly enough. These aren’t the infamous videos from . . . Abu Ghraib. They were taken in 1996” at a detention facility outside of Houston.

The case of *Ruiz v. Estelle* became Wayne’s most famous and his most long-running. It began in 1972 with a handwritten fifteen-page petition from an inmate in a Texas prison within Wayne’s district. The prisoner, David Ruiz, alleged that he was being confined under unconstitutional conditions and specified incidents of harassment by prison officials, inadequate medical care, and unlawful solitary confinement. Eventually, Mr. Ruiz became the lead plaintiff in a class action involving all the prisoners in the Texas system. Wayne presided over the case for thirty years and, despite enormous governmental obstinacy, forced thoroughgoing reform all over the state.

In a totally different arena, Wayne vindicated the rights of children of illegal immigrants to attend public schools. The local school district had reasoned that, because their parents were here unlawfully and were paying no tax, the children should be required to pay tuition – a requirement that effectively and forever shut the schoolhouse doors to them. Wayne quickly outlawed this practice. His decision was upheld unanimously by the Fifth Circuit, and by the Supreme Court on a five to four vote.

Think back on these decisions for a moment. Wayne held that African-Americans should enjoy the same rights as whites, that those whom we had imprisoned should be treated humanely, that children are entitled to public education irrespective of the financial or citizenship status of their parents. What, in the name of all that we hold good and true is controversial about any of those holdings? How could any system of justice have reached different conclusions?

But, this is now, and that was then. The vitriol directed at Wayne and his family was brutal, copious, and unrelenting. If Wayne had not been so robust, so high-hearted, and so unafraid, our state's history would have been vastly different and vastly poorer. One-sixth of the 65,000 residents of Tyler, where Wayne sat, signed a petition calling for his impeachment. Hate mail and obscene phone calls poured in at both home and office. A fleet of school buses was bombed. Wayne received death threats and two different plans to kill him were documented. The minister of the First Baptist Church, which was located across the street from the federal courthouse, called Wayne a socialist intent on tearing down the fabric of local society. A neighbor who was an influential member of the Episcopal Church made it clear, when Wayne sought to attend services there, that he was not welcome. Repair men would not come to his home. When Wayne walked into a restaurant, others would often walk out.

Wayne endured all this with stoicism, but was deeply anguished over what it meant for his beloved wife Sue. At least within the federal courthouse, Wayne was surrounded by sympathetic colleagues. As Sue went about her daily life, however, she had no comparable source of solace. Wayne well realized that, as life kept calling with its insistent and often hateful voice, it was so often Sue who had to answer.

Wayne and Sue persevered. They stood with those who had nothing, absolutely nothing, and were not even allowed to enjoy in peace the nothing that they had. They stood with those for whom life consisted of darkness being added to darkness in a night sky that was already devoid of stars. They stood with those of broken, broken lives, lives that – if they were to be mended at all -- would be mended only imperfectly.

What Wayne and Sue did, and all that they had to bear, “will continue to be commemorated as long as fortitude under fire continues to be admired.” And, as we ask blessings on the life that has ended, and upon the lives that go on, we cannot but be reminded of the smallness of our own vision in the face of these deepest truths.

For other judges, Wayne’s career is both an aspiration and a silent rebuke – we follow so very far behind him. Fortunately for all of us, a well-lived life is eternal. Wayne’s example will always be with us.

For now, at this quiet hour and in this sacred place we say, as Thucydides said two-and-a-half millennia ago: We offer his body to our common earth. We offer to his memory praise that will never end.*

*My primary source for the Judge’s career was Dr. Frank Kemerer’s *William Wayne Justice: A Judicial Biography*. Other sources and attributions can be provided upon request.