

WILLIAM WAYNE JUSTICE – BIRTHDAY TRIBUTE

We are met on an evening in which the stars and planets must be in perfect alignment. We are gathered at one of nation's preeminent universities to honor an alumnus who has earned two degrees and untold admiration here; a man who has been his generation's most valiant and most effective soldier in the fight for civil rights and civil liberties. We are joined by Morris Dees who has been *his* generation's most valiant and effective soldier in the fight for civil rights and civil liberties. The honoree, Judge William Wayne Justice, has recently been named the first recipient of an annual award established in Morris' honor. The title of the award, which was selected before the competition even began, is such an apt cognomen that it includes the names of both men: The Morris Dees Justice Award. If there is a lawyer heaven, surely it cannot be better than this.

At this time and at this place, it is difficult to perform the mental acrobatics necessary to put us in mind of what Texas and, indeed, the entire South, were like in 1968, when Wayne took the bench. It was certainly true, however, that little effect had been felt as a result of the Supreme Court's decision, fourteen years earlier, in *Brown v. Board of Education*. 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 of their choice. ¹

¹ This sentence is borrowed, with modifications, from an article by John Leonard entitled *New Books* in the February, 2006 issue of Harper's at 84.

Many people contributed to the long, vexed, and continuing struggle to change all this. 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.²

The case of *United States v. Texas*, for example, resulted in Wayne imposing a desegregation order on all public schools at all levels throughout the State of Texas. His 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 has been similarly profound. In the wake of Iraq and Abu Ghraib 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 video from . . . Abu Ghraib. They were taken in 1996, at the Brazoria County Detention Center outside of Houston.”³

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

² The biographical information that is included is from Frank Kemerer’s biography, *William Wayne Justice: A Judicial Biography*, and from the November 1998 issue of the Texas Law Review, which was dedicated to Judge Justice.

³ Jonathan Cohn, *America’s Abu Ghraibs: Abroad at Home*, New Republic, May 18, 2004.

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 enjoined this practice. His decision was upheld unanimously by the Fifth Circuit, and by the Supreme Court on a five to four vote.

Wayne's other landmark decisions, such as those dealing with procedural due process and the rights of the mentally challenged, are too numerous to recount. But even a much more detailed inventory of Wayne's jurisprudence would not adequately convey the reasons that he is such a hero to so very many of us. Because what would not be conveyed is the nature of the world that Wayne inhabited as he reshaped its long-established and deeply ingrained practices. Just as he became one of the most important figures in the South he became – simultaneously, and not unlike Morris Dees – one of the most vilified.

One-sixth of the 65,000 residents of the city in which 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.

Still, there was one person who felt, even more acutely than Wayne, the threats of violence, the derision, and the ostracism. And that was his lovely wife, Sue. As Wayne once wrote, “The real grief is felt by my wife, a wonderful person who enjoys the social events and happenings. I work up here in an office where the people approve of what I do. But my wife has to go out in town and mix with people. She has had to be very courageous.”

Neither his own hardships nor those of his family, however, would deflect Wayne from what he saw as the duties that he undertook when he swore his judicial oath. Through it all, his flag never fell; his guns were never silenced. He has spent his career in the trenches, and he has performed with singular valor.

As we reflect tonight on the eighty-seven years of Wayne’s life, on the trajectory that has taken him from birth in tiny Athens, Texas to Manhattan for the Morris Dees award, and then to this elegant setting and this recognition, it can surely be said that Wayne has achieved, brilliantly, the American dream. But, in fairness, many other people in this room have done that. Wayne has also done something far more unusual, and far more important, than achieving the American dream. He has, through his hard work, his high purpose, and his undaunted courage help make the American dream accessible to millions of men, women, and children for whom it was previously thought hopelessly out of reach.

Wayne’s long and full life is both an aspiration and a silent rebuke to our profession: a profession which all too often makes its highest aim, perhaps its only aim, the production of wealth, for our clients, yes, but mainly for ourselves.

Wayne's career reminds us that other paths are open to lawyers. He has chosen to stand with those who have absolutely nothing, and are not even allowed to enjoy in peace the nothing that they have. He has *always* shown a gentle identification with the oppressed and a towering rage against the oppressor. He has stood with those for whom life must seem as if it consists of darkness being added to darkness, in a night that is already totally devoid of stars; broken, broken lives that, if they are to be mended at all, are likely to be mended only very imperfectly.

Contemplating Wayne's life, I am reminded of what F. Scott Fitzgerald said of one of his contemporaries: "He caused the men and the women at the country clubs to put down their drinks and contemplate their last best dreams."

For the sake of our profession, and for the good of our society, I so hope that the generation of lawyers now coming of age will produce those for whom Wayne, and not wealth, is the exemplar, lawyers whose concept of justice is as robust, high-hearted, and unafraid as Wayne's. Through them as through him, we ask that the work go on, the cause endure, the hope still live, and that the dream shall never die. ⁴

⁴ Variations of this sentence have been used many times, most famously in Senator Edward M. Kennedy's speech to the Democratic National Convention in 1980.