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JUDGE ROBERT A. AINSWORTH, JR. MEMORIAL LECTURE

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*FOUR LOUISIANA GIANTS IN THE LAW***

I am glad, at last, to take up Justice Lemmon's January 1998 invitation to participate in this Loyola lecture series. First Court business, then colon cancer, kept me from participating earlier. It is a particular pleasure to be here when the Court is in recess, feeling fine, with the Super Bowl past history and Mardi Gras events not yet crowding the streets.

Judge Robert A. Ainsworth, Jr., whose work and days are celebrated in the lecture series, studied law at Loyola Law School, where he was a classmate of my late dear colleague, once Chief Judge of the D. C. Circuit, J. Skelly Wright. I will speak of Judge Wright later. In this opening remark, may I say that I count it an honor to be in the company of the distinguished jurists who have

* The Loyola Law Review originally published this speech in 2002. Ruth Bader Ginsburg, *Four Louisiana Giants in the Law*, 48 LOY. L. REV. 253 (2002). With Justice Ginsburg's permission, we have republished the speech in this book because it fits with the book's theme of reflecting on Judge J. Skelly Wright's career. Slight modifications have been made to the piece as it appeared in its first publication to conform to our journal's style manual. MANUAL ON USAGE & STYLE (Texas Law Review Ass'n ed., 12th ed. 2011). Additionally, the citations have been edited to conform to nineteenth edition of The Bluebook. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

** Justice Ginsburg appreciates the assistance of her October Term 2001 law clerks in the preparation of these remarks: Heather Elliott, David A. O'Neil, Joseph Palmore, and Aaron J. Saiger.

come to Loyola to keep the memory of Judge Ainsworth vibrant, by celebrating the model of good citizenship he set in private practice, the Louisiana legislature, and later, the federal trial and appellate courts.

Judge Ainsworth merits a place in history first as a state senator who resisted blatant segregationist bills, then as a wise and good judge whose moderate, consistent, and forward-looking views helped to keep the Fifth Circuit steady during the tumultuous 1960s. It is altogether fitting that his friends and colleagues have chosen to remember him by founding and maintaining this Ainsworth Memorial Lecture Series here at his alma mater.

Mindful of Judge Ainsworth's caring and devoted service to this state and our nation, I will speak today of four Louisiana jurists, learned in the law, who might have appeared on Judge Ainsworth's list of the best among lawyers and judges: Judah Benjamin, John Minor Wisdom, J. Skelly Wright, and Alvin Rubin.

Judah Benjamin ranks first in time and has captured my imagination. Alone among the four brave spirits I will describe, Benjamin never served as a judge. Recall that Judge Ainsworth, in 1961, gave up the seat he occupied for some eleven years in the state senate for an appointment to the federal bench. In contrast, Judah Benjamin, in 1853, declined the nomination of President Millard Fillmore to become an Associate Justice of the United States Supreme Court. Just elected U. S. Senator from Louisiana, Benjamin preferred to retain his First Branch post. His choice suggests that the U. S. Supreme Court had not yet become the co-equal Branch it is today.

Had he accepted the Third Branch nomination, Judah Benjamin, not Louis D. Brandeis, would have been the first Jewish Justice to serve on the High Court. It was just as well, for Benjamin's service would not have endured. In early 1861, in the wake of Louisiana's secession from the Union, Benjamin resigned the Senate seat for which he had forsaken the justiceship. No doubt he would have resigned a seat on the Court had he held one, as did his friend Associate Justice John Archibald Campbell of Alabama. (Campbell, incidentally, opposed secession and freed all his slaves on his appointment to the Supreme Court. But when hostilities broke out, he remained loyal to the South. He eventually settled in New Orleans where he built up a thriving

law practice.)

Benjamin is perhaps best known for his stirring orations in the United States Senate on behalf of Southern interests and for his service as Attorney General, Secretary of War, and finally Secretary of State in the cabinet of Jefferson Davis. After the Confederate surrender, Benjamin fled to England; en route, he narrowly survived several close encounters with the forces of storm, sea, and the victorious Union. Benjamin's political ventures in the Senate and in the Confederacy were bracketed by two discrete but equally remarkable legal careers, the first here in New Orleans and the second in Britain.

Having left Yale College without taking a degree, Benjamin came to New Orleans in 1832 and was called to the bar that same year. Although he struggled initially, his fame and fortune quickly grew large after the publication, in 1834, of *A Digest of Reported Decisions of the Supreme Court of the Late Territory of Orleans, and of the Supreme Court of Louisiana*. Benjamin's book treated comprehensively for the first time Louisiana's uniquely cosmopolitan and complex legal system, derived from Roman, Spanish, French, and English sources. The work digested "every point or principle" decided in each Louisiana High Court case.[1] Benjamin's flourishing practice and the public attention he garnered helped to propel his election by the Louisiana legislature to the United States Senate. (In pre-Seventeenth Amendment days, until 1913, Senators were chosen not directly by the People, but by the Legislatures of the several states.)

Benjamin's fortune plummeted with the defeat of the Confederacy. He arrived in England with little money and most of his property lost or confiscated. His wife and daughter settled in Paris, where they anticipated support from Benjamin in the comfortable style to which they were accustomed. He nevertheless turned down a promising business opportunity in the French capital, preferring to devote himself again to the practice of law, this time as a British barrister. He opted for a second career at the bar notwithstanding the requirement that he start over by enrolling as a student at an Inn of Court and completing a mandatory three-year apprenticeship before qualifying as a barrister. This, Benjamin's contemporaries reported, he did cheerfully, although he was doubtless relieved

1. ROBERT DOUTHAT MEADE, JUDAH P. BENJAMIN: CONFEDERATE STATESMAN 37 (1943).

when Lincoln's Inn determined to waive some of its requirements and admit him early.

Benjamin became a British barrister at age 55. His situation at that mature stage of life closely paralleled conditions of his youth. He was a newly minted lawyer with a struggling practice but, he wrote to a friend, "as much interested in my profession as when I first commenced as a boy."[2] Repeating his Louisiana progress, Benjamin made his reputation among his new peers by publication. Drawing on the knowledge of civilian systems gained during his practice in Louisiana, Benjamin produced a volume in England that came to be known as *Benjamin on Sales*. The book was a near-instant classic. Its author was much praised, and Benjamin passed the remainder of his days as a top-earning, highly esteemed, mainly appellate advocate. His voice was often heard in appeals to the House of Lords and the Privy Council.

Benjamin's biographer tells us that "[h]owever desperate his case, Benjamin habitually addressed the court as if it were impossible for him to lose."[3] This indomitable cast of mind characterized both Benjamin's courtroom advocacy and his response to fortune's vicissitudes. He rose to the top of the legal profession twice in one lifetime, on two continents, beginning his first ascent as a raw youth and his second as a fugitive minister of a vanquished power. The London *Times*, in an obituary, described Judah Benjamin as a man with "that elastic resistance to evil fortune which preserved [his] ancestors through a succession of exiles and plunderings."[4]

Unlike Judah Benjamin, who worked to shore up the Old South, the other Louisiana jurists of whom I will speak devoted their lives to building the New. If Judah Benjamin captured my imagination, the next three captured my mind and heart. The first of these, John Minor Wisdom, was one of the very best jurists I have met here and abroad, be the measure his knowledge, dedication, or caring for the law and the large society law serves. We first met in the mid-1960s, when Judge Wisdom visited the law school at which I was then teaching—Rutgers in

2. Letter from Judah P. Benjamin to James M. Mason (Oct. 25, 1866), *quoted in* MEADE, *supra* note 1, at 333-34).

3. MEADE, *supra* note 1, at 353; *see also* ELI N. EVANS & JUDAH P. BENJAMIN, THE JEWISH CONFEDERATE (1988).

4. *Quoted in* ARTHUR L. GOODHART, FIVE JEWISH LAWYERS OF THE COMMON LAW 14 (1949).

Newark, New Jersey. Though heavily engaged in Fifth Circuit decision-making at that critical time, he made space for visits to law schools distant from New Orleans, to lift the spirit of faculties and to inspire law students to contribute to the public good.

I appeared in court just once before Judge Wisdom, in 1973, in a case called *Healy v. Edwards*,[5] a challenge to Louisiana's then system, which exempted any woman from jury service. When it was my turn to argue, Judge Wisdom said: "Mrs. Ginsburg, I think we grasp the points your brief presents, but if there is something you feel a burning need to add, please do so." "Not on the merits," I responded, momentarily regretting that I could not show off all the hours of preparation, "but may I clarify our position on standing," I ventured. I did just that in a minute or two. (The parties I represented prevailed, as I knew they would when Judge Wisdom signaled that oral argument was unnecessary.)

At American Law Institute Council meetings I attended from the late 1970s until 1993, Judge Wisdom was the wisest and the wittiest counselor. The esteem in which he was held was evident. In a crowd that had no short supply of "prime dons," everyone listened when John rose to speak.

Judge Wisdom was for me the model of what a good judge should be. His substance was always secure, and his style was simply beautiful. Judge Alvin Rubin, to whom I shall return shortly, once wrote that Judge Wisdom's opinions were so lucid and free of legal jargon that trial judges could use them as the basis for their jury instructions.[6] When I served on the D.C. Circuit, and noticed more than ever the quality of his opinions, I asked if he would share his style sheet with me. He did, and I use it to this day, striving to be brief (use one word instead of two), clear (one idea to a sentence), and to "put the sex appeal in the first and last paragraphs of each opinion."

Judge Wisdom is of course best known for his civil rights opinions. His reputation as one of the principal judicial protectors of the civil rights movement was solidly anchored by his opinion in *United States v. Jefferson County Board of Education*.[7] In that case, Judge Wisdom wrote that previously

5. 363 F. Supp. 1110 (E.D. La. 1973) (three-judge district court).
6. Alvin B. Rubin, *John Is Every Inch a Sailor*, 60 TUL. L. REV. 256, 258 (1985).
7. 372 F.2d 836 (5th Cir. 1966).

segregated school districts had an affirmative duty to integrate. As now-Fourth Circuit Chief Judge J. Harvie Wilkinson has written, this premise "transformed the face of school desegregation law."[8]

Judge Wisdom's reputation as a preeminent civil rights judge was heightened by his inclusion of clarion statements of principle in his opinions. In an opinion granting an injunction the Department of Justice sought against the Ku Klux Klan, for example, Judge Wisdom wrote that "violence and crime follow as the night the day when masked men conspire against society itself."[9]

Judge Wisdom's rhetorical skill had a lighter side as well. In dissenting from a majority opinion holding that a case was not yet ripe for judicial resolution, he wrote: "This case is so bursting with over-ripeness that it emits an unpleasant odor."[10]

Judge Wisdom never disregarded legal rules he found unaccommodating or tried to chisel his own view of right and wrong into an unyielding body of law. Instead, he used his unrivaled mastery of traditional legal analysis to achieve just, yet law-bound, results.

A prime example of this approach is Judge Wisdom's opinion in *Bagur v. Commissioner of Internal Revenue*.[11] This is not one of the "headline" cases mentioned in the many tributes written in celebration of Judge Wisdom. *Bagur* was a tax case. Yet despite what some might consider its prosaic subject matter, *Bagur* represents for me Judge Wisdom at his best.

Bagur arose from the efforts of the Internal Revenue Service to collect back income taxes from two women. The income in question had been earned by the women's absent, ne'er-do-well husbands, and neither woman had enjoyed a penny of it. Under Louisiana's community property laws, however, both women were considered one-half owners of all their husband's earnings. An over-eager IRS brought actions against these destitute women to

8. J. HARVIE WILKINSON III, FROM *BROWN* TO *BAKKE*—THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978, at 111 (1979).

9. United States v. Original Knights of the Ku Klux Klan, 250 F. Supp. 330, 335 (E.D. La. 1965) (three-judge district court).

10. Valley v. Rapides Parish Sch. Bd., 145 F.3d 329, 334 (5th Cir. 1998) (Wisdom, J., dissenting).

11. 603 F.2d 491 (5th Cir. 1979).

collect the income taxes their husbands never paid on income the wives never saw. (As Judge Wisdom announced in opening his opinion, Mrs. Bagur lived in "grinding poverty.")[12]

Joined by Judge Ainsworth, Judge Wisdom refused an invitation by the women to disregard or distort Louisiana community property law. As he said: "We must apply Louisiana law as we find it."[13] A lesser judge would have stopped at that point, convinced that the law offered no recourse for these double-victims of spendthrift husbands and an overweening bureaucracy. But Judge Wisdom persevered. He advanced an argument not originally raised by the parties. Because their husbands had appropriated all the money, Judge Wisdom explained, the women for their half could claim a deduction under the federal tax law of theft, a tax doctrine creatively adapted by Judge Wisdom to deal sensibly with the *Bagur* case and, thereafter, with others like it.

John Minor Wisdom would have graced the Supreme Court's bench, had fortune worked in his favor. Even without the appointment that would have been his had a merit system prevailed, he ranks as one of the greatest federal judges of all time, with Holmes, Brandeis, and Cardozo, Learned Hand and Henry Friendly. The opinions he wrote as Circuit Judge, on a notably wide range of subjects, are his legacy.

Had political forces not intervened—particularly, the implacable opposition of Senator Eastland—Judge Wisdom might have been joined on the Fifth Circuit bench by another son of New Orleans, J. Skelly Wright. The Fifth Circuit's loss became the D. C. Circuit's gain in 1962, when Judge Wright began his great service on that court.

By the time I joined the D. C. Circuit in 1980, J. Skelly Wright was Chief Judge. He was known to me then through the pages of the Federal Reporter, law school casebooks that featured his opinions, and law reviews that contained his challenging commentary. From these sources, and the history of his brave performance as United States District Judge for the Eastern District of Louisiana from 1949 to 1962, I appreciated his intelligence and ardor, his firmness and spirit. As his colleague, I discovered that J. Skelly Wright was not easily typecast. He was tough when the occasion warranted rigor, but also gentle, even

12. *Id.* at 495.
13. *Id.* at 499.

shy, in social settings. And sometimes, as he told of his successes as a prosecutor in New Orleans, or encouraged responses from less swift colleagues, there was in his countenance a disarming, beguiling, almost mischievous smile and glance.

Judge Wright's heroism in implementing the law of the land, as decreed by the Supreme Court in *Brown v. Board of Education*[14] and *Cooper v. Aaron*,[15] has been recounted in diverse places. An incident told to me by Martha Scallon, Judge Wright's secretary nonpareil, conveys how his life was affected in the trying post-Brown years.

In May 1960, Judge Wright issued the first order ever in Fifth Circuit territory setting a day certain for the beginning of grade school desegregation. His signature on that order and earlier rulings, all of them stridently opposed by strong forces in this state and city, put his personal safety at risk. Opposition to the Judge's day-certain order, his secretary recalled, had reached fever pitch. One evening, when Judge Wright and his wife were out, a caller from the White Citizens Council rang. (Though the phone number was unlisted, it was found out.) The Wrights' son, James, then age thirteen, answered. "Let me speak to that dirty nigger-loving Communist," the voice demanded. Son James replied: "He's not at home. May I take a message?" Sheltered by loving parents through all the vilification and ostracism the Wrights endured, their young son simply took it in stride, along with the cross burned on the lawn and the company of U. S. Marshals around the clock.

At home on a Sunday morning some 46 years ago, in February 1956, Judge Wright set down on the back of a program from a Mardi Gras ball the insight that had come to him early on in the New Orleans school desegregation case; his eloquent statement expressed the understanding that guided his stewardship of the litigation. These are his words, as they appear in his published opinion ordering the school board to desist from requiring segregation in any of the schools within the board's domain:

> The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience,

14. 347 U.S. 483 (1954).
15. 358 U.S. 1 (1958).

> understanding, generosity and forbearance from all of us, of whatever race. But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God.[16]

Throughout his tenure on the D. C. Circuit, Judge Wright kept those words from his 1956 order, encased in glass, close at hand on his desktop.

In his years on the D. C. Circuit, Judge Wright listened and responded to the pleas of outsiders seeking justice under the law. As then Chief Judge Patricia Wald described him in a 1988 Memorial Resolution: Judge Wright combined "careful scholarship and courageous determination to make the law a working force in the lives of ordinary people."[17] Dissenters, indigent consumers and tenants, government employees dismissed for homosexual behavior unrelated to job performance, all figured among those whose human dignity he strived to advance. Two among Judge Wright's hundreds of published opinions during his years on the D. C. Circuit stand out in my memory: *Bundy v. Jackson*,[18] decided in 1981, and *Hohri v. United States*,[19] decided five years later. Both are characteristic and have special meaning for me.

Sandra Bundy, a vocational rehabilitation specialist employed by the D. C. Department of Corrections, experienced persistent sexual intimidation by her supervisors. She pursued a Title VII claim for sexual harassment, though her job was not at risk and she sought no promotion. Judge Wright recognized her right to be left alone. His opinion established that a Title VII claim could be founded on sexual harassment pervasive in a workplace, even when the complainant wanted nothing more than the right to work in an environment free from distracting gender-based taunts.

Judge Wright referred to decisions reading Title VII to reach race-based animus pervasive in a workplace. He asked: "How [in

16. Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 337, 342 (E.D. La. 1956).

17. *A Tribute to Judge J. Skelly Wright*, D.C. Circuit Update (U.S. Court of Appeals for the District of Columbia Circuit), Fall 1988, at 11.

18. 641 F.2d 934 (D.C. Cir. 1981).

19. 782 F.2d 227 (D.C. Cir. 1986).

light of the race cases] can sexual harassment, which injects the most demeaning sexual stereotypes into the general work environment and which always represents an intentional assault on an individual's innermost privacy, not be illegal?"[20] The key question, he wrote, was simply this: "[W]ould the complaining employee have suffered the harassment had he or she been of a different gender?"[21] If the answer was "no," the court could hold the employer of the harassers vicariously responsible and could impose appropriate injunctive relief. Five years after the D. C. Circuit's opinion in *Bundy*, in another case from that circuit, *Meritor Savings Bank v. Vinson*,[22] the Supreme Court affirmed that a Title VII action would lie when a plaintiff complained of a work environment hostile to individuals on the basis of their sex.

My second example of decision-making characteristic of Judge Wright, *Hohri v. United States*, was a lawsuit seeking reparations for Japanese-Americans held in internment camps during World War II. Judge Wright's opinion for the D. C. Circuit tells the story the Supreme Court did not tell in 1945 in *Korematsu v. United States*.[23] In compelling detail, Judge Wright's *Hohri* opinion sets out the whole truth about that sad chapter in U. S. history. Although the Supreme Court vacated the D. C. Circuit's judgment on a procedural ground—the High Court held that the Federal Circuit, not the D.C. Circuit, was the proper appellate forum for the *Hohri* case[24]—Congress at last broke its silence. On August 4, 1988, Congress passed and sent to President Reagan the Civil Liberties Act of 1988, which afforded compensation to internees and acknowledged the "fundamental injustice" of the internments.[25] Judge Wright died on August 6, 1988. President Reagan signed the bill into law four days later.

Judge Wright has been labeled "activist" and "liberal." No doubt he would bear those designations proudly, if properly comprehended. He thought it "regrettable" that courts should be called upon to resolve "great social and political problems" that, ideally, should be tackled "in the political arena by other

20. Bundy v. Jackson, 641 F.2d 934, 945 (D.C. Cir. 1981).

21. *Id.* at 942 n.7.

22. 477 U.S. 57 (1986).

23. 323 U.S. 214 (1944).

24. United States v. Hohri, 482 U.S. 64, 75-76 (1987).

25. Wartime Relocation of Civilians (Civil Liberties Acct of 1988), Pub. L. No. 100-383, 102 Stat. 903 (1988) (codified as amended at 50 U.S.C. app. § 1989b).

branches of government."[26] But, he strongly believed, "[i]f the legislature simply cannot or does not act to correct an unconstitutional status quo, the Court, despite all its incapacities, must finally act to do so."[27]

Judge Wright once borrowed from Theodor Geisel to state his credo:

> It is claimed that judicial review is anomalously undemocratic, and if by that one means that it is often counter-majoritarian, the point must be conceded. But in another sense, the courts are the most democratic institutions we have. . . .
>
> . . . It is in the nature of courts that they cannot close their doors to individuals seeking justice. . . .[28]

In the centerpiece of his statement, Judge Wright quoted from Horton Hears a Who:[29]

> The judiciary is . . . the only branch of government which can truly be said to have adopted Dr. Seuss' gentle maxim: "A person's a person, no matter how small."[30]

Judge Wright was not alone among Louisiana jurists in finding meaning for the law in the words of Dr. Seuss. Alvin Rubin, his son Michael reminded me some years ago, drew on Theodor Geisel among richly diverse sources in his commentary and opinions, first as a district judge and later as a member of the Fifth Circuit. To illustrate arrogant authority, Judge Rubin quoted from Yertle the Turtle: "'Silence,' the King of the Turtles barked back, 'I'm king, and you're only a turtle named Mack.'"[31] He once compared the task of a judge in interpreting less than crystalline legislative texts to the mission of the Greek God Hermes—to convey the hidden meaning of sacred messages in terms ordinary people can understand.[32] And in an often-quoted

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26. Hobson v. Hansen, 269 F. Supp. 401, 517 (D.D.C. 1967) (Judge Wright sitting by designation pursuant to 28 U.S.C. § 291(c)), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

27. J. Skelly Wright, *The Role of the Supreme Court in a Democratic Society—Judicial Activism or Restraint?*, 54 CORNELL L. REV. 1, 6 (1968).

28. J. Skelly Wright, *No Matter How Small*, 2 HUM. RTS. 115, 116-17 (1972).

29. DR. SEUSS, HORTON HEARS A WHO! (1954).

30. Wright, *supra* note 28, at 118.

31. Davis v. Williams, 598 F.2d 916, 917 (5th Cir. 1979).

32. Dir., Office of Workers' Comp. Programs v. Black Diamond Coal Mining Co.,

essay, Judge Rubin urged his colleagues in the Judiciary to write plainly, without decorations or pretentious phrasing. For this advice, he called up a verse from Ecclesiastes, xxxii, 8: "Let thy speech be short, comprehending much in few words."[33]

I am particularly fond of an opinion Judge Rubin wrote in 1973, in *Healy v. Edwards*, when he served on the district court. The case, to which I referred some minutes ago in regard to Judge Wisdom, concerned Louisiana's then jury system, which included women only if they volunteered. As counsel for plaintiffs, I faced an impediment. Twelve years before, in *Hoyt v. Florida*,[34] the Supreme Court had upheld a state statute establishing a system almost identical to Louisiana's. I therefore urged the Eastern District of Louisiana three-judge court to address this pivotal question: Can evolving standards that mark the progress of a maturing society invalidate a rule held constitutional at an earlier time? Judge Rubin's answer, I believe, was the right one. He wrote: "When today's vibrant principle is obviously in conflict with yesterday's sterile precedent, . . . courts need not follow the outgrown dogma."[35]

In that same case, Judge Rubin included a paragraph I have quoted time and again. In it, he answered two questions definitively. First, is there a difference between men and women? The answer, indubitably yes. Second, does it follow that the stature of men and women as community citizens should differ? Most certainly no, Judge Rubin concluded. He explained:

> Females, as individuals, bring to juries "qualities of human nature and varieties of human experience" . . . different from those of males, and a diversity of temperament, among themselves, completely heterogeneous. Their absence from jury panels is significant not because all women react alike, but because they contribute a distinctive medley of views influenced by differences in biology, cultural impact and life experience, indispensable if the jury is to comprise a cross-section of the community.[36]

Two years later, the Supreme Court agreed that Louisiana's

598 F.2d 945, 949 n.7 (5th Cir. 1979).

33. Laitram Corp. v. Deepsouth Packing Co., 301 F. Supp. 1037, 1039 n.1 (E.D. La. 1969).

34. 368 U.S. 57 (1961).

35. Healy v. Edwards, 363 F. Supp. 1110, 1117 (E.D. La. 1973).

36. *Id.* at 1115 (quoting Peters v. Kiff, 407 U.S. 493, 503 (1972)).

differential treatment of men and women for jury-service purposes could not survive constitutional review.[37]

In 1989, Alvin Rubin wrote an essay on good judges that should be required reading for all judges and all involved in the judicial selection process.[38] He called good judges "political creatures who put law above politics."[39] The process through which judges are chosen is indeed political, he acknowledged. But the question is, "what [should we] expect from the mortals chosen [in a political process] when they become judges and render decisions?"[40] Alvin Rubin stressed one word above others: "honesty."[41] The honest judge, he said, "must . . . have intellectual humility, [appreciation] that he is not omniscient."[42] He must read and listen to the parties' presentations, then "decide openly and honestly for the reasons he gives."[43] Those reasons must not be covers for judgments reached on an undisclosed, preconceived ground.

"[T]he stability of our constitutional government and the continuation of respect for the rule of law rest in large part on the faith our citizens have in the integrity of their judges,"[44] Judge Rubin wrote.

> Should the public decide that . . . judicial decisions are made in advance by people determined . . . to be unswervingly faithful to the purely political agenda of those who appointed them, then not only will faith in the judiciary vanish but with it, faith in the integrity of all governmental processes.[45]

Judge Rubin's concern, I believe, should be the concern of all whose oath of office requires them to "administer justice without respect to persons, and do equal right to the poor and to the rich."[46]

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37. Taylor v. Louisiana, 419 U.S. 522 (1975).

38. Alvin B. Rubin, *Good Judges: Political Creatures Who Put Law Above Politics*, LEGAL TIMES, May 29, 1989, at 31 (adapted from a speech delivered in the fall of 1988 at the University of Texas Law School).

39. *Id.*

40. Rubin, *supra* note 38, at 31.

41. Rubin, *supra* note 38, at 31.

42. *Id.*

43. *Id.*

44. *Id.* at 32.

45. Rubin, *supra* note 38, at 32.

46. *See id.* at 31.

The high regard Judge Rubin's colleagues had for him is demonstrated in a moving tribute written by Judge Edith Hollan Jones.[47] She wrote of her starting days on the Fifth Circuit, of Judge Rubin's "cordiality toward a young bankruptcy lawyer and litigator turned judge."[48] He "never condescended," she wrote, "[he] assisted and encouraged me[,] I will never forget his help."[49] "To disagree with [Judge Rubin] on an opinion," Judge Jones said, "was stimulating, because his powerful argumentation brought out the best in any challenger, put the depth of one's conviction to the test, and provoked the kind of thorough debate that federal appellate courts are supposed to undertake."[50] She recalled his resistance to one-line dispositions in pro se cases. "'Let us write a little,' he would say, . . . then succinctly but painstakingly explain the court's ruling, especially to pro se and under-represented litigants."[51]

Judge Wisdom said of his dear colleague and friend: "Alvin B. Rubin was born to be a judge."[52] The remainder of Judge Wisdom's remarks aptly describe Judge Rubin and all jurists I count as heroic:

> [He] had a profound respect for the law and the limitations it imposes on judges. But he also had a warm, compassionate feeling for all human beings, regardless of race, color, creed, or gender. And, with his encyclopedic knowledge of the law and towering intellect, he was able to find means of redressing unfairness, within the bounds of legal propriety, when others might have despaired and yielded to circumstances apparently beyond their control.[53]

"[R]edressing unfairness, within the bounds of legal propriety"—I know no better description of the judge's craft and calling.

47. Edith H. Jones, *A Farewell to Judge Rubin*, 70 TEX. L. REV. 1 (1991).
48. *Id.* at 5.
49. *Id.*
50. *Id.* at 3-4.
51. *Id.* at 5.
52. John M. Wisdom, *Dedication: Judge Alvin Rubin*, 52 LA. L. REV. 1371 (1992).
53. *Id.*