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REMEMBERING JUDGE ELBERT P. TUTTLE, SR.

Charles M. Elson†

Cornell University held a special position in the life and heart of Elbert P. Tuttle. A graduate of the College class of 1918 and the Law School class of 1923, Editor of the *Cornell Sun*, Editor-in-Chief of the *Cornell Law Review*, trustee of the University, and active life-long supporter of Cornell, Judge Tuttle was a Cornellian through and through. In fact, in his spartanly decorated chambers, the first thing I noticed upon meeting him was the prominence of his Cornell memorabilia. It is therefore altogether fitting and proper that the editors of the *Cornell Law Review* have chosen to dedicate this volume to him.

Elbert Tuttle was a most extraordinary man. He lived not one, but really four full lives, setting a standard of excellence in each that few, even separately, could ever match. Distinguished lawyer, journalist, decorated military leader and courageous jurist, he was a "citizen" in the classical sense of the term. Judge Tuttle was a man of tremendous accomplishments, yet he was quiet, humble, even slightly self-effacing. Despite the tumultuous period in which he lived and worked, Judge Tuttle always seemed to take life's challenges with a slightly wry wit and not very much visible worry or angst. Given the gravity of what he faced, however, he must have had considerable inner concern. He maintained an unusually demanding professional life, yet he was completely devoted to his wife Sara and his children, Elbert, Jr. and Jane. Tuttle was a truly complete person whom untold numbers admired and respected.

Judge Tuttle was born in California in 1896, but grew up in Hawaii. He graduated from Cornell with a bachelor's degree in 1918, then entered the Army where, among other things, he wrote for the service newspaper, continuing a journalistic interest that began at Cornell where he was the Editor of the *Cornell Sun*. After the war ended, he wrote for the *New York Evening World*, before entering Cornell Law School. He excelled as a law student, served as the Editor-in-Chief of the *Cornell Law Review*, and graduated in 1923.

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Judge Tuttle then began law practice in Atlanta, Georgia. Although he had no prior connection to the southern city, he and his brother-in-law William A. Sutherland (a former Brandeis clerk) felt that there was much opportunity in the even-then bustling regional center. They founded what later became the nationally known law firm of Sutherland, Tuttle & Brennan (now Sutherland, Asbill & Brennan). Tuttle was active in numerous civic causes, but in the 1930s became known as a prominent civil libertarian when he represented, among others, a black man (whom he had saved from a lynching as a major in the Georgia National Guard) accused of raping a white woman and a black communist imprisoned for passing out leaflets at the Fulton County Courthouse. The latter case ended up in the U.S. Supreme Court where Tuttle prevailed in the now renowned case of *Herndon v. Lowry*.¹ His most celebrated case of that era and one of the early landmark civil liberties rulings, however, was *Johnson v. Zerbst*,² which established a defendant's right to counsel in a federal trial unless such assistance was intelligently waived.

With the U.S. entry into World War II, Tuttle, by then a lieutenant colonel in the National Guard, declined a desk job and was deployed to the South Pacific where he commanded a field artillery battalion. During this command Tuttle was severely wounded in hand-to-hand combat on Ie Shima, a Pacific Island off Okinawa. He eventually retired from military service as a brigadier general. When the war ended, Tuttle returned to his Atlanta law practice and renewed his activity in civic affairs, becoming President of the Chamber of Commerce. Long active in Republican politics, unusual for a leading Atlantan at the time, he was in part responsible for delivering the southern delegations to General Eisenhower at the 1952 Republican Convention, and President Eisenhower appointed him general counsel of the Treasury Department. Among his close acquaintances were most of the young Republican luminaries of the day. In 1954, at the urging of his political cohort and friend, John Minor Wisdom, Tuttle accepted an appointment to the U.S. Court of Appeals for the Fifth Circuit. By then almost sixty, Tuttle initially viewed the appointment as the beginning of his retirement from an active career in the law. Fortunately, this was not to be.

Soon after his appointment, the Supreme Court handed down its ruling in *Brown v. Board of Education*,³ forever changing the racial landscape of the United States. Tuttle, rather than returning to Atlanta for a leisured judicial sinecure, instead became a vigorous champion of the civil rights movement. As both a judge and then chief judge of

¹ 301 U.S. 242 (1937).

² 304 U.S. 458 (1938).

³ 347 U.S. 483 (1954).

the Fifth Circuit, Tuttle, aided by his colleagues John Minor Wisdom, John Brown, and Richard Rives, assured the effective desegregation of southern society. Despite numerous personal attacks and even threats of physical violence, Tuttle courageously ensured that the Supreme Court's edict would be fully enforced by the regional federal courts, assuring the ultimate victory of racial justice and civil rights under law in the South. Historian Jack Bass labeled him an "unlikely hero,"⁴ and in 1980, President Carter awarded him the Presidential Medal of Freedom (which, in Judge Tuttle's characteristically understated way, he kept in a cabinet beneath his television set).

In 1981, he became a judge on the newly-formed U.S. Court of Appeals for the Eleventh Circuit and continued to decide cases well into his nineties. He authored over 1400 opinions and became recognized not only as a great civil libertarian, but as a highly-skilled legal thinker and craftsman. Judge Tuttle wrote in a crisp, simple, and precise style that was influenced both by his early career as a journalist and his military experiences. He had a keen intellect and a spectacular memory. He could recite page references and highly specific historical detail even into his early nineties.

It is almost impossible in the space of a law review dedication to sum up the life of a man as multifaceted, talented, and renowned as Judge Tuttle. However, three simple characterizations immediately come to mind—courage, integrity, and professionalism. Tuttle was an individual of great personal courage. He demonstrated tremendous physical courage throughout his many military activities and during the civil rights era, when acts of physical violence against those supporting integration were regrettably commonplace. But, he also continuously displayed great intellectual courage in championing various unpopular causes, both political and social. Although he grew up in a different era than today, he nonetheless had a sense that society as it was then structured was not as it ought to be. He had the strength to challenge convention and the vision to create a more just culture, where equality under law was not just an empty platitude, but a reality for all citizens.

Tuttle was also a man of tremendous personal integrity. He never wavered from his core beliefs, even when doing so, particularly during the civil rights era, would have guaranteed a more pleasant and uneventful career. Yet, he was never preachy or high-handed. He simply conducted himself in a manner that he thought was right.

My favorite Tuttle characteristic, however, was his deeply held and continuously visible sense of professionalism. Judge Tuttle did not simply speak of professionalism, he was the very embodiment of

⁴ JACK BASS, UNLIKELY HEROES (1981).

the term. In the late 1950s, he delivered a commencement address at Emory University in which he spelled out his concept of the professional. Since entering teaching seven years ago, I have always ended each year's classes reading that speech to my students because I felt that it captured not only the essence of good lawyering, but the meaning of real virtue. As Tuttle stated:

The professional man is in essence one who provides service. But the service he renders is something more than that of the laborer, even the skilled laborer. It is a service that wells up from the entire complex of his personality. True, some specialized and highly developed techniques may be included, but their mode of expression is given its deepest meaning by the personality of the practitioner. In a very real sense his professional service cannot be separate from his personal being. He has no goods to sell, no land to till. His only asset is himself. It turns out that there is no right price for service, for what is a share of a man worth? If he does not contain the quality of integrity, he is worthless. If he does, he is priceless. The value is either nothing or it is infinite.

So do not try to set a price on yourselves. Do not measure out your professional services on an apothecaries' scale and say, "Only this for so much." Do not debase yourselves by equating your souls to what they will bring in the market. Do not be a miser, hoarding your talents and abilities and knowledge, either among yourselves or in your dealings with your clients

Rather be reckless and spendthrift, pouring out your talent to all to whom it can be of service! Throw it away, waste it, and in the spending it will be increased. Do not keep a watchful eye lest you slip, and give away a little bit of what you might have sold. Do not censor your thoughts to gain a wider audience. Like love, talent is only useful in its expenditure, and it is never exhausted. Certain it is that man must eat; so set what price you must on your service. But never confuse the performance, which is great, with the compensation, be it money, power, or fame, which is trivial.

. . . The job is there, you will see it, and your strength is such, as you graduate . . . that you need not consider what the task will cost you. It is not enough that you do your duty. The richness of life lies in the performance which is above and beyond the call of duty.⁵

Judge Elbert Tuttle always acted above and beyond the call of duty. The richness and example of his life truly made the world a finer place in his own time and set an example for others that will long serve as splendid inspiration. We will miss him.

⁵ Elbert P. Tuttle, *Heroism in War and Peace*, 13 EMORY U.Q. 129, 138-39 (1957).