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Alfred C. Aman

Indiana University Maurer School of Law, aaman@indiana.edu

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Honoring Judge Tuttle's Vision of the Law

Alfred C. Aman, Jr. †

Clerking for Judge Tuttle greatly affects one's view of what human beings can do and be. It is very difficult, if not impossible, to be cynical if one knows the Judge. Both as a judge and as a private person, his daily life reflects an approach to problems and people that is intrinsically fair, compassionate, and just.

There are few judges who have had the impact on the law that Judge Tuttle has had and continues to have. As Chief Judge of the Fifth Circuit from 1960 to 1967, the height of the Civil Rights movement, he led a court and wrote opinions which fundamentally changed the legal landscape of the South: Jim Crow laws were declared unconstitutional; voting rights of blacks became a reality; racial discrimination in jury selection was curbed; state universities and colleges were desegregated, and education at all levels, perhaps one of the most important opportunities for all children, was given paramount importance.

In *Woods v. Wright*,¹ for example, Judge Tuttle, in emergency session, heard an appeal from a district judge's refusal to issue a temporary restraining order enjoining the suspension of over a thousand school aged black children whose only crime was that they had marched in a protest demonstration in downtown Birmingham over the weekend. Judge Tuttle, after hearing the arguments in an emotionally charged courtroom, issued his own injunction, as a single judge, prohibiting the dismissal of these students, pending appeal of the case on the merits to the Fifth Circuit. As the Judge recalled many years later:

Many of them were seniors in high school and would have lost their entire opportunity to graduate during that year. And in the facts of life that we are all familiar with, you question how many of these young black children who were seniors and had been kicked out a few days before graduation would come back and get a high school education. So I . . . was happy to feel that I had full justification in reinstating those thousand school children that close to the end of a term which they otherwise would have lost.²

The Fifth Circuit later ruled that the district court's refusal to issue a temporary restraining order was, under the circumstances, an appealable order. It also upheld the power of a single appellate judge to issue

† Professor of Law, Cornell Law School

¹ 334 F.2d 369 (5th Cir. 1964).

² F. READ & L.S. MCGOUGH, LET THEM BE JUDGED 189 (1978).

such an injunction, pending appeal, and ultimately affirmed the substance of Judge Tuttle's order.

Judge Tuttle's leadership and the legal imagination and courage shown by him and other members of that great court made change possible not only in the South, but in other circuits and the nation as a whole. Moreover, the sound legal basis of the results reached by the Fifth Circuit added legitimacy to the rulings of the Supreme Court, by placing the Court in the position of affirming the opinions of the South's own judges, rather than imposing its will from on high in Washington, D.C.

Throughout the Judge's career, both on and off the bench, he consistently has stood for a humane approach to law, one that focuses on the parties involved and the particular human issues that they represent. For Judge Tuttle, the law is not just a chess game, but the complex embodiment of human attempts to resolve essentially human problems. It is a manmade construct with an integrity all its own, but one that must be applied to and ultimately affects human beings. It is the Judge's focus on the human dimensions of a case that explains why, on occasion, he believes the law must change. It is also this concern that explains why cases do not linger in Judge Tuttle's office. The dispatch and care with which he renders his clear, logical opinions are increased by his sensitivity to the real parties in the case before him and their desire to have the case resolved.

Watching Judge Tuttle on the bench is a remarkable experience. His powerful legal, analytical abilities, his intrinsic ability to be fair to the parties, his humor, and, most of all, his deep sense of personal integrity, are evident. In oral argument in one case, I recall, a government lawyer argued that the Court should affirm the conviction of an individual who failed to report for the draft. After making his legal arguments, he added that the Judge must surely appreciate these points, because the Judge was "an old army man, himself," having reached the rank of Brigadier General in World War II. Judge Tuttle responded immediately and firmly: "Counsel, I sit here as a Federal judge, not a Brigadier General."

"The Judge," as one of his friends once put it, "knows the difference between right and wrong." He is not, however, morally self-righteous. The Judge does not preach. He simply gives you his reasons for his views and, in the process, *listens* with great care and respect to yours. He is open-minded, willing to question his own attitudes and to change his mind when he is wrong, but he is not without convictions. The Judge's sense of fairness seems to be built upon his convictions and his open-minded willingness to challenge himself. Those who come before him become voices in his own inner dialogue.

The Judge has a way, particularly in complex and confusing cases,

of formulating a question that truly sums up the case. One knows instinctively that the answer to that question will determine the outcome of the case. Often, when asking this question, the Judge will gesture with his open right hand at counsel as if he is literally about to slice through the legal morass to the heart of the matter. But throughout his probing and skillful questioning of counsel, he is sensitive to their needs as well. I had always hoped that when I argued my first case it would be before someone like Judge Tuttle. (No such luck). He has a way of throwing a lifeline in the direction of new, tongue-tied lawyers that will at least get them started: "Counsel, don't you want to argue that that case means . . .?" "Oh, yes, your honor. That is precisely the point I would make and . . ."

By far, however, the most lasting impression the Judge as a jurist has made on me is the compassion and legal imagination he brings to the law. He sums up his legal philosophy this way: "When I see an injustice in the record, I do all I can, within the parameters of the law, to correct it." This is the judicial philosophy of a judge who pays close attention to the facts and peculiarly human dimensions of the individual case before him and who recognizes that, in some cases, it is necessary "to take at least a short step beyond what had previously been decided."³

In *Novak v. Beto*,⁴ for example, the appellants argued that solitary confinement as administered by the Texas Department of Corrections was cruel and unusual punishment. The record showed that a person sentenced to solitary was kept in a bare, pitch-black cell with a barred iron gate backed up by a wooden door to keep out all light and prevent contact with those in the hall. The prisoner was fed only two slices of bread and some water each day and one "full meal" every seventy-two hours—a meal which the record showed was often incomplete. While in the cell the inmate wore no shoes or regular clothes, only a cloth gown. He was provided a blanket, but no mattress, sheets or pillow. This treatment could continue for up to fifteen days, at which point the prisoner would be kept in the same cell, but with the solid door open to let in the light, and would be fed regular meals for two days. After this two-day reprieve, however, the entire process could start all over again. Upon release from solitary, the inmate's head was shaved bald. One inmate was kept in solitary confinement for a period of seven consecutive weeks.

The majority was "deeply troubled" by the conditions of solitary confinement described in the record, but felt constrained by the cases and their view of what the court could do. They upheld the constitutionality of these conditions. Judge Tuttle dissented, noting:

³ *Novak v. Beto*, 453 F.2d 661, 672 (5th Cir. 1971) (Tuttle, J., concurring in part and dissenting in part).

⁴ *Id.*

I am quite reluctant to disagree with my brothers of the majority on an issue which, I think, necessarily, involves the application of a moral code to one of society's most difficult problems. However, there is no indication that the majority and I differ as to our concept of what the moral code should be. The difference lies in our concept of the extent to which judges can "risk" permitting their "own personal moral codes" in such an area as this to be "impose[d] . . . on a perhaps unready society." For myself, I do not hesitate to assert the proposition that the only way the law has progressed from the days of the rack, the screw and the wheel is the development of moral concepts, or, as stated by the Supreme Court in *Trop v. Dulles*, the application of "evolving standards of decency."

. . . .

As to the limiting effect of the "extant law," . . . we must remember that in each of the cases referred to in the opinion in which cruel and unusual punishment was found to exist, *some* court had to take at least a short step beyond what had previously been decided. This, in fact, is the genius of the common law. I think it is the duty of the court whose members are "deeply troubled" by these conditions to seek a means of removing them that may offer more promise than merely saying that "prison reform is primarily a task for legislators and administrators."⁵

The qualities that characterize the Judge as a judge are, of course, deeply rooted in his personality. One cannot help but be impressed and inspired by the Judge's personal integrity and his ability to understand others with imagination, generosity and humor. One is also struck by the Judge's continuous capacity to grow. A tradition in the office is lunch in the library, particularly since a cafeteria the Judge often frequented closed a few years ago. Along with his present clerks, it is not uncommon for a former clerk or two, as well as other judges' law clerks, to drop in to see the Judge. The discussion with the Judge may pursue a particular point of law, an issue of current interest in the newspaper that morning, or the thesis of a book that he and Mrs. Tuttle have just finished reading. (A good portion of their wide reading is done in the car. Mrs. Tuttle reads aloud as they drive to wherever the Judge is sitting, and because this includes not only the Fifth and the Eleventh Circuits, but often the Ninth Circuit and, on occasion, visits to the D.C., Second and Sixth Circuits as well, they devour a number of books.) Over the years, not only when I was clerking, but whenever I have dropped in as a visitor, I have always been struck by the Judge's engagement with the world around him—the latest events, their significance for the law, and the world at large. Everything is of interest to him, from a local election to the implications of an increasingly interdependent, global economy. The Judge's basic character and fundamental

⁵ *Id.* at 672 (footnote and citation omitted).

values were formed early in life, but the application of these principles to a new and ever changing world has always been an important part of the Judge as a person. He continues to grow each day. Like the law, he too refuses to stand still.

Fresh out of law school I was groping for answers to questions that went beyond the technique of law. What is a lawyer? What does it mean to be a professional? How should the professional and personal sides of life relate to one another? Is it right to allocate one's time and talent exclusively to interests that always are well represented? What obligation does a lawyer have to society's outcasts, those with unpopular views or those too poor to pay for effective legal counsel? Early on in my clerkship, I discovered a Baccalaureate address the Judge gave to the graduate and professional divisions of Emory University in 1957. In it, he said:

The professional man is in essence one who provides service. But the service he renders is something more than that of a 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 clients, patients, students, or flock.

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.⁶

When I came to clerk for the Judge in 1970, I knew I was extraordinarily lucky and that I had a good "professional opportunity." I had no idea at that time just how deeply the Judge would touch my life and

⁶ Tuttle, *Heroism in War and Peace*, 13 EMORY U. Q., 138-39 (1957).

what a source of inspiration and strength he would become for me. This influence includes and goes far beyond the law. To witness his devotion to Mrs. Tuttle and their family is a privilege. "Like love, talent is only useful in its expenditure and it is never exhausted." No one who knows the Judge can doubt that this principle guides him daily, nor that his love of the law is the same love with which he enriches us. When my then-fiancee and I decided to ask Judge Tuttle to marry us, it was because we believed that there could be no more fitting a celebrant on the occasion of that joyous promise.

Most teachers, consciously or subconsciously, hear the voices of the great teachers they have had as they go about their work. One of my main goals in whatever class I teach is to try to pass on at least some of what Judge Tuttle has taught me.