

Preface

"Now about this proposed biography," Judge Justice said, looking intently at me from behind his big desk, "I have some reservations." I knew that my luck had been too good to last. I had been surprised when he accepted my invitation to be the featured luncheon speaker several weeks before at an education law conference I had arranged in Dallas. I had heard that he rarely ventured outside of Tyler, and, indeed, he had declined an earlier invitation. I was even more surprised when he agreed to think about the idea of a biography which I proposed to him following his speech. "I would like to leave a legacy," he had mused.

I had arranged to meet him on Saturday, January 4, 1986, in his Tyler chambers. I sent some of my previous publications for him to look over before the visit. His secretary, Marcelle Simmons, assured me on the telephone that the Judge would not at all mind meeting me on a Saturday. That was about the only time he had available. "I don't want to interrupt his weekend," I told her. "Oh, you won't be," she said. "He often comes to the courthouse on weekends." So it had been arranged. I would park behind the post office and call him from a pay phone. He would come down from his office to unlock the courthouse doors.

I found the courthouse and parked my car where I was told. I called him at the appointed time from the dingy downtown bus station. After several rings, he answered. He met me at the courthouse doors. From there, we walked up three flights of stairs to his chambers. He made coffee in the small study adjacent to his office, chatting amiably. He asked about my drive over from Denton. Did I have a family? I told him I had a wife and two children. He wanted to know their ages, where they were in school. I answered his questions quickly, gaining confidence and becoming more at ease as we talked. I had met him only once before, at the Dallas conference, and was nervous about being in his company.

Like everyone else in Texas, I had read and heard much about William Wayne Justice, Chief Judge, U.S. District Court for the Eastern District of Texas. While studying and teaching constitutional law and civil liberties in other states, I had encountered some of his rulings and knew him to be one of a handful of liberal activist federal judges enmeshed in institutional reform litigation. But it wasn't until I moved to Texas in 1978 to teach education law that I began to realize the full impact of his work. By the mid-1980s, he had issued comprehensive reform orders on statewide school desegregation, incarceration of juvenile delinquents in state institutions, the teaching of bilingual education in public schools, the operation of state prisons, and the care of institutionalized mentally retarded persons. In addition, he had been involved in landmark voter discrimination litigation and had ordered a tuition-free public education for undocumented alien children. The landmark decisions had generated considerable publicity. Feature articles about them and about him were appearing in such publications as *Texas Monthly*, *Newsweek*, *Life*, the *Washington Post*, and the *New York Times*.

Not surprisingly, a great many Texans viewed William Wayne Justice negatively. It was said that he was the most hated man in Texas, the Antichrist of Smith County, an egomaniac caught up in the power of the federal district court judge. When Attorney General Edwin Meese and other Reagan administration officials railed against excesses of activist judges, they were obviously talking about judges of his genre. But others regarded Judge Justice as a giant in the civil liberties field. One journalist noted that he was a sort of "dashboard Jesus" to liberals and minorities in a state which cared little for either. Given the controversy swirling about his court and the obvious impact of his decisions on Texas and national life, I concluded that writing his biography would be a very interesting and worthwhile project.

Here I was, alone in the presence of one of the most powerful persons in Texas. As he puttered about the small kitchenette, he seemed innocuous enough. I began to relax. He gave me a lengthy tour around his offices, carefully explaining how the court was laid out. We saw the lockup area where prisoners were stationed before appearing in court for their trials. He showed the security office, with its bank of television monitors and electronic gadgetry. We toured the spacious courtroom and the adjacent jury room. As he moved through the complex of offices and rooms, it was obvious that he had given this tour many times. He clearly was enjoying showing off the seat of his power.

Now back in his spacious office, with Justice in the big leather chair behind his desk and myself seated in one of the blue captain's chairs in front of it, I realized that I might have to be content with an hour of conversation and a tour of the court. I asked him about his reservations. "While I don't want to appear

overly modest," he replied, "I really don't think my somewhat colorless background and lifestyle would be sufficiently interesting to be worthy of a biography."

I was incredulous. But then I realized that he was missing the main purpose of the study. I explained to him that I planned to focus as much or more on his decisions as on his personal life. In effect, I said, I was proposing a *judicial* biography. "Most people don't know much about the decisions you have rendered," I explained. "They only know you are a person they are supposed to dislike." I told him that, whether he wished it or not, he had become an important figure in Texas contemporary affairs and that I thought his decisions and the jurisprudence behind them were important for people to understand. Additionally, while there were biographies on federal appellate judges including various members of the U.S. Supreme Court, there were hardly any on federal district court judges. Consequently, few outside of the legal profession know what a federal district court judge does.

The idea of a judicial biography caught his attention. I could see that he was intrigued. He leaned back in his chair, a smile coming to his lips. "Well, now, that sheds a different light on things," he said slowly. "If the book will focus on my decisions, then I have no reservations other than the amount of time I will have available to work with you." He added, "I'm not worried about my decisions. They will stand on their own merits." I had cleared the first of two major hurdles before I could begin what I thought would be a two-year project. It turned out to take five.

The second came when we met in his chambers again several weeks later, this time on a Sunday. As before, he made coffee in the study and talked informally as he opened the mail that had come in over the weekend. Once we had taken our accustomed places in his office, I talked over how I planned to go about researching the book. I wanted a list of his law clerks and his major decisions. No problem on either count. Marcelle Simmons could supply the list of clerks, and he would loan me his set of bound volumes, courtesy of the West Publishing Company, containing most of his published decisions. For unpublished material, I planned to review the civil and criminal order books in the clerks' offices at the various divisions of the Eastern District. I asked for access to his private correspondence. "Outside of the business of the court, I don't really have any," he observed. "I'm not much of a writer." This made the next question I was about to raise all the more important.

"Judge," I said, "I know how reluctant you are to be quoted directly. But you are the only source for much of the information I want to include in the biography." I explained that I anticipated many hours of interviews and—this was the sensitive part—that it would be of great help to me if he would consent to let me tape-record them. Justice turned his high-back chair nearly

all the way around and looked out the windows behind his desk. He said nothing. I knew this would not be an easy decision for him to make. But I desperately needed to be freed from the arduous task of notetaking and wanted to enrich the biography with direct quotations. It seemed like minutes before he responded. Without looking directly at me, he nodded ever so slightly. The second hurdle had been crossed.

The book is divided into two sections, the first focusing on William Wayne Justice as a person and the second on the decisions he has rendered. The first three chapters in the first section examine Justice's life before he became a federal judge. I have opted to include numerous quotations from our interviews in these chapters, thus giving them a conversational tone. Letting the Judge describe events in his own words enlivens the discussion and provides insight into his personality. Like everyone who is directly quoted in the book, the Judge has executed an authorization agreement allowing use of these statements, a requirement of the University of Texas Press. Other than his direct quotations, he has not had access to the manuscript. The fourth and final chapter in the first section describes Justice's activities as a judge, his early falling-out with Tyler society, and his judicial philosophy. It is a transitional chapter between the first and second sections of the book.

The much longer second section is devoted to the decisions he has handed down in over twenty years on the federal bench. In most of the chapters in this section, the focus is on a single major decision per chapter. The background of each case is presented, followed by Justice's decision, reactions to it, and some assessment of the decision's impact. Four chapters focus on groups of cases to illustrate the Judge's noteworthy decisions in the areas of voter discrimination, First Amendment rights, rights of the accused, and employment. In addition to extensive commentary from the Judge, all the chapters in this section also contain commentary from selected key figures associated with the litigation. I have interviewed well over a hundred people in preparing the manuscript, including nearly all of Justice's law clerks, and have intensively reviewed court records associated with the cases. Only the threat of making each chapter a book in its own right has forced curtailment of additional research. A complete list of all the cases referenced in the book is contained in an index. A list of all Judge Justice's law clerks is included in an appendix.

My goal in this second section is to describe the important rulings and the jurisprudence behind them. Judgment about the wisdom of Justice's decisions is, for the most part, left to the reader. The final chapter presents a reconsideration of the Judge's judicial approach. Throughout, I have tried to present the material objectively, keeping my own commentary to a minimum. To grasp the full significance of the complexity of judging, I suggest readers put themselves in the position of Judge Justice. What would they have done had they

been faced with these cases and the duty to decide them? How would their decisions fit within an overall judicial philosophy? Assuming the position of the Judge will assist readers to comprehend the complex nature of judicial decision-making at the trial court level and gain insight into the continuing debate about the proper role of the federal judiciary.

Numerous individuals have assisted in the preparation of this book. I am indebted to Justice's former law clerks Richard Mithoff, Marianne Wesson, Fritz Byers, Robert McDuff, Susan Stefan, James L. Sultan, Audrey Selden, Roger Parloff, and David Brown for reading early chapter drafts. Other reviewers of early drafts include Austin attorneys Creekmore Fath and Eric Schulze; University of Chicago Professor Gary Orfield; Lehigh University Professor Perry Zirkel; University of Texas Professors Michael Churgin of the School of Law and Richard Schott of the LBJ School of Public Affairs; and my colleagues Gerald Ponder, Clovis Morrisson, Roosevelt Washington, Ruskin Teeter, and Judy Adkison. A number of persons involved in the cases themselves also contributed valuable suggestions with regard to early drafts. Included among them are Steve Martin, Gilbert Conoley, Alexandra Buek, David Richards, Richard Arnett, Gail Littlefield, and William Bennett Turner.

Two individuals deserve special recognition for reading through all of the chapters in the interest of providing the perspective of the educated layperson. My University of North Texas colleague Richard Simms and my father-in-law Hack Kellner were asked to be candid in their appraisal, and they willingly provided invaluable commentary on how the material might be better presented so that the general reader could understand it.

My research assistants rendered much welcomed help in the preparation of portions of the manuscript. Ann Gill worked on chapters on incarcerated juveniles, care of mentally retarded persons, and segregated public housing while a student at the University of Texas School of Law. Allan Cook, who later enrolled in Northeastern School of Law in Boston, spent over a year researching and drafting material on prison reform. Pat Peters spent many hours transcribing taped interviews, reading early chapter drafts, and engaging in library research. My secretary, Sandy Behrens, also spent hours running off countless updated drafts on the word processor, as well as sorting through the mass of newspaper clippings we received from cooperative editors and publishers from across the state. I am especially indebted to Nelson Clyde of the *Tyler Courier-Times* and *Morning Telegraph* for assembling a mass of materials going back over thirty years.

Judge Justice's court staff made me feel welcome from the first time I met them. Secretaries Marcelle Simmons, Debra Magee, and Evelyn Armstrong rendered help in many ways. Judge Justice's long-time deputy court clerk

Joyce Almaraz and courtroom reporter Dorothy Daugherty readily recalled the names and dates of long past cases and litigants. I am also indebted to Doris Stanley and Sandi Sutherland, federal district court clerks in Tyler and Sherman, respectively, who provided access to unpublished orders and opinions over the duration of this project. Officials at the Federal Record Center in Fort Worth also were helpful in providing access to court records of closed cases, as were those at various courthouses and law libraries throughout the state.

The University of North Texas graciously provided me with a sabbatical to launch the project in 1986 and has assisted me ever since. Additional financial support was provided by individual donors and by an anonymous Texas foundation. I am especially indebted to Judge Joe Tunnell of the District Court of Smith County, 241st Judicial District of Texas, for his assistance in securing financial support.

Finally, I want to thank all of the persons who consented to meet with me and share their thoughts about Judge Justice and about the litigation coming before him. While only those persons who have been directly cited are listed in the reference section, the comments of many others have been instrumental in the preparation of this manuscript. Among those interviewed but not quoted directly are family members and friends; former associates and law clerks; and lawyers, judges, and public officials across the state. The vast majority I sought to talk with cooperated willingly and graciously. I had anticipated considerable difficulty in this direction and found very little. A few agreed to speak on condition of anonymity. Only a handful refused to cooperate under any circumstances.

Special thanks must go to the Judge himself. Over the duration of this project, he willingly accommodated my requests for extensive interview time and documentary material. True to his character, he has been open and candid in his comments, rarely asking that some matters be kept off the record. His commentary infinitely enriches the manuscript.

William Wayne Justice is an extremely controversial judge. As a result, this book cannot avoid being controversial as well. Some will regard it as overly supportive of the Judge, while others will find it not supportive enough. Some will charge that too much space has been devoted to the cases, while others will assert that the case discussions leave out important details. I fully shoulder the responsibility for the book's shortcomings. My hope is that readers will find this book not only enlightening regarding Judge Justice and his judicial career, but also helpful in pondering contentions regarding the proper role of the federal judiciary in contemporary American affairs.