

NATIONAL HISTORIC LANDMARK NOMINATION

NPS Form 10-900

USDI/NPS NRHP Registration Form (Rev. 8-86)

OMB No. 1024-0018

U.S. COURT OF APPEALS – FIFTH CIRCUIT
(JOHN MINOR WISDOM UNITED STATES COURT OF APPEALS BUILDING)

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United States Department of the Interior, National Park Service

National Register of Historic Places Registration Form

1. NAME OF PROPERTY

Historic Name: U.S. Court of Appeals – Fifth Circuit (John Minor Wisdom United States Court of Appeals Building)

Other Name/Site Number: John Minor Wisdom United States Court of Appeals Building

2. LOCATION

Street & Number: 600 Camp Street

Not for publication:

City/Town: New Orleans

Vicinity:

State: LA County: Orleans

Code: 071

Zip Code: 70130

3. CLASSIFICATION

Ownership of Property

Private: ___
Public-Local: ___
Public-State: ___
Public-Federal: X

Category of Property

Building(s): X
District: ___
Site: ___
Structure: ___
Object: ___

Number of Resources within Property

Contributing

1 buildings
___ sites
___ structures
___ objects
1 Total

Noncontributing

___ buildings
___ sites
___ structures
___ objects
___ Total

Number of Contributing Resources Previously Listed in the National Register: 1

Name of Related Multiple Property Listing:

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4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby certify that this ____ nomination ____ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ____ meets ____ does not meet the National Register Criteria.

Signature of Certifying Official

Date

State or Federal Agency and Bureau

In my opinion, the property ____ meets ____ does not meet the National Register criteria.

Signature of Commenting or Other Official

Date

State or Federal Agency and Bureau

5. NATIONAL PARK SERVICE CERTIFICATION

I hereby certify that this property is:

- Entered in the National Register
- Determined eligible for the National Register
- Determined not eligible for the National Register
- Removed from the National Register
- Other (explain):

Signature of Keeper

Date of Action

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6. FUNCTION OR USE

Historic: Government

Sub: post office
courthouse

Current: Government

Sub: courthouse

7. DESCRIPTIONARCHITECTURAL CLASSIFICATION: Late 19th & 20th Century Revivals: Beaux Arts

MATERIALS:

Foundation:

Walls: Stone (granite)

Roof: Ceramic tile

Other: Stone (marble), Metal (steel and copper)

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Summary of Significance

During the era of the modern civil rights movement, decisions issued from the U.S. Court of Appeals – Fifth Circuit developed a jurisprudence that dealt effectively with southern massive resistance and obstructionism following the U.S. Supreme Court's *Brown v. Board of Education* rulings in 1954 and 1955. Its precedent-setting rulings pioneered judicial reform, defined civil rights law, and formed the basis of congressional civil rights legislation. The courthouse is also synonymous with Judge John Minor Wisdom, a foremost defender of civil rights and a scholar of legal doctrinal development.

Describe Present and Historic Physical Appearance.

The U.S. Court of Appeals – Fifth Circuit building is located in downtown New Orleans, Louisiana, on an entire city block bounded by Camp Street and Lafayette Square to the west; Magazine Street to the east; a plaza (formerly Lafayette Street) and a federal building to the north; and Capdeville Street to the south. The three-story marble Italian Renaissance Revival style building has been a prominent feature on this block since its construction in 1915. Known throughout most of its history as the United States Court of Appeals – Fifth Circuit building, the courthouse was renamed the John Minor Wisdom United States Court of Appeals Building in 1994. For close to five decades, the building housed courtrooms and chambers for the U.S. District Court for the Eastern District of Louisiana and the Fifth Circuit Court of Appeals on the second floor. A post office and Executive Branch agencies occupied the first and third floors respectively. Both the courts and post office moved out of the building in 1963 to make way for restoration work, completed in 1973 at a cost of \$3.5 million dollars. When the building reopened, only the Fifth Circuit returned.¹ After nearly a century of use, the U.S. Court of Appeals – Fifth Circuit building retains integrity in its setting and a high degree of integrity in its location, design, materials, workmanship, feeling, and association.

Exterior

Designed by the noteworthy New York architectural firm of Hale and Rogers, and built for \$2,000,000 dollars, the richly appointed U.S. Court of Appeals – Fifth Circuit building is constructed of granite, marble, steel, tile, and copper. It measures 198 feet wide at the west and east ends and 323 feet at the north and south ends. A roof of ceramic tile and copper sheets crowns the courthouse. Two covered skylights punctuate the roof. All walls are topped with an open rail, marble balustrade. Pavilions define the building's four corners. Tiered, stepped back bases surmount the pavilions; and in turn, a colossal bronze sculpture featuring four female figures and a globe surmount the pyramidal bases.

The mirror image Camp and Magazine Street elevations of the richly appointed building are visually divided into three sections. A central block stands between two end pavilions. The ground floors of the pavilions and central block feature chamfered or V-jointed marble cladding. The white marble rests atop a gray granite base.

On the first story of the pavilions, a central arch is flanked by a niche. The arch features an ancon (projecting bracket) and voussoirs (wedge-shaped stones) that frame either a door or a window. It is fronted by two rusticated pilasters and columns. The supports uphold a Doric entablature ornamented with triglyphs (a slightly

¹ U.S. General Services Administration Public Buildings Service, *John Minor Wisdom United States Court of Appeals Building, New Orleans, Louisiana*, pamphlet, n.d.; Federal Judiciary News Release, "The Fifth Circuit Announces Return to New Orleans," www.uscourts.gov/Press_Releases/fifthcircuit111805.html (accessed March 5, 2008). During restoration the court moved eight blocks to the Wildlife & Fisheries Building in the French Quarter, now the Louisiana Supreme Court Building at 400 Royal Street.

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projecting rectangular tablet) and rosette-studded metopes (the space between two triglyphs). Above the entablature is an open rail, balustraded-balcony fronting a second floor French window.

The two upper stories of the pavilions have three openings placed between Ionic pilasters. The central opening on the second story features a double-leaf door. It has an elaborate surround with a curved broken pediment, consoles, and fasces (a bundle of rods bound together around an ax with a projecting blade) flanking a shield with a helmet. Treatments for the outer two, second floor windows consist of an unadorned frieze and cornice while the three, third floor windows have molded architraves and a cartouche (an ornamental shield, scroll, circle, or oval). Surrounding the Ionic columns is a continuous frieze inscribed with the dates and names of former Chief Justices of the U.S Supreme Court. A cornice with dentils and modillions rests above the frieze.

Identical sculptures atop the four pavilions were designed by the renowned Piccirilli Brothers, expert marble carvers who also executed the Daniel Chester French statute of President Abraham Lincoln in the Lincoln Memorial. The compositions each feature four seated, partially robed, female, allegorical figures representing History (wearing a bonnet), Agriculture (with a cornucopia), the Arts (with a flower), and Industry (with a tool).² “The Ladies,” as the sculptures are known, are constructed of bronze and copper and shoulder an armillary copper globe. A band of bas relief figures representing signs of the zodiac encircle the globe. The Ladies and their world repose upon an octagonal pedestal. In turn, the pedestals surmount a tri-tiered, setback pyramidal base. Decorative copper bands displaying palmettes, pinnacles, and pendants front each tier. Paneled marble parapets enclose the base of the bottommost tier.

An arcade characterizes the first floor of the central block. Here seven arches comprising the arcade rise and fall on striated marble clad piers. Within the arches are inset, alternating, double-leaf doors and windows. Above the arcade is a colonnade. Each one of the eight Ionic columns is centered above an arcade pier. Constructed of marble blocks, the column pedestals are incorporated into an open rail balustrade. The exterior wall of the second and third floors is inset from the columns, making room for a narrow balcony. The previously described continuous entablature extends across the support capitals. A marble, open rail balustrade caps off the central block and ties into the pavilions.

Eight pilasters frame the fenestration of the upper floors of the central block. Appointed with an arch top, an ancon, and voussoirs, the three central wall voids have tall casement windows. Aediculae (a niche framed by columns or pilasters and carrying an entablature and pediment) flank these windows. Inscribed with the names of former U.S. Postmaster Generals, the aediculae feature pilasters, an arch top, and an ancon. Pedimented French windows open out onto the balcony and flank the aedicule. Smaller windows with molded architraves and a cartouche are set above the French windows.

The Lafayette and Capdeville Street sides of the building are divided into three sections. Pavilions bookend a central block. The architectural details of the Lafayette pavilions match those of the Camp and Magazine facades. However, the fenestration on the Capdeville pavilions differs from the other facades. Each of the three upper stories and mezzanine has five window openings and the first floor has four windows and a door. The bottom floor windows feature an apron, a sill, and consoles; the mezzanine windows have sills and a continuous belt course; while the two, outer, second story units have plain lintels and the three, inner units have pediments, balconets, and scrolls. The third story windows feature molded architraves.

In Italian Renaissance palazzo fashion, the central block features three cake-like layers. On the Lafayette elevation, each layer or level has fifteen wall voids. Composed of striated, marble clad piers and arches, a

² General Services Administration, Fine Arts Database (FAD), FA438 (A-D).

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grand arcade extends across the bottom floor. Windows or doors are set within the framework of the arches. Appointed with balconets and pediments, the second floor openings feature French windows. The pediments alternate between triangular and segmental crowns with the central unit displaying a broken, segmental arch pediment, federal eagle, flanking fasces, and a shield. Third story windows include molded architraves and a cartouche. The crowning ornamentation of the Lafayette façade consists of a continuous entablature and open rail balustrade.

On the bottom level of the Capdeville side is a former loading dock that the post office used until 1961 when it vacated the building. Covered in bronze, the loading bays are topped by a lintel and flanked by pilasters. Ornamentation for the windows on this side of the building is limited to simple sills and molded architraves.

Interior, First Floor

Inside the grand Italian Renaissance Revival courthouse is an L-shaped lobby known as the “Great Hall.” Coinciding with the Lafayette and Camp Street arcades, a series of vaults create a dramatic public space. Marble clad and bronze-capped piers carry the vaults, eliminating the need for interior supports for the upper stories, and in the process, creating high, long, wide, and open corridors. The interior vault arches coincide with the former post office. During the restoration, stamp windows and letter boxes between these arches were replaced with tall sections of mullioned glass.³

Decorated from floor to ceiling, the Great Hall is a craftsman’s delight. Polished terrazzo tile covers the corridor walkway. In addition to the marble clad vault piers, the great space has marble Tuscan columns, pilasters, and walls. Featuring a vast array of decorative motifs, the vaulted ceilings are cast in bronze. The motifs include tondos (a circular painting or relief sculpture) with allegorical or genre scenes, rosettes, geometric figures, and egg and dart trim. Ornamental chains and harnesses suspend light globes from the ceiling. Where the two halls meet, colonnaded arches frame a circular bronze cast ceiling. A monumental, bronze, ceiling lantern enriches the junction.

The former post office rooms now function as storage space for the Fifth Circuit Court of Appeals’ vast library. Where sorting bins once stood, now stand batteries of bookcases holding law journals, case files, and other legal literature.

Interior, Second Floor

The architecture of the second floor corridors is more reserved than that of the Great Hall befitting their association with the Fifth Circuit courtrooms. Terrazzo tile covers the floor. The ceilings and upper hall walls are plaster. Marble slabs wainscot the lower walls. Marble also sheaths the pilasters. Beams resting on pilasters divide the ceiling into panels. Egg and dart motifs and dentils embellish cornices attached to the perimeter of each panel. Bands of palmette and lotus motifs decorate the walls. Lighting includes side-mounted sconces with double globes and suspended, bronze chandeliers with globe clusters.

The Fifth Circuit courtrooms are located off the main hallway. Each of the East, West, and En Banc courtrooms has an ante chamber or lobby connecting it to the corridor. The ante chambers (lobby, foyer, or anteroom) have two sets of leather-covered, double-leaf, fly doors with transoms. Originally, the doors were sheathed with

³ Leslie A. Steele, “A New Home for Fifth Circuit Court of Appeals,” 47 *The Florida Bar Journal* 7 (1973): 451.

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hogskin, but the material was replaced with leather in 1972.⁴ The doors have marble casements. The floor, wall, and ceiling treatments are like those of the hallways.

Each of the three courtrooms features a distinctive design scheme. The West Court chamber, designed to hold three-judge panels, features a plaster ceiling embellished with a modicum of paneled beams. A cornice caps off and decorates wall and ceiling junctions. Reminiscent of Justice's scales, two bronze chandeliers hold fast to ceiling mounts. Thirty-five-foot-high windows with arch tops and velvet drapery on either side of the court suffuse the interior with natural lighting. Polished Louisiana gum wood panels the room. With pilasters and a continuous entablature, the wood panels echo the Italian Renaissance Revival architecture displayed in the Great Hall and on the exterior of the palazzo-like building. Egg and dart motifs and palmettes are among the details ornamenting the woodwork. Glass orb lighting wraps around the perimeter of the room. Bronze, entwined serpentine sconces uphold the orbs. Richly carved and incorporated into the gum paneling, a Palladian aedicule forms the backdrop for the Judges' Bench. At the center of the composition is a slightly recessed panel festooned with swag and flanked by fluted pilasters and serpentine sconces. Swag decorates the frieze. In the tympanum (a segmental space) of a semi-circular arch topping the aedicule (a canopied niche), there is a carved shield motif. Palmettes and federal eagles, reposing atop the orbs, highlight the piece. The Judges' Bench features fine woodwork, a three-chair tribunal, and flanking court clerk desks. An open rail balustrade separates the court proper from the visitors' area. Rows of oak benches are positioned between an outer and a center aisle. The carpet lining the floor is of recent vintage.

The East Court chamber is also designated for three-judge tribunals. Here the ceiling, more intricately detailed than the West Court ceiling, is composed of coffers created by intersecting paneled beams. Beams running the width of the chamber rest on carved brackets. The windows and chandeliers in this court are like those in the West chamber. Louisiana wood paneling featuring Italian Renaissance Revival details sheaths the lower portion of the walls. Unlike those in the West Court which are relatively unadorned, the East Court pilasters are fluted and have acanthus leaf capitals. Rather elaborate in composition, the sconces display a federal eagle surmounting a bronze orb from which extend three electrical wire tubes cast in the likeness of lotus stems. The stems curve gracefully down and up to lotus blossoms. Three glass light spheres appear to float upon the blossoms. The eagle and its associated details are part of a scrolled, bronze cast, American shield. Backing the Judges' Bench is an ornamental architectural piece incorporated into the gum paneling. Four Corinthian pilasters support a carved entablature. Three scalloped arches fill the upper spaces between the columns. Consoled and intricately carved, the Judges' Bench features a three-sided closed balustrade, a base, and flanking clerk desks. Above the bench and decorative backdrop are three decorative bronze shields with the center one embossed with the letters "U.S." Separating the court from the audience, an open rail balustrade extends across the full width of the chamber. Paneled visitors' benches extend between three aisles toward the rear of the court. The carpet lining the floor is of recent vintage.

The center courtroom exceeds the East and West chambers in size and ornamentation. "Called the En Banc courtroom, it seats the entire Court of Appeals [Fifth Circuit] and permits all active judges to jointly hear arguments in important cases. This courtroom is immense, ringed by a walkway on its outer rim."⁵ The plaster ceiling is quite lavish. Refinished with a bronze glaze, the ceiling exemplifies "horror vacui:" the fear of empty spaces; every square inch is adorned. Pendant studded framework partitions the entire expanse of the ceiling into panels. A ribbon-entwined U.S. shield is the focal point of the center panel. Decorative rings of stylistic details, including a Della Robbia wreath and a garland chain, surround the shield motif. In turn, allegorical

⁴ Ibid.

⁵ U.S. General Services Administration, *John Minor Wisdom*.

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scenes flank the rings. Greek fretwork, rosettes, consoles, putti, egg and dart, dentils, modillions, and other ornaments decorate the ceiling. Multiple tiered chandeliers shed light on the chamber.

With its ornamental, Louisiana gum wood pilasters, columns, and pediments, the En Banc chamber resembles an Italian Renaissance court. Fluted pilasters with Corinthian capitals placed at intervals around the courtroom rise from the floor and extend to the cornice. Ancon-capped arches frame the 35-foot high windows. Blue velvet draperies installed in 1996 bear the official seal of the Fifth Circuit Court of Appeals.⁶ Lobby and judges' sitting room doors are accentuated by a pedimented composition with an entablature and Corinthian pilasters and columns. Gum panels between the full-height pilasters feature fleur de lies and bundled lector rod symbols. Federal eagle sconces emphasize the theme of authority.

The En Banc Court has audience seating like the West and East Courts; however, the Judges' Bench is significantly different. The Bench, which seats 15 judges, has wings at both ends. This winged formation has sight and sound advantages for those judges sitting furthest away from the center of the Bench.⁷ Constructed of San Dominican mahogany, each section of the tribunal seats five judges. Clerk desks are located at the ends of both wings. The royal blue carpet stretching across the floor was installed in 1996.⁸

The areas of the courthouse described in this document represent only a portion of the total space in the building. The building has judges' chambers, a basement, offices on the mezzanine level located on the Capdeville side of the building and first, second, and third stories, as well as other rooms, facilities, and miscellany. Due to heightened national security, these areas of the courthouse are off-limits to the general public. With the exception of the judges' chambers, these spaces are not integral to the civil rights cases heard in the United States Court of Appeals – Fifth Circuit building during its 1956 to 1963 period of significance.

Integrity

The courthouse retains a high degree of integrity in terms of location, feeling, association, workmanship, materials, and design. Still in its original location, the building's setting has experienced some change. Later construction has taken place on the north side of Lafayette Street. In the 1970s, a Brutalist concrete and glass low-rise was built directly across the plaza from the courthouse. In the 1980s, a steel and glass mid-rise was built on either side of the 1970s low-rise. These buildings at the corners of Lafayette and Camp streets and Lafayette and Magazine streets respectively are visible from the courthouse; however, the rest of the surrounding built environment has been in place since at least the early 20th century and retains its urban character.

The courthouse has been the subject of recent and sensitive rehabilitation projects. Over the last ten years the roof has been replaced, the exterior has been cleaned, repointed (where required), and sealed. In 1972, the original wooden window frames were replaced with metal frames. This work was "meticulously matched so as to be practically indistinguishable from the original."⁹ Otherwise, the historic design, materials, and workmanship of the courthouse exterior are intact.

⁶ Michael R. Smith, *The John Minor Wisdom United States Court of Appeals Building* (New Orleans: U.S. Court of Appeals Library System, 1999), 2.

⁷ Harry A. Butowsky, *The U.S. Constitution: A National Historic Landmark Theme Study* (Washington: National Park Service, 1986), http://www.cr.nps.gov/history/online_books/Butowsky2/constitution9.htm.

⁸ Smith, *John Minor Wisdom*, 2.

⁹ U.S. General Services Administration, *John Minor Wisdom*.

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In 1972, the stamp windows and letter boxes between the first floor lobby arches were replaced with tall sections of mullioned glass. This is a minor change when viewed in the context of the overall integrity of the lobby. The General Services Administration (GSA) and the Courts have invested in the restoration of the Great Hall, judges' chambers and the historic courtrooms. This has included restoration of the ornamental plaster work and historic light fixtures. The historic L-shaped corridor, marble floors and pilasters, ceiling vault and arch work, and ceiling ornamentation of architect James Gamble Rogers' 1915 Great Hall are intact. With the exception of new drapery and carpeting and the addition of speakers, the courtrooms retain their historic look.

Wind and rain from Hurricane Katrina in August 2005 damaged the building, but no flooding occurred. The Fifth Circuit Court of Appeals judges and staff briefly relocated to other cities and towns in the region due to damage and power outages, but returned to the building in December 2005 when these issues were resolved.

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State Significance of Property, and Justify Criteria, Criteria Considerations, and Areas and Periods of Significance Noted Above.**Summary of Significance**

The U.S. Court of Appeals – Fifth Circuit (John Minor Wisdom United States Court of Appeals Building) has exceptional national significance under National Historic Landmark (NHL) Criterion 1 for its intimate association with a pattern of events that defined the preeminent role the U.S. Fifth Circuit Court of Appeals held in reshaping the South during the modern civil rights movement. In an era of southern massive resistance to racial equality, the Fifth Circuit’s precedent-setting rulings defined civil rights law, formed the basis of congressional civil rights legislation, and pioneered judicial reform. The courthouse also has exceptional national significance under NHL Criterion 2 as a property associated importantly with Judge John Minor Wisdom, the Fifth’s scholar. Described as “one of the prime architects of the progressive New South,” Wisdom is “regarded as producing the most long-lasting and profound impact on American jurisprudence in the twentieth century.”¹⁰ His greatest legacy is in the field of civil rights.

The period of significance for this courthouse begins in 1956 when the Fifth Circuit court became involved in a multi-year battle to end Louisiana’s crusade against school desegregation, and ends in 1963 when Judge Wisdom’s doctrinal defense in a voting rights case would later be applied to the 1965 Voting Rights Act. During this period, the court developed civil rights jurisprudence and overcame massive resistance to school desegregation and discriminatory voting practices.

The U.S. Court of Appeals – Fifth Circuit (John Minor Wisdom United States Court of Appeals Building) is one of three courthouses that define the Fifth Circuit’s monumental contribution to civil rights jurisprudence in the movement’s critical years of 1956 to 1964. The Fifth Circuit then had jurisdiction over six states in the Deep South: Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. In 1960, seven active judges, one from each state and two from Texas, sat on the Fifth and heard appeals as three-judge panels, in part to balance interests on a regional basis. In 1961, two seats were added, one each in Atlanta, Georgia, and Montgomery, Alabama. Not all of the Fifth’s nine judges consistently ruled for black plaintiffs. Three voted inconsistently and two consistently dissented from decisions. Jurists Richard T. Rives of Montgomery, John R. Brown of Houston (hearing cases in Montgomery), John Minor Wisdom of New Orleans, and Elbert P. Tuttle of Atlanta fairly consistently ruled for black plaintiffs’ constitutional rights on cases heard at the courthouses in Louisiana, Georgia, and Alabama. Collectively and individually, these three courthouses and four jurists outstandingly represent the judicial frontline that profoundly impacted civil rights reform and court procedures. Thus, in addition to this nomination for the New Orleans courthouse, the U.S. Post Office and Courthouse (Elbert Parr Tuttle U.S. Court of Appeals Building) in Atlanta, Georgia, and the United States Post Office and Courthouse (Frank M. Johnson Jr. Federal Building and U.S. Courthouse) in Montgomery, Alabama, are under consideration for NHL designation.

The following narrative describes the Fifth Circuit’s origins in 1891, how it obtained a prominent role in the civil rights movement, and the 1950s assemblage of judges who brought a new era to the court. Subsequent text describes the delay problem the Fifth Circuit faced and how the court dispensed with racial discrimination cases. In particular, this nomination highlights five cases Judge Wisdom heard, either at his New Orleans courthouse or as the author of an opinion for a case heard in Atlanta or Montgomery, that are considered crucial to illustrating the Fifth Circuit’s significance. Two public school desegregation cases—*Bush v. Orleans* (1956,

¹⁰ Joel Wm. Friedman, “Wisdom, John Minor (1905-1999),” in *Encyclopedia of the American Constitution*, ed. Leonard W. Levy and Kenneth L. Karst, 2nd ed. (New York: Macmillan Reference USA, 2000), 2914.

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1960, & 1962) and *Meredith v. Fair* (1962)—exemplify how the court overcame segregationist defiance to the federal judiciary. Three voting rights cases—*Kennedy v. Bruce* (1962), *United States v. Lynd* (1962), and *U.S. v. Louisiana* (1963)—illuminate how the Fifth Circuit’s procedural innovations changed the internal working structure of the federal judicial system and thwarted recalcitrant lower federal district court justices.

Background

On May 17, 1954, the U. S. Supreme Court found racial segregation in public schools unconstitutional, a decision that reversed over five decades of nationally accepted southern race relations. The *Brown v. Board of Education* ruling overturned the “separate but equal” doctrine the Court had sanctioned in *Plessy v. Ferguson* (1896), a decision that kept African Americans from crossing color lines in practically every facet of American society. In its implementation decree, the Court in *Brown II* (1955) ordered racially segregated public school systems to desegregate “with all deliberate speed” and gave school authorities primary responsibility “for elucidating, assessing, and solving these problems.” Lower federal courts then had to decide if action by school authorities constituted “good faith implementation of the governing constitutional principle.”¹¹ In delegating this authority, the Supreme Court believed that federal district court judges, more familiar with local conditions, were better able to apply its mandate.¹²

Southern school officials, politicians, and many jurists ignored the good faith dictum and instead resisted desegregation with all due force. The National Association for the Advancement of Colored People (NAACP), with its Legal Defense and Educational Fund, Inc. (LDF), turned to the courts to integrate schools and other public services. In the 1960s, racial equality issues moved to the voting rights arena as the U.S. Justice Department filed black voter discrimination cases. From the mid-1950s into the 1960s, the Fifth Circuit, the intermediary federal court for six states in the Deep South, became the judicial battleground for civil rights. John Minor Wisdom of New Orleans and his prominent colleagues: Elbert Tuttle of Atlanta, Georgia; John Brown of Houston, Texas; and Richard Rives of Montgomery, Alabama, became the Fifth Circuit judges who most often upheld African American constitutional rights. Known derisively as “The Four,” these jurists advanced the civil rights movement and altered federal court procedures.

Origins of the Fifth Circuit Court of Appeals

In 1891, Congress passed the Circuit Court of Appeals Act to relieve the U.S. Supreme Court’s burdensome caseload. A three-tier system placed the new court as an intermediary judiciary body between the federal district courts below and the Supreme Court above. Petitioners could appeal district court decisions to the circuit court. In addition, circuit riding conducted by Supreme Court justices to hear cases in multiple locations transferred to the circuit and district jurists.

The circuit court usually conducts hearings within three-judge panels, and may rarely meet as a whole, known as *en banc*, when a dissenting judge requests that a decision be reviewed and a majority of the active members

¹¹ Frank T. Read and Lucy S. McGough, *Let Them Be Judged: The Judicial Integration of The Deep South* (Metuchen, NJ: The Scarecrow Press, Inc., 1978), 13. Read was then Dean of the College of Law at the University of Tulsa, and McGough was Professor of Law at Emory University.

¹² Philip Elman interviewed by Norman Silber, “The Solicitor General’s Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History,” 100 *Harvard Law Review* 817 (1986-1987): 845, contains a letter from Justice Frankfurter to McGeorge Bundy dated May 15, 1964, crediting the concept that the Supreme Court should not act as a school board to his law clerk, Philip Elman. The Supreme Court did not provide guidelines for resolving these cases. Rather it would often give a broad command, “such as ‘all deliberate speed’,” stated Judge Wisdom, “and those are the bare bones of the Court’s instruction to the [lower] courts.” Jack Bass, *Unlikely Heroes* (Tuscaloosa: The University of Alabama Press, 1990), 25-26, in an interview with John Minor Wisdom, September 26, 1979.

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of the entire court agrees to rehear the case. The *en banc* process is reserved for cases of exceptional significance and those in which there is a conflict between the opinion under review and another opinion of the Fifth Circuit or of the United States Supreme Court especially on cases involving interpretation of the Constitution. A circuit court panel decision is final unless the Supreme Court decides to review it. A combination of circuit and district judges may sit on special three-judge district courts. Such a court can be called by a district judge in cases that pose a constitutional challenge to a state statute, with the chief judge of the circuit court of appeals appointing the two additional judges.¹³

Under the Circuit Court of Appeals Act of 1891, the Fifth Circuit encompassed Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida. New Orleans, at the time the only major city in the six-state region, became the circuit's home base. Onerous travel between the region's remotest points and New Orleans prompted Congress in 1902 to authorize a term in Atlanta, Georgia. Within the year, Fort Worth, Texas, and Montgomery, Alabama, also became official court locations. In 1915, the New Orleans Fifth Circuit moved several blocks from its original home in the Custom House to the U.S. Post Office and Courthouse, today known as the John Minor Wisdom United States Court of Appeals Building, where it would stay until temporarily relocating sometime in 1963.¹⁴

A New Guard at the Fifth Circuit Court of Appeals

The 1950s brought monumental change to the Fifth Circuit when a handful of new judges joined its bench. In 1951, President Harry Truman appointed Montgomery lawyer Richard T. Rives to join Chief Judge Hutcheson. In 1954, President Dwight Eisenhower chose Elbert P. Tuttle, a Cornell University law school graduate, to fill a newly created vacancy for a seventh judgeship. In 1955, President Eisenhower appointed Houston lawyer John R. Brown to the Fifth Circuit.¹⁵ In 1957, John Minor Wisdom completed the list of Eisenhower appointees later described as "Republican federal judges who dispensed a new brand of Southern justice."¹⁶

John Minor Wisdom

Born in New Orleans in 1905, Wisdom enjoyed the life of a scion in a wealthy southern family replete with black servants. After graduating in 1925 from Washington and Lee University, Wisdom studied a year at Harvard and then returned to New Orleans to study law at Tulane. He graduated first in his class and partnered with the classmate who finished second to open a firm in 1929.¹⁷ The prospering attorney interrupted his career to serve in the military during World War II where he earned the Legion of Merit award and rose to the rank of Lieutenant Colonel. After the war, Wisdom resumed his law practice in New Orleans, yet he longed to make a change in Louisiana's political structure. Huey Long's dictatorial control of the state in the 1930s and the South's one-party Democratic hold convinced Wisdom the time had come to introduce another political party to

¹³ Bass, *Unlikely Heroes*, 19. *En banc* hearings are granted based on votes by the entire active membership of the court of appeals. Based on manpower needs, district judges sit as circuit judges and vice versa.

¹⁴ Harvey C. Couch, *A History of the Fifth Circuit, 1891-1981* (Washington: The Bicentennial Committee of the Judicial Conference of the United States, 1984), 22, 24; Read and McGough, *Let Them Be Judged*, 26. Acts approving these locales further stipulated that the Atlanta term hear appeals and writs of error from the district and circuit courts of Georgia, the Fort Worth term was to hear cases from Texas, and the Montgomery term was to hear cases from Alabama. Couch, 26. U.S. General Services Administration, *John Minor Wisdom*. Later Fifth Circuit Court locations include Jacksonville, Florida, and Houston, Texas.

¹⁵ Read and McGough, *Let Them Be Judged*, 32, 33, 38; Couch, *A History of the Fifth Circuit*, 88; Jack Bass, "Judge Elbert P. Tuttle Remembered as a True Judicial Hero," 2 *Georgia Bar Journal* (August 1996): 60-62. Rives is associated with the Fifth Circuit Courthouse in Montgomery, and Tuttle with the Fifth Circuit Courthouse in Atlanta; both of which are being evaluated for NHL designation.

¹⁶ Howell Raines, *My Soul is Rested: Movement Days in the Deep South Remembered* (New York: Penguin Books, 1983), 343.

¹⁷ Couch, *History of the Fifth Circuit*, 98; Bass, *Unlikely Heroes*, 46.

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the process. In 1951, Wisdom invited Tuttle to New Orleans to discuss the Republican Party. They devised a strategy to develop a Republican organization that would survive a challenge at the state convention.¹⁸ The two attorneys fought vigorously for General Eisenhower's Republican Party election and his presidential nomination. Due in part to their efforts, Eisenhower became president in 1953. In 1954, Eisenhower named Wisdom to the President's Committee on Government Contracts, which had been set up to ensure nondiscrimination in firms with government contracts.

When a vacancy arose in the Fifth Circuit Court of Appeals in 1957, Eisenhower personally selected Wisdom for the job. However, the judicial candidate ran into close questioning in the Senate Judiciary Committee. Staunch conservative Senator James Eastland of Mississippi and his cronies thought Wisdom's involvement in the New Orleans Urban League and promotion of non-discriminatory employment practices smacked of liberalism. In light of the recent advances the Fifth Circuit made in behalf of desegregation, Eastland was wary of appointing another potentially liberal judge to a position of preeminent power. Wisdom overcame this hurdle and took office on June 27, 1957, beginning a judicial career that "would place him in the pantheon of this country's greatest and most influential appellate jurists."¹⁹ He and his Fifth Circuit brethren soon found themselves at the center of the "greatest period of social upheaval since the Civil War."²⁰

The Heart of the Fifth Circuit's Problem

The Supreme Court's 1954 and 1955 rulings in *Browns I* and *II* sparked segregationist defiance by state authorities, Congress, school officials, and segregationists. Every Deep South state enacted massive resistance laws. One hundred southern congressmen signed the 1956 Southern Manifesto vowing to resist *Brown's* mandate. School and university officials denied black applicants admission based on race or contrived technicalities, and some officials closed schools rather than submit to court-ordered desegregation. White Citizens Councils organized to maintain white supremacy and suppressed black citizenship at all levels of society. The Ku Klux Klan subjugated blacks through outright violence. In response to massive resistance, the NAACP LDF filed numerous school desegregation suits in courts throughout the South, but, "[i]n the early years after *Brown II*," states law professor Frank Read, "very few school integration decisions reached the court of appeals level. Most suits were blocked in litigation and delaying tactics at the federal district court level."²¹ "Delay, and the ability of district courts successfully to administer it," stated the *Law Yaw Journal*, "is at the heart of the problem of the Fifth Circuit."²²

District court delays could be partially attributed to local political and social environmental factors that generally influenced southern district judges to rule against blacks in race relations cases. District courts identify with one state and their judges reside within their districts. Circuit courts, on the other hand, are less tied to a specific area. Meeting in six different states, these courts identify with a region and circuit judges reside anywhere within the circuit.²³

¹⁸ Bass, *Unlikely Heroes*, 26.

¹⁹ Joel Wm. Friedman, ESSAYS "The Emergence of John Minor Wisdom as Intellectual leader of the Fifth Circuit: Reflecting Back on the Forty-Fifth Anniversary of His Joining the Court," 77 *Tulane Law Review* 919 (2002-2003): 915.

²⁰ Read and McGough, *Let Them Be Judged*, 55; Couch, *History of the Fifth Circuit*, 99; Bass, *Unlikely Heroes*, 44-45; quote from Constance Baker Motley, *Equal Justice Under Law: An Autobiography* (New York: Farrar, Straus and Giroux, 1998), 108.

²¹ Frank T. Read, "The Bloodless Revolution: The Role of the Fifth Circuit in the Integration of the Deep South," 32 *Mercer Law Review* 1149 (1981): 1155.

²² Notes and Comments, "Judicial Performance in the Fifth Circuit," 73 *Yale Law Journal* 90 (1963-1964): 99-100.

²³ Kenneth N. Vines, "The Role of Circuit Courts of Appeal in the Federal Judicial Process: A Case Study," *Midwest Journal of Political Science* 7 (Nov., 1963): 311. Vines's paper is a case study of the relation of circuit courts of appeal to the district courts using "race relations cases decided in the district courts of the eleven traditional Southern states between May 1954 and October 1962 and then appealed to the regional circuit courts of appeal during the same period." Vines, 308. "Twenty-eight of the more than one

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Even though circuit judges had fewer ties to particular localities, not all of the Fifth’s nine judges consistently ruled for black plaintiffs. A *Yale Law Journal* evaluation covering Fifth Circuit decisions into 1963 found that Rives, Brown, Tuttle, and Wisdom “have fairly regularly upheld Negroes’ constitutional rights.” Three judges have voted inconsistently and “[t]wo judges have quite consistently dissented from these decisions.” Judge Cameron was by far the most consistent dissenter from decisions granting civil rights plaintiffs their requested relief.²⁴ Indeed, it was Cameron, in a dissenting opinion, who pegged the term “The Four” to characterize fellow jurists Rives, Brown, Tuttle, and Wisdom.

School Desegregation – Delay over Deliberate Speed

After the *Brown v. Board of Education* rulings, scores of school desegregation cases inundated the federal appellate courts. “By the end of the 1950s,” LDF attorney Jack Greenberg states, “LDF had commenced more than sixty elementary and high school cases, but only a few had been concluded.”²⁵ LDF litigation associated with the Dallas school system typified the circuit court’s difficulties with making district judges comply with *Brown*. Six different Fifth Circuit panels, including one with Judge Wisdom, held appeals hearings in New Orleans from 1955 to 1961.²⁶ In each instance, the appellate court ordered two district judges to “ride herd” over the Dallas Independent School Board’s segregation plans. The maverick judges defied their senior jurists. Circuit Judges Rives, Tuttle, and Warren Leroy Jones finally compelled a district court judge to approve the Dallas school board’s twelve-year plan, which called for desegregating one grade per year, with a caveat: the court reserved the right to step up the pace of integration consistent with the prevailing interpretation of “deliberate speed.”²⁷

***Bush v. Orleans* (1956 – District Judges Wright, Christenberry, and Borah; 1960 – Wright, Christenberry, and Circuit Judge Rives; 1962 – Circuit Judges Rives, Brown, and Wisdom)**

In New Orleans, desegregation turned into a decade-long, fiercely contested conflict in a state where Jack Greenberg defined “segregation forever” as “litigation forever.”²⁸ Judicial scholars Frank T. Read and Lucy S. McGough regard *Bush v. Orleans* as highly significant within the judicial history of school desegregation:

The New Orleans litigation is, complete unto itself, an encyclopedia of every tactic of resistance employed by all other states combined...it required forty-one separate judicial decisions involving ultimately the energies of every Fifth Circuit judge, two district court judges, and the consideration of the United States Supreme Court on eleven separate occasions....

hundred districts in the nation are located in the eleven states of the traditional South; each of these states is then divided into two, three, or four districts.” Kenneth N. Vines, “Federal District Judges and Race Relations Cases in the South,” *The Journal of Politics*, 26 (May, 1964): 337.

²⁴ Notes and Comments, 120-21, n. 156. Cameron’s dissenting opinion in *Armstrong v. Board of Education of City of Birmingham, Ala.*, 223 F.2d 333 (1963) is based on his own two-year study of assignments made to racial cases between June 1961 and June 1963. For an in-depth assessment of this charge, see Bass, *Unlikely Heroes*, 231-47.

²⁵ Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 254.

²⁶ J. W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (New York: Harcourt, Brace & World, Inc., 1961), 122. Examples of cases include *Borders v. Rippy*, 247 F.2d 268 (5th Cir., 1957) and *Brown v. Rippy*, 233 F.2d 796 (5th Cir., 1956).

²⁷ Read and McGough, *Let Them Be Judged*, 89.

²⁸ Greenberg, *Crusaders in the Courts*, 245.

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Backed by the Fifth Circuit, Federal District Judges J. Skelly Wright and Herbert W. Christenberry lighted the way in this laborious process. By the end of the decade those two judges had invalidated a total of forty-four statutes enacted by the Louisiana Legislature, had cited and convicted two state officials for contempt of court, and had issued injunctions forbidding the continued flouting of its orders against a state court, all state executives and the entire membership of the Louisiana Legislature.²⁹

Anticipating the Supreme Court's *Brown* ruling, the Louisiana legislature passed Constitutional Amendment 16, providing for the maintenance of public elementary and secondary school segregation under the police powers of the state.³⁰ After petitioning the Orleans Parish School Board to comply with *Brown* and getting no response, local black attorney A. P. Tureaud and LDF filed suit against the board on behalf of all school children. On February 16, 1956, Federal District Jurists Skelley Wright (housed in the New Orleans courthouse), Herbert Christenberry, and Fifth Circuit Jurist Wayne Borah struck down Amendment 16 in light of the *Brown* ruling. The three-judge panel returned the case to Judge Wright's jurisdiction. He immediately ordered the Orleans Parish School Board to desegregate "with all deliberate speed."³¹ In 1956 and 1958, school officials and state representatives resorted to further legal artifices to outmaneuver Wright. Again, Wright negated these efforts and the Fifth Circuit affirmed his rulings.

Growing tired of more dilatory tactics, Wright ordered the Orleans Parish School Board to present him with a desegregation plan by May 16, 1960.³² The board contended that the Louisiana Court of Appeals prevented it from complying with the order. Judge Wright then became the first Federal District Judge in the Fifth Circuit to implement a desegregation plan when he commanded the board to desegregate all New Orleans public schools one grade per year beginning with the first grade in the fall of 1960.³³ The Louisiana legislature responded with a rash of segregation laws and authorized Governor Davis to take control of school boards. Judges Wright, Christenberry, and Rives sat for months on a three-jurist panel with Wright authoring its opinions.³⁴

On August 26 to 27, 1960, Wright, Christenberry, and Rives faced high ranking Louisiana officials in the New Orleans federal courthouse. On the 27th, Judge Wright read the panel's decision that he had authored: "the court struck down the state's school closing law, set aside a state court injunction against the school board, ordered Davis to relinquish control of the schools, and enjoined state officials from interfering with the school board's integration plans."³⁵ Thereafter, Louisiana law makers passed twenty-nine bills aimed at defying "Smelly" Wright.³⁶ Wright immediately annulled these maneuvers.

²⁹ Read and McGough, *Let Them Be Judged*, 111. The desegregation of Orleans Parish schools began in 1952 when Tureaud filed the lawsuit named after sixteen-year-old Earl Bush. The suit was sent to District Judge Wright in New Orleans and was suspended for three years pending the outcome of the *Brown* case before the U.S. Supreme Court. Joel W. Friedman, *Desegregating the South: John Minor Wisdom's Role in Enforcing Brown's Mandate*, 78 *Tulane Law Review*, 2216 (2004). LDF attorneys Thurgood Marshall and Constance Baker Motley joined Tureaud, an NAACP lawyer himself, in representing the plaintiffs.

³⁰ Adam Fairclough, *Race and Democracy: the Civil Rights Struggle in Louisiana, 1915-1972* (Athens: University of Georgia Press, 1995), 199.

³¹ Friedman, "Desegregating the South," 2217, 2218.

³² Read and McGough, *Let Them Be Judged*, 128.

³³ Friedman, "Desegregating the South," 2220.

³⁴ The laws included making compliance with desegregation a misdemeanor and another transferring authority of all school boards to Louisiana Governor Jimmie Davis that enabled him to close all schools faced with the *Brown* court order. Read and McGough, *Let Them Be Judged*, 134.

³⁵ Fairclough, *Race and Democracy*, 238.

³⁶ Passed between November 4 and 8, the measures transferred control of the New Orleans School Board to an eight-man committee and authorized the committee to dispatch state troopers to block integration. Friedman, "Desegregating the South," 2223.

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On November 14, 1960, four six-year-old African American girls crossed the color line, one at William Frantz Elementary and three at McDonogh No. 19. Federal marshals called in by Judge Wright oversaw the momentous occasion. The day quickly deteriorated into ugly riots. Thereafter, virulent white citizens boycotted the two schools.³⁷ Crowds of epitaph-shouting white women daily harassed the black girls and few white children brave enough to run the gauntlet to school. Undaunted by daily threats to himself and family, Judge Wright strenuously fought the resistance until he accepted an appointment to the Appellate Court of the District of Columbia in 1962. Before leaving, Wright ordered the board to integrate grades one through six by September 1962.³⁸

The so-called Second Battle of New Orleans raged on in the wake of Wright's departure.³⁹ The *Bush* case was far from resolved when Judge John Minor Wisdom entered the arena. The case took an odd turn when Wright's successor, Judge Frank Ellis, vacated Wright's order to integrate all six grades and reinstated the order to integrate just the first grade. The appellants quickly requested the Fifth Circuit Court of Appeals to reinstate Wright's last plan while the school board asked the court to favor Ellis's plan. On August 6, 1962, a three-judge Court of Appeals panel comprised of Judges Rives, Brown, and Wisdom reached a compromise. Under Judge Wisdom's plan, second and third graders had the limited right to transfer to the school closest to their home under a nondiscriminatory application of the Louisiana Pupil Assignment Act.⁴⁰ Additionally, the order required the board to eliminate the dual school system for first and second grade in 1963, third through fifth by 1964, and a grade per year thereafter.⁴¹ In 1973, the suit was still on Judge Christenberry's docket, but it had been basically inactive since 1967.⁴²

On the outcome of the *Bush* case, Davison M. Douglas, Director of the Institute of Bill of Rights Law at the College of William and Mary, noted how desegregation had succeeded despite the relentless resistance by the state legislature and other state officials. "When the process of desegregation continued...it signaled that opposition to school desegregation in the South would not thwart the federal courts' orders that the Constitution be followed."⁴³

Regarding Judge Minor Wisdom's role in the outcome of *Bush*, Joel W. Friedman, a Jack M. Gordon Professor of Procedural Law and Jurisdiction Law at Tulane University, wrote: "Wisdom's opinion in *Bush* did more than effectively end Louisiana's eight-year crusade to stalemate all federal efforts at implementing the ruling in *Brown I*. Its impact extended beyond New Orleans and the boundaries of Louisiana to the other five states encompassed by the Fifth Circuit. . . . It also created an initial blueprint for implementing that constitutional command in a manner that was also sensitive to the administrative and other practical difficulties associated with this monumental change in the prevailing social order."⁴⁴

³⁷ Fairclough, *Race and Democracy*, 248.

³⁸ Friedman, "Desegregating the South," 2230.

³⁹ The Honorable Elbert P. Tuttle, "Chief Judge Skelly Wright: Some Words of Appreciation," 7 *Hastings Constitutional Law Quarterly* 4 (1980): 869.

⁴⁰ Read and McGough, *Let Them Be Judged*, 160, quote on 161; *Bush v. Orleans Parish School Board*, 308 F.2d 491 (5th Cir., 1962).

⁴¹ Friedman, "Desegregating the South," 2237.

⁴² Read and McGough, *Let Them Be Judged*, 166.

⁴³ Davison M. Douglas, "*Bush v. Orleans School Board* and the Desegregation of New Orleans Schools," in *Teaching Judicial History: Federal Trials and Great Debates in United States History*, http://www.fjc.gov/history/bushvorleans.nsf/autoframe?openForm&header=/history/bushvorleans.nsf/page/header&nav=/history/bushvorleans.nsf/page/nav_legal&content=/history/bushvorleans.nsf/page/legal_issues, Federal Judicial Center (accessed October 2, 2009).

⁴⁴ Friedman, "Desegregating the South," 2237, 2238.

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After the New Orleans Fifth Circuit temporarily moved for ten years to another building, Wisdom advanced the *Bush* blueprint in the Birmingham, Alabama, school case *United States v. Jefferson County Board of Education* (1966).⁴⁵ Considered by many scholars to be Wisdom's ultimate, landmark, desegregation doctrine, *Jefferson* carefully articulated a uniform integration plan to be implemented by all public schools in the Fifth Circuit jurisdiction that began the concept of affirmative action. *Jefferson* "transformed the face of school desegregation law" and called for a racially unified school system to integrate rather than desegregate schools. Two years later the U.S. Supreme Court used this ruling in *Green v. School Board of New Kent County, Virginia* to find a school district's "freedom of choice" plan unconstitutional. It then fell to school boards to establish unitary, rather than dual, school systems.⁴⁶

Meredith v. Fair (1962 – Judges Wisdom, Brown, and DeVane; 1962 – Fifth Circuit *en banc* with Tuttle, Hutcheson, Rives, Jones, Brown, Wisdom, Gerwin, and Bell)

The Fifth Circuit's epochal history associated with the desegregation of the University of Mississippi is an example "of how delay in implementing difficult-to-enforce judicial decisions allows time for resistance to mobilize." Judge Wisdom, head judge of the tribunal presiding over *Meredith v. Fair*, fought an onslaught of intransigent federal district judges, a fellow Fifth Circuit judge, university officials, state legislators, and politicians. So acute was the breakdown of law and order, the Fifth Circuit judges issued rare contempt of court charges against all twelve university trustees and the governor and lieutenant governor of Mississippi. Lastly, when the court hearings had nearly run their gamut, the Fifth Circuit told the Justice Department of the Executive Branch's responsibility to enforce the court's orders.⁴⁷

Early in the case, Judge Wisdom exhorted District Court Judge Mize to expedite Mississippi native James Meredith's case and instructed Mize on how to conduct the trial within fair bounds. Despite these instructions, Judge Mize granted two delays and after the proceedings ended, took a week to pronounce his decision to deny Meredith relief.⁴⁸ Again Meredith resorted to the Fifth Circuit for redress. In one panel hearing, Judge Wisdom presided over the panel with Fifth Circuit Judge John R. Brown and District Court Judge Dozier A. DeVane. Judge Wisdom wrote, "A full review of the record leads the court inescapably to the conclusion that from the moment the defendants discovered that Meredith was a Negro they engaged in a carefully calculated campaign of delay, harassment, and masterful inactivity. It was a defense designed to discourage and defeat by evasive tactics which would have been a credit to Quintus Fabius Maximus."⁴⁹

After the Fifth Circuit ordered Ole Miss to admit Meredith for the 1962 fall term, Fifth Circuit Court of Appeals Judge Cameron of Mississippi, a staunch segregationist, issued four successive stay orders. The panel found it, "unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court" and appealed to U.S. Supreme Court Justice Hugo Black, as Circuit Justice of the Fifth Circuit Court of

⁴⁵ Joel W. Friedman, interview by Gene Ford, October 5, 2007. 372 F.2d 836 (5th Cir., 1966).

⁴⁶ Quote from J. Harvie Wilkinson III, *From Bakke to Brown: The Supreme Court and School Integration, 1954-1978* (New York: Oxford University Press, 1979), 111; Ralph E. Luker, *Historical Dictionary of the Civil Rights Movement* (Lanham, MD: The Scarecrow Press, Inc., 1997), 264, 106.

⁴⁷ Bass, *Unlikely Heroes*, quote on 178, 188; 305 F.2d 343 (5th Cir., 1962).

⁴⁸ Mize first delayed the trial a day and then granted a motion to further postpone the trial due to the illness of Mississippi's Assistant Attorney General. Deborah J. Barrow and Thomas G. Walker, *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform* (New Haven: Yale University Press, 1988), 46.

⁴⁹ David G. Sansing, *The University of Mississippi: A Sesquicentennial History* (Jackson: University Press of Mississippi, 1999), 289. "Maximus was a Roman army commander known as a master of attrition and described as famed for 'conducting harassing operations while avoiding decisive conflicts.'" Greenberg, *Crusaders in the Courts*, 320.

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Appeals, to overwrite Cameron. On September 10, 1962, Justice Black vacated all of Judge Cameron's stays and ordered Judge Mize to sign the injunction admitting James Meredith to the university.⁵⁰

Between September 20 and 27, Meredith and his federal entourage attempted to enroll four times. The Mississippi governor, lieutenant governor, legislature, and Fifth Circuit Court of Appeals representative Judge Cameron, unleashed a fury of activity designed to stop Meredith from enrolling. On September 20th, the Fifth Circuit Court of Appeals ordered all twelve trustees and select administrators to appear before an *en banc* hearing of all eight judges in New Orleans on the 24th. Infuriated by what they termed "monkey business," Judge Tuttle and his brethren justices charged the board with "willfully and intentionally violating the Court's order."⁵¹ After Governor Barnett prohibited the registration and then failed to appear before an *en banc* hearing in New Orleans, the justices decreed that the governor and Lt. governor had to enroll Meredith by October 2 or face \$10,000/day and \$5,000/day fines, respectively.⁵²

In association with this pronouncement, Judge Tuttle emphasized that the executive branch was responsible for enforcing the court's orders, and that it should do so without further delay.⁵³ President John Kennedy directly engaged Governor Barnett in efforts to negotiate a peaceful resolution to the crisis. Barnett's continued evasiveness over Meredith's registration and the maintenance of law and order at Ole Miss prompted President Kennedy and Attorney General Robert Kennedys to act. The Commander in Chief signed Proclamation 3497 and an executive order on September 30, 1962. The proclamation compelled Mississippi's governor, lawmen, officials, police, and others to peacefully comply with the orders of the U.S. District and Fifth Circuit Appeals Courts, but tragedy ensued.

As LDF attorney Jack Greenberg noted: "The issue was no longer just the question of one man's right to go to school at his state university. The authority of the federal judiciary had been called into question, and if its authority weren't established, the ability of one of the three branches of the United States government to fulfill the role given it by our Constitution would be seriously undermined."⁵⁴ In an attempt to quell rebellion at the Ole Miss campus, President Kennedy asked Mississippians to uphold the law in a nationally televised speech on the evening of September 30th in which he stressed the role southern judges had played:

A series of federal courts—all the way up to the Supreme Court, repeatedly ordered Mr. Meredith's admission to the University. When those orders were defied and those who sought to implement them threatened with arrest and violence, the United States Court of Appeals—consisting of Chief Judge Tuttle of Georgia, Judge Hutcheson of Texas, Judge Rives of Alabama, Judge Jones of Florida, Judge Brown of Texas, Judge Wisdom of Louisiana, Judge Gerwin of Alabama, and Judge Bell of Georgia, made clear the fact that the enforcement of its order had become the obligation of the United States government.⁵⁵

Kennedy's address fell on deaf ears at Ole Miss, as a full scale riot was well underway. This riot, termed "The Battle of Oxford, 1962," exacted a heavy toll and was one of the most violent chapters in the history of school desegregation. In the wake of this rebellion, James Meredith enrolled for classes on October 1, 1962, and he graduated from the university on August 18, 1963. In the process the Fifth Circuit "clearly emerged as the

⁵⁰ Read and McGough, *Let Them Be Judged*, 222-24.

⁵¹ The full extent of these tactics is discussed in Gene A. Ford, "Lyceum-The Circle Historic District" National Historic Landmark Nomination (Washington, D.C.: National Park Service, 2008), 27-56.

⁵² William Doyle, *An American Insurrection: The Battle of Oxford, Mississippi, 1962* (New York: Double Day, 2001), 96.

⁵³ Russell Barrett, *Integration at Ole Miss* (Chicago: Quadrangle Books, 1956), 120.

⁵⁴ Greenberg, *Crusaders in the Courts*, 324.

⁵⁵ *The New York Times*, "President's Talk on Mississippi Crisis," October 1, 1962, 22.

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nation's major legal battleground in the civil rights revolution," stated Jack Bass, "and from it shaped a revised concept of American federalism."⁵⁶

Voting Rights: Speed over Deliberation

A new era in civil rights enforcement arrived in the 1960s with the election of President John F. Kennedy. After Robert Kennedy became the U.S. Attorney General, the Division briefed him on its plans to implement the Civil Rights Acts of 1957 and 1960. Kennedy expressed his concerns over plans in Louisiana, Mississippi, and Alabama. He wanted suits filed in every county where an under-registration of black people appeared. The Civil Rights Act of 1960 required election officials to maintain all election and voting records and produce them upon demand for inspection by the Justice Department. The Attorney General had the means to accelerate registration by first proving past voter discrimination and then adding all those applicants to the voting rolls whose qualifications met those of the officially aggrieved. The act also stipulated that a state, as well as an individual, could be sued.⁵⁷

In the early to mid-1960s, as the Civil Rights Division pressed its cases forward, decisions in voting rights cases by the Fifth Circuit Court of Appeals "significantly tightened its authority over recalcitrant district court judges by making major breakthroughs in legal procedure."⁵⁸ These means included "ordering an immediate issuance of mandate," the "injunction pending appeal," and "freezing relief."

Kennedy v. Bruce (1962 – Circuit Judges Tuttle, Rives, and Wisdom)

The first unusual procedural means the court devised was ordering an immediate issuance of a mandate.⁵⁹ Instituted in *Kennedy v. Bruce*, the case involved a district court's 16-month long denial of a Justice Department request to produce county voting records.⁶⁰ On May 9, 1960, Kennedy had petitioned the federal district court in Alabama for an order permitting inspection of the Wilcox County voting records where none of the 6,085 Negro citizens of voting age was registered. After the registrar testified that no Negro citizen in his county had been denied the right to register to vote, the district court found for the defendant.

In 1962, a Fifth Circuit panel comprised of Tuttle, Rives, and Wisdom found the registrar's testimony "incredible," given the vast difference "between the percentages of white and black potential voters on the registration books." The suit could not be dismissed based merely on the registrar's statement and the panel reversed the lower court's finding and "authorized the Justice Department to examine local voter registration lists when there were reasonable grounds to think that some citizens were being denied the right to vote."⁶¹ Because the issuance of a mandate normally takes several weeks, and a long delay had already occurred, Tuttle ordered that the court's order be implemented immediately. The court's actions established a new rule whereby the court had authority to "issue forthwith" its mandate.⁶² *Kennedy* also established the authority of the U.S. Justice Department to request and receive a court order to inspect voting records of any given county based solely on an assumption of obstruction of voting registration.⁶³

⁵⁶ Bass, *Unlikely Heroes*, 173.

⁵⁷ Donald S. Strong, *Negroes, Ballots, and Judges: National Voting Rights Legislation in the Federal Courts* (Tuscaloosa: University of Alabama Press, 1968), 7, 15.

⁵⁸ Bass, *Unlikely Heroes*, 218.

⁵⁹ Elbert P. Tuttle, "Equality and the Vote," 41 *N.Y.U. Law Review* 245 (1966): 257.

⁶⁰ 298 F.2d 860 (5th Cir., 1962).

⁶¹ Couch, *History of the Fifth Circuit*, 115.

⁶² Bass, *Unlikely Heroes*, 226.

⁶³ Luker, *Historical Dictionary*, 144.

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United States v. Lynd (1962 – Circuit Judges Tuttle, Wisdom, and Hutcheson)

A second procedural innovation by the Fifth Circuit, the injunction pending appeal, evolved from the case of *United States v. Lynd*, which was eventually heard at the New Orleans courthouse.⁶⁴ In July 1961, the U.S. Justice Department brought suit against Theron Lynd, the Circuit Clerk and Registrar of Voters for Forrest County, Mississippi. Lynd had refused to open his registration records to federal inspectors since August 11, 1960, and the department charged him with systematically denying African Americans the right to vote since 1959. Following an injunction hearing on March 5-7, 1962, Federal District Judge Cox determined that discrimination existed and he ordered Lynd to disclose all voter records. However, Cox refused to rule on the Justice Department's motion for a temporary injunction against the registrar.⁶⁵ By doing so, Cox avoided issuing a final order in the case. This maneuver effectively blocked an appeal to the appellate court since only final district decisions are appealable to the next level of the judicial system.⁶⁶

Nonetheless, John Doar of the Justice Department appealed Judge Cox's decision to the Fifth Circuit Court of Appeals. Judges Tuttle, Wisdom, and Hutcheson held session in the New Orleans courthouse and issued their ruling on April 10, 1962. Authored by Tuttle, the ruling found Cox's refusal to rule had amounted to a denial, and therefore the ruling could be appealed.⁶⁷ The judges then "issued an injunction requiring Lynd to cease discriminatory practices." Lynd's attorneys appealed to the Supreme Court for a reversal of the Circuit Court's decision and to rescind the injunction. However, on November 5, 1962, the Supreme Court declined to review the Fifth Circuit's decision.⁶⁸

The Tuttle-Wisdom-Hutcheson ruling in *United States v. Lynd* changed the internal working structure of the federal judicial system. "Not only did the action put all district judges on notice that attempts to delay by postponement and inaction would not be tolerated, but it radically altered the existing concept of an injunction pending appeal. For the first time, a circuit court issued an injunction, pending appeal, that did more than freeze the status quo...they enjoined the registrar from continuing discriminatory practices, thus changing the status quo to prevent abuse of legal rights—in this case the right of Negroes to register to vote."⁶⁹

⁶⁴ *Ibid.*, 257-58. An injunction is a court order prohibiting or ordering a given action.

⁶⁵ Judge Cox, a friend of arch segregationist Senator James Eastland, was one of four Kennedy appointed judges to the federal district courts that civil rights supporters have criticized. The remaining three are Judge West in Louisiana, Judge Allgood in Alabama, and Judge Elliott in Georgia. Notes and Comments, 106, n. 84. In *Lynd*, Cox compared Negroes to chimpanzees. Bass, *Unlikely Heroes*, 220. The records showed "a majority of the 22,431 white voting age residents were registered to vote, but that only 25 of the county's 7,431 eligible black residents were registered." Luker, *Historical Dictionary*, 264. For a biographical/historical sketch see The University of Southern Mississippi–McCain Library and Archives, Manuscript Collection at <http://www.lib.usm.edu/~archives/m027.htm?m027/text.htm~mainFrame>.

⁶⁶ Bass, *Unlikely Heroes*, 219.

⁶⁷ Tuttle used Rule 62(g) and the All-Writs Statute to justify this legal mechanism. All-Writs "provided that federal courts 'may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law'." Read and McGough, *Let Them Be Judged*, 187. Rule 62(g) of the Federal Rules of Civil Procedure "does not limit any power of an appellate court...to suspend, modify, restore, or grant an injunction during the pendency of an appeal." Bass, *Unlikely Heroes*, 217, 219.

⁶⁸ The University of Southern Mississippi for quote, Manuscript Collection; *U.S. v. Lynd*, 301 F.2d 818 (1962); *Lynd v. U.S.*, 371 U.S. 893 (1963).

⁶⁹ Bass, *Unlikely Heroes*, 219.

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U.S. v. Louisiana (1963 – Circuit Judge Wisdom, District Judges Christenberry and West)

The years 1961 and 1962 marked an evolution in voting rights litigation. At the end of 1961, the Justice Department filed a lawsuit in Louisiana, and in August 1962, filed a similar suit in Mississippi. Unlike previous suits filed on a county-by-county or parish-by-parish basis, *United States v. Louisiana*, and its companion suit, *United States v. Mississippi*, applied to entire states as the Civil Rights Act of 1960 allowed. Thus, their potential impact was far greater. Judge Wisdom’s highly regarded opinion in *Louisiana* strongly adhered to the “freezing principle” in the formulation of relief.

In *Louisiana*, the department charged Board of Registration officials with using the state’s constitutional interpretation tests to disenfranchise black voters in twenty-one parishes and challenged the legality of said tests. The three-judge panel for the U.S. District Court for the Eastern District composed of Wisdom and District Judges Christenberry and Elmer West faced the pivotal issue of whether the test was administered in a way that denied equal justice.⁷⁰ “Though the law itself may be non-discriminatory on its face and impartial in appearance, if it is applied and administered by public authority with evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons of similar circumstances, material to their rights, the denial of equal justice is still within prohibition of the federal Constitution.”⁷¹

Wisdom’s opinion struck down discrimination in voting rights. He entered into the judicial record a “pattern or practice” finding as provided under the 1960 Civil Rights Act. Evidence from parish voting records and the testimonies of those African Americans who took and failed the prescribed tests “disclosed that registrars discriminated against Negroes as a matter of state policy in pattern based on regular, consistent, predictable unequal application of the test.”⁷² Having revealed the discriminatory intent of Louisiana’s understanding clause, Judge Wisdom brought to bear the U.S. Justice Department’s evidence to show the effect of the discrimination. “In the twenty-one parishes where it has been shown that the interpretation test has been used as of December 31, 1962, only 8.6 per cent of the adult Negroes were registered as against 66.1 per cent of the adult white persons registered. Before the interpretation test was put into use, a total of 25,361 Negroes were registered in the twenty-one parishes using the test. By August 31, 1962, total Negro registration in these parishes was 10,351. During the same period, white registration was not discernibly affected.”⁷³ In Wisdom’s words: “The statistics demonstrate strikingly the effect of resurrection of the interpretation test.” Wisdom concluded “that the ‘understanding clause’ test was unconstitutional on its face because of its unlawful purpose, administration, and inescapably discriminatory effect.”⁷⁴

Wisdom also dedicated part of the *Louisiana* treatise to the citizenship test coming into use in Louisiana as stopgap legislation to replace the interpretation test’s likely invalidation by the Fifth Circuit. “This test is considerably more difficult than the ‘tests’ administered to white applicants in the past,” wrote Wisdom, “in that it requires a comprehension of the theory of the American system of government and a knowledge of specific constitutional provisions.” Wisdom concluded that very few would exercise their right to vote under this test. “Considering Louisiana’s unhappy position as the State with the highest rate of illiteracy and the lowest percentage of citizens with a high school education, the citizenship test can be regarded as a step forward only

⁷⁰ 225 F. Supp. 353, 354 (E.D. La., 1963).

⁷¹ *Ibid.*, 354.

⁷² *Ibid.*

⁷³ *Ibid.*, 381.

⁷⁴ West dissented and Christenberry concurred with Wisdom. Read and McGough, *Let Them Be Judged*, 288; 225 F. Supp. 353, at 398.

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by those in favor of a severely limited representative government of guardians elected by a small, elite electorate.”⁷⁵

Wisdom and Christenberry were also concerned with the citizenship test’s effects on past wrongs: “here, the issue . . . is whether a state may raise the standards for registration by enacting a new law which has the inevitable effect of freezing discrimination under an *unconstitutional* prior law.”⁷⁶ By “freezing effect,” Wisdom meant “locking in place,” or “perpetuating” past discrimination. Those denied voting rights during the understanding clause era had little opportunity to escape this discrimination when faced with more rigid qualifications. In contrast, whites then registered under more lax qualifications remained on the rolls until the State Registration Board ordered all voters purged from the rolls and subjected to the new requirements. This latter circumstance provided the basis for countering the freezing effect.

On November 27, 1963, the court permanently enjoined Louisiana from using both the interpretation and the citizenship tests “until there has been a general re-registration of all voters in a named parish, or until it has been shown, to the satisfaction of the court, that the interpretation test has lost its discriminatory effect in the parish.”⁷⁷ By suspending Louisiana’s double standards, the Fifth Circuit enabled African Americans to join the voting ranks based on lower standards reserved for white applicants. Furthermore, the Fifth Circuit retained jurisdiction over Louisiana’s registration process to prevent further ingenious methods of obstructing justice.

A masterful writer, Wisdom often based his arguments on literary quotes and figures of speech. *Louisiana* contains a premier judicial metaphor:

A wall stands in Louisiana between registered voters and unregistered, eligible Negro voters. The wall is the State constitutional requirement that an applicant for registration “understand and give a reasonable interpretation of any section” of the Constitutions of Louisiana or of the United States. It is not the only wall of its kind, but since the Supreme Court’s demolition of the white primary, the interpretation test has been the highest, best-guarded, most effective barrier to Negro voting in Louisiana....

We hold: this wall, built to bar Negroes from access to the franchise must come down. The understanding clause or interpretation test is not a literacy requirement. It has no rational relation to measuring the ability of an elector to read and write. It is a test of an elector’s ability to interpret the Louisiana and United States Constitutions. Considering this law in its historical setting and considering too the actual effect of the law, it is evident that the test is a sophisticated scheme to disenfranchise Negroes. The test is unconstitutional as written and as administered.⁷⁸

Wisdom’s doctrinal defense of the freezing principle in *Louisiana*, a doctrine first applied by District Court Judge Johnson in Montgomery, formally validated its use in both voter registration cases and in other areas of civil rights grievances. His defense “became the basis on which the Supreme Court affirmed the ‘freezing’ doctrine.”⁷⁹ The principle became the national standard in not only voting rights actions, but also affirmative

⁷⁵ 225 F. Supp. 353, at 392.

⁷⁶ *Ibid.*, 395.

⁷⁷ *Ibid.*, 398.

⁷⁸ *Ibid.*, 355, 356 (E.D. La, 1963); Bass, *Unlikely Heroes*, 52, quoting from interview with John Doar on June 21, 1979.

⁷⁹ *U.S. v. Penton*, 212 F. Supp. 193 (M.D. Ala., 1962); Bass, *Unlikely Heroes*, 271, 272; the Supreme Court citation is *Louisiana v. United States*, 380 U.S. 145 (1965).

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action and public housing development.⁸⁰ It also influenced the Voting Rights Act of 1965. John Doar recalled how lawyers drafting the Voting Rights Act referred constantly to “the wall that must come down.”

On March 18, 1965, Attorney General Nicholas Katzenbach appeared before the House judiciary to testify on the Voting Rights Act of 1965, a bill President Johnson sent to Congress following the violence accompanying the Selma to Montgomery voting rights march. Katzenbach stated how the judicial process was inadequate and described it as “‘tarnished by evasion, obstruction, delay, and disrespect’.”⁸¹ *Louisiana* had taken three years to litigate, and even then the state legislature promulgated another statute to disfranchise blacks. The ability of southern states to stay ahead of federal law had lessened the impact voting rights cases could make. Congress passed the Voting Rights Act on August 4, 1965, and Johnson signed the act into law on August 6.

The act codified the principles articulated in *U.S. v. Louisiana*. Section 2 prohibited a state or political subdivision from using any test or device to deny or abridge the right of any U.S. citizen based on race or color. “The Act authorized the Attorney General to suspend (freeze) any and all tests or devices found in violation of Section 2; the Attorney General and federal courts retained jurisdiction over and ultimate approval of new voting laws enacted by state or local governments whose voter qualification laws had been nullified under the bill.”⁸² The codified principles of *Louisiana* and the enforcement statute engendered in the 1965 Voting Rights Act made the difference in the enfranchisement of African Americans. Prior to the act, 19.4 percent, 6.4 percent, and 31.8 percent of African Americans were registered to vote in Alabama, Mississippi, and Louisiana, respectively; within a year of enactment, those percentages increased to 51.5, 47.2, and 32.9, respectively.⁸³

According to John Doar: “The Division’s hard work underpinned the opinions and orders of federal judges Tuttle of Georgia, Rives and Johnson of Alabama, Wisdom of Louisiana, and Brown of Texas.... These decisions had an influence on individual members of the House Judiciary Committee as they decided upon the final content of the 1965 Voting Rights Bill, and on individual members of Congress to vote to pass the Voting Rights Bill.”⁸⁴

Conclusion

Scholarly and professional opinions concur on the significance the U.S. Fifth Circuit Court of Appeals held during the modern civil rights movement. Presenting hundreds of civil rights cases before the appeals court, LDF and the U.S. Justice Department offer some of the most compelling comments on the Fifth Circuit judges known as “The Four”: Wisdom, Tuttle, Brown, and Rives. LDF attorney Constance Baker Motley noted how these men “all lived long enough to see the New South, which they had helped to create through the judicious

⁸⁰ Wilkinson, *From Bakke to Brown*, 272; Read and McGough, *Let Them Be Judged*, 301; Owen M. Fiss, *The Civil Rights Injunction* (Bloomington: Indiana University, Press, 1978): 10, also available online at <http://www.law.yale.edu/documents/pdf/Faculty/injunction.pdf>. Fiss was once a member of the Civil Rights Division of the U.S. Justice Department and a clerk for the venerable Second Circuit Court of Appeals Judge Thurgood Marshall.

⁸¹ John Doar, “The Work of the Civil Rights Division in Enforcing Voting Rights Under the Civil Rights Acts of 1957 and 1960,” 25 *Florida State University Law Review* 1 (1997), www.law.fsu.edu/journals/lawreview/downloads/251/doar.pdf, 13.

⁸² Charles V. Hamilton, *The Bench and the Ballot: Southern Federal Judges and Black Voters* (New York: Oxford University Press, 1973), 235.

⁸³ A key provision in the 1965 legislation based proof of discrimination on a simple formula rather than on lengthy litigation which did not always end favorably for the Justice Department. “According to the formula, a state or county [or parish] is discriminating at the polls if less than half of the voting age population was registered to vote and any test or device was required for registration.” In the event of this discrimination, federal examiners added those meeting the most basic of requirements to the polls. Strong, *Negroes, Ballots, and Judges*, 91.

⁸⁴ Doar, *Work of the Civil Rights Division*, 13-14.

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use of power.”⁸⁵ Nicholas Katzenbach, Deputy Attorney General under Robert Kennedy and Attorney General under President Lyndon Johnson, believes that “The Four” were keepers of both the law and peace. “If you hadn’t had those judges on the Fifth Circuit...you would have had much more in the way of demonstrations, violence, repression, revolution—that may be too strong a word, but it was moving in that direction. Bobby Kennedy and [others in the Justice Department]...persuaded civil rights leaders to use the judicial process, that it could get them where they wanted to get. I think without the Fifth Circuit, we would never have been able to succeed in doing that.”⁸⁶

In a broad general affirmation, law professors Frank T. Read and Lucy S. McGough assessed the task placed before the Court of Appeals:

After handing down its *Brown* decision, the Supreme Court—contrary to the belief of many citizens—played only a minimal role in the supervision and guidance of its lower federal courts. Left to its Court of Appeals was the task of translating a vague but revolutionary constitutional command into concrete orders for school boards and federal district courts. In that process the Fifth Circuit was the trail blazer, becoming the nation’s greatest tribunal. The story of the evolution of desegregation and race relations law in the twenty years since *Brown* is, then, also the story of one pre-eminent federal Appeals Court.⁸⁷

Within the history of this court, Judge John Minor Wisdom served as the voice of the U.S. Fifth Circuit Court of Appeals during the modern civil rights era. Chief Judge Elbert P. Tuttle and his fellow progressives on the bench, John R. Brown and Richard T. Rives, entrusted Wisdom with authorship of opinions for *en banc* hearings, “presenting difficult and important questions of the law.”⁸⁸ Wisdom’s trenchant intellect, articulate prose style, and penchant for exhaustive research lent themselves well to authoritative judicial doctrine. As the spokesman in hundreds of three-judge panels, Wisdom delivered highly regarded treatises in many areas of civil rights jurisprudence, including education, public accommodations, voting rights, and public transportation. Wisdom’s “well-known and widely admired opinion in *United States v. Louisiana*” provided judicial validation for the 1965 Voting Rights Act.⁸⁹ Read and McGough acknowledge his nationally significant role in the federal judiciary and impact on civil rights reform:

Judge Wisdom became the Court’s scholar-in-residence, elevating the craft of judicial opinion-writing to an art form. Just as Mr. Justice Brandeis, when an attorney had developed what became known as ‘Brandeis Brief’ style of argument—the full articulation of the underlying social realities of a case—it may be said that Judge Wisdom created the ‘Wisdom Opinion’: a characteristically long, detailed exposition of historical development and legal precedent, with particular attention to factual detail adding local color, all set in highly articulate prose. More than any other member of the Court, because of his progressive and quotable synthesis of the issues, Judge Wisdom has become the Court’s spokesman. In every area of race relations law, it is his voice more often than not which is heard and spread in the work of the sister courts. Judge Wisdom wrote seminal opinions, discussed elsewhere, in jury discrimination cases, in voting cases, in public accommodations cases, in desegregation cases and, for that matter, in landmark cases coming before the Court in other areas of the law.⁹⁰

⁸⁵ Motley, *Equal Justice Under Law*, 134.

⁸⁶ Jack Bass, “Faces Turned to the Future,” 34 *Houston Law Review* (Spring 1998): 1507.

⁸⁷ Read and McGough, *Let Them Be Judged*, xii.

⁸⁸ *Ibid.*, 58, 125.

⁸⁹ Burke Marshall, “In Remembrance of Judges Frank M. Johnson, Jr. and John Minor Wisdom,” 109 *Yale Law Journal* (April 2000): 1214.

⁹⁰ Read and McGough, *Let Them Be Judged*, 57.

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Comparison of Properties

Some properties associated with Fifth Circuit Appeals Court rulings have received NHL designation. One such NHL, The Lyceum – The Circle Historic District, is associated with the *Meredith v. Fair* (1962) case heard in the New Orleans courthouse. This district, located on the University of Mississippi campus, significantly illustrates the determination of the Executive Branch in exercising its authority to enforce the U.S. Constitution and federal court orders when the Kennedy administration federalized National Guard to confront segregationists in a bloody riot over the repeated refusal by the university and the state to comply with the Fifth Circuit's order to admit African-American student James Meredith. While this district illustrates the role the Executive Branch played to enforce the Constitution, it is the New Orleans courthouse that possesses exceptional significance in illustrating the role the Judicial Branch played in this case to confront segregationist delay tactics.

Another property related to Judge Wisdom, not currently an NHL, is the former Wildlife & Fisheries Building, now the Louisiana Supreme Court, where the Fifth Circuit resided sometime between 1963 and 1973 while its New Orleans courthouse was being rehabilitated. From this building Wisdom issued his landmark *Jefferson* (1966) school desegregation ruling noted in this nomination. That ruling represents a new era in the history of school desegregation, whereby desegregation became integration and ultimately affirmative action. Although Wisdom made this milestone ruling from the Wildlife & Fisheries Building, it is the U.S. Court of Appeals – Fifth Circuit building that best represents Judge Wisdom under NHL Criterion 2 for the bulk of his civil rights association.

Lastly, during the period of significance, the Fifth Circuit also had a courthouse in Fort Worth, Texas. That courthouse is not under NHL consideration, within the context presented herein, since none of the cases considered crucial to illustrating the Fifth Circuit's preeminent role in the civil rights movement were heard in Fort Worth.

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U.S. v. Louisiana, 225 F. Supp. 353 (E.D. La., 1963)

U.S. v. Lynd, 301 F.2d 818 (5th Cir., 1962)

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(JOHN MINOR WISDOM UNITED STATES COURT OF APPEALS BUILDING)**

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Previous documentation on file (NPS):

- Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
- Previously Listed in the National Register.
- Previously Determined Eligible by the National Register.
- Designated a National Historic Landmark.
- Recorded by Historic American Buildings Survey: #
- Recorded by Historic American Engineering Record: #

Primary Location of Additional Data:

- State Historic Preservation Office
- Other State Agency
- Federal Agency
- Local Government
- University
- Other (Specify Repository):

10. GEOGRAPHICAL DATA

Acreage of Property: 1.5

UTM References:	Zone	Easting	Northing
	15	781920	3316410

Verbal Boundary Description:

The boundary includes the entire block the building encompasses between Camp Street and Lafayette Square to the west; Magazine Street to the east; a plaza (formerly Lafayette Street) and a federal building to the north; and Capdeville Street to the South.

Boundary Justification:

The boundary includes the building that has historically been associated with the Federal courthouse and which maintains its integrity.

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NATIONAL HISTORIC LANDMARKS PROGRAM

December 5, 2014

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APPENDIX A. SUMMARY OF CIVIL RIGHTS CASES

Important 1950s to 1960s civil rights cases argued before the Fifth Circuit Court of Appeals and the District Court for the Middle District of Alabama are the focus of the NHL nominations for courthouses in New Orleans, Atlanta, and Montgomery. For summary and cross-reference purposes, this table lists cases each nomination covers. Judges who authored opinions are underlined.

<p>U.S. Court of Appeals – Fifth Circuit (Wisdom Courthouse), New Orleans, LA</p>	<p>U.S. Post Office and Courthouse (Tuttle Courthouse), Atlanta, GA</p>	<p>United States Post Office and Courthouse (Johnson Courthouse), Montgomery, AL</p>
<p><u>School Desegregation</u> <i>Bush v. Orleans</i> (1956-61) <u>en banc</u> (all judges) and district judges. Illustrates every tactic states used to resist desegregation and courts overcame.</p> <p><i>Meredith v. Fair</i> (1962) <u>en banc</u>. Case resulted in two Per Curiam rulings (multiple judges acting unanimously) and two opinions by Wisdom. Established Fifth Circuit as the country’s major judicial battlefield in civil rights movement.</p> <p><i>U.S. v. Jefferson</i> (1966) <u>Wisdom</u>, Thornberry, Dist. Judge <u>Cox</u> (dissenting). Milestone concept of affirmative action to integrate as opposed to desegregate. (Case noted under <i>Bush v. Orleans</i>).</p> <p><u>Voting Rights</u> <i>Kennedy v. Bruce</i> (1962) <u>Tuttle</u>, Rives, Wisdom. An immediate issuance of mandate, an unusual procedural means, allowed a mandate to take effect immediately rather than several weeks.</p> <p><i>U.S. v. Lynd</i> (1962) <u>Tuttle</u>, Wisdom, Hutcheson. Procedural innovation altered the concept of injunction pending appeal to prohibit discrimination against black voter registration pending appeal to the circuit court.</p> <p><i>U.S. v. Louisiana</i> (1963) <u>Wisdom</u>, district judges Christenberry & <u>West</u> (dissenting). Wisdom’s doctrinal defense of the “Freezing Principle,” first employed by District Judge Johnson, served as the framework for Supreme Court affirmation and influenced the Voting Rights Act of 1965.</p>	<p><u>School Desegregation</u> <i>Holmes v. Danner</i> (1961) <u>Tuttle</u>. To grant immediate relief, Tuttle used the extraordinary procedure of by-passing a Fifth Circuit three-judge panel.</p> <p><i>Woods v. Wright</i> (1963) <u>Tuttle</u>. After school board expelled students marching in Birmingham, Tuttle bypassed a three-judge panel to issue an injunction pending appeal allowing students to finish the school year.</p> <p><i>Hall v. St. Helena</i> (1964) <u>Tuttle</u>, Rives, Wisdom. Court issued a Writ of Mandamus, a mandatory injunction directing an inferior public officer to perform an act required by law when it has refused or neglected to do so.</p> <p><i>Meredith v. Fair</i> (1965) <u>en banc</u>. Tuttle advised Executive Branch of the government of its burden to enforce federal court order.</p> <p><i>Stell v. Savannah</i> (1964) <u>Tuttle</u>, Rives, Bell. Ruling provided extraordinary relief under the All Writs Act in exceptional cases of abuse of judicial power by the District Court.</p> <p><u>Public Accommodations</u> <i>Heart of Atlanta Motel v. U.S.</i> (1964) Tuttle, District Judges Hooper and Morgan. Confirmed constitutionality of the 1964 Civil Rights Act.</p> <p><u>Voting Rights</u> <i>Kennedy v. Bruce</i> (1962) <u>Tuttle</u>, Rives, Wisdom. Court devised immediate issuance of mandate procedure to make decision effective immediately.</p> <p><i>U.S. v. Lynd</i> (1962) <u>Tuttle</u>, Wisdom, Hutcheson. Demonstrates procedural innovation in granting injunction pending appeal.</p>	<p><u>School Desegregation</u> <i>Lee v. Macon County</i> (1967) Rives, <u>Johnson</u>, Grooms. Ruling mandated state-wide school desegregation rather than a case-by-case basis.</p> <p><u>Public Accommodations</u> <i>Browder v. Gayle</i> (1956) <u>Johnson</u>, Rives, District Judge Lynne. Ended 1955 Montgomery Bus Boycott.</p> <p><i>U.S. v. Klans</i> (1961) Johnson. To enforce federal court orders, federal government mobilizes federal marshals during 1961 Freedom Rides.</p> <p><u>Voting Rights</u> <i>Gomillion v. Lightfoot</i> (1959) <u>Jones</u>, Wisdom, <u>Brown</u> (dissenting). Brown’s opinion, upheld by U.S. Supreme Court, helped pave way for voting rights reapportionment.</p> <p><i>U.S. v. Alabama</i> (1961) Johnson’s “freezing principle” essentially negated literacy tests.</p> <p><i>U.S. v. Woods</i> (1961) <u>Rives</u>, Brown, <u>Cameron</u> (dissenting). Foreshadowed injunction pending appeal remedied in <i>U.S. v. Lynd</i> (1962) to prohibit discrimination pending appeal to the circuit court.</p> <p><i>Williams v. Wallace</i> (1965) Johnson allowed Selma-to-Montgomery march to continue under “proportion principle,” a pioneering concept that defined the right to demonstrate.</p> <p><u>Jury of Peers</u> <i>Goldsby v. Harpole</i> (1959) <u>Rives</u>, Brown, Wisdom. <i>Seals v. Wiman</i> (1962) <u>Rives</u>, Brown, Wisdom. These two cases established principle of right to jury of one’s peers.</p>

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APPENDIX B. FIFTH CIRCUIT JUDGES, INNOVATIONS, AND ACCOMPLISHMENTS

Until 1981, the U.S. Fifth Circuit Court of Appeals covered the states of Louisiana, Alabama, Georgia, Texas, Mississippi, and Florida. In 1960, the court consisted of one judge in all these states except for Texas with two judges.

Terms served on the Fifth Circuit by “The Four:”

- Richard T. Rives: (LA, 1951-1966, Chief Judge 1959-1960, Senior Judge (semi-retired) 1966-1981, transferred to Eleventh Circuit in 1981)
- Elbert P. Tuttle : (GA, 1954-1968, Chief Judge 1960-1967, Senior Judge 1968-1996, transferred to the new Eleventh Circuit in 1981)
- John R. Brown: (TX, 1955-1984, Chief Judge 1967-1979, Senior Judge 1984-1993)
- John M. Wisdom: (LA, 1957-1977, Senior Judge 1977-1999)

Other Fifth Circuit judges holding term at some point during the period of significance (1956-1967):

- Joseph Hutcheson (TX, 1931-1964)
- Wayne G. Borah (LA, 1949-1956)
- Benjamin F. Cameron (MS, 1955-1964)
- Warren Leroy Jones (FL, 1955-1966)
- Griffin Bell (GA, 1961-1976)
- Walter P. Gewin (AL, 1961-1976)
- William H. Thornberry (TX, 1965-1978)

Innovations or extraordinary procedure used by the Fifth Circuit:

- Injunction Pending Appeal
- Proportion Principle
- Writ of Mandamus
- Freezing Principle
- Affirmative Action
- Immediate Issuance of Mandate
- All Writs Act

Accomplishments and associated milestone events:

- Expanded school desegregation and voting rights cases from county-by-county to statewide
- Achieved trial of jury by peers
- Paved way for voting rights apportionment
- 1955 Montgomery Bus Boycott – extended principle of *Brown* to public transportation
- 1961 Freedom Rides
- University of Mississippi desegregation (Meredith)
- 1965 Selma-to-Montgomery march – established proportional principle

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Photo #1. Southeast view to Camp Street (right) and Lafayette Street (left) façades. (Camp Street [west façade] and Magazine Street [east façade] are mirror images). Photo by Carol M. Highstreet, Library of Congress Prints & Photographs, LC-DIG-pplot-13820-01718, July 8, 2006.

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Photo #2. Camp Street façade, facing east. Photo by Gene Ford, July 2006

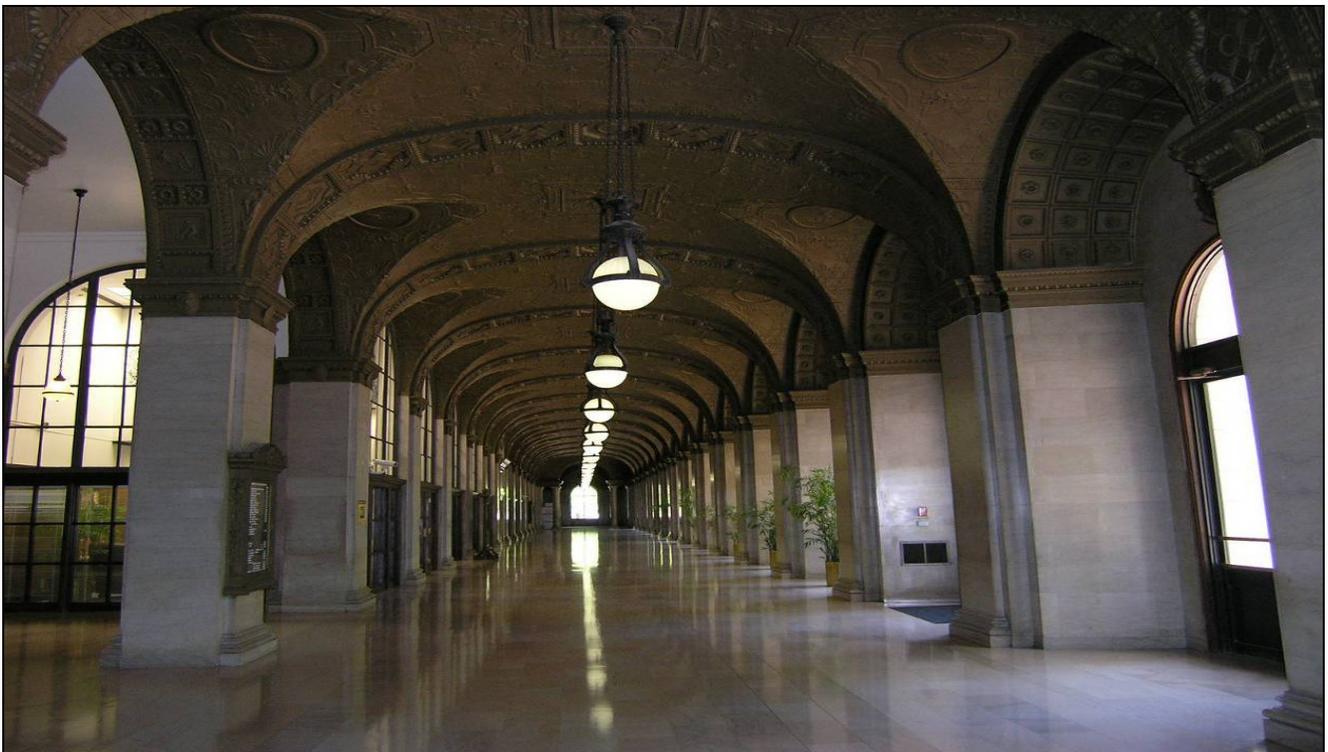


Photo #3. First Floor Lobby, facing west. Photo by Gene Ford, July 2006.

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Photo #4. East Courtroom. Photo by Gene Ford, July 2006.



Photo #5. West Courtroom. Photo by Gene Ford, July 2006.

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Photo #7. En Banc Courtroom. Image by Gene Ford, July 2006.

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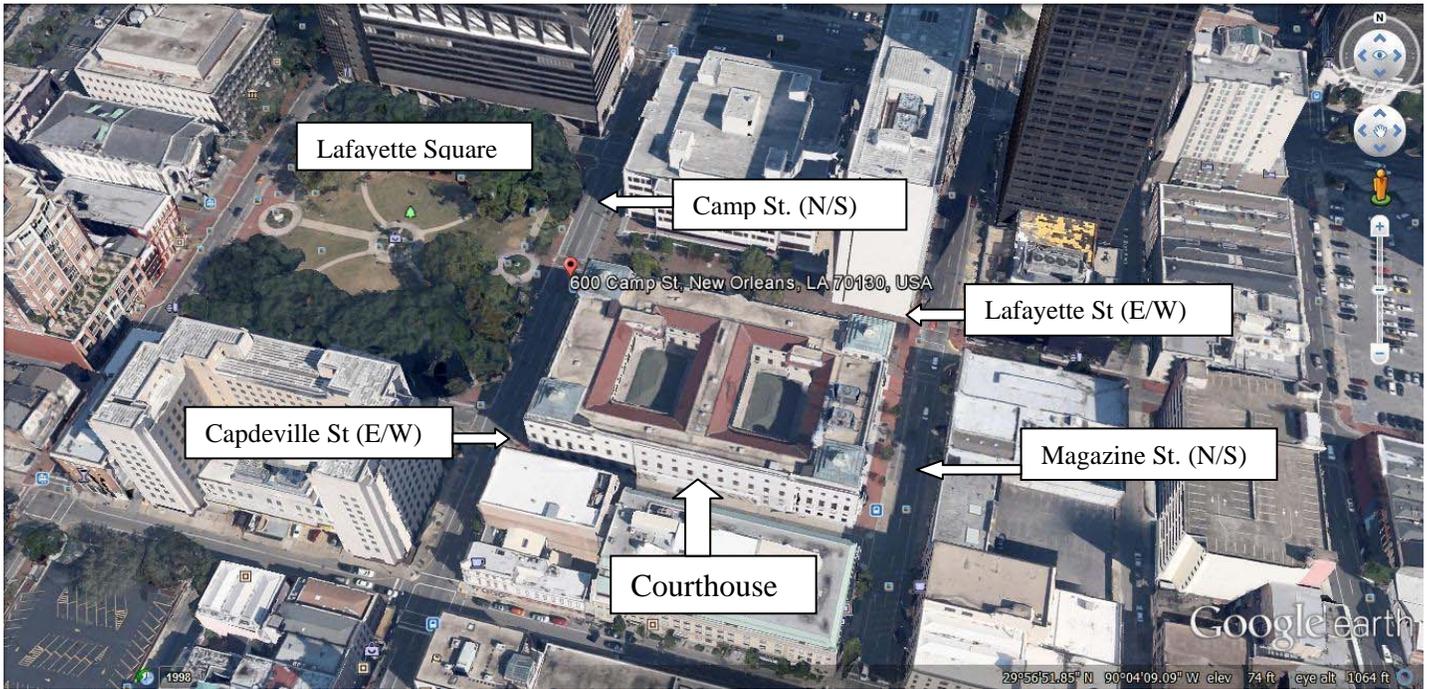


Figure 1. Aerial view of courthouse in center of image. Source: Google Earth, 2014.

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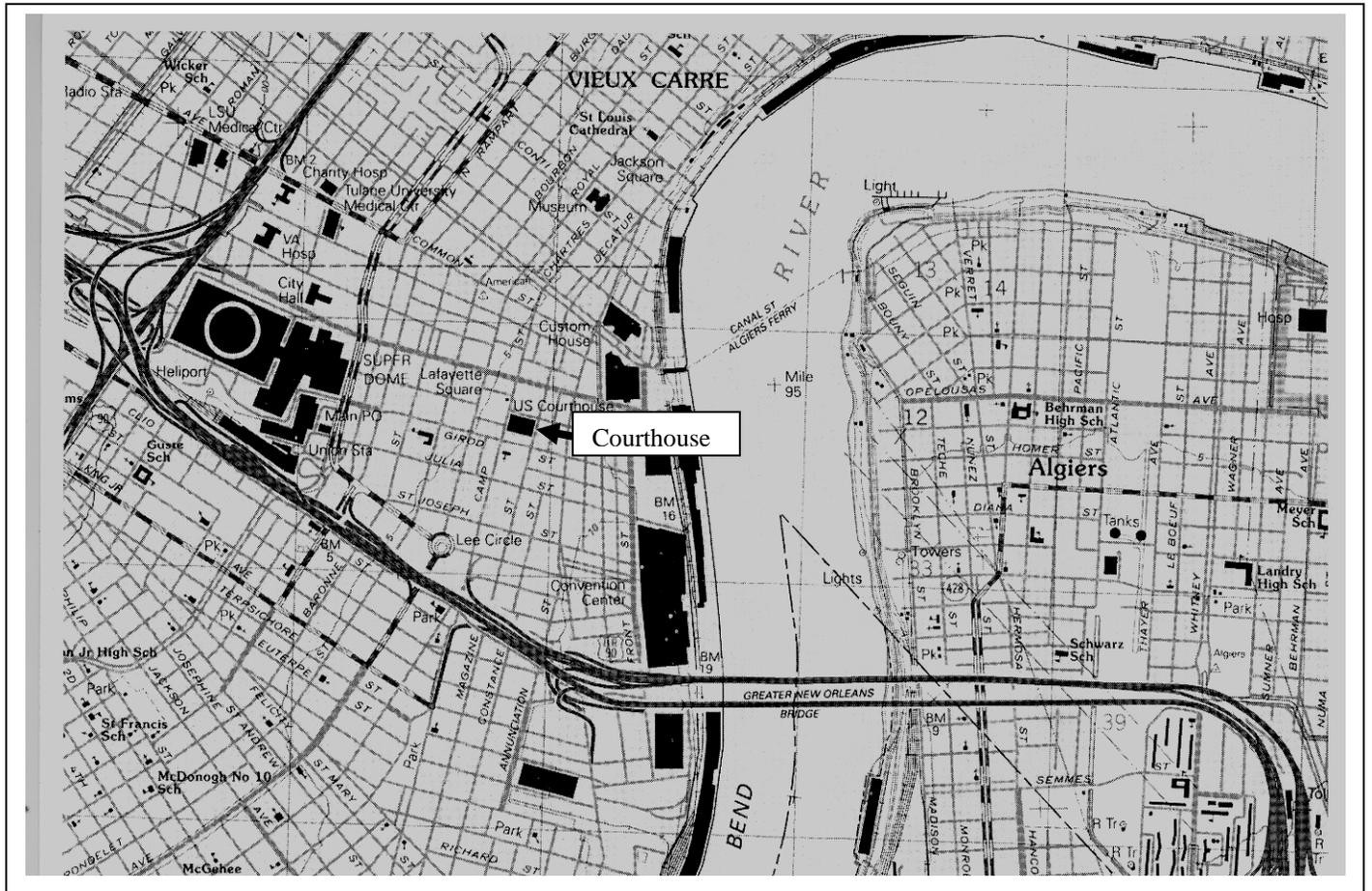


Figure 2. USGS, New Orleans East, LA, 1998

UTM References: **Zone** **Easting** **Northing**
 15 781920 3316410

