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Dedication: Chief Judge Charles Clark

I am proud to be asked to say a few words in honor of Chief Judge Charles Clark. He was appointed in 1969 to the old Court of Appeals for the Fifth Circuit and became the first Chief Judge of the new Fifth Circuit Court of Appeals on October 1, 1981. The old court had included Texas, Mississippi, Louisiana, Alabama, Georgia, and Florida. The new Fifth Circuit has the first three states; the other three constitute the newly created Eleventh Circuit.

Thirty years ago, Charles Clark and I faced each other across the bench. In 1961 Charles was a Special Assistant to the Attorney General of Mississippi. He was thirty-six. That is young—or so it seems to one who is now eighty-six. I was not young: I was fifty-six, but I was new to the bench. I had been on the bench only four years. In those critical years of 1961 to 1966 when Charles represented the State of Mississippi, we had many desegregation cases, the *Meredith* case desegregating the University of Mississippi, its corollary the contempt of court litigation against Governor Ross Barnett, and many other important cases in which Charles spoke for the State of Mississippi.

The most interesting aspect of those cases is that in the minds of everyone, including the judges on the Fifth Circuit, Charles Clark emerged as a shining star. He represented a lost cause—and with flair. He argued vigorously, made the best of a bad case, was deferential to the court, acted with dignity and grace, and conducted himself in every way according to the highest tradition of Anglo-American advocacy. He won my respect then and the respect of all the judges on our court.

Charles Clark was born to be a great lawyer and a great judge. Three generations—the spirits of his father, grandfather, and great-grandfather—must have looked down from above and applauded the legal and judicial performance of the family's fourth generation of lawyers.

Charles was born in Cleveland, Mississippi and practiced law in Jackson. He was a busy litigator, a member of the American College of Trial Lawyers, and an active member of bar associations. On the court he never faltered in his support of the United States Constitution. Two cases will suffice to exemplify this necessary attribute of a federal appellate judge.

The first example is *Joe Hogan v. Mississippi University for Women*.¹ The University had limited its enrollment to women since it was chartered

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1. 646 F.2d 1116 (5th Cir. 1981), reh'g denied, 653 F.2d 222 (1981), aff'd 458 U.S. 718, 102 S. Ct. 3331 (1982).

in 1884. Joe Hogan, a male registered nurse, applied for admission to the University; he wanted a degree from the University's School of Nursing; the University declined to admit him. Judge Clark, reversing the district court, held that the policy excluding Hogan because of his sex denied him equal protection of the law under the Fourteenth Amendment. In his opinion he wrote:

Doubtless, there are many in Mississippi who hold dear the continuation of the "W" as a place for educating the "girls of the State." . . . We say only that the maintenance of MUW today as the only state-supported single-sex collegiate institution in the State cannot be squared with the Constitution. Mississippi suggests no interest of male students which is served by this disparate treatment of females. . . .

The policy of MUW that excludes Hogan because of his sex denies him the equal protection of the law as guaranteed by the fourteenth amendment.²

In a five to four decision of the Supreme Court, Justice O'Connor upheld Judge Clark. Newspapers throughout the country ran headlines: "Girls, meet Joe Hogan."

The second example is *Karen v. Treen*,³ in which Judge Clark held that a Louisiana statute and parish regulations permitting student and teacher prayers in public schools violated the First Amendment. In his opinion Judge Clark said:

Even if the avowed objective of the legislature and school board is not itself strictly religious, it is sought to be achieved through the observance of an intrinsically religious practice. The unmistakable message of the Supreme Court's teachings is that the state cannot employ a religious means to serve otherwise legitimate secular interests.⁴

Those two cases were decided a few months before Judge Clark became Chief Judge in 1981. Before and since that time, Judge Clark has been a staunch defender of the United States Constitution and the United States Supreme Court. I have been thinking how to characterize Charles in a few words. I would characterize Charles Clark as cast in the mold of a great, recently retired Justice, Lewis F. Powell, Jr.⁵

2. 646 F.2d at 1119.

3. 653 F.2d 897 (5th Cir. 1981).

4. *Id.* at 901.

5. Judge Clark's balanced approach to constitutional law is succinctly expressed in the following passage from Charles Clark, *The Role of National Courts in 200 Years of Evolving Governance*, 18 *Cumb. L. Rev.* 95, 97 (1987):

It is currently popular to debate the duty of judges to find the meaning of the

The labors of a chief judge of a circuit are unknown to the public and virtually unknown to most lawyers. They are arduous, time-consuming, and unbearably enmeshed in administrative details. The year that Congress decided to divide the circuit because of our caseload, we had 4,236 appeals filed in cases from six states. This year the new Fifth Circuit—comprising only Texas, Louisiana, and Mississippi—will have 6,200 filings, 2000 more than the old Fifth Circuit had when Congress considered it necessary to split the circuit.

The increased work load in the circuit has imposed increased burdens on the Chief Judge. In wrestling with the problems, Judge Clark's administrative ability has risen to the challenge. He is nationally recognized for that ability. He has served as Chairman of the United States Judicial Conference Budget Committee and as Chairman of the Conference Executive Committee, the most important judicial position, administratively, in the American legal system. These involve breathtaking responsibilities.

In spite of his backbreaking duties, he has managed with elegance to shepherd a flock of judges who are unsheeplike, notoriously hard-headed and independent, inclined to disagree on principle with almost any principle, and to qualify the most innocuous flat statement. Each of us is incorrigibly impressed with the correctness of his own views. Yet, looking back over my thirty-four years on the Court, I congratulate Charles as Chief Judge for managing to herd us as skillfully as a border collie herds sheep into a court having as much collegiality and civility as any Fifth Circuit Court ever had. This is no small feat. And it is not because of his physical stature, commanding presence, and mane of white hair that puts to shame Earl Warren and Warren Burger. It is because he has shown the same grace and ability as Chief Judge that he showed as a young Assistant Attorney General of the State of Mississippi when he represented defendants not always popular at that time with all members of our court of appeals.

I cannot close this talk without complimenting Charles Clark on his art of persuasion. I am not now referring to judicial skills. I refer to

Constitution in the intentions of the founding fathers. "Strict constructionists" must, however, contend with 200 years of history. Finding and fastening 1787 ideas on specific clauses can cause us to lose sight of the fact that the framers' paramount intention was to create a form of governance that would assure justice, peace, liberty, and the general welfare of the citizens in their respective states. What would accomplish those goals today may be very different from what would have been envisioned as needful in 1787. Yet those who would depend more on values in contemporary thought must acknowledge that the federalists adopted and ratified a written Constitution as the supreme law of the land.

That is balanced judgment.

his ability in persuading the lovely, attractive, and in every way supportive Emily Russell—to be his wife.

*Judge John Minor Wisdom**

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