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A TRIBUTE TO WADE MCCREE

*Allan F. Smith**

My friendship with Wade McCree was all too brief. For me, and I suspect for many others, friendship with Wade was an ever-growing experience. Each year, almost each visit with him brought me some new insights as to the depth of his learning and wisdom, the breadth of his understanding of the human condition, the astuteness of his observations on the political and social scene in this country. Yet we learned these things about him not because he played the pundit or held forth in patriarchal style at the coffee table, but rather because these characteristics were simply a part of the warm human being with whom we have been privileged to associate. Indeed, it is probably not his wisdom or astuteness that will stay so firmly in our memory. Instead, our memory will be of that great-hearted man, whose compassion was limitless, for whom living was a joy, and who was fun to be around.

Wade's career embraced almost every activity for which a legal training prepares one — lawyer, judge, advocate, master. But I like to think of his judicial years and his years as Solicitor General as epitomizing his character. He was a judicious man, and a judicial one. He had a capacity for withholding judgment until he was satisfied that he knew as much about the matter as he could reasonably expect to ascertain. And even when armed with that knowledge, he brought a restrained thoughtfulness to the process of judging which has led a former law clerk to describe him as a "principled decisionmaker." That phrase truly captures the spirit of Wade McCree as judge. He could make decisions, and those decisions reflect the high principles of justice by which he was guided.

Illustrative cases (however mundane the subject matter) can be found in any random sampling of his opinions. In *Freeman v. United States*, 509 F.2d 626 (6th Cir. 1975), an air traffic controller negligently gave an airplane pilot incorrect information concerning the plane's course and location. Over a heavy cloud cover, eighteen persons jumped with parachutes, expecting a landing near an air base. Instead, they were over Lake Erie, and sixteen deaths resulted, with

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injuries to the other two. One could expect Judge McCree to sustain a judgment in their favor despite vigorous defense arguments. Or, one might look at *Winston Corp. v. Continental Casualty Co.*, 508 F.2d 1298 (6th Cir. 1975), where an insurer sought to escape liability on a performance bond it had issued in connection with a construction contract. The contractor had defaulted after extensive delays in construction, and the insured had taken over the project to get it completed as quickly as possible. That Judge McCree would find this eminently sensible conduct to be appropriate, and not grounds for excusing the insurer, could surely be predicted.

The same characteristics were apparent in his work as Solicitor General. That office, of course, is one of the most powerful legal offices in our country. The decisions made there concerning which cases will be sent to the Supreme Court, or in which Supreme Court cases *amicus* briefs will be filed, have a tremendous effect on the development of our law and legal system. They influence the future course of Supreme Court decisions probably more than any other single factor. His years in that office have been deservedly praised as years of high achievement, and of demonstrated professional integrity of the highest order. We who have known him would expect no less.

As Solicitor General, he would select those cases which he would argue personally before the Supreme Court, and one would suppose those choices would display his idea of matters of importance. I look upon one of his losing arguments as illustrative. *United States v. Helstoski*, 442 U.S. 477 (1979), involved a Congressman's indictment on charges of political corruption in accepting money from aliens in return for introducing private bills to prevent deportation. Although he failed to persuade the Court on the evidentiary matter at issue, one is not surprised that he would personally push as hard as possible to root out malfeasance in public officials.

Great professional though he was, Wade enjoyed lighter moments of living. I recall a Sunday, perhaps a year before his death, when he and I, with our wives, were guests at a small party given by a visiting professor of the Law School. A young German couple (he was a research scholar in residence) was also there. It turned out that our host was an accomplished pianist. I don't mean accomplished in the concert sense, but rather accomplished as a player of tunes which everyone has heard and is supposed to know. It was there that I found out that Wade was a master of memory of song lyrics. He knew them all. I was simply overwhelmed when he would find second and third verses when the rest of us knew only the chorus. And, to make it worse, when the music turned to German folk songs, to make the for-

eign guests comfortable, Wade was there with the German words. I have to confess that his singing voice was not of operatic quality, and might not even make a Broadway musical, but I've never heard anyone have more fun with those wonderful songs, or know more lyrics, than Wade McCree.

As a colleague on the faculty, Wade was simply superb. We old deans have visions of what we might think of as an ideal faculty. In our vision, of course, every member of the faculty would be a star in his or her own right: scholar, teacher, role model for the students. But every member would also be a person whose influence would radiate from his or her personal office and envelop the entire school and its faculty with a cohesive sense of the greatness of the mission of the institution. And in our vision that reciprocal radiation from fifty offices would produce a brilliant glow at the Law School. Regrettably, no dean has ever put together an entire faculty of such persons, but Wade was one of them. He carried an aura of greatness and it was pervasive. He came to law-teaching late in his distinguished career, but he brought to teaching the same vigor which had propelled him to such success in his varied roles of lawyer, judge, and Solicitor General. He brought the freshness of a new professor but the newness was beautifully tempered by his wide experience. He brought the will to contribute all that he could to the life of the Law School, and the students who came before him. He was always ready with a story, but he was ready also to do his able best to see that the goals of legal education were achieved as fully as human effort can accomplish.

Wade's untimely death has brought a sense of loss to the Michigan Law School. Our solace lies in recalling the joyous life he led, the marvelous contributions he made to our society, and the warmth of his friendship. These will endure.