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In Memoriam: Judge Wendell A. Miles (April 17, 1916 – July 31, 2013)

*Death, be not proud, though some have called thee
Mighty and dreadful, for thou art not so;
For those whom thou think'st thou dost overthrow
Die not, poor Death, nor yet canst thou kill me.
From rest and sleep, which but thy pictures be,
Much pleasure; then from thee much more must flow,
And soonest our best men with thee do go,
Rest of their bones, and soul's delivery.
Thou art slave to fate, chance, kings, and desperate men,
And dost with poison, war, and sickness dwell,
And poppy or charms can make us sleep as well
And better than thy stroke; why swell'st thou then?
One short sleep past, we wake eternally
And death shall be no more; Death, thou shalt die.*

—John Donne, *Holy Sonnets* (1610)

On July 31, 2013, one of our “best men,” United States District Judge Wendell Miles, was taken from us at the age of 97. He was born while the Battle of Verdun raged on the Meuse River in France and just a week before Irish Nationalists seized from the occupying English the center of Dublin in the Easter Rising. His life spanned eleven decades, most of them during the “American Century.” He was a member of our “Greatest Generation,” fought against fascist tyranny in Europe, excelled in the practice of law, especially as a trial advocate, and proved to be a mahatma as a state and federal court judge. We will miss his Aesopian stories and his clever repartee. He is now eternally awake.

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Remembering the Extraordinary Life of Wendell Alverson Miles 1916 - 2013

*Eulogy by Hon. Hugh W. Brenneman, Jr., Given at
Memorial Service at Porter Hills, Grand Rapids, Michigan
August 12, 2013*

My first memory of Wendell Miles was his shock of wavy white hair and piercing blue eyes. It was 1974. He was sitting behind his bench in his courtroom in the Grand Rapids Federal Courthouse. I had just come from Washington, D.C. to be an Assistant United States Attorney. I remember peering through the windows of the courtroom door. I felt like a boy sneaking a peek at the principal on the first day of school. Judge Miles was the very image of a federal judge. His demeanor told me it would be a good idea to have my act together when I entered his courtroom.

Judge Miles shared the 4th floor with the court's only other district judge. All five attorneys in the U.S. Attorney's Office were up one flight, and Steve Karr, the magistrate, was on the 6th floor. Those three floors pretty much comprised my legal universe for the next several years. Thus began my association with Judge Miles, first as a judge, later as my boss, and always as a colleague.

I want to thank Judge Miles' children, Lorraine, Michele and Tom, for the privilege of reminiscing about him for a few moments. I see a number of his law clerks and colleagues here tonight. I don't presume to know him as well as many of you who have gathered here to celebrate his life. Indeed, he had lived half his adult life before he and I ever met. Of course, many of his contemporaries who shared those earlier years are no longer with us. That is what happens when you live to be 97. But I am confident those who are not sitting with us this evening have already greeted Wendell in his new home, a place where he and Mariette are happily together again. At best, I can only hope that my remarks may stir some of *your* memories, and not your recent memories of a frail old man smiling at you as he struggled to walk to his office, but of a passionate younger man, a man of many parts, whose story has many chapters, *any one of which* we would be proud to call our own.

In many ways, I feel like one of those "sidewalk superintendents," walking past a construction site and peering through a hole in the fence to see what is being built. You only catch a glimpse. There is so much you are not privy to. So it was with Judge Miles.

And that is because of the very full life that Wendell Miles chose to lead. He was, of course, nearly a 40-year member of the Grand Rapids Rotary Club; President of the Grand Rapids Torch Club; a 32nd Degree Mason; President of the Holland Board of Education; Chairman of the



Judge Miles in the European Theater during World War II

Republican party's statewide committee to push for Con-Con, the Constitutional Convention of 1963 which ultimately gave us our state Constitution; Vice Chairman of the Michigan Higher Education Commission for a decade; and the first honorary member of the Gerald R. Ford Chapter of the American Inns of Court. He had a B.A. from Hope College, a M.A. from the University of Wyoming, and a J.D. from the University of Michigan Law School, and two honorary law degrees. He received awards too numerous to mention, but one close to the hearts of us in the federal courthouse was the Service to the Profession Award from the Federal Bar Association. But even taken together, all these achievements are but a pale recognition of his real accomplishments.

For, while many of us enjoy reading history (and Wendell did—he was, after all, the Court Historian) and while some teach history (and Wendell did, serving as Distinguished Adjunct Professor of History at Hope College for many years), — while many of us do those things — Wendell Miles, a leader of that which we now call the Greatest Generation, *lived* much of that history that we have read about. He was a player, usually at the highest level of whatever venue he chose to enter but, regardless, was seldom on the sidelines.

To begin, we all know Wendell Miles as a federal district judge. He held this position for over a third of a century. Some would say being a federal district

judge is the capstone of a trial lawyer's career. While many attorneys have aspired at one time or another to become a district judge, Wendell Miles accomplished that. He received his lifetime appointment as a United States District Judge on his birthday, when he was 58 years old. He served from 1974 through 2008, seven of those years as the Chief Judge.

But before he was a federal judge, he was an outstanding trial lawyer. He handled big cases on behalf of utilities like Michigan Consolidated Gas, Michigan-Wisconsin Pipeline; and Trans-Canada Pipeline. He handled a two-year trial involving a \$63,000,000 gas storage field on the eastern side of the state (and 50 years ago, \$63,000,000 was still real money), while flying across 20 to 30 Michigan counties and chunks of Canada from Alberta to Toronto, in a private plane, rushing to make court hearings in numerous pipeline condemnation disputes, as the natural gas industry began burgeoning throughout the Midwest and Canada.

At the same time, Wendell defended two major corporate officers in an 18-month trial before the Seventh Circuit Court of Appeals involving a contempt order of the FTC. Sixteen men were convicted, but not the two defendants Wendell represented.

Wendell was the first General Counsel for Ferris State College, now Ferris State University, handling all of the litigation for that college for half a decade.

He was also special counsel for the City of Grand Rapids. As special counsel, Wendell Miles tried five major condemnation cases that were to change the 19th century face worn by sleepy downtown Grand Rapids. It was this period of urban renewal that cleared the space for our present federal, state, city and county buildings. In several of these trials he went head-to-head with another legendary Grand Rapids trial attorney, Hal Sawyer.

Very few attorneys ever have the opportunity to stand before the United States Supreme Court and argue a case. One is here tonight, Judge Joe Scoville. Wendell Miles was a member of this select fraternity. He argued a one man/one vote case before the U.S. Supreme Court in 1967, in *Sailors v Board of Education of Kent County*.¹

And so, as one of the premier trial attorneys in the state, it is not surprising that before he was a federal

judge, he was a name partner in the prominent law firm of Mika, Meyers, Beckett & Jones. He was there for nine years, and the firm was called “Miles, Mika, Meyers, Beckett & Jones.”

But before he was a private practitioner, Wendell was a prosecutor. But not just a prosecutor; he was twice *the* prosecutor, elected three times as the prosecuting attorney of Ottawa County and then appointed by President Eisenhower as the United States Attorney – the chief federal prosecutor for all of Western Michigan and the Upper Peninsula. He served seven years in that



On the 20th day of July, 1944, I was in Glasgow, Scotland. It had just been announced that Hitler had been assassinated and there was great joy and celebration. I went into a photo shop and became a Scotsman.

Everyone expected the war to be terminated in ten days.

(A note included with the photo.)

position. He said this was the best job he ever had. It was a job designed for a trial lawyer, and Wendell Miles was a perfect fit.

Incidentally, ladies, he was a pioneer of sorts. One of his two assistants was Margaret Cook, only the second female attorney to be hired in the U.S. Attorney's Office. During this time, Wendell had a warm relationship with Federal District Judge Wally Kent, at least outside court. But Judge Kent, it was said, could be quite acerbic on the bench. One day Margaret Cook ran afoul of Judge Kent in court and, following the dust-up, Miles did not hesitate to tell Kent off. It would not be the last time Miles would butt heads with a federal judge while defending a colleague or a client or a principle.

In 1960, he resigned as U.S. Attorney to run for Michigan Attorney General. He lost that election, but said it was a gamble he had been prepared to take. That, was living life. He was not unemployed long. The very same day he lost, a trial attorney representing Michigan Consolidated Gas in a major civil case dropped dead, and Wendell had a new career.

I have not mentioned all of Judge Miles' courts. While many of us have wondered, perhaps with a touch of nostalgia, what it would be like to be that fixture of Americana—the judge of a rural county court—Judge Miles was that judge for four years in the combined Circuit Court for Ottawa and Allegan counties, taking the seat his father, Fred T. Miles, had left two decades earlier.

And I know you have recently heard much about America's spy court, a court once so secret that most people did not even know of its existence, fewer yet of its location. It is the Foreign Intelligence Surveillance Court.² Wendell was selected to serve on that court for seven years by the Chief Justice of the United States.³ He felt very honored by that appointment. The proceedings of that court were so secret that Judge Miles was not even allowed to carry papers in or out of the soundproof courtroom.

It is not that others haven't done some of these same things – we have many accomplished judges and lawyers in the audience – it is that Wendell did them all.

I believe it is self-evident that Judge Miles was a passionate actor in events of his day. But his role in the Greatest Generation does not end there.

Before he was a judge, and before he was a trial attorney, he was a soldier. While my generation has read about World War II, Wendell Miles fought that war, serving in the Army from 1942-1947. He entered a Private and came out a Captain. His first assignment was to interview German Afrika Korps prisoners-of-war at Camp Hood, Texas. He received this task because he had taken two years of German at Hope College. His job was to separate the ardent Nazis from German POWs with more moderate views, and to teach the latter about our political system. He said he was ultimately able to speak fluent German because of coaching he received from a German Wehrmacht sergeant, who had attended Columbia University before the war.



Judge Miles in uniform touring Europe after VE Day.

Two months after D-Day, Wendell landed in Normandy, as part of General Patton's Third Army. He continued his duties in the European Theater, where he interrogated German POWs immediately after capture, to learn of gun emplacements, the location of German troops, and similar intelligence necessary to save American lives. I have no doubt interrogating German soldiers enhanced his ability to cross-examine witnesses in the years to come. He performed this duty in France, Belgium and later Germany as the Third Army advanced into the Third Reich. Gen. George S. Patton, Capt. Wendell A. Miles – together – in the same army. It is somewhat surprising the Germans were able to resist as long as they did.

One of Wendell's duties was to transport German prisoners of war, many of them hardcore Nazi SS troops, to POW camps here in the States. He made three crossings of the Atlantic doing this. On one return trip to Europe, Wendell took 100 incorrigibles the other way – prisoners from Joliet Prison in Illinois to join the American ranks in Europe. Think: *The Dirty Dozen*. Years later, when he stood before Eisenhower in the White House to accept his appointment as United States Attorney, and Ike asked him, "Were you one of my boys?" Wendell could answer yes, and know that, because of his wartime experiences, he had already faced down worse criminals than he would find in West Michigan.

After VE Day, Judge Miles was assigned as a JAG officer to try black marketing cases in Marseille. He was later transferred to Strasbourg, Alsace, where he was

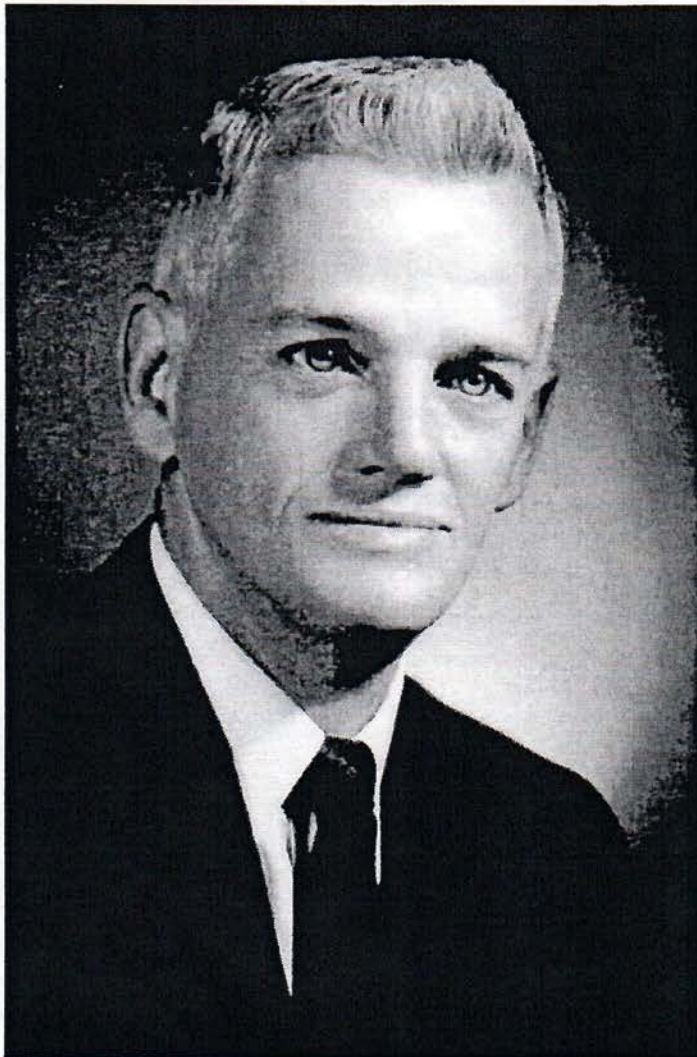
liaison officer handling U.S. claims. His most successful liaison was winning the hand of the most beautiful French girl in Strasbourg, his beloved Mariette. He even learned French so his future mother-in-law could, and would, speak to him. After all, she had a son in the French Underground, and another with the Free French in North Africa. She was not an easy sell. Through his new family Wendell learned to appreciate the symphony and love the opera. And while Wendell was absorbing the culture of the *Old World*, Mariette's family was being exposed to the *New*. When her family saw American troops entering Alsace for the first time, they literally speculated on whether any of the soldiers might be those "Chicago gangsters" that America was so famous for. Ironically, since Wendell had earlier brought over prisoners from Joliet, Illinois, some of them probably were.

After their wedding, Wendell and Mariette moved to Heidelberg, Germany, where he became a law officer in the Third Army's General Court. The couple was provided a home, a car, a chauffeur and a gardener. Apparently there was no sequester in those days. They hunted wild boar, rabbits and moose in the Black Forest. There were symphonies. Mariette became pregnant. The dashing young American officer. His beautiful French bride. The old Heidelberg Castle. The Opera. The Black Forest. It was a romance that needed only Sigmund Romberg to set it to music. Wendell almost made Europe his home, before his father lured him back to West Michigan with the

promise of setting up a private practice, Miles and Myles. It was a tough call.

I have been using the name Wendell – probably for the first time in his presence. Whenever we talked, he was always Judge Miles to me. As Sandy Shank, his devoted and long-time assistant who is with the family tonight can tell you, I could never bring myself to address him otherwise. I doubt she could either. After all, he was my father's contemporary. He was the personification of the Greatest Generation, that generation which raised us and protected us. He was the comfortable reminder that despite the passing years, *ours* was not yet the oldest generation.

Wendell Miles was who he was because he chose to be. This is the point. He was sometimes an observer – he enjoyed watching his Hope College football team beat my Alma College Scots when we would go to a



Judge Miles as U.S. Attorney, 1953-1960

game – but he was usually a doer who participated. Golf. Skiing in the mountains, or up north at the snow bowl on weekends; sailing on Lake Michigan, fishing trips with Wally Kent, or fishing on Lake Superior when he was in Marquette in the summertime. When he was on the bench up there, his clerk would often slip him a note shortly before 5:00 p.m., saying that Capt. Bruce, his fishing boat skipper, was casting off at 5:05 p.m. He would close court in a hurry and run down to the harbor, and they would fish until 10 p.m.

He loved Marquette, and Marquette loved him. Once when he was in Marquette, the Strategic Air Command let him fly in a big tanker that refueled American bombers. That day, the refueling took place over New Orleans, before they returned to Marquette. It reminded him of the times when he had been stationed in Marseille, and would fly to Rome for the weekend, lying in the bomb rack of a U.S. bomber.

But whether he was playing tennis at 6:30 a.m. with those of us half his age, or parking his car in the sub-basement of the Federal Building so he would have an extra flight of stairs to walk up each morning, he was determined to live life to the fullest, and to the end. He fought to stay healthy and to make the most of every day. He did go to the hospital unexpectedly in April two years ago, but he simply had a pacemaker put in and was back to the office the following Monday. When Dylan Thomas admonished, “Do *not* go gentle into that good night,” he was preaching to the choir as far as Wendell Miles was concerned.

Wendell never lived his life timidly, but embraced it vigorously. His was a life marked by passion, whether it was for his children and grandchildren whom he loved so dearly, the wife he worshiped, or the father he idolized. When he worked, he worked hard, putting in long hours. When he played, he played hard. He was very competitive. When he had to fight, he fought hard and without apology.

And throughout it all, he exhibited a dry (one attorney called it an arid) sense of humor. I recall a sentencing conference in his chambers when I was a young prosecutor. Just as the defense counsel was sitting down – his fanny had not quite touched the seat – Judge Miles said, “Well, it looks like we are going to have to send your boy up the river for life.” He said it with such a straight face that the defense attorney didn’t even finish sitting, but stood up, rather dejectedly, to

WENDELL A.
MILES
Your "Mr. District Attorney"

**FOR
ATTORNEY
GENERAL**

MILES *ahead
in experience*

leave. Judge Miles was only kidding. Sometimes his conversation seemed circuitous as he would lead you around the barn, occasionally clearing his throat, but he always knew where he was and he always brought it home. He was this way at 58 and at 88. But he could fool you in court, too. If he asked your opponent a lot of tough questions, it was no time to relax. He was leaning in your opponent's favor and just wanted to make sure the other guy's arguments would hold water.

Nor was it a good idea to try to bluff him. Once, a defense attorney flew in from out of town for the day to demand of Judge Miles at a pretrial conference that his defendant receive an earlier trial date. He was trying to pressure the prosecutor, and he told Judge Miles, "My

client has a right to a speedy trial." The judge looked him straight in the eye and said, "You're right – we'll start the trial tomorrow morning." The defense counsel quickly back-tracked and asked to withdraw his motion for a speedy trial. Judge Miles said, "Of course you can withdraw your motion. Now that that's done, we'll start the trial tomorrow morning."

Supreme Court Justice Oliver *Wendell* Holmes, Jr., after whom Wendell Miles was named, famously said in an 1884 speech,⁴ "I think that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived." Namesake Wendell, who thought that Holmes was perhaps the best judge who ever lived, unquestionably internalized that quotation, because he certainly personified it, didn't he?

Few people will accomplish in this life what Wendell Miles did. But duplicating his achievements is not our challenge. Rather, we should try to emulate his uncompromising spirit and zest for life that tells us to never give up, never give in, and take the most out of each day. And should we ever, in the autumn of our years, be tempted to coast 'gently into that good night,' remembering the life of Wendell Miles should divert us from that path and call to mind the voice of another poet, who said, "I have . . . miles to go before I sleep, . . . miles to go before I sleep."⁵

Judge Miles, thank you and God Bless.

Endnotes

- 1 387 U.S. 105 (1967).
- 2 Created to provide judicial oversight of government's covert surveillance activities of foreign entities.
- 3 He was appointed by then-Chief Justice William H. Rehnquist.
- 4 Memorial Day speech, 1884
- 5 *Stopping By Woods on a Snowy Evening*, by Robert Frost.

Transcript of the Celebration of Judge Wendell A. Miles Life

This celebration was held on Friday, September 20, 2013, in his courtroom (Room 499) of the Gerald R. Ford Federal Building, Grand Rapids, Michigan.

THE COURT: Welcome everyone as we convene here this afternoon to celebrate the life of our departed colleague, District Judge Wendell A. Miles.

Let the record reflect that the courtroom is full and we have a number of distinguished members of the judiciary and other people who were close to Judge Miles during the course of his distinguished public service to the United States of America, and more particularly, service to our court as a United States district judge and his service as chief judge of this court.

We have a distinguished group of speakers who volunteered to share their thoughts about the life and career of Judge Wendell Miles, and for that purpose, I'm pleased first to call on the Honorable David W. McKeague, Sixth Circuit Court of Appeals Judge. Judge McKeague, before he became a member of the Court of Appeals, of course, was a United States district judge for the Western District of Michigan.

Judge McKeague. Thank you for being here, sir.

JUDGE MCKEAGUE: Good afternoon.

Thank you, Chief Judge Maloney, for the kind invitation. I appreciate the opportunity to reflect back on the life of Judge Wendell A. Miles this afternoon. Preparing for today was actually great fun as it turns out, because it provided me with the opportunity to call most of the now senior judges on the Court of Appeals that sat with Wendell and with many of his former clerks, most of whom are here today, who accompanied him on his trips to Cincinnati.

Wendell was a senior judge when I joined the court back in 1992, and had already been so for six years. He continued to be active throughout my time on the district and for three years after I became a circuit judge, or when I went over to the dark side, as the district judges like to say, but we never had the opportunity to sit together in Cincinnati.

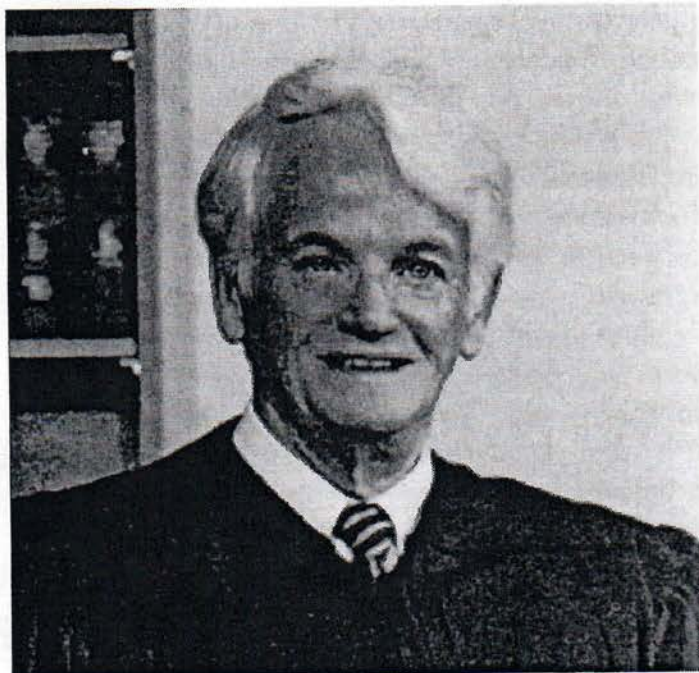
I began my preparation for today by reading the oral history interview of Wendell by Gordon Olson back in

2002. And for all of you that are interested in the history of this court, I really encourage you to read this interview. It's a fascinating account of a truly remarkable career of a soldier, trial lawyer, prosecutor, state judge, federal judge, husband, father, friend to all who knew him, and a true patriot. And several things are immediately apparent when you read the interview. First, as he recounts many of his experiences as an attorney in private practice and as a U.S. Attorney, it readily occurs to you that he may be one of the best trial attorneys to ever sit on the district court bench in the Western District.

Second, he had an absolutely extraordinary memory. This interview occurred when he was 86 years old, and he had a better recollection of events that had occurred in his life years earlier than I do of what I did last week. But perhaps most importantly, and this is where it will involve all of you, he was a great story teller. And as we all know, he did love to tell stories. And when you think about it, this is probably the most important attribute of a great trial attorney because, of course, the best trial involves the telling of some sort of compelling story of some type or the other.

Mr. Olson explained to me recently that when he gets ready to interview people, he asks them to set aside three hours. Wendell, however, had so much that he wanted to tell Gordon that he had to return for three separate interviews.

Reading this oral history also fleshed out many of the stories he told us. He told us stories at lunch, and dinner, and judges meetings, and at conferences, and in other words, pretty much anytime we got together, you knew that there were going to be Wendell Miles stories, many of which I'm sure you've probably heard as well. As probably all of you also know, most of his stories involved his relationship with one Noel P. Fox. Needless to say, in a great understatement, they did not get along. So I gave a lot of thought to whether to even touch upon this subject today, but because it was such a part of Wendell's life, and because it involved the Court of Appeals, I decided that it was appropriate to do so. So here goes.



Hon. Wendell A. Miles

I always thought the story started with how Wendell thought he was mistreated by Judge Fox when Wendell joined the district court in 1974. As Wendell's oral history makes clear, however, these problems actually arose in 1962. They involved the City of Grand Rapids' denial of the transfer and the ultimate revocation of the liquor license for Barnett's Bar. I tried to figure out whether Barnett's Bar still exists in some new incarnation, but I wasn't able to figure that out. It's described in both the District Court and Court of Appeals opinion as the only Class C negro-owned and operated bar in Grand Rapids. Not so much political correctness back when those opinions were written. Wendell, who was practicing with Duchess, Mika, Miles, Meyers, Menzinski, where did that come in in a Dutch community, and Snow, the firm is now of course Mika, Meyers, Beckett and Jones, represented the City of Grand Rapids and the superintendent of the Grand Rapids Police Department.

The case was tried as a bench trial. Wendell, thinking back, describes this trial as three solid weeks of non-stop insults to the police chief, the then safety commission, and the city commission. And in the end, Judge Fox found racial and invidious discrimination and a denial of due process, and he ordered the police chief and the city commission to approve the transfer of this liquor license. Wendell appealed. And in 1966, the United States Court of Appeals reversed Judge Fox and

remanded with instructions to Judge Fox to vacate his order that the police chief and city commission, Wendell's clients, approve the transfer and to vacate his setting aside the denial of the transfer. And reading both the District Court opinion and then the Court of Appeals' opinion very much seems like you are reading about two entirely different cases. The Court of Appeals' opinion includes an exhaustive analysis of each of Judge Fox's factual findings, in what was a 53-page opinion by Judge Fox, concluding that virtually all of them were without substantial evidentiary support, and thus clearly erroneous.

Now, Wendell and his clients were clearly and completely vindicated. That had to be personally and professionally satisfying to him, and he took particular pride in the Court of Appeals' observations that all of the accused were reputable citizens of Grand Rapids and that there was no discernible basis for the enormous immorality and malfeasance that was attributed to the city by the District Court, as Wendell clearly believed.

One of the aspects of this trial that neither the District Court nor the Court of Appeals discusses is the procedure that Wendell claims Judge Fox followed when Wendell tried to introduce evidence of the reasons for this denial by the city. Judge Fox ordered that these reasons be made part of a separate record because he found they hadn't been properly given to the applicant. Wendell described to Mr. Olson how his witnesses were required to testify in chambers, without a court reporter. When he demanded that a court reporter be present, Judge Fox refused. So, according to Wendell, he responded, "All right. Then we are going to go very slowly, because I'm going to write down every question that I ask or you ask, and I'm going to write down every answer." Apparently that didn't go over well with Judge Fox. Go figure. The opinions also don't address, for obvious reasons, Wendell's claim that after the case was over, Judge Fox made clear that he was not welcome to return to Grand Rapids. So when he did arrive back in Grand Rapids eight years later as Judge Fox's new colleague, it's not hard to imagine that this was not a welcome reunion of old friends.

At least two other Court of Appeals decisions are noteworthy. In a case called *United States vs. Marino*, four defendants were convicted of smuggling cocaine to Grand Rapids in hollowed out furniture in the late 1970s. Pretty clever, I think, inasmuch as Grand Rapids

is known as the furniture city. One issue was the admissibility of guns that were found in a suitcase in the trunk of a defendant's car. He argued they were irrelevant because he wasn't charged with a gun offense. Wendell disagreed. He admitted the evidence, and he was affirmed in one of the first cases that recognizes guns as tools of the drug trade which, of course, is a proposition that we routinely accept today.

Another issue was the admissibility of tickets that had the defendant's name on it and other documents that were used to prove that he had traveled in interstate commerce, which is how it got in federal court. The defendant argued that the contents of the documents were hearsay. Wendell admitted them. Again affirmed on appeal on the basis that possession of a written statement evidenced the adoption of its contents. A hearsay proposition that's come to be known as adoptive admissions.

And in another case a year later, before the sentencing guidelines, Wendell set aside a conspiracy verdict that involved clearly a drug kingpin. But still, when it came time to sentence him, he gave him ten years for distribution of only one gram of cocaine. He did this by relying upon the larger drug transactions that had been involved in the conspiracy. And when you think about it, that's really now the precursor of today's use of relevant conduct in the guidelines.

So in spite of what Judge Fox might have thought about Wendell, these cases show that he definitely left his mark, a salutary one I would submit, in our Sixth Circuit jurisprudence.

But the two best Wendell stories that I've heard don't involve the Court of Appeals at all, but I still think they are worth repeating.

In the first, he was the U.S. Attorney, not a judge. He was prosecuting a person accused of robbing a bank in McBain, which is a small town southeast of Cadillac. Wendell describes this as his first case with Hal Sawyer, who at the time was a legendary trial attorney in Grand Rapids, later of course became a Congressman, and Hal had apparently decided this was going to be his first try at a criminal case. And as you might have heard in the story, Sawyer had a bank teller counter built in the courtroom. Wendell heard about that, and he assumed that Hal's plan was to show that the bank president's testimony was that the robber got in the back of the

bank by placing one hand on the counter and then jumping over it, and that simply wasn't possible. So after figuring this out, Wendell explains to Mr. Olson that he spent the entire weekend in the courtroom practicing jumping over that counter. We all heard that story. But what I didn't know was that Wendell showed off this newly acquired skill during the direct part of the case. I would have assumed it was probably during the rebuttal. He called the bank president as a witness, he asked him to describe how the robber got to the inner part of the bank. Wendell says the president described, as he expected, the robber put his hand on the counter and he vaulted over it, which Wendell says was really to the great amusement then of everybody in the courtroom.

After the laughter died down, Wendell said, "You mean like this?" Put his hand on the counter, went flying over the counter. And then just being Wendell, just to prove it wasn't a fluke, he did it again. That case clearly destroyed Hal's defense before he even had a chance to ask a question, and I would say that is effective advocacy.

The last case I'll mention is a great story many of us have also heard involved a drug dealer named Tim Dick. Today many drug cases are actually transferred from state court to federal court because the federal sentences usually are longer. But at that time, the federal sentence was actually shorter than the state sentence. The federal sentence could be up to 15 years, but the state sentence at the time could be up to life. Wendell thought this kid, as he describes him to Mr. Olson, had a real possibility, so he somehow – he doesn't explain this – he somehow maneuvered for him to plead to the federal charge, and then he gave him a much shorter sentence than one would have expected. The name this defendant goes by now, Tim Allen. Yes, yes, that's true, think Tool Time, think the Pure Michigan campaign, it's that Tim Allen.

Wendell confirmed the story to Mr. Olson, and he explained that he was proud of what he did because it was the right decision to make sure that Allen was given another chance. And to me, this personifies Wendell and his strong sense of right and wrong.

And lastly, Wendell loved sitting in Marquette, as Judge Weber will undoubtedly describe. One of my favorite Wendell stories, that he might not even know about actually, involves his penchant for beginning

a sentence by saying, "You are a fine looking young fellow." That sounds pretty good, right. But the deputies in the U.P. soon realized this was very bad news for that defendant. In Marquette, somewhat unlike this courtroom, if someone sits below the bench with their back to the bench and facing towards the back of the courtroom, you literally cannot see that person down in the well of the courtroom, and so that's where the deputies sometimes sit. One of the more irreverent deputies, when hearing those words and knowing what was soon about to become, would then loosen his coat and raise his necktie like a noose. Think about this, nobody could laugh, of course, because it would look like they were laughing at Judge Miles, who was speaking, and I can only imagine what the defendant must have been thinking while this was occurring. That deputy has now retired. I assume any statute of limitations has run.

All of the judges who sat with Wendell on the Court of Appeals that I've spoken with loved to sit with him and appreciated his service to the Court of Appeals. For Wendell's part, Lisa Ray, one of his career clerks, says that Wendell confided to her that Cincinnati was a nice place to visit, but he wouldn't want to live there. And that's just what I think one would expect from someone who was a true trial attorney and true trial judge at heart.

We all greatly admired and respected Judge Miles as a member of what Tom Brokaw described as the "Greatest Generation." Wendell clearly embodied the qualities that defined that era.

It's that strength of character, his sense of fairness, and his humility in the midst of great achievement for which we remember him and honor him today.

THE COURT: It's now my pleasure to recognize the former Chief Judge of the United States District Court for the Western District of Michigan, my colleague, the Honorable Robert Holmes Bell.

JUDGE BELL: Thank you.

In December of 1985, I remember vividly returning from a hard day as a circuit judge and opening the Grand Rapids - the Lansing State Journal and here was an announcement of Judge Miles' intention to take senior status. A series of events occurred, some of them

kind of painful and long and, many months thereafter, he swore me in as his replacement.

Now, if you went to his office, you would find the office filled with pictures, and those pictures were a gallery of his life's experiences. They triggered the stories he would tell. If you went there and said who is that person right there? You then learned all about this person. In a picture of him swearing me into office is one of those pictures that I recall seeing recently. Now I blew it up for a specific purpose, but don't look at me in this, and my frightened children, that's not why it's here. There is somebody in this picture who never aged. Look at that. Look at that. That's incredible. He looked like that two months ago. I found that amazing. As you can see, even in 1987, we could always find a way to see his white hair in a crowd.

At that time the active judges were Judges Hillman, Gibson, Enslin, and then I joined them. They had been appointed by Jimmy Carter, and since I had been appointed by Ronald Reagan, and he had been appointed by Richard Nixon, we had kind of a bond over republican politics. Now for him, politics was people, not necessarily organizations. And so he had a reservoir of stories of Dwight Eisenhower and of Richard Nixon, and of course, his good friend Jerry Ford. Some of his stories I've never seen in a biography of Jerry Ford, like trying to get Jerry Ford appointed a probate judge in Kent County. I'd never heard that one, but it was interesting. We also had a couple other things in common. We had both been circuit judges before our appointment to the federal bench, and we found that that reservoir of experiences as a circuit judge was helpful.

Wendell was named after Oliver Wendell Holmes, and as you can tell from my name, my mother's maiden name was Holmes and her family came from back east originally as did Oliver Wendell Holmes, so he and I were fairly convinced that Vermont and Massachusetts didn't have that many people and I must be related to what he called the best justice that ever was. I never debated him on that.

Under Judge Miles' leadership, the Court matured and grew. The number of district judges increased from two to four; the number of magistrate judges increased from one to three. Many of the matters that we take for granted as standard operating procedures in this court

were, during his time as chief judge, implemented, and I call them monumental changes. Let me just talk about two of them just briefly. One of them was the adoption of court rules. Before that, there were no local court rules. And we just today in a judge's meeting amended a court rule. These court rules allow a particular district to tailor the requirements of lawyers and judges to a particular environment, all new, nothing before that in this court. And then, an even more monumental change, some of which Judge McKeague has alluded to, was the blind draw system for the selection of civil and criminal cases. We take it for granted, but before that—we won't go there.

During this time also, the magistrate judges took on new responsibility, actively assisting the district judges in pretrial and discovery matters in civil cases, in addition to the traditional roles, which were expanded in criminal cases, for taking pleas, for issuing warrants, setting bond, arraignment, and taking pleas in criminal cases.

When his time as chief judge ended, the Court was an entirely different entity than when he arrived, due much to his wise and careful stewardship.

Taking senior status in 1986 did not mean that Judge Miles stopped working, far from it. Although we saw little of him during those first years he served as senior judge, it wasn't because he was off playing golf or tennis. He did some of that, but rather because he

was all over the country sitting by designation; Corpus Christi; Houston, Texas; Tampa and Fort Meyers, Florida; Las Vegas, and even the Virgin Islands. Now as I give you this geography, something comes to your mind, this is all in the southern part.

One of his favorite cases that he told me about—it took a long time for him to tell it because it was such a complicated matter—was a collision occurring in the Houston shipping channel. Now, can you imagine those judges in the Southern District of Texas say here he comes, let's give that case to him, and Judge Miles took it. And it was a huge case. Took untold hours to even unwind the facts of what occurred, let alone the maritime law issues which, as you know, can be very complicated. But he was affirmed by the Eleventh Circuit I'm informed at a later time.

He was a great story teller, and he loved to regale listeners with details of the most unusual cases as well as the historical stories from his war years, and from his time as an U.S. Attorney. And do you know what he thought of the U.S. attorney's job. He said this was the best job I ever had, which is kind of interesting.

Using his strong clear voice, and his large vocabulary in which he didn't—there didn't seem to be any superfluous words. He painted beautiful word picture a gift, no question about it. As time passed by, the makeup of the court changed significantly, but Judge Miles remained the same. He enjoyed the incoming



Beach Scene, Marquette, Michigan

judges, and even an occasional rambunctious judge's meeting, but he wisely counseled us younger judges at these meetings of the historical contexts from which the issues before us arose. It was usually in a story, but if we were watching for it, there was wisdom in it, no question about that.

While Judge Miles told stories about a number of topics, he never said anything about one of the most important assignments and prestigious assignments that he ever received, and that was his appointment by Chief Justice Rehnquist to the Foreign Intelligence Surveillance Court, in Washington, D. C. He was appointed in 1989, and he served until 1996, a full seven year term. And if you know anything about that, that is very top secret, a very select number go in, you have to put your palm print up against the door, it's quite a process. And I have read his collection of news articles about this FISA Court during his tenure wondering if it was anything like the one we are reading about in the New York Times and these others, surprisingly the same tension over government intrusion and security was extant at that time.

Now, I quickly want to say Judge Miles was a pragmatist. He was neither doctrinaire nor philosophically liberal or conservative, but time never ordered him. He arrived at the courthouse anticipating the interplay of lawyers and facts and law, wanting to make sure everything was put before the jury appropriately, and he seemed to relish the drama which a trial produced, and loved witnessing the retelling of the facts in cross examination of those facts, and some of you here can probably attest that during those times, he was completely oblivious to the well-trying case that had caught his attention to whatever time of the day it was or whenever the recesses were supposed to be taken. He thrived on his role as a trial judge, but over time, and this was difficult, he transitioned from courtroom trials and motions to chamber-oriented assignments. And this took place largely at about 2004, 2005, it couldn't have happened at a better time coincidentally, because at that time, Judge McKeague was going to the Court of Appeals, Judge Enslin was having some serious medical problems, and at one point Judge Quist and I were the only ones standing here that were doing the trials, but we had a lot of internal documents that had

to be signed with what I called the magic Article III signature, and a lot of warrants that had to be signed. They were all shuttled into his office when he was there, and he handled an amazing amount of cases on paper. But it took an Article III judge, and it took a careful scrutiny, and he was up to it, he never balked. When we said we've got some matters for you, he never balked. And finally, at full retirement in 2008, we were back up to full strength with the inclusion of our judges who are sitting behind me here.

Yet even after his retirement, all of us still encountered him coming into this building several days a week. Many of you here aided him at this time by securing his noon lunches, providing special goodies for him, helping him walk between the car and the office—we thank you for that. We especially want to pay special attention to Sandy Shank, who is here with us, who was his beloved, beloved, and loyal judicial assistant. She was wonderful. He continued to keep in his chambers collection of his books covering a wide range of topics and eras of history. The shelves offering such diverse titles as *Nixon In The White House*, *Roosevelt's Revolution*, *The Emerging Republican Majority*, that's a 1977 book, and then *The Dark Side of Camelot*, that's a 1969 book. And of course there is *Arthritis and Common Sense - The New Revised Edition*, and then there was a black bound book in there called *Goebbels Diaries*, I never got into that, but I saw it was there, and the list goes on and on. Eclectic, yes; historical, yes; philosophical, yes. I think he had eleven Bibles in there, and one of them said, *Why Do We Need A Bible* and that was an interesting one.

Just this past Christmas, Judge Miles came to our home for dinner with the other judges and spouses perfectly dressed, white hair shining, immaculate. After dinner our court reporter, Kevin Gaugier, and his wonderful band played for us. And in my mind I can still see the three cushions in the sofa, Judge Miles was in the middle cushion, Judge Quist was on the far side and Judge Maloney was on the near side, all sitting together and listening to this music. Guess which person was tapping his foot and doing this. You know, Judge Miles.

What a long and interesting life he led. What an ability to seize the best of each day. We miss him.

CHIEF JUDGE MALONEY: Attorney John Logie, who was a practitioner in the Western District of Michigan for many decades, now retired partner for Warner, Norcross, is our next speaker. Mr. Logie is former mayor of the City of Grand Rapids, former president of the Historical Society of the Western District of Michigan. He and Judge Miles had an intimate shared relationship there in terms of fostering the history of our district, and I'm now pleased to call on Attorney Logie.

MR. LOGIE: Thank you, your Honor.

Good afternoon to all of you, and may it please the Court. I'm very honored to be able to address this august assemblage concerning the life and times of Judge Miles. I want to talk about my most favorite opportunity to appear before him.

Near the end of President Ford's time in the White House, the Department of Commerce developed a jobs program for the entire country, it was sort of a lottery to qualify for federal funding. Congress created a two-tiered measuring stick, one for the larger cities and one smaller pot for smaller ones. Grand Rapids was on the cusp. The benchmark between the two groups, was a score of seven. At our size, we would be at the bottom of the large city list and get no money. So the city realized that it could be near the top of the small group with a score of 6.97, where we had a much better chance to win a piece of the prize. The scoring was to be to two decimal points. Everyone with a score higher than seven would automatically end up in the big city list and got nothing. And when the numbers were published, our score was 7.24. We were at the bottom of the big city list, and got nothing.

At that point in time, my firm, Warner, Norcross and Judd, had an office in Washington, D.C., run by a former partner known by some of the older gentlemen here named Louie Engman, who had left us, taken leave from us in 1971 to join the Nixon administration, and had just resigned as a very young chairman of the Federal Trade Commission, so he headed up our Washington office. There were all of four lawyers there and, with that, and with our presence here in Grand Rapids, Mayor Abe Drasin hired Warner, Norcross, and Judd to sue the United States. I filed the case and sought from Judge Engel a TRO, which he granted. By its terms, the entire national program came to a screeching halt. Shortly

thereafter, Judge Wallace Kent, known by many of us, just a year after being appointed to the Sixth Circuit had a heart attack and died. Judge Engel took his place on that court. So our case went to Judge Miles, the only other judge still hearing cases, and he used to complain bitterly about that when that was so. Meanwhile, the Washington office had been hard at work trying to find out how and why we ended up at the bottom of the big city list. It turned out that the Department of Commerce had a secret scoring table to four decimal places. For those of you civilians in the audience that's, if true, a big big no no. That was enough to push us over into the big city list.

I was advised by the Attorney General's staff that three members, three lawyers of the Attorney General's staff would fly from Washington the day before the hearing and had made their own arrangements. On a cold December snowy day, they flew to Chicago. I still don't understand that. When they got there, they rented a car and struck out for Grand Rapids, in the snow. At three o'clock the next morning they made it to Lansing. I can't make stuff like this up. So nothing for them, they turned around and drove back to Grand Rapids, found their hotel, and barely had time to get cleaned up for court, which commenced at 9:00 a.m. Meanwhile, around the United States, every city attorney whose city commission had submitted an application, big and small, had decided they had better show up in Grand Rapids to watch the action and just to see what the hell was going on here about stopping this whole program. So Judge Miles' courtroom was standing room- sort of like today, only it was a jury of my peers, it was full of lawyers from all over the country sitting here and all around in this particular chambers. I was at this table. And so we had nothing but lawyers and a few reporters to show up to see what was going on. Midway through our arguments, the senior member of the government team, great big tall man, was standing at his table over there making his argument, when he broke down and started to cry. I think it was fatigue but maybe it was my stellar argument. Nonetheless, he was coming apart, and the judge had his face down up here making notes or something, so I stood up in my best theater voice, and I said, "Your Honor, I think we need a recess." And I looked over at my adversary, and Judge Miles looked up saying, "Oh, yes, recess."

Well, when both sides ended their arguments, Judge Miles said he was going to adjourn until later that day and expected to issue an opinion from the bench at that time. At about four o'clock in the afternoon, we got a call to return to the Court to hear the judge's opinion.

Judge Miles quashed the temporary restraining order, but left the case open for trial on the merits. The rest of the country breathed a sigh of relief, and all of those attorneys went home happy.

In his comments, he seemed to indicate that if the plaintiff, City of Grand Rapids, was able to sustain its burden of proof, that might be the basis to get the matter to trial. He was very clear, as he always was on this kind of point, that he was not making any judgment on the ultimate merits of the case. I then met with the city commission in a closed meeting to discuss settlement, as permitted by the Michigan Open Meetings Act, and received authority to open negotiations with the federal government. The city had calculated that if indeed it had ended up at the top of the smaller city list, and 6.97 would have been that, they expected that we could receive as much as \$5.35 million dollars. Fortunately, I didn't have to make the first move. My large adversary, the crying gentleman of a few days earlier, called me up and asked if I had the authority to settle the case, and I said yes. And he asked if I had a number, and I said yes, and answered that we would settle for the amount we calculated would be our share, that is \$5.35 million, and that was our proposed settlement. He said he would call back within 48 hours, and came back the next day to agree to settle at that figure.

Judge Miles was at his best that day in court with the room packed with municipal attorneys from all over America. He loved it. He loved having an audience like this in an active case in his courtroom. But he was very very proper and very very formal, and he always generally when he was on target was that way too. I'm pretty sure that he had an inkling of the direction he was going to go, but his questions to both counsel were designed to help him reach his conclusion without telegraphing the ultimate result. And from my standpoint, I think he brought honor and respect to the Western District Court of the State of Michigan.

And on a personal note, Judge Miles and I discovered years ago a mutual interest in history. Together

with Magistrate Judge Hugh Brenneman and others, we founded the historical society for this court, in the late '90s. The recent 150th anniversary of President Lincoln's appointment of Solomon Withey as our very first west side of Michigan district judge, was something that Judge Miles, we had been talking about this for years, and he always came to our meetings until very late in his life when we would meet. We would meet about four times a year to plan to do things, but I hope some of you in the audience were at that wonderful occasion that David Gass, our current president, quarterbacked into a wonderful, wonderful event.

I think what I admired the most, and actually had the most fun with him, was his love of history here in west Michigan where he grew up, where I grew up, and we could trade war stories. And he was pretty old when we put this show on just a few months ago, but I think in my heart I know that he was there all the way.

CHIEF JUDGE MALONEY: As Judge McKeague referenced earlier, Judge Miles had a love for the upper peninsula, and one of his close friends, the Honorable John R. Weber, retired state circuit judge from Marquette County, is here to share some thoughts about Judge Miles.

JUDGE WEBER: Thank you. Judge Maloney, family members and ladies and gentlemen, I first met Wendell Miles in the early '60s. I was a greenhorn, wet-behind-the-ear lawyer, with my first job in the oil and gas exploration business working for MichCon, and I arrived in Grand Rapids ready to go. The company had just become involved in a high stakes lawsuit involving the condemnation of an oil field over in St. Clair County, and they hired Wendell Miles as the chief trial lawyer, and one of my jobs was to go over and meet this fellow and see if I could help him, make sure he had any company resources that he needed. So over I went to meet Wendell Miles. And I could see right away this was no ordinary lawyer. And I was taking notes. And I had a rare opportunity to follow him around through that hefty piece of litigation, get to know him, and he took me under his wing. He encouraged me, and it was a wonderful time. His infectious love of life just permeated everyone around him as you all know.

It turns out that Wendell was, I think, the preeminent trial lawyer in western Michigan at the time. Some would argue Hal Sawyer. The two of them jostled like titans in a high stakes litigation during the '60s. Why was he such a success? Well, a lot of reasons that we all know, but he was a preparation freak, and he believed that to be a successful trial lawyer, you needed to go out in the field, take the measure of a witness face-to-face, don't rely on statements and investigations by others. That's what he did, and I followed him around through some of that. I think that was a big reason he was such a success as a trial lawyer. Here's his advice to me, and I'm sure to many of the clerks and other young lawyers on how to be a successful trial lawyer; earn a reputation for thoroughness and honesty, admit possible weaknesses in your case, and then argue vigorously you should win, and avoid being personal. If you do that, Wendell Miles told me, judges and lawyers will like you, and lawyers will accept you as mediator, arbitrator.

He knew I was a lover of the outdoors and the north, and we used to talk about it. And he had fallen in love with Marquette as U.S. Attorney, and he would enthrall me with stories about this beautiful little city on the shore of Lake Superior surrounded by near mountains, with wilderness at the doorstep, and that piqued my interest. The only problem he said, Jack, is you probably will starve to death. But I wound up there eventually in Marquette in the middle of the '60s. As soon as he found out I wasn't starving, in fact, I was doing all right, he never ceased to miss an opportunity to remind me of his role in my getting there.

Another funny thing about him—he had a filing system, which I've never seen anything like it before, and it did not involve filing cabinets. In the Bell River Mills lawsuit that I was relating with him, he had an office stacked with files all around the perimeter of the office, piles of files, and he knew where everything was, and God help anybody that disturbed it. I can't recommend that as a filing system, but it worked for him.

Well, in the middle of the '60s, I got transferred back to downtown Detroit by the company that I worked for, and it didn't take very long before I was in Marquette practicing law. And I lost touch with him a little bit. I knew, however, that he had been appointed to the Ottawa Circuit Court, and I knew that would be a wonderful thing, a sensitive thing for him because

his dad, the Honorable Fred T. Miles, was an Ottawa County Circuit judge, and I believe he had the same seat. The county jurisdiction may have changed a little bit, but I knew that would be special for him.

And then in 1974, I ran into him in Metro Airport, and he told me he was on his way to Washington, D.C., to be sworn in as a federal judge. And I knew right away that he would be tending to the judicial needs of the Northern Division as much as he could, and that's what happened.

He was a lawyer's judge. He understood lawyers. He understood what they needed, and how to control them. He was a docket master. He believed that judges should have an active role in resolving these things, not leave it to the lawyers. I remember trying to preserve a vacation in the face of a trial date, without success. I happened to be the federal magistrate at the time, and I transcended quite a political realm because Judge Fox asked me to do it, Judge Miles reappointed me, and then I was appointed to the circuit court of Marquette by John Engler. So I was acceptable to everyone, I guess. Anyway, one of the jobs that I had as the federal magistrate was to deal with the anti-war protesters at K. I. Sawyer air force base, and the long range antenna operation in the U. P. I had to deal with them and fashion a sentence. These were protesters—they were good people trying to make a point, they wanted to go to jail, and I asked him, how do you handle this? And here is his advice, which I think is vintage Wendell Miles: a good stiff jail sentence, a long period of unsupervised probation, a suspension of the stiff jail sentence, with the understanding that if they do it again they automatically serve that sentence, and then they have to deal with the new case. It worked. I found out that protesters who want to go to jail want to go to jail for a weekend; they don't want to go to jail for the summer. So it was a wonderful piece of advice. I remember being before him in Marquette. I was defending a lawyer charged with malpractice, and he wanted a summary from each side, and I gave him mine, and he looked at me and he said, "It sounds like your defense is not as bad as they say." Pretty acute. That case settled.

I remember another story. He got a big laugh out of this, and you may—some of you may have heard this. I, as a circuit judge, I had an attempted murder trial arising out of the Marquette prison, and it involved a

racist group, and there was a feeling that there wasn't adequate security in the Marquette Circuit Court. So I, through Judge Greeley and Judge Bell, got the use of the federal court to conduct this trial. And so I was asked to come over with the bailiff, my bailiff, who was an ex-cy detective, about four feet wide, big guy, and meet with the marshal and make sure that security would be properly handled. And we were up at the bench and one of the marshals said, "Now, if anything happens, Judge, just get right under there, it's lined in kevlar." And there was a period of silence, and my bailiff said, "And, Judge, when you get in, get way over so you don't get hurt when I come in." Miles got a big bang out of that one.

The sweep of Wendell Miles' career is amazing, as others have said: military captain, U.S. Attorney, top lawyer, circuit judge, federal judge to name a few. What a life. What an example he gave to all of us. The U. P. owes him a debt of gratitude for his service and his love of the area while he performed that service, which was evident to all. And I owe him a debt of gratitude for his kindness to me and his encouragement.

I'll end my talk here with some lines from the poet Ernest Dowson. "They are not long the days of wine and roses. Out of a misty dream our path emerges for a while and then closes."

CHIEF JUDGE MALONEY: We have three lawyers who wish to share some stories about Judge Miles: Assistant United States Attorney Don Davis, Attorney Terry Dillon, and Phil Henderson, who is presently a law clerk to Judge Quist, but served as a law clerk also for Judge Miles.

MR. HENDERSON: This one's for Judge Quist. Now, you know where I got my organizational skills. I know where everything is on my desk. After quite a bit of discussion, we decided to call this portion of the ceremony stories before court. As some of you may know, perhaps from personal experience, Judge Miles had a bit of a reputation for maybe taking extended court breaks, once in a while a 5 minute break might turn into, say, half an hour. If you were an attorney waiting for court to resume, you might have thought well, he's probably got a TRO or waiting for a law clerk to finish some important research. Well, we on the inside know the

real story. Judge Miles had to finish his stories. After all, federal judges must tell their stories. On that note, Terry and Don each have a story to share, and then I'm going to share some law clerk remembrances.

MR. DILLON: My name is Terry Dillon, and there's a few things that haven't been talked about in terms of Judge Miles. There's been magnificent descriptions of how he has presided as a judge in Ottawa County and in the Western District of Michigan, for the FISA Court, but there's one court that has not been talked about, and I understand why. It's the tennis court. The Judge did not fare well on the tennis court. And from 1974 to 1985, I played doubles with the Judge in the morning one or two days a week with people from the probation office, law clerks, and other people. And we played some tennis. The Judge took some of us under his wing. He made us better lawyers. He was our mentor. We had our own private Hillman Advocacy course before it ever was formal. But most of the time, instead of playing tennis, the Judge told stories. He regaled us with stories.

And Judge McKeague, you stole one of my stories, so I'm not going to tell that, but the Judge talked a lot about the '50s and '60s. He talked about the fact- he was very proud of the fact that he was the finest trial lawyer in Grand Rapids in the '50s and '60s. He would say, "Terry, don't limit it to Grand Rapids." And he would go on and on about them, and they were just great stories. And as Judge McKeague said, and others said, the two men in town to see were Hal Sawyer, the former Congressman, and Judge Miles. They were the titans of the courtroom. According to Judge Miles, they tried seven trials against each other. Judge Miles was U.S. Attorney in the '50s, Hal Sawyer, as Judge McKeague said, was trying to get his teeth into the criminal defense bar. And then in the '60s, when Judge Miles was in private practice, he tried condemnation cases against Hal Sawyer. And there's seven great trials, seven trials with probably twenty great stories in each one of them, and I could stand here for an hour and a half and tell you those stories because I've heard them, I've heard them, and I've heard them.

Now the law clerks are going to tell you some stories that they observed in terms of Judge Miles, where they were there and they saw him do certain things. Most

of the stories that I know about Judge Miles are not what I saw, but what he told me, so they haven't been verified to the same extent as the law clerk stories. But one of the stories he told me about was he had two bank robbery trials against Hal Sawyer, and in the- I don't know if it was the one you had, Judge McKeague, or not, but Hal Sawyer always used a long pointer as his prop in the courtroom. And when he was cross examining witnesses, he would be pounding that pointer against his hand. And finally Judge Miles—it was Judge Kent was the judge—filed a motion to prohibit Hal Sawyer from using his pointer in the courtroom. He won. Judge Kent said, "You are going to quit advancing upon those witnesses with a three foot club." And then Hal Sawyer said, "But Wendy, he uses his glasses all the time. That's his prop. So if I can't use my pointer, he can't use his glasses." So anyway, that was one of the stories that I had with regards to Hal Sawyer and Wendell Miles.

But the best thing was when he had to summarize the seven trials, he always said, "You know, I tried seven cases against Hal Sawyer. I won all seven. But I got to give Hal his credit, two of them I had the facts." Seriously true story. And he said this is back in the days when, you know, Hal Sawyer would bring all of Warner, Norcross to watch his trials, all ten lawyers.

Final thing is and—this is one where the Judge was on the bench and U.S. Attorney's office was prosecuting the case—shows Judge Miles when his temper got the best of him and when he could recover from his temper.

Trial is going on, U.S. Attorney puts on an FBI agent. The FBI agent, typical FBI agent says, "Can I stand down? Can I approach the jury?" They have an easel, they are pointing out diagrams to the jury, so the jury really starts relating to the FBI agent who is describing things in vivid detail, walking back and forth in front of the jury. And defense puts on their case. Defendant takes the stand and the defendant starts answering the questions of his attorney. But the defendant is smarter than the Judge and smarter than his attorney, so he thinks. He says to his counsel, "I would like to stand down and approach the jury just like that FBI agent did." Lawyer says, "No, no, just wait a second. I'll ask the questions and you answer." He said, "No, I want to stand down, and I want to talk to the jury." Judge Miles says, "Listen to your lawyer." The defendant says, "No,

Judge, you're wrong." To which smoke starts coming out of Judge Miles' ears. He says, "Sit down, shut up, and listen to your lawyer." And then something snapped in the Judge's head. He swivels to the jury and says, "This defendant is presumed innocent." True story, true story. To which- to which, and I'm done now, to which the issue in the Sixth Circuit was obviously the judge's demeanor and the comment about the defendant. I think Don Davis handled the thing on appeal, and the issue was the Sixth Circuit says, "Well, wasn't the Judge out of line?" "Your Honor, he gave a curative instruction. He said the defendant was presumed innocent." "Well, didn't he raise his voice?" "Yes, but he wanted to make sure the jurors in the back row heard what he said." That's all.

MR. DAVIS: Terry, they are all true stories. Before I start, you've heard a lot of references to Judge Miles' career. If you're interested in following up on more detail, and if you did not attend the memorial service at Porter Hills, on the Court's website is the eulogy that was written and delivered by Judge Brenneman, and I really commend it to you if you're reading it. It explores a lot of these issues in depth. There has been a common theme throughout this proceeding today, and that is the stories. Phil mentioned the secret that everyone who practiced before Judge Miles knew and that was the breaks were to finish the story or to start a new story. So when I was asked to come up with one story, I thought this is easy, but unlike Judge McKeague and the other judges who spoke, and John, I had to submit my stories to the story- or to the propriety review of stories committee here, and instead of following my Marine Corps training and just asking for forgiveness instead of permission, I did submit my stories. The first story, I thought it was great. And I think it was Terry said, "You can't tell that story. That person is probably going to be here." And they are. That's okay. Lots of stories. We will go to plan B. And Chip says to this one, he rolls his eyes and says, "I can't believe it, Davis, you have no sense at all. That person is going to be here for sure." And they are. So I'm just going to have to leave you to your imagination as to what those stories were. So I ended up coming up instead of telling a story, I will instead tell the story about the stories.

I first met Judge Miles in June of 1974. He had a month's seniority on me. He sat in this courtroom, and

when I was in court in that first summer, and I think Judge Miles would say that wasn't enough, you could look across the window and see the other courtroom was dark. I clerked for Judge Fox. And it was pretty dark that first summer, we spent a lot of the time working hard up at Whitehall. Apparently Judge Miles didn't see it that way, so and I say this because maybe it will help you understand that my relationship with Judge Miles started frostily. But over the years, I think it warmed.

Flash forward 5 years. Some of his friends took him out for dinner on his 94th birthday, and you can just imagine what that was like hearing the stories. The theme is so consistent, Judge Miles just loved telling stories. And he is telling one story after another, and they were just as enjoyable the tenth time you hear them as the first time you hear them. And he gets to a particular story, and it is a Judge Fox story, and when he finishes I said, "Judge, that story, it's absolutely true." And you could see that additional sparkle in his eyes, and additional big smile, and he thinks he is going to get the inside scoop from Judge Fox's chambers, but that wasn't the answer. The answer was, "Judge, I've heard that story for 35 years, you've always told it exactly the same way, it must be true." Judge Miles, thank you. We are all better for having known you.

MR. HENDERSON: During his 34 years on the federal bench, Judge Miles had 7 law clerks, three secretaries, and three court reporters, at least by my count. Judge Miles valued legal ability in hiring his clerks, but he was often swayed by some common experience or connection that he had with the candidate. Also the clerkship in Judge Miles' chambers often went well beyond the courthouse, creating some very fond memories. Here are a few.

Janet Parker, was Judge Miles' Michigan marching band clerk. She remembers exploring Pictured Rocks with Judge Miles and attending a fish fry with fresh caught fish from Lake Superior in the back of Captain Bruce's Auto Garage. She, like many other clerks, also remembers trips to Pat's bar.

Julie Clough, his Hope College law clerk. That's one of his alma maters. She remembers dancing the polka with Judge Miles at the wedding of a clerk's office employee's daughter in Marquette. She also remembers

cross-country skiing with Judge Miles at the McCormick track, that's in the U.P.

Charles Binder, Judge Miles first two-year law clerk, recalls the day he was hard at work in Marquette and Judge Miles came in and said- or ordered him, he said, "Stop working. You are going to go down the street and visit the Marquette County courthouse where Anatomy of a Murder was filmed." He felt a little guilty about it, but he went there, and as he sat in the courthouse taking in the history and the beauty of the building, he realized why Judge Miles told him, insisted that he go. And if you haven't been there, you should, it's pretty awesome.

Ralph Reisinger, who Judge Miles found interesting because of his German background. He clerked for Judge Miles during his traveling years when Judge Miles sat by designation in other districts. Ralph remembers a shortcut that Judge Miles showed him at the courthouse in Corpus Christi, Texas. They were rescued a few minutes later from the fire escape, that is.

And then there is Chip Chamberlain. Chip claims Judge Miles hired him because he wanted a law clerk with whom he could see eye to eye. Literally. Chip remembers, but perhaps would just as soon forget, the time he and Judge Miles almost became permanent residents of the upper peninsula after they had got lost for several hours while out on a hike. Later, after Chip left his clerkship and became a U.S. Attorney, he received a letter from Judge Miles. He looked at it and thought it must be very important. Perhaps one of the cases I worked on got affirmed by the Sixth Circuit or maybe Judge Miles wants me to serve on an important committee. He opened the envelope and immediately realized that he had vastly underestimated the importance of this one-line note, "Chip, when are you putting the basketball pool together?"

Jim Curtis clerked for Judge Miles from 1976 to 1978. Judge Miles had already hired a law clerk to be a husband for his daughter, so Jim needed to take another angle to get the job. His tennis skills. You see, the problem was there were U.S. attorneys here in town, and most of the attorneys in Marquette, who didn't quite get that when you played tennis with a federal judge, you shouldn't try to beat him. So it was that Jim was hired to be Judge Miles' doubles partner. The first time on the court, Judge Miles laid out his strategy for Jim. Judge Miles stood back of the baseline

in the right-hand corner, Jim was up front. He had his racquet, he pointed to the front part of the court, "If the ball goes there, you get it." Then he pointed to the left side of the court, "If the ball goes there, you get it." Then he pointed to the area where his back hand would be, "If the ball goes there, you get it." And finally, the forehand stroke, "If the ball goes there, I'll get it, but back me up."

Lisa Ray, Judge Miles long-time career clerk who was with him to the close of his judging days, has the following comment: She says, "The last words that I remember Judge Miles saying to me had nothing to do with the law, instead they were spoken from a hospital bed, 'You're a peach of a girl.'" You can just hear Judge Miles saying that. "My connection with him," she says, "began as a professional one, but ended as a personal one. I value them more than I can say."

I'll close with my own memory. I think Judge Miles liked me- liked the fact that I went to Alma College, it was Hope's rival in football. Although recently somebody reminded me perhaps that he liked the fact that my father was a Presbyterian minister, so perhaps he hired me to make amends with his mother who wanted him to be a Methodist minister. I clerked for Judge Miles during his traveling period, and I remember the five weeks we spent in Houston. It was at the beginning of my clerkship. And we visited one of his former clerks, Gary Kuiper, while we were down there. You probably remember that. During that time, Judge Miles shared his love of sports with me, as we went to three Houston Oilers game and drove to College Station, Texas, to see a Texas A & M game with the chief judge. He also shared his love of music with me at the Houston symphony as they played a program called Lucky Strikes Hit Parade. I think I saw a tear in his eye as he listened to the music he had loved during his time in the army in World War II.

More recently in the last several years, Ralph Reisinger and I made it a point to get together with Judge Miles two or three times during the year. Toward the

end of each lunch, Judge Miles would look at us and say, "I love you guys." We would respond, "We love you, Judge." At those moments, he could have been talking to any of his staff, because he loved them all. And I'm pretty sure that you loved him too. Thank you

CHIEF JUDGE MALONEY: Everyone is invited to a reception on the second floor in the jury assembly room. The family invites you to go into Judge Miles' office, which is also on the second floor. There are book on the bookcases and memorabilia in the office, if there is something that interests you, the family invites you to take whatever you would like. I want to thank all of you for attending. You are part of a magnificent tribute to Judge Miles. To all our speakers who shared their remembrances of Judges Miles this afternoon, thank you very much.

The event here today could not have been the success it is without the help of many who served on committees to put this event together. First, a committee chaired by Judge Brenneman, Phil Henderson, Julie Clough, Don Daniels, and Chip Chamberlain, and the ceremonial committee chaired by Judge Carmody, Kathy Wright, Kim Briggs, Rick Wolters, Faith Webb, and Ashley Mankin, thank you all very very much.

Like Don Davis, I invite you to go to the court's website and listen to the eulogy given by Judge Brenneman at Judge Miles' funeral. It is indeed a moving tribute to our colleague.

The transcript of this ceremony, along with Judge Brenneman's eulogy, will be forwarded to the publisher of Fed. Supp., and we hope that they will publish it in the future.

We will miss our colleague. Today's ceremony highlighted Wendell Miles' devotion to his family, his love of and service to the United States of America, his steadfast dedication to the cause of justice, and the rule of law in the Western District of Michigan. May he rest in peace.

Letters to the Editor

From time to time, readers of *The Stereoscope* will send to the Journal Editor letters or email messages commenting on articles published in the Journal. Within the last few months, we have received a number of such communications and publish them herein. We hope that you enjoy them as much as we did.

—Patrick E. Mears, Journal Editor



Letters Re: Honorable Albert J. Engel Addressed to the Editor

Dear Pat,

Thanks so much for all the hard work and kind perspective on my Dad's piece in the *Journal*. T'was much enjoyed by yours truly, my Mother, and the rest of the family. Our thanks to Dave Gass, as well.

Regards,
Joe Engel
Smith, Haughey, Rice & Roegge



Dear Pat:

Thanks much for the current *Stereoscope*. I had some interactions with Judge Engel while serving in Cincinnati. He was a good judge and had a good outlook on the law.

Best,
Honorable Avern Cohn

150th Anniversary DVDs and Challenge Coins Still Available

The professionally produced DVD, *Thank God for Michigan*, specially prepared for the 150th Anniversary of the United States District Court for the Western District of Michigan is still available for purchase at \$30 apiece. Please contact David Gass at gassd@millerjohnson.com to order.

The Challenge Coins commemorating the Anniversary celebration are also available at the cost of \$15 apiece. To order coins, please contact Don Davis at dadavislaw@gmail.com.



The Historical Society for the United States District Court for the Western District of Michigan Membership Application

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Please let us know of your interests and skills and whether you would be willing to share those with the Historical Society. Help us by completing this short questionnaire.

Name: _____

Firm name, Employer name, or Organization represented: _____

Special interests or experience in the field of history, local history or legal history: _____

Suggestions for programs, projects, or activities for the Historical Society: _____

Please check all the following that interest you:

- Writing articles for the Historical Society newsletter
- Layout and/or production of a newsletter
- Annual Meeting (planning and production)
- Oral History Project
- Research in specific legal history areas
- Fund development
- Membership Drive
- Archival Collection and Preservation
- Legal Issues relating to archival and oral history collections (copyright, ownership, etc.)
- Exhibit Preparation
- Small Group Presentations to Adults
- Small Group Presentations in Schools
- Other (Please describe) _____

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