The Fifth Circuit Four:

The Unheralded Judges Who Helped to Break Legal Barriers in the Deep South

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Paper

Length: 2,489
“For thus saith the Lord God, how much more when I send my four sore judgments upon Jerusalem, the sword, and the famine, and the noisome beast, and the pestilence, to cut off from it man and beast.”¹

In the Bible, the Four Horsemen of the Apocalypse were said to usher in the end of the world. That is why, in 1964, Judge Ben Cameron gave four of his fellow judges on the United States Court of Appeals for the Fifth Circuit the derisive nickname “the Fifth Circuit Four” – because they were ending the segregationist world of the Deep South.²

The conventional view of the civil rights struggle is that the Southern white power structure consistently opposed integration. While largely true, one of the most powerful institutions in the South, the Fifth Circuit, helped to break civil rights barriers by enforcing the Supreme Court’s decision in *Brown v. Board of Education*,³ something that other Southern courts were reluctant to do. Despite personal and professional backlash, Judges John Minor Wisdom, Elbert Tuttle, Richard Rives, and John Brown played a significant but often overlooked role in integrating the South.⁴

**Background on the Fifth Circuit**

The federal court system, in which judges are appointed for life,⁵ consists of three levels.⁶ At the bottom are the district courts, where cases are originally heard by a single trial judge. At

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¹ Ezekiel 14:21 (King James Version).
⁵ *United States Constitution*. Art. III, Sec I.
the top is the Supreme Court. However, since Supreme Court review is discretionary, it generally takes few cases. Thus, there is a crucial set of appellate courts in the middle, called the “circuit courts,” where appeals from the district level are heard by randomly-selected panels of three judges. During the civil rights era, there were eleven circuits, each covering a unique geographical jurisdiction. The Fifth Circuit stretched from Texas to Florida – most of the Deep South.

The Fifth Circuit Four were all members of the nine-judge Fifth Circuit during this era. Each had unique life experiences that lead them to take progressive racial stances.

John Minor Wisdom was born into southern aristocracy as the son of a New Orleans cotton broker. Often called the “scholar” of the Fifth Circuit, Wisdom received his appointment from President Eisenhower for boldly supporting Eisenhower in the 1952 Republican National Convention, an almost unthinkable act in the heavily Democratic South.

The “leader” of the Fifth Circuit, Elbert Tuttle was also an Eisenhower appointee and a staunch Republican, believing that the Southern Democratic party was kept small to maintain a hold on power. Having grown up in Hawaii, Tuttle was used to working and socializing with minorities, a unique perspective in the South.

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7 Ibid.
10 Ibid Pg. 12
The only Democrat of the Four and a devout Baptist, Alabamian Richard Rives impressively passed the bar exam at age nineteen. Rives’ racial attitudes were largely influenced by his son, who served in the Pacific Theatre of World War II and told his father of the valiance with which African American soldiers fought. When Rives’ son died in a car accident, Rives decided to accept any federal judicial appointment so he could honor his son’s legacy and help desegregate the South.

The final Eisenhower appointee of the Four, John Brown, was born in Nebraska and attended law school in Michigan. Brown did not grow up around overt racism, as there was only one African American in his hometown. When Brown moved to Houston to specialize in admiralty law, he was disgusted when trial spectators would gasp when he formally addressed African American witnesses as “mister.” Throughout Brown’s judicial career, he went out of his way to hire Jewish law clerks, as many Jews were then barred from the legal profession.

However, the Fifth Circuit was not uniformly racially progressive. Judge Ben Cameron, a Mississippi native, was the Circuit’s staunchest defender of segregation. Cameron justified his actions based on his belief that integration did not reflect the will of white Southerners. Until his death in 1964, Cameron lead the resistance against the Four. Indeed, he gave them their nickname, a reference to the Four Horsemen of the Apocalypse.

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17 Ibid. Pg. 9.
The Fifth Circuit’s Role in Enforcing Brown in the Deep South

Beginning in part with Plessy v. Ferguson, the 1896 Supreme Court decision that established the infamous “separate but equal” doctrine, 23 African Americans were placed in a precarious legal situation. Although the Fourteenth Amendment guaranteed them equal status as citizens, the law still deprived African Americans of basic freedoms, such as the right to vote and attend many schools. However, in 1954, the Supreme Court ended semi-legalized segregation by overturning Plessy in Brown v. Board of Education. 24

The main difficulty with Brown was that it did not establish a plan for desegregation, instead leaving it up to the lower courts. Furthermore, the Supreme Court heard very few civil rights cases in the fifteen years after Brown. 25 This allowed room for significant resistance from some segregationist judges. One famous example is Briggs v. Elliot, from the Fourth Circuit (which encompassed the Virginias and the Carolinas). In 1955, Harry Briggs sued his school district for not providing adequate bus transportation to majority-black schools. Even though this was blatantly unequal, Briggs held that the district acted legally, taking a very minimalistic view of Brown when it concluded “[t]he Constitution… does not require integration. It merely forbids discrimination.” 26

The Fifth Circuit Four had an opposite view of what Brown ordered. Rather than merely eliminating de jure, or legal, segregation, the Four also helped to break de facto, or informal, barriers to African Americans. This distinct approach was first epitomized by the Fifth Circuit in the small town of Mansfield, Texas. 27

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Although African Americans represented a sizeable portion of Mansfield’s population, the segregated Mansfield Independent School District did not offer an African American high school.\textsuperscript{28} In a knee-jerk reaction after \textit{Brown}, Mansfield ISD purchased a bus to take African-American students to a segregated high school in Fort Worth.\textsuperscript{29} However, the forty-mile round trip proved arduous for the students, so on October 15, 1956, three African American parents filed suit in federal court.\textsuperscript{30}

The case was first dismissed by a segregationist district court judge, but his decision was reversed by a Fifth Circuit panel including Judges Rives and Brown. The Fifth Circuit held that there were no administrative issues to excuse the delay in proper integration of Mansfield ISD, rather “there was only a difficulty arising out the local climate of opinion.”\textsuperscript{31} The Fifth Circuit then ordered that African American high school students be admitted to Mansfield High School.

On the eve of registration, masked white mobs rioted through downtown Mansfield, with chants of “a dead n***er is the best n***er” piercing through the Texas air.\textsuperscript{32} Governor Allan Shivers deployed the Texas Rangers, although not with noble intentions. Publicly he expressed: “It is not my intention to permit the use of state officers or troops to shoot down or intimidate Texas citizens who are making orderly protest against a situation instigated and agitated by the NAACP… Personally I hope that the U.S. Supreme Court will be given an opportunity to view the effects of its desegregation decision on a typical law-abiding Texas community.”\textsuperscript{33}

\textsuperscript{31} Ibid.
Intimidated by the armed mobs and the Texas Rangers, no African American pupils registered, and the parents withdrew their lawsuit.\(^3^4\) Mansfield would become a rallying cry for the school-segregation movement, with Governor Orval Faubus of Arkansas citing it as an inspiration for his opposition in 1957 to the Little Rock Nine.\(^3^5\)

Although Mansfield was not a resounding success for the Fifth Circuit, the Four did not give up in their quest for hastening racial integration. Soon after, the Four tackled perhaps their most famous civil rights case, *Meredith v. Fair* (decided by Judges Rives, Tuttle, and Wisdom).

As with most Southern universities, the University of Mississippi (also known as Ole Miss) had been whites-only since its founding in 1848.\(^3^6\) To maintain its all-white identity despite *Brown*, Ole Miss adopted a facially-neutral alumni recommendation requirement for applicants. Considering that Ole Miss had always been segregated, few African Americans knew any alumni to recommend them.\(^3^7\)

In 1962, African American James Meredith was denied admission to Ole Miss because he lacked an alumni recommendation. Meredith sued, alleging that he was rejected solely because of his race, but lost in the trial court. On appeal, Judge Wisdom, in what has become a classic judicial opinion,\(^3^8\) called the recommendation requirement “a patently discriminatory device.”\(^3^9\) The Fifth Circuit sent the case back to the district court to give Ole Miss another opportunity to prove that an alumni recommendation was necessary. After resistance from the state of

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\(^3^6\) “History of the University of Mississippi.” *History | University of Mississippi*, olemiss.edu/aboutum/history.html.

\(^3^7\) Ibid.


\(^3^9\) Ibid.
Mississippi during a retrial, the Fifth Circuit imposed an injunction,\textsuperscript{40} and Meredith was cleared to enroll in Ole Miss.

But the Fifth Circuit’s work was not done. On the night of Meredith’s entrance, riots erupted at Ole Miss with Mississippi Governor Ross Barnett at the helm.\textsuperscript{41} When Meredith attempted to enter the registrar’s office, with Federal Marshals and the National Guard at his side by order of the Fifth Circuit, Barnett blocked Meredith by holding himself against the door. Threatened with arrest, Barnett backed down and returned to leading the protests outside.\textsuperscript{42}

The Fifth Circuit then held Barnett in criminal contempt for defying the court order that Meredith could register.\textsuperscript{43} Barnett appealed to the Supreme Court, arguing that only a jury could find him guilty of contempt – knowing that a white Mississippi jury would acquit him. The Supreme Court upheld the Fifth Circuit, and Barnett was fined $5,000.\textsuperscript{44}

In 1963, the Fifth Circuit Four similarly helped to strike down barriers to voting in \textit{United States v. Louisiana}.\textsuperscript{45} In 1960, Louisiana amended its constitution to add a “neutral” voter registration requirement of being able to interpret any section of the constitution. Registrars were then trained how to decrease the probability of African Americans’ successfully registering by giving them more difficult sections to explain.\textsuperscript{46}

The U.S. Justice Department sued Louisiana, asserting a breach of the 1960 Civil Rights Act. Before the case went to trial, the Louisiana Legislature created a new registration test, which

\textsuperscript{41} Ibid.
\textsuperscript{42} Friedman, Joel Wm. \textit{Champion of Civil Rights: Judge John Minor Wisdom}. Louisiana State University Press, 2013. Pg. 163.
\textsuperscript{44} Ibid. Pg. 194.
appeared to be fair because it included questions randomly drawn for each registrant. However, since the mostly white electorate who had successfully registered before the implementation of either test was exempt from re-registering, the Fifth Circuit struck down both tests for perpetuating all-white elections. In what had been described as the best-written opinion outside of the Supreme Court, Judge Wisdom attacked the barriers facing African American voters: “A wall stands in Louisiana between the registered voters and the unregistered, Negro voters… This wall, built to bar Negros from access to the franchise, must come down.” The head of the Justice Department’s Civil Rights Division, John Doar, remembered later civil-rights lawyers constantly referring to “the wall” when discussing voting rights, a testament to Wisdom’s legacy.

Using the law, the Fifth Circuit radically reshaped the Deep South in these and dozens of other civil-rights cases. As former U.S. Attorney General Nicholas Katzenbach concluded, “If you hadn’t had those judges on the Fifth Circuit … you would have much more in the way of demonstrations, violence, repression, revolution—that may be too strong a word, but it was moving in that direction.”

**Backlash Against the Four**

By pushing to desegregate the South, the Fifth Circuit Four made many enemies in their communities. Tuttle received angry calls so frequently and so late at night that he had to disconnect his phone line. Rives’ son’s grave was desecrated by the KKK, and Wisdom’s

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50 Ibid. Pg. 315.


dogs were poisoned.\textsuperscript{53} In 1969, when there was a vacancy on the Supreme Court, Wisdom as a Republican was a strong contender. However, John Mitchell, President Nixon's Attorney General, rejected him as a "damned left-winger."\textsuperscript{54}

The largest threat against the Four, however, originated internally in the Fifth Circuit. Judge Cameron, exasperated by his colleague's racial liberalism, authored a scathing dissent in \textit{Armstrong v. Board of Education of City of Birmingham}\textsuperscript{55} that attempted to discredit the Fifth Circuit by arguing it was stacking civil-rights cases with the Four. To corroborate his assertion, Cameron cited statistics, which would later appear on the front page of the New York Times,\textsuperscript{56} showing that some combination of the Four sat on 22 of 25 race cases between 1961 and 1962.\textsuperscript{57} Although these statistics were suspect because the Four sat on almost the same percentage of non-race cases,\textsuperscript{58} they soon led to a Senate investigation.

Mississippi Senator James Eastland, a friend of Cameron's and head of the Senate Judiciary Committee, sent an investigator to New Orleans to find grounds for impeachment of the Four,\textsuperscript{59} the only way to remove lifetime-appointed judges. The investigator not only searched for possible political wrongdoing, but also for incriminating information about the Four's personal lives. After finding nothing, the investigator returned to Washington, D.C.\textsuperscript{60}

\begin{footnotes}
\item[54] Ibid.
\item[58] Ibid.
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Another opportunity for Eastland and Cameron to stifle the Four would soon come. Strained by an excess of admiralty and civil-rights cases, the Fifth Circuit requested the Senate Judiciary Committee to appoint several new judges. Eastland used this opportunity to counter-propose a new plan, nicknamed the “Eastland Plan.”

Eastland advanced the idea that the Circuit should instead be split in the middle between Mississippi and Alabama, separating Judges Brown and Wisdom from Rives and Tuttle and thus severely limiting their power as a voting bloc. The Eastland Plan ultimately failed when Judge Cameron, at home on his death bed in Alabama, called Senator Eastland to discuss adoption of the original Fifth Circuit expansion proposal, in exchange for the Circuit’s method of case assignment becoming more transparent.

Ultimately, the Four had the last laugh. Fearing the two-hundred thousand African Americans who had ultimately gained voting rights in Mississippi, Eastland chose not to seek reelection in 1978. Eastland later acknowledged the Four’s importance when he recalled a conversation he had with former Attorney General Ramsey Clark: “Clark told me that the Fifth Circuit had done something that the Supreme Court couldn’t do—that they brought racial integration to the deep South a generation sooner that the Supreme Court could have done it.”

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Conclusion

Considering the Fifth Circuit Four’s role in the Civil Rights Movement, it is surprising that they are largely unknown, even by lawyers today.65 Perhaps this contributes to the widely held misconception that the Southern white power structure uniformly opposed desegregation, when, in fact, four powerful judges played a critical legal role as allies to African Americans in breaking barriers in the South.

Besides the moral integrity of the Four, there was an important second factor that enabled them to be truly colorblind in their decisions. Article Three of the Constitution stipulates that federal judges are appointed for life.66 Without fear of being voted out of office for breaking barriers instead of erecting them, the Four were able to enforce important Supreme Court decisions and laws. There is a movement in the U.S. to have all judicial positions elected rather than appointed. While the arguments of this movement possess merit, the story of the Fifth Circuit Four exemplifies the foresight of the Founders in insulating federal judges from political forces.

66 United States Constitution. Art. III, Sec I.
Appendix A

This is an image of Judge John Minor Wisdom, the “scholar” of the Four, circa the 1970s.

This is an image of Elbert Tuttle, the “Leader” of the Four, sitting in his chambers in the 1960s.

“Judge Elbert Tuttle Sitting in Chambers.” National Public Radio, 5 Oct. 2011,

www.npr.org/2011/10/05/140948689/elbert-tuttle-quiet-civil-rights-revolutionary.
Appendix C

This is an image of Alabamian Judge Richard Rives of the Four from the 1960s.

www.encyclopediaofalabama.org/article/h-3494.
This is an image of Texan Judge John Brown of the Four standing in his chambers in the 1980s.

“Judge John R. Brown.” *University of Houston Law School*, 1 Mar. 2010,

Appendix E

This is a famous image of Governor Ross Barnett at an Ole Miss football game shortly before he physically barred James Meredith from registering. Note the Confederate flags waving around him.

This is an image of Senator James Eastland, the head of the Senate Judiciary Committee who lead the investigation into the Four, standing in front of a Confederate flag in his home.

This is a digitized version of the Wednesday, July 31, 1963 New York Times issue in which Judge Cameron’s fraudulent statistics were published. The article in question can be seen in the middle of the page, entitled “Feud Over Racial Cases Flares In U.S. Appeals Court in South.”

This is a digitized version of the September 26, 1964 New York Times article which stated that the Mansfield Independent School District was appealing to the Supreme Court after being granted an unfavorable verdict in the Fifth Circuit. The article is entitled, “High Court Gets School Bias Case.”

Appendix I

This is a map of the current U.S. Circuit Court boundaries. The Fifth Circuit once included all the states in the current Fifth and Eleventh Circuits but was split along the lines proposed by Eastland in 1981 for administrative reasons.

Annotated Bibliography

Primary Sources


This is a digitized version of the Wednesday, July 31, 1963 New York Times issue in which Judge Cameron’s fraudulent statistics were published. I downloaded this article from the archives on the New York Times’ website.


This is the court case from *Armstrong v. Board of Education of City of Birmingham*. In Judge Cameron’s *Armstrong* dissent, he created the fraudulent statistics which claimed that civil rights cases were being stacked with the Four. I cited this case when quoting it.


This article from the U.K. newspaper The Independent is John Minor Wisdom’s obituary, which was published shortly after his death in 1999. Wisdom’s obituary included details about his participation in the Republican National Convention and his appointment by President Eisenhower.


This is the court case for *Meredith v. Fair*, one of the Fifth Circuit’s most important cases. I used this case to cite Wisdom’s famous rebuttal to the district court’s opinion that Meredith was not academically prepared to enter Ole Miss.


This is the court case from *United States v. Louisiana*. I downloaded this case from the legal database Westlaw. Along with *Meredith, United States v. Louisiana* was one of the cases that I discussed at a low-level.


This is the court case for *United States v. Jefferson County Board of Education*. I cited this case when I wrote that *U.S. v. Jefferson* was another important Fifth Circuit education case. I printed this case from the legal database Westlaw.

This is the court case for *Briggs v. Elliot*. I cited this case when writing the quote from the Fourth Circuit opinion in *Briggs* about the constitution not requiring integration. This is incredibly important historically, as it was the basis for much of the judicial pushback against *Brown* outside of the Four. I printed this case from the legal database Westlaw.


This is a map of the current United States Appellate Courts used in my appendix.


This is an interview that I conducted in person with Mr. Steve Susman of the law firm Susman and Godfrey. Mr. Susman is a lawyer in Houston, Texas who clerked for Judge Brown. From Mr. Susman, I learned personal details about Judge Brown, such as that he went out of his way to hire Jewish law clerks. This interview is primary source because it recounted Mr. Susman’s firsthand experience clerking for Judge Brown.


This is a 1964 article from the New York Times that told the story of Senator Eastland’s plan to split the Fifth Circuit’s geographical jurisdiction. I only found this story in this article, and not in any of my other sources. This article is a primary source because it was published during the civil rights movement.


This is a digitized version of the September 26, 1956 New York Times article called, “High Court Gets School Bias Case.” Although Mansfield was the Fifth Circuit’s first *Brown* related case, it is not widely known about, so primary resources such as this article were invaluable.


This is the court case from Mansfield that I downloaded from the database Westlaw. Although the technical name of the case is *Jackson v. Rawdon*, it is colloquially referred to simply as Mansfield. I cited this case when first discussing Mansfield.


This is an image used in my appendix from NPR of Judge Tuttle sitting in his chambers.

This is an image of Judge Brown from the University of Houston used in my appendix.


This is an article from the New York Times published when the Fifth Circuit was split into the current Fifth Circuit and the Eleventh Circuit. I was unsure of why this was done, but this article clearly explained that the past Fifth Circuit was too busy.


This is an image of Judge Rives from the Encyclopedia of Alabama used in my appendix.

“Ross Barnett at Ole Miss Football Game.” Mississippi Encyclopedia, 10 July 2017, mississippiencyclopedia.org/entries/ross-robert-barnett/.

This is an image of Ross Barnett at an Ole Miss football from the Mississippi Encyclopedia game used in my appendix.


This is an image of Senator Eastland standing in front of a Confederate flag in his home.


This is the Supreme Court case that I obtained from the Westlaw database for Brown v. Board of Education. Brown was one of the most influential court cases of the civil rights movement and was the impetus for the action taken by the Fifth Circuit Four.

United States Constitution. Art. III, Sec I.

This is Article Three, Section One of the constitution which establishes the framework for the federal judiciary. I used this source in my conclusion to describe how the fact that the Fifth Circuit Four were appointed for life was an important factor that enabled them to be racially progressive in their decisions.


This is an image from the official website of The Eastern District of Louisiana Court of Judge Wisdom used in my appendix.
Secondary Sources


This was an article published in The Nation from 2004. It was written by Jack Bass, the author of Unlikely Heroes, and includes personal information about The Four and a large background on Plessy, Brown, and Briggs.


This is an entry on Judge Rives found in the online Encyclopedia of Alabama. Through this source, I learned that Judge Rives impressively passed the bar exam at age nineteen. This entry was written by Jack Bass, the author of Unlikely Heroes.


Written in 1990, Unlikely Heroes is the only comprehensive history on the Fifth Circuit Four. Unlikely Heroes contains a particularly good account of the Fifth Circuit’s involvement in Meredith v. Fair and the Barnett contempt case. Jack Bass is a professor emeritus in Charleston, South Carolina and frequently gives lectures at legal conferences about the Fifth Circuit.


This was an interview that I conducted with Judge Costa of the Fifth Circuit, who was appointed in 2012. Judge Costa is incredibly knowledgeable about the Four, so I learned a wealth of information from him that I could not find elsewhere. We discussed the Four’s cases, backlash, personal lives, and the legacy of the Fifth Circuit. I met with Judge Costa in his chambers at the federal courthouse in Houston, Texas and set the meeting up over e-mail.


This is an encyclopedia of Southern laws and politics that contained a lengthy section on Judge Tuttle and the Fifth Circuit. I found this Encyclopedia at the African American Library at the Gregory School, a Houston Public Library that houses books, records, and exhibits on prominent African Americans and other people involved with the civil rights movement.


This is an article from the Case Western Reserve University Law School faculty journal about the Four, Judge Cameron, and Senator Eastland. I learned a plethora of information
from this source about Cameron’s statistics and their flaws, the Federal Court System, and the legal issues if the Fifth Circuit actually had not been assigning their cases randomly.


*Champion of Civil Rights* is a biography of John Minor Wisdom. Since Wisdom was one of the most active judges of the Four, there are many interesting stories in *Champion of Civil Rights*. I used this book as a source for some of the personal repercussions against Wisdom, background of his life, and details of his involvement in *Meredith v. Fair*.


This article from The Washington Post is mainly about personal and professional backlash against Judge Rives. I learned about the desecration of his son’s grave by the KKK and Rives’ devotion to his religion in this article. Unfortunately, I could not find the exact date that it was published and the author on the Washington Post Website or any other method.

“This History of the University of Mississippi.” *History* | *University of Mississippi*, olemiss.edu/aboutum/history.html.

This is the official University of Mississippi (Ole Miss) history website. It includes information about Ole Miss’s segregation, James Meredith, Ross Barnett, and the riots. I found this resource by searching the internet for information about Ole Miss’s segregation.


Written by Frank Read and Lusy McGough, *Let Them Be Judged* tells the story of the Fifth Circuit and civil rights. For this reason, *Let Them Be Judged* includes events that are important in the Four’s history, but not widely studied. In fact, *Let Them Be Judged* was my only resource that recounted the events of the Four’s first major civil rights case, Mansfield, in depth.


This is a packet of notes that were distributed at a lecture given by Chief Judge Carl Stewart of the Fifth Circuit, Judge Gregg Costa of the Fifth Circuit, and Jack Bass at the American Academy of Appellate Lawyers conference. These notes helped me understand at a high-level the Four’s most important cases. These notes were given to me by Judge Costa when I began e-mail correspondence with him to set up an interview.