

# The Fifth Circuit Four: The Unheralded Judges Who Helped to Break Legal Barriers in the Deep South

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*Junior Division Historical Paper, National History Day 2020 Competition*

*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.<sup>1</sup>*

**I**N THE BIBLE, the Four Horsemen of the Apocalypse are 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.<sup>2</sup>

The conventional view of the civil rights struggle is that the Southern white power structure consistently opposed integration.<sup>3</sup> 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*, something that other Southern courts were reluctant to do.<sup>4</sup> 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.<sup>5</sup>

## **Background on the Fifth Circuit**

The federal court system, in which judges are appointed for life, consists of three levels.<sup>6</sup> At the bottom are the district courts, where cases are originally heard by a single trial judge. At the top is the Supreme Court. However, since Supreme Court review is discretionary, it generally takes few cases.<sup>7</sup> 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.<sup>8</sup> The Fifth Circuit stretched from Texas to Florida—most of the Deep South.<sup>9</sup>

The Fifth Circuit Four were members of the nine-judge Fifth Circuit during this period. Each had unique life experiences that catalyzed their progressive racial stances. John Minor Wisdom<sup>10</sup> was born into Southern aristocracy as the son of a New Orleans cotton broker.<sup>11</sup> Often called the “scholar” of the Fifth Circuit,<sup>12</sup> Wisdom received his judicial appointment from President Dwight Eisenhower for boldly supporting him in the 1952 Republican National Convention, an almost unthinkable act in the heavily Democratic South.<sup>13</sup>

The “leader” of the Fifth Circuit, Elbert Tuttle,<sup>14</sup> was also an Eisenhower appointee and a staunch Republican, believing that the Southern Democratic party was kept small to maintain a hold on power.<sup>15</sup> Having grown up in Hawaii, Tuttle was used to working and socializing with minorities, a unique perspective in the South.<sup>16</sup>

The only Democrat of the Four and a devout Baptist, Alabamian Richard Rives<sup>17</sup> impressively passed the bar exam at age nineteen.<sup>18</sup> 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.<sup>19</sup>

The final Eisenhower appointee of the Four, John Brown,<sup>20</sup> was born in Nebraska and attended law school in Michigan.<sup>21</sup> Brown did not grow up around overt racism, as there was only one African American in his hometown.<sup>22</sup> 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.”<sup>23</sup> Throughout Brown’s judicial career, he went out of his way to hire Jewish law clerks, as many Jews were then excluded from legal jobs.<sup>24</sup>

However, the Fifth Circuit was not uniformly racially progressive. Judge Ben Cameron, a Mississippi native, was the Circuit’s staunchest defender of segregation.<sup>25</sup> Cameron justified his actions based on his belief that integration did not reflect the will of white Southerners. Until his death in 1964, Cameron spearheaded the resistance against the Four. Indeed, he gave them their nickname, a reference to the Four Horsemen of the Apocalypse.<sup>26</sup>

### **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,<sup>27</sup> African Americans confronted a precarious legal situation. Although the Fourteenth Amendment guaranteed them equal status, 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*.<sup>28</sup>

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*.<sup>29</sup> 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 that “[The] Constitution... does not require integration. It merely forbids discrimination.”<sup>30</sup>

The Fifth Circuit Four had an opposite view of what *Brown* required. Rather than merely challenging *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.<sup>31</sup>

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.<sup>32</sup> In a knee-jerk reaction after *Brown*, Mansfield ISD purchased a bus to take African-American students to a segregated high school in Fort Worth.<sup>33</sup> 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.<sup>34</sup>

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 of the local climate of opinion.”<sup>35</sup> The Fifth Circuit then ordered that African American 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.<sup>36</sup> Rioters then hoisted a racist African American effigy<sup>37</sup> on to the façade of Mansfield High School.<sup>38</sup> In response, Governor Allan Shivers deployed the Texas Rangers,<sup>39</sup> although not with noble intentions. He expressed publicly: “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.”<sup>40</sup>

Intimidated by the mobs and the Texas Rangers, no African American pupils registered, and the parents withdrew their lawsuit.<sup>41</sup> Mansfield then became a rallying cry for the school-segregation movement, with Arkansas Governor Orval Faubus citing it as an inspiration for his opposition in 1957 to the Little Rock Nine.<sup>42</sup>

Although Mansfield was not a resounding success for the Fifth Circuit, the Four did not give up their quest for hastening racial integration. Soon after, the Four tackled perhaps one of the most iconic civil rights cases of the 1960s, *Meredith v. Fair*,<sup>43</sup> 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.<sup>44</sup> To maintain its all-white identity despite *Brown*, Ole Miss adopted an ostensibly neutral alumni-recommendation requirement for applicants. Considering that Ole Miss had always been segregated, however, few African Americans knew any alumni to recommend them.<sup>45</sup>

In 1962, African American James Meredith was denied admission to Ole Miss because he lacked a recommendation. Meredith sued, but lost in the trial court. On appeal, Judge Wisdom, in what has become a classic judicial opinion,<sup>46</sup> called the recommendation requirement “a patently discriminatory device.”<sup>47</sup> The Fifth Circuit sent the case back to the district court to give Ole Miss another opportunity to prove that a recommendation was necessary. After resistance from the state of Mississippi during a retrial, the Fifth Circuit imposed an injunction, and Meredith was cleared to enroll at Ole Miss.<sup>48</sup>

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.<sup>49</sup> When Meredith attempted to enter the registrar’s office, accompanied by Federal Marshals and the National Guard by order of the Fifth Circuit,<sup>50</sup> Barnett blocked Meredith by holding himself against the door. Threatened with arrest, Barnett backed down and returned to leading the protests outside.<sup>51</sup>

The Fifth Circuit then held Barnett in criminal contempt for defying the court order that Meredith could register.<sup>52</sup> 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.<sup>53</sup>

In 1963, the Fifth Circuit Four similarly helped to strike down barriers, this time as to voting, in *United States v. Louisiana*.<sup>54</sup> In 1960, Louisiana amended its constitution to add a “race-neutral” provision requiring voter-registration applicants to explain the Constitution. Registrars were then

trained to systematically decrease the probability of African Americans successfully registering by giving them more difficult passages to interpret.<sup>55</sup>

The U.S. Justice Department sued Louisiana, asserting a breach of the 1960 Civil Rights Act. Before the case went to trial, Louisiana created a new test, which appeared to be fair because it included questions randomly drawn for each registrant.<sup>56</sup> 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,<sup>57</sup> Judge Wisdom attacked the barriers facing African Americans: “A wall stands in Louisiana between the registered voters and the unregistered, Negro voters... This wall, built to bar Negroes from access to the franchise, must come down.”<sup>58</sup> 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.<sup>59</sup>

Using the law as its tool of change, 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.”<sup>60</sup>

### 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.<sup>61</sup> Rives’ son’s grave was desecrated by the Ku Klux Klan,<sup>62</sup> and Wisdom’s dogs were poisoned.<sup>63</sup> In 1969, when there was a vacancy on the Supreme Court, Wisdom, as a Republican, was a strong contender. However, John Mitchell, President Richard Nixon’s Attorney General, rejected him as a “damned left-winger.”<sup>64</sup>

The largest threat against the Four, however, originated from within the Fifth Circuit. Judge Cameron, exasperated by his colleagues’ racial liberalism, authored a scathing dissent in *Armstrong v. Board of Education of City of Birmingham* that attempted to discredit the Fifth Circuit by arguing it was stacking civil-rights cases with the Four.<sup>65</sup> To corroborate his assertion, Cameron cited statistics, which would later appear on the front page of *The New York Times*, showing that some combination of the Four sat on 22 of 25 race cases between 1961 and 1962.<sup>66</sup> Although these statistics were suspect because the Four sat on almost the same percentage of non-race cases, they soon led to a Senate investigation.<sup>67</sup>

Mississippi Senator James Eastland,<sup>68</sup> a friend of Cameron's and head of the Senate Judiciary Committee, sent an investigator to the headquarters of the Fifth Circuit in New Orleans to find grounds for impeachment of the Four,<sup>69</sup> 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 disappointed to Washington.<sup>70</sup>

Another chance for Senator Eastland and Judge Cameron to stifle the Four would soon arise. Strained by an excess of admiralty and civil-rights cases, in 1963 the Fifth Circuit requested the Senate Judiciary Committee to appoint several new judges. Senator Eastland used this opportunity to counter-propose a new plan, nicknamed the "Eastland Plan."<sup>71</sup>

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.<sup>72</sup> The Eastland Plan failed when Judge Cameron, on his death bed in Alabama, called Senator Eastland to propose adoption of the original Fifth Circuit expansion proposal, in exchange for the Circuit's method of case assignment becoming more transparent.<sup>73</sup>

The Four eventually 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 conceded 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 than the Supreme Court could have done it."<sup>74</sup>

## Conclusion

Considering the Fifth Circuit Four's role in the civil rights movement, it is surprising that they are largely unknown today, even by lawyers.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> While the arguments of this movement may be attractive, the story of the Fifth Circuit Four exemplifies the foresight of the Founders in insulating federal judges from political forces.

## Notes

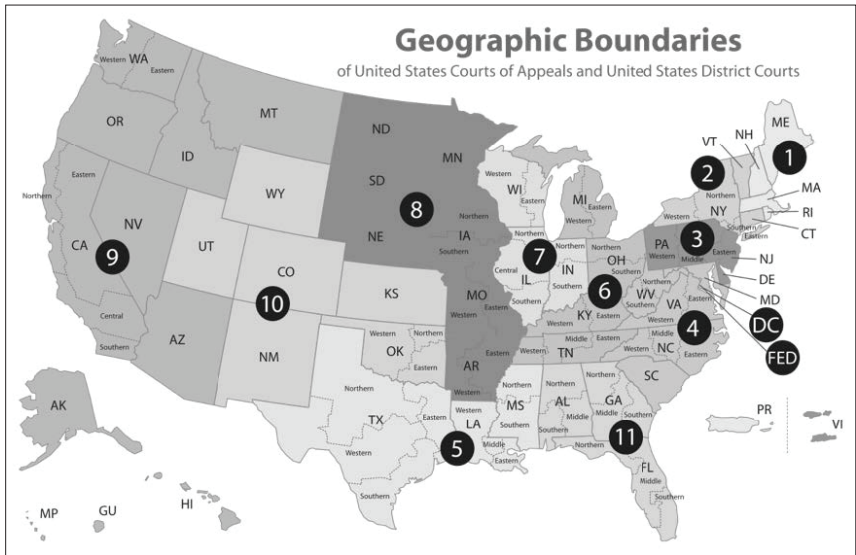
1. Ezekiel 14:21 (King James Version).
2. Bass, Jack. "The 'Fifth Circuit Four'." *The Nation*, 15 Apr. 2004.
3. Bateman, David A., et al. "How Southern Politicians Defended White Supremacy—and Made the South Poorer." *The Washington Post*, 26 Nov. 2018.
4. Supreme Court. *Brown v. Board of Education*. 16 May 1954. *Westlaw*.
5. Costa, Gregg, and Max Grinstein. "Interview with Judge Costa." 14 Jan. 2020.
6. *United States Constitution*. Art. III, Sec I.
7. *Ibid.*
8. Appendix A
9. Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978. Pg. 8.
10. Appendix B
11. Friedman, Joel Wm. *Champion of Civil Rights: Judge John Minor Wisdom*. Louisiana State University Press, 2013. Pg. 6.
12. *Ibid.* Pg. 12.
13. Cornwell, Rupert. "Obituary: John Minor Wisdom." *The Independent*, 4 June 1999.
14. Appendix C
15. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 30.
16. Costa, Gregg, and Max Grinstein. "Interview with Judge Costa." 14 Jan. 2020.
17. Appendix D
18. Bass, Jack. "Richard T. Rives." *Encyclopedia of Alabama*, Alabama State Department of Education, 2 Aug. 2013, [www.encyclopediaofalabama.org/article/h-3494](http://www.encyclopediaofalabama.org/article/h-3494).
19. Emmanuel, Anne S. "Forming the Historic Fifth Circuit: The Eisenhower Years." *Texas Forum on Civil Liberties and Civil Rights*, 2002. Pg. 4.
20. Appendix E
21. Emmanuel, Anne S. "Forming the Historic Fifth Circuit: The Eisenhower Years." *Texas Forum on Civil Liberties and Civil Rights*, 2002. Pg. 9.
22. Susman, Steve, and Max Grinstein. "Interview with Mr. Susman." 10 Jan. 2020.
23. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 70.
24. Susman, Steve, and Max Grinstein. "Interview with Mr. Susman." 10 Jan. 2020.
25. Herbers, John. "Split-Court Plan Vexes U.S. Judges." *The New York Times*, 16 May 1964.
26. Bass, Jack. "The 'Fifth Circuit Four'." *The Nation*, 15 Apr. 2004.
27. United States Supreme Court. *Plessy v. Ferguson*. 18 May 1896. *Westlaw*.
28. Supreme Court. *Brown v. Board of Education*. 16 May 1954. *Westlaw*.
29. Costa, Gregg, and Max Grinstein. "Interview with Judge Costa." 14 Jan. 2020.
30. Fourth Circuit Court of Appeals. *Briggs v. Elliot*. 15 July 1955. *Westlaw*.
31. Fifth Circuit Court of Appeals. *Jackson v. Rawdon*. 15 Oct. 1956. *Westlaw*.

32. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 48.
33. Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978. Pg. 70.
34. Fifth Circuit Court of Appeals. *Jackson v. Rawdon*. 15 Oct. 1956. *Westlaw*.
35. *Ibid*.
36. Huston, Luther. "High Court Hears School Bias Case." *The New York Times*, 26 Sept. 1956.
37. Appendix F
38. "The Detroit Tribune. (Detroit, Mich.), September 15, 1956." *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn92063852/1956-09-15/ed-1/seq-9/>.
39. "The Tribune. [Volume] (Roanoke, Va.), September 22, 1956." *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn98068351/1956-09-22/ed-1/seq-1/>.
40. Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978. Pg. 69.
41. Huston, Luther. "High Court Gets School Bias Case." *The New York Times*, 26 Sept. 1956.
42. Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978. Pg. 71.
43. "The Chronicle. (Pascagoula, Miss.), January 16, 1963." *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn87065526/1963-01-16/ed-1/seq-6/>.
44. "History of the University of Mississippi." *History | University of Mississippi*, [olemiss.edu/aboutum/history.html](http://olemiss.edu/aboutum/history.html).
45. *Ibid*.
46. Costa, Gregg, and Max Grinstein. "Interview with Judge Costa." 14 Jan. 2020.
47. Fifth Circuit Court of Appeals. *Meredith v. Fair*. 12 Jan. 1962. *Westlaw*. Pg.1.
48. "Jackson Advocate. [Volume], June 30, 1962." *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn79000083/1962-06-30/ed-1/seq-5/>.
49. Appendix G
50. Appendix H
51. Friedman, Joel Wm. *Champion of Civil Rights: Judge John Minor Wisdom*. Louisiana State University Press, 2013. Pg. 163.
52. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 182.
53. *Ibid*. Pg. 194.
54. Fifth Circuit Court of Appeals. *United States v. Louisiana*. 8 Mar. 1963. *Westlaw*.
55. Stewart, Carl, et al. "AAAL 2018 Spring Meeting." 12 Apr. 2018.
56. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 272.
57. Friedman, Joel Wm. *Champion of Civil Rights: Judge John Minor Wisdom*. Louisiana State University Press, 2013. Pg. 274.
58. Fifth Circuit Court of Appeals. *United States v. Louisiana*. 8 Mar. 1963. *Westlaw*.
59. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 156.
60. *Ibid*. Pg. 315.
61. Bass, Jack. "The 'Fifth Circuit Four'." *The Nation*, 15 Apr. 2004.
62. "He Made the Right Enemies." *The Washington Post*, Jan. 1983.
63. Cornwell, Rupert. "Obituary: John Minor Wisdom." *The Independent*, 4 June 1999.
64. *Ibid*.



65. Fifth Circuit Court of Appeals. *Armstrong v. Board of Education of City of Birmingham*. 12 July 1963. *Westlaw*.
66. Associated Press. “Feud Over Racial Cases Flares in U.S. Appeals Court in South.” *The New York Times*, 31 July 1963.
67. Entin, Jonathan L. “The Sign of The Four: Judicial Assignments and the Rule of Law.” *Case Western Reserve University School of Law Faculty Publication*, no. 377, 1998. Pg. 370.
68. Appendix I
69. Stewart, Carl, et al. “AAAL 2018 Spring Meeting.” 12 Apr. 2018.
70. “He Made the Right Enemies.” *The Washington Post*, Jan. 1983.
71. Entin, Jonathan L. “The Sign of The Four: Judicial Assignments and the Rule of Law.” *Case Western Reserve University School of Law Faculty Publication*, no. 377, 1998. Pg. 373.
72. Costa, Gregg, and Max Grinstein. “Interview with Judge Costa.” 14 Jan. 2020.
73. H. Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978. Pg. 590.
74. Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990. Pg. 332.
75. Costa, Gregg, and Max Grinstein. “Interview with Judge Costa.” 14 Jan. 2020.
76. *United States Constitution*. Art. III, Sec I.
77. Shugerman, Jed Handelsman. *The People’s Courts: Pursuing Judicial Independence in America*. Harvard Univ. Press, 2012. Pg. 269.

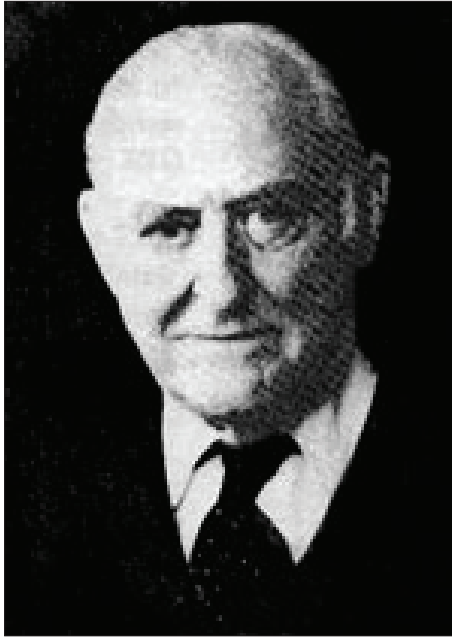
## Appendix A



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 in 1982 for administrative reasons.

“Geographical Boundaries of United States Courts of Appeals and United States District Courts.” *United States Courts*, Administrative Office of the U.S. Courts, [www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links](http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links).

Appendix B



Judge John Minor Wisdom, the “scholar” of the Four, circa the 1970s.

“1970s Image of John Minor Wisdom.” *United States District Court for the Eastern District of Louisiana*, 4 Feb. 2002, [www.laed.uscourts.gov/court-history/law-giants](http://www.laed.uscourts.gov/court-history/law-giants).

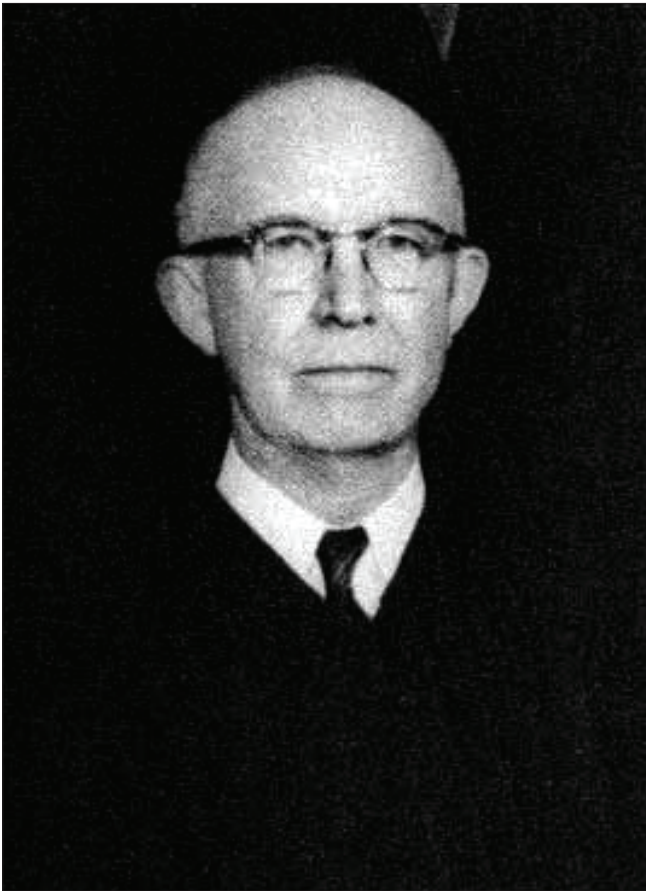
## Appendix C



Judge 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](http://www.npr.org/2011/10/05/140948689/elbert-tuttle-quiet-civil-rights-revolutionary).

Appendix D



Alabamian Judge Richard Rives of the Four from the 1960s.

“Richard T. Rives.” *Encyclopedia of Alabama*, 2 Aug. 2013, [www.encyclopediaofalabama.org/article/h-3494](http://www.encyclopediaofalabama.org/article/h-3494).

## Appendix E



Texan Judge John Brown of the Four in his chambers in the 1980s.

“Judge John R. Brown.” *University of Houston Law School*, 1 Mar. 2010, [www.law.uh.edu/news/evites/spring2010/alumni-040110-lecture.html](http://www.law.uh.edu/news/evites/spring2010/alumni-040110-lecture.html).

Appendix F



This is an image from the 1956 Mansfield Riots of the African American effigy hung from the façade of Mansfield High School.

“Mansfield High School Effigy.” *Fort Worth Star-Telegram*, 29 Mar. 2016, [www.star-telegram.com/news/local/arlington/article68837362.html](http://www.star-telegram.com/news/local/arlington/article68837362.html).

## Appendix G



Mississippi Governor Ross Barnett at an Ole Miss football game shortly before he physically barred James Meredith from registering.

“Ross Barnett at Ole Miss Football Game.” *Mississippi Encyclopedia*, 10 July 2017, [mississippiencyclopedia.org/entries/ross-robert-barnett/](https://mississippiencyclopedia.org/entries/ross-robert-barnett/).



Appendix H



James Meredith (center), accompanied by his security detail from the U.S. Marshalls and National Guard, at the University of Mississippi in 1963.

“James Meredith, Flanked by Federal Marshals, Entering the University of Mississippi.” *Encyclopædia Britannica*, [www.britannica.com/biography/James-Meredith#/media/1/375972/95804](http://www.britannica.com/biography/James-Meredith#/media/1/375972/95804).

## Appendix I



Senator James Eastland, the head of the Senate Judiciary Committee who led the investigation into the Four.

Pittman, Ashton. "Senator James Eastland." *Twitter*, 28 June 2019, [twitter.com/ashtonpittman/status/1145062283653111808](https://twitter.com/ashtonpittman/status/1145062283653111808).

Appendix J

12 L +	THE NEW YORK TIMES, WEDNESDAY, JULY 31, 1963.		
<b>SENATE BARS CUT IN 'PORK BARREL'</b>		<b>YOUNG G.O.P. CLUB REJECTS ALDRICH</b>	<b>Feud Over Racial Cases Flares In U.S. Appeals Court in South</b>
<b>Water Projects Legislation Is Passed by Voice Vote</b>		<b>But Vote for Lamula Is Short of Needed Two-Thirds</b>	
<p><small>SPECIAL TO THE NEW YORK TIMES</small>  <b>WASHINGTON, July 30</b>—The Senate refused today to trim a "pork barrel" bill after a debate that had political overtones.</p>		<p>The New York Young Republicans Club voted last night against endorsing Richard S. Aldrich, a cousin of Governor Rockefeller, for the Republican nomination for Councilman at large in Manhattan.</p>	<p><b>NEW ORLEANS, July 30 (AP)</b>—Bitter fighting in the United States Court of Appeals for the Fifth Circuit over desegregation cases flared into the open today.</p>
<p>By a roll-call vote of 64 to 25, the Senate rejected a Republican effort to send back to committee legislation authorizing nine new water projects, including two controversial Western dams.</p>	<p><b>LED G.O.P. FIGHT.</b> Senator Everett McKinley Dirksen of Illinois. He led the unsuccessful Republican attack to recommend legislation for water projects.</p>	<p>The vote, taken after a heated three-hour meeting in the club's headquarters at 15 West 45th street, was 106 for John J. Lamula, the deputy clerk of the State Assembly, and 75 for Mr. Aldrich.</p>	<p>Judge Ben F. Cameron of Meridian, Miss., one of nine judges in the circuit, accused Chief Judge Ebert P. Tuttle of Atlanta of stacking the deck in hearings involving racial cases.</p>
<p>Senator Everett McKinley Dirksen of Illinois, the Senate Republican leader, led the fight to recommend the bill.</p>	<p><b>NEGRO PROTEST WINS L.L. ZONING BATTLE</b></p>	<p>However, the club did not formally endorse a candidate because the vote for Mr. Lamula fell short of the two-thirds majority required, according to a parliamentary ruling by the club's president, Thomas A. Lauricella.</p>	<p>Judge Cameron made his accusation in two dissents. Both were filed in cases involving Alabama school systems — one in Birmingham, the other in Mobile.</p>
<p>It now goes to conference with the House to reconcile differences with a House-approved measure.</p>	<p><small>SPECIAL TO THE NEW YORK TIMES</small>  <b>BIRMINGHAM, L.I., July 30</b>      —Negroes here boycotted restaurants here last month to protest rezoning of their residential areas for light industry won their fight tonight when the Village Board reversed itself.</p>	<p>Afterwards, Mr. Lauricella charged that a reactionary group from "the radical right" in the club had tried to embarrass the Republican party.</p>	<p>A three-judge panel of the Appellate Court, sitting in New Orleans on July 11, ordered the Birmingham School Board to submit to Federal District Court no later than Aug. 15 a plan for immediate start of desegregation of schools.</p>
<p>Final passage of the bill was by voice vote.</p>	<p>The board unanimously agreed to restore the residential zoning.</p>	<p>Donald S. Piggott, who led Mr. Lamula's campaign, replied that the vote was a clear endorsement of his candidate despite the failure to gain a two-thirds majority. Mr. Piggott is described as a moderate Republican.</p>	<p>On July 18, the Appellate Court ordered that the Mobile School Board also submit a plan no later than Aug. 19 for desegregation by September, 1963. This was later amended to provide for desegregation next year.</p>
<p>The House bill would authorize \$784,000,000 in projects over a two-year period and does not include certain projects the Senate wants. The Senate bill totals \$699,547,000 for one year, including \$418,347,000 for start-up on the new projects.</p>			<p>In a survey of 25 desegregation cases, Judge Cameron said he found that the three-judge panel formed to hear each case nearly always involves some combination of "the four."</p>

The Wednesday, July 31, 1963 edition of *The New York Times* in which Judge Cameron's misleading 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."

Associated Press. "Feud Over Racial Cases Flares In U.S. Appeals Court in South." *The New York Times*, 31 July 1963.

## Annotated Bibliography

### Primary Sources

Associated Press. “Feud Over Racial Cases Flares In U.S. Appeals Court in South.” *The New York Times*, 31 July 1963.

On Wednesday, July 31, 1963, this article appeared in *The New York Times* in which Judge Cameron’s misleading statistics were published. I downloaded this article from the archives on *The New York Times’* website.

“The Chronicle. (Pascagoula, Miss.), January 16, 1963.” *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn87065526/1963-01-16/ed-1/seq-6/>.

I found this article from *The Chronicle: Pascagoula, Moss Point*, in the Library of Congress’ Chronicling America newspaper database. This article recounted the general story of Meredith’s tenure at the University of America, as well as the symbolism and significance behind his acceptance.

“The Detroit Tribune. (Detroit, Mich.), September 15, 1956.” *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn92063852/1956-09-15/ed-1/seq-9/>.

This is an article from *The Detroit Tribune* describing the effigy that was hung from the façade of Mansfield High School. While an image of the effigy was present, I elected to use a modern enhanced version from the *Fort Worth Star-Tribune* in my appendix.

Ezekiel 14:21 (King James Version).

I used this passage from the King James Bible in my introduction. Judge Cameron gave the Four their nickname as a reference to the biblical Four Horseman of the Apocalypse. The Four Horseman; which represent famine, conquest, death, and pestilence, are said to usher in the end of the universe, as Judge Cameron believed the Four Judges were doing in the South.

Fifth Circuit Court of Appeals. *Armstrong v. Board of Education of City of Birmingham*. 12 July 1963. *Westlaw*.

This is the *Armstrong v. Board of Education of City of Birmingham* decision. In Judge Cameron’s *Armstrong* dissent, he crafted the misleading statistics which abetted the idea that civil rights cases were being stacked with the Four. Through this research process, I learned how to look up a case in the legal database Westlaw.

Fifth Circuit Court of Appeals. *Jackson v. Rawdon*. 15 Oct. 1956. *Westlaw*.

This is the court case from Mansfield that I downloaded from the legal database Westlaw. Although the technical name of the case is *Jackson v. Rawdon*, it is colloquially referred to simply as “Mansfield.”

Fifth Circuit Court of Appeals. *Meredith v. Fair*. 12 Jan. 1962. *Westlaw*.

*Meredith v. Fair* was one of the Fifth Circuit’s most important cases. This case provided interesting background information about civil rights and education. I also 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.

Fifth Circuit Court of Appeals. *United States v. Louisiana*. 8 Mar. 1963. *Westlaw*.

This is the decision in *United States v. Louisiana*. Along with *Meredith, United States v. Louisiana* was one of the cases that I discussed extensively. Having access to this case gave me important historical insight from the point of view of the judges involved.

Fourth Circuit Court of Appeals. *Briggs v. Elliot*. 15 July 1955. *Westlaw*.

*Briggs v. Elliot* is incredibly important historically, as it was the basis for much of the judicial pushback against *Brown* outside of the Four. I cited this case for the quote from the Fourth Circuit about the Constitution not requiring integration.

“Geographical Boundaries of United States Courts of Appeals and United States District Courts.” *United States Courts*, Administrative Office of the U.S. Courts, [www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links](http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links).

The current United States appellate court geographic boundaries are represented in this map that I used in my appendix. I used this graphic to show the 1982 shift in the size of the Fifth Circuit, which was first suggested by Senator James Eastland.

Grinstein, Max, and Steve Susman. 10 Jan. 2020.

I conducted an interview in person with Mr. Steve Susman of the law firm Susman 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 Mr. Susman recounted his firsthand experience clerking for Judge Brown. It was important for me to gain this personal insight about Judge Brown, and it was a unique perspective from one of his former employees. We met for about an hour at his apartment.

Herbers, John. “Split-Court Plan Vexes U.S. Judges.” *The New York Times*, 16 May 1964.

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. It was published at the beginning of the divisive colloquy as to whether the Fifth Circuit judges would be split in their opinions.

Huston, Luther. “High Court Gets School Bias Case.” *The New York Times*, 26 Sept. 1956.

Although Mansfield was the Fifth Circuit’s first *Brown* related case, it is not widely studied, so primary resources such as this article were invaluable in establishing a storyline and narrative to support my thesis. This is a digitized version of the September 26, 1956, *New York Times* article.

“Jackson Advocate. [Volume] (Jackson, Miss.), January 30, 1960.” *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn79000083/1960-01-30/ed-1/seq-1/>.

This is an article from the *Jackson Advocate* about *U.S. v. Louisiana* that I pulled from the newspaper database Chronicling America. This is the third *Jackson Advocate* article that I cited, which led me to wonder why this newspaper was so ubiquitous in civil-rights reporting. Through Chronicling America, I discovered that the *Jackson Advocate* is a weekly southern African American newspaper founded in 1938 by civil-rights advocate Percy Greene. It is still published today.

“Jackson Advocate. [Volume], June 30, 1962.” *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn79000083/1962-06-30/ed-1/seq-5/>.

I found this *Jackson Advocate* article in the Library of Congress' Chronicling America newspaper database. This article was published when James Meredith was admitted to the University of Mississippi and mentions the Fifth Circuit judges by name. Chronicling America provided a unique underpinning for my research, because it made local newspapers, such as the *Jackson Advocate*, more accessible.

"James Meredith, Flanked by Federal Marshals, Entering the University of Mississippi." *Encyclopædia Britannica*, [www.britannica.com/biography/James-Meredith#/media/1/375972/95804](http://www.britannica.com/biography/James-Meredith#/media/1/375972/95804).

This is an image used in my bibliography of James Meredith, accompanied by his security detail from the U.S. Marshalls and National Guard, at the University of Mississippi in 1963. I found this image in the *Encyclopædia Britannica*.

"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](http://www.npr.org/2011/10/05/140948689/elbert-tuttle-quiet-civil-rights-revolutionary).

I thought it was important to include photographs of the Judges to give them a face and to show that this research paper is not just a legal history, but that it is about people. This is an image used in my appendix of Judge Tuttle sitting in his chambers.

"Judge John R. Brown." *University of Houston Law School*, 1 Mar. 2010, [www.law.uh.edu/news/evites/spring2010/alumni-040110-lecture.html](http://www.law.uh.edu/news/evites/spring2010/alumni-040110-lecture.html).

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

"Mansfield High School Effigy." *Fort Worth Star-Telegram*, 29 Mar. 2016, [www.star-telegram.com/news/local/arlington/article68837362.html](http://www.star-telegram.com/news/local/arlington/article68837362.html).

This is the image of the African American effigy hung from the façade of Mansfield High School that I used in my appendix. The article from which I pulled the image was published in the *Fort Worth Star-Telegram* on the sixtieth anniversary of the Mansfield Riots. After seeing this photo, I was curious to know whether students still attend high school classes in the building pictured, but the high school has since moved to a different building.

Marcus, Frances F. "Court That Shaped Southern History Ends Long and Busy Life." *The New York Times*, 2 Nov. 1982.

*The New York Times* published this article when the Fifth Circuit was split into the current Fifth and the Eleventh Circuits. I was unsure of why this was done, but this article clearly explained that the former Fifth Circuit was strained by an excess of maritime admiralty disputes.

Pittman, Ashton. "Senator James Eastland." *Twitter*, 28 June 2019, [twitter.com/ashtonpittman/status/1145062283653111808](https://twitter.com/ashtonpittman/status/1145062283653111808).

It was difficult to find a high-quality image of Senator Eastland online. While Twitter is not a source that I would usually cite in an academic context, I thought that it was adequate for the purposes of this image. This image is from the Twitter account of a reporter named Ashton Pittman who writes for the *Mississippi Free Press*, *Jackson Free Press*, and *The Guardian*.

"Richard T. Rives." *Encyclopedia of Alabama*, 2 Aug. 2013, [www.encyclopediaofalabama.org/article/h-3494](http://www.encyclopediaofalabama.org/article/h-3494).

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* used in my appendix.

Supreme Court. *Brown v. Board of Education*. 16 May 1954. *Westlaw*.

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

“The Tribune. [Volume] (Roanoke, Va.), September 22, 1956.” *Chronicling America: Historic American Newspapers*, Library of Congress, <https://chroniclingamerica.loc.gov/lccn/sn98068351/1956-09-22/ed-1/seq-1/>.

This is a 1956 *Roanoke Tribune* article reporting that Texas Governor Allen Shivers had deployed the Texas Rangers in Mansfield. I downloaded it from the Library of Congress’ Chronicling America database.

*United States Constitution*. Art. III, Sec I.

Article Three, Section One of the Constitution establishes the framework for the federal judiciary. I used this source 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.

“1970s Image of John Minor Wisdom.” *United States District Court for the Eastern District of Louisiana*, 4 Feb. 2002, [www.laed.uscourts.gov/court-history/law-giants](http://www.laed.uscourts.gov/court-history/law-giants).

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

## Secondary Sources

Bass, Jack. “The ‘Fifth Circuit Four’.” *The Nation*, 15 Apr. 2004.

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 extensive background information on the court cases *Plessy*, *Brown*, and *Briggs*.

Bass, Jack. “Richard T. Rives.” *Encyclopedia of Alabama*, Alabama State Department of Education, 2 Aug. 2013, [www.encyclopediaofalabama.org/article/h-3494](http://www.encyclopediaofalabama.org/article/h-3494).

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*.

Bass, Jack. *Unlikely Heroes*. University of Alabama Press, 1990.

Written in 1990, *Unlikely Heroes* is the only modern 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.

Bateman, David A., et al. “How Southern Politicians Defended White Supremacy—and Made the South Poorer.” *The Washington Post*, 26 Nov. 2018.

I cited this article from *The Washington Post* when discussing in my thesis how the southern white power structure did not uniformly oppose integration. This article argued that the White backlash against racial integration helped the Republican party to gain an important southern foothold. While I am not attempting to proliferate the pejorative claim that all southern politicians welcomed integration enthusiastically, it is important to consider that the Fifth Circuit, one of the most powerful southern institutions, was largely racially progressive.

Cornwell, Rupert. "Obituary: John Minor Wisdom." *The Independent*, 4 June 1999.

John Minor Wisdom's obituary included details about his participation in the Republican National Convention and his appointment by President Dwight Eisenhower.

Costa, Gregg, and Max Grinstein. "Interview with Judge Costa." 14 Jan. 2020.

I interviewed Judge Gregg 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, after arranging the meeting over e-mail. I had never been into the Houston federal courthouse before, nor had I ever met with or interviewed a judge, so this interview was a unique experience for me. We met for about 75 minutes. This interview was one of my most important sources for background and inspiration.

Ely, James W., and Bradley G. Bond. *The Encyclopedia of Southern Culture: Law & Politics*. University of North Carolina Press, 2008.

The African American Library at the Gregory School is a Houston Public Library that houses books, records, and exhibits on prominent African Americans and other people involved with the civil rights movement. I went to the Gregory School thinking they might have personal information about Judge Brown or about Texas cases. Instead, I found this encyclopedia of Southern laws and politics there that contained a lengthy section on Judge Tuttle and the Fifth Circuit.

Entin, Jonathan L. "The Sign of The Four: Judicial Assignments and the Rule of Law." *Case Western Reserve University School of Law Faculty Publication*, no. 377, 1998.

This is an article from the *Case Western Reserve University School of Law Faculty Publication* 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 what the legal implications would have been if the Fifth Circuit had actually not been assigning their cases randomly.

Friedman, Joel Wm. *Champion of Civil Rights: Judge John Minor Wisdom*. Louisiana State University Press, 2013.

*Champion of Civil Rights* is a biography of John Minor Wisdom. Since Judge 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*:

"He Made the Right Enemies." *The Washington Post*, Jan. 1983.

This article from *The Washington Post* is mainly about the personal and professional backlash against Judge Rives. I learned about the desecration of his son's grave by the



Ku Klux Klan and Rives' devotion to his religion in this article. Unfortunately, I could not find the exact date that it was published or the author on the Washington Post website.

"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 the segregation of Ole Miss.

Read, Frank T., and Lucy S. McGough. *Let Them Be Judged: the Judicial Integration of the Deep South*. Scarecrow Press, 1978.

Written by Frank Read and Lucy 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.

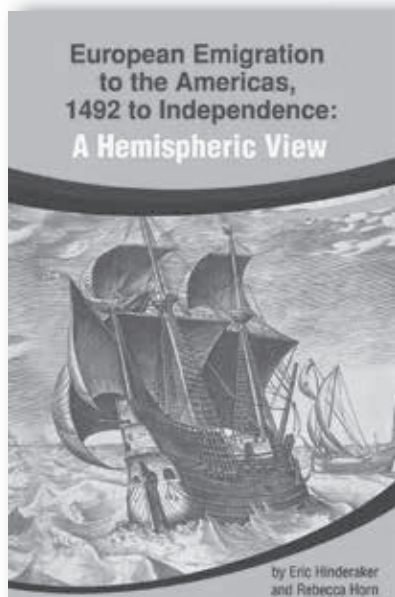
Shugerman, Jed Handelsman. *The People's Courts: Pursuing Judicial Independence in America*. Harvard Univ. Press, 2012

The book *The People's Courts* was imperative to my understanding of the merits, and lack thereof, of different systems of judicial appointments. In his book, Shugerman stresses the importance of systems such as life appointments, which are largely impervious to independent interference, which is precisely the point that I made in my conclusion about the Fifth Circuit.

Stewart, Carl, et al. "AAAL 2018 Spring Meeting." 12 Apr. 2018.

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.

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