

**TOM FAIRCHILD
TRI-COUNTY BAR ASSOCIATION
MEMORIAL**

When Justice Thomas Fairchild passed away, news of his death was carried in the New York Times, the Chicago Tribune, the Milwaukee Tribune. Obituaries noted his membership in the bar associations for the US Supreme Court, the 7th Circuit Court of Appeals, the Wisconsin State Bar, and the Milwaukee and Dane County Bar Associations. But at his memorial service in Madison, it was the members of the Tri-County Bar Association who were there, not members of those larger and more prestigious groups, filling two pews as is our tradition to attend one last meeting with Tom.

Speakers at the service included US Senator Russ Feingold, Justice Fairchild's associates at the 7th Circuit, several former law clerks and other notables. Most commented that out of respect, they also referred to Justice Fairchild as "Judge", and never could quite come to call him Tom. We knew him by no other name.

Tom Fairchild began attending the Tri-County Bar Association summer meetings when he was Chief Justice of the Wisconsin Supreme Court, serving with Grover Broadfoot. He made the summer meeting a priority for over 40 years, once famously leaving the rehearsal dinner for his grandchild's wedding to drive from Madison to make the Friday dinner, only to drive back the next day for the wedding.

He came more regularly than many of members living and practicing in the Tri-County area. He helped us recognize the value of our Association and the importance in relating to each other as people and not as advocates. He never let us stop knowing each other as he would know us.

Every year he would first meet and learn the name of the newest member, remembering the name of that person the next and all subsequent years. In conversation he was much less interested in talking about himself than in hearing about how things were going in the smallest office of the newest member.

Tom helped us be better attorneys and better people. He helped us remember humanity, the value of a good story and a shared beer, and the importance of relationships. He taught us that not only is no one better than the next person, there is no difference between people.

Tom adopted the Tri-County and the Tri-County adopted him. He loved the various and colorful personalities of the Tri-County. He loved the master storytellers of the Tri-County and the many outside attorneys that attended the Tri-County summer meetings.

The Mississippi River was a favorite of Tom's. Many of the trips that he made to the summer meeting were by boat in the company of three of the most notable members of the Tri-County, Floren Hegge, John Ward and Bud Twesme. Tom loved driving the boat. On one trip Judge John P. Foley, Wisconsin Court of Appeals, injudiciously jumped from the boat for the dock and missed. Tom abandoned the wheel and doubled over in laughter as the boat drifted past Judge Foley's hat rising to the surface, followed eventually by Judge Foley himself. Later a diver was hired to pick up Foley's glasses from the bottom of the harbor.

The Foley story was one that Tom loved to tell to others. When Judge Foley died prematurely, Judge James E. Doyle Sr, U.S. District Court, father of our present governor, called Tom and said, "Tom, I understand that Judge Foley went down for the

last time." Now with Tom's death, they are all gone. As Judge Twesme liked to say "You are bound to lose so many along the way."

Tom was a great ambassador for the Tri-County Bar Association. Some years ago when Tom became Senior Judge, his clerks from Tom's service on the Wisconsin Supreme Court and the US Court of Appeals had a dinner for him in Madison. Tom took Dale Sherman around, introducing him to the 20 or 30 persons that clerked for him during his many years on the bench. As Tom introduced Dale as a member of the Tri-County Bar, each clerk smiled and many said "Oh, the Tri-County, Tom's favorite association." Dale noted to Tom that many of his former lady clerks were unusually attractive, if not downright beautiful. Tom answered nonchalantly, "It's just as easy to find a smart and attractive clerk as one who isn't." Tom Fairchild always knew the joy of a lovely woman.

If one were limited in describing Tom with one word it would be "humility." One year after staying on a houseboat parked at the Lake City Marina, bar members and other persons present awoke to the sound of some activity at the front of the boat. They found Tom, then Chief Judge of the US Court of Appeals, under the bow deck cleaning the storage area of rotten, wet sleeping bags, wet pillows and other material. The area where Tom was working was not high enough to stand upright and had the pungent smell of rotted material. But this was typical Tom.

When Tom's daughter, Jenny was in need of an attorney at her home in Colorado, Tom wanted to find out how the legal matter was progressing. Tom used plain stationery to write her attorney so that the attorney would not feel intimidated on hearing from Tom.

Some years ago that same daughter related the story of a conversation that she had

with her brother during the Watergate era and the common opinion that all politicians are crooked. Her brother and she said in unison "But we know one son of a bitch who isn't." These words found their way back to Tom. It became one of Tom's proudest moments.

The *Milwaukee Journal* detailed Tom Fairchild's remarkable legal career. Born on Christmas Day in 1912 in Milwaukee, he was one of five children. His family was Republican, but he came to embrace Progressive Party politics. Later, as the Progressive Party waned, Fairchild helped invigorate a new Democratic Party.

In 1948, he was elected state attorney general, the only Democrat to win statewide office. He was one of the founders of the modern Democratic Party, in a group including Patrick Lucey, Gaylord Nelson, Bill Proxmire, John Reynolds and James E. Doyle Sr. In 1951, President Truman appointed Fairchild as U.S. attorney for the state's Western District. He carried the Democrats' banner against U.S. Sen. Joseph McCarthy in the 1952 election who he accused of "smearing the State Department with wild charges and cruel innuendo."

Tom never spoke an unkind word, even when talking about bitter political opponents such as Joe McCarthy and Richard Nixon. The elections he participated in were not the bitter divisive contests of today.

In 1956, at the age of 44, Tom was elected to the Wisconsin Supreme Court seat long held by his father, Edward T. Fairchild, who was retiring as Chief Justice. Even as a newly elected state Supreme Court Justice, in 1956 Tom dissented from a majority opinion which decided that union membership was a privilege, not a right and upheld the denial of a black bricklayer's right to join his trade's union.

"We are engaged in a struggle to make equality and freedom realities for all Americans," Fairchild wrote in dissent. "In addition to political equality, the full availability to everyone of education and full opportunity for employment to the extent of his capacity are generally considered the basic essentials in order to erase from America anything which could be termed second-class citizenship."

From the *Wisconsin State Journal*: "State Supreme Court Chief Justice Shirley Abrahamson remembered Fairchild ... keeping a stock of limericks in a box. 'When I started on the court and had to start making a lot of speeches, I thought I could borrow some of his limericks, but I found they were not suitable for public consumption.' How well we know.

Justice Nathan Heffernan, who joined the Supreme Court in 1964, recalled that Fairchild always dressed very conservatively, in dark blue and black garb. When Heffernan asked Fairchild about his apparel, Fairchild responded, 'You can get by with a hell of a lot of liberalism if you dress conservative enough.'"

President Lyndon B. Johnson appointed Fairchild to the 7th Circuit U.S. Court of Appeals in 1966, serving as Chief Judge from 1975 until his official retirement in 1981. From the *Chicago Tribune*: "Nearly four decades ago, Federal District Judge Julius Hoffman brought controversy to the third branch of government through his combative reaction to courtroom antics in the Chicago 7 trial. The trial arose from wild anti-war protests during the 1968 Democratic National Convention. But two years later, a diligent and unassuming judge issued from his chambers in the Dirksen Federal Building a lengthy and intricate opinion that, for the moment, restored sobriety to the bench."

To the Tri-County Bar Association, the name of that “diligent and unassuming judge” was Tom. I am sure there is much we did not know of him. But we knew the most important part of him. And he knew us.

Tom possessed all the characteristics we admire- compassion, kindness, modesty, and humility. We of the Tri-County can be proud that a man of Tom's character and accomplishments adopted the Tri-County, enjoying its friendliness and collegiality and sharing with us his intellect and humor over many years.

Tom Fairchild died of natural causes on February 12, 2007 at the age of 94. At his funeral, the Pastor read a quote from the Book of Micah: “What does the Lord require of you but to do justice, and to love kindness, and to walk humbly?”

Thomas Fairchild did. He would charge us to do likewise.

Respectfully submitted to the members of the Tri-County Bar Association in attendance at the summer meeting on Thursday, August 16, 2007.

Dale Sherman

Gary Schlosstein

James Duvall