“A jurist focused on the rights of the individual.” “A judge with the courage to take a stand.” “A man who really made good.” These observations recall Wiley Blount Rutledge, former justice of the Supreme Court of the United States and former faculty member and dean of Washington University School of Law.

Rutledge is the subject of a new biography by John M. Ferren, senior judge on the District of Columbia Court of Appeals. The greatest pleasure in writing *Salt of the Earth, Conscience of the Court: The Story of Justice Wiley Rutledge*, Ferren says, was “getting to know Justice Rutledge.” The University of North Carolina Press published the book in fall 2004.

In the opening pages, Ferren writes, “Wiley Rutledge truly liked people. Regardless of station. And that led to everything.” Rutledge, a public liberal in the 1920s and 1930s, championed the rights of the individual—rare at that time, Ferren observes. Among other issues, Rutledge fought for the separation of church and state; lobbied for a child labor amendment authorizing Congress to set “maximum hours, minimum ages”; and supported women’s rights to “equal work for equal pay.” He himself encouraged both his secretary and a daughter to attend law school.

Writing this particular biography was attractive to Ferren for many reasons. No full-scale biography had been written about the justice; Rutledge’s papers were available at the Library of Congress; and two of his three children live in the Washington, D.C., area. Also among the 160 interviews Ferren conducted were many of the justice’s former students and clerks, as well as clerks for other justices in the 1940s.

Ferren says he personally identifies with Rutledge in part because of their Midwest connections. Ferren’s parents were born in Iowa, and Ferren himself was born in Missouri—the two states where Rutledge served as dean of law schools.

Ferren also feels a sense of professional identification: “I can understand what process he had to go through in deciding cases. I can identify with the kind of work he did, with the difficulties in resolving ambiguities, and with the extent judges allow policy to determine the result, as well as how that policy is reached.”

Rutledge was born July 20, 1894, in Cloverport, Kentucky. According to Ferren, Rutledge—despite losing his mother when he was nine—grew up in a secure and supportive environment, which spurred him to remain optimistic and self-assured throughout his life. He attended college in Maryville, Tennessee, where he met his future wife, Annabel Person, who was his Greek teacher. According to Rutledge, “a lifelong love for both of them” began at Maryville, Ferren writes.

*As a jurist, he believed that the law could help make life better for people. As a person, his humility, his down-to-earth qualities, the fact that he liked people, all kinds of people, were his defining qualities.* John Ferren

(From the left) Louis Pollak; John Ferren, author of the Wiley Rutledge biography; and Victor Brudney judged the Wiley Rutledge Moot Court Competition.
Not long after graduating from college, Rutledge was diagnosed with tuberculosis and spent eight months in a sanatorium. Being surrounded by seriously ill people and dependent upon the care of others deeply affected Rutledge. Ferren writes that he emerged from this experience with great empathy for others and an even greater dedication to individual rights.

Rutledge attended law school in Boulder, Colorado, where he remained to practice, then teach, law until joining Washington University’s law faculty in 1926. Ferren describes him as a fair teacher while being the “hardest grader.” Former students recall Rutledge as “highly intelligent,” a “great thinker,” and even “brilliant” with “a very lively mind.” One student describes him as a “little more friendly, a little more human, a little less stiff-necked than the other professors.”

In 1930 Rutledge was made the School of Law’s acting dean and then dean from 1931 to 1935. As dean, Rutledge helped raise admission standards. He also strengthened the curriculum, including adding a course requirement for legal ethics. Forever mindful of those less fortunate, he helped establish a legal aid clinic in St. Louis.

“Rutledge also sought ways to increase collaboration between lawyers and social workers and thus expanded the commitment to broadening legal horizons that he had initiated through the assembly lectures, while serving as acting dean,” Ferren writes. “Rutledge, in short, became an academic leader.”

Rutledge left Washington University in 1935 to become dean of the University of Iowa College of Law, where he continued to support the rights of minorities.

In 1939 President Franklin D. Roosevelt nominated him for the United States Court of Appeals for the District of Columbia. Then, in 1943, the president appointed him to the Supreme Court—the last of the president’s eight appointees.

Rutledge, 48 years old at the time of his appointment, became best known for his dissents, Ferren says. His most prominent dissent was written in the case of General Tomoyuki Yamashita, who surrendered in 1945 to Allied forces and was executed for atrocities committed by Japanese troops. Arguing against the general’s execution, Rutledge cited reasons such as a failure of proof that the general knew of the soldiers’ actions; untrustworthy evidence tainted by rumor; and violations of the Articles of War, the Geneva Convention, and constitutional due process.

Ferren calls Rutledge the “conscience of the court” because he always gave due regard to the individual experience and because his detailed opinions, based on meticulous attention to facts, “forced his colleagues to think deeply and to take him seriously.” According to Ferren, Rutledge helped preserve civility on an acrimonious court, gaining the personal respect of every justice.

“As a jurist, he believed that the law could help make life better for people. As a person, his humility, his down-to-earth qualities, the fact that he liked people, all kinds of people, were his defining qualities,” says Ferren.

Ferren visited Washington University School of Law recently to lecture on his book and to judge the finals of the Wiley Rutledge Moot Court Competition. Joining Ferren as competition judges were Victor Brudney, Rutledge’s first clerk on the Supreme Court and now professor of law emeritus at Harvard University, and Judge Louis Pollak, one of Rutledge’s last two clerks and currently a senior judge on the United States District Court, Eastern District of Pennsylvania.

Pollak recalls that Rutledge was “a wonderful judge who was always proud to be a dean.”

Rutledge served on the Supreme Court only six years because of his sudden death at the age of 55. Pollak believes Rutledge would have been one of the truly great figures on the court had he lived longer: “In writing opinions for the Supreme Court, Justice Rutledge sought to speak not just to lawyers and judges, but also to ordinary citizens. He wanted an opinion to be ‘understandable by the fellow who runs the corner drugstore.’ He was a great judge and a great human being.”

A new biography details Wiley Rutledge’s many contributions.