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Chief Judge Skelly Wright: Some Words of Appreciation

By THE HONORABLE ELBERT P. TUTTLE*

Nearly twenty years after we were denied the opportunity of having Skelly Wright serve as a colleague on the United States Court of Appeals for the Fifth Circuit, because of his zeal as a protagonist for the protection of the constitutional rights of the black children of New Orleans, I am happy to have a part in publicly expressing my appreciation of this extraordinary judge. When I joined the Court of Appeals in 1954, Skelly Wright had been a district judge in the Eastern District of Louisiana for five years. He shared the work of that district with the late Judge Herbert W. Christenberry, and from the date of *Brown v. Board of Education*,¹ they manned the outposts in the struggle to give effect to the Court's decision in the community which, much to many persons' surprise, turned into what has been called "the second battle of New Orleans."²

Because of the assignment of effort between the judges, it fell to Skelly Wright's lot to handle the case that had been filed well ahead of *Brown*, seeking the desegregation of the Orleans Parish Schools. The case was *Bush v. Orleans Parish Board of Education*.³ Although New Orleans had responded with moderation in the desegregation of the police department, the public library, the public busses and the city recreation facilities, and although it had less residential segregation than any other large American city, the school case became the vehicle for the last frenzied effort by the die-hard segregationists. As described

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1. 347 U.S. 483 (1954).

2. J. Peltason, FIFTY-EIGHT LONELY MEN 224 (1971).

3. It is impossible to give a cite for this case, because before it was over the case required 41 separate judicial decisions, finally involving every judge on the Fifth Circuit Court of Appeals, two district judges, and the United States Supreme Court on 11 separate occasions. For reference, however, it may be cited as *Orleans Parish School Bd. v. Bush*, 242 F.2d 156 (5th Cir. 1957). No Supreme Court citation is given because, during the 10 years involved in the litigation, the Court never issued a full written opinion in the case.

Of course, the reader should be apprised of the fact that the word "Parish" refers to governmental units which are normally called counties in other American states.

by Frank T. Read and Lucy S. McGough in their book, *Let Them Be Judged*:

Backed by the Fifth Circuit, Federal District Judges J. Skelly Wright and Herbert W. Christenberry lighted the way in this laborious process. By the end of the decade those two judges had invalidated a total of forty-four statutes enacted by the Louisiana Legislature, had cited and convicted two state officials for contempt of court, and had issued injunctions forbidding the continued flouting of its orders against a state court, all state executives and the entire membership of the Louisiana Legislature. The desegregation struggle in New Orleans tested the strength of the linchpin of the Constitution: the supremacy of federal law. The federal courts of the Fifth Circuit faced attack from all flanks: from the local state courts and the governor and from the public and its elected representatives. And yet the federal courts survived, and the Supreme Court's mandate was enforced in Louisiana.⁴

The story of this struggle is very hard to believe today. It is accurately and carefully detailed in Read and McGough's book⁵ and is a story that is well worth reading for the picture it gives of the character and performance of Judge Skelly Wright. About him it should certainly be said: "The mind and heart of this dauntless judge enhances the great tradition of the federal judiciary."

Although six years had passed since *Brown v. Board of Education*⁶ became the law of the land, Judge Wright's order of May 1960—that, beginning with the first day of school in September, black children entering the first grade could apply at their option for transfer to the previously all-white school nearest their home and that consideration of their transfer application could not be based on race—was the first district court order in the Fifth Circuit to set a specific date for the beginning of desegregation. The frenzy that followed shook the white citizens of New Orleans, as stated in *Let Them Be Judged*, "far worse than by any Gulf hurricane."⁷ It resulted in some twenty acts passed by four special sessions of the state legislature seeking to block the order. These laws were all stricken by the three-judge court, consisting of Judges Rives, Wright and Christenberry, the opinions generally having

4. F. READ & L. MCGOUGH, *LET THEM BE JUDGED* 111 (1978).

The part played by Herbert Christenberry was as a member of several three-judge district courts consisting of Judge Rives of the Fifth Circuit, Judge Wright and Judge Christenberry. Most of the three-judge opinions were written by Judge Wright, because in all of them he was the initiating judge. *See id.* at 114.

5. *Id.* at 111-68.

6. 347 U.S. 483 (1954).

7. F. READ & L. MCGOUGH, *supra* note 4, at 111.

been written by Judge Wright.⁸ From that moment, until leaving for Washington in April 1962 to assume his seat on the Court of Appeals for the District of Columbia Circuit, Judge Wright faced continued harassment, of a nature and degree probably never endured by any district judge except Judge Frank M. Johnson of Montgomery, Alabama. His life was frequently in jeopardy. The threats became so realistic and widespread that on one occasion he moved from his house. In a typical racist reaction, a cross was burned on his lawn. United States marshals not only took him to and from work, but they lived with him 24 hours a day. All during the special sessions of the legislature he was publicly vilified from the state capitol in Baton Rouge, in live broadcasts to the people of the state. It is good to know that the intense travail which Skelly Wright endured during these years paid large dividends to those who prize highly his view of what the Constitution means by way of equal protection. Rather than being weakened by his New Orleans experience, he brought to his new judicial position a judicial philosophy which has caused him throughout his subsequent career to seek the legal solution which, if it is possible within proper judicial restraints, protects the weak and powerless of our society. This philosophy is well expressed in the scholarly article⁹ written by him in response to Alexander Bickel's Holmes lectures of 1969, which he felt unduly critical of the Warren Court.

Skelly Wright survived the events of New Orleans partially because of his deeply held philosophy and dedication of the law. But those of us who have had the privilege of knowing Helen, his wife, realize that much of the fortitude and courage required of him was equally demanded of her. His survival was truly a family team effort.

Now, reverting to the opening sentence of this word of appreciation, shortly after I became Chief Judge of the Court of Appeals for the Fifth Circuit, I felt it appropriate to call to the attention of the new Attorney General, Robert Kennedy, special information that should be sought in considering persons to be appointed to the courts in our section of the country. Therefore, in March 1961, I sought an appointment with the Attorney General and explained to him the need for ascertaining whether a prospective appointee had participated in the widespread obstruction efforts in opposition to the court's efforts to strike down racial inequalities. Having quickly perceived this point, and since two new vacancies had been created on our Court, the Attor-

8. See, e.g., *id.* at 134 (panel struck down the School Classification Act).

9. Wright, *Professor Bickel, The Scholarly Tradition, and the Supreme Court*, 84 HARV. L. REV. 769 (1971).

ney General said to me: "Now, give me the name of someone who should be appointed to the Fifth Circuit." I said: "General, I did not come here with the idea of recommending anybody for appointment. But since you have asked me, I am very happy to say that Skelly Wright of New Orleans would be an outstanding appointment." "No, no," he responded. "We couldn't do that." I, of course, knew what he meant; Skelly Wright had stood so firmly and consistently in support of the law of the land (so recently and cogently laid down by the United States Supreme Court), he could not be considered for a vacancy on the Court. Appointees had to be approved by the Senate Judiciary Committee and its chairman¹⁰ was at that time, and continued to be, an outspoken segregationist. Thus, we lost a judge who would have been an ornament to and a most helpful member of our Court. Instead, he went to a court where his mind and heart have perhaps served a larger community, because of the importance of many of the decisions of the Court of Appeals for the D.C. Circuit of which he is now the distinguished Chief Judge.