The Unusual Odyssey of J. Skelly Wright

By MICHAEL S. BERNICK*

On February 15, 1956, J. Skelly Wright, United States District Judge for the Eastern District of Louisiana, signed an order requiring the desegregation of the New Orleans public schools.[1] Wright held that the Supreme Court's holding in *Brown v. Board of Education*[2] no longer allowed school segregation. He added that the Court did not expect desegregation to come overnight, since the problems attendant to changing a people's mores were not minor, but that these problems could not diminish the principle that "we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God."[3]

Over the next three years, the New Orleans School Board appealed Wright's order claiming that it was outside the law and that it usurped the power of an elected government body.[4] When the appeals did not succeed, Wright ordered the School Board to prepare a desegregation plan.[5] When the Board took no action, Wright, in May 1960, ordered the implementation of a court-created plan: beginning in September 1960, black children entering the first grade could transfer to the previously all-white schools nearest their homes.[6]

Though the plan involved no movement of white students, it created a storm of protest among whites in New Orleans and the State of Louisiana. Rallies were held, pledging continued opposition and resist-

* B.A., 1974, Harvard University; B. Phil., 1976, Oxford University (Balliol College); J.D., 1979, University of California, Berkeley (Boalt Hall). Attorney, San Francisco. Mr. Bernick is the author of JUDGING AS TRYING TO DO RIGHT, to be published soon.

1. Bush v. Orleans Parish School Bd., 138 F. Supp. 337 (E.D. La. 1956). "It Is Ordered, Adjudged and Decreed that the defendant, Orleans Parish School Board . . . be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school under their supervision. . . ." *Id.* at 342.

2. 349 U.S. 294 (1955).

3. Bush v. Orleans Parish School Bd., 138 F. Supp. 337, 342 (E.D. La. 1956).

4. Bush v. Orleans Parish School Bd., 138 F. Supp. 337, *aff'd*, 242 F.2d 156 (5th Cir.), *cert. denied*, 354 U.S. 921 (1957).

5. *See* Bush v. Orleans Parish School Bd., 187 F. Supp. 42, 43 (E.D. La. 1960).

6. *See id. See also* notes 72-92 and accompanying text *infra*.

ance to all school desegregation. The state legislature passed law after law making desegregation illegal. When desegregation finally came in November 1960, with four six-year old black girls entering first grade in two white elementary schools, hundreds of demonstrators gathered each school day and all but a handful of parents withdrew their children and sent them to schools in another parish.

Denounced as "Judas Scalawag Wright" and hung in effigy on numerous occasions, Wright became a focus of citizens' anger. A drive was started to impeach him for usurpation of legislative power. The legislature overwhelmingly voted to condemn his "disregard of the sovereignty of the state," and when a coffin bearing a coffee-colored doll named "Smelly Wright" was carried through the state capitol, nearly all of the legislators stood up and cheered.

Few who knew Skelly Wright when he assumed the bench in 1949 at age 38, would have expected him to be the one to order school desegregation. Highly conventional in occupation and politics, though never a segregationist, he had done nothing in his life to protest the system of segregation, or in any way question the status quo. Yet when faced with challenges to the segregation system in his early years as a judge, he ruled in favor of these challenges. He was consequently ostracized by New Orleans society and his opposition to segregation solidified. He also embarked upon a most unusual judicial odyssey, questioning established institutions, and identifying with other lone travelers and social outsiders. It is with this odyssey that this article is primarily concerned.

The Early Years

James Skelly Wright was born January 14, 1911 in New Orleans, the second of seven children of James Wright and Martha Skelly. From the beginning he was known as "Skelly" to distinguish him from his father, and later from his younger brother, James Edward Wright. His early years were uneventful. In academics, he showed a quick mind, but was not studious and exhibited no unusual talents. He enjoyed athletics and played intramural sports in high school.

The summer after his final year of high school, Wright took a job as a messenger boy with the small law firm of Dresner and Dresner. It kindled an interest in law, and he began to think of law as a career. The family had no money to send him to college, but later in the summer he received word from Loyola University in New Orleans that his application for financial aid had been approved. In September of 1927, he enrolled.

At that time Loyola was experiencing little of the intellectual agitation occurring at other colleges. There was little interest among the undergraduates in world affairs, or in the great questions of the day—socialism, communism, labor unions and racial minorities.

Wright was no different than most of his peers. His main interests included a campus fraternity, Alpha Delta Gamma, of which he became president and later national chairman, and the prestigious dance committee which organized school dances.

Wright's years at Loyola were also the years of Huey Long's rise and domination of Louisiana politics. Long was elected governor in 1928, and over the next three years wrenched control of the political system from a coalition of manufacturing interests, planters and conservative politicians who had ruled since the early part of the century. While consolidating his own political machine, Long also moved for greater opportunities for what he called "the little man," instituting a free textbook program in the schools, expanding the state-supported Louisiana State University, and constructing highways to connect the poorer rural parishes with other parts of the state.[7]

Years later, Wright would tell people in Washington about the good things Long had done, about his work on behalf of "the little man" (Wright used the same phrase), but in the late twenties and thirties Wright was not among Long's supporters. The New Orleans political machine of which Wright's uncle, Joe Skelly, was a leader, opposed Long and Wright sided with his uncle.

At Loyola, Wright embarked upon a six-year combined undergraduate and law program, but after completing his fourth year and obtaining a bachelor of philosophy degree, the need for money forced him to find employment. He taught math and English history at Fortier High School during the day and took law courses at night. Upon graduation in 1934, Wright was unable to find a job in law. During the depression, there were few openings for young lawyers, especially lawyers from night schools. Thus he continued to teach at Fortier High.

Early Legal Career

In 1936, Wright received an appointment as an assistant U.S. Attorney, largely through the influence of his uncle.[8] Wright started at

7. For an account of Huey Long and his efforts in Louisiana, see T.H. WILLIAMS, HUEY LONG (1969).

8. Upon his appointment the newspapers described him as "Skelly Wright a nephew of the inimitable Joseph P. Skelly, Commissioner of Public Property." New Orleans Times Picayune, Aug. 3, 1937.

the bottom, in the narcotics section, bringing great energy to his work. Between July 1937 and January 1939, he handled 271 cases and had 268 convictions.

When World War II started, Wright enlisted in the Coast Guard. He was stationed in the Atlantic on a submarine chaser, the U.S. Thetis. In 1942 he was reassigned to New York to help establish a disciplinary system for the Merchant Marines. The system ran so well that in June 1943, Wright was assigned to the legal staff of Admiral Stark, Commander of the Navy in London, to establish the system in Great Britain. He remained in London until the end of the war, creating Merchant Marine disciplinary boards, and also participating both as a prosecutor and as a defense attorney in court-martial trials of navy personnel.

While in London, Wright began seeing a young American embassy employee, Helen Patton. The two had met briefly in New York. Helen was from a prominent Washington, D.C. family; her father, Admiral Patton, had headed the Coast Guard Geodetic Survey. She was gracious and gay, qualities which seemed to complement Wright's quiet and reserved nature. In 1945, after "courting amidst the buzz bombs," as Helen liked to recall, they were married in London.

Before the war ended, they had decided to live in Washington. Helen liked the Washington area, and her mother and friends lived there. Washington was also becoming a boom town for young lawyers.

However, at the war's end, Wright had no connections with Washington law firms, and was pessimistic about getting a job. It was decided that while Helen returned to Washington, he would return to his job as an assistant U.S. Attorney in New Orleans to find clients he might represent in Washington. Wright remained in New Orleans for five months, serving as first assistant to U.S. Attorney, Herbert Christenberry, and handling a number of war fraud cases.[9]

Washington, D.C.

Arriving in Washington in the spring of 1946, he had retainers from two clients, the Standard Fruit Company, and Jack Higgins, a large shipbuilder. Shortly after his arrival, he contacted a Coast Guard friend, Terry O'Brien. O'Brien told Wright of a lawyer, John Ingoldsby, who was looking for somebody with whom to share office space and a secretary. With the price only $200 a month, Wright

9. *See, e.g., U.S. Charges Lehde with War Fraud*, New Orleans States-Item, Apr. 4, 1946, at 1.

agreed. In 1947, the two were joined by Marvin Coles, who had been counsel to the Merchant Marine Committee of the House. The three started the firm of Ingoldsby, Coles and Wright, handling shipping matters before the Maritime Commission, as well as Wright's Louisiana clients.

During 1946 and 1947, a combination of circumstances gave Wright the opportunity to argue two cases before the Supreme Court. The first was the famous Willie Francis case.[10] Francis, a seventeen year old black youth, had been convicted of murdering a white pharmacist during a robbery, and had been sentenced to die in the electric chair. After he had been given his last rites, shaved and strapped into the chair, his head covered with a black hood, the generator for the electric chair failed. An electric current passed through Francis' body, strong enough to strain his body, but not strong enough to kill. When the switch had been quickly thrown on and off again and still failed, Francis was released from the chair and a new execution date set.

Francis' father, though, sought out a lawyer, Bertrand deBlanc, who filed a petition in the Louisiana Supreme Court, claiming that Willie had once been put in jeopardy of losing his life, and that an attempt to execute him again would constitute "double jeopardy"[11] and "cruel and unusual punishment."[12] The state supreme court refused to act,[13] claiming the matter to be within the jurisdiction of the Board of Pardons. DeBlanc contacted the Board of Pardons in New Orleans and also contacted Wright in Washington to prepare an appeal to the United States Supreme Court if such became necessary. DeBlanc had never met Wright, but had heard of him from a law school classmate of Wright. Despite the absence of payment, Wright eagerly agreed to take the case, and the opportunity to appear before the Supreme Court.

When the Board of Pardons refused to commute the sentence, Wright filed a petition in the United States Supreme Court. As Francis was scheduled to die in three days, the Court immediately issued a stay, and soon thereafter agreed to hear the case.[14]

In oral argument on November 18, 1946, Wright argued that while

10. Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947). For an account of this case and the individuals involved, see B. PRETTYMAN, DEATH AND THE SUPREME COURT (1961).

11. The Fifth Amendment provides, "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . ." U.S. CONST. amend. V.

12. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII.

13. Louisiana *ex rel.* Francis v. Resweber, 212 La. 143, 31 So.2d 697 (1947).

14. Louisiana *ex rel.* Francis v. Resweber, 328 U.S. 833 (1946).

the State of Louisiana initially had a right to execute Willie Francis, it was bound to conduct the execution without unnecessary suffering, and 'by her [the state's] failure to do so, she has forfeited her right to his life."[15] Wright dramatized Francis' suffering: the shaving of the body, the placing of the wires, the passage of the electric current.[16]

In January 1947, the Court delivered its opinion, voting five to four to uphold the state's decision.[17] Justices Jackson, Reed, and Black, and Chief Justice Vinson held that there was no constitutional bar to a second execution;[18] and they were joined by Justice Frankfurter,[19] who stated that while he personally experienced a certain revulsion against "a State's insistence on its pound of flesh,"[20] the state's action did not violate principles of justice "rooted in the traditions and conscience" of the nation.[21] Four justices, Douglas, Murphy, Rutledge and Burton, dissented[22] stating that a second attempted execution would constitute cruel and unusual punishment, and that the case should be sent back to the Louisiana courts for a factual determination as to whether an electric current had passed through Francis' body.

The case attracted nation-wide publicity[23] and, despite the adverse ruling, brought Wright an increased confidence in his legal skills. Then, little more than a year later, he had the opportunity to appear again before the Supreme Court, and this time was on the winning side.

Johnson v. United States[24] arose in 1947 in Seattle. Ann Johnson was convicted of possession of opium and another narcotic, yen shee, found in her apartment. At issue was whether the police search that had uncovered the drugs was a violation of the Fourth Amendment prohibition against "unreasonable searches and seizures."[25] On a tip,

15. Brief for Petitioner at 8. *See also* Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947).

16. Brief for Petitioner at 8.

17. 329 U.S. 459-60 (1947).

18. *Id.* at 462-66.

19. *Id.* at 466-72 (Frankfurter, J., concurring).

20. *Id.* at 471.

21. *Id.* at 470.

22. *Id.* at 472-81 (Burton, J., dissenting).

23. *See, e.g., Killer to Make Second Trip to Chair*, N.Y. Daily News, Jan. 14, 1947, at 1; *Supreme Court (5-4) Rules Louisiana Can Try Again to Electrocute Willie*, Philadelphia Record, Jan. 14, 1947; *Louisiana Wins Right to Try Again to Put Slayer to Death*, N.Y. Sun, Jan. 13, 1947, at 1.

24. 333 U.S. 10 (1948).

25. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

narcotics officers arrived at Ms. Johnson's apartment; upon being admitted by Ms. Johnson, they smelled burning opium. When she denied having any opium, they placed her under arrest, searched the apartment, and found an opium pipe, still warm, which contained opium. Ms. Johnson's attorney, Anthony Savage, protested that the search was conducted without a warrant, but the district court rejected this protest, and the circuit court affirmed.[26]

The Supreme Court granted certiorari,[27] and Savage, unable to come to Washington at the time, asked Wright to present the oral argument. They had corresponded when both were assistant U.S. Attorneys—Savage in Washington, Wright in New Orleans. Wright had no strong feelings on the subject of police searches, but agreed to take the case.

This time his was the winning position.[28] The majority opinion by Justice Jackson set limits on police searches which continue to be followed today. Jackson held that a search warrant was an important check on police overzealousness, and, as such, was required for all searches, save those involving "exceptional circumstances" like fleeing suspects or the threatened destruction of evidence.[29]

During the time that Wright handled *Francis* and *Johnson*, he was also active in other cases; the firm, after a slow start, was prospering. Wright looked forward to a growing Washington practice and financial security.

Early in 1948, however, Judge J. Adrian Caillouet, district judge in New Orleans, died, and was replaced by Herbert Christenberry. This created a vacancy in the position of U.S. Attorney, albeit one that attracted few applicants. The presidential election was approaching later in the year and it was expected that a new president would be elected, and that whoever was appointed as U.S. Attorney would have to find another job.

Wright, though, saw the temporary position as an opportunity to make additional contacts in New Orleans and obtain for himself the title of "former U.S. Attorney," which would be helpful in his practice. Further, as Christenberry's former first assistant, Wright had a claim on the job. He contacted Christenberry, expressed interest, and obtained the appointment. With Truman's unexpected election, Wright's

26. Johnson v. United States, 162 F.2d 562 (9th Cir. 1947).

27. Johnson v. United States, 332 U.S. 807 (1947).

28. Johnson v. United States, 333 U.S. 10 (1948). Chief Justice Vinson and Justices Black, Reed and Burton dissented without opinion. *Id.* at 17.

29. *Id.* at 14-15.

tenure as U.S. Attorney was extended. Helen, and their son Jimmy, born in 1947, had been awaiting Wright's return to Washington, but now joined him in New Orleans.

Wright settled in to concentrate on his prosecutorial tasks. He once more became an active prosecutor, especially involved in the expulsion of communists from the maritime unions. One of his major prosecutions was that of Robert Himmaugh, an employee of the Federal Barge Company, and member of the National Maritime Union. Wright brought him to trial for making false statements to a government loyalty board: Himmaugh had denied he was a communist, and Wright produced evidence of his work for the Communist Party. Wright had little sympathy with communists, and worked actively to identify them and expel them from positions in which they might disrupt the economy. In a speech to the Junior Chamber of Commerce, Wright spoke of the control which communists in the unions could exercise in the event of a dispute between the Soviet Union and the United States.[30]

In June 1949 a vacancy occurred on the Fifth Circuit, with the death of Judge Elmo T. Lee. Wright called Attorney General Tom Clark to express interest in this position. Years before, Clark had come to New Orleans to prosecute an antitrust case for the government. Wright had assisted him in his successful prosecution and the two had become good friends.

Wright's application for the Fifth Circuit would ordinarily have been given little attention, despite his friendship with Clark, because of his young age (38) and limited experience. However, in 1949 there were few candidates in Louisiana who seemed suitable to President Truman, and few Louisiana Democrats who could make claims on the President. Nearly all of the Democrats had bolted the party to support Strom Thurmond's Dixiecrat campaign—and party leaders had even sought to keep Truman's name off the ballot. Wright, though, had stayed loyal to Truman. Although the Hatch Act[31] prohibited him from campaigning, he had kept in regular contact with Tom Clark, advising Clark on Truman's position in Louisiana, proferring his knowledge of Louisiana politics acquired over the years.

In the absence of other candidates, Wright's nomination was put forward by Clark, and sent through the appointment channels.[32] At

30. *See Falsification Charges Faced*, New Orleans Times Picayune, Mar. 30, 1949, at 1.
31. 18 U.S.C. §§ 600-607 (1976 & Supp. 1980).
32. *See J. Skelly Wright Urged for U.S. Court Vacancy*, New Orleans Times Picayune, June 30, 1949.

the last minute, however, Joseph Hutcheson, Chief Judge of the Fifth Circuit, heard about it and immediately contacted James McGrath, who had replaced Clark as Attorney General upon Clark's nomination to the Supreme Court. Wright was too young, Hutcheson claimed, especially given the advanced ages of the others on the circuit; moreover, he was comparatively inexperienced. Hutcheson suggested that Wright be appointed district judge, and that District Judge Wayne Borah be moved to the circuit.

The suggestion appealed to McGrath, for Borah was a Republican, and his appointment would help stem charges that the administration was politicizing judicial appointments by only appointing Democrats. Borah was reluctant to move to the circuit, but was finally persuaded. In turn, Wright was nominated for the district judgeship, easily confirmed, and on October 26, 1949, assumed his position.

District Judge, New Orleans

Wright's appointment as a district judge was not well received by the New Orleans legal establishment—so many other attorneys had more distinguished practices, and were leaders in the bar association or authors of respected law review articles. In contrast, Wright's prior jobs were mainly political appointments: he had not been active in the bar associations, and he had yet to write one article.

Yet over the next ten years, Wright won the respect of these lawyers, and, in fact, the respect of lawyers and court administrators across the nation for his efficiency, mastery of procedure, quick grasp of issues, and propriety as a judge. Wright also began to author law review articles, putting forward suggestions in such areas as pretrial procedure,[33] jurisdiction[34] and admiralty.[35]

In 1958, the Judicial Conference of the United States complimented Judges Wright and Christenberry of the Eastern District of Louisiana for leading the nation in the number of cases handled per judge; together they handled an average of 641 cases per year, while the national average was only 232 cases. Similarly in 1959, a report of the Senate Appropriations Committee praised Wright for leading the nation in cases handled during 1958, and singled out his use of pretrial

33. Address by J. Skelly Wright, Tenth Circuit Judicial Conference (July 5-9, 1960), *reprinted in* 28 F.R.D. 141 (1961); Wright, *Opening Remarks*, 23 INS. COUNSEL J. 267 (1956); Wright, *Pretrial on Trial*, 14 LA. L. REV. 391 (1954).

34. Wright, *Jurisdiction in the Tidelands*, 32 TUL. L. REV. 175 (1958).

35. Wright, *Act 85-554 and the Disposal of the Judicial Power of the United States*, 6 LA. B.J. 147 (1958).

procedures to facilitate settlements without trial.[36]

The effective use of pretrial was one main reason for Wright's efficiency. Wright did not introduce pretrial: it had been used more or less effectively since the late twenties. He did, however, expand its role and use it with unusual competence. His court handled many of the personal injury cases in the state,[37] and he used pretrial techniques to reduce the caseload. As the Senate Appropriations Committee Report noted, of the civil cases in Wright's court in 1958, seventy-five percent were settled before trial and only six percent were tried.[38]

During the pretrial conference, after the parties had stated their cases, exchanged lists of witnesses, and considered admissions of facts and authentication of documents, Wright would often ask if there had been attempts to compromise. Noting the size of settlements in similar cases, and the relative strengths and weaknesses of the parties, he would even suggest a figure he thought appropriate.[39] As a result, the lawyers were free to begin negotiating without the fear of exposing their own weaknesses, and settlements were often reached. Wright became an active advocate—he termed himself an "evangelist"—of pretrial and he began to circulate his views in speeches and writings.[40]

Wright's docket also cleared quickly because of his facility in handling trials. He sought to have arguments presented as concisely as possible, and frequently interrupted counsel. "We've heard enough on that issue," Wright would say, or "Move on, you've made your argument," or "Get to the point." At a Tenth Circuit Judicial Conference Seminar on Practice and Procedure, Wright explained:

> We don't slop around the courtroom. When they come in the courtroom, they are prepared; and if they are not prepared, the jury knows they are not prepared—because of a couple of comments by the court to that effect. (Laughter)
>
> So they don't come in the courtroom unprepared; they are ready to go. They are ready to move at the appointed hour, and

36. STAFF OF SENATE APPROPRIATIONS COMM., 86th CONG. 1ST SESS., FIELD STUDY OF THE OPERATIONS OF THE UNITED STATES COURTS (Comm. Print 1959) [hereinafter cited as FIELD STUDY]. *See also Now There's a New Worry about Federal Courts*, U.S. NEWS & WORLD REP., June 1, 1959, at 88.

37. A Louisiana direct action statute permitted suits against insurers to be brought in federal court.

38. FIELD STUDY, *supra* note 36, at 65.

39. In a seminar on federal practice and procedure, Wright explained his procedure: "[W]e try to take the load, as I say, off the lawyers' backs by telling them what we think the case should settle at, if it's a personal injury case, a case that we can look at and see about what it's worth." Address by J. Skelly Wright, *supra* note 33, *reprinted in* 28 F.R.D. at 147.

40. His first published article advocated pretrial procedures. *See* Wright, *Pretrial on Trial*, 14 LA. L. REV. 391 (1954).

> we move at the appointed hour; and we get rid of the cases in that way.
>
> We have three cases set for trial every day. Every day. And we keep up with that. And we pretty much get rid of them.[41]

Wright was so expeditious in the handling of cases that, during the month of August each year, he would go to New York to help clear the court docket there.

Wright was also respected for his mastery of procedural devices such as joinder, cross-claim and interpleader. He taught Federal Civil Procedure at Loyola Law School from 1950 to 1962 and a 1960 Wright opinion explaining the use of interpleader continues to be used in law school textbooks.[42]

Wright's mastery of issues, especially in complex cases, impressed lawyers. One such case was *United States v. Leiter Minerals, Inc.*,[43] involving oil rights valued in the millions of dollars. The case turned on arcane legal doctrines of definite and indefinite servitudes. Years later, the lawyers in the case still remembered Wright's skill in understanding and applying these doctrines.[44] In another case, involving complex radar tracking technology,[45] attorney John Malley later wrote: "I found that Judge Wright learned the technology in detail much faster than I could. He was in complete mastery of the subject and the courtroom situation throughout the entire trial. All persons present felt it was a remarkable demonstration on the part of a federal judge."[46]

Wright's style revealed his acute sense of judicial propriety. He took his position seriously and sought to avoid all actions and appearances of improper influence. When, later in his career, Wright was asked what judges had most influenced him, he named his predecessor, Wayne Borah. Borah differed from Wright in background and politics; he was a patrician from a wealthy family, a nephew of an Idaho senator, and a conservative Republican. Yet to Wright, Borah knew how to

41. Address by J. Skelly Wright, *supra* note 33, *reprinted in* 28 F.R.D. at 146.

42. Pan American Fire & Cas. Co. v. Revere, 188 F. Supp. 474 (E.D. La. 1960), *excerpted in*, J. COUND, J. FRIEDENTHAL & A. MILLER, CIVIL PROCEDURE, 616-21 (2d ed. 1971); D. LOUISEL & G. HAZARD, CASES ON PLEADING AND PROCEDURE (1962), wherein the authors note, "It would be difficult to improve upon Judge Wright's discussion in the Pan American case." *Id.* at 764.

43. 204 F. Supp. 560 (E.D. La. 1962).

44. Interview with attorneys in *United States v. Leiter Minerals, Inc.*, Oct. 19, 1978.

45. Seismograph Service Corp. v. Offshore Raydist, Inc., 135 F. Supp. 342 (E.D. La. 1955).

46. Letter from John Malley to author, Sept. 27, 1978. *See also* 135 F. Supp. at 344-45 n.1, where Wright details the intricacies of the various radar components.

behave as a judge; he had integrity, he was unquestionably honest and moral. Wright strove to emulate him.

On a personal level, Wright avoided politicians and refused to get involved in business deals. If a lawyer whom he knew socially was involved in a case before him, he suspended any casual associations until the case was completed. He was also strict about such things as paying for his own meals. Similarly, on the bench, Wright avoided appearances of impropriety by strictly limiting the manner in which he would see lawyers. While other judges conferred with lawyers most casually, Wright required any lawyer involved in a pending case to be accompanied by opposing counsel if he or she wanted to talk.

Wright was not liked as well as District Judge Herbert Christenberry, who fraternized with lawyers and ran a more relaxed courtroom. Wright's authority and scruples, though, were respected. "A tight ship," is how Wright's courtroom was not infrequently described, with Wright characterized as the stern captain.

In substance, Wright's judging at the district court level involved far less questioning of established doctrines and a greater emphasis on precedent than did his later work on the District of Columbia Circuit. As a district judge, Wright had an obligation to follow the precedents of the Fifth Circuit, as well as those of the Supreme Court. In his early years he saw his job as essentially discovering and applying rules, not making law.[47]

One area of exception in which Wright did develop the expertise and confidence to venture from precedent was admiralty law. In a number of cases followed by other courts he expanded the scope of the Jones Act,[48] allowing coverage for a greater number of workers and a greater variety of accidents.[49]

Wright's expansion of the Jones Act was consistent with his general sympathy for personal injury plaintiffs who had been injured

47. A liquor price fixing scheme was upheld by Wright; even though he felt it was unfair to retailers, there was a Fifth Circuit case on point, and he was reluctant to rule otherwise. The Fifth Circuit affirmed the decision, but on appeal the Supreme Court reversed, changing the law. *See* Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1950).

48. 46 U.S.C. § 688 (1976).

49. *See* Offshore Co. v. Robison (unreported in district court), *aff'd* 266 F.2d 769 (5th Cir. 1959). Wright had held that a workman on an oil drilling rig was a "seaman" on a "vessel" under the Jones Act; therefore he was able to sue for damages. In Boudoin v. Lykes Bros. S.S. Co., 112 F. Supp. 177 (E.D. La. 1953), *aff'd*, 348 U.S. 336 (1955), Wright expanded Jones Act coverage to injuries caused by "dangerous" crew members as well as dangerous equipment.

through no fault of their own.[50] However, Wright often limited the size of personal injury awards. New Orleans lawyers joked that Wright tried to provide "something for everyone"—some recovery, especially for indigent plaintiffs, but recovery that was sharply limited in size.

In criminal law, Wright could be gentle with juvenile offenders ("they just need some attention and concern") but harsh with adults.[51] In New York during the summer months, he was especially harsh in sentencing, leading one newspaper columnist to observe, "Nor is he a weeping Willie for hardened criminals. When he's sitting here, criminals wish they were anywhere else."[52] Wright imposed unusually long sentences in cases involving bank robbery, gambling, postal theft, and most of all, narcotics pushing. He also took a hard line on white collar criminals, especially income tax violators.[53]

The Desegregation Cases

Of all of Wright's work on the district court, it was his desegregation cases that had the greatest impact. These cases also had the greatest impact on Wright's development both personally and professionally.

During the heat of the conflict following Wright's school desegregation order in 1960, British journalist W. J. Weatherby visited Wright in his chambers. How was it, Weatherby asked, that Wright who had grown up in New Orleans, had such different racial views than other whites. Wright replied that he had not been different for most of his life. Segregation had been the system when he was younger, and he had accepted it. Further, with some pain he recalled cruelties against blacks he had witnessed when younger, but never protested. "When we were kids," Wright explained, "the habit of whites was to go through the colored section of the city and throw things at Negroes—rotten apples and things. I never threw anything, but I was in the car with some kids who did." Wright acknowledged his racial views had changed

50. *See, e.g.*, Wright's opinion in Trueman v. United States, 180 F. Supp. 172 (E.D. La. 1960).

51. *See, e.g.*, *Countess Given 2-Year Term as Call-Girl Agent*, Washington Post, Aug. 13, 1960, at A-3, col. 5. In a New Orleans lottery case, Wright sentenced a local crime syndicate figure to three years in jail, and fined him $20,000: "This court realizes that you grew up within a system and probably did not have a choice. But what you represent is wholesale corruption which this community cannot tolerate," New Orleans Times Picayune, Nov. 10, 1956, at 1.

52. N.Y. Daily Mirror, July 23, 1957.

53. Address by J. Skelly Wright before the Sentencing Institute and Joint Council for the Fifth Circuit (May 10, 1961) (*Sentencing the Income Tax Violator: Statement of Basic Problem*) *reprinted in* 30 F.R.D. 302 (1962).

over time, but he was unable to say when or why this change had come about.[54]

Neither religion nor any one incident explains Wright's racial views. Though raised as a Catholic and educated at a Catholic college and law school, he had left the Church early in his life.

To some extent his early home life was rooted in racial equality. His mother accepted the segregation system, but on a personal level showed the same kindness to blacks as she did to whites. As a women's leader in the local political machine, she had the informal power to obtain the release of persons in jail pending trial for misdemeanors, and she used this power just as often for blacks as for whites.

The war experience also was important. There was not much direct contact with blacks, but for the first time Wright lived outside New Orleans, and he came back seeing things a little differently.[55] He recalled one poignant incident which occurred shortly after he returned on Christmas Eve of 1945. A party was going on at the House for the Blind located across the street from his office. As the blind people were led into the house, they were separated by race into two rooms. "And here it was Christmas," Wright recalled, "it was all so empty and futile."[56] It was only when he became a judge four years later, however, and was forced to rule on segregated facilities, that his opposition to segregation crystallized.

His first major desegregation case came early in his term on the bench, and involved a suit brought by the NAACP to admit black students to Louisiana State University (LSU) Law School.[57] The University had refused on the ground that there was a separate state-run law school at the all-black Southern University.

Wright ruled for the NAACP and ordered the admission of the black students. He found that though the law recognized a "separate but equal" standard, the educational opportunities at Southern Law School were significantly inferior to those at LSU. The general educational environment at LSU was far richer—LSU had a plant worth

54. "Perhaps it was religion?" Weatherby inquired. "No, I don't think so," Wright replied. "I'm a bad Catholic." Weatherby, *A Judge with a Conscience*, Chicago Sun-Times, Nov. 27, 1960.

55. Wright explained in a television interview with Eric Goldman, "I think the war had a very great effect on this whole race problem. The Negro went to war like the white person did. He fought like the white person. We saw this, those of us who were in the service—we saw this." "Open Mind," WNBC Television, Transcript, at 15 (1969).

56. *Id.* at 14.

57. Wilson v. Board of Supervisors, 92 F. Supp. 986 (E.D. La. 1950), *aff'd per curiam*, 340 U.S. 909 (1950).

over $34 million compared to Southern's plant of $2.5 million—and more directly, there were considerable differences in facilities, libraries and faculty between the two law schools.[58]

The decision seems mild by today's standards, but it had little precedent at the time: in most similar cases courts had refused to recognize constitutional violations as long as there was any black facility, however unequal.[59]

Wright later termed this holding his "crossing of the Rubicon."[60] He followed it over the next three years with additional rulings which ensured blacks opportunities at LSU. He ordered the admission of blacks to a combined six-year undergraduate and law course at LSU (finding no equivalent program at Southern),[61] and required the desegregation of the LSU medical and graduate schools.[62]

In 1957, Wright ruled unconstitutional an act intended to prevent blacks from entering the general undergraduate program at LSU.[63] The act required applicants to obtain a certificate of eligibility and good moral character signed by the student's former principal and superintendent. However, the legislature made it clear that any principal or superintendent so "certifying" a black would be fired. In holding the act unconstitutional, Wright noted that since laws directly requiring segregation were illegal, so too were such transparent devices calculated to effect the same result.[64]

Between 1956 and 1958, Wright upheld challenges to other segments of the segregation system. In 1957, he ordered the desegregation of the parks,[65] and also the desegregation of the transit system,[66] eliminating signs on streetcars and trolleys which required blacks to sit in the back. In 1958, he ordered an end to the system of segregation in sports, which prohibited blacks and whites from competing against

58. 92 F. Supp. at 988.

59. The one exception at the time was Sweatt v. Painter, 339 U.S. 629 (1950), where the Supreme Court found that Texas' black law school did not offer substantially equal training.

60. *Pressure, Hate, Familiar to Judge Wright*, Sunday Advocate (Baton Rouge, La.), Apr. 16, 1978, at 12-A.

61. Tureaud v. Board of Supervisors, 116 F. Supp. 248 (E.D. La. 1953).

62. Foister v. Board of Supervisors, No. 52-937 (E.D. La. 1952); Payne v. Board of Supervisors, No. 52-894 (E.D. La. 1952).

63. Ludley v. Board of Supervisors, 150 F. Supp. 900 (E.D. La. 1957).

64. *Id.* at 903-04.

65. *Transit, City Park Segregation Loses*, New Orleans Times Picayune, May 15, 1957, at 1.

66. Davis v. Morrison, No. 16-886 (E.D. La. 1957), *aff'd*, 252 F.2d 102 (5th Cir.), *cert. denied*, 356 U.S. 968 (1958).

each other in athletic contests.[67]

Wright also ruled against attempts to prevent blacks from voting. In 1950 when the registrar of voters refused to register blacks, Wright issued an injunction which, in effect, required registration of all voters, regardless of race.[68] In 1959 the White Citizens Council challenged the registration cards of 1,377 black voters. These cards were removed from the rolls for such "defects" as misspellings, illegible handwriting, and failure to comply with printed instructions. Wright ordered them restored to the rolls,[69] finding that 50% of the white voters' registration cards had similar "defects".[70]

These decisions did not cause Wright great mental anguish—with each decision his opposition to segregation strengthened—but they did result in a continuing vilification of him and his family. Threatening letters and phone calls came at all hours of the day and night. A cross was burned on his own lawn shortly after the streetcar desegregation case.[71]

More disturbing than this personal harrassment was Wright's rejection by former associates and friends. Before the desegregation cases, Wright had not been accepted by many in the highest social circles in New Orleans; despite his respected position as a federal judge, he had not come from an established family, or attended Tulane or any other prestigious school. Following his desegregation decisions, however, he found that he and Helen were ignored by others who formerly had been their friends. Social invitations became scarce, calls stopped, associates no longer dropped by; Wright found himself with little support outside his family.

Helen was his main source of strength. Though she had grown up in Washington against a backdrop of segregation, she nonetheless stood unswervingly by him. While others urged him to be more cautious in changing the social structure, she gave her full support to his decisions.

All of the vilification and ostracism Wright and his family experienced prior to 1960 paled in comparison to the bitterness that arose over the desegregation of the New Orleans public schools. While most of the white citizens could tolerate Wright's ordering them to share

67. *U.S. Court Voids Louisiana Ban on Mixed Athletics*, New Orleans States-Item, Nov. 28, 1958, at 1.

68. Dean v. Thomas, 93 F. Supp. 129 (E.D. La. 1950).

69. United States v. McElveen, 180 F. Supp. 10 (E.D. La. 1960).

70. *Id.* at 13-14.

71. *Cross is Burned on Judge's Lawn in New Orleans*, Washington Evening Star, May 31, 1958.

their parks, state universities and trolleys with blacks, the education of their children was quite a different matter.

Wright's first school desegregation decision, *Bush v. Orleans Parish School Board*,[72] concluded with a statement that is perhaps the best known of all of Wright's writing:

> The problems attendant desegregation in the deep South are considerably more serious than generally appreciated in some sections of our country. The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity and forbearance from all of us, of whatever race. But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God.[73]

As Wright's decision became widely known, he received letters of support from people around the country, and enjoyed editorial praise in the pages of the *New York Times*[74] and the *Christian Science Monitor*.[75] However, the School Board appealed Wright's decision[76] and procrastinated until, by May 1960, no action had been taken.[77] Wright, who had rejected previous urgings by the NAACP to impose a plan, took the initiative. He ordered that, beginning in September 1960, first grade students could attend formerly all-white or all-Negro schools nearest their homes.[78]

---

72. 138 F. Supp. 337 (E.D. La. 1956). For an account of the development of this case, see *Second Battle of New Orleans*, in F. READ, LET THEM BE JUDGED (1978); *see also* J. W. PELTASON, FIFTY-EIGHT LONELY MEN at 9, 125-27, 221-43 (1961).

73. 138 F. Supp. at 341-42.

74. "Judge James Skelly Wright deserves honor for this eloquent expression," *Light in New Orleans*, N.Y. Times, Feb. 17, 1956, at 22, col. 2.

75. Editorial, *Case by Case*, Christian Science Monitor, Feb. 17, 1956, at 23, col. 1.

76. Orleans Parish School Bd. v. Bush, 242 F.2d 156 (5th Cir.), *cert. denied*, 354 U.S. 921 (1957). When this appeal failed, the Board tried other attacks on the decision. They urged the Fifth Circuit to vacate Wright's decision on the grounds that the NAACP had failed to file a $1,000 bond. The circuit refused; Orleans Parish School Bd. v. Bush, 252 F.2d 253 (5th Cir.), *cert. denied*, 356 U.S. 969 (1958). The Board then claimed that under a state statute only the legislature had the power to integrate the schools. Wright held that no state law could circumvent the Supreme Court's ruling in *Brown*. Bush v. Orleans Parish School Bd., 163 F. Supp. 701 (E.D. La. 1958), *aff'd*, 268 F.2d 78 (5th Cir. 1959).

77. Board member Emile Wagner said in a radio broadcast "I'd sooner have no public schools than the educational and moral swamps of Washington and New York." The other board members, believing they had no alternative, sought to strengthen their position by polling parents. When faced with the choice of desegregation or an actual closing of the schools, however, white parents voted 12,229 to 2,707 to close the schools. *See Public School Halt Favored*, New Orleans Times Picayune, May 4, 1960, at 1.

78. *See U.S. Court Orders New Orleans Pupil Integration in Fall*, N.Y. Times, May 19, 1960, at 1, col. 2. Wright's order read:

This ignited the Louisiana state legislature. During the next two months, it passed a series of statutes designed to preserve segregation.[79] In August, Governor Jimmy Davis exercised his power under one of these statutes to take control of the schools.[80]

These actions were challenged by the NAACP, and were held unconstitutional by a three judge panel of the Fifth Circuit.[81] The panel held that the governor and legislature were not above the law as set forth in *Brown*, and enjoined their further intervention in school affairs.[82] The skirmishing between the legislature, the governor and Judge Wright continued. At a special session called by the governor on November 4, 1960, the legislature passed twenty-five bills forbidding desegregation. Wright held the bills unconstitutional;[83] but this contest continued until November 13th, the day before desegregation was to take place.[84]

When desegregation finally came on November 14, 1960,[85] it consisted not of thousands or even hundreds of transfers, but of four black six-year-old girls entering two white elementary schools.[86] Even such

---

"It is ordered that beginning with the opening of school in September 1960, all public schools in the city of New Orleans shall be desegregated in accordance with the following plan:

A. All children entering the first grade may attend either the formerly all-white public school nearest their homes, or formerly all-Negro public school nearest their homes, at their option.

B. Children may be transferred from one school to another provided such transfers are not based on consideration of race."

Id. at 19, col. 1.

79. Under one statute the legislature reserved the right to reclassify schools on a racially segregated basis, LA. REV. STAT. ANN. §§ 17:347.1-47.6 (West) (repealed 1960); a second authorized the governor to close all schools in the state to preserve segregation, *id.* §§ 17:348.1-48.7 (repealed 1960). Yet another statute imposed a fine or prison term on anyone who assisted a racially mixed school, *id.* 17:337 (repealed 1960).

80. *See Davis Takes Over Orleans Schools*, New Orleans Times Picayune, Aug. 18, 1960, at 1; *Sovereignty of State at Issue Says Davis*, New Orleans Times Picayune, Aug. 20, 1960, at 1.

81. Bush v. Orleans Parish School Bd., 187 F. Supp. 42 (E.D. La. 1960), *cert. denied*, *aff'd per curiam*, 365 U.S. 569 (1961).

82. 187 F. Supp. at 44-45. *See Court Forbids Davis to Bar School Mixing*, New Orleans Times Picayune, Aug. 28, 1960, at 1.

83. *Court Blocks Plan to Seize Schools*, New Orleans States-Item, Nov. 11, 1960.

84. The legislature declared November 14th to be a public school holiday; on that Sunday evening Wright issued an order voiding these actions and enjoining the legislature from further interference. *U.S. Judge Enjoins Legislature*, New Orleans Times Picayune, Nov. 14, 1960, at 1.

85. Wright had permitted a ten-week delay in implementation of the desegregation plan at the request of the School Board. *Judge Okays 10-Week Delay in School Suit*, New Orleans Times Picayune, Aug. 30, 1960, at 1.

86. *See Two Schools Integrated at New Orleans*, Wash. Evening Star, Nov. 14, 1960, at 1.

limited desegregation set off a fury. The four girls were escorted by federal marshalls to their schools, three to the McDonough 19 Elementary School, and one to Frantz Elementary School. They were met by hundreds of angry women shouting epithets. After the girls entered, many of the women followed and, to the cheers of the crowd, withdrew their children from the schools.[87]

The following day the crowds of protestors grew, with nearly one thousand protestors at McDonough 19 alone. Then the following Wednesday, there was a march to the School Board's office. The police dispersed the crowd with fire hoses, and violence followed, with groups of whites roving through the city attacking blacks.[88]

By the end of the first week, a complete white boycott had developed with many white students attending nearby St. Bernard Parish. The boycott was subsequently broken by a few white families, but the great majority of whites continued the boycott through the end of the school year in June 1961.[89]

For Wright, the school year included periodic attempts by the state legislature to overturn desegregation and his continued invalidation of these attempts.[90] The year also brought occasions where he was hung in effigy,[91] and denounced as "Judas Scalawag Wright." A police guard was posted at his house and petitions for his impeachment were passed throughout the state.[92]

During this period of vilification, Wright, never a social man, increasingly came to view himself as a loner and outsider. Each day he followed the same lunch hour routine, walking a couple of blocks to the International House and sitting alone at a table for two facing the wall.

---

87. *Children Withdrawn as Negroes Enter Schools*, New Orleans Times Picayune, Nov. 15, 1960, at 1.

88. *Fire Hoses Turned on Hundreds Protesting School Integration*, New Orleans States-Item, Nov. 16, 1960, at 1; *2,000 Youths Riot in New Orleans*, N.Y. Times, Nov. 17, 1960, at 1, col. 4.

89. The few families who broke the boycott suffered considerably—personal threats, losses of jobs, and eviction. *See Battle of New Orleans*, TIME, Dec. 12, 1960, at 20; *Integration—"Hell"*, NEWSWEEK, Dec. 12, 1960, at 28; *Out of Two Thousand, Two*, Wash. Post, Dec. 15, 1960, at A-30.

90. *See* Bush v. Orleans Parish School Bd., 190 F. Supp. 861 (E.D. La. 1960) (attempt to deny School Board access to funds deposited in local banks); Bush v. Orleans Parish School Bd., 191 F. Supp. 871 (E.D. La. 1961) (attempt to remove school board members from office); Bush v. Orleans Parish School Bd., 194 F. Supp. 182 (E.D. La. 1961) (attempt to punish parents who complied with federal desegregation orders).

91. *See* New Orleans Times Picayune, Nov. 16, 1960.

92. *See Holding the Scales of Justice Can Be a Heavy, Lonely Task*, N.Y. Post, Nov. 21, 1960, at 42.

He avoided contact with anyone else, ate hurriedly, and returned to his office within the hour.

Photographs of Wright taken at the time consistently show an unsmiling, somber man. In 1965, appearing on the television program "Open Mind," Wright told historian Eric Goldman about his isolation:

> You'd walk down the street and you wouldn't know whether or not to smile sweetly at this fellow coming or just hold your peace until he made the first move. This was a constant challenge to you. So you begin to walk along the street, you know, with your eyes down so as not to precipitate this incident, so as to avoid it. And more and more you become a loner. And more and more I became a loner. I had some friends but more and more I became a loner.[93]

In June 1961, Wright received a significant sign of support, an honorary degree from Yale University. In New Haven, he found himself warmly received, and his confidence and outlook improved greatly.

Disappointment came later in the fall, however, when he was passed over for a position on the Fifth Circuit Court of Appeals. Two vacancies on the circuit had opened that spring, and a number of liberals had lobbied for Wright. Among these were the editors of the *New Republic* who published an editorial entitled *Standing by Wright*,[94] urging President Kennedy not to give in to the Southern politicans who opposed Wright's appointment.

There was great opposition. The Louisiana Legislature passed a resolution opposing any promotion for Wright, citing Wright's "utter disregard of the sovereignty of the state" and general incompetence.[95] More importantly, there was opposition to Wright among Southern senators. Neither Alan Ellender nor Russell Long, Louisiana's senators, would support his nomination, and Senator Eastland of Mississippi, head of the Judiciary Committee, stated his adamant opposition to Wright's appointment. When Walter Gerwin and Griffin Bell were nominated for the positions in October, Attorney General Robert Kennedy called Wright and expressed his disappointment, explaining that there was no way Wright could have won Senate approval.[96]

Wright continued to preside over the desegregation of the New

93. "Open Mind," WNBC Television, Transcript, at 21 (1965).

94. NEW REPUBLIC, June 12, 1961, at 7.

95. The resolution passed by a vote of 90 to 7 in the House, and 22 to 10 in the Senate.

96. Senator Long told the President that he would not be re-elected to the Senate in 1962 if he did not veto Wright's promotion to the Fifth Circuit Court of Appeals. V. NAVASKY, KENNEDY JUSTICE 272-73 (1971). Justices Black and Douglas wrote letters to Wright expressing their disappointment. Douglas added that he hoped "someday soon you will be sitting on this Court, a place where you rightfully belong."

Orleans schools from the district court, and also ordered the desegregation of the schools in St. Helena Parish, a rural parish near New Orleans.[97] Then late in 1961, a vacancy opened on the District of Columbia Circuit. The Southern senators saw this as a way to get Wright out of the South and with little fanfare President Kennedy quickly submitted his name to the Senate. He was approved, and in April 1962 left New Orleans for Washington. Just before leaving, though, he made two important desegregation rulings. One was an order to desegregate Tulane University.[98] The other was an order to speed up the New Orleans' school desegregation. By April 1962, only twelve black children were enrolled in white schools, and black schools were still overcrowded and had decidedly inferior facilities.[99]

The segregation cases led Wright to reflect upon traditional attitudes, and to eventually break from them. Prior to assuming the bench, Wright had been occasionally disturbed by the cruelties of segregation, but had not focused on the system as a whole. As a judge presented with evidence of inequalities, he was required to take a public stand; and as he did so his opposition to segregation crystallized and gained strength with each holding. His opinion in the Tulane University case, for example, contains a stronger denunciation of segregation and racial discrimination than his earlier decisions.[100]

The desegregation cases also jolted Wright out of other conventional thought patterns. He found himself cut off from his world, his associates and friends. Standing outside, he began to identify with others on the fringes of society—dissenters, minorities and the poor—and to challenge the status quo.

Finally, the decisions brought Wright into contact with other

97. Hall v. St. Helena Parish School Bd., 197 F. Supp. 649 (E.D. La. 1961). In striking down a "local option" rule which would have permitted the voters to abolish public schools and establish segregated "private schools," the court wrote, "This is like having only the cats vote on a program for kittens and young mice." *Id.* at 659 n.30.

98. Guillory v. Tulane Univ., 203 F. Supp. 855 (E.D. La. 1962). Wright ruled that the University, though private, was "public" under the Fourteenth Amendment and could not discriminate on the basis of race. *Id.* at 863-64.

99. Bush v. Orleans Parish School Bd., 204 F. Supp. 568 (E.D. La. 1962). Wright's decision permitted all children in grades one to six to attend former all-white or all-black schools nearest their homes. Wright's successor, Judge Frank Ellis, cut back the scope of Wright's order. *See* Bush v. Orleans Parish School Bd., 205 F. Supp. 893 (E.D. La. 1962), *aff'd in part and rev'd in part*, 308 F.2d 491 (5th Cir. 1962). Ellis also modified the Tulane University desegregation ruling. *See* Guillory v. Tulane Educ. Fund, 207 F. Supp. 554 (E.D. La. 1962), *aff'd sub nom.* Guillory v. Tulane Univ., 306 F.2d 489 (5th Cir.) (requiring a trial on the merits); Guillory v. Tulane Univ., 212 F. Supp. 674 (E.D. La. 1962) (University's connections with state not substantial enough to bring it within Fourteenth Amendment).

100. Guillory v. Tulane Univ., 203 F. Supp. 855, 858-59 (E.D. La. 1962).

judges who admired his work, and whom he also came to admire, including Justices William O. Douglas, William Brennan, and most of all, Hugo Black. He would have a close association with them, as well as with other strong liberal judges on the District of Columbia Circuit, particularly Henry Edgerton, Charles Fahy and David Bazelon. In April 1962, Wright headed north to Washington.

On the District of Columbia Circuit

The circuit to which Wright came in April 1962 was a sharply divided one. Three strong-willed liberals, Henry Edgerton, Charles Fahy and David Bazelon, had voted, over the previous years, to end racially segregative practices in Washington, D.C.,[101] to overturn individual punishments in "loyalty" and "security" cases,[102] and to limit police searches and coercive police interrogations.[103] They were sometimes joined by the two "swing votes," Judges George T. Washington and E. Barrett Prettyman, and were nearly always opposed by the conservatives, Judges Wilbur K. Miller, Walter Bastian, John A. Danaher and Warren Burger.[104]

Wright was appointed to succeed Prettyman. It was hoped that he might serve as a moderating influence between the liberals and conservatives, and forge a consensus between the two camps. Indeed, in an important case, *McDonald v. United States*,[105] which arose soon after he arrived on the circuit and involved the insanity defense, Wright did assume the role of moderator. The court had become split on the expansion of the insanity defense that had occurred in *Durham v. United*

101. Mays v. Burgess, 147 F.2d 869 (D.C. Cir. 1945); Hurd v. Hodge, 162 F.2d 233 (D.C. Cir. 1947) reversed by the Supreme Court which adopted the "liberals'" position, 334 U.S. 24 (1948).

102. *See, e.g.*, Cafeteria & Restaurant Workers Union, Local 473 v. McElroy, 284 F.2d 173, 192-95 (D.C. Cir. 1960) (Edgerton, Fahy, Washington and Bazelon, J.J., dissenting); Cole v. Young, 226 F.2d 337, 341-43 (D.C. Cir. 1955) (Edgerton, J., dissenting); Shachtman v. Dulles, 225 F.2d 938 (D.C. Cir. 1955); Joint Anti-Fascist Refugee Comm. v. Clarke, 177 F.2d 79, 84-91 (D.C. Cir. 1949) (Edgerton, J., dissenting).

103. *See* Naples v. United States, 307 F.2d 618 (D.C. Cir. 1962) (interrogations); Bynum v. United States, 262 F.2d 465 (D.C. Cir. 1958) (searches and seizures); Work v. United States, 243 F.2d 660 (D.C. Cir. 1957) (same); Payton v. United States, 222 F.2d 794 (D.C. Cir. 1955) (interrogations). *See generally* Pye, *Charles Fahy and the Criminal Law*, 54 GEO. L.J. 1055 (1966).

104. *See generally*, Loeb, *Judicial Blocs and Judicial Values in Civil Liberties Cases Decided by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit*, 14 AM. U.L. REV. 146 (1965), noting the division between the liberal and conservative judges. *Id.* at 151.

105. 312 F.2d 847 (D.C. Cir. 1962).

States[106] and subsequent cases; Burger and the other conservatives viewed this expansion as far too broad, giving psychiatrists free rein to label any behavior a "mental disease or defect." In *McDonald*, Wright took portions of the draft opinions by both sides and constructed an opinion that affirmed *Durham* while expressly limiting the psychiatric testimony;[107] his opinion won the concurrence of the entire court.

Wright's moderating role ended a short time later, however, when another controversial case came before the circuit. *Killough v. United States*[108] involved the admissibility of a confession; the police had obtained one confession from the defendant, Killough, after questioning him for a day and a half before taking him to a magistrate for a reading of his rights. They obtained a second confession after Killough had appeared before the magistrate, but before he had seen a lawyer. All of the judges on the court agreed that the first confession was inadmissible as a violation of the *Mallory* rule,[109] which required that a suspect be taken before a magistrate without unnecessary delay. A split developed over the second confession, however. Judges Miller, Danaher, Bastian and Burger favored its admission, while Fahy, Bazelon, Edgerton and Washington felt that it should be excluded as being too closely connected with the first confession, since it was obtained before Killough had learned of the inadmissibility of the first confession; its admission would thus undercut the *Mallory* rule. Wright voted to bar the confession, and wrote a concurring opinion in which he denounced police techniques calculated to circumvent the protections of the *Mallory* rule.[110]

Killough was the first of a number of criminal procedure cases in which Wright surprised those who had known him as the tough U.S. Attorney of New Orleans. He voted to require police to meet strict standards of probable cause before searches,[111] and to meet *Mallory* rule procedures before interrogations.[112] He also voted to strictly ensure that an accused not be denied his right to a fair trial,[113] his right to

106. 214 F.2d 862 (D.C. Cir. 1954).
107. 312 F.2d at 850-51.
108. 315 F.2d 241 (D.C. Cir. 1962).
109. *See* Mallory v. United States, 354 U.S. 449, 455 (1957).
110. 315 F.2d at 248 (Wright, J., concurring).
111. *See* United States v. Robinson, 471 F.2d 1082 (D.C. Cir. 1972), *rev'd*, 414 U.S. 218 (1973); United States v. Gatlin, 326 F.2d 666 (D.C. Cir. 1963). *See also* United States v. Wright, 449 F.2d 1355, 1364 (D.C. Cir. 1971) (Wright, J., dissenting).
112. *See* Killough v. United States, 315 F.2d 241, 248 (D.C. Cir. 1962), *rev'd*, 336 F.2d 929, 935 (D.C. Cir. 1964) (Wright, J., concurring in part and dissenting in part).
113. *See* Powell v. United States, 352 F.2d 705, 710 (D.C. Cir. 1965) (Wright, J., dissenting).

view the evidence obtained against him,[114] and his right to the effective assistance of counsel.[115]

On the circuit, Wright continued to rule against segregation and racial discrimination. He voted to eliminate the last vestiges of segregation in Washington, such as the recording of racially restrictive covenants.[116] He also voted to include racial discrimination among the unfair labor practices which the National Labor Relations Board could enjoin.[117] And in perhaps the most controversial case he handled on the circuit, Wright ordered that the largely separate black and white schools in Washington be equalized by busing black children to white schools and by requiring the elimination of funding disparities between the black and white schools.[118] In this case, he also invalidated the school district's tracking system which funneled children into academic and nonacademic tracks at an early age. The case led many Northern liberals who had previously supported his Southern desegregation decisions to criticize him.

---

114. *See* United States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971), *on remand*, 448 F.2d 1182 (D.C. Cir. 1971).

115. *See* United States v. DeCoster, 487 F.2d 1197 (D.C. Cir. 1973). "[A] defendant is entitled to the reasonably competent assistance of an attorney acting as his diligent conscientious advocate." *Id.* at 1202 (emphasis omitted).

116. *See* Mayers v. Ridley, 465 F.2d 630, 631 (D.C. Cir. 1972) (Wright, J., concurring).

117. *See* United Packinghouse, Food & Allied Wkrs Int. U. v. NLRB, 416 F.2d 1126 (D.C. Cir. 1969).

118. Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967). Wright heard the case because plaintiffs had named each district judge as defendant, since they appointed school board members. Following the plaintiffs' extensive presentation of evidence the School Board requested and received an extension of 30 days, then moved to disqualify Wright. Wright denied the motion and was upheld by the circuit court. Smuck v. Hobson, 408 F.2d 175, 183 (D.C. Cir. 1969). When the School Board refused to appeal Wright's 117-page opinion, Hansen, the superintendent of schools who resigned in the wake of Wright's ruling, sought an appeal to the circuit court, which upheld Wright's decision. In a subsequent action to enforce the original decision, Wright refused to be caught up in the "overgrown garden of numbers and charts and jargon," but did order an equalization of expenditures for elementary school teacher salaries. Hobson v. Hansen, 327 F. Supp. 844, 859, 863-64 (D.D.C. 1971). Finally, the various aspects of the case were resolved in 1977. *See New School Plan Agreed On*, Washington Post, Sept. 13, 1977, at A-1, col. 5.

Wright's decision was severely criticized. *See* Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U. CHI. L. REV. 583 (1968); Bickel, *Skelly Wright's Sweeping Decision*, NEW REPUBLIC, July 8, 1967, at 11; Kirkpatrick, *Outpourings of a Despotic Judge*, Washington Star, July 9, 1967 (editorial).

As a result of the decision, many whites and middle-class blacks withdrew their children from the schools. The various shifting teacher placement plans and the elimination of the track or ability system, it was felt, caused disruption, driving down academic standards. *See generally* Baratz, *Court Decisions and Educational Change: A Case History of the D.C. Public Schools, 1954-1974*, 4 J.L. & EDUC. 63 (1975); Winskur, *Expenditure Equalization in the Washington D.C. Elementary Schools*, 24 PUB. POL'Y 309 (Summer 1976).

Wright also showed special interest in dissenters, homosexuals and the poor.

Wright strongly opposed government attempts to limit dissenters' First Amendment freedoms. When, in 1969, and again in 1972, the Department of the Interior refused to permit groups to hold peace displays in a park behind the White House, Wright intervened, holding the Department's actions to be violations of the First Amendment.[119] In 1967, an antiwar protester said that if the army ever made him carry a gun, the first person he would shoot would be President Johnson. While the other judges on the circuit upheld the conviction for threatening the President, Wright dissented.[120] When the government sought to bar publication of the "Pentagon Papers" by the *Washington Post* in 1971, Wright voted to allow publication, finding that the government had failed to show a high probability of harm that would justify silencing the press.[121]

In a number of cases during the sixties, various government agencies sought to dismiss employees for suspected homosexual activity, and Wright voted consistently to block these attempts.[122] Although not favoring homosexuality (he referred to it in his opinions as "an unfortunate affliction"), Wright was adamant in his insistence that it had no rational relationship to employee competence. Further, if permitted to go unchecked, such discriminatory practices would permit any agency to turn up disqualifying background information on someone who became *persona non grata* with the bureaucracy.[123]

His concern for the outsider led Wright to side with indigent consumers and tenants whom he perceived as being victimized. In a number of important cases, he took broad steps to reshape the common law rules of contract and landlord-tenant law. Breaking with tradition,

119. Women Strike for Peace v. Morton, 472 F.2d 1273 (D.C. Cir. 1972); Women Strike for Peace v. Hickel, 420 F.2d 597, 604 (D.C. Cir. 1969) (Wright, J., concurring).

120. Watts v. United States, 402 F.2d 676, 686 (D.C. Cir. 1968) (Wright, J., dissenting). *See also* von Sleichter v. United States, 472 F.2d 1244, 1249 (D.C. Cir. 1972) (Wright, J., dissenting).

121. United States v. Washington Post Co., 446 F.2d 1322, 1325 (D.C. Cir. 1971) (Wright, J., dissenting).

122. *See, e.g.*, Finley v. Hampton, 473 F.2d 180, 189 (D.C. Cir. 1972) (Wright, J., dissenting); Adams v. Laird, 420 F.2d 230, 240 (D.C. Cir. 1969) (Wright, J., dissenting); Dew v. Halaby, 317 F.2d 582, 589 (D.C. Cir. 1963) (Wright, J., dissenting).

123. Norton v. Macy, 417 F.2d 1161 (D.C. Cir. 1969), reversed a NASA employee's dismissal based on "personality traits which rendered him 'unsuitable for further Government employment.'" *Id.* at 1162. The opinion by Bazelon, with Wright concurring, noted the serious nature of the dismissal and that the agency had shown no connection between homosexuality and Norton's work as a policy analyst. *Id.* at 1164, 1167.

he introduced protections against misleading business practices[124] and substandard housing.[125]

During the seventies, much of the D.C. Circuit's docket came to consist of challenges to decisions by administrative agencies. Here again Wright emerged as an activist in a number of highly controversial decisions.[126] He halted agency actions he regarded as incompatible with the standards of the National Environmental Policy Act,[127] including the Atomic Energy Commission's granting of a nuclear power plant permit at Calvert Cliffs, Maryland.[128] He halted the Interior Department's approval of the Alaska pipeline,[129] finding it inconsistent with the Mineral Land Leasing Act of 1920.[130] He also overturned Federal Communications Commission decisions inconsistent with the First Amendment.[131]

Because of his decisions sympathetic to environmentalists, dissent-

124. *See* Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965) (courts will refuse to enforce unconscionable contracts). The decision is approved in Ellinghaus, *In Defense of Unconscionability*, 78 YALE L.J. 757 (1969); Murray, *Unconscionability: Unconscionability*, 31 U. PITT. L. REV. 1 (1969); Spanogle, *Analyzing Unconscionability Problems*, 117 U. PA. L. REV. 931 (1969). For a criticism of Wright's formulation, see Epstein, *Unconscionability; A Critical Reappraisal*, 18 J.L. & ECON. 293 (1975); Leff, *Unconscionability and the Code—The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967).

125. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970) (establishing an implied warranty of habitability in rented dwellings). *Javins* was not the first case to find a warranty of habitability; *see e.g.*, Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969) (retaliatory eviction for reporting housing code violations contrary to intent of Congress in enacting housing code). *See also* Robinson v. Diamond Hous. Corp., 463 F.2d 853 (D.C. Cir. 1972); Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970); Dorfmann v. Boozer, 414 F.2d 1168 (D.C. Cir. 1969).

126. Wright's views on the proper balance between courts and administrative agencies may be found in his extensive writings on the subject. *See, e.g.*, Wright, *New Judicial Requisites for Informal Rulemaking: Implications for the Environmental Impact Statement Process*, 29 AD. L. REV. 59 (1977); Wright, *Court of Appeals Review of Federal Regulatory Agency Rulemaking*, 26 AD. L. REV. 199 (1974); Wright, *Courts and the Rulemaking Process: The Limits of Judicial Review*, 59 CORNELL L. REV. 375 (1974).

127. 42 U.S.C. §§ 4321 *et seq.*

128. Calvert Cliffs Coordinating Comm. v. Atomic Energy Comm'n, 449 F.2d 1109 (D.C. Cir. 1971). Wright's opinion in *Calvert Cliffs* has been called "the definitive judicial gloss" on NEPA. F. ANDERSON, NEPA IN THE COURTS 247 (1973). *See also* Sierra Club v. Morton, 514 F.2d 856 (D.C. Cir. 1975), *rev'd sub nom.*, Kleppe v. Sierra Club, 427 U.S. 390 (1976); Students Challenging Regulatory Agency Procedure v. United States, 371 F. Supp. 1291 (D.D.C. 1974), *rev'd*, 422 U.S. 289 (1975).

129. Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973).

130. Pub. L. No. 146, 41 Stat. 437 (1920) (codified at 30 U.S.C. § 181 (1980)).

131. Business Executives' Move for Peace v. FCC, 450 F.2d 642 (D.C. Cir. 1971), *rev'd sub nom.*, CBS v. Democratic Nat'l Comm., 412 U.S. 94 (1972). *See also* Home Box Office v. FCC, 567 F.2d 9 (D.C. Cir. 1977) (per curiam); Chisolm v. FCC, 538 F.2d 349, 366 (D.C. Cir. 1976) (Wright, J., dissenting); CBS v. FCC, 454 F.2d 1018 (D.C. Cir. 1971).

ers, indigent tenants and school desegregationists, Wright came to be seen by some as the archetypal liberal—"a walking stereotype" as critics described him. Yet those who worked with him or knew him often made a point of distinguishing Wright's liberalism from that of many other liberals. They emphasized that Wright's liberalism was rooted not in a comprehensive world view or in reasoned deductions from first principles, but rather in reactions to perceived cruelties and unfairness: a liberalism of the heart more than of the mind. It was said of Hubert Humphrey that he felt pain whenever he saw a person who was infirm, lonely or unhappy. Similarly, Wright, when cases of cruelty, ignorance or despair were brought to his attention, would take on a pained look, and consider what might be done as a legal remedy.

During his years on the circuit, Wright's views on desegregation, environmentalism, the law and the poor, and especially his First Amendment values, were reinforced by his association with other liberal jurists, notably Judges Edgerton, Fahy and Bazelon on the circuit, as well as Supreme Court Justices Douglas, Brennan and Black.

Hugo Black, more than twenty-five years Wright's senior, had become a role model for Wright. Wright and Black first met at the Fifth Circuit judicial conferences in the early fifties. Black was the Supreme Court Justice assigned to the circuit, but was not warmly welcomed by the other judges of the South because of his decisions in civil liberties and civil rights cases, particularly his opinion in *Brown v. Board of Education*.[132] Wright was an exception; he admired Black for this opinion, and sought to befriend him. During the fifties Fifth Circuit conferences were held regularly in New Orleans, and Wright always met Black at the airport and escorted him about.

Wright respected not only Black's stance on desegregation, but also his ability to cut through formal legal doctrines to see the true issues, and his continuing identification with the "little man." To Wright, Black dwelt not in a world of legal concerns alone but in the world of real persons, and Wright found him especially sensitive to those persons who were powerless or nonconformist.[133] Wright offered this tribute: "Hugo Black is a humanitarian—a man with an inborn distrust for the legal cliché who pierces such legalisms to expose the real world outside. It is Black's humanitarianism that has been his polar star in the resolution of personal injury claims."[134] Wright also

132. 347 U.S. 483 (1954).

133. *See, e.g.*, Wright, *Justice at the Dock: The Maritime Worker and Mr. Justice Black*, 14 U.C.L.A. L. REV. 524 (1967).

134. *Id.* at 524.

liked to quote a passage from Black's opinion in *Chambers v. Florida*,[135] in which Black stressed the role of the courts "as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement."[136]

A final word should be said about Wright's personal life: if his judging was marked by unconventionality, his personal life remained almost a model of the conventional. Like Justice Black, he possessed a cultural conservatism, believing firmly in such values as the family, the work ethic and sexual morality. When he heard that one of his former law clerks, though working in a good job, was taking drugs, Wright was outraged: the young man, he felt, was squandering his talents and a fine education. Wright was also outraged when an associate showed him Jimmy Carter's remarks on lust in his *Playboy* interview—outraged both by the remarks and by the magazine. "Have you seen the pictures in here?" Wright asked, shaking his head in disgust.

Wright's life off the bench revolved around his family. He arrived punctually at his chambers each day at nine a.m. and left just as punctually at half past five. Though he may have taken articles or motions home, he never stayed late at the office or came in on weekends.

Wright worked efficiently, and was noted for keeping up with his opinions. Unlike other "reformers," however, he had no consuming drive to achieve. He was not among the "possessed," those driven constantly to accomplish, unable to rest. Perhaps he was too "well-adjusted," in terms of a stable family upbringing and marriage, or he never saw himself as an historical personage.

Outside of his family, Wright had few close friends, but developed very warm relationships with his law clerks. He liked his clerks' enthusiasm and high-mindedness; they in turn liked his accessibility and gentleness.

His clerks today speak of Wright as inspiring them to "do good" in law through his focus on the human equities and policy repercussions of decisions, his belief in "justice within the law," and his idealism. Abe Sofaer, Wright's law clerk from 1965 to 1966, had this to say about his time with Wright:

> I had worked my way through college and law school and on the law review, and when I graduated from law school I was tired. Then I came to Wright. He was in his fifties, but he gave me energy. He was a young man in his idealism, vigor, and most of

135. 309 U.S. 227 (1940).
136. *Id.* at 241.

all his capacity for outrage.[137]

The clerks also saw in Wright a greatness similar to that which Wright saw in Black: the ability to pierce through formalisms, and the innumerable complexities and subtleties, to see essential truths within.

Wright often urged his clerks to go into teaching. For him, as for other judges, there was, of course, the model of Felix Frankfurter, whose clerks had become influential professors throughout the country and had spread Frankfurter's judicial outlook. But more basically, Wright thought it a fine thing to deal with the idealistic young and to produce writings that could bring "light and reason" to the law. To Wright, time in practice and some trial experience was good, but the highest good was to be a law professor.[138]

The Chief Judgeship and Beyond

In 1978, Wright assumed the chief judgeship of the D.C. Circuit. It is a position which he will hold at least until he reaches retirement age, seventy, in 1981. Few of his friends and associates believe, though, that he will step down from the bench in 1981, or at any time before his death.

Judging has become his life. He has few other intellectual interests and no hobbies, having given up golf ten years ago. It is a life he continues to love. Keith Ellison, who clerked with Wright from 1976 to 1977, recalls Wright telling him that there is no better life than being a judge. Lawyers have the responsibility of representing the interests of one side or another. As a judge, he has the opportunity to "do right."

137. Interview with Abe Sofaer, Washington, D.C., Feb. 4, 1979. Mr. Sofaer is now a federal district judge in New York.

138. Wright would often quote Robert Kennedy: "Our answer is the world's hope; it is to rely on youth—not a time of life but a state of mind, a temper of the will, a quality of the imagination, a predominance of courage over timidity, of the appetite for adventure over the love of ease." R. KENNEDY, TO SEEK A NEWER WORLD 230 (1967).