

**BUSH V. ORLEANS PARISH SCHOOL  
BOARD: THE SECOND BATTLE OF NEW  
ORLEANS, CHRONICLES OF THE CASE AND  
THE JUDGE**

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### INTRODUCTION

*Bush v. Orleans Parish School Board* was a decade-long struggle to have the law as declared by the U.S. Supreme Court enforced on the public schools in New Orleans.<sup>2</sup> Because it was an epic struggle, it has been called the Second Battle of New Orleans.<sup>3</sup> In its day, some sixty years ago, it was simply referred to as the New Orleans school crisis.<sup>4</sup> Today, it is a dark and long-forgotten chapter in Louisiana history. J. Skelly Wright, the federal district judge to whom the case fell by chance in 1952,<sup>5</sup> faced down the fury of Louisiana's Governor, legislature, and virtually its entire white population. Before it was over, Judge Wright had become the most known and, perhaps, the most hated man in Louisiana, his birthplace and home. Throughout it all, he had no blueprint to follow. Never before had a federal district judge been thrust into the role of implementing the amorphous mandate of *Brown*—"with all deliberate speed"—in the community in which he lived nor had a federal judge been forced

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2. Earl Benjamin Bush, et al. v Orleans Parish School Board, et al., Civil Action No 3630, Section B, United States District Court, Eastern District of Louisiana.

3. LIVA BAKER, *THE SECOND BATTLE OF NEW ORLEANS: THE HUNDRED-YEAR STRUGGLE TO INTEGRATE THE SCHOOLS* (1996); Editorial, *The Battle of New Orleans*, N.Y. TIMES, Nov. 15, 1960, at 38; Clarence A. Laws, *Second Battle of New Orleans*, CRISIS, Jan. 1961, at 15, ("The current school crisis in Louisiana is frequently referred to by representatives of the press as 'The Battle of New Orleans.' If anything, it should be called the 'Second Battle of New Orleans.'").

4. See, e.g., LA. STATE ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, *THE NEW ORLEANS SCHOOL CRISIS* (1961) [hereinafter *NEW ORLEANS SCHOOL CRISIS*], available at <https://www.law.umaryland.edu/marshall/usccr/documents/cr12sch6.pdf>.

5. *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491, 496 (5th Cir. 1962) ("The district judge to whom the New Orleans School Case fell by chance in 1952 was Judge J. Skelly Wright, an able, courageous, and patient judge.").

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to draft a desegregation plan for a school board to implement.<sup>6</sup> Simply put, it had never been done before, a theme which would come to define Judge Wright's career on the federal bench. Indeed, the *Bush* case was recognized early as an important case by The Louisiana State Advisory Committee to the United States Commission on Civil Rights, which issued a report in 1961 stating that:

The school crisis in New Orleans was one of the most significant events of 1960, not only for the United States but for the entire world. Race relations is the most momentous domestic problem in our country.<sup>7</sup>

Of the many noteworthy cases Judge Wright decided over his long judicial career, this would certainly be his defining case.

This is the story of the *Bush* case and the judge who presided over it.

### JAMES SKELLY WRIGHT

J. Skelly Wright was born in 1911 and grew up in the 1920's in a middle class neighborhood of New Orleans on Camp Street in the shadow of St. Stephen Church.<sup>8</sup> He was the second of seven children of Margaret A. Skelly and James E. Wright. The Skelly side of the family was fourth generation Irish Catholic born in America with roots in County Cork.<sup>9</sup> Margaret Wright walked to 6 A.M. Mass at St. Stephen every day, rain or shine.<sup>10</sup> She was a ward leader for the Old Regulars, which exposed Judge Wright to politics at a young age.<sup>11</sup> His uncle was popular City Commissioner/Councilman Joseph Patrick Skelly, whose campaign flyers proudly boasted that he was born on St. Patrick's Day, an important qualification that secured the Irish vote.<sup>12</sup>

Judge Wright was about as New Orleans as they come. He rode the segregated streetcar to attend Warren Easton High

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6. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 59.

7. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 1.

8. *See supra* note 1.

9. *See supra* note 1; *see also* BAKER, *supra* note 3, at 88.

10. *See supra* note 1; *see also* BAKER, *supra* note 3, at 90.

11. *See supra* note 1; *see also* BAKER, *supra* note 3, at 89. The Regular Democratic Organization, known as the Old Regulars, was a powerful Democratic machine in New Orleans in the early 20th Century.

12. *See supra* note 1.

School and obtained a scholarship to attend Loyola University, where he graduated in 1931 with a Ph.B.<sup>13</sup> After a summer job as a messenger at a downtown law firm, Judge Wright decided that he wanted to be a lawyer, so he taught History, English, and Math at Fortier High School, the new uptown all white boys' high school, during the day to pay for Loyola Law School at night.<sup>14</sup> In those days, there were no student loans. A close, longtime friend of Judge Wright recalled that:

As a teacher, he was a favorite among his students. In his early twenties, he taught history at Fortier High School to put himself through Loyola Law School at night. Nobody slept in his class. Nor did anyone talk out of turn. If the young teacher felt someone was out of line, he was inclined to pick up and throw an eraser by way of admonishment. Despite this predilection for instant discipline, the annual students' poll revealed Wright to be the most popular faculty member at New Orleans' largest boys' high school.<sup>15</sup>

One of his students was future Louisiana Senator Russell Long, son of Huey Long. Senator Long and Judge Wright became personal friends, even though later Senator Long would not support Judge Wright during the school crisis.<sup>16</sup> Because of his commitment and hard work, he was in the vanguard of the generation of the early 20th Century that lifted the middle class into professions previously reserved for the upper class.

There were limited opportunities for new lawyers in 1934 when Judge Wright graduated from law school, in the middle of the Great Depression. He continued to teach at Fortier and, after class, would go downtown to a small law office he shared with a friend to practice law for a few hours in the afternoon. A year later, he landed a much-coveted job as an Assistant U.S. Attorney for the Eastern District of Louisiana. There, he was involved in the prosecution of the Louisiana Scandals cases of the late 1930's, which resulted in hundreds of convictions and prison sentences for the Governor of Louisiana and the president of Louisiana State University (LSU). The U. S. Attorney was Rene A. Viosca whom Judge Wright regarded as the best trial lawyer in the city

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13. *See supra* note 1.

14. *See supra* note 1.

15. Bill Monroe, *In Memoriam: J. Skelly Wright*, 102 HARV. L. REV. 369, 370 (1988).

16. *See supra* note 1.

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and a great teacher. The First Assistant U.S. Attorney was Herbert W. Christenberry who would later become a federal district judge and serve with Judge Wright on numerous three-judge district courts for desegregation cases including Louisiana's first school desegregation case decided before *Brown*. Becoming an Assistant U.S. Attorney was a life changing experience for the young Judge Wright as he developed important trial experience and a lifelong respect for the federal courts.

During World War II, Judge Wright served in the U.S. Coast Guard as commander of a sub-chaser, which sank a Nazi U-Boat off the coast of Florida on his second day aboard.<sup>17</sup> Later in the War, he served on the legal staff of Admiral Harold Stark, Commander U.S. Naval Forces, Europe, during the planning of naval operations for the D-Day invasion.<sup>18</sup> During that time, he met and married Helen Patton, an Admiral's daughter, who was working at the U.S. Embassy in London.<sup>19</sup> After the War, he opened a law office in Washington, D.C. Two of his clients were the Standard Fruit Company, now Dole Food Company, and Higgins Industries, manufacturer of the famous D-Day landing craft.<sup>20</sup>

In 1946, Judge Wright argued the infamous *Willie Francis* death penalty case before the U.S. Supreme Court.<sup>21</sup> That case involved a botched execution using Louisiana's traveling electric chair, "Gruesome Gertie."<sup>22</sup> Francis had received electric current, which was insufficient to kill him.<sup>23</sup> Judge Wright argued that, under the due process clause of the Fourteenth Amendment, a second execution under these circumstances would deny Francis due process under the double jeopardy clause of the Fifth Amendment and the cruel and unusual punishment clause of the

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17. He never accepted credit for the sinking, insisting that it was due to the skill and bravery of his crew.

18. *See supra* note 1.

19. *See supra* note 1.

20. *See supra* note 1.

21. *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947).

22. GILBERT KING, *THE EXECUTION OF WILLIE FRANCIS: RACE, MURDER, AND THE SEARCH FOR JUSTICE IN THE AMERICAN SOUTH* 7 (2008); Deborah W. Denno, *When Willie Francis Died: The "Disturbing" Story Behind One of the Eighth Amendment's Most Enduring Standards of Risk*, in *DEATH PENALTY STORIES* 17, 42 (John H. Blume & Jordan M. Steiker eds., 2009); *see also supra* note 1.

23. *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 461 (1947).

Eighth Amendment.<sup>24</sup> Judge Wright received a call from the clerk advising him that he had won five to four.<sup>25</sup> However, after running down to the Court to get a copy of the opinion, he learned that he lost five to four. The U.S. Supreme Court authorized Louisiana to set the execution of Francis for a second time and carry it out.<sup>26</sup> Governor Jimmie Davis, whom Judge Wright would later confront during the *Bush* case, refused to grant Francis a reprieve.<sup>27</sup>

Because of its unusual facts, the *Francis* case received considerable national notoriety. Even though he lost the *Francis* case, Judge Wright received a referral of another criminal case to be brought before the Supreme Court—probably because he would work for no fee. In 1947, he argued that case, *Johnson v. U.S.*,<sup>28</sup> before the Supreme Court. *Johnson* involved the issue of the admissibility of evidence seized as a result of a search incident to an unlawful arrest. He won that case five to four. The Court found that the government cannot justify an arrest by a search and, at the same time, justify the search by the arrest. The *Johnson* case established the principle that an arrest in violation of state law also violates the Fourth Amendment because “[s]tate law determines the validity of arrests without warrant.”<sup>29</sup>

In 1948, Harry Truman appointed Judge Wright to be U.S. Attorney in New Orleans, filling the position vacated by his longtime friend, Herbert Christenberry, who had been appointed to the district court. Judge Wright was thirty-seven years old.<sup>30</sup> Believing that Truman had little chance to be reelected, he left his wife and young son in Washington; he planned to serve as U.S. Attorney until the next presidential election later that year and then return to his law practice in Washington.<sup>31</sup> To the Nation’s surprise, Truman won the election in 1948. Shortly thereafter, on October 21, 1949, Truman nominated Judge Wright to be a U.S. District Judge for the Eastern District of

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24. *Id.* at 462.

25. Denno, *supra* note 22, at 56-57; *see also supra* note 1.

26. *See supra* note 1.

27. *See supra* note 1.

28. *Johnson v. United States*, 333 U.S. 10 (1948).

29. *Id.* at 15 n.5.

30. *See supra* note 1.

31. *See supra* note 1.

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Louisiana. At thirty-eight, he was the youngest federal judge in the United States.<sup>32</sup>

### THE BEGINNING OF COURT ORDERED DESEGREGATION IN LOUISIANA

Judge Wright's first involvement with the desegregation of public schools began on October 7, 1950, less than a year after his taking the bench, when he ordered the desegregation of LSU Law School under the prevailing separate but equal standard of *Plessy v. Ferguson*.<sup>33</sup> Most courts avoided desegregation under *Plessy* by making fact-findings that the facilities were equal. Since the case raised the issue of the constitutionality of state law, Judge Wright empaneled a three-judge district court panel,<sup>34</sup> composed of himself, U.S. court of appeals Judge Wayne Borah, and U.S. district court Judge Herbert Christenberry.<sup>35</sup> In a rare separate but equal ruling, Judge Wright, writing for the court, found that the facilities and faculty at the all black Southern University in Baton Rouge, the purportedly "equal" law school, were not equal to those of LSU Law School.<sup>36</sup>

At that moment in the fall of 1950 when he signed the order forcing the board of supervisors at Louisiana State University to admit a black man to its all-white law school, Wright was thirty-nine years old and still something of a neophyte on the bench. . . . He'd had no idea then how important to his career the lifetime tenure of a federal judgeship would be. Without that protection, he'd have been dead professionally before he was forty. People afterward described him as a "monument" to lifetime tenure.<sup>37</sup>

The first black graduate of LSU Law School, Dutch Morial, went on to become the first black mayor of New Orleans.<sup>38</sup> In a

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32. See *supra* note 1; see also Monroe, *supra* note 15, at 371.

33. 163 U.S. 537 (1896).

34. At that time, federal law required a three-judge district court be empaneled to hear cases when a litigant sought to prevent the enforcement of state law on the basis that it violated the U.S. Constitution. See 28 U.S.C. § 2281 (1970) (repealed 1976).

35. *Wilson v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 92 F. Supp. 986 (E.D. La. 1950).

36. *Id.* at 989; Monroe, *supra* note 15, at 371.

37. BAKER, *supra* note 3, at 87-88.

38. Monroe, *supra* note 15, at 371.

1995 interview, Helen Wright recalled that the LSU decision did not create much controversy:

It didn't really seem to create such terrible furor; there certainly were ripples, and though there were the harsh segregationists who made a bit of noise but it wasn't really until it got down to the first LSU undergraduate case that it created a real racket. . . . and in retrospect it probably looked a bit raucous but nothing compared to what ultimately happened. There were no mob scenes, no screaming women in hair curlers nor any of those things.<sup>39</sup>

The LSU Law School case was the first of many desegregation cases for Judge Wright. He would later say: “[u]ntil that time, I was just another Southern boy.”<sup>40</sup>

### ***BUSH V. ORLEANS PARISH SCHOOL BOARD***

The New Orleans school case, *Bush v. Orleans Parish School Board*, began on September 4, 1952, when New Orleans attorney, A.P. Tureaud, with the local NAACP chapter, filed a lawsuit on behalf of several black parents entitled *Earl Benjamin Bush et al. v. Orleans Parish School Board et al.* in federal district court in New Orleans.<sup>41</sup> Tureaud's co-counsel was Thurgood Marshall, Chief Counsel of the Legal Defense and Educational Fund of the NAACP.<sup>42</sup> The suit challenged the constitutionality of racial segregation in the Orleans Parish public schools.<sup>43</sup> The clerk of court randomly assigned the case to Section B, the Court of U.S. District Judge J. Skelly Wright. There were only two federal district judges in New Orleans at the time, so his involvement turned on a fifty-fifty chance.

At that time, the landmark case of *Brown v. Board of Education* was making its way through the federal court system.

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39. Interview by Susan L. Carney with Helen Patton Wright 63 (Nov. 11, 1995) [hereinafter Helen Patton Wright Interview], available at [http://dcchs.org/HelenPWright/helenpwright\\_complete.pdf](http://dcchs.org/HelenPWright/helenpwright_complete.pdf).

40. KIM LACY ROGERS, *RIGHTEOUS LIVES: NARRATIVES OF THE NEW ORLEANS CIVIL RIGHTS MOVEMENT* 34 (1993) (citing a January 15, 1979 interview with Jack Bass); BAKER, *supra* note 3, at 87.

41. See *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491, 492-93 (5th Cir. 1962).

42. DAVISON M. DOUGLAS, *BUSH V. ORLEANS PARISH SCHOOL BOARD AND THE DESEGREGATION OF NEW ORLEANS SCHOOLS* 2, 35 (2005), available at <http://www.fjc.gov/history/docs/bush.pdf>.

43. See *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491, 492-93 (5th Cir. 1962).

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The parties in the *Bush* case agreed that a stay of the case was appropriate pending the U.S. Supreme Court's resolution of *Brown*.<sup>44</sup> On May 17, 1954, the Supreme Court decided *Brown I* declaring that government-enforced public school segregation was unconstitutional.<sup>45</sup> Then, on May 31, 1955, the Supreme Court issued its second decision in *Brown*, holding that school desegregation must proceed "with all deliberate speed," but set no timetable.<sup>46</sup> Because the Supreme Court gave limited guidance for implementation of its school desegregation edict, lower courts had to decide on their own how to implement *Brown*.

In what was the beginning of a barrage of legislation enacted over the next seven years intending to block court-ordered school desegregation, the Louisiana legislature quickly reacted to *Brown* by passing a resolution that condemned the Supreme Court's "usurpation of power" and later passed an amendment to the Louisiana Constitution mandating public school segregation.<sup>47</sup> Its articulated authority was under the police power to "protect public health, morals, better education and the peace and good order in the State, and not because of race."<sup>48</sup> The amendment stated:

All public elementary and secondary schools in the State of Louisiana shall be operated separately for white and colored children. This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order in the State, and not because of race. The Legislature shall enact laws to enforce the state police power in this regard.<sup>49</sup>

It was an obvious ruse for the legislature to declare that the amendment had nothing to do with race. Voters overwhelmingly

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44. Orleans Parish Sch. Bd. v. Bush, 242 F.2d 156, 158 (5th Cir. 1957); DOUGLAS, *supra* note 42, at 2.

45. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 495 (1954).

46. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

47. Orleans Parish Sch. Bd. v. Bush, 242 F.2d 156, 159 (5th Cir. 1957); DOUGLAS, *supra* note 42, at 3.

48. LA. CONST. of 1921, art. XII, § 1 (1954), *invalidated by* Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 336, 337 (E.D. La. 1956); *see also* Orleans Parish Sch. Bd. v. Bush, 242 F.2d 156, 159 (5th Cir. 1957); DOUGLAS, *supra* note 42, at 57.

49. LA. CONST. of 1921, art. XII, § 1 (1954), *invalidated by* Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 336, 337 (E.D. La. 1956); *see also* DOUGLAS, *supra* note 42, at 57.

approved this amendment in November, 1954.<sup>50</sup> Thereafter, the legislature passed legislation mandating segregation in all Louisiana schools.<sup>51</sup> This was “part of the legislative plan, enacted subsequent to the Supreme Court’s decision in *Brown v. Board of Education of Topeka*, supra, to avoid the effect of that decision in order to retain segregation in the public schools of the state.”<sup>52</sup> The first statute, Act 555 of 1954, implemented the constitutional amendment by providing that: “All public elementary and secondary schools in the state of Louisiana shall be operated separately for white and colored children.”<sup>53</sup> The second statute, Act 556 of 1954, set forth the means by which schools would maintain segregation. It provided that, each year, the superintendent of schools for each parish would determine the particular public school within each parish to be attended by each student and that no student could enroll in a public school unless assigned in accordance with the provisions of the Act.<sup>54</sup>

After the *Brown* decisions, Judge Wright reactivated the *Bush* case. On February 15, 1956, less than one year after *Brown II* was decided, a three-judge federal district court panel, composed of Judges Borah, Christenberry and Wright, ruled that, in light of the *Brown* decisions, the constitutional amendment and state statutes requiring school segregation violated the U.S. Constitution.<sup>55</sup> As a result, the three-judge court found that the case presented “no serious constitutional question” and that two judges designated by the Chief Judge of the Fifth Circuit to sit with the district judge in the hearing and decision of the case would withdraw and return the case to the district court where it was originally filed.<sup>56</sup> The three-judge panel was then dissolved and the case returned to Judge Wright alone to consider the remaining legal questions and an injunction request from the

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50. DOUGLAS, *supra* note 42, at 3, 57.

51. Act of July 8, 1954, No. 555, 1954 La. Acts 1034; Act of July 8, 1954, No. 556, 1954 La. Acts 1036; *see also* *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 341 (E.D. La. 1956), *aff’d*, 242 F.2d 156 (5th Cir. 1957).

52. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 340-41 (E.D. La. 1956), *aff’d*, 242 F.2d 156 (5th Cir. 1957).

53. *Id.* at 341.

54. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 341 (E.D. La. 1956), *aff’d*, 242 F.2d 156 (5th Cir. 1957).

55. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 336, 337 (E.D. La. 1956); *see also* DOUGLAS, *supra* note 42, at 3.

56. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 336, 337 (E.D. La. 1956).

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plaintiffs.<sup>57</sup> On the same day, Judge Wright, in a separate decision, overruled the defenses of the Orleans Parish School Board and ordered the school board officials to end segregation “after such time as may be necessary to make arrangements for admission of children . . . on a racially nondiscriminatory basis with all deliberate speed.”<sup>58</sup>

Judge Wright timed his order to be filed on Ash Wednesday, a unique day in local culture when most residents would be preoccupied with recovery from Mardi Gras and the beginning of Lent.<sup>59</sup>

Aware of the potential for trouble in a federal court order to reshape the traditions of a city that hadn’t changed “significantly for a hundred years,” Wright tried to time it well. His opinion had been ready on the Monday before Mardi Gras, but he deliberately postponed making it public until after the holiday frenzy ended, when he hoped the calm of Ash Wednesday, beginning of the Christian season of repentance, would work to his advantage.<sup>60</sup>

Judge Wright’s order closed with these oft quoted words, which he first scribbled on the back of a program from a Mardi Gras ball. He had written them the Sunday before he issued his ruling “while Helen sipped her morning coffee in bed. . . . He didn’t tell her what he was writing, and he didn’t read it to her afterwards. She was unaware he was drafting perhaps the most eloquent passage of his career.”<sup>61</sup>

The problems attendant desegregation in the deep South are considerably more serious than generally appreciated in

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57. *Id.*; DOUGLAS, *supra* note 42, at 3.

58. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 342 (E.D. La. 1956), *aff’d*, 242 F.2d 156 (5th Cir. 1957). Judge Wright’s decree stated:

It Is Ordered, Adjudged and Decreed that the defendant, Orleans Parish School Board, a corporation, and its agents, its servants, its employees, their successors in office, and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in *Brown v. Board of Education of Topeka*.

*Id.*

59. *See supra* note 1.

60. BAKER, *supra* note 3, at 260.

61. *Id.* at 261.

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.<sup>62</sup>

Judge Wright included himself in his admonition calling for the "utmost patience, understanding, generosity and forbearance from all of us . . . ."<sup>63</sup>

That order was the first post-*Brown* desegregation order issued by a judge in the states of the Deep South stretching from South Carolina to Louisiana, the states of the old Confederacy. Liva Baker in her book, *The Second Battle of New Orleans*, described that important day in New Orleans history:

Six inches of rain fell on New Orleans on February 15, 1956, flooding at least part of every section of the city and retarding the efforts of street cleaners to remove the mountain of debris left by Rex and his convivial court, King Zulu and *his* followers, and the near million Mardi Gras revelers who'd danced in the streets the day before. Nursing the usual morning-after headaches, New Orleanians trudged solemnly off to Ash Wednesday church services. About the time the aspirin took effect, the afternoon paper was on the street, its eight-column front-page banner headline screaming:

N.O. PUBLIC SCHOOLS ORDERED TO BEGIN  
DESEGREGATION PLANS<sup>64</sup>

The next morning, the Editorial of *The Times Picayune*, the local morning newspaper, echoed the views of its readers and offered no support for the enforcement of the law of the land.

If the court in saying that Orleans must establish an unsegregated school system meant that the school board

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62. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 341-42 (E.D. La. 1956), *aff'd*, 242 F.2d 156 (5th Cir. 1957).

63. *Id.*

64. BAKER, *supra* note 3, at 258.

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must mix white and Negro children, then in our judgment it was crediting the school board with super-human power.<sup>65</sup>

Later, *The Times Picayune* would encourage the school board lawyers and the legislature to exhaust all legal options to block desegregation.<sup>66</sup> Throughout its reporting on the school crisis, *The Times Picayune* and *The States-Item*, the local afternoon paper, continued to publish editorials that encouraged disrespect for the law and the courts.<sup>67</sup>

The school board appealed Judge Wright's desegregation order to the U.S. Court of Appeals for the Fifth Circuit, which affirmed on March 1, 1957.<sup>68</sup> On June 17, 1957, the U.S. Supreme Court denied certiorari.<sup>69</sup> When the case returned to the district court, the school board moved to vacate Judge Wright's February 15, 1956 preliminary injunction on the basis that the plaintiffs failed to post a \$1,000.00 bond ordered by Judge Wright.<sup>70</sup> The plaintiffs then posted the bond and on June 26, 1957, Judge Wright denied the motion.<sup>71</sup> The school board appealed to the U.S. Court of Appeals for the Fifth Circuit, which affirmed Judge Wright on February 13, 1958.<sup>72</sup> On March 28, 1958, the school board's motion for rehearing was denied and the U.S. Supreme Court denied certiorari on May 26, 1958.<sup>73</sup> These actions by the school board delayed implementation of Judge Wright's order for two years and three months. The appeals by

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65. Editorial, *New Desegregation Order*, TIMES PICAYUNE, Feb. 17, 1956, at 12.

66. Editorial, *Time of Crisis in Public Education*, TIMES PICAYUNE, Aug. 25, 1960, at 1.

67. See, e.g., *id.*; Editorial, *Dreadful Day Comes at Last*, TIMES PICAYUNE, Nov. 15, 1960, at 12; Editorial, *Course of the Legislature*, TIMES PICAYUNE, Dec. 3, 1960, at 12; Editorial, *Mask of the Bigot*, TIMES PICAYUNE, Dec. 14, 1960, at 12; Editorial, *This is Not a Time for Recriminations*, TIMES PICAYUNE, Aug. 8, 1961, at 8; Editorial, *A Call for Reason*, TIMES PICAYUNE, Sept. 8, 1961, at 1; Editorial, *The Responsibility of Gov. Davis*, NEW ORLEANS STATES-ITEM, Nov. 8, 1960, at 8; see also *infra* notes 106, 107, 146, 183, 207-09, 222, 307 and accompanying text.

68. *Orleans Parish Sch. Bd. v. Bush*, 242 F.2d 156, 164 (5th Cir. 1957) ("Whatever may have been thought heretofore as to the reasonableness of classifying public school pupils by race for the purpose of requiring attendance at separate schools, it is now perfectly clear that such classification is no longer permissible, whether such classification is sought to be made from sentiment, tradition, caprice, or in exercise of the State's police power.").

69. *Orleans Parish Sch. Bd. v. Bush*, 354 U.S. 921 (1957).

70. *Orleans Parish Sch. Bd. v. Bush*, 252 F.2d 253, 254-55 (5th Cir. 1958).

71. *Id.*

72. See *Orleans Parish Sch. Bd. v. Bush*, 252 F.2d 253 (5th Cir. 1958).

73. See *id.*; *Orleans Parish Sch. Bd. v. Bush*, 356 U.S. 969 (1958).

the school board were one of the most effective means of delaying the implementation of Judge Wright's order.

### LEGISLATURE DELAYS IMPLEMENTATION

The Louisiana legislature acted quickly to derail court-ordered public school desegregation. In the summer of 1956, the legislature responded to Judge Wright's desegregation order with a third set of laws designed to obstruct the federal court's desegregation of the public schools.<sup>74</sup> These actions succeeded in delaying enforcement of the desegregation order for another four years as the constitutionality of the legislation had to be tested in the courts. One law, Louisiana Act 319, enacted in 1956, authorized the legislature to determine the racial composition of schools in large cities, such as New Orleans.<sup>75</sup> The legislature created the Special Schools Classification Committee, giving it the authority to classify schools by race, the intended effect of which was to deny the Orleans Parish School Board the authority to comply with Judge Wright's order.<sup>76</sup>

The Orleans Parish School Board took cover in the contention that the legislature's acts deprived the board of authority to carry out the desegregation order.<sup>77</sup> In the summer of 1958, the school board moved to vacate Judge Wright's February 15, 1956 injunction on the grounds that, as a result of Act 319, the school board no longer controlled the racial composition of the schools.<sup>78</sup> On July 1, 1958, Judge Wright declared Act 319 to be unconstitutional stating:

Any legal artifice, however cleverly contrived, which would circumvent this ruling, and others predicated on it, is unconstitutional on its face. Such an artifice is the statute in suit.<sup>79</sup>

The school board appealed and the U.S. Court of Appeals for the Fifth Circuit affirmed Judge Wright's decision and ordered the school board to comply with his order.<sup>80</sup> In November 1958,

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74. DOUGLAS, *supra* note 42, at 4.

75. Act of July 13, 1956, No. 319, 1956 La. Acts 654.

76. *See* Bush v. Orleans Parish Sch. Bd., 163 F. Supp. 701 (E.D. La. 1958).

77. *Id.* at 701-02.

78. *Id.*

79. *Id.* at 702.

80. Orleans Parish Sch. Bd. v. Bush, 268 F.2d 78, 80 (5th Cir. 1959) (per curiam).

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Louisiana voters approved a state constitutional amendment that prohibited lawsuits against school boards.<sup>81</sup>

In 1958, the legislature enacted a fourth set of anti-desegregation laws that gave the governor the power to close any “racially mixed public school or schools under court order to racially mix its student body.”<sup>82</sup> The legislature also passed laws to provide that “no child shall be compelled to attend any school in which the races are commingled” and to offer tuition grants for private schools if a school system operated “no racially separate public school.”<sup>83</sup>

During this time, Judge Wright did not have a law clerk.<sup>84</sup> His support staff consisted of only a secretary and a messenger.<sup>85</sup> In a later interview, his wife Helen remembered:

He did not have any law clerks for the first nine years he was on the bench. The Chief Judge of the Circuit, Judge Hutcheson, did not approve of law clerks. He didn't think judges needed law clerks . . . . Skelly had a messenger and a secretary, and everything he wrote, he researched, cited, I guess you call it, and wrote for the first 9 years . . . . His very first law clerk was Peter Powers, who is now up here in Washington, and then he had a second law clerk, Jack Martzell, and then Frank Weller—then Louie Claiborne, those four.<sup>86</sup>

Also during this time, only two district judges handled all of the cases in the Eastern District of Louisiana, which consisted of two divisions, the New Orleans and Baton Rouge divisions. Judges Christenberry and Wright were at the forefront of the development of pre-trial procedure. During this very busy time for both of them, they led the nation for several years on the number of cases handled and closed.<sup>87</sup> Every August, Judge Wright would sit on cases pending in the Southern District of New York and other districts around the country. He liked to tell

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81. DOUGLAS, *supra* note 42, at 4.

82. *Id.*

83. DOUGLAS, *supra* note 42, at 4.

84. Helen Patton Wright Interview, *supra* note 39, at 61-62.

85. *Id.* at 62.

86. *Id.* at 61-62.

87. See FIELD STUDY OF THE OPERATIONS OF UNITED STATES COURTS: REPORT TO SENATE APPROPRIATIONS COMMITTEE 65-66 (1959); see also *supra* note 1.

the story of one criminal case he tried in the Northern District of Mississippi: when the defense lawyer put his client on the stand, the client would answer his lawyer's questions by saying, "Yes Colonel" and "No Colonel."<sup>88</sup> At a bench conference, Judge Wright mentioned to the defense lawyer that he had noticed that his client kept calling him "Colonel" and that he did not know that the lawyer was in the military service. The defense lawyer responded that he was not in the service and that the title meant nothing—"kinda like when I address you as 'Your Honor.'"<sup>89</sup> In addition to his service as a federal district court judge, Judge Wright taught Federal Courts at Loyola Law School between 1950 and 1962.<sup>90</sup>

### DEADLINE FOR ACTION

On July 15, 1959, Judge Wright imposed a March 1, 1960 deadline on the Orleans Parish School Board to provide the court with a desegregation plan for the Orleans Parish schools.<sup>91</sup> He extended that deadline to May 16, 1960.<sup>92</sup> On May 16, the school board filed a pleading stating that it could not file a desegregation plan because of state restrictions on its authority.<sup>93</sup> In response, on the same day, Judge Wright filed his own plan requiring the desegregation of the Orleans Parish schools beginning with the first grade on September 8, 1960.<sup>94</sup> Judge Wright's plan simply provided, "All children entering the first grade may attend either the formerly all white public school nearest their homes, or the formerly all Negro public school nearest their homes, at their option."<sup>95</sup> This was the first time a federal judge drafted and implemented such a plan.

The clock was now quickly running out for those trying to block desegregation. In rapid succession, on June 2, 1960, the U.S. Court of Appeals for the Fifth Circuit turned down the Orleans Parish School Board's request for a stay of Judge

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88. *See supra* note 1.

89. *See supra* note 1.

90. Maria Isabel Medina et al., *Making History—Loyola University New Orleans College of Law Welcomes Dean María Pabón López*, 58 LOY. L. REV. 1, 14 (2012); *see also supra* note 1.

91. DOUGLAS, *supra* note 42, at 4.

92. *Id.*

93. *Id.*

94. *Bush v. Orleans Parish Sch. Bd.*, 187 F. Supp. 42, 43 & n.2 (E.D. La. 1960).

95. *Id.* at 43 n.2.

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Wright's May 16, 1960 desegregation order.<sup>96</sup> In turn, on July 10, 1960, the U.S. Supreme Court refused to stay Judge Wright's May 16 order.<sup>97</sup>

During its Regular Session and First Extraordinary Session in the summer of 1960, the legislature took additional action to block Judge Wright's desegregation order and assert state authority over public schools.<sup>98</sup> The legislature passed its fifth and sixth sets of laws designed to block desegregation by giving the Governor authority to take over the operation of any school district that was subject to court-ordered desegregation.<sup>99</sup> Another statute gave the legislature the sole right to determine which schools were for white children, which schools were for black children, and which were to be integrated.<sup>100</sup> The legislature also created a "sovereignty commission" to examine legal measures, including invoking "interposition," that might protect the sovereignty of Louisiana.<sup>101</sup> Under the doctrine of interposition, a state had the authority to block or "nullify" an action of the federal government if the state concluded that the federal government or a federal judge had acted unconstitutionally.<sup>102</sup>

Also that summer, the Attorney General of Louisiana, Jack P. F. Gremillion, filed suit in state court seeking to block the Orleans Parish School Board from following Judge Wright's order.<sup>103</sup> On July 29, 1960, a state court judge found that the legislature had the sole right to determine the racial makeup of the state's public schools and ordered the school board to take no further action to comply with Judge Wright's desegregation order.<sup>104</sup> On August 17, 1960, newly elected Governor Jimmie

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96. DOUGLAS, *supra* note 42, at 18.

97. *Id.*

98. *Bush v. Orleans Parish Sch. Bd.*, 190 F. Supp. 861, 863-65 & n.1 (E.D. La. 1960).

99. *Id.* at 863 n.1; DOUGLAS, *supra* note 42, at 5.

100. Act of July 9, 1960, No. 496, 1960 La. Acts 948; *see also* DOUGLAS, *supra* note 42, at 5.

101. Act of Nov. 6, 1960, No. 15, 1960 La. Acts 30th Extraordinary Sess. 25; *see also* DOUGLAS, *supra* note 42, at 5.

102. DOUGLAS, *supra* note 42, at 5.

103. *Bush v. Orleans Parish Sch. Bd.*, 187 F. Supp. 42, 43 (E.D. La. 1960); *see also* DOUGLAS, *supra* note 42, at 5.

104. *See* DOUGLAS, *supra* note 42, at 5; *Louisiana v. Orleans Parish Sch. Bd.*, No. 382-646 (Civ. Dist. Ct. Orleans Parish, Div. A, Dkt. 5).

Davis declared his intention to take control of the Orleans Parish schools under the authority of the new state laws.<sup>105</sup>

On August 25, 1960, *The Times Picayune* published a front-page editorial that praised the delay tactics of the Governor, school board, and legislature and also regretted that their efforts would eventually be unsuccessful.<sup>106</sup>

In less than two weeks, the people of New Orleans will face one of the most grave situations with which they have ever been confronted. They will face the prospect of integrated public schools or closed public schools. We have already stated that the choice between the two is a tragic one. . . . State and local officials, with skill and determination, have been fighting a legal battle to save segregation. . . . Legal efforts still are being made to avoid integration of the New Orleans public schools. We approve heartily the right to exhaust every legal avenue, for this, too, is a right given by the Constitution. We regret that we do not expect these legal efforts to be successful for long. . . . Integration of the public schools, in our opinion, will damage them.<sup>107</sup>

In response to separate suits filed by A.P. Tureaud and a group of white parents who wanted to keep the schools open, Judge Wright empaneled a three-judge district court composed of himself, Richard Rives, chief judge of the U.S. Court of Appeals for the Fifth Circuit, and U.S. district court Judge Christenberry to consider the constitutionality of nineteen laws enacted or reenacted by the 1960 legislature.<sup>108</sup>

The hearing before the three-judge district court commenced on August 26, 1960, less than two weeks before the new school year was to start on September 8 with the implementation of Judge Wright's desegregation order.<sup>109</sup> At the outset of the hearing, Attorney General Gremillion and the Court locked in sharp exchanges when Judge Rives noted that the Governor was

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105. DOUGLAS, *supra* note 42, at 5.

106. Editorial, *Time of Crisis in Public Education*, TIMES PICAYUNE, Aug. 25, 1960, at 1.

107. *Id.*

108. *Bush v. Orleans Parish Sch. Bd.*, 187 F. Supp. 42 (E.D. La. 1960).

109. *Angry Gremillion, Staff Storm from U.S. Court School Hearing: Judges Take Cases Under Advisement*, NEW ORLEANS STATES-ITEM, Aug. 26, 1960, at 1.

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absent.<sup>110</sup> Governor Davis had successfully ducked personal service saying that “[i]f they can do everything they are trying to do, this state no longer has its sovereignty. . . . We will no longer have a United States of America – it will be something else.”<sup>111</sup> However, Judge Rives ruled that Governor Davis had been properly served through state employees.<sup>112</sup> Judge Rives said Governor Davis’ personal appearance was not necessary and denied Gremillion the right to speak on behalf of the Governor.<sup>113</sup>

Gremillion’s breaking point was reached when Charles E. Richards, attorney for the taxpayers filed affidavits which Gremillion said should have been filed five days earlier under federal law. . . . “I understand schools open Sept. 7 and Gov. Davis and the attorney general should join in helping prevent confusion about the opening day of schools,” admonished Judge Rives.” “You are violating my constitutional rights,” shouted Gremillion. “I ask that the Court grant a continuance and the opportunity for me to study these affidavits.” “We are not going to continue this case,” said Rives in a soft tone. “You’re not playing according to the rules,” boomed Gremillion. “You are running over us roughshod. The schools are going to be open and run. If anything is causing confusion, it is the procedure here in this Court.”<sup>114</sup>

Judge Rives admonished Gremillion, “You may reserve your objections—but I wish you would be more respectful to this court.”<sup>115</sup> Gremillion began shouting again about the affidavits and declared suddenly, “I’m going to walk out.”<sup>116</sup> He and his three assistants then stormed out of the courtroom. In the hallway as he stomped to the elevator, Gremillion charged that the three judges—Judges Rives, Wright, and Christenberry—were a “kangaroo court. I’m not going to stay in this den of iniquity.”<sup>117</sup>

For his actions in court that day, the judges cited Gremillion

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110. *Id.*

111. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 6.

112. *Angry Gremillion*, *supra* note 109.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Angry Gremillion*, *supra* note 109.

for contempt of court.<sup>118</sup> The three judges who were the objects of Gremillion's rants recused themselves from handling Gremillion's contempt hearing.<sup>119</sup> That job then fell to Western District Judge Edwin Hunter, an LSU Law School classmate of Gremillion's.<sup>120</sup> Judge Hunter found Gremillion guilty and sentenced him to a sixty-day suspended jail sentence and 18 months of unsupervised probation.<sup>121</sup>

After three days of arguments, the three-judge panel issued a temporary injunction on August 27, 1960.<sup>122</sup> The injunction restrained the Governor and other state and local officials from enforcing the state court injunction and the various legislative statutes which were intended to block Judge Wright's order.<sup>123</sup> The three-judge court also declared seven of the recently enacted segregation statutes unconstitutional, including the one that authorized the Governor to close schools.<sup>124</sup>

During this time, Judge Wright could not get the Eisenhower Department of Justice to commit the necessary support of U.S. Marshals to enforce his desegregation order for the opening day of the 1960 school year.<sup>125</sup> Concerned with the political fallout, the Eisenhower Administration wanted the implementation of the order delayed until after the 1960 presidential election.<sup>126</sup> Department of Justice officials told Judge Wright that he would get full support in implementing his order if he delayed until after the election on November 8, 1960.<sup>127</sup> Fear that he would not have sufficient support to safely carry out the order forced Judge Wright to consider a delay. Nonetheless, the school board requested a delay, and on August 30, Judge Wright delayed implementation of his desegregation order from September 8, the

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118. *Gremillion is Cited for Court Contempt*, NEW ORLEANS STATES-ITEM, Aug. 27, 1960, at 1.

119. *Contempt Case Before Hunter*, TIMES PICAYUNE, Aug. 30, 1960, § 2, at 2.

120. *Id.*; Joel Wm. Friedman, *Desegregating the South: John Minor Wisdom's Role in Enforcing Brown's Mandate*, 78 TUL. L. REV. 2207, 2221 n.56 (2004).

121. *Gremillion is Found Guilty*, LAKE CHARLES AM. PRESS, Oct. 7, 1960, at 1; Robert N. Kelso, *List of Events Leading up to School Mix Showdown*, NEW ORLEANS STATES-ITEM, Nov. 14, 1960, at 3.

122. *Bush v. Orleans Parish Sch. Bd.*, 187 F. Supp. 42, 45 (E.D. La. 1960).

123. *Id.* at 45-46.

124. *Id.* at 45.

125. DOUGLAS, *supra* note 42, at 6.

126. *See supra* note 1; JACK BASS, UNLIKELY HEROES, 132-34 (1981).

127. BASS, *supra* note 126, at 132-34.

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start of the school year, until November 14, 1960.<sup>128</sup> Judge Wright also accepted the school board's request to give the board greater authority over the placement of black students who requested transfer to previously all-white schools.<sup>129</sup>

As the new deadline rapidly approached, segregationists pressured Governor Davis to take additional legislative action.<sup>130</sup> He called the legislature into an extraordinary session beginning on November 4, the first of five extraordinary sessions of 1960 to deal with Judge Wright's desegregation orders.<sup>131</sup> After just four days, the legislature enacted a seventh set of laws, twenty-nine in all, attempting to block and delay desegregation in New Orleans.<sup>132</sup> These laws included:

- 1) "an interposition resolution, declaring the decisions of the courts in the field of desegregation to be a 'usurpation' of power";
- 2) laws "imposing a mandatory jail term and fine on any federal judge or other federal officer who attempted to [order] school desegregation";
- 3) a transfer of "all powers from the Orleans Parish School Board to the [L]egislature"; and
- 4) making it a State crime for any federal judge or official to order or enforce any desegregation order.<sup>133</sup>

It is hard to imagine a more contemptuous repudiation of federal authority—a State threatening the arrest of a federal judge or U.S. Marshal for carrying out the commands of the U.S. Supreme Court. These actions were tantamount to a declaration of secession from the Union for a second time in 100 years.

### ORLEANS PARISH DUAL SCHOOL SYSTEM

Since the end of Reconstruction, "the Orleans Parish School Board maintain[ed] a dual system of segregated schools based on

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128. *Judge Oks 10-Week Delay in School Mix*, NEW ORLEANS STATES-ITEM, Aug. 30, 1960, at 1.

129. *Id.*; see also DOUGLAS, *supra* note 42, at 6.

130. DOUGLAS, *supra* note 42, at 6.

131. *Id.*

132. Kelso, *supra* note 121.

133. DOUGLAS, *supra* note 42, at 6-7.

race.”<sup>134</sup> “This segregation [was] accomplished by dividing the city geographically into Negro school districts and white school districts based upon the residence and race of the children attending such schools.”<sup>135</sup> In 1959, the capacity utilization of white schools was 73% whereas in black schools it was 114%.<sup>136</sup> In addition, 1,687 black children were on the platoon system, whereas no white children were subject to platooning.<sup>137</sup> “On the opening of school in September, 1960, instead of complying with the Court’s desegregation order, the Board [implemented] a testing program for any first grade child electing a school other than the one to which he would be automatically assigned under the Board’s segregated system.”<sup>138</sup> Under this testing program, only “four Negro first grade children out of 134 applicants were allowed to ‘transfer’ to the white schools nearest their homes during the school year 1960-61.”<sup>139</sup>

#### THE SEVEN DAY BATTLE OF THE TEN YEAR WAR

What would be the decisive battle in the multi-year war on desegregation in New Orleans public schools began in Baton Rouge on Thursday, November 10, 1960.<sup>140</sup> It lasted for seven days and nights. The legislature fired the first salvo by appointing a committee to assume control of the Orleans Parish schools with the intention of blocking the desegregation planned for November 14.<sup>141</sup> Minutes later, Judge Wright fired back by issuing a temporary restraining order against the seizure of the Orleans Parish School Board by the legislature.<sup>142</sup> He ordered that the elected school board be restored to power and enjoined the enforcement of the new state statutes.<sup>143</sup> He also “issued an order restraining state and local officials from arresting or initiating any criminal proceedings against federal officers for the performance of their duties” and requested U.S. Attorney M. Hepburn Many to take steps to block any such action by the

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134. *Bush v. Orleans Parish Sch. Bd.*, 204 F. Supp. 568, 569 (E.D. La. 1962).

135. *Id.*

136. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 4.

137. *Id.*

138. *Id.*

139. *Id.* at 570.

140. *See DOUGLAS, supra* note 42, at 7.

141. *Id.*; Kelso, *supra* note 121.

142. Kelso, *supra* note 121.

143. *Id.*; DOUGLAS, *supra* note 42, at 7.

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state.<sup>144</sup> U.S. Marshals and city police began guarding Judge Wright's home even though he did not request such action.<sup>145</sup>

The *New Orleans States-Item*, the afternoon newspaper, fully supported these continued actions of the legislature in enacting laws preserving segregation and declared that Governor Davis should be praised if his legislative plan proved successful:

This newspaper supports his efforts in that direction, as in past sessions of the Legislature we have recommended enactment of the measures that were intended to preserve segregation.<sup>146</sup>

On Saturday November 12, 1960, in response to Judge Wright's temporary restraining order, "State Education Superintendent Shelby Jackson declared a statewide school holiday [for] Monday, November 14," to prevent Judge Wright's order for school desegregation in New Orleans to begin that day.<sup>147</sup> The legislature swore in the state police as deputy sergeants-at-arm and sent them to New Orleans to enforce the school closure.<sup>148</sup> "President Eisenhower's [A]ttorney [G]eneral, William Rogers, [declared] that the full powers of the Department of Justice would be used" to support Judge Wright's order.<sup>149</sup>

The next day, Sunday, November 13, 1960, Judge Wright ordered Superintendent Jackson to appear in his court to explain why Jackson should not be held in contempt, since the August 27th injunction specifically prohibited Jackson from taking any action to prevent school desegregation in New Orleans.<sup>150</sup> When Jackson appeared for the hearing on Monday, Judge Wright asked him if he intended to block his orders.<sup>151</sup> Jackson hung his head and said no.<sup>152</sup>

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144. DOUGLAS, *supra* note 42, at 7; accord Kelso, *supra* note 121.

145. *City Police Guard Home of U.S. School Judge*, NEW ORLEANS STATES-ITEM, Nov. 11, 1960, at 1; see also *supra* note 1.

146. *The Responsibility of Gov. Davis*, *supra* note 67.

147. DOUGLAS, *supra* note 42, at 7.

148. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 14.

149. DOUGLAS, *supra* note 42, at 7.

150. *Id.*; *Jackson Faces Contempt Action for Holiday Edict*, TIMES PICAYUNE, Nov. 14, 1960, at 17.

151. JIM CARL, FREEDOM OF CHOICE: VOUCHERS IN AMERICAN EDUCATION 45 (2011).

152. *Id.*; see also ADAM FAIRCLOUGH, RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972, at 247 (1995).

The Orleans Parish School Board was trapped between Judge Wright's desegregation order and the order of the State Superintendent of Education that schools would close for a holiday. The board decided to keep the Orleans Parish public schools open and proceed with its planned desegregation on November 14.<sup>153</sup> The public schools in all other Louisiana parishes closed for the declared holiday.<sup>154</sup>

The legislature had the support of most white Louisianans. Numerous displays of this support included rallies and letter writing. For example, on Sunday, November 13, 1960, the Mayor of Monroe, Louisiana sent a telegram to the legislative delegation from Monroe:

The white citizens of Monroe and Ouachita Parish are supporting you and the governor one thousand percent. Let's battle the U.S. courts to the bitter end and learn once and for all whether the state of Louisiana, its legislature and its governor are going to run the affairs of our state or whether or not traitors like Skelly Wright and a Communist Supreme Court is going to take over, and run our state. We are supporting you all the way and ask that no stone be left unturned in this all important fight to preserve our traditional way of life. If we lose this fight then we have lost it all. Keep up the good work.<sup>155</sup>

Also on Sunday, the Louisiana legislature was in continuous session in its First Extraordinary Session of 1960 and passed its eighth set of laws in an attempt to block Judge Wright's desegregation order.<sup>156</sup> It "placed the entire state legislature in charge of the Orleans Parish schools, reaffirmed that November 14 would be a school holiday, voted to fire the Orleans Parish school superintendent and school board attorney, and dispatched various sergeants-at-arms to New Orleans to ensure that the schools would *not* open the next morning in New Orleans."<sup>157</sup> The

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153. DOUGLAS, *supra* note 42, at 7.

154. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 14.

155. *Bush v. Orleans Parish School Board and the Desegregation of New Orleans Schools: Media Coverage and Public Debates*, FED. JUDICIARY CENTER, [http://www.fjc.gov/history/home.nsf/page/tu\\_bush\\_media.html](http://www.fjc.gov/history/home.nsf/page/tu_bush_media.html) (last visited Apr. 11, 2013) [hereinafter *Media Coverage*].

156. *See* DOUGLAS, *supra* note 42, at 7.

157. *Id.*; Dave Snyder, *Marshals Escort Four Negro Girls Into Two Schools As Crowds Jeer*, NEW ORLEANS STATES-ITEM, Nov. 14, 1960, at 1.

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state police could not determine which schools were to be integrated, so state troopers were placed at all forty-eight elementary schools.<sup>158</sup>

The legislature recessed at 9:00 p.m. Never before or since has the Louisiana legislature been so reactive to a single issue. That night the halls of the district court in New Orleans were full of lawyers, reporters, and politicians; it was unlike any other Sunday night before or since. They waited while Judge Wright was in chambers preparing his new order in response to the latest last-minute legislation. Judge Wright acted quickly:

Forty-five minutes later, Judge Wright issued a new order against the entire 140-member state legislature, the governor and lieutenant governor, and various other state and local officials, directing them to take no action “interfering with the operation of the public schools for the Parish of Orleans by the Orleans Parish School Board.” Federal marshals prepared to escort the black children into the white schools the next morning.<sup>159</sup>

In all of his previous orders, Judge Wright had just enjoined the enforcement of the numerous statutes that had been passed by the legislature over the preceding six years. This time, on the night before desegregated schools were to begin in New Orleans, he had enjoined the Governor, each member of the legislature, and virtually every public official in every parish in Louisiana from taking any act which would interfere with his orders. It was bold, unprecedented, and perhaps the most expansive set of injunctions ever issued by a federal judge, but Judge Wright was determined that school desegregation would finally proceed in New Orleans the next morning.<sup>160</sup> Judge Wright’s new injunction impacted virtually every public official in Louisiana, including mayors, chiefs of police, sheriffs, district attorneys and the heads of the state military and state police.<sup>161</sup> Immediately thereafter, U.S. Marshals fanned out across the State to serve the new order on the Governor, the attorney general, the speaker of the house,

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158. Emile Comar, *No Violence as City Cops Keeps Watch*, NEW ORLEANS STATES-ITEM, Nov. 14, 1960, at 1.

159. DOUGLAS, *supra* note 42, at 7; *see also* Bill Billiter, *U.S. Judge Enjoins Legislature: No Interference in Schools, Order*, TIMES PICAYUNE, Nov. 14, 1960, at 1.

160. Billiter, *supra* note 159.

161. *See id.*; Kelso, *supra* note 121.

school board members, and other officials.<sup>162</sup> As with each of the previous services of process on Governor Davis, the marshal dropped the order on the floor in front of his secretary's desk, whereupon the secretary quickly covered it with a plastic sheet as if to pretend that there was not proper service.<sup>163</sup>

### SCHOOL DESEGREGATION BEGINS IN NEW ORLEANS

On Monday morning, November 14, 1960, public school desegregation began in New Orleans. Judge Wright summoned a group of U.S. Marshals to his chambers early that morning to provide each of them with certified copies of his court order and instructions to enforce it.<sup>164</sup> In an interview eight years later, Judge Wright described that morning:

At seven o'clock in the morning, I met the [U.S. Marshals] in my chambers and there were about thirty of them there. Then, the rest were being kept out of town so as not to create a problem; to be used only if needed, and these [marshals] were going to be used in the actual delivery of the children to the schools . . . . I told them exactly how to act; what to do. The state legislature had met all the prior night--and I mean all night--and was still meeting at nine in the morning; and they were sending guards down to be stationed. They were swearing in guards all night to be stationed in the various schools to keep the Negro children out. And the [marshals] had to be instructed as to what to do if opposed by a guard. So, when I did all of that, I gave them a copy of the order and we even got some glue, blue ribbon and I got a seal, and we impressed a blue ribbon and put the seal on the paper so it was made to look very official. I said to the [marshals], if the guards stop you, just show them this, and I hoped that might satisfy[y] them[;] . . . the only thing I did tell them was if a guard pulled a gun then back up and come back and see me; do not go forward. Nobody pulled a gun.<sup>165</sup>

Ruby Bridges, Tessie Prevost, Gail Etienne, and Leona Tate, escorted by U.S. Marshals, entered the first grade at formerly all-

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162. See Billiter, *supra* note 159; see also *supra* note 1.

163. See *supra* note 1.

164. Interview by Mary Gardner Jones with J. Skelly Wright 51 (Sept. 9, 1968) [hereinafter J. Skelly Wright Interview].

165. J. Skelly Wright Interview, *supra* note 164, at 51.

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white elementary schools.<sup>166</sup> “More than 100 law enforcement officers surrounded the two schools to prevent violence.”<sup>167</sup> A crowd of hundreds, mostly women and children, “gathered to jeer the black children and to urge white parents and children to boycott the schools.”<sup>168</sup> White women were in the streets in front of the schools cursing and ranting at the few white parents who dared bring their child to school.<sup>169</sup> Judge Wright called the mayor that morning to complain that the police chief was letting the crowd get too close to the schools but the mayor would not do anything.<sup>170</sup> The white parents, with two exceptions, withdrew their children from the schools.<sup>171</sup> Judge Wright recounted:

They were put in the schools on this morning, and everything went all right until the white mothers gathered outside. And by that afternoon at both the schools, better than 500 whites were withdrawn from each school, so that the only [students] left in each school were the four little Negro children. One school continued like that for the rest of the year. This would mean 8 months, with something like 32 teachers and about three children, all Negro. The other school had about 16 whites, out of 500, and one Negro child, and a full complement of teachers[;] that’s how the first year went.<sup>172</sup>

The Sunday night injunction issued by Judge Wright outraged the Governor and the legislators. However, it did not deter their efforts to block desegregation. The legislature went back into extraordinary session Monday morning to respond to Judge Wright’s overnight injunction and the morning’s events. Lieutenant Governor C.C. Aycock addressed the legislature, describing Judge Wright’s actions as “the genesis of an era of judicial tyranny.”<sup>173</sup> Adcock added that:

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166. See DOUGLAS, *supra* note 42, at 6; Snyder, *supra* note 157; Comar, *supra* note 158. These four girls had been selected by the Orleans Parish School Board out of 136 applicants after extensive psychological testing to be the first students to enter previously all white schools. Five had been accepted but one backed out at the last minute. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 11; see also DOUGLAS, *supra* note 42, at 8.

167. DOUGLAS, *supra* note 42, at 8.

168. *Id.*

169. J. Skelly Wright Interview, *supra* note 164, at 53.

170. *Id.* at 52.

171. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 14.

172. J. Skelly Wright Interview, *supra* note 164, at 51-52.

173. *La. Senate Actions are Listed: Solons Start Day’s Work Early Monday*, TIMES PICAYUNE, Nov. 15, 1960, at 18 [hereinafter *La. Senate Actions*].

The practical effect of Judge Wright's order is to serve notice upon the People of Louisiana that they are being governed not by their elected officials, not by the laws of Louisiana, and not by the Constitution of the United States, but instead by a self-styled and self-appointed one-man board of trustees which will decide what is proper and what is improper for the welfare of the three million people in the state.<sup>174</sup>

House Speaker Tom Jewell of Point Coupee was equally defiant to Judge Wright's new injunctions stating that: "the federal court had no hand in sending me here, and I cannot concede to them the right to restrain my actions in this body."<sup>175</sup> Senator William Cleveland of Crowley said Judge Wright's injunctions were the "most serious thing that ever happened to any state in the union" and challenged Judge Wright to arrest him.<sup>176</sup> Representative John Garrett of Claiborne Parish called the day "another black Monday in the state of Louisiana and another black Monday in the United States of America"<sup>177</sup> He called for the arrest of Judge Wright before sundown to instigate a showdown between the federal government and the State of Louisiana.<sup>178</sup>

The legislature voted to again remove the elected Orleans Parish School Board from office.<sup>179</sup> Two state judges granted requests by state officials for temporary restraining orders to prohibit the Orleans Parish School Board from taking any further action.<sup>180</sup> The U.S. Attorney removed the cases to federal court whereupon Judge Wright immediately vacated the state judges' orders.<sup>181</sup> Before Monday night was over, Judge Wright issued an order nullifying the state court order and restraining the state officials from taking any action to remove the elected school

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174. *Id.*

175. *Solons Fire Board Members*, TIMES-PICAYUNE, Nov. 15, 1960, at 22; accord James H. Gillis & Robert Wagner, *Solons Unseat Board Members*, TIMES PICAYUNE, Nov. 15, 1960, at 1.

176. *La. Senate Actions*, *supra* note 173.

177. *Solons Fire Board Members*, *supra* note 175; accord Gillis & Wagner, *supra* note 175.

178. Gillis & Wagner, *supra* note 175.

179. *Id.*; DOUGLAS, *supra* note 42, at 8; *Solons Fire Board Members*, *supra* note 175; *La. Senate Actions*, *supra* note 173.

180. *Legislature Enjoined 2nd Time in 24 Hours: Restrained from Ousting Board Members*, TIMES PICAYUNE, Nov. 15, 1960, at 1.

181. *Id.*

board.<sup>182</sup>

The Tuesday morning editorial of the *New York Times* covered the New Orleans school crisis:

#### The Battle of New Orleans

When a little girl in a white dress with white ribbons in her hair walked into the William Frantz Primary School in New Orleans yesterday, it seemed that the United States of America had won another battle. . . . Four of them actually did go yesterday to two schools which had previously been segregated. They did this in spite of the Governor of Louisiana, the legislative majority of Louisiana, and the Louisiana State Superintendent of Schools and a force of state police. They were able to do it because a courageous Federal Judge, J. Skelly Wright, prohibited the State of Louisiana from interfering with the integration of the New Orleans schools. . . . There was no serious disorder. If little girls in white dresses with white ribbons in their hair were a menace to the State of Louisiana or to American civilization as a whole, the fact was not apparent yesterday.

New Orleans is one of the most relaxed and thoroughly charming cities in this country. It has an easygoing, tolerant tradition. It is, therefore, altogether fitting that in New Orleans the law of school desegregation should win its first, however slight, victory in the deepest South.<sup>183</sup>

The *Time Picayune* had a completely different take on the day's events:

#### Dreadful Day Comes at Last

The day most New Orleanians had dreaded for six years came Monday. . . . We hold the opinion that integration of the schools will damage them but that this damage will not be as bad as would have been total destruction. . . . The Orleans [P]arish [S]chool [B]oard, the [G]overnor, the [A]ttorney-[G]eneral and members of the Legislature have worked hard to avoid even token integration. We join more than a million fellow citizens in Louisiana in regretting that their efforts did not achieve complete success. . . . So far as

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182. *Id.*

183. *The Battle of New Orleans, supra note 3; Media Coverage, supra note 155.*

we are concerned, we don't like school integration any better in 1960 than we did in 1954, when we urged a relentless legal fight against it; but it doesn't do any good to adopt an ostrich attitude and stick our heads in the sands.<sup>184</sup>

Also on Tuesday, the legislature called on other states to invoke the doctrine of interposition in a coordinated effort.<sup>185</sup> That evening, 5,000 people turned out for a rally of the White Citizens Council of Greater New Orleans to protest desegregation.<sup>186</sup> "State Representative W.K. Brown of Grant Parish called for the arrest of Judge Wright for 'causing disorder, chaos, strife and turmoil in this state.'"<sup>187</sup> State Representative John S. Garrett of Claiborne Parish, chairman of the joint legislative committee on segregation, warned that "if the public permits the integration of four Negro girls today, 'there may be 5000 next week.'"<sup>188</sup> Local segregationists exhorted the crowd to action:

On November 15, William Rainach, Leander Perez, and others addressed a crowd of over 5,000 at a White Citizens Council meeting in New Orleans. Rainach advocated civil disobedience and a scorched earth policy. Perez said, in part, "Don't wait for your daughters to be raped by these Congolese. Do something about it now." Some witnesses described the meeting as "a gathering straight out of Nazi Germany." The action suggested by the speakers was a march on the school board building, city hall, and Judge Wright's office by protesting citizens.<sup>189</sup>

On Wednesday, in response to the prodding by the Citizens Council of Greater New Orleans, over 1,000 persons, mostly high school students, swarmed through downtown streets and buildings.<sup>190</sup> The police directed fire hoses on the mob as they approached the school board building. The mob then charged through the business district, throwing bricks and bottles at

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184. *Dreadful Day Comes at Last*, *supra* note 67.

185. DOUGLAS, *supra* note 42, at 8.

186. *Id.*

187. *Id.*

188. *Impeach Wright, Rally Urged*, NEW ORLEANS STATES-ITEM, Nov. 16, 1960, at 23.

189. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 14.

190. DOUGLAS, *supra* note 42, at 8.

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blacks in buses and cars.<sup>191</sup> There were some injuries and a few blacks retaliated by firing shots and throwing rocks at whites.<sup>192</sup> City police arrested more than 250 persons.<sup>193</sup>

A crowd of teenagers and adults marched on the prescribed buildings, chanting: "Two, four, six, eight, we don't want to integrate." City police, under Superintendent Joseph Giarusso, attempted to control the mob by the use of mounted police and a few fire hoses. No whites were injured, but several Negroes were hurt by flying glass as bus windows were shattered by vandals and two Negroes were severely beaten. The mob dispersed before it reached the heart of the business district.<sup>194</sup>

The war drums of resistance continued to beat throughout November and December 1960. The legislature passed a resolution commending the white parents who withdrew their children from the desegregated schools and calling for a continuance of the boycott.<sup>195</sup>

Another resolution called for the disqualification of Judge Wright from further participation in the New Orleans school desegregation litigation on grounds that he "has a personal bias against the State of Louisiana, its Executive Department, its Legislature and its Judiciary . . . which has made it impossible for him to fairly and impartially discharge the duties of his office."<sup>196</sup>

U.S. Senator Russell Long addressed the legislature and stated that he "would personally vote to impeach the entire [U.S.] Supreme Court."<sup>197</sup> During the last week of November, 100 whites marched into the Louisiana State Capitol with a coffin in which lay a blackened effigy dressed in judicial robes and labeled "Smelly Wright."<sup>198</sup> Louisiana lawmakers gave the marchers a

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191. DOUGLAS, *supra* note 42, at 8.

192. *Id.*

193. DOUGLAS, *supra* note 42, at 8.

194. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 14.

195. DOUGLAS, *supra* note 42, at 8.

196. *Id.* at 8-9.

197. *Id.* at 9.

198. RUBY BRIDGES, *THROUGH MY EYES* 20 (1999) (citing *Parents Stage Demonstration: Carry Black Coffin, Flags into Capitol*, *TIMES PICAYUNE*, Nov. 24, 1960, at 22); *see also* Friedman, *supra* note 120, at 2230.

standing ovation.<sup>199</sup> *The Times Picayune* reported:

Parents and children from integrated New Orleans schools bore a miniature black coffin, containing a blackened effigy of U.S. Judge J. Skelly Wright, into the Louisiana Capitol. . . . The House stood up and, with a long roll of applause, saluted the parents. . . . As the demonstrators moved into the legislative chambers, one woman in the group shouted, “The judge is dead, we have slaughtered him.” Some of the group feigned weeping and mourning, others laughed. The blackened doll inside the yard-long coffin wore a black suit. In its pocket was a small gavel.<sup>200</sup>

In keeping with the charge that he was a traitor to his race, legislators referred to Judge Wright as “Judas Scalawag Wright” on the floor of the legislature.<sup>201</sup>

Throughout November and December 1960, white women protested daily outside William Franz and McDonough No. 19 schools.<sup>202</sup> It took a cold front on December 14, dropping the temperatures to the low 30’s, to break the demonstrations.<sup>203</sup> That day, the John Chase cartoon in the *New Orleans States-Item* spoofed with a drawing of “Ol’ Man Winter” declaring: “I Make Heads Cooler—Too Cold to Demonstrate.”<sup>204</sup> Chase seemed to be poking fun at the segregationists. His cartoon from November 30, 1960, the day the three-judge court rejected the doctrine of interposition, was of a grave with the words “Doctrine of Interposition – Amen” written on the tombstone.<sup>205</sup> On December 31, 1960, Chase published a cartoon of a New Orleans citizen asking Father Time to take the school crisis with him as the year came to an end.<sup>206</sup>

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199. BRIDGES, *supra* note 198, at 20; see also *Trail Blazers on the Bench: The South’s U.S. Judges Lead a Civil Rights Offensive*, TIME, Dec. 5, 1960, at 14, 14 (stating that the marchers carried a “blackened, singed effigy of a man they have little reason to love: J. (for James) Skelly Wright, the tough-minded U.S. District judge who had ordered New Orleans schools to begin integration”).

200. BRIDGES, *supra* note 198, at 20 (citing *Parents Stage Demonstration: Carry Black Coffin, Flags into Capitol*, TIMES PICAYUNE, Nov. 24, 1960, at 22).

201. See *supra* note 1; Friedman, *supra* note 120, at 2230.

202. See *supra* note 1.

203. *Light Sleet, Rain Bring 39 Low Here*, NEW ORLEANS STATES-ITEM, Dec. 14, 1960, at 1.

204. John Chase, Cartoon, NEW ORLEANS STATES-ITEM, Dec. 14, 1960, at 14.

205. John Chase, Cartoon, NEW ORLEANS STATES-ITEM, Dec. 13, 1960, at 8.

206. John Chase, Cartoon, NEW ORLEANS STATES-ITEM, Dec. 31, 1960, at 6.

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On December 3, 1960, *The Times Picayune* Editorial urged the legislature to adjourn its current session because of the impracticality of passing laws that had already been declared unconstitutional.<sup>207</sup> Instead, the *Times Picayune* claimed that “[n]othing can be done immediately to repair the damage done by the integration and depopulation of the two schools.”<sup>208</sup> This claim reflected the paper’s continued belief that desegregation had wrecked the public schools of New Orleans. These pronouncements further fueled the agitation of the local populace. The paper urged that, during a new session scheduled during the legislature’s regular session, legislators could propose new ideas after the appeals of the current court decisions had run their course.<sup>209</sup> The city’s leading paper advocated a cease-fire and regrouping to continue the fight with new ideas.

On Sunday night, December 11, 1960, the legislature, still sitting in its Second Extraordinary Session of 1960, passed a law that blocked the payment of salaries to teachers at integrated William Franz and McDonough No. 19 public schools.<sup>210</sup> Previously, during the Second Extraordinary Session of 1960, the legislature had passed bills blocking the school board’s control of its own funds deposited in local banks and warning banks against honoring the board’s checks.<sup>211</sup> The state removed the Whitney National Bank as its fiscal agent for continuing to honor payroll checks issued by the School Board.<sup>212</sup> The legislature thus cut off the school board’s operating funds and power to borrow, leaving teachers of the Orleans Parish Public Schools without pay. St. Louis heiress, Ellen Steinberg, upon hearing this, announced at a Manhattan cocktail party that she would donate \$500,000 to the school board.<sup>213</sup>

As a result of these actions, the Department of Justice filed contempt charges against the Lieutenant Governor Aycock, House Speaker Jewel, and Superintendent of Education Shelby

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207. *Course of the Legislature*, *supra* note 67.

208. *Id.*

209. *Id.*

210. *House Unit OKs 4 Bills; Include Board Ouster*, NEW ORLEANS STATES-ITEM, Dec. 12, 1961, at 17.

211. H.R. Con. Res. 2, 1960 Leg., 31st Extraordinary Sess. (La. 1960); H.R. Con. Res. 23, 1960 Leg., 31st Extraordinary Sess. (La. 1960); H.R. Con. Res. 28, 1960 Leg., 31st Extraordinary Sess. (La. 1960).

212. NEW ORLEANS SCHOOL CRISIS, *supra* note 4, at 15.

213. *Outright Gift, is Heiress’ Aim*, TIMES PICAYUNE, Dec. 20, 1960, § 3, at 2.

Jackson on December 20, 1960, for acting in defiance of a federal court order by refusing to pay the teachers at desegregated William France and McDonough No. 19 schools.<sup>214</sup> The next day, the three-judge district court ordered that the Orleans Parish Public School bank accounts be freed and enjoined the Governor from again attempting to appoint another school board.<sup>215</sup> On December 21, 1960, Judge Wright issued the orders that banks in New Orleans must honor school board checks.<sup>216</sup> On March 2, 1961, the day before the hearing was to commence, the U.S. Attorney dropped the contempt charges against Aycock and Jewel due to their efforts to release \$2 million for teacher pay.<sup>217</sup> At the March 3 hearing for Jackson, the three-judge panel gave Jackson until March 24 to purge his contempt by complying to certify teachers and providing textbooks and other funds to the desegregated schools.<sup>218</sup> Jackson failed to appear at the March 24 hearing because his doctors said he was critically ill with heart and asthma complications in a Baton Rouge hospital.<sup>219</sup> As a result, Jackson's contempt hearing was continued without date.<sup>220</sup> Jackson then began efforts to purge himself of contempt.<sup>221</sup>

On December 14, 1960, *The Times Picayune* published an editorial denouncing the boycotting of New Orleans Mardi Gras by the American Veterans Committee:

Admittedly, New Orleans is caught in racial tensions. That, however, is a situation not of our own making. It was thrust upon us illegally and incited callously by extraneous forces that care not a whit what harm is done the city or its people.<sup>222</sup>

*The Times Picayune* showed no respect for the federal courts.

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214. *La. Officials Face Contempt Hearing Here*, NEW ORLEANS STATES-ITEM, Mar. 2, 1961, at 2.

215. *Bush v. Orleans Parish Sch. Bd.*, 190 F. Supp. 861, 865-66 (E.D. La. 1960).

216. *Id.*

217. *Contempt Case Quashing Asked*, TIMES PICAYUNE, Mar. 14, 1961, at 1; *Two Contempt Actions to Halt*, TIMES PICAYUNE, Mar. 3, 1961, at 1.

218. *Court Grants Jackson Time*, TIMES PICAYUNE, Mar. 4, 1961, at 6.

219. *Jackson Hearing Delayed Indefinitely: Aids Must Carry Out U.S. Orders*, NEW ORLEANS STATES-ITEM, Mar. 24, 1961, at 1.

220. *Id.*

221. *Id.*; *Jackson Acts to Purge Self of U.S. Counts*, NEW ORLEANS STATES-ITEM, Mar. 24, 1961, at 1.

222. *Mask of the Bigot*, *supra* note 67.

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After years of struggle in the courts, the local morning paper still could not accept that the world had changed and that the law of the land now required desegregated public schools.

On December 17, 1960, the legislature opened the Third Extraordinary Session for 1960. Governor Davis proposed a 1% sales tax hike to fund aid grants for white students to attend private schools to avoid attending integrated public schools.<sup>223</sup> This effort by the Governor to raise taxes brought about much dissension in the ranks of those legislators who had strongly supported the Governor's efforts to block desegregation. State Senator Laurance Eustis of New Orleans who had been elected on a "no new taxes" platform said, "To pass this tax in the name of segregation would be to perpetuate a fraud against the people."<sup>224</sup> Senator P. H. Rogers of Grand Cane strongly opposed the new tax on the Senate floor saying, "I defy anybody to call me an integrationist, and I'll knock their teeth down their throats . . . . The people of the state are being hoodwinked."<sup>225</sup> Davis's house floor leader, Risley Triche of Assumption Parish, had previously called rumors of a tax increase "absurd" and "ridiculous" but was now forced to push the Governor's bill through the legislature.<sup>226</sup> Representative Wellborn Jack of Caddo Parish told the House, "If you defeat this tax, . . . you're going to knock the props from under those fighting for segregation . . . [a]nd U.S. Judge J. Skelly Wright and others will jump on you like a pack of wolves."<sup>227</sup> Legislators also proposed a bill in this Third Extraordinary Session for 1960 to make it a misdemeanor crime for any state official to continue in office when removed by the legislature. This was obviously targeted at the Orleans Parish School Board, which was caught between Judge Wright's orders and the acts of the legislature. On December 21, the house rejected Davis's proposed sales tax hike by a vote of sixty-five to thirty-four.

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223. H.R. 3, 1960 Leg., 32d Extraordinary Sess. (La. 1960); H.R. 4, 1960 Leg., 32d Extraordinary Sess. (La. 1960); H.R. 6, 1960 Leg., 32d Extraordinary Sess. (La. 1960); *Tax Measures are Proposed in Legislature*, TIMES PICAYUNE, Dec. 18, 1960, at 1.

224. *Will Fight Tax Boost – Eustis*, TIMES PICAYUNE, Dec. 19, 1960, at 21.

225. *Senate Delays Sales Tax Hike Vote*, NEW ORLEANS STATES-ITEM, Jan. 6, 1961, at 1.

226. Robert Wagner, *Tax Hike Expected to Pass Committee*, TIMES PICAYUNE, Dec. 19, 1960, at 1.

227. *House Debates Sales Tax Hike: Davis Aides Argue for Okay of Bill*, NEW ORLEANS STATES-ITEM, Dec. 21, 1960, at 1.

During all of this, Judge Wright had his regular docket of civil and criminal cases to manage, including the “duck docket,” the monthly U.S. Fish and Wildlife Service misdemeanor cases charging hunters with violations of the Migratory Bird Treaty Act.<sup>228</sup> *The Times Picayune* reported on January 5, 1961, that Judge Wright fined Lonzo Palmature and Henry Rulf of Morgan City fifty dollars each for shooting coots out of season, George St. Pierre of Cut Off seventy-five dollars for shooting twenty-one coots over the limit, and Remy Ordoyne seventy-five dollars for shooting coots from a moving power boat.<sup>229</sup>

On January 12, 1961, in defiance of Judge Wright’s orders, the legislature voted again to remove the superintendent of the Orleans Parish Public Schools from office and appoint new members assigned by a legislative committee.<sup>230</sup> This was the legislature’s sixth attempt since the summer of 1960 to replace the school board. The next day, Judges Reeves, Christenberry, and Wright again convened as a three-judge district court and enjoined this action as they had done on the other five occasions.<sup>231</sup>

The white boycott of McDonogh No. 19 was finally broken on January 27, 1961.<sup>232</sup> The first white student to enter McDonogh No. 19 since November 17, 1960 was a third grader.<sup>233</sup> Outside the school, jeering white women protesting yelled at the little boy, saying he was a “traitor” as U.S. Marshals escorted him into school.<sup>234</sup>

On March 20, 1961, the Supreme Court affirmed three decisions of the three-judge court in the New Orleans school desegregation fight: the August 27, 1960 order declaring unconstitutional seven acts enacted by the Louisiana State Legislature in the summer of 1960; the November 30, 1960 order

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228. 16 U.S.C. §§ 703-712 (2012).

229. *Fines Imposed on 21 Hunters*, TIMES PICAYUNE, Jan. 5, 1961, at 24.

230. *Redman Gets Ouster Notice*, TIMES PICAYUNE, Jan. 13, 1961, at 1.

231. *U.S. Court Issues Restraint Order*, NEW ORLEANS STATES-ITEM, Jan. 13, 1961, at 1.

232. *Third-Grade Boy Cracks Boycott at McDonough 19*, NEW ORLEANS STATES-ITEM, Jan. 27, 1961, at 1.

233. *Id.*

234. *Id.*; see also *Pupil Ends Full Boycott of School*, BUFFALO COURIER EXPRESS, Jan. 28, 1961, at 2, available at <http://fultonhistory.com/Newspapers%2021/Buffalo%20NY%20Courier%20Express/Buffalo%20NY%20Courier%20Express%201961/Buffalo%20NY%20Courier%20Express%201961%20a%20-%200434.pdf>.

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declaring unconstitutional Louisiana's Act of Interposition; and the other statutes enacted during the November special session of the legislature.<sup>235</sup>

By this time, the desegregation fight had also spread to other parishes and state schools. On May 25, 1960, Judge Wright granted summary judgment in the form of a permanent injunction against further operation of the public schools of St. Helena Parish on a racially segregated basis.<sup>236</sup> At the same time, he also granted the same relief against the East Baton Rouge Parish public schools and five state trade schools.<sup>237</sup> Judge Wright's court was very busy during 1960 and 1961.

### OTHER DESEGREGATION CASES

Judge Wright also decided several other early desegregation cases in New Orleans. After the LSU Law School case in 1950, Judge Wright ordered the desegregation of LSU's undergraduate school on September 11, 1953.<sup>238</sup> In that case, also decided under the separate but equal standard, Judge Wright held that evidence established that the undergraduate program offered by Southern University was not substantially equal to the undergraduate program offered by LSU.<sup>239</sup> The first black student to enroll at LSU as an undergraduate was A. P. Tureaud, Jr., the son of A. P. Tureaud Sr., the attorney for the plaintiffs in the *Bush* case.<sup>240</sup>

Just thirty-five days later, on October 28, a split panel of the Fifth Circuit vacated Judge Wright's decision holding that the case involved an attack on the constitutionality of state law and therefore fell within the jurisdiction of a three-judge district court.<sup>241</sup> In dissent, Judge Richard Rives of Alabama, who later would sit on the three-judge district courts of the *Bush* case, viewed the case as one raising a factual question not requiring a

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235. Orleans Parish Sch. Bd. v. Bush, 365 U.S. 569 (1961) (per curiam).

236. See St. Helena Parish Sch. Bd. v. Hall, 287 F.2d 376, 376, 379 (5th Cir. 1961).

237. See E. Baton Rouge Parish Sch. Bd. v. Davis, 287 F.2d 380 (5th Cir. 1961); La. State Bd. of Educ. v. Allen, 287 F.2d 32 (5th Cir. 1961) (per curiam); La. State Bd. of Educ. v. Angel, 287 F.2d 33 (5th Cir. 1961) (per curiam).

238. Tureaud v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 116 F. Supp. 248, 251 (E.D. La. 1953), *rev'd*, 207 F.2d 807 (5th Cir. 1953), *vacated per curiam*, 347 U.S. 971 (1954).

239. *Id.* at 251.

240. See *supra* note 1.

241. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. v. Tureaud, 207 F.2d 807, 810 (5th Cir. 1953), *vacated per curiam*, 347 U.S. 971 (1954).

three-judge court.<sup>242</sup> On November 16, the Supreme Court granted the plaintiffs' request for a stay of the Fifth Circuit's decision, pending the court's review of the case on the merits—the effect of which was to temporarily reinstate Judge Wright's order.<sup>243</sup> On May 24, 1954, just one week after releasing its decision in *Brown I*, the Supreme Court vacated the Fifth Circuit's order and remanded the case for consideration in light of the ruling in *Brown* “and conditions that now prevail.”<sup>244</sup> On March 30, 1955, Judge Wright reinstated his September 11, 1953 preliminary injunction.<sup>245</sup> Despite the Supreme Court's landmark case of *Brown*, LSU's Board of Supervisors continued to fight desegregation of its undergraduate school in the district court, the court of appeals and the Supreme Court through 1958 when its appeals ran out.<sup>246</sup>

Judge Wright also handled other early desegregation cases in Louisiana. In 1957, he ordered the integration of the City Park swimming pools.<sup>247</sup> In 1958, he served on a three-judge district court which ordered the desegregation of public sporting events by declaring a state statute that prohibited sporting events between black and white participants to be unconstitutional.<sup>248</sup>

Judge Wright also ordered the desegregation of the New Orleans streetcars and buses in 1958.<sup>249</sup> The operator of the transit system, New Orleans Public Service, Inc., was worried

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242. *Id.* at 810 (Rives, J., dissenting).

243. *Tureaud v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 346 U.S. 881, 882 (1953).

244. *Tureaud v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 347 U.S. 971, 972 (1954) (per curiam).

245. *Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. v. Tureaud*, 228 F.2d 895, 895 (5th Cir. 1956) (per curiam).

246. *See Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. v. Tureaud*, 225 F.2d 434 (5th Cir. 1955), *set aside on reh'g*, 226 F.2d 714 (5th Cir. 1955) (per curiam), *vacated per curiam*, 228 F.2d 895 (5th Cir. 1956); *Ludley v. Bd. of Supervisors of L.S.U.*, 150 F. Supp. 900 (E.D. La. 1957), *aff'd sub nom.* *Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. v. Ludley*, 252 F.2d 372 (5th Cir. 1958).

247. *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54 (1958) (per curiam), *aff'g* 252 F.2d 122 (5th Cir. 1958).

248. *Dorsey v. State Athletic Comm'n*, 168 F. Supp. 149 (E.D. La. 1958) (finding that LA. REV. STAT. ANN. §§ 4:451 *et seq.* were unconstitutional insofar as they “attempt[ed] to prohibit athletic contests between negroes and whites based solely on the contestants' race or color”), *aff'd per curiam*, 359 U.S. 533 (1959).

249. *See Morrison v. Davis*, 252 F.2d 102 (5th Cir. 1958) (affirming Judge Wright's district court judgment).

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that a boycott could cause financial ruin, as had occurred in Montgomery, Alabama and actually wanted an end to the problem of transit segregation.<sup>250</sup> With the cooperation of the transit system and local politicians, Judge Wright's desegregation order went into effect over the Memorial Day weekend when there was less use of the system.<sup>251</sup> Judge Wright held that it was not necessary that the plaintiffs be subject to prosecution, as had occurred with Rosa Parks, in order to have standing to challenge the statue.<sup>252</sup> He stated:

It is not the Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared.<sup>253</sup>

A news reporter who boarded the St. Charles streetcar to witness the moment set by Judge Wright for the end of segregated public transportation later observed:

When the time came, the motorman stopped the streetcar. Passengers, white and black, watched as the motorman walked down the aisle toward the back, picked up the signs that differentiated white and black sections from the seat-backs on either side, returned to the front of the car, placed the signs on the floor, and started the car moving again. Nobody made a sound. Nobody changed seats. Not much had happened. But everything had changed. A few of the blacks who entered streetcars and buses after that moment chose seats in front.<sup>254</sup>

The school desegregation process, however, would not be as peaceful.

During that time, the telephone would ring at the Wright residence on Newcomb Boulevard whenever Judge Wright handed down one of his desegregation decisions.<sup>255</sup> Helen Wright chastised her husband for not forewarning her to avoid answering the phone:

One of those cases, I don't know which one it was, but I have

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250. J. Skelly Wright Interview, *supra* note 164, at 48-49.

251. *See supra* note 1.

252. *Morrison*, 252 F.2d at 103.

253. *Id.*

254. Monroe, *supra* note 15, at 371.

255. Helen Patton Wright Interview, *supra* note 39, at 67.

a feeling it was the streetcars. As soon as the case would come down someone would hear it on the radio and pick up the telephone and start screaming epithets through the phone at me; . . . I remember one of these cases when he failed to tell me he was going to issue this order and I got these vile phone calls. I called him up and I said, "What have you done, sugar?" "Oh, why, what?" I said, "They're screaming again." He told me what he'd done and I said, "Don't you ever do it again without giving me a little warning—to . . . not answer the phone . . ." <sup>256</sup>

Years later, the chairman of the New Orleans transit system told Judge Wright that there had been fewer racial incidents on the transit system in the year after integration than in any prior year. <sup>257</sup>

In addition to the New Orleans public schools, Judge Wright ordered the desegregation of the public schools of East Baton Rouge and St. Helena Parishes in 1960. <sup>258</sup> In an early voting rights case decided in January of 1960, Judge Wright issued an injunction blocking the efforts of Washington Parish elected officials to purge the voter registration rolls of all persons illegally registered. <sup>259</sup> Judge Wright found that the elected officials had colluded with the White Citizens Council. This had resulted in the removal of almost all of the black voters from the rolls while leaving the "white voters practically untouched even though over 50% of the white registration cards have the same defects and deficiencies as did the challenged Negro cards." <sup>260</sup>

### HOSTILITIES

During this time, Judge Wright and his family became the focus of much hostility for which they required protection by U.S. Marshals and New Orleans police, who lived in their home on Newcomb Boulevard and escorted Judge Wright to work. <sup>261</sup> Old

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256. Helen Patton Wright Interview, *supra* note 39, at 67.

257. J. Skelly Wright Interview, *supra* note 164, at 49.

258. See *Davis v. E. Baton Rouge Parish Sch. Bd.*, 214 F. Supp. 624, 625-27 (E.D. La. 1963) (discussing Judge Wright's May 25, 1960 desegregation order); *Hall v. St. Helena Parish Sch. Bd.*, 287 F.2d 376, 376-78 (5th Cir. 1961) (discussing Judge Wright's 1960 district court order).

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

260. *Id.* at 13-14.

261. See *supra* note 1; *City Police Guard Home of U.S. School Judge*, *supra* note 145; Friedman, *supra* note 120, at 2230.

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friends shunned the Wrights, a cross was burned on their lawn, Judge Wright was harassed on the street, and threatening phone calls were a constant both at his office and at his home.<sup>262</sup> He was vilified and made a pariah in his hometown for doing his constitutional duty to enforce the law.

Louisiana news media and business leaders almost unanimously steered clear of the struggle, allowing the judge, his wife, and twelve-year-old son to bear the brunt of it alone. Eighty percent of the white parents voted in a referendum to close the schools rather than desegregate them. Hate calls intruded into the Wright home. There were death threats, day-and-night protection by federal marshals, and friends who no longer spoke to Skelly or Helen Wright.<sup>263</sup>

In 1960, a state poll showed that Judge Wright had a higher name recognition than the Governor of Louisiana.<sup>264</sup>

In the communities of the pre-Brown era, where social and economic and occasionally political power overlapped, ostracism could be complete. Judges such as John Minor Wisdom of the Fifth Circuit and J. Skelly Wright of the Louisiana federal district court were among those who felt its sting: Wright was “the most hated man in New Orleans,” where 90% of the public knew of him by name or as the “integration judge” and where old friends crossed the street to avoid having to speak.<sup>265</sup>

On some nights, New Orleans police were detailed to protect the Wrights at home.<sup>266</sup> Helen Wright described that it was an awkward situation:

They didn’t like his decision, let’s put it that way. They didn’t approve of him and I think they probably thought they would prefer that he not have the protection.<sup>267</sup>

One night when the police were not at the Wright home, a

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262. Marjorie Hunter, *Judge J. Skelly Wright, Segregation Foe, Dies at 77*, N.Y. TIMES, Aug. 8, 1988, at D10.

263. Monroe, *supra* note 15, at 371.

264. *See supra* note 1.

265. BASS, *supra* note 126, at 114-15 (“[M]ore than 90 percent of the public recognized Wright by name. . . . Only 70 percent could name the mayor of New Orleans, and fewer could name the governor of Louisiana.”).

266. *See supra* note 1.

267. Helen Patton Wright Interview, *supra* note 39, at 82.

cross was burned on the front lawn:

I had been to the opera with a friend and we came back. Skelly was asleep, he was a very early to-bedder. Jimmy was in bed asleep. And we came back and here was this blazing cross right in the middle of the lawn. I, of course, was frightened for Skelly and Jimmy and I went—my friend was equally frightened, and went tearing into the house and both of them just sound asleep, totally unaware as to what was going on. So, whoever planted it didn't get the satisfaction of frightening Skelly, certainly. But, I woke him up. . . . There was no mob. . . . Just this blazing cross about six feet tall, eight feet tall; it seemed monumental. Anyway, I woke him up and he came on down and he knocked the cross over and stamped out the fire and took it apart, dismantled it, and put it in the driveway along side the house.<sup>268</sup>

Helen Wright felt it was a “cowardly symbol of intimidation.”<sup>269</sup> The charred cross remained on the side of the Wright home till the day the family moved to Washington, never having been collected as evidence for an investigation.<sup>270</sup>

On another night, when Judge Wright's twelve-year-old son, Jimmy, was home alone, the phone rang and Jimmy answered it: “Let me speak to that dirty [N-word]-loving Communist,” the voice demanded. Jimmy replied: “He's not at home, may I take a message?”<sup>271</sup> Helen Wright quietly endured the hostilities along with her husband and son.

[T]hose 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.<sup>272</sup>

At his chambers, Judge Wright's secretary would screen his calls.<sup>273</sup> However, during one lunch hour, he answered the phone when she was out and was amazed at the obscenities with which

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268. *Id.*

269. *Id.* at 83.

270. *See supra* note 1.

271. *See supra* note 1.

272. Elbert P. Tuttle, *Chief Judge Skelly Wright: Some Words of Appreciation*, 7 HASTINGS CONST. L.Q. 869, 871 (1980).

273. BAKER, *supra* note 3, at 424.

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she had to deal on a regular basis.<sup>274</sup> Even Judge Wright's mother received threatening phone calls—one such anonymous caller yelled to Mrs. Wright that she should have drowned her son at his birth.<sup>275</sup> Once, while walking to lunch downtown, Judge Wright was pushed into the street in front of a car as he stood on a curb waiting to cross.<sup>276</sup> Today, it is hard to imagine that a federal judge could be treated in such a manner without the full power of the U.S. Justice Department coming to bear on the situation.

The political leaders of New Orleans and those with influence over the populace offered no leadership or support to the desegregation effort. The elected officials, business community, teachers, civic groups, and unions generally kept silent and took a hands-off approach to the school crisis. They avoided involvement even though the public schools were in violation of the U.S. Constitution as declared by the Supreme Court during the six years since *Brown*.

During the entire time of the school crisis, the local New Orleans newspapers, *The Times Picayune*, and *New Orleans States-Item*, strongly opposed the desegregation and encouraged the concerted delay tactics of the lawyers and the legislature.<sup>277</sup>

Confronted with the shrill determination of militant segregationists to prevent the local public schools from desegregating, New Orleans's haut monde hid from the most important issue in its recent history, torn between the roles of skeptic and ostrich. . . . The local newspapers reflected their subscribers' views on race. . . . Ignoring entirely the fact that the local school board was operating in violation of a five-year-old Supreme Court order that the local federal district court judge had made specifically applicable to New Orleans, the paper seized every opportunity to cheer on Gerald Rault's obstructionist tactics, heartily approving his efforts to "exhaust every legal avenue" to avoid school desegregation. The editors still "deplored the change of position on the part of the [S]upreme [C]ourt of the United

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274. BAKER, *supra* note 3, at 424.

275. *See supra* note 1.

276. *See supra* note 1.

277. *See, e.g., supra* notes 65, 66, 67, 106, 107, 146, 183, 207-09, 222 and accompanying text.

States which created our dilemma.”<sup>278</sup>

Both *The Times Picayune* and *New Orleans States-Item* published editorials that supported segregation and encouraged disrespect for the courts.<sup>279</sup> While he was implementing this profound transformation of the southern way of life, Judge Wright’s court opinions provided the only means by which he could explain the justification and need for change.

### OTHER JUDGES INVOLVED

To be sure, Judge Wright was not the only federal judge involved in the desegregation of the schools. Federal procedure at that time required a three-judge district court to resolve whether a state statute or state constitutional provision violated the U.S. Constitution.<sup>280</sup> Fellow federal Judges Herbert Christenberry on the district court and Wayne Borah and Richard Rives on the court of appeals participated on these three-judge courts for the *Bush* case.<sup>281</sup> These judges voted with Judge Wright on every three-judge court decision.<sup>282</sup> In a 1983 interview, Judge Wright acknowledged the support he received from Judges Rives and Christenberry:

I would have to say that both of them, Judge Rives and Judge Christenberry were every bit a part of this problem as I was and when they were called on to do their part, they responded absolutely and completely.<sup>283</sup>

In addition, appellate court Judges Rives, Elbert Tuttle, John Brown, and John Minor Wisdom heard the appeals of the *Bush* case to the Fifth Circuit Court of Appeals.<sup>284</sup> But as the district judge to whom the case was assigned Judge Wright sat on

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278. BAKER, *supra* note 3, at 310.

279. See sources cited *supra* note 67.

280. See 28 U.S.C. § 2281 (1970) (repealed 1976).

281. See, e.g., *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 336 (E.D. La. 1956); *Bush v. Orleans Parish Sch. Bd.*, 190 F. Supp. 861 (E.D. La. 1960).

282. The decisions of these three-judge district courts were appealable directly to the U.S. Supreme Court.

283. Interview by Gus Weill with J. Skelly Wright, in Washington, D.C. (Nov. 1983)

[hereinafter Gus Weill Interview of J. Skelly Wright], available at [http://ladigitalmedia.org/video\\_v2/asset-detail/LLOLG-0202](http://ladigitalmedia.org/video_v2/asset-detail/LLOLG-0202).

284. See, e.g., *Orleans Parish Sch. Bd. v. Bush*, 242 F.2d 156 (5th Cir. 1957); *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491 (5th Cir. 1962); Friedman, *supra* note 120, at 2229, 2233.

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all of the three-judge district courts. In addition, Judge Wright wrote every opinion issued by the three-judge district courts, wrote all of the regular district court opinions and issued all of the orders and injunctions to enforce his orders.<sup>285</sup> As a result, all of the hostility and blame were focused on him. Thus, he drew all of the fire and ire:

More than anyone else associated with this tragic epos, Wright was demonized and transformed into a virtual pariah in his home state, compelled to rely upon armed federal marshals to escort him to and from his office and to guard his home.<sup>286</sup>

While most fellow Louisianans had great contempt for Judge Wright's actions, others from afar monitored the school crisis with great interest. In December of 1960, *Time* magazine placed him and several other southern federal judges handling civil rights cases on an "honor roll without precedent in the U.S. legal annals."<sup>287</sup> On June 12, 1961, Yale University conferred an Honorary Doctor of Laws on Judge Wright.<sup>288</sup> Eleven others received honorary degrees that day, including Justice Felix Frankfurter. Judge Wright received the longest applause when his citation was read:

Son of New Orleans, war-time officer of the Coast Guard, United States Judge. We salute today more than your exemplary career as lawyer and citizen. In recent years, you and your brother federal judges in the South have written a proud page in the history of our law and in our history as a people. Yours has been the most difficult of all tasks a judge must perform to school the people in the law, when this requires a change in their prevailing customs. With lonely courage, you have done your duty under circumstances of great difficulty. Yale pays tribute to the tradition of law you so steadfastly represent and confers upon you the degree of Doctor of Laws.<sup>289</sup>

Years later, Helen Wright said that this was the first real

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285. See *supra* note 1; BASS, *supra* note 126, at 130.

286. Friedman, *supra* note 120, at 2230.

287. *Trail Blazers on the Bench*, *supra* note 199, at 14; BAKER, *supra* note 3, at 423.

288. Yale Citation, J. Skelly Wright, Honorary Doctor of Laws, June 12, 1961 (on file with author).

289. *Id.*

indication to her that someone was watching and supporting what was occurring in New Orleans.<sup>290</sup> Judge Wright would also receive honorary degrees from the University of Notre Dame, the University of Southern California, Howard University, the University of Vermont, and Loyola University of New Orleans.<sup>291</sup>

### PERSONAL REFLECTIONS

In a 1968 interview, Judge Wright offered some personal insight into what he felt during this tumultuous time in his life. He said that it became clear to him with each decision that he was going to continue with what he was doing.<sup>292</sup> As a result, he became more isolated because he was so hated.<sup>293</sup>

It became increasingly clear with one decision piling on another decision that I was going [to continue] to do what I was doing, and I became more and more isolated from the community. I became better and better known, and more and more hated, for what I was doing.<sup>294</sup>

[M]ore and more I became a loner. I didn't see a lot of people, a few friends, I guess, but not too much. Sometimes I felt like I was imposing on them because you don't want to tarnish other people. . . . In fact, I had six brothers and sisters and it effected all of them.<sup>295</sup>

He was able to continue because he convinced himself that he was right and "there's no retreat from that."<sup>296</sup> He added that "[a]t least there is no retreat for someone who wants to live within himself. To me, there is no other way, I just couldn't turn any other way."<sup>297</sup> For his part, he recognized that "these were unusual times and no one else was there to do it; and so I felt that I should do what I could to see that the job was done as peacefully as possible."<sup>298</sup>

In the end, he persevered, not only because he followed the

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290. *See supra* note 1.

291. *See supra* note 1.

292. J. Skelly Wright Interview, *supra* note 164, at 53.

293. *Id.* at 53-54.

294. *Id.*

295. *Id.* at 55.

296. *Id.* at 55-56.

297. J. Skelly Wright Interview, *supra* note 164, at 56.

298. *Id.* at 52.

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dictate of the Supreme Court, but also because he was convinced he was doing what was morally and socially right:

I'm a real Southerner[,] I didn't believe any of this that I was doing it because of the Supreme Court. This made me a bigger man and so on. While there may have been some validity to that, in the beginning, it didn't last long. I became convinced that not only was I right in following the Supreme Court, but what I was doing was morally and socially right, so I was going to do it. I could have cut corners, I could have delayed[,] I didn't have to be aggressive about this, and still be within the structure and the commands of the Court, but I became convince[d] I was right, so I moved away. I wasn't going to allow the Supreme Court decision to be frustrated by this kind of delay.<sup>299</sup>

In a 1983 interview he was asked whether the threats and hostilities had any impact on him:

Well quite frankly, I really didn't think of all of these things. I knew what was taking place. I knew that I was hated and I would think 80% to 90% of the people. I knew that every now and then they would come up and put police and marshals, two police and two marshals in my house for a period of time. I assumed that they had gotten some reason to put these people in my house for a period of time. And I didn't particularly ask any questions about it. . . . I was kind of a loner anyway. A judge tends to be a loner. And a federal judge in the situation I found myself, I got more so, I stayed pretty close to the courthouse and stayed pretty close to home and so I didn't have all of that contact with people generally.<sup>300</sup>

He had a special way of minimizing the impact of the hostilities on his work, saying he was not afraid to do his job:

I was frightened from time to time but not seriously. One time somebody, I think, actually tried to push me out in front of the stream of traffic. I was walking one half block from the courthouse on the curbside of Camp Street and somebody pushed me out into the street and I just missed a car that came by. After that, I walked on the inside of the sidewalk so

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299. J. Skelly Wright Interview, *supra* note 164, at 56.

300. Gus Weill Interview of J. Skelly Wright, *supra* note 283.

that I wouldn't get pushed out into the street . . . . Obviously, I thought of dire things but quite frankly, it didn't affect my work and it certainly didn't affect what I did. I think I did what I felt I had to do and I wasn't afraid to do it.<sup>301</sup>

### FALL OF 1961

One year later in the fall of 1961, school desegregation in New Orleans only slightly expanded. The four girls who had launched the desegregation era in November of 1960 moved on to the second grade.<sup>302</sup> Four new schools were added to the two from the previous year.<sup>303</sup> Sixty-six black first graders requested to be transferred to white schools—less than half the number from the first year—and only eight new black first graders overcame the hurdles of the 1961–62 testing program to enter previously all-white schools.<sup>304</sup> Only twelve of the thirteen thousand black children entering the first grade in the years 1960–61 and 1961–62 were admitted to white schools in the fall of 1961.<sup>305</sup> Thus, in the second year of desegregation, only twelve of some fifty-six thousand black students had been placed in a formerly white school.<sup>306</sup> The white boycott at the six desegregated schools had reduced the usual enrollment of 2,800 students down to 846 students.<sup>307</sup> Nevertheless, schools opened much more peacefully in the fall of 1961 than the prior year.<sup>308</sup>

On December 15, 1961, President Kennedy appointed Judge Wright to the United States Court of Appeals for the District of Columbia Circuit.<sup>309</sup> Southeastern senators, displeased with Judge Wright's desegregation rulings, had blocked previous efforts by President Kennedy to appoint him to the United States Court of Appeals for the Fifth Circuit in New Orleans.<sup>310</sup>

If he had not fought that fight with such manifest conviction, J. Skelly Wright almost certainly would have become a judge

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301. Gus Weill Interview of J. Skelly Wright, *supra* note 283.

302. DOUGLAS, *supra* note 42, at 10.

303. *See* Bush v. Orleans Parish Sch. Bd., 308 F.2d 491, 494 (5th Cir. 1962).

304. Bush v. Orleans Parish Sch. Bd., 204 F. Supp. 568, 570 (E.D. La. 1962).

305. *Id.*

306. There were 37,845 white students enrolled in Orleans Parish Public Schools in the fall of 1961. *See id.* at 569 n.4.

307. Editorial, *Triumph of Good Order*, TIMES PICAYUNE, Sept. 8, 1961, at 10.

308. DOUGLAS, *supra* note 42, at 10.

309. *Id.* at 11.

310. *Id.*

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on the Fifth Circuit Court of Appeals and lived out his life in New Orleans, honored and esteemed by old friends, neighbors, and fellow citizens. But he was now a pariah. Moreover, Senator James Eastland, Chairman of the Judiciary Committee, let it be known that he would oppose any nomination of Judge Wright to a southern appeals court.<sup>311</sup>

The news reports covering Judge Wright's appointment to the D.C. Court of Appeals showed the differing attitudes of the Washington press and the New Orleans press towards Judge Wright. *The Washington Post* reported that Judge Wright "is best known for his courage and his fierce determination . . . [and how he] stood up against tremendous pressure from segregationists in Louisiana."<sup>312</sup> The *Post* also observed that:

The selection of Judge J. Skelly Wright . . . is gratifying . . . [as he] has earned a promotion by 12 years of able service as a Federal trial judge and especially by his unruffled and courageous decisions that guided New Orleans through its desegregation ordeal. Sometimes Judge Wright is inaccurately praised as a great champion of desegregation. Rather, his distinction lies in the fact that he upheld the law of the land in the face of an intemperate rampage on the part of the government of Louisiana.<sup>313</sup>

In contrast, *The Times Picayune* merely reported on the appointment and stated that Judge Wright "has been a controversial figure in some quarters" because of his desegregation rulings.<sup>314</sup> The *States-Item* also simply recounted that Judge Wright "has been a controversial figure in New Orleans."<sup>315</sup>

It seemed as if many believed that, if it had not been for Judge Wright, desegregation would not have occurred in the public schools of New Orleans. Nevertheless, it was clear that New Orleans and the rest of Louisiana were happy to see him

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311. Monroe, *supra* note 15, at 372.

312. James E. Clayton, *New Appeals Court Judge Termed Able and Tough Young Professional*, WASH. POST, Dec. 17, 1961, at B4.

313. *Prettyman to Wright*, WASH. POST, Dec. 19, 1961, at A14; accord Peter Braestrup, *Wright is Named to Appeals Court*, N.Y. TIMES, Dec. 16, 1961, at 18.

314. *Wright to D.C. Appeals Court*, TIMES PICAYUNE, Dec. 16, 1961, at 1.

315. *JFK Appoints Wright to D.C. Appeals Court*, NEW ORLEANS STATES-ITEM, Dec. 16, 1961, at 3.

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### LAST ORDERS IN NEW ORLEANS—PARTING SHOTS OF THE TEN YEAR WAR

Before he departed New Orleans, Judge Wright had two final parting shots to deliver on desegregation. First, he ordered the desegregation of Tulane University, and second he ordered an acceleration of the desegregation of the Orleans Parish public schools.

#### DESEGREGATION OF TULANE UNIVERSITY

On March 28, 1962, Judge Wright issued his decision granting a summary judgment to order the desegregation of Tulane University.<sup>317</sup> He found that the school had a sufficient nexus with the State of Louisiana to apply the Fourteenth Amendment. His conclusion was based, in part, on the fact that the school was originally chartered in 1847 as a state school, the University of Louisiana. The school was renamed The Tulane University of Louisiana in 1884 to honor its new benefactor, Paul Tulane. The governance of the school and the use of public buildings were transferred to the Tulane Educational Fund.<sup>318</sup> As part of the transfer, the state gave tax-exempt status to the Tulane Educational Fund and required that state officials, including the Governor and mayor of New Orleans, be on the board.<sup>319</sup> Judge Wright quoted a 1906 report of the Tulane president, a former state Supreme Court Justice, that, as a result of a state constitutional amendment, “the Tulane University of Louisiana, . . . is, and remains the University of Louisiana established by the State in 1847.”<sup>320</sup> Tulane’s president concluded his 1906 report stating:

No one can read the Constitution of the State, the Legislative Acts and the judicial decisions bearing on the subject without perceiving that the Tulane University of Louisiana is nothing more nor less than the University of Louisiana established by the State in 1847, continued under a slight change of name

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316. Friedman, *supra* note 120, at 2231.

317. *Guillory v. Adm’rs of Tulane Univ.*, 203 F. Supp. 855 (E.D. La. 1962).

318. *Id.* at 861.

319. *Guillory v. Adm’rs of Tulane Univ.*, 203 F. Supp. 855, 861 (E.D. La. 1962).

320. *Id.* at 863 (quoting former Louisiana Supreme Court Justice Charles E. Fenner).

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and under control of Administrators appointed in a different way from that formerly pursued, but deriving their authority directly from the State.<sup>321</sup>

Judge Wright found nothing in the law or history of the school that changed that status.<sup>322</sup> He also found that Paul Tulane's restriction that his donation was to benefit "white young persons"<sup>323</sup> did not "supply a constitutional basis for racial discrimination."<sup>324</sup>

On April 9, 1962, Judge Wright issued an injunction against Tulane ordering Tulane to admit the plaintiffs.<sup>325</sup> The Tulane student newspaper, the *Hullabaloo*, criticized the Tulane board for being spineless for not acting on its own and using Judge Wright as the "fall guy . . . the perfect flunky—a man fearlessly opposed to segregation and 'used to being spat upon in public for his unpopular decisions.'"<sup>326</sup> On the other hand, *The Shreveport Times* called Judge Wright's *Tulane* order "a final gesture of arrogance."<sup>327</sup> Tulane's attorney later remarked that Judge Wright "stuck integration in Tulane's ear."<sup>328</sup>

### FINAL OPINION IN *BUSH*

Judge Wright delivered his final opinion in the *Bush* case on April 3, 1962.<sup>329</sup> He noted the persistence of significant

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321. *Guillory v. Adm'rs of Tulane Univ.*, 203 F. Supp. 855, 861 (E.D. La. 1962). (quoting former Louisiana Supreme Court Justice Charles E. Fenner).

322. *Id.*

323. *Guillory v. Adm'rs of Tulane Univ.*, 203 F. Supp. 855, 860 (E.D. La. 1962).

324. *Id.* at 857; *accord id.* at 860 n.21.

325. Cheryl V. Cunningham, *The Desegregation of Tulane University* 70 (Dec. 1982)

(unpublished M.A. thesis, University of New Orleans), available at <http://www.tulane.edu/link.com/PDF/desegregation2.pdf>.

326. *Id.* at 73 (citing Robert Clark, *The Ford Foundation and Integration: Money Talks*, TULANE HULLABALOO, Apr. 13, 1962, at 2).

The suit allowed the board an easy way out, the article stated; it could pacify New Orleanians by appearing to be forced by a "scalawag" to admit blacks and, at the same time, court the foundations. The author castigated the Tulane board for selling out to the popular whims of the foundations and queried if Ford [Foundation] decided to promote the theory that the earth is flat, whether the Tulane board would "crawl to Ford and agree to teach world flatness in exchange for another set of bowling alleys."

*Id.*

327. Cunningham, *supra* note 325, at 72.

328. *Id.* at 69.

329. *Bush v. Orleans Parish Sch. Bd.*, 204 F. Supp. 568 (E.D. La. 1962).

inequalities between black and white schools.<sup>330</sup> In the two years since he issued his desegregation plan in May, 1960, requiring desegregation of one class per year starting with the first grade, only twelve out of approximately 13,000 eligible black students had been admitted to white schools.<sup>331</sup> In addition, 5,540 black elementary school children were on platoon, but no whites were. Classes for black students were conducted in classrooms converted from stages, custodians' quarters, libraries and teachers' lounge rooms, while similar classroom conditions did not exist in the white schools.<sup>332</sup> His order prohibited the school board from applying the Louisiana Pupil Placement Act,<sup>333</sup> which required testing of students before allowing a transfer to a desegregated school.<sup>334</sup> He further ordered that, in the fall of 1962, grades one through six of the New Orleans schools would be desegregated.<sup>335</sup> On April 9, 1962, Judge Wright also entered his final order in the *Bush* case enforcing the stepped up pace of desegregation set forth in his April 3 opinion.<sup>336</sup> Judge Wright's closing words in the *Bush* case recognized the inherent inequity of a desegregation plan implemented in stages:

Generations of Negroes have already been denied their rights under the separate but equal doctrine of *Plessy v. Ferguson*, supra, and, at the present pace in New Orleans, generations of Negroes yet unborn will suffer a similar fate with respect to their rights under *Brown* unless desegregation and equal protection are secured for them by this court.

The School Board here occupies an unenviable position. Its members, elected to serve without pay, have sought conscientiously, albeit reluctantly, to comply with the law on order of this court. Their reward for this service has been economic reprisal and personal recrimination from many of their constituents who have allowed hate to overcome their better judgment. But the plight of the Board cannot affect the rights of school children whose skin color is no choice of

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330. *Bush v. Orleans Parish Sch. Bd.*, 204 F. Supp. 571 (E.D. La. 1962).

331. *Id.* at 570.

332. *Id.* at 571.

333. Louisiana Pupil Placement Act, No. 492, 1960 La. Acts 939 (1960) (codified as amended at LA. REV. STAT. ANN. §§ 17:101-104 (repealed 2010); LA. REV. STAT. ANN. § 17:107 (repealed 1975); LA. REV. STAT. ANN. §§ 17:105, 106, 108-110 (2013)).

334. *Bush v. Orleans Parish Sch. Bd.*, 204 F. Supp. 568, 572 (E.D. La. 1962).

335. *Id.* at 571.

336. *See Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491, 495 (5th Cir. 1962).

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their own. These children have a right to accept the constitutional promise of equality before the law, an equality we profess to all the world.<sup>337</sup>

These were Judge Wright's last words as a federal district judge in New Orleans. He left New Orleans on April 15, 1962, for his new post in Washington, D.C., as Circuit Judge on the U.S. Court of Appeals for the District of Columbia Circuit.

For their parting shot, not one member of Louisiana's congressional delegation attended Judge Wright's Senate confirmation hearing, not even his personal friend, Louisiana Senator Russell Long.<sup>338</sup> Nevertheless, even his most ardent detractors would have agreed that he left a huge impact on Louisiana, perhaps more so than any other judge. His departure from his home state was complete, although he would return to Louisiana many times to visit family, attend conferences, and give speeches.

### THE UNDOING BY THE NEW JUDGE

President Kennedy nominated Frank B. Ellis to replace Judge Wright on the district court in New Orleans.<sup>339</sup> Ellis had been Kennedy's 1960 Louisiana campaign manager and served as Kennedy's Director of the Office of Civil Defense Mobilization.<sup>340</sup> Ellis and Judge Wright were friends and played golf on occasion.<sup>341</sup> Nevertheless, Judge Ellis wasted no time in undoing Judge Wright's final orders in New Orleans. On April 19, 1962, Judge Ellis entered an order staying Judge Wright's April 9 temporary injunction in the *Tulane* case and granted Tulane a new trial.<sup>342</sup> Then on May 15, 1962, Judge Ellis issued his opinion overturning Judge Wright's summary judgment and temporary injunction, finding that the degree of state action was in dispute, making summary judgment inappropriate.<sup>343</sup>

On July 21, 1962, a Fifth Circuit panel composed of Judges

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337. *Bush v. Orleans Parish Sch. Bd.*, 204 F. Supp. 568, 571 (E.D. La. 1962).

338. *See supra* note 1.

339. Friedman, *supra* note 120, at 2231.

340. Cunningham, *supra* note 325, at 78.

341. Friedman, *supra* note 120, at 2231.

342. Cunningham, *supra* note 325, at 76.

343. *Guillory v. Adm'rs of Tulane Educ. Fund*, 207 F. Supp. 554, 556 (E.D. La. 1962).

Wisdom, Brown, and Cameron affirmed Judge Ellis' *Tulane* ruling.<sup>344</sup> In a per curium opinion, the Fifth Circuit held that Judge Ellis had not abused his discretion in granting a new trial and dissolving Judge Wright's temporary injunction.<sup>345</sup>

On remand, Judge Ellis held a quick trial on August 3, which was nothing more than the same evidence and repeat of the arguments the plaintiffs and Tulane had made to Judge Wright on summary judgment.<sup>346</sup> Judge Ellis then took over four months to make his decision. The November 30 editorial of the *Hullabaloo* expressed impatience with both the board and Judge Ellis and concern that national foundations had threatened to cut off grants if Tulane was not integrated by year's end.<sup>347</sup> On December 5, 1962, Judge Ellis finally issued his opinion.<sup>348</sup> He found that state involvement in the Tulane Board was not "so significant that it may fairly be said [to be] actions of the State of Louisiana."<sup>349</sup> Judge Ellis' opinion gave no hint of any fact issue in dispute that would have prevented the granting of a summary judgment.

Tulane may have escaped a judicial finding that it was a quasi-public school for the time being, but it had not solved its integration problem. The petitioners pressed their case by quickly appealing to the Fifth Circuit on December 6.<sup>350</sup> Tulane had had enough. On December 12, the board voted unanimously to admit black students into the university in February 1963.<sup>351</sup>

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344. *Guillory v. Adm'rs of Tulane Univ.*, 306 F.2d 489, 490 (5th Cir. 1962) (per curiam).

345. *Id.*

346. *Cunningham, supra* note 325, at 84.

347. *Id.* at 95.

348. *Guillory v. Adm'rs of Tulane Univ.*, 212 F. Supp. 674 (E.D. La. 1962).

349. *Id.* at 687.

350. *Cunningham, supra* note 325, at 97-98.

351. *Id.* at 98. This action was most likely motivated by a \$6 million grant by New York based Ford Foundation, which required a certification by Tulane that it was a desegregated institution. Judge Wright recognized this in his March 28, 1962 opinion:

This case has overtones of litigation designed to rescue the University from the unfavorable position in which it now finds itself, particularly with respect to large foundations created to dispense funds to institutions of higher learning. The statement of the Board indicating that it "would admit qualified students regardless of race or color if it were legally permissible" supports this suggestion.

*Guillory v. Adm'rs of Tulane Univ.*, 203 F. Supp. 855, 864 (E.D. La. 1962). Because of this, Judge Wright raised the suggestion that the suit may, in fact, be a "friendly proceeding" to free Tulane from this dilemma. *Id.*

In the *Bush* case, on May 23, 1962, Judge Ellis vacated Judge Wright's last order and restored the schedule for the desegregation of the New Orleans schools to one grade each year.<sup>352</sup> On appeal, Judges Rives, Brown, and Wisdom of the Fifth Circuit affirmed the holdings of Judges Wright and Ellis that the school board's implementation of the student testing was unconstitutional.<sup>353</sup> However, on the question of acceleration of desegregation, Judge Wisdom stated that the court was "struck by the lack of a sound basis for acceleration or deceleration."<sup>354</sup> The Fifth Circuit panel then split the difference between Judges Wright and Ellis by implementing a plan that allowed for the integration of the first five grades by 1964 and one grade per year thereafter.

### **BUSH EPILOGUE**

Desegregation in New Orleans progressed at a very slow pace. By the 1964–65 school year, only 873 black students out of the school-age population of over 100,000 black students attended desegregated schools.<sup>355</sup> Three years after the Fifth Circuit ruling, even Judge Ellis recognized the woeful insufficiency of Judge Wisdom's Fifth Circuit plan to accomplish desegregation in any timely way. In 1965, Judge Ellis ordered a new plan for the desegregation of the Orleans Parish public schools.<sup>356</sup> After his wholesale rejection of Judge Wright's last order in *Bush* in May of 1962, Judge Ellis adopted Judge Wright's plan and ordered the school board to create single-school districts without regard to race on a year-by-year basis for succeeding grades.<sup>357</sup> Schools would be desegregated starting with the fifth grade in 1965–66 and adding two more classes every year until the twelfth grade was reached by 1969–70.<sup>358</sup>

The *Bush* case finally came to an end in the late 1970s. Judge Christenberry, who had been on the three-judge district court panels in the early days of the *Bush* case, was assigned the

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352. DOUGLAS, *supra* note 42, at 11.

353. *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491 (5th Cir. 1962).

354. *Bush v. Orleans Parish Sch. Bd.*, 308 F.2d 491, 501 (5th Cir. 1962).

355. Daniel Kiel, *It Takes A Hurricane: Might Katrina Deliver for New Orleans Students What Brown Once Promised?*, 40 J.L. & EDUC. 105, 119-20 (2011).

356. CARL L. BANKSTON III & STEPHEN J. CALDAS, *A TROUBLED DREAM: THE PROMISE AND FAILURE OF SCHOOL DESEGREGATION IN LOUISIANA* 59 (2002).

357. *Id.*

358. *Id.*

case after the retirement of Judge Ellis in 1965. In 1975, Judge Christenberry declared that the Orleans Parish public schools were in compliance with the *Bush* desegregation order and that the biannual reports of the school board were no longer required.<sup>359</sup> Judge Christenberry stated that he would completely dissolve the court order in 1977 if there were no new actions filed by the NAACP.<sup>360</sup> After Judge Christenberry's death on October 5, 1975, Judge Charles Schwartz dissolved the court order in 1978.<sup>361</sup> The case that had come in with such a roar went out like lamb.

No other southern state “matched the vigor, imagination, and frenzy displayed by Louisiana” in fighting court ordered desegregation.<sup>362</sup> During Judge Wright's tenure on the *Bush* case between 1952 and 1962, there were forty-one separate judicial decisions in the *Bush* case, including six by the Supreme Court, all of which affirmed the federal district court.<sup>363</sup>

Before the warfare had ended, in 1962, Judge Wright had issued forty-one rulings—an average of one every three months for ten years. He eventually had injunctions in force against the Governor, the Attorney General, the Superintendent of Education, the state police, the National Guard, all district attorneys, all sheriffs, all mayors and police chiefs, anyone acting in concert with them and, finally, the entire legislature. In the words of Jack Bass, Judge Wright, with the support of the federal judiciary and eventually the Justice Department, had faced down “the full force and power of the entire state of Louisiana.”<sup>364</sup>

It was an epic struggle.

#### UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Judge Wright went on to serve on what many consider to be the most influential circuit court in the United States, the United States Court of Appeals for the District of Columbia.

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359. *Id.* at 61.

360. *Id.*

361. BANKSTON & CALDAS, *supra* note 356, at 61.

362. BASS, *supra* note 126, at 116.

363. *See* Monroe, *supra* note 15, at 371-72.

364. *Id.*

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The appointment opened up a new quarter century of opportunity for Judge Wright to define his sense of constitutional justice from a higher bench. It also took Skelly and Helen Wright and their son from a landscape of implacable hostility into a climate of social warmth and intellectual acceptance. In Washington, recognized immediately as a jurist of granite qualities, the judge could also flourish as a person. A steadily building coterie of friends, most of them lawyers, judges, and Supreme Court justices, discovered in Skelly Wright a man of complexity and warmth, magnetic in his humanity, and simultaneously a character engagingly defined around the edges by some fine eccentricities.<sup>365</sup>

On that Court, Judge Wright would be involved in many of the important cases of the day.

Moving to the Washington D.C. did not end the controversies of Judge Wright's judicial life. He wrote hundreds of opinions while on the court of appeals in Washington. He ordered a blood transfusion to a dying Jehovah Witness, in *In re President and Directors of Georgetown College, Inc.*<sup>366</sup> He gave life to "unconscionability" in contracts in *Williams v. Walker-Thomas Furniture Co.*<sup>367</sup> and found a warranty of habitability in every rental contract in *Javins v. First National Realty Corporation.*<sup>368</sup> He recognized that "de facto" discrimination was as illegal as "de jure" discrimination in *Hobson v. Hansen.*<sup>369</sup> In 1973, his court, sitting en banc, ordered President Nixon to comply with a *subpoena duces tecum* for his White House recordings in *Nixon v. Sirica.*<sup>370</sup> In *Ethyl Corp. v. EPA,*<sup>371</sup> he held that the EPA could ban lead in gasoline even though the harmful effects of lead had not yet been proven with certainty and he was the first to hold that workplace sexual harassment that creates a hostile work environment may constitute gender discrimination under Title VII of the Civil Rights Act of 1964 in *Bundy v. Jackson.*<sup>372</sup> All of

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365. *Id.* at 372.

366. 331 F.2d 1000 (D.C. Cir. 1964).

367. 350 F.2d 445 (D.C. Cir. 1965).

368. 428 F.2d 1071 (D.C. Cir. 1970).

369. 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969) (en banc).

370. 487 F.2d 700 (D.C. Cir. 1973) (en banc).

371. 541 F.2d 1 (D.C. Cir. 1976) (en banc).

372. 641 F.2d 934 (D.C. Cir. 1981).

these cases, although controversial at the time, are now considered mainstream law. At the beginning or end of each of his opinions there is a clear, cogent, and passionate passage without any legalese capturing the core and driving force behind his decision.

In September of 1963, Judge Wright issued his order in the Georgetown Hospital case authorizing a blood transfusion to be administered to a dying twenty-five-year-old mother of a seven-month-old child.<sup>373</sup> The woman was a Jehovah Witness and her husband would not approve a blood transfusion for his wife on religious grounds.<sup>374</sup> Renowned trial attorney, Edward Bennett Williams represented Georgetown Hospital.<sup>375</sup> Williams went to the courthouse seeking an injunction ordering the transfusion to save the mother's life. The district judge refused to issue an injunction. It was four in the afternoon on Friday and Judge Wright was the only appellate judge at the courthouse.<sup>376</sup> Judge Wright went to the hospital to interview the woman, her husband, and doctors at the hospital. Later Judge Wright wrote his opinion, and after concluding his legal analysis ordering the transfusion, he closed his opinion by stating:

The final, and compelling, reason for granting the emergency writ was that a life hung in the balance. There was no time for research and reflection. Death could have mooted the cause in a matter of minutes, if action were not taken to preserve the *status quo*. To refuse to act, only to find later that the law required action, was a risk I was unwilling to accept. I determined to act on the side of life.<sup>377</sup>

This had never been done before. Yale Professor Alexander Bickel, among others, criticized Judge Wright for “rushing” to the hospital ‘with robes flapping.’<sup>378</sup> It was controversial and one of

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373. *In re* President & Dirs. of Georgetown Coll., Inc., 331 F.2d 1000, 1001-02, 1008 (D.C. Cir. 1964).

374. *Id.* at 1002.

375. *Id.* at 1001-02.

376. *In re* President & Dirs. of Georgetown Coll., Inc., 331 F.2d 1000, 1001, 1003 n.7 (D.C. Cir. 1964).

377. *Id.* at 1009-10.

378. ARTHUR SELWYN MILLER, A “CAPACITY FOR OUTRAGE”: THE JUDICIAL ODYSSEY OF J. SKELLY WRIGHT 184 (1984) (quoting Thomas C. Grey, *J. Skelly Wright*, 7 HASTINGS CONST. L.Q. 873, 873 (1980)); see also *In re* President & Dirs. of Georgetown Coll., Inc., 331 F.2d 1010, 1011-15 (D.C. Cir. 1964) (Miller, J., dissenting); *id.* at 1015-18 (Burger, J., dissenting); Richard L. Beatty, *Court*

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the earliest pro-life decisions issued by a federal court.

The 1967 case *Hobson v. Hansen*,<sup>379</sup> threw Judge Wright again into the public school desegregation cauldron, but this time he was in the North. Chief Judge David Bazelon designated him to sit as a district judge since all of the D.C. district judges had recused themselves on the grounds that, under the D.C. City Charter, they had appointed the members of the school board.<sup>380</sup> Famed civil rights lawyer, William Kunstler, represented the plaintiffs.<sup>381</sup> In *Hobson*, Judge Wright eliminated the “tracking” system in the public schools of Washington, D.C.<sup>382</sup> The tracking system placed children according to test scores.<sup>383</sup> However, Judge Wright found that the system often resulted in placement of students along racial lines, placing most black students in lower tracks and white students in upper tracks.<sup>384</sup> He concluded his findings of fact, with these tough words:

In sum, all of the evidence in this case tends to show that the Washington school system is a monument to the cynicism of the power structure which governs the voteless capital of the greatest country on earth.<sup>385</sup>

Judge Wright ordered that the underpopulated schools accept students from overpopulated schools—by being bused across town.<sup>386</sup> In concluding his opinion in *Hobson*, he recognized the courts’ duty to confront the difficult constitutional issues that elected officials would not and that the North was not immune to the problems that he had confronted in the South:

It would be far better indeed for these great social and political problems to be resolved in the political arena by other branches of government. But these are social and

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*Authorized Blood Transfusion Over Adult Patient’s Religious Objection – A Violation of the First Amendment? (Application of the President and Directors of Georgetown College, Inc., D.C. 1964)*, 26 MONT. L. REV. 95 (1964).

379. *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), *aff’d sub nom.* *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969) (en banc).

380. *See supra* note 1.

381. *Hobson*, 269 F. Supp. at 405.

382. *Id.* at 407, 517.

383. *Id.* at 407.

384. *Hobson v. Hansen*, 269 F. Supp. 401, 407 (D.D.C. 1967), *aff’d sub nom.* *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969) (en banc).

385. *Id.*

386. *Id.* at 407, 511, 517.

political problems which seem at times to defy such resolution. In such situations, under our system, the judiciary must bear a hand and accept its responsibility to assist in the solution where constitutional rights hang in the balance. So it was in *Brown v. Board of Education*, *Bolling v. Sharpe*, and *Baker v. Carr*. So it is in the South where federal courts are making brave attempts to implement the mandate of *Brown*. So it is here.<sup>387</sup>

In *Hobson*, Judge Wright expanded the concept of discrimination to include “de facto” discrimination.<sup>388</sup> This had never been done before. *Hobson* was also the advent of busing as a tool to achieve school desegregation and as a dirty word in the vernacular of those who opposed it. The *Hobson* case has been referred to as the most important case involving schools since *Brown*.<sup>389</sup>

Judge Wright’s opinion in *Hobson* drew national attention and reignited the controversy surrounding his role in school desegregation. Conservative columnist and avowed segregationist, James Kilpatrick, reacted with a scathing column:

In brief, this opinion is the outpouring of a despot who has swallowed emotionalism and regurgitated law.<sup>390</sup>

In her memoirs, Helen Wright wrote about the impact of *Hobson* on their personal lives:

Fury flew again and some of our hosts upon our arrival became more ‘former friends.’ The second time around the surprise element is gone and therefore it is more tolerable—disappointing, but tolerable. . . . It certainly was *déjà vu*. Even in Washington, D.C., the subject of desegregation became explosive. Once again, and for similar reasons, ostracism became a part of our social life (to a milder degree, I must admit). It seemed unbelievable that we should face tension and bigotry again after so many years of it. As I reminded myself so often, we learned again that true

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387. *Id.* at 517 (citing *Brown I*, 347 U.S. 483 (1954); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Baker v. Carr*, 369 U.S. 186 (1962)).

388. *Id.* at 515.

389. Judy Pasternak, *J. Skelly Wright; Renowned Liberal Appellate Judge*, L.A. TIMES, Aug. 8, 1988, at 14.

390. James Kilpatrick, *Bizarre D.C. Integration Law Augurs National Woe*, PRESS TELEGRAM, July 10, 1967, at B2.

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friendships are precious while false friends are numerous.<sup>391</sup>

The controversies surrounding Judge Wright did not end with his move north and showed that bigotry and intolerance were not solely southern traits.

Legal scholars recognize *Javins v. First National Realty Corporation*,<sup>392</sup> decided by Judge Wright in 1970, as one of the most important landlord-tenant cases of the twentieth century protecting the rights of poor and powerless tenants from the neglect of slumlords. This well-known opinion firmly established the implied warranty of habitability as a cornerstone of American property law. Judge Wright's opinion in *Williams v. Walker-Thomas Furniture Co.*<sup>393</sup> is one of the leading cases on unconscionability in contracts. In *Walker*, Judge Wright gave life to the provision in the Uniform Commercial Code, which voided unconscionable commercial transactions by applying it to the small print of a furniture lease/purchase contract that charged usurious interest rates and allowed for repossession if the purchaser missed one payment. Both of these opinions appear in contract law casebooks for first-year law students.<sup>394</sup>

Another one of Judge Wright's well-known quotations is the opening line of his June 18, 1971 dissent in the Pentagon Papers case during the height of the Vietnam War. The majority of the court of appeals had prevented the *Washington Post* from publishing the Papers when it reversed the district court's denial of the Government's request for a temporary restraining order to prohibit publication. In dissent, Judge Wright voiced his strong support for the First Amendment with these powerful words:

This is a sad day for America. Today, for the first time in the two hundred years of our history, the executive department has succeeded in stopping the presses. It has enlisted the judiciary in the suppression of our most precious freedom. As if the long and sordid war in Southeast Asia had not already done enough harm to our people, it now is used to cut out the heart of our free institutions and system of government. I

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391. HELEN PATTON WRIGHT, MY JOURNEY: RECOLLECTIONS OF THE FIRST SEVENTY YEARS 105-06 (1995).

392. 428 F.2d 1071 (D.C. Cir. 1970).

393. 350 F.2d 445 (D.C. Cir. 1965).

394. See Jeffrey M. Lipshaw, *Metaphors, Models, and Meaning in Contract Law*, 116 PENN ST. L. REV. 987, 990 (2012).

decline to follow my colleagues down this road and I must forcefully state my dissent.<sup>395</sup>

Just twelve days later, on June 30, 1971, the U.S. Supreme Court adopted Judge Wright's position in a landmark decision, which allowed the publication of the Papers by the *Washington Post* and *New York Times*.<sup>396</sup>

Another landmark ruling on freedom of the press was a 1987 en banc opinion, written by Judges Wright and Kenneth W. Starr, in *Tavoulaareas v. Piro*, which held that evidence of a publication's history of vigorous pursuit of high-impact stories of alleged wrongdoing does not automatically create a jury question of actual malice.<sup>397</sup> The decision vindicated the *Washington Post* in a libel suit brought by William Tavoulaareas, former president of Mobil Oil.<sup>398</sup> Judge Wright had concurred in part and dissented in part from the original majority opinion by Judges Antonin Scalia and George E. MacKinnon, which had reinstated the jury's verdict awarding compensatory and punitive damages to Tavoulaareas.<sup>399</sup> In his concurring and dissenting opinion, Judge Wright said:

If this excessive jury verdict on these mundane, flimsy facts is upheld, the effect on freedom of expression will be incalculable. The message to the media will be unmistakable—steer clear of unpleasant news stories and comments about interests like Mobil or pay the price.<sup>400</sup>

The D.C. Circuit then heard the case en banc and reinstated the trial court's granting of judgment notwithstanding the verdict in favor of the Post defendants.<sup>401</sup> It was one of the last opinions Judge Wright wrote.

In 1985, in a ruling that had profound implications for cable television programming, Judge Wright wrote that the Federal Communications Commission cannot require cable television

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

396. *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971) (per curiam).

397. *Tavoulaareas v. Piro*, 817 F.2d 762, 797 (D.C. Cir. 1987) (en banc).

398. *Id.* at 766-67.

399. *Tavoulaareas v. Piro*, 759 F.2d 90, 144 (D.C. Cir. 1985) (Wright, J., concurring in part and dissenting in part).

400. *Id.* at 146.

401. *Tavoulaareas v. Piro*, 817 F.2d 762 (D.C. Cir. 1987) (en banc).

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operators to transmit the signals of all local broadcast television stations.<sup>402</sup> Judge Wright found that the Federal regulations “are fundamentally at odds with the First Amendment.”<sup>403</sup> He held that because cable had “virtually unlimited channel capacity,” the government cannot restrict cable television operators in their exercise of First Amendment rights to the same extent as over-the-air broadcasters.<sup>404</sup>

Because of his court’s location in Washington, Judge Wright played a role in the early days of development of the federal law of judicial review of agency action. As such, he is recognized as an important figure in the development of federal environmental law.<sup>405</sup> One writer observed that, if there were such a thing as a “Who’s Who” of environmental law judges, Judge Wright’s name would be one of the top names on the list.<sup>406</sup> In the environmental field, Judge Wright decided cases involving the Trans-Alaska Pipeline,<sup>407</sup> the liquid metal fast breeder reactor program,<sup>408</sup> the regulation of lead as an additive to gasoline under the Clean Air Act,<sup>409</sup> international whaling,<sup>410</sup> and numerous other cases under the National Environmental Policy Act of 1969 (NEPA).<sup>411</sup> His 1971 decision in one of the earliest cases on environmental law, *Calvert Cliffs’ Coordinating Committee, Inc. v. United States Atomic Energy Commission*,<sup>412</sup> was the first thorough appellate review of NEPA. Today, law students still study the *Calvert Cliffs* case for Judge Wright’s declaration that the role of courts in enforcing environmental law was to ensure that the federal bureaucracy implements the environmental statutes Congress passes.<sup>413</sup>

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402. *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1438 (D.C. Cir. 1985).

403. *Id.*

404. *Id.* at 1450.

405. Richard J. Lazarus, *Judging Environmental Law*, 18 TUL. ENVTL. L.J. 201, 204 (2004).

406. *Id.* at 205.

407. *Wilderness Soc’y v. Morton*, 479 F.2d 842 (D.C. Cir. 1973) (en banc).

408. *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079 (D.C. Cir. 1973).

409. *Ethyl Corp. v. EPA*, 541 F.2d 1 (D.C. Cir. 1976).

410. *Am. Cetacean Soc’y v. Baldrige*, 768 F.2d 426 (D.C. Cir. 1985), *rev’d sub nom. Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221 (1986).

411. National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. §§ 4321-4370h (2012)).

412. 449 F.2d 1109 (D.C. Cir. 1971).

413. *Id.* at 1111.

These cases are only the beginning of what promises to become a flood of new litigation—litigation seeking judicial assistance in protecting our natural environment. Several recently enacted statutes attest to the commitment of the Government to control, at long last, the destructive engine of material ‘progress.’ But it remains to be seen whether the promise of this legislation will become a reality. Therein lies the judicial role. . . . Our duty, in short, is to see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy.<sup>414</sup>

This declaration was an exception to Judge Wright’s general position as an advocate of judicial deference to agency decision-making. This departure can arguably be attributed to Judge Wright’s belief that environmental law, like civil rights law, was “in need of heightened judicial scrutiny to safeguard the interests of those less politically powerful (whether racial minorities or unborn future generations).”<sup>415</sup>

In 1973, Judge Wright sat on the en banc panel that heard the Nixon Tapes case, the first of the many Watergate cases before the Court of Appeals for the District of Columbia Circuit.<sup>416</sup> Charles Allen Wright argued on behalf of President Nixon. Archibald Cox, the Special Prosecutor whose later firing was called the Saturday Night Massacre, presented the Government’s case.<sup>417</sup> Judge Wright wrote a significant portion of the court’s per curiam opinion, which rejected President Nixon’s claim that he had absolute immunity from compulsory process when he, as president, asserted a formal claim of executive privilege.<sup>418</sup> The court held that, while presidential conversations are “presumptively privileged,” the presumption could be overcome by an appropriate showing of public need by the branch seeking access to the conversations.<sup>419</sup> The court found that “a uniquely powerful,” albeit undefined, showing had been made by the special prosecutor, who had argued that the tapes subpoenaed by the grand jury contained evidence vital to

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414. *Id.*

415. Lazarus, *supra* note 405, at 206.

416. *Nixon v. Sirica*, 487 F.2d 700, 703 (D.C. Cir. 1973) (en banc).

417. *Id.*

418. *Id.* at 712-716.

419. *Id.* at 717.

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determining whether probable cause existed that those indicted had committed crimes.<sup>420</sup> This was just one of the actions that ultimately led to President Nixon's resignation in August, 1974, in the face of almost certain impeachment and removal from office.<sup>421</sup>

In *Bundy v. Jackson*, decided in 1981, Judge Wright wrote the first appellate decision holding that sexual harassment in the workplace that creates a hostile work environment may constitute gender discrimination under Title VII of the Civil Rights Act of 1964.<sup>422</sup> Sandra Bundy, a vocational rehabilitation specialist employed by the D.C. Department of Corrections, claimed to have suffered persistent sexual intimidation by her supervisors and brought a Title VII claim for sexual harassment.<sup>423</sup> Judge Wright's opinion established that a Title VII claim could be founded on sexual harassment in a workplace, even when the complainant had not lost any job benefits.<sup>424</sup> Recognizing that no court had gone this far, Judge Wright found that:

What remains is the novel question whether the sexual harassment of the sort Bundy suffered amounted by itself to sex discrimination with respect to the "terms, conditions, or privileges of employment." Though no court has as yet so held, we believe that an affirmative answer follows ineluctably from numerous cases finding Title VII violations where an employer created or condoned a substantially discriminatory work environment, regardless of whether the complaining employees lost any tangible job benefits as a result of the discrimination.<sup>425</sup>

After reviewing cases finding discriminatory and offensive work environments based on race, he posed the question:

How then can sexual harassment, which injects the most demeaning sexual stereotypes into the general work environment and which always represents an intentional assault on an individual's innermost privacy, not be

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420. *Id.*

421. Carroll Kilpatrick, *Nixon Resigns*, WASH. POST, Aug. 9, 1974, at A01.

422. *Bundy v. Jackson*, 641 F.2d 934 (D.C. Cir. 1981).

423. *Id.* at 939-40.

424. *Id.* at 943-44.

425. *Id.*

illegal?<sup>426</sup>

Judge Wright's opinion in *Bundy* was heralded as "groundbreaking" and "set an important, influential legal precedent and became a focal point for public discussion of sexual harassment and a rallying point for feminists in the early 1980s. *Bundy's* case was discussed widely in law reviews and covered extensively in the press, generating sympathy for the victims of sexual harassment."<sup>427</sup> Although derided in conservative quarters as an improper assertion of a judge's personal morality,<sup>428</sup> just five years later, the Rehnquist Supreme Court, with Chief Justice Rehnquist delivering the opinion for the Court, unanimously adopted Judge Wright's position in *Bundy*.<sup>429</sup> That principle is now part of the standard guidelines of the modern diverse workplace.

*Hohri v. United States*,<sup>430</sup> decided in 1986, was one of Judge Wright's last decisions. In *Horhi*, nineteen Japanese-Americans sought reparations for being held in World War II internment camps.<sup>431</sup> In 1944, the Supreme Court had upheld the constitutionality of Executive Order 9066, which ordered Japanese Americans into internment camps during World War II.<sup>432</sup> However, Judge Wright's opinion set out in great detail the truth about that dark chapter of U.S. history.

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426. *Id.* at 945.

427. CARRIE N. BAKER, THE WOMEN'S MOVEMENT AGAINST SEXUAL HARASSMENT 120 (2008).

428. Walter Berns, *Let Me Call You Quota, Sweetheart*, COMMENTARY MAG. (May 1, 1981), <https://www.commentarymagazine.com/article/let-me-call-you-quota-sweetheart/>.

This truly inspired reading of the statute was offered by Chief Judge J. Skelly Wright, a judge made in the mold of Douglas and not given to acquiescing in Congress's decision as to what is good for the country. As he wrote in the *Harvard Law Review* a few years ago, the Warren Court especially must be praised for teaching us that there is "no theoretical gulf between the law and morality," by which Judge Wright meant that the law must be made to conform with morality—someone else's law and his morality. . . . If the law of this case becomes the law of the land—Wright's opinion was issued only in January of this year—private as well as public employers can be held to have discriminated if, like the city of Washington here, they permit their female employees to be subjected to unwelcome sexual advances.

*Id.*

429. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

430. *Hohri v. United States*, 782 F.2d 227 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987).

431. *Id.* at 231.

432. *Korematsu v. United States*, 323 U.S. 214 (1944).

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In *Hohri*, the Government claimed sovereign immunity and that the suit was time barred.<sup>433</sup> Judge Wright held that the six-year statute of limitations on the Takings Clause claims had not elapsed. He found that the Government's concealment of the lack of military necessity for the internment program was sufficient to suspend the statute of limitations, and that it did not begin to run until a political branch made an authoritative statement acknowledging that there was reason to doubt a military necessity.<sup>434</sup> Such a statement, he reasoned, occurred in 1980 when the Congress passed an act creating the Commission on Wartime Relocation and Internment of Civilians to review the evidence.<sup>435</sup> The Commission had concluded that, during World War II, the government deprived Japanese-Americans of their liberty and property because of their ethnic origins alone—not military necessity.<sup>436</sup> Therefore the statute of limitations began to run at that time.<sup>437</sup> He concluded his opinion by stating:

The United States cannot be presumed to be amenable to suit. Fortunately, the Founders provided that the right to obtain just compensation for the taking of one's property should remain inviolate. In so doing, they no doubt assumed that the normal statutes of limitations would apply. But they also most certainly assumed that the leaders of this Republic would act truthfully. In the main, history has proven the Founders correct. We have also learned, however, that extraordinary injustice can provoke extraordinary acts of concealment. Where such concealment is alleged it ill behooves the government of a free people to evade an honest accounting.<sup>438</sup>

The Supreme Court vacated the D.C. Circuit's judgment holding that the Federal Circuit was the proper appellate forum for the case.<sup>439</sup> One year later, Congress finally acted. On August 4, 1988, Congress passed the Civil Liberties Act of 1988, which granted compensation to internees and acknowledged the

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433. *Hohri*, 782 F.2d at 231.

434. *Hohri v. United States*, 782 F.2d 227, 253 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987).

435. *Id.*

436. *See id.*

437. *Id.*

438. *Id.* at 256.

439. *United States v. Hohri*, 482 U.S. 64 (1987).

“fundamental injustice” of the internments.<sup>440</sup> President Reagan signed the bill into law six days later on August 10, 1988.<sup>441</sup>

Judge Patricia Wald, Judge Wright’s colleague on the Court of Appeals for the District of Columbia Circuit, had first-hand insight into his judicial process and philosophy:

Skelly Wright was preoccupied with the effects of his decisions upon human beings; doctrinal niceties took second place. But he was canny, too; he wrote and thought strategically as to how his decisions might attract other judges’ votes and survive on review. He got mad when they didn’t, but usually he managed, even in hostile climates, to make them reversal-proof. Most of all, he never shrank from making the hard decisions when the political branches straddled. Critics called him a “judicial activist,” and he embraced the term. . . . To the end Wright remained convinced that the law could and should be an “instrument for good,” and that judges had opportunities and duties well within the separation of powers limits to make it so.<sup>442</sup>

#### LAW CLERKS

During the time that he served on the court of appeals, Judge Wright had more of his law clerks go on to clerk at the Supreme Court than any other federal or state judge.<sup>443</sup> A study covering the period from 1962 to 2004 ranked him as the top “feeder court judge” in the country for providing law clerks to the Supreme Court—a total of thirty-four clerks—an amazing statistic considering that he assumed senior status on June 1, 1986.<sup>444</sup> To be considered for a clerkship with Judge Wright, a candidate had to be editor in chief of his or her school’s law

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440. Civil Liberties Act of 1988, Pub. L. No. 100-383, § 1(1), 102 Stat. 903, 903 (codified as amended at 50 U.S.C. app. § 1989 (2012)).

441. Victor Bascara, *Cultural Politics of Redress: Reassessing the Meaning of the Civil Liberties Act of 1988 After 9/11*, 10 ASIAN L.J. 185, 201 (2003). Judge Wright died on August 6, 1988, four days before the Civil Liberties Act of 1988 became law. See Hunter, *supra* note 262.

442. Patricia M. Wald, *Wright, James Skelly*, in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 604, 604-05 (Roger K. Newman ed., 2009).

443. TODD C. PEPPERS, COURTIERIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK 32 (2006); see also ARTEMUS WARD & DAVID L WEIDEN, SORCERERS’ APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT 84 (2006).

444. PEPPERS, *supra* note 443, at 32.

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review.<sup>445</sup> Many of his law clerks now teach at the nation's leading law schools.<sup>446</sup>

### NON-JUDICIAL WRITINGS

In addition to the numerous opinions he wrote throughout his forty years as a district and circuit judge, Judge Wright authored fifty-eight articles published in law reviews and elsewhere, making him one of the most prolific off-the-bench writers in modern times.<sup>447</sup> He wrote on a wide range of topics and filled his pieces with challenging commentary and candid admissions. He wrote his first law review article, entitled *Pre-Trial on Trial*,<sup>448</sup> for the Louisiana Law Review in 1954. His words then are just as valid today:

From time immemorial, lawyers and judges alike have received less than complete approbation from laymen. That really is an understatement. It will be remembered that Plato included no lawyers in his Utopia nor did Sir Thomas More in his. . . . Much of the criticism directed at our profession is of course utterly without foundation. On the other hand we, as lawyers and judges, must recognize the validity of at least some of the criticism and admit our shortcomings. Perhaps the most valid criticism relates to the law's delay, its technicality and its cost. No one can with fairness say that

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445. *SCOTUSblog on Camera: Donald B. Verrilli, Jr. – Complete*, SCOTUSBLOG (Oct. 31, 2013), <http://www.scotusblog.com/media/scotusblog-on-camera-donald-b-verrilli-jr-complete/>.

446. Those include Michael W. McConnell - Professor at Stanford University Law School and Director, Stanford Constitutional Law Center; Senior Fellow, Hoover Institution (Former U.S. Circuit Judge, United States Court of Appeals for the Tenth Circuit), Susan Estrich - Professor at the University of Southern California Law School (in 1976 was the first female president/editor-in-chief of the Harvard Law Review), L. Michael Seidman - Professor at the Georgetown University Law Center, Randall Kennedy - Professor at Harvard Law School (Rhodes Scholar), Carol Steiker - Professor at Harvard Law School (in 1981 was the second female president of the Harvard Law Review), Richard Fallon - Professor at Harvard Law School (Rhodes Scholar), Robert Weisberg - Professor at Stanford Law School, Geoffrey R. Stone - Professor at University of Chicago Law School, Dean of the Law School (1987-1994) and Provost of the University of Chicago (1994-2002), William Whitford - Professor at University of Wisconsin Law School, Thomas C. Grey - Professor at Stanford Law School (Marshall Scholar), and Michael C. Harper - Professor at Boston University School of Law.

447. *Published Works of J. Skelly Wright*, 57 GEO. WASH. L. REV. 1060 (1989); ON COURTS AND DEMOCRACY: SELECTED NONJUDICIAL WRITINGS OF J. SKELLY WRIGHT 283-85 (Arthur Selwyn Miller ed., 1984).

448. J. Skelly Wright, *Pre-Trial on Trial*, 14 LA. L. REV. 391 (1954).

much cannot and should not be done to expedite the disposition of cases, eliminate the technicality of the law and reduce its cost.<sup>449</sup>

Other law review topics included *Justice at the Dock: The Maritime Worker and Mr. Justice Black*,<sup>450</sup> *Politics and the Constitution: Is Money Speech?*,<sup>451</sup> *Color-Blind Theories and Color-Conscious Remedies*,<sup>452</sup> *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*,<sup>453</sup> and *In Praise of State Courts: Confessions of a Federal Judge*.<sup>454</sup>

As one might expect, given his New Orleans experience, Judge Wright's writings often centered on the rights of minorities and the disadvantaged. For instance, in 1965, he delivered the first James Madison Lecture at New York University not given by a Supreme Court Justice—his topic: *Public School Desegregation: Legal Remedies for De Facto Segregation*.<sup>455</sup> He proposed that *de facto* segregation was just as violative of the Constitution as *de jure* segregation—a very novel proposal for the time.<sup>456</sup> That lecture was later published as an article for the New York Law Review, where he stated:

The American Negro is a totally American responsibility. Three hundred years ago he was brought to this country by our forefathers and sold into slavery. One hundred years ago we fought a war that would set him free. For these last one hundred years we have lived and professed the hypocrisy that he was free. The time has now come when we must face up to that responsibility. Let us erase this blemish—let us

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449. *Id.* at 391-92.

450. J. Skelly Wright, *Justice at the Dock: The Maritime Worker and Mr. Justice Black*, 14 UCLA L. REV. 524 (1967).

451. J. Skelly Wright, *Politics and the Constitution: Is Money Speech?*, 85 YALE L.J. 1001 (1976).

452. J. Skelly Wright, *Color-Blind Theories and Color-Conscious Remedies*, 47 U. CHI. L. REV. 213 (1980).

453. J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609 (1982).

454. J. Skelly Wright, *In Praise of State Courts: Confessions of a Federal Judge*, 11 HASTINGS CONST. L.Q. 165 (1984).

455. J. Skelly Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 40 N.Y.U. L. REV. 285 (1965) [hereinafter *Legal Remedies for De Facto Segregation*].

456. *Id.*; see also J. SKELLY WRIGHT, *Public School Desegregation: Legal Remedies for De Facto Segregation*, in ON COURTS AND DEMOCRACY: SELECTED NONJUDICIAL WRITINGS OF J. SKELLY WRIGHT 167, 167 (Arthur Selwyn Miller ed., 1984).

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remove this injustice—from the face of America. Let us *make* the Negro free.<sup>457</sup>

His lecture would reappear two years later in an unsuccessful recusal attempt during the trial of the *Hobson* case when, fourteen days into the trial, the school board filed a motion for voluntary displacement based, in part, on his comments on legal remedies for de facto segregation articulated in his lecture.<sup>458</sup>

He also wrote articles for non-legal publications such as the New York Times Sunday Magazine where, in the spring of 1969, during the height of the race riots of Watts, Newark, and Detroit of the late 60's, in an article entitled *The Courts Have Failed the Poor*, he powerfully advanced:

Ignorance, discrimination, slums, poverty, disease and unemployment—these are conditions that breed despair and violence. Is it any wonder that our cities, once melting pots, are now powder kegs?<sup>459</sup>

Judge Wright wrote one of his last publications in the spring of 1987 for the Hastings Constitutional Law Quarterly, entitled *The Judicial Right and the Rhetoric of Restraint: A Defense of Judicial Activism in an Age of Conservative Judges*.<sup>460</sup> In this piece, he observed that the federal bench had come to be dominated by conservative judges, and he correctly predicted that it was likely to be that way “for some time to come.”<sup>461</sup> He proposed that politics is an inherent aspect of judging whether that judging style is based on originalism or judicial activism.<sup>462</sup> He espoused that originalism, as a form of constitutional interpretation, was no less political than judicial activism.<sup>463</sup> He suggested that, to make the matter of judging more open and honest, judges should be open about their political propensities rather than hiding behind theories of interpretation or claims of

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457. *Legal Remedies for De Facto Segregation*, *supra* note 455, at 308.

458. *Smuck v. Hobson*, 408 F.2d 175, 182-83 (D.C. Cir. 1969) (en banc).

459. J. Skelly Wright, *The Courts Have Failed the Poor*, N.Y. TIMES MAG., Mar. 9, 1969, at 26, 26.

460. J. Skelly Wright, *The Judicial Right and the Rhetoric of Restraint: A Defense of Judicial Activism in an Age of Conservative Judges*, 14 HASTINGS CONST. L.Q. 487 (1987).

461. *Id.* at 489.

462. *Id.* at 519-23.

463. *Id.* at 519.

judicial restraint.<sup>464</sup>

His non-judicial writings were as bold and provocative as his judicial opinions. He was never shy about expressing his views and even relished in the fact that they may stir some controversy. He enjoyed debate, even challenging his distractors to respond. At his core, however, he was always a teacher.

In the Yale Biographical Dictionary of American Law, Judge Wald summed up Judge Wright's long tenure on the federal bench:

In nearly 40 years on the federal bench Wright broke ground and defied conventional wisdom in a sweeping range of fields that included environmental law, sexual harassment, drug addiction, administrative law, housing and poverty law, and corroboration in rape prosecutions. He wrote more than 1,000 opinions, at least 100 of which are staples of legal anthologies and law students' casebooks. He shone in the halcyon days of the Warren Court and stood his lonely ground in the succeeding Burger and Rehnquist Court eras. .

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On a court which was rapidly becoming known as the second most important in the nation, Skelly was a renaissance judge.<sup>465</sup>

### IN MEMORIAM

On August 6, 1988, Judge Wright passed away after a long illness at his home in Westmoreland Hills, Maryland, outside of Washington.<sup>466</sup> His obituary in the *New York Times* observed that:

Judge Wright, a pioneer in the desegregation of public schools and public transportation in his native New Orleans, was considered one of the most liberal judges in the nation's court system. He was also regarded by many Southern whites as a traitor to his class. Some called him "Judas" Wright.

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464. *Id.* at 519-23.

465. Wald, *supra* note 442, at 604.

466. *See supra* note 1.

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In the months after his order to integrate the public schools in New Orleans in 1960, Judge Wright was shunned by old friends. A cross was burned on the lawn of his home. Telephone threats against his life became so numerous that police guards were assigned to protect him.

In the end, Judge Wright had his way, bringing about not only the integration of the public schools in New Orleans but also the integration of universities, buses, parks, sporting events and voting lists, historic moves that reverberated elsewhere in the South in the 1950's and 1960's, the era of the civil rights campaigns.<sup>467</sup>

Phil Johnson, who delivered the nightly WWL-TV editorial for decades in New Orleans, recalled the controversies of the 1950's but declared nonetheless that Judge Wright was one of New Orleans's heroes:

New Orleans lost one of its heroes on Saturday. Federal Judge J. Skelly Wright died at 77 at his home near Washington. To call him a hero was to invite controversy. He is the judge who ordered the integration of this city's public schools in 1956. It doesn't sound like much today. But then, 32 years ago, it was a most controversial step. But, thank goodness, in Judge Wright we had a man unafraid of controversy. He never saw his decision as an act of bravery or of any special kind of courage. He always said later that he ordered our schools integrated because it was the law . . . and because it was the right thing to do. His decision put him in the center of a personal firestorm. Friends shunned him, a cross was burned on his lawn, federal marshals were assigned to guard him, day and night. . . . Jimmy Davis was Governor then. And segregationists ruled the Legislature. They tried to fire the School Board. Judge Wright wouldn't let them. They tried to have the state take over the Orleans Parish School System. Judge Wright blocked that. They tried to close the schools. He kept them open. In all, he slapped down over 100 laws passed by the Legislature in clumsy attempts to avoid integration. . . . Some may not agree, but we are all in his debt. . . . And when the chips were down, he rose above the pettiness and the bigotry rampant in this community and did what had to be done. He

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467. Hunter, *supra* note 262.

was, indeed, a hero. He is a part of the history of us all.<sup>468</sup>

Bill Monroe, Judge Wright's close, longtime friend who was the news director for WDSU TV in New Orleans during the school crisis and later the moderator for NBC's Meet the Press in Washington, wrote in the Harvard Law Review:

Judge J. Skelly Wright did what came naturally. Quietly, he carried the flag of Tom Paine and Thomas Jefferson. Without musket, he marched to the Battle Hymn of the Republic. He did the job of a United States judge as he understood it. He knew in his bones what to do with a blueprint for freedom and equality: build on it, make it whole. He was a believer. He enjoyed every exhilarating minute of it.<sup>469</sup>

Judge Abner J. Mikva, a fellow judge on the Court of Appeals for the District of Columbia Circuit, wrote in the Yale Law Journal:

Becoming a judge on the same court with Skelly Wright was something like joining the Yankees while Lou Gehrig was on the team. From my earliest days as a young lawyer and legislator in Illinois, I had heard about Judge Wright, then holding forth as a District Judge in Louisiana. I read with admiration and respect about his repeated bouts with the Louisiana establishment to uphold the rule of law of *Brown v. Board*. He had taken on his colleagues, his community, and many of his home-state friends to carry out his obligations as a judge. I had learned by that time that the most important measuring-stick by which to rate public people was their courage. For Judge Wright you needed a big stick. . . .

. . . .

In the Chicago vernacular with which I grew up, "He seen his duty and he done it." Great game Skelly—you were the Iron-man of the bench. We will never forget you.<sup>470</sup>

Justice William Brennan also wrote in the Yale Law Journal:

J. Skelly Wright, my close and dear friend of over 30 years, was a remarkable man. The brilliant achievements he

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468. *Phil Johnson Editorial* (WWL-TV television broadcast Aug. 8, 1988).

469. Monroe, *supra* note 15, at 374.

470. Abner J. Mikva, *Remembering Skelly Wright*, 98 YALE L.J. 211, 211 (1988).

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crowded one upon another in almost 40 years on the federal bench richly earned him his national reputation as one of the outstanding jurists of the nation's history. His lasting impact in shaping the development of the law of civil rights and liberties has vastly enriched us all. . . . Skelly Wright was a quiet, modest man, more embarrassed than happy with praise. He was a man of principle, and a wholly compassionate complete human being who never lost sight of the human dimensions of the great problems that confront society. We are a better America because Skelly Wright lived. We will miss his person, his inspiration, and the gay spirit that endeared him to us all.<sup>471</sup>

He was involved in all the great issues of his time as if it had been his destiny. Starting with his desegregation cases of the '50s, like *Wilson*, *Tureaud* and *Bush*, and then with his later cases, like *Georgetown Hospital*, *Javins*, *Williams*, *Hobson*, *Calvert Cliffs*, *Bundy*, *Nixon*, and *Washington Post Co.*, he led the way on many important areas of the law, including the First Amendment, environmental law, agency law, gender discrimination, and of course, human rights. He hit them all the same way—head on—never flinching—never afraid to make an unpopular call. His tenure on the bench coincided with major transformations of the American way of life in the area of civil rights and he was right in the middle of it all. Many of his decisions, especially those involving civil rights and the environment, have impacted the lives of most Americans in some way. While in his day many critics branded him a judicial activist, as if it was an evil thing, much of what he did is *de rigueur* today. He was truly a man ahead of his time. Such is the legacy of a man with extraordinary legal vision and courage. For me, he was my uncle and was the toughest, smartest, and nicest man I ever knew.

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471. William J. Brennan, Jr., *Tribute to Honorable J. Skelly Wright*, 98 YALE L.J. 207, 207, 209 (1988).