JUDGE J. SKELLY WRIGHT AND THE RACIAL DESEGREGATION OF LOUISIANA

*Randall Kennedy**

Judge J. Skelly Wright's principal claim to historic prominence resides in rulings he made on behalf of racial justice. Over the course of his thirty-seven years on the bench, he made notable contributions in other areas as well, including the protection of fairness in commercial transactions[1] and the protection of federal constitutional civil liberties in disputes involving the press, protestors, and criminal defendants.[2] But the decisions for which he is most highly esteemed, the opinions that most prompt our celebration, the rulings that have proven to be the most durably instructive are those in which Judge Wright struggled against racial injustice.[3]

In the middle of the twentieth century invidious racial discriminations were conspicuous and pervasive everywhere in the United States but particularly in the Deep South. In 1950 the Louisiana constitution dictated that "[s]eparate public schools shall be maintained for the education of white and colored

* Michael R. Klein Professor of Law, Harvard Law School. I would like to acknowledge the organizers and sponsors of the symposium at Loyola College of Law honoring Judge J. Skelly Wright. I am especially grateful to Dean María Pabón López and Professor M. Isabel Medina. They made possible a wonderful day of presentations, discussions, and recollections that were instructive, memorable, and uplifting.

1. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

2. *See* Women Strike for Peace v. Morton, 472 F.2d 1273, 1274-94 (D.C. Cir. 1972) (Wright, J., concurring); United States v. Wash. Post Co., 446 F.2d 1322, 1325-27 (D.C. Cir. 1971) (Wright, J., dissenting); Powell v. United States, 352 F.2d 705, 710-11 (D.C. Cir. 1965) (Wright, J., dissenting).

3. *See* JACK BASS, UNLIKELY HEROES 112-35 (1981); J. W. PELTASON, FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION 221-43 (1961); LIVA BAKER, THE SECOND BATTLE OF NEW ORLEANS: THE HUNDRED-YEAR STRUGGLE TO INTEGRATE THE SCHOOLS (1996); Michael S. Bernick, *The Unsung Odyssey of J. Skelly Wright*, 7 HASTINGS CONST. L.Q. 971 (1980).

children."[4] Statutes criminalized inter-racial marriage; permitted only same-race adoptions; decreed that at circuses admitting whites and blacks, ticket offices could not be less than twenty-five feet apart; prohibited the renting of dwellings "to a negro person or negro family when such building is already in whole or in part in occupancy by a white person or white family;" and insisted upon equal but separate accommodations aboard intra-state busses and trains.[5]

Enforcing the Fourteenth and Fifteenth Amendments, Judge Wright repeatedly issued rulings that undermined Louisiana's pigmentocracy.

Finding that the Registrar of Voters in Washington Parish had refused to register blacks "solely on account of their race and color," Judge Wright issued a permanent injunction enjoining the continuation of that racist and unconstitutional practice.[6] A decade later, the Judge declared that the same registrar was participating in a new scheme of racial disenfranchisement under which the White Citizens Council systematically challenged the eligibility of prospective black voters.[7] Refusing to be misled by pretextual explanations and ordering appropriate relief, Judge Wright wrote that "[a] court need not . . . shut its mind to what all others can see and understand."[8]

After the Supreme Court belatedly repudiated "separate but equal" in *Brown v. Board of Education*[9] and subsequent related decisions, Judge Wright followed suit resolutely.[10] He struck down the law requiring racial segregation in the New Orleans

4. STATES' LAWS ON RACE AND COLOR 170 (Pauli Murray ed., Univ. of Ga. Press 1997) (1951).

5. STATES' LAWS ON RACE AND COLOR, *supra* note 4, at 170-95.

6. *See* Dean v. Thomas, 93 F. Supp. 129, 129-30 (E.D. La. 1950).

7. *See* United States v. McElveen, 180 F. Supp. 10, 11 (E.D. La. 1960), *aff'd in part sub nom.* United States v. Thomas, 362 U.S. 58 (1960).

8. *Id.* at 14.

9. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

10. Even before *Brown*, when the baleful concept of "separate but equal" remained "good" federal constitutional law, Judge Wright issued rulings that hastened desegregation in Louisiana higher education. Writing in *Wilson v. Board of Supervisors of Louisiana State University*, 92 F. Supp. 986, 988 (E.D. La. 1950), *aff'd per curiam*, 340 U.S. 909 (1951), Judge Wright (joined by Judge Wayne Borah and Judge Herbert Christenberry) concluded that state authorities had failed to satisfy the requirements of *Plessy v. Ferguson*, 163 U.S. 537 (1896), by consigning blacks to a law school that was separate and unequal.

public parks.[11] He annulled the law imposing segregation in the city's transit system.[12] He invalidated the law that barred blacks and whites from competing against one another athletically.[13]

By far the most controversial of Judge Wright's decisions, however, were those in which he applied *Brown v. Board of Education* to the public primary and secondary schools of New Orleans—becoming the first district court judge to do so in a major city in the Deep South. He must have known that ordering desegregation in that setting would trigger militant resistance. According to historian Neil R. McMillen, "Louisiana moved with rapidity second to none in establishing an official attitude of defiance to [*Brown*]."[14] Three days after Chief Justice Warren announced the Supreme Court's landmark holding, both houses of the Louisiana assembly ratified a resolution censuring that Court for what the legislators termed an "unwarranted and unprecedented abuse of power."[15] The legislature then promulgated a new constitutional provision that reiterated Louisiana's commitment to racial segregation in public schooling. Segregation was required, the legislature insisted, "not because of race" but "to promote and protect public health, morals, better education and the peace and good order in the State."[16] The legislature, moreover, established the Joint Legislative Committee to Maintain Segregation and enacted provisions that directed the state board of education to disregard certificates of graduation from any racially desegregated public school; withheld from any racially desegregated public school books, supplies, and lunches; and criminalized the conduct of any person, firm, or corporation that violated the dictates of the new anti-desegregation legislation.

11. *Transit, City Park Segregation Loses*, TIMES PICAYUNE, May 16, 1957, at 1.

12. *See* Morrison v. Davis, 252 F.2d 102, 102 (5th Cir. 1958) (per curiam) (affirming "a final injunction . . . declaring unconstitutional all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses, and enjoining defendant officials and public service corporations from enforcing such statutes").

13. *See U.S. Court Overrides La. Athlete Mix Ban: Enforcing Halted by Injunction*, NEW ORLEANS STATES-ITEM, Nov. 28, 1958, at 1; *see also* Bernick, *supra* note 3, at 985-86.

14. *See* NEIL R. MCMILLEN, THE CITIZENS' COUNCIL: ORGANIZED RESISTANCE TO THE SECOND RECONSTRUCTION, 1954-64, at 59 (1971).

15. *Id.*

16. 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) (per curiam).

A panel that included Judge Wright held these anti-*Brown* enactments to be unconstitutional.[17] Subsequently, sitting alone, he enjoined the Orleans Parish School Board from continuing to require racial segregation.[18] He did not order immediate desegregation. Indeed, he intimated that actual desegregation might not be forthcoming "even in a year or more."[19] Echoing the Supreme Court's invocation of "all deliberate speed," he directed local officials only to begin making arrangements for racially non-discriminatory education, stressing the need for circumspection:

> The problems attendant desegregation in the [D]eep South are considerably more serious than generally appreciated in some sections of our country. The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity and forbearance from all of us, whatever race.[20]

Ultimately, though, Judge Wright insisted that, regardless of any problems, *Brown* would be followed.[21]

For four years local school authorities did nothing to comply with Judge Wright's order that they at least begin to plan to comply with *Brown*.[22] The school board refused to acknowledge the legitimacy of the new constitutional dispensation, refused to prepare white public opinion for desegregation, and refused to respond at all to the black community's aspirations.[23] Eventually the school board polled parents on whether they preferred to "see the schools closed rather than integrated" or "kept open even though a small amount of integration is necessary."[24] The school

17. Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 336, 336-37 (E.D. La. 1956) (per curiam).

18. 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).

19. *Id.* at 341.

20. 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).

21. *Id.* at 342.

22. ADAM FAIRCLOUGH, RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972, at 234 (1995); *see also* DONALD E. DEVORE & JOSEPH LOGSDON, CRESCENT CITY SCHOOLS: PUBLIC EDUCATION IN NEW ORLEANS, 1841-1991, at 236-37 (1991); Mary Lee Muller, *New Orleans Public School Desegregation*, 17 LA. HIST. 69, 75 (1976).

23. *See* FAIRCLOUGH, *supra* note 22, at 234.

24. *Id.* at 522 n.1.

board conceded that it only considered the wishes of the whites, 82% of whom voted for closure rather than integration.[25] "I will abide by the wishes of the white people," the board president declared, "because they are the people who support the school system and elect us."[26]

On May 16, 1960, Judge Wright himself designed a plan for desegregation pursuant to which first-grade students at the start of the next school year would be permitted to enter, "at their option," the school nearest their residence.[27] Despite the limited scope of the order—it applied only to first graders—the Louisiana white power structure reacted hysterically. The state legislature enacted yet another battery of laws renewing the requirement that white and Negro school children be separated, again barred any sort of state assistance to desegregated schools, and again punished as a crime conduct violating this prohibition. The legislature also authorized the Governor to close any school in the state ordered to desegregate and to close all of the schools in the state if one was integrated.[28] Viewing these and kindred laws as nothing more than "additional weapons in the arsenal of the State for use in the fight on integration," Judge Wright enjoined officials from enforcing them.[29] That did not stop the legislature, however, from passing additional segregationist enactments. Hence the legislature made it a criminal offense for agents of the federal government, including judges, to attempt to enforce *Brown v. Board of Education*, required the state Board of Education to revoke the license of any teacher who instructed a class in violation of the Constitution and laws of Louisiana (i.e., a desegregated class), required the Board to terminate for malfeasance in office any principal who allowed a teacher to instruct a desegregated class, and denied promotion or graduation credits to any student who attended a desegregated class—provisions that were all eventually annulled by Judge

25. *Id.*

26. *Id.*; Muller, *supra* note 22, at 75-76.

27. The plan, in whole, reads as follows:

A. 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.

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

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

28. FAIRCLOUGH, *supra* note 22, at 235.

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

Wright and his colleagues.

Facing impending desegregation under Judge Wright's plan, the Orleans Parish School Board finally decided to submit a plan of its own. That plan relied upon the state's pupil placement law, which was obviously intended to discourage blacks from seeking transfers to "white" schools and obviously intended, too, to provide officials with non-racial pretexts for denying requests for transfers.[30] In a move that disappointed the activists spearheading the struggle for desegregation, Judge Wright accepted the board's proposal. He also pushed back by ten weeks his deadline for initiating desegregation. November 14, 1960, became the new, historic day for a twentieth-century breaching of the color bar in elementary public education in New Orleans.[31]

Under the school board's direction only four black girls were allowed to attend "white" schools.[32] But even that miniscule amount of "race mixing" generated widespread apocalypticism. The Governor called the legislature into a special session at which it hurriedly enacted twenty-nine new laws for the purpose of delaying or preventing any desegregation.[33] The session was, as two historians of the episode observe, "[a] legislative carnival unique in the annals of American lawmaking."[34] Then, on November 12, the state superintendent of schools declared November 14 to be a statewide school holiday.[35] Judge Wright immediately cited him for contempt of court. The legislature then superseded the Superintendent, declaring November 14 to be a holiday under its own authority.[36] Judge Wright enjoined the Governor and the entire legislature, directing the Orleans Parish School Board to proceed to desegregate regardless of the actions of state officials.[37]

30. *See* FAIRCLOUGH, *supra* note 22, at 235.

31. Judge Wright stated later that he pushed back the date for desegregation in order to spare the Eisenhower Administration from having potentially to deal with a crisis right before a Presidential election and to secure a commitment for back-up from the Department of Justice in the event that Louisiana officials disobeyed court orders. *See* FAIRCLOUGH, *supra* note 22, at 238.

32. *Id.* at 239.

33. FAIRCLOUGH, *supra* note 22, at 242.

34. *See* FRANK T. READ & LISA S. MCGOUGH, LET THEM BE JUDGED: THE JUDICIAL INTEGRATION OF THE DEEP SOUTH 139 (1978).

35. FAIRCLOUGH, *supra* note 22, at 243.

36. *Id.*

37. *Id.*

On November 14, 1960, marshals escorted the four black first graders to schools whose identities had been kept secret to minimize the likelihood of disruption. Marshals accompanied three of the girls to the McDonough No. 19 School and the other to the William J. Frantz School. Two days later white segregationists held a rally under the aegis of the White Citizens Council. "Let's don't be cowed," William Rainach declared.[38] "Let's use the 'scorched-earth' policy. Let's empty the classrooms where they are integrated."[39] Not to be outdone, Leander Perez, the most influential of the hard-core segregationists, railed against communists, "Zionist Jews," that "weasel, snake-head mayor of ours," and that "smart-alec mulatto lawyer," Thurgood Marshall.[40] He urged his listeners to take their case more forcefully to the parish school board. "Don't wait," he warned, "for your daughter to be raped by these Congolese. Don't wait until the burr-heads are forced into your schools. Do something about it now."[41]

For hundreds of white high school students the next day, "something" included hooliganism in downtown New Orleans, where they ran in and out of public buildings, banged on the locked doors of the mayor's office, and harassed blacks. For many white segregationist parents, "something" meant boycotting the desegregated schools. Just three days after the appearance of the black first graders, only nineteen white students remained at the Frantz School and only two at McDonough No. 19. The boycotters not only withdrew their children from school, they also put pressure on others to maintain white segregationist solidarity. Boycotters created a gauntlet of shrieking mothers that had to be run twice daily by whites who took their children to school.[42] These non-conforming whites also suffered by having their tires slashed, their windows at home shattered, and their porches bespattered with paint.[43] A white family that had a child at Frantz attempted to defy the boycott but then encountered financial difficulties when the father quit his position as a

38. FAIRCLOUGH, *supra* note 22, at 244.

39. *Id.*

40. *Id.*

41. *Id.*

42. FAIRCLOUGH, *supra* note 22, at 247.

43. *Id.* at 249. "They became targets for stone-throwing teenagers when they ventured out to shop. Mysterious 'officials' visited them at home, offering 'protection' if they stopped sending their children to [a boycotted school]. And they received constant phone calls, day and night, abusive, silent, threatening, obscene." *Id.*

municipal gas-meter reader when his co-workers constantly taunted him.[44] Unable to find another job, he moved to Rhode Island with his wife and six children.[45] It is no wonder that by the end of November only two white children continued to attend the Frantz School while none continued to attend McDonough No. 19.[46]

Despite the boycott and state governmental hostility to Judge Wright's enforcement of *Brown,* desegregation in the New Orleans public schools survived, albeit only tenuously. Judge Wright refused to retreat from his invalidation of de jure racial segregation in his home city. This was important. It changed the parameters of legitimacy, of what was right and wrong in the eyes of the law. As a practical matter, though, racial separation continued to be the overwhelming practice as authorities deployed the pupil-placement law to minimize transfers. In 1961 only twelve blacks were permitted to attend previously "white" schools.[47] Not only was Judge Wright unable to lift the color bar at more than a handful of schools, he was also unable, even at the desegregated schools, to create interracial harmony—a condition that remains elusive.

It is altogether proper to pay homage to Judge Wright given the record of his jurisprudence in the bitter struggle over desegregation in Louisiana. He occupies a place among the pantheon of judges who helped to advance the frontiers of racial justice in the 1950s and 1960s—a cadre that includes such distinguished figures as Earl Warren, William J. Brennan, J. Waites Waring, Frank M. Johnson, Elbert P. Tuttle, and John Minor Wisdom.[48] Three points of complication, however, are in order. First, while Judge Wright's efforts warrant recognition, so, too, do the efforts of those, often overlooked, who brought those cases to his courthouse. What enabled Judge Wright to become

44. FAIRCLOUGH, *supra* note 22, at 250.

45. *Id.*

46. *Id.* at 248.

47. *Id.* at 255.

48. *See* ANNE EMANUEL, ELBERT PARR TUTTLE: CHIEF JURIST OF THE CIVIL RIGHTS REVOLUTION (2011); SETH STERN & STEPHEN WERMIEL, JUSTICE BRENNAN: LIBERAL CHAMPION (2010); TINSLEY E. YARBROUGH, JUDGE FRANK JOHNSON AND HUMAN RIGHTS IN ALABAMA (1981); JOEL WILLIAM FRIEDMAN, CHAMPION OF CIVIL RIGHTS: JUDGE JOHN MINOR WISDOM (2009); BERNARD SCHWARTZ, SUPER CHIEF: EARL WARREN AND HIS SUPREME COURT: A JUDICIAL BIOGRAPHY (1983); TINSLEY E. YARBROUGH, A PASSION FOR JUSTICE: J. WATIES WARING AND CIVIL RIGHTS (1987); BASS, *supra* note 3.

an heroic jurist was the courage and fortitude of plaintiffs who braved intimidation to vindicate their rights and the rights of their children. Honor is due Judge Wright for his role in the battles noted previously, particularly the protracted struggle over schooling in New Orleans. But honor is also due to the plaintiffs who, guided by their remarkable attorneys, insistently knocked on courthouse doors until they received at least a semblance of appropriate relief.[49]

Second, Judge Wright and his family endured much on account of his anti-segregationist rulings. A cross was burned on his lawn.[50] He and his family received countless threatening and obscene letters and phone calls.[51] Former friends and acquaintances shunned the Wrights.[52] But Judge Wright retained, of course, his racial prestige as a white man and enjoyed, too, the extra protection afforded by his status as a judicial officer of the United States—privileges absent from the lives of those whose petitions he adjudicated.

Finally, attention needs to be paid to the ambiguities that surround judicial decision-making and its relationship to racial beliefs. Repudiating the constitutional legitimacy of de jure segregation did not necessarily entail a belief that blacks are potentially the intellectual, moral, and cultural equals of whites. Justice John Marshall Harlan was a white supremacist even

49. Richard Kluger makes this point beautifully in the opening pages of his magisterial history of *Brown v. Board of Education*, where he rightly begins the story not with the Justices of the Supreme Court but with the plaintiffs and the people who stood with and behind the plaintiffs. *See* RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 3-26 (1976). In her history of the New Orleans school desegregation struggle, Liva Baker is mindful of the special racial burden that the plaintiffs and their black attorneys shouldered. *See* BAKER, *supra* note 3. She recognizes, for instance, that "[p]arties to legal suits against the white establishment risked heavy losses." *Id.* at 153. For information regarding the principal local attorney representing the *Bush* plaintiffs, see RACHEL L. EMANUEL & ALEXANDER P. TUREAUD, JR., A MORE NOBLE CAUSE: A. P. TUREAUD AND THE STRUGGLE FOR CIVIL RIGHTS IN LOUISIANA (2011). For information about the leading civil rights attorney of the era, a lawyer who played a key role in virtually all major challenges to segregation in the 1950s, including the struggles in Louisiana, see MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961 (1994).

50. Bernick, *supra* note 3, at 986.

51. BAKER, *supra* note 3, at 423-24.

52. *Id.* at 423-26; Bernick, *supra* note 3, at 986.

though his dissent in *Plessy v. Ferguson*[53] was an eloquent, comprehensive, and prescient condemnation of Jim Crow segregation. With respect to Judge Wright, it is clear that he was unequivocally committed to carrying out the anti-segregationist orders of the Supreme Court. It is unclear, however, whether in the '50s and early '60s he was fully committed to the proposition that blacks are fully as capable as whites and as deserving of every consideration bestowed upon white citizens. True, when he invalidated de jure racial segregation in the New Orleans public schools, Judge Wright movingly averred 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."[54] One must also contend, however, with evidence that the pervasive racism that for so long surrounded him tainted his perceptions, intuitions, and habits.[55] "When I shake hands with a Negro," he remarked in 1960 to a British journalist, "I have a different feeling than when I shake hands with a white."[56] Deferring to Jim Crow etiquette, Judge Wright stated that he did not "intend to associate personally with Negroes."[57] Yet, in that same interview, Judge Wright related an anecdote that he repeated countless times in subsequent years, a didactic anecdote that appears to champion racial equality. Looking out of a window at Christmastime, he glimpsed a party being held in a neighboring building.[58] The party was split in half, with one portion for whites and the other for blacks.[59] He then realized that left on their own, partygoers would not have recognized the difference because all of them were blind. At that moment, he said, he recognized the cruel silliness of segregation.[60] As Wright spoke, the journalist observed, he became "so moved that he could not complete the story for several minutes."[61] Obviously, Judge Wright was conflicted within himself at that time about the requirements for racial decency.

53. Plessy v. Ferguson, 163 U.S. 537, 552-64 (1896) (Harlan, J., dissenting).

54. Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 337, 342 (E.D. La. 1956), *aff'd*, 242 F.2d 156 (5th Cir. 1957).

55. *See* BAKER, *supra* note 3, at 91-94 ("If there was any strong element of conformity in [Judge Wright's] youth, it was his attitude toward blacks.").

56. FAIRCLOUGH, *supra* note 22, at 245.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. FAIRCLOUGH, *supra* note 22, at 245.

I mention this last point not to diminish Judge Wright but to elevate him. It is to his credit that he allowed himself to be drawn so personally and authentically into the profound moral, political, and ideological conflicts that his jurisprudence reflected and reinforced. He was puzzling over the requirements of racial decency as were John F. Kennedy, Lyndon Johnson, Ella Baker, Septima Clark, Martin Luther King, Jr., and every other thoughtful, politically engaged American—then and now. He learned from that puzzling. Although he was a successful, powerful figure, Judge Wright allowed himself to be corrected and instructed. He thereby grew, infusing later phases of his career with lessons hard-won in the ferocious battles he fought in Louisiana. By overcoming backwards habits and ideas in which he had been steeped, Judge Wright made himself a better person, a better judge, and a worthy figure for emulation, admiration, and commemoration.