

**Wright, James Skelly** (1911-88). Federal judge. 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. He died after a sad but valiant battle against Alzheimer's disease and cancer.

Skelly Wright is best known for his heroic rulings in the immediate aftermath of *Brown v. Board of Education* when, as a recent arrival on the federal bench in New Orleans – President Harry Truman appointed him in 1949 – he ordered desegregation first of the Louisiana state law school and the city's transportation system and, in 1956, of the city's public schools. His profound distaste for segregation was summed up in a frequently told story of watching from his office window a Christmas party being held for blind persons in a neighboring community center. The black guests were carefully led to a separate party room from the white guests, even though none of them could tell the others' color. That stark snapshot of the ultimate illogic of segregation stayed with him always. For his efforts, Wright and his brave, ever-supportive wife, Helen, were rewarded with social ostracism, burning crosses on their lawn, and death threats. President Kennedy's attempts to place him on the Fifth Circuit in the early 1960s, which then included all of the Deep South, were implacably resisted by Mississippi senator James Eastland, chair of the Senate Judiciary Committee. Thus, he came instead to the District of Columbia Circuit in 1962, and a brilliant new career opened up for him in constitutional and regulatory law.

On a court which was rapidly becoming known as the second most important in the nation, Skelly was a renaissance judge. Like General Eisenhower, he seemed to be the beneficiary of much plain old luck. He was there when the big cases came, or he unearthed the big issues in them that others had left buried. He attacked the "tracking system" in D.C. schools, a transparent device for keeping poor black students permanently consigned to educational oblivion. He wrote the first appellate decision recognizing "sexual harassment" as a form of gender discrimination. He breathed life into a then-dormant environmental impact statement requirement for all significant federal activity. He made government bureaucrats explain how their decisions advanced the public interest enshrined in regulatory statutes. His breathtaking forays into landlord-tenant law and consumer rights produced unprecedented victories for oppressed tenants and victimized buyers. He bravely attempted to make treatment rather than prison the only allowable response to an addicted drug user's prosecution for possession.

Who was this man who forged ahead so doggedly and covered so much ground in his judicial career? He was born in New Orleans to a large Irish family of modest means and graduated from Loyola University (1931) and its law school (1934), teaching history at a high school to earn money for law school; he practiced first as an assistant U.S. attorney (1937 – 46) and as the U.S. attorney in New Orleans (1948 – 49). In World War II, he served as a coast guard commander; he had a lovely wife – they invariably referred to each other as "Sugar"; he read few books except the really important ones. He decried any form of ostentation including cars made after 1980, and he was rarely seen on the Washington social scene; for lunch he took his colleagues to the Federal Trade Commission cafeteria across the street from the courthouse. "He was more embarrassed than happy with praise," said Justice William J. Brennan, Jr., his friend for decades;

they shared the same Irish wit, modesty, a sure internal compass, and an occasionally blunt directness. Wright did everything fast and to the point, whether presiding as chief over judges' monthly meetings or eliciting answers from counsel at oral argument; he abhorred useless rhetoric or "talky" discussions. The district court judges loved him because he had been in their place and understood their peeves and restraints.

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. When he ordered desegregation of the New Orleans public schools, he wrote: "The problem of changing a peoples' mores ... is not to be taken lightly .... But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us, freeborn Americans, with the right to make our way, unfettered by sanctions imposed by man because of the work of God." 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.

It will be interesting to look back a century from now to see which judges fare the best – the elegant theoreticians, the cautious deferrers, the textually faithful, the law and economics sophisticates, or those who sought within the law to bring about the fairest outcomes for the neediest people. If the last, Skelly Wright will be high on the list.

Patricia M. Wald

Jack Bass, *Unlikely Heroes* (1982); "In Memoriam: J. Skelly Wright," *Harvard Law Review* 102 (1988); "In Memoriam: Judge J. Skelly Wright," *George Washington Law Review* 57 (1989); Arthur Selwyn Miller, "A Capacity for Outrage": *The Judicial Odyssey of J. Skelly Wright* (1984); Jeffrey Brandon Morris, *Calmly to Poise the Scales of Justice: A History of the Courts of the District of Columbia Circuit* (2001).

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