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ONE JUDGE'S BATTLE AGAINST THE NEW YORK CITY JUDICIAL ESTABLISHMENT

PERCY R. LUNEY, JR.*

Black Robes, White Justice is an autobiography of a black lawyer and judge trying to understand a society shackled by racism, prejudice and discrimination. As an autobiography, the book is stimulating and informative. Judge Wright, through his life experiences, conveys his story of the problems encountered by blacks and other non-white racial groups in the courtroom. Through Judge Wright's eyes, we see the perplexities, conflicts, choices and dilemmas of being a black lawyer and judge in America. His revelations about the politics of judicial selection and promotion, particularly of black judges, in New York City are discouraging for those of us who still believe that a merit system can work in America.

After reading about Judge Wright's pre-judicial experiences, one easily understands and appreciates the significance of this statement: "The average white judge, no matter how decent his intentions, cannot possibly understand where the Black criminal is coming from. He has not experienced the environment, the frustration and the humiliation that goes with being Black in America."¹

Judge Wright succeeds in making the reader feel his sadness, pain and indignation from the cited incidents of racism, discrimination and prejudice which he has experienced or observed. His early childhood, secondary and undergraduate education, army and law school experiences provide much insight into his unique perspective as a judge. His scholarship to attend Princeton University was withdrawn when the director of admissions discovered that he was "colored." Although he graduated from a Catholic high school, the University of Notre Dame rejected his application for admission because he was not white. After graduation from Lincoln University in Pennsylvania, an historically black institution of higher education, he enrolled at Fordham Law School. Before he could finish his legal education, he went into the army during World War II. Segregation was pervasive in the military and Judge Wright recalls the many humiliations that he suffered and endured because his skin color was not white. When he returned to America after the war, he completed his legal education at New York Law School.

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1. B. WRIGHT, *BLACK ROBES, WHITE JUSTICE*, (1987) (book jacket).

Judge Wright, as a law student, spent a great deal of time with Judge James S. Watson, the first black judge in the history of the state of New York. He relates a story that Judge Watson was unable to accept a nomination to the State Supreme Court because he did not have the money that was required to payoff the Mayor of New York City, William O'Dwyer. At this time in New York City's history, most judgeships were purchased with significant financial contributions to city hall. After graduation from law school, Judge Wright was hired as an associate at Proskauer, Rose, Goetz & Mendelsohn, a prominent New York City law firm.

One of Judge Wright's most interesting reminiscences concerns his employment at this law firm. He was the first non-white lawyer at the firm and was told by the managing partner, Bernard Lang, he would "never become a partner because the firm's clients . . . were not ready for a Negro partner."² That occurred in 1951; shortly thereafter, he left the law firm and started his own practice in an office which he shared with three other lawyers. Judge Wright had a successful general law practice which included providing legal representation to black jazz musicians such as Art Blakey. In 1967, New York Mayor John Lindsey recruited Judge Wright for public service and he was named general counsel to the New York City Human Resources Administration.

A year later, a friend, who was now a partner at the Proskauer law firm, nominated him for partnership. Judge Wright was led to believe that his offer of partnership was all but assured as soon as one partner returned from Europe. In the end, the firm concluded again that the time was not appropriate to have a black partner.³ Judge Wright's experience with a major historically white New York City law firm reflects a trend that has not improved much over the years. As of February 1987, this same law firm has only one black associate among its 250 associates and partners.⁴

The number of blacks hired by major law firms in New York City has not kept pace with those firms' phenomenal growth. In the last five years, for example, the proportion of blacks at twenty-five major New York City law firms (with 100 or more associates) has steadily declined. In February 1979, there were sixty-four blacks in a total associate pool of roughly 2000, or about 3.2% of the total. By February 1984, although the associate pool had grown to 4000, there were ninety-four blacks, or 2.3% of the total.⁵ The percentage of black associates and partners at

2. *Id.* at 45.

3. *Id.* at 46.

4. 1987-88 NALP Law Firm Questionnaire. Proskauer, Rose, Goetz & Mendelsohn also employed one Hispanic and one Asian American associate in February 1987.

5. KARMEL, "Why Blacks Still Haven't Made It", *The American Lawyer* (March 1984) 121-27, 121.

these twenty-five New York City law firms has declined despite a growing pool of black law school graduates from leading law schools where these law firms normally recruit. Nonwhite student enrollment at the fifteen leading law schools has been approximately 10% or more since 1973.⁶

The reasons for partnership refusal have also not changed over the years. Interviews with 25% of all black associates and partners at large New York law firms in 1984 revealed the following reasons for the poor nonwhite lawyer hiring and promotion to partnership record by historically and predominantly white medium and large size law firms:

1. There is little or no pressure, especially economic, on law firms to hire and to promote non-white lawyers.
2. Some law firms fear that giving a greater presence to blacks and other non-white lawyers might alienate clients. "It's not an open prejudice. But clients feel more comfortable with people like themselves. Clients keep calling for certain associates. That makes their career."
3. Some law firms just can't be sure whether or not the non-white lawyer can "fit into their family." "Fitting in" is just as important as performing well.⁷

Judge Wright, through a series of anecdotes, describes his legal career and his conflicts with the New York City legal and judicial hierarchies. He explains the nature of the political control exerted over judicial selection and legal process. Judge Wright's active protection of criminal defendants' constitutional rights and his attempts to treat criminal defendants as human beings angered the New York City Police Association and judicial bureaucracy. Judge Wright's ongoing battle with the

6. See American Bar Association, *Review of Legal Education in the United States*, Chicago: ABA, (1973-1987).

7. KARMEL, *supra* note 5 at 122-25. Most representatives of a law firm's corporate clients belong to private clubs and move in social circles inaccessible to most nonwhites. They are not accustomed to nonwhites in positions of authority, handling their legal matters, giving them advice and acting as their equals. Hostile white clients can be the downfall of a nonwhite lawyer. Roy Brooks, formerly a black associate with Cravath, Swaine and Moore, stated "One client had a prejudicial view of me before they got to see my work;" William Pollard, formerly an associate with Paul Weiss, Rifkind, Wharton & Garrison, found that "Black associates weren't being invited to the important meetings or introduced to clients . . . They weren't being taken into the acculturation process." In a recent article, Rollin Chippey, an associate with Brobeck, Phleger & Harrison in San Francisco, and the only black at that time in this 200 person law firm, stated that reactions of shock and consternation were exhibited by clients in about 80% of his initial client meetings. "I feel like I have to be ready to answer every question or my abilities will be doubted because I'm black." Frederick F. Smith, Jr., "Are America's Law Firms Willing To Make Black Partners," *Black Enterprise* (November 1984) 63-66. Another black associate shared his experiences trying to work with a corporate client's white representative who refused to work with him and only called the partner in charge. The associate's next evaluation stated that he "failed to inspire client confidence."

Having these experiences in mind Mario Baeza stated that when he started as an associate at Debevoise and Plimpton, he "purposefully chose to do private placements, transactional deals, because of the fear of clients who would not feel comfortable because I'm black." KARMEL, *supra* note 5 at 127. This work minimized regular face to face contact with clients. Mr. Baeza was one of only seven black partners in large New York law firms in 1984.

New York City Police Association reveals its role in the criminal justice system and the political process.

Judge Wright recounts criminal cases where he imposed lighter penalties than those sought by the police or reduced bail to an affordable level over police objections. In one case, a white defendant was charged with homicide. The deceased, a friend of the defendant, had been involved in a fist fight with the defendant. After the fight was over, the deceased walked away and died shortly thereafter. Judge Wright released the defendant without bail because he had no money. The press and the police portrayed Judge Wright as a law and order foe who turned loose dangerous and depressed criminals on unsuspecting communities. He soon earned the infamous nickname "Turn 'Em Loose Bruce" which displays the contempt with which he was generally held by the press and the police.⁸

One only wishes that he had devoted more time to a similar discussion of the New York City police force. There are presumably, today, significant numbers of Black and Hispanic persons on the New York city police force. It would have been very interesting to learn Judge Wright's perception of the general performance and attitudes of non-white New York City police officers. From the lack of discussion on this issue, it is unclear whether or not Judge Wright is implying that the New York City police department as an institution is incapable of fair treatment of non-whites regardless of its racial makeup.

Black Robes, White Justice is not meant to be a systematic or analytical examination of racism in the American courtroom, and Judge Wright devotes very little time to the actual problems of the criminal justice system. On several pages, he mentions the great number of cases resolved through plea bargaining sessions in the privacy of the judge's chambers or during bench conferences.⁹ The defendant's fate is determined outside of his or her presence and normally without any consultation. After the negotiations, the defendant learns the consequences. From Judge Wright's view, one gets the impression that organizations, such as the New York Legal Aid Society, which provide legal representation to indigent criminal defendants are equally at fault. The available evidence does not fully support this assertion.

The New York Legal Aid Society workload problem seriously impacts on its effectiveness in providing adequate legal assistance and results from inadequate funding. Understaffed offices and excessive caseloads seriously threaten the public defender's ability to perform professional duties in an ethical manner and to provide constitutionally effective legal assistance. Indigent criminal defendants describe public defenders as ow-

8. B. WRIGHT, *supra* note 1 at 117.

9. *Id.* at 71-72.

ing allegiance to the state, devoting too little time to their cases, providing ineffective representation, uncaring, and pressuring them to plead guilty.¹⁰ Public defender systems subjected to excessive caseload pressures begin to resemble an impersonal bureaucracy handling routine criminal cases like an assembly line.¹¹ "One not uncommon effect is that clients simply refuse to cooperate with defenders, to tell defenders their side of the charges, to assist in locating witnesses, etc. Such a lack of cooperation in some cases has disastrous implications on the representation that can be provided."¹² The fundamental sixth amendment right to effective legal assistance depends on free interaction and exchange of confidential information between the criminal defendant and his or her attorney. If the attorney client relationship cannot be meaningful, the attorney's ability to render competent legal representation may be seriously impaired.

Despite the problems existing in the New York City judiciary and the police department, an independent public defender program might improve the current situation if excessive caseloads are eliminated. From Judge Wright's failure to discuss the New York City Legal Aid Society and its public defender excessive caseload problem, one concludes either that he deems this outcome clearly impossible given New York City's political environment or that he considers the influence exerted by any Legal Aid Society to be ineffective against the entrenched bureaucracy of the New York City judicial and criminal justice systems. Whatever the reason, Judge Wright devotes very little discussion to the Legal Aid Society or public defender excessive caseload problems.

CONCLUSION

After reading *Black Robes, White Justice*, the reader wonders if there can be any hope for a judicial establishment infected with political and

10. BERGER, *The Supreme Court and Defense Counsel: Old Road, New Paths*, 86 COLUM. L. REV. 9, 53 (1986).

11. *Id.* at 53, 61 (citing *United States v. Decoster (Decoster III)*, 624 F.2d 196, 280-281, n.89 (D.C. Cir.) (Bazelon, J., dissenting), cert. denied, 444 U.S. 944 (1979); *Wallace v. Kern*, 392 F. Supp. 834, 847 (E.D.N.Y.), vacated on jurisdictional grounds, 481 F.2d 621 (2d Cir. 1973), (per curiam); *Standards for Criminal Justice*, 5-2.4, commentary (2d ed. 1980); N. Lefstein, *Criminal Defense Services for the Poor*, 8-24 (1982).

12. MOUNTS, "Public Defender Programs, Professional Responsibility and Competent Representation," 82 WIS. L. REV. 473, 486-87 (1982). There must be some truth in the following comments by indigent defendants: "I don't want a public defender. I want a real lawyer."; "Did you have an attorney on your last case? No, I had a public defender." Berger, *supra* note 14, at 53. Clients refer to public defenders as "dump trucks" because they believe the defenders only want to 'dump' them some other place as quickly as possible. See also O'Brien, Peterson, Wright & Hostica, "The Criminal Lawyer: Defendant's Perspective," 5 AM. J. CRIM. L. 283 (1977); Tyler, "Competent and/or Effective: How Breakdowns Occur," 33 NLADA Briefcase, 75 (1976); for a discussion of problems created by client mistrust, See also, Wilkerson, "Public Defenders As Their Clients See Them," 1 AM. J. CRIM. L. 141 (1972).

racial bias, much less a society. Perhaps one incident sums up the continuing problem of racial stereotypes and bias in American society. During 1974, Judge Wright felt faint and weak during a trial at which he was presiding. He was rushed to a hospital emergency room and placed on one bed in a curtained-off area. The area contained two beds. The other bed was occupied by a drunken derelict from the Bowery. Judge Wright was shaven and well dressed in a three piece suit. The drunk was in need of a shave, drooled, wore soiled clothes including unmatched socks and sneakers and sang softly in garbled syllables.

I heard a nurse outside the curtained area say, "Hurry, doctor, we have a judge who is ill." A white doctor parted the curtains, paused at the entrance, looked at me and then at the white derelict. He hurried to the side of the white man, lifted his wrist, as though to test his pulse, and said, "Judge, what seems to be the matter?"¹³

13. B. WRIGHT, *supra* note 1 at 24, 25.