

BOOK BRIEF

Black Robes, White Justice. By Bruce Wright. Seacaucus, New Jersey: Lyle Stuart Inc. 1987. Pp. vii, 214. \$15.95.

Herein lie buried many things which if read with patience may show the strange meaning of being black here at the dawning of the Twentieth Century. This meaning is not without interest . . . ; for the problem of the Twentieth Century is the problem of the color-line.¹

This is an unusual book review about an unusual book. In *Black Robes, White Justice*, Justice Bruce Wright of the New York Supreme Court, has written a damning indictment of the American legal system that should cause us to reexamine our notions of the Constitution, justice, and race relations in this country.

For many Americans, "the law" has everything to do with notions of fairness and justice. Courts and judges are thought to be fountains of equanimity. This view is particularly prevalent among students in most law schools, and especially so for students of color. For instance, the events surrounding the nomination and defeat of Judges Robert Bork and Douglas Ginsburg to the United States Supreme Court² focused the nation on the role of the judiciary and the judicial selection process. Even with the Court's most recently seated Justice, Anthony Kennedy, it is apparent that many people view the nomination and confirmation process as a question of ideology rather than objective capability.³ Some feel judges should be results-oriented people primarily concerned with addressing issues concerning the majority. A "good" nominee is one who thinks as you do. For others, judges should not come to the bench with a pre-packaged ideology. The potential of a philosophical predisposition doomed Judge Bork's nomination, and also concerned many about both Judge Ginsburg and Judge Kennedy's nominations.

Unfortunately, much of the debate and analysis on judicial philosophy centers on the nation's highest court. In addition to those nine justices, there are more than 18,000 judges in courts around the country.⁴ These judges and justices of lower federal and state courts decide most litigation. Yet, many lower court judicial selections escape the attention of most observers.⁵ A decade ago as a law student in New York City, I quickly became aware of Bruce Wright and his tribulations with various citizens of the city, including the mayor, his colleagues in the bar and on the bench, and with the metropolitan police department. Known as "Cut 'Em Loose Bruce," Judge Wright often

1. W.E.B. DuBois, *THE SOULS OF BLACK FOLK* vii (1903).

2. *See On Trial: Character*, U.S. NEWS & WORLD REPORT, Sept. 28, 1987, at 26-27, 29; Berger, *Going . . . Going . . .*, U.S. NEWS & WORLD REPORT, Oct. 12, 1987, at 20-22; *Meese's Man For the Court*, Wash. Post Nat'l Weekly, Nov. 16, 1987, at 25. *See also* The Bork Nomination, 9 CARDOZO L. REV. 1 (1987).

3. *See, e.g., Church Far More Judicious*, TIME, Nov. 23, 1987, at 16-18; *For Round 3: A Conservative Without Bork's Bite*, Wash. Post Nat'l Weekly, Nov. 23, 1987, at 13.

4. THE AMERICAN BENCH v (4th ed. 1987).

5. Although the American Bar Association's judicial selection committee provides professional ratings of most federal court nominees, those rankings do not have the force and effect that one might necessarily expect. For a recent example see The New York Times, July 20-25, 1986 for articles on the nomination of Daniel A. Manion to the Seventh Circuit Court of Appeals.

has been vilified for his judicial decisions, particularly those involving bail. In Wright's view, high bail amounts are not needed. He believes that the eighth amendment⁶ literally requires courts to use bail only as a means of ensuring an accused's appearance at trial. All too often, however, judges use bail as a form of punishment, not insurance.⁷

Throughout his book, Wright recalls a series of incidents⁸ culled from his sixty-odd years, including some thirty years in practice and on the bench. The book's hallmark is Wright's broad sense of law as a dynamic concerned with justice as an even-handed application of legal principles to similar fact situations. Because his experience is in New York, Wright focuses on and criticizes that city's criminal justice system. He characterizes criminal courts as "custodial conspira[tors] against those who break the law."⁹

In Wright's eyes, ideal justice involves a quest for moral force. He begins this journey by describing the nation's courts:

Most of the judges of America are male, white, middle-class, aloof and conservative. Brought before them is a parade of dark-skinned defendants, all alien to the concept the judges have of the way life ought to be.

In New York City, most judges have completed four years of college and three of law school. Presumably, such scholars are intellectuals of one kind or another. But more often than not, they are acquainted with no more than theories. Seldom do they have any personal familiarity with the reality and cruel adjectives which modify and diminish the lives of the poor. Such judges gaze upon the captives of the police across a vast expanse of social distance.¹⁰

Thus, race, social and economic status all interfere with the even application of legal principles to matters in litigation. Instead of judges trying to serve as objective arbiters seeking to understand the causes and breadth of alleged misconduct, Wright sees most judges as succumbing to public pressure based on factors such as race. The heralded concept of "judicial discretion becomes whatever a judge perceives a community emotion to demand."¹¹ That people of color are in the minority and unable to express their opinions through traditional avenues like the media, means that their cries will not be heard or considered by those who judge.

The book chronicles a number of instances that illustrate disparate treatment according to race. He notes that in New York City for example, Bernard Goetz has yet to be condemned judicially, for shooting four Black youths in a subway. Though he does not discuss the Howard Beach beatings of three Black men, that event also reflects Justice Wright's suggestion that judges react to community emotion and pressure. Despite the guilty verdict and sentences in the Howard Beach cases, one must still ask whether justice was done. Query the result had Blacks perpetrated similar acts against Cauca-

6. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. U.S. CONST. amend. VIII.

7. "Given that the largest number of criminal defendants are from our inner cities and black, bail becomes an instrument of social repression." B. WRIGHT, *BLACK ROBES, WHITE JUSTICE* 203 (1987).

8. It would be trite to call these vignettes, stories. In chapters one and two, Justice Wright provides autobiographical information which affirms DuBois' comments on the problem of race and the twentieth century.

9. *Id.* at 11.

10. *Id.* at 12.

11. *Id.* at 203.

sians. Perhaps the majority community's emotion would have demanded similar swift and harsh retribution. Perhaps the punishment might have been even greater for Black perpetrators.

I suppose it is difficult, and at times unnecessary, for those in a democratic majority to see the necessity of recognizing and being sensitive to the needs of those in the minority. Throughout its text the United States Constitution emphasizes the idea that freedom can come to a society only when that community protects the rights of each of its citizens equally. There is no place where acknowledging the differences and needs of the minority is stronger than in our court system. Yet, "[i]t is from the most conservative segment of a well-behaved society that our judges are chosen."¹² For Wright, the idea of justice then, has become a limited concept:

The hard fact is that none of us knows what to do about crime, . . . In our desperation to do something, we send offenders to jail. There is no other place to send them. Judges, divorced from the way of life of the streets, hear a catalogue of crimes read off and charged to a defendant. They are appalled. They are shocked. They become angry. They realize that they are really a security force and keepers of the peace. In their minds, they convict the defendant. He is the menace, a danger to society.¹³

Although Judge Wright intended to write a book about racism in New York, he notes that race consciousness and insensitivity are not different in other parts of the country. In chapter three, entitled "Judging the Judges," he notes that some of the worst perpetrators of an insensitive judicial system are Black judges. Because judges are either popularly elected or appointed by an elected official, Wright sees the selection process as having created a class of politicians-hoping-to-become-judges. The select number of attorneys, Black, Caucasian, or of other races, who are designated "qualified" to sit on a bench, come from the ranks of those who advocate the status quo most ardently. He accurately notes that until people of color vote in greater numbers, and therefore require their elected officials to be more cognizant of issues of difference and diversity, the prospects for judicial change remain remote.

In chapters four through six Wright again addresses the question of racism through personal story. For many, this storytelling style will make for difficult reading. While he tries to provide sufficient background to his narratives, Wright is more often than not, unsuccessful. Readers unfamiliar with New York City politics and life may find the presentation tedious and, at times, rambling. However, one needs to read beyond the lines for the overall message on the effects of race in the criminal justice system. Wright's actions on and off the bench have been aimed at identifying not only the legal, but also the social significance of race in the search for even-handed treatment under the law. Race is an ugly but historic fact of American life.

Never having had to sue for the right to enter a public library, park, or swimming pool; never having attended a one-room shack masquerading as a schoolhouse; never having had to be for the constitutional right to vote[,] to spend money to eat in a restaurant, to seek refuge in a hotel or inn, it was impossible for [my fellow judges] to have genuinely humane feelings about

12. *Id.* at 20. Later Judge Wright notes that in selecting judges from a narrow band of the populace, the majority ensures a particular majoritarian notion of justice. "Most of the judges of America . . . value the system that has elevated them to such prominence within it." *Id.* at 28.

13. *Id.*

blacks as persons, as opposed to *black* persons. [¶]. . . The black endurance had been *their* experience. Hearing or reading about such constitutional travesties was the same to them as seeing a dull and pointless film dealing with unreal inventions. The everyday life and straitened posture of black existence and survival could never be felt. . .¹⁴

Like DuBois, Wright argues that unless America confronts its race consciousness and racism directly, the struggle to form a just and humane society will be lost. He ably addresses the fears that many Caucasians have whenever race is mentioned in conjunction with the criminal justice system.

It is not that the judge must have affection for blacks, nor is it necessary for jurors to have such a tender emotion. The difficulty is in bringing objectivity and impartiality to a jury in a race-stricken land. It seems inescapable that white judges reach conclusions that reflect white community standards.¹⁵

Searching beyond mere rules for the causes of criminal behavior is the task Wright wants society generally, and courts in particular, to undertake.

He is pessimistic about the chances for success in transforming the way judges respond to crime. "To plan long-term responses to crime and criminal behavior is obviously too burdensome for a society that has found comfort in quick answers . . ."¹⁶ Though it may be difficult to read, *Black Robes, White Justice* is important reading for anyone concerned about a free and just society. Race consciousness and racism are not subjects with easy answers. Understanding that both exist is a necessary first step. Working to reduce the effects of both is the next move. Both are difficult if not impossible tasks; but, both are essential. If courts are to give meaning to the ideas of fairness and justice in the twenty-first century, we must finally address matters of color. We are now nearly a century behind.

W. H. KNIGHT, JR.*

14. *Id.* at 107.

15. *Id.* at 77.

16. *Id.* at 177.

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