

DOCUMENTS OF THE GENERAL FACULTY

**REPORT OF THE MEMORIAL RESOLUTION COMMITTEE FOR
CHARLES ALAN WRIGHT¹**

The special committee of the General Faculty to prepare a memorial resolution for Charles Alan Wright, professor, law, has filed with the Secretary of the General Faculty the following report.

John R. Durbin, Secretary
The General Faculty

**IN MEMORIAM
CHARLES ALAN WRIGHT**

Professor Charles Alan Wright, who held the Charles Alan Wright Chair in Federal Courts, died on July 7, 2000. Professor Wright had served this law school and this University for 45 years, with great loyalty and extraordinary distinction. For many of those years, he was without question the best known and most respected member of the faculty of law.

He is survived by his wife Custis Wright, his son Charles Edward Wright, his daughters Eleanor Clarke, Margot Clarke, Henrietta Wright, and Cecily Fitzsimons, by six grandchildren, and by friends and admirers throughout the world.

Perhaps the first question in a document such as this is what to call him. To his many friends—on the faculty, across the nation, and abroad—he was simply "Charlie." That is how we knew him, how we spoke to him, and how we spoke about him. But his own manners were formal, and nearly all his written references to other persons—whatever their rank and however close their acquaintance—were by last name and appropriate title. We will follow his own practice here.

Mr. Wright, as he then was, was something of a child prodigy, and so the long career of Professor Wright got off to a very early start. Born in Philadelphia on September 3, 1927, he graduated from Wesleyan University in 1947 and from Yale Law School in 1949, clerked for Judge Charles E. Clark on the United States Court of Appeals for the Second Circuit, and assumed his duties as assistant professor of law at the University of Minnesota in 1950, just before his twenty-third birthday. He was promoted to associate professor in 1953. He joined the faculty of The University of Texas at Austin in 1955, at the age of twenty-seven.

Mr. Wright studied under the mid-century legal realists at Yale, and the best of legal realism is apparent throughout his life's work. A more momentous formative experience came in his clerkship with Judge Clark, who had been the reporter and chief draftsman for the original Federal Rules of Civil Procedure in 1938, and who continued to serve actively in the rulemaking process until 1955. During that clerkship in 1949-50, Mr. Wright and Judge Clark coauthored Mr. Wright's first article on procedure. The origins of Professor Wright's greatest work—a lifelong study of legal practice in the federal courts, principally organized around the various sets of federal rules—lie in this apprenticeship with Judge Clark.

Professor Wright's reputation rested first and foremost on his monumental treatise, *Federal Practice and Procedure*. This is the one indispensable reference work on procedure and jurisdiction in the federal courts. Begun in 1969, by the time of Professor Wright's death it had grown to 57 large volumes, with second and third editions of many volumes and frequent supplements to all the volumes. He recruited a team of distinguished coauthors; the volumes are variously credited to Wright; Wright & Miller; Wright, Miller, & Kane; Wright,

¹ Title header corrected on June 5, 2001

Miller, & Cooper; Wright, Miller, & Marcus; Wright & Gold; Wright & Graham. Professor Wright was the one author common to all volumes, the leader and organizer of the whole project.

With one notable exception that is revealing of the man, Professor Wright read every word of every volume. The exception is that he did not participate in preparing the treatise's discussion of any case in which he had participated as counsel, and with respect to the cases in which he had represented President Richard M. Nixon, he did not even read what his coauthors wrote, lest they be influenced by fears of what he might think.

Professor Wright's coauthors have described an active collaboration in which they each worked on their own volumes but he worked on all the volumes. He sent them a stream of queries, suggestions, and new cases for possible inclusion. He reviewed drafts for substance, clarity, and style; he patiently debated substantive disagreements. When he and a coauthor could not agree on a point of substance, he insisted only that the treatise note that there were serious arguments for each position.

It is impossible to overstate the importance of this work. The treatise has been cited more than 50,000 times in on-line texts, periodicals, and judicial decisions (and there are some 10,000 additional on-line citations to his other writings). There are other luminary legal academics with famous treatises, but none that even come close in frequency of citation. His friend Bryan Garner believes, and it is probably true, that Professor Wright is the most-cited human ever to write about law in English. *Federal Practice and Procedure* is cited so often in part because it deals with procedure, and every litigated case potentially raises procedural issues. But more fundamentally, the work is cited so often because its persuasive authority is universally accepted, and because its explanations of complex matters are so lucid.

This remarkable set of books is but one of the more than 250 entries in Professor Wright's bibliography. He also maintained his casebook on federal courts through ten editions, and his one-volume hornbook on federal courts through five editions. Thousands of law students use these books, and nearly every federal judge keeps the hornbook near at hand. Before beginning his own treatise, he had rewritten seven volumes of an earlier treatise on federal procedure. He published several other books and vast numbers of reviews and occasional pieces. He also kept up an active correspondence with family and friends, and with scores of lawyers, judges, and scholars all over the United States and the English-speaking world.

Professor Wright's reputation also rested in part on his fame as a Supreme Court advocate. He personally argued thirteen cases in the Supreme Court of the United States, including a remarkable series of nine cases from 1968 to 1973. He won ten of the thirteen cases outright, won half his point in another, and lived to see his position substantially vindicated in the two cases he lost.

Professor Wright won two relatively minor Supreme Court cases in 1963, securing reversals on behalf of an injured railroad worker and a mentally ill criminal defendant. He won two more late in his career: in 1987, he successfully defended the free speech rights of a citizen who had been prosecuted for interrupting a Houston police officer, and in 1999, he won a unanimous reversal for a German company caught up in a highly technical jurisdictional dispute about where and whether it could be sued in the United States. Of course these cases were minor only as compared to the range of cases decided by the Supreme Court of the United States. At least four Justices thought these cases presented some issue of national importance or they would not have been decided in the Supreme Court at all.

Professor Wright's run of cases from 1968 to 1973 included three important wins on behalf of criminal defendants: two on the privilege against self-incrimination and one on the speedy trial rights of defendants incarcerated in another state. He successfully defended the power of circuit judicial councils to remove federal judges from active duty—perhaps the only meaningful check on a life-tenured judge who becomes mentally disabled or commits non-criminal misconduct. In his most spectacular success, he argued for reversal of a \$145,000,000 default judgment against Hughes Tool Co., winning on an issue that had been unsuccessfully appealed to the Supreme Court eight years before.

The remaining four cases were by any standard landmark decisions in substantive constitutional law: *Maryland v. Wirtz* in 1968, *Oregon v. Mitchell* in 1970, *Furman v. Georgia* in 1972, and *San Antonio Independent School District v. Rodriguez* in 1973. He represented the states in *Maryland v. Wirtz*, unsuccessfully arguing that Congress could not subject the states to the Fair Labor Standards Act or to suits to enforce the Act. His claim

that the states were immune to such suits is now the law of the land; his claim that applications of federal legislative power are sometimes limited by the sovereignty of states is now one of the Supreme Court's guiding principles.

Professor Wright represented Texas in *Oregon v. Mitchell*, defending state power to set voting qualifications and challenging federal legislation that lowered the voting age to eighteen. This was his half win; with Justice Black casting the swing vote, the Court held that Congress could set the voting age in federal elections but not in state elections. It took a constitutional amendment to lower the voting age in state elections. *Mitchell* remains one of the leading decisions on Congressional power to enforce the Civil War Amendments to the Constitution, and here too, the Court has moved in Professor Wright's direction and even beyond. Recent decisions have restricted Congressional power to enforce those amendments further than he approved.

Furman v. Georgia was the case that was supposed to end capital punishment in the United States. Professor Wright appeared in a companion case, *Branch v. Texas*, decided in the same opinion, and so the consolidated cases became known as *Furman*. The Court chose to hear three of the many capital cases before it at the time; it chose *Branch* because of its belief that Professor Wright would represent Texas. To avoid any disappointment, Chief Justice Burger quietly let out the word that the Court wanted Professor Wright, and Texas obliged. Professor Wright lost in *Furman/Branch*; the Texas capital punishment statute was struck down. But as in *Maryland v. Wirtz*, the Court's view of the matter soon swung in Professor Wright's direction, and as everyone knows, capital punishment in Texas is again a matter the state can decide for itself. We do not know what Professor Wright thought of the way Texas uses that power, although we do know he cared deeply about the procedural rights of criminal defendants.

Finally, Professor Wright represented the defendant school districts in *San Antonio Independent School District v. Rodriguez*, successfully arguing that even extreme local variations in educational funding were beyond the reach of the Equal Protection Clause. This was a case that could easily have gone the other way and thus have triggered a generation of federal litigation over funding local schools. The facts were appealing for the plaintiffs, who attended a desperately underfunded and somewhat gerrymandered school district. The case was decided five to four, with two frequent swing votes (Justices Powell and Stewart) joining the five. This was an argument that mattered more than most.

Professor Wright's 48-page brief mentioned no law until page 25. The first half of his brief was devoted to a careful exploration of the complexities of school finance, and to a showing that the trial court had adopted the solution just proposed in a new book by three professors. Had the Equal Protection Clause really anticipated this newly-created academic theory? Did not the theory require some period of testing and experimentation before being imposed on the country as the only constitutionally permissible solution? He acknowledged that plaintiffs and their academic theorists had opened the eyes of the nation to a serious and previously unrecognized problem, but the search for a solution was just beginning; it could not be solved at a stroke by one Supreme Court decision. The Supreme Court declined to get involved; over a much longer time, and with much trial and error, the Texas courts and the Texas legislature have alleviated the problem.

Professor Wright's most famous and most difficult client was President Richard M. Nixon. Professor Wright represented the President on constitutional issues growing out of the Watergate investigations by Congress and the special prosecutor. For a time he clearly appeared to be the President's lead lawyer, but then there was a shuffling of responsibilities, and he did not argue the case in the Supreme Court. It seems clear that his client lied to him, and it seems equally clear that Professor Wright could not have saved the Nixon Presidency even if he had been given full control of the case. Professor Wright steadfastly refused to comment on his representation of the former President, resisting the temptation to clarify his own role at the expense of a client's confidences. Of all the many things he did in his extraordinarily full life, representing President Nixon was the one thing most visible to the non-legal public, and it became the centerpiece of many of his obituaries.

After *United States v. Nixon*, Professor Wright greatly reduced his role as an active litigator, although he continued to consult behind the scenes with other lawyers and wrote occasional friend-of-the-court briefs. The cases we have described include two business cases, one personal injury case, and eleven constitutional cases. In Professor Wright's view, these eleven constitutional cases were of a piece. Express civil liberties, federalism, and separation of powers were all means of protecting liberty. His clients might or might not use their liberty

wisely, but power concentrated in Congress or any other central body might not be used wisely either, and centralized blunders and abuses were more dangerous than decentralized blunders and abuses. So whether he was defending the free speech rights of a street protestor, the self-incrimination rights of a professional gambler, a state's right to decide for itself about the death penalty or the minimum wage, or even a President's right to keep secrets from Congress and the public, he saw himself as defending the limitation and dispersal of government powers, and thus in the broadest sense, defending the liberties of the American people.

Another large piece of Professor Wright's work was his service to The American Law Institute, a select organization of lawyers, judges, and legal scholars that produces independent studies and summaries of American law. Professor Wright was elected to the Institute in 1958, when he was only thirty. From 1963 to 1969, he served as reporter for the Institute's massive *Study of the Division of Jurisdiction Between State and Federal Courts*. At the conclusion of that project, he was elected to the Council, the small group that reviews every draft document before its submission to the membership.

For the last seven years of his life, he served as president of the Institute. This required countless trips to Philadelphia for meetings on the Institute's many continuing projects; it required an active correspondence with reporters and members of the Council. And for a week each spring, he would preside over the annual meeting of the membership—hundreds of lawyers, many with strong and sharply divided views, some unwilling to give up when they had lost, some prone to talk too much in any event—debating book-length analyses of broadly defined topics from the whole range of American law. He presided with authority and aplomb, giving every member a reasonable chance to speak and then pushing the agenda on towards conclusion.

Other public service reflects his prominence, his skills, his expertise, and the range of his knowledge and interests. Professor Wright served for nearly 30 years, under appointments from three different Chief Justices, on various committees to propose revisions of the federal rules of procedure or the statutes granting jurisdiction to the federal courts. He was a frequent speaker at the circuit conferences of federal judges; some federal judges described him as their coach. He served eight years on the permanent committee to supervise the *Oliver Wendell Holmes Devise History of the Supreme Court of the United States*, seven years on the Commission on the Bicentennial of the Constitution, ten years on the Committee on Infractions of the National Collegiate Athletic Association (five years as chair), and two years as chair of the NCAA Administrative Review Panel.

Professor Wright also served his local community. He served on the vestry of Good Shepherd Episcopal Church and on important committees of the Episcopal Diocese of Texas. He served on the boards of the Austin Symphony Orchestra, the Austin Lyric Opera, and the Austin Choral Union. He was a founder of KMFA, the classical music station, and chaired its board for 31 years. He served repeated terms on the boards of St. Andrew's and St. Stephen's Episcopal Schools, and in the early 1960s, he took a leading role in desegregating those schools. He helped found The University of Texas Faculty Club, extracting a commitment that it would not be segregated, and then he organized a successful faculty boycott when the operators failed to honor their commitment.

Professor Wright served the University in many ways—on four presidential search committees, in multiple terms on the Men's Intercollegiate Athletics Council, as faculty representative to the NCAA and the Big 12, and on countless law school committees. He was a strong supporter of international programs, and his British connections were important to the creation of the law school's various exchange programs with British universities. In his last federal case, he was an active member of the legal team representing the University in its affirmative action litigation, *Hopwood v. Texas*. In this representation he encountered a dilemma that few lawyers are ever likely to face, and he resolved it with his own unbending standards of propriety. He participated fully in the drafting of the final round of briefs, but he took his name off the list of counsel, lest there be some hint of impropriety in his submitting a brief to a court that was about to give him an award for service to the federal courts.

Professor Wright was a popular and successful teacher, teaching large sections of Constitutional Law and Federal Courts year after year. And he taught his labor-intensive Supreme Court Seminar, open to exactly nine students, each of whom was assigned to assume the persona of one Supreme Court Justice for the semester, and to speak, vote, and write opinions in actual pending cases as he or she believed that Justice would speak, vote, and write. In 1980, he won the Student Bar Association Teaching Excellence Award.

And then there was his beloved intramural football team, the Legal Eagles. Professor Wright was the founder and longtime head coach; he promoted himself to athletic director in 1991. And he kept records. The Legal Eagles is the longest lasting and most successful intramural team in the history of The University of Texas. In 45 years, the Legal Eagles won 330, lost 44, and tied 5. Their longest winning streak was 40 games; their longest losing streak was 1 game. They won 27 of 35 Law-Grad Division championships, and 7 of 14 All-University championships. The tradition continues today in student hands; the team no longer has a coach.

Perhaps Professor Wright's greatest service to this University was simply that once he came to Texas, he stayed at Texas for the rest of his remarkable career. When he arrived in 1955, the law school was in many ways still a regional institution. It had its share of distinguished and productive professors with national reputations; national law schools regularly tried to raid the Texas faculty. But nearly the entire student body, and more surprisingly, nearly the entire faculty, had Texas roots. Professor Wright, a Republican and Episcopalian from Philadelphia, obviously did not come here in 1955 because of any preexisting affinity for the state.

Over the years he accepted visiting appointments at Harvard, Yale, Pennsylvania, and Cambridge; but he repeatedly turned down permanent offers and inquiries from other schools, instead lending his immense personal prestige to this law school's climb to greatness. Georgia once nearly lured him away with a well-endowed superchair, but he decided at the last minute that he could not leave Texas. His career at Texas single-handedly raised the stature of the law school; it signaled that a law professor with unlimited choices might choose to spend his career at Texas, and that there were no limits to what a member of this faculty could accomplish.

He of course accumulated many honors in his long career. Among the most significant were the Learned Hand Medal of the Federal Bar Association, the Fordham-Stein Prize of Fordham University, the Distinguished Alumnus Award of Wesleyan University, and the Lifetime Achievement Award from The University of Texas School of Law. He may have especially valued the Clarity Award for Clear Legal Writing, from the Plain English Committee of the State Bar of Michigan. He was a Fellow of the American Academy of Arts and Sciences; more surprisingly, he was also a Corresponding Fellow of the British Academy.

It is difficult to summarize Professor Wright's remarkable productivity in a few pages; it is even harder to capture the man himself in writing. He was devoted to his family and they to him. He had intense, lifelong friendships, nurtured by frequent correspondence and much travel. It is said that you learn much about a person's character by how he treats his secretary; his secretaries praised him beyond measure.

For anyone who first met him in the last 35 years, his reputation preceded him. Professor Samuel Issacharoff of Columbia University spoke for many when he said that he had never known any other human being who "so towered over his particular walk of life." Then when you did meet him, he was physically imposing: tall, broad-shouldered, erect in posture, impeccably dressed, formal in manner, precise in speech. One of his longtime secretaries described the overall effect as "The Aura."

Some, students and faculty alike, were too intimidated to proceed further. And if everyone had imposed on the kindness behind the imposing persona, then either that kindness or his remarkable productivity would have come to an end. But those who were not intimidated found him readily available. His phenomenal memory of cases and his familiarity with the vast store of information in his treatise made him an extraordinary resource for his colleagues. He was nearly always willing to do some new service for the people and institutions he cared about. He answered all his voluminous mail, even the ever-hopeful but often frivolous letters from prisoners, and on at least one occasion, his intervention led to release of an innocent man who had been wrongfully convicted.

Professor Wright had a lively intellectual curiosity that extended far beyond federal procedure or constitutional law. He defined a "true scholar" as one who "cannot stand idle whenever an answerable question remains unanswered," and he published tongue-in-cheek essays on such esoteric trivia as the proper spelling of the apocryphal St. Catherine and the merits of different complimentary closes to various kinds of letters.

Professor Wright was a creature of fixed habits. When in his own office, he ate the same series of lunches in rotation week after week. Every weekday morning, he sat in the same chair in the faculty lounge to read the *Wall Street Journal*. The chair was not reserved for him by any formal rule, but he always found the chair vacant at the appointed time. He had an extraordinary self-discipline and a prodigious capacity for work, and no doubt his fixed habits helped maintain his productivity.

He had a fully justified confidence in his own abilities; there was no false modesty about him. But behind all the enormous achievement and the grand demeanor, he was at heart a shy man. He generally loved technology but called the telephone "the invention of the devil." He preferred to initiate communications in writing—in long letters, in brief hand-delivered notes, by fax machine, or by e-mail. His formal manners and sometimes idiosyncratic conventions were partly just who he was, a manifestation of authentic self, but they were partly a way of routinizing and easing human interactions that seemed to remain a bit daunting for all his greatness. His formality, once you understood it, became an endearing touch, a hint of deeply human vulnerability in a living legend who was larger than life.

Justice Ruth Bader Ginsburg once said that Professor Wright stands "like a Colossus . . . at the summit of our profession." That was true—even when viewed from the perspective of the Supreme Court of the United States. But as Dean William Powers added, and as Justice Ginsburg promptly agreed, he was also our friend. We miss having a Colossus on the faculty, but even more, we miss our friend.

This memorial resolution was prepared by a special committee consisting of Professors Douglas Laycock (chair), Roy Mersky, and L. A. (Scot) Powe.

Distributed to the Dean of the School of Law, the Executive Vice President and Provost, and the President on March 2, 2001. Copies are available on request from the Office of the General Faculty, FAC 22, F9500. This resolution is posted under "Memorials" at: <http://www.utexas.edu/faculty/council/>.