

CHAPTER 5

"Just Another Southern 'Boy'"

Much, much later, Federal District Judge J. Skelly Wright would remember this moment and recognize it as the turning point, when people began to look at him "a little fishy-eyed," and even his friends demanded to know "what's happening?" He had planned at one time to write his autobiography in his golden years; he'd gone so far as to scribble a rough outline on one of his yellow legal pads. This moment had fallen into chapter 6: "Race Cases Already on Docket—LSU Law School," and he'd described it tersely as "crossed the Rubicon."

No one, not even he, predicted at this moment the depth of the agonies he—and his wife and young son—would endure because of what he was setting in motion, although he was a southerner, a native Louisianan, and if he could not foresee the *full* implications of what he was doing, he knew he was not signing a simple order awarding A a few hundred dollars for damages to a boat which B had smashed into one foggy night in the Gulf. He knew he was going unarmed into the territory of people's emotions, where reason counted for much less than the strong feelings they had about race, tradition, and the meddling of the Yankee-government. Had he been a less cerebral and more emotional man, the crisis into which he was steering could have torn him to pieces.

At that moment in the fall of 1950 when he signed the order forcing the board of supervisors at Louisiana State University to admit a black man to its all-white law school, Wright was thirty-nine years old and still something of a neophyte on the bench. He'd taken his seat exactly a year ago, in October, 1949. He'd had no idea then how important to his career

the lifetime tenure of a federal judgeship would be. Without that protection, he'd have been dead professionally before he was forty. People afterward described him as a "monument" to lifetime tenure.

He'd had no idea then either that before he was fifty, he would be the central figure in the local segregation crisis, that he would have attracted a following of tormentors, or that he would have become the most hated man in New Orleans, perhaps in all of Louisiana and across the South, wherever people cared about what they called the "southern way of life."

Never before had Wright been a crusader. He would have scoffed if anyone had told him history had picked *him* out for more than an ordinary role in human affairs, that in the performance of that role he would become much more than he ever thought he was. Watching him over the next decade as he stared down the entire state of Louisiana—the governor, the legislature, the state courts, and 80 to 90 percent of the people in the state—was nearly enough to convince one that Harry Truman was right when he said that "men make history and not the other way."

People who knew Wright well were often surprised at his judicial performance: his burgeoning activism in civil rights matters that came before his court, his vast reserves of resolution that backed up his convictions, and the courage his course of action required. Some saw it as betrayal and they dropped him. A private sort of person, he wasn't one to advertise his evolution, but it was all there in his past, each step: in the Irish Channel, aboard the *Thetis*, at the Christmas party for the blind, at his first argument before the U.S. Supreme Court where he fought for the life of Willie Francis, a young black man denied a fair trial under Louisiana's two-tiered system of justice. Anyone who put it all together and into perspective could have predicted how Skelly Wright's story would come out.

James Skelly Wright was born January 14, 1911, in New Orleans, the second of seven surviving children born to James E. and Margaret (Skelly) Wright. He was called Skelly to distinguish him from several other Jameses in the family.

Present-day Wrights are a little vague about their antecedents. The Wright side of the family came from St. Louis. Skelly's younger brother Jim believed Skelly and he were part of a fourth generation of Skellys born in America, that it was probably their great-great grandparents who'd come from County Cork and settled in South Louisiana. Skelly liked to say he'd sprung from "potato famine Irish."

The Irish were administering affairs in several American cities just after the turn of the twentieth century. One European observer remarked that New Orleans, a port of entry for Irish immigrants second only to New York before the Civil War, was "held captive by Irishmen

and their sons." It was perhaps only natural that Skelly's family should figure in the political life of their city. His mother was a ward leader for the Regular Democratic Organization (RDO), referred to affectionately by its supporters, sardonically by its detractors, as the "Old Regulars," or the "Ring." The only political party in town worth belonging to at the time, the RDO was an effective, tightly controlled urban machine whose boss for the first quarter of the twentieth century, Martin Behrman, claimed his word was worth twenty-six thousand votes to any candidate or issue. Margaret Wright's brother, Joseph P. Skelly, had begun as one of Behrman's lieutenants and was rapidly becoming a functionary in the upper echelons of the organization. It was through his influence that Skelly's father, a plumber, was appointed an inspector for the New Orleans Sewage and Water Board.

The Wrights lived in a "shotgun-camelback" house of which there were rows and rows in New Orleans. Local lore ascribed the name "shotgun" to the fact that a man could shoot unobstructed from door to door, "camelback" to the "hump," or second story added to the structure about midway between front and back walls. It was set among others of its kind on Camp Street in a downtown working-class area of the city known as the Irish Channel, which stretched for a mile or so between the river and the affluent Garden District. At one time it was home to predominantly Irish seamen and known as one of New Orleans's tough spots.

In the twentieth century, it was perhaps best known for its language peculiarities. Despite the section's proximity to the Garden District, one was not on lower Camp Street apt to hear the accents of the next neighborhood over, the "paht" of the "wuld" in which the elite of "Niew" (rhymes with "view") "Oh' le uns" lived. One was far more likely to be greeted by "Where-yat?" instead of "How are you?," to hear "boids choip" and eat "erstlers berled in erl," the language legacy of Irish dock workers from Brooklyn and Hoboken who moved south to find work along the lower Mississippi during the decades before the Civil War. Known as the "niggers of the time," it was these Irish who built the levees without which the lower river valley would be in near-perpetual flood. The immigrant Irish, the reasoning went, came cheaper than native blacks for whom high prices had been paid at auction and who were needed to work the cotton fields, not to be wasted on such unskilled work.

New Orleanians still gleefully pass on the story of Mayor Robert Maestri, the uneducated (after the third grade) son of a Sicilian poultry peddler who, told to keep his mouth shut during President Franklin Roosevelt's visit to New Orleans, could endure his muzzle no longer and blurted out after lunch: "How ya like dem erstlers?" All his life Skelly

Wright “remembahed” things and called his wife “Sugah,” but if his speech ever was Irish Channel, he had erased most of its reminders before he became a judge.

Which was only one of the foundations of his Irish Channel heritage from which Wright had kicked away. Compared to the others, it was probably the least important.

Had he followed the generations of Irish Channel boys who’d matured before him, he might have become a plumber like his father, or perhaps a Catholic priest in the custom some Irish families had of sending a son or daughter into the Church. Neither future was ever really a possibility: he was too ambitious for the one, too skeptical for the other.

An intensely practical streak in him precluded his acceptance of anything on faith, and although he had been born into a devout Catholic family and his mother walked to 6 A.M. mass every day, rain or shine, Skelly eventually drifted away from the Church, returning only for funerals and weddings. His son later called him a “devout agnostic.” Skelly described himself as a “bad Catholic” and doubted his early religious training influenced his later humanitarian and principled judicial positions.

Although he was close to Uncle Joe Skelly and his family, spent summers at their place in Long Beach, Mississippi, followed every nuance in the older man’s lively talk, young Skelly decided that he himself, although politically astute, was entirely too “thin-skinned” to be a combatant, however much he loved politics, however traditional such a career was among his clan.

Following a summer at the close of his high school career when he worked as a messenger for a downtown law firm and announced to his blue-collar family that he’d decided to be a lawyer, Skelly in effect left the Irish Channel and its traditions intellectually and psychologically. Except for Uncle Joe who’d gone to Spring Hill College in Mobile, Alabama, no one in his immediate family had gone to college. His parents’ education had ended in high school, and his older brother Eddie had gone to sea at fourteen, working in the engine room of a merchant ship to help support the family. There was no precedent for Skelly’s choice.

Nevertheless, as soon as his application for financial assistance was approved, Skelly enrolled, not at prestigious Tulane University where young men who expected to be taken into downtown law firms went, but at Jesuit-run Loyola University, twenty-five blocks from home by streetcar where less affluent boys, many of whom aspired to political life as their route to professional prominence and financial security, traditionally matriculated. His own scanty resources required that Skelly earn his degree as quickly as possible, and he chose the combined undergraduate/law curriculum that promised B.A. and LL.B. in six years.

He'd been born into the Progressive Era, a time when utopia had seemed to be within the reach at least of white Americans, attainable on this earth through hard work, clean living, and a little legislation larded with prudent government regulation of the very rich. Antitrust laws, minimum-wage measures, food inspection statutes, Interstate Commerce and Federal Trade commissions—armed with these and more, the reformers would soon, they believed, redistribute the pots of money that had fallen into the hands of a few entrepreneurs: Rockefellers and Morgans, Fisks, Hills, and Vanderbilts. The efforts were only mildly successful, though the times gave off an aura of aspiration and dream fulfillment that contrasted sharply with the hopelessness that pervaded the nearby black community and sent A. P. Tureaud seeking Eden in Chicago. A few reforms were actually achieved, but unfettered *laissez faire* continued to dominate the first three decades of the twentieth century almost as successfully as it had the last two of the nineteenth.

Before Skelly got his LL.B., the stock market had crashed, and the party had ended. There were numbness, bewilderment, disillusion, and depression where optimism and vitality had so recently reigned. It was only a matter of time before he exhausted his tuition money. As resourceful as he was resolute, he took courses in practice teaching at Tulane during the summer, earned a teaching certificate, and shifted to Loyola's night school so he could teach mathematics and history at Alcée Fortier High School during the day.

Fortier High School, on Freret Street in uptown New Orleans, was the newest (dedicated April 28, 1931), largest (1,300 students), and best public high school in the city. Its student body, all white, all male—New Orleans's schools were gender-separate at the time—was made up of formerly privileged youngsters whose fathers had lost the fortunes out of which they would have paid their sons' tuitions at private schools, and its teaching staff when Skelly joined it was made up largely of unemployed young law school graduates.

Even after he got his LL.B. in June, 1934, the bottom of the Great Depression, law positions were still scarce and young unemployed lawyers still plentiful. Skelly continued on at Fortier. But at 3:00 P.M. each day, he scurried off to a little downtown law office he was sharing temporarily with a friend and practiced what law he could from three to five. Like Tureaud's at the custom house, it was not a particularly satisfactory arrangement for an ambitious young man with a new law degree. It was, however, financially necessary, at least for a time.

If there was any strong element of conformity in Skelly's youth, it was his attitude toward blacks. Until he became a judge, he had been by

his own admission “just another southern ‘boy’” in the matter of race relations. The subject was rarely discussed, even more rarely was the system challenged, although it was *the* dominant concern of most southerners, white and black. It was just always there. Children sometimes sensed it and asked questions, but they were quickly hushed up.

Skelly didn't need words anyway. The signs on the drinking fountains and the barriers between the white and black sections of the trolleys told him all he needed to know, these and the unwritten code of etiquette that passed intact between the generations. From the time they were five years old, southerners—white and black—knew where to sit and where not to, who used the back door, who the front, whom they called “missus” and whom “auntie,” whom they invited into their living rooms and whom they couldn't. Blatant discourtesy was almost never permitted, but it was clearly understood that when the maid was driven home at the end of the day, she sat in the backseat.

White southerners knew the rules, but they generally didn't know much about individual blacks in the early years of the century when Skelly Wright was growing up in New Orleans. About the only Negroes they knew at all were the domestics they supervised in the kitchens and laundry rooms of their homes or the dock workers they saw sitting at the back of the trolleys. Of both these groups, whites were permitted only glimpses. Many—if not most—blacks, even the most cherished domestic servant whose love and loyalty were legendary, have censored the pictures they allowed white folks to see and have taken off their masks only after they returned to their homes and communities. It was one of the ways they kept their sanity.

There were occasionally exceptions—a reaching out by one race, a response by the other. Usually it involved a maid, a housekeeper, sometimes a wet nurse. In the Wrights' case, it was the young helper on the truck that delivered ice to their home on Camp Street every day. They'd nicknamed him Brother-in-Law in honor of the intimacy he'd achieved among them, first as the close friend of the oldest Wright boy, Eddie, then as “almost a member of the family,” confiding in the always sympathetic Margaret, seeking her advice and assistance, and continuing to drop in even after the advent of refrigeration. Charming, intelligent, industrious, Brother-in-Law gave the Wrights a better-than-average white southerner's glimpse of a Negro as an individual with intellectual and emotional capacities not so very different from their own, but whose natural inclinations and talents could only be restrained by the professional and social rules of the society into which he'd been born. The ice truck, though Brother-in-Law eventually owned the route, was undoubtedly the end of the line for him, as high as his aspirations and hopes could carry

him. Not enough by itself to make a judicial radical of Skelly later in his life, but as a memory, it could not but help to shape an evolving consciousness of race.

Margaret Wright was casually friendly with all of the black families in the neighborhood—in the New Orleans tradition, the white block on which the Wrights lived abutted a Negro block. She made a practice of visiting neighborhood families in mourning, including Negro families, often slipping them a few dollars, and it was a Negro neighbor who woke the Wrights the night the toolshed caught fire.

But the Wrights broke no new ground in race relations. They accepted segregation and its complex of rules as unquestioningly as they accepted the rising and setting of the sun, the changing of the seasons, the timeless, relentless currents of the nearby river. The laws of nature and the laws of society were equally irrefutable. The sense had been instilled in nearly all white southerners that "blacks were inferior," not in a "bitter" context then—that came later—but Negroes at the time were "believed to be not as well educated or to have the means of white people in the neighborhood." The social arbiters got no arguments from the Wrights.

His mother's casual neighborliness notwithstanding, young Skelly's contacts with blacks were as restricted as any white boy's: occasional mixed ball games in the street, but no mixed birthday parties then and no real companionship between the two races. Summers it was Skelly's white next-door neighbor, Dee-Dee Howard, with whom he teamed up to mow lawns.

Each fall, Skelly and his brothers and sisters registered at McDonogh 7, the all-white school about two blocks away. The black children in the neighborhood went to another school nearby. Skelly probably would have been genuinely surprised at the time to discover the Negro school had too many students, too few teachers, tattered geography books, and toilets that didn't always work. During his entire academic career, he never sat next to a black boy or shared a class with one. Warren Easton High School, from which he'd graduated in 1927, was, of course, for white boys only. Loyola didn't admit blacks until more than a quarter of a century afterward.

A consciousness of race grew unhurriedly in this southern boy. As a young man, Skelly was not one of those who abused blacks at Mardi Gras parades, but he did not protest when others attacked them, even though he'd been outraged at the spectacle of white teenagers systematically working the street crowds, searching out the lone Negro, assaulting him at will.

Skelly hadn't ever tossed rotten apples and other garbage out car

windows into the front yards of blacks' homes, but he'd sat unprotesting alongside friends who did. Like everybody else in his time and place, he'd called Negroes "nigger." He'd lived by the unspoken but well-understood rules that the color of his skin dictated, and left the questions and discussions to the social scientists and the philosophers. As he himself confessed later:

I was as southern as anybody else was around there. I saw the system down there. I saw what was going on down there. While I didn't embrace it, it didn't repel me.

And on another occasion:

Blacks were something apart. The injustice was lost on me basically. I took it like everybody else took it.

It was in the United States attorney's office that Skelly Wright's future began to assume a recognizable shape, at least the federal coloration part of it. It didn't seem so important perhaps in the mid-1930s when men were still selling apples on street corners and Americans, even in the states' rights-conscious South, were grateful for any of the federal largesse directed their way. That he grew up in the federal system, however, was essential to everything Wright did later as a judge.

Nothing Skelly experienced could, of course, match the sting of the racism A. P. Tureaud had endured. There was, however, at least a distant kinship between the men from the Irish Channel and the Seventh Ward. Wright, for example, had no illusions about his own eligibility for employment in a downtown law firm. He was acutely aware that there were varying degrees of white equality in old, clannish New Orleans. However high his aspirations, however solid his academic credentials, however sound his ability, he knew the odds against a boy from the Irish Channel being taken on by a good private law firm in those days. He realized that in New Orleans the "law business" was "rather closely held," and that even if he did beat the odds, "promotion depended to a large degree on paternal relationships with the senior partners."

Wright thought the U.S. attorney's office would be a better place to start. A lot of young lawyers, especially those who hadn't attracted many clients, started there. From all he'd heard, it was interesting work, far from monotonous, even exciting at times. It would make a good training ground, he reasoned, particularly the trial work.

In 1936, he went to Uncle Joe Skelly, who'd become a prominent fig-

ure in New Orleans as well as in the Regular Democratic Organization. After serving apprenticeships as a political lieutenant of the late boss Behrman, as registrar of voters for Orleans Parish, and state senator, Joe Skelly had been elected a city commissioner in 1930, one of the ruling quintet (the mayor and four commissioners). Uncle Joe's sponsorship of a job seeker was as good as fifty extra points on a civil service examination.

Skelly's hirability owed something to the political times, too. First under Mayor Behrman, a typical big city politician at the turn of the century, and now under Mayor Maestri, Behrman's clone, the Old Regular machine had ruled New Orleans for the first three decades of the century unchallenged. By the mid-thirties, after years of political warfare, the Long machine, which controlled the rest of the state, had at last succeeded in humbling the city organization, and the two machines were enjoying a period of wary rapprochement. All of which boded well for young Skelly Wright's finding a job.

Taking advantage of the temporary good feeling between his Old Regulars and the Long-run state machine, Uncle Joe went straight to the new U.S. senator from Louisiana, Allen J. Ellender, the bayou-born peppery little Longite whose recent election to the late senator Huey Long's seat had been supported by the Old Regulars. It would have been difficult to turn Uncle Joe down, and as quick as you could say "Atchafalaya," young Skelly Wright was an assistant United States attorney for the Eastern District of Louisiana, with a regular salary and an office in the Post Office Building, which held, in addition to the Post Office, the Immigration and Naturalization Service, the U.S. attorney's office, the federal district court, and the U.S. Court of Appeals for the Fifth Circuit—just about all the local branch offices of the federal government, immersing the new young prosecutor in the federal atmosphere.

Because of his relationship with Uncle Joe and Uncle Joe's with Mayor Maestri, Wright had begun to acquire a reputation as a crony of Maestri's. Skelly stood only on the outer fringes of Maestri's crowd, didn't even know Maestri personally, but it was the way he was beginning to be identified by uptown New Orleanians, and it was, perhaps, time to cut that particular tie to the past. A federal appointment, unconnected to and invulnerable to either city or state political pressures, was just the ticket.

The boss, the U.S. attorney, in 1936 was Rene A. Viosca, forty-six-year-old FDR appointee to the position. He assigned Wright to the narcotics division, the bottom rung in the prosecutor's office. The work was fairly routine, consisting largely of taking the guilty pleas of local offenders. Except for Carlos Marcello, the future "Mafia boss of the South," none was particularly notable in the annals of crime. In 1938, even Mar-

cello was just another young punk caught trying to peddle twenty-three pounds of marijuana and hustled off to the federal penitentiary in Atlanta for a year's rustication.

It was said of Wright later that as a prosecutor he was less solicitous of defendants' rights than he was afterward as a judge. Within eighteen months in the U.S. attorney's office, he had disposed of 271 cases, of which 268 were convictions, a record that could do no harm, should he decide to continue on in the federal service. He would not have been the first man to march to a judgeship along the conviction route.

As the mid-thirties became the late thirties, the U.S. attorney's office in New Orleans became the vortex of the action as Viosca and his staff began digging into the scandalous behavior of Louisiana officialdom. The corruption involved the political successors to the late Huey Long who, the minute the power was theirs, had gone on an orgy of embezzling, kickbacks, influence peddling, vote stealing, and fifty-seven varieties of graft—everything but sex. Otherwise honest merchants, lawyers, newspapermen, bankers, and industrialists, many of them among New Orleans's elite, had been caught in it and feared to refuse to cooperate; they knew their coffee would rot on the docks, property assessments would rise, their clients would lose in state courts. The scale of operations was grander than most people had seen before, even in Louisiana where political corruption was a popular folk art, amusing to Yankees and other foreigners. Before his assassination in 1935, Huey Long himself, aware of his successors' intellectual capacity—having people around him as smart as he was, after all, would have made Huey nervous—and aware of their avarice, was also aware of what would happen to them:

If anything happens to me [he'd predicted], the people who try to wield the powers that I have created will all land in jail.

The state was virtually impotent, however. Parish grand juries feared to indict; summoned to serve, potential jurors pleaded sickness, important business, any obstacle to attendance. Records of state agencies were padlocked, sealed against the prying eyes of the public. State judges served subject to machine approval. Necessity humbled them not only to the governor but also to the local bosses and patronage dispensers. It was clear that if matters were left to the state, none of the offenders would ever see the inside of a jail.

The cleanup thus fell to the federal government. O. John Rogge, an assistant attorney general from the criminal division known as a whiz-bang untangler of complex legal matters, was dispatched by the Depart-

ment of Justice in Washington to take personal charge of the investigation. He'd never before actually tried a criminal case—he'd earned his reputation winning civil suits—and Viosca had to give him lessons in elementary criminal procedure.

The usual approach to such cases was to look for income tax evasion, and a few of the malefactors *were* caught cheating on their federal taxes. But others, men who wouldn't have been caught dead revealing the details of the shell games they had been playing with the state's money, had been candid about declaring their ill-gotten financial gains on their tax forms.

Rogge finally hit on the postal laws. To some it seemed a little far-fetched, almost too simple. No one had even to write a letter. He need only to cash his kickback check, which in the ordinary course of business would be mailed out to the local bank. Rogge declared it use of the mails to defraud and the courts upheld him. By the fall of 1939, Rogge, Viosca, and the staff, which had virtually moved into the office, often sleeping there when a big case demanded long hours, had dug out evidence to indict upward of twenty-five top state officials, to convict five of the ruling hierarchy, and to force the resignations of several others.

Skelly Wright always said this period was the “high point” of his time in the U.S. attorney's office. He'd been on the brink of leaving when the investigation started, but stayed on, expecting to “get a kind of experience,” he said later, “that I would regret the rest of my life if I turned my back on it.”

The months ahead confirmed that he had used “good judgment.” He was “exhilarated” by the legal problems, the trails of evidence, the prosecution of the cases. There he was, a young man in his late twenties, shepherding the politically powerful—the governor, members of his cabinet, the president of the state university, people he knew only from the newspapers or Uncle Joe's casual conversation—through the halls of justice on their way to the penitentiary. Years later, Wright regaled dinner-party guests, lunch companions, and anyone else who was interested with his tales of the Louisiana scandals.

Prosecuting the scandals had added some zest to a job that was becoming routine, and there'd been the added prestige that attached locally to the heroes of the well-publicized dramas. But the work Wright was proudest of was his prosecution of Patrick Classic. The case went all the way to the U.S. Supreme Court and became an important precedent for the biggest black-voting rights suit of them all, *Smith v. Allwright*.

Classic's case, called *United States v. Classic*, carried no obvious implications for the races. All the actors were white. But the principle involved mattered to every southerner in America, white or black.

Patrick Classic and four of his fellow election commissioners, all Old Regulars, had been caught with their hands in the ballot box following the 1940 Louisiana primary, which included candidates for the federal Congress. The unusual thing about it was not that they'd falsified election returns, but that they'd been caught. Vote stealing by overly zealous Old Regulars, Longites, or any local sheriff with access to a ballot box was one of the most popular perversions of the political process in Louisiana, carried out with the utmost impunity.

Classic's case arose toward the end of the U.S. Supreme Court's long period of indecisiveness about federal and state jurisdiction over primary elections, its off-again on-again flirtation with the two constitutional rivals. U.S. Attorney Rene Viosca filed charges against Classic and his accomplices, explaining to his chief back at the Justice Department in Washington that he wanted to make this a test case:

In view of the recurring demands in this state that the Federal Government do something about these election matters, I believe that this test case should be brought to a conclusion in order that we may definitely know the extent of Federal jurisdiction.

Given the South's political peculiarities, Viosca wanted to know, could federal authority be imposed at the primary stage to help eliminate the voting frauds that had long plagued Louisiana? And he put his "fledgling junior" assistant U.S. attorney to work on it.

Wright's draft of the indictment was double-barreled. Two charges relied on John Rogge's development of mail fraud law in connection with the Louisiana scandals. Recalling that, he had only to prove that Classic and the other commissioners had mailed falsified ballots and tally sheets to the secretary of state in Baton Rouge.

Defense attorneys filed a demurrer—the legal way of saying they didn't agree. They argued that state law making it mandatory for election returns to go through the mails was an open invitation to Congress to begin regulation of local elections—which was exactly what the local federal attorneys had in mind. Management of local elections, however, Classic's lawyer declared, had been left to the states by the Constitution.

The judge in the case was fifty-seven-year-old, Thibodaux-born-and-bred Adrian J. Caillouet. He had been appointed to the federal district court only five months before but was a former governor of the state bar and known to be one of the most capable members of it. He saw this part of the indictment Wright's way and dismissed the defendants' demurrer.

The other parts of the indictment, involving delicate points of federal-state relationships, were more elusive. Putting a constitutional spin on his arguments, Wright charged that Classic and his cronies had conspired to deny Louisiana voters "enjoyment of rights and privileges secured to them by the Constitution and laws of the United States." That is, voters in the Second Precinct of the Eleventh Ward of New Orleans, where Classic was stationed, had been denied exercise of the franchise in the September, 1940, primary. The defense lawyers demurred to that charge, too, replying that federal protection did not extend to state primary elections.

Anxious, too, perhaps to clarify a prickly and recurring question regarding federal jurisdiction, Judge Caillouet, explaining that he felt bound by a 1921 federal precedent, *Newberry v. United States*, in which the U.S. Supreme Court supported state jurisdiction, sustained the defense this time and dismissed these counts of the indictment. In so doing, he opened the way for prosecutors to take their case to the Court.

The usual route of a case from the district court, the lowest federal court, to the U.S. Supreme Court, the highest, is through a federal appellate court. The federal judicial code, however, authorized the government to appeal directly to the Supreme Court from a district court ruling under a variety of legal circumstances, including cases involving constitutional issues.

At this stage, the pros in Washington took control of the suit. Attorney General Robert H. Jackson studied Viosca's plan to make Classic's a test case and decided it might indeed be the very vehicle for overruling the twenty-year-old *Newberry*. Solicitor General Francis Biddle agreed that he and other justice department lawyers were looking for a way to abolish the southern white primary and saw in Classic's a case to begin with.

Writing the government's brief—the printed argument each party submits to the Supreme Court prior to oral argument—was taken over by Department of Justice lawyers. The New Orleanians, Wright and Viosca, were downgraded to contributors.

On May 26, 1941, the Court announced its decision. The U.S. attorney's office in New Orleans, which had asked the extent of federal jurisdiction over state elections, had its answer:

Interference with the right to vote in the Congressional primary in the Second Congressional District for the choice of Democratic candidate for Congress is thus, as a matter of law and in fact, an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance, since it is the

only stage when such interference could have any practical effect on the ultimate result, the choice of the Congressman to represent the district.

It was a narrow ruling, limited on its face to elections of federal officials, but Viosca immediately saw the principle and its implications. As he told the *Times-Picayune* afterward, the decision gave the federal government permission to intervene in state elections whenever federal civil rights statutes were violated.*

Classic had brought the Court to one of those junctures whose importance becomes obvious in retrospect. One road led to time past, to the indecisiveness of the past half century; the other road led to the full realization of Rene Viosca's analysis of *Classic*'s promise.

Three years later, in April, 1944, and building on *Classic* at each point of its opinion, the Court made its choice in *Smith v. Allwright*, imposing federal rules on primary as well as general elections. It was the farthest-reaching Court decision on the scope of the Constitution in the civil rights field thus far.

The Court, however, could hardly have done anything else. By 1944, America had been plunged into a life-or-death struggle for democracy. The justices couldn't very well have denied it with straight faces at home.

Skelly Wright, on whose notepads the major precedent for it had begun, was out of the country when the Court made its momentous announcement. He was in London, on duty with the Coast Guard, attending to other matters.

*The Court had also, of course, to deal with the immediate problem of the offenses committed by *Classic* and his fellow commissioners. The justices disposed of it by sending the case back to New Orleans for a new trial. The government dillydallied for more than a year. Finally, toward the end of 1942, the defendants plea-bargained their way out. The government agreed to settle for a \$940 fine (distributed among the five men), suspended jail sentences, and five-year probations.

Permission to reprint the preceding excerpt has been requested.

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Second Battle of New Orleans

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