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WADE H. MCCREE, JR.: A COMPASSIONATE AND GREAT JUDGE

*Horace W. Gilmore**

Wade H. McCree, Jr. served as a judge for nearly twenty-three years. He served seven years as a Wayne County (Michigan) Circuit Judge, six years as a United States District Judge, and ten years as a United States Court of Appeals Judge.

He had great respect for the judiciary and its purpose in our society. He expressed this view in a speech to the Economic Club of Detroit on February 4, 1980, when he said:

Perhaps the real genius of our government is that in its least powerful branch with its tradition of self restraint lies the safest potential for resolution of the most divisive issues in the unfinished agenda of our democracy. If this view is correct, then the judges are indeed the ultimate guardians of our liberties.¹

Michigan Governor G. Mennen Williams first recognized Wade McCree's talents when he appointed him to be a member of the Workmen's Compensation Commission in 1952. In 1954, Governor Williams named him a Judge of the Wayne County Circuit Court.² In 1961, President Kennedy appointed him to the federal bench in the United States District Court for the Eastern District of Michigan. In 1966, President Johnson appointed Judge McCree to the United States Court of Appeals for the Sixth Circuit. Finally, in 1977, President Carter appointed him to the position of United States Solicitor General.

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I wish to thank the following for their assistance: My two law clerks, Kristen Larcom and Patrick Corbett; Hugh Munce (Detroit Legal News, Detroit); and the following former law clerks of Judge McCree: Professor Maurice Kelman (Wayne State University Law School); Barbara Klarman (Tilchin & Hall, Farmington Hills); Howard Boigon (Davis, Graham & Stubbs, Denver); Paul Levy (Public Citizen Litigation Group, Washington, D.C.); D. Michael Kratchman (Evans & Luptak, Detroit); Jerold D. E. Lax (Schlussel, Lifton, Simon, Rands, Galvin & Jackier, Ann Arbor); Darryl Anderson (O'Donnell, Schwartz & Anderson, Washington, D.C.).

1. Detroit Legal News, Feb. 4, 1980, at 1, col. 1.

2. Judge McCree was the first Black ever appointed to the circuit court in Michigan. At the time of his investiture, Governor Williams was approximately 20 minutes late in arriving and was chastised by the then-presiding circuit judge for being late for the ceremony. Governor Williams' response was most appropriate: "We have been waiting two hundred years for this day, and I do not think twenty minutes more will matter very much."

As Otis Smith, McCree's close friend, former Michigan Supreme Court Justice, and General Counsel of General Motors,³ stated at the time of the Presentation of the Portrait of Judge McCree to the Sixth Circuit in 1981:

When Judge McCree was later to stand the test of a county-wide election, his reputation for skill and fairness earned him endorsements from many diverse and even mutually hostile groups and as a result he led all others in the balloting.

....

... I know that when lawyers talked about the ablest and fairest trial judges in Michigan, among the first to be named always was Judge Wade McCree. Wade was indeed a superb trial judge because he governed, so to speak, not merely from rank but from intellect. His exchanges with lawyers on some of the more metaphysical properties of the law are simply priceless.⁴

From Wade McCree's first days on the Wayne County Circuit Court bench through his service on the Sixth Circuit Court of Appeals, he possessed a great sense of compassion, and uniformly sought within the law to protect individuals and minorities against more powerful interests. He always ruled, however, within the law, and would not bend it to protect anyone. He was totally and completely devoted to the rule of law.

Unfortunately, none of Judge McCree's opinions as a Wayne County Circuit Judge was published. As a judge in the United States District Court, he wrote 19 published opinions, which can be found in volumes 199 F. Supp. through 352 F. Supp. While on the Sixth Circuit Court of Appeals, he wrote 223 published majority opinions, which can be found in volumes 341 F.2d through 553 F.2d. During the same period of time, he wrote 72 published dissents and 36 published concurrences.

He was probably the most respected judge of the Wayne County Circuit Court during the period between 1956 and 1961, when I served with him. He was even-handed, thoughtful, and scholarly in everything he did on the bench. He was very active in many of the bench committees, serving on the Probation Committee, Friend of the Court Committee, and others concerned with court administration.

Former Chief Judge Edwards, of the Sixth Circuit, speaking at the Presentation of the Portrait of Judge McCree, described an episode that was typical of McCree's career as a judge. Judge Edwards said:

I was waiting for an elevator when a lawyer left Judge McCree's court-

3. See O. Smith, *The Quintessential Public Servant*, 86 MICH. L. REV. 255 (1987).

4. Presentation of the Portrait of the Honorable Wade McCree, Cincinnati, Ohio, June 11, 1981, reprinted in 725 F.2d C, CII, CIII (6th Cir. 1981) [hereinafter Portrait Presentation].

room and came to join me at the elevator. He was somewhat distraught and without waiting, he burst out: "Well, he beat me. He beat me." — then a pause — "But he made me like it." Throughout Judge McCree's career, his gift for administering the law helped people to understand — and accept it, even when losing.⁵

Judge McCree's published decisions in the United States District Court and the Sixth Circuit Court of Appeals show a man dedicated to the law and compassionate in all of his dealings. I would like to discuss a few of his opinions, both at the district court level and the circuit court level, recognizing that in no way is this a comprehensive treatment of his judicial work, but merely examples of his brilliance and his concern for the protection of individual rights and the rule of law.

I should point out generally that Judge McCree was a stickler for language. He received excellent training at the Boston Latin School, Fisk University, and Harvard Law School, and he used that education in writing his opinions. He would go over opinions line by line with his clerks, often taking hours to make sure that the language was perfect.⁶ Moreover, he had a great sense of justice. He would never knowingly issue an opinion that was not good law. While he always strived to render a just decision protecting individual rights, he would never bend the law.

One of the district court opinions of which Judge McCree was most proud was *United States v. Caplan*.⁷ In *Caplan*, defendants moved to quash search warrants that were based in part on information received from a pen register that gave IRS agents information on telephone numbers called.⁸ The information obtained from these pen registers was part of the basis for the issuance of the search warrants in the case. Judge McCree granted the motions to suppress, finding that the recording of the numbers was an interception within the meaning of the law. He said:

I find that an "interception" took place under the circumstances here, and that . . . no authority can permit this. To the government's argument that no "communication" was intercepted, defendants, in open court, demonstrated that it was possible to dial a number and to permit

5. Portrait Presentation, *supra* note 4, at CIV.

6. In *Dixie Plantation Co. v. Duncan*, 383 F.2d 879 (6th Cir. 1967), Judge McCree, writing for the Sixth Circuit, affirmed a district court judgment, appealed by a tobacco producer, upholding a burley tobacco allotment by the county agricultural stabilization and conservation committee of 1.37 acres for the producer's farm. Though this was a very complex case, Judge McCree was able to write a clear opinion in only two-and-a-half pages.

7. 255 F. Supp. 805 (E.D. Mich. 1966).

8. A pen register is a device attached to a telephone line that records the number of every outgoing telephone call. See BLACK'S LAW DICTIONARY 1021 (5th ed. 1979).

the phone to ring a specified number of times, and then to hang up. When this was done, the pen register dutifully recorded the fact that the number was called. History affords us the illustration of a pre-arranged signal. Paul Revere's associate, who hung a lantern in the Old North church, would hardly have been exculpated at a trial for treason if he argued that he was not sending a communication, but was only illuminating the belfry. It seems that if the agents entertained no misgivings about the use of the pen register constituting an "interception" here, they would have frankly requested its employment instead of having resorted to the technique of stimulating the telephone company to do so by suggestion. The government should not be permitted to instigate an investigation that is unlawful any more than it can instigate conduct that is unlawful, as the entrapment cases teach.⁹

This case broke new ground by finding that the pen register data, where lines were capable of interstate transportation, violated wiretap laws, and by extending the right of privacy through statutory construction. *Caplan* was totally consistent with Judge McCree's interest in protecting the individual.

In another significant district court decision, *Evans v. Kropp*,¹⁰ a habeas corpus proceeding, a police guard had information concerning the mental illness of a state prisoner. This information was never transmitted to the sentencing judge by the prosecutor or defendant's retained counsel. The sentencing judge accepted petitioner's plea of guilty to second-degree murder, and sentenced him to life imprisonment after state remedies were exhausted. Petitioner filed a writ of habeas corpus under 28 U.S.C. § 2254, which came before Judge McCree.

Judge McCree granted the writ, holding the proceedings did not comport with due process. He found that the prosecutor was chargeable with the knowledge of the treating psychiatrist's diagnosis and recommendation of a sanity hearing, which was communicated to guards in charge of the prisoner in the hospital. He indicated his preference for protecting the individual rights of the accused against the negligent failure of the government and the courts to find out the actual facts of the accused's condition. With regard to the accountability of the government, Judge McCree stated:

[T]he state is accountable for all information which comes within the knowledge of its agents while prosecuting a criminal matter, so that the knowledge of the police is clearly chargeable to the prosecutor, who is also merely an agent of the state.¹¹

He also expanded the concept of effective assistance of counsel,

9. 255 F. Supp. at 808 (citations omitted).

10. 254 F. Supp. 218 (E.D. Mich. 1966).

11. 254 F. Supp. at 222.

holding that an attorney's decision that his defendant would be far better off in a state prison from which he would be eligible for parole in ten years than he would be in a state hospital for the criminally insane, which influenced the attorney's failure to notify the court of the client's mental condition, deprived defendant of his guaranteed rights under the fourteenth amendment. Judge McCree elaborated on the role of an attorney:

I believe that no lawyer, as an officer of the court, has the right to make such a judgment. Regardless of his personal views, he may not withhold from the court such critical information as the diagnosed mental incompetency of his client and of his consequent possible inability to stand trial. I find that Mr. O'Connell's failure to inform the court of his client's mental condition deprived petitioner of the effective assistance of counsel which is guaranteed by the Fourteenth Amendment.¹²

Once again, Judge McCree showed his great concern for protecting the rights of individuals within the law and the Constitution.

Judge McCree was also concerned with giving a plaintiff his day in court, but only if this was possible within the bounds of the law. In *Gaetzi v. Carling Brewery Co.*,¹³ a case cited numerous times, he dealt with a conflicts of law issue over the proper statute of limitations in an antitrust action. Plaintiff, a former distributor of beer, was suing the brewery supplier for wrongful termination of the plaintiff's distributorship. The supplier moved for partial summary judgment on the ground that the cause of action was barred by the four-year statute of limitations applicable to private antitrust actions, 15 U.S.C. § 156. Plaintiff asserted the six-year state statute of limitations applied. After determining when the cause of action accrued, Judge McCree held that the four-year statute applied, even though the cause of action accrued after the enactment date of the federal statute, but before its effective date. Recognizing that Congress allowed a six-month grace period before the effective date of the four-year statute to allow persons with viable claims under longer state limitations statutes to bring suit, he noted that "plaintiff here was not in that position," and so he applied the shorter limitations statute.¹⁴ Here, plaintiff's cause of action accrued on November 7, 1955, the federal statute was effective January 7, 1956, yet plaintiff did not bring suit until October 30, 1961.

On the other hand, if a plaintiff complied with the necessary statute of limitations, Judge McCree would rule within the law to allow the parties to obtain fair results on the merits of the case. In *Crowe v.*

12. 254 F. Supp. at 222.

13. 205 F. Supp. 615 (E.D. Mich. 1962).

14. 205 F. Supp. at 619.

Chesapeake & Ohio Railway Co.,¹⁵ Judge McCree wrote authoritatively on the right of a plaintiff to obtain production of crewmen's statements taken on behalf of a railroad company immediately after an accident, even though such crewmen were subject to deposition. He found there was good cause for production of such statements, stating:

[D]iscovery should not be less available where relevant, non-privileged information is contained in a document than when such information is lodged in the memory of a witness. . . . In view of the liberal spirit of the rules, the court should be disposed to grant such discovery as will accomplish full disclosure of facts, eliminate surprise, and promote settlement.

. . . .

. . . When both parties are apprised of all facts pertaining to a case, the issues can be narrowed, the trial shortened, surprise avoided, and the chances for a fair and amicable settlement enhanced.¹⁶

Crowe has had a great influence in the development of the law of discovery.

Judge McCree was effective in resolving disputes in chambers as well as in the courtroom. In an unpublished case, *Ross v. Bannan*,¹⁷ plaintiffs, inmates of a state prison and communicants of the Muslim faith, brought suit under the federal Civil Rights Act alleging that the prison authorities had denied plaintiffs permission to receive, or order by mail, copies of the Muslims' daily prayer book, and that the authorities had refused to permit plaintiffs "to correspond with their spiritual leader." In a conference in chambers, Judge McCree moved the parties to an understanding in this highly sensitive dispute. The officials agreed to allow plaintiffs to receive their prayer books, and agreed that plaintiffs could correspond with their spiritual advisor, but subject to the same controls as other prison inmates. Through his dispute resolution skills, Judge McCree helped the parties reach a fair, equitable, and speedy agreement.

If a plaintiff appeared to have a viable claim, Judge McCree would broadly construe the jurisdiction of the federal court. In *Chovan v. E.I. DuPont de Nemours & Co.*,¹⁸ he wrote authoritatively on the effect of a state long-arm statute on limited personal jurisdiction. *Chovan* involved a diversity action in Michigan for the death of a miner killed by the premature explosion of dynamite. McCree held that the long-arm statute allowed exercising jurisdiction over a foreign corporation that annually loaded about fifteen million feet of fuse exceeding

15. 29 F.R.D. 148 (E.D. Mich. 1961).

16. 29 F.R.D. at 150-51.

17. No. 21429 (E.D. Mich. June 4, 1962).

18. 217 F. Supp. 808 (E.D. Mich. 1963).

\$130,000 in value onto common carriers destined for points in Michigan. He held these contacts with Michigan were sufficient to subject the company to limited personal jurisdiction.¹⁹

Judge McCree's appointment to the United States Court of Appeals for the Sixth Circuit in 1966 was uniformly hailed as an outstanding one. He had established a solid record as a legal scholar deeply devoted to the law and the Constitution, and at all times anxious to protect individual rights. He wrote many significant opinions as an appellate judge, and, in this short tribute, I can only briefly discuss a few of them.

One of the most significant was *Mitchell v. Johnson*,²⁰ a habeas corpus case. The district court had denied the writ, which raised the question of whether an indigent prisoner has a right to appointed counsel after the first appeal in state court has been exhausted, and the only remedy remaining in state court was the seeking of leave to appeal from the State Supreme Court for a discretionary review. Judge McCree reversed, on behalf of a unanimous court, finding the government's argument not persuasive that, because appellant had already taken one appeal with the aid of counsel, the Constitution required no more. Significantly, he said:

The temple of criminal justice does not have three stories for the affluent and only two for the indigent. We conclude that the constitutional principles enunciated in *Griffin*, *Burns* and *Douglas* require appointment of counsel to assist indigent appellants in application to the Michigan Supreme Court for discretionary review. Our decision is supported by the spirit, if not by the express command, of the Sixth Amendment right to assistance of counsel, applicable to the states in the Fourteenth Amendment.²¹

Judge McCree was most meticulous in protecting the rights of defendants, as well as those of the government, in criminal procedural matters. He was very interested in criminal procedure, and particularly desirous to see that the state at no time would overreach to send a defendant to jail.

An interesting case on this subject is *Johns v. Perini*,²² which involved an appeal from a district court's denial of a writ of habeas corpus. After reviewing the transcript of the state trial court proceedings, Judge McCree noted that the record disclosed the existence of documentary evidence that would have supported petitioner's defense of an alibi, yet no attempt had been made to introduce such evidence

19. 217 F. Supp. at 813.

20. 488 F.2d 349 (6th Cir. 1973).

21. 488 F.2d at 353.

22. 440 F.2d 577 (6th Cir. 1971), *cert. denied*, 409 U.S. 1049 (1972).

after objection by the prosecuting attorney. The transcript was insufficient, according to Judge McCree, to determine whether the petitioner had been denied effective assistance of counsel, and required an evidentiary hearing. He held:

Although it appears that the trial court could, under the Ohio statute, have excluded even appellant's own alibi testimony . . . it apparently exercised its statutory discretion to permit Johns to testify. It is not clear whether defense counsel made a tactical decision not to introduce the documentary evidence or whether he was precluded from doing so because he had neglected to give the statutory notice. In the latter event, since this was appellant's only defense, issuance of the writ would be dictated . . .²³

The court then remanded the case for a hearing to determine whether a negligent omission by counsel precluded presentation of evidence of an alibi in support of appellant's only defense. Once more, Judge McCree showed his deep concern for the protection of individual rights, and insisted upon adequate judicial procedures.

In many criminal cases, Judge McCree was often the dissenter.²⁴ In every one of such cases, he was concerned with procedural flaws or denial of a defendant's constitutional rights. In *United States v. Hoffa*,²⁵ he dissented from affirmance of the conviction because of the possibility that the prosecuting attorney may have relied upon perjured testimony in the case. He pointed out that, had the government revealed that the witness had perjured himself during the trial, defense counsel could have used that fact to impeach a key government witness. He found the majority opinion unconvincing on that point, and felt that the prosecutor's actions may have denied the defendant due process.

Judge McCree wrote in every area of the law, and always lucidly, concisely, and effectively. In *Davis v. School District of Pontiac*,²⁶ Judge McCree, writing for the court, affirmed the decision of the district court, holding that the record supported the determination that school officials were responsible for the racial imbalance in the school system, including the purposeful segregation in the administration and faculty. He stated the district court properly fulfilled its duty to eradicate the effects of past unlawful discrimination. Judge McCree wrote

23. 440 F.2d at 579 (citations omitted).

24. See, e.g., *Giocalone v. Lucas*, 445 F.2d 1238, 1251 (6th Cir. 1971), cert. denied, 405 U.S. 922 (1972) (McCree, J., dissenting) (contending that a strike force of police officers and IRS agents had conducted an illegal search of defendant's home).

25. 437 F.2d 11 (6th Cir.), cert. denied, 402 U.S. 988 (1971).

26. 443 F.2d 573 (6th Cir.), cert. denied, 404 U.S. 913 (1971).

this opinion, which showed great courage and incisive scholarship, during the school busing crises throughout the country.

Judge McCree was also concerned with the protection of the environment, as was exemplified in *Environmental Defense Fund v. Tennessee Valley Authority*.²⁷ Writing for the court, he affirmed a district court's granting of a preliminary injunction to stop construction of the TVA's dam and reservoir project. Judge McCree held that an environmental impact statement is required whenever a governmental agency intends to take steps that will result in significant environmental impact, whether the steps were planned before or after the effective date of the National Environmental Protection Act, and even if the steps represent the final stages of the government plan.

Judge McCree further showed his concern for civil rights, and the protection of basic constitutional rights, in *Glasson v. City of Louisville*.²⁸ In *Glasson*, a police officer forcibly took a poster from a young woman, peacefully standing on a public sidewalk, and destroyed it. It was a protest sign, and she was standing on a motorcade route that the President of the United States would soon be travelling. Action was brought under 42 U.S.C. §§ 1983 and 1985(3) for abridgement of rights guaranteed by the first and fourteenth amendments. The district court, sitting without a jury, determined, after trial, that appellant could not recover damages under § 1983 because the police had acted reasonably in destroying her poster, and she would not recover damages under § 1985(3) because she failed to prove that the destruction of her poster was motivated by an impermissible discriminatory animus. The poster, which she was holding peacefully while waiting for the President to pass, said: "Lead us to hate and kill poverty, disease and ignorance, not each other." Judge McCree, writing for the Court, reversed, in an eloquent opinion:

To permit police officers to prohibit the expression of ideas which they believe to be "detrimental" or "injurious" to the President of the United States or to punish for incitement or breach of the peace the peaceful communication of such messages because other persons are provoked and seek to take violent action against the speaker would subvert the First Amendment, and would incorporate into that constitutional guarantee a "heckler's veto" which would empower an audience to cut off the expression of a speaker with whom it disagreed. . . .

. . . Miss Glasson . . . was engaged in activity protected by the First Amendment and . . . the destruction of the sign by Louisville police officers . . . deprived her of that right.²⁹

27. 468 F.2d 1164 (6th Cir. 1972).

28. 518 F.2d 899 (6th Cir.), cert. denied, 423 U.S. 930 (1975).

29. 518 F.2d at 905-06 (footnote omitted). Judge McCree was not reluctant to dissent in

Judge McCree did not hesitate to discuss important constitutional principles in his opinions, such as federalism and the separation of powers. *United States v. Carson*³⁰ was a suit by the government against a borrower under a federal loan program, and a livestock broker, who, upon borrower's request, sold livestock in which the government held a mortgage interest. The broker retained only a percentage of the proceeds, amounting to his commission. Under state law, the government could only recover from the broker that percentage. Judge McCree, writing for the majority, reversed the district court, holding that federal law applied and that the broker was liable to the government for the fair market value of the livestock at the time of the conversion. Leading into his analysis of federalism, Judge McCree commented: "Far more is involved here than a few head of cattle. This case raises serious issues both of federalism and of the separation of powers of the branches of the federal government."³¹ He followed that with an extensive and scholarly analysis of federalism:

Where a decision is likely to have a substantial effect on the implementation of a federal program, then a federal court should declare a rule consistent with the program's demands. Congress, of course, is the primary source of federal law, and the federal courts must adhere to the intent of Congress whenever this intent is discernible. When congressional intent is not expressed or otherwise ascertainable, however, the courts may, within reasonable bounds, utilize the techniques of the common law to reach the appropriate rules for disposition of controversies before them. . . .

. . . .
. . . The presence of a federal program permits the federal courts to make a choice, but does not of itself determine what the choice will be. In the instant situation, however, formulation of a uniform federal rule, rather than adoption of the laws of the several states as the federal rule, is the more appropriate alternative.³²

In another interesting case, *Stifel v. Hopkins*,³³ a federal prisoner brought a diversity action against his parents and the attorney who represented him throughout criminal proceedings. The district court held that the prisoner could not acquire domicile in the state of his incarceration, and thus dismissed the action for lack of diversity juris-

order to protect civil rights when he felt that individuals were being deprived of constitutional protections. *See, e.g.,* *Barker v. Taft Broadcasting Co.*, 549 F.2d 400 (6th Cir. 1977) (male worker discharged for violating code prohibiting long hair for male employees); *Robinson v. Shelby Co. Bd. of Educ.*, 467 F.2d 1187 (6th Cir. 1972) (defining extent of constitutional mandate for desegregation).

30. 372 F.2d 429 (6th Cir. 1967).

31. 372 F.2d at 431.

32. 372 F.2d at 432.

33. 477 F.2d 1116 (6th Cir. 1973).

diction. Judge McCree, writing for the majority, reversed, holding that "a litigant will not be precluded from establishing a domicile within a state for purposes of federal diversity jurisdiction solely because his presence there initially resulted from circumstances beyond his control."³⁴ Once more, Judge McCree showed his practical approach to judicial problems, protecting the rights of individuals to have their day in court.

Two more opinions, one a dissent and one a concurring opinion, deserve comment. In *Clinton Street Greater Bethlehem Church v. City of Detroit*,³⁵ the majority affirmed a master's denial of certification of the church's membership in a class of persons entitled to recover for losses sustained due to the city's condemnation proceedings, thus denying the church damage recovery. In dissent, Judge McCree held that the record was inadequate for the master to make such a determination, and that the case should be remanded to the master for findings concerning the value of the church's property as of the time of the takings. With his usual eloquence, Judge McCree started his dissent by stating: "If anything is clear from a study of the voluminous record in this case, it is that the [church] has been pillaged and despoiled in the past two decades as thoroughly as any ancient city at the onslaught of raiding barbarians."³⁶

In *Kelley v. Metropolitan County Board of Education*,³⁷ the majority affirmed a district court's choice of the Department of Health, Education and Welfare's plan for school desegregation. The plan had allegedly placed the burden of desegregation disproportionately on black students and their parents. Judge McCree concurred, stating, *inter alia*, that "[o]ur opinion should not be construed in any way as a qualification of the principle that a district court has an obligation to endeavor to distribute the burden of integration equitably on all races and that any deviation from this norm, without a compelling justification, is impermissible."³⁸ Judge McCree explained that the court did not address this issue in order to insure that at least some kind of plan was in effect:

I agree that we should not now disturb the District Court's approval of the HEW plan and possibly encourage the kind of delay and inaction that has caused this case to pend for 17 years. Plaintiffs may seek modification of the court's order on the ground that the plan places a dispro-

34. 477 F.2d at 1126.

35. 484 F.2d 185 (6th Cir. 1973).

36. 484 F.2d at 189.

37. 463 F.2d 732 (6th Cir. 1972).

38. 463 F.2d at 752.

portionate burden on black children and their parents, and this issue can be litigated and determined before the beginning of the 1972-73 school year. In this way, the disproportionate burden asserted by plaintiffs will exist at most for only a short period of time and will amount to no more than a transitory phase (assuming the absence of sufficient justification for maintaining it permanently) in the over-all creation of a unitary school system.³⁹

What appeared to be approval of a faulty desegregation plan by Judge McCree and the Sixth Circuit was actually a big step toward a unitary school system.

Wade McCree was not only an outstanding judge, he was deeply dedicated to the improvement of the law, and active in many law-related activities. He served for many years on the Executive Committee of the American Law Institute, was a Fellow of the American Bar Foundation, and a member of numerous boards and commissions devoted to the improvement of the law. I served with him on two of these. He and I were both members of the Advisory Committee for Appellate Justice. This committee, made up of legal scholars, judges (both trial and appellate level), and lawyers, was concerned with improving the efficiency of the appellate procedure. The Committee met for a period of two years and ultimately issued a very comprehensive report, to which Judge McCree made significant contributions.

I also served with him as a member of the Board of the Institute for Court Management. The Institute was largely responsible for developing the profession of court administration, and most Court Administrators today are Fellows of the Institute. Judge McCree was an excellent member of the Board. He attended meetings without fail, and always was most constructive in his comments. The Board was much more effective because of him.

In addition, Judge McCree was very much interested in continuing judicial education, and served for a long period of time as a member of the Board of the National Judicial College at the University of Nevada. This group is the premier training group for state trial and appellate judges in the country, and runs some forty different programs every year. It is largely responsible for elevating the quality of the state judiciary. As a very effective and active member of its board, Judge McCree made major and significant contributions to the improvement of continuing judicial education.

In an article as short as this one, it is impossible to thoroughly analyze and present Judge McCree's contributions to the jurisprudence of this country. Suffice it to say that they are significant and

39. 463 F.2d at 752.

great. Judge McCree was, above all, a fine lawyer and a fine judge. He was always concerned with protecting the constitutional rights of all, no matter how insignificant the rights and individuals appeared to be. As Judge Lively says in his eloquent tribute: "He was surely born to be a judge."⁴⁰ Nothing truer could be said about Wade H. McCree, Jr. The bench lost a great judge when he left it to become Solicitor General.⁴¹ He was missed then, and he is missed today.

40. See Lively, *Wade H. McCree, Jr.: Born To Be A Judge*, 86 MICH. L. REV. 249 (1987).

41. Judge McCree often told me that he thought the Solicitor General's job was the best lawyer's job in the country. In saying this, he always emphasized that it was the best *lawyer's* job. He made no effort to compare it to the judiciary, and often longed to return to the bench. He often quoted his daughter Kathy as asking him why he would give up a life tenancy to take a tenancy at will when he became Solicitor General. He said to me many times he really had no good answer to that question.