

Brigham Young University Journal of Public Law

Volume 4 | Issue 2

Article 2

5-1-1990

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Recommended Citation

Margaret Bush Wilson and Kenneth R. Wallentine, *Margaret Bush Wilson: Advocate, Counselor, Friend*, 4 BYU J. Pub. L. 207 (1990).
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Margaret Bush Wilson

*Address to Students and Faculty
J. Reuben Clark Law School
January 18, 1990*

As I listened to the introduction given me, I was reminded of a prayer. I understand it was a prayer that Mohammed was reputed to have said when he was being honored by his followers. It goes like this:

I thank thee Lord for knowing me better than I know myself, for helping me to know myself better than others know me. Forgive them, please, for what they do not know.

Allow me to express my thanks for the way in which I have been welcomed on this campus and to this institution. When I told some of my colleagues I was coming out to Provo, Utah, for two weeks they said, "Where is that?" I said, "Well, it's not far from Salt Lake City." They said, "Well, isn't that Mormon country?" I said, "Yes, I'm going out to a Mormon school." They said, "You're going to do WHAT?" And it went on like that. Finally, one of them blurted out, "Aren't the Mormons the folks that don't like black folks?" I said, "Well, I'll go out there and find out."

I have found out. I found out something I really didn't know. That, in the history of the Mormon church, Joseph Smith, who was the founder, did not really have any hang-ups about black people. Some of us were part of his entourage when he started this movement. It's only later that some people became confused about race, like much of the rest of the nation.

So, one of the things that has brought me great joy as I've been here for the past almost two weeks is to sit down with several of you individually and to share with each other perspectives about these things that are of great concern both to us and to the nation.

We didn't always agree, but we have been talking to each other. If I do not accomplish anything else, I hope that when I leave, you will remember that this is what democracy is all about. You really don't have to agree, but you do have to communicate, and you have to be willing to have an open mind and a sympathetic spirit.

I shall not deal with *Shelley v. Kraemer* just as a legal case because that is in your books, and you can read it. But behind what is in your books is a human story of warmth, courage, commitment, and a desire to make things better for some children. I should tell you that Mr. Shelley is still living at eighty-four years. J.D. Shelley is his full

name. I asked him once "What's the J.D. stand for?" And he said, "Nothing. That's my name, J.D." You may not know this but black parents in the South named their children with initials so that people who were seeking to demean them could not call them by their first name. There was a time in the past when black people were not supposed to be accorded the respect of "Mr." or "Mrs." They were called by their first names. So somebody in the South thought that one of the ways to get around that is to name children by initials. That's how J.D. got his name, I'm sure, though he didn't tell me that.

About six months ago I went by his house. In the living room of a modest home there are pictures everywhere—on the piano, on the walls, on the furnishings that have surfaces—and all these pictures have one thing in common. They are of descendants of the J.D. Shelleys, and all are pictures of young people wearing caps and gowns. The Shelley children have grown, married, and have children, and now these pictures on the walls are of their children's and descendent's graduations, first from high school, then college. Some of them have gone to graduate school. This is really a remarkable story about a couple that went to the sixth grade in school.

Go back with me to 1939, which makes it now over fifty years ago. Ethel and J.D. Shelley were born in a little town called Starkville, Mississippi. They married when J.D. was eighteen and his wife Ethel was sixteen. Their parents consented to the marriage, and they quickly had five children. J.D. worked as a laborer, first in a sawmill and then on highways. Ethel worked in domestic service and in private homes. In the early part of 1939, she decided that she would stop working, because the children were then getting to an age where she felt she needed to be home looking after them. So she notified her employer, a woman in the majority community, that she would no longer be coming. Her employer asked her if she would find somebody else, and she did, a young woman who was much younger than Ethel, but who was looking for a job. Then, while this young woman was working for Ethel's former employer, a wristwatch disappeared. The woman accused this new employee of having stolen it. A day or two after the accusation, some of the police came down into the Negro quarter of the city, found this young girl, dragged her out of her home, whipped her with a rubber hose, and threw her in a ditch. It was on a Sunday, and the people in that area who were going to and from church saw this incident. The children ran to the elders to tell them and to ask them to do something about it—nobody moved. Finally, Ethel Shelley said to J.D. Shelley, "Let's go and get her." The two of them went to the area where she was lying in the ditch and rescued this woman. By the way, a couple of days after this incident, the watch was finally found behind

a wash basin in the house.

That night, J.D. Shelley decided that he would leave Mississippi. He stayed another few days and then left. I asked him why he left, and he said, "I left because I did not want to take the risk of having my children suffer the same thing." He came to St. Louis alone. Fortunately, he had relatives in St. Louis and stayed with them until he could find a place to live. He got a job, earned enough money, and sent for his family. They came to St. Louis in 1939 and lived in a racially separated part of the city because that was the pattern then. But with children, it was very hard to find a decent place to live. So they were crowded up in these little quarters—three rooms, the mother and father, and five children. Both were very industrious, however, and they made a pact between them. Ethel was working and J.D. was working, and both agreed that they would live on J.D.'s salary and save Ethel's, and that is what they did.

They had a very nice financial plan, and they began to accumulate some savings. Finally J.D. said, "Well, I think I'd like to buy a car." And Ethel said, "No, J.D., we've got all these children. I think we need to buy a house." J.D. was stunned because it had never occurred to him to buy a house. He was then working at the Scullin Steel Plant, and he had a foreman who he respected. He said to the foreman, "My wife wants to buy a house, and I don't quite know what to do about it. What do you think?" And the foreman said, "Are you paying rent?" And Shelley said, "Yes." And the foreman persisted, "Do you have enough money to make a down payment on a house?" They did and he said, "Yes." So his foreman said, "Well, then it makes sense to buy the house, doesn't it?" So J.D. went home that night and told Ethel, "Fine, we'll buy a house."

The Shelleys were people with a sixth-grade education. They did not quite know where to turn or what to do, but they were very devout church people. And they went to the Elder of their church and said, "We'd like to buy a house." It just so happened that the Elder, in addition to being the minister and leader in their church, was also a person who was in the real estate business. And he said, "I'll see what I can do."

Well, to make a long story short, he began to drive around and look, and he saw a sign on a house in north St. Louis, 4600 Labadie. He made a contact with a person that he knew and that person contacted the agent whose name was on the sign, and he referred them to my father, and they began to work this out.

Now, what I want you to understand is that the Elder contacted a white salesperson who he knew because the house was in a neighborhood that was practically all white. The sign on the building was from

Brune Realty, a white real estate company. It also happened that Mr. Brune and my father were just very close friends. And while I have not been able to find all of the records, I have begun to piece together what I think happened.

I can remember one evening my father saying that he had a gentleman come into the office to list his property, who was a Caucasian. My father said, "Where is your property located?" And he gave his address. My father said, "Well, isn't that property covered by a restrictive covenant?" And according to my father's report, the man said, "Mr. Bush, I don't care what it is covered by, I want to sell my house." And I suspect then that my father arranged with Mr. Brune to put Mr. Brune's sign on the house so that it would not cause any confusion. Then my father proceeded to deal with the people who came, and the Elder then, through his person, came to Mr. Brune and thus to my father.

They used straw parties. These are people that allow others to use their names to buy property. It was quite legal in Missouri at that time. Most real estate people in those days used straw parties to buy and sell. So straw parties were used in this case. Ultimately, the title to 4600 Labadie was placed in the name of J.D. and Ethel Shelley.

A few days after the closing, the Shelleys moved in. J.D. Shelley had to work the day of the move, and so he did not get home until late in the evening. By then his family was already settled in their two-family flat. It was and is a very modest little flat which is still sitting there almost like it was nearly forty years ago, except for one difference. Forty years ago, it was a predominantly white neighborhood; forty years later, it is predominantly black.

J.D. got off the bus and started walking across toward Labadie Avenue, where the house is located. A beat policeman appeared, caught step, and walked along with him. They had a very revealing conversation. The policeman said to J.D., "Where are you going?" And Mr. Shelley said, "I'm going home." The policeman said, "Where's that?" Mr. Shelley said, "4600 Labadie." Then they just talked, according to J.D.'s report. But the policeman walked with him until he reached his door and watched him go into the house. Those of us who know what the social climate was like back in those days are inclined to believe that it was no accident that the policeman was there; the word had gotten around that he was simply making sure that nothing happened to J.D. Shelley on his way home. Nothing did happen to the Shelleys for two or three days, until the doorbell rang, and in the doorway was a deputy sheriff with a summons directed to both J.D. and Ethel Shelley. It had been prepared as the result of a suit filed by Fern and Louis Kraemer in the 4500 block of Labadie. Their complaint was that the

Shelleys had moved into a house that was restricted to Caucasians only, that this was a valid racial restrictive covenant, and that they were violating a contract that ran with the land. The Kraemers asked the court to order the Shelleys to move. The Shelleys hardly understood all of this because it was so sophisticated and complicated in terms of the documents that they had received. They went again to the Elder, and the Elder went to Mr. Bush (my father), and Mr. Bush said, "I will get the lawyer and arrange for him to represent them." And they went to court.

It turned out in the testimony, there had been some black people who were living in that area and had been living in the area since 1882. There just had not been any moving there in recent years. When George Vaughn, the lawyer, began to probe into the facts, he developed all of this, which raised serious questions about the validity of the covenant. The judge in the lower court dismissed the injunction and told the Shelleys to go home. Everybody thought that was the end of it.

About two weeks later, after a motion for a rehearing was denied, the Kraemers filed a notice of appeal and asked the Missouri Supreme Court to review the case.

The Kraemer's lawyer was named James Crowe, which is really kind of ironic because that's his real name, spelled C-R-O-W-E. In the light of those of us who know about "Jim Crow," it seemed ludicrous. Here we were in the midst of this dispute, and the opposing counsel was named James Crowe.

Well, the Missouri Supreme Court took a look at these papers which were filed. Neither side asked for oral arguments; they just went up on the pleadings. The Missouri Supreme Court ruled against the Shelleys, reversed the lower court, and ordered the Shelleys to give up their property.

Now, to let you know the context in which all of this was happening, the NAACP had been struggling with restrictive covenants since the early part of the 1920s. The NAACP started the challenge when the city of Louisville, Kentucky, and its city council created a zoning law that separated the city into sections so that in certain zones, you could live there only if you were one color or the other. The NAACP challenged that and ultimately the U.S. Supreme Court said that this was state action and was unconstitutional. The city council was a part of the state structure. Then began this device of restrictive covenants, private agreements, mind you, between private owners, and therefore no state action was involved. One after one after one, no matter what the NAACP did to challenge these covenants, when they reached the Supreme Court, the Court would say, "certiorari denied." That was the climate in which the Shelleys found themselves.

Meanwhile, because of the influx of black people from the South, in major cities the housing situation was getting critical, as the Shelleys discovered. Without some opportunity to go outside of these boundaries restricted by these covenants, there was no solution to the problem. Quite frankly, the NAACP had been looking for a case which would help them to get a handle on how to create a fact situation which could get around the private contract or mention of it, and they had not yet found one.

My father and others, in the real estate business, who were dealing every day with people who wanted to find places to live were impatient. So when the Missouri Supreme Court reversed the decision, my father said, "Well, let's find a way to take this up to the U.S. Supreme Court." As I remember, the day the decision of the Missouri Supreme Court came down, we were at the breakfast table looking at all these bold newspaper headlines saying "Court Reverses Housing Suit." My father seemed discouraged. It was one of the few times, in fact, it was probably the only time, I saw him look discouraged. My mother with her pert, pretty self, was sitting at the end of the table. She said, "Oh Dad, you can't give up now." My father got up from the table and went to the telephone and called; and I could hear him calling all the real estate brokers and salesmen in the black community. I say all, which may convey the impression that there were a lot of them, but there must not have been more than twelve back in those days. They met that night in our home and began to discuss this situation. It was my father's strong recommendation that they had to do something about this. They could not just let this go without an effort to challenge. He convinced them, and they agreed to form themselves into an organization. They picked the name, "Real Estate Brokers Association of St. Louis." My father turned to me and said, "Now you incorporate us." I had been out of law school less than five years, and I didn't know the first thing about incorporating anything. You will find when practicing law—as I did right then—if you don't know, you can find it. So I went to the books and found how to incorporate an organization like they wanted, and I did it.

Then began a very fascinating period in connection with this case because it moved on two levels then. It moved on a legal level, and it moved on a community level. I was involved on the community level. Indeed, I can remember saying to lawyer Vaughn, "I'd like to help on the *Shelley* case." And he snorted and said, "I've got to have some lawyers who know something!" And he was right. So, he prepared diligently, and in April of 1947, the papers were filed with the United States Supreme Court—a petition for writ of certiorari. That means to send up the record so the Court can take a look at what the lower court

has done. Then we waited—April, May, and finally June. Suddenly lightning struck. George Vaughn received a wire from the Clerk of the Supreme Court of the United States saying, “certiorari granted.” We were all stunned and overjoyed. The NAACP was astounded. It immediately sent up its Detroit restrictive covenant case which was also pending and certiorari was granted again. Next, there were two restrictive covenant cases in Washington, D.C. They were likewise sent up and certiorari granted to those also. The four cases were then combined by the Court.

Litigation like the *Shelley* case costs money. As I look back, compared with what it might cost now, it was rather nominal. The total court costs were seven-hundred fifty some dollars. It was a lot of money back then. Can you imagine going to the Supreme Court now and having it cost \$750!

Well, we did a lot of things in St. Louis. The first thing the brokers decided was that they needed a citizens advisory committee. They invited one of our distinguished educators to be the chairman of this committee. He brought a group together called the Citizens Advisory Committee for the Brokers Association for the *Shelley* case. There were rallies in churches; fundraisers and ads solicited for activities to raise the money to pay for this case. Meanwhile, the lawyers were working feverishly. They had closed ranks. Lawyers in St. Louis were working with the lawyers in Detroit and NAACP lawyers in New York. Several conferences were held in preparation for the hearing before the Supreme Court. One of the decisions of the NAACP in consultation with all the lawyers was that the case needed to be put, not just in the legal context, but in the sociological context as well. Thus, a lot of effort was made to obtain data and information about the state of housing for black people in America at that time—which was deplorable. All of this was included in some of the briefs.

Mr. Justice Vinson was then the Chief Justice, and on the day of the hearing in January of 1948, when everybody was assembled in the courtroom, the justices walked in, and there were only six. None of the lawyers had known that three justices would not participate. There was a frantic effort among them to discern what the implications of this were because that meant that they had a very slim majority, and a split vote three and three was a sure loss. I am sure the lawyers had profiles of all the justices, and when they realized that three were absent, they had to see who was left on the panel and what the possibilities were. It was a very tense moment because if only three justices voted “no” the whole case would have been lost. The argument began. George Vaughn was first. I am sure it must have been a very emotional time for him because he was the grandson of a former slave. I think he told the

Court that and that he felt that this was a kind of knocking on the door and that black people had helped to build this country too and that he wanted that door open for his people.

As I understand it, very few questions were asked. The justices just listened in silence. Though the argument was in January of 1948, the Court did not rule until May. You can imagine January, February, March, April, and May; it was a kind of agony of anticipation. There was no way to know what was going on, no way to determine. Then, on the third of May, one of the lawyers representing the Kraemers in Washington wired Gerald Seegers in St. Louis who was local counsel representing the Kraemers. It was a very terse telegram that said: "Supreme Court denies all in the covenant cases." By the time the word came to the Shelleys, it was common knowledge. The vote of the Justices was 6-0 in favor of the Shelleys.

As I look around this auditorium, I don't know how many of you can grasp how profoundly important that decision was and how it deeply affected people who were close to the case and people in general, especially in the black community. If you have never experienced the racial prejudice or segregation in terms of having to find a place to live or to eat for that matter, I don't think you have any grasp of the depth and sense of accomplishment that that decision brought.

As a little girl, my parents used to take us downtown between meals. It was always a lark for us. We had to be dressed and ready at breakfast, and we were always home in time for lunch. I didn't understand why until I was grown. This was, for my parents, a survival tactic. There was no place to feed us downtown. We could not find any place downtown where we could eat because of racial segregation. So, to avoid that, our parents took us downtown between meals. This was a part of the real world of America fifty years ago.

Well, *Shelley v. Kraemer* was an important decision. It obviously has not solved the housing problems in this country. It obviously has not ended racial discrimination and racism. But, it is an important mosaic in this tapestry we are weaving in this country piece by piece by piece to make the United States this shining, golden opportunity which the rest of the world envies, covets, admires, and fears.

Reflecting upon the decision, I think about you here starting out in your legal careers. It seems to me that we have a very real responsibility to keep this mosaic-building going and to recognize that there are some unfinished agendas. We have the precious opportunity to lead the world into a finer and more humane dimension than any of us have now.

All we have to do is remember June 1989 in China's Tianemen Square and what is happening in Romania, Bulgaria, and the rest of

Eastern Europe. One of the most astonishing things I heard, not long ago, was people in one of those Eastern European countries singing “We Shall Overcome” on the march—singing a song that was the theme for Martin Luther King, Jr. and the black struggle in this country.

Whether we want to admit it or not, black people have been at the vortex of every significant step forward in these United States from the beginning, the founding of the country. Somehow or another, we seem to be the catalyst to get things going and make things happen for the better. I tell you they are better. Just visit the South now, which I do quite often because I have to come in and out of Alabama and Atlanta. I do not know this charming, wonderful part of the country. There is such warmth, and I’m talking about public civility now. I’m not presuming at all that there are not some private reservations among people in the South. It is not demonstrated in the public domain. And, if nothing more can be accomplished, we ought in this country, at least, to master the art of public civility, because that is a mark of being civilized.

Finally, you are an educational institution, and I think one of the grave and overwhelming defects in American character today is the lack of respect for the mind. There are derisive phrases—“egg-heads,” “intellectual snobs”—all these things, designed to carefully discourage respect for the mind. That may be our Achilles’ heel because the one thing we need now is to develop our intellectual power. That’s what you’re about here. We have just to look around the world to know that others are doing this very, very effectively, and we need not to demean what can be our greatest strength along with our diversity.

Let me close with a favorite poem which comes from a favorite poet. His name is Langston Hughes. It is one of my favorites because Langston Hughes was a very, very wonderful American. He loved this country and yearned for its best. Out of that love, he wrote these words:

There is a dream in this land
With its back against the wall
To save the dream for some
It must be saved for all.

Thank you very much.