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## RONALD N. DAVIES, MY FRIEND

HONORABLE MYRON H. BRIGHT\*

I write these memories about the late Judge Ronald N. Davies with real pleasure, as I recall my association and friendship with him. During his thirty years on the federal bench, Judge Davies presided at several of my cases. He served as a great trial judge in the sense that he made expeditious rulings on matters of evidence, fact, or law that came before him. And of all the judges, state and federal, before whom I have tried cases, Judge Davies was one of the best.

In addition to his expeditious rulings in a case, Judge Davies never lost his sense of humor. I recall one of my cases where I represented a widow whose husband had been killed in an automobile accident on a North Dakota highway. The widow, as a witness, described her husband as “a tall person, six feet two inches, and a wonderful person.” Judge Davies interrupted the testimony: “Can’t a short man be wonderful, too?” Everyone in the courtroom answered or thought, “Yes.” Judge Davies was five feet one inch tall.

I briefly mention two important cases that I tried before Judge Davies. The first, *Merchants National Bank & Trust Co. of Fargo v. United States*,<sup>1</sup> presented several novel and new issues to be resolved by the court. The facts of the case are as follows: On July 31, 1965, William Bry Newgard, a patient with a mental illness under the supervision of the Veterans’ Administration Hospital in Fort Mead, South Dakota, committed a brutal killing of his wife, Eloise A. Newgard, in Detroit Lakes, Minnesota.<sup>2</sup> Merchants National Bank and Trust Company brought a federal torts claim on behalf of the estate of Mrs. Newgard against the United States.<sup>3</sup> In a trial which involved approximately twenty-four doctors, psychiatrists, and psychologists who appeared as witnesses, Judge Davies, as the trial judge, determined that the United States, through the Veterans’ facility, was negligent in its custodial care of Mr. Newgard and awarded the plaintiff \$200,000.00.<sup>4</sup> The case involved the largest award for wrongful death in

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\*The Honorable Myron H. Bright, Circuit Judge, United States Court of Appeals for the Eighth Circuit, Fargo, North Dakota (1968 to present).

1. 272 F. Supp. 409 (D.N.D. 1967).

2. *Merchs. Nat’l Bank & Trust Co.*, 272 F. Supp. at 414.

3. *Id.* at 417.

4. *Id.* at 421.

the history of North Dakota, and concerned significant points of law in multi-state torts.

On the difficult and important issue of damages, the court needed to decide which state law applied: Minnesota with a \$35,000.00 limit on recovery for wrongful death cases, South Dakota with a similar law, or North Dakota with no limit on recovery for wrongful death. In rejecting the government's contention that either the South Dakota or Minnesota law should apply, Judge Davies applied the North Dakota law and stated:

From their briefs, counsel concedes that the state of South Dakota has never adopted a conflicts of law rule for multistate torts. Nor has the state of North Dakota. This Court is thus called upon to determine what the South Dakota conflicts of law rule is, in the absence of any pronouncement upon that point by the Supreme Court of South Dakota.

This Court is of the opinion that the South Dakota Supreme Court would follow its sister states, Minnesota and Wisconsin, in adopting "the most significant relationship" or the "most significant contacts" rule, and upon that basis and for the further reason that the "contacts" rule is a modern and enlightened one, the law of the State of North Dakota will be applied to the facts in this case.<sup>5</sup>

Judge Davies's ruling on damages took an expansive and proper view of the loss sustained from the wrongful death:

Damages include the loss of any and all services which children would probably have received from their mother and are not limited to those for loss of money or income. There is evidence in this case that [Mrs.] Newgard, had she lived, would have received periodic pay raises. The North Dakota Supreme Court inferentially supports the admissibility of such evidence to show future earning power. Moreover, the expense of educating children was held to be relevant to money or services that could reasonably be expected from the decedent, in the same case.

It is difficult indeed to place a monetary value on the loving care and the advice and guidance of which the Newgard children will be forever deprived through the loss of their mother. It must be included, dispassionately, with the other factors set out herein in reaching the complex and always vexing question of compensatory

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5. *Id.* at 419.

loss in this type of case, and the declining value of the dollar has been taken into account.

The Court concludes that plaintiff is entitled to recover the sum of Two Hundred Thousand Dollars (\$200,000.00) from the defendant, as compensatory damages . . . .<sup>6</sup>

The award amounted was the greatest sum of money ever awarded in North Dakota for minor children's loss of their mother. The case demonstrates that Ronald Davies looked at cases before him with understanding, compassion, and fairness. The case eventually settled without the government taking an appeal.

The second case, *United States v. Irvin Warfield, Jr.*,<sup>7</sup> concerned a young man in his early twenties, who saw a quick road to success by selling life, health, and accident insurance for an Iowa company doing business in North Dakota. In his efforts to maintain a high standing with his state sales manager, the insurance salesman wrote a number of false applications and submitted forged checks to his company. No policyholder sustained any damage, but his company paid commissions on business that was not actually ever in force. The United States indicted the young man on thirteen counts of interstate transportation of forged documents. The District of North Dakota appointed me to defend against the charges. After a trial that lasted approximately two weeks, the jury returned a verdict of guilty on approximately nine counts. The case was of some satisfaction to me, not because of the conviction, but because of the nature of the sentence, this young man became steadily employed and proved himself a worthwhile member of society.

What I did not write then, but do explain now, is that Judge Davies deserves credit for the young man's complete rehabilitation. Instead of sending him to prison, Judge Davies imposed a "deferred" sentence upon this young man, as then provided by law. The deferred sentence provided that if the young man did not commit any crime during a period of time and lived honorably, that sentence would be vacated and the conviction removed from the records. I give Judge Davies ample credit for this just result. Judge Davies, among other things, understood so well that rehabilitation was much better than incarceration.

Let me now turn to Judges Davies' role in the Little Rock case. I was aware of the emergence of a stronger civil rights movement in this country following the Supreme Court ruling in *Brown v. Board of Education of*

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6. *Id.* at 421 (citations omitted).

7. No. 67-cr-9094 (D.N.D. Sept. 27, 1967).

*Topeka*.<sup>8</sup> I followed the events of the Little Rock case and knew Judge Davies had ordered integration of Central High School in Little Rock, Arkansas to proceed without delay, but did not learn the full story at the time.

I spoke of Judge Davies's role in the Little Rock case on August 6, 2001, at the dedication of the Ronald N. Davies U.S. Courthouse in Grand Forks, North Dakota. At that time, I reminded the audience of Judge Davies' great service to this country. That service merits constant repetition.

In 1957, the country faced a crisis in its race relations. On September 3, 1957, nine black students were told by school authorities not to report to Central High School in Little Rock, Arkansas. Arkansas Governor Orval Faubus had called out the Arkansas National Guard and, as Commander in Chief, directed that they stop any black student from entering a previously white school and (note with interest) any white student from entering a black school.

The school board asked Judge Davies, as the sitting judge, for instruction. Judge Davies ordered the integration to proceed. On September 4, the nine students sought entry to the school. Their way was barred by the Arkansas National Guard troops standing shoulder-to-shoulder on the school grounds.

With the eyes of the entire nation on him and with Little Rock in turmoil, Judge Davies heard from all the parties. At the conclusion of the hearing, he made the following statement:

It is very clear to this Court from the evidence and the testimony adduced upon the hearing today that the plan of integration adopted by the Little Rock School Board and approved by this Court and the Court of Appeals for the Eighth Circuit has been thwarted by the Governor of Arkansas by the use of National Guard troops.

It is equally demonstrable from the testimony here today that there would have been no violence in carrying out the plan of integration and that there has been no violence.<sup>9</sup>

What happened next is history. Governor Faubus withdrew the National Guard, but his actions had inflamed racist passions within Little Rock. Police could not control the mob. The police directed that, for their safety, children be taken out of the school. That's when President

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8. 347 U.S. 483 (1954).

9. *Faubus v. United States*, 254 F.2d 797, 803 (8th Cir. 1958).

Eisenhower called in the troops, the 101st Airborne Division, later replaced by the federalized Arkansas National Guard, to ensure enforcement of federal court orders.

Judge Davies stood strong and tall. He embodied the principle that the rule of law must be and is stronger and more powerful in the end than the violence of the mob. His role in this case marked the beginning of a long and hard battle to integrate the Little Rock public schools. Although Judge Davies rarely talked about the case with me, on one occasion he mentioned two matters. He remarked that he had received hate mail and death threats during and after his rulings in that case. He said, "I never read those missives in full. When I saw that the letter constituted threats or mail of hate, I threw the letters in a file and never bothered with that mail again." He also noted that his being a "Yankee" and "Catholic" were subjects of derogatory comment in Little Rock, Arkansas. I know that he was a vigorous opponent of any improper moral or legal discrimination against any person.

In honoring Judge Davies, we honor the rule of law and all judges who recognize that an ordered society requires the rule of law. The enforcement of the rule of law by the judiciary stands between democratic government and anarchy.

Judge Davies did not desegregate the Little Rock schools. The school system remained subject to court supervision for more than forty years, but supervision by the courts has now ended. What Judge Davies is remembered for is that he stood strong under difficult circumstances and demonstrated that a federal judge must uphold the rule of law against violence of the mob and the actions of those who would subvert the law.

On August 21, 2011, the Judge Ronald N. Davies High School dedication took place in Fargo, North Dakota. I had arranged for Justice Stephen Breyer to come to the dedication and speak. Unfortunately, the airplane carrying Justice Breyer and his granddaughter from the east coast encountered mechanical difficulties and needed to turn back. As a result, instead of my introducing Justice Breyer to the audience as planned, I served as a substitute speaker at the request of school officials.

I spoke at the dedication about the Little Rock School case and about the importance of Judge Ronald N. Davies in the Little Rock school cases with words really derived from Justice Breyer and another source. I commented about the "Little Rock Nine," the nine young people from Little Rock who volunteered to become the students to attempt desegregation of Central High School in that city. On a 2007 United States Mint Little Rock Coin and Medal Set, minted on the 50th anniversary of the Little Rock case, is an imprint of Central High School. On the obverse side of that coin is an

imprint of several students' and soldiers' feet to demonstrate the soldiers escorting the students in their entry to Little Rock Central High School. The coin then carries nine stars representing the nine black children who went to school on that day, that difficult day of September 25, 1957. Here's what the coin and medal set said about the Little Rock Nine:

Through their noble acts, these civil rights pioneers' actions considerably advanced the civil rights debate in this country. So important was the successful integration of Little Rock Central High School to the American Civil Rights Movement that Dr. Martin Luther King, Jr. personally attended the 1958 commencement for Ernest Green, the school's first African-American graduate. In 1999, the Little Rock Nine each received a Congressional Gold Medal which honored their heroism during the desegregation of Little Rock Central High School.<sup>10</sup>

And so, at the dedication, we honored two types of heroes: the student heroes of which I spoke, and the judicial hero Ronald N. Davies. He stood up to the mob opposing integration, as you all know, and he did rule that the law is the law, and that desegregation shall proceed.

What a man! I knew him well and he deserves the recognition given him in the naming of this school as the Judge Ronald N. Davies High School. Judge Davies' conduct and rulings in that case began a great movement that was needed, the desegregation of the public schools in this country.

Now, here's what Justice Breyer has said about that case, in part. Justice Breyer wrote about the Supreme Court being a court whose edicts are the highest law of the land.<sup>11</sup> The Justice said, "Well, who's going to enforce the edicts or the judgments of the court if the people don't want that judgment and don't want to do what the law says?"<sup>12</sup> He added, "[H]ow much of a difference could nine judicial signatures [the Supreme Court], or ninety, or nine thousand, make in a South determined to resist?"<sup>13</sup> He then remarked, "No sooner did the Court's decision appear than school authorities closed Central High School. And it stayed closed the rest of the

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10. The United States Mint Little Rock Coin and Medal Set is a 2007 commemorative silver one dollar coin and medal set celebrating The Little Rock Central High School Desegregation 50th Anniversary.

11. See STEPHEN BREYER, MAKING OUR DEMOCRACY WORK: A JUDGE'S VIEW 3-12 (2010).

12. *Id.*

13. Stephen Breyer, *Making Our Democracy Work: The Yale Lectures*, 120 YALE L.J. 1999, 2009 (2011).

school year. Children of every race lost a year of education . . . . Still, the die was cast, in integration's favor."<sup>14</sup>

Justice Breyer quotes this wonderful statement: "And the day eventually came when Elizabeth Eckford, one of the Little Rock Nine, and the woman whose face was photographed so enraged, began to tour the country speaking together about the virtue of repentance. In my view, despite the school closing, Little Rock and *Cooper v. Aaron* [the name of the case] played an important role in this lengthy process. Central High became a symbol[,]"<sup>15</sup> a forerunner for integration in this country, and that was truly a great moment.

There is little more I need to add to his statement, but I will say: Justice Breyer, in a speech to The Forum Club of the Palm Beaches, referred to September 25, 1957, as "a great day for the United States of America,"<sup>16</sup> and I, as the speaker for the Judge Ronald N. Davies High School dedication, say that August 21, 2011, was a great day for the City of Fargo and the State of North Dakota.<sup>17</sup>

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14. *Id.*

15. *Id.* at 2009-10.

16. Michele Dargan, *Stephen Breyer Praises U.S. Supreme Court's Deliberative Process Despite Differences in Beliefs*, PALM BEACH DAILY NEWS (Feb. 16, 2011), <http://www.palmbeachdailynews.com/news/stephen-breyer-praises-u-s-supreme-courts-deliberative-1259811.html>.

17. Honorable Myron H. Bright, Circuit Judge, U.S. Court of Appeals for the Eighth Circuit, Address at Judge Ronald N. Davies High School Dedication (Aug. 21, 2011).