

Interview with Hon. Sol Wachtler, April 28, 2016 by John Caher and Joyce Williams

John Caher: The Franklin H. Williams Judicial Commission was established 30 years ago by then-Chief Judge Sol Wachtler. The following is brief segment of an interview with Judge Wachtler in which he discusses the factors and forces that led him to establish the Commission.

I'm John Caher, Senior Advisor for Strategic and Technical Communications.

You've told me that even as a young associate on the Court of Appeals, the words you used were "troubled" and "embarrassed" by the lack of diversity in the judicial system of one of the largest and most diverse states in the country. What was that bothering you, and why did you care?

Sol Wachtler: I guess a lot of it came from my upbringing. I was raised in the South, and I was appalled by the outrageous bigotry— and I mean harsh, cruel bigotry. So it wasn't only keeping Blacks out of your life, it was a question of not having them be part of your community. They lived in a separate part of town. There were curfews at night that governed them. They couldn't sit at a lunch counter.

Frank Williams was in the Army during World War II. That was a segregated army, and I came in the Army shortly thereafter, and I was in Augusta, Georgia training military police and interacting with the Augusta Police Department, and I saw the cruelty of bigotry. The Army was just in its process of being integrated at that time, and the Blacks were terribly persecuted in the army as soldiers.

So, it was something that bothered me morally as a civilized person. When I came north, I found that there was the same push back away from members of the African American community. I became town supervisor. There wasn't a single African American in town government.

When I went on the bench in Nassau county, there was one African American judge who was in the District Court, which was the low court. Court personnel, there were two low level clerks who were Black. All the rest were white. When I went on the Court of Appeals, there were no African Americans on the court. There were no African American employees in the Court of Appeals Hall!

That all was changed, but it was wrong for the State of New York to give this image of being a liberal, progressive state, and yet have no African Americans as part of the judicial or legal system. It might be tolerable in other areas, barely tolerable, but not in a justice system, where the perception has to be that justice is available to all, and that all people of every race and background can participate in the process.

I can remember we had a vacancy on the Court of Appeals, and it was in 1974, I believe. Malcolm Wilson was then the governor. Nelson Rockefeller had gone on to become vice president, and I spoke to then Governor Wilson and said, "Is there an opportunity to make an appointment? Why don't we appoint a Black to the court?" He said, "Who would you recommend?" I recommended Harold Stevens who was then presiding justice of the Appellate Division, First Department, and he said, "Would he take it? It means he'd have to run in November," and I said, "I'll speak to him."

I went to his apartment and I asked him if he wanted to be the first Black on the New York Court of Appeals, and he looked me in the eye and he said, "The first *Negro* on the Court of Appeals." That was very important to him. He was raised in a dirt floor shack in South Carolina and was in the cavalry during World War II. I mean the *horse cavalry*. Went to Boston College, got his law degree there, and he was appointed to the Court, and he was a remarkable addition to the court. He gave depth and breadth to our discussions with respect to so many matters because he could bring a perspective that none of us had ever had or lived through or in.

He had a run the following November. Malcolm Wilson delivered him the Republican and Conservative lines. He had the Democratic line and the Liberal line. So he had all four parties, and he lost the election because Jack Fuchsberg ran a primary against him for the Democratic line. We had an African American, finally, on the Court, and he couldn't win an election state-wide with all four parties behind him.

John Caher: He was only there what, 9 or 10 months, wasn't it?

Sol Wachtler: That's right, that's right. It wasn't until we had an appointed Court of Appeals that Mario Cuomo appointed in 1985 Fritz Alexander. At the same point, he appointed me as Chief Judge, and then we started trying to make some dramatic changes.

John Caher: Now you've got these concerns that have been bothering you really since childhood, and more so as you become a New Yorker and a New York judge. You become Chief Judge in '85, finally with the power to do something about it. You established within a year or two of becoming Chief Judge, this first Commission of its type in the country, I believe. Can you just talk about the Commission and why you formed it and what you really thought it could do, and the significance of it being the first?

Sol Wachtler: I thought it could, above all other things, educate the public as to the necessity for diversity in the court. Now mind you, it wasn't only for the African American race or for other minorities. *It was for the justice system.* We were the beneficiaries having them on the court, having them participate in the justice system was important to us both because of the intellect and understanding they could bring to the court as well as the perception by others of a court that is capable of administering justice fairly and equally.

It was going to be a big undertaking. I didn't want to do one of these things where you form a committee, and the committee looks into something, and gives you a report, and you say, "Very nice," and then you move on after a press release or a photo op. I wanted to have a real job done, first of all, to find out where and why there was this lack of diversity, and then find out how to remedy this ill. I spoke to Vernon Jordan about it. Vernon Jordan and I discussed it. He thought it was a wonderful idea. He gave me three or four names, and one of those names was Franklin Williams.

Then, by pure happenstance shortly thereafter, I was at a small dinner party with Thurgood Marshall, and Thurgood Marshall was a kind of man who used to sit back, and he would hold forth. He was discussing in great length and depth his concerns about the Black community, and they were talking about his ultimate retirement and who would fill his seat. He was saying how he doesn't think it necessarily has to be a "Negro" so long as the person was very competent and so long as his mind and heart were in the right place.

Then I started talking to him about the commission and asked him for a recommendation, and he didn't hesitate for a minute. He said, "Frank Williams, but I doubt whether he can take it. He's a very busy man." So now I'd heard the name twice, and I confessed to my ignorance I didn't know that much about him.

I knew it was Phelps-Stokes, but I didn't know his enormous, incredible background. I don't think that there are many people in the history of the Civil Rights Movement who could match his credentials, qualifications and abilities, so I called him up.

I remember calling him from my house in Albany, a cold call, and I introduced myself, and I told him at length what I was thinking about and had been concerned with and asked whether he would undertake the chairmanship of it. His answer was, "You know, when you start digging into this problem, you're going to create wounds, and wounds that can't be covered over or cured with a Band-Aid." I said, "I understand that." I said, "That's why I want you to do it." I said, "I want someone who is not going to be a company man."

Vernon Jordan used to talk about the fact that he never learned negotiable instruments in bills and notes because where he lived, all you had to do was have a count in the store. The count he used to call it, and he said, "That was where all the business was done and where the debts were accumulated and collected." When he went to law school, he didn't know what a check was.

This is the kind of thing, the kind of intelligence and background I wanted brought to this, someone that can understand the problems that are created by not integrating and having a diverse force within the court system. He said, "Let's meet," and I went to Phelps-Stokes, into his office. He was very proud of his office because it had a parking place in the building. He had his own private parking place. That's the greatest thing you can have in New York City.

We had a wonderful discussion, and there was an instant bonding between us. It turns out that it was very genuine, and he said, "There are a couple of conditions that I would impose. "Number one," he said, "it's going to cost a million dollars to do this thing right." I said, "Don't go to number two because we can't give you a million dollars." He said, "I don't want your million dollars." He said, "I will get the money provided that you come with me when I get it." I said, "I can't solicit funds." He said, "I don't want you to do anything. Just sit in the room and let me introduce you to indicate that the Chief Judge is behind the project."

"Number 2," he said, "I want to appoint my own staff. I don't want to have my office or the office of the commission any way related to the court system. I want to be completely apart," and he said, "I'm not going to talk to you about the progress of the commission, or what we're doing, or

what we're not doing except to ask you for your consent and access to the courthouses around the state because I'm going to want to have hearings around the state." They were all very easy things to consent to, and he accepted the job.

