

ON SENATE CONFIRMATION OF MEN AND MASONS

In the spring of 1987, Judge David B. Sentelle was nominated to fill the vacancy on the United States Court of Appeals for the District of Columbia Circuit. The nomination was held up in the Senate because Judge Sentelle was a member of the Masonic Fraternity. Fortunately Judge Sentelle is a man of integrity and honor and stood up for his Masonic principles. Several Senators also had the courage to speak out forcefully in support of their Masonic membership. Judge Sentelle has shared with the Fraternity the story of his nomination and we would like to thank him for doing so. Hon. Sentelle belongs to Excelsior Lodge #261, Charlotte, N.C.

As you know, I have succeeded Justice Antonin Scalia in his former position on the United States Court of Appeals for the District of Columbia circuit. Normally this would not seem a topic of Masonic interest. Indeed, I would formerly have thought that it had nothing to do with Freemasonry whatsoever, except insofar as the teachings of our order and the examples set by our brethren as ancient and modern as George Washington, both Roosevelts, and Gerald Ford instruct us in how to conduct ourselves in public life as well as private. However, as some of you know, my fitness to serve in this office was questioned by certain senators because I am a Mason and, therefore, you as Masons may have some interest in what went on. Indeed, perhaps, you may have a right to know.

The story begins in early June of 1986. At that time, I had been a United States District Court Judge for the Western District of North Carolina for approximately seven months. I was very happy in that position. One morning, I received a call from Washington, D.C., specifically from an assistant attorney general, who informed me that Judge Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit had announced that he was retiring. I found this fact to be of more than passing interest since Skelly Wright is viewed, or was viewed, as one of the more liberal members of that court and his retirement would present the opportunity for President Reagan to appoint a more conservative judge to take his place. I did not, however, immediately understand why the Assistant Attorney General was calling me. However, he quickly let me know the reason. "The Administration would like to know," he said, "whether you are at all interested in elevation to the Court of Appeals to the District of Columbia Circuit."

At that point, a lot of things went through my mind. The circuit courts of appeal are the second highest courts in the United States. They are, in short, one step below the United States Supreme Court. The circuit for the District of Columbia is considered by many to be the most prestigious of the circuits. It is often referred to as the No. 2 court in the land. It isn't the Supreme Court, but you can physically and metaphysically see the Supreme Court from there. In my career, four judges of that court have been nominated to be Justices of the United States Supreme Court. Appointment to that Circuit Court is an opportunity that would come but once in a lifetime and it's an opportunity that one does not lightly turn down.

I concluded at that point that the discussion of the position with me was a compliment; that I would go to Washington and be further complimented; have a pleasant conversation; fly back to North Carolina; and receive polite assurances that I had been duly considered but that someone else had been chosen for the appointment. I flew to Washington. As I had anticipated, I was shuttled all day long among various officials of the Department and the Reagan Administration; being asked the same questions over and over about my background, my general philosophy, and my thoughts on moving to Washington.

I flew back to Asheville and learned that night that Chief Justice Burger was retiring from the Supreme Court; that Justice Rehnquist would be named to take his place; and that Judge Antonin Scalia of the District of Columbia Circuit was being nominated for elevation to the Supreme Court thereby creating a second vacancy. Not long after that, the Assistant Attorney General called me again, advised me that the list of nominees was being shortened, at which point I assumed that I was about to be told I was no longer to be on the list. Instead, he told me that I was about to be included on the short list of nominees that would remain, but before my name was put on that list, they had to know if I would take the position if it was offered. I said yes, if the job is offered to me, I'll take it.

My nomination was then duly sent to the United States Senate. The ABA conducted an investigation of my qualifications. They do this for all Federal Judicial nominees. The results are classified as unqualified or qualified. In a minority of cases, the ABA goes on to say well qualified, in a very few rare instances, exceptionally well qualified. The ABA's investigating committee did not find me exceptionally well qualified, but I am flattered to say that they unanimously voted me well qualified. Therefore, the Administration did not expect any difficulties with the confirmation hearing and advised me that I would need to have no witnesses present at the hearing, that very few senators would probably bother to attend, and that I might as well bring my family and enjoy a day or two in Washington, D.C.. That's not quite the way it happened.

They were right that not many senators attended. Only two members of the Committee showed up, Senator Leahy, who was presiding, and our Brother, Senator Strom Thurmond. As to what happened next, well, the editorial page of The Wall Street Journal reported it this way:

"During the hearings on the Judge nominated to succeed Antonin Scalia on the D.C. Circuit Court, Sen. Leahy asked Judge David Sentelle if he planned to resign from a club that discriminated against blacks.

"Judge Sentelle hadn't expected this sort of controversy. There was none in 1985 when he was made a Federal District Court Judge in North Carolina. The American Bar Association rated him "Well Qualified." Only Sens. Leahy and Strom Thurmond bothered to show up for the early April hearing. Sen. Leahy began by urging Judge Sentelle's wife and daughters not to miss the cherry blossoms. He told the Judge, 'by all accounts that I have read, you served with a great deal of distinction in your home state.'

"Then came the kicker. Sen. Leahy asked if Judge Sentelle belonged to any organizations that 'discriminate against members of minority groups.' 'not to my knowledge,' Judge Sentelle replied.

Sen. Leahy noted that Judge Sentelle was a Mason. He charged that according to his information, Masons must be 'male, white and believe in a supreme being.'

"Judge Sentelle protested that 'there are black Masons.' Sen. Leahy stood his ground: 'Do you feel that a judge should be allowed to hold membership in an organization that discriminates on the basis of race?' Judge Sentelle allowed as how they shouldn't. The code of judicial conduct prohibits 'invidious discrimination,' which Judge Sentelle said proscribes fraternal groups that discriminate by race."

At this point, let me interrupt The Wall Street Journal since they don't give the full report and they could not since the transcript of the Senate Proceedings occupies 47 pages. Senator Leahy asked me the following question: "If your nomination is confirmed, do you plan to maintain your membership in these Masonic Organizations?" At that moment, if I had told the Senator that I did not intend to maintain my membership in Excelsior 261, in the bodies of the Scottish Rite, and the Oasis Temple of the Shrine, not only would I have been saying that I had been doing something wrong to have held two judgeships for four years as a man and a Mason, but I would have been repudiating the principles that led my father and my grandfathers and my uncles and my brother into this fraternity. I would have been reflecting on the judicial character of the late Judge Warlick and dozens and even hundreds of other judges who are our Brothers and whom I admire. It was then that I stated my intention to remain a Mason. After a little more arguing back and forth between Senator Leahy and myself, it became Senator Thurmond's turn. I don't know if you know our Brother Senator Thurmond personally, but by this time, he was quite agitated. His prematurely orange hair was standing on end and Senator Thurmond asked: Do you know of a Mason that has been accused of discrimination just because he joined the Masons?

"Judge Sentelle: Not to my knowledge, not before today, Senator.

"Sen. Thurmond: I have been a Mason since 1925.

"Judge Sentelle: Yes, Sir. "Sen. Thurmond: I am proud to be a Mason.

"Judge Sentelle: I am, too, Senator."

As things developed then, Senator Leahy blocked the Senate vote on my confirmation for the next few weeks. Interestingly enough, a Knight of Columbus and a non-white Mason were approved by the Committee without holdup and without question of their membership during that period of time. After my nomination cleared the Committee, and again interestingly enough, Senator Leahy did not cast a vote against it, I was unanimously passed by the Committee. My nomination then went to the Senate Floor where Senator Simon of Illinois placed a hold against that nomination saying that the hold was placed to give him time to inquire of the ABA as to whether or not my membership in the Masonic Lodge offended the ABA's standards for judicial nominees. Their response was:

"As you know, the American Bar Association has already approved Judge Sentelle as "Well Qualified" for the Federal Judiciary, first on August 5, 1985, in connection with his nomination to the United States District Court and most recently on February 3, 1987, in connection with his

nomination to the United States Court of Appeals. Our Committee is not in a position, nor would it wish, to comment further on his qualifications."

During the pendency of Simon's hold on my nomination, I heard from Masons from North Carolina, West Virginia, from as far away as Colorado, and so I might add, did Senator Byrd.

Finally when the senate recessed in August, the nomination was still on hold. I was still hearing from Masons around the country, so I understand, was Senator Byrd. Byrd's frustration with the Senate's lack of progress was growing daily.

When the Senate reconvened in September, a roll call vote was taken to confirm my nomination by a vote of 87 to 0. Senator Byrd stood up and declared that it had been his intention to have a roll call vote on that nomination ever since he first heard it was held up because of my membership in the Masonic Lodge. He said it was his intent to put that question to an end in the U.S. Senate. Then Senators Helms, Thurmond and Allan Simpson all spoke on their membership in the Masonic Lodge and how much it meant to them.

As it happened, I was in Washington that day and Senator Helms' staff had called me into the gallery to see the last of the roll call. When I came down to the cloakroom to call my wife and tell her it was over, Senator Helms brought Senators Byrd and Dole, all our Brothers, in to congratulate me and all did with warm and fraternal and, I think, sincere enthusiasm. And indeed, it was over.

Now let me say that throughout this whole process I have not viewed myself as either a hostage or martyr. But whether or not I was confirmed for the higher office, I can still get up every morning and when I shave I don't have to look away from the mirror because I know I can look in the eye of the same man and the same Mason that I was before I ever met Senator Leahy or Senator Simon. And I would rather be able to do that and meet on the level with my Brethren than to hold court in any courthouse in this land.