1. NAME OF PROPERTY

Historic Name: U.S. Post Office and Courthouse (Elbert Parr Tuttle U.S. Court of Appeals Building)

Other Name/Site Number: Elbert Parr Tuttle U.S. Court of Appeals Building

Designated a National Historic Landmark by the Secretary of the Interior on July 21, 2015.

2. LOCATION

Street & Number: 56 Forsyth Street NW Not for publication:

City/Town: Atlanta Vicinity:

State: Georgia County: Fulton Code: 121 Zip Code: 30303

3. CLASSIFICATION

Ownership of Property	Category of Property
Private:	Building(s): X
Public-Local:	District:
Public-State:	Site:
Public-Federal: X	Structure:
	Object:

Number of Resources within Property

Contributing		Noncontributing	
buildings	1	buildings	0
sites	0	sites	0
structures	0	structures	0
objects	0	objects	0
Total	1	Total	0

Number of Contributing Resources Previously Listed in the National Register: 1

Name of Related Multiple Property Listing:

4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby certify that this ____ nomination ____ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ____ meets ____ does not meet the National Register Criteria.

Signature of Certifying Official Date

State or Federal Agency and Bureau

In my opinion, the property ____ meets ____ does not meet the National Register criteria.

Signature of Commenting or Other Official Date

State or Federal Agency and Bureau

5. NATIONAL PARK SERVICE CERTIFICATION

I hereby certify that this property is:

___ Entered in the National Register
___ Determined eligible for the National Register
___ Determined not eligible for the National Register
___ Removed from the National Register
___ Other (explain): _____

Signature of Keeper Date of Action

6. FUNCTION OR USE

Historic: Government Sub: post office
courthouse

Current: Government Sub: courthouse

7. DESCRIPTION

ARCHITECTURAL CLASSIFICATION: Late 19th & 20th Century Revivals: Beaux Arts

MATERIALS:
Foundation:
Walls: Stone
Roof: Terra cotta, Metal
Other: Stone (marble), Metal (steel), Brick

Summary of Significance

The United States Court of Appeals for the Fifth Circuit bore the great bulk of the burden of enforcing *Brown v. Board of Education* after the United States Supreme Court rendered its historic decisions in 1954 and 1955. Standing firm in its commitment to the constitutional guarantees of equal protection and due process, the Fifth Circuit developed a jurisprudence that dealt effectively with massive resistance and obstructionism. The work of the Fifth Circuit both fostered and implemented nationally significant civil rights legislation. In 1990 the building was renamed the Elbert Parr Tuttle U.S. Court of Appeals Building in honor of its most historic occupant. As a member of the Fifth Circuit from 1954-1981 and especially as Chief Judge from 1960-67, the most critical years of the civil rights revolution, Elbert Parr Tuttle earned a national reputation as one of the most significant judges of the twentieth century.

Describe Present and Historic Physical Appearance

Built in 1910, the U.S. Post Office and Courthouse was designed in the Second Renaissance Revival style by James Knox Taylor, the Supervising Architect of the U.S. Treasury, and built at a cost of $1,022,472.[1] The five-story granite and brick building in downtown Atlanta, Georgia, occupies an entire city block bounded by Poplar Street to the northeast; Fairlie Street to the northwest; Walton Street to the southwest, and Forsyth Street to the southeast. Originally a mixed-use federal building, the third floor housed courtrooms and chambers for the Fifth Circuit Court of Appeals and later in 1980 for the United States District Court for the Northern District of Georgia. The first floor housed the U.S. Post Office beginning in 1933 and other agencies occupied the remaining floors. In 1981, the Fifth Circuit was divided so that Louisiana, Mississippi, and Texas remained in the Fifth Circuit while Alabama, Florida, and Georgia became the Eleventh Circuit. By then, the Post Office and the United States District Court for the Northern District of Georgia had vacated the building. The newly created Eleventh Circuit temporarily moved out to make way for restoration work. The restoration was completed in 1987 at a cost of $7.7 million.[2] After nearly a century of use, the building retains a high degree of integrity in setting, location, design, materials, workmanship, feeling, and location.

Exterior, General

The U.S. Post Office and Courthouse is constructed of brick, granite, steel, and molded architectural terra cotta. The building measures 192 feet wide and 190 feet deep. The wall masses terminate in an elaborate continuous entablature. Terra cotta tiles crown the U-shaped, hipped roof. An iron arch, with a standing seam metal cover, spans the former post office loading area on Fairlie Street.

The building's exterior is clad in rusticated, dressed and sculpted granite, and decorative glazed terra cotta. Three courses of rusticated granite constitute the plinth (lowest part of the wall). A coved block band signals a transition from rusticated to smooth stone work. Nine courses of honed, channeled blocks encase the first story. A string course around the building demarcates the first floor from the second floor. The course consists of three bands: one features roundels and triglyphs, the second displays a Vitruvian scroll, and the third is paneled. Granite courses rise up the face of the second, third, and fourth stories, reaching the entablature at the bottom of the fifth story. A denticulated architrave composes the bottom of the architectural composition while an anthemion-embellished (a flat ornament of floral form) and modillion-studded cornice marks the top. The intermediary frieze on the Forsyth Street façade incorporates fifth floor windows and a band of cartouches

[1] Cost provided by General Service Administration, Christopher Eck to Susan Salvatore, Sept. 13, 2011.
[2] U.S. General Services Administration Public Buildings Service, *A Brief History of the Elbert Parr Tuttle U.S. Court of Appeals Building,* pamphlet, n.d.

(ornate or ornamental frame). Most of the original exterior fenestration on all sides of the building is composed of multi-light, copper-clad, wood windows.

Exterior, Forsyth Street Elevation

The Forsyth Street elevation contains three sections: a slightly projecting central block and two flanking "set back" portions. Fenestration on the first two floors on the central block is symmetrically aligned in seven bays. On the first story, three large arch top openings mark the primary entrance. Within each arch is a double-leaf door. The outer two doors have decorative surrounds of bronze. Decorative lintels and grill work crown the doors. Two arch top windows flank either side of this tri-portal entrance. Repeating the curvilinear theme below, an arcade boldly defines the upper story fenestration. The seven arches comprising the arcade gracefully rise from and fall on pilasters. Pilaster and arch decoration includes roundels, egg and dart, and bead and reel trim. At the base of these wall piercings are casement windows with open rail, balustraded balconets topped by large arch top casements which coincide with the courtrooms.

On the "set back" portion, each story has one window with distinct embellishments. The first-floor window features an arched cap with voussoirs; the second story window surround is distinguished by a broken bed pediment with a cartouche and consoles; the third story window has modified bead and reel detail; the fourth story window has an ancon and molded architrave; and the fifth story window features flanking carved panels.

Exterior, Walton and Poplar Street Elevations

Symmetry governs the aesthetics of the Walton and Poplar Street mirror image façades. The eleven wall openings on each floor are aligned in bays. With the exception of a double-leaf door at the center of the first floor, all other openings contain casement windows. Each floor has a distinctive window treatment. First-floor windows have semi-circular headers. Second-floor windows are appointed with a segmental or triangular, broken bed pediment, a cartouche, and consoles. Third-story windows are accentuated by bead and reel motifs and roundels. Fourth-floor window dressing includes ancons, panels with a strigillation design (wave pattern or S-shaped flutes) and shields. The fifth-floor frieze fenestration features flourishes like carved and inset panels.

Exterior, Fairlie Street Elevation

The Fairlie Street elevation is divided into three sections. An iron arch fronts the court between the two ends of the U-shaped courthouse. The arch, spandrels, spaces between the columns, and space below are enclosed with metal covers for security reasons; however, the aesthetics of the iron span are undiminished. The aesthetics of the flanking ends do not break ranks from the rest of the courthouse. Each end has five stories with three windows per floor. Those of the middle three stories are set within columnar piercings. Stylistic embellishments conform to those of the building's other sides.

Interior, First Floor

Inside the courthouse is a U-shaped lobby known as the "Great Hall." A series of vaults, coinciding with the arched windows on Forsyth, Poplar, and Walton Streets, create a dramatic public place. Marble clad piers carry the vaults, eliminating the need for interior supports for the upper stories, and in the process, creating high, long, wide, and open corridors. The interior vault arches coincide with the former post office. Mullioned glass with arched headers and paneled wood work fill the arch openings. Carved entablatures compose part of the arch treatments. Decorated from floor to ceiling, the Great Hall is a craftsman's delight. Polished, green terrazzo tile panels with gray trim cover the corridor walkway. In addition to the marble clad vault piers, marble clad arches and wainscoted walls adorn the great space. With the exception of painted ribs, the vaulted ceilings are

unadorned. The ends and middles of the Great Hall have domed vaults ornamented with a painted guilloche (an ornamental border) and a chandelier.

The former post office rooms serve as administrative offices and as an atrium for the Eleventh Circuit Court of Appeals' vast library located on the basement floor. Where once stood sorting bins, now stand batteries of bookcases holding law journals, case files, and other legal literature.

Interior, Third Floor

The third-floor corridors are architecturally much more reserved than the Great Hall. Carpet covers the floor. Plaster covers the upper portion of the hall walls, while marble slabs wainscot the lower walls. Beams resting on pilasters divide the plastered ceiling into panels. Cornices attached to the perimeter of each panel are plain. Lighting consists of ceiling mounted fixtures.

The former Fifth Circuit (now the Eleventh Circuit) Appellate courtroom is located off the main hallway. Simple marble surrounds appoint the entrances to the Appellate chamber. Two sets of double-leaf doors fill the doorway. The outer wall pocket doors are paneled oak leafs with brass hardware. Brass hand and kick plates and tacks accentuate the leather wrapped, inner fly doors. Each panel has an oval porthole window.

The Fifth Circuit Appellate chamber was designed to hold three-judge panels. Decorative paneled beams embellish the plaster ceiling and rosettes adorn the ceiling and beams. A bracketed cornice caps off and decorates the wall and ceiling junctions. Reminiscent of the Scales of Justice, bronze chandeliers hold fast to ceiling mounts and provide much of the chamber's lighting. Along Forsyth Street, arch top windows with drapery suffuse the chamber interior with natural lighting. Polished oak wood panels the entire room. Leaf motifs, rosettes, wreaths, consoles, and ornamental bronze grille work heighten the room's appeal. The judges' bench features a three-chair tribunal with fine woodwork. An open rail balustrade separates the court proper from the visitors' area containing rows of oak benches positioned between aisles. The maple boards lining the floor are laid in a herringbone pattern with decorative inlays positioned along the borders.

Remaining Areas

The areas of the courthouse described in this nomination represent only a portion of the building's total space. The building has judges' chambers, a basement, offices on all floors, as well as other rooms, facilities, and miscellany. Due to heightened national security, these areas of the courthouse are off limits to the general public. With the exception of the judges' chambers, these spaces are not integral to the civil rights cases heard by the U.S. Fifth Circuit Court of Appeals.

Integrity

The U.S. Post Office and Courthouse retains a high degree of integrity in terms of location, setting, feeling, association, workmanship, materials, and design. In regard to its location and setting, the courthouse has been a prominent feature on the block bounded by Poplar, Fairlie, Walton, and Forsyth Streets since the building's completion in 1910. The Fairlie-Poplar Street Historic District (NRHP-listed, 1984), of which this building is a contributing resource, has maintained its historic architectural character despite development in the surrounding downtown Atlanta area. In evidence is the courthouse's feeling as an early twentieth century federal public building, its association with the Fifth Circuit, and the place from where Judge Tuttle administered the court and authored opinions.

Workmanship, materials, and design have experienced limited change. The arch spanning the courtyard on the Fairlie Street side contains one noticeable change in its historic fabric. The arch, spandrels, spaces between the columns, and space below have been enclosed with metal covers for security reasons. This alteration is reversible and does not conceal the historic materials, workmanship, and design of the arch. The first floor has undergone a few minor alterations. During a recent restoration, the Great Hall's marble floor was replaced with green terrazzo panels trimmed with gray terrazzo, a material found in other early twentieth century courthouse flooring.[3] The terrazzo's hue and texture compliments the hall's original marble clad window and door surrounds, wainscoting, and vault and arch piers. Ceiling lanterns replaced during the restoration represent a minor change. Vintage in appearance, the lanterns blend well with the lobby's Second Renaissance Revival detailing.[4]

The former mail room conversion to a library left the lobby walls and doors intact. With the postal service windows and customer wall desks still in place, the post office still appears to be in business. In the grand scheme of the Great Hall, these changes are hardly noticeable. In the chambers, the General Service Administration (GSA) recently installed new carpeting on the aisles, draperies, and flat screen computer monitors. These additions bear little to no impact on the historic character of the courts. Overall, the Appellate courtroom is a testament to the efforts of past courthouse officials and the GSA to maintain this excellent courthouse architecture.

[3] U.S. General Services Administration, "Elbert P. Tuttle U.S. Court of Appeals Building, Atlanta, GA," at https://www.gsa.gov/real-estate/historic-preservation/explore-historic-buildings/find-a-building/all-historic-buildings/elbert-p-tuttle-us-court-of-appeals-building-atlanta-ga?_gl=1*1jeh68c*_ga*MjE0MTgwMjM2OS4xNjc3NjExMjQw*_ga_HBYXWFP794*MTY4OTM2NjQ2Ny4zLjAuMTY4OTM2NjQ2Ny4wLjAuMA.. (accessed October 21, 2009).

[4] Max Jumper, GSA-provided contact, personal interview with Gene Ford, March 16, 2006.

8. STATEMENT OF SIGNIFICANCE

Certifying official has considered the significance of this property in relation to other properties:

Nationally: X Statewide:__ Locally:__

Applicable National Register Criteria:	A__ B__ C X D__
Criteria Considerations (Exceptions):	A__ B__ C__ D__ E__ F__ G__
NHL Criteria:	1, 2
NHL Criteria Exceptions:	N/A
NHL Theme(s):	II. Creating Social Institutions and Movements 2. reform movements IV. Shaping the Political Landscape 1. parties, protests, and movements
Areas of Significance:	Law Politics/Government Social History
Period(s) of Significance:	1960-1966
Significant Dates:	N/A
Significant Person(s):	Elbert Parr Tuttle
Cultural Affiliation:	N/A
Architect/Builder:	James Knox Taylor
Historic Contexts:	Civil Rights in America: *Racial Desegregation in Public Education in the United States*, A National Historic Landmark Theme Study (August 2000) *Civil Rights in America: Racial Voting Rights*, National Historic Landmark Theme Study (2007, rev. 2009) *Civil Rights in America: Racial Desegregation of Public Accommodations,* National Historic Landmark Theme Study (2004, rev. 2009)

State Significance of Property, and Justify Criteria, Criteria Considerations, and Areas and Periods of Significance Noted Above.

Summary Statement of Significance

The U.S. Post Office and Courthouse (Elbert Parr Tuttle U.S. Court of Appeals Building) has exceptional national significance under National Historic Landmark (NHL) Criterion 1 for its intimate association with the preeminent role the U.S. Fifth Circuit Court of Appeals played in reshaping the South during the modern civil rights movement. This appeals court bore the great bulk of enforcing *Brown v. Board of Education* after the U.S. Supreme Court rendered its historic decisions in 1954 and 1955. Standing firm in its commitment to the constitutional guarantees of equal protection and due process, the Fifth Circuit developed a jurisprudence that effectively dealt with southern massive resistance and obstructionism. The work of the Fifth Circuit both fostered and implemented nationally significant civil rights legislation.

The courthouse also has exceptional national significance under NHL Criterion 2 for its association with Judge Elbert Parr Tuttle, Chief Judge of the Fifth Circuit from 1960 to 1967 during the critical years of the civil rights revolution. Tuttle's administrative leadership, along with his innovative jurisprudence, secured justice without delays and earned him a national reputation as one of the most significant judges of the twentieth century.

The period of significance for this courthouse extends from 1960, when Tuttle became chief judge to 1966 when a Fifth Circuit school desegregation ruling (*U.S. v. Jefferson*) marked a turning point in school desegregation. During these years, the Fifth Circuit under the leadership of Chief Judge Tuttle developed a significant body of civil rights jurisprudence, overcame massive resistance in multiple school desegregation and voting rights cases, and more fairly applied and enforced the right to trial by jury of one's peers.

The U.S. Post Office and Courthouse (Elbert Parr Tuttle U.S. Court of Appeals Building) is one of three courthouses that define the Fifth Circuit's monumental contribution to civil rights jurisprudence in the movement's critical years of 1956 to 1964. The Fifth Circuit then had jurisdiction over six states in the Deep South: Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. In 1960, seven active judges, one from each state and two from Texas, sat on the Fifth and heard appeals as three-judge panels, in part to balance interests on a regional basis. In 1961, two seats were added, one each in Atlanta, Georgia, and Montgomery, Alabama. Not all of the Fifth's nine judges consistently ruled for black plaintiffs. Three voted inconsistently and two consistently dissented from decisions. Jurists Richard T. Rives of Montgomery, John R. Brown of Houston (hearing cases in Montgomery), John Minor Wisdom of New Orleans, and Elbert P. Tuttle of Atlanta fairly consistently ruled for black plaintiffs' constitutional rights on cases heard at the courthouses in Louisiana, Georgia, and Alabama. Collectively and individually, these three courthouses and four jurists outstandingly represent the judicial frontline that profoundly impacted civil rights reform and court procedures. Thus, in addition to this nomination for the Atlanta courthouse, the U.S. Court of Appeals – Fifth Circuit (John Minor Wisdom United States Court of Appeals Building) in New Orleans, Louisiana, and the United States Post Office and Courthouse (Frank M. Johnson Jr. Federal Building and U.S. Courthouse) in Montgomery, Alabama, are under consideration for NHL designation.

The following narrative describes the Fifth Circuit's origins in 1891, how it obtained a prominent role in the civil rights movement, and the 1950s assemblage of judges who brought a new era to the court. Subsequent text describes the delay problem the Fifth Circuit faced and how the court dispensed with racial discrimination cases. In particular, this nomination highlights seven cases in which Judge Tuttle issued orders or authored opinions and one case in which Judge Tuttle joined in a district court decision. Of these eight cases, five public school desegregation cases illustrate how the court overcame segregationist defiance to the federal judiciary,

two voting rights cases show how the Fifth Circuit's procedural innovations changed the internal working structure of the federal judicial system, and a public accommodations case confirmed the constitutionality of the Civil Rights Act of 1964.

Background

On May 17, 1954, the U. S. Supreme Court upended the post-Civil War apartheid that had long governed race relations across the Deep South. Its *Brown v. Board of Education* ruling found racial segregation in public schools unconstitutional, overturning the "separate but equal" doctrine sanctioned by the Court in *Plessy v. Ferguson* (1896) that kept African Americans from crossing color lines in practically every facet of American society. Implementing its ruling in *Brown II* (1955), the Court ordered racially segregated public school systems to desegregate "with all deliberate speed" and gave school authorities primary responsibility "for elucidating, assessing, and solving these problems."[5] The burden then fell on the lower federal courts, in particular the Fifth Circuit, to oversee the implementation of the *Brown* mandate.

Across the Deep South, school officials, voter registrars, politicians, and even state and federal judges resisted desegregation. Litigation brought on behalf of or in defense of individuals, such as Rosa Parks and James Meredith, often sponsored by the National Association for the Advancement of Colored People (NAACP), as well as suits brought and defended by attorneys in the Civil Rights Division of the U.S. Department of Justice filled the Fifth Circuit courthouse dockets in New Orleans, Louisiana; Atlanta, Georgia; and Montgomery, Alabama. In that tense and difficult era, four judges on the Fifth Circuit—Elbert Tuttle of Atlanta, John Minor Wisdom of New Orleans, John Brown of Houston, and Richard Rives of Montgomery—were singled out for their commitment to enforcing the civil rights of black Americans. They became known collectively as "The Four"—an epithet when uttered by die-hard segregationists, but praise on the tongues of many others.

Origins of the Fifth Circuit Court of Appeals

In 1891, Congress created the courts of appeals to relieve the U.S. Supreme Court's burdensome caseload and circuit riding duties that required hearing cases in multiple locations. The Circuit Court of Appeals Act created a three-tier system whereby the new circuit court functioned as an intermediary judiciary body between the federal district courts below and the Supreme Court above. As its name implies, the circuit court hears cases on appeal from the district court. In addition, circuit riding conducted by Supreme Court justices to hear cases in multiple locations transferred to the circuit and district jurists. The circuit court's decision is final unless the Supreme Court decides to review it.

The circuit court usually conducts hearings before three-judge panels. "Forming panels of judges from each of several states," describes law professor Anne Emanuel, "is supposed to balance those interests, resulting in a less insular rule of law—one that reflects regional, not merely local, interest."[6] The circuit court may also meet as a whole, known as *en banc*, when a party or an active judge requests that a decision be reviewed, and a majority of the active members of the entire court agrees to rehear the case. The *en banc* process is reserved for cases of exceptional significance and those in which there is a conflict between the opinion under review and another opinion of the Fifth Circuit or of the United States Supreme Court. During the years of the civil rights revolution, pursuant to a federal statute since repealed, a combination of circuit and district court judges often

[5] Frank T. Read and Lucy S. McGough, *Let Them Be Judged: The Judicial Integration of The Deep South* (Metuchen, NJ: the Scarecrow Press, Inc., 1978), 13. When authoring this book, Read was Dean of the College of Law at the University of Tulsa, and McGough was Professor of Law at Emory University.

[6] Anne S. Emanuel, "Turning the Tide in the Civil Rights Revolution: Elbert Tuttle and the Desegregation of the University of Georgia," 5 Michigan Journal of Race & Law 1 (1999-2000).

sat on special three-judge district courts, convened when a state statute was challenged on federal constitutional grounds.[7]

New Orleans was home to the circuit's first courthouse; before the turn of the century it was the only major city in the six-state region. Beginning in 1902, Congress created more court locations when onerous travel between the region's remotest points and New Orleans prompted Congress to authorize a term in Atlanta, Georgia. Within the year, Fort Worth, Texas, and Montgomery, Alabama, also became official court locations.[8]

A New Guard at the Fifth Circuit Court of Appeals

The 1950s brought monumental change to the Fifth Circuit. In 1952, before President Eisenhower assumed office and made five Republican appointments, each member of the court was a southern Democrat. Thereafter, Eisenhower appointed Elbert Parr Tuttle (Georgia) in 1954; John R. Brown (Texas), Benjamin Franklin Cameron (Mississippi), Warren Jones (Florida) in 1955, and John Minor Wisdom (Louisiana) in 1957.

Earlier in 1951, President Harry Truman had appointed lawyer Richard T. Rives of Montgomery, Alabama.

Elbert Parr Tuttle

Born in California in 1897, Elbert Tuttle moved with his family to Hawaii in 1907. Raised in the only multi-racial culture in the United States at that time, Tuttle returned to the mainland for college and earned both his undergraduate and law degrees at Cornell University. During a summer spent at the Jacksonville home of a college classmate, Tuttle met Sara Sutherland. They married in 1919. In 1921, when he graduated from law school, they moved to Atlanta, where her family had settled. Tuttle and his brother-in-law, Bill Sutherland, who had been a law clerk to Justice Brandeis on the U.S. Supreme Court, opened a law firm that specialized in federal tax work and became one of the nation's leading practices.

In 1931, as a member of the National Guard, Tuttle led the rescue of John Downer from a lynch mob and then spearheaded a successful petition for a writ of habeas corpus. Although Downer, a black man accused of raping a white woman, was convicted on retrial and ultimately executed, Tuttle, who was not convinced a rape had even occurred, worked on his behalf to the very end.[9] In 1934, Tuttle filed a habeas petition on behalf of Angelo Herndon, a nineteen-year-old black man who had been convicted of attempting to incite insurrection and sentenced to twenty years on a Georgia chain gang for handing out pamphlets calling for a rally to protest Atlanta's decision to terminate relief funding to the poor. Joined by Sutherland and by Whitney North Seymour, Tuttle challenged the Georgia statute under which Herndon had been convicted, arguing it violated the right to free speech. The Herndon matter culminated in an opinion by the U.S. Supreme Court that is a landmark of First Amendment jurisprudence.[10] In 1938, in another pro bono representation, Tuttle successfully petitioned the U.S. Supreme Court for a writ of certiorari in a case where two young Marines had been convicted of passing forged currency in a Charleston, South Carolina, brothel. The Court's opinion in that case, *Johnson v. Zerbst*, established both that an indigent defendant is entitled to appointed counsel in federal felony prosecutions, and

[7] Jack Bass, *Unlikely Heroes* (Tuscaloosa: The University of Alabama Press, 1990), 19.

[8] Harvey C. Couch, *A History of the Fifth Circuit, 1891-1981* (Washington: The Bicentennial Committee of the Judicial Conference of the United States, 1984), 22, 24; Read and McGough, *Let Them Be Judged*, 26. Acts approving these locales further stipulated that the Atlanta term hear appeals and writs of error from the district and circuit courts of Georgia, the Fort Worth term was to hear cases from Texas, and the Montgomery term cases from Alabama. Couch, 26. U.S. General Services Administration, *John Minor Wisdom United States Court of Appeals Building,* pamphlet. Later Fifth Circuit Court locations include Jacksonville, Florida and Houston, Texas.

[9] Jack Bass, "Judge Elbert P. Tuttle Remembered As a True Judicial Hero," 2 *Georgia Bar Journal* 60 (August 1996): 61.

[10] Read and McGough, *Let Them Be Judged*, 37.

that the waiver of a federal constitutional right is not effective unless it is knowing, intelligent, and voluntary.[11] Over the next few decades, *Johnson v. Zerbst* became the most cited case in American jurisprudence.[12]

Long an officer in the Georgia National Guard, Tuttle volunteered for overseas service and commanded a field artillery battalion in the Pacific Theater during World War II. He returned a decorated war hero, the recipient of the Bronze Service Arrowhead, the Bronze Star, the Legion of Merit and the Purple Heart. In Atlanta, he resumed an effort to build a viable Republican Party in Georgia, then completely dominated by the white Democratic Party. His efforts were mirrored by those of John Minor Wisdom in New Orleans; the support of their delegations proved critical to Eisenhower's ability to secure the nomination for President at the Republican National Convention in 1952.[13] Eisenhower later nominated both Tuttle and Wisdom to seats on the U.S. Court of Appeals for the Fifth Circuit.

"Judge Elbert Tuttle sat in the eye of the storm," writes his biographer Anne Emanuel, "but he did not yet realize it. He could not foresee—could not imagine—the outright defiance of the rule of law that so many of the south's [*sic*] political and civic leaders would engage in."[14] Guiding the Fifth Circuit through the civil rights era, Tuttle and his Fifth Circuit brethren soon found themselves at the center of the "greatest period of social upheaval since the Civil War."[15]

<u>The Heart of the Fifth Circuit's Problem: Justice Delayed is Justice Denied</u>

The Supreme Court's 1954 and 1955 rulings in *Browns I* and *II*—that respectively found segregated schools unconstitutional and established its implementation—sparked segregationist defiance across the South. Governors pledged resistance and 100 southern congressmen, including the entire congressional delegation from four of the states in the Fifth Circuit, signed the 1956 Southern Manifesto decrying the Supreme Court and vowing to resist *Brown's* mandate. School and university officials continued to deny black applicants admission based on race. Some school officials contrived technicalities; some closed schools rather than submit to court-ordered desegregation. The Fifth Circuit led the way in implementing *Brown* in schools and in extending *Brown's* mandate to other public services and facilities, such as the Montgomery, Alabama busses that were desegregated following Rosa Parks' arrest, as well as to the critical area of voting rights.

For segregationists time became a vital tool to resisting change. In a 1966 law review article, Judge Tuttle explained that school boards considered another year of noncompliance with segregation cases as "a prize worth fighting for, and thus worth litigating for," and every election that excluded black voters gave one more term in office to the old system. "There were no effective sanctions," Tuttle continued, "to coerce the reluctant official to take voluntary action to comply with what everyone knew was the law. Thus, each school district and each county or parish became a separate unit to be dealt with unless it could be demonstrated that time was no longer on the side of the recalcitrant."[16]

Besides noncompliance by politicians and school boards, federal district courts caused undue delays. "In the early years after *Brown II*," states law professor Frank Read, "very few school integration decisions reached the

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[11] Alfred C. Aman, Jr., "Elbert Parr Tuttle," 82 *Cornell Law Review* 1 (1996): 6; 304 U.S. 458 (1938).
[12] Anne S. Emanuel, "The Tuttle Trilogy: Habeas Corpus and Human Rights," 10 *Journal of Southern Legal History* 5 (2002): 19.
[13] Bass, "Judge Elbert P. Tuttle," 61.
[14] Anne S. Emanuel, "Forming the Historic Fifth Circuit: The Eisenhower Years," 6 Texas Forum on Civil Liberties and Civil Rights 233 (2001-2002), 245.
[15] Constance Baker Motley, *Equal Justice Under Law: An Autobiography/Constance Baker Motley* (New York: Farrar, Straus and Giroux, 1998), 108.
[16] Elbert P. Tuttle, "Equality and the Vote," 41 *New York University Law Review* 245 (1966): 264.

court of appeals level. Most were blocked in litigation and delaying tactics at the federal district court level."[17] This resistance consumed the voting rights arena as Justice Department lawyers faced outright hostility from five district court judges who "prevented any substantial judicially mandated expansion of southern blacks' voting rights by failing to halt most of the discrimination to which those citizens were subjected."[18] The local political and social environment generally influenced southern district judges to rule against blacks in race relations cases. Geographical ties, Kenneth Vines of Tulane University explains, accounted in part for differences between district and circuit judges: "Identification with any one state in the circuit is avoided by having the court meet at a number of locations within the circuit…. Circuit judges may live anywhere within the circuit, unlike district judges who must reside within their districts. For these reasons the circuit judge is much less tied to a particular locality than is the district judge."[19]

Not all circuit judges consistently ruled for black plaintiffs. With nine judges serving on the Fifth in 1963, the *Yale Law Journal* identified Rives, Brown, Tuttle, and Wisdom as four judges who "fairly regularly upheld Negroes' constitutional rights." Of the remaining five judges, three voted inconsistently and two "consistently dissented from these decisions." Judge Benjamin Cameron was by far the most consistent dissenter from decisions granting civil rights plaintiffs their requested relief.[20] It was within a dissenting opinion that Cameron pegged the derisive term, "The Four," to characterize fellow jurists Rives, Brown, Tuttle, and Wisdom.

School Desegregation: More Deliberation than Speed

In the pre-*Brown* era, the NAACP successfully desegregated some graduate and professional schools. Its first success came in a 1936 state court case, when a black student gained admission to the University of Maryland's law school.[21] In 1938, the U.S. Supreme Court's first case on segregation of public higher education found that "any southern state could be brought to court for failure to provide educational opportunities, particularly graduate and professional training, for all its citizens on the basis of equality."[22] Between 1947 and 1950, the NAACP's Legal Defense and Educational Fund, Inc. (LDF), tackled segregation at the post-graduate level in Oklahoma and Texas. In 1950, a three-judge U.S. district court panel in New Orleans ordered Louisiana State University to admit a black student to its graduate school.[23]

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[17] Frank T. Read, "The Bloodless Revolution: The Role of the Fifth Circuit in the Integration of the Deep South," 32 *Mercer Law Review* 1149 (Summer 1981): 1155.

[18] David J. Garrow, *Protest at Selma*, *Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven: Yale University Press, 1978), 23. The five district judges include Harold Cox and Daniel H. Thomas of Alabama's Southern District, Claude F. Clayton of Mississippi's Northern District, and E. Gordon West and Benjamin Dawkins of Louisiana's Eastern and Western Districts, respectively.

[19] Kenneth N. Vines, "The Role of Circuit Courts of Appeal in the Federal Judicial Process: A Case Study," 7 *Midwest Journal of Political Science* (Nov., 1963): 311. Vines' paper is a case study of the relation of circuit courts of appeal to the district courts using "race relations cases decided in the district courts of the eleven traditional Southern states between May 1954 and October 1962 and then appealed to the regional circuit courts of appeal during the same period." Vines, 308. Twenty-eight districts "are located in the eleven states of the traditional South; each of these states is then divided into two, three, or four districts." Kenneth N. Vines, "Federal District Judges and Race Relations Cases in the South," 26 *The Journal of Politics* (May, 1964): 337.

[20] Notes and Comments, "Judicial Performance in the Fifth Circuit," 73 *Yale Law Journal* 90 (1963-1964): 120-21, n. 156. Cameron's dissenting opinion in *Armstrong v. Board of Education of City of Birmingham, Ala,* 223 F.2d 333 (1963) is based on his own two-year study of assignments made to racial cases between June 1961 and June 1963. For an in-depth assessment of this charge, see Bass, *Unlikely Heroes*, 231-47.

[21] *Murray v. Maryland*, 169 Md. 478 (1936).

[22] Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 151. *Missouri ex rel Gaines v. Canada*, 305 U.S. 337 (1938).

[23] *Roy Wilson v. Board of Supervisors of LSU*; *Sipuel v. Oklahoma State Board of Regents*, 332 U.S. 631 (1948); *McLaurin v. Oklahoma State Regents for Higher Education*, 399 U.S. 637 (1950); and *Sweatt v. Painter*, 210 S.W. 2d 442 (1947), 366 U.S. 629 (1950).

After the *Brown* rulings, federal appellate courts became inundated with scores of school desegregation cases. By the end of the 1950s, LDF began more than sixty elementary and high school cases, concluding only a few.[24] As Judge Tuttle stated, "…*every* school board considered it was not bound by what the Supreme Court said until there was an order directing that particular county school board to desegregate. So they continued…year after year, they would litigate, rather than just recognizing what the law was and comply with it."[25]

University officials in Florida, Georgia, Alabama, Mississippi, and Louisiana drew a white curtain across their campuses and adamantly refused to admit undergraduate black students. After *Brown*, the University of Alabama was the first educational institution under court order to desegregate. In *Lucy v. Adams* (1955), a Birmingham attorney and LDF filed a lawsuit against the university, charging that it had denied admission to Pollie Anne Myers and Autherine Juanita Lucy based on their race. An injunction by a district judge of the Northern District of Alabama was affirmed by the Fifth Circuit on December 30, 1955, and the district judge ordered the university to admit the students. Only Lucy enrolled on February 1, 1956. Angry students and outside agitators reacted violently and within days university officials expelled Lucy, citing the health and well-being of all students (including Lucy) as their reason.[26] After this case, the Fifth Circuit Court of Appeals resorted to extraordinary procedures to overcome delays.

Hamilton E. Holmes and Charlayne A. Hunter, et al. v. Walter N. Danner, Registrar of the University of Georgia (1961 – Circuit Judge Tuttle)

In this school desegregation case, Judge Tuttle used the extraordinary procedure of by-passing a three-judge panel to issue an immediate injunction to immediately admit two black students to the University of Georgia. In the summer of 1959, Charlayne Hunter and Hamilton E. Holmes, honor students at the all-black Turner High School in Atlanta, applied for admission to the University of Georgia. University administrators deferred their enrollment for a year allegedly based on technical rather than racial reasons. Georgia Governor Ernest Vandiver publicly opposed their admission and a Georgia statute provided that state funding would be cut off from any educational institution that admitted both "the white and colored races."[27] After a year of dilatory tactics, Hunter and Holmes secured the legal services of Atlanta based attorney Donald Hollowell and LDF counsel Constance Baker Motley. Because the defendant, Walter Danner, registrar for the university, lived in Macon, Hollowell and Motley filed suit in the U.S. District Court for the Middle District Court of Georgia.

Opening statements for *Holmes v. Danner* began on September 13, 1960. The university's legal counsel thinly veiled the institution's segregation policy by claiming that the plaintiffs had not properly completed their enrollment applications. The plaintiffs contended that Danner and other officials had discriminated against the two applicants based solely on their race. Since Hunter and Holmes had appealed Registrar Danner's actions to the University Board of Regents, Judge William A. Bootle ruled that they would have to await the regents' decision before the court would take further action.[28] This ruling played into the hands of the university, as the regents had thirty days to respond, inviting further procedural delay; however, Bootle's call was by the book. This maneuver exhausted the institution's administrative procedures for handling admission. Following the

[24] Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 254.

[25] Harold Raines, *My Soul is Rested: Movement Days in the Deep South Remembered* (New York: Penguin Books, 1983), 345.

[26] Motley, *Equal Justice Under Law*, 81, 121; *Lucy v. Adams*, 350 U.S. 1 (1955). Marshall and Motley petitioned Judge Grooms to find Registrar Adams in contempt of court for expelling Lucy, but Grooms ruled that Adams had not refused to obey his order. Motley, *Equal Justice under Law*, 124. University administrators had denied Myers' admission based on alleged problems with her background.

[27] Section 8, 1956 Ga. Laws 753, 762.

[28] Ibid.

thirty days, the case fell into the court's jurisdiction. Judge Bootle warned the defendants that he would tolerate no further delays.[29]

The regents denied Hunter and Holmes admission and *Holmes v. Danner* returned to the legal arena. The script for *Holmes* paralleled that of other school desegregation cases as the university's lawyers piled up supposed instances of the plaintiffs' failure to comply with admission policies.[30] Lawyers followed this bogus argument with a litany of spurious charges, such as Holmes's alleged "evasiveness" while answering questions about whether or not he had frequented bars and prostitution parlors, the loss of transfer credits for both applicants, and feigned concerns that the applicants would lose vital credit hours in transferring to Georgia.[31] Motley and Hollowell presented evidence showing that the University of Georgia strictly enforced segregation to the point of excluding white students who favored desegregation. They also demonstrated that prospective white applicants were not subjected to an ethical examination. On Friday, January 6, 1961, Judge Bootle ordered the university to immediately enroll Hunter and Holmes.[32]

Segregationist sentiment dominated public discourse. Governor Vandiver reiterated his campaign pledge of "No, not one!" meaning not one black student would attend school with whites, and threatened to withhold funding from the university.[33] On January 7, 1961, state officials filed a motion for a stay pending appeal of Bootle's order. On Monday, January 9th, the last day of registration for the winter quarter, Hunter and Holmes appeared at the University to register for classes. Before they could complete the process, news reached the Registrar that Judge Bootle had granted the stay, and they were turned away. From the Macon courthouse, Motley and Hollowell called Judge Tuttle, who had become the Fifth's Chief Judge only a month earlier.[34] Tuttle agreed to hear an appeal as soon as the attorneys for both sides could appear and set it for 2:30 p.m. By the time the hearing began, the Atlanta courtroom was full; when it concluded, Tuttle announced he would deliver an opinion in writing in short order. In less than an hour his secretary handed out copies of his order vacating Bootle's stay (an action the media referred to as "Tuttle boots Bootle)" which restored Bootle's previous order directing the university to admit the two applicants.[35] They registered that afternoon. The next morning the state filed a motion in the U.S. Supreme Court seeking to vacate Tuttle's ruling; within hours the Supreme Court denied the motion. On Wednesday, January 11, a riot broke out on campus and university administrators suspended Holmes and Hunter "for their own protection and that of other students." On Friday afternoon, Judge Bootle, whose original order directing the university to allow them to register had been so firmly backed up by Chief Judge Tuttle, ordered them readmitted.

Tuttle's intervention in *Holmes v. Danner* came at a critical juncture. Registration for the winter quarter was about to close, and Holmes and Hunter were midway through their sophomore years at other colleges. If the university could simply continue to delay, their applications to attend would soon become moot. Under ordinary protocols, the judges of the U.S. Circuit Courts of Appeals sit on three-judge panels—but it would take costly time to convene a panel. Tuttle then used "unorthodox" and "extraordinary" procedures when he determined he had jurisdiction to sit alone, rather than sitting on a panel; when he docketed the appeal for the afternoon of the very day on which the order appealed had been issued; and when he ruled almost immediately.[36] Tuttle was

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[29] Thomas D. Dyer, *The University of Georgia: A Bicentennial History, 1785-1985* (Athens: The University of Georgia Press, 1985), 326.

[30] Ibid., 327.

[31] Calvin Trillin, *An Education in Georgia* (Athens: The University of Georgia Press, 1963), 23-24.

[32] 191 F. Supp. 394 (M.D. Ga. 1961); Dyer, *University of Georgia,* 328, 329.

[33] Trillin, *Education in Georgia*, 23-24.

[34] Bass, "Judge Elbert P. Tuttle," 60; Kofi Lomotey, ed., *Encyclopedia of African American Education* (Thousand Oaks, CA: SAGE Publications, Inc., 2010), 1:338.

[35] Couch, *History of the Fifth Circuit,* 110; Bass, *Unlikely Heroes*, 217; Greenberg, *Crusaders in the Courts*, 283.

[36] Bass, *Unlikely Heroes*, 218; Couch, *History of the Fifth Circuit,* 110.

"[d]etermined not to permit dilatory defendants to impede swift enforcement of clearly established civil rights."[37] The very rule that gave Judge Bootle the power to grant the stay, Rule 62(g) of the Federal Rules of Civil Procedure, also allows an appellate court "to suspend, modify, restore, or grant an injunction during the pendency of an appeal."[38] Tuttle's reliance on this rule and the All Writs Act,[39] created a jurisprudence that made "expedited appellate hearings in race and civil rights cases standard operating procedure."[40]

Woods v. Wright (1963 – Circuit Judge Tuttle)

Tuttle's determination to enforce the constitutional rights of black Americans also proved critical in *Woods v. Wright*, where he once again sat alone to issue an injunction pending appeal. On May 20, 1963, the Birmingham, Alabama school board suspended or expelled over 1,000 African American elementary and high school students who had been arrested for parading without a permit after participating in demonstrations led by Martin Luther King Jr. The Birmingham demonstrations, sometimes known as "The Children's Crusade," and the violent response of Police Commissioner Bull Connors and his forces, resulted in one of the most dramatic confrontations in the history of civil rights. Even so, a fragile peace had been brokered in Birmingham—and then the suspensions and expulsions were announced. Because the school board also announced it would entertain no appeals until June, after the school year ended, no seniors could graduate and no students could be promoted. On May 22, arguing before District Judge Clarence W. Allgood, LDF attorney Motley asked for a temporary restraining order against the school board's action. Judge Allgood denied it, but not until he had lectured Motley on the evils of using children in demonstrations. Again, as she had in the University of Georgia desegregation case, Motley made her way directly to a pay phone and called Chief Judge Tuttle. Again he agreed to hear an appeal, sitting alone, as soon as the attorneys could appear. At 7 p.m. that evening, Tuttle convened the hearing; once again he rendered an opinion immediately, this time ruling from the bench.[41] "It appears shocking," he said, "that a board of education interested in the education of children committed to its care, should…destroy the value of one term of school for so many children."[42] Before the attorneys for the School Board left the courtroom, Judge Tuttle directed them to use local radio stations to let the students and their families know they should return to school in the morning. Tuttle's decisive intervention represented a significant victory for the Movement. It enabled Dr. Martin Luther King Jr., who was in the courtroom for the oral argument, to maintain a commitment to passive resistance and less than three weeks later President Kennedy announced his intent to propose civil rights legislation. "Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them."[43]

Meredith v. Fair (1962 – Circuit Judges Wisdom, Brown, and District Judge DeVane; 1965 – Fifth Circuit *en banc* with Tuttle, Hutcheson, Rives, Jones, Brown, Wisdom, Gerwin, and Bell)

Even after the court-ordered desegregation of the University of Georgia, the University of Mississippi held out for segregation, supported by Governor Ross Barnett who proclaimed the state's right to interpose its

[37] Couch, *History of the Fifth Circuit,* 110.
[38] Bass, *Unlikely Heroes*, 218.
[39] 28 USC Sec. 1651.
[40] Read and McGough, *Let Them Be Judged,* 186.
[41] Bass, *Unlikely Heroes*, 206-08; case later heard by Rives, Jones, and Bootle in *Woods v. Wright*, 334 F.2d 369 (5th Cir. 1964); Allgood ruling, *Woods v. Wright,* 8 Race Relations Law Reporter 444 (N.D. Ala. 1963); Tuttle order, *Woods v. Wright*, 8 Race Relations Law Reporter 445 (5th Cir. 1963). A district judge declined to enjoin the suspension. Alfred C. Aman, Jr., "Honoring Judge Tuttle's Vision of the Law," 68 *Cornell Law Review* (1983): 152. This text contributed primarily by Anne Emanuel, Professor of Law, Georgia State University College of Law.
[42] Claude Sitton, "U.S. Appeals Judge Orders Birmingham to Reinstate Pupils," *The New York Times*, May 23, 1963, 1, 19.
[43] John F. Kennedy Presidential Address, June 11, 1963.

sovereignty and ignore the orders of the federal courts. The judges of the Fifth Circuit remained committed to enforcing the constitutional rights of black Americans. In 1961, "the courts," states Arthur M. Schlesinger, Jr., Special Assistant to President Kennedy, "were about to precipitate a new crisis of equal rights."[44] The history of the desegregation of the University of Mississippi is an example "of how delay in implementing difficult-to-enforce judicial decisions allows time for resistance to mobilize."[45]

After the Fifth Circuit ordered Ole Miss to admit James Meredith for the 1962 fall term, Fifth Circuit Court of Appeals Judge Cameron of Mississippi, a staunch segregationist and a strong believer in states' rights, issued four successive stay orders. The panel, finding it "unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court" appealed to Justice Hugo Black, who was the United States Supreme Court Justice assigned as Circuit Justice for the Fifth Circuit. On September 10, 1962, Justice Black vacated all of Judge Cameron's stays and ordered District Court Judge Sidney Mize to sign the injunction admitting Meredith to the university.[46]

Between September 20 and 27, Meredith, accompanied by federal marshals and Justice Department officials, attempted to enroll four times. The Mississippi governor, lieutenant governor, legislature, and Fifth Circuit Court of Appeals Judge Cameron unleashed a fury of activity designed to stop Meredith from enrolling. On September 20th, the Fifth Circuit Court of Appeals ordered all 12 trustees and select administrators to appear before an *en banc* hearing of all eight judges in New Orleans on the 24th. The trustees had appointed Governor Barnett as Registrar of the University, in order to assist his defiance of the orders to enroll Meredith. Infuriated by what they termed "monkey business," Judge Tuttle and his brethren charged the board with "willfully and intentionally violating the Court's order."[47] The trustees avoided being held in contempt by agreeing to comply with all orders of the court.[48] After Governor Barnett and Lt. Gov. Johnson continued to prohibit Meredith's registration and failed to appear before an *en banc* hearing in New Orleans, on September 28, 1962, the court found them "in civil contempt of its order of September 25, 1962 and imposed a fine of $10,000 a day unless, before October 2, 1962, he had shown the Court that he was fully complying with the order and had notified all of the officers under his jurisdiction to cease interfering with the orders of the courts and to cooperate in the admission of Meredith to the University of Mississippi.[49]

After the governor had failed to even appear for the hearing, Chief Judge Tuttle advised Assistant Attorney General Burke Marshall that "the court has nearly exhausted its power….if what the court said Mr. Meredith is entitled to he is going to get [admission to the University of Mississippi] the burden now falls on the Executive Branch of the Government."[50] President John Kennedy directly engaged Governor Barnett in efforts to negotiate a peaceful resolution to the crisis. Barnett's continued evasiveness over Meredith's registration and the maintenance of law and order at Ole Miss prompted President Kennedy and Attorney General Robert Kennedy to act. The Commander in Chief signed Proclamation 3497 and an executive order on September 30,

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[44] Arthur M. Schlesinger, Jr., *A Thousand Days: John F. Kennedy in the White House* (Boston: Houghton Mifflin Company, 1965), 940. Although President Kennedy showed enthusiasm for civil rights, dealing with Congress was a balancing act, and Kennedy "appointed some of the worst, most egregiously racist Southern judges" to gratify some of his white southern supporters. However, he appointed Burke Marshall, a believer in racial equality, as head of the civil rights division, and would eventually propose the "most comprehensive civil rights legislation in modern times." Greenberg, *Crusaders in the Courts*, 299.

[45] Bass, *Unlikely Heroes*, 178.

[46] Read and McGough, *Let Them Be Judged*, 222-24.

[47] The full extent of these tactics is discussed in Gene A. Ford, "Lyceum-The Circle Historic District" National Historic Landmark nomination (Washington, DC: National Park Service, draft 2006), 16-35, above quote on 22.

[48] Bass, *Unlikely Heroes*, 184-85.

[49] *U.S. v. Barnett*, 346 F.2d 99, 108 (Wisdom, J. dissenting) (5th Cir. 1965); William Doyle, *An American Insurrection: The Battle of Oxford, Mississippi, 1962* (New York: Double Day, 2001), 96.

[50] Bass, *Unlikely Heroes,* 188.

1962. The proclamation compelled Mississippi's governor, lawmen, officials, police, and others to peacefully comply with the orders of the U.S. District and Fifth Circuit Appeals Courts, but tragedy ensued.

According to LDF attorney Jack Greenberg, "[t]he issue was no longer just the question of one man's right to go to school at his state university. The authority of the federal judiciary had been called into question, and if its authority weren't established, the ability of one of the three branches of the United States government to fulfill the role given it by our Constitution would be seriously undermined."[51] In an attempt to quell rebellion at the Ole Miss campus, President Kennedy, in a nationally televised speech on the evening of September 30th, asked Mississippians to uphold the law and stressed the role of the Fifth Circuit judges:

> A series of federal courts—all the way up to the Supreme Court, repeatedly ordered Mr. Meredith's admission to the University. When those orders were defied and those who sought to implement them threatened with arrest and violence, the United States Court of Appeals—consisting of Chief Judge Tuttle of Georgia, Judge Hutcheson of Texas, Judge Rives of Alabama, Judge Jones of Florida, Judge Brown of Texas, Judge Wisdom of Louisiana, Judge Gerwin of Alabama, and Judge Bell of Georgia, made clear the fact that the enforcement of its order had become the obligation of the United States government.[52]

Kennedy's address fell on deaf ears at Ole Miss, as a full scale riot was well underway. This riot, termed "The Battle of Oxford, 1962," exacted a heavy toll and was one of the most violent chapters in the history of school desegregation. In the wake of this rebellion, James Meredith enrolled for classes on October 1, 1962. He graduated from the university on August 18, 1963. In the process the Fifth Circuit "clearly emerged as the nation's major legal battleground in the civil rights revolution," stated Jack Bass, "and from it shaped a revised concept of American federalism."[53]

Hall v. St. Helena Parish School Board and *Hall v. West* (1964 – Circuit Judges Tuttle (author), Rives, and Wisdom)

In 1964, the Fifth Circuit described *Hall* as an extraordinary case, in which the court resorted to a writ of mandamus—a mandatory injunction directing an inferior public officer or agency to perform an act required by law when it has refused or neglected to do so. A decade after the decision in *Brown*, resistance, especially at the primary and secondary school levels, continued, sometimes assisted by obstructionist federal judges, Judge E. Gordon West of Louisiana among them. In 1962, after President Kennedy nominated federal district court Judge J. Skelly Wright to the United States Court of Appeals for the District of Columbia Circuit, Judge West took over many of the cases on Judge Wright's docket. Judge Wright had been steadfast in his enforcement of the *Brown* mandate; as a result he had been ostracized and reviled, even to the extent of a mock funeral procession carrying a doll dressed in judicial robes and labeled "Smelly Wright" in the Louisiana legislative chambers.[54] In 1960, Judge Wright had issued an order commanding the St. Helena Parish School Board to desegregate "with all deliberate speed;" an order affirmed by the Fifth Circuit in February, 1961.[55] Because the school board did nothing, the plaintiffs filed three motions with Judge West, the first in January 1962, asking him to order steps toward desegregation. Judge West did nothing. Frustrated by this dereliction of duty, in 1964,

[51] Greenberg, *Crusaders in the Courts*, 324.
[52] *New York Times*, "President's Talk on Mississippi Crisis," October 1, 1962, 22.
[53] Bass, *Unlikely Heroes,* 173.
[54] Read and McGough, *Let Them Be Judged,* 139-40.
[55] *St. Helena Parish School Board v. Hall*, 287 F.2d 396 (5th Cir. 1961), *cert. denied*, 368 U.S. 830 (1961).

the *Hall* plaintiffs requested a writ of mandamus from the Fifth Circuit.[56] Writing for the panel, which included Judges Rives and Wisdom, Tuttle noted that mandamus is a drastic and extraordinary remedy. "We are unwilling to utilize them as a substitute for appeal," he wrote. "As extraordinary remedies, they are reserved for really extraordinary causes. This, is such a 'really extraordinary case'."[57] Tuttle then not only commanded Judge West to act, that is, to enter an order; he prescribed the terms of the order to be entered. Thus, when a district court failed to create its own plan, the Court of Appeals stood ready to do the job itself.[58]

Stell v. Savannah-Chatham County Board of Education (1964 – Circuit Judges Tuttle (author), Rives and Bell)

In this case, the Fifth Circuit relied on the All-Writs Act, the statute which authorizes a federal court to "issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of the law."[59] The *Stell* case had dragged on for years before obstructionist Judge Frank Scarlett of the Federal District Court for the Southern District of Georgia. When, in May of 1963, Judge Scarlett denied a motion for a preliminary injunction requiring a prompt start to desegregation of the schools, LDF attorneys filed an appeal with the Fifth Circuit Court and asked the court to enter an injunction pending appeal lest another school year elapse before any desegregation occur in the Savannah schools. The panel, consisting of Chief Judge Tuttle and Circuit Judges Richard Rives and Griffin Bell, agreed that the plaintiffs were entitled to an injunction requiring an immediate end to desegregation. Writing for the panel, Tuttle drafted an injunction and directed Judge Scarlett to enter it. This extraordinary relief, Tuttle wrote, was authorized by the All-Writs Act, a statute "meant to be used only in the exceptional case where there is clear abuse of discretion or usurpation of judicial power." Tuttle found the federal district court derelict in denying the plaintiffs' motion for injunctive relief. Since *Brown* was the law of the land Tuttle reasoned, the district court had no other course of action but to require the board to desegregate its schools. Judge Scarlett's intransigent refusal to provide the plaintiffs the relief they were entitled to brought the case well within the reach of the All Writs Act.[60]

Public Accommodations: Upholding the 1964 Civil Rights Act

African American mass demonstrations, televised racial violence, and the federally enforced desegregation of higher education institutions, as well as the black passive resistance movement of the early 1960s led to the adoption of the landmark Civil Rights Act of 1964. Considered the most comprehensive civil rights legislation in U.S. history, the act granted the federal government strong enforcement powers. Title II of the act guaranteed racial and religious minorities equal access to public accommodations. Within months of its passage, the act was challenged.

Heart of Atlanta Motel v. United States (1964 – Circuit Judge Tuttle, District Judges Hooper and Morgan)

In *Heart of Atlanta Motel*, the owner, whose motel served mostly transient interstate travelers and who refused to serve blacks, claimed that prohibiting racial segregation in public accommodations exceeded Congress's powers under the Commerce Clause and violated the Fifth Amendment's Due Process Clause and the Thirteenth Amendment as being involuntary servitude. Heard in the Atlanta courthouse, before Judge Tuttle and District Judges Frank A. Hooper and Lewis R. Morgan, their ruling upheld Title II and enjoined the motel from discriminating on account of race. The Supreme Court unanimously confirmed the decision. Along with a

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[56] Bass, *Unlikely Heroes,* 221; *Hall v. St. Helena Parish School Board,* 197 F. Supp. 649 (E.D. La, 1961), affirmed 368 U.S. 515 (1962); *Hall v. West*, 335 F.2d 481 (5th Cir. 1964).
[57] *Hall v. West*, 335 F.2d at 482.
[58] Read and McGough, *Let Them Be Judged*, 163.
[59] *Stell v. Savannah-Chatham County Board of Education,* 318 F.2d 425 (5th Cir. 1963).
[60] Ibid., at 426.

companion case involving a restaurant, *Heart of Atlanta*, served "as a major constitutional test of the public accommodations provisions (Title II) of the Civil Rights Act of 1964 as well as an important reaffirmation of Congress's broad powers under the Commerce Clause."[61] For the most part, the Civil Rights Act of 1964, its validation by the Supreme Court, and its enforcement by the Justice Department succeeded in wiping out official segregation in public accommodations.

Voting Rights: The 1960s and Speed Over Deliberation

As the fight for equal rights expanded beyond school desegregation, Martin Luther King Jr. exclaimed that the "central front" belonged to suffrage: "If we in the south can win the right to vote it will place in our hands more than an abstract right. It will give us the concrete tool with which we ourselves can correct injustice." The Executive Branch shared in promoting the franchise—hoping the fight would take place in the courts, rather than the streets as was happening with efforts to desegregate public accommodations. According to Arthur Schlesinger, by 1960 many held the view that "the franchise was the keystone in the struggle against segregation. Negro voting did not incite social and sexual anxieties; and white southerners could not argue against suffrage for their Negro fellow citizens with quite the same moral fervor they applied to the mingling of races in schools. Concentration on the right to vote, in short, seemed the best available means of carrying the mind of the white South. Then, once Negroes began to go to the polls, politicians would have to temper their views or lose their elections."[62]

The battle over voting rights grew intense. As Judge Tuttle described: "At the very moment when the Negroes were being imbued with a desire to participate fully in governmental and public affairs and to enjoy all of the fruits of citizenship, state officials, both high and low, were devising new means to deny them these same rights. New requirements were devised for limiting the franchise, which, if objectively administered, would prevent all but the most highly educated members of the community from being registered to vote in the future."[63]

After the Supreme Court's *Brown* decision, "a true threat to the system of white political domination in the South caused legislators and other officials of many of the Southern states to seek new methods to prevent massive registration by the theretofore disfranchised group." White political leadership would make every effort to thwart the tide. "Thus," stated Judge Tuttle, "a collision course was laid out."[64]

The Civil Rights Act of 1957 had given the Justice Department authority to seek civil injunctions to block discriminatory practices by southern registrars. It also elevated the Civil Rights Section into a division within the Justice Department to give it greater resources.[65] But, as John Doar, Assistant Attorney General for the Department of Justice's Civil Rights Division from 1960 to 1967, noted, distinguished constitutional lawyers believed that the federal government lacked the power to regulate voter qualification; it was widely thought that "voter qualifications were the exclusive domain of the separate states." Because of this uncertainty, Attorney General William "Bill" Rogers decided that the Division "should proceed cautiously until the Supreme Court

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[61] Kermit L. Hall (ed.), *The Oxford Companion to the Supreme Court of the United States* (New York: Oxford University Press, 1992), 369; *Heart of Atlanta Motel v. United States*, 231 F. Supp. 393 (N. Dist. Ga. 1964); 379 U.S. 241 (1964). In the companion case, *Katzenbach v. McClung*, 379 U.S. 294 (1964) the U.S. Supreme Court reversed a three-judge district court opinion (cir. judge Walter Pettus Gewin, dist. judges Seybourn Harris Lynne & Harlan Hobart Grooms), 233 F. Supp. 815 (N. Dist. Ala. 1964) as applied to a restaurant.

[62] Schlesinger, *A Thousand Days*, 935.

[63] Tuttle, "Equality and the Vote," 250.

[64] Ibid.

[65] Susan Cianci Salvatore, Steven F. Lawson, Peter Iverson, and Neil Foley, *Civil Rights in America: Racial Voting Rights Theme Study*, (Washington, DC: National Park Service, 2007, rev. 2009), 40.

decided the extent of federal authority over voting."[66] The pace quickened with the enactment of the Civil Rights Act of 1960, which required election officials to maintain all election and voting records and produce them upon demand for inspection by the Justice Department, and the appointment of Robert Kennedy as Attorney General. Kennedy had the means to accelerate registration by first proving past voter discrimination and then adding all those applicants to the voting rolls whose qualifications meet those of the officially aggrieved. The act also stipulated that a state, as well as an individual, could be sued.[67]

During these years, the Division faced resistance in trying these cases before certain federal district judges. One such prime example is *United States v. Mississippi*.[68] On October 12, 1963, Doar wrote judges Cameron, Brown, and Cox, who were assigned to the case, with the case's chronological history. He also requested that the court give the case immediate attention. Judge Harold Cox replied with an admonishment that he was already familiar with the chronology of the case and added:

> If you need to build such transcripts for your boss man, you had better do that by interoffice memoranda because I am not favorably impressed with you or your tactics in undertaking to push one of your cases before me. I spend most of my time in fooling with lousy cases brought before me by your department in the civil rights field, and I do not intend to turn my docket over to your department for your political advancement.[69]

As had been the case with school desegregation, the Fifth Circuit faced repetitive voting cases. Despite the clarity of the law's requirements, all too many registrars refused to fulfill their constitutional obligations until individually ordered—which meant county by county litigation. Tuttle described how it fell upon the appellate courts to go beyond what had "been usual in American jurisprudence," and "fashion means to give effect to principles of law, once firmly established, much more rapidly than would be possible if full sway were allowed to the normal procedural maneuvering."[70] "Prompt hearings in the district courts, accelerated settings of appeals in the appellate courts, and temporary relief by way of injunction when the law was clear finally made it plain that the prize of delay could no longer be won."[71] In the early to mid-1960s, decisions rendered in voting rights cases by the Fifth Circuit Court of Appeals "significantly tightened its authority over recalcitrant district court judges by making major breakthroughs in legal procedure."[72] Two of the breakthroughs were "ordering an immediate issuance of the mandate of the court" and issuing "injunctions pending appeal."

<u>*Kennedy v. Bruce* (1962 – Circuit Judges Rives, Wisdom, and Tuttle (author)</u>

Kennedy v. Bruce[73] is one of the numerous cases of "disobedience of higher courts by a southern district judge in civil rights litigation." In this case a district judge continued to deny Attorney General Kennedy's request "to produce county voting records some sixteen months after the request was made."[74] On May 9, 1960, Kennedy had petitioned the federal district court in Alabama for an order permitting inspection of the Wilcox County voting records where none of the 6,085 Negro citizens of voting age was registered, but "the list carried the

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[66] John Doar, "The Work of the Civil Rights Division in Enforcing Voting Rights Under the Civil Rights Acts of 1957 and 1960," 25 *Florida State University Law Review* 1 (1997): 1.
[67] Donald S. Strong, *Negroes, Ballots, and Judges: National Voting Rights Legislation in the Federal Courts* (Tuscaloosa: University of Alabama Press, 1968), 7, 15.
[68] Doar, "Work of the Civil Rights Division," 1.
[69] Ibid., 10.
[70] Tuttle, "Equality and the Vote," 257.
[71] Ibid., 264.
[72] Bass, *Unlikely Heroes*, 218.
[73] *Kennedy v. Bruce*, 298 F.2d 860 (5th Cir. 1962).
[74] Ibid., Notes and Comments, "Judicial Performance in the Fifth Circuit," 97.

names of more white people than the white voting age population of the county." The registrar testified that no African Americans had been denied the right to register to vote in his county and the district court denied the Attorney General's request to inspect the records.

Writing for a panel that included judges Rives and Wisdom, Tuttle found "that the registrar's testimony was incredible in light of the disparity between the percentages of white and black potential voters on the registration books."[75] The Fifth Circuit panel reversed the lower court and "authorized the Justice Department to examine local voter registration lists when there were reasonable grounds to think that some citizens were being denied the right to vote." The *Kennedy* case established the authority of the U.S. Justice Department to request and receive a court order to inspect voting records of any given county.[76] Moreover, noting that over two years had elapsed since the Attorney General first sought the right to inspect the records; the court ordered its decision effective immediately. As Judge Tuttle stated, "Ordering an immediate issuance of the mandate is the first unusual procedural means that our court devised for this purpose."[77]

<u>*United States v. Lynd* (1962 – Circuit Judges Tuttle (author), Wisdom, and Hutcheson)</u>

"The case of *United States v. Lynd,*" Tuttle explained in a 1966 address, "demonstrates a second procedural innovation by which the Fifth Circuit has given much prompter effect to rights which the court concludes are clearly overdue. This is the granting of an injunction *pending appeal* by the court of appeals."[78] In July 1961, the U.S. Justice Department brought suit against Theron Lynd, the Circuit Clerk and Registrar of Voters for Forrest County, Mississippi, for systematically denying African Americans the right to vote since he took office in 1959. Relying on the Civil Rights Act of 1960, Assistant U.S. Attorney John Doar had formally requested on August 11, 1960, that Lynd open his registration records to federal inspectors. Lynd refused to do so. On January 19, 1961, Doar filed an enforcement proceeding with District Court Judge Harold Cox of the Southern District of Mississippi. Under the law, Judge Cox should have entered an order granting Doar's request; instead he did nothing. After six months had passed, on July 6, 1961, Doar filed suit seeking a temporary injunction allowing inspection of the records, this time relying on Rule 34 of the Federal Rules of Civil Procedure. In February 1962, Judge Cox dismissed the enforcement proceeding, calling it "abandoned." From March 5 to 7, 1962, John Doar presented evidence at a hearing on his request for an injunction; when the government rested, Theron Lynd and the State of Mississippi reserved the right of cross examination and asked for thirty days in which to prepare their defense. Judge Cox ordered a thirty-day recess. Fourteen months had now passed since the government had sought to enforce the right to inspect the voting records, relief which should have been granted automatically. Instead, Judge Cox continued to decline to rule on the merits.

Realizing that relief could simply be delayed forever, John Doar filed an appeal asking the Fifth Circuit Court of Appeals to issue an injunction pending appeal. Fifth Circuit Judges Tuttle, Wisdom, and Hutcheson heard oral argument in the New Orleans courthouse and issued their ruling on April 10, 1962; they relied on Rule 62(g) and the All-Writs Act for the authority to provide the relief requested. Authored by Tuttle, the panel's opinion found Cox's refusal to rule had amounted to a denial, and therefore could be appealed.[79] The judges then issued an injunction requiring Lynd to cease discriminatory practices. Lynd's attorneys appealed to the Supreme Court for a reversal of the Circuit Court's decision and to rescind the injunction. On November 5,

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[75] Couch, *History of the Fifth Circuit*, 115.

[76] Ralph E. Luker, *Historical Dictionary of the Civil Rights Movement* (Lanham, MD: The Scarecrow Press, Inc., 1997), 144 including quote; 298 F.2d 860 (5th Cir. 1962); PreCYdent, 298 F.2d 860 Kennedy v. Bruce.

[77] Tuttle, "Equality and the Vote," 257.

[78] Ibid., 257-58. An injunction is a court order prohibiting or ordering a given action.

[79] Read and McGough, *Let Them Be Judged*, 187; Bass, *Unlikely Heroes*, 217, 219.

1962, the Supreme Court declined to review the Fifth Circuit's decision, leaving it in force.[80] The ruling in *United States v. Lynd* changed the internal working structure of the federal judicial system: "Not only did the action put all district judges on notice that attempts to delay by postponement and inaction would not be tolerated, but it radically altered the existing concept of an injunction pending appeal. For the first time, a circuit court issued an injunction, pending appeal, that did more than freeze the status quo…they enjoined the registrar from continuing discriminatory practices, thus changing the status quo to prevent abuse of legal rights—in this case the right of Negroes to register to vote."[81]

Conclusion

Scholarly and professional opinions concur on the impact the U.S. Fifth Circuit Court of Appeals made on the modern civil rights movement. Speaking of the judges known as "The Four"—Wisdom, Tuttle, Brown, and Rives, LDF attorney Constance Baker Motley noted that these men "all lived long enough to see the New South, which they had helped to create through the judicious use of power."[82] Nicholas Katzenbach, Deputy Attorney General under Robert Kennedy and Attorney General under President Lyndon Johnson, believes that "The Four" were keepers of both the law and peace: "If you hadn't had those judges on the Fifth Circuit…you would have had much more in the way of demonstrations, violence, repression, revolution—that may be too strong a word, but it was moving in that direction. Bobby Kennedy and [others in the Justice Department] …persuaded civil rights leaders to use the judicial process, that it could get them where they wanted to get. I think without the Fifth Circuit, we would never have been able to succeed in doing that."[83]

Scholars echo these accolades. A southern historian and Robert Kennedy Book Award winner, Jack Bass believes the Fifth Circuit judges played a significant role in reshaping the South. Brown, Rives, Tuttle, and Wisdom "moved the federal judiciary in the deep South beyond its role as an institution of law and made the United States Court of Appeals for the Fifth Judicial Circuit an agent for change."[84] The effect this court made on policy was readily evident even in 1963 when Professor Kenneth N. Vines wrote:

> In race relations cases decided in the South after May 1954 the circuit courts reversed nearly half (45 per cent) of all cases appealed to them. This means that policy changes affected in the appeal from district to circuit courts were frequent and important. Far from duplicating the policies adjudicated in the district courts, the circuit courts made substantial revision. The function of appeals was thus not a ritualistic exhaustion of remedies nor a routine repetition of district court processes but an important continuation of the federal court process which affected substantial changes in policy.[85]

In a broad general affirmation, law professors Frank T. Read and Lucy S. McGough assessed the task placed before the Court of Appeals:

> After handing down its *Brown* decision, the Supreme Court—contrary to the belief of many citizens—played only a minimal role in the supervision and guidance of its lower federal courts. Left to its Court of Appeals was the task of translating a vague but revolutionary constitutional command into concrete orders for school boards and federal district courts. In that process the

[80] *U.S. v. Lynd*, 301 F.2d 818 (5th Cir. 1962); *Lynd v. U.S.*, 371 U.S. 893 (1963).
[81] Bass, *Unlikely Heroes*, 219.
[82] Motley, *Equal Justice Under Law*, 134.
[83] Jack Bass, "Faces Turned to the Future," 34 *Houston Law Review* 1492 (Spring 1998): 1507.
[84] Bass, *Unlikely Heroes*, 16.
[85] Vines, "The Role of Circuit Courts of Appeal," 318-19.

> Fifth Circuit was the trail blazer, becoming the nation's greatest tribunal. The story of the evolution of desegregation and race relations law in the twenty years since *Brown* is, then, also the story of one pre-eminent federal Appeals Court.[86]

Biographer and law professor Anne Emanuel described how "The Four" "stood firm in their commitment to enforcing equality under the law and they gave life to the maxim that justice delayed is justice denied. In the segregated south, at a time when federal courts were the only avenue of relief from the oppression of state enforced segregation and state maintained discrimination—not only in education, but also in the voting booth, in employment opportunities, in all manner of public accommodations—the United States Court of Appeals for the Fifth circuit became a beacon of hope and a bulwark of liberty."[87]

As to Tuttle's significance, according to professor and author Jack Bass, Chief Judge Elbert P. Tuttle was a decisive force in transforming the broad directive of the Supreme Court and mandate of *Brown* into racial justice. "As chief judge in the 1960s, Tuttle recognized that state officials were using delay as a tactical weapon in a strategy based on wearing down the outside forces of change, and he and like-minded judges realized that state judges often acted as part of a repressive political system. Led by Tuttle, the Fifth Circuit pioneered procedures to remove civil rights cases from the state courts and ordered recalcitrant and reluctant federal district judges to act and, if necessary, wrote orders for them to issue."[88] Fifth Circuit Court of Appeals historian Harvey C. Couch affirmed Bass's view stating, "In fashioning interim relief and expeditious appeals, Tuttle proved himself determined to carry out the mandates of *Brown* and give real meaning to the equal protection clause."[89]

As significant as Tuttle's judicial reform was to the cause of civil rights, Tuttle's peers believe his leadership was even more important. "His responsibility was characterized by Judge Wisdom as 'shepherding a court of very unsheeplike judges at a time of social ferment, when the court, as an institution, was exposed to severe stresses and strains'."[90] Supreme Court Justice Earl Warren praised his fellow judge thus: "…for his role in this struggle [civil rights], particularly during his years as Chief Judge, Elbert Tuttle must be recognized as one of the great judges of this era."[91] "Judge Tuttle," Warren said, "combined administrative talents with great personal courage and wisdom to assure justice of the highest quality without delays which might have thrown the Fifth Circuit into chaos."[92]

One of the most eloquent assessments of Judge Tuttle's contribution comes from former civil rights activist now Congressman John Lewis, who spoke at Tuttle's funeral:

> As Chief Judge of the old Fifth Circuit, of the old South, Judge Elbert P. Tuttle did more than any lawyer, any member of the bench or bar to liberate the South—to usher in the new south, a new America….[T]his extraordinary man, so good and so decent, prevailed. He had an inner strength—a moral strength born of righteousness—that would not fail. It guided him. Under the rule of law, Judge Tuttle created a new generation in the South.[93]

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[86] Read and McGough, *Let Them Be Judged*, xii.
[87] Emanuel, "Forming the Historic Fifth Circuit," 258-59.
[88] Bass, *Unlikely Heroes*, 20.
[89] Couch, *History of the Fifth Circuit*, 139.
[90] Read and McGough, *Let Them Be Judged*, 44.
[91] Couch, *History of the Fifth Circuit*, 139, quoting from Earl Warren, "A Tribute to Chief Judge Tuttle," 1 *Georgia Law Review* 1 (1967), 2.
[92] Bass, "Judge Elbert P. Tuttle," 60.
[93] Anne Emanuel, *Elbert Parr Tuttle: Chief Jurist of the Civil Rights Revolution* (Athens: University of Georgia Press, 2011), 325.

Comparison of Properties

Some properties associated with Fifth Circuit Appeals Court rulings have received NHL designation. One such NHL, The Lyceum—The Circle Historic District, is associated with the *Meredith v. Fair* (1962) case heard by the Fifth Circuit. This district, located on the University of Mississippi campus, significantly illustrates the determination of the Executive Branch in exercising its authority to enforce the U.S. Constitution and federal court orders when the Kennedy administration federalized National Guard to confront segregationists in a bloody riot over the repeated refusal by the university and the state to comply with the Fifth Circuit's order to admit African American student James Meredith. While this district illustrates the role the Executive Branch played to enforce the Constitution, it is the New Orleans courthouse, where the Fifth Circuit sat *en banc*, that possesses exceptional significance in illustrating the role the Judicial Branch played in this case to confront segregationist delay tactics. This scenario would be similar to any property associated with the cases described herein—where it will be the Atlanta, New Orleans, and Montgomery courthouses that best elucidate the role the Fifth Circuit played in the civil rights movement.

Lastly, during the period of significance, the Fifth Circuit also had a courthouse in Fort Worth, Texas. That courthouse is not under NHL consideration, within the context presented herein, since none of the cases considered crucial to illustrating the Fifth Circuit's preeminent role in the civil rights movement were heard in Fort Worth.

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Woods v. Wright, 8 Race Relations Law Reporter 445 (5th Cir. 1963)
U.S. v. Barnett, 346 F.2d 99 (5th Cir. 1965)
U.S. v. Lynd, 301 F.2d 818 (5th Cir. 1962)

Previous documentation on file (NPS):

__ Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
X Previously Listed in the National Register.
__ Previously Determined Eligible by the National Register.
__ Designated a National Historic Landmark.
__ Recorded by Historic American Buildings Survey: #
__ Recorded by Historic American Engineering Record: #

Primary Location of Additional Data:

__ State Historic Preservation Office
__ Other State Agency
__ Federal Agency
__ Local Government
__ University
__ Other (Specify Repository):

10. GEOGRAPHICAL DATA

Acreage of Property: About one acre

UTM References:	**Zone**	**Easting**	**Northing**
	16	741730	3730000

Verbal Boundary Description:
The boundary includes the entire block the building encompasses between Poplar, Fairlie, Walton, and Forsyth Streets.

Boundary Justification:
The boundary includes the building that has historically been associated with the Federal courthouse and which maintains its integrity.

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DESIGNATED A NATIONAL HISTORIC LANDMARK
JULY 21, 2015

APPENDIX A. SUMMARY OF CIVIL RIGHTS CASES

Important 1950s to 1960s civil rights cases argued before the Fifth Circuit Court of Appeals and the District Court for the Middle District of Alabama are the focus of the NHL nominations for courthouses in New Orleans, Atlanta, and Montgomery. For summary and cross-reference purposes, this table lists cases each nomination covers. Judges who authored opinions are underlined.

U.S. Court of Appeals – Fifth Circuit (Wisdom Courthouse), New Orleans, LA	U.S. Post Office and Courthouse (Tuttle Courthouse), Atlanta, GA	United States Post Office and Courthouse (Johnson Courthouse), Montgomery, AL
School Desegregation *Bush v. Orleans* (1956-61) *en banc* (all judges) and district judges. Illustrates every tactic states used to resist desegregation and courts overcame. *Meredith v. Fair* (1962) *en banc.* Case resulted in two Per Curiam rulings (multiple judges acting unanimously) and two opinions by Wisdom. Established Fifth Circuit as the country's major judicial battlefield in civil rights movement. *U.S. v. Jefferson* (1966) Wisdom, Thornberry, Dist. Judge Cox (dissenting). Milestone concept of affirmative action to integrate as opposed to desegregate. (Case noted under *Bush v. Orleans*). **Voting Rights** *Kennedy v. Bruce* (1962) Tuttle, Rives, Wisdom. An immediate issuance of mandate, an unusual procedural means, allowed a mandate to take effect immediately rather than several weeks.	**School Desegregation** *Holmes v. Danner* (1961) Tuttle. To grant immediate relief, Tuttle used the extraordinary procedure of by-passing a Fifth Circuit three-judge panel. *Woods v. Wright* (1963) Tuttle. After school board expelled students marching in Birmingham, Tuttle bypassed a three-judge panel to issue an injunction pending appeal allowing students to finish the school year. *Hall v. St. Helena* (1964) Tuttle, Rives, Wisdom. Court issued a Writ of Mandamus, a mandatory injunction directing an inferior public officer to perform an act required by law when it has refused or neglected to do so. *Meredith v. Fair* (1965) *en banc.* Tuttle advised Executive Branch of the government of its burden to enforce federal court order. *Stell v. Savannah* (1964) Tuttle, Rives, Bell. Ruling provided extraordinary relief under the All Writs Act in exceptional cases of abuse of judicial power by the District Court.	**School Desegregation** *Lee v. Macon County* (1967) Rives, Johnson, Grooms. Ruling mandated state-wide school desegregation rather than a case-by-case basis. **Public Accommodations** *Browder v. Gayle* (1956) Johnson, Rives, District Judge Lynne. Ended 1955 Montgomery Bus Boycott. *U.S. v. Klans* (1961) Johnson. To enforce federal court orders, federal government mobilizes federal marshals during 1961 Freedom Rides. **Voting Rights** *Gomillion v. Lightfoot* (1959) Jones, Wisdom, Brown (dissenting). Brown's opinion, upheld by U.S. Supreme Court, helped pave way for voting rights reapportionment. *U.S. v. Alabama* (1961) Johnson's "freezing principle" essentially negated literacy tests. *U.S. v. Woods* (1961) Rives, Brown, Cameron (dissenting). Foreshadowed injunction pending appeal remedied in *U.S. v. Lynd* (1962) to prohibit discrimination pending appeal to the circuit court.

U.S. v. Lynd (1962) Tuttle, Wisdom, Hutcheson. Procedural innovation altered the concept of injunction pending appeal to prohibit discrimination against black voter registration pending appeal to the circuit court. *U.S. v. Louisiana* (1963) Wisdom, district judges Christenberry & West (dissenting). Wisdom's doctrinal defense of the "Freezing Principle," first employed by District Judge Johnson, served as the framework for Supreme Court affirmation and influenced the Voting Rights Act of 1965.	**Public Accommodations** *Heart of Atlanta Motel v. U.S.* (1964) Tuttle, District Judges Hooper and Morgan. Confirmed constitutionality of the 1964 Civil Rights Act. **Voting Rights** *Kennedy v. Bruce* (1962) Tuttle, Rives, Wisdom. Court devised immediate issuance of mandate procedure to make decision effective immediately. *U.S. v. Lynd* (1962) Tuttle, Wisdom, Hutcheson. Demonstrates procedural innovation in granting injunction pending appeal.	*Williams v. Wallace* (1965) Johnson allowed Selma-to-Montgomery march to continue under "proportion principle," a pioneering concept that defined the right to demonstrate. **Jury of Peers** *Goldsby v. Harpole* (1959) Rives, Brown, Wisdom. *Seals v. Wiman* (1962) Rives, Brown, Wisdom. These two cases established principle of right to jury of one's peers.

APPENDIX B. FIFTH CIRCUIT JUDGES, INNOVATIONS, AND ACCOMPLISHMENTS

Until 1981, the U.S. Fifth Circuit Court of Appeals covered the states of Louisiana, Alabama, Georgia, Texas, Mississippi, and Florida. In 1960, the court consisted of one judge in all these states except for Texas with two judges.

Terms served on the Fifth Circuit by "The Four:"

- Richard T. Rives: (LA, 1951-1966, Chief Judge 1959-1960, Senior Judge (semi-retired) 1966-1981, transferred to Eleventh Circuit in 1981)
- Elbert P. Tuttle: (GA, 1954-1968, Chief Judge 1960-1967, Senior Judge 1968-1996, transferred to the new Eleventh Circuit in 1981)
- John R. Brown: (TX, 1955-1984, Chief Judge 1967-1979, Senior Judge 1984-1993)
- John M. Wisdom: (LA, 1957-1977, Senior Judge 1977-1999)

Other Fifth Circuit judges holding term at some point during the period of significance (1956-1967):

- Joseph Hutcheson (TX, 1931-1964)
- Wayne G. Borah (LA, 1949-1956)
- Benjamin F. Cameron (MS, 1955-1964)
- Warren Leroy Jones (FL, 1955-1966)
- Griffin Bell (GA, 1961-1976)
- Walter P. Gewin (AL, 1961-1976)
- William H. Thornberry (TX, 1965-1978)

Innovations or extraordinary procedure used by the Fifth Circuit:

- Injunction Pending Appeal
- Proportion Principle
- Writ of Mandamus
- Freezing Principle
- Affirmative Action
- Immediate Issuance of Mandate
- All Writs Act

Accomplishments and associated milestone events:

- Expanded school desegregation and voting rights cases from county-by-county to statewide
- Achieved trial of jury by peers
- Paved way for voting rights apportionment
- 1955 Montgomery Bus Boycott – extended principle of *Brown* to public transportation
- 1961 Freedom Rides
- University of Mississippi desegregation (Meredith)
- 1965 Selma-to-Montgomery march – established proportional principle

Photo 1. Forsyth Street elevation to the right and Walton Street elevation to the left. Photo by Gene Ford, March 16, 2006.

Photo 2. Fairlie Street elevation showing the two ends of the U-shaped courthouse building. The iron span between the ends fronts a courtyard. Photo by Gene Ford, March 16, 2006.

Photo 3. View of the Great Hall. Photo by Gene Ford, March 16, 2006.

Photo 4. View to bench of the Fifth Circuit Courtroom (now the Eleventh Circuit Courtroom) for three-judge panels. Photo by Gene Ford, March 16, 2006.

Photo 5. View of courtroom seating and entry to Fifth Circuit courtroom.
Photo by Gene Ford, March 16, 2006.

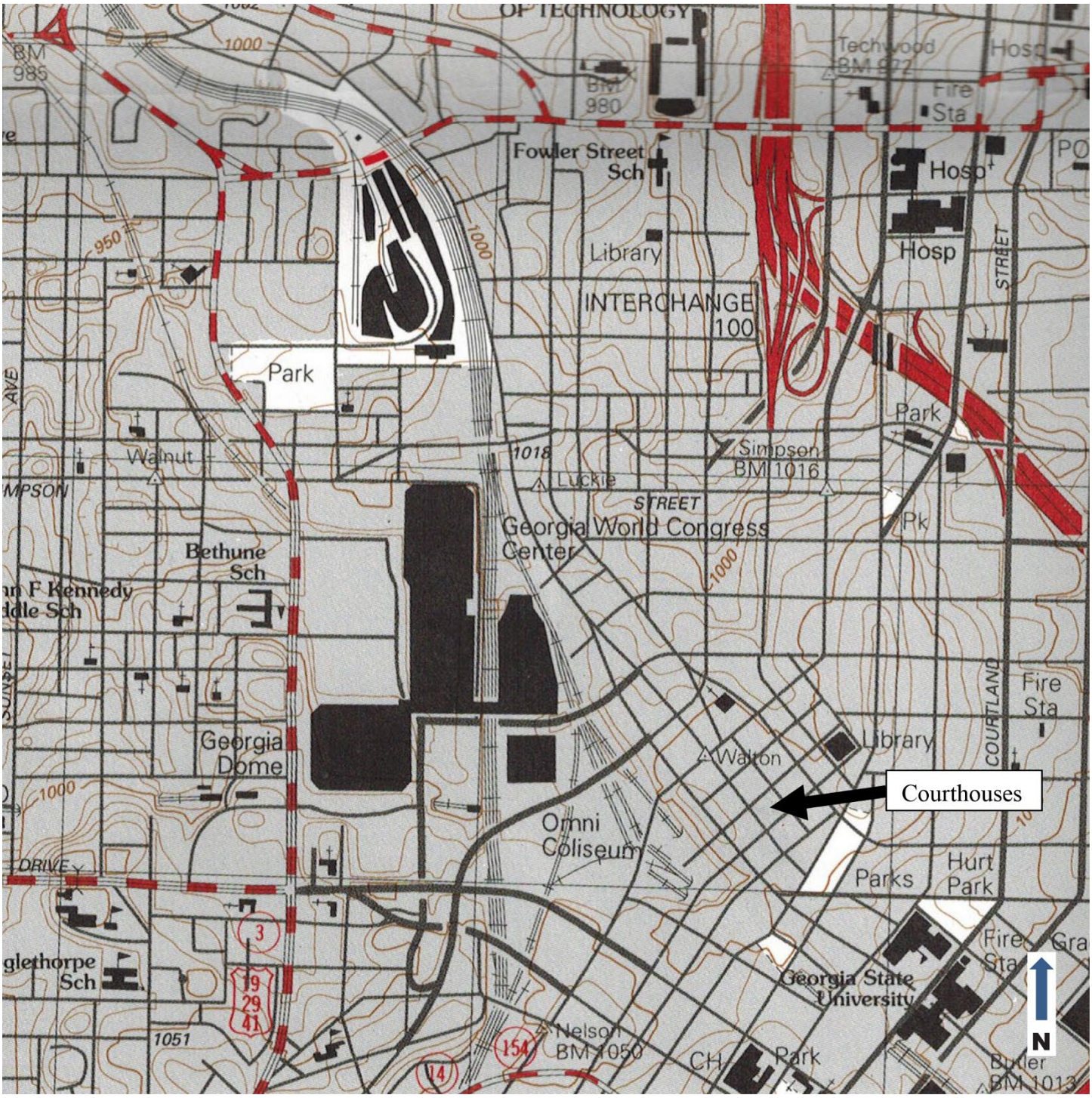

Figure 1. U.S.G.S. Northwest Atlanta Quadrangle, 1997.

UTM Coordinates

Zone	Easting	Northing
16	741730	3730000

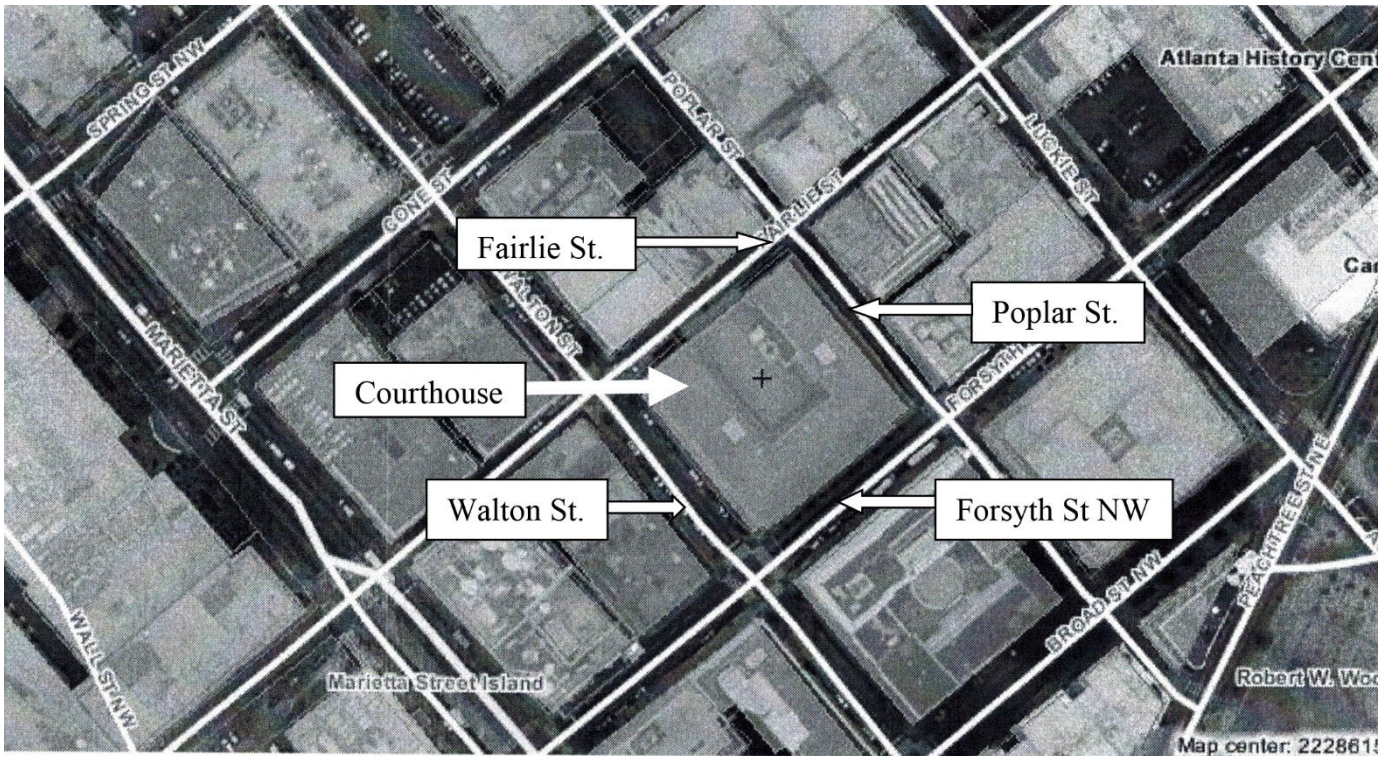

Figure 2. Courthouse aerial view. Source: City of Atlanta, GIS