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## A Tribute to Hon. George Bundy Smith -- A Friend and Colleague

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## A Tribute to Hon. George Bundy Smith -- A Friend and Colleague

**Cover Page Footnote**

Richard Wesley is a Circuit Judge on the United States Court of Appeals for the Second Circuit.

## **A TRIBUTE TO HON. GEORGE BUNDY SMITH**

### **A FRIEND AND COLLEAGUE**

*Richard C. Wesley\**

Dean Treanor, former and present colleagues, friends and family of Judge Smith, and our honoree, Judge George Bundy Smith. It is a distinct honor and pleasure to share a few thoughts with you about my friend, George Smith. I suspect that I have been given this assignment as a result of some lobbying by the Chief Judge for she, like all great Chief Judges, is always aware of what goes on in her court. Indeed, she has been a witness to some of the George and Dick escapades that I hope will some day be a part of the lore of Eagle Street, much like the continuing search for Ben Cardoza's socks. Judith was there on that fateful morning in Washington Park when George, responding to my challenge that I would thrash him in a game of tennis, cleaned my clock. George, you never gloated over that victory and I am grateful for it. I think it plain that my task here tonight is to give a personal perspective on George Smith—friend and colleague.

I remember well the first time I met George Smith. On January 1, 1995, my wife and I traveled to Albany to participate in the Inaugural Ceremonies for our newly-elected Attorney General Dennis Vacco. I was an associate justice of the Appellate Division Fourth Department at the time. George and Alene Smith made a similar journey that day as George had been asked to administer the oath of office to Comptroller-elect Carl McCall. As luck would have it, the Smiths and the Wesleys found themselves seated next to each other on the dais that morning. I confess I was a bit worked up. The convention center was full—it was a day of celebration. Good Lord even Howard Stern was up on the dais with us. As is often the case when I get a bit excited, I started to talk—a common trait for country folk. Here is a verbatim transcript of my first conversation with George Bundy Smith:

Judge Wesley: “Judge Smith my name is Dick Wesley. I sit on the Fourth Department. Isn't this just fabulous? It is so exciting

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2007]

*A FRIEND AND COLLEAGUE*

1157

to see all these people here to celebrate the changing of the guard? Don't you agree Judge Smith?"

Judge Smith: (quietly) "Yes."

Judge Wesley: "I see you are going to swear in Comptroller McCall—do you know him?"

Judge Smith: (still quietly) "Yes."

Judge Wesley: (now breathless) "Well I think it is just glorious. I see your colleagues are all gathered down in front. My wasn't it cold this morning coming in to the hall?"

Judge Smith: "Yes, it was."

I turned to Kathy Wesley, convinced that I had doomed all future Wesley opinions appealed to the High Court, and announced, "He hates me!"

Our paths did not cross again until December 7, 1996—the day following my nomination to the Court of Appeals by Governor Pataki. Judge Smith and my other colleagues all called that day to wish me well and welcome me to the Court. He was warm and gracious—I presumed he had not recalled that I was the blabber mouth who sat next to him almost two years earlier.

Shortly after I started my work at the Court, I resolved that I would get to know George better—I had read about his work in the civil rights movement and was fascinated at the prospect of hearing about his life in the mid-1960s working for the NAACP (National Association for the Advancement of Colored People) Legal Defense Fund. But as we all know, George Smith is a man of few words—he gives new meaning to the word "laconic." I know of no better way to get to know someone than to break bread with them, thus I proposed to George that we eat breakfast together promptly at 8:00 A.M. every morning that the Court was in session, and he accepted.

At first the conversations were quick, short exchanges about the weather, sports, or a case we were considering. Al Rosenblatt would join us just a year later. Soon we began to shift to talking about our families—George is a very loving husband and proud father—and later politics. Eventually he told us bits and pieces about his time with the NAACP, litigating desegregation cases in the South, and how he was treated.

My friend is a personal and private fellow. George Smith is the embodiment of the principles he holds most dear. He is not vain. In addition to his undergraduate and law degrees he holds a Ph.D. and Masters degree from New York University and a Masters de-

gree from the University of Virginia; he has studied in Paris and at Yale but never flaunts his academic accomplishments. He never seeks to draw attention to himself although he knows his life story is an inspiration to others. He is thoughtful and careful not to offend, but he is steadfast in his views on the law and the path of justice. George does things on the merits.

Over the years, I treasured my time with him in the morning. I rewarded his friendship by constantly teasing him about current events or little personal tidbits he mentioned at the breakfast table—I promised him I would not reveal tonight any of those secrets he imparted to us over his cereal and toasted English muffin. As always George was good natured about my foolishness. I suspect that he even enjoyed it.

On September 11, 2001, I was sitting in the breakfast room at the court waiting for George. It was a stunningly beautiful day—I had been out for an early morning run and was anxious to see my friend. George came in very upset and told me that a plane had hit the World Trade Center. Later that day we gathered in the conference room and George led us in prayer. George Bundy Smith is a man of great faith. It obviously gives him great comfort and yet as with all things Smith, it enriches him and those who know him without flash or flourish.

In 1998, the Chief asked George and I to interview the candidates for the Chair of the Board of Law Examiners. I am not sure how Judith decided on George and me, but we both were happy to do the job. Over the next few years George and I became the “dynamic duo” of the Court. We interviewed applicants to head up the Law Reporting Bureau and two more positions on the Board of Law Examiners. It was my view that I was to soften the candidate up with my usual banter and then George moved in for the kill. During the entire time we performed that task for the Court we never once disagreed on whom we should recommend. I confess I still wonder about that today. Two people could not be from more divergent paths. George was born in Mississippi and raised in Washington, D.C. during segregation. I came from a rural, upstate all-white community. George was all city and I was all country, and yet when it came to people we used the same lens.

I have always found it somewhat curious that George was viewed as the “most liberal” judge on the Court. That moniker is hard for me to understand. When one looks at the opinions of George Bundy Smith it is apparent that they are a perfect reflection of George Smith the man. They are forceful but never over-

stated. They reflect careful consideration and seek not to draw attention to the author, but to shine a bright light on the merits of the matter at hand. Given our time constraints, I mention but one. In *People v. Wesley*<sup>1</sup>—yes that’s right Wesley—Judge Smith wrote a majority opinion for the Court approving the use of DNA evidence *against* a defendant. The opinion is well reasoned and thorough—Judge Smith would later author an article in the *Fordham Law Review* on the same subject.<sup>2</sup> What strikes me is the irony of Judge Smith’s opinion in opening the door for DNA evidence to *convict* a defendant when today that very same type of evidence is so often used to vacate the convictions of innocent defendants. It shows me that Judge Smith’s belief in the law and the judicial process is well founded. *Principles* are George Smith’s North star. Adherence to what is right and true will always work for ultimate good.

I want to end this short tribute to my friend with the tale of two pictures that hang in my chambers. One is a picture taken by a college friend of mine during a trip we took along old U.S. Highway #1 in 1969. Just outside Jericho, North Carolina was a huge red billboard that read, “You are in the heart of Klan Country, Welcome to North Carolina, Join the United Klans of America, Inc. Help fight integration and communism.” When I first saw that sign in 1969, it scared me to death. That sign represents a dark and horrible part of our history. George Bundy Smith knew what life was like in the South when I was traveling down that road.

In 1961, at the request of Reverend William Sloan Coffin, George Smith left Yale Law School before his second year final exams and joined the Reverend and two others to ride on a bus in Alabama to test local Jim Crow laws used to discriminate against those traveling in interstate commerce. Violence broke out along the way and as the bus came in to Montgomery, Alabama its police motorcycle escort pulled away, leaving the riders exposed to the angry mob gathered at the bus depot. George’s twin sister Inez Smith Reid, a judge herself, recounts that

Rev. Coffin looked at George who sat by him and “was amazed to see his nose still in [a law book on] Future Interests. ‘Aren’t you nervous, dope’ Rev. Coffin asked affectionately,” “George glanced out of the window, then at [Rev. Coffin]. He grinned.

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1. 83 N.Y.2d 417, 430 (N.Y. 1994).

2. See generally George Bundy Smith & Janet A. Gordon, *The Admission of DNA Evidence in State and Federal Courts*, 65 *FORDHAM L. REV.* 2465 (1997).

‘Sticks and stones can break my bones’ he said, ‘but law exams can kill me.’”<sup>3</sup>

The next day George, Rev. Coffin, Rev. Ralph Abernathy, and others were arrested and George spent a number of days in jail—you can see George’s mug shot on [smokinggun.com](http://smokinggun.com). His conviction was later overturned by the United States Supreme Court.<sup>4</sup> I keep that picture of the billboard in my chambers to remind myself—and any one else who might ask—that *Brown v. Board of Education*<sup>5</sup> was just the beginning of a long judicial battle against racial injustice in this nation. George knows much of the journey. Indeed Dean Treanor once said of Judge Smith that he is “someone whose life story and whose profound and inspirational commitment to the cause of racial justice are inextricably linked with the legacy of *Brown*.”<sup>6</sup>

The second picture is of my friend George Bundy Smith. It was taken as a possible press photo at the Court. Brother George is smiling and thus he refused to allow it to be substituted for his usual stern faced, all-business look. However he did agree to give it to me and inscribed it to me as friend and colleague. George has a gentle sweet smile, it is vintage George. The smile is genuine but not overstated. It reflects strength and humility. It is the face of a great American. That picture daily reminds me that giants walk the earth not with the sound of thunder but with the quiet dignity of selfless dedication to what is right and just. So it is with George Bundy Smith.

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3. Inez Smith Reid, *From Birth to the Bench: A Quiet but Persuasive Leader*, 68 ALB. L. REV. 215, 218-19 (2005).

4. See *Abernathy v. Alabama*, 380 U.S. 447 (1965).

5. 349 U.S. 294 (1955).

6. John D. Feerick, *George Bundy Smith—A Good Lawyer*, 68 ALB. L. REV. 207, 207 (2005).