

Book Review

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**GOODBYE MIKE,
HELLO JUDGE:
MY JOURNEY FOR JUSTICE**

BY MYRON H. BRIGHT

*North Dakota Institute for Regional Studies
Press, Fargo, ND, 2014. 174 pages, \$30.00.*

Reviewed by Dennis M. Kelly

Judge Myron H. Bright was appointed by President Lyndon Johnson in 1968 and is now the longest serving judge on the U.S. Court of Appeals for the Eighth Circuit. Still active at age 96, he has heard more than 6,500 cases in more than 46 years on the bench. His autobiography is a fascinating account of the often contentious process behind some of his major decisions. It is also a compelling story of a soldier, lawyer, and judge, told with the wisdom of almost a century of life.

Born in 1919, the son of Jewish immigrants, Bright was raised on the Iron Range of Minnesota. He spent his early years working in his father's store in Eveleth, Minnesota, where he learned to appreciate the ethnic diversity of a community of immigrants who worked in the mines. In 1939, he enrolled at the University of Minnesota Law School but soon interrupted his studies for service in the U.S. Army Air Corps in India.

As one of the increasingly fewer members of the "greatest generation," Bright shares his remarkable personal recollections of his World War II days. Many of his experiences involved courts martial, such as the one of a soldier charged with using a military vehicle without permission. The soldier, whom Bright defended, said that he had responded to a request for help in retrieving a stranded vehicle, thus supporting a defense of implied consent to use the military vehicle in an emergency. The soldier, however, did not remember the name of the person who had sought his help. So Lt.

Bright placed a notice on a billboard and waited for the witness to come forward. The witness quickly appeared, and the soldier was found not guilty. Some months later, Bright learned that the testimony had been false, that it was "a put-up job." He couldn't believe that he had been so easily deceived. But the lesson served him well over the years: "Don't trust your client or his witnesses to tell the truth; they may lie. Dig out the facts. Find the truth."

Bright completed law school after the war and began a successful career as a trial lawyer in Fargo, North Dakota. The first five years was a learning period of trying and often losing cases despite long hours and careful preparation. "By losing cases, I learned," he writes. He adds that a lawyer should not tell a jury what to do. "Show them the road. Let them decide. Statements such as 'is that reasonable?' or, after mentioning an important fact, 'what do you think?' often got the jury agreeing with me."

Bright and his wife, Fritzie, were liberal Democrats in historically Republican North Dakota. Having established a reputation as a trial lawyer, Bright, with Fritzie's strong support, jumped into the world of politics in the late 1950s, an endeavor for which Fritzie possessed a natural flair. They were essential in bringing about the close and unexpected election to the U.S. Senate of Democrat Quentin Burdick in 1960, and the election of a Democratic governor, William Guy. In 1960, they also led the charge in Fargo for John F. Kennedy for President. Those were exciting times, and, more than 50 years later, Bright remembers even seemingly insignificant events. One involved North Dakota's blue laws, which barred the sale of alcohol on Sundays. Candidate Kennedy liked to have two bottles of Heineken beer with his dinner, but his Fargo hotel could not provide them on Sundays. Fritzie's trip to a local store on Saturday solved the

problem, and Kennedy's visit was a great success.

With Senator Burdick's strong support, President Johnson nominated Bright to the Eighth Circuit. He recounts in detail his 1968 meeting at the White House with Johnson and Burdick—the Rose Garden tour; the room with three portable television sets, each tuned to a different network; and the quintessential Johnsonian advice: "[W]hen you're a circuit judge, while you can't be active in politics, you better get your cousins and kinsmen to remember the man who got you where you are."

Goodbye Mike, Hello Judge centers on Bright's career on the bench. He brought to the court a liberal judicial philosophy and a determination to "stand up and be counted" when he knew he was right. Often in the minority, particularly in later years, he has left a lasting imprint on the law, in cases such as *Reserve Mining Co. v. EPA*, 514 F.2d 492 (8th Cir. 1975), which balanced a scientifically uncertain rush to close a Minnesota mine for environmental reasons and the hardship to potentially displaced workers, whose plight he knew all too well from his years on the Iron Range. "Having known of and felt unfair discrimination myself, I have a concern that I should do all that I can do to limit or eradicate wrongful discrimination under law." In *Green v. McDonnell Douglas Corp.*, 463 F.2d 337 (8th Cir. 1972), Bright formulated the rule that the U.S. Supreme Court unanimously adopted in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Once the plaintiff in a Title VII case demonstrates that he belongs to a racial minority; that he applied and was qualified for a job for which the employer was seeking applicants; and that, despite his qualifications, he was rejected and the employer continued to seek applicants, then the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason

for the rejection and to show by competent evidence that the reasons were not pretextual. Green was a critical step in the fight against employment discrimination and truly deserves the appellation “landmark case,” having been cited more than 132,000 times by courts throughout the country.

Bright tells the remarkable story of James Dean Walker, who was wrongfully convicted of the 1963 murder of an Arkansas police officer and sentenced to death. Walker was freed in 1985 because of Bright’s refusal to give up when he knew he was right. *Walker v. Lockhart*, 763 F.2d 942 (8th Cir. 1985). Bright comments, “I don’t know anybody who can get any more pleasure than I did from feeling that there was a life saved.” A South Dakota prisoner—a habitual offender sentenced to life without parole for passing a bad check—also benefitted from the judge’s refusal to tolerate injustice. *Helm v. Solem*, 684 F.2d 582 (8th Cir. 1982). Although it was his seventh nonviolent felony, the penalty did not fit the crime. Against the existing precedent, Bright found the sentence cruel and unusual. He writes: “An imaginative judge seeking to do justice in a case even when precedent seems against a proper result must and should find a way to do justice within the law.” Bright was vindicated and surprised when the Supreme Court affirmed that decision in *Solem v. Helm*, 463 U.S. 277 (1983).

Given his aversion to unjustifiable prison sentences, it is not surprising that Bright’s biggest disappointment is the lack of progress pushing back on the federal sentencing guidelines, particularly as they apply to Native Americans, who are subject to federal penalties for crimes committed on reservations that may be vastly disproportionate to state court sentences. He wrote a series of opinions demonstrating the unreasonableness of the guidelines, which in this book he calls “part of a topsy-turvy world of sentencing.” He complains that many district court judges still follow them, even though they are now merely advisory.

Goodbye Mike, Hello Judge is a highly readable account of a life that witnessed almost a century of our country’s history. Bright reveals a profound appreciation of our American system of justice and a compassionate idealism. He may serve as a model for the legal profession for many years to come.

Dennis M. Kelly is a retired partner of Jones Day, where he spent his entire career after he clerked for Judge Bright in 1968–69.