

DEDICATION

The Supreme Court of the United States reviews only a small percentage of all judgments issued by the twelve courts of appeals.¹ Each of the courts of appeals, therefore, is for all practical purposes the final expositor of the federal law within its geographical jurisdiction. This crucial fact makes each of those courts a tremendously important influence in the development of the federal law, both constitutional and statutory. Hence, it is an obviously useful and significant service to keep close track of and to publicize, particularly for the benefit of lawyers and judges, the work of the circuits.

This is especially true of the Court of Appeals for the Fifth Circuit. Before 1981 the Fifth Circuit stretched from Miami to El Paso and it handled more appeals than any other federal appellate court. On October 1, 1981, the states of Alabama, Florida, and Georgia were broken away from the Fifth Circuit to form the new Eleventh Circuit. Despite the split, the Fifth Circuit, now covering Texas, Louisiana, and Mississippi, still has a heavier workload than the other courts of appeals, with the exception of the Ninth Circuit.² Also, with the exception of the Ninth Circuit, it is the source of more cases on our argument docket than any other circuit court.

Illustrative of the wide scope of the Fifth Circuit's work are some of the cases from that court that we at the Supreme Court have reviewed this past Term. *Barefoot v. Estelle*³ involved both procedural and substantive matters concerning the application of the death penalty. *United Brotherhood of Carpenters v. Scott*⁴ clarified the standards for private civil rights suits brought under 42 U.S.C. § 1985(3).⁵ *United States v. Villamonte-Marquez*⁶ was an important case in which we reversed the court of appeals and held that, in certain situations, law enforcement officials may conduct searches of ships and boats even if they do not suspect illicit activity. In the

1. Because the Court of Appeals for the Federal Circuit has a specialized jurisdiction, I do not include it in this recitation.

2. See Blow & Blumenthal, *5th Circuit: The Judges Behind the Headlines*, The Dallas Morning News, Apr. 10, 1983, at A1, col. 1.

3. 103 S. Ct. 3383 (1983).

4. 103 S. Ct. 3352 (1983).

5. 42 U.S.C. § 1985(3) (Supp. V 1981).

6. 103 S. Ct. 2573 (1983).

realm of tax law, *Commissioner v. Tufts*⁷ resolved a question that had been unsettled for thirty-five years: what is the amount of gain realized on a sale of property that is subject to a nonrecourse mortgage which exceeds the fair market value of the property? The first amendment rights of public employees were at issue in *Connick v. Myers*,⁸ and in *Jefferson County Pharmaceutical Association v. Abbott Laboratories*,⁹ a significant antitrust case, we concluded for the first time that the Robinson-Patman Act has some application to government procurement. We also dealt with Fifth Circuit decisions on issues of labor law,¹⁰ witness immunity,¹¹ oil and gas,¹² and the right to a free public education.¹³

In many instances, Fifth Circuit decisions other than the ones we have reviewed have had an impact on Supreme Court jurisprudence. This past Term, for example, in *Director, Office of Workers' Compensation Programs v. Perini North River Associates*,¹⁴ a longshoremen's compensation case, we reversed a Second Circuit decision and agreed with the contrary analysis of the Fifth Circuit.¹⁵ It should also be noted that before the division of the Fifth Circuit, the circuit adopted its own version of a good faith exception to the exclusionary rule in *United States v. Williams*.¹⁶ *Williams* remains the law of the Fifth and Eleventh Circuits and was an important consideration in the Supreme Court's decision to address, during the 1983 Term, the question of modifying the exclusionary rule.

Regardless of whether, in the end, we agree or disagree with the Fifth Circuit's rationale, in many instances our task of analysis has been eased considerably by detailed and cogent opinions of the Fifth Circuit's judges. The Fifth has aptly been described as a great

7. 103 S. Ct. 1826 (1983).

8. 103 S. Ct. 1684 (1983). *Bush v. Lucas*, 103 S. Ct. 2404 (1983), affirmed a decision of the still undivided Fifth Circuit Court of Appeals which held that federal employees do not have a *Bivens* cause of action for alleged constitutional violations of their superiors. See *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) (violation of the Constitution by federal agents acting under color of federal authority gives rise to a federal cause of action).

9. 103 S. Ct. 1011 (1983).

10. *W.R. Grace & Co. v. Local Union 759*, 103 S. Ct. 2177 (1983).

11. *Pillsbury Co. v. Conboy*, 103 S. Ct. 608 (1983).

12. *Public Serv. Comm'n v. Mid-Louisiana Gas Co.*, 103 S. Ct. 3024 (1983).

13. *Martinez v. Bynum*, 103 S. Ct. 1838 (1983).

14. 103 S. Ct. 634 (1983).

15. See *id.* at 639 n.8, 649 n.29 (citing *Boudreaux v. American Workover, Inc.*, 680 F.2d 1034 (5th Cir. 1982) (en banc), *cert. denied*, 103 S. Ct. 815 (1983)).

16. 622 F.2d 830 (5th Cir. 1980).

court,¹⁷ and we follow its work with interest. I therefore am pleased to dedicate this Symposium. This scholarly examination of the Fifth Circuit's opinions will aid all judges and lawyers who appreciate the importance of maintaining the federal law in a satisfactorily coherent state.

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17. Wisdom, *Requiem for a Great Court*, 26 LOY. L. REV. 787, 787 (1980).

