



MY GOD! NOW HE IS ARGUING WITH HIMSELF

William R. Wilson, Jr.

The letter reproduced below – the original was dated April 24, 2009 and printed on the stationery of the U.S. District Court for the Eastern District of Arkansas, in Little Rock – may be merely dictum from Judge Wilson, but it is useful, entertaining, and thought-provoking dictum. That is the kind we like.

– *The Editors*

The Honorable Raymond W. Gruender
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street, Suite 23.365
St. Louis, Missouri 63102

Re: *Little Rock School, et al v. Pulaski County School, et al*, No.
07-1866

Dear Judge Gruender:

Since no Petition for Rehearing *En Banc* has been filed and the mandate issued, I assume it is okay to write you.

In your dissent in the June 26, 2006, Opinion in *Little Rock School, et al v. Pulaski County School, et al*,¹ you disagreed with the

William Roy Wilson, Jr. has been a District Judge on the United States District Court for the Eastern District of Arkansas since 1993. He took senior status last year.

¹ *Little Rock School, et al v. Pulaski County School, et al*, 451 F.3d 528, 541-543 (8th Cir. 2006) (Gruender, concurring in part and dissenting in part).

“deeply embedded” standard I had used. After considerable cerebration, I decided you were absolutely correct.

When I used a different standard (the one you suggested) in an order of February 23, 2007, you disagreed in your concurrence in the April 2, 2009, Opinion.²

This puts me in mind of three things:

1. Before the Civil War, Braxton Bragg (later a Confederate general) was assigned to a remote post “out west.” There was a shortage of officers, so he became both a company commander and the post quartermaster. As a company commander, he submitted a request for certain items. As quartermaster, he denied it. As company commander, he appealed to the Commanding General. When the General got the appeal, he exclaimed “My god! Mr. Bragg has argued with every other officer in the U.S. Army, now he is arguing with himself.”
2. Judge Easterbrook, of the 7th Circuit, authored an opinion in which he warned against another appeal “of this nature.” Sure enough some lawyer took an appeal on the same point. When the opposing lawyer, in oral argument, reminded Judge Easterbrook of his earlier admonition, he responded, “Counsel, don’t you recognize dictum when you see it.”
3. Several years ago my late father-in-law, Robert C. Compton, Sr., of the El Dorado, Arkansas Bar, and the Honorable Melvin Mayfield (then a Circuit Judge, later a Court of Appeals Judge, now retired) prepared an amendment to the Arkansas Worker Comp Statutes. The Arkansas Legislature passed their proposed amendment. When it came before Judge Mayfield, as Circuit Judge, he held the amendment unconstitutional.

I have verified 2 and 3 above. Professor Gary W. Gallagher, who

² *Little Rock School, et al v. Pulaski County School, et al*, No. 07-1866, 2009 WL 860357, at *6-7 (8th Cir. April 2, 2009) (Gruender, concurring).

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teaches Civil War at the University of Virginia, tells the Bragg story, but cautions that it may be apocryphal.

Kudos

Wm. R. Wilson, Jr.

cc: The Honorable Roger L. Wollman
The Honorable Michael J. Melloy
The Honorable Joe Thomas Ray
The Honorable Melvin Mayfield
Counsel of Record

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