

Reflections on Judge Frank M. Johnson, Jr.

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For any student of the law, indeed for any person who believes in the values for which the Constitution of the United States stands, the name Frank Minis Johnson, Jr. should ring familiar. Frank Johnson was the best example of what this country can be. More than simply a model jurist, he was a model American. As debate rages today over the role of the judiciary and whether one should support the appointment of “strict constructionist” or “activist” judges to the bench, Judge Johnson’s record stands above the fray. His career demonstrates the wisdom of those great Americans who drafted our Constitution. Our forefathers proved wise enough to provide the courts not only the moral authority—based in our Constitution and Bill of Rights and embodied in people like Judge Johnson—but also the independence necessary to exert that authority at those times when the bedrock of our freedom—the right of all Americans to life, liberty, and the pursuit of happiness—is threatened.

Judge Johnson’s life transcended politics. Almost unimaginable for a federal judge today, Frank Johnson was both a Republican who headed Alabama’s Veterans for Eisenhower during the President’s 1952 campaign and President Jimmy Carter’s choice to be Director of the FBI. Called by the Ku Klux Klan “the most hated man in Alabama” and an “integrating, carpet-bagging, scalawagging, race-mixing, bald-faced liar” by Governor George Wallace,¹ the Judge Johnson I knew was no radical, but a man of deep principle. He once said, “It is the obligation of every Judge to see that justice is done within the framework of the law.”² From the beginning, his years on the bench were spent in tireless pursuit of this goal.

Judge Johnson’s life and mine were connected long before either of us knew the other existed. In December 1955, I was a fifteen-year-old young man living in rural Pike County, Alabama. At just that time, only three weeks after Judge Johnson was appointed to the U.S. District Court in

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1. TINSLEY E. YARBROUGH, *JUDGE FRANK JOHNSON AND HUMAN RIGHTS IN ALABAMA* 87 (1981) (quoting Governor Wallace).

2. Frank Johnson, Jr., *Finding Justice Within the Law*, BIRMINGHAM NEWS, Aug. 15, 1993, at C1 (reprinting Johnson’s address before the American Bar Association Section on Individual Rights).

Alabama by President Eisenhower, Rosa Parks, a seamstress from Montgomery, Alabama, refused to give up her seat on a bus to a white man. That moment changed both my life and Judge Johnson's life forever.

While my parents did not know Rosa Parks, they knew plenty of women like her. Montgomery was only fifty miles from my home in Troy, Alabama, and more than a few of the women that I knew worked in Montgomery doing the same type of work Mrs. Parks did. Some of them may have ridden the same bus Mrs. Parks rode, and all of them had firsthand experience of the injustice of Jim Crow.

For Judge Johnson, the Rosa Parks case was the first major case he would decide. And just as in the multitude of high-profile cases that would follow, the Judge did not allow the spotlight to diminish his commitment to deliver justice. Together with another member of a three-judge panel, Judge Johnson ruled that segregation in the Montgomery bus system violated Mrs. Parks's right to due process and equal protection of the law. And while I can honestly say that the Montgomery bus boycott that resulted from Mrs. Parks's arrest may have changed my life more than any other event before or since, that decision by Judge Johnson changed the nation.

There was a special quality to Judge Johnson. He knew that the fine lines of law, if used to oppress and to alienate, could become chasms that divide both men and nations. But that was not his vision. And Rosa Parks's case was only the beginning. Judge Johnson was involved in what seem now to be all of the important civil rights decisions for over three decades. In the face of social ostracism, countless threats to his life, two cross-burnings on his lawn, and the firebombing of his mother's house, Judge Johnson held fast to his principles and raised the Constitution as a lonely shield against his adversaries.

The register of his decisions speaks volumes about the man. Among other things, Judge Johnson's rulings integrated the University of Alabama, opened the jury boxes of Alabama courtrooms to African-American men and women, expanded the availability of court-appointed lawyers to poor defendants, and integrated the Alabama State Police. These decisions embodied Judge Johnson's view of the law, a view that laid waste to the walls that separate men and strengthened the bonds that would unite a nation.

Though I had been aware of him for some time, I first met Judge Johnson in 1961. I was twenty-one years old then and taking part in the Freedom Rides across the South. The rides were undertaken to test the Supreme Court ruling in *Boynton v. Virginia*,³ which extended the prohibition of segregation from buses and trains to interstate transportation terminals. Greeted at the Greyhound station in Montgomery, Alabama, with

3. 364 U.S. 454 (1960).

baseball bats, bricks, chains, and tire irons, we were beaten as the local police stood by. Days later, bruised and bloodied, we appeared before Judge Johnson's court.

Judge Johnson asked me to explain the Freedom Ride and to tell him why we wanted to continue on into Mississippi. I had been in court before, but this was the first time I had actually testified, and I was nervous. I answered his question by saying that I had begun this ride to see how the law was carried out and I wanted to continue it for the same reason. That answer seemed to satisfy Judge Johnson. He lifted the injunction that had prohibited us from continuing the Freedom Ride, and two days later we boarded a Greyhound bound for Jackson, Mississippi.

That was not the last time our paths would cross. Throughout the struggle the Judge's courtroom provided a safe harbor for justice amidst the storms that threatened to engulf the nation. On March 7, 1965, one of these storms was unleashed when a group of people—most of us plain folks: teenagers, teachers, housewives, undertakers, and beauticians—began a march from Selma, Alabama, to Montgomery. We moved in an orderly fashion through the streets of Selma and slowly ascended the Edmond Pettus Bridge, crossing the Alabama River. Upon reaching the crest of the bridge, we looked out to see an ocean of Alabama State Troopers waiting for us on the other side. Less than a minute after ordering us to turn around, the troopers advanced, beating us with clubs and bull whips, trampling us with horses, and driving us back to Selma's Brown Chapel Church. Though we were beaten down, the nation was watching and Bloody Sunday became a turning point in the movement. President Lyndon Johnson described the clash in the grand terms it deserved: "At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama."⁴

Less than two weeks later, on March 17, an order was issued that we be permitted to finish the journey that we had begun. The author of that order was Judge Frank Johnson. Even today, the Judge's words stand as testimony to the righteousness of peaceful protest:

[I]t seems basic to our constitutional principles that the extent of the right to assemble, demonstrate and march peacefully along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against. In this case, the wrongs are enormous.⁵

4. Special Message to the Congress: The American Promise, 1965 PUB. PAPERS 281, 281 (Mar. 15, 1965).

5. *Williams v. Wallace*, 240 F. Supp. 100, 106 (M.D. Ala. 1965).

It seems safe to say that the wrongs of that time were matched blow for blow by the rights upheld by Judge Frank Johnson.

Judge Johnson's influence reached a point where people often referred to him as "the real Governor of Alabama." And as the elected Governor, George Wallace, continued to obstruct integration and resist the imposition of justice in Alabama, this moniker became more and more accurate. At one point or another, people appointed by "Governor" Johnson oversaw Alabama's schools, prisons, and elections, among other institutions. These traditional bastions of state authority had become havens for Wallace's segregationist policies. But beneath the ever vigilant eyes of Judge Frank Johnson, justice could not be denied.

The great respect and admiration I hold for Judge Johnson come not simply from his unyielding commitment to justice but also from the manner in which he dispensed this justice. To me, the Judge's defining characteristics were his lack of pretension, his dignified, direct manner, and his ability to raise the bar of equal protection without raising his voice. There is a story that has often been told about Judge Johnson: Until a federal appeals court ordered him to do otherwise, the good Judge presided over his court without the trappings of a robe or a gavel. Frank Johnson believed that these symbols were unnecessary for the maintenance of order in his court. For me, that solitary belief—that simple act—is Frank Johnson. The good Judge, more than any person I have ever known, grasped the difference between the appearance of justice and real-life justice. Indeed, he defined it. Judge Johnson peered beneath the badge to the heart of the man and saw beyond the law to the moral core of our nation.

I remember in 1976 when President Jimmy Carter sought to nominate Frank Johnson as the Director of the FBI. I was gravely disappointed that Judge Johnson's health kept him from accepting the nomination. I knew that to have a man of Judge Johnson's caliber in that position would set a new standard for integrity and justice in public service. That belief continues to this day. In fact, recently I initiated the effort to rename the FBI's headquarters after Frank M. Johnson, Jr.⁶ For good reason, several of my colleagues in Congress have joined me in this effort. All of us who knew Frank Johnson understand that the Judge's name inscribed above the portals of the FBI headquarters would serve as a reminder to us all of the ideals to which our nation and all its public officials should aspire.

As I think back now to a young man peering out the window of a Greyhound bus as it pulled out of that Montgomery bus station, I realize more than ever the profound debt of gratitude that not only I, but all Americans, owe the man whose words provided us safe passage. The nation will miss his wisdom. I will miss the man. And I bid him safe passage.

6. See H.R. 3031, 106th Cong. (1999).