

REFLECTIONS ON AMERICA'S COURTROOM  
FRANK M. JOHNSON JR. UNITED STATES COURTHOUSE

WELCOME AND OPENING REMARKS

Honorable Emily C. Marks

IF THESE WALLS COULD TALK

Mr. Jere Beasley, Esquire  
Mr. Peter Canfield, Esquire  
U.S. Magistrate Judge Rusty Johnson

Moderated by Dean William Brewbaker  
University of Alabama School of Law

THE KEYNOTE ADDRESS

Honorable Myron H. Thompson  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

Honorable Emily C. Marks, Chief U.S. District Judge  
Honorable R. Austin Huffaker, Jr., U.S. District Judge  
Honorable Myron H. Thompson, U.S. District Judge  
Honorable W. Harold Albritton, III, Senior U.S. District Judge  
Honorable W. Keith Watkins, Senior U.S. District Judge

Honorable Joel F. Dubina, Senior U.S. Circuit Judge,  
11th Circuit Court of Appeals  
Honorable Ed Carnes, Senior U.S. Circuit Judge,  
11th Circuit Court of Appeals

Honorable Bess M. Creswell, Chief U.S. Bankruptcy Judge  
Honorable Christopher L. Hawkins, U.S. Bankruptcy Judge

Honorable Stephen M. Doyle, Chief U.S. Magistrate Judge  
Honorable Jerusha T. Adams, U.S. Magistrate Judge  
Honorable Kelly Fitzgerald Pate, U.S. Magistrate Judge  
Honorable Chad W. Bryan, U.S. Magistrate Judge  
Honorable Charles S. Coody, U.S. Magistrate Judge

Trey Granger, Clerk of Court

Thursday, October 24, 2024  
2:30 p.m.

(Call to order of the court)

CHIEF JUDGE MARKS: You may be seated.

Good afternoon.

AUDIENCE: Good afternoon.

CHIEF JUDGE MARKS: My name is Emily Marks, and I'm the Chief U.S. District Judge for the Middle District of Alabama. On behalf of the court, I extend to you-all a very warm welcome. And this is Alabama, so it is very warm.

In this courtroom, in this very courtroom, the lives of three people intersected: Rosa Parks, Dr. Martin Luther King, Jr., and Judge Frank M. Johnson, Jr., for whom this courthouse is named. That intersection marks a pivotal point from which lawlessness and injustice turned toward justice and the rule of law.

It is our great honor and privilege to have you all here in this historic courtroom, known as America's Courtroom, to reflect on the legacy of the court.

On the bench with me today are District Judge Austin Huffaker, District Judge Harold Albritton, and District Judge Keith Watkins.

Also with us are the judges of the Middle District of Alabama, District Judge Myron Thompson, Chief Bankruptcy Judge Bess Creswell, and our magistrate judges, Chief Magistrate Judge Stephen Doyle, Judge Jerusha Adams, Judge Kelly Pate, and Judge Chad Bryan.

And you are all such welcomed and honored guests. And to recognize every VIP in this room individually would unreasonably extend this program, but I would like to recognize Chief Judge David Barron of the First Circuit Court of Appeals.

Along with Chief Judge Barron and his colleagues on the First Circuit, we have federal and state court judges from Massachusetts, Rhode Island, Puerto Rico, Pennsylvania, and California. Welcome to all of you.

We have a wonderful program for you today. And I am very, very pleased to introduce our panelists for today, Mr. Jere Beasley, Mr. Peter Canfield, and United States Magistrate Judge Rusty Johnson, who will engage in a panel discussion entitled "If These Walls Could Talk" moderated by Dean William Brewbaker, Dean of the University of Alabama School of Law.

Mr. Jere Beasley founded the law firm Beasley Allen Crow Methvin Portis & Miles. He graduated from Auburn University and earned his juris doctor from the University of Alabama School of Law. Mr. Beasley has been recognized in Best Lawyers, Super Lawyers, and Chambers U.S.A. Leading Lawyers. Lawdragon has recognized him multiple times as one of the top 500 plaintiff consumer lawyers and inducted him into its Consumer Hall of Fame in 2017. He serves on the board of directors of the Judge Frank M. Johnson, Jr. Institute.

Peter Canfield practices law in Atlanta, Georgia.

He is a former partner of Jones Day, from which he retired in 2023. He is a graduate of Amherst College and Yale Law School, where he was editor of the *Yale Law Journal*.

He clerked for Judge Frank M. Johnson, Jr., on the Eleventh Circuit Court of Appeals and for Judge Myron Thompson in the Middle District of Alabama. Mr. Canfield is a founding director of Georgia First Amendment Foundation and former chair of the State Bar of Georgia's Communications Committee.

Judge Rusty Johnson is a United States Magistrate Judge for the Northern District of Alabama. Prior to his appointment, he was a tenured professor at Samford University's Cumberland School of Law. Before joining the law school faculty, he practiced law in Birmingham, Alabama.

Judge Johnson served as a law clerk to Judge Myron Thompson of the Middle District of Alabama and for Judge Martha Craig Daughtrey of the Sixth Circuit Court of Appeals.

Judge Johnson graduated from Duke University and earned his juris doctor and master of international affairs from Columbia University.

Dean William Brewbaker was appointed Dean of the University of Alabama School of Law in 2023. He is a graduate of Vanderbilt University and earned his juris doctor from the University of Virginia and his LLM from Duke University.

Dean Brewbaker joined the Alabama Law School

faculty in 1993 and was the William Alfred Rose Professor of Law. He spent time as a visitor of the faculty of law at the University of Cambridge. And prior to joining the law school faculty at Alabama, Dean Brewbaker practiced law in Birmingham, Alabama.

And now, with these very impressive panelists, "If These Walls Could Talk." Dean Brewbaker.

DEAN BREWBAKER: Thank you, Judge Marks.

I don't have to say what an incredible honor it is for me to be seated in a room like this with distinguished panelists and incredibly distinguished assemblage of judicial talent in this room. I can't think of another room where that ever happens. And it's appropriate that it takes place in America's Courtroom. So what an incredible occasion. Thank you, Judge Marks, thank you, Trey, for making this possible. And thank you to these great panelists.

I gather our panelists are chosen because they're distinguished lawyers and judges and because of their personal connections with Judge Thompson and Judge Johnson. And so I thought the goal of today's panel is to maybe help us have a better sense of these important judges as human beings and as a people.

So I'd like to start, if I could, by asking you guys sort of how you know these judges. What's your personal connection with them? And then we can take it from there.

Peter, you want to start us off?

MR. CANFIELD: Sure. And I don't know if I should grab the microphone or --

Can you-all hear me okay?

AUDIENCE: Yes.

MR. CANFIELD: So thank you for the opportunity to be here today. It's no exaggeration to state that the country has had no more inspiring jurists. And I have certainly had no more important mentors in my life than Frank Johnson and Myron Thompson. And it's such an honor to be here today in the courtroom that's been home to them both to pay them tribute.

I first came south into this courthouse and courtroom fresh out of law school in New England 45 years ago. My office was a spot at the table in the law library that was through that door, and my life has never been the same since. Personally, it led to the most important friendship in my life with Laurel Lucia, with whom I'll celebrate 40 years of marriage next month.

Like me, Laurel also clerked for Judge Johnson, but four years later. And when she arrived in Montgomery for her clerkship armed, as she likes to say, with the complete works of William Shakespeare, I was back here in Montgomery working. After working for Judge Johnson as a law clerk and then Judge Thompson, I worked in the Civil Rights Division at the Justice Department, then came back here as a deputy

district attorney. And Laurel's first day here, Judge Johnson had one of his clerks introduce us. And with a lot of help from the Judge and Ruth Johnson, the rest is history.

(Laughter)

MR. CANFIELD: Our oldest's daughter's middle name is Johnson. And Laurel would love to be here today, but she's in Georgia working on voter protection issues.

But let me --

(Applause)

MR. CANFIELD: Professionally, though, Judge Johnson and Judge Thompson could not have been more important to me either.

I was -- in law school, I would have to admit that I was, at best, kind of a listless student. In college, I had been quite taken by journalism. I worked for my college newspaper. And I really thought of trying to make journalism as a career, but I just didn't think my writing skills were enough that I could really ensure that I'd make it. So I sort of went to law school by default in a way, and I can't say that it or the summers that I had working at law firms ever quite seemed to be really the fit for me. So, of course, I thought about clerking for a judge as an alternative. I wasn't sure I would like that. And I recall interviewing with -- many of you probably remember Judge Robert Merhige of Richmond. And I interviewed with Judge Merhige, and he told me that he liked to

hire clerks who really loved the law. And I wasn't sure that that was me at that point, but clerking for Judge Johnson and Judge Thompson really changed that for me.

You know, I think what drew me into journalism was the prospect of articulating, you know, what the truth is, what true facts are, and then explaining them to other people no matter how uncomfortable that could be. And when I got here in Montgomery, I really discovered, much to my surprise, that that was here in much more abundance than I ever thought.

You know, as with journalists, a big part of judging, particularly trial court judging, is doing just that; it's figuring out what the facts are and then explaining them in opinions. And both Judge Johnson and both Judge Thompson excel at doing that more than any judges I have ever seen.

But I also found that unlike journalists, judges even got to do a little bit more because they got to actually take that truth and take that explanation and try and make themselves make a difference by telling it often, you know, despite great resistance to the powers that be. You know, they could articulate issues with what was wrong in the mental health system, what was wrong in the prison system -- discrimination -- but beyond that, they could actually do something about it.

And, you know, when I was in law school, they taught -- there was a course called Injunctions. And it was



largely a course about what happened here in this courtroom in the '60s and '70s. What I found is that it's more difficult to make stuff happen than just saying what should happen. And both Judge Johnson and Judge Thompson have an amazing ability to be able to not only say what should get done, but get people to do it. And that's what Judge Johnson did and did so effectively again and again and again in so many circumstances here and what Judge Thompson has continued to do.

DEAN BREWBAKER: Thank you, Peter.

So, Judge Johnson, what about you? Tell us about your personal connection with Judge Thompson.

JUDGE JOHNSON: Well, of course I clerked with Judge Thompson from 1999 to 2000, for one year. I got connected because in law school, you know, I always wanted to practice in civil rights work.

I came out of the Peace Corps in West Africa for a couple of years and then went to grad school and law school. And one of the professors at the law school at the time was Jack Greenberg, who succeeded Thurgood Marshall, but he was in retirement at the time, teaching at the law school. And I asked, you know, I want to return down South. I'm from South Carolina. I grew up in the country. And I asked him, you know, Who should I clerk for? Who can I, like, apply to to clerk for if I was interested in civil rights? And he immediately, instantly said, Myron Thompson, without any doubt.

And so I applied. I think he wrote a letter of recommendation on my behalf along with Louis Henkin, who's a human rights -- see, I went to law school, and then I got the offer and ended up down here. And I was just thrilled to be here, of course.

You know, I introduced Judge on a couple of occasions in the past for different awards that he's accepted and keynote speeches and such. And I've talked about how, in America's history, you know, there is a book, *America's Prophet*, by Bruce Feiler about how Moses has been a symbolic figure throughout history for different figures and -- public figures in United States history. And, you know, it talks about how Moses was a symbol as a freedom fighter for so many -- during so many different eras of our history, going back to the founders, going back to, you know, Harriet Tubman, known as Moses, going up to our Freedom Fighters in the civil rights moment. And I took off that in introducing Judge Thompson, but it's also applicable to Judge Johnson.

You know, those were Freedom Fighters; but just in that same mosaic symbolism, we needed to have lawgivers, those who can interpret the law and enforce our constitutional values and our enduring constitutional values and actually interpret it on behalf of what the framers conceptualized with respect to advice. And Judge Thompson and Judge Johnson were so pivotal with respect to being lawgivers going up into the 1950s and going up to the present.

So I was just, you know, beyond thrilled. But then when I started -- I'll get into some of this later, but let me just lay out for you how close the connection was. I was just mentioning this earlier today.

Back at the time here, back in the chambers, there were basically -- Judge had three clerks. And when my court clerk sat in a little antechamber -- and she had a little office by herself right outside of Lillian, who was the secretary for Judge. But then there was this huge room in which two -- my court clerk, Bobby, and I, we sat in the huge room. Judge had his office where it's currently situated. But he also had a work station in the huge room, and it was right across the doorway from where I sat. So he was always in there working with us on opinions. And so you never escaped the Judge's influence throughout the entire clerkship. And there was no slacking off whatsoever.

DEAN BREWBAKER: Thanks.

So, Mr. Beasley, what about you?

MR. BEASLEY: I'm just honored to be here.

Can everybody hear me in the back since I'm sitting over here in this big chair? And the reason I'm in the big chair, I've got a crippled knee. Dumb me. I fall and bust a kneecap, and they asked me to come anyway.

(Laughter)

MR. BEASLEY: You know, Judge Johnson and I had a

rather interesting relationship. I never appeared in his court as a lawyer. We had a connection that nobody really knew about that I kept quiet and he, for good reason, kept quiet.

There was a lady who worked for us named Louise Duncan, a black female. Guess where her mama worked? Mrs. Ruth Johnson. And we developed a relationship through our wives. Mrs. Johnson would tell Sara stuff about how to deal with adversity, how to deal with all the problems that a dumb lieutenant governor was facing with George Wallace as governor. And I learned a lot. But I'm going to take you back -- even further back than anybody in this room can talk about.

When I was in college, unmarried, had been on a football scholarship, got hurt and got back in -- dropped out of school for two years, came back and was working in a warehouse in Clayton, Alabama, the hometown of then Judge George Wallace, who later became governor. One Saturday morning I was working in the warehouse, and this car came screeching up to a halt in front of the building. This would have been roughly 1958. Wallace had run for governor and lost and came back to be circuit judge. The Civil Rights Commission had ordered him to turn over voting records from Barbour and Bullock County. Judge Johnson had the case and cited then Judge Wallace for contempt of court. So the car that screeched to a halt was occupied by Wallace. He comes in to meet with a fellow named Marshall Williams, who was the best politician I

had ever dealt with, who ran Barbour County. And they went back and closed the door in the room, and they were talking. And I could hear them.

Judge Wallace told him, he said, Judge, Judge, Judge, said, that blankety-blank judge in Montgomery is going to put me in jail if I don't turn over these records. He said, What do you think I need to do? He said, Get your rear end in your car and go up there and give him those records. And he did. But then after that, he took the stand -- and Judge Thompson will probably remember this even at his young age then. Wallace ran on a program that he stood up to Judge Johnson on the records from Barbour and Bullock County. I saw that personally and didn't know the impact of it as a dumb kid from Barbour County at that time.

But there was other things over a period of time that Judge Johnson and I -- I never appeared in his court as a lawyer, but I had tremendous respect for him as a man.

This judge sitting here, Judge Thompson, and Judge Johnson had a lot in common. One trait that any judge ought to take on, they might have a position in a case personally, they never let that position influence their rulings and both sides had to follow the law. And the rule of law was important to both judges. And it's more important today in this country. And I'm probably the oldest guy in here, maybe. I think it's more critically important today than

at any time in my entire history.

But I'm going to tell you how I got to be a trial lawyer. Judge Thompson worked for a guy named Bill Baxley, who was attorney general, who was probably the smartest guy I ever dealt with in my life. He had a memory. He could remember how many votes he got in Cherokee County, how many he got in every county by number. He and I were political enemies but personal friends. In fact, when we both got into politics, I wanted to run for attorney general, and Bill convinced me that I needed to run for lieutenant governor, that he was going to run for attorney general.

(Laughter)

MR. BEASLEY: So I let him talk me into it. So I ran for lieutenant governor and ran against a tremendously large number of folks, and somehow or another I was elected. The youngest lieutenant governor in the history and also the dumbest lieutenant governor in history. I had no clue of the rules, didn't know anything about it. I got in there and did the best I could.

I went through some rather interesting news. The assassination attempt on Governor Wallace changed my life forever. This happened in '71. And I'd been in office roughly for a year. And everything changed from that point forward.

And I had another term as lieutenant governor, ran for governor and was soundly put back into the private

sector by the people of Alabama. And I learned a lot, but I was also deeply in debt for my campaign. I sent resumes to every law firm that I had dealt with as lieutenant governor. Guess how many responses I got? One. And that was from then lawyer Truman Hobbs, who said if he had an opening, he'd hire me but he didn't have one.

So anyway, I was down. I really didn't know what to do. And Sara, my wife, suggested to me, said, You've got this relationship with Judge Johnson, why don't you go talk to him and get his advice, this is what you ought to do. And the reason I had to make a decision, Fob James, who had defeated me in -- all of us in the governor's race had offered me a very small job with the State of Alabama just to help me out financially, which I appreciated. And I was on the verge of taking it. So I go and I met with Judge Johnson in this building, in his office, and I laid it out to him. And he could tell that I was down. And I was. And I just told him all my problems and all of everything I was facing. And I said, Judge, I said, I just don't know what to do. He said, Well, let's just stop this conversation. He said, Don't you have a law license? I said, Yes, sir, you know I got a law license. He said, Look around Montgomery. He said, There's not a law firm in Montgomery that stands out as a -- he didn't say plaintiff's law firm, but he said a law firm representing victims of wrongdoing. He said, Look around. He said, They

want to be insurance lawyers, defense lawyers for companies. He said, I'm going to give you some advice. And I'm going to use a word that may offend some, but I'm going to quote him. He said, Jere, said, get your ass out of politics and practice law. And that was a direct quote. And it shocked me. And I did. And I'll have to admit that Fob James and Judge Johnson did me a tremendous favor.

So I didn't -- you asked me to tell you this, Bill, so I did.

DEAN BREWBAKER: Yes, I did. I think that's a pretty good story, actually, myself. And, you know, it actually leads into the next question I had put on my list of questions precisely to get you to tell that story.

So I'm going to ask Judge Johnson and Mr. Canfield a similar sort of a question, which is these judges obviously have left tremendous public legacies; but in addition to those legacies, of course, they leave human legacies, sort of the story that Mr. Beasley just told.

I wonder if you can think of -- and we'll start with you, Judge Johnson, if that's okay -- of specific incidents or conversations or things in your relationship with Judge Thompson that affected you personally or professionally going forward.

JUDGE JOHNSON: Sure. Sure. Many things, but one that comes to mind that occurred very early in my clerkship.



It was the first day, a Monday, in my clerkship. And Judge called me into the office so we could talk and meet each other. And then he gave me a legal writing assignment and said, I need a draft by Thursday. I was like, Oh, my goodness. It was on the Railway Labor Act.

I don't know if you remember this, Judge. It had -- exactly.

I remember it indelibly. I had no idea -- you know, I covered LMRA in law school. LMRA. Railway Labor Act, I had no idea what this was about. And so, you know, went about doing what I could, drafted some things. And then I presented Judge two drafts going one way or the other in my legal analysis, because I was like, it's Thursday, I got to get something to him.

And he memorably said something that I still employ today and I talk about all the time, and I still do it especially as a judge today. He said, you know, Judicial writing is not just about resolving conflicts between the parties, it's about educating the public as to what the law is.

And that affected me with respect to -- of course, with the rest of the clerkship -- with respect to going into practice and with respect to being a judge; that when I engage in legal writing, I'm not just resolving the dispute between the parties at bar, I also have to make sure I do a sufficient exploration of what the law is so that the public

can know how to accord their affairs with respect to anything that comes before them. So that has influenced me substantially ever since the very beginning of my clerkship.

So, I mean, so many other things that occurred. You know, the one thing that really influenced me was the way he treated litigants in the court as well. And I do that today. I treat everyone with respect.

I remember this one occasion when he had a multi -- like couple week trial. It was a drug trial. And one of my co-clerks, she was the clerk on the case. And I remember she came back into the chambers during a recess and said, oh, you know, the main kingpin, you know, he was in his 50s or 60s, a rather rotund fellow, and they gave him like a medium-sized shirt to wear, so like a button-up; and it was like all stretched up to here. And she came back and she was just kind of just -- I can't say she was disgusted, but she was just like -- because he had to stand in front of her station like right here on a couple of occasions, and she was just all upset about it. And Judge went back out at the end of the proceedings of that day and said, Listen, when you bring him back tomorrow, you make sure he has on a sufficient sized shirt because you're not going to bring him back in here with a short shirt anymore.

And so he treated every litigant with that type of respect who came before him. And I do the same. I greet

everybody -- every defendant, every litigant, I greet them personally, and I talk to them directly in all proceedings because I learned that from so many different instances that I saw Judge actually employ that.

DEAN BREWBAKER: Wow, that's wonderful.

So what about you, Peter? Specific incidents or conversations that have had an effect on you personally or professionally?

MR. CANFIELD: Well, I'm not sure this is going to answer that directly, but let me --

DEAN BREWBAKER: I've got three lawyers up here. I'm not counting on that.

MR. CANFIELD: All right. I mean, to tell you a little bit more about Judge Johnson as a person. I mean, as much as Rusty has said, he very much believed in writing opinions so that people could understand them. And the way he put it, he often had some kind of -- he's from North -- Northwest Alabama, which is sort of hillbilly country in some people's lexicon, and he had a lot of phrases for things. And he used to say, Well, we need to put it down where the goats could get it, was how he referred to that.

He had a wonderful sense of humor. I never saw him mistreat anybody, although I think he definitely had a command. I saw him as an appellate judge, not when he was on the trial court, where his command of the courtroom was kind of

legendary. But I don't think he got that command from berating people. People just knew. He was -- he is very smart, very discerning, listened. I always felt like he knows -- you can't get away with anything with him. And I think most people had that sense.

He was -- I think a lot of people who don't know him think that he was a very stern person, and he was very stern and serious in the courtroom, but he also had wonderful relations with his colleagues. I mean I used to think he would have made a great politician. And I remember saying that to him at one point, and he said, Oh, you know, it's too unpredictable to be a politician; I wouldn't do that; being a politician is just, you know, something that can happen like --

But he -- I remember when I first started working for him, you know, to get across his sense of how he should write opinions -- and he didn't want law review articles; he wanted short, clear opinions. He told me -- he said, We need to approach -- and this is probably not PC today, but he told me, We need to approach -- Here's how you have to approach writing an opinion, he said; you know, Like porcupines who are about to engage in intercourse, you need to proceed very carefully. And he would have things like that. But he had --

This is probably a good -- I have told this story before in this courtroom, but it's probably worth repeating for a group of judges. We would -- when I clerked for him, he was

on the Fifth Circuit. Our settings were down in New Orleans. And every -- there was a hotel in the French Quarter in New Orleans then called the Royal Sonesta, I think. And there was -- the judges all had a special rate, as did we as clerks, you know, and we were all on one floor of the Royal Sonesta. He -- there was -- he had a habit of -- and he called it -- I mean, the judges and some law clerks would get together before dinner and have a drink. He called it saluting the Constitution.

And he -- one sitting, he had brought the remains of a big like half-gallon thing of Jack Daniels down with him when we -- he didn't like to fly. We drove to New Orleans. And he had -- you know, there had been some saluting the Constitution going on, and this bottle was empty. So he had this big half-gallon empty bottle of --

DEAN BREWBAKER: We call that a handle down here.

MR. CANFIELD: Okay. So we're headed out to dinner. He tells me to grab the bottle, the handle. We walk by the room of -- the chief judge at the time was William Coleman, who was from Mississippi. He'd been an attorney general. He'd been everything. And he hated New Orleans. I used to -- we used to drive with him to the courthouse sometimes. And he and Judge Johnson would tell him mule stories, and he'd talk about how he wished they'd put six feet of concrete over the city of New Orleans. So Judge Coleman would go to bed earlier. And

he -- we walked by his room, and there was his dinner tray out in front. And the Judge told me, Put the bottle down next to the dinner tray so every other judge in the court would walk by and see.

(Laughter)

DEAN BREWBAKER: Okay.

MR. CANFIELD: I don't know if that answered your question.

DEAN BREWBAKER: No, I think that's great. So porcupines and dogs, handles.

So let me ask a more boring question. One of the things I think that I certainly think of and I suspect most of us in this room think of when we think about these two judges is their courage. And so, you know, I wonder, Mr. Beasley, if you could talk a little bit about what it would have been like for Judge Johnson in our mutual hometown of Montgomery, Alabama, back in the --

MR. BEASLEY: Yeah. I moved to Montgomery in 1971. And I knew on a personal basis about the threats -- all of the just uncanny, unbelievable threats against Judge Johnson and his family, things that would be really just shocking to anybody, and the public generally oblivious to it. Didn't necessarily accept it. But he was very unpopular.

Give you an example of the setting. I think Judge Thompson one time mentioned this. Judge Rives had taken

a stand that set him aside in Montgomery, aligned him with Judge Johnson. And all of a sudden, Judge Rives, who had been from an old Montgomery family, all of a sudden became extremely unpopular; threats against him, against his family. And that was the climate at that particular time.

And both judges that are being honored today had the courage to stand up against -- for example, where we are right now, the balcony up here, think about this: Black folk would be in that gallery and white folk down here in this courtroom; yet this courtroom is probably, I'd say, of all the courtrooms in America -- and I'm limiting it to a limited scope -- probably had more effect on independence, on liberty, on justice than any courtroom in the entire country. And two judges had that responsibility.

This judge followed a great judge without a doubt. And this is a great judge. I was always intimidated by Judge Thompson because he's so much smarter and always knew my case better than I did and would let you know quickly if you were stepping in the wrong direction.

But we've changed a lot in Montgomery, thank goodness. I was telling Rusty -- Judge -- I was telling him about the first African-American that I hired as a lawyer in my firm. His name is LaBarron Boone. And when the word got out in Montgomery amongst the Bar Association that Jere Beasley, this outsider from Barbour County who Judge Frank Johnson had

put into law practice, was considering hiring an African-American lawyer -- this would have been roughly 30 years ago -- I get a call from a prominent lawyer in Montgomery, a friend of mine. He said, I got to talk to you. I said, What? He said, The rumor is out that you're hiring a black lawyer. I said, What? He said, The word is out. He said, If you do this, it's going to ruin you in Montgomery; said, You won't be able to stay in this town if you do this. I said, Run that by me again. And he did. I said, You just guaranteed that I've hired LaBarron Boone.

And I did. And the irony is that he later became president of the Chamber of Commerce. But that was the setting at that time, the feelings in Montgomery.

We're seeing a lot of it today in the current climate, a lot of hate and hating something or somebody, and if you try to get them to explain why they hated it, they couldn't do it. And I hate to say, but many of our problems in this country, racism is the core to the problem. And Frank Johnson had the courage in a town like Montgomery, as a federal judge, to change things tremendously. And this judge followed up. And others have done the same.

And thank goodness that most Americans believe that we must preserve the rule of law, we must honor the Constitution. And it doesn't take a smart person to figure that out.



DEAN BREWBAKER: Thank you.

Judge, would you like to add anything about that with respect to Judge Thompson?

And one other thing that occurs to me is sort of, you know, you spend time personally with the judges that you work for. And, you know, maybe there's some insights about what it is about the personal life of a judge that enables them to stand up under that sort of pressure.

JUDGE JOHNSON: Sure. Sure. Well, on the point of courage, I would say I had somewhat of a direct experience with respect to all of the calamity that Judge and Ann and the family faced after my clerkship, and this was the -- after he issued the Ten Commandments decision.

And I was coming off of the road. I had litigation in Mississippi. And I worked in Birmingham, and I was coming back. And so I was going to drop by. I was going to stay overnight, I believe, at the house. And I rolled up, and there was a trailer outside parked next to the park, close to their home. And when I got out of my car -- I parked right in the front of the house, as I usually do -- someone jumped out of the trailer in a flak jacket and a firearm and was like, Who are you and what are you doing here? And, of course, it was an Assistant United States Marshal, who was there to protect Judge and Ann and the family. And I was like, Okay, hold on. Just let me knock on the door; they're expecting me

here. And they came out, and I went in.

And that impressed upon me the dangers that they faced with respect to the decisions that he made throughout the years. But I think it also touches upon the personal relationship that Judge had with all of his clerks. You know, from the very outset, they invited us into their home to have dinners, to hang out, and to go be a part of the family.

And I remember about midway through my clerkship, I was talking with Judge and I think it was Ann. And Judge stopped me, because I was talking about my mom at the time, and he realized that he and my mother were the same age. And, you know, he hit the bench when he was 33. And he actually had some clerks over the years that were older than him. So I hit him when it was like 20 years after 1980, and here he was having a clerk whose parent was the same age.

And so, you know, having grown up here in the South -- you know, I grew up in a rural area in South Carolina. You know, parents were supposed to be feared and not to be friends with and such. And so coming into my clerkship, you know, with Judge and with Ann, you know, and they welcomed me into the home, I got a whole 'nother conception of what parenting was like when I saw how they parented their children and how they came into the home. And that really influenced me because they somewhat became my surrogate parents. And I really hung out with the boys a great deal and had a lot of fun

with them. I used to go out and have rib days with Miles on the weekends and such. And that was -- had such an indelible influence upon me.

But with respect to Ann, I mean, she really just took care of us and took care of me particularly, gave me such like wonderful advice. I wasn't dating anyone at the time, but she gave me advice all the time about what I should be looking for. She never mentioned it, but I think a couple of times she brought some folks by that I may have been -- but I was working too -- I was working too hard to really -- to really do anything at the time. But I mean, Ann was just -- was just so much wisdom, so much caring, and a treasure just at that time.

That's why so many clerks always come back. And whenever there's something that we're holding for the Judge, tons of clerks come back. And we love to be with him because, I mean, for me, they were like not just friends necessarily -- like my parents can't be my friends -- they were my surrogate parents.

DEAN BREWBAKER: So I'm going to look at Trey and the judge over here. Can we let Peter answer this question? And then I think we might have hit on our time right here. Would you mind?

MR. GRANGER: Yeah, please. And there may be one more question.

DEAN BREWBAKER: Okay. Sure. Please.

MR. CANFIELD: I don't think -- Judge Johnson couldn't have been Judge Johnson and Judge Thompson could not be Judge Thompson without Ruth Johnson and Ann over them. I have no doubt about that. I mean the -- particularly given -- I mean Judge Johnson used to like to say, You can't ostracize someone who likes fishing, which he would do, but they were certainly isolated.

And I would like to give a short story of the -- I mean, the resistance and the reaction, I mean, that Judge Johnson faced is well-known. Judge Thompson has also faced that kind of resistance over the years. And it doesn't just come in terms of -- a lot of times it's official too.

I mean, one case that I worked on when I was clerking I think is a good example that -- I know you're going to the lynching museum while you're here, what's popularly sometimes called the lynching museum. But -- and there was a time when lynching, as many people say in the South, went underground; that it was no longer public lynching but you had underground lynching; and a lot of it was more official violence.

And one of the cases I worked on when I was with Judge Thompson was related to that. It was -- the case involved -- it was an unarmed and nonviolent offender, a guy named Eugene Adler (phonetic), who worked -- you know, I think he'd been -- he had a felony conviction for like some kind of

like receiving stolen property offense, and he was sentenced to an honor farm around Montgomery. And one day he walked off the work detail. So the -- not just the guard, but Alabama's deputy prison commissioner went out to get him. And when he ran away from them -- he was unarmed -- he shot him and killed him.

Now, under much of the common law and under Alabama statute at the time, you could use -- a prison official could use deadly force against any felon if they reasonably believed it was necessary to stop them. That was the only -- you know, they didn't have to pose a danger; it just had to be -- they just had to believe they needed to shoot them in order to stop them.

And Adler's family sued the commissioner. The case was about to go to trial before a jury. There was a motion in limine. You know, with qualified immunity, you had -- the Judge had to make a decision as to whether both -- the statute was unconstitutional, which he ruled that it was; but that might not be enough because the commissioner might not have -- it might not have been clear enough at the time. So the judge ruled that the statute was unconstitutional in this motion in limine, the case went to the jury, and Adler's family lost. So it was never appealed.

So Alabama's Attorney General at the time then declared, I don't care what this judge said, but I'm telling

all the police departments in the state they should go ahead and continue; if they believe it's necessary to stop a fleeing felon, it's okay to shoot and kill them.

And that went on for four years, and there were other cases. I know -- I'm sure there were many other people who died, but I know one -- at least one died, and the case came before Judge Thompson, and there was a verdict. And four years after that ruling that the statute was unconstitutional, the U.S. Supreme Court in a case called Tennessee/Garner said the same thing. But it took four years for officials in the state of Alabama to stop doing that and to just tell a federal judge that, you know, we're just going to disregard that ruling.

DEAN BREWBAKER: So this is your last chance to tell a story that includes words like "porcupine," "handles," "dogs," "George Wallace" or "U.S. Marshals." And so if you've got one of those that you'd like to tell, I think that would be great. Otherwise, if you want to, as a closing remark, maybe think about the one or two characteristics of these judges that really made them the unique leaders that they've been on our federal bench. So who wants to go first on that?

MR. BEASLEY: Let the clerks go first, and I'll rebut.

JUDGE JOHNSON: Well, you know, if I could think of one characteristic, it would be empathy with respect to Judge Thompson. And, you know, when I say empathy, I want to make

sure that I contrast that or just make sure that you understand it's not the same as compassion. Because as a judicial figure, with respect to exercising empathy, which I understand is understanding others' perspectives and then taking those into consideration with respect to adjudicating a case but making sure you remain impartial, whereas, compassion -- and based upon my understanding -- is not only understanding the perspective, but sharing the suffering and actually advocating to try to relieve the suffering.

My understanding of a judicial role is to exercise empathy. And Judge certainly did so on so many different occasions in understanding the litigants' perspectives. I remember the *Austin versus Hopper* case, which was the hitching post case that came before Judge, that actually -- *Hope versus Pelzer*, Justice Stevens' opinion, relied upon the factual findings in Judge's case for the finding.

And Judge referenced certain things in that case about how the plaintiffs, when they were hitched and the things that would happen to them with respect to defecation being -- and urination and the guards would pour water for dogs in front of them and not give them any water. And it took for him to rule on the qualified immunity defense that, you know, it was clearly established law, not based upon any prior case that came or that was ruled, but based upon the obvious

constitutional violation there. For me, that took some empathy to understand what happened with those individuals when they were hitched to the post.

But just to show you that, you know, it's not the same as compassion, I remember another case we had with Judge when -- you know, it was not a qualified immunity case. This guy was detained for 28 days by some county without having seen -- having an initial appearance before a judge. And so, you know, had to rule on that constitutional issue. But there was another issue in the case in which the -- the defendant -- or the plaintiff, he had his keys to his car confiscated and given to I guess his estranged significant other. And Judge -- I was thinking, wow, this is a procedural due process violation, right, even though the car was titled in his child's name.

And I grew up in the South under pretty meager circumstances. That happened a lot. You know, if you had credit issues, you always put something in a child's name trying to circumvent some law where someone was trying to come after the thing.

And the Judge was like, I understand. I know what you're saying. But under the due process clause, it wasn't his property. And it was titled in the child's name. So it shows you how, you know, you can take into perspective what the litigant is, but you always make the right ruling and



accord the rule of law when you make the ruling.

DEAN BREWBAKER: All right. Thank you.

MR. CANFIELD: So to really sum up both judges, I think -- and I read this recently, going back and reading about the freedom riots. JFK was very concerned that that case was going to come before Judge Johnson here, and so he asked Burke Marshall to tell him something about the judge and why all these civil rights cases were coming before Judge Johnson. And it wasn't because he had some personal predilection; it was because Burke Marshall said, He's clear, straight, and quick, which I think sums up how -- and Judge Thompson as well.

But I have to tell one story that --

So when I came down to clerk, I'd never been to a big -- I'd never been to an SEC football game. And if you haven't been, it's a different experience. So I -- so the Judge said, Do you want to go to the Alabama/Auburn game? And I said, Sure. And I thought it was a little odd that he wanted to go up to a football game. But he said that Bear Bryant would always ask him to come up and say a few words to the football team -- to the Alabama football team before the game -- big game. So...

DEAN BREWBAKER: All right. Mr. Beasley.

MR. BEASLEY: I guess. I'm closing.

I hope that I have learned a lot from these folks here today from my left about the judges. And I didn't know

some of it, but I will note this: That I hope that we run our law firm like they ran their courts and their lives. And that's this way: We insist in our law firm that we do things the right way and we do it for the right reason. And if we follow that and don't deviate from it, the results are going to be good for everybody concerned. Just having this get-together today to honor two great judges, two great men, who have done things the right way, and they obviously did it for the right reason, and I salute both of them.

DEAN BREWBAKER: Thank you.

(Applause)

CHIEF JUDGE MARKS: Gentlemen, thank you very much.

I now have the distinct honor and privilege of introducing our keynote speaker, Judge Myron Thompson.

Judge Thompson was appointed to the federal bench in 1980 to fill the seat vacated by Judge Frank M. Johnson, Jr., when he was elevated to the Eleventh Circuit Court of Appeals.

Judge Thompson served as Chief District Judge here from 1991 to 1998. He is a graduate of Yale College and received his juris doctor from Yale Law School. Judge Thompson was the Eleventh Circuit District Judge representative on the Judicial Conference of the United States from 2007 through 2011. He was the chair of the district judges representatives to the conference from 2010 through 2011. In 2017, Judge

Thompson received the Yale Law School Award of Merit; and in 2022, Yale University awarded him an Honorary Doctor of Law degree.

Judge Thompson has spent over four decades on the federal bench right here in Montgomery, Alabama. And I am privileged to call him my colleague and my friend.

Judge Thompson.

(Applause)

JUDGE THOMPSON: I want to say two things. First of all, I did not know that they were going to talk about me today; otherwise, I wouldn't have come. And the second thing is, you know, I'm glad to learn from Rusty that the reason why my interns come back is to see my wife, Ann.

And I want her to stand.

(Applause)

JUDGE THOMPSON: Now, I definitely have to say this. With all of these judges -- and I understand there are about a hundred of you. And I'm reminded of a comment by Kennedy when the scientists came to the White House. And he said something similar to what I'm about to say to you about Thomas Jefferson. And I'm going to paraphrase it and say it to you. I have never seen so much judicial wit and intelligence in one place since Frank Johnson presided here alone.

(Applause)

JUDGE THOMPSON: The panel discussion is really hard

to follow. Again, I'm truly touched.

After accepting the court's invitation to give these remarks, which I will keep short, I racked my brain about what to say. And I'm certain you did not come down here to hear me talk about law. We can do that over Zoom. I know you came down here to hear about southern history and, in particular, to hear about, since we're all judges, judicial southern history. And I decided the way I would do that is to borrow from perhaps the South's greatest tradition, which is storytelling. Of course, I'm not that good at storytelling. I can't match Judge Watkins when it comes to storytelling. I feel like I should simply give my remarks to him. But I have three stories I'd like to share with you. I'll call them vignettes.

The first story I will call Aspic, Buttermilk, and Cornbread. The second story I will call is A Justice called Black and A Black Justice. And the third and last story I will share with you is called In Search of Joe.

Don't worry. This one is about ten or 15 minutes. Just sit back, and hopefully you'll enjoy my storytelling. Just don't fall asleep on me. And if I start to speak more slowly, it's not because I'm feigning a southern accent, it's just because it's late and been a long day.

Aspic, Buttermilk, and Cornbread is my first story.

Judge Richard T. Rives was born on January 15,

1895, in Montgomery, Alabama. Three of his great great grandfathers had served in the American Revolutionary War. Both sides of his family had operated large plantations using enslaved labor before the American Civil War. He attended the public schools in Montgomery and graduated valedictorian of his class. However, he was unable to finish college and withdrew because he could not afford it and began working as an attorney -- pardon -- began working for an attorney here in Montgomery. He never went to law school but studied what we call -- what they called back then studying law and eventually passed the Bar at the age of 19. He was ambitious; and although he would deny it, he was also political and a bit wily. He was definitely revered as a lawyer in this entire state because he became president of the Alabama Bar.

Sort of like you, Harold.

He was also president of the Alabama Bar.

However, Judge Rives was a bit, as I said, wily. He was like Caesar. You know, he turned the opportunity down three times until people came back and said, we want you as president.

(Laughter)

JUDGE THOMPSON: It, therefore, came as no surprise when in 1951 he was nominated to a vacancy on the old Fifth Circuit Court of Appeals. He was already in a case before the United States Supreme Court when he was told that his

nomination had just been voted out of the Senate and that how he would soon be confirmed by the Supreme Court.

Since he was in Washington at the time, he went by the office of Hugo Black, who was on the Supreme Court as we all know. And he told Black, I really don't feel competent to be an appellate judge. He said, I don't -- I've never been in the walls of a law school. And Justice Black looked at him and said, You know, those cases that you hear will first come to you and will likely come to us; and more likely than not, the questions will be extremely close. Richard, there's not a lot of harm you can do.

(Laughter)

JUDGE THOMPSON: And harm he did not do. To the contrary, he became one of those famous four on the old Fifth Circuit. As Bass described him -- what were they -- Tuttle, Wisdom, Brown, and Rives.

I'm just going to vary from my script here.

When I was in law school, I knew about Tuttle, Wisdom, Brown, and Rives. Now, we were talking about diversity on the federal courts. And I was just hanging around with my friends, and we were talking about, oh, you know, there's so many white males on the federal court, there's no women on the federal court, there's no blacks on the federal court. And we said, well, what's your ideal -- panel, what's your ideal federal panel? And I said, I'd like to have those white-

haired, white old men from the old Fifth Circuit. I said, sometimes, you know, I'll -- but I strongly believe in diversity, but first comes what they think. And that was the famous four from the Fifth Circuit. And, of course, Judge Rives was one of them.

Jack Black -- Jack Bass described them as, They battled to make the rule of law work during a period of social upheaval. They not only accepted the constitutional philosophy, they extended it downward from the Warren Court and reinforced it upward and outward, stretching and expanding the law to protect the rights and liberties granted through the Constitution.

Burke Marshall, who someone mentioned earlier, who became a law professor at Yale Law and, indeed, taught me, would later say, These four judges, including Judge Rives, I think have made more of an impact on American society and American law as any four judges below the Supreme Court have ever done before. Yes, from the voting to public transportation to public schools to public facilities, Rives, Tuttle, Wisdom, and Brown stood shoulder to shoulder making our Constitution live up to its promises.

He and Johnson were both hated. They received an avalanche of mail, abusive telephone calls, and threats. Rives, however, never did give up picking up that phone. He never got an unlisted number. He would rise at all hours of

the night to answer the abusive calls, which were sometimes answered by his wife. And one in particular said, You better enjoy your husband while you can; you won't have him long. But the worst indignity, even beyond the one where he was indirectly criticized from the pulpit by his own pastor, came on the morning when he and his wife visited their son's grave and found it strewn with garbage and painted red. Judge Rives said only that that must be the work of some demented soul and never mentioned it again.

But this is really just the forward to my story. Here's my story about Judge Rives. You have to go back to 1972, when I had come back as the first black Assistant Attorney General of Alabama, and I'd been given the opportunity to argue before the old Fifth Circuit, and on the bench is Judge Rives along with two other judges. After the argument was over, he sent word back to me. He said, Tell Judge -- well, Tell Mr. Thompson he did okay.

You know, I've carried that practice forward. Sometimes when I'll get a young lawyer come in, I'll just say, you know -- I'll bring both sides back in chambers. I know it's their first case. I say, You did okay. Because it meant so much to me, especially coming from Judge Rives.

By the way, I ended up winning the case. And I'm rather sure it was despite my oral argument rather than because. But nevertheless, I remember him so fondly.



But then I have to go back to the real heart of my story, which is in 1980, after I became a judge in this building. And I received a call from the chief circuit judge then of the old Fifth and later of the new Eleventh. His name is John Godbold. And he said, Myron, do you have time for lunch? And of course, to ask me did I have time for lunch was really a rhetorical question. It means, I will see you at lunch. So I said, yes. He says, Why don't you come up here. So I walked up there. He said, Let's walk around the corner. I have a friend that would like to have lunch with us. And of course, it was Judge Rives.

We went to lunch in 1980. It was a Thursday. Judge Rives did not say anything. He clearly had early dementia. Every Thursday after that, Judge Godbold, when he was in Montgomery, would call me and say, Come up, let's go to lunch with Judge Rives. And Judge Rives would have, as you can guess, aspic, buttermilk, and cornbread.

Eventually Judge Godbold, because of other obligations, no longer could have lunch with Judge Rives and I had lunch with him alone. And I did it every Thursday for a year. I don't know if he knew my name. I don't know if he knew I was even a judge. And I would sometimes think to myself as I was sitting there how wonderful it would be to exchange with him his stories and for me to tell my stories.

Here was a man whose grandparents had been slave

owners -- a great, great man -- had been slave owners, and here I am, the great great grandson of slaves. And I was just thinking how much we could share. I'd love to hear those stories about the old Fifth Circuit. Stories such as I remember when I started out as a lawyer, the old Fifth Circuit had a rule that if you brought a case of race discrimination, it was reviewed factually de novo by the circuit. And the reason for that was they didn't trust the district judges.

And the way I learned that was in one of my earliest cases, where I was sitting down with another lawyer who I was sort of watching perform. We were before a judge who we were certain would not and could not and would never rule in favor of a black plaintiff claiming race discrimination. The judge kept overruling everything and clearly showed hostility to us. So I turned to my fellow lawyer and I said, Why are we here? He said, I don't care about him, he's just the vehicle for us to get to the Fifth Circuit. He is just the vehicle for us to get before Judge Rives and Judge Wisdom and the others.

And sure enough he ruled against us, and sure enough we prepared our real trial before the Fifth Circuit. And the briefs were written not objecting as if the judge made error. The Rives were a de novo review. We just made the case for why the Fifth Circuit should rule in favor of our plaintiffs. And this was responding to conditions in the South back then. Of course, the Supreme Court years later said you

can't do that; that's just not the law. But the Fifth Circuit was like that. It was responding to the conditions that existed at the time.

Another case I'd love to have been able to talk to Judge Rives about was when the Voting Rights Act was passed. Many of you may not know that a good part of that act is merely a codification of remedies and claims developed by the old Fifth Circuit. Section 2 of the Voting Rights Act, nothing but old Fifth Circuit law. Judge Rives, Judge Wisdom, Judge Tuttle, they all developed it. What brilliant men. I would love to have been able to share that with him, but he never called my name.

I used to wonder, I'd say, you know, just once if he would just say my name. And eventually, you know, I decided I really didn't care.

His wife, Martha, who would bring him down there, sort of sensed that, you know, is this really worth it with Judge Rives, you know, to take him to lunch every day when he may not even know who I was. And we would set out from this courthouse and we would walk up to the cafeteria, which was up the hill about two blocks from here, and I would walk behind him because I was so afraid he would fall. And I have a limp because I had polio as a kid, and to me it was the lame leading the lame.

But anyway, so I would walk behind him, afraid he

would fall, and we would get to the cafeteria. And the lady who worked there knew what Judge Rives wanted, which was aspic, buttermilk, and cornbread. And of course, he would sit down, he would eat his aspic, he'd break his cornbread into his buttermilk and he would drink it; and then we would come back here. And of course, his wife would then pick him up and take him home.

Well, Martha I think sensed that I was frustrated. I couldn't talk to him. And she said, you know, this Thursday is the most important day in his week. And I wasn't sure whether she was telling me that because she wanted me to feel like I was of some value. But then again, I just thought, you know, that's really not the issue. The issue is that it was the most important day of each week in my life. And that made the lunch worthwhile. Because I thought that the least I could do for a man who had struggled so hard to bring justice to this state, for a man who had suffered so much personally to do that, the least I could do was to share aspic, buttermilk, and cornbread with him.

That's my first story.

(Applause)

JUDGE THOMPSON: I'll say this. I really like the aspic, and I love cornbread, but buttermilk just really tastes like and looks like sour milk to me. I still can't get it down.

My second story is about -- it's called -- I have it right here.

UNIDENTIFIED: (Unintelligible)

JUDGE THOMPSON: That's right.

It's called A Justice called Black and A Black Justice.

Like me, Hugo Black was born and raised in small-town Alabama. Although we were on opposite sides of the color line and we grew up in segregated communities, mostly, if not entirely, the people whose skin we shared -- the skin color we shared, we both pursued legal education, and we both built small law practices in a small town, and we both took -- eventually took seats on the federal bench.

As we know, Black was a legal revolutionary as a Supreme Court Justice. His impact on our understanding of the Constitution lingers today, and his legacy is remarkable. You can read all this in Wikipedia. But I don't want to retell that. More importantly, he was not perfect, and he was not infallible, as none of us is.

Throughout his life, Justice Black had many triumphs, but he also made several grave and serious errors with regard to morality and jurisprudence. As we know, he was a member of the Ku Klux Klan. And also early in his time on the bench on the Supreme Court, he wrote the majority opinion in *Korematsu versus United States*, upholding the federal

government's racist internment of Japanese Americans during World War II. And yet -- and yet -- Justice Marshall looked over all of that when he chose Justice Black to swear him in. He could have asked any of those other justices up there.

Marshall's wife, Sissy, often said, Well, it was because Judge Black was so liberal. There were other liberal justices up there who didn't have that baggage. Why did Marshall choose Justice Black? And I've pondered that.

Justice Black was born in Ashland, Alabama, in 1886, during the time of great courage. In some ways, he was a conformist; and in many ways, he was a nonconformist. He was a conformist in the sense that he joined your regular organizations, and, of course, one of those regular organizations was the KKK. He was also politically ambitious and fiercely competitive with a keen desire to promote his law firm and mingle with the white politicians, business owners, and salesmen who provided him with a steady source of income. But of course, Justice Black is not remembered for conformity even though he himself said he was a joiner.

He, of course, had characteristics early on that led to some of those incredible decisions he made when he became a Supreme Court Justice and when he made the rule of law the law that would protect all of us regardless of our race.

Perhaps one of his most interesting decisions was when he was appointed as the prosecutor in Bessemer, Alabama.

The police in Bessemer had been beating up black citizens for quite some time. And Justice Black knew that if he charged those police officers, none of the blacks would come forward as witnesses; they would be too afraid of retaliation. And of course, there was no jury that was going to convict them anyway.

So what he did was he impaneled a grand jury, and he called before the grand jury the various police officers but basically told them that they were just looking at the operation of the police department. That relieved him of the obligation, by the way, to inform them of their right to remain silent. That's the wiliness part of Justice Black. But he also got them to talk about all of the police brutality in Bessemer. He then had the grand jury file a report which detailed a long history of police brutality. Black then had that report sent to the police department. It resulted in the firing of the three police officers who were considered the most vicious.

He had one assistant prosecutor in his office who he heard was not protecting the rights of blacks. He fired that assistant.

He did not believe in gambling, but he personally had over a hundred charges of gambling which had been brought, by the way, exclusively against blacks dismissed. He knew that those were a pretext for racial discrimination.

Marshall knew that. And Marshall knew about Black's stellar history and legacy as a justice. But why would he choose Black? I mean, why would he choose Justice Black to swear him in? I was still puzzled.

About a year or two ago, I was asked to speak at the dedication of a monument in a park to Justice Black in Ashland, Alabama, where Justice Black had grown up. At that celebration, I posed the question of why did Marshall choose Justice Black, especially in light of his KKK background and when he could have chosen another justice, Warren or others, who clearly may not have carried that baggage with them, even though Warren had come from California where they had the internment of the Japanese. But I never really answered the question. I just posed it.

But I've had a chance to think about it more. And I've decided that Marshall chose Justice Black not despite his background of being a member of the KKK and having perhaps written the decision in Korematsu, he chose him because of that background. I'm speculating. But when I was called to talk about Justice Black, I felt the same way that I think Marshall may have felt when he asked Justice Black to swear him in.

I think that swearing in was an affirmation of hope. I think he said in all white Americans, even Klansmen, there is a Justice Black. That's hope. It's a prayer that no matter who you are, you can rise to the occasion. You can do



the right thing. And in all black Americans, there is a Justice Marshall. And I think that's why he wanted Justice Black, of all the other justices, to swear him in. It was a hope for our future.

And I think I was there at that dedication, indeed as the only keynote speaker, a black man, a black judge, honoring this great justice. Because I think it's a hope for the future that we can rise above the narrowness of ourselves.

That's my second story.

(Applause)

JUDGE THOMPSON: I'm going to get you out of here.

My final story is sort of a coda. It's sort of a supplement to what you've heard earlier about Judge Johnson. And as I said, it's called In Search of Joe.

Earlier this year, in late January, I was called by someone from the Administrative Office of the Courts to give a speech in Baltimore in celebration of the 60th year of the Criminal Justice Act. Now, they called me in late January, and the event was two weeks later. So I said to myself, Why now? And they said, Well, you know, the person we really wanted to speak had to back out. And I'm saying to myself, Why would you call someone and tell them they were your second choice? That's not exactly the way to get them to say yes. But then they told me that their first choice who had backed out was Justice Jackson. I was, oh, wait a minute, I'll take it. If

I'm the second choice to Justice Jackson, I'm deeply honored. Anyway, I did say yes, and I went up for the occasion.

But I want to tell you, you know, one of the reasons that they had selected me was that a group of judges from the AO had came down here, like you've come down, and I had shown them the courtroom. They wanted to talk about the CJA Act and so forth. And I told them that I was responsible for getting the Federal Defender program when I was chief judge here in Montgomery. It was one of the first Federal Defender programs in the Southeast.

(Applause)

JUDGE THOMPSON: And I was so concerned about the nature and quality of representation of defendants in criminal cases.

And I'm going to interject this here because it's not in my speech. But I had been on the bench maybe for 12 years then, and I could never get a second vote from the three judges. We have a three-judge court. And I could never get that second vote to establish a Federal Defender program. And the other two judges would always, Oh, you know, we take that oath to do right to the rich and the poor. They have an obligation to give them a fair trial. And I said, Well, have you seen the quality that we're getting here? It's so poor and everything.

Well, finally one of them took senior status, and

we got a new judge. And that judge had basically practiced only civil law. And after he had seen what it was like to have criminal lawyers appear before them, many of which bordered on incompetency -- indeed, just were incompetent -- he came to a meeting and he was just, Oh, my God, can you imagine? Oh, this is just horrible. I can't believe the quality of representation we are having in our criminal cases. So I said, Well, Harold, why don't we get a federal defender? And he said, Yes. So I rushed back to chambers, called the AO, and I said, We accept.

Right, Harold?

(Applause)

JUDGE THOMPSON: So I got this help from an unlikely source, the Civil Bar, and we got our federal defender.

But this is really only the forward to this third story, because the inspiration took place in the early -- or the mid, actually, 1970s.

I had come back to Alabama from Yale Law School. I had served two years in the Attorney General's Office as a prosecutor, the first black Assistant Attorney General. And then I decided to set out to pursue my dream, which was to be a hip pocket lawyer. I wanted to set up a practice in the southeast corner of the state in a little town called Dothan. It's actually a part of -- there's a Biblical reference to Dothan. It says, Let us go to Dothan. And I wasn't relying on

the Biblical reference. I just wanted to go to Dothan. So I set out. And sure enough, I bought an old house. I lived in the back. I set up an office in the front and opened the door.

Now, my inspiration was a movie -- I'm a movie buff -- *Anatomy of a Murder*. I wanted to be Jimmy Stewart in *Anatomy of a Murder*. I wanted to have an old house. I wanted to go to court. I wanted to do justice. I was just that idealistic and unrealistic. Anyway, so I set out to do this.

And by the way, have any of you seen *Anatomy of a Murder*?

(Applause)

THOMPSON: One of the wonderful characters in that is Eve Arden. She plays Jimmy Stewart's secretary. I even had a surly secretary.

But anyways, I'm sitting in my office, you know, doing some work. My secretary is at her desk hoping she'll get paid and -- just like Eve Arden. And she comes in and she's like, You have a call from the federal courthouse, they want you over there right now. I said, Oh, my goodness. I had two civil cases over there. I said, What deadline have I missed? And I really was nervous.

So the courthouse, by the way -- I mean, my office was only two blocks from the county courthouse and about three blocks from the federal courthouse. So I walk over there to the federal courthouse. I walk in, and the courtroom deputy

is standing out there, and he says, Mr. Thompson? I said, yes. He said, Come this way. So I walk into this small office, and there is who? Frank Johnson. He's sitting behind this desk looking up at me. And he says, Mr. Thompson, how long have you been down here? I said, Oh, about two weeks, sir. He said, Could you take an appointment? I said, An appointment? He says, A criminal appointment. We have a young man out in the courtroom who changed his plea from guilty to not guilty, and would you accept representing him? And I said, Yes, sir. And I'm thinking to myself, Oh, my goodness. And he says, The trial is set for tomorrow.

I walk out the door; but just before I can get to the door, I can see that he was thinking exactly what I was thinking; that is, I'm going to file a motion for a continuance. So he added to his comments, Be ready. In other words, a motion for a continuance would not be granted. I knew to be ready.

So I walk out into the courtroom and there is my client, and I'm probably a year or two younger than he is. And I'm thinking to myself this guy is thinking, I am going to jail, I am going to jail, I am going to jail. And I asked him about the details of his crime -- alleged crime -- see, I already thought he was guilty. I asked him about the details of his alleged crime, and he gave them to me, and it looked like, you know, we really had a loser. And finally I said, Is

there anybody on the face of the Earth who can verify your innocence? And he said, Yes. I said, Oh, really? I says, Who? He says, There is this guy who was present and he can verify that I'm innocent. And I said, Tell me about this guy. And he said, Well, he lives out West somewhere. I said, Where at? Well, I think around -- but I'm not sure. And then he says, I -- I remember that he was present on the night; he was there, as I said. And then I said, What is -- what is his name? He says, Joe. And I said, Joe who? He said, I don't know his last name. And so I'm really thinking to myself this is a real loser. And I said, Well, why didn't you try to get Joe? He said, We tried; we couldn't find him, talking about his old lawyer. And finally I said, Well, let me go back and think about it.

So I go back to my office, where my surly secretary was waiting, and I said, Take this dictation. You know, we didn't have computers back then; we had typewriters; and basically I dictated most everything I filed with the court. And I said -- and I dictated a motion to subpoena a witness, and I described the witness as Joe who may live out West, perhaps Colorado.

My client was lucky enough to have a lawyer like me. You know, there's a fine line between stupidity and courage. I think mine was stupidity. But he was lucky to have a lawyer that stupid. And I debated whether I was going to

file that motion with Judge Johnson. And I thought to myself, you know, this will be the first and the last case he will appoint me to. And I went over there, and I presented him with the motion. He looked at it and he says, Joe? I said, Yes, sir. I said, This is all my client can tell me. And to my absolute shock, he signed the order; but he went further. And this is classic Frank Johnson. He ordered the FBI to find Joe.

(Laughter)

JUDGE THOMPSON: And I go back to my office, and I'm sitting there in the office -- I couldn't sleep that night because I was so worried about the next day. I'm preparing my closing argument, which was basically going to rely on, you know, that day's doubt because I had no proof. I had to just challenge the government's case on reasonable doubt.

And I get a call at eleven o'clock. I pick up the phone. And at the other end is an FBI agent calling from I think Colorado, actually. And he says, Is this Mr. Thompson? I say, Yes, sir. He says, Are you looking for someone named Joe? I said, Yes, sir. Well, I have a man here who may be your man. I said, Put him on. And sure enough, it was Joe. And he verified everything my client had said. And the FBI said, We're giving him a ticket and he'll be in Dothan at eight o'clock the next morning.

You know, the next morning I'm sleeping pretty well, but I wanted to catch him at the airport before the U.S.

Attorney got to him. So I meet him at the airport. I get it on tape -- his description of what happened on tape. Then I bring him back to the federal building. We go to the U.S. Attorney's office. He basically tells the U.S. Attorney that, you know, there were other people involved but my client was totally innocent. And he drops the charges.

(Applause)

JUDGE THOMPSON: And then the courtroom deputy comes in, and he says, Judge Johnson wants to see you. And I walk in, and he looks up.

You know -- Peter, you know those glasses, don't you? The half glasses that look like he -- when he stares at you, you want to die.

But nonetheless, I was standing before him; and he said, Well, we found Joe, didn't we?

And that was my inspiration. I knew that if we were going to have a level playing field, the government had the FBI, Judge Johnson gave me the FBI. He didn't just sign the paper. He ordered the FBI to find Joe. And I don't think that there was another judge in this country who would have done that.

Now, you've heard some great stories about Judge Johnson, about the mental health system, about prisons, about the schools, about public transportation, but I consider my story -- I call it The Sparrow. When I started, I said this



was a coda, but this was a supplement, but indeed, it's really like a completing of the picture.

Because he had those great cases, but he also cared about the sparrow, my little client, and he gave him, at his disposal, the complete FBI to go find Joe.

There is no question in my mind that without that, my client would either have pled guilty to something for which he was totally innocent or he would have gone to trial, gotten a higher sentence, and been convicted, again for something for which he was totally innocent. That was Frank Johnson.

Those are my three stories.

(Applause)

CHIEF JUDGE MARKS: Well, I know better than to try and follow Judge Thompson --

JUDGE BARRON: Judge --

CHIEF JUDGE MARKS: Yes, sir.

JUDGE BARRON: Judge, first, do you mind if I approach?

CHIEF JUDGE MARKS: Of course not, Chief.

JUDGE BARRON: I just want to say on behalf -- I know we've all just arrived here. And what came to mind is, one, don't try and tell a story. But the second thing that came to mind is in my faith, the Jewish faith, when we celebrate a freedom story is a word that's used as we commemorate all the

different things God did to bring freedom. And that word is Dayenu, which means it would have been enough. And I think for all of us who just arrived, honestly I can say this would have been enough for our whole trip. And we're greatly indebted to you.

CHIEF JUDGE MARKS: Chief Judge Barron, it is our absolute honor and pleasure. And we're just so thrilled that you're all here. I am not going to attempt to follow those two programs with any profound words, but I will simply say on behalf of the Middle District of Alabama, I extend to you our deepest gratitude for you-all making this very long trip down here to Alabama to spend the day with us.

This concludes our ceremony. We are adjourned.