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Justice Delayed, Justice Delivered: The Birmingham Sixteenth Street Baptist Church Bombing and the Legacy of Judge Frank Minis Johnson Jr. Judge Frank M. Johnson Jr. Centennial Symposium & Law Clerks Reunion

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JUSTICE DELAYED, JUSTICE DELIVERED: THE BIRMINGHAM SIXTEENTH STREET BAPTIST CHURCH BOMBING AND THE LEGACY OF JUDGE FRANK MINIS JOHNSON JR.

Kenneth M. Rosen & Hon. W. Keith Watkins***

That delayed justice should be avoided in the United States legal system is fundamentally consistent with American aspirations of doing what is morally right. Answering criticism by other clergy of his civil rights activities, in his famed *Letter from a Birmingham Jail*, Dr. Martin Luther King Jr. referenced a jurist in proclaiming that “justice too long delayed is justice denied.”¹ The need for urgency in remedying injustice is clear.

However, similarly important is the idea that even if the delivery of justice is not speedy, one must continue to strive for it until achieved. Indeed, that same letter from Dr. King and his other work testified to the need to continue the struggle against injustice, relying on the deep belief that the world can and must become a more just place.² That journey towards justice is taken on a road paved by courageous individuals. Judge Frank Minis Johnson Jr. of the United States District Court for the Middle District of Alabama and the United States Court of Appeals was one of the most significant and bravest road builders of the last century.

Judge Johnson was born in Winston County, Alabama, in 1918 and served in the United States Army, in private practice, and in the United States Attorney’s Office before his appointment to the bench by President Dwight D. Eisenhower in 1955.³ As a federal judge, in case after case over many years, Judge

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1. See, e.g., “*Letter from a Birmingham Jail [King, Jr.]*,” AFR. STUD. CTR. — U. PENN., https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Mar. 17, 2020).

2. See, e.g., *id.*; Martin Luther King, Jr., “*I Have a Dream . . .*”: *Speech by the Rev. Martin Luther King at the “March on Washington,”* NAT’L ARCHIVES, <https://www.archives.gov/files/press/exhibits/dream-speech.pdf> (last visited Mar. 17, 2020).

3. *Johnson, Frank Minis, Jr.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/johnson-frank-minis-jr> (last visited Mar. 17, 2020).

Johnson's decisions remedied long-standing injustices, from racial discrimination to the treatment of patients in mental institutions to other wrongs.⁴ While the need for justice in these cases may have predated Judge Johnson's involvement as a jurist and was long overdue, Judge Johnson ensured that justice ultimately was delivered.

To honor Judge Johnson's efforts to deliver justice and his many achievements, the Judge Frank M. Johnson Jr. Centennial Committee helped organize a variety of special events held in January of 2019.⁵ The celebration began with two days of events in Montgomery, Alabama, and concluded with a day-long symposium in Tuscaloosa, Alabama, at The University of Alabama School of Law. Papers from that symposium are published in this issue of the *Alabama Law Review*.

In Montgomery, participants registered for the centennial program at the Freedom Rides Museum, and the events included direct commentary on Judge Johnson's life, as well as other gatherings honoring him.⁶ Bryan Stevenson, the founder of the Equal Justice Initiative, helped commence the celebration by addressing those in attendance at the new National Memorial for Peace and Justice. David Bagwell and Cathy Wright reflected on their time clerking for Judge Johnson at a breakfast held at the Kress Building after being introduced by Judge Susan Russ Walker, another of Judge Johnson's former clerks. United

4. See generally ROBERT F. KENNEDY, JR., JUDGE FRANK M. JOHNSON, JR.: A BIOGRAPHY (1978); Myron H. Thompson, *Measuring a Life: Frank Minis Johnson, Jr.*, 109 YALE L.J. 1257 (2000); The Associated Press, *Judge Johnson Buried in the Alabama Hills*, N.Y. TIMES, Jul. 28, 1999, at C24, <https://www.nytimes.com/1999/07/28/us/judge-johnson-buried-in-the-alabama-hills.html>.

5. For more information on the events, see the invitation from the Judge Frank M. Johnson Jr. Centennial Committee for the Judge Frank M. Johnson Centennial Celebration & Symposium. The committee, co-chaired by two of Judge Johnson's former law clerks, Ms. Debbie Long and Mr. Bobby Segall, also included: Chief Circuit Judge for the Eleventh Circuit Court of Appeals Ed Carnes and Circuit Judge Joel F. Dubina; Chief District Judge for the U.S. District Court for the Middle District of Alabama W. Keith Watkins and District Judges Emily C. Marks, Myron H. Thompson, and W. Harold Albritton; Chief Magistrate Judge Wallace Capel for the U.S. District Court for the Middle District of Alabama and Judges Susan Russ Walker, Gray M. Borden, Stephen M. Doyle, and Charles S. Coody; Mr. Leroy Abrahams; Ms. Anita Archie; Mr. Owen Aronov; Hon. Bill Baxley; Hon. Jere Beasley; Ms. Alexia Borden; Dean Mark Brandon; Ms. Sarah Beatty Buller; Dean Charles Campbell; Judge John Carroll (ret.); Ms. Florence Cauthen; Ms. Kate Cotton; Hon. Elton Dean; Hon. Gerald Dial; Mr. Jim Duff; Dr. Glenn Eskew; Mr. Joe Espy; Ms. Monique Fields; Hon. Louis Franklin; Montgomery County District Judge Monet Gaines; Mr. Bob Geddie; Mr. Lewis Gillis; Mr. Trey Granger; Mr. Fred Gray; Mr. Johnny Green; Montgomery Circuit Judge Sally Greenhaw (ret.); Ms. Debbie Hackett; Rev. Cromwell A. Handy; Mr. Lamar Higgins; Ms. Liz Huntley; Ms. Sidney James; Mr. Johnny Johns; Ms. Vera Jordan; Ms. Jay Lamar; Ms. Vanessa Leonard; Dr. Eric Mackey; Ms. Danielle Ward Mason; Mr. Phillip McCallum; Mr. Mac McLeod; Mr. Ed Mizzell; Dr. Valda Montgomery; Rev. E. Baxter Morris; Chief Justice of the Alabama Supreme Court Drayton Nabers (ret.); Dr. Charles Nash; Ms. Nichelle Nix; Dr. Cathy Randall; Mr. Quentin Riggins; Ms. Sheron Rose; Dr. Quinton Ross; Ms. Kathy Sawyer; Mr. Todd Schmidt; Mr. Lee Sentell; Hon. Todd Strange; Dean Henry C. Strickland III; Chief Justice of the Alabama Supreme Court Lyn Stuart (ret.); Mr. John Turner; Hon. Ronda Walker; and Dr. Laurie Weil.

6. See generally *Judge Frank M. Johnson Jr Centennial Celebration*, ALMD (Feb. 23, 2019), <http://www.almd.uscourts.gov/news/judge-frank-m-johnson-jr-centennial-celebration>.

States District Judge Emily C. Marks welcomed participants to the Dexter Avenue King Memorial Baptist Church, where United States Circuit Judge Joel F. Dubina and others offered a variety of inspirational readings.⁷ Chief United States District Judge W. Keith Watkins welcomed guests to the Frank M. Johnson Jr. U.S. Courthouse Complex, where additional speakers, including former United Nations Ambassador Andrew Young, addressed participants.⁸ In the beautiful courtroom where Judge Johnson once presided over cases that would help shape history, United States District Judge Myron H. Thompson also talked about the new Judge Frank M. Johnson Jr. Institute introduced by Judge Watkins the previous day. The Institute will continue to carry on Judge Johnson's legacy, will explore the link between law and social change, and will provide educational services.⁹

In addition to the previously noted events, the Centennial Celebration also honored Judge Johnson with a program at the Alabama Shakespeare Festival. The program focused on the September 15, 1963, bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama, that resulted in the deaths of Addie Mae Collins, Carol Denise McNair, Carole Robertson, and Cynthia Wesley and on the efforts to deliver justice for these young victims.¹⁰ The horrific event instantly gripped national attention. For instance, the front page of the *New York Times* the following day included the headline, "Birmingham Bomb Kills 4 Negro Girls in Church."¹¹ Another headline on the same front page declared, "Full-Scale FBI Hunt on in Birmingham Bombing."¹² Yet insufficient investigative efforts failed to yield a successful prosecution for many years.¹³

Over a decade later, Alabama's young, new Attorney General Bill Baxley would revisit the investigation into the bombing and secure the conviction of

7. The program at the church where Dr. King preached also included Reverend Cromwell Handy, Laurie Weil, Greta Lambert, Cordelia Anderson, Jack Bass, Rabbi Scott Looper, and the Alabama State University Choir directed by Kristofer Sanchack.

8. Speakers at the courthouse also included Wayne Flynt, Peter Canfield, Howell Raines, and Judge Marks.

9. See The Judge Frank M. Johnson, Jr. Institute, FACEBOOK, <https://www.facebook.com/thejohnsoninstitute/> (last visited Feb. 23, 2020); see also Judge Frank M. Johnson Jr. Centennial, ALA. BICENTENNIAL, <https://alabama200.org/frank-johnson-centennial> (last visited Feb. 23, 2020).

10. The program also featured a performance of a play, *Four Little Girls: Birmingham 1963*.

11. Claude Sitton, *Birmingham Bomb Kills 4 Negro Girls in Church; Riots Flare; 2 Boys Slain*, N.Y. TIMES, Sept. 16, 1963, at 1, <https://www.nytimes.com/1963/09/16/archives/birmingham-bomb-kills-4-negro-girls-in-church-riots-flare-2-boys.html>.

12. *Full-Scale F.B.I. Hunt on in Birmingham Bombing; Full Inquiry Ordered*, N.Y. TIMES, Sept. 16, 1963, at 1, <https://www.nytimes.com/1963/09/16/archives/fullscale-fbi-hunt-on-in-birmingham-bombing-full-inquiry-ordered.html>.

13. See DOUG JONES & GREG TRUMAN, BENDING TOWARD JUSTICE: THE BIRMINGHAM CHURCH BOMBING THAT CHANGED THE COURSE OF CIVIL RIGHTS 33–38 (2019) (describing issues with contemporary investigation).

Robert E. Chambliss for the first-degree murder of Carol Denise McNair.¹⁴ Attorney General Baxley personally argued the case. The trial coincided with McNair's birthday, and as the trial drew to a close, he told the jury, "You twelve have an opportunity to do something no one else can do. You have the opportunity to give her a birthday present."¹⁵ Because of the challenge of gathering and presenting evidence years after relevant events occurred, prosecuting the case so long after the bombing was no easy task. Securing a conviction and delivering justice were harder.¹⁶ Winning a conviction reflected extraordinary lawyering by Attorney General Baxley and his colleagues in the Alabama Attorney General's Office.

Attorney General Baxley and three of his former colleagues from the Attorney General's Office fascinated and inspired the audience at the Alabama Shakespeare Festival with a detailed discussion of work on the case. In addition to Attorney General Baxley, the discussants included Judge Thompson, Chief United States Circuit Judge Ed Carnes, and former Deputy Attorney General of Alabama George Beck.¹⁷ Although justice may have been delayed, they, like Judge Johnson, ensured that justice was delivered. Their powerful description of how they delivered justice follows.¹⁸

14. See *id.* at 44–68; Bill Richards & Andrew Kilpatrick, *Alabamian Is Guilty in 1963 Fatal Bombing*, WASH. POST (Nov. 19, 1977), <https://www.washingtonpost.com/archive/politics/1977/11/19/alabamian-is-guilty-in-1963-fatal-bombing/ce885b43-ed44-44ce-a7c1-c56f91ebff23/>.

15. See Yasmin Moreno, *Bill Baxley Reflects on 16th Street Baptist Church Bombing*, HARV. CRIMSON (Oct. 17, 2013), <https://www.thecrimson.com/article/2013/10/17/bill-baxley-reflects-on-16th-street-baptist-church-bombing/>.

16. The conviction withstood a variety of challenges on appeal as the Alabama Court of Criminal Appeals upheld the conviction. *Chambliss v. State*, 373 So. 2d 1185 (Ala. Crim. App. 1979).

17. After they told their stories, United States Senator and former United States Attorney Doug Jones, who later would conduct his own prosecution related to the church bombing, joined them on stage. See generally JONES & TRUMAN, *supra* note 13. As noted by Attorney General Baxley below, former Alabama Attorney General and current United States Circuit Judge William H. Pryor Jr. deputized then-United States Attorney Jones, allowing him to pursue the matter in state court.

18. The transcript below was edited for accuracy and clarity by the speakers. We thank Risa L. Entrekin for her assistance with the transcription.