

The Storied Third Branch

A Rich Tradition of Honorable Service Seen Through the Eyes of Judges

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U.S. District Court, Western District of Kentucky Judge Edward H. Johnstone “A Great Judge from the Greatest Generation”

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I am uncertain as to whether leaders are born or made. The same may be said with those we selectively call great. I do believe we recognize greatness when we see it. Judge Edward Huggins Johnstone is a great judge and a great person. I had the privilege of observing him when he was a practicing lawyer, appearing before him when he was a Circuit Judge in Kentucky and a District Judge for the Western District of Kentucky, and succeeding him in that position after he had taken senior status in 1993.

Judge Johnstone was born on April 26, 1922, in Sao Paulo, Brazil. His father, a graduate of the University of Kentucky, was then an agricultural advisor to the Brazilian government. In 1922, his father became McCracken County, Kentucky's first University of Kentucky Extension Agent, and he and his family returned to Kentucky. When World War II broke out, Judge Johnstone and both brothers served along with the family dog, Pinch, a Doberman, who was in the K-9 Corps. Judge Johnstone, who saw combat in the Battle of the Bulge, returned with a Bronze Star and a Silver Star for gallantry while an infantry sergeant in Europe. Upon his return, he completed his formal education and graduated from the University of Kentucky College of Law in 1949.

Judge Johnstone had the looks and mannerisms of Abraham Lincoln. At 6 foot 4 inches, he soon was called “Big Ed,” and around the courthouse he was named “Big Foot” for his size 14 shoe. Early on, he became well known in the courthouse. He was tall and gangly, with an endearing grin. Johnstone earned the

well-deserved reputation of having a brilliant mind and being the best trial lawyer in the state.

After 27 years in private practice, in his small home town of Princeton, Kentucky, Johnstone was appointed in 1976 as a state Circuit Judge. He served for 16 months before he was selected by President Carter as a United States District Judge for the Western District of Kentucky. He served as Chief Judge from 1985 through 1990. He was a member of the Executive Committee for the Judicial Council, Sixth Circuit, from 1988-1990. He also served on the Judicial Conference of the United States from 1991-1993. In that capacity, Judge Johnstone made an important and lasting contribution to the administration of the law on the national level. After 34 years of service on the federal bench, he assumed inactive status in 2010.

While Judge Johnstone received many of the awards and honors provided to judges with long and distinguished careers, his best achievements are his true devotion to public service, the respect earned from the lawyers and litigants, and his zealous pursuit of justice.

Early in his career, he courageously decided two cases which set a national standard for fairness and effectiveness in prison class-action litigation. He forged a consent decree to require that conditions of confinement meet constitutional standards. Truly barbaric conditions were effectively remedied because Judge Johnstone had the courage to do what was right but not necessarily popular. He was able to achieve agreement and change because his actions commanded the respect of all parties involved.

The case books are filled with precedents in which Judge Johnstone's wise and restrained application of the principles of fairness and social justice established legal principles which have made our society a better place to live. Whether it has been prison reform, access to education, racial justice, sex discrimination, civil liberties, the rights of the disabled, the environment, or criminal justice, Judge Johnstone's decisions have set a standard of excellence which demonstrate that law can be a force in society to bring out the best in our communities and make society a better place for all of our citizens.

Judge Johnstone's entire career has exemplified a devotion to public service and a commitment to equal justice under law that has served as an example to the state of Kentucky and the nation. But the greatest landmark of his career has been the indelible impact he has left on the minds and hearts of all who have come into contact with him. Whether rich or poor, black or white, male or female, powerful

or disenfranchised, Judge Johnstone has treated each human being within his power to judge as an equal before the law. He has set the standard for fairness, compassion, and humanity by which the rest of the state and federal bench will be judged for generations to come. His work has been characterized by a searching and inquiring intellect, an extended hand, an adherence to the law, and an open heart.

While Judge Johnstone's contribution to the development and administration of the law is evident from the record, no description of his contribution to society can ignore the large, generous, and very human spirit which has animated his work. The work of the judiciary has not just been a job for this remarkable person. It has been a calling, a vocation in the truest sense of that word. His compassion, his unflinching common sense, his unique ability to bring people together, and his simple decency have enabled him to make the legal system work the way it was intended: to provide equal justice to all. Judge Johnstone is ever mindful of the human consequences of his every decision. These qualities, together with a true passion for public service, have placed him in the front rank of the Third Branch of the federal government. They have won for him a lasting place in the hearts of all those who have worked with him or appeared before him as litigants or counsel. Before writing this piece, I contacted several of his law clerks and colleagues on the bench, and this work reflects their comments to me and hopefully their love and respect for him.

I only succeeded Judge Johnstone; no one could take his place. He exemplifies all that is great about our profession. He truly is a great judge from the greatest generation.