

MEMORIES OF JIMMY ROBERTSON

*John Griffin Jones**

I was taught by Justice Jimmy in law school. He was, like, very-well-educated smart and an oddball. I learned he was from Greenville and practiced over there with Campbell DeLong for many years. He was a real Mississippi “liberal” of the 60s and 70s context, in the tradition of Judge William Keady, William Winter, Dick Molpus, Danny Cupit, Sonny Merideth, John Robin Bradley, Debbie Bell, and Rob McDuff. Those folks set his context, and we students benefited greatly from it.

He possessed, then and always, a thoroughly examined legal mind in addition to his funny stories and technical knowledge. He taught us that the law could do something good in terms of the way the world really worked. In that way, he lifted the discussion above the thickets of law that we saw when professors of less understanding were trying to convey something to us.¹

The only flaw we saw in Professor Jimmy’s presentation was a really unfortunate full ‘70s hairdo. It was blow-dried and shaped to look like a helmet or a wig. He, too, was a victim of the fashions that always hit Mississippi at least a decade late. And it beat the buzz-cut, Izod-shirted Mississippi holdovers on the faculty who told us only one in three of us would make it out and let us know that they were there for the culling. Not Professor Jimmy.

Because of educated yet practical legal mind, we were elated when Governor Winter appointed him to the Supreme Court in

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¹ I had to take 6 hours of UCC, do not understand what it is for, and have never used it in 39 years of practice.

1983. We thought he was the leading scholar of the law on the Ole Miss faculty, which we thought might bring balance and, perhaps, some legal weight to the Court's decisions. We weren't wrong. Of course his decisions were too long for the taste of many, but he was both explaining himself and imparting a philosophy that was totally new to the Court. If you were looking for support in the law and had a Justice Jimmy opinion to rely on, you had not only the law but the critical question of why the law was the law. That was unprecedented and, in my experience, a Godsend.

Because of the politics we shared and the smattering of individuals with like minds in the Bar, I gravitated toward personal injury. His opinions on Rule 402(a) of the Restatement of Torts and the relatively new² theories of strict liability in tort were helpful and, for some, essential to a working understanding of the law. Oh, he was tough on some of the easily abused subsets of the law, like the impotent "borrowing statute" that allowed claims that expired in plaintiff's home state to be filed in Mississippi and get the unheard-of advantage of our six-year statute of limitations.³

However, for the young, brief-writing, briefcase toting, totally naïve, would-be trial lawyer, there were a few cases lying around that nobody paid attention to that offered a chance to get some early trial experience. These were workers' compensation cases. In that area of the law, Justice Jimmy's early decisions in cases like *South Central Bell v. Aden* and *Marshall Durbin v. Hall* actually laid out the path to proving "disability." More importantly, these cases put forward a statutory construction that read the Act as social legislation that existed to take care of injured workers as a cost of doing business, which meant courts would interpret the Act "liberally" in favor of the worker. There was no 'other state law in Mississippi that was there for the people I represented'. Using Justice Jimmy's holdings and, just as importantly, his explanations of why the result was compelled by the Act, I took a few workers' compensation cases, won them, and then started taking all I could find. I actually got to speak with Justice Jimmy at a comp seminar in 1988 or '89. When confronted by some of the decisions he authored, he laughed and said, "look, I came from a defense practice

² Well, new since *State Stove* in 1966.

³ Oh, the salad days of plaintiffs' personal injury practice in Mississippi!

in the Delta where all I knew about workers' comp was how to hold a plaintiff to its exclusive remedies. I figure the injured worker out to get the relative meager benefit of this law absent exceptional circumstances." In a minute he explained away all notions of liberal bias and "overanalyzing" the precedent with a few words that made sense to his audience.

Later, I tried to follow his "Law and Economics" views by reading his articles and the small explanation of the theories in his decisions. However, I admit I did not get as much from them as his dicta for an employer who refused to rehire a previously-injured worker that argued he could do anything and earn as much as he could pre-injury. He upheld the appeal penalties and the award of permanent total disability for a South Central Bell operator who ruptured a disc bending over to pull out a card from a rolodex by saying:

A postscript: Everything about this case seems contrary to the spirit and purposes of our Worker's Compensation Act. That act and worker's compensation laws generally were in part premised upon the empirically demonstrable fact that disabling industrial accidents often occur in unusual and unlikely ways and under circumstances where it is difficult to demonstrate medically or otherwise just how the incident caused injury or disability. Our law declared irrelevant notions of fault. It was thought that the fact of accidental injury in a work connected setting resulting in disability was all that a worker should have to establish to obtain the modest compensation benefits allowable by law. Yet we have here an employer who for seven years has doggedly pursued the proposition that reaching to disconnect a telephone call and punching a Simplex time card simply could not cause the kind of disabling back injury claimant assets here.⁴

That kind of music has not been heard since Justice Jimmy left the Court in 1992, but we heard it again when he outlawed apportionment as a viable, if internally inconsistent, defense to compensation claims in the famous *Nellie Brown* decision in 1989.⁵ No subsequent decision could possibly overturn that decision;

⁴ S. Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 598 (Miss. 1985).

⁵ See generally *Stuart's, Inc. v. Brown*, 543 So. 2d 649 (Miss. 1989).

indeed, it took the Legislature doing so in 2012. The legislature told those of us there for the workers that the committee was in recess until after Easter, but they reconvened after we' stood down and crammed apportionment back into the Act. However, there has never been any attempt, let alone success, at distinguishing or even mentioning Justice Jimmy's holding and rationale in *Nellie Brown*. The opponents of the spirit and purpose of the Act just stuck apportionment where it did not belong and let it go at that.

I thought of Justice Jimmy then. He was a true Godsend to those of us who try to understand why the law is what the law is, and we will miss his guidance, leadership, and opinions until the law gives way to power. I wonder now what Justice Jimmy would have to say to President Trump, using nothing but the law and his understanding of it as weapons in an increasingly scary time. He would have told me that the law will ultimately save us. And I still have faith.