

Edward Johnstone Profile

Beloved country judge hangs up his robe; fixed the state's prisons

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PRINCETON, Ky. — Struggling to seat a jury, Judge Edward H. Johnstone offered an unusual deal to a farmer who insisted he needed to be excused to cut his tobacco.

"If I come help you cut tobacco on Saturday, will you sit on my jury today?" asked Johnstone, then a circuit judge.

The farmer served on the jury, recalled then-Commonwealth's Attorney Bill Cunningham, and the judge reported for duty that weekend on the farm.

Now, after 30 years on the bench — 29 of them in federal court — the judge with a common touch has hung up his robe. After barreling more than a million miles from Paducah to Bowling Green and Owensboro to Louisville, Johnstone, 84, has stopped trying cases as a U.S. district judge and now only handles Social Security disability appeals.

Johnstone may be best known for transforming Kentucky's once medieval prisons into institutions now considered reasonably safe and humane by forging a historic 1980 settlement between inmates and their keepers.

But lawyers and litigants say his greatest legacy is bringing humanity and dignity to the courtroom, treating every one with respect, from bank president to bank robber.

"I don't think you'll ever find a judge with a greater passion to be fair to all sides than Edward Johnstone," said former law clerk Philip Shepherd, a Frankfort lawyer .

Johnstone never used a gavel. He said he thought it better to command respect through fairness and humility. He introduces himself as "Ed " and insists his clerks call him "Big Foot," a nickname he earned with his size-14 shoe.

His home number is in the phone book, and he fought the General Services Administration for years to keep it from adding luxuries to his chambers like hardwood floors. "He just wanted his toilet fixed," recalled former clerk Steve Reed, who was later U.S. attorney and chairman of the University of Kentucky board of trustees.

And on his first day at work in 1977 at the U.S. courthouse in Paducah, Johnstone ripped down the parking lot sign that said, "Reserved for Federal Judge."

"I didn't want to be treated differently than any other citizen," he said during an interview last week at his modest, \$75,000 home in Princeton, where he and his wife Kay have lived since 1952.

The sign is now planted in his yard.

Faith in human nature

Stories of Johnstone's compassion are legend.

Todd Leatherman, who clerked for the judge from 1989 to 1990 and now heads the Kentucky attorney general's consumer protection division, recalled a prisoner with a stutter once representing himself in court and struggling to cross-examine the warden of a private prison he had sued.

When the warden began to mock the prisoner's impediment, Johnstone grabbed a yardstick from behind the bench, brought it down with a crack on the rail beside the witness's head and bellowed, "He's doing the best he can."

Over the objection of his family and staff, Johnstone habitually picks up hitchhikers — including once when he gave a ride to a man he'd just given 30 days to get his affairs in order before reporting to prison.

"Ed took him to the bus station and gave him money to buy a ticket home," said Herby Merrick, a retired barber in Johnstone's home town of Princeton and one of his best friends.

Retired Assistant U.S. Attorney Alexander "Sandy" Taft said Johnstone sometimes may have tried too hard to find the good in people — as when he sentenced the leader of the Outlaws motorcycle gang, Bill Henry "Happy" Fambrough, a notorious criminal, for drug trafficking.

Johnstone, a World War II veteran honored with a Silver Star for his heroism in the Battle of the Bulge, saw in a pre-sentence report that Fambrough had joined the Army at age 17, and he praised him for serving his country.

"Of course, the only reason Happy signed up was because it was either that or go to jail," Taft said.

Assistant U.S. Attorney Larry Fentress said he didn't always agree with Johnstone but found the judge could be tough when necessary.

"He believes in the essential goodness in people and tried to find that in the most hardened crooks, and that is an affirmation of the human spirit," Fentress said. "He never got jaded."

Cases made headlines

Johnstone presided over some of Kentucky's most sensational trials, including what is thought to have been the longest criminal trial in the Western District, in which a dozen Hells Angels were convicted in 1989 of conspiring to bomb their rivals, among other charges.

It was in Johnstone's courtroom that Louisville's Mel Ignatow finally admitted he had killed his ex-girlfriend, Brenda Sue Schafer, four years earlier. Johnstone could only punish Ignatow for lying to a grand jury about the crime because he'd already been acquitted of murder in state court. Johnstone sentenced him to eight years and one month in prison.

He may have had his greatest impact in reshaping Kentucky's prisons, first by forging a consent decree in 1980 that ultimately forced the state to spend \$120 million to improve its penitentiary and reformatory, and two years later by carving out new rights and programs for women prisoners.

He made surprise visits to the prisons, where he sought out both guards and prisoners. "I wanted to see the prisons in their natural state, without any preparation for my arrival," he said.

Barbara Jones, the Corrections Department's general counsel, said Johnstone was the "instrument of change" in modernizing Kentucky's prison system. "He was the department's harshest critic, but he became our strongest advocate."

A legendary hard worker who often held court long into the evening, then insisted on meeting his clerks for breakfast at 7 the next morning, Johnstone took senior status, or semi retirement, 13 years ago, saying he wanted to spend more time with his family.

But he continued to work nearly a full docket, closing more criminal cases than any other judge in the district, his clerks said. He and his staff drove the circuit in his Mercedes diesel — he called it "Old Blue" — until there were holes in the floorboards. "He called it his air conditioning," Merrick said.

Johnstone once said his work ethic came from his father, William Johnstone, a famed horticulturist who began his career as a county extension agent and couldn't understand why public employees didn't work six days a week.

But Johnstone carved out time for field trips to Western Kentucky towns like Iuka in Livingston County and Wallonia in Trigg, where he seemed to know people in every café and country grocery store. "I wanted to know what people were really thinking," Johnstone said.

Moments of humor

And he occasionally brought a little mischief to his courtroom.

During a lull in a horse-racing fixing trial, he once asked an expert witness from the Daily Racing Form to give jurors his Derby picks.

The late Frank Haddad, the famed defense attorney, told of the time he walked into Johnstone's Paducah courtroom in the middle of another trial and the judge announced, "Mr. Haddad, you and your guilty client have a seat back there and I'll be with you in a minute."

At 6-foot-4, Johnstone appears a bit awkward, and he has always been notoriously absent-minded.

As a young lawyer in the 1950s, he was introducing Harry S Truman at a bar convention in Louisville when, according to the judge, the former president noticed that Johnstone was wearing one black and one brown shoe.

"I'm glad you people from Western Kentucky can afford two pair of shoes," Truman said.

Former law clerk Teresa Moss Groves, now associate general counsel for Murray State University, said Johnstone got ink spots in his khaki trousers so often from leaky pens that he finally bought an emergency pair so he could change into them and "Mrs. Johnson wouldn't find out."

Last year, when he was under round-the-clock protection after a defendant allegedly threatened his life, he took the marshals assigned to guard him to the Kentucky State Penitentiary at Eddyville for a tour. But Johnstone had forgotten his wallet, and a guard wouldn't let him in without an ID, so the judge waited in the warden's office while the marshals took the tour.

Corrections Commissioner John Rees said Johnstone later wrote a letter praising the prison guard for equitably enforcing the rules.

Johnstone decided earlier this year to stop trying civil or criminal cases because of increasing deafness. He said he is continuing to handle Social Security appeals, which are done on paper, because like all federal judges he is paid full salary for life and "it is my duty to return something, as long as I am competent."

As his hearing worsened in recent years, he had his courtroom fitted with amplification equipment and listened to testimony and arguments on headphones. He tells how he once overheard two lawyers whispering angrily as they left the courtroom. "That old son of a bitch was in a foul mood today," one of them told the other. Johnstone interrupted them.

"I don't know which of you said that," he said, "but you were half-right."

Wary of power

Johnstone was always mindful of the power of the government and the need to keep it in check, say defense attorneys and prosecutors alike.

He bridled under federal sentencing guidelines, which he said were too rigid and robbed judges of discretion, and he reveled when they were struck down last year by the U.S. Supreme Court. "Our resources are misspent, our punishments too severe and our sentences too long," he said at the time.

He didn't hesitate to impose lesser sentences than those recommended by the government, even when it might be unpopular, such as in February, when he sentenced a man convicted of distributing child pornography to one-third the 18 years recommended by the government.

Johnstone wrote that while the crime was "despicable, deeply disturbing and unlawful ... our system of justice forbids sentencing on the basis of emotion or gut reaction."

He sometimes told attorneys how, as a sergeant in the Army, he saw the horrors of Dachau a few days after the concentration camp was liberated in April 1945. David Friedman, general counsel of the American Civil Liberties Union of Kentucky, said it shaped Johnstone's philosophy.

"He saw the horrors that can result from unbridled government power," Friedman said.

Johnstone said the American people must never forget what happened in Germany, or the importance of preserving the values in the U.S. Constitution — especially the Bill of Rights.

"We should not forget that document — no matter how grave the crisis," he said. "That is something I believe."