

## A PERSONAL TRIBUTE TO JUDGE E. GRADY JOLLY

*Simon Turner Bailey\**

I stood on the sidewalk outside the James Eastland Federal Building on a hot, sunny July morning long enough for one of the Marshals to descend the steps and ask what business I had there. I was early, I told him, too early to go inside. Behind the courthouse's walls Judge Jolly was sitting behind his desk in an impeccable seersucker suit, reading a motion or brief and probably fiddling with his fountain pen. He was not expecting me—a law student he had never met—for another fifteen minutes. I would have to kill some time.

Or better yet, I thought, I could use the time. Early as I was, it was still too late to learn any constitutional law or read another one of the Judge's many fine opinions. But there was time enough to summon a higher power. I crossed West Street and entered the chapel of Saint Andrew's Episcopal Cathedral. I sat alone in the still, quiet room and began to pray. I prayed that my interview with Judge Jolly would go well, that he would not look at me and see a prideful young person without a clue, but would instead see someone with potential. Time passed quickly. After saying amen, I crossed back toward the courthouse and entered the front door.

Pam Gerity,<sup>1</sup> the Judge's career law clerk, greeted me when I arrived in chambers. We chatted briefly, and then the moment of truth arrived: Judge Jolly was ready to speak with me. He welcomed me into his office with a handshake and we got down to business. We hit the usual interview topics—where I was from, my interests, etc.—but the interview was also substantive. We talked about justiciability, the Establishment Clause, and a few

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<sup>1</sup> Pam clerked for Judge Jolly in 1989-90 and has been his career clerk since 2001. She is an extraordinary asset, capable of remembering opinions Judge Jolly drafted decades ago and handling more than her share of the clerks' workload. I am grateful for her guidance during my clerkship and for her continued friendship.

recent high-profile cases that had come before the Fifth Circuit. I watched Judge Jolly's expression, hoping for some sign of whether my comments were measuring up. I could never get a read.

Near the end of the interview, Judge Jolly asked me what ought to have been an easy question: "Why do you want to clerk?" I suppose the advantages of a federal clerkship seemed so obvious to me, I had trouble thinking of what to say. So I blurted out a foolish answer about wanting to confront "the important questions of our age." Judge Jolly chuckled and quipped right away that the "important questions of our age should be dismissed as political questions."

I felt put in my place, though gently so, and I was sure that I had blown it. When Judge Jolly extended me an offer, I felt an incomparable sense of relief. My foolishness was excused and my prayers were answered.

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From that first meeting with Judge Jolly, I was struck by his grace and by his ability to make a point directly but with good cheer. I observed the same quality on display throughout my clerkship in 2011-2012 and have observed it since. As a clerk, I saw Judge Jolly circulate draft opinions and memos that confronted a fellow judge's work, and that candidly and forcefully expressed disagreement. He was never vicious, never intemperate. He let law and reason do their work and sidelined *ad hominem* attacks.

Judge Jolly's conduct was and is an impactful model of professionalism.<sup>2</sup> I think often about the example he set when I am writing a motion or brief and feel tempted to dip my own pen in poison. Whenever Judge Jolly communicates with a fellow judge in writing, he signs off with the valediction "cordially," and

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<sup>2</sup> Lawyers spend a lot of time lamenting the decline in professionalism within the bar. See Donna C. Chin, et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 RUTGERS L. REV. 889, 890-92 (1999). For those young lawyers inclined to behave professionally, the best safeguard for their inclination is a good role model. *Id.* at 897. Judge Jolly was, and is, mine.

he means it. He respects the Court and the legal profession, and he shows that respect in the way that he communicates.<sup>3</sup>

This sincere cordiality is not, however, a distraction from the purpose of these communications: persuasion. Judge Jolly writes and speaks with great clarity, and I have never seen him bury the point of his argument below layers of false warmth or pretense.

Judge Jolly thinks deeply about the cases that come before him; he pores over the briefs and memoranda prepared by the lawyers and clerks, reads the key authorities cited in those papers, and listens closely to oral argument. He reaches a conclusion only after extensive deliberation and careful thought, then articulates that conclusion with precision and order, sharpening his focus as he goes.

Much is written in our day about keeping an open mind, which is an admirable trait if it does not become an end to itself: “[T]he object of opening the mind, as of opening the mouth, is to shut it again on something solid.”<sup>4</sup> Judge Jolly opens his mind to receive good arguments from advocates and other judges, but he does not leave his mind open forever. When his view of the case matures to a conclusion, he is resolute and expresses himself clearly. This quality is a product of deeply-held principles. Judge Jolly is committed to rationality, individual liberty, and respect for the rule of law. He decides cases on their individual merit but filtered through what he knows to be true.

Lest I paint too serious a picture of the man, you should know that humor and cheerfulness pervade Judge Jolly’s chambers. He delights in practical jokes and uses stories to teach and inform.<sup>5</sup> He told me innumerable stories about colorful lawyers and politicians to explain why he was making one decision or another.

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<sup>3</sup> Judge Jolly not only respects the profession, he has actively encouraged others to do the same, including by founding the Charles Clark Inn of the American Inns of Court. *History of the Inn*, CHARLES CLARK INN COURT, <http://charlesclarkaic.org/about/history-inn/> [<https://perma.cc/DG4E-DELY>] (last visited Aug. 31, 2017). The Inn’s programming is geared toward improving the quality and civility of the bar.

<sup>4</sup> G.K. CHESTERTON, *THE AUTOBIOGRAPHY OF G.K. CHESTERTON* 217 (Ignatius Press 2006) (1936).

<sup>5</sup> Judge Leslie Southwick put it best in describing Judge Jolly as a “genial man, mischievous in his humor.” LESLIE H. SOUTHWICK, *THE NOMINEE: A POLITICAL AND SPIRITUAL JOURNEY* 29 (2014).

The stories provide excellent facts by which to remember my year with the Judge and are a window into his view of the world.

My clerkship coincided with Judge Jolly's 30th anniversary on the bench, so I am by no means the first lawyer who has observed and learned from him—as other tributes in this collection attest. I am part of an extended family of Jolly law clerks that has grown and matured over 35 years and counting. It is gratifying whenever I meet another member of this family; even when the person clerked many years before me, we have similar experiences to share. The family of clerks—spread across the country and carrying with us little bits of the Judge's wit and wisdom—are a part of Judge Jolly's legacy.

Another part of that legacy is his large and still-growing collection of judicial opinions. Judge Jolly is a talented writer and he writes with his audience in mind, as writers should. More than once during my clerkship Judge Jolly reminded me that judges do a disservice to the “consumers of their opinions” when they write around the point and fail to make a clear statement. The bench and bar should be grateful to Judge Jolly for decades of opinions that speak directly to the issues raised in those cases. In rendering sound decisions, he has provided useful guidance to lawyers and judges in future cases who look to the Fifth Circuit for precisely that. The consumers of Judge Jolly's opinions have been well-served.

When Judge Jolly recently announced that he would take senior status, he described his service on the Fifth Circuit as a “cherished privilege.”<sup>6</sup> The privilege is ours. Anyone who knows Judge Jolly, either personally or through his opinions, is better off because of it. His work and example challenge us all to a higher standard of professionalism and skill.

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<sup>6</sup> Letter from Hon. Judge E. Grady Jolly to President of the United States (Mar. 1, 2017) (quoted in Bracey Harris & Geoff Pender, *Trump to Appoint New Mississippi Judge*, CLARION-LEDGER (Mar. 10, 2017, 10:39 AM), <http://www.clarionledger.com/story/news/politics/2017/03/10/jolly-vacate-5-us-circuit-court-seat/99005512/> [<https://perma.cc/7CSP-EQNV>]).

Clerking for Judge Jolly is among the turning points in my life, a uniquely enriching personal and professional experience. In hindsight, knowing what I stood to gain, I should have prayed and prepared more for that first meeting with him. Certainly, I should have formulated a better answer for why I wanted to serve as his law clerk. It was my good fortune to clerk despite having such a foolish answer to that question, and it is my honor to offer this personal tribute to Judge Jolly now, as he vacates his seat as an active judge. I know I join others in these pages in wishing the Judge well as he enters this next chapter in an outstanding career of public service.