

A TRIBUTE TO JUSTICE JIMMY ROBERTSON

*Judge Virginia Carlton**

I consider former Justice Jimmy Robertson a good friend and mentor. He was an outstanding jurist and a brilliant lawyer. I first met Justice Robertson when I was in law school at the University of Mississippi School of Law. Justice Robertson taught my jurisprudence class, and he gave me great encouragement and advice in my legal career. I was honored to get to know him better when I later served as a law clerk at the Mississippi Supreme Court from 1989-1990 while he was serving as a Mississippi Supreme Court Justice. When I got married in June of 1990, Justice Robertson threw a party for me and also attended my wedding. As fate would have it, Justice Robertson had been long-time friends with my husband's family in Greenville, Mississippi, for many years and also for several generations. Hence, we became lifelong friends. Justice Robertson would entertain me with colorful stories from Greenville, where my husband's family lived and where Justice Robertson began his practice of law upon graduation from law school.

One story Justice Robertson shared with me really stood out. When he was still a young lawyer, he inadvertently made history. Justice Robertson was a young associate lawyer in his law firm, and an employee of one of the firm's clients needed some legal representation in county court for a misdemeanor conviction of driving under the influence of intoxicating liquor. So, the law firm

* This tribute is submitted by Presiding Judge Virginia Carlton. Judge Carlton has served on the Mississippi Court of Appeals since 2007.

dispatched young green-behind-the-ears Jimmy to handle the case of *Capler v. City of Greenville*.¹

The case was on appeal from a municipal court on a trial de novo to the county court in Washington County before Judge Zelma Wells Price, the first female judge in Mississippi. The story stuck with me because of the constitutional significance and because Judge Price happened to be my husband's great aunt. I'm sure that the senior lawyers in the firm were smirking and knew that they were sending the young lawyer into a firestorm. Judge Price was a well-known force of nature.² Governor Hugh White appointed her to be the first female judge in the state of Mississippi at a time when it was against statutory law for women to be eligible for jury duty.

Well, one hundred and twenty-three prospective jurors had been called for the term of court at which the defendant was to be on trial, and forty of them were women.³ As acknowledged, this occurred during the time period when it was illegal for women to serve on juries.⁴ However, Judge Price forged ahead. Before the trial on the merits began, young Jimmy filed a motion to quash the venire based on the fact that women were called for jury duty in violation of Mississippi statutory law. Despite the prosecution's request for the court to sustain the motion, Judge Price overruled

¹ *Capler v. City of Greenville*, 207 So. 2d 339 (Miss. 1968). See generally Kenneth J. Mulvey Jr., *Constitutional Law - Sixth Amendment - Systematic Exclusion of Women from Jury Service Violates the Sixth and Fourteenth Amendments*, *Taylor v. Louisiana*, 95 S. Ct. 692 (1975), 3 FORDHAM URB. L.J. 733, 733-35 (1975) (The United States Supreme Court overruled and reversed a Louisiana conviction after finding the Louisiana statute excluding women from jury service unconstitutional. The Supreme Court ruled that the presence of a fair cross section of the community is an essential requirement of an individual's right to jury trial and that this right is contravened by the exclusion of women from jury panels.).

² Zelma Wells Price Obituary, *The Delta Democrat-Times* (Feb. 24, 1974), <https://www.newspapers.com/article/the-delta-democrat-times-zelma-wells-pri/18649261/> [<https://perma.cc/DU52-QS8Z>]. Judge Price died in 1974. She was admitted to the Mississippi Bar and began the practice of law in 1929. She was elected to the Mississippi Legislature in 1943, where she served twelve years and authored the Mississippi Youth Court Act. In 1953, Judge Price was appointed county judge of Washington County by Governor Hugh White. She was elected to that office successively until she retired in 1970.

³ *Capler*, 207 So. 2d at 340-41.

⁴ See *State v. Hall*, 187 So. 2d 861 (Miss. 1966) (The issue of whether women should serve on juries constituted a matter to be determined by the legislature, and the court was "unwilling to take from the legislature that which the people have entrusted to it.").

the motion to quash the venire.⁵ Both the defendant and the prosecution requested that the women called to serve on the jury be excused for cause based on the fact that they were women.⁶ However, Judge Price announced at the beginning of the trial that no women would be excused for cause based on their gender.⁷ During jury selection, the prosecution exercised the City's six peremptory challenges by excusing six women, resulting in a jury of eleven men and one woman.⁸ Young Jimmy, on behalf of his client, then declined to challenge the woman peremptorily, despite possessing three peremptory challenges that he never used.⁹ (Justice Robertson did not personally believe that gender was relevant to juror competence.).

The facts of the case were pretty straightforward. Law enforcement stopped the defendant because his vehicle was weaving in the road from one lane to another, and the defendant nearly ran off the right side of the street.¹⁰ After the defendant exited his vehicle, the officer observed him staggering and smelled a strong odor of alcohol.¹¹ At the police station, the defendant's speech was practically incoherent, and he would not walk.¹² The defendant had to be carried to his cell, a.k.a. "the drunk tank." After a trial in county court, the defendant was convicted by a jury consisting of one lone female juror and eleven male jurors.¹³ On appeal, the Mississippi Supreme Court held that because young Jimmy had not exercised his remaining peremptory challenges to strike the woman from the jury during jury selection, the defendant waived his right to raise the issue that "the jury was not lawfully constituted." The supreme court ultimately affirmed the conviction.¹⁴

⁵ *Capler*, 207 So. 2d at 340.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 341.

¹⁴ *Id.*

In the end, as a young lawyer, Justice Robertson played a role in seating the first female juror in Mississippi by not using his peremptory challenge to strike her from the jury. Months after the supreme court issued its ruling in this case, Mississippi changed the law to allow women to be lawfully eligible to serve as jurors.¹⁵

Some years back, Justice Robertson contacted me to share that he had read in a newspaper that the lady who served as the first female juror in Mississippi had passed, without fanfare. We wondered if she ever received much acknowledgment for her service as the first female juror in Mississippi. I can only imagine that she must have been brave and committed to performing her public duties. Her quiet passing felt a bit anticlimactic to both of us.

Justice Jimmy Robertson was a good friend, outstanding professor, great justice, and caring mentor. He loved the law. I am honored to give tribute in celebration of his life and legacy.

¹⁵ The 1968 Legislature passed a statute that made women eligible for jury service. 1968 Miss. Laws ch. 335, §1 (H.B. 895). *see also* Miss. Code Ann. § 13-5-1 (Rev. 2019) (providing juror qualifications for every citizen not under the age of 21).