

Mississippi College Law Review

Volume 40 | Issue 3

Article 10

Fall 2022

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Recommended Citation

Mills, The Honorable Michael P. (2022) "FRED LEE BANKS, JR.," *Mississippi College Law Review*. Vol. 40: Iss. 3, Article 10.

Available at: <https://dc.law.mc.edu/lawreview/vol40/iss3/10>

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FRED LEE BANKS, JR.

*The Honorable Michael P. Mills**

Dark clouds brooded over the marbled Dome of the Mississippi Capitol as roguery ran loose at High Noon on the first Tuesday following the first Monday in January in the year of our Lord, 1984, one of the most miserable days of my life, and the day that I first remember *seeing* Fred Lee Banks, Jr. This was the day I took an oath as a new member of the Mississippi House of Representatives. I and several other young lawyers and related malcontents known in the Press as the Gang of 26 for our stance as anti-Old Guard “reformers” were about to get our first taste of legislative reality. Immediately after being sworn in, I would cast what would likely be the most consequential vote of my legislative career! The outcome would determine whether I became part of the in-crowd or remained an outcast. Though the vote was technically to change the Rules of the House, it was really a vote against the Speaker, one C. B. “Buddie” Newman, Jr., the gentleman from Issaquena County. My heart pulled me down one road, but my head told me to take another. And that, my friends, has made all the difference.¹

I said that was the day that I first remember *seeing* Fred Lee Banks, Jr.,² because I do not remember *speaking* with him then, though I well

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¹ As a side-note, and in order to make my comments appear more scholarly, I quote from Section 40 of our State Constitution, which provides the oath for members of the legislature to take, each of whom vows that “I will, as soon as practicable hereafter, carefully read [or have read to me] the Constitution of this state, . . . and I will not vote for any measure or person because of a promise of any other member of this legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.” Many of us, not having had time to read (or have read to us) the Constitution, immediately violated our oaths by voting for or against the Rules, in hopes of getting favorable committee assignments, parking spots, maybe an office in the Capitol with a secretary, and such other sundry perks and trifles as might be doled out by the Speaker. Finally, I note that the ability of a legislator to trade his or her vote to other legislators for like favors in return is a time-honored legislative practice. And we swore not to do it! So help me God!

² I write to praise Fred, not to bury him. When we gather to memorialize a public man before he passes on, does it not seem right and fitting that we look behind his dry, perhaps contrived, public utterances and speeches to glean those hints of personality

remember watching the handsome, self-assured, neatly-dressed young man, whom I recognized from his picture in the papers as Fred Banks, Jr., weaving among the membership, leaning to talk to this member, grinning at that one, shaking hands with another, busily “working the floor” as this behavior was known. Fred was a member of Speaker Newman’s “Go-Team,” and he was counting votes.

Fred Lee Banks, Jr., was elected to the Mississippi Legislature in 1975, enjoying a three-way tie with schoolteacher Doug Anderson and preacher Horace Buckley for the honor of being the second African American elected to the House of Representatives since Reconstruction, the first being my dear friend Robert Clark, Jr. So, arguably, Fred Lee Banks, Jr., was Number Two, and there is something to be said for that.

I began to have some doubts about our chances of changing the Rules in the weeks and days leading up to my first legislative vote, but those in the know generally led those of us not in the know to believe that we probably had fifty or more votes on our side. There would be some protection in numbers. The Go-Team couldn’t afford to punish the entire herd! Unfortunately, the House leadership knew how to flush us out (or down) one at a time. First, they picked a temporary Speaker, the wily gentleman from Washington, H. L. “Sonny” Merideth, Jr., to preside. Sonny, a master of reading human nature, knew exactly how to make the voting procedure as painful as possible for the losing side. When the substitute motion was put to change the Rules, Sonny did not let us “go on the board” where everyone voted at once. No, he called for a roll call *voice* vote. We would be called out before the Inquisitors one by one. Drip ... drip ... drip. It went something like this as the clerk slooowwwly called our names in order of our District number:

District 1: Mack Loyd Wadkins . . . “No.”

District 2: Harvey Moss . . . “No.”

District 3: Billy McCoy . . . “No.”

revealed in more intimate moments of candor and plain dealing when the Great Man is not on-stage, so to speak? For instance, I note that the renowned Gospel singer Willie Banks was from Raymond, Mississippi, and therefore Hinds County, as was Chuck Berry’s mother, a Mississippi schoolteacher named Lula Thomas, who married one Charles Henry Banks. I suggested to Fred that genius really does run in some families and that he was surely related to Willie Banks and Chuck Berry. Most lawyers would be flattered to be so linked to greatness. (Just ask me if I am kin to Elvis!) Fred adamantly denies that he is related to the Hinds County Bankses, stating that he is a “Madison County Banks.” Humility. Honesty.

District 4: James Nunnally . . . “No.”

District 5: Ralph Doxey . . . “No.”

District 6: Morris Lee Scott . . . “No.”

I might be the only person in the House to vote to change the Rules! Gloom, despair, and agony on me! I was living a child’s nightmare where you dreamt that you went to school naked and everyone else had their clothes on. My fate seemed as gloomy as the dark skies shadowing the Dome. Then they called for District 7:

District 7: John Grisham, Jr. . . . “Yes.”

What you say Scannell-Boogah!³ But thirteen more Districts would vote No before I heard my name called:

District 21: Mike Mills . . . “Yes.”

So there were two of us!

Our numbers did not improve much as the tally droned on. The Gang lost 95 to 26. Buddie Newman, Sonny Merideth, and the Old Guard, whose numbers included the scholarly Fred Lee Banks, Jr., defeated us soundly. I felt bruised as a run-over hog. Rather than being on the Go-Team, John and I and the rest of the Gang of 26 found ourselves on the Go-Away Team.

Buddie Newman punished us by appointing every member of the Gang of 26 to serve on the no-great-shakes Agriculture Committee. (Where I did obtain some picayunish prestige as the Chairman of the one-person Seed and Feed Sub-Committee.) Not one member of our Gang was appointed to either of the “Money” committees, i.e., Appropriations or Ways and Means.

While John Grisham and I and the rest of the Gang of 26 bided our time on Agriculture, my friend Fred Lee Banks, Jr., basked in his fancy-pants status as the new Chairman of Judiciary “B”; as Secretary of Ethics; as Vice-Chairman of Judiciary En Banc; as a member of the powerful Ways and Means Committee; and as a member of the Oil and Gas Committee, a

³ A favorite phrase of the tough old Speaker, C. B. “Buddie” Newman, who idolized the Philippines dictator, Ferdinand Marcos, and who once danced with the First Lady of Many Shoes, Imelda.

Red-Meat committee if ever there was one.⁴ Fred was also a ranking member on the Interstate Cooperation Committee, which meant he got to take a lot of out-of-state trips to study how other states ran their business. (Much more exciting than debating how much rodent waste to allow in a sack of seed or feed).⁵

Committee envy aside, when the House finally got down to the business of making laws, I found Fred to be dedicated to the service of the people, a member we could trust.⁶

Fred Lee Banks, Jr., was appointed to the Mississippi Supreme Court in 1985, succeeding the brilliant Reuben Anderson, thereby becoming the second African American to serve on the Mississippi Supreme Court. The Legislature's loss was the Supreme Court's gain. I joined Fred on the Supreme Court in 1995, and it was here that I came to have even greater respect for him as a lawyer and as a man.⁷ Justice Banks knew the law, respected the law, and was determined to get the law right. He was not an activist or politician on the court. Like me, he thought the plaintiff should win sometimes and the defendant should win sometimes

⁴ In legislative parlance, a "Red Meat" committee draws a lot of interest from lobbyists who are anxious to take its members out to the watering holes serving the best red meat and the finest liquid refreshments.

⁵ Other lawyers in the Gang of 26 included Don Alford, Ed Blackmon, Johnny Reeves, Thomas U. Reynolds, Bill Singletary, Dewayne Thomas, Joe Warren, Percy Watson, and future lawyer Cecil Simmons. Others who voted to change the Rules were Credell Calhoun, Eric Clark, Tyrone Ellis, Isiah Fredericks, Ernest Garvin, Curtis Holston, Jerry Hutto, Dick Livingston, Bennet Malone, Walter Robinson, Frances Savage, Barney Schoby, Johnny Stringer, and Wootsie Tate. In addition to a world-famous author, the Gang of 26 has produced two Mississippi Supreme Court Justices, two state-court chancellors, one federal judge, and some fine lawyers. Some might observe that, with the passage of time, our Gang of 26 compares very well with the 95 on the Go-Team.

⁶ I recently asked Fred what was the most important legislation that he handled when he was in the Legislature. He was modest, saying he really couldn't recall, but after I pressed him, he said he suspected it was the Landlord-Tenant Act. Well, I couldn't resist telling him that I had recently declared that law unconstitutional. *See Conner v. Alltin, LLC*, No. 3:20-CV-057, 2021 WL 5588731 (N.D. Miss., Nov. 30, 2021). Fred quickly responded that, "well that may have been because Hillman Frazier drafted it." I note for the reader that Hillman Frazier was a former legislative draftsman and a sitting member of the House when I was elected. He is now one of the Lions of the Mississippi Senate, and I presume he will not object to my quoting Fred's comment, the good Senator likely preferring to be mentioned in this article as noted rather than being otherwise left entirely out!

⁷ I hesitate to declare that Fred was the most brilliant legal mind with whom I served in the Legislature or on the Supreme Court. If I said this, I might disappoint others, not the least being my former colleague, the brilliant Ed Blackmon, who still serves in the House, or the former gentleman from Plantersville, the eloquent Steve Holland, not to mention Chief Justice Dan Lee, but Fred is certainly in the top two or three.

and sometimes you have to vote to reverse in a criminal appeal. He was a lawyer's judge. Honest. Dedicated. He read the briefs.

It was also on the Supreme Court that I saw more of Justice Banks's quick wit which is sharp as a Texas toothpick. Fred and I were having lunch in the basement of the old Carroll Gartin Building when I mentioned that I had recently had my DNA tested and, to my surprise, learned that I did not have any Native American ancestry. I always thought, based on our family myth, that we had a Native American in our lineage. However, my DNA results (at the time) indicated that I had no Native American ancestry. According to the findings, I was eighty-eight percent British Isles and twelve percent Ashkenazi Jew. I told Fred that after my initial surprise, I had embraced my newfound ancestry and was proud to be a direct descendant of Abraham, a child of that great family who gave the world a hunger for Justice. I told Fred that before I was tested, I had never heard of an Ashkenazi Jew but was pleased to learn that some mighty fine folks identified as Ashkenazi Jews and that my new-found cousins included Albert Einstein, Carl Sagan, Steven Spielberg, Stephen Breyer, and Elena Kagan. Incredibly, I learned that Ashkenazi Jews can trace their ancestry all the way back to Noah's grandson, Gomer, named in the tenth Chapter of the Book of Genesis. I told Fred that I would challenge any blue-haired member of the Society of Mayflower Descendants or Daughter of the American Revolution to boast a pedigree older or nobler than mine! Blue bloods indeed! I rested my case.

Fred listened patiently to my elaborate tale, took a sip of water, grinned, then said, "Well, Mike, if someone had asked me to name a lawyer from Itawamba County who had a grandpa named Gomer, I would probably say it was you."

Surprise, surprise!

I hesitate, from this distance in time and place, to speculate on which of Justice Banks's many opinions was the most important. However, I suggest for consideration a 1998 special concurrence in *Daniels v. Harrison County Board of Supervisors*,⁸ in which Justice Banks wrote about the Confederate flag as follows:

Some may theorize to the contrary, but the bottom line is that the Confederate battle flag conjures up images of and is popularly used to symbolize slavery, white supremacy, racism and oppression. It takes no back seat to the Nazi Swastika in this regard. Nevertheless, a common argument

⁸ 722 So. 2d 136 (1998).

in favor of the flag is that it represents a piece of Southern history that should not be forgotten.

I have no qualms with preserving history. Such symbols as the Confederate flag and Nazi Swastika are appropriate in museums, exhibits and the like. I do not believe, however, that it is appropriate public policy to continue to fly the Confederate battle flag at government facilities. To continue to do so under the shibboleth of ‘preserving tradition’ readily lends itself to negative connotations that, with good reason, offend a large number of Mississippi citizens—sending a message that their feelings do not matter. One can only wonder what role such divisiveness plays in the problems which continue to plague our state.⁹

Justice Banks then stated that he agreed with the majority that

the judiciary is not the avenue to effectuate the removal of the Confederate battle flag from public property . . . the Legislature is the primary expositor of this state’s public policy. If, by its choice of symbols, the Legislature announces a public policy of insensitivity to persons still reeling from the effects of hundreds of years of a pernicious system of oppression based on race, so be it. The world should and will take note.¹⁰

I wish I had written that.

Justice Banks, in this special concurrence, was performing the finest service that a judge or a lawyer can provide in a civil society. He was respecting the rule of law (i.e., deferring to the will of the legislature, even though he might disagree with their judgment), but, equally important, he was teaching us to respect the feelings of our fellow citizens. He was speaking for humanity.

Time passes. Memories fade. Who and what should be remembered? Fred Lee Banks, Jr., is a good man. He recently mentioned that we both resigned from the Mississippi Supreme Court on the same day, October 31, 2001. I went to the federal bench, Fred into private practice. A chapter closes. Turn the page.

⁹ *Id.* at 140-41.

¹⁰ *Id.* at 141.