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Robb McDuff

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## NOTES OF A FAN

*Rob McDuff\**

There is no one like Fred Banks.

He is a scholar of the law and a person of politics; an activist who later joined the highest court in the State; a quiet but persuasive presence who made his voice, and the voices of his dispossessed clients, heard in the halls of power. He is a person who broke through barriers designed to prevent people like him from entering the halls of power; a person who, once he possessed power, exercised it wisely and thoughtfully with an acute understanding of the difficulties faced by marginalized people in our society. Fred Banks is a lawyer of great abilities in trial and on appeal, in state and federal court, as a legislator, and as a trial judge and supreme court justice. He had an outside game and an inside game, and he excelled at both.

The various articles in this volume have described the impressive breadth of Fred Banks's career. I write here just to add a few words of appreciation and highlight a few things, including his early years as a civil-rights lawyer during the crucible of the civil-rights movement and his service as one of the early Black members of the Mississippi legislature during a time of major transformation.

I have been a fan of Fred since 1976 when I first met him. As a college student, I worked part-time for Frank Parker, the legendary voting-rights lawyer in the Jackson office of the Lawyers Committee for Civil Rights Under Law. One Saturday morning, Frank invited me to sit on a meeting of civil-rights luminaries to discuss the latest federal court decision in the long-running legislative redistricting case. Aaron Henry was there, as were Henry Kirksey, Rims Barber, Owen Brooks, Gordon Henderson, and, of course, Fred Banks. I was a college kid, and I felt like I was in a room with giants. As they dissected the ruling—deciding which parts should be appealed to the U.S. Supreme Court—I was struck by Fred's impressive and practical analysis of the intersection between law and politics that played out in the case. I have been in awe of him ever since.

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\* Rob McDuff is an attorney for the Mississippi Center for Justice and operates his own law practice, the Law Office of Robert McDuff, in Jackson, Mississippi. He earned his Bachelor's degree from Millsaps College and his Juris Doctorate from Harvard Law School. Attorney McDuff previously worked as a lawyer with the Lawyers' Committee for Civil Rights in Washington, DC; as a lawyer with the civil rights law firm Ratner & Sugarmon in Memphis, Tennessee; as an Assistant Professor at the University of Mississippi Law School; and as a law clerk to Judge William Wayne Justice of the U.S. District Court for the Eastern District of Texas.

I met Fred a few times in the ensuing years after I became a lawyer. I had the privilege in the mid-1980s of deposing him and Reuben Anderson as friendly witnesses in a federal court case challenging the discriminatory lines used to elect state-court judges in parts of Mississippi. At the time, Fred was the only Black state trial court judge in Mississippi and Reuben was the only Black state supreme court justice. Since that time, I have known Fred in many capacities, including as co-counsel, as adviser, as a fellow founder and board member of the Mississippi Center for Justice (MCJ), and as an occasional tennis opponent. I remain in awe of him today.

In a state marred by a history of racial oppression, the legal battles during the Civil Rights Movement marked the most important period of Mississippi's legal history. Fred Banks was at the forefront.

Fred became a lawyer in 1968, returning to his hometown of Jackson after graduating from Howard Law School. He joined the NAACP Legal Defense Fund's (LDF) Jackson office, where he worked with Reuben Anderson, his friend since the fifth grade, who had joined the LDF office a year earlier as the first Black person to graduate from the University of Mississippi Law School.

In the 1950s and early 1960s, the only Mississippi attorneys willing to take civil rights cases were Black lawyers R. Jess Brown, Jack Young, and Carsie Hall, who did so as part of their general law practices on behalf of Black Mississippians. Beginning in the mid-1960s, a number of out-of-state lawyers who were part of national organizations came to Mississippi to work full time on civil rights cases; some stayed for several years. But the first native Mississippians to jump headlong into the fray as full-time civil-rights lawyers were Reuben Anderson and Fred Banks.

In 1970, with support from LDF, they formed their own firm: Anderson, Banks, Nichols & Leventhal. Reuben shifted to private practice while Fred continued spending most of his time on civil rights cases.<sup>1</sup>

For a long time now, we have been accustomed to viewing Fred Banks as a leading member of the Mississippi Bar, frequently and appropriately honoring him for the enormous contributions he has made during his professional life. But when he entered the practice of law in 1968, Fred was only the tenth Black lawyer in the entire state, and he took more civil-rights cases than anyone. This was a troubled time. Fred and his colleagues were fighting against the dominant culture, and the

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<sup>1</sup> Pettigrew Kraft, *An Oral History with the Honorable Fred L. Banks, Jr.*, Mississippi Oral History Program, UNIVERSITY OF SOUTHERN MISSISSIPPI, [https://usm.access.preservica.com/uncategorized/IO\\_5a37a2c9-a759-4e03-8189-f8d601ce9009/](https://usm.access.preservica.com/uncategorized/IO_5a37a2c9-a759-4e03-8189-f8d601ce9009/) (last visited Apr. 8, 2022). The transcript of this interview contains a fascinating discussion of events and cases, as well as Fred's reflections on the legal process.

opposition was intense. Martin Luther King, Jr., was assassinated in Memphis approximately two months before Fred moved back to Mississippi. Fred himself recalled that when he drove back to his hometown of Jackson to commence his law practice, he went through Meridian only a few hours before a Klansman attempted to blow up the home of a Jewish business leader. The night after he returned to Jackson, as he was visiting with friends in a parking lot, Jackson police officers descended on the group. One of them asked for Fred's driver's license and, rather than hand it back to Fred, dropped it on the ground.<sup>2</sup> When Fred showed up for the bar exam preparation course at the Jackson School of Law, he was told it was a private institution and was turned away.<sup>3</sup>

In his first appearance in a school desegregation case, in federal court in Oxford, the courtroom was so crowded that one of the Plaintiffs, Henry Reeves, Sr., had to wait outside because there was no room. During a recess in the proceedings, Reeves came in and people moved over so that he was able to squeeze in the front row. At that point, the lawyer for the Benton County schools, John Farese, ordered Reeves out of the courtroom. When Fred told Farese he had no authority to order anyone out of the courtroom, Farese mouthed the letter "n" and challenged Fred to a fight. The conversation quickly ended as the judge returned to the courtroom.<sup>4</sup>

Undeterred, Fred continued fighting to desegregate and improve the public schools over bitter opposition. He represented Black students, teachers, and administrators who were often marginalized as Black school systems were merged into White ones. He represented Black people who were turned away from public businesses. He represented civil rights activists. He joined the fight to replace the Mississippi Democratic Party's White establishment (the Regular Democrats) with a new integrated group of activists (known as the Loyalist Democrats). He defended Black people in death penalty prosecutions, including a member of the separatist Republic of New Africa accused of killing a law enforcement officer in a shootout with police. He was a key figure in the monumental redistricting battles of the time, serving as an expert witness regarding politics and voting patterns. As President of the Jackson branch of the NAACP, he led a number of protests, including marches against police brutality, and spoke at news conferences where he called out high officials.

In 1975, he ran for election to the Mississippi legislature, a bicameral body of 174 members which had only one Black representative

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<sup>2</sup> *Id.*

<sup>3</sup> The school was owned by John Satterfield, a Mississippi lawyer who was a leading figure in the White Citizen's Council, a member of the State Sovereignty Commission, and, incidentally, a former President of the American Bar Association.

<sup>4</sup> Kraft, *supra* note 1.

(Robert Clark). The legislature fought strenuously during those years to maintain discriminatory election districts that would prevent any other Black people from being elected to that body and joining Clark. Due to federal court litigation, however, a handful of majority-Black single-member districts were drawn in Hinds and Harrison Counties prior to the 1975 election, and Fred was elected along with two other new Black legislators, bringing the total to four. In 1976, Fred was asked to serve as co-chair of the Mississippi campaign for Jimmy Carter, playing a major role in Carter's victory in Mississippi.

Fred did all of this with the quiet brilliance and integrity that is his hallmark, becoming more and more influential as a legislator and political figure while continuing in his role as one of the most important lawyers in the state during this pivotal time in Mississippi's history.

In the meantime, Reuben Anderson effectively integrated the Mississippi judiciary when he was appointed to a Jackson Municipal Court judgeship in 1976 and then to a full-time County Court judgeship for Hinds County in 1977. In 1982, he was appointed as the first and only Black Circuit Court Judge in the State. In 1985, Judge Anderson resigned from the Circuit Court to become the first Black Mississippi Supreme Court justice. That's when Fred began his judicial career, replacing Reuben Anderson as a Circuit Court Judge. In 1991, after Anderson retired from the Supreme Court, Fred was appointed to the mid-term vacancy and replaced him as the only Black justice. Fred then won a mid-term special election later in 1991 and was re-elected in 1996.

Fred Banks was one of the trailblazers in the integration of the legislative branch when he joined that body in 1975. It was only in 1978, spurred by federal court litigation, that the legislature adopted a statewide single-member redistricting plan that led to an increased number of Black state legislators. Reuben Anderson and then Fred Banks were trailblazers in the integration of the state court judiciary. No other Black lawyers were elected as trial-court judges until 1989. Fred later described the importance of racial diversity in the judiciary:

[E]verybody, every individual brings a different viewpoint. And because the dividing line in our society in Mississippi has been race in so many aspects of our lives, I brought something that was a little bit different than everybody else. And everybody grew up somewhere. Everybody was influenced by some philosophy or another, so all of the judges bring some bit of history into the process. But having grown up in the black community, unlike the other seventy-nine [circuit and chancery court] judges that were serving in

the state of Mississippi, I brought something that was more unique than they did. I don't say that any particular outcome was different, although there may have been some outcomes in the process that may have been different had the judge been a different person. And sometimes that's based on a racial outlook. But I don't think it's a tremendous difference. It is a part of government. It's a position of power and it's important that those people who are affected by it see that they have a stake in it, too, and are able to operate in it and operate it just like anybody else.<sup>5</sup>

The recent nomination of Justice Ketanji Brown Jackson marks the prescience of those words. She had been a public defender, and no U.S. Supreme Court justice had defended criminal cases since Thurgood Marshall. In the nation's judiciary as a whole, there are few lawyers with criminal defense and civil rights experience.

But when he came to the bench, Fred Banks brought with him the rich history of his years as a civil rights lawyer, a lawyer who had defended high-stakes criminal cases, and a legislator, all of which greatly informed his service as a trial court judge and later as a supreme court justice. The rare combination of these experiences—and the intelligence and character he brought to each of them—make him a truly unique figure in our time.

After leaving the Mississippi Supreme Court and joining Phelps Dunbar, Fred Banks was one of the founders of the Mississippi Center for Justice and the first chairperson of its board of directors. Martha Bergmark, the first President of MCJ, explained:

It took a village to launch the Mississippi Center for Justice in 2003, but a handful of key people earned sine qua non status. Justice Banks was most assuredly one of those. In the earliest days, when MCJ was but an idea seeking traction, he generously lent his name and prestige to our fledgling effort. He opened doors to potential supporters who would otherwise have been skeptical that we could pull it off. He chaired the founding board of directors and led the board throughout our first decade. In his inimitable soft-spoken way, he provided wise counsel and encouragement at every turn. But for Justice Banks, the Mississippi Center for Justice would not be the force for progressive change it is today. And personally, I count myself fortunate beyond

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<sup>5</sup> *Id.*

words to be able to claim this brilliant, deeply good person as my mentor and friend.

When asked what he wanted to be remembered for, Fred stated:

Well, I hate to borrow from Thurgood Marshall, but I just love his epitaph, “I did the best I could with what I had.” [laughter] . . . I did the best I could with what I had and I tried to be true to my values. I tried to be fair to everybody without any hatred or resentment against people, individuals, or races or anything like that.<sup>6</sup>

Fred will be remembered for all of these things, and for so much more, during his remarkable life—a life of engagement with the crucial events of the times which continues to this day. There is no one like him, and we are lucky he came our way.

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<sup>6</sup> *Id.*