1. NAME OF PROPERTY

Historic Name: U.S. Post Office and Courthouse (Frank M. Johnson Jr. Federal Building and U.S. Courthouse)

Other Name/Site Number: Frank M. Johnson Jr. Federal Building and U.S. Courthouse

Designated a National Historic Landmark by the Secretary of the Interior on July 21, 2015.

2. LOCATION

Street & Number: 15 Lee Street Not for publication:

City/Town: Montgomery Vicinity:

State: AL County: Montgomery Code: 101 Zip Code: 36104

3. CLASSIFICATION

Ownership of Property	Category of Property
Private:	Building(s): X
Public-Local:	District:
Public-State:	Site:
Public-Federal: X	Structure:
	Object:

Number of Resources within Property

Contributing		Noncontributing	
buildings	1	buildings	0
sites	0	sites	0
structures	0	structures	0
objects	0	objects	0
Total	1	Total	0

Number of Contributing Resources Previously Listed in the National Register: 1

Name of Related Multiple Property Listing:

4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby certify that this ____ nomination ____ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ____ meets ____ does not meet the National Register Criteria.

Signature of Certifying Official Date

State or Federal Agency and Bureau

In my opinion, the property ____ meets ____ does not meet the National Register criteria.

Signature of Commenting or Other Official Date

State or Federal Agency and Bureau

5. NATIONAL PARK SERVICE CERTIFICATION

I hereby certify that this property is:

___ Entered in the National Register
___ Determined eligible for the National Register
___ Determined not eligible for the National Register
___ Removed from the National Register
___ Other (explain): _____

Signature of Keeper Date of Action

6. FUNCTION OR USE

Historic: Government Sub: courthouse
post office
government office

Current: Government Sub: courthouse

7. DESCRIPTION

ARCHITECTURAL CLASSIFICATION: Late 19th and 20th Century Revivals: Classical Revival

MATERIALS:
Foundation: Stone
Walls: Stone
Roof: Terra cotta
Other:

Summary of Significance

The United States Post Office and Courthouse has exceptional national significance under National Historic Landmark (NHL) Criterion 1 for its association with the preeminent role held by the U.S. Fifth Circuit Court of Appeals and the U.S. District Court of the Middle District of Alabama in reshaping the South during the modern civil rights movement. The courthouse also has exceptional national significance under NHL Criterion 2 for its association with U.S. District Court Judge Frank M. Johnson Jr. and Fifth Circuit Court Judges Richard T. Rives and John Robert Brown.

Describe Present and Historic Physical Appearance

The United States Post Office and Courthouse, built in 1933, occupies the northeast corner of a city block in downtown Montgomery, Alabama. The block is bounded by Church Street to the northwest, Lee Street to the northeast, Court Street to the southeast, Catoma Street to the southwest, and Clayton Street to the south. Known throughout most of its history as the United States Post Office and Courthouse, the five-story Classical Revival style building was renamed the Frank M. Johnson Jr. Federal Building and U.S. Courthouse in 1992 in honor of Judge Johnson.

During its early history, the building housed courtrooms and chambers for the U.S. District Court for the Middle District of Alabama and the Fifth Circuit Court of Appeals on the second and fourth floors, and a post office on the first level. Other agencies occupied the remaining floors. In 1978, the U.S. Post Office moved out of the building. Both courts moved out of the building in 2002 to make way for restoration work completed in 2006.

With respect to topography and street layout, the courthouse site is irregular. The terrain slopes downhill from the Court Street side to the intersection of Lee and Church Streets. This intersection represents the junction of two competing grid plans. Court Street is part of a grid oriented in a north/south direction, while Lee is part of grid oriented in a northwest/southeast direction. The resulting intersection of these grids is a home plate-shaped block with Church at the base, Lee and Catoma parallel to each other, and Court and Clayton intersecting Lee and Catoma, respectively.

The federal building also shares the block with two other buildings. A circa 1958 one-story, brick and concrete block streamlined building hugs the sidewalk along Court Street. The building once housed the Greyhound Bus terminal associated with the 1961 Freedom Rides to desegregate public transportation and now houses a museum dedicated to that event. A 2002 courthouse annex stands adjacent to the historic bus depot and courthouse. This crescent-shaped, five-story, limestone building covers a majority of the block and connects to the rear of the 1933 courthouse via a two-story, enclosed passageway. The annex reads as a separate building and does not interfere with the perception of the courthouse as a complete entity. A brick-covered plaza covers the expanse between the annex, historic courthouse, and Church Street.

Exterior

Designed by architect Frank Lockwood of Montgomery, Alabama, the courthouse rests on a granite base and is constructed of brick, granite, steel, limestone, sandstone, and terra-cotta tile. It measures approximately 200 feet wide and 125 feet deep. The wall masses terminate in an elaborate continuous entablature. Terra cotta tiles crown the U-shaped, hipped roof. Thirteen courses of bush-hammered and tool-edged limestone denote the exterior of the first story. A cornice with dentiling signals a transition from rusticated to smooth stonework. Demarcating the first floor from the second, a band of smooth sandstone blocks wraps around the building. Sandstone courses rise up the face of the second, third, and fourth stories, reaching an elaborate entablature. An unadorned architrave composes the bottom of the architectural composition while a modillion and

dentil-embellished cornice marks the top. The intermediary frieze is inscribed "FEDERAL BUILDING UNITED STATES COURT HOUSE" on the Church Street façade, and features triglyphs and metopes. The fifth floor on three sides of the courthouse hides behind the entablature. An elevator housing and chimney top on the Lee Street side of the building and a fifth-story penthouse on the annex plaza side are encased in sandstone. Buff-colored brick is affixed to the rear exterior. Mostly hidden by the stories surrounding it, a two-story, sandstone corridor connects the upper ends of the U-shaped configuration.

The Church Street elevation of the richly appointed Classical Revival style courthouse is visually divided into three sections. Two pedimented projections frame a central block. On the first story of the projection, there is a central, double-leaf, bronze-framed, glass door. Ornamentation highlighting the door includes marble surrounds, a grillwork transom, a scrolled and dentil-lined lintel, a plinth-perching federal eagle, and a round arched, glass tympanum with bronze grillwork. Flanking these entrances on either side are bronze lanterns and grillwork-fronted windows. Four fluted Doric columns surmount the first floor and support an entablature and pediment. Three windows each on the second, third, and fourth stories are situated between the columns. Pediments crown the second story windows while detailing is much more subdued for those on the upper floors.

Symmetry governs the fenestration of the central block. The seven wall openings on each of the four floors are aligned in columns. On the bottom story, double-hung sash windows with semi-circular caps stand beneath an arcade. On the second and third floors, wall openings encase casement windows and transoms. Second story windows have molded cornices while those on the third have a modicum of voussoirs. Casements on the fourth floor lack transoms, and stylistic detailing is limited to a keystone.

An arcade characterizes the first floor of the southwest elevation, which faces the annex plaza. The five arches comprising the arcade rise and fall on striated limestone clad piers. Within the arches are inset, casement windows with semi-circular headers. A colonnade stands above the arcade. Six of the eight fluted pilasters are centered above an arcade pier. Constructed of sandstone blocks, the pilaster pedestals repose upon a band of sandstone block indicating the transition between the ground and the second stories. The previously described continuous entablature extends across the pilaster capitals. Columns of windows exist between the pilasters. The windows are constructed and detailed like those of the other façades. Fenestration on the Court Street side of the federal court also conforms to these design standards.

A tri-portal entrance and massive loggia dominate the Lee Street façade. The three doorways fronting Lee Street resemble those of the Church Street projections. Like the Church Street federal eagle pedestals, those on this side of the court building feature a "Latin motto inscription of republican governance and civic virtues: *Macte virtute*; *Pro bono publico*; *Regnant populi*; *Festina lente*; and *Favete linguis*."[1] Above this Classical Revival style entrance, eight bold, fluted Doric columns uphold an entablature. The columns and entablature step out from the main body of the courthouse to create a narrow loggia. Seven columns of four windows fall visually within the space between the columns. These windows are like those described in the previous paragraphs.

Interior

Inside the grand courthouse is an L-shaped lobby on the first floor. The longer 168-foot corridor extends along Church Street and the shorter corridor along Lee Street. Transforming what might otherwise be an ordinary space into a dramatic public place, a series of colossal arches in the Lee Street hall and pilasters in the Church Street hall create high, long, and wide corridors. The lobby's long hall coincides with the former postal service area. Service windows and customer wall desks are still in place; however, the service areas behind the counters

[1] Linda Nelson and Cydney E. Millstein, "United States Post Office and Courthouse," National Register of Historic Places Registration Form (Washington, DC: National Park Service, April 1998), 2.

and mail room have been converted to offices and a courtroom, respectively. The elevator bank is located where the two halls intersect.

Decorated from floor to ceiling, the first floor lobby is a craftsman's delight. Polished inlaid Travertine marble, with edges and wall bases of green Maryland marble, cover the corridor walkway.[2] Lozenges, parallelograms, circles, and other geometric motifs and patterns accentuate the floor design. Ohio Briar Hill sandstone with polychrome hues decorates the walls. The elevators contribute to the appeal of this courthouse with their bas relief, bronze-covered doors and walls. Pilasters feature polished marble tiles and arches feature sandstone cladding. Carved into the ancon of each arch is a symbol of modernity, such as a train, plane, or automobile representing transportation, or a radio tower representing communication. The coffered ceiling features gold leaf-embossed rosettes, dentils, and garlands. Ornamental chains suspend lanterns from the ceiling.

The architecture of the upper floor corridors is more reserved than that of the lobby befitting their association with the courtrooms and offices. The floor is decked with terrazzo tile while plaster covers the ceilings and walls. In places, the ceilings have deeply recessed panels. Reminiscent of the scales of justice, light fixtures hold fast to ceiling mounts and provide some of the hall lighting. Recessed lighting exists throughout the halls. Coved molding cornices line the bottom and tops of the walls on both sides of the halls. "Office doors are of natural wood and reinforced translucent glass, with large working transoms above."[3]

The district courtroom, rendered in the Italian Renaissance Revival style, is a masterpiece in courthouse architecture. With a two-story high ceiling and a balcony, this is an immense court chamber. The paneled and beamed ceiling is quite lavish. Re-gilded and repainted in the early 1970s, the ceiling exemplifies "horror vacui:" the fear of empty spaces; every square inch is adorned. Colorful palmettes, floral motifs, and geometric patterns create a vivid composition on the panel and beam surfaces. Beams rest on carved and detailed brackets. Light globes hang from ceiling beams via ornamental chains and metal rings and discs and shed light on the chamber.

Compared to the ceiling, the chamber walls are a study in understatement. With the exception of the bases, which feature marble wainscoting, the walls are covered with smooth, unadorned acoustical plaster. Wall sconces wrap around the perimeter of the room. This unassuming surround showcases seven grand arches. Six of the arches, three on either side of the court, frame the tall casement windows. Window surrounds consists of stone casing with floral capitals and twisted rope motif trim. The seventh arch highlights a niche behind the judge's bench. Within a series of setback twisted rope trim with rosettes and floral capitals, the recessed niche features a painted blue field with white stars and a lighter blue border with floral motifs. A clock bejewels the setting.

Black walnut panels compose the top and sides of the judge's bench. Separating jurists from the rest of the court, richly grained panels form a closed rail balustrade around the jury box. A similar balustrade fronts the spectacular, cantilevered third floor balcony. The visitors benches are also constructed of this wood, as are the paneled doors located around the chamber.

The smaller circuit courtroom is a work in black walnut. The three-judge court is finished from floor to ceiling with golden hued wooden panels. Interspersed between the panel units are fluted pilasters. A marble base wraps around the perimeter of the room. The black walnut judges' bench rests on a dais trimmed with marble. The room has ceiling light fixtures similar to those in the District Court.

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[2] Ibid.
[3] Ibid., 3.

The areas of the courthouse described in this document represent only a portion of the total space in the building. The building has judges' chambers, a basement, offices on all floors, as well as other rooms, facilities, and miscellany. Due to heightened national security, these areas of the courthouse are off limits to the general public. With the exception of the judges' chambers, these spaces are not integral to the civil rights cases heard in the U.S. District Court for the Middle District of Alabama and U.S. Fifth Circuit Court of Appeals during the building's period of significance.

Integrity

The United States Post Office and Courthouse retains integrity in its setting and a high degree of integrity in its location, feeling, association, workmanship, materials, and design. In regard to location, the courthouse has been a prominent feature on the block bounded by Church, Lee, Court, Catoma, and Clayton Streets since its construction in 1933. Its setting has not been perfectly preserved. Some construction has taken place in the immediate vicinity of the courthouse since the period of significance. To the rear and east of the 1933 courthouse is a 2002 five-story, curved, courthouse annex and plaza fronting Church Street. A walkway connects the 2002 building to the rear corner of the 1933 building. The annex is considered a separate building. Sometime in the 1970s and 1980s, a six-tiered, parking deck and a low rise, corporate (AT&T) building were constructed to the immediate northeast of the courthouse site. In the last decade, Troy University created ground level parking in the block northwest of Church Street.

Overall, though, the United States Post Office and Courthouse retains many of its long time neighbors. Located at the corner of Catoma and Church Streets, a short distance to the west of the courthouse, the Temple Kahl (later the Catoma Street Church of Christ) building has been a mainstay of this downtown area since 1862. The two-story, brick, commercial building at the corner of Lee and Church Streets predates the construction of the courthouse by several years. The 1930s, streamlined Moderne Moore Building just down the street on Lee is a contemporary of the subject government edifice. Overshadowed by the court building, the Greyhound Bus Station was built across the street from the Moore Building circa 1958. With these historic buildings and the Lee and Church Street façades of the federal courthouse in view from a triangular median at the intersection of Lee and Church Streets, the courthouse's larger setting retains integrity.

The courthouse exterior maintains its 1930s appearance according to 1931 architectural drawings, historic photographs from Judge Johnson's 1955 to 1999 tenure, and photographs from a recent survey. Architect Frank Lockwood's original U-shaped plan, fenestration placement, granite and limestone casing, Classical Revival motifs, and terra cotta roof have not been altered over the last eight decades. In 1972, historic bronze window frames were replaced with those of enameled metal.[4] This replacement amounts to a minor cosmetic change since the replacement windows retain the historic division of lights and the enameled metal is painted to resemble a bronze finish. Otherwise, the exterior design of the Montgomery courthouse that Lockwood designed seems timeless.

The courthouse interior reflects the same level of care and attention dedicated to the preservation of the exterior. After recent restoration efforts, the Great Hall's inlaid Travertine marble floor with all of its lozenges, parallelograms, circles, and other geometric motifs and patterns positively gleams as though nearly 80 years of foot traffic did nothing to diminish the floor's 1933 sheen. The green Maryland marble wall bases and Ohio Briar Hill sandstone wall and arch work coverings exude polychrome hues true to the day they were installed in the Great Hall. Bronze-covered doors and elevators and the gold leaf embossed coffered ceiling shine brightly. Of course, the historic L-shape of the corridor and arch work are still intact.

[4] Ibid., 2.

This is not to say that the interior is exactly as it was in the 1930s through 1960s. During the 1970s, lanterns in the Great Hall were replaced with those that accommodate florescent lighting.[5] The replacement lanterns represent a minor change, since they look vintage, blend with the Classical Revival detailing of the lobby, and bear no resemblance to traditional florescent lights. After the Post Office moved out of the building in 1978, courthouse administrators converted the former mail room on the first floor to a courtroom.[6] However, the lobby walls and doors remain intact. With the postal service windows and customer wall desks still in place, the Post Office still appears to be in business in the federal building. In the grand scheme of the Great Hall, these changes are hardly noticeable.

The district courtroom is a testament to the efforts of past courthouse officials and the General Service Administration (GSA) to maintain this excellent courthouse architecture. Architect Frank Lockwood's masterpiece is remarkably preserved in its entirety from the marble wainscoting and bronze grille work to the black walnut judge's bench, jury box, and cantilevered gallery to the richly detailed Florentine Revival style ceiling. In the 1970s, workmen heedful of the ceiling's wonderful artwork, painstakingly re-gilded and repainted all of the seemingly infinite number of floral and geometric motifs.[7] The GSA recently installed new carpet, draperies, and flat screen computer monitors in the chamber. These additions accord well with the historic character of the court. The same level of preservation and recent upgrading exists in the Appeals Courtroom on the fourth floor. Due to national security issues, no discussion of the present condition of the judges' chambers is available.

Overall, the United States Post Office and Courthouse's excellent state of preservation, decades as a federal courthouse, and relatively intact setting all create a strong sense of place that is highly evocative of the period when the district and circuit courts pronounced decisions on landmark civil rights cases.

[5] Ibid., 3.
[6] Ibid., 2.
[7] Ibid., 3.

8. STATEMENT OF SIGNIFICANCE

Certifying official has considered the significance of this property in relation to other properties:

Nationally: X Statewide:__ Locally:__

Applicable National Register Criteria:	A__ B X C X D__
Criteria Considerations (Exceptions):	A__ B__ C__ D__ E__ F__ G X
NHL Criteria:	1, 2
NHL Exceptions:	
NHL Theme(s):	III. Expressing Cultural Values 1. educational and intellectual currents IV. Shaping the Political Landscape 1. parties, protests and movements 2. governmental institutions
Areas of Significance:	Law Politics/Government Social History Ethnic Heritage /Black
Period(s) of Significance:	1956-1967
Significant Dates:	N/A
Significant Person(s):	U.S. Court of Appeals for the Fifth Circuit Judges Richard T. Rives and John R. Brown U.S. District Court for the Middle District of Alabama Judge Frank M. Johnson, Jr.
Cultural Affiliation:	N/A
Architect/Builder:	Frank Lockwood
Historic Contexts:	*Civil Rights in America: Racial Desegregation in Public Education in the United* States, National Historic Landmark Theme Study (August 2000) *Civil Rights in America: Racial Voting Rights*, National Historic Landmark Theme Study (2007, rev. 2009) *Civil Rights in America: Racial Desegregation of Public Accommodations*, National Historic Landmark Theme Study (2004, rev. 2009)

State Significance of Property, and Justify Criteria, Criteria Considerations, and Areas and Periods of Significance Noted Above.

Summary of Significance

The United States Post Office and Courthouse has exceptional national significance under National Historic Landmark (NHL) Criterion 1 as a property intimately associated with the preeminent role that the U.S. Fifth Circuit Court of Appeals and the U.S. District Court for the Middle District of Alabama played in reshaping the South during the modern civil rights movement. These courts bore the great bulk of the burden of enforcing *Brown v. Board of Education* after the U.S. Supreme Court rendered its historic decisions in 1954 and 1955. Jurisprudence developed by these courts dealt effectively with southern massive resistance and obstructionism as its rulings both fostered and implemented nationally significant civil rights legislation.

The courthouse also has exceptional national significance under NHL Criterion 2 for its association with three judges considered critical to the social and political transformation of the segregationist South during the 1950s and 1960s. Fifth Circuit appellate judges Richard T. Rives and John R. Brown and District Judge Frank M. Johnson Jr. contributed to the emergence of civil rights in America and led the courts through new legal territory during a decade of social upheaval and the judicial remaking of the South.

The period of significance begins in 1956 when Judges Rives and Johnson ruled on the Montgomery bus boycott case, the first major nonviolent social action of the modern civil rights era, and extends to 1967 when Judge Johnson authored an opinion that mandated statewide school desegregation over a case-by-case basis. During this period the courts developed civil rights laws, battled massive resistance to school desegregation and discriminatory voting practices, and developed the right to trial by jury of one's peers.

The U.S. Post Office and Courthouse (Frank M. Johnson Jr. Federal Building and U.S. Courthouse) is one of three courthouses that define the Fifth Circuit's monumental contribution to civil rights jurisprudence in the movement's critical years of 1956 to 1964. The Fifth Circuit then had jurisdiction over six states in the Deep South: Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. In 1960, seven active judges, one from each state and two from Texas, sat on the Fifth and heard appeals as three-judge panels, in part to balance interests on a regional basis. In 1961, two seats were added, one each in Atlanta, Georgia, and Montgomery, Alabama. Not all of the Fifth's nine judges consistently ruled for black plaintiffs. Three voted inconsistently and two consistently dissented from decisions. Jurists Richard T. Rives of Montgomery, John R. Brown of Houston (hearing cases in Montgomery), John Minor Wisdom of New Orleans, and Elbert P. Tuttle of Atlanta fairly consistently ruled for black plaintiffs' constitutional rights on cases heard at the courthouses in Louisiana, Georgia, and Alabama. Collectively and individually, these three courthouses and four jurists outstandingly represent the judicial frontline that profoundly impacted civil rights reform and court procedures. Thus, in addition to this nomination for the courthouse in Montgomery, the U.S. Post Office and Courthouse (Elbert Parr Tuttle U.S. Court of Appeals Building) in Atlanta, Georgia, and the U.S. Court of Appeals – Fifth Circuit (John Minor Wisdom United States Court of Appeals Building) in New Orleans, Louisiana, are under consideration for NHL designation.

This nomination focuses on prominent cases heard at the Montgomery courthouse by Judges Rives, Brown, and/or Johnson. The nomination provides a brief overview of the Fifth Circuit's origins and the judges most closely associated with the Montgomery courthouse. The narrative describes the Fifth Circuit's origins in 1891, how it obtained a prominent role in the civil rights movement, and the 1950s assemblage of judges who brought a new era to the court. In particular the nomination highlights nine cases that proved pivotal to watershed protest events, formulating civil rights, and establishing American jurisprudence. The District Court found

segregated public transportation unconstitutional in the 1956 Montgomery Bus Boycott, enjoined the Ku Klux Klan from violence in the 1961 Freedom Rides, and allowed the 1965 Selma-to-Montgomery voting rights march to proceed under a "proportional principle," that permitted demonstration in proportion to the severity of inequity. A school desegregation case made the nation's first statewide integration ruling. Two cases made it possible for African American defendants to be tried by a jury of their peers. Two voting rights cases pioneered the "freezing principle," whereby black voters registering to vote could be enrolled under the same procedures previously used to enroll white voters, and the "injunction pending appeal," that allowed circuit court jurists to break from standard appellate procedures to overcome delaying tactics employed by district court jurists. A third voting-related case, based on a dissenting opinion supported by the U.S. Supreme Court, set a precedent for federal judicial intervention in state redistricting.

Background

On May 17, 1954, the U.S. Supreme Court upended the post-Civil War apartheid that had long governed race relations across the Deep South. Its *Brown v. Board of Education* ruling found racial segregation in public schools unconstitutional, overturning the "separate but equal" doctrine sanctioned by the Court in *Plessy v. Ferguson* (1896) that kept African Americans from crossing color lines in practically every facet of American society. In *Brown II* (1955), the Court ordered racially segregated public school systems to desegregate "with all deliberate speed" and gave school authorities primary responsibility "for elucidating, assessing, and solving these problems."[8] The burden then fell on the lower federal courts, in particular the courts of the Fifth Circuit, to oversee the implementation of *Brown's* mandate.

Across the Deep South, school officials, voter registrars, politicians, and federal judges resisted desegregation. Litigation brought on behalf of or in defense of individuals, often sponsored by the National Association for the Advancement of Colored People (NAACP), as well as suits brought by the Civil Rights Division of the U.S. Department of Justice, filled the dockets of southern district courts and the Fifth Circuit courthouses in New Orleans, Louisiana; Atlanta, Georgia; and Montgomery, Alabama. In that tense and difficult era, District Judge Frank Johnson of Montgomery, and four judges on the Fifth Circuit—Elbert Tuttle of Atlanta, John Minor Wisdom of New Orleans, John Brown of Houston, and Richard Rives of Montgomery—were singled out for their commitment to enforcing the civil rights of black Americans. The latter became known collectively as "The Four"—an epithet when uttered by die-hard segregationists, praise on the tongues of many.

The Courts

In 1891, Congress created the courts of appeals to relieve the U.S. Supreme Court's burdensome caseload and circuit riding duties that required hearing cases in multiple locations. The Circuit Court of Appeals Act created a three-tier system whereby the new circuit court functioned as an intermediary judiciary body between the federal district courts below and the Supreme Court above. As its name implies, the circuit court hears cases on appeal from the district court. The circuit court's decision is final unless the Supreme Court decides to review it.

How trials were heard differed between the district and circuit courts. In district court, only a single judge hears trial cases. Circuit court usually conducts hearings before three-judge panels. "Forming panels of judges from each of several states," describes law professor Anne Emanuel, "is supposed to balance those interests, resulting

[8] Frank T. Read and Lucy S. McGough, *Let Them Be Judged: The Judicial Integration of The Deep South* (Metuchen, NJ: The Scarecrow Press, Inc., 1978), 13. Read was then Dean of the College of Law at the University of Tulsa, and McGough was Professor of Law at Emory University.

in a less insular rule of law—one that reflects regional, not merely local, interest."[9] The circuit court may also meet as a whole, known as "*en banc*," when a party or an active judge requests that a decision be reviewed, and a majority of the active members of the entire court agrees to rehear the case. The *en banc* process is reserved for cases of exceptional importance, especially those involving interpretation of the Constitution. During the years of the civil rights revolution, pursuant to a federal statute since repealed, a combination of circuit and district court judges often sat on special three-judge district courts, convened when a state statute was challenged on federal constitutional grounds.[10] In such an instance, the chief judge of the circuit court of appeals appoints the two additional judges.

A New Guard at the Fifth Circuit Court of Appeals

The 1950s brought monumental change to the Fifth Circuit. In 1952, each member of the court was a southern Democrat. Thereafter, President Eisenhower made five Republican appointments: Elbert Parr Tuttle (Georgia) in 1954; John R. Brown (Texas), Benjamin Franklin Cameron (Mississippi), Warren Jones (Florida) in 1955, and John Minor Wisdom (Louisiana) in 1957. Earlier in 1951, President Harry Truman had appointed lawyer Richard T. Rives of Montgomery, Alabama.

Fifth Circuit Judge Richard Rives

Richard Rives's background did not presage a future as a progressive jurist in civil rights matters. His family, early settlers of Montgomery, "belonged to the deep South culture of Alabama." The Civil War claimed the family plantation and wealth. Subjected to genteel poverty, Rives's forebears nonetheless retained their attitudes toward race. Born in Montgomery in 1895, Rives embraced his aristocratic southern roots well into his legal career. He earned a scholarship to Tulane University in 1911, but limited funds forced him to drop out of college after only one year of study. Rives returned to Montgomery where he entered the law firm of Wiley Hill whose family plantation bordered that of the Rives's family before the Civil War.[11] The law intern passed the bar exam at the young age of 19. He went on to a 37-year career as a trial lawyer that "involved him in cases in which he as an advocate sought to exclude as well as to protect Negroes."[12]

Rives's son, Richard T. Rives Jr., influenced his father's mind regarding racial equality. Rives Jr. graduated from Harvard and after his World War II experience he questioned the treatment of southern blacks.[13] While a student at the University of Michigan Law School, Richard Jr. introduced his father to Swedish writer Gunner Myrdal's *An American Dilemma: The Negro Problem and Modern Democracy* (1944).[14] Unfortunately, tragedy struck before father and son could advance their discourse. Rives Jr. died in an auto accident in 1949. Rives took the loss of his only son hard, anticipating that the two would enter into practice together. That same year Fifth Circuit Judge Leon Clarence McCord (nominated by President Roosevelt in 1938) talked with Rives Sr. about accepting a seat on the Appeals Court,[15] however, two years passed before Rives entertained the idea. In 1951, Rives visited with Alabama Senators Lister Hill and John Sparkman to discuss a potential appellate court appointment. The politicians gave their support and later, while arguing a case before the U.S. Supreme Court, Rives received word that President Truman had approved his nomination to the U.S. Fifth Circuit Court of

[9] Anne S. Emanuel, "Turning the Tide in the Civil Rights Revolution: Elbert Tuttle and the Desegregation of the University of Georgia," 5 Michigan Journal of Race & Law 1 (1999-2000): 1.
[10] Jack Bass, *Unlikely Heroes* (Tuscaloosa: The University of Alabama Press, 1990), 19.
[11] Bass, *Unlikely Heroes*, quote on 47, 71.
[12] Read and McGough, *Let Them Be Judged*, 32.
[13] Harvey C. Couch, *A History of the Fifth Circuit, 1891-1981* (Washington: The Bicentennial Committee of the Judicial Conference of the United States, 1984), 84.
[14] Bass, *Unlikely Heroes*, 70.
[15] Couch, *History of the Fifth Circuit,* 84.

Appeals.[16] Ironically, Rives informed his friend, Supreme Court Justice Hugo Black, that his lack of background in admiralty, labor, and patent law made him uneasy about his appointment particularly since all the Fifth Circuit's states bordered bodies of water. Ultimately, civil rights cases pushed him beyond the bounds of his prior legal experience.[17]

Fifth Circuit Judge John Brown

Born in 1909, Brown grew up in Holdrege, Nebraska, "with Abraham Lincoln as his boyhood hero." After graduating from the University of Michigan Law School, Brown accepted an offer from Royston and Razor, a distinguished firm in Houston, where he specialized in admiralty and maritime law and became a senior partner. During World War II, Brown served as a port commander in the Philippines, where he gained administrative experience that would later prove useful on the court. After the war, Brown returned to his law practice and became politically active. His judicial appointment, like that of jurists John Wisdom and Elbert Tuttle, resulted from his postwar work in helping build a state Republican party. In 1952, he assisted in direct campaign efforts in Houston, he was a member of the challenged Texas delegation for Eisenhower at the 1952 Republican national convention, and in 1953 he became Chairman of the Harris County Republican Party.

Brown's appointment to the Fifth Circuit became official on July 27, 1955. His aptitude and wartime administrative experience quickly placed Brown in an administrative role. At Chief Judge Joseph Hutcheson's direction, Brown took on duties of judicial assignments and scheduling, which he continued under Rives who served as Chief Judge from 1959 to 1960, and then Chief Judge Tuttle from 1960 to 1967.[18] Brown became chief judge on July 17, 1967.

District Court Judge Frank Johnson

In rare African American civil rights cases, federal district judges from the South acted independently from and in unison with the Fifth Circuit Court of Appeals. Judge Frank M. Johnson Jr. was one such judge. Born in Haleyville, Alabama, Johnson grew up in the southwestern foothills of the Appalachian Mountains in Winston County, away from the cradle of the Confederacy and milieu of Black Belt agriculture.[19] The vicinity's craggy topography, more suitable to subsistence farming than the large scale cultivation of cotton, placed plantation economy and culture in the minority.

Johnson gained an appreciation of the legal profession after his father, Frank Sr., became the Probate Judge of Winston County and Frank Jr. observed court proceedings. According to the younger Johnson, watching the lawyers argue cases "fascinated the hell out of me." In the fall of 1939, Frank Jr. entered the University of Alabama's prelaw undergraduate program and in 1941 he entered the university's law school, becoming fast friends with George Wallace, the future governor of Alabama. In 1943, Johnson graduated first in his class and Wallace finished near the top.[20] Their friendship would not weather the storm of the civil rights movement.

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[16] Bass, *Unlikely Heroes*, 71.

[17] Couch, *History of the Fifth Circuit,* 82, 84; Read and McGough, *Let Them Be Judged,* 32.

[18] Bass, *Unlikely Heroes,* 101-02; Clyde Willis, "Brown, John R. (1909-1993)," in *Great American Judges: An Encyclopedia,* ed. John R. Vile, vol. 1 (Santa Barbara: ABC-CLIO, 2003), 133, available at http://books.google.com/books?id=U6uJ-oWsZFYC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=true.

[19] Jack Bass, *Taming the Storm: The Life and Times of Judge Frank M. Johnson and the South's Fight Over Civil Rights* (New York: Doubleday, 1993), 13; Willis, "Brown, John R. (1909-1993)," 133.

[20] Robert Francis Kennedy, Jr., *Judge Frank M. Johnson, Jr., A Biography* (New York: G. P. Putnam Sons, 1978), 47; Jack Bass, *Taming the Storm*, 19; Tinsley E. Yarbrough, *Judge Frank Johnson and Human Rights in Alabama* (Tuscaloosa: The University of Alabama Press, 1981), quote on 3, 54. The future federal judge and the governor heatedly contested segregation, prompting Wallace in

Johnson took an interest in politics, campaigning for the Republican cause in 1952. During the campaign, he met Herbert Brownell, the manager of the southern campaign for presidential hopeful Thomas E. Dewey. In 1953, Brownell became U.S. Attorney General under President Eisenhower where he became instrumental in securing Johnson the post of U.S. Attorney for the Northern District of Alabama. In 1954, Johnson successfully prosecuted farmers Oscar and Fred Dial for peonage and related charges. The Dials used debt as a means to force poor blacks into servitude on their West Alabama plantation. The presiding judge in the case, Seybourn Lynne, commented: "You'll [Johnson] be the last United States Attorney—, or prosecutor, either—in the South to get a conviction for slavery, now that the Supreme Court's decided this *Brown* case." In 1955, a federal district judge vacancy arose for the Middle District of Alabama. Brownell wanted a few good judges who "would vigorously enforce the Supreme Court's *Brown* decision."[21] Johnson's conviction in the *Dial* proceedings convinced both Brownell and Assistant Attorney General Warren Burger that Johnson was the man for the job. President Eisenhower approved the appointment, and on November 7, 1955, Johnson was sworn in.[22]

According to Judge Johnson, his background in Winston County influenced his decisions in the courtroom over the next five decades:

> I think my regional background had a very, very decisive effect on my approach to dispensing what I consider to be justice, and attempting to, through judicial decisions, thwart actions that I consider unjust. People in that section of the country have a fiercely independent attitude and personality. They have an intense respect for the individual and the individual's right. They believe in a person's dignity, and they believe each person is possessed of and is entitled to integrity. They believe that without regard to race, creed, color, or ideology. "Every man's his own man" is a real basic philosophy. I came here [Montgomery] with that, maybe most of it unconsciously ingrained in me.[23]

Resistance to the Modern Civil Rights Movement

Not long after Johnson's appointment, the Supreme Court's rulings in *Browns I* and *II* sparked wholesale segregationist defiance across the South. Between 1954 and 1956, southern politicians were ill-prepared to organize effectively against *Brown*. This confusion prompted the formation of segregationist grassroots organizations.[24] White Citizens Councils used economic and political pressures to promote white supremacy and suppress black citizenship at all levels of society, while groups such as the Ku Klux Klan subjugated African Americans through outright violence. Members of Congress did little to support the Court's order. On August 12, 1955, Senator James O. Eastland of Mississippi "told a cheering audience in Senatobia, Mississippi, 'On May 17, 1954, the Constitution of the United States was destroyed because the Supreme Court disregarded the law and decided that integration was right. You are not required to obey any court which passes out such a ruling. In fact, you are obligated to defy it'."[25] In 1956, 100 southern congressmen signed the Southern Manifesto, vowing to resist *Brown* and maintain segregation.

1959 to denounce his former friend as "an integrating, carpet-bagging, scalawagging, race-mixing, bald-faced liar." Stephan Lesher, *George Wallace: American Populist* (New York: Addison-Wesley Publishing Company, 1994), 140.

[21] Bass, *Taming the Storm*, 81, 85, 88-89.

[22] Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 67.

[23] Bass, *Taming the Storm*, 21, quoting "Bill Moyers' Journal," *Judge Frank Johnson and Human Rights in Alabama* (Tuscaloosa: The University of Alabama Press, 1981), 5.

[24] Scott Cashion, review of George Lewis, *Massive Resistance: The White Response to the Civil Rights Movement* (New York and London: Oxford University Press, 2006), http://www.h-net.org/reviews/showrev.php?id=25349 (accessed August 10, 2011), 1.

[25] Bass, *Unlikely Heroes,*" 17, quoting from *Look*, April 3, 1956, 24.

From 1956 to 1960, segregationists used a wide array of tactics to gain the upper hand in combating the growing civil rights movement.[26] Legislatures in every Deep South state enacted massive resistance laws in a return to the debunked doctrines of nullification and interposition that had guided the Civil War. State authorities believed they "had the constitutional right to nullify the effectiveness of any federal law or federal court decision with which it disagreed and to interpose its sovereignty between that decision or law and the federal government."[27] Locally, school officials denied black applicants admission based on their color or contrived technicalities and closed schools rather than submit to court-ordered integration. From 1960 to 1965, in the era of mass sit-ins and planned freedom rides, a more astute civil rights movement, combined with federal government efforts to end Jim Crow, increasingly placed segregationists on the defensive.[28]

Jim Crow re-entrenchment seriously threatened the court's ability to implement *Brown*. Few southern judges were sympathetic to the numerous desegregation law suits brought forth by the NAACP's Legal Defense and Educational Fund, Inc. (LDF). At times openly hostile to LDF staff and their plaintiffs, state and federal judges impeded justice through evasive, dilatory, and obstructionist tactics. Prospects for implementing racial equality through the judicial system appeared dim given the hold recalcitrant judges maintained on the courts. In 1962, the *Yale Law Journal* described how the delays in civil rights cases in the deepest south did not seem to be "accidental or limited" and attributed the source of delays to "the reluctance of district court judges to grant timely or compliant enforcement of civil rights."[29] Further resistance from within the Fifth Circuit itself threatened to slow the court's legal offensive. Indeed, it was Fifth Circuit Judge Ben Cameron of Mississippi, a zealous supporter of states' rights, who had bitterly named Rives, Wisdom, Tuttle, and Brown "The Four."[30]

Prospects for a new spirit of judicial activism prevailed with new appointments to the Fifth Circuit. Judges Tuttle, Rives, Wisdom, and Brown, along with district court Judge Johnson, departed from strict adherence to judicial precedents and embraced innovative ways of interpreting the Constitution and the Court's statutes to render civil rights relief to African Americans. The courthouses in New Orleans, Montgomery, and Atlanta, became "*Brown's* major battleground."[31]

Public Accommodations

The Montgomery Bus Boycott, *Browder v. Gayle* (1956 – Circuit Judge Rives (author), District Judges Johnson, and Lynne (dissenting)

Rosa Parks' arrest in December 1955 for refusing to surrender her bus seat to a white passenger in Montgomery, Alabama, sparked a revolution and helped transform the burgeoning civil rights movement. With clergymen Martin Luther King Jr. and Ralph David Abernathy at the helm, the newly formed Montgomery Improvement Association boycotted Montgomery's bus lines for one year. In conjunction with the protest, the association petitioned the NAACP to file suits in behalf of Parks and for King, who was arrested in retaliation for the boycott. Judges Rives and Johnson made history when they extended *Brown* to public transportation.

On May 11, Judge Rives presided over the five-hour hearing in Johnson's Montgomery courtroom with Judge Johnson and District Court Judge Seybourn H. Lynne. Counsel for the defense argued that the panel should not

[26] Cashion, review of George Lewis, 2.
[27] Constance Baker Motley, *Equal Justice Under Law: An Autobiography/Constance Baker Motley* (New York: Farrar, Straus and Giroux, 1998), 134.
[28] Cashion, review of George Lewis, 2.
[29] Notes and Comments, "Judicial Performance in the Fifth Circuit," 73 *Yale Law Journal* 90 (1963-1964): 93-94. Footnotes in this commentary provide citations to relevant cases and commentaries from 1961-1963.
[30] For an insight into Judge Cameron and his accusations against Chief Judge Tuttle see Bass, *Unlikely Heroes*, Chap. 12.
[31] Motley, *Equal Justice Under Law*, 133.

act since the Supreme Court had set precedent only with regard to the status of segregated education and not segregated public transportation facilities. The 2-1 ruling decided otherwise, with Johnson casting the swing vote. In the majority opinion Rives wrote, "We cannot in good conscience perform our duty as judges by blindly following the precedent of *Plessy v. Ferguson*…when we think that *Plessy v. Ferguson* has been impliedly, though not explicitly, overruled." Judge Lynne succinctly presented the opposing view, stating that the lower court should wait until the Supreme Court had explicitly set precedent with regard to public transportation facilities. It was not within the lower court's purview to "decide new issues on the basis of some perceived 'new doctrinal trend' emerging from the Supreme Court."[32] The Supreme Court put the issue to rest after Montgomery and Alabama State officials appealed the district court's decision and affirmed the lower court's ruling.

Although direct action had initiated the challenge to Jim Crow laws in the Montgomery bus boycott, it was judicial action that ultimately won desegregation on Montgomery's buses and represented an important legal breakthrough in civil rights law. The import of the Montgomery bus lawsuit transcended intrastate travel, proved that new leaders of the civil rights movement could find relief in the courts, and "set the trailblazing direction the Fifth Circuit would follow in civil rights law."[33]

The Freedom Rides, *U.S. v. Ku Klux Klan* (1961 – District Judge Johnson)

The leading scholar of the effort to integrate public transportation, Catherine A. Barnes, concluded that at the end of the 1950s "virtually all forms of Jim Crow transit had been outlawed, and considerable desegregation had gradually taken place."[34] Nevertheless, she pointed out that as one moved further south the chances of encountering Jim Crow in bus depots and train station waiting rooms and lunch counters skyrocketed despite relentless black efforts and favorable Supreme Court decisions such as the U.S. Supreme Court's 1960 ruling in *Boynton v. Virginia* that outlawed segregated interstate transportation terminals.[35] The Freedom Rides, sponsored by the northern Congress of Racial Equality (CORE) and later by the Student Nonviolent Coordinating Committee (SNCC), set out to test *Boynton*. Beginning on May 4, 1961, volunteers began riding Trailways and Greyhound buses from Washington, D.C., to New Orleans. These rides, along with the student sit-ins, created "the largest mass movement of blacks and whites for racial justice since the days of the abolition movement."[36] Judge Johnson's courtroom figured prominently in the *U.S. v. Ku Klux Klan* suit associated with the Freedom Rides.

Once the Freedom Rides entered Alabama on May 14, 1961, violence erupted. Near Anniston, an angry mob attacked and burned one bus. In Birmingham, Ku Klux Klan members descended on a Trailways bus as it pulled into the station. Police Commissioner Bull Connor granted the Klan fifteen minutes free reign before he ordered police to stop the beatings. In Washington, where U.S. Attorney Robert Kennedy and his Deputy Attorneys advised President Kennedy on his legal powers, Deputy Attorney Burke Marshall later recalled telling the

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[32] Frank M. Johnson, *Defending Constitutional Rights*, ed. Tony A. Freyer (Athens: University of Georgia Press, 2001), 138; *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956). The case was named for Aurelia Browder, the first named plaintiff, and Mayor W. A. Gayle, the first named defendant.

[33] 352 U.S. 903 (1956); quote from Bass, *Taming the Storm,* 136; Catherine A. Barnes, *Journey from Jim Crow: The Desegregation of Southern Transit* (New York: Columbia University Press, 1983), 124, 126. Barnes emphasizes the importance of the *Browder* case which desegregated public carriers in Miami, Birmingham, New Orleans, Tampa, and Atlanta. "Legally," Barnes states, "*Browder* marked the demise of *Plessy v. Ferguson* and the separate-but-equal doctrine." Barnes, 126.

[34] Barnes, *Journey from Jim Crow* 155.

[35] Taken from Susan Cianci Salvatore, Matt Garcia, Alton Hornsby Jr., Steven Lawson, and Theresa Mah, *Civil Rights in America: Racial Desegregation of Public Accommodations* (Washington, DC: National Park Service, 2004, rev. 2009), 49.

[36] Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 286.

President of the Justice Department's potential plan to file a complaint against Klan group interference and to enforce police protection for interstate travelers. The department chose to file in Montgomery, Alabama, according to Marshall, "because of the character of the District Judge in Montgomery, who was a very strong judge, Judge Frank Johnson."[37]

After Governor John Patterson assured the Kennedy administration that Alabama would protect the Freedom Riders, the buses departed Birmingham on May 20, 1961, headed for Montgomery. Shortly before arriving at the Greyhound bus terminal adjacent to the federal courthouse, the highway patrol escort disappeared, abandoning the riders to the mercy of a violent mob estimated at 300 strong.[38] U.S. Justice Department attorney John Doar and FBI agents observed and photographed the melee from the third floor of the Montgomery courthouse.[39] An hour later, police finally intervened.

News of the Montgomery violence quickly reached President Kennedy who ordered Justice Department officials to Montgomery to restore law and order.[40] On the evening of Saturday, May 20, Kennedy, in consultation with Burke Marshall, dispatched Doar to Johnson's lake cottage where the judge signed a temporary restraining order against the Klan and the Montgomery police department.[41] Johnson ordered all involved parties to appear in his courtroom on Monday. On Monday morning tensions ran high as federal marshals surrounded the courthouse and lined the courtroom to protect Judge Johnson and witnesses. On Friday, June 2, Judge Johnson read his order to a packed courtroom. The order "enjoined the Klan groups from their violence and interference with interstate travelers and the Montgomery police from their 'unlawful' acts of 'willfully and deliberately…failing or refusing to provide protection." The order also enjoined "CORE, King, and others from continuing Freedom Ride activities," an order LDF attorney Jack Greenberg viewed as a "cooling off period." [42] Under its authority to enforce federal court orders, the federal government now mobilized six hundred federal marshals. On June 12, Johnson allowed the order to expire. The rides continued until November 1961, when the Interstate Commerce Commission, upon pressure from the Kennedy administration, enforced its ban on segregated interstate transportation.

School Desegregation

Lee v. Macon County Board of Education (1963 – Judge Johnson; 1964 – Judges Rives, Johnson, and District Judge Grooms; 1967 – Judges Rives, Johnson (author), and Grooms)

For years after the *Brown* rulings, federal appellate courts faced scores of school desegregation cases. One such case, *Lee v. Macon County Board of Education*, pitted Alabama Governor George Wallace against his former classmate, Judge Frank Johnson. In litigation that spanned five years, and described by two law professors as "epic," Wallace's relentless interference and defiance eventually led Johnson to expand the scope of *Lee* from a county-wide school desegregation order to a mandatory statewide plan for integration.[43]

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[37] Bass, *Taming the Storm,* 174-75.

[38] Barnes, *Journey from Jim Crow*, 162-63. Also injured in the attack was President Kennedy's administrative assistant, John Seigenthaler, who had earlier met with Governor Patterson and his Cabinet to gain protection for the Freedom Riders.

[39] Bass, *Taming the Storm*, 179.

[40] Deborah J. Barrow and Thomas G. Walker, *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform* (New Haven: Yale University Press, 1988), 35.

[41] Bass, *Taming the Storm*, 179; Johnson was fair and decent in enforcing the law, although sometimes had his own idea of what should be done. At the time of the Freedom Rides he enjoined the Freedom Riders for a time, apparently to provide for a cooling-off period, not anywhere authorized by law." Greenberg, *Crusaders in the Courts*, 354-55. *U.S. v. U.S. Klans*, 194 F. Supp. 892 (1961).

[42] Bass, *Taming the Storm*, 181-82, Greenberg, *Crusaders in the Courts*, 355.

[43] Read and McGough, *Let Them Be Judged*, 398.

In the week after Wallace's January 1963 inauguration and his "segregation forever" speech, the black parents of thirteen students brought a class action suit in the district court for admission to the all-white Tuskegee High School. The Justice Department, representing the public interest, entered the suit in July 1963, a month after Wallace had clashed with the Kennedy administration and lost his "stand in the schoolhouse door" at the University of Alabama to keep two black students from enrolling. Despite this loss, Wallace did not lose the will to contest desegregation at the elementary and secondary levels. In August, Johnson ordered the Macon County School Board to cease operating a dual school system.[44] Although the board complied, Wallace closed Tuskegee High to "preserve the peace" and enforced his order with over 100 highway troopers. A week later the governor permitted white students to attend school, but prevented black students from entering all white institutions.[45] Wallace's actions did not receive support from all at the local or regional level. In the words of the Montgomery Advertiser, the paper "must sorrowfully conclude that, in this instance, its friend has gone wild. Alabama is not a banana republic. It is in no need of an adventurer to ride down upon local authority."[46]

Wallace's defiant actions invoked the ire of the U.S. Justice Department, prompting Attorney General Burke Marshall to call together all five federal district judges in Alabama who represented the state's Northern, Southern, and Middle Districts, "the first time such a judicial body had been called into session."[47] The judges met as a court with John Doar in the Montgomery courthouse and thereafter "issued a sweeping order restraining Wallace and 'everyone acting in his behalf' from interfering with public school desegregation in Tuskegee, Mobile, and Birmingham."[48] Wallace then posted National Guard Units around the Macon County schools. An angry President Kennedy ordered Wallace to "cease and desist his unlawful conspiracies," federalized and removed the Alabama guardsmen from the schools. On September 10, 1963, thirteen black students entered Tuskegee High without incident.[49] Many white students transferred to two nearby high schools while others became the charter class at newly established private academies, a common response to desegregation across the South. In reaction, Judge Johnson ordered the state to end Alabama legislative grant-in-aid and state-ordered transportation enabling the former Tuskegee students to attend the other Macon County institutions.[50]

At the beginning of 1964, the conflict started anew. With only twelve black students and thirteen teachers at Tuskegee High School, Wallace closed the facility and ordered the black students transferred to "other high schools in Tuskegee," that being the all-black Tuskegee Institute High School.[51] Judge Johnson then ordered that six black students be permitted to transfer to Macon County High School and six to Shorter High School.[52] Although the black students entered Shorter without incident, the same was not so in Notasula, home to Macon County High School. There the mayor denied admission to the black students, declaring the school unsafe based on its fire ordinance and current enrollment of 174 students.[53]

Governor Wallace's intransigence and meddling in State Board of Education matters pushed the *Lee v. Macon County* plaintiffs to petition the court for a statewide expansion of their suit. The questionable constitutionality of state statutes triggered a three-judge hearing and in 1964, Judges Rives, Johnson, and District Judge Hobart

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[44] 221 F. Supp. 297 (M.D. Ala. 1963).
[45] Read and McGough, *Let Them Be Judged*, 399; Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 194.
[46] Yarbrough, *Judge Frank Johnson*, 92-93.
[47] Frank Sikora, *The Judge: The Life & Opinions of Alabama's Frank M. Johnson, Jr.* (Montgomery: The Black Belt Press, 1992), 171.
[48] Bass, *Taming the Storm*, 209.
[49] Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 195.
[50] Bass, *Taming the Storm*, 212; Read and McGough, *Let Them Be Judged*, 400.
[51] Read and McGough, *Let Them Be Judged*, 400.
[52] Bass, *Taming the Storm*, 215.
[53] Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 198-99.

Grooms declined to expand the case into a state wide suit.[54] However, Judge Johnson held as unconstitutional the Alabama grant-in-aid program enabling white students to attend private academies; enjoined further use of the Alabama Pupil Placement Law because it had been used to continue segregation; and ordered Governor Wallace and his cronies to comply with federal court orders.[55]

Three years later, in 1967, Wallace finally brought the full weight of the court upon himself after he encouraged the Alabama legislature to outlaw federal Health, Education, and Welfare (HEW) guidelines in Alabama. Once again, Rives, Johnson, and Grooms presided over the case. Johnson wrote the opinion:

> This Court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform state-wide plan for school desegregation, made applicable to each local, county and city system not already under court order to desegregate, and to require these defendants to implement it. Only in this way can uniform, expeditious and substantial progress be attained, and only in this way can the defendant state officials discharge the constitutional duty that was placed upon them twelve years ago in *Brown v. Board of Education*.[56]

Owen Fiss, currently Stirling Professor of Law at Yale University, esteems *Lee v. Macon County* as one of the more significant cases in constitutional law. In a 1989 interview, Fiss, who worked as special assistant to John Doar on the *Lee* brief, stated, "I see in that kind of case something as ingenious, as path-breaking, as innovative as something like *Marbury v. Madison*."[57] According to Fiss, *Lee* "had important implications for federalism. I think *Lee v. Macon County* was just tremendously transformative in terms of what school desegregation could be." Johnson's *Lee* ruling clearly mandated state wide integration.[58] A 1967 *Time* cover story described the order "as the first such statewide ruling in the nation, and perhaps the most important school order since the Supreme Court's decision of 1954." *Time* also referred to Johnson "as one of the most important men in America. In eleven and a half years of interpreting and enforcing the U.S. Constitution, he has wrought social and political changes that affect all of Alabama, all of the South, all of the nation."[59]

Voting Rights

As *Brown* paved the way to new freedoms in both school desegregation and public accommodations, black leadership turned to the right to vote as the road to political freedom. States responded by enacting new legislation to keep blacks disfranchised and, like the school desegregation cases, many district courts delayed voting rights cases. The Justice Department faced outright hostility from five district court judges who failed to halt most of the discrimination southern blacks faced. Any judicial progress made "was largely the result of rulings issued by the Fifth Circuit Court of Appeals in reversing the actions of the district judges."[60]

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[54] Jack Bass, *Taming the Storm*, 219.

[55] Read and McGough, *Let Them Be Judged*, 402.

[56] Ibid., 405; *Lee v. Macon County School Board,* 267 F.Supp. 458 (M.D. Ala. 1967). Judge Johnson spent the next couple of years working out the details of desegregation plans with each of the 118 school boards in Alabama. Additionally, Johnson met Judge Rives in chambers every Saturday to work out the plans. Bass, *Taming the Storm*, 230.

[57] Bass, *Taming the Storm*, 235. "*Marbury* is one of the seminal cases in American constitutional law, in which Chief Justice John Marshall wrote that the Supreme Court possessed the authority to invalidate an act of Congress as unconstitutional."

[58] Ibid., 229.

[59] Bass, *Taming the Storm*, 235.

[60] David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven and London: Yale University Press, 1978), 23. The district judges included Cox, Daniel H. Thomas of Alabama's Southern District, Claude F. Clayton of Mississippi's Northern District, and E. Gordon West and Benjamin Dawkins of Louisiana's Eastern and Western Districts, respectively.

The legal battle against registrars was as fraught with obstacles as the registration process itself. The local white registrar was "a law unto himself."[61] In addition to reading, writing, and interpretation tests, registrars instituted voucher requirements (letters of recommendations from white voters), voucher restrictions (limits on the number of vouchers provided by white references), and limitations on the number of daily applicants in efforts to discourage and restrict black registration. Some southern county administrations went so far as to close registration offices for extended lengths of time to prevent minority enfranchisement. Litigation initiated by individual plaintiffs and the NAACP was both expensive and tedious, with a negligible number of black citizens registering. In 1954, Walter White, head of the NAACP, wrote that "[a]n estimated five hundred thousand dollars has been spent by Negro citizens on legal cases challenging disenfranchisement, many of them ending in defeat." [62]

The passage of the Civil Rights Act of 1957 gave the Justice Department authority to seek civil injunctions to block discriminatory practices by southern registrars. It also elevated the Civil Rights Section into a division within the Justice Department to give it greater resources. But, as John Doar noted, distinguished constitutional lawyers believed that the federal government lacked the power to regulate voter qualification; it was widely thought that "voter qualifications were the exclusive domain of the separate states." Because of this uncertainty, Attorney General William "Bill" Rogers decided that the Division "should proceed cautiously until the Supreme Court decided the extent of federal authority over voting."[63] The pace quickened with the enactment of the Civil Rights Act of 1960, which required election officials to maintain all election and voting records and produce them upon demand for inspection by the Justice Department, and the appointment of Robert Kennedy as Attorney General. Kennedy had the means to accelerate registration by first proving past voter discrimination and then adding all those applicants to the voting rolls whose qualifications meet those of the officially aggrieved. The act also stipulated that a state, as well as an individual, could be sued.[64] Judges hearing cases in the Montgomery federal courthouse would craft innovative procedures including the "freezing principle," the "proportion principle," and the "injunction pending appeal." In 1959, one Alabama case in particular, helped pave the way on reapportionment.

Gomillion v. Lightfoot (1959 – District Judge Johnson; 1959 – on appeal to Circuit Judges Brown (dissenting), Wisdom, and Jones (author)

In 1957, the Alabama legislature approved Act No. 140 to redraw Tuskegee's boundaries. The oddly configured boundary, sporting twenty-eight sides, excluded the black Tuskegee Institute and the vast majority of the town's more than four hundred registered black voters, but kept all of the approximately six hundred white voters. Profoundly dismayed with the new boundary, Charles C. Gomillion, chair of the social science division at Tuskegee Institute, instituted a law suit along with others against Tuskegee mayor, Philip M. Lightfoot, and other city officials. The plaintiffs charged that the act "violated the Fourteenth Amendment's equal protection clause and the Fifteenth Amendment's guarantee that the right to vote 'shall not be denied or abridged…on account of race, color, or previous condition of servitude'." [65] With *Gomillion*, voting rights and legislative reapportionment hung in the balance.

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[61] Ibid., 8, quoting from V. O. Key, Jr., *Southern Politics in State and Nation* (New York: Alfred A. Knopf, 1949), 563.

[62] Charles V. Hamilton, *The Bench and the Ballot: Southern Federal Judges and Black Voters* (New York and London: Oxford University Press, 1973), 32.

[63] John Doar, "The Work of the Civil Rights Division in Enforcing Voting Rights Under the Civil Rights Acts of 1957 and 1960," 25 *Florida State University Law Review* 1 (1997): 1.

[64] Donald S. Strong, *Negroes, Ballots, and Judges: National Voting Rights Legislation in the Federal Courts* (Tuscaloosa: University of Alabama Press, 1968), 7, 15.

[65] Bass, *Taming the Storm*, 145, 146.

The case first dealt a blow to the plaintiffs when Judge Johnson, who described the redistricted Tuskegee as "a sea dragon," felt compelled to dismiss the case because "his court lacked 'authority or jurisdiction' to declare the act void."[66] The plaintiffs then requested relief in the U.S. Fifth Circuit Court of Appeals. Judge John Minor Wisdom and Judge Warren Jones concurred with Johnson,[67] but Judge Brown's powerful dissent concluded that the act "was written to prevent blacks from voting in municipal elections and thus in clear conflict with the Fifteenth Amendment."[68] The case went on to the U.S. Supreme Court which agreed with Judge Brown and sent the case back to the district court for reconsideration, whereupon Judge Johnson voided Act No. 140 and ordered Tuskegee returned to its original political boundaries.

Gomillion's immediate effect was to undermine white supremacy in Tuskegee and Macon County. In the long term, it "set a precedent for federal judicial intervention in state redistricting and for later one-person, one-vote decisions that would affect legislative apportionments across the country."[69] Indeed in *Sims v. Frank* (1962), Judge Johnson would join Judge Rives in becoming the first court to apply the Supreme Court's holding in *Baker v. Carr* (1962) that federal courts had jurisdiction in reapportionment cases. As for Judge Brown himself, the dissent in *Gomillion*, "clearly established him as a forceful judicial activist with a nationalist perspective who was willing to interpret the constitution broadly to further the liberal agenda in race relations."[70]

United States v. Alabama (1961 - Judge Johnson)

In this voter registration case, Judge Johnson developed the revolutionary concept of relief called "freezing." This case arose in Macon County where its voting rolls showed a glaring discrepancy between the number of voting age whites and blacks. Although virtually all of the county's 2,800 whites were registered, less than 10% of the almost 1,200 blacks were not.[71] Additionally, the Justice Department revealed that Macon County registrars subjected African American applicants to significantly more difficult literacy tests than white applicants. Furthermore, registrars assisted white applicants and often ignored their test results, but refused to help blacks and rigidly upheld their test results. Given this compelling evidence, Judge Johnson enjoined the registrars of Macon County from further discrimination; and ordered that 65 qualified African Americans be added to the voting list.[72] Additionally, he ordered the registrars to register every black applicant "whose performance in attempting to qualify is equal to the performance of the least qualified white applicant ever registered."[73] This rather ingenious "freezing principle" provided much leeway for registering African American voters given "the least qualified white voter" standard, and in the process effectively neutralized literacy tests. Fifth Circuit Judge Wisdom would adopt Johnson's freezing principle in the landmark *United*

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[66] Bass, *Unlikely Heroes*, 100. *Gomillion v. Lightfoot*, 167 F. Supp. 405 (M.D. Ala. 1959); Judge John Minor Wisdom, "Tribute to Judge John R. Brown," 34 Houston Law Review 1519 (1997-1998): 1522. At that time, *Colegrove v. Green* (1946) was the law of the land regarding district apportionment. In this Illinois case, the Supreme Court ruled that reapportionment is "a question of a political nature and not appropriate for resolution in the courts." Couch, *History of the Fifth Circuit*, 106.

[67] *Gomillion* was Wisdom's first civil rights case and a decision he later regretted. Bass, *Taming the Storm*, 147.

[68] Bass, *Unlikely Heroes*, 107; *Gomillion v. Lightfoot*, 270 F.2d 594 (5th Cir., 1959). Judge Brown later considered his dissent "the most significant opinion he ever wrote;" Bass, *Unlikely Heroes,* 100.

[69] Quote from Ralph E. Luker, *Historical Dictionary of the Civil Rights Movement* (Lanham, MD: Scarecrow Press, Inc., 1997), 103; Jonathan L. Entin, "Of Squares and Uncouth Twenty-Eight-Sided Figures: Reflections on *Gomillion v. Lightfoot* After Half a Century," 50 *Washburn Law Journal* 133 (2010): 146, https://contentdm.washburnlaw.edu/digital/collection/wlj/id/5777 (accessed August 15, 2011); *Encyclopedia of Alabama, "*Gomillion v. Lightfoot," https://encyclopediaofalabama.org/article/gomillion-v-lightfoot/ (accessed August 15, 2011).

[70] Willis, "Brown, John R.," 135; *Sims v. Frank*, 208 F. Supp. 431 (M.D. Ala. 1962); *Baker v. Carr*, 369 U.S. 186 (1962).

[71] Strong, *Negroes, Ballots, and Judges*, 152; 192 F. Supp. 677 (M.D. Ala. 1961).

[72] Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 87.

[73] Bass, *Taming the Storm*, 153.

States. v. Louisiana case, a principle upheld by the U.S. Supreme Court in 1965 and incorporated into the Voting Rights Act of 1965.[74]

United States v. Woods (1961 – Circuit Judges Rives (author), Brown, and Cameron (dissenting)

Efforts by the Justice Department coalesced with the Fifth Circuit's "readiness to improvise remedial measures" in this case.[75] On September 7, 1961, African American civil rights worker John Hardy attempted to register African Americans to vote at the Walthall County, Mississippi, courthouse. Once inside, Registrar John Q. Wood pointed a pistol at Hardy and ordered him to leave. As Hardy was walking out the door, Wood struck him on the back of the head.[76] After police arrested Hardy for disturbing the peace, the Justice Department intervened, requesting that District Court Judge William Harold Cox issue a temporary restraining order to allow the voter registration to continue. Judge Cox denied the injunction. Because denial of a temporary restraining order cannot be appealed, Hardy had no recourse to a higher authority, leaving him vulnerable to state prosecution and the unfinished registration work.[77]

Even though Hardy had exhausted his legal relief, the Justice Department initiated *United States v. Woods*[78] in the Fifth Circuit Court of Appeals. In the critical stage of a voter registration drive, Judge Rives expedited and moved the case ahead of many others to be heard in Montgomery. The opinion authored by Rives and joined by Judge Brown "ruled that the district court's denial of the temporary restraining order would mean substantial rights 'will be irreparably lost if review is delayed until final judgment'." Because final decisions are reviewable, the judges ruled the district court's denial to be "sufficiently 'final' to be reviewable."[79] This legal maneuver then enabled the Fifth Circuit to order that the district court issue a temporary restraining order on behalf of the plaintiff. Through Judges Rives's and Brown's judicial activism and creativity, Hardy received equal protection of the law rather than being inextricably imprisoned within the machinations of what was then passing for state law. Rives's legal relief in *Woods* anticipates Fifth Circuit Judge Elbert P. Tuttle's "injunction pending appeal" remedy advanced in *U.S. v. Lynd* (1962) that prohibited discrimination pending appeal to the circuit court.

The Selma to Montgomery March, *Williams v. Wallace* (1965 – Judge Johnson)

Judge Johnson's actions in this case pioneered new ground in civil rights jurisprudence, and literally and figuratively cleared the road for the passage of the 1965 Voting Rights Act. Although the 1964 Civil Rights Act had strengthened voting rights legislation, African Americans in Dallas County, Alabama, continued to face registration obstacles, with one of the most formidable being Dallas County Sheriff Jim Clark who actively intimidated and arrested people working on behalf of voter registration efforts. Civil rights strategists believed Clark's short temper "would respond violently to renewed demonstrations" and arouse national interest. Martin Luther King Jr. and leaders of the Student Nonviolent Coordinating Committee (SNCC) decided to stage a march from Selma to the Capitol in Montgomery, as King declared, "We are going to bring a voting bill into being in the streets of Selma"[80] Over Governor Wallace's denial, citing safety reasons, the march proceeded as scheduled. On March 7, 1965, marchers left out of Selma across the Edmund Pettus Bridge. At the opposite end

[74] David J. Garrow, "Visionaries of the Law: John Minor Wisdom and Frank M. Johnson, Jr.," 109 *Yale Law Review* 6 (2000), 1220; Ronald J. Krotoszynski, Jr., "Equal Justice Under Law: The Jurisprudential Legacy of Judge Frank M. Johnson, Jr.," 109 *Yale Law Review* 6 (2000): 1245.
[75] Couch, *History of the Fifth Circuit*, 111.
[76] Barrow and Walker, *A Court Divided*, 42.
[77] Couch, *History of the Fifth Circuit*, 111.
[78] 295 F.2d 772 (5th Cir., 1961).
[79] Barrow and Walker, *A Court Divided,* 42; quotes from Bass, *Unlikely Heroes*, 216.
[80] Bass, *Unlikely Heroes,* 260.

of the bridge, 50 to 75 state troopers and a posse headed by Sheriff Jim Clark ordered the marchers to turn back. When the protestors refused to yield, the troopers, using nightsticks, cattle prods, and tear gas, suddenly charged and forced the marchers back in a disorderly retreat. In the melee that came to be known as "Bloody Sunday," 87 people sustained injuries, 17 of which required hospitalization.[81] National media covering the march awakened the nation to the savagery of the Alabama segregationists, and prompted President Lyndon B. Johnson to call for a voting rights bill at an emergency session of Congress.

The day after Bloody Sunday, King sent his attorneys to Johnson's courtroom to ask for injunctive relief from Wallace's further interference in a subsequent march.[82] However, the suit, *Williams v. Wallace*,[83] did not begin as King hoped. Judge Johnson, as he had done in the 1961 Freedom Rides, enjoined the activists from further activity until he could hear the competing claims between the protestors' right to march and the "general public's right to travel on the highway."[84] On March 17, 1965, Johnson handed down his landmark ruling: "[It] seems basic to our constitutional principles that the extent of the right to assemble, demonstrate and march peaceably along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against. In this case, the wrongs are enormous. The extent of the right to demonstrate against these wrongs should be determined accordingly."[85]

Johnson's proportional principle, permitting demonstration in proportion to the severity of the inequity, established a constitutional basis and precedent for civil disobedience. As one biographer notes, "When *Williams v. Wallace* was upheld on appeal, the United States then, for the first time, had an accepted and 'correct' provision defining the constitutional right to demonstrate. Prior to Johnson's opinion on the Selma march this right had been a hazy area of constitutional law into which few dared venture."[86]

The second 54-mile Selma to Montgomery march started on Sunday, March 21, 1965. Approximately 3,000 strong, the marchers successfully crossed the Edmund Pettus Bridge with troops stationed along the highway and helicopter protection overhead. On March 25th, as thousands made their way along Montgomery's Dexter Avenue en route to the State Capitol, Judge Rives asked Judge Johnson to join him in his office: "You have ordered one of the largest parades in the nation's history…. Now I want you to come up to my floor [fourth] and view it." A lawyer and former law clerk to Judge Johnson from 1991 to 1992 "argues that the Selma march should be…as well regarded for its contribution to the development of First Amendment law as to the development of our national morality."[87]

An Impartial Jury of One's Peers

The history of minority discrimination in voter registration is at least partially responsible for African Americans seldom serving as jurors in the South since prospective jurors are culled from voter registration lists. Jury exclusion raised two issues, one being the constitutional right to trial by an impartial jury of one's peers,

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[81] Bass, *Taming the Storm*, 237. Later, Viola Liuzzo, a white housewife from Detroit, Michigan, who assisted in transporting the marchers, was shot to death by Ku Klux Klansmen.

[82] Lesher, *George Wallace,* 327.

[83] 240 F. Supp. 100 (M.D. Ala. 1965).

[84] Bass, *Unlikely Heroes,* 260-61.

[85] Garrow, "Visionaries of the Law," 1232. Additionally, Johnson approved a plan the plaintiffs had submitted for the upcoming march and ordered Wallace and the other defendants to provide adequate protection for the marchers.

[86] Kennedy, Jr., *Judge Frank M. Johnson, Jr.*, 104.

[87] Bass, *Taming the Storm*, 236; Ronald J. Krotoszynski, Jr., "Celebrating Selma: The Importance of Context in Public Forum Analysis," 104 *Yale Law Journal* 1411 (1994-1995): 1412. Johnson later presided over the conviction, by an all-white jury, of three Klansmen who murdered white civil rights activist Viola Liuzzo while she drove marchers back to Selma.

and the second being denied the opportunity to participate in the administration of justice. In 1959 and 1962, Judge Rives authored two opinions that made a trial by jury of one's peers possible.

U.S. ex rel. *Goldsby v. Harpole* (1959 – Circuit Judges Rives (author), Brown, and Wisdom)

In 1959, the Fifth Circuit Court of Appeals granted a hearing for Robert Lee Goldsby regarding the systematic exclusion of blacks from the jury. A Mississippi court in Carroll County had convicted Goldsby of murdering a white woman and sentenced him to death. After several years and appeals, Chief Justice Earl Warren of the U.S. Supreme Court issued a stay to enable the "petitioner to exhaust his federal rights in the proceeding."[88] Writing for the three-judge panel, Judge Rives stated that a case had been made for the systematic exclusion of qualified blacks from the grand and petit juries based on race. Of the county's 15,000 population, 57 percent were black, and selecting its jury from voter registration lists revealed that "the last two blacks registered to vote in the county had died in 1952."[89] Rives wrote, "the courts must declare the maintenance of such a condition violative of the Constitution and must not tolerate its longer continued existence."[90] Upon retrial, Goldsby was convicted again and eventually executed, "but the case established a principle that trial by a jury of one's peers, who were selected without racial discrimination, was a constitutional right."[91]

U.S. ex rel. *Seals v. Wiman* (1962 – Circuit Judges Rives (author), Brown, and Wisdom)

In 1962, a black defendant challenged the selection of veniremen in an Alabama county. The defendant's legal representation charged that only two percent of the prospective jurors were African American even though they represented approximately one-third of the total population. Fifth Circuit judges Rives, Brown, and Wisdom constituted the three-judge panel in *Wiman*. Authored by Judge Rives, the opinion "held that substantial under-representation of blacks, like total exclusion, was sufficient to create a statistical presumption of discrimination which the State bore the burden of disproving."[92] Both *Goldsby* and *Wiman* made it possible for African American defendants to be tried by a jury of their peers.

Conclusion

Scholarly and professional opinions concur on the significant influence the U.S. Fifth Circuit Court of Appeals had on the modern civil rights movement. Professor of history John M. Spivack eloquently describes the atmosphere in which the Fifth Circuit operated and its national contribution:

> The Fifth Circuit is unique in a substantive as well as an institutional sense. It has been at the center of one of the most difficult legal, social, and political problems in our recent experience, the redefinition of the relationship between blacks and whites. In the 1950s and early 1960s, a large portion of civil rights cases were decided here. Precisely in that section of the country where racial relations were both an essential part of the culture and most out of step with the demands of justice and the times, the Fifth Circuit Court of Appeals was the final arbiter. The slow-moving but eventually successful enforcement of national law and policy in the South was in no small degree the result of the judicial statesmanship of the Fifth Circuit…. They guided the

[88] Couch, *History of the Fifth Circuit*, 99.
[89] Bass, *Unlikely Heroes*, 279.
[90] Couch, *History of the Fifth Circuit*, 101; 263 F.2d 71 (5th Cir., 1959).
[91] Luker, *Historical Dictionary*, 262.
[92] Read and McGough, *Let Them Be Judged*, 334; 304 F.2d 53 (5th Cir., 1962). The court also distinguished itself in equal rights for women in *White v. Crook* whereby Rives, Johnson and District Judge Allgood found Alabama's law excluding women from juries violated the equal protection clause of the 14th Amendment. 251 F. Supp. 401 (M.D. Ala. 1966).

> South through its early adjustment to the constitutional standard for racial equality and slowly evolved desegregation policy for the entire nation.[93]

In a broad general affirmation, law professors Frank T. Read and Lucy S. McGough assessed the task placed before the Court of Appeals:

> After handing down its *Brown* decision, the Supreme Court—contrary to the belief of many citizens—played only a minimal role in the supervision and guidance of its lower federal courts. Left to its Court of Appeals was the task of translating a vague but revolutionary constitutional command into concrete orders for school boards and federal district courts. In that process the Fifth Circuit was the trail blazer, becoming the nation's greatest tribunal. The story of the evolution of desegregation and race relations law in the twenty years since *Brown* is, then, also the story of one pre-eminent federal Appeals Court.[94]

But, within the Montgomery courthouse, it was not just Fifth Circuit jurists who held eminent sway in civil rights law. Their actions provided reinforcement for District Court Judge Johnson who explained what that support meant to his rulings: "It meant that what I said about it was the last word for all practical purposes. The litigants and the people knew it. It gives a District Judge more power and more authority. It gives him more assurance. It makes him confident that 'I'm not going to be emasculated if I decide this case like it ought to be. I'm going to be affirmed if they appeal it.' That's what the Fifth Circuit meant to me when Brown, Wisdom, Rives, Tuttle, and some of the others were controlling that court."[95]

John Doar of the Justice Department recognized the contribution of these five jurists within the legal field that contributed to the civil rights movement:

> Now, I don't know any civilization that's been able to break a caste system except what was done in this country in the sixties. And as far as the law is concerned, it certainly wasn't the people in Washington. It certainly wasn't the Justice Department. It was these five men. It's just like some greater being put these men where they were at that time.
>
> They made an immeasurable contribution to the welfare of the country…. The federal judicial system is not necessarily designed to bubble up great men. It's unusual, really, that those kinds of men would get appointed to the jobs. It's a phenomenon. And just at this point in time in American history they were there.[96]

Comparison of Properties

Some properties associated with the District Court's rulings in civil rights events have received NHL designation. One such NHL, the Dexter Avenue Baptist Church in Montgomery, Alabama, is associated with the Montgomery Bus Boycott. This church and its pastor, Martin Luther King Jr. played a pivotal role in organizing the boycott. Another NHL, the Edmund Pettus Bridge, is associated with the Selma to Montgomery march and "Bloody Sunday" when law enforcement officers violently turned marchers back to Selma. These events relate to the *Browder v. Gayle* (1956) and the *Williams v. Wallace* (1965) respectively that were heard in the Montgomery courthouse. While these NHLs illustrate the events and the direct role activists played in the

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[93] John M. Spivack, *Race, Civil Rights and the United States Court of Appeals for the Fifth Judicial Circuit* (New York: Garland Publishing, Inc., 1990), 32-33, 170.
[94] Read and McGough, *Let Them Be Judged*, xii.
[95] Bass, *Taming the Storm*, 134.
[96] Bass, *Taming the Storm,* 141, interview with John Doar, April 21, 1989.

civil rights movement, it is the Montgomery courthouse that possesses exceptional significance in illustrating the role the federal courts played to extend the mandate of *Brown* beyond school desegregation and to pioneer new ground in civil rights jurisprudence. Likewise, bus stations associated with the Freedom Rides may be eligible for NHL consideration for the events and their direct association with activists.

Lastly, during the period of significance, the Fifth Circuit also had a courthouse in Fort Worth, Texas, home to Judge John R. Brown. That courthouse is not under NHL consideration, within the context presented herein, since none of the cases considered crucial to illustrating the Fifth Circuit's preeminent role in the civil rights movement were heard in Fort Worth. Judge Brown, as a member of "The Four," is therefore recognized under Criterion 2 with the Montgomery courthouse where he sat on three-judge panels for three cases.[97]

[97] Court records do not indicate where a fourth case heard by Judge Brown, *Gomillion v. Lightfoot*, was argued. It was first argued before Judge Johnson at the Montgomery District Court and is discussed in this nomination. Because court records do not indicate where the case was argued, the New Orleans Fifth Circuit Headquarters assumes the case must have been argued in New Orleans. Correspondence with U.S. Fifth Circuit Court of Appeals, New Orleans, Louisiana, with Susan Salvatore, November 2014.

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United States ex rel. *Seals v. Wiman*, 304 F.2d 53 (5th Cir., 1962)
United States ex rel. *Goldsby v. Harpole*, 263 F. 2d 71 (5th Cir., 1959)
United States v. U.S. Klan's, 194 F. Supp. 892 (1961).
United States v. Alabama, 192 F. Supp. 677 (M.D. Ala. 1961).
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White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966).
Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965).

Previous documentation on file (NPS):

__ Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
_X_ Previously Listed in the National Register.
__ Previously Determined Eligible by the National Register.
__ Designated a National Historic Landmark.
__ Recorded by Historic American Buildings Survey: #
__ Recorded by Historic American Engineering Record: #

Primary Location of Additional Data:

__ State Historic Preservation Office
__ Other State Agency
__ Federal Agency
__ Local Government
__ University
__ Other (Specify Repository):

10. GEOGRAPHICAL DATA

Acreage of Property: less than one acre

UTM References:	**Zone**	**Easting**	**Northing**
	16	564890	3582050

Verbal Boundary Description:
The boundary is the 1933 courthouse building footprint as it sits in the city lot bounded by Church Street to the northwest, Lee Street to the northeast, Court Street to the southeast, Clayton Street to the south, and Catoma Street to the southwest.

Boundary Justification:
The boundary includes the building that has historically been associated with the Federal courthouse and which maintains its integrity.

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DESIGNATED A NATIONAL HISTORIC LANDMARK
JULY 21, 2015

APPENDIX A. SUMMARY OF CIVIL RIGHTS CASES

Important 1950s to 1960s civil rights cases argued before the Fifth Circuit Court of Appeals and the District Court for the Middle District of Alabama are the focus of the NHL nominations for courthouses in New Orleans, Atlanta, and Montgomery. For summary and cross-reference purposes, this table lists cases each nomination covers. Judges who authored opinions are underlined.

U.S. Court of Appeals – Fifth Circuit (Wisdom Courthouse), New Orleans, LA	U.S. Post Office and Courthouse (Tuttle Courthouse), Atlanta, GA	United States Post Office and Courthouse (Johnson Courthouse), Montgomery, AL
School Desegregation *Bush v. Orleans* (1956-61) *en banc* (all judges) and district judges. Illustrates every tactic states used to resist desegregation and courts overcame. *Meredith v. Fair* (1962) *en banc.* Case resulted in two Per Curiam rulings (multiple judges acting unanimously) and two opinions by Wisdom. Established Fifth Circuit as the country's major judicial battlefield in civil rights movement. *U.S. v. Jefferson* (1966) Wisdom, Thornberry, Dist. Judge Cox (dissenting). Milestone concept of affirmative action to integrate as opposed to desegregate. (Case noted under *Bush v. Orleans*). **Voting Rights** *Kennedy v. Bruce* (1962) Tuttle, Rives, Wisdom. An immediate issuance of mandate, an unusual procedural means, allowed a mandate to take effect immediately rather than several weeks.	**School Desegregation** *Holmes v. Danner* (1961) Tuttle. To grant immediate relief, Tuttle used the extraordinary procedure of by-passing a Fifth Circuit three-judge panel. *Woods v. Wright* (1963) Tuttle. After school board expelled students marching in Birmingham, Tuttle bypassed a three-judge panel to issue an injunction pending appeal allowing students to finish the school year. *Hall v. St. Helena* (1964) Tuttle, Rives, Wisdom. Court issued a Writ of Mandamus, a mandatory injunction directing an inferior public officer to perform an act required by law when it has refused or neglected to do so. *Meredith v. Fair* (1965) *en banc.* Tuttle advised Executive Branch of the government of its burden to enforce federal court order. *Stell v. Savannah* (1964) Tuttle, Rives, Bell. Ruling provided extraordinary relief under the All Writs Act in exceptional cases of abuse of judicial power by the District Court.	**School Desegregation** *Lee v. Macon County* (1967) Rives, Johnson, Grooms. Ruling mandated state-wide school desegregation rather than a case-by-case basis. **Public Accommodations** *Browder v. Gayle* (1956) Johnson, Rives, District Judge Lynne. Ended 1955 Montgomery Bus Boycott. *U.S. v. Klans* (1961) Johnson. To enforce federal court orders, federal government mobilizes federal marshals during 1961 Freedom Rides. **Voting Rights** *Gomillion v. Lightfoot* (1959) Jones, Wisdom, Brown (dissenting). Brown's opinion, upheld by U.S. Supreme Court, helped pave way for voting rights reapportionment. *U.S. v. Alabama* (1961) Johnson's "freezing principle" essentially negated literacy tests. *U.S. v. Woods* (1961) Rives, Brown, Cameron (dissenting). Foreshadowed injunction pending appeal remedied in *U.S. v. Lynd* (1962) to prohibit discrimination pending appeal to the circuit court.

U.S. Court of Appeals – Fifth Circuit (Wisdom Courthouse), New Orleans, LA	**U.S. Post Office and Courthouse (Tuttle Courthouse), Atlanta, GA**	**United States Post Office and Courthouse (Johnson Courthouse), Montgomery, AL**
U.S. v. Lynd (1962) Tuttle, Wisdom, Hutcheson. Procedural innovation altered the concept of injunction pending appeal to prohibit discrimination against black voter registration pending appeal to the circuit court. *U.S. v. Louisiana* (1963) Wisdom, district judges Christenberry & West (dissenting). Wisdom's doctrinal defense of the "Freezing Principle," first employed by District Judge Johnson, served as the framework for Supreme Court affirmation and influenced the Voting Rights Act of 1965.	**Public Accommodations** *Heart of Atlanta Motel v. U.S.* (1964) Tuttle, District Judges Hooper and Morgan. Confirmed constitutionality of the 1964 Civil Rights Act. **Voting Rights** *Kennedy v. Bruce* (1962) Tuttle, Rives, Wisdom. Court devised immediate issuance of mandate procedure to make decision effective immediately. *U.S. v. Lynd* (1962) Tuttle, Wisdom, Hutcheson. Demonstrates procedural innovation in granting injunction pending appeal.	*Williams v. Wallace* (1965) Johnson allowed Selma-to-Montgomery march to continue under "proportion principle," a pioneering concept that defined the right to demonstrate. **Jury of Peers** *Goldsby v. Harpole* (1959) Rives, Brown, Wisdom. *Seals v. Wiman* (1962) Rives, Brown, Wisdom. These two cases established principle of right to jury of one's peers.

APPENDIX B. FIFTH CIRCUIT JUDGES, INNOVATIONS, AND ACCOMPLISHMENTS

Until 1981, the U.S. Fifth Circuit Court of Appeals covered the states of Louisiana, Alabama, Georgia, Texas, Mississippi, and Florida. In 1960, the court consisted of one judge in all these states except for Texas with two judges.

Terms served on the Fifth Circuit by "The Four:"

- Richard T. Rives: (LA, 1951-1966, Chief Judge 1959-1960, Senior Judge (semi-retired) 1966-1981, transferred to Eleventh Circuit in 1981)
- Elbert P. Tuttle: (GA, 1954-1968, Chief Judge 1960-1967, Senior Judge 1968-1996, transferred to the new Eleventh Circuit in 1981)
- John R. Brown: (TX, 1955-1984, Chief Judge 1967-1979, Senior Judge 1984-1993)
- John M. Wisdom: (LA, 1957-1977, Senior Judge 1977-1999)

Other Fifth Circuit judges holding term at some point during the period of significance (1956-1967):

- Joseph Hutcheson (TX, 1931-1964)
- Wayne G. Borah (LA, 1949-1956)
- Benjamin F. Cameron (MS, 1955-1964)
- Warren Leroy Jones (FL, 1955-1966)
- Griffin Bell (GA, 1961-1976)
- Walter P. Gewin (AL, 1961-1976)
- William H. Thornberry (TX, 1965-1978)

Innovations or extraordinary procedure used by the Fifth Circuit:

- Injunction Pending Appeal
- Proportion Principle
- Writ of Mandamus
- Freezing Principle
- Affirmative Action
- Immediate Issuance of Mandate
- All Writs Act

Accomplishments and associated milestone events:

- Expanded school desegregation and voting rights cases from county-by-county to statewide
- Achieved trial of jury by peers
- Paved way for voting rights apportionment
- 1955 Montgomery Bus Boycott – extended principle of *Brown* to public transportation
- 1961 Freedom Rides
- University of Mississippi desegregation (Meredith)
- 1965 Selma-to-Montgomery march – established proportional principle

Photo 1. Lee Street façade (in the foreground) and Church Street façade (on the right).
Photo by Gene Ford, April 18, 2006.

Photo 2. Church Street façade. Photo by Gaene Ford, April 18, 2006.

Photo 3. First floor lobby. Photo by Gene Ford, April 18, 2006.

Photo 4. District Courtroom. Photo by Gene Ford, April 18, 2006.

Photo 5. Circuit Courtroom. Photo by Gene Ford, April 18, 2006.

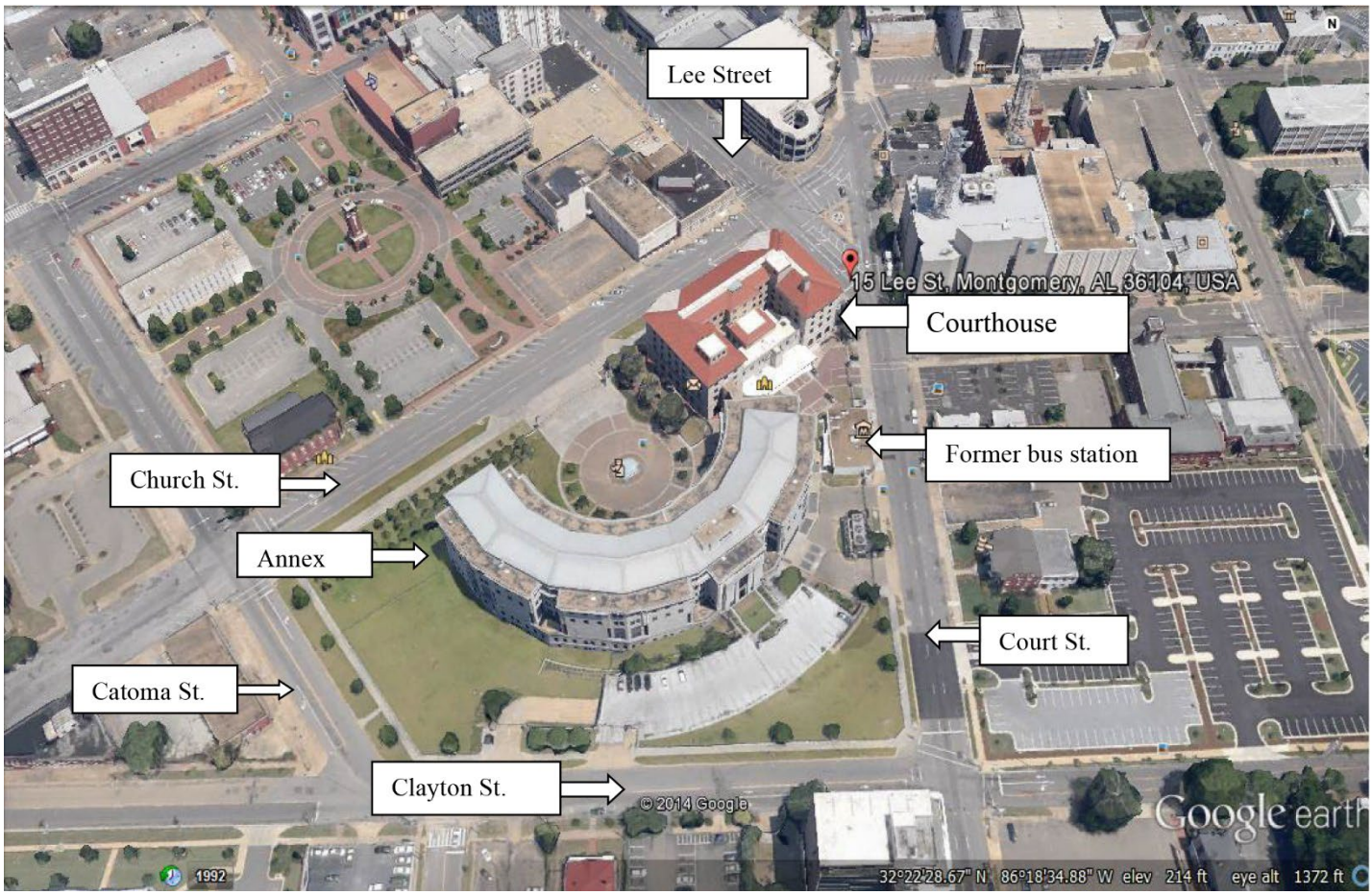

Figure 1. Aerial view showing courthouse in relation to the annex and the former bus station.
Source: Google Earth, 2014.

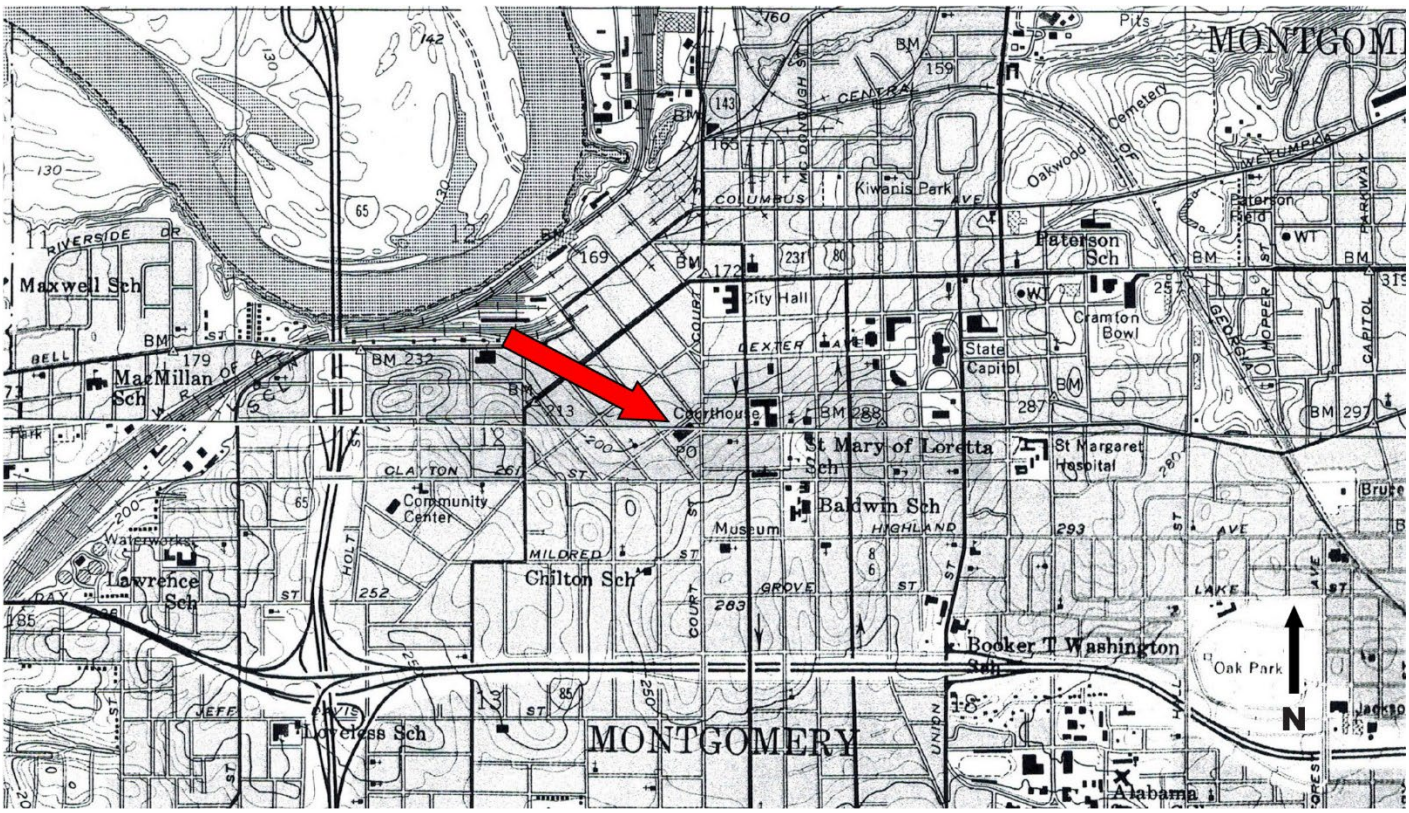

Figure 2. USGS, Montgomery North and Montgomery South, Alabama, 1958, photo revised 1981. Courthouse is in center of image.

UTM Coordinates

Zone	Easting	Northing
16	564890	3582050