

1 IN THE CRIMINAL COURT OF TENNESSEE AT CHATTANOOGA  
2 THE ELEVENTH JUDICIAL DISTRICT

3 STATE OF TENNESSEE \*  
4 Plaintiff, \*

5 vs. \*

CASE NO. 231240

6 ED JOHNSON \*  
7 Defendant. \*

ORIGINAL

8 February 25, 2000

9 TRANSCRIPT OF HEARING ON  
10 MOTION TO SET ASIDE CONVICTION

11 Volume One of One Volume

12 THE HONORABLE DOUGLAS A. MEYER, PRESIDING JUDGE

13 APPEARANCES

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1           IN THE CRIMINAL COURT OF TENNESSEE AT CHATTANOOGA  
2                   THE ELEVENTH JUDICIAL DISTRICT  
3                                   DIVISION I

4           STATE OF TENNESSEE                   \*

5           vs.                                    \*           Case No. 231240

6           ED JOHNSON                           \*

7                   This cause came on to be heard and was  
8           heard on the 25th day of February 2000, before the  
9           Honorable Douglas A. Meyer, Judge, holding the  
10          Criminal Court for Hamilton County, at Chattanooga,  
11          Tennessee, and the following proceedings were had,  
12          to-wit:

13                   THE COURT: Let's see. Mr. Phillips is  
14          here on behalf of Ed Johnson, and Attorney General  
15          Bill Cox is here on behalf of the State.

16                   MR. PHILLIPS: Yes.

17                   THE COURT: And, of course, representing  
18          Ed Johnson is Reverend Paul McDaniel.

19                   MR. PHILLIPS: That's correct. We filed  
20          it in the, as next friend, correct.

21                   THE COURT: All right.

22                   MR. PHILLIPS: May I address the Court?

23                   THE COURT: Okay.

24                   MR. PHILLIPS: May it please the Court,  
25          what brings me before the Court this afternoon of  
                all things is a tombstone, a tombstone that sits

1 atop Missionary Ridge here in Chattanooga, and it  
2 is a tombstone that has haunted me for now more  
3 than 30 years. It, of course, is the tombstone of  
4 Ed Johnson, which is in the Pleasant Garden  
5 cemetery on top of historic Missionary Ridge that  
6 contains, Your Honor, the last words that Ed  
7 Johnson spoke to the lynch mob that murdered him  
8 here in, on March 19th of 1906. And that tombstone  
9 reads, "God bless you all. I am an innocent man."

10 Your Honor, that tombstone has haunted me  
11 both as a lawyer and as a person, and I appear  
12 before this Court -- I realize that these  
13 proceedings are really historic and for historical  
14 purposes.

15 I would like to point out to Your Honor  
16 that most of the time, most of the time where there  
17 has been posthumous petitions filed, they have been  
18 directed to the executive branch of the government,  
19 asking for posthumous pardons of individuals.

20 Well, one of them, as Your Honor knows,  
21 is the president of the United States was asked to,  
22 to posthumously pardon Dr. Mudd, who fixed the, the  
23 leg of Wilkes, John Wilkes Booth, who shot the  
24 president of the United States.

25 The governor of Georgia was asked to

1 posthumously pardon Leo Franks and did so.

2           However, Your Honor, I have filed not  
3 with the executive branch of the government, I have  
4 filed this petition with the judiciary, and I have  
5 filed this petition in the very court that Ed  
6 Johnson was convicted in and sentenced to be hanged  
7 in. That is Division I of the Criminal Court of  
8 Hamilton County, Tennessee. The picture of the  
9 judge who presided over that trial is back on the  
10 back wall back there.

11           And I did this on purpose, Your Honor. I  
12 know that it has not been done in the past, but I  
13 did this because it is the judicial branch of the  
14 government, Your Honor, that is responsible for  
15 justice in our system, and, and I think it is  
16 appropriate to ask the judicial branch of the  
17 government to set aside this man's conviction after  
18 all of these years.

19           And I'll relate to the Court in a minute  
20 the legal basis for doing that, but I think it's  
21 appropriate for this, for the judiciary to do this  
22 as a symbolic matter and a matter of historical  
23 moment, to let it be known through the judiciary  
24 that racism should not play any part in the system  
25 of justice that we have, not one iota, not one bit.

1                   And, Your Honor, I know that we have come  
2 a long, long way since 1906. And, you know, I sort  
3 of fantasized not too long ago that if Ed Johnson  
4 came back to life and he went down to the same  
5 Federal Court that we, wherein he was put before,  
6 he could look up and see an African-American  
7 federal judge sitting there. But even probably  
8 more importantly, he would see another federal  
9 judge down there who is white: Judge Edgar, who  
10 would not put up with racism being a part of any  
11 judicial proceeding in that courtroom in any manner  
12 and to any extent.

13                   Plus, we have three judges here,  
14 including Your Honor. We have Judge Stern, who is  
15 the first criminal, female criminal judge that  
16 we've ever had in this county. Judge Bevil. All  
17 three of those judges, I can stand before this  
18 Court and say all three of our criminal judges  
19 would not put up with racial bigotry, racial  
20 prejudice as a part of any proceeding in these  
21 courts.

22                   But, Your Honor, let me just say a few  
23 words about the events that occurred in this case,  
24 because it is the events that give this Court some  
25 authority for doing what I'm asking the Court to

1 do.

2 And by the way, I am withdrawing my  
3 application to expunge the record of Ed Johnson.  
4 You know, your young clerk, who did some research  
5 work on this case, the research that she did  
6 indicated to me -- it just dawned on me that I  
7 certainly do not want to expunge the record of Ed  
8 Johnson in this case. Quite to the contrary, I  
9 want this record to go forth for generations to  
10 come of what we're doing here today, and I  
11 certainly do not want that record destroyed in any  
12 manner and to any extent.

13 But what I do ask for and I have prayed  
14 for in the petition also was that this conviction  
15 of his be set aside. That would then return him to  
16 the presumption of innocence that he is entitled  
17 to.

18 And, Your Honor, the reason that I  
19 believe the Court has authority to do that is that  
20 Ed Johnson's conviction never became final. As  
21 Your Honor knows, he was tried in an atmosphere of,  
22 of mobocracy, that is, the very courthouse where he  
23 was tried in was a courthouse surrounded by police  
24 officers and armed men, and this man's own family  
25 could not get into the courthouse. That is not a

1 public trial. That is not a fair trial.

2 Your Honor is familiar with the  
3 proceedings that occurred in the courtroom where he  
4 was subjected to a situation where the jurors were  
5 actually so bigoted they were trying to get their  
6 hands on him to do him harm, the very jurors that,  
7 that were trying his case.

8 The lawyers who were appointed to  
9 represent him, although they tried in many ways to  
10 do him as we lawyers are supposed to do, give our  
11 total effort to them, Your Honor knows that they  
12 were, they were affected by the racial bigotry in  
13 this community to such an extent that they were  
14 afraid to file motions for a continuance and  
15 motions to attack the all-white juries that, that  
16 heard them.

17 And, Your Honor, the reason we do not  
18 have to put on any proof in this court to ask the  
19 Court to do this is because the Court can take  
20 judicial notice of the appellate decisions by our  
21 courts and the appellate decisions by the United  
22 States Supreme Court, and there is an opinion by  
23 the United States Supreme Court dated May of 1909  
24 that finds the sheriff of Hamilton County and the  
25 chief deputy of Hamilton County guilty of willful

1 contempt of court for having aided and abetted and  
2 acquiesced in this man being taken from their  
3 custody and taken down to the Walnut Street Bridge  
4 and lynched.

5 That prevented this man from ever -- that  
6 prevented him from having an appeal. That also  
7 prevented this, this conviction from ever being  
8 final.

9 Now, I know that the normal situation is  
10 that when someone dies on appeal, where his case is  
11 on appeal, that case is really mooted and, and that  
12 person is then judged by the almighty. But there's  
13 a big difference in that occurring and what  
14 occurred in this case.

15 What occurred in this case was that an  
16 agent, in fact, two agents of the State were  
17 involved in the participation and the acquiescence  
18 of this man being murdered. And I respectfully  
19 submit that that gives the foundation and a legal  
20 basis for setting aside this man's conviction,  
21 because of that State wrongdoing.

22 And the Court knows that this decision by  
23 the United States Supreme Court made a factual  
24 finding of the guilt of the sheriff and his deputy  
25 acquiescing and cooperating with the actual mob



1           that lynched this man.

2                     At one time, Your Honor knows, he had six  
3           lawyers, six white lawyers, who waived his right to  
4           appeal on the grounds that the community here would  
5           not stand for an appeal; that if he appealed, he  
6           would be lynched. And, therefore, he went before  
7           the Court, the trial court and waived his right to  
8           appeal and the trial court accepted that waiver.

9                     As Your Honor knows, under no criteria of  
10          our state law today or our federal law would that  
11          be permitted. Your Honor would never do that,  
12          never permit a man to waive a right to appeal under  
13          those coercive circumstances.

14                    The bottom line is, is that this man was  
15          arrested, tried, convicted and lynched for one  
16          reason: He was an African-American. That's it.  
17          That's it.

18                    Of course, we cannot permit justice in  
19          this country to function in that fashion, and I  
20          know Your Honor can't, and I respectfully submit to  
21          you that there is a legal basis for this proceeding  
22          and for this court's order, and it's needed.

23                    You know, not too long ago somebody said  
24          to me, "Why are you doing this?" Well, I think  
25          that we have a lot of racial problems still left in

1 this country, and, Your Honor, Your Honor knows  
2 that we have to look at those problems in a  
3 truthful manner and look at our history, not  
4 through rose-colored glasses, but look for the  
5 truth, and the truth in this case is brutal and is  
6 sickening. But the greatest thing is that we can  
7 send to the community a message that we care, that  
8 we care about justice, that we care about having a  
9 system that does not look to race.

10 Your Honor, if Your Honor will permit me,  
11 I would like to have the young man who worked for  
12 twelve years, Mark Curriden, on this case with me,  
13 if you would permit him to make a few remarks to  
14 the Court, I would appreciate it.

15 And then after that, I would like to  
16 introduce to Your Honor the -- of course, Your  
17 Honor knows him -- but for the record, I want to  
18 say a few words about the man that we asked to step  
19 forward as a representative of the African-American  
20 community to be next friend in this petition we  
21 filed.

22 But first, if Your Honor will permit Mr.  
23 Curriden to --

24 THE COURT: All right. Mr. Curriden.  
25 We're glad to have you.

1 MR. CURRIDEN: Thank you, Your Honor. I  
2 appreciate it.

3 One of the interesting things is when we  
4 were doing the research, Your Honor, we interviewed  
5 dozens and dozens of people, went through the Court  
6 records, went to Tuskegee University, went to the  
7 archives in D.C., went to each of the archives of  
8 the justices on the Supreme Court in 1906 through  
9 1909.

10 Probably one of the most significant  
11 people we talked to was Roy Noel, a citizen of  
12 Chattanooga forever and ever, truly one of the  
13 historians of African-American history here. And I  
14 don't think that I certainly appreciated the social  
15 importance of this case within the African-American  
16 community until I spent a couple of days with Roy  
17 Noel, and he started telling me -- and, of course,  
18 when we started this, the Walnut Street Bridge was  
19 being renovated and there was the whole controversy  
20 about this case on the bridge. And, and I guess  
21 that neither of us, neither Mr. Phillips nor I  
22 really understood just what a shadow this case cast  
23 on the community here.

24 And then we decided at the end of the  
25 book, what are some of the things that we can

1 accomplish? I mean, twelve years to work on a  
2 project is a lot of time, and a lot of people kept  
3 saying, "When are you going to finish this? When  
4 are you going to finish this?"

5 And so, at the end, Mr. Phillips and I  
6 sat down. We said, "Well, what do we want to  
7 accomplish? What are the goals? What are the  
8 things" -- and certainly the cleanup of the  
9 cemetery was one thing, where Ed Johnson is buried.  
10 And when he and I went up there when we were  
11 finishing the book, that cemetery is in horrible  
12 condition and it needs to be cleaned up.

13 Number two was the saving of the files at  
14 Tuskegee University. They have thousands and  
15 thousands of files. They have an individual file  
16 on all 4,708 people who were lynched in this  
17 country between 1880 and 1944, files that are  
18 there, they're deteriorating, that need to be  
19 preserved and known to the public.

20 But then in talking to people like  
21 Reverend McDaniel, and even Roy Noel earlier, it  
22 became clear that -- one day we went down to the  
23 clerk's office to find out, during the research,  
24 what was there, what was in the file. And really,  
25 the courthouse had burned, so -- and shortly after

1 this case, so there wasn't -- the true files were  
2 not here in Hamilton County.

3 The one thing that was there was a simple  
4 record that stated that Ed Johnson was found guilty  
5 and is guilty of rape and sentenced to die. And I  
6 think that had a big impact on us that that record  
7 is still there, and it needs to be changed.

8 If I may, Your Honor, there's two things  
9 in the public record that we quote in our book, and  
10 we can get you copies of these originals if you  
11 like. The first was, that really had the great  
12 impact about why this conviction needs to be  
13 reversed was when Nevada Taylor, the victim, who  
14 was a very brave woman actually, she took the  
15 witness stand, and this is the dialogue that went  
16 in place.

17 She'd been on the witness stand and had  
18 been asked over and over, "Is this the man? Is  
19 this the man?" pointing to Ed Johnson, and she  
20 wavered several times, and finally a juror stood up  
21 and said, "Miss Taylor, can you tell us again, is  
22 that the Negro, the one that attacked you?

23 "Miss Taylor: To the best of my  
24 knowledge and belief, he is the same man."

25 Then the juror again, "But, Miss Taylor,

1 can you state positively that this is the Negro,  
2 the one who assaulted you?"

3 "Miss Taylor: I will not swear that he  
4 is the man, but I believe he could be the Negro who  
5 assaulted me."

6 Another juror, "In God's name, Miss  
7 Taylor, tell us positively, is he the guilty Negro?  
8 Can you say it? Can you swear to it?"

9 And she shook her head. "Even Ed  
10 Johnson, who stood before his accuser, bowed his  
11 head in his hands and wiped away the tears. Two  
12 jurors leaned forward, choking back sobs. Lawyers  
13 on both sides were speechless. At that moment a  
14 juror rose to his feet and started to rush towards  
15 the defendant, only to be restrained by fellow  
16 jurors. Pointing at Ed Johnson, he yelled, quote,  
17 "If I could get at him, I would tear his heart out  
18 right now." Certainly not an atmosphere of  
19 impartial and fair trial, impartial jury and fair  
20 trial.

21 The second, as Mr. Phillips has already  
22 pointed out, took place, and this was in the  
23 federal court records in which his own lawyers go  
24 to Ed Johnson, he's already been found guilty, and  
25 now his lawyers go to him and they are convinced

1 that he will not win on appeal, and they are  
2 convinced that a lynch mob will come after him and  
3 the sheriff this time will not protect him. They  
4 say this outright.

5 And here's the quote from the court  
6 record, "Ed, there are two choices here," this is  
7 from his lawyer, Your Honor, "You can accept the  
8 verdict of the Court and die in an orderly, lawful  
9 manner, or you can die horridly in the hands of the  
10 mob. Do you want to die at the hands of the mob?  
11 Do you want to die in an orderly fashion or do you  
12 want a lynch mob to take you from your cell, drag  
13 you into the streets, beat you, hang you in front  
14 of everyone, leaving your body there for all to see  
15 and then come after your family?"

16 Ed Johnson: "No, sir."

17 The lawyer: "Do you want us to do as we  
18 think best in deciding on an appeal?"

19 Ed Johnson: "Yes, sir. I will tell the  
20 judge that I am ready to die, but I will also say I  
21 am not the guilty man."

22 Those are very powerful words, and  
23 throughout this case, as Mr. Phillips has said, is  
24 that the evidence pointing away from Ed Johnson is  
25 overwhelming. And in talking to both Mr. Cox early

1 on, he asked us one significant question is, "Well,  
2 why do we want to do this?" And there were many  
3 technical reasons and, you know, the bottom line is  
4 we believe it's just the right thing to do.

5 THE COURT: Thank you.

6 MR. PHILLIPS: May it please the Court,  
7 of course, when a petition is brought on behalf of  
8 a person who is deceased, you must do it in the  
9 form of a next friend petition. And I didn't have  
10 to, I didn't have to seek out various people in the  
11 community. I had one person in mind, and when I  
12 approached him, he didn't hesitate and said that he  
13 would be glad to do it. That is the Reverend Paul  
14 McDaniel, who, Your Honor, is a superb example and  
15 representative not only of the black community of  
16 this -- the African community here, but of this  
17 community, period.

18 He has served very honorably in public  
19 office, been on the County Council for years and  
20 years, and finally retired and -- but he is very  
21 active in his, the church that he heads. He is  
22 just a wonderful, wonderful person.

23 I would ask him to address the Court with  
24 permission.

25 Thank you.



1 THE COURT: All right. Reverend  
2 McDaniel.

3 REVEREND MCDANIEL: Your Honor, it's  
4 somewhat strange and difficult for me to really  
5 stand here, first, to decide as to what should I  
6 say, and next, as to where should I start.

7 The attorney was correct that I did come  
8 forward freely, and I came, though, after I had  
9 read the well researched and dramatic and powerful  
10 presentation of the facts in this case.

11 I confess that I had heard of the case,  
12 especially a few years ago, with reference to, in  
13 regard to the NAACP seeking to have some sort of  
14 monument or some item on the reconstructed Walnut  
15 Street Bridge.

16 At that time, I did not give the sort of  
17 attention to this case, the situation that maybe I  
18 ought to have done, but after being urged by my  
19 friend, Rheubin Taylor, to read this manuscript,  
20 that I couldn't put it down. And I thought this  
21 was a very powerful description of much that I have  
22 heard about and I've known about in the history of  
23 my life, and then I could identify to some extent  
24 with it, especially in terms of the court  
25 situation.

1 I could make some identification in terms  
2 of the history of black people who have been  
3 unjustly killed in this nation, and particularly in  
4 this case when we use the word "the next friend,"  
5 how could I be the next friend? As I read the  
6 procedures, at least there was one difference --  
7 well, some similarity and then some differences:  
8 One, that I also went to court. I was not on trial  
9 for my life, but for my rights. I was heard in  
10 Chancery Court, but I won in Chancery Court.

11 My opponent appealed my case to the State  
12 Supreme Court, and I lost in State Supreme Court.  
13 But I, too, had the right, as those two other noble  
14 attorneys who took Ed Johnson's case to the U.S.  
15 Supreme Court, I had two noble attorneys who took  
16 my case to the U.S. Supreme Court, but the  
17 difference was that -- well, the similarity was  
18 that the Court agreed to hear the, both cases, and  
19 agreed for a stay of execution of the decision of  
20 the lower courts. But I was advantaged to have my  
21 court, my case heard in the U.S. Supreme Court and  
22 to have reached a decision in my favor.

23 THE COURT: Without interrupting your  
24 chain of thought, that was when you were seeking to  
25 run for office and they tried to keep you off

1 because you were a reverend?

2 REVEREND MCDANIEL: Yes. And  
3 Tennessee state --

4 THE COURT: And Tennessee law said you  
5 could not.

6 REVEREND MCDANIEL: Tennessee State  
7 Constitution, I think Article 7, I still remember,  
8 prohibits a clergy from sitting in the state  
9 legislature, and the same requirements was to sit  
10 in the Constitutional Convention, which I was a  
11 candidate and won a seat in that convention. And  
12 the U.S. Supreme Court reversed the decision of the  
13 State Supreme Court in my favor.

14 But Ed Johnson did not have that right.  
15 He did not have the opportunity for the Court to  
16 hear his case and to be given that decision, and  
17 instead, a group of lawless citizens took him and  
18 took the law in their own hands.

19 And I think that it just may be fitting  
20 and proper and his next friend, in terms of sharing  
21 of the injustices that many have shared, and so I  
22 feel that what we do today may have symbolic  
23 significance as to this case, and they say a word  
24 to our community: That we ought to be mindful of  
25 our history, not only certain things that we

1 cherish, but also those things that would challenge  
2 us, that we may so carry on justice for all.

3 Judge, by the way, I did receive a letter  
4 from a citizen of this community after hearing  
5 about the case and our involvement, the book that  
6 was written, that he wrote a letter -- and I think  
7 the Attorney Phillips also received a copy -- was  
8 that in 1945, this person was on his way to Fort  
9 Benning, Georgia, to be inducted, I think, into the  
10 armed services.

11 And he stopped in Macon, Georgia, at the  
12 bus station there, to eat, and the person who  
13 waited on him was a person who asked people where  
14 you're from, and this waitress did the same thing  
15 to this gentleman, Mr. Craigmire, and asked him  
16 where he was from, and he said Chattanooga,  
17 Tennessee.

18 And she said, "That's a bad town. That  
19 was the town that lynched my son on a bridge."

20 I think that what we can do today is  
21 somewhat justified, at least our sentiment in that  
22 case, and give Chattanooga a little better name.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. PHILLIPS: May it please the Court,

1 let me say just one or two words and then I'll turn  
2 it over to the general.

3 The one or two words I want to say is  
4 that, too, I was astonished when I first started  
5 reading and researching this case that two African-  
6 Americans were practicing law in Chattanooga in  
7 1906 here, and what turned out to be extremely,  
8 very, very brave human beings. One of them was  
9 Styles Hutchins, who was the first African-American  
10 lawyer ever to be admitted to the Georgia bar, and  
11 plans are now in place to hang the portrait that my  
12 co-author and I have agreed to provide to the  
13 Georgia Supreme Court to place in their Supreme  
14 Court building.

15 The present chief justice of the Georgia  
16 Supreme Court is an African-American, but he's not  
17 the only African-American on the bench in the  
18 Georgia Supreme Court. There's a young lady who is  
19 also an associate justice on the Georgia Supreme  
20 Court that is African-American.

21 We hope to have ceremonies there to place  
22 this man's portrait there in a place of honor. The  
23 second person, the second African-American in this  
24 case was Noah Parden, who was also a very, very  
25 brave, brave individual.

1                   Both of those individuals had to leave  
2 Chattanooga in 1906 when this lynching occurred out  
3 of fear of being lynched themselves. And I have no  
4 doubt that they probably would have been had they  
5 stayed here.

6                   Things have changed, Your Honor, since  
7 then. But I like to also, to say this, and then  
8 I'll close: The changes that have been brought  
9 about have been tremendous, and those changes have  
10 been brought about by the actions and conduct of  
11 lawyers and judges, and I am proud to be an officer  
12 of this court.

13                   Thank you.

14                   THE COURT: Thank you. General Cox.

15                   MR. COX: Your Honor, first let me say  
16 that the gentlemen that have spoken here today are  
17 all personal friends of mine, well known to me and  
18 well respected by myself and my staff.

19                   It's apparent that a motion has been  
20 filed and it's also apparent no opposition to this  
21 motion has been filed on behalf of the State.  
22 There may be a feeling that every time any motion  
23 comes up in court, it's my duty to oppose it, but  
24 that's not my duty at all, as this Court knows and  
25 understands. My duty is to see to it that justice,

1 or as close as we can come to justice, occurs in  
2 the State of Tennessee, and that's my  
3 responsibility as district attorney.

4 Your Honor, I'm sure this Court realizes  
5 and understands, as do all of us, that time and  
6 circumstances and a lynch mob have robbed this  
7 court of the opportunity to do actual justice in  
8 this case. Actual justice would have been to  
9 prevent what happened from happening. That was  
10 attempted back then but it did not happen.

11 And as I understand it, what Mr. Phillips  
12 is seeking today, and the Reverend McDaniel is  
13 seeking today is an affirmation from this court  
14 that indeed a wrong occurred and a setting of the  
15 record straight in that regard.

16 I, I have no doubt -- I've read the book,  
17 and I've viewed the evidence that's contained in  
18 that book through the research, and I have no doubt  
19 that the criminal justice system in place at that  
20 time failed Mr. Johnson and failed us all.

21 And as I understand it, this Court today  
22 has the opportunity to make a gesture toward  
23 justice in this case, and certainly, as an officer  
24 of the State and as district attorney, I will not  
25 stand in the way of such gesture, because, as Mr.

1 Curriden said, it seems to me the right thing to  
2 do.

3 THE COURT: Thank you.

4 The Court, of course, will sustain the  
5 petition, but I would like to make a couple of  
6 comments first.

7 There is a historical basis for doing it,  
8 and actually, I had the benefit of the research  
9 that Deborah Fanselau, our judges' law clerk, has  
10 done. There's a legal basis for this. It's not  
11 just historical, but there is a legal basis.

12 It really is hard for us in the white  
13 community today to imagine how badly blacks were  
14 treated during that period of time. Books like Mr.  
15 Phillips's and Mr. Curriden's book go a long way in  
16 explaining it, and, in fact, the whites that I have  
17 talked to really are appalled when they read this  
18 book to see how Ed Johnson was treated at that  
19 time.

20 The black community was well aware of it  
21 because the blacks had handed down from generation  
22 to generation the way they were mistreated,  
23 especially from 1880, and some put the Jim Crow  
24 period 1880 to 1920, but we all know actually it  
25 extended into the seventies. It was only in the



1       sixties that you had the civil rights act that were  
2       passed in '64, I believe, when Lyndon Johnson was  
3       president. There was legislation proposed by  
4       President Kennedy. And it wasn't all done  
5       overnight then, and it is still a continuing  
6       struggle. But the white community does need to  
7       have a sense of history, to know what really went  
8       on during that time.

9               There have always been white leaders that  
10       did understand and did know what was going on.  
11       Shortly before leaving office in 1921, Georgia  
12       Governor Hugh Dorsey, in 1921, issued a statement  
13       as to the Negro in Georgia in which he listed 135  
14       cases of peonage -- that's where people were held  
15       in bondage because they were in debt, and these  
16       were normally blacks that were held in virtual  
17       slavery, which was against the law, of course --  
18       but he had 135 cases of peonage, lynching and  
19       cruelty towards blacks that were called to his  
20       attention during his two years as governor.

21               He concluded by saying, "To me, it seems  
22       that we stand indicted as a people before the  
23       world." So I guess you could say that about the  
24       white community today as far as the, the past  
25       misdiscretions by the courts and the law

1 enforcement agencies.

2           Ironically, we have a jury right now  
3 deliberating in a rape case, and as you know, Ed  
4 Johnson was charged with rape. The difference is  
5 that on our jury today there are six men and six  
6 women, two are black women, one is a black man; two  
7 important witnesses in the case, the lady from the  
8 Rape Crisis Center was a young black nurse who  
9 examined the victim, the DNA expert from the TBI  
10 lab in Nashville was a young black woman who was  
11 the expert.

12           Back in 1906, women wouldn't have been on  
13 the jury and you wouldn't have had all, you would  
14 not have had those witnesses and you wouldn't have  
15 had two professional black women testifying in a  
16 case.

17           Of course, locally, Ardena Garth is our  
18 elected public defender countywide, Rheubin Taylor  
19 is our county attorney, and Edith Blackwell is the  
20 foreman of the concurrent grand jury, and we have  
21 many others. William Cotton, of course, is sitting  
22 there and he's one of our commissioners, county  
23 commissioners, former city commissioner. So we do  
24 have more blacks in public office.

25           But still, even today, there is still not

1 equality, even -- there is a striving for it, but  
2 it has not arrived.

3 The procedural history, of course, in  
4 this case is that on January the 25th, 1906, the  
5 sheriff of Hamilton County arrested Ed Johnson on  
6 the charge of rape that had occurred two days  
7 earlier on January the 23rd.

8 On February the 11th, February the 11th,  
9 that's 17 days later, he was convicted of rape and  
10 sentenced to death. And as Mr. Phillips and Mr.  
11 Curriden made the point, his attorneys did not  
12 appeal the case.

13 At the last, the two black attorneys did  
14 enter an appearance, and as the book indicates, the  
15 judge did not tell them, when one attorney said,  
16 "Judge, Sunday doesn't count in the running of the  
17 statute of limitations," the judge answered later  
18 in his testimony was that he didn't have a duty to  
19 tell him that he was wrong, and so his appeal was  
20 barred, and the judge did have an obligation to  
21 explain to the attorney that, No, you're wrong,  
22 you've got to file that motion for new trial  
23 before, and he did not do so.

24 The black attorneys then, of course,  
25 filed a petition for writ of habeas corpus in the

1 United States Circuit Court, which was sitting in  
2 Knoxville, and that court turned down the attorneys  
3 for Ed Johnson.

4 And then they went to Washington D.C. and  
5 went before Justice Harlan, and Justice Harlan  
6 granted a stay and then the Supreme Court itself  
7 granted a stay. Any justice can grant a temporary  
8 stay and then they consider whether or not the  
9 majority will vote to hear it.

10 But interestingly -- and I showed it to  
11 Mr. Phillips -- after Ed Johnson was convicted and  
12 the judge asked him if he had anything to say, of  
13 course, he did say, "I guess I'll have to suffer  
14 for what somebody else done."

15 And the judge asked him if he had  
16 received a fair trial, and he said he guessed  
17 they'd done everything they could for him, "But I  
18 guess I'll be punished for another person's crime."

19 And something that the white community I  
20 don't believe really understands is that,  
21 especially at that time, young black males were  
22 afraid because it wasn't necessarily that they  
23 were -- the object was to bring in a black body,  
24 not necessarily the person who was, who had  
25 committed the crime, and I think that's what

1 happened in this case. There was a rush to find  
2 somebody to convict and blame for this. And this  
3 is not an isolated incident. That's what the young  
4 black males faced during that period of time.

5 And, unfortunately, there is still some  
6 harassment by law enforcement, not near as bad,  
7 especially in this community -- or hopefully, I  
8 don't think theirs is that bad.

9 But the sheriff was then instructed by  
10 the judge to take the defendant and keep him  
11 safely. He used the words "keep him safely," and,  
12 of course, the sheriff did not keep Ed Johnson  
13 safely. Even though the newspaper and everyone  
14 knew that the people were, the mob was upset by the  
15 action of the U.S. Supreme Court granting the stay,  
16 they left one elderly deputy on duty in the jail to  
17 keep Ed Johnson safely.

18 Ed Johnson obviously was a very brave  
19 man, because he stood there and took that, always  
20 protesting his innocence. Most people, I think,  
21 would have been crying and begging and pleading for  
22 their life, but he stood right there and said, "God  
23 bless you all, I'm an innocent man."

24 Now, after, after the mob acted and  
25 murdered Ed Johnson, the U.S. Supreme Court then

1 did send agents into the Chattanooga area and they  
2 spent a year investigating, and then they had an  
3 actual trial in the U.S. Supreme Court. They tried  
4 the sheriff and three or four deputies and several  
5 members of the mob, I think a total of about 21  
6 people, and, of course, they found that the sheriff  
7 was guilty of contempt by failing to keep the  
8 prisoner safely.

9 In 19 -- well, let's see, later, of  
10 course, there was a provision in the law, I guess  
11 it was about 60 days later -- 60 years later, that  
12 provided that records could be expunged.

13 There's, Tennessee statute was passed to where  
14 someone who's found innocent after a trial or where  
15 the charge is no-billed by the grand jury, or any  
16 reason the case is dismissed, that that can be set  
17 aside. And in this particular case, there is no  
18 statute of limitation on it, so it does run.

19 The Reverend McDaniel can proceed legally  
20 to ask, as next friend, to ask that this charge be  
21 dismissed, and, of course, the Court first will  
22 have to set aside the conviction and then dismiss  
23 the charge against Ed Johnson.

24 And as Mr. Phillips said, it would be  
25 terrible to ever expunge the record. The record

1 should always be there. The only thing that needs  
2 to be expunged or clarified is that the conviction  
3 is set aside.

4 As Mr. Curriden said, the only records  
5 that could be found among the Hamilton County  
6 records, due to the fire in 1909, was that, that he  
7 had been convicted of rape.

8 So that conviction is set aside and the  
9 charge against him is dismissed, and it will be a  
10 matter of record.

11 I won't bore all of you by going through  
12 all the legal aspects of it, but it will be  
13 available to the news media or anybody else that  
14 wants copies of this, but I am dismissing the  
15 charge against him.

16 Anything further, though, before we  
17 adjourn, Mr. Phillips, or --

18 MR. PHILLIPS: No, Your Honor.

19 THE COURT: Or General Cox?

20 MR. COX: No, Your Honor.

21 THE COURT: All right. Thank you.

22 END OF REQUESTED PROCEEDINGS.  
23  
24  
25

REPORTER'S CERTIFICATE

I, the undersigned Abigail M. Pearce,  
Official Court Reporter for the Eleventh Judicial  
District of the State of Tennessee, do hereby  
certify that the foregoing is a true, accurate and  
complete transcript, to the best of my knowledge  
and ability, of all the proceedings had and  
evidence introduced in the trial of the captioned  
cause, relative to appeal, in the Criminal Court  
for Hamilton County, Tennessee, on the 25th day of  
February 2000.

I do further certify that I am neither of  
kin, counsel nor interest to any party hereto.

March 13, 2000

Abigail M. Pearce

Official Court Reporter

State of Tennessee