

# The Storied Third Branch

*A Rich Tradition of Honorable Service Seen Through the Eyes of Judges*

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## Irving Goldberg “Remembering Irving Goldberg”

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The basic facts about Irving L. Goldberg, who served for 31 years on the United States Court of Appeals for the Fifth Circuit, are easy to summarize. Born in Port Arthur, Texas, in 1906, he received his B.A. from the University of Texas at Austin in 1926 and his LLB from Harvard Law School in 1929. Upon his graduation, he practiced in several cities in Texas until World War II broke out. Finding himself in Washington, D.C., as a Navy Lieutenant, Goldberg worked with the Committee on Naval Affairs, on which then-Congressman Lyndon Johnson was serving. Another Texan was also serving in Congress at that time – the legendary Sam Rayburn, who became Speaker of the House in 1940. As Judge Goldberg told the story over coffee and donuts, “Lyndon,” “Sam,” and Irving often carpooled around Washington during those days. Their friendship was cemented.

After the war, Goldberg returned to Texas, where he settled in Dallas and with Robert Strauss and others formed the law firm that today is known as Akin Gump Strauss Hauer & Feld LLP. Although his practice was not limited to tax matters, he particularly enjoyed those cases. One of his more notable clients was – once again – Lyndon Johnson. This is how Goldberg came to play a small but important part in the tragic events of November 22, 1963 – a story that his many law clerks heard over morning coffee and that Lawrence J. Vilaro and Howard W. Gutman

committed to writing in a memorial piece written just after the judge's death.<sup>1</sup> As they recount it, Goldberg had been invited to the luncheon for the President and Vice-President that was to take place that day. But no one came, and after a time word began circulating that shots had been fired and that cars were speeding to Parkland Hospital. Goldberg went home, but no sooner had he arrived than the telephone rang. The "Dallas White House" – specifically, Lyndon Johnson – was trying to reach him. After confirming that President Kennedy had been assassinated, Johnson urgently asked whether he had become President automatically, or if he needed to be sworn in. Goldberg replied, as the authors report, "Well, you are President right now, but it should be memorialized by some formality with witnesses." Johnson's next question was "who could do the job." Goldberg answered "anyone who can take an oath," but he recommended that it should not be a Republican. Johnson asked him to find someone, and Goldberg suggested District Court Judge Sarah Evans Hughes. Johnson's last statement before hanging up was an order to Goldberg to get Judge Hughes to Air Force One as soon as possible.

Goldberg turned to another future federal judge, Barefoot Sanders (then the United States Attorney in Dallas) to help him track down Judge Hughes. He also reminded Sanders to give Judge Hughes a copy of the Constitution, so that she would have the text of the presidential oath in front of her. In the confusion, it seems that Sanders was not able to handle this detail; Judge Hughes instead used a copy that had been sent to Dallas by Attorney General Robert Kennedy. Johnson had invited Goldberg to be present at the event, but in the end he and Mrs. Goldberg were blocked by the Dallas police. Rather than push matters, they quietly returned home. Three years later, Johnson named Goldberg to a newly created seat on the United States Court of Appeals for the Fifth Circuit. He was confirmed on July 22, 1966, at a time when that court was still bearing the burden of enforcing, over significant public opposition, the civil rights laws and the Supreme Court's constitutional decisions in this area. Jack Bass described Goldberg as "an activist especially sensitive to civil liberties" in his book *Unlikely Heroes*.<sup>2</sup> Although by 1966 much of the hard work had already been done by such giants as Elbert Tuttle, John Minor

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<sup>1</sup> See Lawrence J. Vilaro and Howard W. Gutman, "The Honorable Irving L. Goldberg: A Place in History," 49 S.M.U. L. Rev. 1 (1995).

<sup>2</sup> *Unlikely Heroes*, at 304-05 (paperback ed. 1990).

Wisdom, and J. Skelley Wright, there were still countless school desegregation, prison, mental health hospital, and similar cases that demanded the court's attention. Judge Frank M. Johnson, Jr., noted when he delivered the Irving L. Goldberg Lecture at Southern Methodist University School of Law,<sup>3</sup> that Judge Goldberg's personal experience and his deepest convictions prepared him well to fight this battle. As Judge Johnson observed, "Irving Goldberg learned from the cradle what it feels like to be different from the majority. He grew up as a Jew in the small city of Port Arthur, Texas, in the early years of [the 20<sup>th</sup>] century. It was a time when the Ku Klux Klan still enforced its own brand of vigilante justice on blacks, Jews, Catholics, and others who did not conform to their standards."<sup>4</sup> This experience did not embitter Goldberg: instead, it reinforced his passion for justice, his faith, and his compassion for the less fortunate.

One might think that such a well-connected, accomplished person would not be any fun to be around, but that would certainly be the wrong conclusion to draw about Judge Goldberg. To the contrary – emphatically – virtually everyone who knew him treasured his ebullient personality, his sharp wit, his inimitable writing, and his warmth. Across all boundaries of political affiliation, ideology, religious preference, economic circumstance, and geography, the Judge reached out effectively to his colleagues, and quickly turned professional relationships into lasting friendships. This was equally true of his law clerks, each of whom spent one year working in chambers and then a lifetime enjoying the Judge's companionship. Even today, when a former clerk meets another person who knew the Judge, the first comment almost always is "What a character!" Our courts are well served when we are lucky enough to have judges with the breadth of intelligence, interest, and humanity that Judge Goldberg possessed.

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<sup>3</sup> Frank M. Johnson, Jr., *Civilization, Integrity, and Justice: Some Observations on the Function of the Judiciary*, 43 *Southwestern L. J.* 645 (1989).

<sup>4</sup> *Id.* at 652.