

9-1-1981

A History of the Florida Supreme Court

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Recommended Citation

The Honorable Joseph A. Boyd Jr. and Randall Reder, *A History of the Florida Supreme Court*, 35 U. Miami L. Rev. 1019 (1981)
Available at: <http://repository.law.miami.edu/umlr/vol35/iss5/7>

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ARTICLES

A History of the Florida Supreme Court

THE HONORABLE JOSEPH A. BOYD, JR.*
and RANDALL REDER**

To a certain extent, the development of Florida's modern judicial processes and institutions can be understood by looking closely at the history of the individuals who have served on the state's foremost judicial body, the Florida Supreme Court. Unfortunately, many of the historical insights and anecdotes concerning the justices have been lost or are scattered over many different sources. This article pulls together many of these scattered materials and presents an insider's look into the lives and aspirations of the men who have served and shaped Florida's Supreme Court.

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I. THE TERRITORIAL COURTS OF FLORIDA

The cession of the Florida territory to the United States in the early nineteenth century ended the colonial chapter in Florida's history during which the territory had been the object of bitter rivalries between the great colonial empires. The early colonists did not, however, leave a lasting impact on Florida's judicial process. Rather, Florida's modern court system originated from the territorial courts that were established after the United States acquired East and West Florida from Spain in 1821.¹ At that time, Major

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1. Prior, *The Judicial System of Florida*, in 2 C. TEBEAU & R. CARSON, *FLORIDA FROM INDIAN TRAIL TO SPACE AGE* 208 (1965). Louisiana's judicial institutions, on the other hand,

General Andrew Jackson, who had been appointed governor of the acquired territory by President James Monroe,² divided East and West Florida into two counties, Escambia and St. Johns.³ By executive order, General Jackson then established the first county courts and justice of the peace courts in each county,⁴ a move that gave welcome relief to Florida's residents, who until then had been forced to fight lawlessness largely on their own.⁵

While the settlers of the new territory defended their communities against hostile Indians, pirates, and privateers, Congress began constructing Florida's legislative and judicial institutions. In 1822 Congress combined East and West Florida into the Territory of Florida and established a territorial government to replace General Jackson's provisional administration.⁶ Congress also established a superior court in both the eastern and western territories,⁷ and empowered the United States President to appoint the judges.⁸ Finally, Congress authorized the legislative council of the territory to establish inferior courts and justices of the peace.⁹

In 1824 Congress redivided the Florida territory into three judicial districts. The Eastern District extended to the Suwannee River, the Western District included the territory west of the Apalachicola River, and the new Middle District encompassed the land between both rivers.¹⁰ At the same time, Congress also established a court of appeals composed of the superior court judges from each district.¹¹ It was this tribunal that became the model for Florida's first supreme court.

II. FLORIDA'S FIRST SUPREME COURT

Florida's first state constitution, which was drafted at the St. Joseph's Constitutional Convention in 1838,¹² created the first

still reflect the impact of the early French and Spanish colonists. *Id.*

2. See 22 THE TERRITORIAL PAPERS OF THE UNITED STATES 9 (C. Carter ed. 1958) [hereinafter cited as TERRITORIAL PAPERS].

3. Buford, *Something About the Supreme Court of Florida*, 6 FLA. ST. B.A. L.J. 29 (1932).

4. *Id.*

5. Prior, *supra* note 1, at 209.

6. Act of March 30, 1822, ch. 13, 3 Stat. 654.

7. *Id.* § 6, 3 Stat. 656.

8. *Id.* § 8, 3 Stat. 657.

9. *Id.* § 6, 3 Stat. 656.

10. Act of May 26, 1824, ch. 163, § 1, 4 Stat. 45.

11. *Id.* § 4, 4 Stat. 46.

12. Whitfield, *Whitfield's Notes*, reprinted in 3 FLA. STAT. 81, 218 (1941) [hereinafter cited as *Whitfield's Notes*]. Five of the convention delegates, Walker Anderson, Thomas

state supreme court.¹³ It was not until Florida achieved statehood in 1845,¹⁴ however, that this judicial body was actually established. It had appellate jurisdiction only and the power to grant writs of injunction, mandamus, and habeas corpus.¹⁵ Like the territorial court of appeals, the supreme court was not an independent tribunal, but rather consisted of the circuit court judges.¹⁶

Besides establishing the first Florida Supreme Court, the state constitution made three additional changes in the judicial system worthy of mention. First, it redivided the state into the Western, Middle, Eastern, and Southern Circuits.¹⁷ Second, the constitution provided that circuit judges would be elected by the state legislature.¹⁸ Finally, the constitution added the office of attorney general to the judicial system.¹⁹

In July 1845, the Florida General Assembly elected the circuit court judges who would also serve on Florida's first supreme court. The general assembly elected Thomas Baltzell, George S. Hawkins, Isaac H. Bronson, and William Marvin to serve as circuit court judges for the Middle, Western, Eastern, and Southern Circuits respectively.²⁰ Two of those elected, Isaac Bronson and William Marvin, declined the invitation to serve. Thomas Douglas was appointed to serve in place of Isaac Bronson, and George W. McCrae was appointed to replace William Marvin.²¹ The first session of the Florida Supreme Court convened in January 1846,²² and at that session Thomas Douglas was selected to serve as chief justice.²³

The first four justices of the Florida Supreme Court all had interesting and colorful histories that reflected the diversity of the Florida population at that time. Justice Thomas Douglas, a native of Connecticut, did not settle in Florida until he was in his mid-thirties. He had left Connecticut for the Indiana Territory, and

Baltzell, Benjamin D. Wright, Augustus G. Semmes, and Leslie A. Thompson later served on the Florida Supreme Court. Buford, *supra* note 3, at 30.

13. FLA. CONST. of 1838, art. V, § 1.

14. See Act of March 3, 1845, ch. 48, 5 Stat. 742.

15. FLA. CONST. of 1838, art. V, § 16.

16. *Id.* § 3.

17. *Id.* § 5.

18. *Id.* § 11. The legislature also elected the clerks of the Florida Supreme Court. *Id.* §

13. The court began appointing its own clerks in 1861. FLA. CONST. of 1861, art. V, § 12.

19. FLA. CONST. of 1838, art. V, § 16.

20. 2 R. RERICK, MEMOIRS OF FLORIDA 81 (1902).

21. *Id.* at 82.

22. Justice McCrae served *pro tempore* until his appointment in March 1846. *Id.*

23. 2 R. RERICK, *supra* note 20, at 82.

there engaged in various business enterprises.²⁴ He then decided to pursue a career in law, serving as an Indiana circuit court judge while still continuing his legal studies.²⁵ During a trip along Florida's gulf coast, he visited Pensacola and fortuitously decided to apply for the position of district attorney for the Western District of Florida. His application was denied, but in 1826 his friends in Congress were influential in having him appointed district attorney for the Eastern District of Florida.²⁶ He held that position until his appointment to the circuit court in 1845.²⁷

Thomas Baltzell was one of the more colorful men to serve on the first Florida Supreme Court. Born in Frankfort, Kentucky on July 1, 1804, he was licensed to practice law in 1825 while still under the age of twenty-one.²⁸ That same year, he moved to Florida with Governor Duval and settled in Jackson County.²⁹ In 1832 a quarrel he had with John D. Westcott, the Secretary of the Territory of Florida, grew so heated that they challenged one another to a duel. The two men met near Haden's Ferry on the Alabama border to settle their differences, and Baltzell wounded Westcott during the duel that ensued.³⁰ Fortunately, the wound was not serious, and Westcott later went on to become one of Florida's first United States Senators as well as the father of a future supreme court justice.³¹ Justice Baltzell eventually represented Jackson County in the Legislative Council of 1832 and the St. Joseph's Constitutional Convention of 1838-1839. He also represented the Middle District of Florida in the territorial senate from 1843-1845 before he was elected as circuit judge.³²

The third member of the first supreme court, George S. Hawkins, was born in Kingston, New York in 1808, and later studied at Columbia University.³³ He fought in the Seminole War as captain of the Franklin County volunteers and was injured during a skirmish with the Indians. When asked if he was wounded, he replied jokingly, but prophetically, "[e]nough to send me to Congress!"³⁴

24. *Id.* at 82.

25. *Id.*; In Memoriam Thomas Douglas, 159 Fla. xxx (1947-1948).

26. 2 R. RERICK, *supra* note 20, at 83; 23 TERRITORIAL PAPERS, *supra* note 2, at 556.

27. In Memoriam Thomas Douglas, *supra* note 25, at xxx.

28. In Memoriam Thomas Baltzell, 159 Fla. xxx (1947-1948).

29. Address by David S. Walker, Meeting of the Tallahassee Bar Association.

30. B. GROENE, ANTE-BELLUM TALLAHASSEE 105 (1971).

31. See 2 R. RERICK, *supra* note 20, at 101.

32. In Memoriam Thomas Baltzell, *supra* note 28, at xxx.

33. J. STANLEY, HISTORY OF JACKSON COUNTY 235 (1950).

34. *Id.* See also 1 R. RERICK, *supra* note 20, at 193.

In 1839 Hawkins was elected to Florida's first Territorial Senate and in 1841 served as its president.³⁵ He also served as district attorney for the Western District of Florida.³⁶ Justice Hawkins served as circuit court judge until his resignation in 1853.³⁷ Then, as he had prophesized, he was elected Florida's representative to the United States Congress in 1856.³⁸ He later served as a district court judge during the Civil War.³⁹

George W. McCrae, the fourth member of the first supreme court, served as circuit judge for the Southern Circuit until 1848, when he was defeated by Joseph Lancaster in an election for that position.⁴⁰ Justice Lancaster, an early Florida settler, was appointed by President John Quincy Adams to the Legislative Council of 1825,⁴¹ and was a justice of the peace for St. John's County in 1826. The following year he served as judge of the Alachua County Court.⁴² Justice Lancaster's career was interrupted by the Seminole War, in which he fought as a captain. After the war, he resumed his career in public service, holding positions as chief clerk of both the legislative council and the State House of Representatives.⁴³ He was also the legislative representative of Duval County, and later the Speaker of the House, before his election to the bench in 1847.⁴⁴ After retiring from the court, he settled in Tampa and was later elected the city's mayor.⁴⁵

As circuit judges, these four men comprised Florida's supreme court from 1846 to 1850. On the first day of the supreme court's first session in January, 1846, the court upheld its jurisdiction to review cases pending in the former territorial court of appeals.⁴⁶ The appellee had challenged the court's jurisdiction to review cases pending in the territorial courts, asserting that the admission of Florida into the Union "was a virtual repeal of the act creating those Legislative Courts, [including the Court of Appeals] . . .

35. 1 R. RERICK, *supra* note 20, at 172.

36. 2 *id.* at 75, 84.

37. *Id.* at 91.

38. 1 *id.* at 230.

39. 2 *id.* at 93; J. STANLEY, *supra* note 33, at 235.

40. 2 R. RERICK, *supra* note 20, at 84; In Memoriam Joseph B. Lancaster, 159 Fla. xxxii (1947-1948).

41. See 23 TERRITORIAL PAPERS, *supra* note 2, at 225-26.

42. In Memoriam Joseph B. Lancaster, *supra* note 40, at xxxii.

43. *Id.*

44. *Id.*

45. *Id.*; see Snow, *After 100 Years, Tampa Mayor's Grave Found in Jacksonville*, Tampa Tribune, Mar. 8, 1980, at § 02, col. 1.

46. *Stewart v. Preston*, 1 Fla. 1 (1846).

without any saving of proceedings commenced and pending before it."⁴⁷ Therefore, "[i]n such a case the whole power and authority cease, and the Court cannot proceed with what may have been commenced."⁴⁸ The supreme court rejected the appellee's challenge, however, and upheld its jurisdiction to review the case, holding:

A question to the jurisdiction is at all times a delicate one, and would have influenced the Court to pause and hesitate, before assuming it in this case, if the power had been at all doubtful. But we see no room to question the jurisdiction. The act of the Legislature of the State, organizing the Supreme Court, is imperative, "that all cases *now pending in said Court of Appeals*, shall be transferred to said Supreme Court, and tried, and decided therein, and thereby, except cases cognizable by the Federal Courts."⁴⁹

In another case of first impression, the court considered the effect of split (2-2) decisions, ruling that in such cases, the supreme court must affirm the judgment of the lower court.⁵⁰

In January, 1851 the Florida legislature created a new supreme court independent from the circuit courts. The chief justice and the two associate justices of this new supreme court were each to be elected by the legislature to serve for a term of eight years.⁵¹ Walker Anderson was elected as the court's chief justice, and Leslie Thompson and A. G. Semmes as the associate justices.⁵² These three men were important in establishing the Supreme Court of Florida as an independent judicial body.

Chief Justice Anderson, who, as a legislative representative had sponsored the bill establishing the independent supreme court, was born in Petersburg, Virginia. He attended the University of North Carolina and later studied law under his uncle, Judge Duncan Cameron, in Raleigh, North Carolina. In 1836 he moved to Pensacola and began practicing law.⁵³ Before his election to the supreme court, Justice Anderson served as a delegate to the Constitutional Convention of 1838-1839, as the United States District At-

47. *Id.* at 6.

48. *Id.*

49. *Id.* at 8 (quoting Act of July 25, 1845, ch. 5, § 14, 1845 Fla. Laws 12, 13-14) (emphasis added by court).

50. *Fraser v. Willey*, 2 Fla. 116 (1848).

51. Act of Jan. 11, 1851, ch. 371, § 1; 1850 Fla. Laws 121.

52. Brown, *Brief History of the Supreme Court of Florida*, 17 FLA. L.J. 34 (1943); Buford, *supra* note 3, at 30; *Whitfield's Notes*, *supra* note 12, at 215, 219.

53. In Memoriam Walker Anderson, 160 Fla. XLIII (1948).

torney for the District of West Florida in 1844-1845, as a member of the territorial house of representatives in 1840, and as a member of the territorial senate in 1845.⁵⁴ Although Justice Anderson accepted his nomination as chief justice of the supreme court, he resigned in May, 1853, and Benjamin Drake Wright, an attorney and newspaper owner and editor from Pensacola,⁵⁵ was appointed to serve in his place.⁵⁶

The second member of the new supreme court, Associate Justice Leslie Thompson, was born in Charleston, South Carolina on October 8, 1806. He grew up in Savannah, Georgia, where he went to college and studied law in the office of a local judge. In 1827 he moved to Tallahassee where he practiced law and participated in the city's government, serving at various times as its clerk, treasurer, and district administrator.⁵⁷ A prolific writer, Justice Thompson authored several classic treatises on Florida law. When Florida became a state in 1845, the legislature authorized the compilation of a digest of the general and public laws of the state and territory.⁵⁸ Thompson was appointed to compile this work,⁵⁹ which was a much-cited reference source for many years. Thompson also authored a compilation of the British statutes⁶⁰ that were incorporated as part of Florida's laws,⁶¹ and drafted the rules of practice for the circuit courts.⁶² After he was defeated in his 1853 election bid for the office of chief justice by Thomas Baltzell, Thompson moved to Galveston, Texas, where he continued his public service career as a member of the Texas Legislature and as mayor of Galveston.⁶³

The third man to sit on the newly constituted supreme court, Albert G. Semmes, was born in Sand Hills, Georgia on August 18,

54. *Id.*; see 26 TERRITORIAL PAPERS, *supra* note 2, at 373-74.

55. See generally J. KNAUSS, TERRITORIAL FLORIDA JOURNALISM 63 (1926).

56. In Memoriam Benjamin Drake Wright, 160 Fla. xli (1948); 2 R. RERICK, *supra* note 20, at 86; Buford, *supra* note 3, at 30.

57. In Memoriam Leslie Atchinson Thompson, 159 Fla. xxxii (1947-1948); J. KNAUSS, *supra* note 55, at 79.

58. Act of Dec. 27, 1845, ch. 46, 1845 Fla. Laws 118; In Memoriam Leslie Atchinson Thompson, *supra* note 57, at xxxii.

59. In Memoriam Leslie Atchinson Thompson, *supra* note 57, at xxxii; see A MANUAL OR DIGEST OF THE STATUTE LAW OF THE STATE OF FLORIDA (L. Thompson ed. 1847).

60. BRITISH STATUTES IN FORCE IN THE STATE OF FLORIDA (L. Thompson ed. 1853), reprinted in 3 FLA. STAT. 1 (1941). Thompson compiled these statutes in 1853, but they were not published until 1941.

61. Botts, Foreword to BRITISH STATUTES IN FORCE IN THE STATE OF FLORIDA (L. Thompson ed. 1853), reprinted in 3 FLA. STAT. 1 (1941).

62. Supreme Court Minutes (March 6, 1847).

63. In Memoriam Leslie Atchinson Thompson, *supra* note 40, at xxxii.

1810. After graduating from the University of Georgia, he served as the solicitor general for Georgia's southern circuit from 1834 to 1837.⁶⁴ He later moved to Apalachicola, Florida and immediately became involved in state politics. He was elected without opposition as the Franklin County delegate to the St. Joseph's Constitutional Convention,⁶⁵ and later practiced law privately for several years. Following his defeat in his bid for reelection as associate justice in 1853, Justice Semmes retired to New Orleans.⁶⁶

This legislatively elected supreme court met for the first time in Tallahassee on January 30, 1851 in a political atmosphere still flushed with the pride and excitement of the state's recent admission to the Union.⁶⁷ The difficulties and obstacles that had postponed statehood were forgotten. The panic of 1837 and the associated bank failures and economic depression were but a dim memory.⁶⁸ Even the problems with the Indians seemed to wane in the face of this new state. It was in this vibrant and optimistic atmosphere that the court began holding sessions in each of the four circuits, first convening in Tallahassee in January, then moving to Jacksonville and Tampa, and finally completing its term in Marianna by March.⁶⁹

One of the principal appeals of statehood for Florida residents had been the promise of home rule in local affairs and full participation in state and national government.⁷⁰ All free white males who were twenty-one years of age, citizens of the United States, residents of Florida, and identified with a district could vote if they were enrolled in the militia or had a legal exemption from that duty.⁷¹ It was not surprising, therefore, that soon after the legislative election of the state supreme court, the legislature amended the state constitution to provide for the popular election of the justices.⁷² The amendment, effective as of 1853, provided for the election of the justices to a six-year term.⁷³

64. THE SEMMES AND ALLIED FAMILIES 107 (1918).

65. Apalachicola Gazette, Oct. 11, 1838, at 2, col. 3.

66. St. Augustine Ancient City, Oct. 29, 1853, at 2, col. 3.

67. Supreme Court Minutes (January 30, 1851).

68. C. TEBEAU, A HISTORY OF FLORIDA 171 (1971).

69. Supreme Court Minutes of 1852-1853.

70. C. TEBEAU, *supra* note 68, at 171.

71. *Id.*

72. FLA. CONST. of 1838, art. V, § 11 (as amended 1853).

73. *Id.* § 12.

III. THE ANTEBELLUM SUPREME COURT

In the first popular election held in 1853, Thomas Baltzell was elected chief justice, and Thomas Douglas and Charles H. DuPont were elected associate justices.⁷⁴ The newcomer to the court, Charles H. DuPont, grew up in South Carolina. When he was ten, his mother sent him to Ohio to attend school and work on a farm, with the hope that he would learn "the noble art and duty of earning a living by honest labor."⁷⁵ He went on to graduate from Franklin College in Georgia in 1826, and shortly thereafter moved to Gadsen County, Florida. There he purchased a plantation and soon became a successful farmer and lawyer, living in comfort and luxury. Before his election to the supreme court, he served his community as a county court judge, a representative in both houses of the territorial legislature, and as a general during the Seminole War.⁷⁶

Thomas Douglas was the only one of the first popularly elected justices who did not complete his full six-year term. While returning home to Jacksonville from Tallahassee in May, 1855, he became seriously ill, and died four months later on September 11, 1855 at the age of sixty-five.⁷⁷ Bird M. Pearson, a descendant of William Penn and the Byrds of Virginia, was elected to fill Justice Douglas's unexpired term. Born in Union District, South Carolina in 1803, Justice Pearson graduated from South Carolina College and remained in South Carolina practicing law until 1838. He lived in Fawnsdale, Alabama before moving to a plantation in Florida in 1845, where he practiced law until his election to the supreme court.⁷⁸

Towards the end of Justice Pearson's term, his health began to fail.⁷⁹ In fact, his poor health provoked a heated and dramatic dispute between Chief Justice Baltzell and Justice DuPont. The dispute began when Justice Baltzell was the only one to appear in Tallahassee on January 3, 1859, the scheduled date of the court's first session of the year. This was not an unusual occurrence, how-

74. Brown, *supra* note 52, at 34; Buford, *supra* note 3, at 30; *Whitfield's Notes*, *supra* note 12, at 219.

75. In Memoriam of Charles H. DuPont, 16 Fla. v-vi (1876-1878).

76. *Id.* at vi-vii.

77. 2 R. RERICK, *supra* note 20, at 83.

78. 2 R. RERICK, *supra* note 20, at 88-89; In Memoriam Bird M. Pearson, 160 Fla. XLII (1948).

79. 2 R. RERICK, *supra* note 20, at 88-89; In Memoriam Bird M. Pearson, *supra* note 53, at XLII.

ever, given the difficulty of traveling over wilderness roads. Justice DuPont arrived the next day, but business could not be conducted without the third member. When Justice Pearson failed to appear in Tallahassee, Justice DuPont returned to Quincy. After appearing intermittently over the next two weeks, Justice Baltzell issued the following order on January 18th:⁸⁰

That Justices DuPont and Pearson be notified to attend court for the transaction of business on Monday next the 24th.

Associate Justice Pearson having failed and refused to attend the Session of the Court ordered to be held in the Capitol in Tallahassee on the first Monday in January past without any good reason assigned therefore.

It is ordered that he be taken in the custody of the Sheriff of this Court to abide the further order of the Court in the premises.⁸¹

On January 25, Justice DuPont returned to the court and discussed with Chief Justice Baltzell the propriety of calling in a circuit judge to replace Justice Pearson. When they failed to reach an agreement, Justice DuPont entered a formal protest in the supreme court's minutes against Justice Baltzell's January 18th order calling for the arrest of Justice Pearson.⁸² Justice DuPont wrote:

An entry having been inserted in the minutes of this Court under date of the 18th January purporting to be an "order" directed to the Sheriff of this Court to arrest and take into custody the Body of Bird M. Pearson one of the Associate Justices of the Court to answer for an alleged dereliction of duty in failing to attend at this term, I do most solemnly Protest against the same as having been made without the authority of Law or the sanction of Precedent and as well calculated to bring the body into disrepute.

I do further Protest against the insertion in the minutes of the Court of a previous entry of the same date purporting to be an "order" directing a citation to be sent to me requiring my attendance; as calculated to impute a dereliction of duty on my part, and wholly unnecessary inasmuch as it was understood and agreed between the Chief Justice and myself that I would promptly attend upon a simple invitation from him that my presence would effect an organization of the Court.

I do further Protest that the minutes Book is the property

80. Supreme Court Minutes (January 18, 1859).

81. *Id.*

82. Supreme Court Minutes (January 25, 1859).

of and under the sole control of the Court and that no individual member thereof possesses the right to make or cause to be made therein any Entries purporting to be "Orders" save such as declare an adjournment or become necessary to procure the Organization contemplated by the fifth Section of the Act Establishing a Supreme Court.

[signed]
C.H. DuPont
Associate Justice⁸³

Harshly condemning the impropriety of entering this protest in the court records, Chief Justice Baltzell recorded the following statement beneath that of Justice DuPont:

The above was made without the knowledge or consent of the Chief Justice to whom is confided by law the records to see that proper entries are made subject to the examination of the Court, is indeed perhaps undesignedly an attempt to supersede that officer in the discharge of that function and duty and the recording of his individual views, sentiments and Opinion which is not the action of the Court.

The court did not continue its Session owing to a difference of opinion of the Justices the protestant holding that nothing could be done except to adjourn. How a court does not exist or is closed for the transaction of business and yet open to make a case by a member of it—determines it in a hurry, then back this determination in the shape of a "protest" on the minutes of the Court in advance of its regular presentation by the party complaining after notice has been given of a motion to order which is yet to be acted upon by the Court remains to be seen.

To decide a case without oral argument, discussion, examination of authorities before it is properly presented is the reverse of judicial action which directs a hearing first and decision afterwards, nor is protest allowable in judicial proceedings, it is legislative in its character. As to the Complaint of "notification" the letter of protestant filed herewith says—"I have concluded not to go down today (the time for meeting) but to await a notification from you when my presence is needed."

As this Entry of the Protestant is entirely individual it has no place on the records of the Court and is therefore not a part of the same nor authenticated.

By Order of the Chief Justice.⁸⁴

The justices did not mention this dispute again until the full court

83. *Id.*

84. *Id.*

reconvened in Tallahassee after holding its regular sessions in Jacksonville and Tampa. Justices DuPont and Pearson then issued an order proclaiming that Chief Justice Baltzell's January 18th orders were "without authority of law and of none effect . . . and . . . shall be considered as expunged from the records of this court."⁸⁵ Chief Justice Baltzell dissented in a lengthy opinion, claiming that Justice Pearson's failing eyesight was an insufficient reason for failing to attend the court's sessions, and that the court was empowered to enforce the attendance of its members.⁸⁶ These opinions were the last mention of this vehement dispute in the public records.

The end of the supreme court's 1859 term marked the end of the antebellum era in Florida. The aristocratic plantation owners, who set the standards for southern society and provided social and political leadership, steered the state towards the Confederacy.⁸⁷ By 1861 the State of Florida was just as eager to leave the Union as it had been to enter it just fifteen years earlier.⁸⁸ The supreme court's decisions during this era regarding the rights of women and blacks reflected the views of this paternalistic, slave-holding society.⁸⁹ The court, like the state itself, was struggling to maintain and preserve a southern aristocracy that would soon be destroyed.

During this period the court also resolved several controversial issues concerning its power and jurisdiction. In *Griffin v. Orman*,⁹⁰ for example, the court held that section five of the Act of January 11, 1851⁹¹ required the action of the three judges in every case, rather than just a majority. In *Ex parte White*,⁹² the court found that the constitution restricted the supreme court's original jurisdiction to proceedings in which it exercised its power of superintendence and control over another court.

IV. THE SUPREME COURT DURING THE CIVIL WAR AND RECONSTRUCTION

The justices who would serve on the Florida Supreme Court

85. 8 Fla. 495 (1859).

86. *In re Pearson*, 8 Fla. 496 (1859).

87. See 1 C. TEBEAU & R. CARSON, *supra* note 1, at 180.

88. *Id.* at 187.

89. See, e.g., *Clark v. Gautier*, 8 Fla. 360 (1859); *Maiben v. Bobe*, 6 Fla. 381 (1855); *Luke v. State*, 5 Fla. 185 (1853); *McRaeny v. Johnson*, 2 Fla. 520 (1849).

90. 5 Fla. 332 (1853).

91. Act of Jan. 11, 1851, ch. 371, § 5, 1850 Fla. Laws 121, 122.

92. 4 Fla. 165 (1851).

during the Civil War were elected by popular election in 1859. Because of his failing health, Justice Pearson did not run for reelection.⁹³ Justice DuPont defeated Justice Baltzell in the election for chief justice,⁹⁴ and William A. Forward and David S. Walker were elected associate justices.⁹⁵

Justice Forward, a native of New York, fought in the Canadian rebellion of 1837, during which he was taken prisoner and deported from Canada.⁹⁶ Thereafter, he moved to St. Augustine, Florida and soon became involved in state politics, serving as speaker of the last territorial house of representatives, representative in the state house of representatives, state senator, and circuit judge.⁹⁷ When the Civil War broke out after his election to the supreme court, Justice Forward volunteered to serve as a private in the Second Regiment of the Florida Infantry, but the "earnest entreaties" of his friends persuaded him to remain on the bench.⁹⁸

David S. Walker was one of Florida's most influential politicians during the Civil War era. A native of Kentucky, he moved to Florida in 1837. He was a member of the Florida Senate in 1845, and the House of Representatives in 1848,⁹⁹ and also served as the state register of public lands and ex officio state superintendant of public instruction.¹⁰⁰ His achievements were widely acclaimed, with one historian noting that "[t]o him more than any other one man the State was indebted for the foundation of her school system."¹⁰¹ Justice Walker's election to the supreme court in 1859 followed his unsuccessful gubernatorial campaign in 1856 as the American Party candidate.¹⁰² He served as associate justice until 1865 when he again ran for governor, this time unopposed.¹⁰³ He was subsequently appointed a state circuit court judge in 1879 and

93. In Memoriam Bird M. Pearson, *supra* note 78, at XLII.

94. In Memoriam Thomas Baltzell, *supra* note 28, at xxx.

95. Brown, *supra* note 52, at 34; Buford, *supra* note 3, at 30; *Whitfield's Notes*, *supra* note 12, at 219.

96. 2 R. RERICK, *supra* note 20, at 89; In Memoriam Justice William A. Forward, 61-64 So. 2d (Fla. Cas.) xxxi (1952-1953).

97. In Memoriam Justice William A. Forward, *supra* note 96, at xxxi.

98. 1 R. RERICK, *supra* note 20, at 246.

99. 1 R. RERICK, *supra* note 20, at 295; In Memoriam Justice David Shelby Walker, 61-64 So. 2d (Fla. Cas.) xxxi (1952-1953).

100. 1 R. RERICK, *supra* note 20, at 221, 295.

101. *Id.* at 295.

102. 1 R. RERICK, *supra* note 20, at 230; In Memoriam Justice David Shelby Walker, *supra* note 99, at xxxi.

103. 1 R. RERICK, *supra* note 20, at 294; In Memoriam Justice David Shelby Walker, *supra* note 99, at xxxi.

served for twelve years until his death.¹⁰⁴

In 1861 Florida formally joined the Confederacy and amended its constitution to substitute the words "Confederate States" for "United States."¹⁰⁵ As can well be imagined, the Civil War severely disrupted the normal routine of the supreme court.¹⁰⁶ The court's sessions now lasted only a few days, and, as many of the state's attorneys were fighting in the Confederate Army, there was very little litigation.¹⁰⁷

After the end of the Civil War in 1865, Florida put its efforts into recovering from the political disintegration and extensive property damage caused by the war. In July, President Johnson appointed William Marvin as Provisional Governor of Florida, and authorized him to convene a group of delegates to amend the 1861 Constitution.¹⁰⁸ Assembling in Tallahassee in October, the delegates repealed the 1861 Ordinance of Secession¹⁰⁹ and adopted a new constitution, which in addition to establishing a new civil government,¹¹⁰ abolished the popular election of supreme court justices and provided for their appointment by the governor with the advice and consent of the senate.¹¹¹ The newly elected governor, former Justice David S. Walker, selected Charles H. DuPont to continue on the bench as chief justice, and appointed Augustus E. Maxwell and James M. Baker as the new associate justices.¹¹²

Augustus E. Maxwell was born in Elberton, Georgia on September 21, 1820, and moved to Alabama two years later. After studying at the University of Virginia, he returned to Alabama to practice law. In 1845 he moved to Tallahassee, where he served as a member of the state legislature, state senator, secretary of state, and attorney general. From 1852 to 1856, he represented Florida in the United States Congress and, upon Florida's secession from the Union, the state legislature elected him senator to the Congress of

104. In Memoriam Justice David Shelby Walker, *supra* note 99, at xxxi.

105. FLA. CONST. of 1861, Ordinance of Secession; *Whitfield's Notes*, *supra* note 12, at 219.

106. According to Justice David Walker, "the tornado of civil discord had swept over the land, prostrating every interest, entirely destroying our labor system and uprooting the very foundations of our political edifice." 1 R. RBRICK, *supra* note 20, at 295.

107. See generally Supreme Court Minutes of February 16, 1864.

108. Proclamation of the President on July 13, 1865, *reprinted in* 3 FLA. STAT. 159 (1941).

109. FLA. CONST. of 1865, Ordinance No. 1.

110. FLA. CONST. of 1865.

111. *Id.* art. V, § 10.

112. Brown, *supra* note 52, at 34-35; Buford, *supra* note 3, at 30; *Whitfield's Notes*, *supra* note 12, at 219.

the Confederate States, where he served from 1862 to 1865.¹¹³ Justice Maxwell served on the Florida Supreme Court for only one year. Frustrated by the political confusion of the reconstruction period,¹¹⁴ Justice Maxwell resigned from the court to accept the position of president of the Alabama & Florida Railroad Company.¹¹⁵ In his place, the governor appointed Samuel J. Douglas.¹¹⁶

A native of Virginia, Justice Douglas came to Florida in 1841 when President Tyler appointed him United States District Judge for the Middle District of Florida.¹¹⁷ In 1845 he relocated in Key West where he worked as the collector of customs until 1861, when he returned to Virginia to support the cause of his native state during the Civil War. At the end of the Civil War, he returned to Florida.¹¹⁸

The third associate justice appointed to the bench in 1865, James Baker, was born in North Carolina and graduated from Davidson College. He moved to Alligator, Florida in the late 1840's, and was later instrumental in changing the town's name to Lake City.¹¹⁹ He was the solicitor for the Eastern Judicial Circuit from 1853 until 1856, when he ran unsuccessfully against George S. Hawkins for a seat in the United States Congress. In 1859 he was elected as the first judge of the newly created Suwannee Circuit, and he served in that capacity until his election to the Confederate Senate in 1861.¹²⁰

Although the new court convened in Tallahassee in 1866, it did not accomplish much business during its first term because of the problems and confusion caused by Florida's unstable relationship with the Union.¹²¹ President Johnson had issued a proclamation reestablishing the state government and restoring Florida to the Union in 1865, but Congress rejected his plan and passed a series of reconstruction acts over his vetoes.¹²² Congress placed Florida in a military district and ordered the military authorities

113. 1 R. RERICK, *supra* note 20, at 621; In Memoriam, 45 Fla. xvii-xviii (1903).

114. 1 R. RERICK, *supra* note 20, at 621.

115. In Memoriam, *supra* note 113, at xviii.

116. 2 R. RERICK, *supra* note 20, at 90.

117. 26 TERRITORIAL PAPERS, *supra* note 2, at 379. Justice Douglas was reappointed to the same position the following year. *Id.* at 444.

118. 2 R. RERICK, *supra* note 20, at 90.

119. 2 HISTORY OF FLORIDA 34 (H. Cutler ed. 1923).

120. In Memoriam Justice James McNair Baker, 61-64 So. 2d (Fla. Cas.) xxxiii (1952-1953).

121. For a discussion of the relationship between Florida and the Union at this time, see W. DAVIS, THE CIVIL WAR AND RECONSTRUCTION IN FLORIDA 438-45 (1964).

122. Whitfield's Notes, *supra* note 12, at 219.

to call an election of delegates to a new constitutional convention.¹²³

The delegates to the convention assembled in Tallahassee on January 28, 1868, but only after bitter disputes forced the military to intervene and reorganize the discordant delegates, were they finally able to draft a new constitution.¹²⁴ The new constitution, which was approved on February 26, 1868 and ratified on May 4, 1868,¹²⁵ provided that the supreme court justices would be "appointed by the Governor and confirmed by the Senate"¹²⁶ and would serve "for life or during good behavior."¹²⁷ The newly elected Governor, Harrison Reed, appointed Thomas J. Boynton as chief justice of the supreme court, and Ossian B. Hart and Edwin M. Randall as associate justices. Boynton declined to accept, so Randall was made chief justice, and James D. Westcott, Jr. was appointed as associate justice.¹²⁸ These three men, so diverse in experience and background, were to play significant roles during the reconstruction era. The chief justice of this supreme court, Edwin Randall, was originally a carpetbagger from New York. He moved to Jacksonville after the Civil War and practiced law until his appointment to the bench. He served on the supreme court until 1885, when he returned to Jacksonville to resume his former law practice.¹²⁹ As a prominent member of the Republican Party, he became a delegate to the Constitutional Convention of 1885.¹³⁰

Justice Hart was a native of Jacksonville and the son of the founder of that city. He practiced law in Tampa and Key West, remaining in Key West throughout the Civil War.¹³¹ Although a former slaveholder, he was one of the few native Unionists in Florida.¹³² Shortly after the war ended, he returned to Jacksonville and became an active member of the state Republican Party, forming close political ties with Harrison Reed.¹³³ He was elected governor in November 1872, a position which he held for only a short time before he died in March 1874.¹³⁴

123. Act of March 2, 1867, ch. 153, 14 Stat. 428.

124. *Whitfield's Notes*, *supra* note 12, at 178.

125. *Id.*

126. FLA. CONST. of 1868, art. VI, § 3.

127. *Id.*

128. 2 R. RERICK, *supra* note 20, at 98.

129. 2 R. RERICK, *supra* note 20, at 98; In Memoriam, 36 Fla. xi, xiii (1895).

130. E. WILLIAMSON, *FLORIDA POLITICS IN THE GILDED AGE, 1877-1893*, at 135 (1976).

131. 1 R. RERICK, *supra* note 20, at 326.

132. J. SHOFNER, *NOR IS IT OVER YET* 158 (1974).

133. *Id.* at 165.

134. *Id.* at 287.

Like Justice Hart, James D. Westcott, Jr. was a native of Florida, but unlike the other two justices, he was a Democrat.¹³⁵ Born in Tallahassee in 1839, he became Governor Perry's private secretary at the age of twenty. He was Leon County's representative to the General Assembly in 1866 and served as attorney general in 1868. When appointed associate justice, he was only twenty-nine years of age.¹³⁶

When the new court met in October 1868, it quickly became embroiled in several controversial political issues. The court's involvement was precipitated by a provision in the new constitution authorizing the governor to require the justices to issue a written opinion interpreting any part of the constitution or any point of law.¹³⁷ Governor Reed immediately took advantage of this provision, and, on October 14th, he requested an advisory opinion on whether, under article XVI, section 1 of the Florida Constitution, "a person who was a member of the Secession Convention, and signed the ordinance of secession, can hold any official position, legislative, executive, or judicial, in this State, or act as deputy for any officer, or act in a *clerical* capacity in any department of the government."¹³⁸ The constitutional provision in question forbade any state or federal officer or legislator who took an oath to support the United States Constitution, and thereafter engaged in insurrection or rebellion against the United States, from holding any state office.¹³⁹ Construing this provision strictly, the supreme court held that a copying clerk or laborer was not a public officer within the meaning of the prohibition.¹⁴⁰ Since the delegates to the Secession Convention were not executive or judicial officers and were not required to take an oath of office, those members who did not vote for or sign the Ordinance of Secession,¹⁴¹ and who afterwards engaged in insurrection or rebellion, were not necessarily included in the prohibition.¹⁴² The court's ruling thus enabled many of Florida's confederate politicians to continue to participate in state

135. *Id.* at 330.

136. 2 R. RERICK, *supra* note 20, at 101; In Memoriam, 24 Fla. v-vi (1888).

137. FLA. CONST. of 1868, art. V, § 16: "The Governor may at any time require the opinion of the Justices of the Supreme Court as to the interpretation of any portion of this Constitution, or upon any point of law, and the Supreme Court shall render such opinion in writing."

138. *In re* Executive Communication, 12 Fla. App. 651 (1868) (quoting FLA. CONST. of 1868, art. xvi, § 1) (emphasis added by court).

139. FLA. CONST. of 1868, art. XVI, § 1.

140. 12 Fla. App. at 652.

141. FLA. CONST. of 1861, Ordinance of Secession.

142. 12 Fla. App. at 652-53.

politics.

Governor Reed's administration was fraught with dissension as competing Republican factions and the Democrats sought control of the state.¹⁴³ The dissension reached crisis proportions within several months of Reed's inauguration when dissatisfied Republicans and Democrats began the first of four attempts to impeach Governor Reed on charges of lying, incompetence, corruption, and embezzlement.¹⁴⁴ The first impeachment attempt was made in November 1868 at an extraordinary session of the legislature. The house voted to impeach Governor Reed, and after notifying the senate of the impeachment, the house leaders moved to adjourn.¹⁴⁵

On November 9th, Governor Reed challenged the validity of the impeachment proceedings, arguing that the senate had not transacted any business because it had failed to obtain a quorum, and requested an opinion on the issue from the supreme court.¹⁴⁶ Lieutenant Governor Gleason, a Republican who claimed he became Acting Governor upon the Assembly's vote for impeachment, also wrote to the court, asserting that the senate had sole jurisdiction over the matter and that the court was therefore without authority to render an opinion.¹⁴⁷ With each justice writing a separate opinion, the supreme court concluded that contrary to Gleason's claim, it was required to issue an opinion, and agreed that the senate had failed to obtain a quorum and therefore had not validly convened in the extraordinary session.¹⁴⁸ Chief Justice Randall explained that the court could not "recognize a declaratory resolution of the Assembly as constituting an effective impeachment, until the declaration of impeachment or the accusation be made to [the senate]."¹⁴⁹ Because the court found there was no effective impeachment, it declined to answer the question whether impeachment disqualifies a governor from performing the duties of his office.¹⁵⁰ The answer, however, was soon forthcoming.

The second attempt to impeach Governor Reed began in January 1869, when George P. Raney, a Democrat and future supreme court justice, introduced a motion in the house of representatives

143. J. SHOFNER, *supra* note 132, at 223.

144. *See id.* at 198-204; W. DAVIS, *supra* note 121, at 542-48.

145. J. SHOFNER, *supra* note 132, at 204.

146. *In re* Executive Communication, 12 Fla. App. 653, 654-59 (1868).

147. *Id.* at 659-60.

148. *Id.* at 660-85.

149. *Id.* at 678.

150. *Id.* at 661.

to appoint a committee to investigate the governor. The motion passed by a thirty-to-five vote.¹⁵¹ On January 26th, however, the house refused to impeach by a vote of forty-three to five.¹⁵²

In January of the following year, the house commenced another investigation of Governor Reed. After reviewing the charges against the Governor and new evidence of embezzlement and bribery, the investigating committee issued a majority report recommending impeachment and a minority report recommending against impeachment.¹⁵³ By a margin of only five votes, the house accepted the minority report, which had concluded that although the governor had acted improperly, there was insufficient evidence of any criminal intent on the governor's part.¹⁵⁴

In February 1872 the General Assembly commenced impeachment proceedings for the fourth and last time. On February 10, 1872 the General Assembly voted unanimously to impeach Governor Reed, and notified the senate of the impeachment.¹⁵⁵ The senate convened as the high court, with Chief Justice Randall presiding, to begin the impeachment trial. The prosecution did not have its witnesses ready, however, so the senate adjourned from day to day without ever beginning the trial until finally it adjourned *sine die* without disposing of the action.¹⁵⁶ One author suggests that the impeachment trial was postponed indefinitely because "[t]he senate mistrusted its ability to convict the governor without doing great injury to itself and believed that his suspension from office because of his impeachment could be extended to the fast approaching end of his term as governor. Thus Reed might be disposed of without being expelled."¹⁵⁷

The senate's failure to act affirmatively on the impeachment resolutions placed Governor Reed in a quandary because under the 1868 Constitution, an impeached officer was "disqualified from performing any of the duties of his office until acquitted by the Senate."¹⁵⁸ On April 27th, Governor Reed requested an opinion from the court on whether the Senate's adjournment without decision constituted an acquittal, thereby entitling him to resume his

151. W. DAVIS, *supra* note 121, at 613.

152. *Id.* at 615.

153. *Id.* at 616.

154. J. SHOFNER, *supra* note 132, at 212.

155. *Id.* at 220.

156. *In re Executive Communication*, 14 Fla. App. 289, 290-91 (1872); J. SHOFNER, *supra* note 132, at 220-21; W. DAVIS, *supra* note 121, at 632.

157. W. DAVIS, *supra* note 121, at 632-33.

158. FLA. CONST. of 1868, art. XVI, § 9.

duties as governor.¹⁵⁹ Justices Westcott and Hart held that they did not have jurisdiction to decide whether the actions of the senate constituted an acquittal because "the Court of Impeachment is still in existence and must determine the matter,"¹⁶⁰ and because "during his [Reed's] suspension his power as Governor to demand our opinion upon any question of law ceases."¹⁶¹ Chief Justice Randall dissented, claiming that Governor Reed had a right to seek the court's opinion and to resume his powers upon the senate's adjournment.¹⁶²

Before the court's decision, however, Acting Governor Day had called a special session of the legislature so that he could pursue the impeachment proceedings in the event the supreme court ruled in favor of Reed. Since Day had reopened the question of whether Reed should have a trial, he was forced to carry through with the proceedings. The senate voted to resume the trial, and on May 6th it acquitted Reed by a vote of ten to seven.¹⁶³

By the time the senate acquitted Reed, there were only a few months left before the November gubernatorial elections. Although the Democrats had hoped to capitalize on the factionalism within the Republican Party, they were unable to put together an effective coalition, and the Republican candidate, Justice Ossian B. Hart, won the election.¹⁶⁴ He resigned from the supreme court in January 1873 to become governor.¹⁶⁵ Governor Hart had campaigned so vigorously, however, that he contracted pneumonia and never fully recovered. When he died in March 1874, Lieutenant Governor Marcellus L. Stearns became the new Republican governor.¹⁶⁶ Upon Justice Hart's resignation from the bench, Franklin D. Fraser was appointed to take his place. In May 1874, after serving on the supreme court for only one year, Justice Fraser resigned and was replaced by R. B. Van Valkenburgh.¹⁶⁷ Justice Van Valkenburgh was a native of New York who had served as a New York legislator and United States Congressman. He was a Union brigadier-general during the Civil War, and was later appointed Minis-

159. *In re Executive Communication*, 14 Fla. App. at 291.

160. *Id.* at 307.

161. *Id.*

162. *Id.* at 317.

163. J. SHOFNER, *supra* note 132, at 221-22.

164. *Id.* at 286-87.

165. *Whitfield's Notes*, *supra* note 12, at 219.

166. J. SHOFNER, *supra* note 132, at 287-88.

167. Buford, *supra* note 3, at 30.

ter to Japan.¹⁶⁸ He moved to Jacksonville in 1871, and participated prominently in the 1872 liberal republican movement.¹⁶⁹ Justice Van Valkenburgh served on the supreme court for fourteen years until his death in 1888.¹⁷⁰

The Democrats finally gained superiority in Florida with the defeat of the Republicans in the hotly contested 1876 gubernatorial election. The incumbent, Marcellus Stearns, had secured the Republican nomination. His opponent was Democrat George F. Drew, a wealthy lumber mill owner who was able to attract both native white voters and a segment of the black community that was disillusioned with the previous Republican administrations.¹⁷¹ After a sordid election noted for "[f]raud, chain voting, tissue paper ballots, and intimidation . . . on both sides,"¹⁷² the partisan Board of State Canvassers announced a Republican victory.¹⁷³ The initial vote had been in Drew's favor, but the canvassing board refused to count the votes from four counties because of allegations of fraud and other irregularities in the election returns, resulting in a majority for Stearns. Unwilling to accept this result, Drew filed a petition with the Supreme Court of Florida requesting that a writ of mandamus be issued ordering the board to reassemble and count all the votes.¹⁷⁴ In a controversial decision, the court unanimously held that the Board of State Canvassers had exceeded its ministerial authority and ordered the board to count all of the election returns.¹⁷⁵ On recount George Drew was elected Governor of Florida,¹⁷⁶ and as one of his first actions in office, he appointed as attorney general, George Raney, one of the attorneys who had represented Drew in the aforementioned matter.¹⁷⁷

Drew's victory marked the end of the reconstruction era in

168. 2 R. RERICK, *supra* note 20, at 102; In Memoriam Robert Bruce Van Valkenburgh, 160 Fla. xlv (1948).

169. J. SHOFNER, *supra* note 132, at 330.

170. In Memoriam Robert Bruce Van Valkenburgh, *supra* note 168, at xlv.

171. E. WILLIAMSON, *supra* note 130, at 11-14.

172. *Id.* at 13.

173. *Id.*

174. *State ex rel. Drew v. Board of State Canvassers*, 16 Fla. 1, 18-24, 27 (1876).

175. *Id.* at 43-53.

176. E. WILLIAMSON, *supra* note 130, at 13-14. Although the gubernatorial election results were changed, the results of the Florida electoral vote in the presidential election evaded judicial scrutiny. Months after the election, Justice Randall told George Raney that he was surprised that a proceeding in mandamus had not been instituted as to the presidential electoral vote. In Memoriam, *supra* note 129, at vvi-xvii. For a discussion of both the gubernatorial and presidential election results, see J. SHOFNER, *supra* note 132, at 328-39.

177. 1 R. RERICK, *supra* note 20, at 339.

Florida.¹⁷⁸ Justices Randall, Van Valkenburgh and Westcott continued to serve on the supreme court, and in 1885 Florida again adopted a new constitution.

V. THE SUPREME COURT AT THE TURN OF THE CENTURY

The year 1885 heralded major changes in the makeup of the supreme court. Both Justices Randall and Westcott resigned from the court in January after the inauguration of Edward Perry as Florida's new governor.¹⁷⁹ George C. McWhorter was appointed to replace Chief Justice Randall, and George P. Raney replaced Justice Westcott.¹⁸⁰

George C. McWhorter, a native of Alabama and alumnus of the University of Alabama and the University of Georgia, moved to Florida in 1857. He practiced law actively until his appointment to the bench, and also served as a representative to the state legislature and as a presidential elector. He resigned as chief justice on July 1, 1877 to become chairman of the Florida Railroad Commission, a position he held until his death in 1891.¹⁸¹

George P. Raney was an astute politician and a well-known orator.¹⁸² He was born in Apalachicola in 1845 and attended the University of Virginia. After serving in the Confederate Army during the Civil War, he returned to the University of Virginia to study law. He settled in Tallahassee in 1826, and played a major role both in the Florida Democratic Party, and in Florida state politics before and after his nine years of service as a Florida supreme court justice.¹⁸³

An event that had a profound impact on the supreme court was the 1885 Constitutional Convention held in Tallahassee from June 9th to August 3rd. The new constitution was ratified in the 1886 general election and took effect on January 1, 1887.¹⁸⁴ Like the 1853 amendments to the constitution of 1838,¹⁸⁵ the new constitution provided for the popular election of the supreme court justices and fixed their term of office at six years. Of the justices chosen in the first election of 1888, however, one would serve a

178. E. WILLIAMSON, *supra* note 130, at 14.

179. 1 HISTORY OF FLORIDA, *supra* note 119, at 213; Brown, *supra* note 52, at 35.

180. Brown, *supra* note 52, at 35.

181. 2 R. RERICK, *supra* note 20, at 102; In Memoriam, 27 Fla. XIII, XIII-XIV (1891).

182. See 1 PIONEER FLORIDA 52 (D. McKay ed. 1959).

183. 2 R. RERICK, *supra* note 20, at 103-04.

184. *Whitfield's Notes*, *supra* note 12, at 219.

185. FLA. CONST. of 1838, art. V, §§ 11-12 (as amended 1853).

two-year term, another a four-year term, and the last a six-year term, so that one justice would be elected every two years, thereby ensuring the stability of the court.¹⁸⁶ One justice would be designated chief justice by lot and would serve in that capacity during his term.¹⁸⁷ For the first time the constitution imposed qualifications on judicial candidates, requiring that justices be attorneys and at least twenty-five years of age.¹⁸⁸

The new constitution also provided that any vacancies occurring before the first election in 1888 would be filled in accordance with the appointment provisions of the 1868 Constitution.¹⁸⁹ When Chief Justice McWhorter resigned on July 1, 1887, former Justice Augustus E. Maxwell was appointed to take his place under this provision.¹⁹⁰ Then, after Justice Van Valkenburgh passed away on August 1, 1888, Henry L. Mitchell was appointed associate justice.¹⁹¹

Justice Mitchell's family moved from Alabama to the present location of Plant City, Florida in 1846. Before his appointment to the bench, he served as a state's attorney, legislator, captain in the Confederate Army, and circuit court judge.¹⁹² Called the "Grand Old Man" of Tampa,¹⁹³ Justice Mitchell was notorious for his sense of humor. An attorney once published a poem in the town newspaper ridiculing Justice Mitchell's Civil War sabre, which he kept hanging on the wall behind his desk. When the attorney next appeared in court, Justice Mitchell grabbed his sword and chased the attorney out of the courtroom and through the streets of Tampa, yelling, "I'll teach you not to make fun of my sword!" The attorney escaped, and Justice Mitchell enjoyed laughing about the matter.¹⁹⁴

When the first judicial election was held in 1888, the voters reelected George P. Raney, Augustus E. Maxwell, and Henry L. Mitchell, the three justices who were then sitting on the court. The justices drew lots to determine the length of their terms, with Justice Maxwell receiving the two-year term, Justice Mitchell the

186. FLA. CONST. art. V, § 2 (prior to 1902 amendments).

187. *Id.*

188. *Id.* § 3.

189. *Id.* art. xviii, § 5.

190. Brown, *supra* note 52, at 35.

191. *Whitfield's Notes*, *supra* note 12, at 219.

192. 2 PIONEER FLORIDA, *supra* note 182, at 404.

193. *Id.* at 404.

194. *Id.* at 404-05.

four-year term, and Justice Raney the six-year term.¹⁹⁵ Justice Raney was also selected Chief Justice by lot.¹⁹⁶ The court first met as the Constitution of 1885 provided, on the first Tuesday after the first Monday in January following their election to the supreme court.¹⁹⁷

In 1891 two new justices joined the court. Milton H. Mabry, who was elected to succeed Augustus Maxwell,¹⁹⁸ was born in Alabama and educated at the University of Mississippi. He received his law degree from Cumberland University at Lebanon, Tennessee and began practicing law in Tupelo, Mississippi. In 1878 he moved to Leesburg, Florida, where he formed a law partnership with future supreme court justice William A. Hocker. Before his election to the bench, Justice Mabry served a term in the state legislature, and as the last Lieutenant-Governor of Florida before the position was abolished.¹⁹⁹

The second new justice to join the court in 1891, R. Fenwick Taylor, was appointed associate justice by Governor Francis Fleming when Justice Mitchell resigned to return to the circuit court.²⁰⁰ Justice Taylor was born in South Carolina in 1849 and moved to Florida in 1852. At the age of fifteen, he interrupted his schooling to fight with the Confederate Regulars in the Battle of Gainesville. When the Civil War ended, he resumed his education and eventually joined the Florida bar in 1870. Justice Taylor practiced law until his appointment to the bench in 1891, and continued to serve on the court for thirty-four years.²⁰¹ Although Taylor was one of the few justices never to hold a political office, he was a leader in his community, both as a member of the bar and in politics.²⁰²

The composition of the court did not change for the next three and one-half years. Although Justice Raney's term did not expire until the end of 1894, he resigned a few months earlier.²⁰³ Benjamin S. Liddon was appointed to take his place as chief justice, and was then elected that fall to a full six-year term as associate jus-

195. 1 HISTORY OF FLORIDA, *supra* note 119, at 214.

196. *Id.*

197. FLA. CONST. art. V, § 2 (prior to 1902 amendments).

198. 2 R. RERICK, *supra* note 20, at 104.

199. In Memoriam, 81 Fla. 1, 5-6 (1921).

200. Portrait of the Chief Justice, 85 Fla. 1 (1923); *Whitfield's Notes*, *supra* note 12, at 219.

201. Brown, *supra* note 52, at 35-36.

202. 3 HISTORY OF FLORIDA, *supra* note 119, at 184-85.

203. In Memoriam, 77 Fla. 1, 4 (1919).

tice.²⁰⁴ Justice Liddon was born in Jackson County, Florida in 1853. He taught school while studying to become a lawyer. He began practicing law in 1875 and soon formed a partnership with Francis B. Carter, his future successor to the supreme court. Justice Liddon resigned from the bench in January of 1897 and moved to Pensacola to resume practicing law.²⁰⁵ Governor William D. Bloxham appointed Francis Carter to succeed Justice Liddon on January 11, 1897. Justice Carter served on the supreme court until 1905, when he resigned to take a more active position as judge of the First Judicial Circuit.²⁰⁶

The Spanish American War of 1898 marked a turning point in the development of both the state of Florida and the Florida Supreme Court. Although the war lasted only from April to August, it had an important and far-reaching impact on Florida history. Construction and development in Florida began to accelerate rapidly as wartime activities provided a needed and welcomed boost to the state's growing economy. The population was growing as well, and by 1900, it had swelled to 528,542 from just 269,500 in 1880.²⁰⁷ Symbolic of Florida's explosive growth was the construction of the "Flagler Folly," a railroad that extended 156 miles from Miami to Key West, cost over twenty thousand dollars, and required seven years to complete.²⁰⁸

As development increased and the population grew, so did the complexity of the executive and administrative organization that governed the state. It was thus only natural that the demands upon the judiciary multiplied also, placing the court under the burden of an increasingly heavy workload. The state legislature responded to this burden in 1901 by authorizing the court to appoint three attorneys to act as commissioners and assist the court in performing its duties.²⁰⁹ The three appointees, Evelyn C. Maxwell, James F. Glen, and William A. Hocker, served until 1902,²¹⁰ when a constitutional amendment was passed adding three justices to the court.²¹¹ The amendment provided for the immediate appointment of three additional justices to hold office until 1905, at which

204. 2 R. RERICK, *supra* note 20, at 104.

205. Francis Beauregard Carter, 90-93 So. 2d (Fla. Cas.) xxxv (1956-1957).

206. *Id.*

207. 2 C. TEBEAU & R. CARSON, *supra* note 87, at 1.

208. M. COX & J. DOVELL, *FLORIDA FROM SECESSION TO SPACE AGE* 90-91 (1974); A. HANNA & K. HANNA, *FLORIDA'S GOLDEN SANDS* 300 (1950).

209. Act of May 8, 1901, ch. 4905, 1901 Fla. Laws 42.

210. Buford, *supra* note 3, at 30.

211. FLA. CONST., art. V, § 2 (as amended 1902).

time the legislature would be authorized to provide for the popular election of the justices.²¹² Under the amendment, the number of justices holding office at one time was not to be less than three or more than six.²¹³

In December 1902, acting under the authority of this new amendment, Governor Jennings appointed Evelyn C. Maxwell, Thomas M. Shackelford, and Robert S. Cockrell to sit as the new justices on the six-man court.²¹⁴ These three new justices brought rich and varied backgrounds to the Florida Supreme Court. The first, Evelyn C. Maxwell, was the son of former Chief Justice Augustus E. Maxwell and the grandson of former Justice Walker Anderson.²¹⁵ Born in Alabama on July 27, 1863, he studied in the public and private schools of Pensacola and at the University of Nashville in Tennessee. He began practicing law in 1885 and was the judge of the Escambia Criminal Court of Records from 1892 to 1896. He then served as a circuit judge until his appointment as commissioner in 1901.²¹⁶ While on the supreme court, he was often teased about the apparent chaos and disorder of his office, even though he could find any document on a minute's notice. Governor Caldwell, who was a practicing attorney at the time, enjoyed telling the following anecdote about Justice Maxwell's "filing system":

He had large, roomy, well furnished and equipped offices. His original desk was very large, and instead of having a secretary and filing clerk, he just stacked his correspondence on top of the desk until it got to be about two feet high. He moved to his little conference table which was large enough to seat eight and continued to stack the mail and pleadings on top of the table as he had his desk. After he moved his chair all around the table and finally got his filings so high they began to topple, he moved to his secretary's desk—she had been gone for some years. It was when I was a young lawyer and had business with him. In the course of that business we needed a particular document which had been sent to him many years before. He walked back to his original desk and straight to the pile of documents and pulled our paper from the mess.²¹⁷

212. *Id.*

213. *Id.*

214. Buford, *supra* note 3, at 30.

215. *Id.* at 31.

216. 3 HISTORY OF FLORIDA, *supra* note 119, at 58-59.

217. Questionnaire distributed to several former and current Justices of the Supreme Court of Florida and members of The Florida Bar (response of Millard F. Caldwell) [hereinafter cited as "Questionnaire"].

The second new justice, Thomas M. Schackleford, was born in Fayetteville, Tennessee in 1859. He attended Burritt College in Spencer, Tennessee, and practiced law in Tennessee for several months before moving to Lake Weir, Florida in 1882. Before his appointment to the supreme court, he was a delegate to the Democratic National Convention in 1888, a presidential elector of Florida in 1892, and City Attorney of Tampa from 1900 to 1902.²¹⁸ He also played an instrumental role in forming the Florida Bar Association.²¹⁹

Robert S. Cockrell, the third new justice, was inadvertently appointed to the court by Governor Jennings, who thought he was appointing Robert's brother, Alston Cockrell.²²⁰ Nonetheless, Robert Cockrell served on the court for several years before being defeated in his third bid for reelection by Jefferson Browne in 1917. He allegedly lost the election because an opinion he wrote alienated the influential railroad interests in the state, which then lobbied heavily for Browne.²²¹

In 1903 the legislature exercised its authority under the 1902 constitutional amendment²²² to provide for the popular election of the supreme court justices.²²³ Elections for four justices were to be held in 1904, with their terms beginning on the first Tuesday after the first Monday in June, 1905. Staggered terms were also arranged so that only two justices would come up for reelection every two years; the justices were to choose the chief justice by lot.²²⁴

Chief Justice Mabry declined to run for reelection upon the expiration of his term in January 1903, and former commissioner William A. Hocker was elected as his successor. Justice Hocker was born in Buckingham County, Virginia in 1844. He fought with the Second Virginia Cavalry during the Civil War, and his company was General Lee's bodyguard at Appomattox. After studying law at the University of Virginia, he moved to Leesburg, Florida in 1874. He served as a Florida state legislator, state attorney, and circuit judge before the supreme court appointed him as a commissioner in 1901.²²⁵

218. In Memoriam Honorable T. M. Shackleford, 100-101 So. 2d (Fla. Cas.) XLVII (1957-1958).

219. Questionnaire, *supra* note 217 (response of Leo Foster).

220. *Id.*

221. *Id.* (response of Richard Ervin).

222. FLA. CONST. art. V, § 2 (as amended 1902).

223. Act of June 4, 1903, ch. 5124, § 1, 1903 Fla. Laws 64-65.

224. *Id.*

225. 2 R. RERICK, *supra* note 20, at 565.

Justice Evelyn Maxwell also resigned from the court before the 1904 elections, and Governor Jennings replaced him with James B. Whitfield.²²⁶ Justice Whitfield's family moved to Leon County from North Carolina in 1863 when he was three years old. He attended the West Florida Seminary (which is now Florida State University) and later studied law at the University of Virginia. He was elected county judge of Leon County in November 1888, but resigned the following March to become the clerk of the supreme court. He also served as the state treasurer and attorney general before his appointment to the bench in 1904.²²⁷

Justice Whitfield, a dedicated member of the supreme court, wrote many leading opinions. His pioneer opinion that public service corporations can be compelled to keep their roadbeds, track, and rolling stock in a fit condition, *State ex rel. Ellis v. Atlantic Coast Line Railroad*,²²⁸ was telegraphed to the Supreme Court of California.²²⁹ His most cited opinion,²³⁰ *State v. Atlantic Coast Line Railroad*,²³¹ was a scholarly piece concerning legislative and administrative powers. United States Supreme Court Justice Hugo Black²³² praised Whitfield for his opinion in *Montgomery v. State*,²³³ in which he concluded that state officials may not discriminate on account of race or color in selecting and summoning jurors.

In 1905 Justice Carter resigned from the court and Charles B. Parkhill was appointed in his place.²³⁴ Justice Parkhill was born in Leon County in 1859, and, like Justice Whitfield, studied law at the University of Virginia. He served as a state senator, county attorney, county solicitor, and circuit judge before his supreme court appointment.²³⁵ By the end of Justice Parkhill's term, the legislature had reduced the court's membership from six justices to five, effective upon the occurrence of a vacancy on the court.²³⁶ Thus,

226. Brown, *supra* note 52, at 36.

227. 3 W. CASH, *THE STORY OF FLORIDA* 319 (1938); 3 *HISTORY OF FLORIDA*, *supra* note 119, at 122-23; In Memoriam Justice James Bryan Whitfield, 58-60 So. 2d (Fla. Cas.) xxxix (1952).

228. 53 Fla. 650, 44 So. 213 (1907).

229. In Memoriam Justice James Bryan Whitfield, *supra* note 227, at xl.

230. *Id.*

231. 56 Fla. 617, 47 So. 969 (1908).

232. Letter from Hugo Black to Claude Pepper (Jan. 29, 1948).

233. 55 Fla. 97, 45 So. 879 (1908).

234. Brown, *supra* note 52, at 35.

235. 2 *HISTORY OF FLORIDA*, *supra* note 119, at 95-96.

236. Act of June 3, 1911, ch. 6169, 1911 Fla. Laws 97. This act was introduced and sponsored by Representative Glenn Terrell, who coincidentally was appointed as the sixth

when Justice Parkhill resigned at the end of his term in 1911, he was not replaced.²³⁷

When Justice Hocker retired from the supreme court at the end of his term in 1915, William H. Ellis succeeded him on the bench.²³⁸ Justice Ellis was born in Pensacola in 1867. After studying law on his own, he was admitted to the Florida bar in 1889. In 1906 he married Justice Taylor's daughter. He served as president of the Quincy Town Council, chairman of the Board of County Commissioners, state auditor, and attorney general before his supreme court appointment.²³⁹ It was Justice Ellis who, as attorney general, instituted the suit that ultimately culminated in Justice Whitfield's opinion requiring railroads to keep their roadbeds, track, and rolling stock in a fit condition.²⁴⁰

In 1917 two new justices joined the court. Jefferson B. Browne defeated Robert S. Cockrell in the 1916 election,²⁴¹ and Thomas F. West was appointed to replace Justice Shackelford.²⁴² Born and reared in Key West, Justice Browne was an active member of that community, and author of a book on Key West. He was elected to the state senate for two terms and served as president for one of those terms. He was closely associated with the railroad interests in the state, having been the Chairman of the Florida Railroad Commission.²⁴³ Justice Browne resigned from the court in June 1925, and was later appointed circuit judge of the Twentieth Judicial Circuit.²⁴⁴

Justice West was born near Milton, Florida. After attending law school at Washington & Lee University in Lexington, Virginia, he returned to Florida where he actively participated in state politics. Before his appointment to the court in 1917, he served as a state representative, senator, and attorney general, and as the president of the state bar association.²⁴⁵ In 1918 he was reelected to a full six-year term on the supreme court. Like Justice Browne, however, he resigned from the court in 1925, and later accepted an

justice when the legislature reinstated a six-member court. Buford, *supra* note 3, at 31. See Act of May 7, 1923, ch. 9280, 1923 Fla. Laws 312.

237. *Whitfield's Notes*, *supra* note 12, at 220.

238. Brown, *supra* note 52, at 36.

239. 3 HISTORY OF FLORIDA, *supra* note 119, at 160.

240. *Id.*; see *State ex rel. Ellis v. Atlantic Coast Line R.R.*, 53 Fla. 650, 44 So. 213 (1907). See also text accompanying note 228 *supra*.

241. Questionnaire, *supra* note 217 (response of Leo Foster).

242. Brown, *supra* note 52, at 36.

243. WHO WAS WHO IN AMERICA 153 (A.N. Marquis Co. 1943).

244. Brown, *supra* note 52, at 36.

245. 3 HISTORY OF FLORIDA, *supra* note 119, at 236.

appointment as a circuit judge of the First Judicial Circuit.²⁴⁶

The railroad played an important role in the industrial development of Florida,²⁴⁷ and it was therefore not surprising that the supreme court soon became embroiled in numerous controversies involving railroads. From several of these cases evolved general principles of law that are still applicable today. For example, in *McWhorter v. Pensacola & Atlantic Railroad*,²⁴⁸ the supreme court held that an act authorizing Florida's Railroad Commission to establish rates was a proper delegation of legislative authority. In *Florida Central & Peninsular Railroad v. Williams*²⁴⁹ and *Florida Central & Peninsular Railroad v. Foxworth*,²⁵⁰ the court grappled with such significant legal concepts as comparative negligence and wrongful death actions. And, in *Osborne v. State*,²⁵¹ the court upheld the application of a license tax on an express company conducting business primarily but not exclusively in the State of Florida. The Supreme Court of the United States affirmed *Osborne* in a landmark decision involving the states' right to tax businesses engaged in interstate commerce.²⁵²

Thus, the Florida Supreme Court played a significant role in the beginning of the industrial development of the state—a role that was to increase in importance during the 1920's.

VI. THE SUPREME COURT AFTER WORLD WAR I

The spectacular growth and promise of the early twentieth century continued unharnessed through 1925.²⁵³ Indeed, this unprecedented boom caused Florida's population to almost triple between 1900 and 1925.²⁵⁴ The most obvious cause of the rapid increase was the lure of the climate, coupled with a ready means of transportation—the automobile.²⁵⁵ Just as significant, however, was the abounding confidence engendered by the Coolidge prosper-

246. Brown, *supra* note 52, at 36.

247. See A. HANNA & K. HANNA, *supra* note 208, at 216-17, 226-28, 231, 250-51.

248. 24 Fla. 417, 5 So. 129 (1888).

249. 37 Fla. 406, 20 So. 558 (1896) (jury must apportion fault between plaintiff and defendant).

250. 41 Fla. 1, 25 So. 338 (1899) (under wrongful death statute, widow could recover husband's lost future earnings, but not for his pain and suffering or her mental distress).

251. 33 Fla. 162, 14 So. 588 (1894), *aff'd*, 164 U.S. 650 (1897).

252. *Osborne v. Florida*, 164 U.S. 650 (1897).

253. 2 C. TEBEAU & R. CARSON, *supra* note 1, at 55.

254. *Id.* at 1, 55.

255. M. COX & J. DOVELL, *supra* note 208, at 155; 2 C. TEBEAU & R. CARSON, *supra* note 1, at 57-58.

ity in the aftermath of World War I.²⁵⁶ As observers have noted:

At the close of World War I Americans had pockets bulging with war profits with little opportunity of spending them They wanted to go places; they had money to pay their way, the family jalopy in which to travel, and the long Dixie Highway beckoning toward Florida sunshine which the advertisers said was the answer to chilblains as soon as the first blizzard struck the old homestead.²⁵⁷

The frenzied Florida land boom and its resultant explosion in population placed a heavy strain on all facets of the state's social services, including the Florida Supreme Court. Just as demands in the early 1900's had forced an increase in the number of justices, so too in 1923 a heavy court docket prompted the legislature to re-create the sixth seat on the Florida Supreme Court.²⁵⁸ Acting on this legislative approval, Governor Cary Hardee appointed William Glenn Terrell to the position on May 15, 1923.²⁵⁹

Justice Terrell served on the Florida Supreme Court for forty years and eight months, longer than any other man in Florida's history.²⁶⁰ During that time, he wrote nearly 2500 legal opinions, prompting Chief Justice E. Harris Drew to call him "one of the greatest judges who ever sat on the Florida Supreme Court."²⁶¹ When Justice Terrell retired in 1964 at the age of eighty-six, Governor Farris Bryant stated that "Judge Terrell probably has had as much impact upon the history of Florida as any man"²⁶² Born in 1878, Justice Terrell began practicing law in 1903 in Bushnell, Florida. He participated in state politics as a representative and senator before becoming a supreme court justice.²⁶³ Justice Terrell was renowned for his homespun opinions and witticisms.²⁶⁴

In 1925 the court's composition again underwent major changes. Justices Taylor, Browne, and West resigned that year, and in their stead, Governor Martin appointed Louis Strum, Arm-

256. M. COX & J. DOVELL, *supra* note 208, at 155.

257. A. HANNA & K. HANNA, *supra* note 208, at 334.

258. Act of May 7, 1923, ch. 9280, 1923 Fla. Laws 312.

259. 3 FLORIDA FROM INDIAN TRAIL TO SPACE AGE 796 (Southern Pub. Co. 1965) [hereinafter cited as FLORIDA FROM INDIAN TRAIL]; In Memoriam, 160-163 So. 2d (Fla. Cas.) 8, 18 (1964).

260. 3 FLORIDA FROM INDIAN TRAIL, *supra* note 259, at 796.

261. *Id.*

262. *Id.*

263. *Id.*; In Memoriam, *supra* note 259, at 18.

264. 3 FLORIDA FROM INDIAN TRAIL, *supra* note 259, at 796; see L. HALL, THE JUDICIAL SAYINGS OF JUSTICE GLENN TERRELL (1964).

stead Brown, and Rivers Buford, respectively.²⁶⁵ Armstead Brown was born and reared in Georgia. He studied law in Alabama under the guidance of his uncle, Judge J. R. Dowdell, a man who later became chief justice of the Alabama Supreme Court. Justice Brown moved to Jacksonville, Florida in 1915, but resettled in Miami just two years later.²⁶⁶ He served on the Florida Supreme Court from 1925 to 1946 and was known to all as a gentle and sensitive person.²⁶⁷

The second new member on the court was Justice Louie Strum, who was born in Valdosta, Georgia in 1890. His family later moved to St. Petersburg, Florida, where he attended the St. Petersburg Military High School and Stetson University Law School. He then practiced law in Jacksonville until enlisting in the United States Navy as a Lieutenant Commander during World War I. He resumed a career in law upon his return to Jacksonville, and later served as assistant city attorney and city attorney until his appointment to the bench. He resigned from the supreme court in 1931 when President Hoover appointed him United States District Judge for the Southern District of Florida, a position he retained until 1950, when President Truman appointed him United States Circuit Judge for the Fifth Circuit.²⁶⁸

Justice Rivers Buford, the third new appointee, was probably the most colorful justice to serve on the court in this century.²⁶⁹ Born in Pulaski, Tennessee in 1878, he moved to Wewahitchka, Florida while still a child. He studied law in the office of Fred T. Meyers of Tallahassee until he was admitted to the bar in 1900. Justice Buford practiced law until 1912 when Governor Gilchrist appointed him state attorney for the Ninth Judicial Circuit. In 1921 he was elected attorney general, an office which he held until his appointment to the supreme court in 1925. Although he never went to college, Justice Buford was highly respected by his colleagues for his honesty, integrity, and common sense. One of his associates professed that

What [Justice Buford] failed to acquire in formal education, he more than compensated for in that which defies definition, the highest grade of intelligence It is acquired in the University of Adventure, Experiment and Experience, and without it

265. Brown, *supra* note 52, at 36-37.

266. 2 W. CASH, *supra* note 227, at 42-43.

267. Questionnaire, *supra* note 217 (response of Justice Richard Ervin).

268. In Memoriam Judge Louie W. Strum, 71-74 So. 2d (Fla. Cas.) III-IV (1954).

269. *Id.*

the knowledge acquired in the schools is apt to be low grade nonsense.²⁷⁰

As a highly regarded member of the court, Justice Buford was also celebrated for the speed with which he prepared his short concise opinions and discharged the business of the court. In almost twenty-three years on the supreme court he prepared 2657 opinions.²⁷¹

With three new members on the bench, the supreme court embarked on a new term while the legislature continued to change the organization of the court and the procedures by which it conducted its business. For example, in 1926 the legislature adopted an amendment to the constitution changing the method of selecting the chief justice.²⁷² This amendment provided that the justices themselves would elect the chief justice, rather than selecting him by lots. In January 1927, the justices used this procedure for the first time, and elected William H. Ellis as chief justice because he was the member with the most seniority who had not yet served in that capacity.²⁷³ This first election began the Florida Supreme Court's tradition of rotating the chief justiceship every two years by seniority, except in rare circumstances.²⁷⁴

Later that same year, the legislature passed an act²⁷⁵ that enabled each three-justice division of the supreme court, a qualified justice of that division, or the chief justice to examine the questions of law decided by the other division before the other division filed an opinion. The act also authorized a majority of the justices to concur or dissent in any case in which a written opinion was filed, except in capital cases or cases construing the state or federal constitution, in which *every* justice had the opportunity to concur or dissent.²⁷⁶ The practical effect of this act was that the court worked in two divisions, and the clerk of the court would send the even numbered cases to Division "A" and the odd numbered cases went to Division "B."²⁷⁷

A final significant change for the supreme court in the 1920's

270. Tribute of the Supreme Court of Florida to Mr. Justice Rivers Henderson Buford, 100-101 So. 2d (Fla. Cas.) XLIII-XLV (1957-1958).

271. *Id.* at XLIV-XLV.

272. FLA. CONST. art. V, § 44 (as adopted 1926).

273. Brown, *supra* note 52, at 37.

274. *See id.* at 37-38.

275. Act of May 28, 1927, ch. 12323, 1927 Fla. Laws 1261.

276. *Id.*

277. For a discussion of the application of this statute, see Buford, *supra* note 3, at 32-33.

was the 1929 law authorizing the court to appoint three commissioners to assist with the court's ever-increasing work load.²⁷⁸ The selection of these three commissioners was left to the court, and after a number of secret ballots, it unanimously selected Charles O. Andrews, Charles E. Davis, and Sam Matthews.²⁷⁹

The 1930's brought three major changes in the composition of the court. First, Fred H. Davis was appointed to the bench in 1931 when Justice Strum resigned to accept an appointment to the United States District Court.²⁸⁰ Justice Davis was one of the most industrious men to serve on the court. Born in Greenville, South Carolina, he grew up in Jacksonville and Tallahassee. Upon completing public school, he did not attend law school but began reading the law on his own. He was admitted to the bar in 1914 when he was only twenty years old.²⁸¹ Justice Davis's political career included service as speaker of the house of representatives, and as attorney general in 1927.²⁸² It was rumored that when Doyle Carlton became Governor in 1929, he did not want Davis on the cabinet because of the amount of respect he commanded, so Governor Carlton appointed him to the supreme court.²⁸³ While on the court, Justice Davis was noted for working tremendously hard all day long, only taking time off to have supper. His industriousness took its toll, however, for he died of a heart attack in 1937 when only forty-one years old.²⁸⁴

Second, when Justice Davis died in 1937, Governor Fred P. Cone appointed his former law partner, Roy H. Chapman, to the bench. Justice Chapman, a native of Lake Butler, Florida, attended the East Seminary at Gainesville and Stetson University Law School. He then practiced law with Fred P. Cone for twenty-five years.²⁸⁵ While on the bench, he became notorious for his advocacy of the "little people." A legend developed that once when a railroad attorney was about to begin argument on a railroad negligence case, Justice Chapman leaned over and asked the attorney, "It hit the little woman didn't it?" When the attorney conceded

278. Act of June 29, 1929, ch. 14553, 1929 Fla. Laws 1080.

279. Buford, *supra* note 3, at 32.

280. Brown, *supra* note 52, at 37.

281. 3 W. CASH, *supra* note 227, at 4; 2 HISTORY OF FLORIDA, *supra* note 119, at 7.

282. 3 W. CASH, *supra* note 227, at 4.

283. Letter from Evelyn Davis Burns (Justice Davis' sister) to Justice Joseph A. Boyd, Jr. (June 2, 1980).

284. Interview with Justice B. K. Roberts (Apr. 21, 1980).

285. In Memoriam Honorable Roy Harrison Chapman, 102-104 So. 2d (Fla. Cas.) xxxix-xli (1958).

that it had, Justice Chapman allegedly wanted to hear no more and proceeded to rule against the railroad.²⁸⁶

Finally, in 1938 Elwyn Thomas was appointed to take the place of Justice Ellis, who resigned just a few months before the end of his term. Justice Thomas was then elected to the bench in the general election a few months later.²⁸⁷ Born in Ankona, Florida in 1894, Justice Thomas attended public schools in Brevard and St. Lucie Counties. He then attended Stetson University and graduated from its law school in 1915. He was the city attorney for Ft. Pierce and Vero Beach and the prosecuting attorney for St. Lucie County before his appointment as a circuit judge in 1925. He served as circuit judge of both the twenty-first and ninth judicial circuits.²⁸⁸ He was a man of integrity, and would reputedly go to extreme lengths to avoid the appearance of impropriety. In fact, when he ran for his position as supreme court justice in 1938, he financed his own campaign with borrowed funds, rather than accept any contributions.²⁸⁹ During his tenure on the court, he was the first chairman of the Judicial Council that formulated the constitutional amendment creating the district courts of appeal,²⁹⁰ and was the principal author of the amendment.²⁹¹

The early 1940's brought only two significant changes to the Florida Supreme Court. First, in 1940 the constitution was again amended to provide for the addition of a seventh justice to the court.²⁹² The amendment was adopted in November, 1940 and that same month Governor Cone appointed Alto Adams to the position.²⁹³ Justice Adams was born and reared in Walton County near DeFuniak Springs, Florida. After being admitted to the bar, he moved to Ft. Pierce to practice law. He campaigned for Governor Cone in the 1936 gubernatorial election, and was rewarded for his support by an appointment to the circuit bench in 1938 and to the supreme court in 1940.²⁹⁴

The second change in the court's composition during the early 1940's came with the retirement of Justice Whitfield in 1943.²⁹⁵ In

286. Questionnaire, *supra* note 217 (response of Justice Richard Ervin).

287. Brown, *supra* note 52, at 38.

288. In Memoriam, 246-247 So. 2d (Fla. Cas.) 5, 20 (1971).

289. *Id.* at 16-17.

290. *Id.* at 21.

291. Questionnaire, *supra* note 217 (response of Chesterfield Smith).

292. FLA. CONST. art. V, § 2(a) (as amended 1940).

293. Brown, *supra* note 52, at 38.

294. Interview, *supra* note 284.

295. In Memoriam Justice James Bryan Whitfield, *supra* note 227, at xxxix.

the general election to fill his seat, H. L. "Tom" Sebring defeated Jeff Turnbull.²⁹⁶ Born in Olatha, Kansas in 1898, Justice Sebring was one of the most versatile men to serve on the supreme court. He specialized in architecture, engineering, and business administration at Kansas State College, and attended the University of Florida College of Law while working as the head football, track, and boxing coach. In 1934 Governor Dave Sholtz appointed him circuit court judge of the Eighth Circuit, where he served until his election to the supreme court in 1943.²⁹⁷ While serving on the bench, he designed the present supreme court building, which the court moved into in 1949.²⁹⁸ In 1955 he retired from the bench to become the dean of Stetson Law School.²⁹⁹

These men comprised the Florida Supreme Court from the 1920's to the end of World War II. This was a time of extreme and rapid change in Florida, and the responses to these changes are reflected in the very important decisions made by the supreme court during this time. For example, during this period the Florida Supreme Court became involved in several significant economic decisions affecting the development of the state. The tremendous boom of the early twenties had brought tourists and land speculators pouring into Florida, lured by the sunny weather and the hope of a quick profit.³⁰⁰ At the height of the boom in 1925, the legislature responded to some of the problems created by the burgeoning volume of land sales transactions by providing for a speedier method of quieting title.³⁰¹ In upholding the validity of the act's notice provisions against constitutional attack, the court observed:

In view of the intense activity which prevails in the real estate market in Florida, and the meteoric rise in prices, whereby countless parcels of land, heretofore of but nominal or small value, are now repeatedly changing hands at high and constantly enhancing prices, there are few matters of more vital concern to owners of real estate in Florida than a speedy and adequate method of quieting and stabilizing the title to their lands.³⁰²

But the year 1925 also marked the beginning of the collapse of

296. Questionnaire, *supra* note 217 (response of Justice Richard Ervin).

297. Honorable Justice Harold L. Sebring, 86-89 So. 2d (Fla. Cas.) XLV-XLVI (1956).

298. Interview, *supra* note 284. For pictures of the old and present supreme court buildings, see Roberts, *Florida's Judiciary—Past, Present, and Future*, 50 FLA. B.J. 396, 397-99 (1976).

299. Honorable Justice Harold L. Sebring, *supra* note 297, at XLVIII.

300. A. HANNA & K. HANNA, *supra* note 208, at 337-40.

301. Act of Nov. 30, 1925, ch. 11383, 1925 Fla. Laws 136.

302. *McDaniel v. McElvy*, 91 Fla. 770, 790, 108 So. 820, 827 (1926).

the boom as Florida was rocked by a series of setbacks. First, the transportation system collapsed as two successive shipwrecks kept boats from leaving or entering the Miami harbor for weeks, and the Flagler and Seaboard railroads declared an embargo on most incoming freight in order to repair their tracks. That winter, Florida experienced a cold wave that ruined the orange crop and deterred tourists and potential investors from coming to the state. The National Better Business Bureau chilled investment further when it began to publicize the results of its investigations into fraudulent transactions. By the time the West Indian hurricane had devastated Miami in 1926, the boom was finished.³⁰³

The next year, the legislature created the Florida Real Estate Commission to regulate the activities of real estate brokers and salesmen by ensuring that all brokers and salesmen working in the state satisfied certain minimum criteria.³⁰⁴ In 1929 the supreme court upheld the constitutionality of the act as a proper subject of the state's police power.³⁰⁵ Unfortunately, for many persons these protective measures came too late, and they found themselves committed by land-sale agreements to purchase nearly worthless land. When many of these purchasers refused to perform their contracts, the unfulfilled agreements became clouds on the titles to much of the property in the state. In 1941 the legislature sought to remove these obstacles by requiring all persons who had obtained an interest in land pursuant to a land-sale agreement entered into before January 1, 1930 to file suit within six months to establish their right to the land.³⁰⁶ Noting that the purpose of the act was to stimulate and encourage current land sales by cancelling unperformed land-sale agreements entered into during the boom period, the court upheld the constitutionality of the act.³⁰⁷

Another area the court examined during this era was the financing of the state's roads and bridges. In 1929 the legislature passed two laws, one that imposed a five-cent gasoline tax to raise funds to pay off outstanding county bonds that had been issued to raise revenue for local construction,³⁰⁸ and another that created a statewide agency to administer all road construction funds.³⁰⁹ The

303. A. HANNA & K. HANNA, *supra* note 208, at 341-42; C. TEBEAU, *supra* note 68, at 385-87.

304. Real Estate License Law, ch. 12223, 1927 Fla. Laws 1078.

305. State *ex rel.* Davis v. Rose, 97 Fla. 710, 122 So. 225 (1929).

306. Act of April 26, 1941, ch. 20235, 1941 Fla. Laws 102.

307. Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So. 2d 775 (1944).

308. Act of June 21, 1929, ch. 14575, 1929 Fla. Laws 1121.

309. Act of June 21, 1929, ch. 14486, 1929 Fla. Laws 940.

supreme court upheld the tax on the ground that the act imposed a county, not state, tax and therefore was not unconstitutional.³¹⁰ The court also required, however, that all funds be distributed to the various counties in the same proportion in which they were collected.³¹¹ Two years later, the court upheld a second law³¹² that imposed an additional gas tax and authorized the state to reimburse counties for money expended in road construction.³¹³

The economic crunch of the late 1920's compelled many local governmental units to search for alternative means of financing their operations. Some municipalities, for example, attempted to increase their tax bases by extending their boundaries. If, however, the city did not have a legitimate need for the acquired property and sought only to increase its revenues, the court would rule that the city's extension of its boundaries unconstitutionally deprived the owners of their property without just compensation.³¹⁴

Some local governmental units experimented with new methods of borrowing money. The supreme court determined the validity of these financing systems by examining whether the particular financing system unconstitutionally obligated the governmental unit's future taxing power.³¹⁵ For example, a municipality could constitutionally issue revenue certificates to raise funds to improve an already existing public utility, and could pledge the future revenues of the improved utility as security for the certificates. A municipality could not, however, issue revenue certificates to acquire a new or separate utility and then secure those certificates by a pledge of future revenues.³¹⁶

The Florida Supreme Court did not escape involvement in the

310. *Amos v. Mathews*, 99 Fla. 1, 126 So. 308 (1930).

311. *Id.* at 48, 126 So. at 326.

312. *Carlton v. Mathews*, 103 Fla. 301, 137 So. 815 (1931).

313. Act of June 22, 1931, ch. 15659, 1931 Fla. Laws 1162.

314. *See, e.g., State ex rel. Attorney General v. Avon Park*, 108 Fla. 641, 149 So. 409 (1933) (taking unconstitutional when acquired property not useful to municipality and obtained primarily for increased taxation); *State ex rel. Davis v. Stuart*, 97 Fla. 69, 120 So. 335 (1929) (city unconstitutionally extended its boundaries to encompass property not necessary for present city purposes solely to increase tax base); *cf. Winterhaven v. State ex rel. Landis*, 125 Fla. 392, 170 So. 100 (1936) (city's extension of its jurisdiction not unconstitutional when state acquiesced in extension for nine years and failed to allege or prove specific harmful encroachment).

315. *Compare State v. City of Miami*, 113 Fla. 280, 152 So. 6 (1933) (approving validation of water revenue certificates to pay for water system) and *Tapers v. Pichard*, 124 Fla. 549, 169 So. 39 (1936) (approving noninterest-bearing certificates paid to builders of county jail) with *Boykin v. Town of River Junction*, 121 Fla. 902, 164 So. 558 (1935) (invalidating certificates that were to pay for county jail).

316. *Boykin v. Town of River Junction*, 121 Fla. at 908-09, 164 So. at 560.

boom, bust, depression, and recovery that rocked Florida from the early 1920's to the end of World War II. This era witnessed enduring social changes that resulted in complex political and social problems for the next generation of Floridians. Thus, while the postwar years brought new prosperity to the state, it also brought new problems to the supreme court.

VII. THE SUPREME COURT AFTER WORLD WAR II

In the years following World War II, the population and urbanization of Florida increased rapidly. Florida grew from the thirty-second most populous state in the nation in 1900, to become the twentieth most populous state in 1950.³¹⁷ By 1960 Florida ranked tenth, having increased its population by almost eighty percent in only ten years.³¹⁸ Florida was not only growing, it was also urbanizing more rapidly than the rest of the country, and the bulk of both the growth and the urbanization was concentrated in the southern half of the state.³¹⁹ Almost three-fourths of Florida's population lived in cities in 1960, as compared with just over one-third in 1920.³²⁰ The political and social history of Florida in the decades following World War II reflects the problems and advantages of such rapid growth, matters with which the supreme court would necessarily become involved.

In contrast to the political growth and excitement of the post-war era, there were relatively few changes in the Florida Supreme Court immediately following World War II. One of the changes was the appointment by President Truman of Justice Sebring to the Nazi War Crimes Tribunal in Nuremberg, Germany.³²¹ Justice Sebring wanted to serve on this tribunal, but not at the expense of losing his position on the bench, so he requested and was granted a leave of absence. Rather than select a single replacement for Justice Sebring, the court used its power to appoint other judges to fill vacancies on an ad hoc basis. The court appointed a different judge to the seat each month, compensating them from Justice Sebring's salary.³²²

The second change on the bench in 1946 was the retirement of Justice Armstead Brown, followed by the subsequent election of

317. C. TEBEAU, *supra* note 68, at 431.

318. *Id.*

319. *Id.*

320. *Id.* at 432.

321. Honorable Justice Harold L. Sebring, *supra* note 297, at XLVII.

322. Interview with Justice B. K. Roberts, *supra* note 284.

Paul D. Barns, a Dade County circuit judge.³²³ Justice Barns soon found that he thoroughly disliked Tallahassee.³²⁴ He was often asked why he remained on the court when he preferred Miami and could earn more money as a circuit court judge. He responded with the story of a gentleman who once asked to be excused from jury duty because of pressing business needs. Judge Barns told the gentleman that he needed him for one day, but promised to excuse him for the other days. The gentleman served one day, and then returned unexpectedly the following day. Judge Barns was surprised to see him again and reminded the juror that he had been excused. The juror replied, "Well, Judge, I understood you all right, but I was serving on this jury Monday, and there were so many fools around here I thought I better stay and keep things straight!"³²⁵ Justice Barnes remained on the supreme court for two and one half years, perhaps to "keep things straight," but then resigned to return to Miami.³²⁶

Prior to Justice Barns's resignation, Justice Buford resigned also, and Governor Millard Caldwell appointed circuit judge T. Frank Hobson to fill the vacancy.³²⁷ Justice Hobson was well-known for his unusual work habits, often working late into the night and then sleeping during the day.³²⁸ According to Justice Ervin, Justice Hobson "did not like pretense or hypocrisy . . . [and] would smile broadly when someone was obviously being petty or pontifical or political or catering to special interests . . . for personal glory."³²⁹ During his fourteen years on the court, Justice Hobson was never chosen to serve a full term as chief justice, even though under the rotation system his turn had come up twice.³³⁰ In 1962 his failing health forced him to resign just before his term

323. *Id.*

324. Interview with Judge Hugh Taylor (Apr. 23, 1980); Questionnaire, *supra* note 217 (response of Justice Richard Ervin); *id.* (response by Leo Foster).

325. Interview with Judge Hugh Taylor, *supra* note 324.

326. Interview with Justice B. K. Roberts, *supra* note 284.

327. *Id.*

328. *Id.*; Questionnaire, *supra* note 217 (response of Elizabeth G. Pierson).

329. Questionnaire, *supra* note 217 (response of Justice Richard Ervin).

330. According to Justice Roberts, several of the other justices approached him in 1953 when it was Hobson's turn to become chief justice, and told him that they preferred to elect Roberts rather than Hobson. Roberts replied that Hobson had told him he did not want to be chief justice because he did not like administration, but that he did not want to be stigmatized by being passed over. The justices worked out an arrangement whereby they would elect Hobson chief justice with the understanding that he would be replaced by Justice Roberts in two months. The next time Hobson's turn came up, six of the justices, with Justice Thornall voting no, voted for Hobson. Hobson resigned that same day. Interview with Justice B. K. Roberts, *supra* note 284.

expired. Former Governor Caldwell, who had appointed Justice Hobson to the bench, was appointed in Hobson's place.³³¹

When Justice Barns resigned from the court in 1949, Governor Fuller Warren appointed B. K. Roberts to the position. Justice Roberts was born and reared in Sopchoppy, Florida. He attended college at the University of Florida, from which he also received a degree in law in 1928. After graduation, he practiced law in Tallahassee until the advent of World War II. He served in the military during the war, and then returned to Tallahassee to resume his lucrative law practice.³³² Justice Roberts served on the court for twenty-seven years, resigning in 1976 to return to private practice.³³³

In 1951 Alto Adams resigned from the court to run for governor. He was succeeded by John E. Mathews, a former member of the senate and the floor leader under Governor Warren. Although his health had begun to fail, Justice Mathews accepted the added responsibilities of the chief justiceship when his turn came up under the rotation system in January, 1955. He died soon afterwards of a heart attack.³³⁴

When Justice Roy Chapman died in 1952,³³⁵ Governor Warren appointed Harris E. Drew to the court in his place. Justice Drew received his law degree from Stetson University and was admitted to the bar in 1923. He was the attorney for the town of Palm Beach for twenty-nine years, from the time he graduated from law school in 1923 until his appointment to the supreme court. In October 1952, four months after his appointment to the court, he was elected to a six-year term. While serving on the bench, Justice Drew was the chairman of the Appellate Rules Committee and served two terms as chief justice.³³⁶

In 1954, during his first year in office, Governor Leroy Collins appointed two new justices to the court. Benjamin Campbell Thornall joined the court in May 1955 after Justice Mathews's death.³³⁷ Justice Thornall was born in Charleston, South Carolina in 1908, and received an LL.B. from the University of Florida in 1930. He served as city attorney of Orlando, county attorney of

331. *Id.*

332. 3 FLORIDA FROM INDIAN TRAIL, *supra* note 259, at 144.

333. *Id.*

334. *Id.*

335. In Memoriam Honorable Roy Harrison Chapman, *supra* note 285, at xli.

336. 3 SOUTHERN PUBLISHING Co., *supra* note 259, at 798.

337. Questionnaire, *supra* note 217 (response of Elizabeth Pierson).

Orange County, and legislative advisor and counselor to Governors Holland and McCarty.³³⁸ Justice Thornall served on the supreme court until his death in November 1970.³³⁹

Governor Collins's second appointee was Stephen C. O'Connell. Justice O'Connell was born in West Palm Beach in 1916, and graduated from the University of Florida College of Law in 1940. He established a general practice of law in Fort Lauderdale upon graduation, but interrupted it to join the military during World War II. Before his appointment to the bench, he served as city attorney of Hallandale.³⁴⁰ He served on the supreme court from 1955 to 1967.³⁴¹

The latter half of the 1950's marked the resurgence and rapid development of an issue that was to dominate Florida politics for many years to come—the issue of civil rights. The United States Supreme Court's landmark decision, *Brown v. Board of Education*,³⁴² had important ramifications in Florida. The response of the Florida Supreme Court to *Brown* exemplifies the court's independence and perseverance in promoting social justice, even while opposed by the other two branches of the state government. Although the Supreme Court of the United States had ruled in *Brown* that segregating races in public schools is unconstitutional, it gave no deadlines for implementing integration.³⁴³ Individual cases were referred to district courts, and segregationists, hoping for long delays, procrastinated in complying with the decision. Public officials in Florida, including Governor Leroy Collins and the attorney general of Florida, were reluctant to desegregate the schools.³⁴⁴ The Florida Legislature went even further and acted positively to preserve segregation. In June 1955 it passed a law reorganizing Florida's law on public schools, and continued to provide for schools segregated on the basis of race.³⁴⁵ The responsibility was thus on the Florida Supreme Court to take the first steps toward desegregation, and this it did in 1955 when it held that Virgil Hawkins, a black student from Daytona Beach, could not be denied admission to the University of Florida College of Law be-

338. 3 FLORIDA FROM INDIAN TRAIL, *supra* note 259, at 798; In Memoriam, 246-47 So. 2d (Fla. Cas.) 5, 22-23 (1971).

339. In Memoriam, *supra* note 338, at 23.

340. 3 FLORIDA FROM INDIAN TRAIL, *supra* note 259, at 797-98.

341. Supreme Court of Florida 5 (Jan. 1980) (public document).

342. 347 U.S. 483 (1954).

343. *Id.*

344. C. TEBEAU, *supra* note 68, at 441.

345. Florida School Code, ch. 29764, § 230.23(6)(a), 1955 Fla. Laws 380 (1955).

cause of his race.³⁴⁶ With this first step, the supreme court encouraged further efforts to desegregate the public schools during the 1950's and 1960's.

The supreme court's composition remained constant from 1955 to 1962, although its jurisdiction was changed by constitutional amendment in 1956.³⁴⁷ In the November general election, the voters approved a revision of article V to the Florida Constitution that established the district courts of appeal as intermediate appellate courts,³⁴⁸ and granted the supreme court new powers. The amendment authorized the supreme court to assign active or retired justices or judges to judicial service,³⁴⁹ to promulgate its own rules of practice and procedure,³⁵⁰ and to appoint a clerk and marshal of the court.³⁵¹ It also required for the first time that the justices devote their full time to judicial duties.³⁵² In addition, the new provision gave the court exclusive jurisdiction over the admission to the bar and the discipline of attorneys.³⁵³

The 1960's brought many changes to the Florida Supreme Court. Former Governor Millard Caldwell was appointed to the court in 1962 to complete the last few months of Justice Hobson's term, and was subsequently reelected. He retired from the bench in 1969, at the end of his elected term, to practice law in Tallahassee.³⁵⁴

In 1964 Governor Farris Bryant appointed Attorney General Richard Ervin to fill the seat vacated by Glenn Terrell.³⁵⁵ Justice Ervin was a progressive member of the court whose many dissenting opinions reflected his strong advocacy of human rights. For example, his dissent in *Gardner v. State*,³⁵⁶ in which Justice Boyd joined, championed the right of a defendant in a capital case to examine and respond to any presentence investigation reports re-

346. *State ex rel. Hawkins v. Board of Control*, 83 So. 2d 20 (Fla. 1955). The court, however, delayed issuing a preematory writ of mandamus ordering school officials to admit Hawkins, pending a determination of whether the university needed to make any adjustments before black students could be safely and satisfactorily admitted. *Id.* at 25.

347. FLA. CONST. art. V, § 4(2) (as adopted 1956).

348. *Id.* § 5.

349. *Id.* § 2.

350. *Id.* § 3.

351. *Id.* § 4(4).

352. *Id.* § 18.

353. *Id.* § 23.

354. Tallahassee Democrat, Aug. 19, 1980, § B1, col. 1.

355. Dyckman, *How Florida's Supreme Court Views Abortion, Crime, Mental Health, Women's Conjugal Rights*, St. Petersburg Times, Sept. 5, 1971 (Magazine), at 21, col. 5.

356. 313 So. 2d 675, 677 (Fla. 1975) (Ervin, J., dissenting).

viewed by the sentencing judge. The Supreme Court of the United States reversed the decision of the Florida Supreme Court, adhering to Justice Ervin's position that refusing the defendant permission to review and respond to the presentence report denied him due process.³⁵⁷ Justice Ervin also adamantly opposed the death penalty, considering it unconstitutional.³⁵⁸

Justice O'Connell resigned from the bench in 1967 to become president of the University of Florida. Wade L. Hopping was appointed to fill the vacancy, but was declared ineligible because he had not yet been a member of the Florida bar for ten years.³⁵⁹ Governor Kirk appointed former Justice Alto Adams to fill the vacancy in the interim. By the time Justice Hopping met the eligibility requirements and joined the court, there were only a few months left in the term. He was defeated in the 1968 election by Vassar Carlton,³⁶⁰ a former judge of the county and circuit courts at Titusville. James C. Adkins, Jr. and Joseph A. Boyd, Jr. were also elected to the bench in 1968, replacing retiring Justices Caldwell and Thomas.³⁶¹ Before joining the bench, Justice Adkins served as an assistant state attorney and circuit judge of the Eighth Judicial Circuit.³⁶² Justice Boyd, a graduate of the University of Miami, held positions as city attorney for the city of Hialeah, county commissioner and chairman of the commission for Dade County, and vice mayor of Dade County before joining the court.³⁶³

In 1970 Justice Thornall died after a protracted illness. Governor Kirk appointed David L. McCain, a Republican who had run unsuccessfully against Justice Adkins in 1968, to fill the vacancy.³⁶⁴ When Justice Drew retired before the end of his term in 1970, Hal P. Dekle was elected to succeed him. Like Justice McCain, Justice Dekle had run in the 1968 election, but lost in the primaries to Vassar Carlton.³⁶⁵

In 1972 the state adopted the revision of article V of the Flor-

357. *Gardner v. Florida*, 430 U.S. 349 (1977).

358. *See, e.g., Gardner v. State*, 313 So. 2d 675, 677 (Fla. 1975) (Ervin, J., dissenting); *Spinkellink v. State*, 313 So. 2d 666, 671 (Fla. 1975) (Ervin, J., dissenting); *State v. Dixon*, 283 So. 2d 1, 11 (Fla. 1973) (Ervin, J., dissenting).

359. *See* FLA. CONST. art. V, § 13A (as adopted 1966).

360. Dyckman, *supra* note 355, at 22, col. 4.

361. Supreme Court of Florida, *supra* note 341, at 11-12.

362. *Id.* at 11.

363. *Id.* at 12.

364. Dyckman, *supra* note 355, at 23, col. 1.

365. *Id.* at 21, col. 4.

ida Constitution that restructured the state's court system.³⁶⁶ For example, in an effort to remove politics from the process of appointing judges to fill vacancies, the revisions created a judicial nominating commission for each of the state's courts.³⁶⁷ The commission's function was to screen applicants for judicial posts whenever a vacancy occurred, and to tender at least three nominations to the governor.³⁶⁸

In the mid-1970's, there were again major changes on the court. In March 1974 Justice Carlton resigned, and Governor Askew appointed Ben F. Overton, formerly a circuit court judge in Pinellas County, to replace him.³⁶⁹ Later that year, Justice Ervin retired, and Arthur J. England, Jr. was elected to succeed him.³⁷⁰ Justice England attended the Wharton School of Finance and Commerce as an undergraduate, the University of Pennsylvania Law School, and received a master of laws degree in tax from the University of Miami. He served as consumer advisor and special counsel for Governor Askew before joining the court.³⁷¹

In the general election of 1974, Justice Adkins, who was then chief justice, ran unopposed and was elected to another six-year term, as were Justices Overton and Boyd.³⁷² Justice Boyd's race was bitterly contested, and his adversaries challenged his election, but the accusations against him were cleared by a special committee of the legislature the following year.³⁷³ When Justices Dekle and McCain resigned later that same year, Governor Askew appointed Alan C. Sundberg and Joseph W. Hatchett in their places.³⁷⁴ Then, in 1976, Frederick B. Karl was elected to replace retiring Justice B. K. Roberts.³⁷⁵

In 1976 the Florida Constitution was again amended to abolish the popular election of supreme court justices and district court of appeal judges, and to institute instead a merit retention system.³⁷⁶ Under the new system, voters would no longer choose from among several candidates, but rather would vote on whether a particular

366. FLA. CONST. art. V (as amended 1972).

367. *Id.* § 11; see also *id.* § 20(c)(5) (provision establishing composition of judicial nominating commission).

368. *Id.* § 20(c)(5).

369. See Supreme Court of Florida, *supra* note 341, at 13.

370. See *id.* at 10.

371. *Id.*

372. See *id.* at 11-13.

373. 1975 JOURNAL OF HOUSE OF REPRESENTATIVES 400.

374. See Supreme Court of Florida, *supra* note 341, at 6, 14.

375. See *id.* at 6.

376. FLA. CONST. art. V, § 10 (amended 1976).

justice should be retained in office for another six-year term.³⁷⁷ If the voters decided not to retain a particular justice, the governor would select his replacement.³⁷⁸

Before the first merit retention election was held, however, two new justices joined the court. When Justice Karl resigned in 1978 after serving a little over a year, Governor Askew appointed James E. Alderman, a former circuit court and district court of appeal judge.³⁷⁹ Then, Justice Hatchett resigned from the court in 1979 to accept an appointment to the United States Court of Appeals for the Fifth Circuit. To replace him, the newly elected Governor, Robert Graham, appointed Parker Lee McDonald, who had been a circuit court judge for over eighteen years.³⁸⁰

VIII. THE SUPREME COURT TODAY

On November 4, 1980, Justices Adkins, Alderman, Boyd, England, McDonald, and Overton won reelection by substantial margins in the first merit retention election.³⁸¹ Chief Justice Sundberg was not a candidate, since his term was not scheduled to end until January 1983. In the fall of 1981, Justice England resigned, and Justice Raymond Ehrlich was appointed in his place. Thus the current seven members of the Florida Supreme Court are Justices Adkins, Alderman, Boyd, Ehrlich, McDonald, Overton, and Sundberg.

Chief Justice Sundberg, a native Floridian, is the current chief justice of the Florida Supreme Court. Born in 1933, he received an LL.B. degree from Harvard Law School and an honorary Doctor of Laws degree from Stetson University. He was admitted to the Florida bar in 1958, and began a general law practice in St. Petersburg until appointed to the supreme court on May 5, 1975. Chief Justice Sundberg is a member of several civic and professional organizations and brings a wealth of experience to his position as chief justice.³⁸²

Justice James Alderman was born in Ft. Pierce, Florida in 1936. He received a Bachelor of Arts degree from the University of Florida in 1961 and a law degree from the same university. After graduation he began practicing law in Ft. Pierce, where he remained for ten years. First appointed as a county judge in 1971,

377. *Id.*

378. *Id.* § 11.

379. Supreme Court of Florida, *supra* note 341, at 15.

380. *Id.* at 16.

381. *Id.* at 10-13, 16.

382. *Id.* at 14.

Justice Alderman has since gained experience³⁸³ as a judge at all levels of the state court system. He was appointed to the Florida Supreme Court by Governor Askew in 1978.³⁸³

Justice James Adkins, another Florida native and graduate of the University of Florida Law School, began his legal career in 1938 as a research assistant for the Supreme Court of Florida. He brings to the bench twenty years of trial work and litigation experience and left behind a thriving law practice. He was appointed to the supreme court in 1969, and served as chief justice from 1974 to 1976.³⁸⁴

Justice Joseph Boyd, Jr. attended Piedmont College and Mercer University Law School in Georgia before coming to Florida in 1939. In 1948 he received his Juris Doctor degree from the University of Miami Law School. He practiced law in the city of Hialeah from 1948 to 1968, and was elected to the Supreme Court of Florida on November 5, 1968. He was reelected in 1974 for a six-year term, winning all sixty-seven counties except one in which there was a tie.³⁸⁵

Justice Overton was appointed to the Supreme Court by Governor Askew in 1974, and was subsequently elected to a six-year term in September 1974. During his term he served as chief justice from 1976 to July 1, 1978. Born in 1926 in Wisconsin, Justice Overton received a Bachelor of Science degree in business administration and a law degree from the University of Florida. Before his election as a supreme court justice, he had served for nearly ten years as a circuit court judge, and as chief judge for over three of those years.³⁸⁶

Justice Parker Lee McDonald was born and raised in Sebring, Florida, graduating in 1950 with a bachelor's degree in business administration and a Bachelor of Laws from the University of Florida. He was appointed circuit court judge in 1961 and continued to serve in that capacity until his appointment to the supreme court by Governor Graham in 1979. While a circuit court judge, Justice McDonald served in all divisions of the court, and served with each of the five district courts of appeal on special assignment.³⁸⁷

Justice Raymond Ehrlich was born in Swainsboro, Georgia. He

383. *Id.* at 15.

384. *Id.* at 11.

385. *Id.* at 12.

386. *Id.* at 13.

387. *Id.* at 16.

later moved to Florida, and received his undergraduate and law degrees from the University of Florida. After serving in the United States Navy during World War II, he began practicing law in Jacksonville in 1946. Governor Graham appointed Justice Ehrlich to the Florida Supreme Court in October 1981.

The Florida Supreme Court now stands on the threshold of a new era. The recent changes in its jurisdiction³⁸⁸ will give the court more time to reflect upon and decide general policy matters.³⁸⁹ With Florida rapidly becoming one of the nation's largest states, the supreme court finds itself increasingly treading upon new ground. The author hopes that this capsule history of the Supreme Court of Florida will help the justices and the people who appear before them to appreciate the court's responsibility to the citizenry of the state and nation.

388. FLA. CONST. art. V, § 3(b) (1980); see England, Jr., Hunter, & Williams, Jr., *An Analysis of the 1980 Jurisdictional Amendment*, 54 FLA. B.J. 406 (1980).

389. Supreme Court of Florida, *supra* note 341.