Nova Law Review

Volume 11, *Issue* 1 1986 *Article* 2

Looking Back on Eighteen Years as a Justice of the Supreme Court of Florida

Joseph A. Boyd. Jr.*

*

Looking Back on Eighteen Years as a Justice of the Supreme Court of Florida

Joseph A. Boyd. Jr.

Abstract

As I approach retirement after three six-year terms on the Florida Supreme Court, it seems natural to look back over the years to try to assess to some extent the experience I gained and the contributions I made to the development of the law in Florida.

KEYWORDS: Florida, justice, years

Looking Back on Eighteen Years as a Justice of the Supreme Court of Florida

Joseph A. Boyd, Jr.*

As I approach retirement[1] after three six-year terms on the Florida Supreme Court, it seems natural to look back over the years to try to assess to some extent the experience I gained and the contributions I made to the development of the law in Florida. The purpose of this paper is to share with the reader some of the highlights of my career as a lawyer and as a supreme court justice.

I. Personal Background

I have had a strong interest in government for almost as long as I can remember. When I embarked upon my legal career, I was naturally drawn to public affairs and served as Hialeah City Attorney and as a member of the Zoning Board before seeking election to the Dade County Commission in 1958. I served on the Commission for ten years before running for the supreme court in 1968.

I can trace my lifelong interest in government and public affairs to an incident that occurred when I was about six years of age. In Jackson County, Georgia, where I was reared, I observed convicts doing road work wearing striped clothing and leg chains. My grandmother told me that the men working in the chain gang were being punished for their bad deeds. She warned me that if I continued to fight with neighborhood boys I might end up on the chain gang myself. This made a deep and frightening impression on me, especially when I found it difficult to refrain from responding to provocations from other boys.

I confided my fear to my father, telling him that I didn't want to be put in the chain gang merely for defending myself. It was then that I first heard of one of the great safeguards of liberty under our consti-

* Associate Justice, Florida Supreme Court 1969-1987, Chief Justice, 1984-1986.

1. Although I will retire from the court in January, 1987, I have no plans to retire in the sense of abandoning or curtailing an active working life. I plan to resume the private practice of law with my son Joseph R. Boyd and Susan Thompson in the firm of Boyd & Thompson in Tallahassee.

tution of government by the rule of law: the writ of habeas corpus. My father told me that any imprisoned person could write a letter to a judge and that the judge could order the sheriff to bring the arrested person to court and explain the reason for the arrest. Thus, I was assured, an arrested person who had done no wrong would be immediately released by order of the judge. I have treasured this Great Writ ever since.

My early fascination with the righteous power of the rule of law was given another boost when a local plantation owner had a tenant farmer arrested for taking some cotton when the farmer moved without giving the landowner his share. The value of the cotton was minimal but the owner was offended by an act which he considered to be an affront to his authority. The bookkeeper at the plantation store was the justice of the peace and the farm superintendent was the constable. After the arrest, a preliminary hearing was set to be held at the plantation store. My father contacted a lawyer named Joe Quillian. Mr. Quillian was later to serve as a justice of the Georgia Supreme Court.

My father took my brothers and me to the hearing. We waited in front of the store and we witnessed Joe Quillian's arrival into town. To our eyes he was dressed "like a Spanish ambassador." He was a most impressive sight as he drove his gleaming black Ford with red wheels through the muddy roads of north Georgia. The mere presence of Joe Quillian was enough to prompt the landowner to dismiss his complaint against the sharecropper. The experience of observing this played a great part in my decision to dedicate my life to law and government.

The sheriff of our rural north Georgia county was a figure who inspired both fear and fascination to me as a boy. He was tall and wore a black, western-style hat, a leather vest and boots, and carried a large pistol at his side. I knew that the sheriff was the one who put criminals in the chain gang and who hanged murderers. Thus his appearance inspired a profound sense of dread for me.

One day, the sheriff came to our house to see my father. I was afraid that his purpose was sinister and I recall telling my brothers that our father was going to the chain gang. I followed the sheriff to the barn and watched as he approached my father. There I saw the sheriff offer my father a drink of illegal, confiscated moonshine liquor. I soon realized that the sheriff was merely campaigning for votes. My relief was mixed with a deep sense of moral outrage in the knowledge that the sheriff had probably jailed the moonshiner but was freely using the illegal whiskey himself. When I told my father how I felt about the sheriff, he explained that when I grew up I could vote to put the sheriff

out of office or even run for sheriff myself. In retrospect, the local sheriff was probably a good sheriff by the standards of that day.

These childhood experiences formed the basis of early learning in my life about concepts that were to run like a continuous thread throughout my career: the rule of law, fairness and due process, and democratic government through elections.

After graduation from high school I attended Piedmont College in Demorest, Georgia, paying my way through by working various jobs. After Piedmont, I attended Mercer University Law School for a year. During college and law school I sold Bibles, brushes, cleaning equipment, and automobiles. In my college dormitory I dealt in used appliances and clothing. After I departed Georgia and came to Miami, I sold bread and cakes on a bread-truck sales route, worked as a hotel night clerk and sold real estate. I still have an active real estate license.

In 1938, I married Ann Stripling of Hialeah. She was assistant city clerk of the City of Hialeah and a realtor. She would later be the office manager of my law practice and manager of all my political campaigns.

During World War Two I served in the United States Marine Corps. I attained the rank of sergeant and was stationed during most of the war in the South Pacific and the Far East. I served in the army of occupation after the Japanese surrender. I was among the first to enter the atomically devastated city of Nagasaki.

After my discharge from the Marines, I returned to Miami and finished my law studies, receiving my law degree from the University of Miami in February 1948. I immediately opened my own law office, and conducted a law practice from 1948 to 1969 specializing in real property, probate, and corporate law. From 1951 to 1958 I was City Attorney for Hialeah. From 1958 to 1968 I was a Dade County Commissioner, including a term as Chairman and Vice Mayor of the Metropolitan Dade County government.

When I was considering whether to seek election to the supreme court in 1968, there were numerous obstacles, some of which appeared nearly insurmountable. Nearly forgotten by the Floridians of today is the fact that there had traditionally been a strong sense of sectionalism in Florida, which manifested itself in a powerful animosity toward candidates from Miami seeking statewide political office. In the one hundred twenty-three years since statehood, only one United States Senator, George Smathers, had been elected from Dade County. No governor or cabinet member had been elected from Dade. Only two supreme court justices from Dade County — Armsted Brown (1925-

1946) and Paul Barns (1946-1949) — had served in the long history of the Court.

I overcame sectionalism and was elected in 1968. Two years later a majority of the cabinet was elected from Dade County and in 1978 Bob Graham became Florida's first governor from Dade County. I was reelected overwhelmingly in 1974 and in 1980 won a third term through the merit-retention election process.

Life in Tallahassee and working in the supreme court building were drastically different from the style of life and work my family and I had known in the international cosmopolitan setting of Miami. Having no prior judicial experience and being denigrated by some people as just a Miami politician, I felt I had to show my new colleagues that I could fit in and perform court work successfully. At that time the style, manner, and attitudes of a Miamian were so culturally different from those of Tallahassee that I sometimes felt from people's reactions that they regarded me as they would a visitor from a foreign nation.

II. The First Term: 1969-1974

During the beginning of my first term I quickly learned about the operation of the court and the process of making judicial decisions. The supreme court is a collegial body which must discuss issues and arrive at a consensus, ultimately making decisions by majority vote. I found that my experience as a county commissioner was very helpful in this regard because I know how to communicate with people. On the other hand, the work of a county commission is done very much in the open. Public pressures and community demands are an acknowledged part of the process. Judicial decision making is much more insulated from political pressures. The touchstone is analysis and application of the law rather than the preferences of the public.

Although the court is a collegial body, much of the day-to-day work on cases must be carried out by individual members working alone. Cases are assigned for evaluation and preparation of proposed opinions. This individual phase of the work is followed by voting and, if necessary, discussion in conference. In a difficult case, the process of reaching a majority decision expressed by an agreed majority opinion can require a special kind of leadership and persuasive ability. It is very different from the kind of leadership that makes for success in the legislative or executive branches of government. It was a very rewarding experience for me to feel that I had performed this leadership role successfully and well.

Needless to say, I was not always able to persuade a majority to agree with my views. Although the Earl Warren era was coming to a close when I came on the court, the trends that had been set in motion at the United States Supreme Court were continuing to influence the Florida judiciary. On several occasions, my views were more in tune with the theme of protection of civil liberties than were those of my colleagues. Early in my first term, there was a question of the extent of the applicability of *Gideon v. Wainwright*[2] to state trials of misdemeanor charges. In *State ex rel. Argersinger v. Hamlin*,[3] the Florida Supreme Court was squarely confronted with the issue of whether an indigent person accused of a misdemeanor was entitled to court-appointed counsel. In the absence of a definitive requirement of same, from the United States Supreme Court, the Florida Supreme Court followed the guidance found in existing precedents at that time. The court reasoned that any application of *Gideon* to misdemeanor trials "would apply to the right-to-counsel rule the same principles applicable to a determination of the right to a jury trial, namely, that this right extends only to trials for non-petty offenses punishable by more than six months imprisonment."[4] The court thus held "that an indigent defendant accused of a misdemeanor is entitled to court-appointed counsel only when the offense carries a possible penalty of more than six months imprisonment."[5] Because the maximum term available for the offense of which the petitioner had been convicted was six months and the record showed he had been sentenced to three months, the court held there was no right to court-appointed counsel.

I concurred in part and dissented in part, noting that the court's decision was a step in the right direction but insisting that it had not gone far enough.[6] I found that the degree or severity of the possible incarceration was immaterial under the sixth and fourteenth amendments. I concluded that court-appointed counsel should be available to any indigent accused person facing possible incarceration for any period of time whatsoever. Chief Justice Richard W. Ervin and Justice James C. Adkins, Jr. concurred with my opinion.

On certiorari, the United States Supreme Court reversed and held that an accused is entitled to court-appointed counsel whenever "one's

---

2. 372 U.S. 335 (1963).
3. 236 So. 2d 442 (Fla. 1970), *rev'd*, 407 U.S. 25 (1972).
4. *Id.* at 443.
5. *Id.* at 444.
6. *Id.* (Boyd, J., concurring in part and dissenting in part).

liberty is in jeopardy."[7] Thus there was inaugurated the practice, still followed today, of determining in advance of an indigent accused's trial whether any incarceration is contemplated in the event of conviction.[8] The court by drawing this line where it did was able to remedy the spectre of "assembly-line justice" where the defendant's personal liberty is at stake while leaving the states with a relatively free hand when dealing with many petty offenses not involving the threat of jail.

Another significant civil liberties case was *Smith v. State*.[9] There the Florida Supreme Court answered a challenge to the validity of Florida Statutes section 856.02,[10] commonly referred to as the Vagrancy Law. The court adhered to precedent, finding nothing "to persuade us to recede from our previous conclusion respecting the validity of Section 856.02."[11]

Joined by the late Justice E. Harris Drew, I dissented, expressing the following opinion:

> I must dissent to the majority opinion. The statute in question was designed long ago to prevent idle and irresponsible persons from living on the income of those who earned their living by the sweat of their brows.
>
> In our time a large portion of our population retires at an early age and is encouraged to relax in the Florida sunshine. Hundreds of thousands of tourists visit Florida. They should not be required to prove they have a lawful purpose. It would be a contravention of our basic understanding of constitutional rights to jail persons in this State for "wandering around without having a lawful purpose." Specifically the requirement that persons who wander around must have a lawful purpose is too vague to notify the public as to what standard of conduct the State requires. It seems logical to conclude that to prove an accused person has no lawful purpose the State must show the defendant was engaging in an unlawful purpose. The burden must be upon the State to prove one is doing an unlawful act.
>
> Vagrancy statutes have been widely used by police authorities to hold people remotely suspected of crimes while investigations were conducted. Modern interpretations of individual civil rights under state and federal constitutions clearly prohibit this now. If

7. Argersinger v. Hamlin, 407 U.S. 25, 40 (1972).
8. *See* FLA. STAT. § 27.51(1)(b) (1985).
9. 239 So. 2d 250 (Fla. 1970), *vacated*, 405 U.S. 172 (1972).
10. FLA. STAT. § 856.02 (1969).
11. *Smith*, 239 So. 2d at 251.

> one is engaging in unlawful conduct the State should charge the person with violating a specific law. There is certainly no shortage of criminal laws.[12]

As the majority had noted, the issue of the constitutionality of the statute and similarly worded municipal ordinances was at the time pending before the United States Supreme Court. In due course the Court rendered its decision in *Papachristou v. City of Jacksonville*.[13] There the Court noted the Vagrancy Law's derivation from the so-called "Poor Laws" enacted during the Elizabethan era in England. The Court struck down the statute on the ground of vagueness, but with a general overtone of substantive due process, that is, that there was no rational basis to support the law's criminalization of such behavior as idleness and wandering about without any purpose. The Florida Supreme Court's *Smith* decision was vacated and remanded for reconsideration in light of *Papachristou*.[14]

Later the Florida legislature reformed the vagrancy statute to create the "loitering and prowling" statute, Florida Statutes section 856.021.[15] I registered the same objections I expressed about the vagrancy law by concurring with the dissenting opinion of Justice Ervin in *State v. Ecker*.[16] I took the view that the law improperly allows police to approach and question people without any reasonable ground to believe they are doing anything wrong. The Florida Supreme Court recently reaffirmed its upholding of Florida Statutes section 856.021[17] in *Watts v. State*.[18] I reaffirmed my dissenting view.[19]

A significant case involving the first amendment was *Tornillo v. Miami Herald Publishing Co.*[20] In *Tornillo*, the court upheld the constitutionality of Florida Statutes section 104.38,[21] which required each newspaper to publish upon request the "reply" of any political candi-

---

12. *Id.* at 251-52 (Boyd, J., dissenting).
13. 405 U.S. 156 (1972).
14. Smith v. Florida, 405 U.S. 172 (1972). *See also* Comment, *Constitutional Law: Florida Vagrancy Legislation Invalidated*, 3 STETSON INTRAMURAL L. REV. 53 (1972).
15. FLA. STAT. § 856.021 (1973).
16. 311 So. 2d 104, 111 (Fla. 1975). *See also* Comment, *Constitutional Law: Florida's Vagrancy Statutes — Round Two*, 28 U. FLA. L. REV. 250 (1975).
17. FLA. STAT. § 856.021 (1973).
18. 463 So. 2d 205 (Fla. 1985).
19. *Id.* at 207 (Boyd, J., dissenting).
20. 287 So. 2d 78 (Fla. 1973).
21. FLA. STAT. § 104.38 (1971).

date whose "personal character" or record had been "assailed" in the "columns" of the newspaper. The Florida Supreme Court majority reasoned that the effect of the law was to enhance rather than abridge the freedom of the press because it guarded against abuse of the power of the press. The court relied heavily on the observation that modern newspaper publishing is an extremely difficult field in which to become and remain established, with the result that many newspapers have a monopoly in the markets they serve. The court also provided a limiting construction which it believed overcame the statute's vagueness problems.

I dissented, noting the problems of vagueness, but primarily on the ground expressed as follows:

> Since these constitutional provisions [the first amendment to the U.S. Constitution and article I, section 4 of the Florida Constitution] prohibit the government from limiting the right of the publishing press to publish news and comment editorially, it would be equally unconstitutional for the government to compel a publisher to print a statement of any other person, or persons, against that publisher's will.[22]

In *Miami Herald Publishing Co. v. Tornillo*,[23] the United States Supreme Court reversed the Florida Supreme Court's decision. The Court found that any rule of "forced access" to the use of the newspaper publisher's medium would require some kind of enforcement mechanism. Governmental enforcement must necessarily operate as a command to the publisher that certain matters be published. Such a command was the equivalent of "a statute or regulation forbidding" the publication of "specified matter."[24]

> Even if a newspaper would face no additional costs to comply with a compulsory access law and would not be forced to forgo publication of news or opinion by the inclusion of a reply, the Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the pa-

22. *Tornillo*, 287 So. 2d at 89.
23. 418 U.S. 241 (1974).
24. *Id.* at 256.

per, and treatment of public issues and public officials — whether fair or unfair — constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time. Accordingly, the judgment of the Supreme Court of Florida is reversed.[25]

III. Second Term: 1974-1980

In my second term, I continued to be very much concerned about constitutional rights. A noteworthy case was *McArthur v. State*.[26] There the appellant argued, among other things, that the evidence presented at her trial was legally insufficient to support her first- degree murder conviction. The state's case was based essentially on circumstantial evidence. It was undisputed that Mrs. McArthur had held the gun that had fired the bullet that had killed her husband. What was questionable was whether she had intentionally pulled the trigger. The court found merit in the appellant's argument that the evidence was not incompatible with all reasonable hypotheses of innocence. Although it thus found that the state had not carried its burden of proof, the majority nevertheless directed that the state be allowed to seek conviction in a second trial. I dissented to this portion of the court's decision on the ground of double jeopardy.[27]

The state did indeed mount a second prosecution on the same charge, and when the defendant sought to block the trial, the Florida Supreme Court, in a decision in which I did not participate, denied her petition for writ of prohibition.[28] On certiorari[29] the United States Supreme Court vacated the judgment and remanded "for further consideration in light of" *Greene v. Massey*[30] and *Burks v. United States*.[31] On remand the five-man court that had denied prohibition found, in accordance with *Greene* and *Burks*, that reversal for insufficient evidence is the equivalent of a judgment of acquittal so that a second trial

25. *Id.* at 258.
26. 351 So. 2d 972 (Fla. 1977).
27. *Id.* at 978.
28. McArthur v. Nourse, 358 So. 2d 132 (Fla. 1978).
29. McArthur v. Nourse, 438 U.S. 902 (1978).
30. 437 U.S. 19 (1978).
31. 437 U.S. 1 (1978).

was prohibited by the Double Jeopardy Clause.[32]

During my first term the United States Supreme Court had decided *Furman v. Georgia*,[33] striking down numerous state death penalty laws. The Florida legislature adopted a new death penalty law before the year was out.[34] Review of capital convictions and sentences was to become one of the heaviest burdens placed on the Supreme Court of Florida.

There was much litigation over the procedure by which death sentences were imposed. In *Gardner v. State*,[35] the court affirmed a murder conviction and death sentence. I concurred with Justice Ervin's dissenting opinion which expressed the view that it was improper for the trial judge to consider a presentence investigation report without providing the contents thereof to the defendant before sentencing.[36] The United States Supreme Court vacated the death sentence, holding that any such report must be provided to the defendant for the purpose of allowing responsive explanation or argument before sentencing.[37]

In 1979, Florida carried out its first execution of a capital sentence since 1964. The offender's name was John Spinkellink. In 1975, I had authored the opinion on Spinkellink's initial appeal, affirming his conviction for first-degree murder and the sentence of death.[38] There were numerous post-conviction proceedings filed in the case in 1979, and as author of the original opinion I was obliged to defend the court's original decision on the appeal to my colleagues. This process continued right up until the moment of execution as lawyers for Spinkellink and death-penalty opponents filed pleading after pleading to try to block the execution.

The adjudication of death penalty cases, including evidentiary, procedural, and constitutional issues, has always been a very heavy burden for me. I have expressed numerous times, in court opinions and elsewhere, my *personal* views about capital punishment. Although I have mixed emotions concerning it, both on religious and on practical grounds, the vast majority of Floridians favor death as a punishment in certain instances. As I believed I had no authority to substitute my

---

32. McArthur v. Nourse, 369 So. 2d 578 (Fla. 1979).
33. 408 U.S. 238 (1972).
34. 1973 Fla. Laws 72-724.
35. 313 So. 2d 675 (Fla. 1975).
36. *Id.* at 677 (Ervin, J., dissenting).
37. Gardner v. Florida, 430 U.S. 349 (1977).
38. Spinkellink v. State, 313 So. 2d 666 (Fla. 1975), *cert. denied*, 428 U.S. 911 (1976), *reh'g denied*, 429 U.S. 874 (1976).

judgment for that of the people on this policy question, I was obliged to follow and apply the law to the cases that came before me. No justice has been more consistent in affirming death penalties than I have.

At the same time, however, I have always tried to be very conscientious about reviewing the evidence of guilt in capital cases to be certain that the conviction is justified. I have frequently clashed with my colleagues over the standard to be applied when judging the legal sufficiency of the evidence to support the verdict of guilt.[39]

IV. Third Term: 1981-1986

In my third term I continued to provide maximum possible protection to the fundamental constitutional rights of individuals. I authored the opinion in *Department of Education v. Lewis*,[40] where the court held that a proviso in an appropriations bill was unconstitutional. The proviso, found in the general appropriations bill that became chapter 81-206, Laws of Florida,[41] purported to withhold state funds from any state-supported college or university, and from its students, "that charters or gives . . . assistance to or provides meeting facilities for any group or organization that recommends or advocates sexual relations between persons not married to each other."[42] The proviso was struck down on two grounds.[43] First, it was a violation of article III, section 12 of the Florida Constitution, which provides:

> Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.[44]

The second ground of unconstitutionality was that the proviso was an infringement on the freedoms of expression and association.[45] We reasoned that students cannot be made to surrender their constitutional rights at the campus gate and that schools making meeting rooms and facilities available to some student groups could not deny these benefits

---

39. *E.g.*, Thompson v. State, 494 So. 2d 203 (Fla. 1986); Riley v. State, 366 So. 2d 19, 22 (Fla. 1978).
40. 416 So. 2d 455 (Fla. 1982).
41. *Id.* at 458.
42. *Id.* (citing Act effective July 1, 1981, ch. 81-206, 1981 Fla. Laws 621, 645).
43. *Id.* at 463.
44. FLA. CONST. art. III, § 12.
45. *Department of Education*, 416 So. 2d at 462.

to other groups on the ground of the views and beliefs expressed. "The right of persons to express themselves freely is not limited to statements of views that are acceptable to the majority of people."[46] The opinion concluded:

> Those who fought in the American Revolution and adopted the Constitution and the Bill of Rights included persons of widely varying religious, political, and moral views. They were moved by the desire to establish limited government and to enshrine certain fundamental personal rights as immune from governmental infringement. In order to secure to all the liberty they had gained, the framers of the First Amendment wrote it in broad, liberal terms. The history of the interpretation of the First Amendment shows a steady movement toward protecting the free-speech rights of persons of all political and moral views. Ours is a nation rich in diversity, and our strength has been in our practice of allowing free play to the marketplace of ideas. We consist of many divergent associational groups, and "[a]s to each group, there are sectors of the community to whom its values are anathema." *Gay Students Organization v. Bonner*, 509 F.2d 652, 658 (1st Cir. 1974). Nevertheless, "[t]o permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship." *Police Department v. Mosely*, 408 U.S. 95, 96, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972).
>
> We therefore hold that the proviso violates the freedom of speech under the First Amendment and article I, section 4 and is unconstitutional.[47]

I authored the court's opinion in *Odom v. Deltona Corp.*,[48] which held that the State of Florida was estopped to deny the validity of deeds executed by the Board of Trustees of the Internal Improvement Fund and that the Marketable Record Title Act operated to perfect the title of landowners as against the claims of the state that title to sovereignty lands had not passed.

In *Coastal Petroleum Co. v. American Cyanamid Co.*,[49] the court distinguished *Odom* and held that the Marketable Record Title Act did not operate to cut off state claims to sovereignty lands. The court also

---

46. *Id.* at 461.
47. *Id.* at 463.
48. 341 So. 2d 977 (Fla. 1976).
49. 492 So. 2d 339 (Fla. 1986).

found that deeds given by the Trustees one hundred years ago did not include sovereignty lands encompassed by the legal descriptions and that the state was not estopped to deny that such lands were included. I dissented, finding that the conveyances conveyed what they said they conveyed, that the state was estopped to assert otherwise and that in any case, MRTA perfected the title of the private landowners.[50] I said:

> Much has been written and spoken, in the communications media and elsewhere, concerning the legal issues in this case and the related political issues. Many have suggested that the courts are being asked to give away state-owned lands. The truth is that the lands in question here, as well as other lands, were legally conveyed by authorized state officials. It may very well be the case that in doing so, public officials failed to exercise care and diligence on behalf of the public. But the fact that decisions of former officials were unwise is no reason to now penalize innocent purchasers who paid market value and relied upon state officers' authority to sell. I can see no constitutionally permissible basis for the state to recover such lands except by purchase or by eminent domain based on a public purpose and the payment of just compensation.
>
> There has also been much public discussion of the effect of the Marketable Record Title Act. I agree with the district court's holding that MRTA applies with the same force to land claims of the state as to those of private claimants. The law was intended to apply and should apply to all real estate claims without any exception for those of the state. Under MRTA, the claims of the state in these cases are asserted too late and cannot be revived. If private claimants were to seek to call into question the deeds of an ancestor given one hundred years ago, based on mistakes, reservations or infirmities not preserved by re-recording under the statute, such claims would be barred under MRTA. The same rule should apply against the state because of the overriding interest in the stability and marketability of land titles.
>
> Constitutional protection of private property rights is an essential feature of our form of government and our society. Whenever the awesome power of government is used to extract from people their lives, liberties, or property, their only refuge is in the courts. The circuit court orders in these cases correctly preserved the vested rights of real property owners against attempted state confiscation. The district court was in my view correct in affirming those circuit court judgments. I would approve the district court deci-

50. *Id.* at 345-49 (Boyd, J., dissenting).

sions. I therefore respectfully dissent.[51]

Some people take the view that property rights are not as important as other personal rights and therefore hold the government to a lower standard of justification when property rights are infringed upon than when the rights of life, personal liberty, or other personal freedoms are concerned. This is a fallacy because rights of property are crucial to an individual's ability to construct a decent and secure life.

In *Roush v. State*[52] I dissented from the court's decision to allow the closure of a business and seizure of its property without proof that the owner had done anything wrong. The court approved such "remedies" imposed through a summary procedure with only an inference of wrongdoing by the owner, because the penalties provided by the law were deemed to be civil rather than criminal. I said that a closure of a business and seizure of its property were severe penalties regardless of what they were called. There had been no proof, and none had been required in the court's view, that the owner of the business had knowingly and intentionally done anything wrong. In dissent I said:

> The concept of due process, the presumption of innocence, the requirement that only those shown to have violated published laws may be subjected to penal sanctions — these are principles that the founders of this Republic found so important that they insisted on their being written into the basic charter as the Bill of Rights. They were intended as protections against arbitrary and oppressive governmental action. The framers of the Bill of Rights knew from history and from personal experience that without such protections, the rights of individuals are commonly trampled upon by kings and governments as they go about the business of promulgating and enforcing "public policy."[53]

In 1984, the court decided the appeal of the notorious Ted Bundy, who had been convicted of the sorority house murders that took place in Tallahassee in 1978. By random assignment I was given the task of evaluating the briefs and record and preparing a proposed opinion. The record on appeal was voluminous because the tax-paid, court-appointed public defenders and other lawyers who helped Bundy provided every conceivable kind of defensive tactic through discovery, pretrial motions,

---

51. *Id.* at 349 (Boyd, J., dissenting).
52. 413 So. 2d 15 (Fla. 1982).
53. *Id.* at 23 (Boyd, J., dissenting).

trial motions and objections, and post-trial motions. The issues raised on appeal were difficult, some of them novel and highly complex. The court's opinion was very long compared with other capital cases. The unanimous decision of the court was to affirm the convictions and sentences.[54]

Other noteworthy cases I authored in the 1980's included *First American Title Insurance Co. v. First Title Service Co.*[55] In this case, the court receded from the long standing rule that the liability of a land title abstracter for negligent performance extends only to one in contractual privity with the abstracter.[56] At the same time we resisted the demand for a ruling that the abstracter is liable to anyone foreseeably damaged.[57] We chose a carefully crafted middle position and held that the abstracter's duty of care extends not only to one in privity but also to known third-party users of the abstract.[58] Thus, we gave protection to persons for whose benefits abstracts are prepared without exposing abstracters to indefinite and perpetual contingent liability.

> The effect of our holding in this case will be to change the law of abstracter's liability, but not so drastically as the petitioner would have us change it. Where the abstracter knows, or should know, that his customer wants the abstract for the use of a prospective purchaser, and the prospect purchases the land relying on the abstract, the abstracter's duty of care runs, as we have said, not only to his customer but to the purchaser. Moreover, others involved in the transaction through their relationship to the purchaser — such as lender-mortgagees, tenants and title insurers — will also be protected where the purchaser's reliance was known or should have been known to the abstracter. But a party into whose hands the abstract falls in connection with a subsequent transaction is not among those to whom the abstracter owes a duty of care.[59]

I also authored the majority opinion in *Chase Federal Savings & Loan Association v. Schreiber.*[60] In *Schreiber*, the majority held that a

---

54. Bundy v. State, 455 So. 2d 330 (Fla. 1984), *cert. denied*, 106 S. Ct. 1958 (1986).
55. 457 So. 2d 467 (Fla. 1984).
56. *Id.* at 469.
57. *Id.* at 471.
58. *Id.* at 473.
59. *Id.* at 473.
60. 479 So. 2d 90 (Fla. 1985).

deed, to be effective to convey title to real property, was not required to be supported by consideration.[61] Consideration was a matter of form in land transfers and it had become a formal requirement in deeds quite by accident.[62] We found no valid prohibition in Florida law against a person giving real property by deed to a non-relative and no reason for such a prohibition. Thus we rejected the attempt of an estate to set aside the gratuitous deed of a decedent, where there was no allegation or showing that the deed was not made voluntarily, intentionally, and without duress or undue influence.

In *Nodar v. Galbreath*,[63] the court affirmed the doctrine of qualified privilege to hold that a parent could not be held liable for slander based on statements made to a school board about the performance of his child's teacher. We found that the parent had a privilege to speak and had not abused the privilege.[64] At the same time we rejected the request of the news media to declare that a teacher was a public official[65] for purposes of the "actual malice" standard of *New York Times Co. v. Sullivan*.[66]

In *Department of Transportation v. Nalven*,[67] I wrote for the majority to adhere to the traditional, constitutionally required rule that a taking of property by eminent domain requires the payment of full compensation measured by market value at the time of the taking.[68] The State of Florida was forthrightly trying to erode that constitutional right based on the argument that the planning of a road project had itself enhanced the value of the property.[69]

V. Chief Justice: 1984-1986

When I first came on the court, I learned that the official seal of the court bore the motto "Sat cito si recte," which means "soon enough if correct." I have believed ever since that the court seal should be changed. Cases should be decided carefully, but litigants and the public are also entitled to have them decided with reasonable timeliness. If the

61. *Id.* at 101.
62. *Id.* at 99.
63. 462 So. 2d 803 (Fla. 1984).
64. *Id.* at 809.
65. *Id.* at 808.
66. 376 U.S. 254 (1964).
67. 455 So. 2d 301 (Fla. 1984).
68. *Id.* at 307.
69. *Id.* at 304.

judiciary cannot provide timely resolution of cases, society will turn increasingly to the use of administrative tribunals to resolve cases more efficiently.

When I became Chief Justice in 1984, I finally got an opportunity to do something about court delay. I organized a committee to study court efficiency and by administrative order I promulgated standards setting maximum time periods for the conclusion of various specific classes of litigation including a six-month limit for appellate cases. My efficiency committee formed the basis for the later creation of the Florida Judicial Council, which makes recommendations on a broad range of judicial management matters. The time standards I announced by administrative order were later promulgated as rules of judicial administration on the recommendation of the Judicial Council. These efforts attracted attention throughout the nation, including a commendation from Chief Justice Warren Burger.[70]

Another consequence of becoming Chief Justice was that I had the responsibility of communicating on behalf of the court with numerous entities within and without the court system. One of the most difficult jobs was the responsibility of informing the Governor of Florida on request that no order of the court provided any basis for blocking a scheduled execution.

On the day of a scheduled execution, the justices would arrive at the court building at around 6:00 a.m. in order to be ready to review any petitions that might be filed seeking a stay of execution. The clerk's office would be open for the purpose of receiving any such petitions. Telephonic communication would be established between the Governor's office and the Chief Justice's office at about one hour before the scheduled execution and would remain open until the scheduled time of 7:00 a.m. At that point, I, as Chief Justice, would inform the Governor that nothing had been filed that would legally stand in the way of his carrying out the execution. Having received such information, the Governor would tell the warden to proceed. Several minutes later the Governor would inform the Chief Justice that the execution had been carried out. I performed this difficult function as Chief Justice on several occasions during 1984-86.

---

70. *See* Boyd, *Streamlining Judicial Proceedings*, TRIAL, Sept. 1986, at 6 (letter to the editor).

VI. Conclusion

Beginning in the 1920's and greatly increasing during the depression of the 1930's, large numbers of indingent, transient men came to South Florida. They rode freight trains, hitchiked, or drove old automobiles. They came for the warmth and the easy lifestyle. Many lived on handouts or petty thievery and slept wherever they could find a dry place.

It was common practice in those days for criminal court judges to resolve prosecutions of petty criminal cases by suspending sentences on criminals from other places if they would agree to leave Florida. There was a general feeling in favor of getting such "bums" out of town and that this was preferable to sheltering and feeding them at public expense. Of course, some such defendants agreed to leave but then came right back. On occasion, those persons who had been "banished" and were brought into court a second time would be punished for their earlier offense as well as for the second infraction.

This kind of criminal sanction was still being used when I started practicing law in 1948. My very first court appearance was on behalf of a plumber whose life was complicated by the simultaneous existence of a wife, a girlfriend, a drinking problem, and bad teeth.

My client had saved three hundred dollars and had been planning to use the money to pay a dentist to fix his teeth. He did not trust his wife and he had left the money with his girlfriend. She lived with her mother in a small white frame house. My client was accused of having gone to her house drunk, saying that he wanted his money to buy a swamp buggy. She refused, saying that he needed the money for dental expenses.

It was alleged that my client then flew into a rage, physically attacked the girlfriend and her mother, threw red paint all over the house, and then began demolishing the house with an axe. My client was arrested by an off-duty policeman, taken to jail, and released on bail.

The judge knew that it was my first court appearance and said he preferred not to send my client to jail. He said that if my client would leave Miami on the four o'clock train for New York he would hold the charges in abeyance. This appeared to be a reasonably favorable outcome to my client and me in view of the evidence and the possible punishment. My client left town as directed and I never heard from him again.

It was somewhat ironic — and was the kind of thing that makes a

long career in the law very interesting — that twenty years later one of the first court opinions I authored as a Florida Supreme Court Justice declared that the indefinite suspension of sentence with a condition of "banishment" was legally improper under Florida law.[71] In *State ex rel. Baldwin v. Alsbury*,[72] the petitioner had been convicted of shoplifting in 1964 and sentenced to sixty days in jail. The sentence was suspended on condition that the defendant leave Miami Beach. In 1969 he was arrested again in Miami Beach, charged with shoplifting and found not guilty. However, the municipal court ordered that he be required to serve the remainder of the 1964 jail sentence. A unanimous panel of the court concurred in my opinion holding "that the court was without power to indefinitely suspend a sentence in return for petitioner's promise to stay out of town. The maximum sentence authorized . . . has long since expired."[73] While I had believed the procedure was lawful when it seemed to benefit my client, I was instrumental in putting an end to the procedure, which was inherently discriminatory and susceptible of being abused.

Whatever success I have enjoyed I owe largely to the efforts of my family. My parents were of modest means but they gave me the discipline and encouragement I needed to do well in school and achieve my goals.

As I stated previously, in 1938 I married Ann Stripling of Hialeah. She managed my law office while conducting her own real estate business. She managed all my political campaigns and provided crucial support, encouragement, and business expertise. I could never have succeeded in achieving my goals were it not for this lasting partnership.

Our five children are all grown now and are all embarked on their own professional careers.[74] They always helped me in my political cam-

---

71. State *ex rel.* Baldwin v. Alsbury, 223 So. 2d 546 (Fla. 1969).

72. *Id.*

73. *Id.* at 547.

74. Our eldest child, Joanne Goldman, is a former United States Naval Intelligence officer. She is now a teacher and lives in Rockville, Maryland, with her husband Robert Goldman, also a former naval officer, and their two sons James and Thomas.

Our second child is Betty Jean Jala, a realtor, who is married to David Jala of Atlanta, where they live with children Jason and Joanne.

Our elder son is Joseph Robert Boyd who practices law in Tallahassee in the firm of Boyd and Thompson. His wife is Sue Boyd (she is also his officer manager). He has two sons, Joseph Robert, Jr., and Jonathan.

Our younger son is James Boyd, a certified public accountant who lives in Tallahassee and has two children, Stacy and Lindsay.

paigns and always conducted themselves according to the high standards befitting the family of a public official.

Finally I express my thanks to the people of Florida who supported, encouraged and voted for me. They did me the supreme honor of letting me serve them on their supreme court.[75]

Our youngest child is Jane Boyd, who recently graduated from Florida State University College of Law and is employed by The Florida Bar.

75. I am deeply indebted to Nancy Shuford, who has worked with me with the utmost loyalty and patience as my secretary for the last twelve years. I also express my gratitude to all the justices and court personnel with whom I worked for the past eighteen years, including all the young lawyers who have worked for me as research aides, especially including James Logue and Randall Reder.