The Centennial History of the Court of Appeals of Georgia, 1906–2006

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In Memory of Tom Watson Brown, 1933–2007,
lawyer, philanthropist, historian, raconteur, and friend.

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Preface

History does not follow a script or a guideline; it does not follow an outline or a paradigm; it does not follow a mountain or a valley. History evolves based upon the habits, customs, and mores of a people.

Institutions are not invented. They are devised and founded based upon needs, desires, and necessities, but their effectiveness and vitality always rest with people because institutions are founded to help people navigate through the perils and travails of life in pursuit of a better life. Hence any institution — religious, civic, social or political — has to be both responsible and responsive to people.

The judiciary may appear to be an abstraction to some, but courts reflect the utilitarian values of this so-called abstraction. Courts place a face on this abstraction as they protect the rights of citizens vis-à-vis citizens, as they protect the rights of citizens from an overreaching government, as they protect citizens from vigilante justice, and as they protect the functions of a tripartite government to ensure that each of its branches remains within its proper sphere of authority.

So history follows events and their duration; and, for the most part, it follows the major or dominant participants in those events. It is the historian who captures and chronicles those events. It is the historian who fleshes out the circumstances of those events by providing context and interpretation because history does not occur in a vacuum.

In this, *The Centennial History of the Court of Appeals of Georgia*, our historians seek to lay bare the history of our court. The record of the Court of Appeals is an enviable one; the history of the Court of Appeals is an inspiring one; and the future of the Court of Appeals beckons us with the same significance that faced our predecessors. Looking back, we salute our ancestors; looking forward — as every generation must — we challenge posterity that there shall be no retreat from those twin virtues of liberty and justice.

John H. Ruffin, Jr.
Chief Judge
Atlanta, Georgia
September, 2006

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The Crisis

A crisis in Georgia's judicial system brought about the creation of the Court of Appeals. By the 1890s, the Supreme Court, then in the fifth decade of its existence, struggled to adjudicate a caseload that had grown precipitously since the court's inception in 1845. The Supreme Court had less than 100 cases its first year, and over 700 in 1894. From 1845 when there were 93 counties and 11 circuits, Georgia had grown to have 137 counties and 23 circuits. The population of the state had increased from less than 800,000 people to an estimated 2,000,000. The emergence of the "New South" foreseen in 1886 by Henry W. Grady, the renowned editor of the *Atlanta Constitution*, had brought new life to the state economy and generated more litigation.

The Supreme Court, Georgia's only appellate forum, was overwhelmed. It was apparent to bench and bar alike that something must be done to relieve the ever-increasing burden. The longer opinions of earlier years in which contrasting legal theories and precedents were presented and discussed in depth for the edification of the bench and bar had been replaced by shorter opinions limited to the facts of the case and the applicable law. The decisions of the three justices were still thorough and well written, but discussion of judicial precedents, analyses of statutory provisions, and the development of various legal doctrines were necessarily curtailed. So serious was the crisis that it began to appear in the press as illustrated by an article from the *Atlanta Constitution*.

> *No one familiar with the actual condition of legal matters in this state can seriously question the actual necessity for the increase in the number of judges on our supreme court. The security of life and property demand an increase for, as the court is now constituted, it is a physical impossibility for the three judges to give the requisite time and examination to the causes submitted were each one to work for full ten hours per day from the first to the last day of each year. It is the interest and welfare of the people that is at stake.*[1]

It was apparent that a constitutional amendment to increase the number of justices on the Supreme Court was needed. Politics resulted in delay. In 1893 and 1894 a constitutional amendment was passed by the Georgia legislature to increase the number of judges on the Supreme Court. Unfortunately, both failed to be ratified by the public, despite support from the Georgia Bar Association. Frustrated over the lack of progress in resolving the problem, Chief Justice Logan E. Bleckley resigned in October 1894. Despite his striking appearance,[2] Bleckley was well respected and his resignation stunned the legal com-

[1] "Increase of Judges," *Atlanta Constitution*, August 19, 1894, 18,1, quoting the August 19, 1894 *Hawkinsville Dispatch.*

[2] With a beard down to his navel, hair to his shoulder, and standing 6 feet, 5 inches, Bleckley was once described as talking like Blackstone and looking like Santa Claus.

munity. His resignation provided the catalyst for the legislative and public support that was necessary for the passage of a constitutional amendment to enlarge the Supreme Court and to eventually create the Court of Appeals of Georgia. An 1896 amendment increased the number of justices on the Supreme Court to six, all of whom were seated in 1897. Relief for the judicial burden had come at last, but the need for an additional appellate court was still apparent.

Logan E. Bleckley

In 1902, the Georgia Bar Association appointed the Committee on the Relief of the Supreme Court, consisting of one member from each of the congressional districts.

> *This movement—if we may call it such—this movement for the relief of the Supreme Court is of no recent origin. I think it is unfortunate that it has been termed a movement for the relief of the Supreme Court. It is a movement in behalf of the administration of the law, for the relief of those whose lives, whose liberty, whose property, is involved, those who have been given under the Constitution of the State the right to have an adverse decision reviewed. That's what it is, no more, no less.*[3]

Over the next few years, as the Supreme Court caseload continued to increase, it became feared that the court would be unable to comply with the constitutional requirement to dispose of cases within two terms of court and cases would be affirmed by operation of law. A number of suggestions arose at the annual bar association meetings: the creation of twelve separate courts of appeal in the various judicial circuits throughout the state; establishment of a monetary threshold for appeal; restriction on appeals from the trial courts; and creation of two divisions of the Supreme Court, one for civil cases and one for criminal cases. As time passed, a consensus developed that the establishment of a single appellate court in Atlanta was best. In 1903, a bar association committee adopted the suggestion of Justice Samuel Lumpkin for the creation of a court of appeals with jurisdiction over all cases except those reserved to the Supreme Court. Its decisions would be subject to review by the Supreme Court by writ of certiorari.

The Creation of the Court

Finally, in 1906, the legislature, with the support of Governor Joseph M. Terrell, passed a proposed amendment to the Georgia Constitution of 1877 that would accomplish these purposes. The amendment was ratified by the public on October 3, 1906.

The amendment limited the jurisdiction of the Supreme Court to three classes of cases: (1) civil cases originating in the superior court, or carried thereto from the court of ordinary [probate court]; (2) all cases of correction of capital felonies; and (3) determination of questions certified to it by the Court of Appeals. All other cases were within the jurisdiction of the Court of Appeals, but any constitutional issues were to be certified by it to the Supreme Court.

Although the original draft of the constitutional amendment had proposed a court of appeals consist-

[3] Justice Andrew J. Cobb, "Report of the Twenty-Third Annual Meeting of the Georgia Bar Association," in Orville A. Park, ed., Atlanta: Franklin-Turner Company, 1906, 23.

ing of five judges to be appointed by the governor for staggered terms, the amendment as finally passed established a Court of Appeals of three judges to be elected in the following manner:

> *The Governor shall, immediately [up]on the ratification of this amendment, call an election, to be held on Tuesday after the first Monday in November, Anno Domini nineteen hundred and six, at which the judges of the Court of Appeals shall be elected in the manner in which Justices of the Supreme Court are elected.… The terms of office of the judges then elected shall begin on the first day of January, Anno Domini nineteen hundred and seven, and shall continue respectively two, four and six years and until their successors are qualified. The persons so elected shall, among themselves, determine by lot which of the terms each shall have, and they shall be commissioned accordingly by the Governor.*

The candidates on the November ballot would be those nominated in the Democratic primary election of October 3. Sixteen candidates qualified: Thomas J. Chappell of Columbus, Fred Foster of Madison, Thomas F. Green of Athens, William R. Hammond of Atlanta, Frank Harwell of LaGrange, William M. Henry of Rome, Benjamin H. Hill, Jr., of Atlanta, Charles S. Jones of Macon, Charles G. Janes of Cedartown, George S. Jones of Macon, Henry C. Peeples of Atlanta, Arthur G. Powell of Blakely, P.P. Proffit of Elberton, David M. Roberts of Eastman, Richard B. Russell of Winder, Howard Van Epps of Atlanta, and B. S. Willingham of Forsyth. "Judge Russell had not announced his own candidacy, but, at the last moment, just before the entries for the primary closed, his friend Walter Brown of Atlanta had paid the fee and entered his name."[4]

What was the Nation Like When the Court was Established?

In 1906 there were 76 million Americans. It was a period of significant immigration from Europe; over 1.29 million immigrants came to the US in 1906. In 1907, the average worker made $12.98 a week in wages. In the year 1907, the Wright Brothers made their first flight at Kitty Hawk. Sears & Roebucks and Montgomery Ward catalogs were the most read books after the Bible.

In Europe, nations began the face-off that would lead to war within seven years. Prussia, Austria-Hungary, and Italy formed the Triple Alliance, to which Britain, France, and Russia responded with the Triple Entente. President Theodore Roosevelt, whose "Great White Fleet" showed the Stars and Stripes in a cruise around the world, continued to increase the size of the United States Navy. These ominous developments caused no concern to the newly formed court or its operations, but within a decade all Americans would be affected by the conflict to be known as "The World War."

[4]Arthur G. Powell, "The Birth of the Court of Appeals," *Georgia Review 2/2* (Summer 1948): 150.

Each candidate had to pay a qualifying fee of $100. "On the basis of early returns, the press of the state announced as the probable nominees, Judge Russell, Arthur G. Powell, and Henry C. Peeples, in the order named. But on the final count, Benjamin H. Hill, Jr. nosed Peeples out by a small margin. The amendment creating the court was strongly opposed in some sections, but it was ratified by a safe majority, and a few days later it was proclaimed by the Governor as adopted."[5]

Judges Russell, Powell, and Hill were unopposed in the general election in November, which also confirmed the passage of the constitutional amendment creating Ben Hill County, named after Judge Hill's father. The three judges took office on January 1, 1907, and proceeded immediately to draw for terms by lot as the legislation had provided. Judge Russell drew the six-year term, Judge Powell the four-year term and Judge Benjamin Hill the two-year term. Each of them was subsequently re-elected.

[5]Arthur G. Powell, "The Birth of the Court of Appeals," *Georgia Review* 2/2 (Summer 1948): 150.

The First Judges

The first three judges of this court were a son of a famous United States (and Confederate) senator, the father of a famous United States senator, and the author of one of the finest legal treatises ever written in the state of Georgia. Each was an able and experienced attorney of the highest reputation.

Benjamin Harvey Hill, Jr.

Benjamin Harvey Hill, Jr., was baptized as Cicero Holt Hill, but while in college changed his name to Benjamin Harvey Hill in homage to his late father.

Benjamin Harvey Hill

Upon its organization, Judge Hill became the first chief judge of the Court of Appeals of Georgia. Hill was a graduate of the University of Georgia and its law school, class of 1871. He had practiced law in Atlanta for many years, and had served as the state solicitor-general (district attorney) in Atlanta from 1877 to 1885 and as United States district attorney at the appointment of President Grover Cleveland from 1885 to 1889. Hill's selection as chief judge was a discreet matter, one recalled by Judge Powell:

> *[Hill] told me he was anxious to be the first Chief Judge of the court, but did not wish to commit the indelicacy of voting for himself. I told him that I could avoid that embarrassment for him; that the constitutional amendment had made no provision for the selection*

of a Chief Judge. I reminded him that the same situation had confronted the Supreme Court when it was organized in 1845, and that an act had then been passed providing that the oldest Justice in commission or (if there were more than one whose commissions were of the same date) the one who was oldest in point of time should be Chief Justice. I told him that in the present plans of organization I had been delegated to draw, I would with propriety embody such a provision, and that with his vote and mine it would be adopted, and that he would so automatically become the Chief Judge.[6]

The first reported opinion of the Court of Appeals was in a case argued on January 8, 1907, and decided on January 11.

The first opinion delivered by this court was prepared by Judge Hill in the case of Hunter v. Lissner*, 1 GA App 1. The case was one of small importance, involving a certiorari from a justice's court, in a suit upon a promissory note, but the opinion delivered by Judge Hill set an example which he followed throughout his judicial career. It was clear in expression and indicated patient research and careful consideration of the questions involved. He wrote with an easy, flowing style, and lucidity of expression, which was characteristic of all his opinions. One might differ with his conclusions, but there was rarely ever any doubt as to the meaning of his language.*[7]

Judge Hill served as chief judge until 1913. He resigned to become judge of the Superior Court of Fulton County since the compensation for that office exceeded that of a judge of the Court of Appeals. His tenure as chief judge was largely responsible for the confidence the bar and public had in the new court. His reputation was that he was courteous, considerate, and absolutely fearless in upholding the dignity of the law. He was defeated in the next election for Superior Court judge and resumed the practice of law in Atlanta for two years in association with his nephew, Harvey Hill. He ran for election again to the Court of Appeals "both because he loved the work and because he wanted to vindicate his judicial record before the people of the whole State."[8] He was elected by a substantial majority and sworn in again as a judge of the Court of Appeals on November 15, 1920, and served until his death on July 19, 1922. He is buried in historic Oakland Cemetery in Atlanta.

Richard B. Russell

Richard B. Russell was born in Marietta on April 27, 1861, two weeks after the first shot of the Civil War was fired at Fort Sumter. At age nineteen years, he graduated from the law school of the University of Georgia and was admitted to the bar in 1880. He practiced law in Athens, where he served as solicitor-general and judge of the superior court, and later as a trustee of the University of Georgia. He resigned the superior court judgeship position in 1906 to enter the race for governor, in which he ran second to the populist candidate Hoke Smith. Richard Russell declined to

Richard B. Russell

[6]Arthur G. Powell, "The Birth of the Court of Appeals," *Georgia Review* 2/2 (Summer 1948): 151.
[7]J. R. Pottle, Chairman Memorial Committee, In Memoriam, Judge Benjamin Harvey Hill, 29 GA App 801, 803-804 (1922).
[8]Ibid., 803.

become a candidate in the subsequent election for the Court of Appeals, but his name was placed on the ballot by his friends. He served on the court for ten years, during the last three of which he was Chief Judge. He resigned to return to the practice of law in 1916 and was elected to the Supreme Court in 1922. He became chief justice in 1923, and has the distinction of being the only person to head both courts. In the memorial of Judge Russell printed in the *Georgia Reports*, Arthur G. Powell, his colleague on the Court, described Judge Russell's character in the following words: "No man can truly say that Judge Russell, in his judicial work, was ever influenced by any bias or friendship between one suitor or another. If his decisions were ever swayed, and perhaps sometimes they were, from the straight and narrow course of cold judicial logic, it was due to his ideology of mercy, and of sympathy for the poor, the helpless, the unprotected and the underprivileged.…"[9]

Arthur G. Powell

Arthur G. Powell was born and raised in Early County, attended Mercer University for eighteen months, studied law, and was admitted to the bar at the age of eighteen. He began the practice of law in Blakely, in partnership with his father: "He became a specialist in litigation involving land law in the unsettled condition of land titles in South Georgia. His services in this field were in demand in courts throughout the southern part of the State, and his success there brought him additional practice. In addition to success in litigation, Judge Powell, at an early age, became a wise counsellor and displayed great ability in conciliating differences arising among contestants, which led to the amicable settlement of many cases...."[10] After his father's death, he practiced alone for several years, and then formed a partnership with Judge J. R. Pottle, who would later succeed him on the Court of Appeals.

Arthur G. Powell

Judge Powell's service on the Court of Appeals was characterized by the same success that had attended his private practice:

> *He brought to this office the ability of all great lawyers to dispose of cases both quickly and correctly, and to give clear and logical reasons for doing so.… He did not feel that he had been especially called on to announce great principles of law which would affect mankind, but rather dealt with the litigants and lawyers as if they stood with him on the same plane. The style of his opinions, if they may be said to have a fixed style, was laconic, at times conversational or homely. He delighted in the use of epigrams and at times, when the occasion justified, jest. The great English judges in the Yearbooks wrote in this style. In most cases, however, his opinions are precise, exact, and always in keeping with dignity of this great Court.*[11]

Judge Powell loved literature and studied French. He became friends with American poet Wallace Stevens, who was also the general counsel for the Hartford Insurance Company. On a winter vacation to Key West, both men met Ernest Hemingway with whom they, thereafter, vacationed and wrote together.

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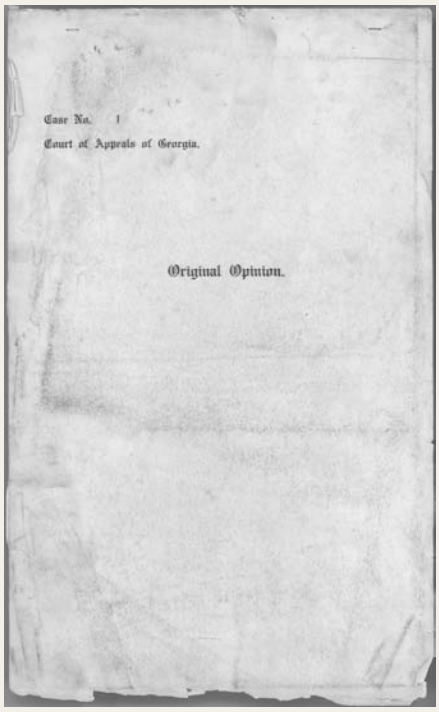
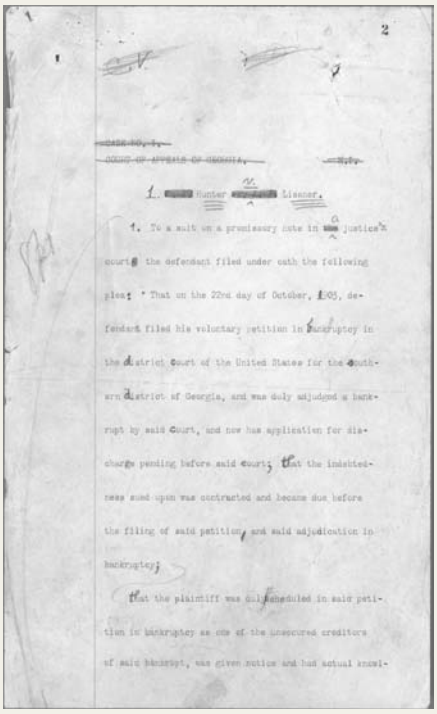
[9]Arthur G. Powell, Chairman Memorial Committee, In Memoriam to Chief Justice Richard Russell, 188 GA 869, 873 (1939).
[10]Reuben R. Arnold, Chairman Memorial Committee, In Memoriam to Judge Arthur Gray Powell, 87 GA App 927, 928 (1952).
[11]Ibid., 929.

Case No. 1 Court of Appeals of Georgia *Hunter v. Lissner*


Case No. 1
Court of Appeals of Georgia.

Original Opinion.

On January 11, 1907, the first decision of the Court of Appeals of Georgia, written by by Chief Judge Benjamin Harvey Hill, was published.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1. [redacted] Hunter [redacted] Lissner.

1. To a suit on a promissory note in [redacted] justice's court the defendant filed under oath the following plea: "That on the 22nd day of October, 1905, defendant filed his voluntary petition in bankruptcy in the district court of the United States for the Southern district of Georgia, and was duly adjudged a bankrupt by said Court, and now has application for discharge pending before said court; that the indebtedness sued upon was contracted and became due before the filing of said petition, and said adjudication in bankruptcy;

That the plaintiff was duly scheduled in said petition in bankruptcy as one of the unsecured creditors of said bankrupt, was given notice and had actual knowl-

Judicial Economy

The initial salary of the first judges of the Court of Appeals was set at $4,000.00 per annum. For many decades, judicial salaries in Georgia were not commensurate with the responsibility of the position or the level of legal ability required to perform them. Many attorneys could earn more in the private practice than on the bench, and, therefore, passed up opportunities for judicial service. Judge Powell took office at a financial sacrifice, supplementing his salary with his property and farming income. With this income failing, Judge Powell resigned from the bench, effective January 15, 1912. He then formed a partnership with John D. Little, an able lawyer and son of a former Supreme Court justice. Thereafter, Judge Powell enjoyed great success in the practice of law in Atlanta, and was a founding partner in the law firm now known as Powell Goldstein LLP.

During his final year on the court, Judge Powell published his treatise *Actions for Land*, dealing with the preparation and trial of cases involving disputed land titles. Resolving land disputes required an understanding of both common law principles, technical procedural requirements, and (as Judge Powell put it in his preface) the "multiformity of estates and of interests, legal and equitable, which so frequently is found in connection with the title to land." After almost a century since the treatise was published, it remains a standard and helpful work in this field of law.

Economy, often to the point of frugality, was the common denominator of state governmental opera-

tions at that time, and the new Court of Appeals was not excepted from its application. On August 4, 1907, Governor Hoke Smith signed into law a bill "To Pay Salaries and Expenses of the Court of Appeals for 1907" which appropriated "the following sums of money, or so much thereof as may be necessary," for the following purposes:

> *For the payment of the salaries of the three judges of the Court of Appeals, four thousand dollars apiece.*
>
> *For the payment of the salaries of three stenographers to the judges of the Court of Appeals, one thousand five hundred dollars apiece.*
>
> *For the payment of the salary of the sheriff of the Court of Appeals, one thousand dollars.*
> *For the payment to the clerk of the Court of Appeals his salary, if the costs of the Court of Appeals do not amount to the sum allowed by law for compensation of said clerk, an amount equal to the difference between the actual amount due said clerk and such costs, as provided by law.*
>
> *For the contingent funds of the Court of Appeals in payment for necessary filing cases, printing, stationery, record books, etc., and for such articles and supplies as may be needed by said court in the conduct of its business for which provision is not made elsewhere, the sum of twelve hundred dollars, to be expended as the judges of that court may direct.*
> *For the library of the Court of Appeals for the purchase of books, etc., to be expended by direction of the judges of said court, one thousand dollars.*[12]

The Organization of the Court

Offices for the judges and staff members were provided in the capitol building, and the Court of Appeals shared with the Supreme Court its imposing courtroom in the south wing. The first clerk of the Court of Appeals was Logan Bleckley, a son of the chief justice of the same name and deputy clerk of the Supreme Court of Georgia. He would serve in the position of clerk until 1938. James H. Pitman from Troup County served as sheriff until October at which time P. W. Derrick of Henry County took office. George W. Stevens was appointed the reporter. John M. Graham of Augusta would later take Stevens's place as reporter. He had been a private secretary to Alexander H. Stephens, owned and edited the *Crawfordsville Democrat*, and was one of the unsuccessful candidates for a Court of Appeals judgeship in 1916.

The first stenographers of the court were Edward C. Hill of Atlanta serving Judge Benjamin Hill, W. A. Cameron of Sylvester serving Judge Powell and Ms. Marion Bloodworth working for Judge Russell. Judge Powell opposed Bloodworth's employment on the ground that the code stated that females were ineligible to hold a civil office. Judges Hill and Russell prevailed noting that the position also included clerical duties.

[12]Georgia Laws, 1907, 22.

The Early Court

An example of the cases before the court in its first few years illustrates the types of community issues in that era.

In *Joe Hammock v. State*, 1 GA App 127 (1907), the Court of Appeals reversed the trial court's conviction of Hammock for carrying a concealed weapon, holding that a citizen cannot be summarily searched on suspicion and then the evidence found be used to incriminate that citizen.

In another case, *Bashinsky v. Macon*, 5 GA App 3, (1909), a Mr. Bashinsky was convicted of keeping a "blind tiger"[13] in violation of state prohibition laws. In 1885 a Georgia statute gave voters in each county the right to impose prohibition in their county. By 1907, most counties had voted for prohibition and in the same year, the state legislature enacted mandatory statewide prohibition. The race riot of 1906 in Atlanta probably encouraged the enactment of prohibition; there was a fear of violence from drunken African Americans and of the organization of mobs by inebriated white citizens in the bars and saloons. The new statewide law went into effect in 1908. Mr. Bashinsky had been keeping liquor in a rear room and a downstairs bedroom in the same building as his restaurant. Although the court affirmed the trial court decision, it directed Bashinsky be resentenced as the sentence exceeded the city charter's sentencing limits.

The Court of Appeals – 1917. Left to right, Judge Frank Harwell; Judge Roscoe Luke; Judge Nash Broyles; Chief Judge Peyton L. Wade; Judge W.F. Jenkins; Judge O.H.B. Bloodworth; Logan Bleckley, Clerk of Court. Below, Sheriff Derrick.

In *Clarence Manning v. State*, 6 GA App 240 (1909), the court reversed Manning's conviction for unlawful shooting of a rabid dog on Sunday. The opinion stated, "A mad dog is a public enemy and to shoot at a mad dog is not the willful and wanton firing of a weapon, within the terms of the act of 1898, which forbids the shooting of firearms on Sunday."

Controversial Decisions

During the first few years, there were also two controversies that were publicized in the *Atlanta Constitution*. The first involved Judge Augustus W. Fite of the Cherokee Judicial Circuit. In September 1911, Judge Fite criticized Judge Russell, hinting that Russell had neglected his duties as a judge and had been outspoken in condemning the prohibition law. Then, in January 1912, the Court of Appeals reversed Judge Fite in *Jerry McCullough v. State*, 10 GA App 403 (1912), in an opinion written by Judge Hill. The case involved the conviction of an African American man for attempted assault of a Caucasian woman resulting in a twenty-year prison sentence. Hill opined that the evidence did not show felonious intent and that Fite should have allowed polling of the jury before the sentence was announced.

[13] A "blind tiger" meant operating a business of selling liquor in violation of the prohibition laws by hiding the illegal operation behind a legitimate business.

In a second trip of the case to the Court of Appeals, Judge J. R. Pottle's opinion again reversed the case. Judge Fite fired a letter to the newspaper inferring that the appeals court opinion was responsible for a recent riot and that if the court refused to reconsider its decision, the legislature should give the citizens an opportunity to abolish the Court of Appeals. Thereafter, the Court of Appeals had its sheriff serve a charge of contempt and a notice of hearing on Judge Fite. After the hearing in October 1912, Judge Fite was found guilty and sentenced to a fine of $500 or ten days imprisonment.

The second controversy, involved W. T. Moyers, an attorney and stenographer discharged by Judge Russell, who made accusations of misconduct against the judge. Mr. Moyers broadcast a pamphlet addressed to the Governor, the Speaker of the House of Representatives, and the President of the Senate when the Georgia General Assembly convened in 1915. Among the charges against Judge Russell in the pamphlet were neglect of duty, a chronically bad temper, stealing a typewriter and a map, having a stenographer write some of his legal opinions and duplicity in discharging Moyers from the position of stenographer. At the request of a member of the legislature to the judiciary committee, the Georgia House of Representatives appointed a special committee to investigate. Mr. Moyers summoned a number of witnesses to the hearing in the Capitol building including all the judges of the Court of Appeals, a former justice of the Supreme Court of Georgia, the other stenographers and the Clerk of the Court of Appeals. The witnesses denied all the allegations against Judge Russell and described him as an excellent judge and man of integrity. Because this testimony was so favorable to Judge Russell, the committee did not require the judge to testify although he was prepared to do so. Later the investigating committee prepared a report finding the charges against Judge Russell to be groundless.

Changes to the Court

Judge Arthur G. Powell was succeeded on the bench by his former law partner, J. R. Pottle. James Robert Pottle was born and raised in Warrenton, where his father was a Superior Court judge. He was educated in the public schools and in the Georgia Military College at Milledgeville. He taught school for four years and in 1896 was admitted to the bar. He became the secretary to Justice Andrew J. Cobb of the Supreme Court, and in 1906 moved to Blakely to form a partnership with Arthur G. Powell. Upon the resignation of Judge Powell from the Court of Appeals in January 1912, Governor John M. Slaton appointed J. R. Pottle to the vacancy until the next election. Judge Pottle ran in the election for the remainder of Judge Powell's term against Nash R. Broyles. Pottle and Broyles tied in the county unit vote, but Judge Pottle had won the popular vote. Under the circumstances, Broyles withdrew from the race. Thereafter, Judge Pottle served until February 1914 when he moved to Albany and continued the practice of law. In his memorial report in 1933, it is stated, "That he deserves rank as one of the State's great jurists, though he served for only so short a time as two years, the official reports of this court

J.R. Pottle

most fully attest. His judicial opinions are clear, thorough and concise, and disclose an accurate grasp of legal principles. He was one of the State's great lawyers."[14]

Chief Judge Hill was the second of the original three judges to resign. He was replaced by Judge L. S. Roan in 1913. Judge Roan was a native of Henry County and a graduate of Fayetteville High School. According to his memorial report in 1915, "he never attended a law school, but, after the old-time method, obtained his legal training in Griffin, Georgia, in the offices of Peeples and Stewart, a noted law firm composed of the late Judge Cincinnatus Peeples and Judge John D. Stewart, the latter subsequently the representative from the fifth district in Congress."[15]

L.S. Roan

Judge Roan was admitted to the bar in 1870, and began his practice in Fairburn, which was then in Campbell County. His memorial report mentions that

> *He was a number of times mayor of his town, and took much interest in the upbuilding thereof, and especially in its schools and educational interests.… He was practical and painstaking in all that he undertook. He was a safe counselor and a strong advocate and a skillful manager of cases. He was unusually successful and never failed to secure for a client all that he was entitled to in a case. He was careful and successful in the training of those who studied for the profession in his office; they in almost every instance becoming successful members of the bar.*[16]

In 1914, following the resignation of Judge J. R. Pottle, Governor Slaton appointed a practicing lawyer from Dublin as his successor. Peyton L. Wade was a native of Screven County born on January 9, 1865, only weeks after Sherman's army passed through it during the March to the Sea. He received an AB degree from the University of Georgia in 1886, where he was a classmate and college roommate of the future Governor Slaton. His early career is well summarized in his memorial report in 1919: "After graduating Judge Wade taught school in Dublin during 1886 and 1887; and during his residence there he edited the *Dublin Post* until February, 1888. He was one of the founders of the Weekly Press Association of Georgia, which was organized at Milledgeville in 1887. During his residence at the University, he was one of the editors of *Pandora*, the College Annual, published at Athens."[17]

Peyton L. Wade

Judge Wade was admitted to the bar in 1888, practiced in Athens one year, and moved the following year to Dublin, where he practiced law until his appointment to the Court of Appeals on February 4, 1914. Suggested to the governor for appointment to the Court of Appeals bench, Judge Wade's qualifications and character were endorsed by more than twelve city bar associations and hundreds of prominent lawyers. He was not only an outstanding lawyer, but a dedicated bibliophile.

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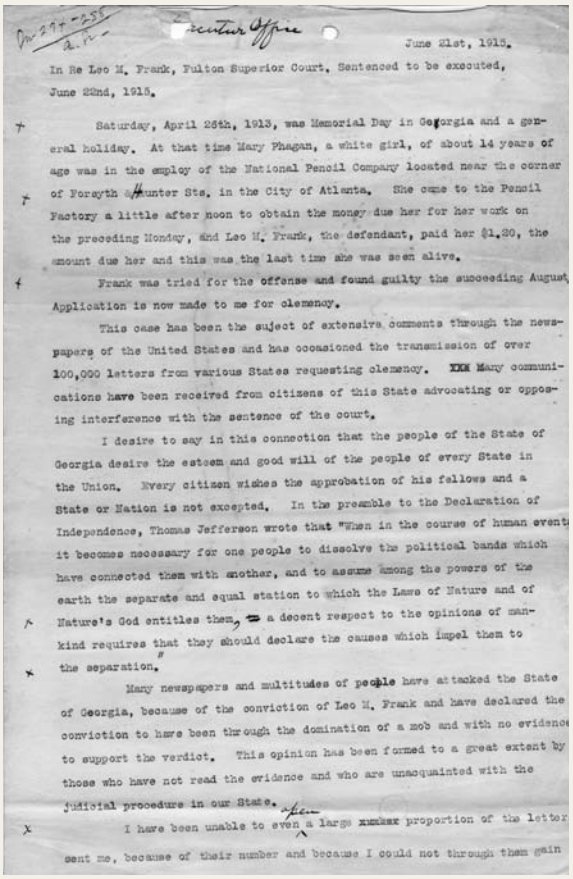
[14]Arthur G. Powell, Chairman Memorial Committee, In Memoriam to Judge James Robert Pottle, 48 GA App 857, 858 (1933).
[15]Warren Grice, Chairman Memorial Committee, In Memoriam to Judge L. S. Roan, 16 GA App 873, 873-874 (1915).
[16]Ibid., 874 (1915).
[17]James K. Hines, Chairman Memorial Committee, In Memoriam to Chief Judge Peyton L. Wade, 24 GA App 819 (1919).

Leo Frank and Mob Violence in Georgia



June 21st, 1915.

In Re Leo M. Frank, Fulton Superior Court. Sentenced to be executed, June 22nd, 1915.

Saturday, April 26th, 1913, was Memorial Day in Georgia and a general holiday. At that time Mary Phagan, a white girl, of about 14 years of age was in the employ of the National Pencil Company located near the corner of Forsyth & Hunter Sts. in the City of Atlanta. She came to the Pencil Factory a little after noon to obtain the money due her for her work on the preceding Monday, and Leo M. Frank, the defendant, paid her $1.20, the amount due her and this was the last time she was seen alive.

Frank was tried for the offense and found guilty the succeeding August. Application is now made to me for clemency.

This case has been the subject of extensive comments through the newspapers of the United States and has occasioned the transmission of over 100,000 letters from various States requesting clemency. XXX Many communications have been received from citizens of this State advocating or opposing interference with the sentence of the court.

I desire to say in this connection that the people of the State of Georgia desire the esteem and good will of the people of every State in the Union. Every citizen wishes the approbation of his fellows and a State or Nation is not excepted. In the preamble to the Declaration of Independence, Thomas Jefferson wrote that "When in the course of human event it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the Laws of Nature and of Nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

Many newspapers and multitudes of people have attacked the State of Georgia, because of the conviction of Leo M. Frank and have declared the conviction to have been through the domination of a mob and with no evidence to support the verdict. This opinion has been formed to a great extent by those who have not read the evidence and who are unacquainted with the judicial procedure in our State.

I have been unable to even a large number proportion of the letter sent me, because of their number and because I could not through them gain

While he was a judge of the Stone Mountain Judicial Circuit Superior Court, by a special act of the legislature Judge Roan held the criminal division for the Superior Court of Fulton County. Judge Roan was the trial judge in the famous Leo Frank case, a murder case concerning the death of a young woman, Mary Phagan, who was a worker in a pencil factory in which Mr. Frank was a supervisor. At the time Judge Roan was appointed to replace Judge Benjamin Hill on the Court of Appeals, he was entertaining a motion for new trial on Leo Frank's behalf. Judge Hill was taking a Superior Court judgeship newly created by the legislature in Fulton County. After the conclusion of the case, Governor Slaton reviewed the case evidence and requests for clemency including that of Judge Roan who expressed doubt over Frank's guilt. Despite public agitation, Governor Slaton commuted Frank's death sentence just days before the scheduled execution date and the end of his term of office. Governor Slaton had to flee the state after his decision. About two months later, Leo Frank was abducted from jail by a mob and lynched.

Between the 1880s and the 1930s, Georgia experienced numerous instances of mob violence often resulting in murder. Over this period more than 400 individuals were murdered in such a manner. Politicians often played to white fears of the growing African American community and newspapers fanned racial tensions.

In 1906, the same year as the Court of Appeals was created, a mob incited by newspaper articles reporting alleged assaults by African Americans on Caucasian women roamed downtown Atlanta assaulting African Americans and damaging their businesses. A number of African Americans were killed during these riots which continued for several days.

Overwhelmingly, victims of mob violence in Georgia were African American males. Often the justification for the violence was purported or attempted assault or rape of white women. Leo Frank was one of the few white victims of the lynch mobs. Leo Frank was Jewish, and bias against his ethnicity may have contributed to the public agitation in this case.

He owned one of the largest private libraries in this State, and on leaving Dublin to take a seat on the bench of this court he gave a large number of valuable books to the Carnegie Library of Dublin. In 1918 he gave thirteen hundred volumes to the University of Georgia, and intended to give a number of books to Oglethorpe University. This purpose was carried out by his wife after his death, when she gave 335 volumes from his library to Oglethorpe University. This still left him with a very large private library of the best literature of all lands.

He was a man of stainless integrity and uprightness. In the practice of the law he was never known to do a questionable or shady thing. He spurned all tricks in pursuing his profession.… He was an upright judge as he was an honest man.[18]

In 1914, apparently because of ill health, Judge Roan chose not to run for the remainder of Judge Ben Hill's term and resigned on December 31, 1914. He died in a hospital in New York City eight weeks later. Nash Broyles, who had announced his decision to oppose Judge Roan for election, won Judge Roan's seat.

Nash Rose Broyles, took office on January 1, 1915, and would remain with the Court of Appeals until his death more than thirty-two years later. Nash Broyles graduated from Boys' High School in Athens in 1885. He received his AB degree from the University of Georgia in 1888 and graduated from its law school in 1889. He practiced law in Atlanta until 1898, when he was elected city recorder.

No ideologies or intangible philosophies swayed him, nor did power or popular applause swerve him from his judgment. A believer in the enforcement of the law, an opponent of trifling technicalities, an advocate of the punishment of the guilty as a protection to society, the volumes in which he wrote contain many a case where he declared that the evidence did not justify a conviction, and the obscure and unknown defendant secured his freedom.

His strength lay in his faith in the eternal principles of right and wrong. With him a contract entered into fairly was inviolable whether it was that of the weakest person or the most powerful one. He regarded the individual as at the apex of creation, and his rights and obligations were to be so measured.…

Courage in every form was his distinguishing characteristic. Fear of nothing except to do wrong was the ideal of his life. His opinions were marked by simplicity and clarity. The words he employed were old-fashioned Anglo Saxon, and unconfused by complex and pedantic abstractions. One who read them found no difficulty in understanding what he thought and what he meant. In every line was found a search for justice and for the true law.[19]

[18]James K. Hines, Chairman Memorial Committee, In Memoriam to Chief Judge Peyton L. Wade, 24 GA App 820 (1919).
[19]John R. Slaton, Chairman Memorial Committee, Memorial to Chief Judge Nash Rose Broyles, 75 GA App 887, 888-889 (1947).

One of the shortest tenures of office in the history of the Court of Appeals besides Judge Roan was that of the successor to Judge Russell upon his resignation in 1916. Robert Hodges was a native of Macon and a graduate of Mercer University in the class of 1885. He followed the established precedent of teaching school for two years, during which he studied law under the tutelage of the local bar, to which he was admitted in 1887. His service as solicitor-general of the Macon Judicial Circuit to which he had been elected was interrupted by the advent of the Spanish-American War. Answering a call of President McKinley in 1898 for volunteers, Robert Hodges enlisted. Upon commissioning as a captain by Governor W. Y. Atkinson, he organized a company of the 3rd Georgia Regiment. After service, he resumed his duties as solicitor-general until his term expired on January 1, 1900. He subsequently served as judge of the City Court of Macon until he was appointed by Governor Harris to succeed Judge Russell on June 6, 1916. On June 9, 1916, the press announced that certain cases heard before Judge Russell would be reargued so that Judge Hodges could hear cases he would decide which were pending after Russell resigned.

Robert Hodges

Similar to Judge Wade, Judge Hodges had a significant library and literary interest.

> *Though Judge Hodges at the time of his death had enjoyed the honor of being a member of this court for only a brief period, he demonstrated conspicuous ability as an appellate judge.… In addition to his splendid legal attainments, Judge Hodges was recognized in a certain sense as a literary authority; his familiarity with the classics of all nations being notable. His library, both legal and literary, was one of the most carefully selected and complete in our State, and while he was unswerving in his loyalty to, and happy in the companionship of his friends, much of his time was given to his best friends, his books.… He was an ardent advocate of the Baconian theory, and wrote a cryptogram of ingenious and intricate construction to demonstrate the fallacy of Shakespearean authorship.*[20]

Judge Hodges fell ill suddenly on December 2, 1916, and was taken to a private hospital in Macon where he fell unconscious. He never revived, dying on December 12, barely six months since his appointment. Judge Hodges was forty-eight years old and the cause of death was described in the news as dropsy, fluid accumulation in the tissues that may have been a sign of heart disease.

[20]Ronald Ellis, Chairman Memorial Committee, Memorial to Judge Robert Hodges, 19 GA App 829, 830 (1917).

Early Expansion

The forces that had led to the creation of the Court of Appeals continued unabated during the first decade of its existence. From 1906 to 1916, seven additional counties and thirty-eight additional city courts were created. The population of the state had increased by almost half a million from 1900 to 1910, and the number of lawyers admitted to practice had almost doubled since 1890. Both industrial and agricultural development had steadily continued, with a resulting increase in civil litigation. The Georgia Bar Association annual meeting in 1914, Court of Appeals Judge Pottle reported on the status of the caseload of the two appellate courts.

> *In 1906 the Supreme Court was about a term behind. Since that time the Court of Appeals has been created and has been disposing of nearly eight hundred cases a year which formerly went to the Supreme Court. Litigation has been constantly increasing. The population of the state has grown. Let us see how stands the situation today…. Since the establishment of the Court of Appeals the average annual return to that court has been seven hundred eighty cases, and the present average return to the Supreme Court is six hundred sixty cases; the average annual return to the two courts being 1,440 cases. At this time the Supreme Court is still about a term behind. It has on hand four hundred forty-six cases undisposed or, which have been argued and assigned to the justices, eight criminal and four hundred thirty-eight civil cases. The Court of Appeals has on hand sixty-seven criminal and two hundred thirty-three civil cases.*[21]

In the next year, 1915, a Georgia Bar Association resolution noted the effect of the increasing caseloads on the appellate courts and the need for relief.

Resolution Georgia Bar Association 1915

WHEREAS, No Justice of the Supreme Court or Judge of the Court of Appeals has been able to attend this meeting of the Association, and,

WHEREAS, The Justices and Judges have advised the Association that they greatly desired to attend but were prevented from doing so by reason of the crowded condition of the dockets of their courts, and the necessity of deciding the cases at the second term or have them affirmed by operation of law, and,

WHEREAS, Said courts have been forced to remain in continuous session with no opportunity for even the briefest vacation, and without cessation from their onerous and exacting labors, and,

WHEREAS, Said courts are now annually deciding more than sixteen hundred cases, which is a greater number than can be disposed of with satisfaction to the bar or credit to the court, even with the incessant slavish toil to which the Justices and Judges are being subjected, and,

WHEREAS, Some relief from the present intolerable condition is absolutely and manifestly necessary and must be immediately had; therefore, be it

> *Resolved*, That the letter from the Justices of the Supreme Court calling attention to and emphasizing these conditions be referred to the Permanent Commission on Revision of the Judicial System and Procedure with direction to confer with the Supreme Court and Court of Appeals as early as practicable and devise some measure of relief....][22]

[21]Orville A. Park, *Report of the Thirty-First Annual Session of the Georgia Bar Association* (Macon GA: J.W. Burke Company, 1914) 221.
[22]Orville A. Park, *Report of the Thirty-Second Annual Session of the Georgia Bar Association* (Macon GA: J. W. Burke Company, 1915) 26.

Upon review of the situation by members of the bench and bar, legislation to increase the number of judges on the court from three to six was enacted on August 19, 1916. The act also provided the judges would sit in two divisions of three judges each and would elect a chief judge who would make the assignments of judges to the divisions. The chief judge was designated the presiding judge of the first division. The Act also provided that all criminal cases would be assigned to one division.

The election process for the three new judgeships in 1916 was an exercise in the art of politics. Fourteen candidates from around the state qualified to run in the September Democratic primary. Under the county unit system then in effect, the official nomination of the three candidates whose names would be placed on the ballot in the November general election was to be made at the state Democratic convention. The number of delegates to the convention was fixed at six for the three most populous counties in the state, four for the twelve next most populous counties, and two for each of the remaining counties. The leading candidate in each county election received all its votes in the convention as a unit, thus giving the system its name. If no candidate in the popular election received a majority of the unit votes, each county would vote on the first ballot as the election results dictated, and was thereafter free to make its own choice. That is exactly what happened in the 1916 race.

The fourteen candidates and their unit votes in the September primary were: O. H. B. Bloodworth of Forsyth, 160; Alexander Stephens of Atlanta, 142; Walter F. George of Vienna, 138; W. Frank Jenkins of Eatonton, 134; John B. Hutcheson of Ashburn, 120; Roscoe Luke of Thomasville, 94; Henry J. Fullbright of Waynesboro, 66; John J. Kimsey of Cornelia, 44; M. J. Yeomans of Dawson , 42; A. W. Cozart of Columbus, 34; Henry S. Jones of Augusta, 24; George C. Grogan of Elberton, 14; John M. Graham of Marietta, 10; and L. P. Skeen of Tifton, 2.

Thereafter, at the convention that met in Macon on September 25, Walter F. George, W. Frank Jenkins, and Roscoe Luke were nominated as the three Democratic candidates to run unopposed in the November election. The terse report in the *Atlanta Constitution* gave no indication of the political turmoil that had produced this result:

> *In no instance, save in the nomination of appellate court judges, was there any appearance of a contest; and that was short-lived. After the initial ballot in which the name of each of the fourteen original candidates figured, Candidates Grogan and Jones withdrew from the race. Upon the second ballot Judge George was nominated, and Graham, Kimsey, Yeomans and Cozart dropped out of the contest voluntarily. The third ballot resulted in filling the remaining two places on the ticket.*[23]

After the death of Judge Hodges, the governor received over 300 applications for the vacant judgeship. The governor offered the appointment to Ellsworth Hall of Macon and Samuel H. Sibley of Union Point who both declined, before contacting Judge Oliver Hazzard Bartow Bloodworth to fill the unexpired term. Thus, by the

Oliver H.B. Bloodworth

[23]"George, Jenkins, Luke Named on Appellate Court; Ovation Accorded Dorsey," *Atlanta Constitution*, September 27, 1916, 1.

untimely demise of Judge Hodges, the governor had the opportunity to reward the winning candidate in the September primary. Judge Bloodworth's early career is well stated in his memorial report in 1933:

> *Judge Bloodworth was born during the most unsettled period of American history, and in consequence of the economic disaster which overwhelmed the South during the Reconstruction period following the War Between the States, his father suffered financial ruin; but in spite of this disaster [Judge Bloodworth] determined to acquire the sound education for which he was distinguished. He attended the grammar school at Milner, later entering Gordon Institute at Barnesville, from which he was graduated in 1878, and immediately matriculated at the University of Georgia, from which he received his liberal arts degree in 1880, at which time he was awarded the golden Phi Beta Kappa key as evidence of his high class standing, he being the first-honor man of his class.… After his graduation he took up his residence in Forsyth, the county seat, and began the study of the law in a local law office, and was admitted to the practice of the law in Monroe Superior Court on October 1, 1881. He immediately "hung out his shingle" in Forsyth…where he was an active practitioner until the time of his elevation to the bench of this court.*[24]

He served as mayor of Forsyth, state representative from Monroe County, solicitor-general of the Flint Judicial Circuit, and as chairman of the board of trustees of Bessie Tift College. His memorial report paints a revealing portrait of his life and career:

> *Undoubtedly Judge Bloodworth was wedded to the law. It was his only business or professional endeavor. He cherished the highest concepts of its ethics, and applied his vast energy to its study as a science comprising the noblest field of the intellectual faculties. He was never known to stoop to any act of sharp practice, or to allow his own pecuniary interest to dominate his clients' welfare. He believed that respect for and obedience to the law is the foundation-stone of our civilization, and sincerely championed the cause of popular liberty.…*[25]

On January 1, 1917, the court was reorganized into the first division consisting of Chief Judge Peyton Wade and Judges Walter F. George and Roscoe Luke, and the second division consisting of Presiding Judge Nash Broyles and Judges W. Frank Jenkins and Oliver Bloodworth, the latter being the division to which all criminal cases were assigned. Unfortunately for the three new judges, they would not be paid a salary until July when a special provision for pay could be passed by the legislature.

[24]G. Ogden Persons, Chairman Memorial Committee, In Memoriam Judge Oliver Hazzard Bloodworth, 46 GA App 847 (1933).
[25]Ibid., 848.

Walter Franklin George, the first judge to be nominated in 1916, was born on a farm in Webster County, educated in the public schools, and graduated from Mercer University with a Bachelor of Science degree in 1900 and a Bachelor of Laws degree in 1901. He began his law practice in Vienna and on January 1, 1907, entered upon a career of public service that would continue almost uninterrupted for over half a century. He was solicitor-general of the Cordele Judicial Circuit and was serving as that circuit's judge at the time of his election to the Court of Appeals in 1916. After only nine months of service on that bench, he was appointed by Governor Hugh M. Dorsey to fill the vacancy on the Supreme Court created by the resignation of Justice Beverly D. Evans. He served on the Supreme Court until December 31, 1921, when he resigned to return to Vienna and resume his law practice.

Walter F. George

The break in Judge George's public service lasted only one year when he was elected to the United States Senate in 1922 to fill the unexpired term of Senator Tom Watson who had died during that summer. Senator George rose to be a leader in world affairs as chairman of the Senate Foreign Relations Committee from the days of World War II until his retirement from the Senate on January 5, 1957, after which he served as special representative of the president of the United States to the North Atlantic Treaty Organization (NATO) until his death on August 4, 1957. The Walter F. George School of Law at Mercer University was named in his honor in 1947.

The second winner in the election of 1916 was William Franklin Jenkins. W. Franklin Jenkins was born on September 7, 1876, in Webster County but was raised and educated in the public schools at Eatonton in Putnam County. His matriculation at the University of Virginia was interrupted by a prolonged attack of typhoid fever that caused him to return to Georgia. Upon recovering, he entered the school of law at the University of Georgia, from which he graduated in 1896. He practiced law in Eatonton in partnership with his father, W.F. Jenkins the elder, who died in 1909, and thereafter continued the practice until his election to the Court of Appeals in 1916. He had also been the mayor of Eatonton, chairman of the board of education of Putnam County, and a member of the Georgia legislature. At the time of his appointment, Judge Jenkins was the vice-chair of the state Democratic committee. The nature of his practice is well stated in his memorial report: "General practitioners of that day did not specialize. They were lawyers. They tried civil cases, criminal cases, suits at law, bills in equity, and whatever else came to hand. In his twenty years at the bar, Judge Jenkins defended more than a hundred murder cases—and it was not a lawless community. It is said that the worst verdict ever returned against one of these clients was for voluntary manslaughter."[26]

William Franklin Jenkins

Judge Jenkins served on the Court of Appeals for twenty years, during which time he twice declined

[26]B. D. Murphy, Chairman Memorial Committee, In Memoriam Justice William Franklin Jenkins, 217 GA 880, 881 (1961-1962).

opportunities to be appointed to the Supreme Court. In 1936, he ran without opposition for the vacant seat left by the retirement of the Justice Price Gilbert. He served for twelve years on the Supreme Court and was chief justice from 1946 until he retired in 1948. Throughout his career, Judge Jenkins's principles were well known.

> *He had but one rule about his own style: that every headnote, and every division of an opinion, must embody a complete statement of law—one that could be lifted out of all context without impairment.*
>
> *He had but one rule about his own consideration of a case: that every point, however trivial it might seem, should be considered and decided.*
>
> *He had but one rule about the result to be reached in any case: that which truth, justice and the law required.*
>
> *It never occurred to him that a case could be "loaded," or that a judge could be "on a spot."*
>
> *He never hesitated to grant a rehearing if he felt that his opinion might be wrong, or even that it was not clear to the losing lawyer. He attributed good faith to every member of the bar, and often said that a lawyer who made a point in good faith, however erroneously, was entitled to know that it had been considered.*
>
> *We may sum up…by saying that he met, in full measure, the high standards of ability, integrity and diligence established by the faith of the people of Georgia in the judiciary of this State.*[27]

[27]B. D. Murphy, Chairman Memorial Committee, In Memoriam Justice William Franklin Jenkins, 217 GA 883-884 (1961-1962).

The third successful candidate in the 1916 election was Roscoe Luke. A veteran of the Spanish-American War, he was born and raised in Thomasville, where he practiced law, served as solicitor of two local courts and as mayor. His service on the Court of Appeals would last for almost sixteen years.

Roscoe Luke

Seldom have the wrestling of the judicial conscience been more clearly displayed than in an opinion written by Judge Luke in 1931. The plaintiff filed suit for defamation of character against the estate of the testatrix, the provisions of whose will had implied that the plaintiff was the illegitimate son of the testatrix's former daughter-in-law. The defendant executor raised as a defense the common-law maxim *Actio personalis moritur cum persona* (a personal right of action dies with the person). Under this doctrine the suit would have been dismissed, but the plaintiff argued that the common-law maxim was not applicable under the reasoning in recent decisions of courts in Pennsylvania and Tennessee. Judge Luke's opinion adopted the plaintiff's argument and allowed the lawsuit to proceed. His opinion, in which Chief Judge Broyles concurred:

> *Upon consideration of the question we find ourselves squarely facing a choice between two courses: on the one hand, the orthodox course of adhering strictly to the rigid rule of the common law, which in any case of the character of that before us would do violence to our innate sense of what is fair and right; or, on the other hand, falling in line with the constantly changing concepts of the law and*

> *its administration by conforming with what appears to be a modern doctrine, "pure drawn from the fountains of justice." In the instant case, notwithstanding our natural aversion to do anything in the nature of "judicial legislation," we are impelled, in good conscience, to adopt the latter alternative. Though the doctrine that we have decided to follow, it is true, does not seem to be derived from any ancient legal lore, it has the merit, in our judgment, of being deep rooted in a moral source, and at least appears to have become an established theory of the law of this country.*[28]

Judge Luke's judicial career had yet another chapter. In November 1932, he resigned his seat on the Court of Appeals. Governor Richard B. Russell, Jr., immediately appointed Hugh James MacIntyre, judge of the City Court of Thomasville, to fill the vacancy, and appointed Judge Luke as judge of the City Court to succeed Judge MacIntyre. It was a neat arrangement by which the two judges simply exchanged benches.

By the time the three new judges — Walter F. George, William F. Jenkins, and Roscoe Luke — were elected, office space in the State Capitol was limited as indicated by a news article in the *Atlanta Constitution* August 29, 1916, stating that a mezzanine would be created for the court records room. In fact, the governor later ordered the state military department to vacate quarters on the first floor of the Capitol for the offices of the new second division of the Court of Appeals.

As well as enlarging the bench of the court, the 1916 constitutional amendment also enlarged the jurisdiction of the court. Initially, the Court of Appeals handled cases from the city courts and felonies other than capital cases. This amendment provided that the court would have jurisdiction of a significant number of civil cases from the Supreme Court. There was also a change in that a constitutional issue would no longer need to be certified to the Supreme Court from the Court of Appeals. The case could be appealed directly to the Supreme Court of Georgia.

A Changing Georgia

On August 19, 1916, Governor Nathaniel E. Harris signed legislation providing that "female citizens shall be admitted to the practice of law in this State upon the same terms and qualifications as now applied to male citizens." This legislation required a six-year effort and prior to the vote there was still opposition by the bar. Immediately prior to the passage of the act, out of the existing forty-eight states, Georgia was one of three states that still prohibited women from law practice. Missouri and West Virginia were the other two states that barred women from practicing law. The efforts to admit women to the practice of law in Georgia began in 1911 when Minnie Anderson Hale, who had graduated from the Atlanta Law School, was denied admission to practice by the Superior Court. At that time the law required an applicant for admission to practice law to be a male citizen. After the Superior Court's denial of her application, Hale helped introduce a bill in the Georgia General Assembly to strike the word "male" from the law. Although hotly debated, the bill was

[28] *Hendricks v. Citizens & Southern National Bank*, 43 GA App 408, 411 (1933).

defeated. Thereafter, Minnie Hale appeared annually before the judiciary committee of the legislature to urge passage of a bill. Minnie Hale was supported by another woman graduate of the Atlanta Law School, Georgia McIntire-Weaver, Clark Howell, the editor of the *Atlanta Constitution*, and as time passed some eminent attorneys and judges. Ms. Hale also sought her admission in a lawsuit, arguing that she was not subject to the particular section of the Georgia code which required an applicant to be a male citizen. On June 14, 1916, the Supreme Court of Georgia rejected her argument. Despite this defeat two months later the act to permit females to practice law finally passed the legislature.

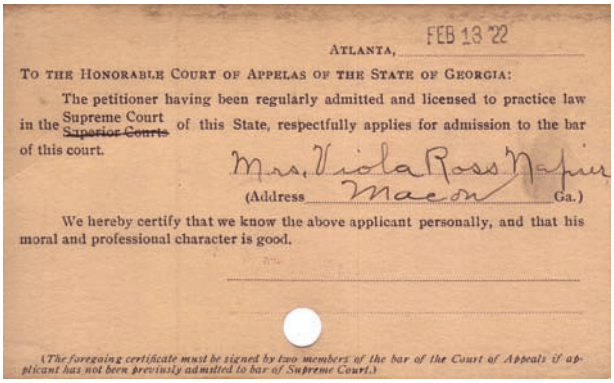
In 1920, there were only twenty-five women who were members of the Georgia Bar. Therefore, it was quite noteworthy that in 1921 Viola Ross Napier and Aline Hardin of the Macon bar defended a murder case. A story published in the *Atlanta Constitution* recorded the first time female attorneys appeared as counsel for the defendant in a murder case.

> *For the first time in the history of Bibb County women lawyers will, on Monday, defend a man charged with murder, when Mrs. Viola Napier, widow of Hendley V. Napier, one of Macon's leading attorneys, and Miss Aline Hardin, cousin of Judge Charles L. Bartlett, will be associated with the defense of a former city detective, W.C. Swift, who, with four other former city detectives, is charged with murdering in April, 1919, Abram Kimbrell and Phillip Lamar.*

> *It is generally believed that it will be the first time in the history of the State of Georgia that women lawyers have participated in trials where the death penalty is applicable. Other lawyers in the case are W. A. McClellan, leading counsel for the defense, who has associated with Attorney John R. Cooper, T. A. Jacobs and Walter Defore.…*[29]

Viola Ross Napier later became the first woman to be admitted to practice before the Court of Appeals. Her portrait hangs in a place of honor at the Walter F. George School of Law at Mercer University. Napier was born in Macon and was a schoolteacher. After her husband died during the flu epidemic of 1919 she became a lawyer to better support her four children. She attended a night school and passed the bar exam in 1920. She had her own practice, representing primarily women and the indigent.

Viola Ross Napier



ATLANTA, FEB 13 '22

TO THE HONORABLE COURT OF APPELAS OF THE STATE OF GEORGIA:

The petitioner having been regularly admitted and licensed to practice law in the Supreme Court ~~Superior Courts~~ of this State, respectfully applies for admission to the bar of this court.

Mrs. Viola Ross Napier

(Address Macon Ga.)

We hereby certify that we know the above applicant personally, and that his moral and professional character is good.

(The foregoing certificate must be signed by two members of the bar of the Court of Appeals if applicant has not been previously admitted to bar of Supreme Court.)

Admission card of Viola Ross Napier to the Court of Appeals of Georgia, dated February 13, 1922.

[29]"Women Attorneys Will Defend Man at Murder Trial, Fair Lawyers to Plead the Case of Former Macon Policeman," *Atlanta Constitution*, February 5, 1916, 1.

The Last Judges in the World War I Era

In spring 1917, Congress declared war on the Central Powers, as Germany and its allies were known. Despite the War, the operation of the court continued much the same as new judges joined the court.

The vacancy created by the appointment of Judge Walter F. George to the Supreme Court in October 1917 was filled quickly by Governor Dorsey's appointment of Frank Harwell. He was born in Troup County and educated in the public schools of West Point. He was a Phi Beta Kappa graduate of the University of Georgia with a Master of Arts in 1891. After studying law in LaGrange for two years, he was admitted to the bar in 1893. He practiced in LaGrange and served as judge of the local city court. He did not offer for reelection to the Court of Appeals in 1918.

Frank Harwell

Judge Harwell's opinions have been called "crisp and concise." In an appeal from Laurens County in 1917, he wrote:

> *The defendant was charged, jointly with one Wynn, of dynamiting fish, and was found guilty. The evidence shows that the defendant suggested to Wynn that they go down to Turkey Creek and get a mess of fish, and together they went to the creek. Defendant was not seen to have any fishing tackle of any kind when he went to the creek. A large explosion was heard at the creek, and when witnesses who heard it arrived at its source they found the water muddy, dead fish floating on its surface, and saw the defendant and Wynn gathering in the fish. Wynn was in the water picking up fish, and the defendant on the bank with a dip-net dipping them up. The defendant was afterward seen on his way home with the fish; and when asked if they were fit to eat, he replied that they were. We think the evidence amply supports the verdict…"* [30]

Judge Frank Harwell's successor was Alexander William Stephens, a prominent Atlanta attorney who had finished second in the 1916 Democratic primary. He was the great grandson of John L. Stephens who was the brother of Alexander H. Stephens, who had served both as governor of Georgia and as vice-president of the Confederacy. Judge Stephens grew up in Taliaferro and Wilkes counties. He was a fourth-generation lawyer who had graduated from Boys' High School in Atlanta and the University of Georgia. He also studied law at Harvard. Stephens was admitted to the practice of law after examination in open court. He practiced in Atlanta until 1918, when he was elected to the Court of Appeals. He was described as "a man of very strong and independent views": "While in his legal opinions Judge Stephens was inclined to the liberal side, somewhat after the manner of the late Justice Oliver Wendell Holmes, in his political and economic views he was strictly conservative and a consistent opponent of all fads and

Alexander W. Stephens

[30] *Bracewell v. State*, 21 GA App 133, 134 (1917).

innovations. These for the most part he held to be un-American.…"[31]

The death of Chief Judge Peyton L. Wade on August 29, 1919, created a vacancy on the court to which Governor Dorsey appointed his friend Charles Whitefoord Smith. A native of South Carolina, Judge Smith had moved with his family to Atlanta. He attended the local public schools and Wofford College in Spartanburg, South Carolina. His memorial reports on his early career: "After leaving Wofford College Judge Smith studied law in the office of Gartrell and Stephens of Atlanta, and was admitted to the practice of law on April 20, 1876, when he lacked a day of being twenty years old. He practiced the profession alone until about 1883, when he formed the first and only partnership of his career, with Captain John Milledge, who was the first captain of the Governor's Horse Guards."[32]

Charles Whitefoord Smith

From 1892 to 1893, Judge Smith served as a state senator from the thirty-fourth district. His home was in the suburb of Atlanta known as Edgewood, a community he helped to found and build. He served as its first mayor, holding that office for six consecutive terms. After Edgewood was merged into the city of Atlanta, Smith represented the ward as an Atlanta City Council member until his appointment in 1915 as a judge of the Stone Mountain Judicial Circuit.

Smith was very active in the Georgia state militia, serving eighteen years and reaching the rank of captain. He was for many years senior captain of the Governor's Horse Guards Association of Georgia.

Judge Smith's memorial report contains a litany of those qualities of character, mind, and temperament which every judge may aspire to emulate:

> *By nature and training he was judicial in temperament and possessed of qualities of mind and soul that inspired confidence and respect. He was not what would be termed a showy, but rather a substantial and solid character. He was of the earnest, tireless manner of man. His habits were good, his purposes were lofty and pure, his devotion to duty unquestionable.*
>
> *There was therefore little surprise when he was appointed by Governor Dorsey a judge of the Court of Appeals.*[33]

Smith sat on the Court of Appeals bench for only fourteen months. He did not offer for election in 1920, possibly because of the disadvantages of a statewide race under the county-unit system by a judge who was little known outside Atlanta. He was succeeded by the winner of the 1920 election, former Chief Judge Benjamin H. Hill, who reassumed his seat on this bench on November 15, 1920, and served until his death on July 19, 1922.

[31]Reuben R. Arnold, Chairman Memorial Committee, Memorial to Judge Alexander William Stephens, 72 GA App 893 (1945).
[32]W. Carroll Latimer, Chairman Memorial Committee, In Memoriam Honorable Charles Whitefoord Smith, 31 GA App 813 (1924).
[33]Ibid., 814.

Conclusion

In the first fourteen years of its existence, fifteen judges had filled the six judgeships on the Court of Appeals. The court entered the decade of the 1920s with a stable bench and an efficient operation, but the state and nation in which it sat were about to undergo a period of ominous change.

The armistice of November 11, 1918, had ended the fighting in Europe, but the victorious Allies did not dictate the terms of peace to a prostrate Germany until the signing of the Treaty of Versailles on June 28, 1919. Its harsh terms and stringent reparations burdened the German economy and placed sole blame for the war on Germany.

German resentment to the treaty would ultimately culminate in the election of Adolf Hitler, a former corporal in the German army, as chancellor. After the bloodiest war in history a quarter-century later, the mistakes made at Versailles would finally be rectified by two US Army veterans, Captain Harry S. Truman and Colonel George C. Marshall.

In 1919, the great redeeming feature of the Treaty of Versailles was seen by President Woodrow Wilson as the establishment of a League of Nations strong enough to guarantee the political independence and territorial integrity of its member states. When serious opposition to the treaty was manifested in the Senate, Wilson undertook a cross-country speaking tour in support of ratification. He suffered a debilitating stroke in October 1919 that effectively ended any chance that the treaty would be ratified.

All this had little effect on Georgia, where a new threat known as the boll weevil had begun to threaten the future of the state's premier crop — cotton. New strains on the economy in the coming decades would put both Georgia's fiscal and judicial stability to the test.

Chapter 2
A Maturing Institution: 1920–1956

The Court of Appeals of Georgia matured as a public institution during the thirty-five year span from 1920 through 1955. In this period, the Court of Appeals consisted of two divisions of three judges each. The average tenure of the nineteen judges who served from 1920 to 1956 was almost fifteen years. Six of the nineteen judges later served on the Supreme Court of Georgia. Stability, continuity, and productivity were the hallmarks of this era in the history of the Court of Appeals.

Although 1920 to 1956 was a period of stability for the Court of Appeals of Georgia, momentous events were taking place on the state, national, and world stages. Georgia experienced a decline in its cotton-based economy, the Great Depression, and the migration of many Georgians from rural to urban areas as a result of poor economic conditions. A new generation of political leaders, including Walter F. George, Eugene Talmadge, Eurith D. Rivers, Richard Russell, and Carl Vinson dominated state politics, while Franklin D. Roosevelt's New Deal attempted to guide the nation out of the Depression. World War II shook the world, and in Georgia, the war effort produced an economic boom in the post-war years, but Georgia's social and political scene faced a struggle over racial segregation.

The Bench 1920–1956

All but one of the nineteen Court of Appeals judges serving from 1920 to 1956 were born before 1900. Most of these men were of the horse-and-buggy generation that saw the rise of railroads and the automobile. They were raised in a rural state coming through Reconstruction and obtained their educations and began their careers in the last years of the nineteenth century up to World War I. They hailed from communities across Georgia, from Atlanta to Americus, Baxley, Cuthbert, Dalton, Garden Valley, LaGrange, Liberty Hall, Montezuma, and Wildwood. Most received their legal training at one of the relatively new law schools, although about one-fourth were trained by reading law under the tutelage of a practicing attorney. About one-half of the nineteen judges brought to their judgeship practical experience they earned from holding one or more elective offices, with six having served as a mayor.

Initial service on the Court of Appeals was more frequently obtained by appointment than election. Only six of the nineteen judges serving between 1920 and 1956, were initially elected to the Court of Appeals. Those were Nash R. Broyles, first elected in 1914, Roscoe Luke and William F. Jenkins, elected when the Court of Appeals added three judges to serve a term beginning in 1917, Alexander W. Stephens, elected in 1918, Benjamin H. Hill, Jr. who

was elected as an original member of the Court of Appeals in 1907, and John B. Guerry, elected in 1933. The other thirteen judges were appointed to a vacancy on the Court usually resulting from a judge's death or the appointment of a judge to the Supreme Court.

Benjamin Harvey Hill

John B. Guerry

Leadership of the Court

The period from 1920 to 1956 was characterized by stability and continuity not only in the Court of Appeals as an institution, but also in the leadership of the court. The first chief judge of this era was Nash R. Broyles. After engaging in private practice, serving as a United States commissioner, and holding the elected office of city recorder of Atlanta for sixteen years, Judge Broyles was elected to the Court of Appeals in 1914, and was made chief judge in 1919. He was the longest serving chief judge, holding that office until his death in 1947. Georgia saw ten governors come and go during Chief Judge Broyles's remarkable tenure, a tenure marked by Broyles's prudence:

Nash Broyles

> *No ideologies or intangible philosophies swayed him, nor did popular applause swerve him from his judgment. A believer in the enforcement of the law, an opponent of trifling technicalities, an advocate of the punishment of the guilty as a protection to society, the volumes in which he wrote contain many a case where he declared that the evidence did not justify a conviction, and the obscure and unknown defendant secured his freedom. His strength lay in his faith in the eternal principles of right and wrong. With him a contract entered into fairly was inviolable whether it was that of the weakest person or the most powerful one. He regarded the individual as the apex of creation, and his rights and obligations were to be so measured.*[34]

Judge Broyles's successor as chief judge was I. Homer Sutton, who served in that role from 1947 to 1954. Beginning in 1906, Judge Sutton practiced law in North Georgia for twenty years, and served terms as mayor of Clarkesville, city attorney, and county attorney. In 1926, he was elected Superior Court judge. As judge, he gained a reputation as fair, impartial, and efficient, and he was rarely reversed on appeal. In 1932, Judge Sutton was appointed to the Court of Appeals where he served until his appointment to the Supreme Court in 1954.

I. Homer Sutton

The judicial philosophy of Chief Judge Sutton was described in his memorial:

[34]John R. Slaton, Chairman Memorial Committee, Memorial to Chief Judge Nash Rose Broyles, 75 GA App 887, 888-889 (1947).

In more than 1500 opinions prepared by Judge Sutton for the appellate courts there is ample display of his power to make plain the most complex and confusing issues. Judge Sutton had a realistic approach to the law based upon the application of logical expectation from the trend of past decisions to the particular facts of each case before the court, as sifted and illuminated by his penetrating and thorough analysis and his amazing powers of memory. These powers enabled him to write clear and forceful opinions, stated in plain and concise language that is not susceptible to misunderstanding.[35]

The last chief judge of the period 1920 to 1956 was Jule Wimberly Felton, who became chief judge upon Judge Sutton's appointment to the Supreme Court in 1954. He served until 1969 when he was appointed to the Supreme Court. The roster on page 28 lists the other men who were elected or appointed to serve the court from 1920 to 1956.

Jule Wimberly Felton

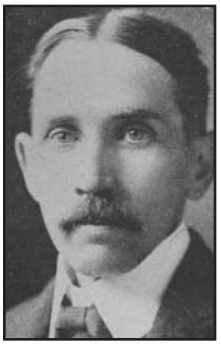
These judges were stewards in the task of building the Court of Appeals as an institution and developing in Georgia a proud tradition of appellate review.

Continuity

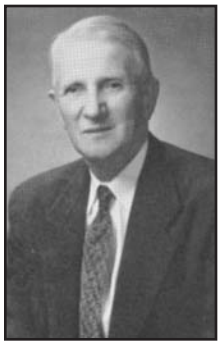
Logan Bleckley

The stability and continuity reflected in the history of the judges of the Court of Appeals in this era also applies to the dedicated service of court personnel. During the period from 1920 to 1956, only two persons served as clerk of court. Logan Bleckley served from 1907 to 1938. His successor, William G. England, served from 1938 to 1957. England was employed a total of forty years by the court, first as secretary to the judges and then as clerk of court. In addition, only three persons served as reporter of decisions during this period: George W. Stevens (1897–1943), B. W. Fortson (1943–1945), and Arthur H. Codington (1945–1962). B. W. Fortson had been a representative in the Georgia legislature and superintendent of schools in Calhoun County; he was also the father of Ben W. Fortson, Jr., who later served as the secretary of state of Georgia.

William G. England



George W. Stevens



Arthur H. Codington

[35]E. D. Kenyon, Chairman Memorial Committee, In Memoriam Justice I. Homer Sutton, 217 GA 873, 874 (1961-62).

Judges 1920-1956

Reason Chesnutt Bell was a former solicitor and judge of the Albany Judicial Circuit and a trustee of Mercer University.

Frank Arthur Hooper, Jr., was a Fulton County legislator prior to joining the Court of Appeals. He served out the unexpired term of Judge Bloodworth, and, thereafter, was a superior court judge in Atlanta and a judge of the US District Court, Northern District of Georgia.

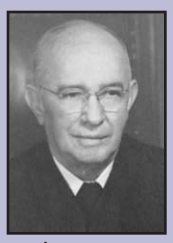

Hooper


MacIntyre

Hugh James MacIntyre was a former judge of the City Court of Thomasville and Juvenile Court of Thomas County. He was a trustee of the Georgia State Women's College.

John Benjamin Guerry was a former solicitor of Quitman County and a student of history, particularly the Civil War. He died while in office in an automobile accident en route to attend the American Institute of Law in Washington, DC. Guerry took his oath of office as a judge of the Court of Appeals a second time when it was discovered a portion of the oath had been omitted from the book used by the Governor when first swearing in the new judge.

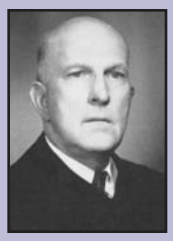
Bernard Clay Gardner succeeded Judge Guerry. He was a former teacher and solicitor and a superior court judge of the Albany Judicial Circuit.


Gardner

David Monroe Parker was a former mayor of Baxley and state representative from Ware County.


Parker

Johnson Murphy Claggett Townsend was a star baseball player, a former state representative from Dade County, an assistant attorney general, and a superior court judge of the Cherokee Circuit.


Worrill

Charles William Worrill attended United States cavalry and army schools, was a Texas Ranger, and a deputy marshal. It was said that while serving as a superior court judge of the Pataula Circuit he kept two pistols on his bench.

Ira Carlisle was a state representative and senator and a solicitor and judge of the City Court of Cairo.

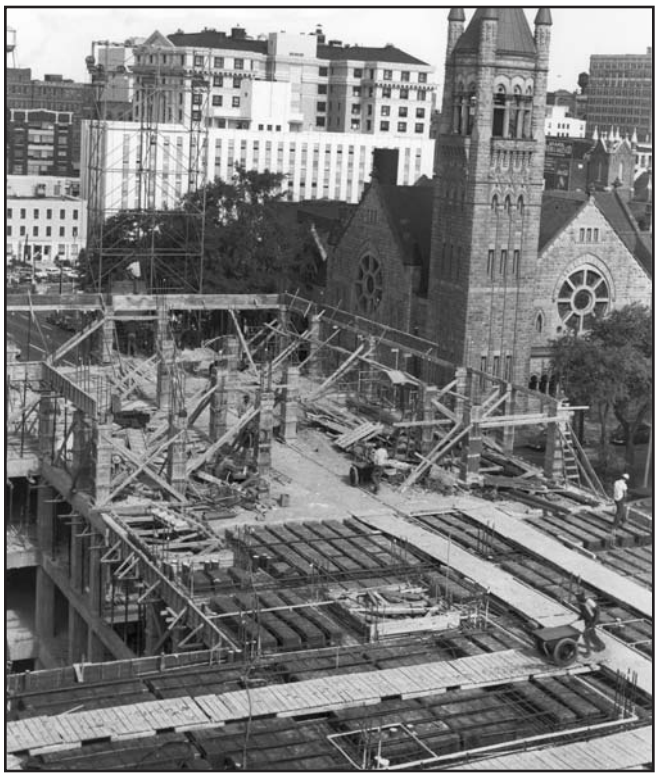

Carlisle

Joseph Dillard Quillian loved to read Greek and Roman classical literature and had been county attorney of Barrow County, a city attorney of several cities in that county, and a school board member.

Horace Elmo Nichols was an accomplished musician having attended a number of music schools. He practiced law in Canton where he served as a solicitor of the Blue Ridge Circuit. He later served as an assistant attorney general and a superior court judge of the Rome Judicial Circuit. He was instrumental in the establishment of the Georgia State University College of Law.


Nichols

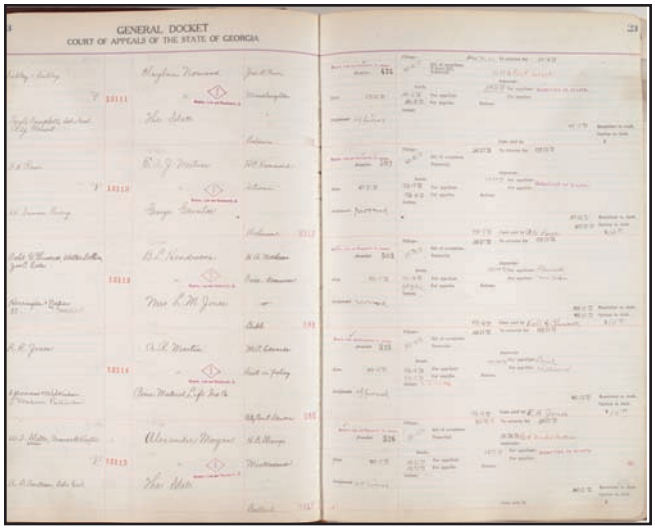
From 1920 to 1956, there were very few legislative acts directly affecting the Court of Appeals and none affecting its size and structure. Three acts did affect the court, however. First, in 1943, the General Assembly passed legislation creating the position of judge emeritus, allowing judges of the Court of Appeals who reached seventy years of age and ten years of judicial service to be appointed judge emeritus upon resignation from the court and receive two-thirds of a judge's salary for life. Secondly, the jurisdiction of the Court of Appeals was altered in 1945, when the state constitution was amended to give the Supreme Court jurisdiction in equity cases, habeas corpus cases, and cases involving extraordinary remedies. Lastly, in an act very important to the future of the court, the legislature authorized the construction of a state judicial building to be completed in 1956.



Construction of the State Judicial Building.

Women in the Court

Another distinct break with the past also occurred in this period; it concerned the status of women in the nation and before the court. In 1920, the Nineteenth Amendment of the United States Constitution was ratified, guaranteeing women the right to vote. In 1922, Georgia suffragist Rebecca Latimer Felton, age eighty-seven, was appointed by Governor Thomas Hardwick to an interim appointment to the United States Senate. Although she served only one day before yielding to the recently elected Walter F. George, Rebecca Latimer Felton had the distinction of being the first woman ever to occupy a seat in the United States Senate. That same year, another trail blazing woman, Viola Ross Napier, became the first woman to argue a case before the Court of Appeals of Georgia. The court records reflect that Viola Napier of Macon, thirty-one years old and a member of the bar since 1920, argued the case of *Hendricks v. Jones* on February 13, 1922.[36]



General Docket Court of Appeals 1922

[36]28 GA App 335 (1922).

A Snapshot of the Operation

In a June 3, 1927, address to the Forty-Fourth Annual Session of the Georgia Bar Association, Court of Appeals Judge Reason Chestnutt Bell provided a snapshot of the operation of the court in 1927, including its procedures, workload, docket, and internal operations. Excerpts, including a measure of Judge Bell's wry humor, have been provided below.

Operation as a Two Division Court

Questions for decision are occasionally discussed informally by the judges of one division with the judges of the other division, but as a rule one division knows little or nothing of what the other is deciding until the decisions are published in the advance sheets of the Southeastern Reporter. May I remark that, notwithstanding this fact, conflicts between the decisions of the respective divisions are exceedingly rare, and that the scarcity of such conflicts would seem to be evidence that each division is tracking the law pretty closely in its rulings.

Judge Reason Chesnutt Bell

Assignment of Cases

The judges do not, after the arguments, take the cases to their offices and divide them as they might divide a bushel of potatoes. But within each division, the cases are assigned to the different judges by a system of rotation. In addition to the court dockets, each judge has an individual docket in which he keeps a record of the cases assigned to him. A judge is not, under the rules, obliged to keep a case merely because it falls to him on the argument; he may exchange it to another judge on his division if he can find one who is willing. For the most part, however, the cases are held and decided in accordance with the original assignments.

The Appellate Record

Every record is not read by every judge. Otherwise, little time would be left for anything else. Each judge is trusted by the others to read the record and to state the facts of the case assigned to him. If my associates can not depend upon me for the facts of the ordinary case in my charge, I am unworthy of a position on the court.

Preparation of Opinions

Each judge, in the preparation of an opinion, makes a carbon copy which he passes on with the record to his respective associates, each of whom, after consideration, makes a note on the margin of such copy, stating whether he concurs, dissents or wishes to consult, with perhaps comments or suggestions. This copy is retained in the private files of the judge writing the opinion. If an opinion has been returned to its author unconditionally okayed, the case is ready to be stricken from the docket as disposed of at any time the judges may come together for that purpose. This they are accustomed to do either in the court's library or in the office of one of the judges. There is no form or ceremony in the rendition of a decision. When the judges are through with a case, it goes with the decision first to Messrs. Graham and Stevens, the reporters, who carefully study the decision for the purpose of correcting any errors the judge may have made—in spelling, grammar or rhetoric, after which they forward the decision and the record to the Clerk. Whereupon, or presently, the

of the Court of Appeals: 1927

Clerk exposes the decision to public inspection on a table in his office. Up to that time the case has only been in process. Now it is decided.

Opinion Drafting

Where a case has been the rounds of the judges and the opinion is not unanimously and unconditionally agreed to, it is brought to the consultation for discussion. The opinions are often times returned to the author badly disfigured if not entirely ruined. Each judge is constantly undergoing the severest discipline at the hands of his associates, for there is no delicate sentiment which saves one's work from the hardest blow which any member of the court may see fit to give it. Many cases are brought to consultation repeatedly before they are passed.… In close cases the judges frequently write several opinions for the initial consideration of their associates. This practice serves to bring out the different theories suggested and also to preserve the line of thought which a judge may need but might otherwise forget before succeeding in having the case disposed of.

So far as I have been informed, the cases that hold the record on the Court of Appeals for the length of time actually consumed in their solution are the cases of *Gilstrap vs. Leith*, 24 GA App 720, and *Central of GA Ry. Co. vs. Hawley and Jones*, 33 GA App 375. Each of these cases occupied the time of the judge to whom it was assigned for from six to eight weeks before any satisfactory solution could be arrived at and yet in each of them the opinion was brief.… It is not a rare occurrence to encounter cases which require from one to two weeks or even longer to decide, and it is impossible to estimate the amount of work done in a given case by the length and character of the decision rendered. It is said that the longest opinions are usually written by the newest judge, that is, until he has better sense.… It not infrequently happens that after a decision has been unanimously agreed to, the author will hold it back and later seek to persuade the other judges that his original opinion was wrong. This is usually a far easier task than was that of showing that he was right in the first place; although many of the reversals of the Court of Appeals by the Supreme Court are in cases in which we become doubtful of and withdrew from our first impression.… In a recent case the opinion of the majority was written by Judge Stephens, and a dissenting opinion was filed by Judge Jenkins. The judgment was in favor of the plaintiffs in error. The attorney who represented them is authority for the statement that one of the plaintiffs in error dropped dead while reading the opinion. Whether it was the opinion of the majority or the dissent the attorney was unable to say; and since both opinions were especially strong in that case, it seems impossible to determine which of the judges, if either, should be held responsible for this unfortunate occurrence.

Court Docket

A little inquiry for the purpose of estimating the relative proportion of cases affirmed and reversed reveals the following; 1,581 cases are reported in volumes 33, 34, and 35 of the reports, 1,052 civil and 529 criminal. Of the 529 criminal cases, 441 were affirmed and eighty-eight were reversed. Of the 1,052 civil cases, twenty-four were dismissed; and 1,028 were decided on their merits, with 661 affirmed and 367 reversed. It is seen that of the criminal cases only about 17% were reversed, of the civil about 36%; and that the dismissals amount to less than 2%.

A Snapshot of the Operation

It may be interesting, though doubtless not useful, to know where the cases come from: Of the 1,052 civil cases referred to, Fulton county furnished about 20%; Bibb, Chatham, and Floyd, varying but slightly in the order named, each about 4%; Richmond, Laurens, and DeKalb, each about 2%; Decatur, Colquitt, Wilkes, Muscogee, Cobb, Glynn, and Berrien from 1% to a little less than 2% each. These fourteen counties furnished practically 50% of the litigation in the Court of Appeals, as reported in volumes 33, 34, and 35, while there were about twenty counties from which no civil case appears in these three volumes. There are six counties from which we have had no civil case in five years, with six other counties from which only one civil case each has been sent up during this period. The fact that a given county supplies little or no litigation does not necessarily mean that it is a community of slight business activity or that it furnishes no work for the lawyer. We all know that the lawyer serves his client best by avoiding litigation and even controversy wherever it is possible to do so, without undue sacrifice of rights or principles.

Speaking of certiorari, a compilation shows that, beginning with the effective date of the Constitutional amendment providing for the review of decisions of the Court of Appeals by certiorari, there are reported in volumes 19 to 35, inclusive, an aggregate of about 9,000 cases, and that petitions for certiorari were made in 654 of this number. The petitions were granted in 133 cases and denied in 521 cases. Of those cases in which the petitions were granted, sixty-three were reversed and sixty affirmed. The approximate results in percents were as follows: Certiorari applied for in 7 percent of the cases, 20 percent of the applications were granted, 80 percent were denied, and 50 percent of the grants were followed by reversals. The reversals, however, amounted to less than 1 percent of the total number of cases decided.

Observations of an Appellate Judge

The work of an appellate judge tends naturally to a spirit of contrition and humility. Men working together unselfishly and without rivalry in search of truth, all in pursuit of the same truth, find little cause for self-exaltation. How greatly is this true where the thoughts and opinions of each are so rigidly analyzed, and if deemed to be wrong, are so frigidly condemned, as in the give and take business of deciding intricate law cases and endeavoring to write opinions therein in which all may concur. There is but little stimulation from without, even after a decision is once agreed to and delivered. The attorney for the losing party generally bemoans the fact that the judges were so dense, obstinate, or careless as never to see the point, while the attorney for the prevailing party knew all the time what the decision would be if the court were only capable of grasping his logic, and merely congratulates himself that for once it was. No other person is particularly interested for the time being. But what higher inspiration can one enjoy than that which is derived from the love of justice and truth or from the consciousness of having done an important task as well as one could? We do hear from our work occasionally, as in motions for rehearing. In these instances, there can be no mistake as to the esteem in which our decisions are held in some quarters. And it produces a delightful sensation, after the grant of such a motion, to have the counsel in whose favor the decision was originally rendered come forward and defend it as one of the ablest ever written! However, the destruction of one's own handiwork, if it is found to be faulty, is even more pleasurable, and no edifice is satisfying whose architecture is not the law.

of the Court of Appeals: 1927

Appellate Courts and the Development of Law

Of the rendition of decisions, as of the making of books, there is no end. Although it is the belief of some great thinkers that if men were wise enough to discern and apply them, it would be found that a very few rules would suffice for all cases, the multiplication of laws has progressed to the point of becoming a menace to civilization, and the courts must share with the legislative bodies responsibility for the dreadful condition. If, in the absence of a Moses, a Justinian, or a Blackstone, there is no remedy for what has been done, the greatest care should be taken not to add to the confusion. Judges should exercise the most extreme caution in declaring a new rule or in opening an established rule to a new exception. In view of the many thousand principles which have already become settled law, it should be necessary to announce new doctrines only in very rare and exceptional cases. The lawyer who is constantly seeking to raise some new question merely to glorify himself serves the court and his country badly. So do appellate courts mistake when they strain either to affirm or reverse a given case out of a desire for individual justice. Such a disposition can only lead to artificial distinctions and exceptions, to the perplexity of the people and the ultimate confounding of the courts themselves.

Under our system, the judge of a reviewing court should seek that justice which is found in the logical application of the law to the facts considered abstractly and hypothetically, and not that concrete justice which the judge may personally think ought to be done under the peculiar circumstances. Every case should be approached with a concern only for the discovery and application of the law that most naturally governs it, and without regard to what may be the resulting judgement. It is true, the modern tendency seems to be in favor of dispensing concrete justice in the particular case, and I do not say that in the course of time it may not prove to be the wiser policy. However, so long as we require the writing and publication of decisions, and proceed under a system of precedents, such tendency can only serve to increase the uncertainty of the law by making a rule for every case and thus enlarging the number of precedents. A disposition to deal freely with the cases under the law may result in a larger number of reversals, but it will tend to prevent the inordinate multiplication of laws, and make for a greater sum of justice in the end. Undoubtedly, it will at times become necessary for the judges to supply a rule of law where none has existed before. There are gaps in the law which can be filled in no other way. But judicial legislation can be justified only by a legal vacuum plus an absolute necessity that it be filled, and the growth of the law by that process should be slow and imperceptible as the processes of change and growth and should only follow in their wake. The courts should deal cautiously with the so-called "case of first impression," and the attorneys should be generous in their attitude even if the decision in such a case should be sparing in its [pronouncements]. With no one to deliver us from the multitude of rules into which we have become enmeshed, it behooves all who are interested in a life under law to lend aid against thickening the maze.

"…the judge of a reviewing court should seek that justice which is found in the logical application of the law to the facts considered abstractly and hypothetically, and not that concrete justice which the judge may personally think ought to be done under the peculiar circumstances."

Napier represented the plaintiff in a lawsuit against the owner of a hotel, claiming that the hotel owner was negligent in maintaining a dimly lit stairwell in which the plaintiff fell, causing injuries. The trial court had overruled the defendant hotel owner's demurrer to the lawsuit, and the hotel owner appealed, claiming that the lawsuit should have been dismissed.

The case was heard by Chief Judge Broyles and Judges O. H. B. Bloodworth and Roscoe Luke. Although the Court of Appeals did not rule in favor of Napier's client, her advocacy in the Court of Appeals constituted a significant milestone for women. And this would not be her last breakthrough: Napier would also be the first woman to argue before the Supreme Court of Georgia and the first woman elected to the Georgia legislature.

Caseload–Productivity of the Court

The caseload size and the number of decisions issued by the court from 1920 to 1956 bears testament to the productivity of the court and its critical role in Georgia's legal system. The decisions from a day in 1920 are compared below to the decisions issued in 1956.

A Day of Decisions: 1920

On January 6, 1920, the Court of Appeals issued twenty decisions on thirteen civil and seven criminal cases. Of the twenty cases, sixteen were decided "on the headnotes," meaning that the published opinion was limited to a concise description of the court's holding without an extensive written opinion.

The criminal cases included appeals from convictions for possession and sale of intoxicating liquor, larceny, cheating and swindling, assault and battery, burglary, and unlawful shooting. All the criminal cases were decided on the headnotes and all but one case were affirmed.

Of the thirteen civil appeals, the Court of Appeals affirmed the lower court in nine cases and reversed in four. Here are summaries of the four cases with written opinions. In *Morrow v. Young*, the court affirmed the Dougherty County Superior Court's dismissal of a trover action arising out of a dispute over the assets of the bankrupt Albany Ice Cream Company. Most of the opinion, authored by Judge Roscoe Luke, is devoted to a careful recitation of the facts and arguments of the parties, along with a list of authorities supporting the court's holding.[37] *Adams v. Walker* involved an appeal from the City Court of Tifton in which the City Court had directed a verdict for the defendant in a contract action, involving the sale of a mule.[38] Adams brought suit upon a promissory note from Walker for the price of the mule, which had died before the note was due. Walker claimed that since Adams retained title to the mule, the loss from the mule's untimely death fell upon the seller, Adams. In an opinion by Judge Luke, the court reversed the lower court's ruling in Walker's favor, carefully analyzing the terms of the contract and concluding that the contract "was intended to make the loss of the animal fall upon the buyer rather than the upon the title-holder, where it would ordinarily fall."[39] In *Guggenheimer & Co. v. Whitehurst*, an appeal from a contract action from

[37]24 GA App 642 (1920).
[38]24 GA App 646 (1920).
[39]Ibid., 648.

Twiggs County Superior Court, the Court of Appeals issued a short opinion reversing the lower court's denial of the defendant's motion for a new trial, holding that the jury's verdict for the defendant was without evidence to support it.[40] The last of the opinions was in *Bradfield v. Atlanta Coca-Cola Bottling Co.*[41] Judge Luke's opinion for the Court of Appeals reversed the Fulton County Superior Court, which had directed a verdict for the defendant bottling company in a suit alleging it had been negligent in causing small particles of glass to be included in plaintiff's beverage. The court held that the questions of fact should be submitted to a jury. Chief Judge Broyles filed a dissenting opinion, contending that the defendant's evidence "clearly showed that it had exercised ordinary care in the bottling of the beverage."

A Day of Decisions: 1956

Fast-forwarding to the spring of 1956, the Court of Appeals issued the final decisions rendered in its original quarters in the State Capitol Building. These last five decisions issued before the dedication of the new courtroom at the State Judicial Building were dated May 23, 1956. The only case in the 1956 group decided on the headnotes was *Richards & Associates, Inc. v. Studstill*, a tort case that the Supreme Court had taken on certiorari and reversed the original decision of the Court of Appeals, only requiring the Court of Appeals to enter judgment in accordance with the Supreme Court's mandate.[42] One noticeable difference between the 1920 opinions and the 1956 opinions is that the opinions in the later group are, on average, lengthier.

The only criminal case of the 1956 group, *Scroggs v. State*, resulted in a reversal of a voluntary manslaughter conviction.[43] Florence Scroggs was tried in Cobb Superior Court for the homicide of Effie Adams, a woman the defendant alleged had been having an affair with the defendant's husband. The Court of Appeals, in an opinion authored by Judge John Townsend, held that the evidence suggested that the defendant's act was justified and that the evidence did not support the conviction.

The other three decisions were in civil cases. In *Reserve Life Insurance Co. v. Peavy*, the court affirmed the Bibb County Civil Court's decision overruling demurrers to an action by a policyholder to collect on a hospitalization policy.[44] In *McGowans v. Speed Oil Company*, the court affirmed the Polk Superior Court's dismissal of a tort suit on the ground that the plaintiff's amendment changing the name of the defendant to "Speed Oil Company of Atlanta" sought, under the guise of misnomer, to add a new party defendant.[45] And in *Shropshire v. Caylor*, the court affirmed the Gordon Superior Court's decision overruling a defendant's demurrer in a tort case arising out of a car crash.[46] The defendant argued the collision was the fault of the service station employee to whom defendant had entrusted his car, but the Court of Appeals affirmed the lower court's decision that the defendant-car owner could be sued because at the time of the crash the car "was being operated for the benefit of such owner and pursuant to his instructions."

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[40] 24 GA App 650 (1920).
[41] 24 GA App 657 (1920).
[42] 94 GA App 28 (1956).
[43] 94 GA App 28 (1956).
[44] 94 GA App 31 (1956).
[45] 94 GA App 35 (1956).
[46] 94 GA App 37 (1956).

The Court of Appeals of Georgia 1949-1951. Left to right: Judge Charles W. Worrill, Judge Bernard C. Garndner, Sr., Presiding Judge Hugh J. MacIntyre, Judge I. Homer Sutton, Judge Jule W. Felton, and Judge John Murphy Clagett Townsend.

These two samples of Court of Appeals opinions, one from a single day in 1920 and one from a single day in 1956, exemplify the breadth of cases adjudicated by the court. *Walker* and *Shropshire* also illustrate the change in the Court's environment as the days of animal power gives way to machine power. While the average published decision was somewhat longer at the end of this era than the beginning, the decisions from volumes 24 and 94 of the *Georgia Appeals Reports* bear a strong resemblance.

A Passion for the Law

The court's many decisions on a vast array of legal questions during this period defy a single, general description, but it is worthwhile to focus on a few individual cases. Two such cases bear testament to the complexity and gravity of issues confronting the court and the craftsmanship and passion of the judges: *Hendricks v. Citizens' & Southern National Bank*, 43 GA App 408 (1931) and *Winston v. State*, 79 GA App 711 (1949).

Hendrick v. Citizens' & Southern National Bank

In the *Hendricks* opinion authored by Judge Roscoe Luke, the decision begins with a concise statement of the history of the case. "Leroy Hendricks brought suit in the Chatham County Superior Court against the Citizens' & Southern National Bank, executor of the will of Mrs. Nancy Hendricks for the recovery of damages alleged to have been sustained by reason of a libel contained in Mrs. Hendricks's will."[47]

In her will, Mrs. Hendricks, who had a substantial estate, left Leroy Hendricks, the son of the divorced wife of Mrs. Hendricks's deceased son, only $100, for the stated reason that she did not "recognize him as a grandson, descendent of my blood." In his suit, Leroy Hendricks claimed that the execution of the will libeled him by falsely stating that he was illegitimate. The case presented an issue of first impression.

[47] 43 Ga App 408 (1931).

Leroy Hendricks, pointing to cases decided in two other jurisdictions, contended that he had a valid cause of action and should be allowed to proceed with his suit. The bank responded that under common law the libel action was extinguished by the death of Mrs. Hendricks, and that the trial court was right to throw the case out. Judge Luke eloquently described the choice facing the court:

> *Upon consideration of the question, we find ourselves squarely facing a choice between two courses; on the one hand, the orthodox course of adhering strictly to the rigid rule of the common law, which in any case of the character of that before us would do violence to our innate sense of what is fair and right; or, on the other hand, of falling in line with constantly changing concepts of the law and its administration, by conforming with what appears to be modern doctrine, "pure drawn from the fountains of justice." In the instant case, notwithstanding our natural aversion to do anything in the nature of "judicial legislation," we are impelled, in good conscience, to adopt that latter alternative. Though the doctrine that we have decided to follow, it is true, does not seem to be derived from any ancient legal lore, it has the merit, in our judgment, of being deep rooted in a moral source.…*[48]

The court concluded that Mrs. Hendricks knew that the will would be executed upon her death, and, therefore, Leroy Hendricks could not sue the bank as executor, but could sue Mrs. Hendricks's estate. Judge Luke's opinion concludes its discussion of this issue with a flourish:

> *[Mrs. Hendricks] knew when she executed her will that, unless she took some measure to prevent it, the instrument would be presented for probate and record. That was the very purpose of its formal execution. The law presumes that one contemplates the natural consequences of his act, and upon that principle bases his legal responsibility. If the allegations of the petition are true, then to hold that the estate of the executrix is not answerable in law would be to say, in effect, that the wrong committed against the plaintiff is without remedy. This we are unwilling to hold. Indeed, it is not unimaginable that even in the orderly administration of the law that there are circumstances where it may be possible that pure logic must in some small measure yield to righteous indignation.*[49]

Winston v. State

The second example of the court's work is a 1949 criminal case opinion by Judge John Townsend. His opinion directly applies binding precedent in a straightforward manner but also illustrates how the court's decisions reflect a passion for justice. The defendant in the case, Lloyd Winston, was convicted in the City Court of LaGrange of illegal possession of whisky. The evidence supported the conclusion that the police had obtained the incriminating evidence by breaking through the locked door of defendant's home without a search warrant. That evidence was admitted against Winston at trial. The Court of Appeals assumed that the search was a violation of the prohibition against

John Townsend

[48]43 Ga App 411 (1931).
[49]Ibid., 413.

unreasonable searches and seizures found in the state and federal constitutions. However, the court was bound by prior decisions of the Supreme Court of Georgia that exclusion of the illegally seized evidence is not a remedy for even flagrantly illegal searches. In such cases, defendants were left to the remedies of civil suits and police disciplinary procedures. Less than one month before the Court of Appeals issued its decision in *Winston*, the United States Supreme Court had refused to require the states to exclude evidence seized in violation of the federal prohibition on unlawful searches in *Wolf v. Colorado*.[50] As a matter of applying state and federal precedent, Judge Townsend's opinion for the court dutifully applied the law set forth in earlier cases. What is remarkable is that Judge Townsend chose to explain that he was agreeing to affirm Winston's conviction "solely because he is bound by precedent." Judge Townsend then made an impassioned statement about why he believed that the state and federal constitutions both should be interpreted to include a general rule that illegally seized evidence should be excluded from trial as the remedy for the constitutional violation.

> *Speaking for the writer only, the decisions of our Supreme Court making admissible evidence obtained through the criminal acts of peace officers, amounting to unlawful, unwarranted, unreasonable and reprehensible violation of our two most sacred documents aside from the Holy Writ, present a most deplorable paradox. These decisions have had the effect of making but an empty shell of what was intended by the framers of these great guaranties of liberty to be the living seed of freedom…. The foregoing decisions of our Supreme Court, coupled with the law not in conflict therewith, say in effect to the peace officers of this State, "You shall not make an unreasonable search and seizure of the home of a citizen, because his home is his castle. The breaking down of his door is a trespass for which you are responsible both civilly and criminally. An unlawful search and seizure by you amounts to a violation of the most sacred rights under our organic law. However, if you do make such a search, bring the evidence you thus obtain into a court of justice, and it will be given the same consideration as evidence honorably obtained.… The rule as enunciated in this State, making evidence obtained in violation of the search and seizure clause of the Federal and State Constitutions admissible, creates an injustice for which the citizen has no adequate remedy.*[51]

Judge Townsend's call for reconsideration of the settled legal question would not be heeded during his judicial career, but prophetically foretold the United States Supreme Court's reasoning many years later when it reversed course and required states to apply the exclusionary rule to evidence illegally seized in *Mapp v. Ohio*.[52] Judge Townsend's opinion in *Winston* illustrates both the principled application of binding precedent and how dissenting voices enrich the law over time.

[50] 338 US 25 (1949).
[51] 79 GA App 711, 714-715 (1949).
[52] 367 US 643 (1961).

Conclusion

By the time of the dedication of the State Judicial Building in 1956, the Court of Appeals of Georgia had an impressive legacy of stability, continuity, and productivity. That legacy was built in the confines of the old courtroom in the Capitol, which had echoed with the ongoing business of the Court of Appeals for fifty years—the sound of the gavel, the calling of cases, the arguments of the advocates, and the questions of the judges. While the old chamber would fall silent, the business of the court would enliven a new space where the Court would continue to build its legacy.

Chapter 3
An Expanding Court: 1956–1980

The Court of Appeals moved into the new State Judicial Building in 1956. Chief Judge Jule Wimberly Felton noted that it was "the first time in the history of Georgia that the Court of Appeals has had its own courtroom and adequate quarters and facilities necessary for its proper function."[53] Fittingly, Chief Judge Felton, the longest serving appellate judge in Georgia's history, presided over the courtroom dedication on June 4, 1956. He served from 1937 to 1969, including fifteen years as chief judge. In 1969, Governor Maddox appointed him to the Supreme Court of Georgia, where he served until his retirement in 1971.

Court of Appeals Courtroom Dedication, 1956.

Judge Felton was the author of the inspirational credo carved in the marble above the bench in the courtroom of the Court of Appeals: "Upon the integrity, wisdom and independence of the judiciary depend the sacred rights of free men." The motto was later revised.

Expansion to Three Divisions

The move to the spacious new building also marked the beginning of the expansion of the court for the first time since 1916, when the number of judges was increased from three to six. The six judges in 1956 were Chief Judge Jule W. Felton, judges Bernard Clay Gardner, Sr., John Murphy Clagett Townsend, Ira Carlisle, Joseph Dillard Quillian, and Horace Elmo Nichols. This even number of judges occasionally resulted in the court being equally divided between affirmance and reversal, as happened in *Tucker v. Carmichael*,[54] a prenatal injury case.

In 1960, the Georgia legislature increased the Court of Appeals to seven judges, sitting in two divisions: one composed of three judges and one composed of four judges. All criminal cases were assigned to one division, a mandate dating back to the establishment of divisions in 1916. In the following year, the General Assembly added two more judges to the court and provided that the court sit in three divisions of three judges each, with one division han-

[53]Chief Judge Jule W. Felton, Dedication of the Courtroom of the Court of Appeals on 4 June 1956 at 10 o'clock. 93 GA App 901, 910 (1956).
[54]208 GA 201 (1951).

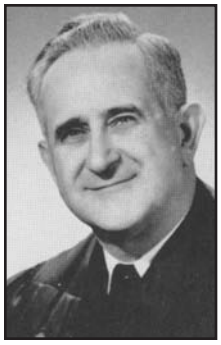
dling all criminal cases. In 1967, the legislature eliminated the requirement that criminal cases be assigned to a single division.

S. Ernest Vandiver, Jr., was governor of Georgia from 1959 to 1963, and the increase in the number of judges of the Court of Appeals, gave him the opportunity to make an unusual number of judicial appointments, eventually totaling seven. Only one other governor, George D. Busbee, would appoint more judges to the Court of Appeals, and his appointments spanned two terms in office.

S. Ernest Vandiver, Jr.

Governor Vandiver's Appointments

Governor Vandiver's appointment of Judge Joseph D. Quillian to the Supreme Court of Georgia in 1960 made way for his first appointment to the Court of Appeals. John Sammons Bell took office on February 8, 1960. Bell was chairman of the executive committee of Georgia's Democratic Party, a position from which he resigned upon his appointment to the court. Judge Bell is attributed with designing the Georgia state flag that was adopted in 1956 and flown over Georgia until 2001. This flag incorporated the Confederate battle flag, which proved to be very controversial in the latter part of the twentieth century.



Joseph D. Quillian

John Sammons Bell

From 1969 until his retirement in 1979, Judge Bell served as chief judge. He was the last chief judge elected by his brethren for an unlimited term, for in 1979 the position of chief judge was set for a two-year term. Judge Bell's was the first portrait to hang in the courtroom of the Court of Appeals.

On March 4, 1960, the governor filled the new seventh seat with the appointment of John Eccleston Frankum, who served the court for seven years before being appointed to the Supreme Court of Georgia by Governor Lester G. Maddox. In the fall of the same year, Robert Henry Jordan was appointed by Governor Vandiver to fill retiring Judge Bernard Clay Gardner's seat. Judge Robert Jordan served twelve years, and then he was appointed to the Supreme Court of Georgia. He was chief justice of that court from December 1980 until his retirement in November 1982.

John Eccleston Frankum

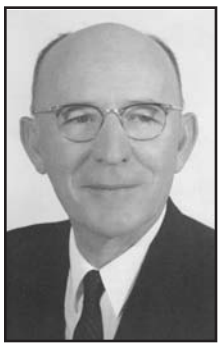
Robert Jordan

Homer Eberhardt

When the two additional judges were authorized in 1961, Governor Vandiver appointed Homer Christian Eberhardt of Valdosta, who was president of the Georgia Bar Association at the time,

and Robert H. Hall of Atlanta, an assistant state attorney general, to become judges eight and nine, respectively. Judge Homer Eberhardt once taught English at Mercer University and had been an associate editor of Orville A. Park's *Annotated Code of Georgia*, a revision of the code of 1910 authorized by the Georgia legislature in 1914. Judge Robert Hall sat on the Court of Appeals of Georgia from 1961 to 1974 and on the Supreme Court of Georgia from 1974 to 1979. From 1979 until his death in 1995, he served as a United States District Court judge for the Northern District of Georgia. Judge Hall, Judge Frank A. Hooper, Jr., who served on the court in 1932, and Judge Clarence Cooper are the only Court of Appeals of Georgia judges to have subsequently served in the federal judiciary.

William Vance Custer was the next judge to join the Court of Appeals. Governor Vandiver appointed William Vance Custer in 1961, to fill the late Judge John Murphy Clagett Townsend's seat. Judge Custer attended Oglethorpe University for one year. He then studied law in his father's office and was admitted to practice in 1922 at age nineteen. Arguably, he was the last Court of Appeals of Georgia judge without a formal law school education. During this period, men without a law school diploma could be admitted to the bar by making formal application to a judge of any Superior Court. The application was accompanied by a certificate from two practicing members of the bar of Georgia attesting to the moral character of the applicant, and certifying that they had examined the applicant "upon the various branches of the law and deem him qualified for admission to the practice of the law." Applicants then submitted to a written examination prepared by a board of examiners.

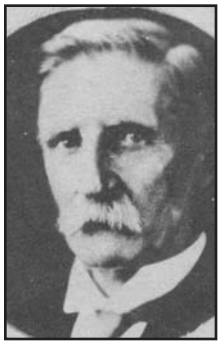


William Vance Custer

Judge Randall Evans, Jr., who was appointed in 1969, also obtained his law degree in an unusual fashion. He was unable to attend college for a bachelor's degree, but attended Maynard Law School in Macon, Georgia, receiving his LLB after just seventy days as Lige Maynard's apprentice. Judge Evans passed the Georgia Bar exam in 1925, at the age of eighteen.

Judge Custer's untimely death in 1962, less than four months after his appointment, led to Governor Vandiver's seventh Court of Appeals appointment, that of Robert Lee Russell, Jr., who served until his death in 1965. Judge Russell and his grandfather, Judge Richard B. Russell, Sr., who was on the court from 1907 to 1916, are the only grandson and grandfather combination to serve on the Court of Appeals of Georgia. The intervening generation of Russells was well represented in public life by Richard B. Russell, Jr., who, after serving as governor of Georgia from 1931 to 1933, went on to the United States Senate, where, until his death in 1971, he became one of the most influential members in the history of that body.

Robert Lee Russell, Jr.



Richard B. Russell, Sr.

Even as the court expanded from six, to seven, and then to nine judges, the whole court was required to determine each case in which there was a dissent in the assigned division. This process did not change until 1996, when the Georgia legislature provided that cases involving a dissent would be determined by seven judges, including the assigned division, the next division in succession, and a seventh judge.

Supporters of the Rights of All Citizens

Three judges would be appointed by the next governor, Carl E. Sanders, in the 1960s. He appointed Charles Adams Pannell to the court, following Judge Ira Carlisle's retirement in 1963. Pannell's background and experience were particularly impressive. He served on the Georgia Board of Pardons and Parole for several years in the early fifties, and while chairman in 1953, he voted to commute the sentence of a black man who had been convicted of killing a white man in Monroe County. After the local grand jury indicted Pannell, county officials asked him to leave the county because of talk of lynching. Judge Horace Nichols of Rome, as visiting judge, subsequently dismissed the charges against Pannell. About ten years later, Judge Nichols and Judge Pannell found themselves sitting together on the Court of Appeals of Georgia.

Charles A. Pannell

Prior to his appointment to the Court of Appeals, Judge Pannell served in the Georgia legislature. In 1961, Judge Pannell introduced the first bills designed to repeal segregation laws in Georgia and to assure that the public schools would remain open, at a time when many were clamoring for a shutdown of schools following the federal order that the University of Georgia be integrated. As state senator, Pannell was also instrumental in passing the unified bar bill creating the State Bar of Georgia in 1963.[55]

The death of Judge Robert Russell, Jr., after less than four years on the court led to Governor Sander's 1965 appointment of Judge Braswell D. Deen, Jr., who had served in the state legislature. He is credited with achieving the 1953 passage of the law permitting women to serve on juries in Georgia. Judge Deen was instrumental in the establishment of the Georgia Legal History Foundation in 1985, and his interest in legal history is further evidenced by the book he authored with William Scott Henwood, *Georgia's Appellate Judiciary: Profiles and History.*

Upon the retirement of Chief Judge John Sammons Bell in 1979, Judge Deen became the first chief judge under the new system of rotation of that position. In an interview conducted in 2006, Judge Deen stated he felt that during his term as chief judge he had worked toward a closer relationship with the Supreme Court and "democratized" the Court of Appeals by creating a number of committees that gave each of the judges more of a voice in the administration of the court.

[55]Pannell was born without a left hand, but never thought of himself as having a physical disadvantage. He played basketball at Young Harris College and attended Mercer University on a football scholarship.

The last of the three Court of Appeals judges appointed by Governor Sanders was John Kelley Quillian who succeeded Presiding Judge Horace Nichols, who was appointed to the Supreme Court of Georgia in November 1966. Judge Quillian's father, Joseph Dillard Quillian, was on the Court of Appeals from 1953 to 1960, during which time the son served as his father's law assistant. The judges Quillian are the only father-son combination to serve during the court's first 100 years.


John Kelley Quillian

New Appellate Procedures

During the 1960s, some of the most significant legislation in decades was enacted, and it had a direct effect on the court. The Appellate Practice Act of 1965 modernized appellate procedure, abolished bills of exception, and provided for institution of an appeal by the filing of a notice of appeal, thus making it easier to perfect an appeal. In *Chambliss v. Hall*, Judge Robert Hall explained, "The new Appellate Practice Rules were adopted by the General Assembly of Georgia for the primary purpose of securing speedy and uniform justice in a uniform and well ordered manner; they were not adopted to set traps and pitfalls by way of technicalities for unwary litigants."[56] The following year, the Georgia Civil Practice Act was enacted and a new Criminal Code was finalized in 1968, following years of work. In 1971, the legislature enacted the Juvenile Court Code of Georgia.

As a result of the new appellate practice act, a number of cases arose requiring the appellate courts to interpret the new act including *Peters v. Liberty Mutual Insurance Co.*[57] and *Taylor v. Haygood.*[58] In *Peters*, the Court of Appeals denied a motion to dismiss the appeal of a Superior Court order in a workers' compensation case, stating that under the new act, the proper form was a notice of appeal, not a writ of error. In *Taylor*, the Court of Appeals held that an appeal in a suit for damages arising from a collision of a state patrol car with other automobiles driven by the defendants was timely filed. Although the notice of appeal had not been filed within thirty days of the judgment in the case, it was filed within thirty days after the order overruling the motion for new trial, and, therefore, was timely within the language of the 1965 appellate practice act.

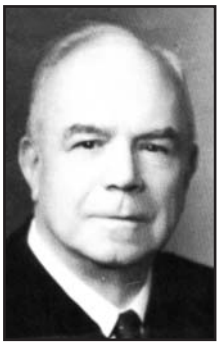
An Unusual Appointment

With the elevation of Judge John Frankum to the Supreme Court of Georgia in 1967, George Stanley Joslin, who at one time had been Judge Bell's professor at Emory University Law School and later his law assistant, was appointed interim judge of the Court of Appeals by Governor Lester G. Maddox, until Judge Whitman was ready. After being appointed to the Court of Appeals by Governor Maddox, Superior


George Stanley Joslin

[56]113 GA App 96, 98 (1966).
[57]113 GA App 41 (1966).
[58]113 GA App 30 (1966).

Court judge George Price Whitman delayed being sworn in to the office. Judge Whitman chose to delay his appointment until he accumulated enough service with the Superior Court of Fulton County to qualify for retirement benefits.[59] Chief Judge Bell met with the governor and requested the interim appointment of Joslin due to the court's heavy caseload. Just over two months later, on July 1, 1967, Judge George Price Whitman took the oath of office. In 1968, at age eighty-four, Judge Whitman was elected to the office "against strong, able, opposition."[60] In fact, in the September 1968 Democratic primary, his opponent garnered 333,539 votes, to Judge Whitman's 344,380 according to records in the secretary of state's office.


George Price Whitman

Sixteen Court of Appeals of Georgia judges have gone on to serve on the Supreme Court of Georgia. Only one, Richard B. Russell, Sr., served both as

[59] *The Atlanta Journal*, "Dr. Joslin Takes Oath as Judge," April 24, 1967, 14, 1.
[60] Robert B. Troutman, Sr., Chairman Memorial Committee, In Memoriam Judge George Price Whitman, Sr., Remarks of Presiding Judge Homer C. Eberhardt, 126 GA App XXVII, XXXVI (1972).

Judges with Service on Both the Court of Appeals and Supreme Court

	Court of Appeals	Supreme Court
Richard B, Russell, Sr.	1907–1916	1916–1938
Walter F. George	1917	1917–1922
William Franklin Jenkins	1917–1937	1937–1948
Reason Chesnutt Bell	1922–1932	1932–1949
I. Homer Sutton	1932–1954	1954
Jule Wimberly Felton	1937–1969	1969–1971
Charles William Worrill	1949–1953	1953–1954
Joseph Dillard Quillian	1953–1960	1960–1966
Horace Elmo Nichols	1954–1966	1966–1980
John Eccleston Frankum	1960–1967	1967–1972
Robert Henry Jordan	1960–1972	1972–1982
Robert H. Hall	1961–1974	1974–1979
Thomas O. Marshall	1974–1977	1979–1989
George T. Smith	1976–1980	1981–1991
George H. Carley	1979–1993	1993 to present
Robert Benham	1984–1989	1990 to present

chief judge of the Court of Appeals and as chief justice of the Supreme Court. Six of the sixteen judges also served as the chief justice of the Supreme Court: judges Russell, Bell, Jenkins, Nichols, Jordan, and Marshall.

A Wordsmith and a Judge

Judge Randall Evans, Jr., replaced Chief Judge Jule Felton upon his appointment to the Supreme Court. Judge Evans was appointed by Governor Maddox, even though Judge Evans frankly admitted to the governor that he had not voted for him. He was a brilliant plaintiff's lawyer before appointment to the court. Judge Evans's skill and keen intellect were legendary, and he was the subject of a tribute in rhyme, written by Judge George Fryhofer of Waynesboro, Georgia, entitled "King of the Plaintiff's Bar," sung to the tune of "Davy Crockett." It seems that attorney Evans made the national news when he ordered a county sheriff to stop a passenger train bound from Atlanta to Augusta, in order to collect a judgment. The sheriff held the locomotive for an hour and a half until the Georgia Railroad paid an $8000 judgment that had been levied against it.

Randall Evans, Jr.

A superior court judge, Dunbar Harrison, once challenged Judge Evans that if he should be so presumptuous as to reverse him again, Judge Evans should write the reversal in poetry. Judge Evans did so in *Brown v. State*.[61]

The D. A. was ready
His case was red-hot.
Defendant was present,
His witness was not.
He prayed one day's delay
From His honor the judge.
But his plea was not granted
The Court would not budge.
So the jury was empaneled
All twelve good and true
But without his main witness
What could the twelve do?
The jury went out
To consider his case
And then they returned
The defendant to face.
"What verdict, Mr. Foreman?"
The learned judge inquired.
"Guilty, your honor."
On Brown's face—no smile.
"Stand up" said the judge,
Then quickly announced
"Seven years at hard labor"
Thus his sentence pronounced.
"This trial was not fair,"
The defendant then sobbed.
"With my main witness absent
I've simply been robbed."
"I want a new trial—
State has not fairly won."
"New trial denied,"
Said Judge Dunbar Harrison.
"If you still say I'm wrong,"
The able judge did then say
"Why not appeal to Atlanta?
Let those Appeals Judges earn
part of their pay."

[61] 134 GA App 771 (1975). The version quoted here does not include footnotes in the original opinion.

"I will appeal, sir"—
Which he proceeded to do—
"They can't treat me worse
Than I've been treated by you."
So the case has reached us—
And now we must decide
Was the guilty verdict legal —
Or should we set it aside?
Justice and fairness
Must prevail at all times;
This is ably discussed
In a case without rhyme.
The law of this State
Does guard every right
Of those charged with crime
Fairness always in sight.
To continue civil cases
The judge holds all aces.
But it's a different ball-game
In criminal cases.
Was one day's delay
Too much to expect?
Could the State refuse it
With all due respect?
Did Justice applaud
Or shed bitter tears
When this news from Savannah
First fell on her ears?
We've considered this case
Through the night—through the day.
As Judge Harrison said,
"We must earn our poor pay."
This case was once tried—
But should now be rehearsed
And tried one more time.
This case is reversed!

Judge Evans was also the author of *Opening and Closing Arguments: The Law in Georgia*. He was honored by the American Trial Lawyers Association in 1975 as one of the nation's two most outstanding judges, sharing that honor with US District Court Judge John J. Sirica, famous for the Watergate trials.

Leadership for Court Improvement

Following his gubernatorial election in 1970, Jimmy Carter created the Governor's Commission on Judicial Processes by executive order, which stated that "[s]entiment has crystallized in Georgia regarding the imperative need for meaningful improvements in judicial processes."[62] The commission was chaired by Presiding Judge Robert H. Hall of the Court of Appeals of Georgia from 1971 to 1973. Two other men who were later appointed by Governor Carter to serve on the Court of Appeals also served on that commission: Julian Webb, at the time state senator, and Irwin W. Stolz, Jr., then president of the Georgia State Bar.[63]


Robert H. Hall

The court reform movement of the 1970s included the creation in Georgia of a unified judicial system. A 1974 constitutional amendment read, "For the purposes of administration, all of the courts of the State shall be a part of one unified judicial system.…

[62]Executive Order as quoted in President's Annual Address, Irwin W. Stolz, Jr., President, State Bar of Georgia 1970–1971, Ga. B. J. 73, 75–76 (August 1971).
[63]In fact, Stolz was continuing a proud tradition of judges serving as president of the State Bar of Georgia or its predecessor organization, the Georgia Bar Association: Arthur G. Powell (1922) William Vance Custer (1948), and Homer C. Eberhardt (1961).

The administration provided herein shall only be performed by the unified judicial system itself and shall not be administered to or controlled by any other department of Government."[64]

The 1970 commission made a number of far-reaching recommendations affecting the administration of the state judicial system. Over time, many were implemented, including creation of a sentence review process, an Administrative Office of the Courts, the Judicial Administrative Districts, and the Judicial Qualifications Commission. The Judicial Qualifications Commission provided a body to investigate complaints of violations of the Code of Judicial Conduct, which had been adopted by the Supreme Court of Georgia in 1973. Implementing the recommendations of the governor's commission has helped bring the state judicial branch into the modern era in terms of business practices and accountability.

Additionally, as a result of the 1971 commission recommendations, Governor Carter established a Judicial Nominating Commission (JNC) by executive order on December 3, 1971. The purpose of the creation of the JNC was to ensure that truly qualified individuals who would adhere to the principles of integrity and impartiality would be submitted for the governor's consideration for judicial office. Subsequent Georgia governors have followed this example and formed a JNC by executive order. Whenever a judicial vacancy occurs, the JNC takes nominations, screens candidates, and gives the governor a list of recommended candidates, although the governor is not obligated to appoint from the JNC's list. Since 1971, all Georgia governors have followed this process when making appointments to the bench of the state courts including the Court of Appeals.

A Tradition of Service

Upon Judge George Whitman's retirement in 1971, Governor Jimmy Carter had his first opportunity to appoint a Court of Appeals judge, and he named H. Sol Clark, a Savannah attorney, to the bench. Judge Clark had the distinction of being the first Jewish appellate court judge in Georgia. Although the men and women who have served the Court of Appeals have had a tradition of leadership and service to their profession, communities, and country, Judge Clark is particularly noteworthy. Known as "Mr. Legal Aid," he founded the Savannah Legal Aid Office in 1946. He served for twenty-five years as either the chair or vice-chair of the State Bar Legal Aid Committee and was instrumental in the establishment of the statewide Georgia Legal Services Program in 1971. Judge Clark was honored for his work by the State Bar of Georgia with the creation of an annual H. Sol Clark Award, which is given to an individual lawyer who has excelled in one or more activities that extend civil legal services to the poor. Judge Clark returned to the practice of law in 1976. His leadership and service to the profession were recognized in 1982 by the American Bar Foundation when it selected him to receive its Fifty-Year Award.

H. Sol Clark

[64]Georgia Constitution, Article VI, §I ¶II.

Among his many accomplishments, Judge Clark was a prolific writer. He wrote, with his son Fred S. Clark, *Settlements Law and Strategies: The Law in Georgia*, and he was president of Scribes, the American Society of Writers on Legal Subjects in 1979 and a founder of the Author's Court in 1980. An excerpt from one of his opinions, *Banks v. State*, provides an example of his writing skill as well as his humor: "Literary license allows an avid alliterationist authority to postulate parenthetically that the predominating principles presented here may be summarized thusly: Preventing public pollution permits promiscuous perusal of personality but persistent perspicacious patron persuasively provided pertinent perdurable preponderating presumption precedent preventing prison."[65]

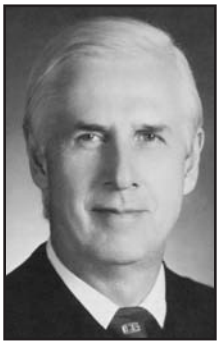
Governor Carter appointed Judge Robert Jordan to the Supreme Court of Georgia in 1972, and then appointed Irwin W. Stolz, Jr., to the vacant seat on the Court of Appeals. Stolz had been president of the State Bar of Georgia shortly prior to his appointment to the court, and, as noted above, had served on the Governor's Commission on Judicial Processes. Stolz was also a member of the Judicial Council of Georgia and served as a director of the American Judicature Society.

Irwin W. Stolz, Jr.

Julian Webb

Judge Julian Webb was appointed in March 1974 to take the place of Judge Hall who had become a justice of the Supreme Court of Georgia. As noted above, Webb had served on the Governor's Judicial Processes Commission while a senator, and he was chairman of the Senate Judiciary Committee. Webb was a leader in modernizing and strengthening the state's system of judicial administration.

After Judge Homer Eberhardt's retirement in the same year, Governor Carter appointed Judge Thomas Oliver Marshall, Jr., a fellow Sumter County native, to the court for the remainder of Judge Eberhardt's unexpired term. Judge Eberhardt's retirement led to the first contested election for an open appellate court seat since 1960.[66] Judge Marshall, a Superior Court judge for the Southwestern Judicial Circuit, was elected to the office on November 5, 1974.



Thomas O. Marshall, Jr.

Governor Busbee's Appointments

Two retirements in 1976 gave Governor George D. Busbee his first opportunities to appoint members to the Court of Appeals, in fact, two judges in a single year. Upon Judge Randall Evans's retirement, he named William Leroy McMurray, Jr to the bench. Judge McMurray had served as a Superior Court judge of the Cordele Judicial Circuit prior to his appointment, and at one time had been a special agent for the FBI. On September 1, 1976, Judge Pannell retired. In August, Judge George T.

[65] 132 GA App 809, 810 (1974).
[66] "Americus Judge Seeks New Post," *Atlanta Journal*, April 5, 1974, 38A.

Smith had won the Democratic nomination for the Court of Appeals in a contested election for Pannell's seat for a term to begin the next year. Governor Busbee then appointed Smith to fill the unexpired term of Pannell. Smith was elected in November for a full term. Smith had been elected to the Georgia House of Representatives in 1958 and was Speaker of the House from 1963 through 1966. In 1966, he was elected lieutenant governor of Georgia. With his 1976 election to the Court of Appeals of Georgia, Smith became the only person in Georgia history to win contested elections in all three branches of state government. Smith was elected to the Supreme Court of Georgia in 1980 and served through 1991.


George T. Smith

In 1977, Governor Busbee appointed three judges to the Court of Appeals, beginning with Arnold Shulman upon Judge Clark's retirement, followed by the appointments of Harold R. Banke and A. W. "Buck" Birdsong, Jr. Judge Banke was appointed upon Judge Stolz's resignation, and Judge Birdsong was appointed to fill the vacancy left when Judge Marshall became a justice of the Supreme Court of Georgia. Judge Banke had previously served on the Superior Court of the Clayton Judicial Circuit, including fifteen years as that court's chief judge.


Harold R. Banke

Judge Birdsong was the youngest juvenile court judge in Georgia when, in 1958 at age thirty-three, he was appointed to the Troup County Juvenile Court. He held that position until 1976, refusing any raise in pay, asking that the money be used to hire and pay probation officers. As an attorney in LaGrange, he was one of the first to use the "battered wife syndrome" as a defense in a murder case, and his client was acquitted. He served on the Court of Appeals for twenty-one years, and was active on the ABA's Committee on Continuing Appellate Education and the Georgia Institute for Continuing Judicial Education.


A.W. "Buck" Birdsong

Judge Norman Lee Underwood was appointed to the court when Judge Bell retired. Judge Underwood served from February until December 1979, when he resigned to run for the United States Senate. Judge Underwood secured the first sound system for the courtroom and also implemented the court's use of an online legal research system. Also in 1979, on the retirement of Judge Webb, Governor Busbee appointed Judge George H. Carley, who later served as chief judge and was appointed to the Supreme Court of Georgia in 1993. Governor Busbee went on to appoint John Sognier and Marion T. Pope, Jr., in 1981, for a total of nine appointments.


Norman Lee Underwood

Service to the Nation

Prior to their judgeships, many of the Court of Appeals judges in this time period served the country during World War II or in subsequent conflicts. At least three were awarded the Purple Heart: Robert L. Russell, Jr., John Sammons Bell, and Braswell Deen. Judge Russell enlisted in the Marines in 1943 at the age of seventeen, and was a machine gunner on Okinawa during World War II. Judge Bell was an Army officer during World War II and was awarded the Purple Heart for service in the Battle of New Georgia in the Solomon Islands. Judge Deen served as a Marine, participating in the Peleliu and Okinawa invasions.

Other judges of the Court of Appeals have served in some capacity in the armed services since 1940. Judges George T. Smith, Marion T. Pope, Jr. and Thomas Marshall served in the Navy; Marshall was a 1941 graduate of the United States Naval Academy. Judges Robert Jordan, Randall Evans, Robert Hall, William McMurray, Harold Banke, A. W. Birdsong, and George Carley all served in the Army with most of them serving overseas during World War II. Judges George Stanley Joslin, Arnold Shulman, Kelley Quillian, John Sognier and Alan Blackburn served in the Army Air Corps or Air Force. Two judges have also held intelligence positions: Judge Harold Banke during World War II and, more recently, Judge Charles B. Mikell, Jr. during the Viet Nam conflict.

An Able Staff

The Court of Appeals had six clerks over its first 100 years: Logan Bleckley (1907–1938), William G. England (1938–1957), Morgan Thomas (1957–1980), Alton Hawk (1981–1986), Victoria McLaughlin (1987–1993), and William L. Martin, III (1994–present). All have been able and competent, but the service of one, Morgan Thomas, stands out because it spanned forty-six years, and thirty-eight of the seventy judges to date. Graduating from the University of Georgia School of Law in 1934, Morgan Thomas became deputy clerk. His twenty-three years in this capacity were interrupted by service during World War II. In 1957, he was appointed clerk of court, a position he held for another twenty-three years, until his retirement in 1980. Beloved, prolific, and dubbed the "Court's Goodwill Ambassador" by Chief Judge John Sammons Bell, Thomas published advance sheets, and authored "Morgan's Corner," a popular column in the *Georgia State Bar Journal* highlighting recent appellate cases with a flair.

Morgan Thomas

The court reporter's office has always been a very integral part of the court, having the responsibility of publishing the opinions of the court. Two of the reporters serving in this era were Wiley H. Davis (1973–1980) and Guy M. Massey (1980–1984). Wiley Davis was a scholarly man, a former assistant attorney general, and editor in chief of the Harrison Publishing Company, which, at that time, published the Georgia code, reports, and laws. He was the quintessential professorial type, quiet spoken with rounded glasses and a pipe. On the other hand, Guy Massey who had been Davis's assistant was handsome and big, standing 6' 2". He looked like a movie actor and was a fine athlete, playing both football and baseball. He pitched for the Chattanooga Spinning Mill, an industrial league, semi-pro baseball team; and signed a contract to pitch for the St. Louis Cardinals. His baseball career ended with a throwing injury followed by service in New Guinea and the Philippines during World War II. He was both a prodigious writer and astute investor in real estate.

Guy Massey

Much has changed in how the reporter's work was conducted. William Scott Henwood, the reporter from 1984 through 2005, noted that the technology used in the 1970s was limited to typewriters and hand work. Electric typewriters did not become the norm until the court's Underwood typewriters were replaced in 1975. Only later models had correcting tape. Printed volumes of citations were used to trace the history of cases. Opinions were handwritten before being typed as an original with 3 carbon copies. The reporter's office used the third carbon copy for editing purposes. Indexes for the case reports were typed on 3" by 5" cards with the reporter indicating the points of law in each opinion. Once the carbon copy of the opinion was edited, it was taken to the publisher's office located near the court. The publisher had to retype the opinions for the printing process before the case reports were finally published.

Jurisdictional Changes

Since the inception of the court, there have been few jurisdictional changes, but three changes were made in this era of the court's history. In 1956, the Georgia Constitution of 1945 was amended to provide for direct review of juvenile court judgments by the Supreme Court and the Court of Appeals. In *Powell v. Gregg*,[67] the Supreme Court of Georgia held that those cases were solely within the purview of the Court of Appeals. In 1977, the General Assembly passed an act that transferred jurisdiction from the Supreme Court to the Court of Appeals over appeals of cases of armed robbery, rape, and kidnapping, where the death penalty is not imposed, and transferred from the Court of Appeals to the Supreme Court jurisdiction in cases involving state revenue, contested elections, and the constitutionality of legislative enactments of municipalities. The Supreme Court of Georgia in *Collins v. State*,[68] held that the legislature did not have the authority to prescribe jurisdiction to the Supreme Court because jurisdiction of that court is limited by the Georgia

[67]224 GA 226 (1968).
[68]239 GA 400, 401 (1977).

Constitution. However, in the interest of orderly administration and to effectuate the intent of the legislature, the Supreme Court directed by order that the Court of Appeals transfer those classes of cases to the Supreme Court for review. Noting the US Supreme Court's holding in *Coker v. Georgia*[69] that the death penalty cannot be imposed in cases of rape when the victim was not killed, the Supreme Court of Georgia applied that rationale to armed robbery and kidnapping, and, therefore, those crimes were no longer capital felonies reserved to the jurisdiction of the Supreme Court of Georgia. Thus, although a portion of the 1977 statute was determined to be unconstitutional by the Supreme Court of Georgia, these two jurisdictional changes did, in fact, go into effect.

The last major legislation affecting the Georgia's appellate courts in this era, amendments to the Appellate Practice Act of 1965, occurred in 1979. Review of trial court decisions was divided into two categories: direct appeal and applications. Applications are a category of review granted not by right, but on a discretionary basis. The application process was established to provide a rapid review of the more routine types of cases to determine if the case should be given a complete review. If the application is granted, a direct appeal can be filed; if denied, unless a motion for reconsideration or a petition for certiorari is successful, the decision of the trial court is final. By 2005, about 25 percent of the cases filed in the court were applications. These amendments have helped the court handle its growing caseload.

Efficiency Measures

Other measures were also taken to increase the efficiency of the court's work, including reducing the amount of time allotted for oral argument. Originally, argument was set for two hours on each side and all cases were set for oral argument. By 1934, the time for argument had been reduced to thirty minutes for each side, except for felony cases and civil cases where the amount involved exceeded $1,000, in which event one hour per side was permitted. The rules were amended in 1954 to allow only thirty minutes per side without regard to the type of controversy. In response to the growing caseload, the time allotted for oral argument was again reduced to twenty minutes on each side in 1975. The presumption that the court would set all cases for oral argument changed as well. Under Chief Judge Braswell Deen, the court's rules effective August 1, 1979, included a new Rule 8(g), providing that oral argument is never mandatory unless expressly ordered by the court. Additionally, by 1979, Rule 36 made it clear that the court would affirm certain cases without opinion: "Cases in which one or more of the following circumstances exist and are dispositive of the appeal, …[1] the evidence supports the judgment; [2] no reversible error of law appears and an opinion would have no precedential value; [3] the judgment of the court below adequately explains the decision.... may be affirmed…[without opinion]."[70]

[69]433 US 584 (1977).
[70]149 GA App 869, 889 (1979).

The Court and Citizen's Rights

This era was a period of advocacy for civil rights, integration demonstrations, and war protests. Although most civil rights cases were decided in the federal courts, a number of related cases were decided in the Court of Appeals.

In *Montgomery v. Mayor of Athens*,[71] a group of individuals was arrested for parading without a permit on May 6, 1961. They were walking on the sidewalks of downtown Athens near and on the University of Georgia campus where the United States attorney general was scheduled to speak on the views of the federal government regarding civil rights and racial desegregation. The defendants were carrying signs, some of which read, "Petition Committee on Un-American Activities to Visit Athens, Ga." and "Integration—Segregation is a Religious Issue, Ne. 13:1-3." They were found guilty in Recorder's Court and the Superior Court denied certiorari. On appeal, the Court of Appeals reversed, holding that although the language of the city's ordinance on parading without a permit was very broad, the appellants' activities did not constitute a parade.

Allen v. State[72] involved the racial composition of the jury. Allen, who engaged in encouraging and assisting African Americans in Sumter County to register to vote, was indicted for assaulting a police officer with the intent to murder. The Caucasian defendant challenged the array of jurors, claiming that African Americans were systematically excluded. He alleged that no African Americans had been selected for a jury in the county for forty years, although 46 percent of the population age twenty-one and older was African American and African Americans constituted 27 percent of the tax digest. The Court of Appeals reversed the trial court's dismissal of Allen's motion to quash the indictment, stating that the defendant was entitled to present evidence to show that he was denied equal protection and due process under the Fourteenth Amendment of the United States Constitution and that the manner of selecting the grand and trial jurors was not in accordance with Georgia law.

Judge Sol Clark wrote the court's opinion in *Sumbry v. Land*,[73] which begins:

> *"It was the best of times, it was the worst of times…" Those words which Charles Dickens used to open his novel,* A Tale of Two Cities, *apply appropriately to Columbus, Georgia, in the summer of 1971. The optimistic phrase refers to the hopeful outlook created for that community by consolidation of the governments of the City of Columbus and County of Muscogee so that a new body politic, known as "Columbus, Georgia," came into existence on January 1, 1971.… The pessimistic phrase applies to the unhappy occurrences which ended in the instant appeal plus other litigation here and in the Federal courts.*

Following a number of demonstrations in July 1971 related to the dismissal of several African American members of the police department, the city of Columbus passed an ordinance that empowered the mayor to proclaim a civil emergency. The mayor proclaimed an emergency and issued an order prohibiting the public assembly of twelve or more individuals. Thereafter, a superior court judge issued

[71] 105 GA App 57 (1961).
[72] 110 GA App 56 (1964).
[73] 127 GA App 786 (1972).

a restraining order to prevent a march planned for July 31. Eighty-one individuals were sentenced to jail for violating the restraining order. Judge Clark explained the court's rationale in affirming the contempt convictions:

> *[T]he Supreme Court of Georgia, whose decisions are binding precedents upon this court…, provides the key to the decision that is to be made in this court in the case of* Carroll v. Celanese Corp.*, 205 GA 493 (4) (54 SE2d 221), as follows: Whether a contempt of court has been committed in the violation of an injunctive order, and how it shall be treated, are questions for the discretion and judgment of the court that issued the order, and its discretion will not be interfered with by this court unless there is an abuse of discretion. If there be any substantial evidence from which the judge could have concluded that his order had been violated, his finding to that effect cannot be disturbed by this court, in so far as sufficiency of the evidence is concerned.*[74]

Hudgens v. Local 315 Retail, Wholesale, and Dept. Store Union[75] involved an appeal by a shopping center owner seeking to prohibit two separate activities: distributing handbills protesting the war in Vietnam in the public areas of the shopping center, and picketing of the shopping center by a labor union. The court found that the controversy related to the first activity had ended because the war protestor stipulated that he would not distribute his handbills at the shopping center in the future. The court also found that it did not have jurisdiction over the matter regarding the labor union. This case illustrates, as do the prior cases, how state and national events influenced the issues coming before the Court of Appeals in the 1960s and 1970s.

[74]127 GA App 796 (1972).
[75]133 GA App 329 (1976).

Conclusion

By the 1970s the court was quite a different institution from the court in 1956. The court had grown from six to nine judges and had its own courtroom. The judges sitting on the bench in the 1970s had been young men during World War II. After the war, they helped initiate and served on organizations striving to modernize and improve the state judicial branch, such as the State Bar of Georgia, Georgia Legal Services, and the Judicial Process Commission of 1971. Major revisions modernizing the laws governing trial and appellate court procedures were enacted during this era, and the court dealt with issues arising out of a changing environment, particularly disputes concerning civil rights.

Modifications to the jurisdiction of the court and the increasing state population—from 3.9 million in 1960 to 5.5 million in 1980—added to the court's caseload. By 1974, the Court of Appeals of Georgia ranked sixth in the nation in opinions published by an intermediate appellate court, with 999 opinions published. Supreme Court justice Nichols noted, "When we consider that the first five ranked intermediate courts [New York, Florida, Texas, Illinois, and Louisiana] have 20 or more judges, it is perhaps safe to assume that the Georgia Court of Appeals has close to the highest, if not the highest caseload per judge in the country."[76] This increasing caseload had an impact on the court's size and procedures in the next era in the court's history as well.

[76]Georgia Supreme Court Leads Nation in Published Opinions, vol. 3 *Georgia Courts Journal* (August–September, 1975) 5.

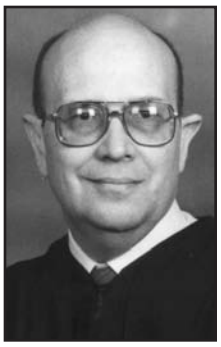
Chapter 4

An Evolving and Diverse Court: 1980–2006

The final quarter of its first century was for the Court of Appeals of Georgia a time of marked growth and change. This was perhaps inevitable because between 1980 and 2005, Georgia and its people also experienced considerable growth and change. The state population rose from approximately 5.5 million in 1980 to almost 9 million in 2006, making Georgia the tenth most populous state of the Union. The number of attorneys licensed to practice in the state rose dramatically during this period from just over 13,000 in 1980 to more than 36,000 in 2006. The State's economy accelerated and became broadly diversified. Georgia businesses expanded beyond American shores, and the world came to Georgia for the 1996 Olympics. Change was a hallmark of Georgia in these years.

A New Leadership Model

The change in the role of the chief judge is an example of the evolution of the court in this era. The chief judge selects presiding judges and assigns the nine judges to the three-judge panels into which the court is organized and through which its basic work is done. The chief judge is the spokesperson for the court and is given, by custom, general administrative supervision of the court. Judge George H. Carley (now Justice Carley) complimented Chief Judge John W. Sognier for his administrative skills in the tribute made at his retirement, noting that he "acts expeditiously, but fairly. And that is quite an accomplishment for a leader when his followers consist of eight other prima donnas."[77]



George H. Carley

John W. Sognier

Traditionally, the court's judges elected the chief judge, who continued in that role at the pleasure of the other judges. Therefore, there were long periods without a change; only seven judges held the office of chief judge during the court's first seventy years. Some chief judges, such as John Sammons Bell, served the average length of time, a decade, while others served only a few years.

By the late 1970s, however, a new approach resulted in the position being rotated, typically for a term of two years based upon the tenure of the judges with the court. Judge Braswell D. Deen, Jr., held the post from 1979 through 1980, and thereafter, the post was filled by a new individual every two years with the exception of the tenure of judges Arnold Shulman and William Leroy McMurray, Jr., as chief judge. Both these men served only one year as chief judge. Judge McMurray knew that if he served for two years, Judge Shulman would be unable to serve as chief judge since he would reach

[77]Henwood and Abbot, Reporters, A Tribute to Judge John W. Sognier, Chief Judge Retired, 205 GA App XXXIII, XXXVII (1992).

the mandatory retirement age. As a courtesy to Judge Shulman, Judge McMurray served only one year as chief judge so that Judge Shulman would have a chance to be the chief judge before retirement.

Judge Arnold Shulman

Between 1980 and 2005, the court was served by twice the number of chief judges it had from 1907 to 1979. In the centennial year, the court was headed by Chief Judge John H. Ruffin, Jr., who assumed his duties on January 1, 2005. In addition to his many other duties, Judge Ruffin was a leading force in the organization of the events observing the centennial.

John H. Ruffin, Jr.

The background of those who served as chief judge was changing as well. Of the first seven chief judges, all save the last, John Sammons Bell, were born in the nineteenth century. Judge Bell was born in 1914. Each of the first seven chief judges was educated in Georgia undergraduate institutions and had their legal training in Georgia. In the last quarter century of the court's history, several chief judges of the court obtained their law degree at schools outside the state, including John W. Sognier (Catholic University), Harold R. Banke (George Washington), Dorothy Toth Beasley (American University), Edward H. Johnson (Vanderbilt University), and John H. Ruffin, Jr. (Howard University). Six judges currently on the court have also obtained a LLM in Judicial Process from the University of Virginia School of Law.

Changes in the Legal Staff

Diversity in the educational institutions the Court of Appeals staff attorneys have attended has also become the norm. By specific statutory authority, OCGA § 15-3-9(a), Court of Appeals judges are authorized to appoint law assistants. These "clerkships" traditionally had been positions filled by recent law school graduates. These young lawyers were hired by a particular judge and worked primarily as research and writing assistants for that judge. The tenure of these appointments was generally one or two years, with the result that by the time the clerk had become very familiar with the court's work, he or she would often move to other employment.

This early model has been transformed. Because of the caseload of the court, each judge now has three attorney assistants, whose title has changed to staff attorney. Many of the staff attorneys are not recent law school graduates but experienced attorneys. The educational background of this group has included notable law schools outside Georgia. Moreover, the court as a whole now employs a central core of staff attorneys. These attorneys perform valuable work checking newly filed cases for compliance with appli-

Central Staff Attorneys at Work: Rachel Derrico, Amy Doyle, Janice Ward and Debbie Wellborn

cable rules and procedures, a jurisdictional review, and also draft memoranda for applications filed with the court.

The National Center for State Courts, a non-profit organization seeking to improve the justice system by regularly gathering data on state courts, observed that "No modern appellate court exists without the input and advice from some combination of clerks of court, law clerks or central staff attorneys."[78] The Court of Appeals of Georgia was a part of this trend and by 2006 the court had in excess of fifty experienced lawyers working as staff attorneys.

Diversity and Women

In 1980, the Court of Appeals consisted of nine judges, all Caucasian males, but the years that followed saw the bench become more diverse. Dorothy Toth Beasley became the first female member of the court when she was appointed by Governor Joe Frank Harris in 1984. Beasley had previously been an assistant attorney general and served as a state court judge of Fulton County. She had also argued before the United States Supreme Court in the companion Georgia case *Doe v. Bolton*, 410 US 179 (1973), to *Roe v. Wade*, 410 US 113 (1973), which set abortion rights parameters.

Dorothy Toth Beasley

Beasley was also the first female appellate judge in Georgia history. Since Beasley served on the court, there have been three other women Court of Appeals judges: Anne Elizabeth Barnes, M. Yvette Miller, and Debra Bernes who all are still serving.

Judge M. Yvette Miller (left), Judge Debra Bernes, and Judge Anne Elizabeth Barnes with Governor Sonny Perdue in the governor's office.

An obvious sign of the court's recognition of women as state citizens, a sign literally set in stone, is the motto inscribed in marble on the upper front center of the courtroom of the Court of Appeals of Georgia. The credo created by Chief Judge Jule W. Felton for the new judicial building in 1956, which is centered directly above the court bench, originally read: "Upon the integrity, wisdom and independence of the judiciary depend the sacred rights of free men." In 1992, at the suggestion of Judge Beasley and with the permission of Jule Felton, Jr., the motto was expanded by inserting the words "and women" at the end of the inscription. In an interview in 2005, Beasley stated that after the change was approved by the court and someone was hired to change the motto, "I was scared to death because its one big piece of marble and I knew that if it got cracked, there would go my whole salary for about five years.… But it didn't, of course, and so there it was."[79]

[78]Roger A. Hanson, *Work of Appellate Court Legal Staff* (Williamsburg: National Center for State Courts, 2000) 7.
[79]Judge Dorothy Toth Beasley, Senior Judge, Court of Appeals of Georgia, interview with John Ruggeri, July 29, 2005.

Diversity and African Americans

The court's first African American judge, Robert Benham, a practicing attorney from Cartersville was also appointed by Governor Harris and assumed his duties in 1989. He was the first African American to serve on an appellate court in Georgia and later served as chief justice of the Supreme Court of Georgia. Judge Benham would be the first Court of Appeals judge to hire an African American staff attorney, Denise Majette, who later served as a State Court judge in DeKalb County and was elected to the US Congress. Other African American judges have since served the court, including Judge Clarence Cooper and three current judges: Chief Judge John H. Ruffin, Jr., Judge M. Yvette Miller, and Judge Herbert E. Phipps.

Judge Robert Benham and Judge Clarence Cooper, the first two African Americans to serve on the Court of Appeals of Georgia.

Notably, these changes in the court did not result from any one policy or directive. No one person or commission determined that any given percent of staff attorneys or judges should have an educational degree from out-of-state institutions or should reflect a specific sex, race, or ethnicity. Instead, the diversification of the Court of Appeals of Georgia came about as a reflection of and, indeed, as part of changes in the State Bar of Georgia, as increasingly graduating law students had more varied backgrounds and experiences. The court changed as Georgia changed, and the result was that as it entered its second century the court could draw upon a broad spectrum of legal talent nurtured in many legal venues and reflecting different backgrounds and life experiences.

Notable Service

While all members of the Court of Appeals are noteworthy, several individuals serving on the court after 1980 had special distinctions. In 1984, Judge J. Kelly Quillian retired after eighteen years of service. In this service, he had eclipsed the record of his father, who was a member of the court from 1953 to 1960. Two judges were appointed to the Supreme Court of Georgia: George H. Carley in 1979 and Robert Benham in 1989. Judge Clarence Cooper was appointed by President Clinton to the bench of the United States District Court for the Northern District of Georgia in 1994, where he joined former Court of Appeals of Georgia judge Robert H. Hall. Judge Gary B. Andrews, who joined the court on January 1, 1991, brought the

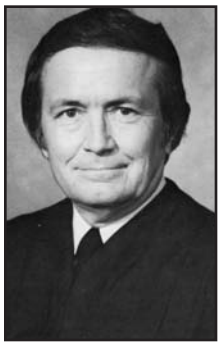
Gary B. Andrews

Edward H. Johnson

unique perspective of having been a member (1987 to 1989) and Chairman of the Georgia Public Service Commission. Judge Edward H. Johnson, chief judge during 1999 and 2000, served in the state legislature from 1977 to 1980.

There were two judges whose tenure on the court came close to the longevity record of Judge Jule W. Felton, who served for thirty-two years: Braswell T. Deen, Jr., who retired from the court in 1990 with the second lengthiest service of twenty-five years, and Judge William L. McMurray, Jr., who retired

Braswell D. Deen, Jr.



William L. McMurray, Jr.

with twenty-four years of service in 2000. At that time, it was noted that McMurray was the principal author of approximately 4,238 opinions and had authored another 350 opinions including dissents and separate concurrences. In his twenty-four years on the bench, McMurray either had written or participated in approximately 13,500 opinions, establishing a record that may never be surpassed.

Humor in the Halls of Justice

Although the Court of Appeals is foremost a place for legal scholarship, it is, as well, an institution in which humor can be found. Judge Marion T. Pope, Jr., who retired in 2002, is a well-known raconteur. Another jurist with a pronounced sense of humor was the Honorable George Carley, who, at a 1992 retirement tribute to Chief Judge John Sognier, recalled a Grand Canyon vacation taken by Judge Sognier, himself, and their wives. The four vacationers decided to ride down to the canyon floor on mules that were reported to know the narrow trail extremely well. As the journey progressed, the mules came closer and closer to the edge of the trail. Carley recalled how Judge Sognier, who was riding behind him on a mule named Jolene, became more and more upset with the animal as it seemed to stray closer to the precipice. Judge Sognier finally was heard to blurt out: "Look here, mule, I am Chief Judge of the Court of Appeals of Georgia, and I order you not to walk so close to the edge of the trail." Jolene, unimpressed, looked around, and Judge Carley recalled: "…promptly proceeded to do what mules are want to do in the middle of the trail. I guess that mule knew that [Judge Sognier] was out of his jurisdiction."[80]

Marion T. Pope

It would be difficult, however, to match the humor offered by Judge Deen at a retirement tribute to him as he left the court in 1990. Judge Deen, after listening to many praises of his long service, had a

[80]Remarks by Justice George H. Carley, 243 GA App 33 (2000).

chance to respond. He began by commenting that he could now understand how the famous character Quasimodo, hero of Victor Hugo's novel, felt after he retired following twenty-five years of duty as a bell-ringer at the great cathedral of Notre Dame in Paris. Judge Deen explained:

> *Upon his retirement, the church committee considered new applicants for this position. Forty to fifty persons were interviewed. One man had arthritis in both arms and could not use them. The committee inquired, "Are you sure you can ring the bell?" He said, "Oh, yes, I can use my head." He took a flying leap and hit the bell, and it rang — so he was hired. Every day the bell rang, but one day he missed the bell, went out through the third-story window, and landed on the stone courtyard. The sheriff walked up and asked, "Who is that man?" A bystander said, "I don't know his name but his face sure does ring a bell." The church had to interview more applicants. Another man with arthritis in each arm showed up to apply. The priest said, "You look awfully familiar." The man said, "My twin brother used to be your bell-ringer. I can use my head and also ring the bell." The priest agreed to hire him. He rang the bell every day until he missed the bell, went through the third-story window, and landed on the stone courtyard. The sheriff asked the priest, "Who is this man?" The priest replied, "I don't know his name but he's a dead-ringer for his brother!"* [81]

A Varied Caseload

The ultimate purpose of the Court of Appeals of Georgia, as it is of any court, is the resolution of disputes among parties via the interpretation of law. The Court of Appeals decided cases in large numbers in this period. Georgia's economic and population surge brought with it a growing amount of civil litigation; at the same time, district attorneys continued to prosecute criminal activity around the state. Also, in the new 1983 state constitution the jurisdictional split between the Court of Appeals and Supreme Court was changed to give the Court of Appeals jurisdiction of cases involving state revenue. The result of these changes was a steady increase in the number of appeals coming to the court from across the state.

This trend had been developing for many years. As early as 1984, at ceremonies for retiring Judge J. Kelly Quillian, a Court of Appeals resolution of appreciation of Judge Quillian noted that during his eighteen years on the court "Judge Quillian has seen each judge's caseload increase from fewer than 100 cases per year to more than 300 cases per year."[82]

The heavy caseload persisted into the twenty-first century. Among other case types, there was an increase in malpractice, illegal drug activity, and child-related appeals such as molestation, deprivation, and terminations of parental rights. Examination of court filings from the years 2000 through 2006 reflect that in each year total filings exceeded 3,000.

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[81] Remarks by Judge George H. Carley, 205 GA App 37 (1992).
[82] Howard E. Worley, Reporter, A Tribute to Judge J. Kelley Quillian, Chief Judge Retired, Resolution of the Court 173 GA App XXXI, XLII (1984–85).

Filings 2006

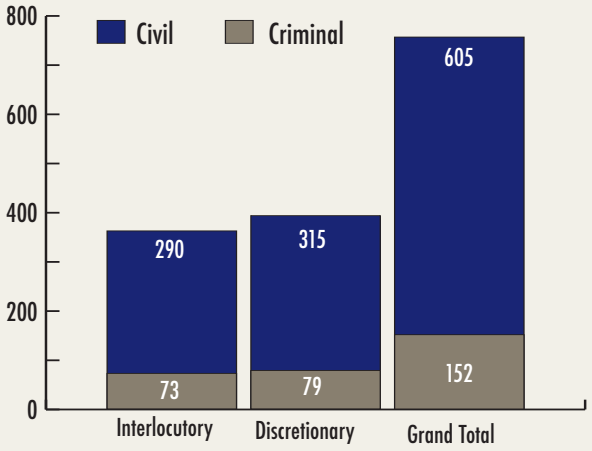
Direct Appeals – Civil

Torts	22.7%
Contracts	21.7%
Independent Motions/ Special Proceedings	15.6%
Domestic Relations	10%
Dispossessories	10.6%
Real Property & Eminent Domain	9.6%
Administrative	3.9%
Trusts and Estates	1.8%
Corporation & Banking & Taxes	1.5%

Direct Appeals – Criminal

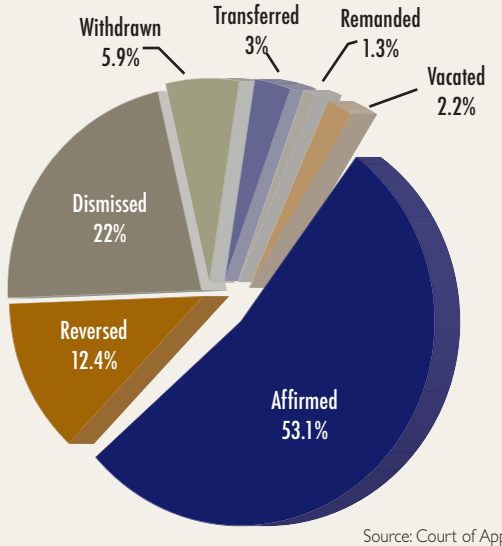
Crimes vs. Persons	31.4%
Controlled Substance Violations	17.4%
Sexual Offenses	15.8%
Motions	11.2%
Burglary & Theft	9.5%
DUI & Traffic Offenses	6.9%
Other Crimes	7%
Delinquent	.8%

Applications Disposed 2006



32% Interlocutories Granted
23% Discretionaries Granted
27% Total Applications Granted

Direct Appeals Disposed 2006



Source: Court of Appeals

The heavy caseload of the Court of Appeals of Georgia was the result not only of a growing corps of lawyers representing an ever-increasing population of Georgians, but the last decades of the twentieth century saw an upsurge in the scope and complexity of Georgia laws, many of which would eventually come before the Court of Appeals in the form of an appeal from a decision of a lower court ruling. Some laws required minimal interpretation, whereas others, even ones that might seem straightforward, required seemingly endless judicial review. For example, in 1987, the General Assembly enacted OCGA § 9-11-9.1 to establish the requirement that when a plaintiff files a suit alleging "professional malpractice" the suit must include an affidavit of an expert witness that explains at least one negligent act or omission claimed to exist on the part of the defendant. A saving provision allowed for an extension or grace period of forty-five days to file the affidavit if the lawsuit was filed within ten days of the running of the statute of limitations.

This seemingly straightforward requirement proved more difficult in day-to-day application than the drafters of the law probably anticipated, and a flood of appellate activity followed to examine every conceivable aspect of the statute. Litigants tested the discretion of the trial court in granting extensions. Whether the affiant had sufficient expertise to testify against the defendant professional was repeatedly examined. Other questions were reviewed as well. Was an orthopedic surgeon able to testify against a physical therapist under the statute? Could a nurse provide an affidavit against a physician, or a physician against a nurse? Were affidavits invalid in cases in which the oath was administered by a notary over

the telephone? Was the failure to attach an affidavit to the original complaint an amendable defect, and, if so, under what circumstances? These and myriad other questions from one relatively concise statute reflected the array of appellate issues that often arose from new laws.

Other cases that came to the court in this period also illustrate the growth in both the economy and population of the state. For example, in the 1980s the construction of the Metropolitan Rapid Transit system in Atlanta spawned a number of appeals from condemnation actions for the land on which the system was built.[83] The expansion of the Atlanta airport in 2003 also generated litigation that reached the Court of Appeals.[84] Even a few well-known entertainers, Kenny Rogers, of country music fame,[85] and Terry Bollea, known as Hulk Hogan among followers of televised wrestling,[86] came to the court for resolution of contract matters.

In several cases in this period, nationally known corporations were involved in large verdict cases: *Time Warner Entertainment Co., L. P. v. Six Flags Over Georgia, LLC*[87] and *General Motors Corp. v. Moseley*.[88] The Time Warner case involved an award of $197 million in compensatory damages and $257 million in punitive damages arising from the partnership of the two companies. The appeal was affirmed at 245 GA App 334 (2004), but was remanded by the United States Supreme Court to the Court of Appeals for review in light of a new decision from the Supreme Court in *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*[89] The Court of Appeals was directed to determine Leatherman's application to allegations of excessive punitive damages. The court again affirmed the award, stating that under the state standard the award did not constitute an abuse of discretion. Furthermore, although reasoning that the appellants had abandoned any claim under the Due Process Clause of the Fourteenth Amendment of the United States Constitution (the claim in *Leatherman*), the court held that the award was not excessive even under the guideposts adopted by the United States Supreme Court.

Moseley was a wrongful death case that involved a collision of a GMC pickup truck in which the fuel tank ruptured. The jury awarded the parents of the deceased driver over $4 million dollars and $101 million dollars in punitive damages. In the first appeal from the case, the Supreme Court of Georgia upheld the constitutionality of OCGA §51-12-5.1, which required payment of a portion of the punitive damages to the State of Georgia. The Court of Appeals case arose from the trial court's denial of motions for a new trial.

In 1996, the summer Olympics brought world attention to Georgia, but, unfortunately, the event was marred by a bombing at the Centennial Olympic Park. This tragic incident resulted in several suits which that brought appeals to the court. Appeals from the defamation action of Richard Jewell, a security guard at the event who was once considered a suspect, and an action to determine the liability of the Atlanta committee for the Olympic

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[83] *Collins v. MARTA*, 163 GA App 168 (1982) and *Fountain v. DeKalb Co.*, 154 GA App 302 (1980).
[84] *City of Atlanta v. Yusen Air & Sea Service Holdings, Inc.*, 263 GA App 82 (2003) and *Whigham v. City of Atlanta*, 262 GA App 742 (2003).
[85] *Rogers v. Butler* and *Threatt et al. v. Rogers*, 269 GA App 402 (2004).
[86] *Bollea v. World Championship Wrestling, Inc.*, 271 GA App 555 (2005).
[87] 254 GA App 598 (2002).
[88] 213 GA App 875 (1994).
[89] 532 US 801 (2001).

Games were both docketed in the Court of Appeals.[90]

In the field of criminal law, the legislature increased mandatory sentences in this period, so the court dealt with appeals arising from the application of those revised statutes, for example *Rucks v. State*,[91] which concerned a mandatory life imprisonment sentence for a second sale of certain controlled substances, (in this instance, cocaine) and *Genarlow Wilson v. State*,[92] which involved application of a mandatory ten-year sentence without parole to a seventeen-year-old boy convicted of aggravated child molestation of a fifteen-year-old girl.

Examples of other important criminal cases are *Mincey v. State*,[93] which applied the decision of the United States Supreme Court in *Batson v. Kentucky*,[94] protecting defendants from bias in the use of peremptory challenges and *Georgia v. Randolph*,[95] in which the United States Supreme Court upheld the decision of the Court of Appeals in *State v. Randolph*.[96] This case addressed whether police officers have the authority to conduct a warrantless search of a marital residence when, after one spouse refuses, the other spouse grants consent to search the home.

[90] *Atlanta Journal-Constitution v. Jewell and Jewell v. Cox Enterprises*, 251 GA App 808 (2001) and *Anderson v. the Atlanta Committee for the Olympic Games, Inc.*, 261 GA App 895 (2003).
[91] 201 GA App 142 (1991).
[92] 279 GA App 459 (2006).
[93] 180 GA App 263 (1986).
[94] 476 US 79 (1986).
[95] 547 US 103, (2006).
[96] 264 GA App 396 (2003).

Prelude to Expansion

These varied appeals just give a taste of the many types of issues arising from the increasingly diverse population and the economic development of the state. Given the foregoing, it was to be expected that, by the 1990s, the Court of Appeals of Georgia was among the busiest appellate bodies in the nation. Had the court continued into the twenty-first century with only the nine members, each of the nine would have needed to write an opinion approximately every day and a half. Of course such schedule does not contemplate time for oral arguments, motions for reconsideration, or general administrative duties.

As the end of the twentieth century approached, it was obvious to many that the workload of the court must be reduced, yet the solution was not simple. In 1981, the court obtained an appropriation to fund a second staff attorney for each judge. In 1987, the General Assembly passed a law authorizing appointment of senior appellate judges. Any judge of the Court of Appeals who retired, could, at that individual's option, be appointed by the governor to the newly created post of senior appellate court judge. The governor's appointment would run for life and would remove eligibility of the appointed individual to hold any other non-judicial public office of Georgia or practice law. The authority of the individual so appointed would be to exercise judicial power "upon the request and the consent of a majority of the judges of the requesting court." The law, which allowed utilizing talents of retired Court of Appeals judges on at least an emergency basis, was used from time to time, but did not provide the needed workload relief.

Another idea to reduce the court's workload did not prove effective either. In 1988, the Court of Appeals was authorized by the General Assembly to establish a voluntary pre-appeal settlement conference procedure in civil cases. The court could employ senior appellate court judges and senior superior court judges to hold settlement conferences. The rules adopted by the court declared the conference process was "intended to afford a realistic consideration of the possibility of settlement of the case or alternatively the simplification of issues on appeal."[97] Basically, the settlement conference was a form of mediation. The hope was that prior to a lengthy and expensive appeal, parties in some cases might find that a candid discussion guided by an experienced judge could avoid the appeal, thus aiding "the speedy and fast disposition of cases." Unfortunately, the procedure was not widely appreciated by the bar, and very few litigants chose to avail themselves of pre-appeal settlement conferences. In the meantime, the court's workload continued to escalate and the experiment ended.

Expansion of the Bench

In the 1990s, the court made two changes to the rules concerning oral argument in order to conserve the judges' time. In 1980, all cases were permitted to be argued, and arguments were twenty minutes per side. Two problems with this procedure grew as the court's schedule became busier. The first problem was unpredictability. On oral argument day, each case would be called one by one, yet the court would not know if anyone was going to show up to argue. Secondly, oral arguments on so many cases resulted in judges sitting on the bench for hours and hours. As Judge Pope noted, "I would sit up here in this courtroom from 10:00 A.M. till 7:00, probably as late as 8:00 P.M. hearing oral argument. Well about 3:00…you're dead in two places, your head and where you sit."[98] A change to the rules in 1993 reduced oral argument to fifteen minutes per side, and in 1995, oral argument was limited to cases in which a party requested argument and it was granted by the court.

In the mid-1990s, Chief Judge Beasley and the court began to seek support for increasing the number of judges on the court. In 1996, Governor Zell Miller proposed a solution with a legislative package that would increase the number of judges by a total of four, thus making a seated total of thirteen. There would be four divisions, with the chief judge functioning as administrative head of court and assisting the divisions as appropriate. This sweeping reorganization was not enacted, but in 1996 the legislature did authorize a tenth judge. On July 16, 1996, Judge

[97] *Rules of the Court of Appeals*, Rule 52 I, 191 GA App 981 (1989).
[98] Judge Marion T. Pope, Jr., Senior Judge, Court of Appeals of Georgia, interview with John Ruggeri, July 28, 2005.

Frank M. Eldridge formerly of the Superior Court of Fulton County was sworn in as the tenth judge of the Court of Appeals of Georgia. He was the sixty-third judge in the court's history. As well as serving on the Court of Appeals, Eldridge authored numerous legal treatises and journal articles and served as an adjunct professor at the Emory Law School and the National Judicial College.

Frank M. Eldridge

The same legislation that brought Judge Frank Eldridge to the Court also changed the process by which cases were decided when a dissent was written. Prior to this time, a dissent in a case heard by one panel of three judges would result in the case being referred to the entire court. Following 1996, cases triggering a dissent were referred to a panel of seven judges, including the division to which the matter was initially heard, the next division in succession and a seventh judge. The 1996 law also provided that a decision of a three-judge division overruling a prior decision must be referred to seven judges for decision. Finally, the General Assembly gave the court authority to determine, upon a unanimous basis, when its business might require temporary assistance. Should the court unanimously make such determination, the court was authorized to request assistance of the senior appellate judges.

As welcome as were these legislative efforts, they did not solve the problem of the prodigious workload faced by the court. Indeed, having a tenth judge actually created a problem that hindered administration. Court panels are arranged in multiples of three judges, leaving the tenth judge without a permanent division. The chief judge was taken off a permanent division, but assigned to every tenth case, with the result that this judge would often hear a number of cases during oral argument with one division, and then have to leave the bench when an argument was scheduled for an appeal for which that judge was not a member of the assigned trio. The end result was awkward. As a result, the chief judge was called to hear oral argument on more days of the month than would have resulted under the prior rotation.

Legislative efforts to bring more judges to the bench of the Court of Appeals were unsuccessful until 1999, at which time Senate Bill 99 passed and was signed by Governor Roy Barnes. The new act increased the number of judges from ten to twelve, organizing the members into four divisions of three judges each. The retirement of Judge Dorothy Beasley, plus the newly created positions, created three vacancies at one time. Rarely in Georgia history has a governor had an opportunity to appoint at one time as many appellate judges as did Governor Barnes in 1999 when he appointed M. Yvette Miller, a former State Court judge of Fulton County, John J. Ellington, former State Court judge of Treutlen County, and Herbert E. Phipps, former Superior

Judge John J. Ellington (left) Judge M. Yvette Miller, and Judge Herbert E. Phipps were sworn-in on July 12, 1999 by Governor Roy Barnes

Workflow of a Direct

Robert G. Tanner

When a party or an attorney decided to appeal, he or she filed a Notice of Appeal with the clerk of the trial court that had decided the matter. The trial court clerk then prepared a record of the pertinent documents from the case file for transmittal to the Court of Appeals. Various pleadings, depositions, transcripts, and other documents designated by the parties would be assembled into the "record on appeal."

In the Court of Appeals, the documents are delivered to the offices of the clerk of the Court of Appeals, where files are created. The Notice of Appeal is entered into the court's docket and the case is assigned to a panel of judges. As soon as the appeal is docketed, the clerk's office would mail written notice to the parties that the matter has been docketed and that briefs in support of their positions would be due by certain dates.

Attorneys for the parties in the appeal would then begin to marshal cases and arguments in support of their respective positions, piling library tables with books as each team compared and contrasted prior cases with their own case's legal issues. Photocopy machines would hum as reproductions of significant decisions would be made for future reference and to be incorporated into briefs. Initial thoughts would flow into dictating machines, so that later typists can type out the various legal arguments. Drafts of briefs would spill out across the pages, only to be reworked by attorneys, retyped, and reworked again. In the end, a final document would be prepared and multiple copies of the briefs would be made for delivery to the Court of Appeals.

Not infrequently, the brief would be finished on the day it was due, and worried glances would be directed at the clock, it being necessary to have a brief delivered before close of business on the due date. More than a few times, a last minute race occurred, complicated by the fact that parking was often difficult near the Court of Appeals. Rather than have a single individual drive to downtown Atlanta, park a vehicle, and then dash to deliver a brief to the Court of Appeals, lawyers working on short deadlines sometimes raced the final product to the court by a team. One individual would drive and pause briefly at the front entrance of the court while another alighted with the precious cargo and sprinted in to achieve a timely filing. Such efforts were known in this writer's law firm as "drive-by filings."

Newly arrived briefs are dutifully stamped by court personnel. Records are made in the court's docket as to what had been received, and the process of distribution began. Stacks of briefs are distributed to judges of the division to which the case had been assigned and to their clerks. A new wave of library consultation then occurs. Judges and their clerks pull down volume after volume of law books to ponder citations offered in the briefs. Photocopying machines again hum with copies of cases. Once the division agrees upon the law and the ruling of the case, the judge assigned to the matter and his or her clerk would begin to craft a written opinion. Dictating machines again are switched on and soon another cadre of typists would position their earpieces to type the emerging decision. The initial draft, once presented to the writing judge, would be corrected, retyped, and re-corrected until the finished product satisfied the division. During this process, stacks of papers surge from one desk to another. One is reminded of the epic fictional case of *Jarndyce v. Jarndyce*, as related in the Charles Dickens' novel *Bleak House*; Dickens described how, whenever the case was brought to the court of the lord chancellor, there was a "bringing in of great heaps, and piles and bags and bags full of paper."[99]

[99]Charles Dickens, *Bleak House* (New York: R.G. Newbge, 1994) 381.

Appeal, 1980–Present

Once a final draft of an opinion had been approved by the judges, copies are mailed to the attorneys for the parties, the trial court, and the office of the official court reporter. The same official serves as reporter both for the Supreme Court and Court of Appeals. The reporter's duties require him or her to attend in person, or by assistant, all sessions of the Supreme Court and Court of Appeals, and to publish the decisions of those courts. The court reporter is responsible for overseeing a contract with a publisher and for ensuring that the publisher ultimately produces and distributes an accurate copy of the court's opinions. The reporters diligently proofread copies of all decisions going to the publisher to ensure that the draft was an accurate version of what the court has ruled. During the decades in question, the equipment used to do this work has also changed from word processors to personal computers and opinions could be electronically transmitted to the publisher rather than mailed or picked up. This work was ably supervised and carried out first by Scott Henwood, and more recently by Jean Ruskell and their respective staffs. The publisher generally distributed weekly a booklet containing the decisions from thirty to fifty cases. These "advance sheets" typically arrived on the desks of lawyers two to three months following the actual decision.

William Scott Henwood

Jean Ruskell

Yet, even with the opinions of the Court of Appeals safely in the hands of judges and lawyers across the state, the process was not at an end. Small hillocks of paper still required attention. The copy of the record prepared by the initial trial court, as well as the briefs and motions of both sides in each case, and the orders of the court had been accumulating. When the time for any motions for reconsideration or appeal to the Supreme Court had passed, these often-voluminous piles of papers still had to be housed. For many years, they were sent to the State Archives, a division of the Office of the Secretary of State. There they were stored for future reference in the event legal scholars might want to know the precise arguments offered to the court in any given case.

As the years went by, these records began to present storage problems, and by the 1990's, the State Archives had determined to no longer accept paper case files and records from the Court of Appeals for storage. Accordingly, the court began to microfilm the pertinent pleadings from the appellate process. These in turn were stored. The microfilm, of course, took up less space than the original documents, but as time progressed, even the storage of microfilm records of paperwork in thousands of cases began to swell.

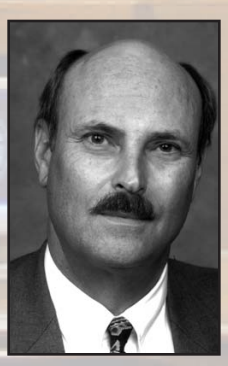
The process by which an opinion of the Court of Appeals came into being may strike some as antiquated, if not Dickensian, yet this was in fact the routine followed by virtually all appellate courts in the twentieth century. Now these old ways have begun to be swept away by the revolution in information processing. New technologies have provided a means to simplify greatly the process of legal research, writing, and editing, and the Court of Appeals of Georgia was among the first in the nation to exploit this new technology to facilitate its workflow.

Court judge in the Dougherty Judicial Circuit, as the judges to fill these posts. Twelve judges remain the authorized strength of the court to the present.

Despite these efforts, the caseload of the Court of Appeals has remained a heavy one as the court enters its second century. As recently as 2002, at a retirement tribute for Judge Marion T. Pope, Jr., the retiring judge reflected on twenty-one years of service. He noted that since 1981 he had seen the court's caseload almost double. Even with three new judges, the addition of one staff attorney per judge (bringing the total to three per judge) and even with the addition of central staff attorneys, Judge Pope predicted "more changes for the Court in the future as it works to manage the ever increasing caseload."[100]

Economy of Operation

The Court of Appeals has managed its considerable output of cases in an economical fashion. The Court of Appeals consumes considerably less than one tenth of 1 percent of the state budget. That the Court of Appeals runs economically reflects careful attention to administrative details by its members and support staff, particularly, the clerks of the court. The current clerk of the Court of Appeals, William L. Martin III, as well as his two immediate predecessors, Victoria McLaughlin and Alton Hawk, were diligent in their duty of ensuring that the court ran in as economical a fashion as possible. However efforts to contain costs also had a lighter side from time to time. The story is told of Judge Harold R. Banke, who retired from the court in 1991. He once returned from the post office carrying a bag packed with stamps. He announced to several judges that he had bought $100 worth of stamps because the cost of postage was going to rise two cents the next day. It is recalled humorously that he blushed and hurriedly left the room when someone reminded him that the court would still have to pay the extra two cents the next day to use the mails.[101]



William L. Martin, III

Victoria McLaughlin

Alton Hawk

New Technology for the Court

In the early 1980s new technology was applied to legal research and writing. One of the early proponents was Justice Charles Weltner of the Supreme Court. Weltner of Georgia was instrumental in leading the Supreme Court and the Court of Appeals to purchase jointly a mainframe computer in 1982. Its purpose was to automate docketing, to streamline the process of keeping track of appeals, and to reduce hand-recording of case data. Bud Tirey, formerly of the Georgia Department of Administrative Services, became the chief technology assistant with the court to provide the court in-house information technolo-

[100]Henwood and Ruskell Reporters, A Tribute to Marion T. Pope, Jr., Chief Judge Retired, 257 GA App XXIX, LI. (2002).
[101]Henwood and Abbot Reporters, A Tribute to Harold R. Banke, Chief Judge Retired. Remarks of Justice George Carley, Supreme Court of Georgia, 204 GA App XXXIII, XLVIII (1992).

Court of Appeals IT Staff works on the court's servers. From left, Bob McAteer, Bud Tirey, Brett Muller, and John Ruggeri.

gy expertise. The court is now served by an information technology staff of three: John Ruggeri, Bob McAteer, and Brett Muller.

By the late 1980s, personal computers began to replace the large mainframe computers. As with the mainframe, attitudes toward change varied and could vary over time, as evidenced by Justice Robert Benham's reaction.

> *I engineered the [personal] computers for the court, but that shows something else in that I was probably the most least likely candidate who wanted to have computers. I made a statement early on that I was a yellow-pad lawyer and I would be a yellow-pad judge, and it would be a cold day in another region of the country before I agreed to computers. Now that sounds nonsensical now, but at the time few lawyers, if any, had computers. Now I was a lawyer who had a computer when I practiced, I had a computer-typewriter, but the driving force for me was that I had small children, and my children had computers and until then [I] had thought of computers as just toys. But I saw what they could do, how they could increase the amount of work and the speed with which work could be done.*[102]

[102]Justice Robert Benham, Supreme Court of Georgia, interview with John Ruggeri, April 21, 2005.

The mainframe unit was abandoned by the court in favor of a server-based platform permitting a local area network. The system was also changed to rely on fiber-optic cables, which gave it greater flexibility and adaptability. As a result, the full court, the judges and all court employees, had access to an automated docketing system. By the year 2000, all written opinions of the Court of Appeals and the Supreme Court were in a searchable database. Additionally, the court negotiated agreements with two companies, LEXIS and Westlaw, for on-line legal research. The connections were initially achieved via telephone lines and were later upgraded to high-speed, internet access. Legal research and word processing was then available twenty-four hours a day. The result was to improve the way and speed that cases are docketed and researched and opinions drafted.

Court of Appeals Courtroom.

The court modernized its courtroom in 2005 to include a system so that the attorneys presenting oral arguments could use documents or photographs from a document camera platform, from their personal computer, or from an audio or video disk which displayed on computers at the judges' bench, the attorney tables, clerk's station and on a screen for the audience.

As the Court of Appeals of Georgia enters its second century, the foundations already laid should allow for significant further improvements in the application of information technology to the judicial decision-making process. The court is currently working on a system to accept documents electronically from attorneys' offices, to automatically update the court docket, and to distribute documents in an electronic form to the appropriate judicial offices. "Drive-by filings" could soon be a thing of the past.

Community Service and Leadership

By introducing electronic processing to the appellate court work, the court was, among other things, making itself more accessible to citizens of the state. In fact, judges of the court between 1980 and 2006 took a number of innovative steps to accommodate Georgians. Not surprisingly, many judges were individually involved in various aspects of community service, and, by the same token, judges often provided leadership in efforts to improve the judicial system as a whole. For example, Judge A. Harris Adams served as a member of the Supreme Court of Georgia Chief Justice's Commission on Indigent Defense; he was also a member of the advisory board of the Georgia Indigent Defense Council. Similarly, Judge Edward H. Johnson served as chairman of the board of trustees of the Institute of Continuing Judicial Education, a position previously held by Judge John H. Ruffin, Jr., and A. W. Birdsong, Jr. Judge G. Alan Blackburn served on the Chief Justice's Commission on Professionalism. Judge John H. Ruffin, Jr. served as a chairperson of the Chief Justice's Commission on Racial and Ethnic Bias. Judges J. D. Smith and Charles B. Mikell, Jr., who currently sit on the court, both have been active in local community projects. Judge Smith, a former Superior Court judge of the Northeastern Judicial Circuit, has been a director of the Gainesville Kiwanis Club and a director of the Lanier Education Foundation, while Judge Mikell, a former Superior Court judge in the Eastern Judicial Circuit, has been president of the Neighbor to Neighbor Justice Center and served on the boards of both the United Way and Boy Scouts in the Chatham County area.

A. Harris Adams

G. Alan Blackburn

J. D. Smith

Charles B. Mikell, Jr.

Court Accessibility

As an institution, the Court of Appeals of Georgia has sought to become more accessible to Georgians through the establishment of a website. Through the website, www.gaappeals.us, a viewer can review the rules and calendar, perform a docket or case search of an individual matter, retrieve court opinions, and learn other information concerning the function of the court. There is even a specific link by which a viewer can e-mail a question to the clerk of court.

The court also continued its service through hearing oral arguments in different areas of the state. In 1996, the General Assembly specifically legislated that the Court of Appeals could hear oral argument

Students at Georgia State University Law School observed oral arguments on March 28, 2006.

at locations other than at the seat of state government. Rather than hearing all cases in the central Atlanta courtroom, divisions of the court occasionally heard oral argument in law schools and other community forums throughout Georgia. The impact has been to increase the visibility of the work of the court to citizens of Georgia.

Not all cases brought to the court are filed by attorneys. Indeed, a not inconsiderable number of matters are filed in the Court of Appeals without the benefit of counsel, and this fact provided an opportunity for the court to be helpful in yet another way. In 2000, William L. Martin III, the clerk and court administrator of the court, attended the National Conference of Appellate Court Clerks where he studied a number of written guides from other states designed to explain appellate practice to laypersons. As a result of little guidance, many Georgians filing or defending appeals pro se (parties without legal counsel) filed defective pleadings that consumed valuable judicial and administrative time. Martin addressed the problem through an informative pamphlet entitled "A Citizen's Guide to Filing Appeals in the Court of Appeals of Georgia." The original booklet of December 2000 provided an overview of the appeals process and its update is now available on the court website.

Recent Election Contests

The year 2004 was significant in the history of the Court of Appeals of Georgia because of a prolonged and very expensive election season. To be sure, there had been contested elections involving a seat on the Court of Appeals in the past. In 1992, Judge G. Alan Blackburn, then a practicing attorney, ran against incumbent Chief Judge John W. Sognier for the latter's seat on the Court of Appeals.

In 1998, a practicing attorney from Atlanta, Anne Elizabeth Barnes, ran for an open seat on the court. Two other contenders vied for the position, but Anne Barnes won in the primary without a

Judge Anne Elizabeth Barnes was sworn-in by then-Chief Justice Robert Benham on January 6, 1999.

runoff, becoming the first woman to be elected to a statewide judicial position in Georgia without having first been appointed to the bench by the governor.

The Bernes Race – 2004

The Barnes race of 1998 would, however, be overshadowed by the contest of 2004. In that year, Judge Frank Eldridge announced his retirement from the court, making the effective date of his departure the end of his term. Thus, the upcoming vacancy would have to be filled through election. Six candidates, Debra Bernes, William A. Hawkins, Howard Mead, Thomas E. Rawlings, Mike Sheffield, and Elizabeth Lee Tarte Wallace, campaigned actively for the position.

On the evening of July 9, 2004, a debate among all candidates was televised from the studios of station WAGA, the Georgia Public Broadcasting affiliate in Atlanta. A debate of this size had not occurred before in Georgia judicial history on the television screen.

The non-partisan primary election was rapidly approaching when it was discovered that in Laurens County, Georgia, there had been a misprint on the absentee ballots. The error resulted in the name of one of the candidates, Howard Mead, being incorrectly listed as "Thomas Mead." The problem was corrected prior to the primary with regard to ballots to be used that day at the polling places, but absentee ballots had already been mailed with the incorrect name. This relatively minor mistake from a rural county was to have disproportionately large consequences.

The primary election was held on July 20, 2004, and candidate Debra Bernes, a Cobb County prosecutor, earned the most votes. She exceeded her closest rival, Mike Sheffield, by more than 100,000 votes. Mike Sheffield in turn stood ahead of Howard Mead with a 382-vote margin. Under election rules, Mike Sheffield won the right to a run-off election with Debra Bernes, and the two candidates began preparations to continue their quest for the judgeship.

In the meantime, the Mead campaign examined vote totals and believed that there was a sufficient problem with the incorrectly printed absentee ballots in Laurens County to put the entire primary in doubt. Accordingly, the Mead campaign filed a lawsuit to overturn the election. On August 6, a hearing was held in the Cobb County Superior Court to examine that question. On the evening of the same day, Debra Bernes and Mike Sheffield took part in another televised debate. Even while the candidates were debating, their lawyers were puzzling through the decision of the Superior Court upholding the primary election. The Mead campaign then appealed that decision to the Supreme Court of Georgia.

Just three days later, on August 9, the Supreme Court halted the Court of Appeals runoff election

due to take place the next day. The campaigns of the candidates were instructed to prepare briefs addressing the questions of whether the misprinting of ballots from Laurens County was sufficient to set aside the entire primary. A decision to overturn the initial primary could invalidate all the results of the primary election. However, the candidates finishing in the bottom half of the slate agreed they would not run again in the primary regardless of the Supreme Court decision.

On September 2, 2004, a closely divided Supreme Court ruled. The majority consisted of justices Norman Fletcher, George Carley, and Harris Hines, with Justice Carol Hunstein specially concurring. Justice Leah Sears had not participated, being replaced by Judge Neal J. Dickert, who dissented along with justices Robert Benham and Hugh Thompson. Thus, the case was decided by only a one-vote margin, with two former Court of Appeals judges (justices George Carley and Robert Benham) on opposite sides of the result.

The Supreme Court majority found that the incorrect listing of candidate Howard Mead meant that the Laurens County absentee ballots did not comply with those Georgia laws requiring the names of all qualified candidates be listed on the ballots. The Supreme Court did not see this as an insignificant problem because some individuals who voted for other candidates might have voted for Mead if his name appeared correctly; likewise, it was possible that some who did not vote in the contested race would have voted for candidate Howard Mead but chose not to vote for anyone when his true name could not be found on the ballot. The court also noted that the number of misprinted ballots exceeded the difference in the number of votes between Sheffield and Mead. The court ruled that the result of the election had been sufficiently cast in doubt so that the runoff between Bernes and Sheffield could not go forward.

The Supreme Court ordered a new primary election to take place on the same day as the general election, November 2, 2004. Campaigning resumed by candidates Bernes, Sheffield, and Mead and continued through the fall. On the day of the general election, voters again placed Bernes in the lead, but the second- and third-place finishers switched places. Mead finished second on the November ballot ahead of Sheffield, and thus won the right to meet Bernes in a runoff.

The ensuing weeks saw unprecedented campaigning, which included substantial expenditure by both sides. Mead, a former aide to governors Zell Miller and Roy Barnes, is reported to have raised in excess of $3,000,000 to fund his race. Bernes reported contributions of more than $600,000. The total funds raised by all candidates vying for this one judgeship would be a sum well in excess of $4,000,000, an amount many times the salary of the seat (which paid approximately $150,000 annually at the time).

The campaign was notable not only as the most expensive in Georgia judicial history, but also the most sophisticated in its use of technology. Both the Bernes and Mead campaigns used modern electioneering methods, including extensive use of the internet, electronic telephone messages, and use of radio and television interviews and advertising.

The longest and most dramatic judicial election in the history of Georgia ended when voters went to

the polls on November 23, 2004. The turnout was light, the election coming two days before Thanksgiving. However, voters who participated gave a resounding victory to Bernes, the first Jewish Georgian to win a statewide election in Georgia history, and on January 1, 2006, Judge Bernes became the seventieth member of the court and put the rigors of the campaign behind her. In a 2006 interview Judge Bernes stated, "I do not want my election to be the defining experience of my professional life.… I want it to be my service."[103] An election cycle requiring three elections and involving fundraising in the millions would have been inconceivable to those persons who supported the creation of the Court of Appeals in 1906.

Judge Debra Bernes was sworn-in by Governor Sonny Perdue on December 7, 2004.

Governor Sonny Perdue administered the oath of office to Judge Debra Bernes on December 7, 2004 in the House Chamber at the Capitol.

Members of the Georgia General Assembly watched the 2004 election, and it figured in legislative discussions and proposals in the 2005 session. The 2005 General Assembly enacted OCGA § 45-12-61, making any person ineligible for an appointment to fill a vacancy on the Supreme Court, the Court of Appeals, or other state courts who had made "contribution to or expenditure on behalf of the governor or the governor's campaign committee either (1) in the 30-day period preceding the vacancy…or (2) on or after the date the vacancy occurs." The legislation did have a saving provision that allowed a person to be appointed who had made a contribution within thirty days preceding the vacancy.

Perhaps also reflecting concern over the course of the 2004 election, a bill was introduced in the 2005 General Assembly to create a taxpayer-funded mechanism for financing judicial elections. This proposal sought to ensure "fairness of democratic elections in Georgia and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, these effects being especially problematic in elections of the judiciary since impartiality is uniquely important to the integrity and credibility of the Courts."[104] The act did not pass. In the aftermath of the Bernes election, there were also discussions about changing judicial races from non-partisan to partisan races. Whether these two changes for judicial elections will become reality remains to be seen. What does seem certain is that as the court enters its second century, this issue will be one which attracts continuing debate.

[103]Judge Debra Bernes, Court of Appeals of Georgia, interview with Bob McAteer, May 26, 2006.
[104]HB102, 2005 Public Financing for Appellate Judicial Campaign Fund Act.

Conclusion

The final years of the court's first century saw unprecedented growth and change in the Court of Appeals of Georgia. In 1980, the court consisted of nine Georgia males who held their seats without significant election activity. Twenty-five years later, a larger, more diverse and very technologically sophisticated court was handling one of the busiest and varied caseloads of any appellate court in the nation, and the potential existed that joining its ranks in future could become a more hotly contested and certainly more expensive process.

Yet, for all the change, the court ended its first century much as it began, as a body dedicated to the interpretation of law. This spirit was perhaps best summarized by Judge Marion T. Pope, Jr. upon his retirement from the court in 2002. The words he spoke can serve as a tribute to the history of the Court of Appeals of Georgia, as well as a guideline for the future: "For 21 years, I have had daily interaction with the best and brightest this State offers. The cases and the issues we consider continue to challenge and to fascinate me.… I think the law is alive. I think the law lives, and it was intended to adapt and grow as the culture and society evolved. This job allows you to be part of that evolution."[105]

[105]Henwood and Ruskell Reporters, A Tribute to Marion T. Pope, Jr., Chief Judge Retired, 257 GA App XXIX, LI (2002).

Chapter 5

The Centennial Celebration, 2006

The Centennial Court of Appeals of Georgia

Seated, left to right, Presiding Judge G. Alan Blackburn, Presiding Judge Gary B. Andrews; Chief Judge John H. Ruffin, Jr.; Presiding Judge Edward Johnson; Presiding Judge JD Smith. Standing, left to right, Judge Anne Elizabeth Barnes; Judge M. Yvette Miller; Judge John J. Ellington; Judge Herbert E. Phipps; Judge Charles B. Mikell; Judge A. Harris Adams; Judge Debra Bernes.

We pause during this Centennial Year to celebrate the founding of the Court of Appeals of Georgia. However, we celebrate more than the founding of our Court. We celebrate our dedication to the rule of law, to freedom, and to those principles which have made our Court a "People's Court". We also honor those judges who have preceded us, and whose guidance and wisdom were essential to the development of this Court. We further honor those employees-both past and current-whose dedication has and continues to be indispensable to the operation of the Court.

We especially invite all Georgians to review the historical materials the Court has prepared, and to attend the year-long events planned by the Centennial Committee. We also invite you to observe the Court's oral arguments in furtherance of increasing your knowledge of the Court's functions as well as its history.

This the 6th day of February, 2006.

John H. Ruffin, Jr.
Chief Judge

[Excerpt from Biographies of the Judges and Court History *pamphlet]*

BY THE GOVERNOR OF THE STATE OF GEORGIA

A PROCLAMATION
COURT OF APPEALS CENTENNIAL YEAR

WHEREAS: The Court of Appeals of Georgia was organized on October 3, 1906, with the ratification of a constitutional amendment creating the Court; and

WHEREAS: In fulfilling the role for which it was created, the Court of Appeals of Georgia has assumed a significant portion of the appellate caseload burden for the state; and

WHEREAS: The Court has increased from a bench of three judges originally assigned 155 cases from the Supreme Court to a bench of twelve judges and 3,140 case filings in 2005; and

WHEREAS: The function of the Court of Appeals of Georgia is vital to fair treatment in the trial courts, final resolution of disputes and preservation of public trust in government operation; and

WHEREAS: The Court of Appeals of Georgia has diligently performed this role in the judicial branch of Georgia government by ensuring fairness, impartiality and consistency in the application of the law and delivering decisions which provide clear and coherent direction to the trial courts, litigants, attorneys and public; now

THEREFORE: I, SONNY PERDUE, Governor of the State of Georgia, do hereby proclaim 2006 as the COURT OF APPEALS CENTENNIAL YEAR and honor the Court and its judges, staff and hundred years of history as an integral part of our Judicial Branch. I encourage all Georgians to participate in this year's Centennial.

In witness thereof, I have hereunto set my hand and caused the Seal of the Executive Department to be affixed this 24th day of January in the year of our Lord two thousand six.

GOVERNOR

ATTEST

CHIEF OF STAFF

Centennial Proclamation

In 2006, the Court of Appeals began a year-long celebration of the court's first 100 years. The 100th birthday of the court was recognized by the governor on January 24, 2006, in a proclamation ceremony held in the State Capitol rotunda. Chief Judge John H. Ruffin, Jr., welcomed the governor, lieutenant governor, the speaker of the house, and an audience of judges, legislators, court employees, and the public to the ceremony. Presiding Judge J. D. Smith narrated a short video history of the court from 1906 to 2006 noting that the original courtroom for both the sessions of the Supreme Court of Georgia and the Court of Appeals of Georgia had been in room 341, now the Appropriations Room of the very building, the State Capitol, in which the ceremony was being held. It was fifty years later, in 1956, when the construction of the current Judicial Building was completed to house the state's two appellate courts.

Governor Sonny Perdue (left) presents Chief Judge Ruffin with the Proclamation as Presiding Judge J. D. Smith looks on.

Presiding Judge J. D. Smith recounts the Court's history.

The apex of the program occurred when Governor Sonny Perdue proclaimed 2006 the Court of Appeals Centennial Year and recognized the court's role of ensuring that "Georgians received fair treatment in the trial courts and in the final resolutions of disputes." Proclamations were also presented by Lieutenant Governor Mark Taylor and Speaker of the House Glenn Richardson. Activities honoring the 100th year of the court were planned and implemented by a Centennial Committee under the theme "A Century of Serving Justice."[106] These activities were planned to reach not only the legal community but students and ordinary adult citizens throughout the state. As Judge Miller said, "I think our title ['A Century of Serving Justice'] embodies everything that the court stands for, which is justice, moderation, and fairness. And also what these individuals have stood for and that is strength, dignity, tenacity, and perseverance.… Hopefully, the citizens of the state will know that we are honorable public servants, and that we are their judges and that we are here to do the right thing."[107]

Audience at Proclamation ceremony.

The Court of Appeals of Georgia

Centennial Seal

To symbolize the court during the centennial year, the court adopted a new seal that included the centennial theme, the dates 1906–2006, and a representation of the Lady Justice taken from the image on the front doors of the State Judicial Building.

[106]Members of the Centennial Committee included the Honorable John H. Ruffin, Jr., chair; the Honorable Anne Elizabeth Barnes; the Honorable M. Yvette Miller; the Honorable John J. Ellington, Jr.; the Honorable Marion T. Pope, Jr.; William L. Martin, III, Esquire; the Honorable Harold Melton; Jeff Milsteen, Esquire; Scott Henwood, Esquire; Ms. Debra Nesbit; Lendon Gibbs, Esquire; Professor Helen S. Ridley; Ms. Jane Martin; Robert Feagin, Esquire; Mr. Bob McAteer; Gwendolyn Waring, Esquire; Kimberly M. Esmond, Esquire; Laura Speed-Dalton, Esquire; Professor Marjorie Girth; Dean Rebecca H. White; the Honorable Wendell K. Willard; Charles R. Adams III, Esquire; Rebecca Sullivan, Esquire; Mr. Edwin Bell; Holly Sparrow, Esquire; and Ms. Dianne M. Joy.

[107]Judge M. Yvette Miller, Court of Appeals of Georgia, interview with Bob McAteer, May 17, 2006.

Student from Gordon Lee High School argues before judges of the Court of Appeals in Chickamauga.

Division One judges listen to arguments in Chickamauga. Left to right, Judge Anne Elizabeth Barnes; Presiding Judge Gary B. Andrews; and Judge Debra Bernes.

Centennial Tour

In order to bring the centennial commemoration to communities throughout Georgia, the court held oral arguments in eleven locations in the state during 2006. Holding arguments in these locations was intended to bring a better understanding of the court and its processes to students and the public.

In April 2006, the court held arguments in Savannah in the historic city hall that had been dedicated in the same year as the creation of the Court of Appeals. In Chickamauga, the court not only held scheduled oral arguments but heard the arguments of Gordon Lee High School students who presented lively mock arguments based on an actual appeal that had been disposed of in the prior year and who were rewarded with constructive criticism from the panel judges, Presiding Judge Gary Andrews, Judge Anne Elizabeth Barnes, and Judge Debra Bernes.

Judges of the Third Division Judge Charles B. Mikell, Jr..; Presiding Judge G. Alan Blackburn; and Judge A. Harris Adams listen to an argument in Savannah.

Centennial Tour

March 23, 2006
Richmond County Courthouse, Augusta

March 27, 2006
Georgia State Law School, Atlanta

April 20, 2006
Historic City Hall, Savannah

May 24, 2006
Jackson County Courthouse, Jefferson

September 6, 2006
Chickamauga Civic Auditorium, Walker County

September 8, 2006
Bulloch County Courthouse, Statesboro

September 14, 2006
Wayne County Courthouse, Jesup

September 20, 2006
Peach County Courthouse, Fort Valley

September 21, 2006
Mercer University Law School, Macon

September 27, 2006
Hall County Courthouse, Gainesville

September 29, 2006
Morehouse College, Atlanta

Division Two enters the courtroom in Ft Valley, Georgia. Front to back, Judge John J. Ellington; Judge M. Yvette Miller, and Presiding Judge Edward Johnson.

Fourth Division Judges pose with students in Statesboro, Georgia. From left, Judge J. D. Smith; Chief Judge John H. Ruffin, Jr.; and Judge Herbert E. Phipps.

Oratorical Contest

On September 9, 2006, the court continued its celebration by organizing and sponsoring a statewide high school oratorical contest on the subject of the separation of powers and the judicial branch of government. Jill Pryor of Bondurant, Mixson, and Elmore, LLP, and a member of the Centennial Committee served as chair of the contest.[108]

The contest finals were held at the State Bar Center in Atlanta. The first-place winner was Caleb Smith, Cartersville High School, whose oration was titled "The Judicial Branch: Guardian of the Constitution." The first-place through fourth-place winners and quarter-finalists all received scholarships provided by Justice Served, Inc., a charitable foundation dedicated to educating the public about the Georgia judicial system.

The top four finishers in the Oratorical Contest pose with Ms. Jill Pryor, Chair of the Contest.

State Bar of Georgia Resolution
for
THE COURT OF APPEALS OF GEORGIA

Congratulating THE COURT OF APPEALS OF GEORGIA on the occasion of its 100th anniversary; and for other purposes.

WHEREAS, THE COURT OF APPEALS OF GEORGIA is celebrating its Centennial during the Year 2006; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA was organized to assist and relieve the Supreme Court of its over burdensome caseload; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA was created by a Constitutional Amendment ratified by the public on October 3, 1906; and

WHEREAS, the caseload of THE COURT OF APPEALS OF GEORGIA has increased tremendously through the years; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA has played an integral role in ensuring fairness and adherence to the law and in improving the administration of justice, and its judges have, over the last century, devoted their careers to serving justice; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA invites all citizens of Georgia to celebrate the Centennial by learning about the history of the Court, its judges, and its role in our State's judicial system;

NOW THEREFORE BE IT RESOLVED BY THE STATE BAR OF GEORGIA, that 2006 is hereby designated as a Year Honoring THE COURT OF APPEALS OF GEORGIA and its one hundred years of existence as an integral part of the system of justice in Georgia.

BE IT FURTHER RESOLVED that the Secretary of the State Bar is authorized and directed to transmit an appropriate copy of this resolution to Chief Judge John H. Ruffin Jr. and the other members of THE COURT OF APPEALS OF GEORGIA.

Given this 3rd day of June 2006.

Robert D. Ingram
President, State Bar of Georgia

Resolution from the State Bar of Georgia.

The Court of Appeals of Georgia

[108]She was assisted by Roberta Earnhardt, assistant district attorney of the Rockdale Judicial Circuit, and a number of volunteers including the final round judges, Justice George H. Carley, Supreme Court of Georgia; Chief Judge John H. Ruffin, Jr.; Judge Anne Elizabeth Barnes; and Judge M. Yvette Miller, Court of Appeals of Georgia; and Judge Sidney L. Nation, Superior Court, Rockdale Judicial Circuit.

Other Activities

As well as promoting understanding of the judicial system by students and the general public, the court sponsored two continuing legal education opportunities for Georgia attorneys during the centennial year. First, a panel discussion was held at the state bar annual meeting on the subject of separation of church and state on June 1, 2006. The program included remarks and discussion by Chief Judge John H. Ruffin, Jr. and Judge Anne Elizabeth Barnes of the Court of Appeals of Georgia; A. James Elliott and John Witte, Jr., of the Emory University School of Law; Angie Wright-Rheaves, Court of Appeals; Jeffrey O. Bramlett, Bondurant, Mixson, and Elmore, LLP, Atlanta; Vernadette Ramirez Broyles, Alpharetta; and Albert M. Pearson III, Moraitakis, Kushel, Pearson and Gardner, LLP, Atlanta. A resolution of the state bar honoring the court during its centennial year was also presented at the state bar's annual meeting.

Secondly, a number of mini-seminars on the subject of judicial independence were presented by judges of the Court of Appeals at the State Bar and a number of law firms.

May 25, 2006
Fellows, Johnson and LaBriola, LLP

June 29, 2006 • Hunton and Williams

August 22, 2006
Appellate Practice Section of the State Bar of Georgia

August 31, 2006
Nelson, Mullins, Riley and Scarborough, LLP

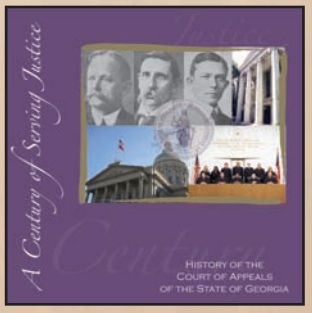
November 2, 2006 • Powell Goldstein, LLP

Centennial Dinner

In a final culmination of all the year's events, Justice Served, Inc., sponsored a centennial dinner in honor of the Court of Appeals on October 6, 2006, at the Georgia Aquarium. In the presence of over 900 persons attending, a scholarship was awarded to the winner of the high school oratorical contest who then presented his speech to the audience. Judge William R. Wilson, Jr., United States District Court, Eastern District of Arkansas, gave the keynote address.

Judge William R. Wilson, Jr., US District Court, Eastern District of Arkansas gives the keynote address at the Centennial Celebration on October 6, 2006.

Following the dinner the guests had the opportunity to view "A Century of Serving Justice," a court history video which debuted at the dinner. The video is now being used regularly to orient visitors to the court.

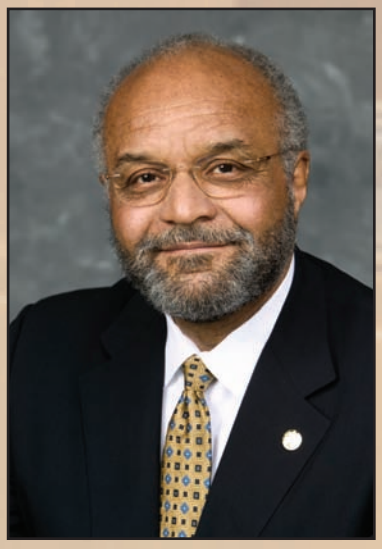


Reflections on the Court's History

The centennial gave the Court of Appeals an opportunity to look back at its origins in the last century. The purpose of the court's creation was to relieve the caseload burden of the Supreme Court, and that it has done well from the initial shift of 156 cases from the Supreme Court to the new Court of Appeals in the first year. Since then the caseload has grown to about 3,300 appeals per year. The court is handling about 86 percent of the appeals in the state.

In interviews conducted in 2006 with current judges of the court and the clerk, these individuals expressed their view of what the future may hold for the court.

"100 years from now I hope that people will say that as they look back over the history of the Court of Appeals that the Court of Appeals has been a place where people of the State of Georgia could come and get justice, and get a fair consideration of their issues, and get a resolution of their conflicts in a way that was satisfactory to all, even those who were on the losing end of the opinions in the sense that even the losers felt that they received a fair hearing and that they got justice even though they didn't prevail, that they had a fair chance. And I think that that's what we should always strive for to make every person who comes to court feel like they have been heard and that they had a fair chance to speak their peace, and that what they said was given the same consideration as everybody else, no matter how rich or poor they were."[109]



Judge Herbert Phipps

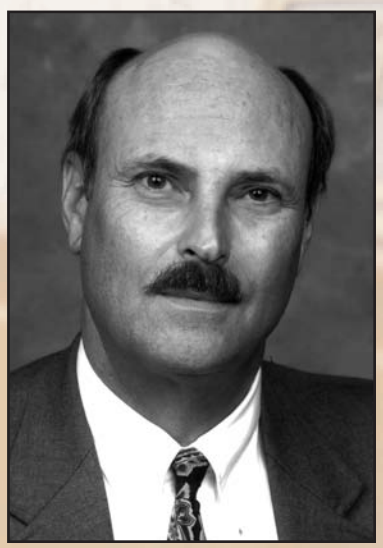
"That we were a court that moved the business of the people, and that we did so fairly with integrity, with honor, with respect for the rule of law and the lives of people."[110]

Judge Debra Bernes

[109]Judge Herbert E. Phipps, Court of Appeals of Georgia, interview with Bob McAteer, May 11, 2006.
[110]Judge Debra Bernes, Court of Appeals of Georgia, interview with Bob McAteer, May 26, 2006.

"... I think the most important thing that I hope folks will be saying about the Court of Appeals 100 years from now is that they followed the law, that they carried out justice, that they were good public servants, that the people of Georgia had confidence in our system.... [I]n the United States and in Georgia, it's our system of justice that separates us from all the other countries of the world. And the quality of life in any community depends on the quality of the judicial system, and I hope that 100 years from now that the people will say the Georgia Court of Appeals improved the quality of life for all Georgians."[111]

Judge John J. Ellington



William L. Martin, III, Clerk

"... I hope that in 100 years from now, that people will be saying the Georgia Court of Appeals is still the best appellate court in the country. I certainly feel like it is, I certainly feel like the dedication of the employees of the Court of Appeals, certainly the people in the Clerk's office really make this the best appellate court in the country. I don't know of another appellate that has as high a caseload and as short a turn-around time, and delivers as many quality opinions as the Court does. It is a diverse Court, there are three African-Americans, there are three females, there are judges who were trial judges, there're judges who were not trial judges, but I think that's one of the strengths of the Court. Just like I think the strength of a jury, you know, having 12 people with different backgrounds, different life experiences, helps to get the best possible verdict. I think that diversity on the Court of Appeals helps to give the best decisions that can possibly be had."[112]

As its second century begins, the Court of Appeals looks forward to its role as a strong pillar of the state judicial system.

[111]Judge John J. Ellington, Court of Appeals of Georgia, interview with Bob McAteer, June 15, 2006.
[112]William L. Martin, Clerk, Court of Appeals of Georgia, interview with Bob McAteer, July 3, 2006.

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