



GEORGE T. SMITH was born October 15, 1916, and is a native of Mitchell County, Georgia. After graduating valedictorian of his class at Hopeful High School, he attended Middle Georgia College and Abraham Baldwin Agricultural College. On August 26, 1940, he joined the U. S. Navy. While in the Navy, he attained the rank of lieutenant commander and received the Naval Merit Unit citation. Following his military service, he entered the University of Georgia School of Law and in 1948 received his LL.B.

Upon graduation from law school, Justice Smith went to Cairo, Grady County, Georgia, to practice law. In addition to his private law practice, he served as County Attorney, Solicitor of the State Court of Grady County, Cairo City Attorney, and attorney for the Grady County Board of Education.

In 1958 Justice Smith was elected to represent Grady County in the Georgia House of Representatives, where he served for eight years. He became Speaker of the House of Representatives in 1963 and held that position through 1966. In 1966 he was elected Lieutenant Governor of the State of Georgia.

Upon leaving the Lieutenant Governor's office in 1971, Justice Smith returned to the private practice of law in Marietta, Cobb County, Georgia. In 1976 he was elected to a six-year term as Judge on the Georgia Court of Appeals. He thus became the only person in Georgia history to win contested elections in all three branches of State government - legislative, executive, and judicial. In recognition of this outstanding record of service, his portrait was unveiled in the rotunda of the State Capitol on May 12, 1980, in accordance with a Joint Resolution passed by the Georgia House and Senate. It is now displayed on the third floor of the State Capitol. Justice Smith was elected to the Supreme Court of Georgia in 1980, and joined the Court on January 1, 1981. He presently serves on the Executive Committee of the Appellate Judges Conference.

During his career he has devoted many hours of service to civic and professional organizations. He was District Governor of the Georgia Kiwanis in 1960 and has served on the Board of Trustees of the National Arthritis Foundation and as chairman of its National Government Affairs Committee.

Justice Smith is married to the former Eloise Taylor of Camilla, Mitchell County, Georgia. They reside in Marietta and are active members of the Marietta First Baptist Church.

*Spahr to him on 1/27/05
Interview to AST for 3/7/05*

George T. Smith: A Dissenting Opinion

BY KATIE WOOD
STAFF REPORTER

James L. Bentley III departed from tradition at his going away party two months ago by giving his boss, Georgia Supreme Court Justice George T. Smith, a present. The gift from the former law clerk was a plaque, which now sits on the front of the justice's desk just above his nameplate.

During the period between January 1986 and June 1987, Georgia Supreme Court Justice George T. Smith dissented 58 times. His closest competitor was Justice Charles L. Weltner who dissented 32 times while Justice Richard Bell dissented 26 times.

"Smith, J.," the plaque reads. "Respectful, hell. I just dissent." When he opened the present, Smith "Of course the court roared. Only I could really appreciate that."

The reason is that Smith not only dissents more frequently than any of his colleagues, but also is the only justice who expresses his disagreement with the majority in no uncertain terms.

While other justices say they "respectfully dissent" before setting out their legal differences in their minority opinions, Smith peppers his dissents with digs.

For example, in *Eason v. State*, 256 Ga. 701 (1987), Smith called for reversal of the guilty but mentally ill conviction of a man he described as "full-blown crazy."

He based much of his argument on a comparison of the man's bizarre behavior with the actions of another man whose guilty but mentally ill conviction had been reversed by the court in *Stevens v. State*, 256 Ga. 440 (1986).

"Perhaps one reversal of a conviction of an insane killer is all this court can handle in one term," Smith wrote in his dissent. When reminded of the line, Smith rocks in his chair and laughs.

"That was ugly, but I liked it—give them little zinger," Smith says.

The swipes at the majority do not reflect personal feelings, says Smith, who describes the justices as a congenial group. "We get along fine. There's no animosity," Smith says.

Justice Charles L. Weltner shares that view.

When the justices meet to consider cases, Weltner says, "It's remarkable how well-nurtured and good-humored our discussions are."

Smith's dissent remarks net in the back to haunt him, giving the other justices material for good-natured teasing.



Georgia Supreme Court Justice George T. Smith



ZACHARY COVINO/STAFF REPORTER

In *Ticor Construction Co. v. Brown*, 255 Ga. 547 (1986), Smith used the South Georgia expression, "It's weak as pond water," to describe the majority's legal reasoning.

"They gave me a bad time on that," Smith admits. Now when his colleagues disagree with one of his arguments, Smith says, "They'll say, 'George T., that's just as weak as pond water.'"

"We use that one on him frequently," Weltner agrees.

Smith dissents more frequently than any of the justices, according to a Daily Report survey of Supreme Court votes from January 1986 to June of this year—published with the opinions in Georgia Reports Volumes 255, 256 and advance sheets for 257.

During that period Smith dissented 58 times. His closest competitor was Weltner who dissented 32 times, while Justice Richard Bell dissented 26 times.

Although only a small percentage of those votes to dissent result in minority opinions, Smith was the most frequent writer with 13 written dissents. Justice Hardy Gregory Jr.—who dissented 22 times—wrote 10 and Weltner wrote seven. (Gregory was out of town this week, and unavailable for comment.)

The counts on others on the Supreme Court bench are as follows: Chief Justice Thomas O. Marshall, 25 dissent votes, four written dissents; Presiding Justice Harold G. Clarke, 15 dissent votes, five written dissents; Justice Bell, 26 dissent votes, four written dissents; and Willis B. Hunt Jr., six dissent votes, four written dissents.

Hunt was appointed to the bench April 9, 1986. Former Chief Justice Harold N. Hill Jr., who resigned March 31, 1986, dissented twice during the period in question and put both into writing.

There does not appear to be a consistent bloc of justices repeatedly joining in minority opinions, indicating the lack of a strong ideological split on the court.

"I'm a bloc of one," Smith says. "I had three [votes to dissent] at one en banc about a month ago."

Smith says he carefully researches cases before going to an en banc session. "As a rule, when I go to an en banc, I have my mind made up," he says.

"He's a strong-willed man, full of purpose and determination," Weltner says of his fellow justice.

"Compromise is good in the legislative branch. Compromise doesn't have any place in the judicial branch," says Smith, who is the only Georgian in history to have won contested elections in all three branches of government.

Smith was elected to represent Grady County in the Georgia House of Representatives in 1958 and served eight years, during which time he was elected speaker of the House.

In 1966, he was elected lieutenant governor of Georgia, a post he held until 1971 when he returned to private practice.

Smith was elected to the Georgia Court of Appeals in 1976 and was elected to the Supreme Court in 1980.

The 70-year-old justice says the reasons for his dissents—his inability to compromise his legal convictions—can be found in his background.

"Having been born and raised on a small farm in Southwest Georgia—very poor—I have a natural leaning toward the underdog," Smith says.

On his office wall among his plaques hangs a picture of a man plowing behind two mules. The artwork is a reminder of what might have been the Mitchell County native's future had he not been valedictorian of his Hopeful High School class and able to attend college and earn a law degree.

Smith's natural inclination to root for the little guy and his firsthand knowledge that the Legislature can easily rewrite a law overturned by the court frequently cause Smith to interpret statutes in favor of the person going up against the state, he says.

In addition, Smith says, he is a strong believer in landowners' rights.

Those convictions converged in *Josh Cabaret, Inc. d/b/a Sweet Things v. Department of Transportation*, 256 Ga. 749, in which Smith sided in his dissent with a company seeking damages after the DOT threatened condemnation—causing the business to move—but later canceled the threat.

"This is another case in which the Department of Transportation (DOT) has

with impunity trampled upon the property rights of an individual. If a private home instead of a 'dance club' had been involved in this case, such high-handedness would not have been approved by the majority of this court," Smith wrote.

"It's not right," Smith says when asked about the case: "The state has too much power, and they exercise it to the fullest extent."

Smith also declares, "I'm a strong Fourth Amendment man."

He joins his law clerk in an adjoining room to search for a case, kneeling on the floor to go through a file drawer full of dissents.

Rising, wiping the knees of his light blue seersucker pants, Smith returns with *LoGuidice v. State*, 251 Ga. 711 (1983), in which he called for the suppression of evidence obtained in what he contended was an illegal search.

The appellant, Thomas LoGuidice, was charged with possession of marijuana with intent to distribute and sought to suppress evidence from a search of his Upson County property.

Law enforcement officers, without a warrant, searched LoGuidice's land, a feat that required crossing a creek, climbing a barbed wire fence and following an old logging road about 200 yards before reaching a clearing where marijuana was growing.

Although the Supreme Court ruling prompting the dissent simply declared that the case did not satisfy the criteria for a grant of certiorari, the Court of Appeals in *LoGuidice v. State*, 164 Ga. App. 709 (1982), had held the search fell under the "open fields" doctrine. That doctrine

holds that the Fourth Amendment does not extend to areas outside a dwelling place or its curtilage.

"It is inconceivable to me that this court would condone the outrageous, illegal investigative activities carried on by law enforcement officers in this case. To sanction this search is to say that law enforcement officers may freely trespass on fenced, posted, secluded rural property without regard for the privacy of persons under the Fourth Amendment," Smith wrote.

Although Smith can be categorized on some issues—"I'm a plaintiffs' judge basically speaking," he says—sometimes he will land on the opposite side.

Smith says he "completely astounded defense attorneys" when he dissented in *National Gypsum Co. v. Wammock, et al.*, 256 Ga. 803 (1987). The majority declined to answer certified questions from the 11th U.S. Circuit Court of Appeals in a case in which a man whose lungs had been damaged by asbestos was awarded punitive damages.

Smith argued that such damages are awarded to deter future wrongdoing and noted that the company in question had stopped making asbestos products.

"While a stinging blow might serve well to beat caution into a reckless party, this case could set off a chain of events that would amount to the stoning to death of the defendant," he wrote. "We do not impose the death penalty upon individuals in tort cases in Georgia. Except in instances of the most heinous intentional act, we should not sanction the death penalty in like cases against corporate defendants."

Smith says he is a "very strong competitor. I don't like to lose. My wife says, 'He doesn't even like to lose a game of tidlywinks.'"

But Smith says his dissents go beyond a competitor's desire to have the last word.

Smith says he will simply cast his vote in the dissent column if he disagrees with the majority in a case that is "peculiar unto itself" in which a written dissent will not help develop an area of law or provide guidance to attorneys who will have similar cases in the future.

Besides helping develop areas of law with his minority opinions, Smith writes them because he clearly enjoys doing so.

"A dissent is not only more fun, it's easier to write," Smith says.

When writing a majority opinion, it may be necessary to soften some areas of the argument to the satisfaction of the other justices, Smith says.

Although other justices will sometimes join in a dissent, Smith and Weltner say the minority opinions are usually written solely to express the feelings of the author.

As a result, Smith says, "In a dissent, you can let your feelings hang out."

In a case that appears to still rankle Smith, *Herndon v. Herndon*, 256 Ga. 847 (1987), the justice did just that.

Smith dissented when the majority affirmed without opinion a trial court ruling declaring incompetent an 85-year-old widow who became upset after she saw that her husband's gravesite was covered with water and that he would not be buried after a graveside service. She later decided to have him buried in Bainbridge where she would be living, prompting the suit by some of her children.

"Though I recently turned 70, I fortunately possess the capacity and the authority to make choices in matters affecting my life, a fact that keeps life worth living," Smith wrote. "I know, however, that opportunities to make such choices will become more limited as the years roll by. Awareness of this fact makes it particularly painful to observe the action taken by this court in allowing a superior court to deny an 85-year-old widow the opportunity to make one of the last, and certainly one of the most important, decisions of her life—the decision of where to bury her late husband."

"This court, in allowing the trial court to extinguish Mrs. Herndon's desire, acquiesces to the burial of Mrs. Herndon's spirit along with her husband's body."

The court now includes blacks and women, as pictured in this 1993 special session. The current court has been noted for its judicial activism.



W.A. BRIDGES JR. / Staff

Clarke: 'New path for future'

► Continued from G1

Some prosecutors take a very different view of the changes in the court, saying it has turned liberal and soft on crime.

Lawyers for the government and big business both point out numerous rulings in recent years that have made it easier for them to be sued.

For his part, Clarke says much of the reaction is overblown. "It's been more of an evolution of the law than a revolution," said the justice, who has been on the court for 14 years.

"There was no predisposition to remake the law, just to decide each case fairly. But when you look back, you see that maybe [we] have cleared a new path for the future."

Perhaps Clarke's most important legacy will be his emphasis on deciding cases based on the Georgia — not the U.S. — Constitution, in the process making the state court a more independent body.

"For too many years, we punt[ed] the important issues to the federal courts," Clarke observed. "If people's rights can be decided at the state level, we should handle it here." "I think there is a group on the court, of which I am one, that believes that the Georgia Supreme Court could interpret the state constitution more expansively than the federal Constitution in several areas. That automatically means giving more rights to the citizens of Georgia."

That trend is evident in several positions taken by the Clarke court:

► While the U.S. Supreme Court has ruled that nude dancing is not necessarily protected speech under the U.S. First Amendment, the Georgia justices have said the state's First Amendment is much broader and that cities and counties cannot ban nude dancing, but only restrict it in some ways.

► In another First Amendment case, the state court ruled that state park officials cannot prohibit or restrict people from handing out religious pamphlets on park property.

► While the federal courts and courts in other states have taken steps to reduce large punitive damage awards handed out by juries against large corporations, the Georgia Supreme Court has expressly refused to do so.

► The state justices have removed several layers of legal immunity from certain state government agencies, so that people seriously injured because of a government action can sue the state and collect damages.

► Last year, the justices adopted the "enriched injury liability rule," which allows victims of injuries to seek damages from deep-pocket companies even if the company did not directly cause the injury. For example, someone seriously injured by a drunken driver in a car crash could sue both the driver and the car manufacturer for not making the victim's car safe enough to protect him in the crash.

"For too many years, we punt[ed] the important issues to the federal courts. If people's rights can be decided at the state level, we should handle it here."

HAROLD CLARKE
Chief Justice of Georgia

"I don't think the court itself is liberal," said Justice Leah Sears-Collins, the first woman and second black person to serve on the court. "But when you look back at our rulings in the area of civil law, I do think we have made a determined effort to look out for the rights of the underprivileged."

New people, new ideas

Court-watchers say this philosophy is largely due to the diversification of the court's membership over the last four years. In 1990, Robert Benham became the first black justice. Two years later, Sears-Collins was appointed. Twelve months later, Carol Hunstein, the first white woman, was added.

"It is absolutely the people who have been appointed to the court in the recent years who are fueling the changes in judicial philosophy," said Howard Hunter, dean of the Emory School of Law.

Clarke agrees. "The way you think about things and interpret things is determined by your upbringing and your experiences in life," he said. "Thanks to Justice Sears-Collins or Benham, ideas or opinions that would never before have been discussed or vocalized are now bantered about and sometimes become law."

Reversing lower courts

The court also has shown a new willingness to overturn precedents and reverse decisions by lower courts. In 1989, the year before Clarke became chief justice, the court reversed 7 percent of the cases that came before it. Just three years later, the reversal rate had more than tripled to 23 percent.

The area of criminal law has seen real change. In 1989, the justices reversed only two death sentences. In 1992 they overturned seven. And over the past four years, the court has reversed more capital convictions than it did through the entire decade of the 1980s.

In fact, lawyers say that some members of the court have been very pro-active in examining death penalty appeals. In one example, the justices sent a case back to the trial judge asking him to check into the possibility that the defendant's lawyers didn't do a good job of representing him — this even though the defendant's appeal never raised the issue of ineffective assistance of counsel.

"I think this is a result of Chief Justice

Clarke's very strong belief that every death penalty case should be gone over with a fine-tooth comb," said Justice Willis Hunt, who was appointed to the court in 1986. "It's not that members of the court are opposed to the death penalty, but there is a sense that capital cases should be held to a higher standard of review."

No more 'rubber stamp'

The court has emphasized defendants' rights, using its written opinions to chastise prosecutors for varying reasons, including using their peremptory strikes to remove blacks from sitting on juries and making inflammatory remarks in front of juries.

And the court has told trial judges that they should keep a strict eye on defense lawyers to make sure they are aggressively representing their clients.

"There has been an inclination by past members of the state Supreme Court that if the defendant had a living, breathing person as his lawyer, then he received a fair trial," said University of Georgia law professor Ron Carlson. "The perception was that the Georgia Supreme Court was a rubber stamp for prosecutors and trial judges."

That perception has changed during the past four years, as the justices have:

► Eliminated the "good-faith exception." The court's ruling prohibited police from introducing evidence into court if they gathered it without probable cause. The U.S. Supreme Court has ruled exactly the opposite, saying that as long as police "believed" they had probable cause, the evidence could be admitted.

► Prohibited the execution of mentally retarded people, while the U.S. Supreme Court has allowed it.

► Made it tougher to introduce victim-impact statements to a jury when sentencing a criminal defendant. The U.S. Supreme Court has taken the opposite approach.

Not the politically popular thing

"No doubt about it, we have widened the path of protections for these accused of crimes and made sure these people get a fair trial," said Justice Norman Fletcher, who was appointed to the court in 1990. "This may not be a politically popular thing to do in these times, but it is something that is required of us by the constitution."

"I'm sure some people, especially prosecutors, think the court has gone crazy. But all we are doing is reinstating rights and protections that had eroded away over the years."

Clarke said he hopes the justices will stay to that course after he retires next month. And he cautions people about attaching labels to those on the court.

"I hope the court during my term will be remembered not as a liberal or conservative body, but as caring for people's problems," he said.

ANALYSIS

A chief justice's supreme legacy

By Mark Curriden

When Chief Justice Harold Clarke retires from the Georgia Supreme Court next month, he will leave behind a stunning legacy: an activist court that has reversed decades of conservatism and judicial passivism in the state.

At a time when the U.S. Supreme Court and other federal courts are taking a narrower, more conservative approach to

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the law, Georgia's justices have gone in the opposite direction. They have broadened the rights of free speech and expression, strengthened the open records law, cracked down on wayward prosecutors and police, expanded individual liberties and overturned death sentences by the handful.

This record was amassed during the four years since Clarke was elevated to the chief justice's post in January 1990. At that time, the state's highest court was a group of seven white, silver-haired men. But the makeup of

the court has changed significantly since then, including blacks and women for the first time.

Now, as Clarke prepares to retire March 1, legal experts are assessing the impact of the Clarke court.

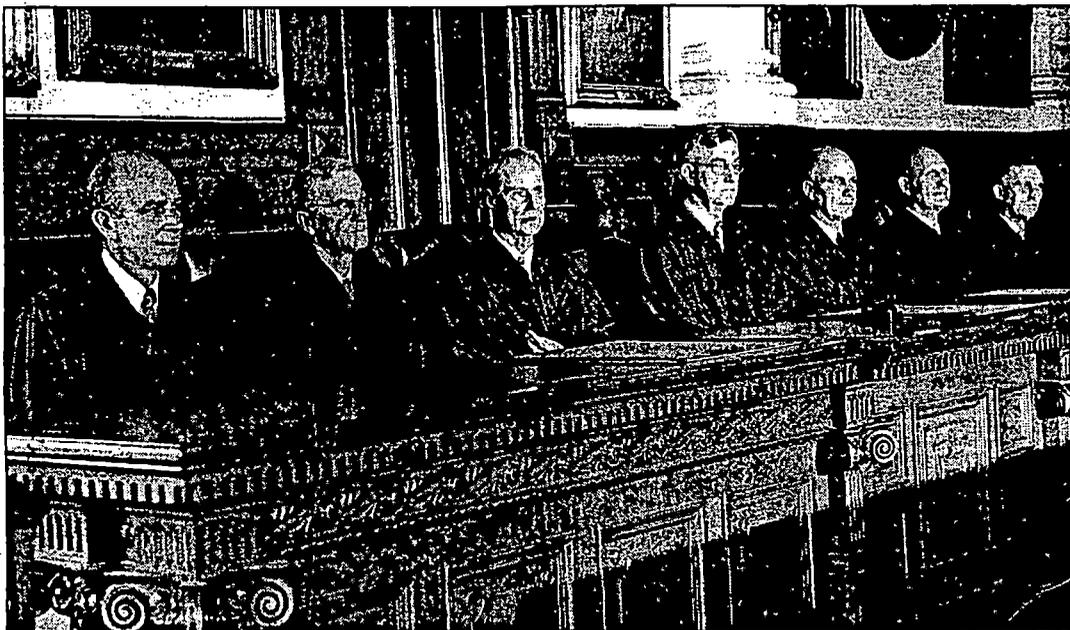
"For the first time, Georgia has a Supreme Court that cares about righting wrongs, about what is fair and just, and not just moving cases," said prominent Atlanta civil litigator Emmet Bondurant. "It is still a generally conservative court, but at least it takes an intellectually honest look at problems and issues."

Please see **CLARKE, G3** ▶

The Atlanta Journal / The Atlanta Constitution

PERSPECTIVE

In recent years, the Georgia Supreme Court has experienced major changes in its makeup and has broadened its interpretation of individual rights.



FILE

In 1947 — and until as late as 1990 — a group of seven white men made up the Georgia Supreme Court. Recent appointments have changed the racial makeup of the court.

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