

11th Circuit Historical News

The Southern District of Alabama, Part II From the frontier to the 21st century

By G. Cameron Pfeiffer-Traylor



The Great Jury Oak in Baldwin County was where Judge Harry Toulmin would sometimes hold court in the early 1800s. (From "The Story of Mobile" by Caldwell Delaney, 1981)

court wrangling with frontier land disputes and Native American threats to a sophisticated legal force in the 21st century federal judiciary.

In its first 100 or so years, the Court dealt with "dastardly assassins," dismantled massive "rum rings,"

We've come a long way from the sparse Fort Stoddert outpost and days of holding court under a "great Jury Oak" or in a crude log cabin. As a shiny new \$89 million building takes shape next to the 1934 historic structure that has housed the Southern District for 82 years, one cannot help but reflect on the district's more than 200 years of existence – years that have transformed it from a quasi-

handled cases assessing protections for newly freed slaves against KKK threats, decided anti-slave trade disputes and issues of state versus federal rights, and addressed naturalization applications by World War II enemy aliens. During the next 100 or so years, the Court grappled with silent prayer in public schools, desegregation, secular humanism, bankrupting the United Klans of America, the Amtrak Sunset Limited crash, conspiracies to distribute drugs, BP oil spill fraud, turtle smuggling, Clean Water Act issues, public corruption, constitutional claims, billboard



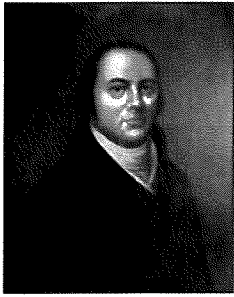
The portraits of all of the judges of the Southern District of Alabama (except Ephraim Kirby) hang in the John Archibald Campbell Courthouse in Mobile. (Photo courtesy of G.C. Pfeiffer-Traylor)

See "21st century," page 22

About the author: G. Cameron Pfeiffer-Traylor is a career law clerk for the Hon. U.S. District Judge Kristi K. DuBose (Southern District of Alabama). She is a joint J.D./M.A. graduate of the American University's Washington College of Law and School of International Service and received her undergraduate degree from Vanderbilt University. She is a member of the Mobile Bar Association, Alabama State Bar and New York State Bar and is in her 16th year of practice. This article features Part II of a two-part series on the Southern District of Alabama. Part I in the Spring 2016 11th Circuit Historical News (Vol. XIII, No. 1) discussed the history of the Southern District courthouses and the architecture of the Mobile, Ala., courthouse. Sources used for Part II of the article are provided at the end of the article. For detailed endnotes or further information, you may contact the author at Cameron_Pfeiffer@alsd.uscourts.gov.

bans, same sex marriage, employment discrimination, the Civil Rights Act, prisoner litigation, maritime disputes, Social Security appeals, terrorism, intellectual property disputes and much more.

Taking Root – The Early Days and the Territory's Frontier Judges



JUDGE EPHRAIM KIRBY

Today's Southern District stretches from the alligator- and oyster-laden Mobile Delta to the fertile topsoil of the Black Belt, from Mobile to Selma, encompassing Baldwin, Choctaw, Clarke, Conecuh, Dallas, Escambia, Hale, Marengo, Mobile, Monroe, Perry, Washington and Wilcox counties. This, one of the nation's 94 district (trial) courts, found root in 1804 when

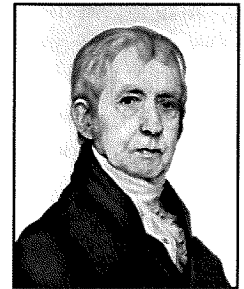
President Thomas Jefferson appointed Connecticut native and Revolutionary War soldier **Ephraim Kirby** (1804) as the first judge for the Mississippi Territory (including Alabama's southern half – the Southern District – known as the "Old Southwest"). Kirby was charged with handling land disputes and providing intelligence to the government about the area, its settlers and the Native Americans. Kirby's base and the seat of government was Fort Stoddert, erected in 1799 about 50 miles above Mobile at the joining of the Alabama and Tombigbee Rivers. The center of all legal business in Alabama's section of the Territory and port of entry for goods arriving from Spanish-held Mobile, it was also where the first recorded Protestant marriage ceremony was held in Alabama, where the first newspaper was printed in Alabama (1811) and the staging ground for Mobile's acceptance of Spain's surrender of the city (1813).

Kirby described the Tensaw settlement of some 50 to 60 families as "the most opulent and respectable settlement in the country" but noted that this "section of the United States has long afforded an asylum to those who prefer voluntary exile to the punishments ordained by law for heinous offences. The present inhabitants (with few exceptions) are illiterate, wild and savage, of depraved morals, unworthy of public confidence or private esteem; litigious, disunited and knowing each other, universally distrustful of each other. The magistrates without dignity, respect, probity, influence or authority – The administration of justice, imbecile and corrupt. ... The most ancient inhabitants ... are French people who [are] ... generally peaceable honest, well disposed citizens."

Fort Stoddert's remoteness plagued Kirby: "should I continue here any great length of time, cut off from all intercourse with the intelligent part of my species I

shall forget the relation in which I stand to them," he wrote, wishing for termination of his duties "in this wild region." For him, isolation prevented the local settlers from solving problems, and federal intervention was needed. Kirby lasted six months at the "harsh outpost," succumbing to fever. He remains buried there today. He believed that by failing to preserve and publish legal cases as "proper histories," "the principles of their decisions were soon misunderstood, or erroneously reported from memory." Kirby compiled the "1789 Volume of Connecticut Reports," the first American reports and the beginning of modern law case reports, because "should histories of important causes be carefully taken and published, in which the whole process should appear, showing the true grounds and principles of the decision, it would in time produce a permanent system of common law."

President Jefferson next appointed England native **Harry Toulmin** (1804-1819), a searcher of religious freedom and "an object of suspicion to the [British] government." Toulmin served as judge, postmaster, minister and physician in the wilds at Fort Stoddert, trying to bring order and stability to the remote frontier. As Kirby never held court, Toulmin held the first permanent federal court in

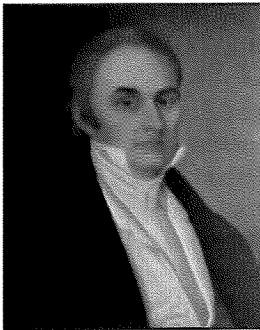


JUDGE HARRY TOULMIN

the Territory in the fall of 1804, dispensing justice from a crude log courthouse or the great "Jury Oak" in Baldwin County. Law was "an every-day, practical, common-place, business-like affair. ... Readiness, precision, plainness, pertinency, knowledge of law, and a short-hand method of getting at and getting through with a case, were the characteristics and desiderata of the profession. There was no time for wasting words."

With an active frontier docket, he covered an area 340 miles long and 330 miles wide on horseback with long hazardous journeys through deep wilderness full of hostile Native Americans. Yet "for much of his tenure the court was the least of his concerns. He was forced to be the able U.S. diplomat in the tense period of the occupation of Spanish Mobile by the Americans in 1813, followed by the retaliatory raids of the Creek Indians, bearing Spanish arms, at Burnt Corn, and Fort Mims." Toulmin also had to quash efforts by groups to retake Mobile from the Spanish by illegal means. He played a role in the arrest of former Vice President Aaron Burr, who was detained until March 1807 at Fort Stoddert, where he often played chess with Toulmin's daughter. Toulmin wrote the first digest of laws for the Territory and supported stricter membership requirements for

the territorial bar (a uniform rule of admission, checks on honesty, sobriety, veracity, industry and honor due to the "circumscribed power of the court to check or suspend the wayward or profligate practitioner"). His judgeship ended when Alabama became a state in 1819, and he died in 1824 at the Washington County Courthouse. Toulmin's 15-year judgeship and work compiling laws, including the "1823 Digest of the Laws of the State of Alabama," earned him the moniker "the Frontier Justinian."



JUDGE CHARLES TAIT

Statehood and the District's First Federal Judges

Alabama joined the Union in December 1819, and Congress established Alabama's first federal district court on April 21, 1820, with one judgeship having jurisdiction over the entire state to hold court for four terms alternating between Cahawba

(then the state capital) and Mobile. The first naturalization ceremonies began in 1820 as well. In that year, President James Monroe nominated Virginia native, U.S. senator and staunch sponsor of Alabama's admission to the Union **Charles Tait** (1820-1826) as Alabama's first federal judge.

Tait earned \$1,500 per year after swearing to be "held and firmly bound jointly and severally unto the President of the United States." He walked with a wooden peg leg due to a childhood accident (resulting in an amputated leg) and was involved in a celebrated "duel" with Judge Dooly of Georgia. Dooly refused to duel Tait unless his leg was encased to simulate Tait's handicap. At the appointed time, Dooly's "second" was scouring the woods for "a bee-gum [tree limb]" for Dooly "to put my leg in." "Do you suppose for a minute that I am going to risk a good leg of flesh and blood against Tait's wooden stump! If I hit his leg, he can get him another one before tomorrow morning; but if he hits mine I may lose my life, certainly my leg; and to put myself on equal footing with Tait, I must have a bee-gum for protection. I can then fight him on equal terms." Tait's "second" asked Dooly, "[t]hen am I to understand that you do not intend to fight Judge Tait!" Dooly responded, "I thought everyone knew that."

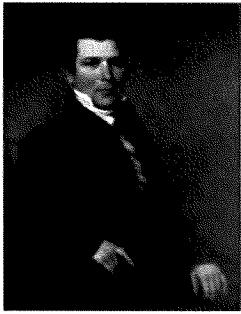
As a judge, Tait was annoyed by the widely varying legal abilities of attorneys before him, and particularly by novices' mistakes and behavior. So, Tait banned them, admitting to practice only persons who had been two or more years admitted to an appellate bar. He also took great pains to educate juries in their responsibilities and was famous for his grand jury charges, which were often

published in the paper and which were prefaced with: "We should never forget that patriotism consists in devotion to our constitution, and the laws that emanate from them. There is no true liberty without security."

Tait also dealt with several significant foreign slave-trade suits. One of the more known line of cases concerned three ships – the Constitution, the Merino and the Louisa – attempting to smuggle 108 slaves into the United States via the Port of Mobile in 1818 in direct violation of federal law (*The Merino*, 22 U.S. 391 (1824)). Tait ruled that the ships and their cargo were forfeited to the United States, overruling existing Alabama law that allowed slaves to be turned over to those to whom they were being shipped and setting a new precedent for the prosecution of slave smugglers and piracy.

One attorney, displeased with the ruling, brought misconduct charges against Tait before the House Judiciary Committee, claiming Tait refused to allow him to practice in federal court and used insulting language and gestures when he attempted to qualify as counsel. The committee exonerated Tait and noted that admission to the bar was "not a natural right, but a right to be acquired" and the applicant was bound to demonstrate "legal and moral qualifications to the satisfaction of the court," and it was "the duty of the Judge to exercise his best judgment, conscientiously, but freely." "The dignity of the tribunals, the purity of the bar, the rights of the people, and the transaction of business, require this to be done firmly and fearlessly – responsible only to the country for the integrity of his mind, not the errors of his judgment."

In 1824, the Southern and Northern Districts were officially established with the Southern District, covering 21 counties and with Tait serving as the only judge over both until 1826, holding court in both Cahawba and Mobile four times a year. At the time, it cost \$8 to be an attorney licensed to practice in the Southern District, a designation made by the Clerk of Court after completing two years of practice and establishing compliance with other requirements (admitted "in the Superior or Circuits Courts of this State; their private and professional character appears to be fair" and if "they produce satisfactory testimonials of good moral character and professional correctness"). In 1826, the Alabama state capital was moved from Cahawba to Tuscaloosa, and the court ceased sitting in Cahawba. That year, Tait returned home to study the vast deposits of fossils on his Alabama River bluff property (the Claiborne beds), which contained the largest known number of fossil Eocene shells. Years later, Tait's son reflected on his father's legacy: "He was a well educated man ... a man of quiet industry, perseverance, and energy of character. His honesty & Honor I think were unquestionable. His patriotism and public spirit ... above suspicion. ... I will say that my Father had his foibles & his



JUDGE WILLIAM H. CRAWFORD

faults. Which it is for me to throw a veil over."

President John Quincy Adams appointed Virginia native and former U.S. Attorney **William H. Crawford** (1826-1839) to succeed Tait. Crawford was known for narrowly escaping death while employed as a federal district attorney when a postmaster, whom he prosecuted for stealing money

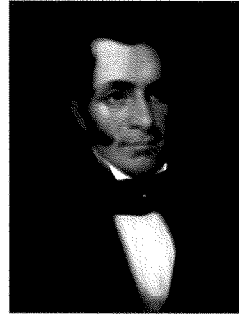
from the mails, ambushed him by shooting him with a musket. During his judgeship, the Act of March 3, 1827, assigned the federal courts of Alabama to the Ninth Circuit. The 1830s brought unique disputes to the Court: "filled with property claims between Indians and U.S. citizens, but Alabama laws prohibited the word of an Indian from being heard in court against a white man. The Federal courts deferred to the state laws. It was an omen of the sectionalism and struggle over states' rights which were to divide the nation within another generation. The voiceless Indians were forcibly removed by 1838."

Crawford also dealt with a number of bank cases as Alabama endeavored to exclude foreign corporations from the state, and non-Alabama banks sued in the Southern District to recover on contracts between themselves and Alabama residents (The Alabama Bank Cases). Crawford also presided over cases involving Alabama property title disputes such as *Smith T. v. Whitaker*, in grappling with whether title originally belonged to the Chickasaw nation before being passed to another, and a property claim concerning Spanish cession. In 1839, he was assigned to also preside over the newly created Middle District, doing so until 1849, and while serving in that capacity issued the *Tombigbee Railroad Co. v. Kneeland*, 45 U.S. 16 (1846) decision (addressing issues after Alabama enacted laws protecting local banks/debtors from competition with nonresident banks). As for his style, he "was neither sociable nor popular, for he was a man of strong antipathies, and austere being." Thomas Sully's portrait of Crawford's elegant wife, Winnifred Fitts, is more widely known than that of his time on the court. He also served as a trustee of the University of Alabama, helping craft the college's plans before it opened in 1831.

In 1842, Alabama was transferred to the Fifth Circuit. By 1845, there were approximately 664 attorneys practicing in Alabama. In 1846, Montgomery became the new state capital, but one judge was still responsible for handling the dockets of all three districts and holding court in Huntsville, Tuscaloosa and Mobile.

In 1849, President Zachary Taylor appointed South Carolina native, former Alabama governor, U.S.

congressman, state legislator and state supreme court justice **John Gayle** (1849-1859). Gayle was "immensely popular and was considered a kind public servant and a firm and incorruptible judge." He supported states' rights,



JUDGE JOHN GAYLE

was known for strict impartiality, championed improvements in transportation and pressed unsuccessfully for a Tennessee-to-Tombigbee river canal. Gayle was often at Fort Stoddert, where his parents resided, and was involved in efforts to resolve Creek disputes. More is known about his first wife, Sarah Haynsworth Gayle (given the publication of her *Journal* and her friendship with Francis Scott Key),

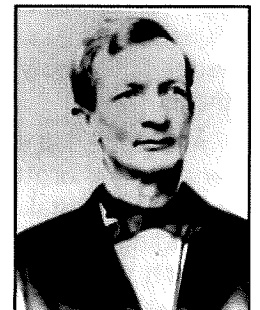
and his brother Levin (who held no regular employment and was frequently in dire financial straits, resulting in Gayle often being financially strapped to his own detriment).

In one of Gayle's cases (for the Middle District), *Townsend v. Jemison*, 50 U.S. 407 (1850), he applied conflicting local laws (choosing an Alabama statute of limitations over Mississippi's), and the federal judiciary acknowledged being bound by local law on substantive issues.

These 1820-1860 judges and their caseloads reflected the surrounding economic and demographic realities that shaped their lives and values. They originated from the southern section of the state within Mobile's reach, were savvy to the interplay of law and commerce, had active legal practices in south Alabama and belonged to the pro-commercial wing of their political parties. Three of the four lived in urban communities, and they experienced the challenges and opportunities of immigration. A sampling of the Southern District's docket for seven years between 1822 and 1856 reveals 818 motions filed: 722 civil (including 487 judgments, 204 continuances and 26 dismissals), 11 criminal (1 judgment, 10 continuances and no dismissals) and 85 admiralty (39 judgments, 24 dismissals, 22 continuances). The criminal practice was insignificant given the lack of federal criminal common law or statutes, about 10 percent involved admiralty, and the remainder dealt with civil property and commercial contract disputes (primarily commercial credit transactions tied to the antebellum economy and title issues).

Secession, Civil War and the Close of the 19th Century

In 1859, Virginia native and state legislator **William Giles Jones** (1859-1861) was appointed by



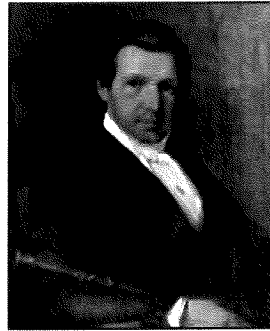
JUDGE WILLIAM GILES JONES

President James Buchanan. Jones served until his 1861 resignation due to Alabama's secession from the Union. He was "recognized as Alabama's foremost authority on insurance, maritime and admiralty law." Buchanan selected Jones "because he enjoyed an eminent reputation as a lawyer, and resided at Mobile where nearly all the business of the court must be dispatched."

Following his resignation, Jones served as the district judge of the Confederate States of America until 1865, having been appointed by Confederate States President Jefferson Davis. While he could not actively serve "a court which did not exist," he presided over Confederate District Court in Mobile, and at the close of the Civil War was arrested and indicted for treason against the government in the same court. But before he could be tried, Congress passed an act to relieve him from prosecution. His obituary noted that the federal judgeship was a "position he held with honor to himself until the secession of the State. ... Jones was a very remarkable man in many respects. In his character, both public and private, he was marked for his great purity. And the beautiful blending of amiability and prudence, with positive firmness and a deep sense of justice, all made up a character and a life well worthy of emulation by future generations of men." He "has always borne the most enviable reputation as a citizen and as a jurist. Intellectually he is solid and penetrating, clear in conception and concise in expression. There is nothing eccentric about him; all is uniform and methodical. While on the bench he won 'golden opinions from all sorts of people' by his decorum, patience, impartiality, and ability."

Jones heard the foreign slave trade case of *United States v. Gould*, 25 F.Cas. 1375 (C.C.S.D. Ala. 1860), 8 Am. Law Reg. 525 (S.D. Ala. 1860), which dealt with South Alabama businessmen who purchased slaves brought into Alabama in violation of federal anti-slave trade laws. He deliberated the legal status of illegally imported slaves under Alabama laws, concluding that once an unlawfully imported slave passed from the importer's control and thus into the federal government's jurisdiction and mingled with the population, "he is a free ... alien subject to state law" and "if any person, knowing him to be free, should buy or sell him as a slave, such person would be subject to ten years imprisonment." *Gould*, 25 F. Cas at 1379-1380. Jones pondered the anti-slavery laws: "The result of that examination is a thorough and clear conviction that congress has the constitutional power to prohibit the importation of slaves; that it is wise, just and politic to prohibit it, and that the laws prohibiting it ought not to be repealed, but ought to be maintained, respected, and strictly enforced." *Gould* at 1376.

In 1861, President Abraham Lincoln did not acknowledge Alabama's secession and, "ignoring the fact that Alabama's



JUDGE GEORGE WASHINGTON LANE

Federal Judicial District was no longer a part of the United States," appointed Georgia native, Alabama legislator and former state court judge **George Washington Lane** (1861-1863).

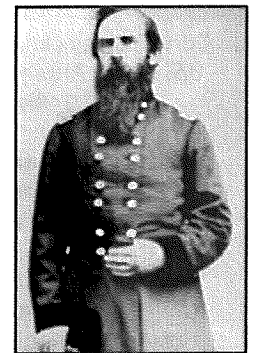
In 1864, President Lincoln appointed Ireland native and former U.S. army captain, brigadier general, Methodist preacher and lawyer **Richard**

Busteed (1863-1874). The court did not sit until federal rule was re-established in 1865 "at which time Busteed became one of the most unpopular judicial figures in Alabama history." By 1867, an Alabama federal judge's salary had jumped to \$3,500 per year, but still only one judge served the Southern District, and Busteed faced special challenges after the Civil War:

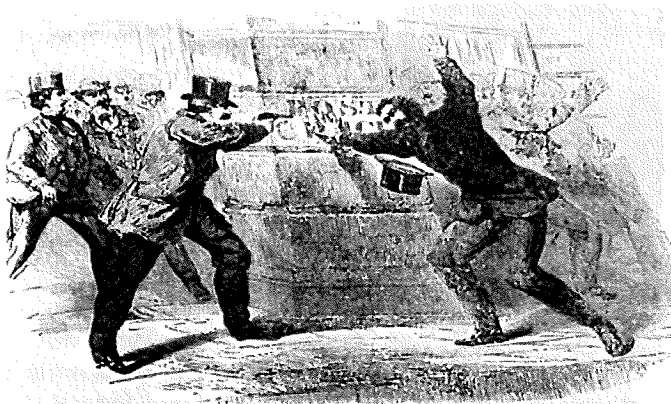
Early Alabama federal courts wrestled with several important issues. The courts had to define the relationships between the national and state governments, particularly in sectional controversies over slavery. Other concerns involved determining legal sources to be used in federal courts. During the antebellum period, federal law was not as voluminous as it would become after the Civil War or, certainly, as in the twentieth century. Were early federal courts to use state laws, the limited amount of federal law, legal precedents, constitutional interpretations, general democratic principles, or all of the above? The period between the end of the Civil War and the eve of World War II brought changes for the Alabama federal courts, as it did for the federal judiciary throughout the nation. ... Economic and demographic realignments within Alabama, combined with diversity of citizenship lawsuits and the creation in 1891 of a federal court of appeals leading to a more structured federal judiciary, accelerated changes within the Alabama federal judiciary. At the turn of the century, the progressive mood of Congress greatly expanded federal law by regulating railroads, enacting food and drug requirements, establishing farm credit programs, regulating large corporations through antitrust measures, and controlling currency through the Federal Reserve system.

Not only did Busteed have to deal with novel legal issues, but he also was shot three times in broad daylight by a U.S. district attorney, just a few years into his judgeship:

... the silence of placid old Royal Street ... was abruptly shattered by the sharp report of pistol fire. Employees ...



JUDGE RICHARD BUSTEED



Artist's conception of the shooting of Judge Richard Busted, as it appeared in Frank Leslie's Illustrated Newspaper, January 18, 1868.

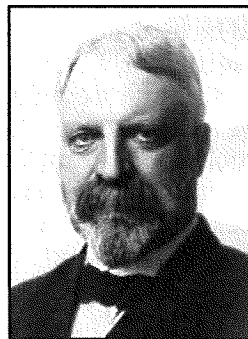
A drawing depicting the shooting of Judge Richard Busted by U.S. District Attorney L.V.B. Martin is featured in "The Story of Mobile" by Caldwell Delaney.

looked up from their work, and ... rushed into the street. To their amazement, they saw ... Busted ... collapse in the street, badly wounded. Immediately after ... Busted fell, they saw U.S. District Attorney L.V.B. Martin advance from a point near the steps of the Customs Building [the federal courthouse] ... and fire two more shots into Busted's crumpled form. Thus violently did personal differences between [the two] flare into the open, drawing an expression of fear ... that the episode would result in reprisal action from the Northerners then ruling the city. Although the people of Mobile well knew that ... Busted was incompetent and probably guilty of corrupt practices which had caused bad blood ... the entire city at that time was so intimidated by the abusive powers of carpetbag dominations, that the blame was placed on Martin, while Busted's virtues were extolled.

In the local papers, Martin was called a "dastardly assassin" who committed the "murderous deed" of "shooting an unarmed and defenseless man down in the street in cold blood, without a word of warning" and "the Northerners" were charged "to see to it that the odium of this wretched and cowardly deed is not cast upon the people of Mobile, nor attributed to any malevolent spirit prevailing among the Southern people." Martin was never prosecuted. Busted recovered from his wounds, but in 1873 serious impeachment charges for non-residency, failure to hold court and improper use of his official position were brought against him by the House Judiciary Committee. He resigned in 1874 before the House could vote.

Apart from the shooting, Busted was known for the Alabama Klan Trials of 1872, which addressed the Fourteenth Amendment, upheld federal power to pass police laws to operate within the state to the exclusion of the police regulations of any state and to punish

violators of such laws, and upheld federal jurisdiction in all prosecutions involving combinations of two or more people who injured/oppressed another "in any matter affecting life, liberty or the pursuit of happiness." See, e.g., *U.S. v. Hall*, 26 F.Cas. 79 (C.C.S.D. Ala. 1871). Armed with Busted's judicially sanctioned legal authority to secure citizens' rights, Department of Justice attorneys embarked on a mission in 1870 to destroy the KKK by punishing civil rights violations in the South. Hundreds of Klansmen were prosecuted, convicted and imprisoned by federal courts from 1870 to 1873 for violating citizens' rights to life and property, to freedom of speech and assembly, to keep and bear arms, to equal protection of the laws and to vote.



JUDGE JOHN BRUCE

In 1875, Scotland native, former Prairie Bluff farmer and state representative **John Bruce** (1875-1886) was appointed by President Ulysses S. Grant to fill Busted's seat. In 1886, Mobile native and former Confederate army colonel, state representative and state court judge **Harry Theophilus Toulmin** (1887-1916) was appointed by President Grover Cleveland. Toulmin's November 1916 obituary in The

New York Times noted his 30 years of service and that he had notified the president of his intent to retire on Dec. 1 but "his resignation had not been accepted," adding "[h]e was not deficient in a single quality that should belong to a jurist, and each of these qualities was developed to a degree rarely attained."

In 1891, Alabama became part of the new Fifth Circuit, and federal judge salaries were made uniform and bumped to \$5,000. The Southern District was also a hub for new citizenry, as from 1833 to 1906 some 7,000 individuals from hundreds of different countries swore their loyalty to the United States and were naturalized.

The Early 20th Century, Prohibition, the Depression and the New Deal

In 1905, Selma was added as an "authorized meeting place," and in 1911, the Southern District was reorganized to reflect the 13 counties it now serves. In 1916, with the creation of the federal income tax, the Customs House aspect of the court became even more prominent, as countless dollars in duty taxes were collected on foreign goods entering Mobile Bay. In 1917, Wilcox County native and former bankruptcy referee **Robert Tait Ervin** (1917-1949) was appointed by President Woodrow Wilson. During his judgeship, the 1920s "roared" in Mobile. Large-scale civic projects and port expansion, including a



A portrait of Judge Harry Theophilus Toulmin hangs over the judge's chambers entrance of the West Ceremonial Courtroom on the second floor. (Photo courtesy of G.C. Pfeiffer-Traylor)

shipbuilding boom brought after World War I, emerged. On Nov. 2, 1920, 3,200 Mobile women cast their first ballots to vote. The Mobile Register noted "[t]he women appeared to have needed no urging to vote. They were the first at the polls and were coming all day in droves."

In 1923, the Alabama legislature authorized the creation of the state docks. In 1924, baseball legend Babe Ruth and the New York Yankees played exhibition games in town. In 1925, civil rights advocate John LeFlore reorganized the local chapter of the NAACP. In 1927, John T. Cochrane dedicated the Cochrane Bridge ("a ten-mile structure that spans five rivers to connect Mobile to the Eastern Shore," replacing the old bay boats that once ferried folks), causeways were erected across Mobile Bay, and the Saenger Theatre opened. In 1929, the Junior Chamber of Commerce sponsored the first Azalea Trail, and the Alabama Deep Sea Fishing Rodeo was first held. In

October 1929, the tallest building in the city (Merchants National Bank Building) opened (18 stories, housing 20 attorney offices) – "a sign of Mobile's growing prosperity."

In the midst of this "roar," the Southern District tackled prohibition head-on. Prohibition Act indictments – the most notable being the Mobile Rum Ring trial – made their way into federal court before Ervin, to thwart a "county saturated with liquor ... sold as openly as orange juice":

... liquor flowed into the port city more swiftly than almost any other city in the nation. Mobile was ideal as a port of entry for the big smugglers. When the Volstead Act had first amended the Constitution, few liquor dealers took it seriously. Flagrant violations were the order of the day ... the Federal Government decided to clamp down hard on the violators. The Volstead Act Enforcement Crusade swung into operation and its first big target was Mobile. ... Izzy Einstein, the renowned Federal prohibition agent, came to Mobile. ... Then came the Federal District Attorney, Aubrey Boyles, who was to upset the apple cart. Mobile was, according to Boyles, designed by authorities in Washington to be the example of the most thoroughly cleansed city in America and the program of the Enforcement Crusade would base its policies on results obtained in Mobile ... the Federal agents swooped down ... in November of 1923. They seized a hundred thousand dollars worth of booze in the first few days and uncovered what they claimed to be a giant rum ring. The Federal grand jury opened hearings in November and heard testimony until Christmas Eve ... the results were shocking. The grand jury called for indictments against 117 leading men of the community. They were promptly arrested and the first trials set for May, 1924 ... the Government succeeded in convicting six men ... and three others were sent off to the Federal pen in Atlanta to cool off awhile ... by the time the big trial rolled around in February 1925, their cells were boiling. The Federal men told the convicts they could get a bit of fresh air by agreeing to testify in Mobile. ... So back to Mobile came the hometown boys to testify against their former roommates. ... Mobilians were aghast to find among the accused the names of their sheriff ... Legislator and ex-sheriff ... and ... Chief of Police ... well-known figures ... [including] Frank Boykin ... [and] Judge J.B. Conaughton.

Specifically, in 1922, Boyles, began sending coded telegrams to the U.S. assistant attorney general in charge of federal prohibition warning that a massive protection racket was going on in Mobile – the Mobile Rum Ring. Former Texas Ranger Manuel "Lone Wolf" Gonzauillas was called in to infiltrate and document the ring. Early in the morning of Nov. 13, 1923, federal agents swept through Mobile and confiscated eight trucks of liquor worth more than \$100,000. "There was no place to store that much booze in the federal building, so agents stacked

it in the alley outside and surrounded it with electrified barbed wire and guards armed with sawed-off shotguns." Some 415 cases from a single address on Conception Street were seized, 23 Mobilians were arrested and 117 indictments issued including to some of Mobile's leading citizens and public officials. However, in an odd twist, in December a warrant was issued to arrest Boyles on charges of soliciting bribes. The allegations came from a freshly indicted state legislator who claimed he had been offered the chance to escape prosecution in return for a fat payout. Boyles turned himself in, was released on bail, and asked to be relieved of his duties until the charges were resolved. Hugo Black replaced Boyles as prosecutor.

The Mobile Rum Ring trial was the biggest case ever heard in Mobile federal court. Lone Wolf thrilled the press with descriptions of the ring's inner workings, discussing how "front" businesses in Mobile had back rooms with bars "where all the vintages of yore were served to the thirsty" and how the bootleggers bought protection from the local police and local attorneys collected the money. During the almost month-long trial of more than 70 defendants, witness testimony frequently elicited bouts of uproarious laughter and presented more of a circus-like atmosphere "straining the ability of ... judge ... Ervin to maintain order in the courtroom. On one occasion, he fined two defendants and put them in jail for ten days after they got into a fistfight during a break in the trial. On another, the judge fined ... a defendant ... \$250 for mumbling an expletive in court." Local legend also tells that one of the most prominent defendants, Frank Boykin, ate a telegram from Washington during the trial to avoid it being introduced as evidence. One witness testified that he was offered \$17,000 not to testify and was planning on taking the money but ran out of gas on the way to the seal the deal. Another testified that he and Boykin planned to ship carloads of booze disguised as tar. Another – apparently not realizing the incriminating nature of his statement – testified that Boykin brought him a sample of rum to test which "taste[d] pretty good to me."

After the prosecution presented its case, the defense attorneys presented "a splendid array," parading "half of Mobile past the witness stand to testify to the good character of the accused. All of the witnesses were unanimous ... that the accused would never think of doing such a thing as these foreigners were claiming. One witness told of the time that Sheriff Holcombe helped her grandmother across Royal Street ... another told of ... Boykin feeding fresh peanuts to the squirrels in Bienville Square. ... Just as the accused were approaching sainthood, the parade came to a halt and the defense counsel ... would now bring to the stand the defendants themselves." The defendants denied the allegations. After a recess, and after Hugo Black and the defense attorneys had

their final say, the "jury left the courtroom to try to untangle the maze of conflicting testimony. ... the jury returned after twenty-two hours of deliberation ... disappointing the crowd. 'Not guilty,' they said ..." Specifically, the jury returned 33 not guilty verdicts and 11 guilty verdicts (some of the defendants had pleaded guilty, and Ervin tossed out the charges against others, including Boykin).

Not to be undone, the following day Ervin accused some of the defendants of conspiring to bribe federal prohibition agents, and another trial was later held. The defense again denied everything, but Boyles testified that Boykin had asked him to be part of a conspiracy for the district attorneys to collect liquor taxes, offering \$100,000 for advance information on liquor raids. In the end, Boykin received a two-year sentence, which he appealed, with the federal appeals court overturning his bribery convictions after deciding the indictment against him was excessively vague, and scores of Mobilians were heavily fined.

In the fall of 1929, the Great Depression hit, "setting off more than a decade of hard times as the worst depression in history tightened its grip on the port city." Mobilians suffered terribly from the dislocations and privations, and businesses failed, shipyards closed, industrial plants laid off workers, and city services were slashed. Nevertheless, despite facing hard times, even more notable events were in store for Mobile's legal community, and the 1930s ultimately brought the New Deal to Mobile and a new federal building.

In 1930, Rosa Gerhardt (1898-1975) became the second woman to practice law in Mobile (becoming the first female bar president in 1948 and first woman to serve as president of a bar organization in the state of Alabama). In the 1930s, Mobile was reawakening from a period of self-preservation. Cotton exports, banana imports, downtown dock expansions, formation of the Historic Mobile Preservation Society (1935), construction of Bellingrath Gardens (1932), the maritime industry skyrocketing and an influx of new citizens again transformed the city. In this Golden Age of Radio, stories of "rivalries, romance and adventure" by "The Old Narrator" John F. Glennon also entertained the ears of Mobilians. Cotton and corn ruled agriculture, with Alabama producing 1,312,963 bales of cotton and 35,683,874 bushels of corn in 1930. Tallulah Brockman Bankhead was becoming a star of stage and screen. The Deep Sea Fishing Rodeo was a hit only after a few years running. Chocolate milk cost 5 cents at Van Antwerp's, and you could buy a Plymouth for \$445 or eat a full breakfast at Morrison's for 13 cents.

The courts were tested on New Deal programs, most dramatically with the Northern National Recovery Administration (NRA), the TVA and the Social Security Act, and the interests of the New Deal were upheld. With

these changes came rumblings of a new courthouse. In 1934, the Southern District underwent a metamorphosis as its stately home at 113 St. Joseph St. took shape – a grand and imposing “modern” federal building. The construction contract was awarded by the federal government on Sept. 1, 1934, construction began 24 days later, and construction was complete on Dec. 9, 1935. The Southern District’s new home was hailed as a success and a welcome sight in downtown Mobile.

In 1935, River Ridge native and former state representative, state prosecutor, farmer and nine-term congressman **John McDuffie** (1935-1950) was appointed by President Franklin D. Roosevelt. He previously spoke at the dedication of the Alabama Docks in Mobile and was a staunch advocate for rivers and harbors. Four days after he took the oath of office and began service in the newly built courthouse, his first wife – whom he courted for 15 years before marrying – died. In November 1907, McDuffie introduced before the Alabama legislature a bill – which passed despite heated opposition – that changed the wording of the Alabama Code section regarding attorney practice to read “his or her diploma” instead of “anyone who presented his diploma from the University of Alabama would be permitted to try cases.” This rewriting of the bar admission statute so that women could present credentials carved a path for women to practice as attorneys in the state.

In 1939, McDuffie presided over an intriguing criminal trial “when a [Valentine’s Day] brawl spilled out” onto



Judges John McDuffie and Robert Tait Ervin are featured in the Mobile Press Register in March 1935.

continued, next page

The Eleventh Circuit Historical Society
P.O. Box 1556 • Atlanta, Georgia 30301
(404) 335-6395

I hereby apply for membership in the class checked below and enclose my check for \$ _____ payable to the Eleventh Circuit Historical Society.

Annual Membership

_____ Student	\$ 5.00
_____ Judge/Individual	50.00
_____ Associate	100.00
_____ Contributing	250.00
_____ Sustaining (individual)	500.00
_____ Keystone (law firm)*	500.00
_____ Patron	1,000.00

Name _____

Address _____

Telephone _____

E-mail _____

*KEYSTONE FIRMS: Please name five (5) members of your firm to be Society members.

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

the streets in the city's shabby red light district; namely, a conspiracy to interfere with freedom of the press, and the first time Title 18 U.S.C. § 51 (adopted in 1870 to protect newly freed slaves against threats from the KKK) was applied to protect an individual's First Amendment rights. Six defendants – two underworld chiefs, a madam, her husband, a "thug" and an assistant state prosecutor – were indicted and accused of blackmailing the Mobile Register's editor to "lay off editorializing about Mobile's illegal gambling rackets." The jury convicted five. As expressed to the jury by McDuffie at trial: "It is a rather unusual ... record of facts, that which every decent citizen will be loath to hear, that every citizen with civic pride will feel sorry to hear, that such a thing might have transpired within the community, or within his State." The Fifth Circuit, finding that jurisdiction was in the state court and not federal court, did not agree with McDuffie. The convictions were overturned, and the defendants walked.

Also that year, the Southern District received funding from President Roosevelt's New Deal "alphabet soup program" (e.g., the Works Progress Administration or WPA) for expansion of the 1934 federal building westward, infilling portions of the interior light courtyard. On the heels of the federal courthouse expansion, "World War II utterly transformed the city and its economy," which became the second-largest in the state and "propelled it out of the Great Depression." Mobile underwent a boom in employment, with the docks running three shifts 24 hours a day, and more than 89,000 people moved to the city to take jobs with war effort industries. Local U.S. Congressman Boykin helped Brookley Field become a new air supply depot and maintain its prewar work force, eventually becoming the city's largest employer with more than 17,000 jobs. In 1941, a tunnel under the Mobile River was completed, named for Alabama Congressman John Hollis Bankhead, Sr. On opening day, a crowd of curious Mobilians walked under the Mobile River in 12 minutes, and "a Great Dane named 'Poochy' made the historic trip, along with a woman pushing her infant child and a little girl on roller skates." The Waterman Steamship Co. boasted one of the nation's largest merchant fleets, and Mobile became one of the busiest shipping and shipbuilding ports in the nation. The courthouse witnessed the changing world in which it sat and adapted.

On Dec. 8, 1941, World War II hero and author Dr. Sidney Phillips, Jr. voluntarily enlisted in the courthouse lobby. Seventy-two years later, he returned to the building as the honored guest speaker for the December 2013 naturalization ceremony – a ceremony during which one citizen from a formerly designated WWII "enemy alien" nation (Germany) was naturalized. Also in December 1941, the federal clerk of court was required to file monthly reports on "enemy aliens" petitioning to be naturalized

due to "Instruction No. 34," per the U.S. Department of Justice Immigration and Naturalization Service's "Form N-435" governing petitions "filed by natives, subjects or citizens of Germany and Italy, the former to include Austrians." A 1942 letter noted that a "formal declaration of war against Rumania, Hungary and Bulgaria was approved ... and the instructions ... now apply to ... [those] petitions for naturalizations." The naturalization process for an enemy alien entailed an FBI investigation into the person's activities and loyalty, completion of a "Certificate of Loyalty," and undergoing a hearing, among other things – with the caveat that "it should be remembered that in any case where a doubt arises as to the loyalty of an enemy alien ... the doubt shall be resolved in favor of the United States." By the late 1940s, the clerk of the Southern District was regularly writing immigration and naturalization letters, requesting more Form N-435s "as my stock is completely depleted."

During McDuffie's judgeship, his concern with enforcing the rules of society was balanced with the defense of individual rights against abuses of the law. He presided over the 1948 Boswell Amendment case, *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949), in which plaintiffs claimed Alabama registration boards possessed unlimited discretion to grant or deny the right to vote. McDuffie ruled that the Boswell Amendment did not provide a uniform system for determining whether an applicant understood or could explain an article of the Constitution.

McDuffie was a strong supporter of free enterprise and expressed concern about the expanding authority of the federal government at the state and national level. He was "known for his distinctive green eyeshade and engaging manner ... he reveled in his duties as a judge, [but] his heart was always heavy when he had to pass sentence." He asked that, upon his death, in place of flowers books be donated in his honor where needed. Sand Island, at the mouth of the Mobile River, was renamed McDuffie Island in his honor.

Following World War II, Alabama federal courts continued to change. "While cases involving diversity of citizenship and removals from state courts declined, the numbers of cases involving federal laws or appeals of administrative decisions by federal agencies increased. The 1964 Civil Rights Act and 1965 Voting Rights Act further added to the cases brought before the federal bench. Procedural changes began to centralize and standardize many federal court processes. ... External institutional factors diminished the roles played by local attorneys in their relations with the Alabama federal bench. Some federal judges, however, resisted the standardization being imposed on the Alabama courts by national organizations."

The Mid-20th Century and the Second Judgeship

In 1951, Prattville native and Navy lieutenant **Daniel Holcombe Thomas** (1951-2000) was appointed by President Harry S. Truman. Thomas “grappled with desegregation in southern Alabama and made a national reputation presiding over admiralty cases.” In his words:

I was appointed a Federal Judge ... I have had many experiences in this job. ... The most difficult part of which was the integration of the public schools after the Brown decision in 1955 ... encompassed the integration of the schools, not only in Mobile County, but throughout the entire Black Belt. ... Many things have happened on the lighter side ... the instance of the only female bank robber that I tried. She was the brains behind a ring of bank robbers who robbed several banks in this area. She never carried a gun ... but directed the entire operation. She finally pled guilty ... and I sentenced her to the penitentiary. Despite this record, she would continually write me stating to the effect that if I did not get her out ... I would make a confirmed criminal out of her.

In 1952, Immigration and Naturalization notified the clerk that Alien Enemy reports “are no longer necessary concerning German nationals since Germans are no longer classified as enemy aliens.” From 1949 to 1986, the Southern District naturalized more than 2,600 citizens. It is still a process over which the Court presides today. For example, WWII Auschwitz concentration camp survivor, naturalized citizen and author Agnes Tennenbaum was the honored guest speaker at the May 2015 naturalization ceremony, where 39 immigrants from 24 countries were naturalized.

The 1960s also brought novel cases to the Court: “The Civil War had nearly destroyed the nation over the issue of slavery. A century later the descendants of the slaves rose to demand their rights as citizens. Their movement became a new revolution. ... Federal judges had the power to decide the limits of government power and were often called upon to resolve conflicts between individual rights and governmental authority ...” In 1961, the first woman juror in Mobile served on a case in the building: “the trial took place in federal district court since women were still not permitted on state or local juries.” While the function was later phased out, in the 1960s the Court also processed many hundreds of passport applications each year (e.g., from the mid-1960s to 1970s processing 700 to 1,400 each year). Various civil rights acts were passed and then litigated in the Southern District. The Customs House vacated the building during the 1960s, and the federal court expanded its operations.

In 1963, Thomas presided over the important civil rights case *Davis v. Mobile Cty. School Bd.*, 219 F. Supp. 542 (S.D. Ala. 1963), a school desegregation case filed after the Mobile county school system failed to

implement an effective desegregation plan. Thomas held that, in view of the existing conditions, including limited physical facilities, personnel problems and administrative commitments, school authorities would not be required by preliminary injunction to present within 30 days for court approval a plan for complete reorganization of the county school system on a racially integrated basis, but that authorities would be required to present at trial of case a specific plan for operation of the schools of the county on a racially nondiscriminatory basis commencing at the beginning of the 1964-65 school year. Over a number of years, many plans were considered and rejected, and the case went on appeal to the Fifth Circuit and then on further appeal to the U.S. Supreme Court in the 1970s. The Supreme Court held that once constitutional violations had been discovered in a desegregation plan, the lower courts should have used every available remedy and remanded the case with instructions to fashion a remedy that would realistically work. Despite the ruling, more legal battles ensued, and the case was only finally resolved in 1997 via dismissal by Judge William Brevard Hand.

Thomas also dealt with numerous maritime cases (gaining national recognition) and cases involving literacy tests, voter registration, mass arrests of demonstrators and school integration. Thomas also recalled unique naturalizations: one for a woman “very anxious to be naturalized” but confined to her home, so he swore her in, in her living room; and another for one of the Sisters in the Convent of Visitation at the Convent – “When I say we convened court in the Convent ... that is literally true. We went through more locked doors, and I daresay, in areas where a man had not been since the building was constructed.”

In 1966, the Southern District received its second judgeship. In 1979, an Act of Congress proposed the naming of the courthouse; and in 1981, the building was officially named the “John Archibald Campbell United States Courthouse” in honor of United States Supreme Court Associate Justice John Archibald Campbell (1853-1861).

While a senior judge for the Southern District, Thomas presided over a notable trial in the Middle District of Florida (sitting by designation), *Complaint of Hercules Carriers, Inc.*, 586 F. Supp. 962 (M.D. Fla. 1983), the result of a stormy night in 1980 that led to a freighter ramming the Sunshine Skyway bridge over Tampa Bay, killing 35 people when cars and a bus plunged into the water. In his 53-page opinion, Thomas called the crew “incompetent” and refused to limit the vessel’s liability for damages. Thomas took senior status in 1971 and remained on the bench until 2000. After 49 years, he became one of the longest-serving federal judges.

The Late 20th Century to Early 21st Century and the Third Judgeship

On Oct. 14, 1980, Congress assigned Alabama to the Eleventh Circuit and then in 1984 authorized a third judgeship – the same number of active Article III district judges sitting today. After 1966, judges who served (some of whom still actively serve) were:

- Enterprise native and former U.S. Army and Naval reservist, FBI special agent and state court judge Thomas Virgil Pittman (President Lyndon B. Johnson) (1966-2012), who also served the Middle District from 1966-1970.
- Mobile native and former U.S. Army member William Brevard Hand (President Richard M. Nixon) (1971-2008).
- Cottonwood native and former Air National Guard member Emmett Ripley Cox (President Ronald Reagan) (1981-1988).
- Mobile native and former U.S. Army member and U.S. probation officer Alex T. Howard, Jr. (President Ronald Reagan) (1986-2011).
- New York native and former U.S. Army lieutenant, 8th Artillery, 7th Howitzer Battalion, assistant public defender and DA Charles R. Butler, Jr. (President Ronald Reagan) (1988-present).
- Missouri native and WWII veteran Richard W. Vollmer, Jr. (President George H.W. Bush) (1990-2003).
- Virginia native and former AUSA Callie V. Granade (President George W. Bush) (2002-present) and the first female U.S. attorney in Mobile and first female district judge for the S.D. Ala.
- Tuscumbia native and former member of the U.S. Marine Corps, Alabama Army National Guard, U.S. Army Reserve (retired), assistant and chief assistant DA, AUSA, and U.S. magistrate judge William H. Steele (President George W. Bush) (1990-2003 magistrate; 2003-present district).
- Brewton native and former AUSA, assistant DA, Alabama deputy attorney general, chief counsel to U.S. Sen. Jeff Sessions and U.S. magistrate judge Kristi K. DuBose (President George W. Bush) (2000-2005 magistrate; 2005-present district), the first female magistrate judge for the S.D. Ala.



The John Archibald Campbell Courthouse has stood in Mobile, Ala., since the 1930s.
(Photo courtesy of G.C. Pfeiffer-Traylor)

The Southern District also has four active magistrate judgeships held by the highly respected William E. Cassady, Bert W. Milling, Jr., Sonja F. Bivins (the first African-American judge and second female magistrate judge for the Southern District) and Katherine P. Nelson. So, 200 years later, that singular “frontier” judgeship has blossomed into three active Article III judges, four magistrate judges and one senior Article III judge who conduct the Court’s business today.

Pittman was widely recognized for his decision in *Bolden v. City of Mobile, Ala.*, 423 F. Supp. 384 (S.D. Ala. 1976) – a case contesting the practice of “at large” elections for city commissions because they prevented minority representation. He ruled the election process had to be changed because it illegally discriminated against African-American voters by essentially ensuring that only white candidates could win. The then-Fifth Circuit upheld his ruling, 571 F.2d 238 (5th Cir. 1978), and after an appeal to the U.S. Supreme Court, 446 U.S. 55 (1980), the case was returned to Pittman with a ruling that electoral districts must be drawn without racially discriminatory intent to warrant constitutional protection. Pittman abolished the city commission and ordered the Alabama legislature to form a new city government with leaders elected by district. Per Pittman, “I go by the book. The Constitution takes supremacy over any state law. I don’t seek controversy or shirk from it.”

Hand grappled with silent prayer in public schools and



The Ceremonial Courtroom features portraits of the past chief judges.

textbooks applying secular humanism. In the Section 1983 action, *Jaffree v. Board of School Comm'rs*, 554 F. Supp. 1104 (S.D. Ala. 1983), Hand ruled that silent prayer was permissible in Mobile County public schools, describing his ruling as "a direct challenge to settled precedent" and adding that "perhaps this opinion will be no more than a voice crying in the wilderness." He wrote:

If this Court is compelled to purge 'God is great, God is good, we thank Him for our daily food' from the classroom, then this Court must also purge from the classroom those things that serve to teach that salvation is through one's self rather than through a deity. ... The founding fathers were far wiser than we. They were content to allow the peoples of the various states to handle these matters as they saw fit and were patient in permitting the processes of change to develop orderly by established procedure. They were not impatient to bring about a change because we think today that it is the proper course or to set about to justify by misinterpretation the original intent of the framers of the Constitution. We must remember that "He, who reigns within Himself, and rules passions, desires, and fears, is more a king" Milton, *Paradise Regained*. If we, who today rule, do not follow the teachings of history then surely the very weight of what we are about will bring down the house upon our head, and the public having rightly lost respect in the integrity of the institution, will ultimately bring about its change or even its demise.

The Eleventh Circuit and U.S. Supreme Court reversed his decision, saying the prayer violated the Establishment

Clause of the First Amendment. A few years later, Hand ruled (in a 172-page order – the longest in Southern District history) in *Smith v. Board of School Comm'rs of Mobile Cty.*, 655 F. Supp. 939 (S.D. Ala. 1987), that 44 textbooks promoting secular humanism were unconstitutional and had to be removed from public schools as violating the Establishment Clause of the First Amendment. Hand wrote:

The question arises how public schools can deal with topics that overlap with areas covered by religious belief. Mere coincidence between a statement in a textbook and a religious belief is not an establishment of religion. However, some religious beliefs are so fundamental that the act of denying them

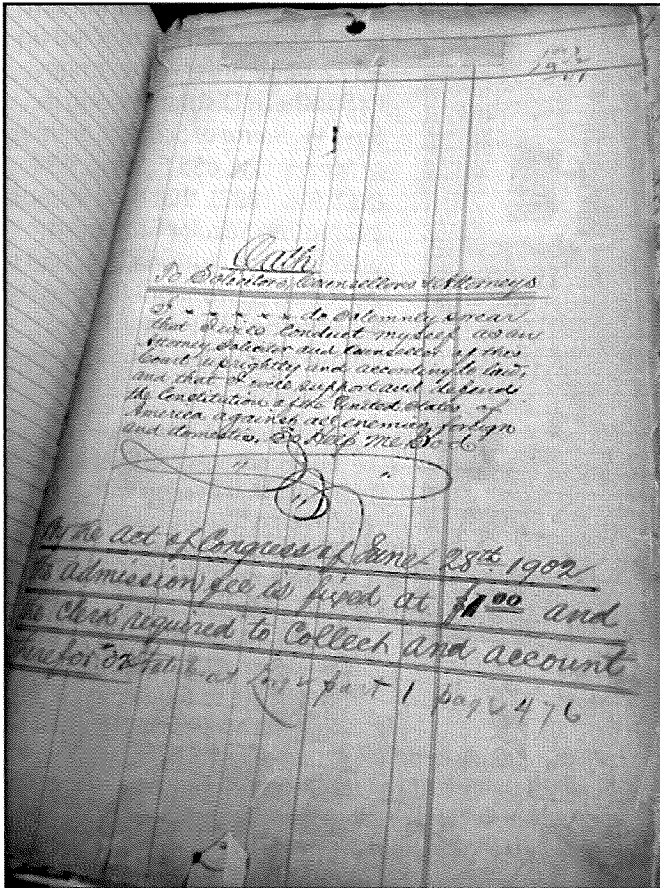
will completely undermine that religion. In addition, denial of that belief will result in the affirmation of a contrary belief and result in the establishment of an opposing religion.

The state may teach that lying is wrong, as a social and civil regulation, but if, in so doing it advances a reason for the rule, the possible different reasons must be explained evenhandedly. As otherwise stated, the state may not promote one particular reason over another in the public schools.

Teaching that moral choices are purely personal and can only be based on some autonomous, as yet undiscovered and unfulfilled, inner self is a sweeping fundamental belief that must not be promoted by the public schools. The state can, of course, teach the law of the land, which is that each person is responsible for, and will be held to account for, his actions. There is a distinct practical consequence between this fact, and the religious belief promoted, whether explicitly or implicitly, by saying "only you can decide what is right and wrong." With these books, the State of Alabama has overstepped its mark, and must withdraw to perform its proper nonreligious functions. ...

The Eleventh Circuit reversed, 827 F.2d 684 (11th Cir. 1987) and held that secular humanism was not a violation of the Establishment Clause and that the message conveyed by the textbooks neither unconstitutionally advanced a nontheistic religion nor inhibited theistic religions.

Howard's service on the bench included rendering a decision that bankrupted the United Klans of America.



The historic log book of the Southern District of Alabama includes early attorney admissions. (Photo courtesy of G.C. Pfeiffer-Taylor)

In 1981, African-American Mobilian Michael Donald was lynched by two alleged United Klans of America members, Henry Hays and James Knowles, resulting in a civil wrongful death suit filed by the Southern Poverty Law Center and a criminal murder trial. The criminal case was heard before Hand. The attackers were convicted of murder; Hays was sentenced to death and was executed in 1997, and Knowles was sentenced to life in prison. Howard presided over the civil trial and refined the legal theory of agency that held the Klan accountable for its members' acts. In 1987, a jury found the Klan guilty and awarded \$7 million in damages; the settlement eventually bankrupted the Klan. Later, Howard handled a case stemming from "the worst train wreck in Amtrak history" when Amtrak's Sunset Limited, with 210 passengers aboard, plunged into Bayou Canot in 1993, seconds after the bridge had been smashed by a barge, resulting in the deaths of 47 passengers, including several children. Sitting by special designation on the Atlanta-based Eleventh Circuit, Howard wrote the 1997 opinion, *In re Amtrak "Sunset Ltd" Train Crash in Bayou Canot, Ala., on Sept. 22, 1993*, 121 F.3d 1421

(11th Cir. 1997), reversing the lower court (Vollmer) that had ruled that Alabama's wrongful death law applied to civil lawsuits. Howard concluded instead that state law conflicted with the basic concepts of admiralty law. Howard also issued a key decision in the 1994 election case of Perry Hooper Sr., *Roe v. Mobile Cty. Appointing Bd.*, 904 F. Supp. 1315 (S.D. Ala. 1995), blocking efforts by Democrats to count 1,700 to 2,000 absentee ballots that lacked the signatures of two witnesses or a notary public.

Vollmer continued ferreting out the complexities of the Amtrak Sunset Limited crash and addressed a variety of diverse issues during his time at the Court. As for his judgeship, and "as was said in the opening prayer at his investiture ceremony, 'Justice and justice alone shall be your aim.'" A tribute to Vollmer by U.S. Sen. Jeff Sessions in May 2003 stated:

Mr. President, the death of United States District Judge, Judge Richard W. Vollmer, Jr. was a great loss to our country, the American legal system, his friends, and especially his wonderful family. ... He engaged in an active practice in State and Federal courts where he won the respect of his fellow lawyers and jurists before whom he appeared. ... He had a strong work ethic and he demanded the same of the lawyers who appeared before him. He never failed to offer his assistance with a congested court docket during times when the Southern District of Alabama did not have its full complement of active judges. Even upon taking senior status, and with failing health, he was always available if the workload demanded it. Judge Vollmer was not just somebody who worked in the courthouse. Although he loved the law, he ... was deeply concerned about the personal well-being of all the courthouse family with whom he worked, often going out of his way to inquire into their well-being. As U.S. District Judge William Steele has noted, he had a bright and warm presence with a quick smile and laugh. His positive spirit has made the U.S. Courthouse in Mobile a wonderful place to work. Widely esteemed as a jurist, respected by all who appeared before him, he brought to the bench a sincere quality of humility, love of the law, patience, personal integrity and genuine faith. ... It can now be said with certitude that Judge Vollmer spent his career dispensing justice fairly and impartially. ... He cared deeply for the unfortunate, was pained to see young people be sentenced to long jail terms though he did his duty ... he was a generous affirmer and true mentor for many. ... Judge Vollmer served in an exceptional court. The ... Southern District of Alabama has a great record of integrity, industry, legal skill and collegiality. He received an illustrious tradition and passed it on even brighter. ... He leaves a legacy of always seeking to do what is just and fair and right.

May the Southern District and its complement of esteemed judges continue the tradition of integrity,

industry, legal skill and collegiality, as it renders justice over its next 200 years.

Sources

Books

- W. Brewer, *Alabama, Her History, Resources, War Record, and Public Men: From 1540 to 1872* (1872)
- Carol Ellis & Scotty E. Kirkland, *Historic Photos of Mobile* (2008)
- Ben Erickson, *Mobile's Legal Legacy: 300 Years of Law in the Port City* (2008)
- First National Bank of Mobile, *Highlights of 100 Years in Mobile, 100th Anniversary 1865-1965* (1965)
- Robert McNeill Glennon, *Alabama History on the Air!: Mobile Radio Broadcasts of the 1930s* (2009)
- Jay Higginbotham, *Mobile! City by the Bay* (1968)
- Herbert James Lewis, *Clearing the Thickets: A History of Antebellum Alabama* (2013)
- Clinton P. King and Meriem A. Barlow, *Naturalization Records: Mobile, Alabama, 1833-1906* (1986)
- Brendan Kirby, *Wicked Mobile* (2015)
- Lucian Lamar Knight, *Georgia's Landmarks, Memorials, and Legends, Volume II: Section I - Under the Code Duello* (1914)
- Melton Alonza McLaurin and Michael Thomason, "Mobile: The Life and times of a Great Southern City: An Illustrated History" (1981)
- Robert F. Moss, *Southern Spirits: Four Hundred Years of Drinking in the American South, with Recipes* (2016)
- Paul M. Pruitt, Jr., David I. Durnham and Sally E. Hadden, *Traveling the Beaten Trail: Charles Tait's Charges to Federal Grand Juries, 1822-1825* (2013)
- Michael Thomason, *Mobile: The New History of Alabama's First City* (2001)
- Gregory A. Waselkov, *A Conquering Spirit: Fort Mims and the Redstick War of 1813-1814* (2006)
- The Journal of Sarah Haynsworth Gayle 1827-1836: A Substitute for Social Intercourse*, edited by Sarah Woolfolk Wiggins with Ruth Smith Truss (2013)

Newspaper & Magazine Articles (last visited July 8, 2016, if on internet)

- Chip Drago and Chris McFayden, *Mobile's Valentine's Night Massacre*, <http://www.mobilebaymag.com/Mobile-Bay/August-2011/Mobiles-Valentines-Night-Massacre/>, MOBILE BAY MAGAZINE (Aug. 2011)
- Brendan Kirby, *Mobile Press-Register 200th Anniversary: Trial of the century? How about two in the span of 12 months in 1930s Mobile* (6/24/13), http://blog.al.com/live/2013/06/trial_of_the_century_how_about.html, PRESS-REGISTER
- Brendan Kirby, *Alex Howard, former federal judge, dies in Mobile at 86* (2/10/11), http://blog.al.com/live/2011/02/former_federal_judge_alex_howa.html, PRESS-REGISTER
- Brendan Kirby, *Courthouse receives link to namesake* (4/30/08), PRESS-REGISTER
- Brendan Kirby, *'Boardwalk Empire' of the South: Prohibition brought violence, corruption to Mobile* (6/23/13), http://blog.al.com/live/2013/06/boardwalk_empire_of_the_south.html

-Wolfgang Saxon, *Daniel H. Thomas, 93, Federal Judge Known for Maritime Cases*, <http://www.nytimes.com/2000/04/18/us/daniel-h-thomas-93-federal-judge-known-for-maritime-cases.html> (4/18/00) THE NEW YORK TIMES

-Press-Register staff, *Baldwin County Historical Society to hear tales of 1930s radio programs*, http://blog.al.com/pr-community-news/2010/02/historical_society_to_hear_tales_of_1930s_radio_programs.html (2/26/10) PRESS-REGISTER

-John L. Robb, *Virgil Pittman: The Man Who Changed Mobile Forever* (Insight), http://blog.al.com/press-register-commentary/2012/01/virgil_pittman_the_man_who_cha.html (1/22/12) PRESS-REGISTER

-Microfiche collection, Mobile Public Library, History Department: THE MOBILE-REGISTER – September 1933, March 5, 1934, March 10, 1934, September 1, 1934, September 25, 1934, September 30, 1934; *John A. Campbell*, THE DAILY REGISTER, March 14, 1889; *Contract for U.S. Building is Awarded at Washington; Work to Start Immediately*, THE MOBILE REGISTER, September 1, 1934; *Contract Awarded for New U.S. Building: Work to Start Immediately*, THE MOBILE REGISTER, September 2, 1934; *Work May Begin on U.S. Building by End of Week*, THE MOBILE REGISTER, September 25, 1934; Advertising and local information from March 5, 1934, March 10, 1934, September 30, 1934 publications; *Custom House Annex*, THE MOBILE REGISTER, July 5, 1938; *Early Start Seen on Customs House Annex*, THE MOBILE REGISTER, July 5, 1938; *Early Action Asked on New Courthouse*, THE MOBILE REGISTER, July 19, 1938; *Ask \$20,000 More for New Project: Plans for Construction of Annex to Federal Building Progress Rapidly*, THE MOBILE REGISTER, September 30, 1938

Internet (last visited July 8, 2016)

- Federal Judicial Center, History of the Federal Judiciary, U.S. District Courts for the Districts of Alabama, Legislative History, http://www.fjc.gov/history/home.nsf/page/courts_district_al.html
- Federal Judicial Center, History of the Federal Judiciary, U.S. District Courts for the Districts of Alabama, Judge Succession Charts, http://www.fjc.gov/history/home.nsf/page/courts_district_al_sc.html
- Federal Judicial Center, History of the Federal Judiciary, U.S. District Courts for the Districts of Alabama, Judges of the Southern District of Alabama, <http://www.fjc.gov/servlet/nGetCourt?cid=31&order=c&ctype=dc&instate=al>)
- Federal Judicial Center, History of the Federal Judiciary, Judicial Salaries, http://www.fjc.gov/history/home.nsf/page/js_3_1.html
- http://www.fjc.gov/history/caseload.nsf/page/caseloads_private_civil, Federal Judicial Center, History of the Federal Judiciary, Private Civil Cases
- United States District Court Middle District of Alabama, *Prologue and Promise: A Brief History and Profile of the United States District Court for the Middle District of Alabama*, and Biographies of Judges Who Have Previously Served, http://www.almd.uscourts.gov/outreach/court_history.html
- Federal Judicial Center, History of the Federal Judiciary, Private Civil Cases, http://www.fjc.gov/history/caseload.nsf/page/caseloads_private_civil
- Encyclopedia of Alabama, <http://www.encyclopediaofalabama.org/article/h-2338> (Charles Tait), <http://www.encyclopediaofalabama.org/article/h-1167> (John Gayle), <http://www.encyclopediaofalabama.org/article/h-3273> (John McDuffie)
- Alabama Department of Archives & History, <http://digital.archives.alabama.gov/cdm/compoundobject/collection/voices/id/3005/rec/2>,

<http://digital.archives.alabama.gov/cdm/compoundobject/collection/photo/id/8094/rec/17> (South Around to Cross Ellicott's Line)

-Humanities and Social Sciences H-net Online, Tony Freyer and Timothy Dixon, *Democracy and Judicial Independence: A History of the Federal Courts of Alabama, 1820-1994* (1995), as reviewed by Barbara Rust (National Archives, Southwest Region, Ft. Worth, Texas), and Published on H-Law (September 1996), <https://www.h-net.org/reviews/showrev.php?id=591>

- <https://www.almd.uscourts.gov/historic-district-judges-alabama-middle-district>

-data.almd.uscourts.gov/outreach/docs/JOHNGAYLE.pdf

-data.almd.uscourts.gov/outreach/docs/WGJONES.pdf

-<http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=36796173> (Harry Theophilus Toulmin)

-PBS, *The War, The Four Towns, Mobile, Alabama*, https://www.pbs.org/thewar/the_witnesses_towns_mobile.htm

-Matthew L. Downs (Univ. of Mobile 7/10/14)), Encyclopedia of Alabama, *Great Depression in Alabama*, <http://www.encyclopediaofalabama.org/article/h-3608>

-Alabama Archives, Alabama History Timeline, <http://www.archives.alabama.gov/timeline/al1901.html>

- U.S. Senator Jeff Sessions, Floor Statements, *Tribute to Richard W. Vollmer, Jr.* (5/7/03), <http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=89d467e6-7e9c-9af9-71f9-a018672dd6de>

-JNET, Administrative Office of U.S. Courts, *Federal Court Management Statistics*, <http://jnetlegacy.ao.dcn/cgi-bin/cms.pl>, <http://jnet.ao.dcn/resources/statistics/federal-court-management-statistics>

Cases

As cited within the article.

Law Review Articles

-O'Connor and Bilder, *Appeals to the Privy Council Before American Independence: An Annotated Digital Catalogue*, 104 Law Libr. J. 83, 87 (Winter 2012)

-Tony Freyer, *The Paradox of Federal Judicial Power in Antebellum Alabama*, 44 Ala. L. Rev. 477 (Winter 1993)

-Robert J. Kaczorowski, *Federal Enforcement of Civil Rights During the First Reconstruction*, 23 Fordham Urb. L.J. 168 (Vol. 23, Issue 1, Article 4, 1995)

-Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction*, 61 N.Y.U. L. Rev. 863, 920-921 (Nov. 1986)

Other

- Administrative Office of US Courts, Annual Questionnaires on Passports and Naturalizations (Reports) 1996-1986

-Alien Enemy Reports, Southern District of Alabama

-Family Search, Alabama Naturalization and Citizenship, https://familysearch.org/learn/wiki/en/Alabama_Naturalization_and_Citizenship (last visited July 8, 2016)

-Slave Ships in Alabama, 19th Congress, 1st Session, Doc. No. 121, Message from the President of the United States, March 8, 1826 (1826) (a Congressional report)

-Judge Daniel H. Thomas, *Stories of the Mobile Bar* (1983)

-H.R. Rep. No. 69, 17th Cong., 2d Sess. 3 (1823)

-Act of August 16, 1842, 5 STAT. 507

-The Alabama Law Journal, Vol. II April 1883 No. 1, Obituary

-National Register of Historic Places, United States Court House and Custom House/John A. Campbell United States Courthouse, Mobile, Mobile County, Alabama, National Register #08000964 (including the August 27, 2008 Nomination Form Materials for the October 8, 2008 inclusion to the Register)

-National Archives and Records Administration (NARA) (historic documents, including Record Group 121, Public Building Service, Folders 2 and 5, for the John A. Campbell Courthouse, Mobile, AL)

-Personal interview with Dr. Sidney C. Phillips, Jr. (12/13/13)

-Contemporary Photographs courtesy of author G.C.Pfeiffer-Traylor (2015)

-Acts of the Special Session of 1907 at 201

-1 Conn. (1 Kirby) iv (1790)

SHARE YOUR NEWS!

Submit items for publication in the 11th Circuit Historical News to Wanda Lamar, executive director of the Society. (email: wanda_lamar@ca11.uscourts.gov). Historical articles on the federal courts and judges within the Eleventh Circuit will be considered, as well as investitures, courthouse dedications, portrait presentations, memorial ceremonies and oral history programs.