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## Mississippi Supreme Court Elections: A Historical Perspective 1916-1996

Leslie Southwick

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# MISSISSIPPI SUPREME COURT ELECTIONS: A HISTORICAL PERSPECTIVE 1916-1996

*Leslie Southwick\**

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\*Judge, Mississippi Court of Appeals. Unsuccessful candidate for Mississippi Supreme Court in 1996 election. The author acknowledges the exceptional assistance of several individuals, only some of whom can be named here. Willie Rainer transcribed countless notes of newspaper articles. The library staff at the Mississippi Department of Archives and History was exceptionally considerate and helpful; they were *sin qua non* for this Article. Risking that I am overlooking someone, among those assisting were Anne Webster, Nancy Bounds, Joyce Dixon, Victor Bailey, Mike Allard, and Steven White. Not to be overlooked are Elbert Hilliard and Hank Holmes. Mary Miller and Ken Raigins at the State Library were exceedingly gracious. Georgia Thackston laboriously gathered the information on contributions and expenditures. Charlie Brenner, in charge of the inter-library loan services at Jackson's Eudora Welty Library, was unfailingly successful in acquiring newspaper microfilm. Secretary of State Eric Clark and able assistants in his office, including Phil Carter, David Roberts, Pam Johnson, Chris Clark, Martin Hegwood, and probably others unknown, helped me uncover some elusive election returns and recent financial reports. Beverly Herring of the Madison County-Canton Public Library was most gracious (as was her husband Jim), while Martha McCrary performed the daunting task of ferreting out every *Madison County Herald* story on the 1916 campaign. Betty Cagle of the Lee County Library examined the *Tupelo Journal* for 1924 election articles. Judge Roger McMillin made the acquaintance of the 1924 New Albany news stories through that Chancery Clerk's bound newspapers. Last, and most burdened of all, the author commends the *Law Review* staff who checked behind all these unorthodox sources.

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## I. INTRODUCTION

While the judicial campaigns have been conducted in a dignified manner this year, opponents of the elected judiciary system are more than ever convinced that the adoption of this plan was a serious mistake. It is ridiculous, to say the least of it, to see a member of the State's highest tribunal forced to go about over the State poking his cards into the hands of voters and soliciting their support in much the same manner that a tinware peddler tries to sell his goods.<sup>1</sup> [1916].

Supreme Court candidates are forced to raise money to put on media efforts. That is offensive in itself. Candidates for judicial [office] should not be taking money from people with special interest agendas. But, worse, some of those media campaigns have been disgusting in their generalizations and emotional appeals on controversial subjects like the death penalty with little or no regard to the complicated legal issues involved . . . This campaign again has shown the folly of electing judges.<sup>2</sup> [1996].

Death, taxes, and criticisms of judicial elections are among the constants of Mississippi life. Words used to describe the practice of electing judges differed in style and not substance, from "ridiculous" in 1916 to "folly" in 1996. That chronological range covers the entire period since Mississippi abandoned an appointive system. The constancy of the criticism of electing judges proves only that certain, probably obvious problems have been perceived for as long as this state has selected its judges this way.

Some critics suggest quite different solutions than do others. One remedy is based on the proposition that the problems with elections are on the margins. Therefore, with additional laws and more rigorous enforcement, the difficulties will disappear. Entirely different proposals are offered by those who believe that the criticisms merely highlight the unavoidable negatives associated with all elections. Only a structural change, namely, to begin appointing appellate judges, will eliminate the problems. Appointment schemes have included adoption of what is commonly called the "Missouri Plan," which begins with the governor's selection of a name from a list submitted by a committee, and is followed in a few years' time with a popular vote on retention or dismissal of the appointee.<sup>3</sup> Another proposal is similar to the federal system for judicial selection, which is unlimited appointment discretion by the executive and legislative confirmation power. Such an appointment has in most proposals included a definite term of office, with the judge then reappointed or replaced.<sup>4</sup>

Election reforms have been a frequently attempted remedy. The election reforms that began with the "Corrupt Practices Act" in 1935 will be discussed in

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1. *The Supreme Judgeships*, JACKSON DAILY NEWS, Aug. 11, 1916, at 4.

2. Editorial, *Supreme Court: Vote for Independence and Dignity*, CLARION-LEDGER (Jackson, Miss.), Nov. 2, 1996, at 16A.

3. This approach is explained in David W. Case, *In Search of an Independent Judiciary: Alternatives to Judicial Elections in Mississippi*, 13 MISS. C. L. REV. 1, 22-26 (1992).

4. A bill to this effect was introduced in the 1997 legislative session, but died. H. Con. Res. No. 13. Other bills on either appointing appellate judges or on judicial selection reform were considered, but all failed. Editorial, *Campaign Reform*, CLARION-LEDGER (Jackson, Miss.), Mar. 14, 1997, at 12A.

the next section. Promotion of an appointive system also began at least by that same year. Judge Frank Everett, Sr., chairman of a state bar committee, presented a proposal in 1935 that Mississippi Supreme Court judges be appointed by the governor from a list of three-to-five names.<sup>5</sup> The list of names would be generated by a vote of the state bar.<sup>6</sup>

Thus 1935 is a mirror of the mid-1990s and of many of the years in between — at the same time as judicial election reforms are being considered, other critics are arguing that the only answer is to scrap the whole approach.

Whether the ills are serious, and if so, whether there is a remedy that is less seriously debilitating than the disease, will be questions that continue to engage public policy debaters and makers. What is often-times a useful component of a public policy discussion is also the most difficult to acquire — a command of the facts. For all except the most recent supreme court elections, the facts are well-hidden inside dim memories, dusty archives, and newspaper microfilm. Even what is discovered in such places is not altogether reliable, as memories, archives, and newspapers all reflect the biases of participants and observers. Still, without the effort of determining what has gone before, there is no anchor to the discussion of what is to come.

What has gone before will be reviewed beginning with events in 1916. That is the year that Mississippi discarded an appointive system used since 1870 and began electing judges. There will be a brief examination of the changes in statutes applicable to judicial elections. Following that will be a discussion of each contested supreme court race. Out of ninety-nine elections for a supreme court position, only thirty-seven were contested. To conclude will be an attempt to analyze the data. The trends that reveal themselves are not always what might be expected.

## II. CONSTITUTIONAL PROVISIONS AND STATUTES AFFECTING JUDICIAL ELECTION

This Article begins its review of Mississippi judicial elections in 1916, because that year the State dropped its appointive system and began electing supreme court justices. However, the State had for a substantial part of the 1800's also elected judges. The Mississippi Constitution of 1817 established a supreme court with judges elected by the legislature.<sup>7</sup> The judges' primary duties were to serve as judges in the trial courts known as superior courts.<sup>8</sup> A panel of superior court judges would sit from time to time as an appellate court to review cases from other superior courts.

Jacksonian democracy expressed itself in Mississippi in several ways in the state constitution adopted in 1832. One of the most obvious was by providing for popular election of judges. A three-judge High Court of Errors and Appeals would be elected, each judge chosen from a separate geographic district for a six-

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5. R. J. Farley, *The Proposed Amendment to Change the Manner of Selecting Judges*, VIII MISS. L. J. 489 (1936).

6. *Proceedings of the Mississippi State Bar*, VIII MISS. L. J. 71-74 (1935).

7. MISS. CONST. of 1817, art. IV, § 9.

8. 1817 Miss. Laws §§ 1, 3 at 7-19.

year term.<sup>9</sup> These three districts, dividing the state into northern, central, and southern regions, have remained largely unchanged since 1833.<sup>10</sup>

The High Court of Errors and Appeals remained in place until Mississippi's re-entry into the Union after the War Between the States. The 1868 constitutional convention provided for gubernatorial appointment of all judges, with advice and consent of the senate. The supreme court consisted of three justices who were required to reside in the supreme court districts from which they were appointed.<sup>11</sup> The justices served for staggered nine-year terms.<sup>12</sup>

The next and most recent state constitution, adopted in 1890, retained the appointive judicial system with nine-year supreme court justice terms. One historian, Secretary of State Eric Clark, said that probably "the most controversial secondary problem which the delegates [to the 1890 convention] had to consider was whether to institute an elective judiciary."<sup>13</sup> A majority of the convention's Judiciary Committee favored an appointive system to avoid election of the "windiest demagogue." A proposal for judicial elections was defeated by the full convention on a fifty-five to thirty-six vote.<sup>14</sup>

In January 1898, the governor recommended and the legislature passed a constitutional amendment to elect all judges, including the three-judge supreme court.<sup>15</sup> The people ratified the amendment in 1899, with seventy-one percent of the voters in favor.<sup>16</sup> The supreme court subsequently held that the amendment violated a provision in Article 15, Section 273 of the constitution. That provision meant that if the elements of several different amendments were joined into the form of a single amendment, such that the voters could not vote on each actual amendment separately, then the submission to the people was invalid. The 1899 amendment explicitly amended five sections of the constitution and the supreme court found its substance to consist of "at least four separate amendments."<sup>17</sup>

Mississippi's appointive judiciary finally fell in the second decade of the twentieth century. The first pillar of judicial appointments was toppled in 1910 when the legislature submitted to the people a constitutional amendment providing for election of circuit and chancery judges.<sup>18</sup> It passed with almost eighty percent of the vote<sup>19</sup> and was upheld by the supreme court.<sup>20</sup> The legislature made the final

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9. MISS. CONST. of 1832, art. IV, §§ 2, 3.

10. JOHN R. SKATES, JR., A HISTORY OF THE MISSISSIPPI SUPREME COURT, 1817-1948 (1973). The districts were found valid under the Voting Rights Act. *Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143 (5th Cir. 1992), cert. denied, 114 S. Ct. 555 (1993); see also *NAACP v. Fordice*, 105 F.3d 655 (5th Cir. 1996) (unpublished opinion) (*res judicata* did not bar new plaintiffs from challenging same districts when used for Transportation and Public Service Commission elections).

11. MISS. CONST. of 1868, art. VI, § 2.

12. MISS. CONST. of 1868, art. VI, § 3.

13. Eric Charles Clark, *The Mississippi Constitutional Convention of 1890: A Political Analysis*, 131 (1975) (unpublished M.A. thesis, University of Mississippi). Secretary of State Clark earned the "historian" label by subsequently acquiring his Ph.D.

14. *Id.* at 131-32.

15. JOHN R. SKATES, JR., A HISTORY OF THE MISSISSIPPI SUPREME COURT, 1817-1948 at 47 (1973).

16. *State ex rel. McClurg v. Powell*, 27 So. 927 (1900).

17. *Id.* at 930.

18. 1910 Miss. Laws ch. 358.

19. 1912 Miss. Reg. 119-20 (1913).

20. *State ex rel. Collins v. Jones*, 64 So. 241, 254-55 (1913). The governor vetoed a 1912 bill that provided the procedures for the election of these judges, indicating the reluctance with which this authority was relinquished. *Id.* at 255.

push for complete judicial elections in 1914. Among nine constitutional amendments submitted for ratification in November 1914 was one for popular election of supreme court justices.<sup>21</sup> The court's membership was increased to six members and terms were reduced from nine to eight years.<sup>22</sup> For the first time, the court was permitted to sit in divisions, removing any need for all justices to review all cases.<sup>23</sup> The amendments were ratified.<sup>24</sup> The court was increased to nine justices in 1952, again with the governor's having the authority to make appointments to the new positions pending the first election.<sup>25</sup>

In 1916, and indeed for all but four of the elections prior to 1994 that are reviewed here (1980, 1988, 1991, 1992), the only election was the Democratic primary. That is because until the 1970's, Mississippi was a one-party state<sup>26</sup> and Republican or independent candidates did not file for the supreme court. Even though Mississippi now has as competitive a two-party system as other states, a statute adopted in 1994 eliminated party primaries for judicial elections. In the future, the general election in November and, when necessary, a run-off two weeks later, will choose judges.

The important election rules for most of the relevant period were therefore those governing primaries, i.e., Democratic primaries. The first important statute after adoption of the constitutional amendment providing for elections of supreme court justices was:

Nominations of candidates for the office of judge of the Supreme Court by any political party shall be made by districts, and the primary elections for that purpose shall be held concurrently with the primary elections for the nomination of representatives in congress, except as may be herein otherwise provided. The general primary election laws shall apply to and govern the nomination of candidates for the office of judge of the Supreme Court in so far as they may be applicable.<sup>27</sup>

Though regular elections would only be held on the dates of congressional elections, the legislature also provided that elections for vacancies would be held at "next regular election for state, or state district officers, for representatives in congress, or for United States senator, occurring more than five months [nine months beginning in 1935] after the existence of the vacancy to be filled . . . ."<sup>28</sup> The governor had the right to fill a vacancy by appointment, with that appointee to serve until the first Monday in January after the election for the vacancy.<sup>29</sup>

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21. MISS. CONST. of 1890, art. VI, § 145 (1916); 1914 Miss. Laws ch. 514.

22. MISS. CONST. of 1890, art. VI, § 145A (1916); 1914 Miss. Laws ch. 518.

23. 1914 Miss. Laws ch. 519.

24. MISSISSIPPI HOUSE OF REPRESENTATIVES JOURNAL 1916, at 198.

25. MISS. CONST. of 1890, art. VI, § 145B (1952); 1952 Miss. Laws ch. 244 & ch. 468.

26. JAMES W. LOEWEN & CHARLES SALLIS, MISSISSIPPI: CONFLICT AND CHANGE 322-23 (1974).

27. 1916 Miss. Laws ch. 161.

28. *Id.* The change to nine months was pursuant to 1935 Miss. Laws ch. 19, codified at MISS CODE ANN. § 3190 (1942). Another section of the code continued to state that a supreme court vacancy was filled at the first election held after five months. MISS CODE ANN. § 3316 (1942), codifying 1916 Miss. Laws ch. 161. A trial judge statute also conflicted with § 3190. MISS CODE ANN. § 3312 (1942). Nine months became the clear rule in MISS. CODE ANN. § 23-5-247 (1972).

29. 1916 Miss. Laws ch. 161.

The primaries for those vacancies would be held at the same time as the primaries for the regularly scheduled offices on the ballot that year.<sup>30</sup> Thus regular judicial elections would always be contemporaneous with the even-numbered year congressional elections, but special elections to fill vacancies could and occasionally have been held in the odd-numbered years in which the gubernatorial election is conducted.<sup>31</sup>

In 1916, the deadline for candidates to file was extremely close to the primaries — only fifteen days before the election.<sup>32</sup> Beginning in 1930, candidates had to file no later than thirty days before the primary.<sup>33</sup> The deadline was changed in 1944 to sixty days before the primary.<sup>34</sup>

The first attempt to shed light on the financing of judicial and other elections occurred with passage of the "Corrupt Practices Law of 1935" which allegedly was drafted by Justice Virgil Griffith.<sup>35</sup> Judicial candidates could not receive campaign contributions from "any person, trustee, or corporation or any association of persons, by whatever name known. . . ."<sup>36</sup> The only exception was for "a member of the bar, in active practice and in good standing and who himself is not a candidate for any office at said primary," who could contribute "in the aggregate as much as fifty dollars. . . ."<sup>37</sup> On the first and fifteenth of every month during the campaign, the candidate had to file as a public record the name of all contributors and the amount contributed.<sup>38</sup> Within thirty days after a primary, the judicial candidate was to file with the Secretary of State an itemized statement of expenditures made by him or anyone at his authorization, including showing the name of the recipient.<sup>39</sup> These reports cannot be located.

A significant amendment was made in 1971. In future elections, only contributions greater than \$500 had to be reported by candidates "for state office, including those elected by Supreme Court Districts. . . ."<sup>40</sup> Further, reports were to be filed on the fifth day of each month during the campaign, and then on the Saturday before the election.<sup>41</sup> Whether much of this applied to supreme court

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30. *Id.*

31. A supreme court race contemporaneous with a gubernatorial election has occurred only five times: John W. Kyle (1951), Kermit Cofer (1979), Lenore Prather and James L. Robertson (1983), and Fred Banks (1991).

32. MISS. CODE § 3715 (1906); MISS. CODE ANN. § 6407 (1917). F.R. Birdsall, *News and Views from the State Capital*, THE LEADER (West Point, Miss.), Aug. 15, 1924, at 2 ("all candidates must have their names in the hands of the proper executive committees, together with the printer's fee, at least 15 days before the primary . . .").

33. 1930 Miss. Laws ch. 277, § 5679, codified MISS. CODE ANN. § 5879 (1930).

34. 1944 Miss. Laws ch. 170; codified MISS. CODE ANN. § 3121 (1942). This act operated to suspend the previous code section "for the duration of the present war," and would be automatically repealed six months after the war "shall officially end." *Id.* However, the change was made permanent in 1947. 1948 Miss. Laws 1st Extra Sess. of 1947, ch. 18.

35. 1935 Miss. Laws ch. 19, codified at MISS. CODE ANN. §§ 3158-3195 (1942), adopted November 25, 1935. Governor Mike Conner apparently asked Justice Griffith to draft what became this act in response to the vitriolic August 1935 gubernatorial primary. Robert G. Gillespie, *Virgil Alexis Griffith, 1874-1953*, 37 J. MISS. HIST. 267, 271-72 (1975); CHESTER M. MORGAN, REDNECK LIBERAL: THEODORE G. BILBO AND THE NEW DEAL 78-106, 130 (1985) (describing the 1935 campaign).

36. 1935 Miss. Laws ch. 19, codified at MISS. CODE ANN. § 3192 (1942).

37. *Id.*

38. 1935 Miss. Laws ch. 19, codified at MISS. CODE ANN. § 3179 (1942).

39. 1935 Miss. Laws ch. 19, codified at MISS. CODE ANN. § 3181 (1942).

40. 1971 Miss. Laws, ch. 510, § 1, codified at MISS. CODE ANN. § 3179 (1942).

41. *Id.*

rices themselves is unlikely, as the section limiting contributions in Supreme Court races to \$50 from attorneys was not changed. That section was amended in 1978 to remove the prohibition regarding non-lawyer contributions, but to limit the amount to \$250 per election.<sup>42</sup>

The Corrupt Practices Law remained in effect until adoption of the Mississippi Election Code of 1986. Now the names of contributors to supreme court candidates who gave amounts above either \$200 or \$500, depending on the interpretation of the statute, had to be reported along with the dollar amount of the contribution.<sup>43</sup> Thus there no longer was a limit to the aggregate amount of contributions from one source, just a requirement to identify those contributing above the threshold amount. Political action committees also for the first time had to report contributions made specifically for a candidate.<sup>44</sup>

As an overlay to the statutes, the *Canons of Judicial Ethics* prohibit the solicitation of contributions except by a committee on behalf of the candidate, and also impose certain other restrictions on incumbents and candidates that attempt to maintain the dignity and impartiality of the judiciary even during a campaign.<sup>45</sup> Similar limitations existed under the Corrupt Practices Act.<sup>46</sup> A candidate is not to "announce his views on disputed legal or political issues," but may speak "on behalf of measures to improve the law, the legal system, or the administration of justice" and may pledge "faithful and impartial performance of the duties of the office . . ." <sup>47</sup> Among the central "duties of the office" is to apply the undisputed law, which permits a judge to state that he will uphold a specific law and not silently undermine it. The death penalty is frequently mentioned. Another candidate might pledge that women and children will receive their due in domestic cases. Assuring the application of valid laws as opposed to promising one outcome in a class of cases are significantly different pledges. Only the former is proper under these *Canons*.

One minor, if previously cumbersome, mechanic has changed in the filing for a supreme court seat. Until 1916, there were three supreme court districts, but only one judge per district. With the addition of a second judge in each district in 1916, it became important to designate which position the candidate was seeking. The initial statute required that "each candidate shall state the name of the

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42. 1978 Miss. Laws, ch. 479, § 3, codified at MISS. CODE ANN. § 23-3-65 (1972), repealed by 1986 Miss. Laws, ch. 495, § 333.

43. 1986 Miss. Laws, ch. 495, §§ 334, 335; MISS. CODE ANN. § 23-15-807(c)(ii) (1972). The statute requires reporting contributions in excess of \$500 made to "a candidate for statewide office or office elected by Supreme Court district . . ." *Id.* Under the *Mississippi Code of Judicial Conduct*, supreme court candidates themselves cannot personally receive contributions. MISS. CODE OF JUDICIAL CONDUCT Canon 7, § B(2)(1997). The \$500 contribution section, read in light of the judicial canon, was interpreted by the secretary of state's office in 1996 not to apply to judicial races because no contributions are made to "candidates." All supreme court race contributions were said to fall under the separate statutory provision that reporting must be made of all contributions in excess of \$200 "made to a political committee or to a candidate for an office other than statewide office or office elected by supreme court district . . ." MISS. CODE ANN. § 23-15-807(c)(ii) (1972).

44. MISS. CODE ANN. § 23-15-801(c) (1972); R. Andrew Taggart & John C. Henegan, *The Mississippi Election Code of 1986: An Overview*, 56 MISS. L. J. 535, 555-56 (1986).

45. MISS. CODE OF JUDICIAL CONDUCT Canon 7 (1997). The code was adopted in Mississippi in 1974 from a set of model canons.

46. 1935 Miss. Laws ch. 19, codified at MISS. CODE ANN. § 3191 (1942).

47. MISS. CODE OF JUDICIAL CONDUCT Canon 7 (1997).

incumbent or latest incumbent of the office to which he aspires, and both primary and regular election ballots shall so indicate.”<sup>48</sup> That awkward designation was changed in 1964 when the legislature gave a number to each of the positions.<sup>49</sup> There was no historical aspect to the numbering, i.e., position one in a district is not necessarily the original post created in 1832; position number two is not necessarily the position created in 1916.<sup>50</sup> Now there are three numbered positions for each of three numbered supreme court districts.<sup>51</sup>

The most extensive change in recent years was making all judicial races non-partisan, from election of trial courts to the supreme court.<sup>52</sup> The statute became effective in September 1994. Under the statute, all judicial candidates must file by the first Friday in May, with the initial election then held at the regular November election.<sup>53</sup> A candidate is not to “align himself with any candidate for any [other judicial office]. . . or with any political faction or any political party at any time” and “is prohibited from campaigning or qualifying for such an office based on party affiliation.”<sup>54</sup> Should no judicial candidate receive a majority, a run-off is held two weeks after the November election.<sup>55</sup> Vacancies are filled at the first election for state offices or congress held more than nine months after the “existence of the vacancy.”<sup>56</sup>

There have also been many changes perhaps unrelated to elections. The court’s chambers were at the new capitol beginning in 1903 but were moved to the new Carroll Gartin Building in May 1973. The first two law clerks were not authorized until 1964.<sup>57</sup> Even the most obvious aspect of the appearance of a supreme court justice is of relatively recent origin — it was not until the sitting of January 10, 1949, that justices wore robes while hearing oral arguments. Before that time business suits were the attire.<sup>58</sup> Benchmark annual salaries during this period are \$4,500 in 1916, \$10,000 in 1948, \$19,000 in 1966, \$46,000 in 1978, \$75,800 in 1988, and \$98,300 in 1997.<sup>59</sup> The salary likely has impacted potential candidates and appointees more than have chambers, clerks, and clothing.

In summary, during these eighty years, changes have been made in the dates for the dispositive elections — from the summer primaries to the November general elections. The amount, source, and reporting of contributions have been

48. 1935 Miss. Laws ch. 19, codified at Miss. CODE ANN. § 3313 (1942).

49. 1964 Miss. Laws ch. 361, codified at Miss. CODE ANN., § 3313.5 (1942), and Miss. CODE ANN. § 23-15-993 (1990).

50. See Appendix for the designations.

51. Miss. CODE ANN. § 23-15-993 (1990).

52. 1994 Miss. Laws ch. 564, H.B. 1809.

53. Miss. CODE ANN. § 23-15-977 (Supp. 1996).

54. Miss. CODE ANN. §§ 23-15-973, 977 (Supp. 1996).

55. Miss. CODE ANN. § 23-15-981 (Supp. 1996).

56. Miss. CODE ANN. § 23-15-849 (Supp. 1997).

57. Supreme court hand-written ledger (in possession of the court). The first clerks were Barry Powell and George Whitten, assigned to the court as a whole. In 1967, three additional clerks were authorized and the number gradually increased after that. *Id.*

58. *Id.* The commencement of wearing of robes occurred six months after thirty-six year Chief Justice Sydney Smith died in July 1948.

59. The first two salaries are for all justices; thereafter the figure is for an associate justice. 1910 Miss. Laws ch. 117 § 1 (still in effect in 1916); 1948 Miss. Laws ch. 221 § 1; 1966 Miss. Laws ch. 445 § 2; 1978 Miss. Laws ch. 520 § 4; 1988 Miss. Laws ch. 528 § 4; 1997 Miss. Laws ch. 577 § 3, codified at Miss. CODE ANN. § 25-3-35 (Supp. 1997).

altered dramatically. The elimination of partisan primaries and substitution of a general election and run-off has been the most recent change. What has not been changed is the ultimate goal of a political campaign, which is to gain recognition and support among the electorate. That has rarely been a passive undertaking.

### III. THE CAMPAIGNS, 1916-1996

Most of the information in the following sections is garnered from newspaper accounts. The variations in quality and objectivity of reporting and editing, reliability of sources for information and pressures of deadlines, all impact accuracy. Absent an exhaustive study made of each campaign, these details are as accurate as could be determined. There was no attempt to examine all relevant newspapers, but instead the goal was to find one and perhaps two newspapers which through the course of a campaign reported on a court race. The lack of reporting was quickly revealed. Finally, the discussion primarily is of the public campaign. Many tactics no doubt were secret and they are unavoidably a missing part of the story. News stories are also a distorted view of even the public campaign, since what was reported was considered the most newsworthy. For example, what was reported on the 1992 Jimmy Robertson-Jimmy Roberts campaign focused almost entirely on criticisms being made of incumbent Justice Robertson, the most caustic of which were made by independent groups and not by then-Chancellor Roberts. What the two candidates themselves did was largely lost in the miasma.

A few of the election stories are told in much greater detail than the remainder. That is at times the product of a large amount of information being available; other times an earlier election was conducted around themes quite similar to present-day ones, and that is highlighted. Some elections receive quite brief coverage because little occurred of note, or little was discovered. Regardless, the following is not intended as an equal-time exercise, but as an explanatory one.

The campaigns are grouped in ten-year blocks, with a summary of certain quantitative aspects made at the end of each of those blocks.

#### A. 1916-1925

##### 1. 1916 [4 races]

As 1916 began, there were several controversies regarding the commencement of judicial elections that would occur that summer. One Justice, J. Morgan Stevens, had been appointed since the last session of the legislature in 1914. He had not yet been confirmed by the senate as required under the soon-to-be replaced appointment procedures.<sup>60</sup> Lieutenant Governor Theodore Bilbo, who would ascend to the governorship on January 18, 1916, did not accede to Stevens' right to have a full nine-year term and thought the appointment should expire on January 1, 1917, which was when the justices elected in 1916 would take office. He therefore attempted to block Stevens' confirmation.<sup>61</sup> Circuit

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60. Miss. Code. § 2384 (1906).

61. *Judiciary Fight Appears in State Senate Session*, JACKSON DAILY NEWS, Jan. 5, 1916, at 1; *Supreme Judgeships in Limelight*, JACKSON DAILY NEWS, Jan. 14, 1916, at 3.

Judge Paul B. Johnson of Hattiesburg, who would later be governor, denied rumors that he had Bilbo's support to replace Stevens if confirmation could be stopped.<sup>62</sup> On January 5, 1916, Governor-elect Bilbo and Justice Stevens met for dinner at the Edwards House hotel.<sup>63</sup> Whatever was said, Bilbo dropped his opposition and Stevens was unanimously confirmed.<sup>64</sup> No election for that seat occurred until 1922.

Another problem was the three new supreme court judgeships that had been created by constitutional amendment adopted in 1914 that would become effective in 1916. Outgoing Governor Earl Brewer "sprung a surprise" on the legislature by suggesting during his last few days in office that a legislative caucus quickly nominate three new judges, whom Brewer would then appoint.<sup>65</sup> It did not occur, and the political plums were left for Bilbo. On January 25, 1916, the legislature took the final step of inserting the amendment into the constitution for the three extra judgeships.<sup>66</sup> Governor Bilbo announced his selections the next day "despite the contention of some attorneys that he was without authority to do so" until additional legislation was adopted.<sup>67</sup> His authority was questioned under the theory that there could not be "vacancies" for the governor to fill if no one had ever served in the office and then resigned or died.<sup>68</sup> The positions were vacant, but they had never been vacated. Bilbo was undeterred by such legal quibbles. The justices were sworn in on January 27 and began work immediately, but it was not until March 21, 1916 that the legislature passed a bill authorizing the governor to make the appointments "immediately upon this act becoming effective."<sup>69</sup>

Had Bilbo successfully derailed Justice Stevens' confirmation, the governor would have been able — after only a week in office — to name four of the six justices on the high court. On the other hand, had outgoing Governor Brewer's "surprise" proposal been accepted to let the legislature nominate the new justices, Bilbo would have had no appointments. Mississippi was a one-party state, but Brewer and Bilbo were in rival and bitterly antagonistic camps within that single party.<sup>70</sup>

After all these political machinations, four supreme court judgeships had to be filled at these first elections for justices since 1865.<sup>71</sup> Besides Governor Bilbo's three appointees to the new positions, one of the other three incumbents ran in this election; the remaining two continued until elections in 1920 and 1922.<sup>72</sup>

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62. *Denies He Opposes Stevens' Confirmation*, JACKSON DAILY NEWS, Jan. 14, 1916, at 3.

63. *May Compromise Judiciary Fight*, JACKSON DAILY NEWS, Jan. 11, 1916, at 8; *Peace Reigns Over Stevens Appointment*, DAILY CLARION-LEDGER (Jackson, Miss.), Jan. 7, 1916, at 7.

64. *Stevens Gets a Full Nine-Year Term*, JACKSON DAILY NEWS, Jan. 11, 1916, at 8.

65. *Governor Brewer Springs Surprise*, JACKSON DAILY NEWS, Jan. 11, 1916, at 8.

66. 1916 Miss. Laws ch. 154, effective January 25, 1916. Bilbo made his announcement on January 26.

67. *Gov. Bilbo Names 3 New Judges*, LAWRENCE COUNTY PRESS (Monticello, Miss.), Feb. 3, 1916, at 1; *Potter, Holden, Sykes New Judges*, JACKSON DAILY NEWS, Jan. 26, 1916, at 3.

68. *Can Bilbo Appoint New Judges?*, JACKSON DAILY NEWS, Jan. 16, 1916, at 11.

69. *New Supreme Court Judges Take the Oath*, JACKSON DAILY NEWS, Jan. 28, 1916, at 2; 1916 Miss. Laws ch. 161, § 7; codified MISS. CODE ANN. § 6856 (1917).

70. ALBERT D. KIRWAN, *REVOLT OF THE REDNECKS: MISSISSIPPI POLITICS 1876-1925*, at 239-59 (1964).

71. SKATES, *supra* note 15, at 27.

72. SKATES, *supra* note 15, at 51-52.

There were rumors that Governor Bilbo and his organization were helping his appointees' campaigns in various ways, including writing personal appeal letters, and similar stories existed that Bilbo's personal opponents also found reasons to oppose his court nominees.<sup>73</sup>

The eight-year terms for the three new positions on the court all began in January 1917.<sup>74</sup> The commencement of the term for the fourth seat on the 1916 ballot would not be until May 1918. That was because supreme court judgeships under the 1890 constitution had nine-year terms, each of which began in May of the relevant year. The change to eight-year terms did not "abridge the terms of any of the present incumbents . . . ; but they shall continue to hold their respective offices until the expiration of the terms for which they were respectively appointed . . ." <sup>75</sup> Besides becoming a year shorter, the terms thereafter would begin in January. Chief Justice Sydney Smith's nine-year appointed term began on May 10, 1909, and would not expire until May 10, 1918. The 1916 election was the closest one to the beginning of that term. Whoever won would receive a seven year, eight month term (eight years thereafter) that began in May 1918 and ended in January 1926.<sup>76</sup> A similar eighteen-month gap between election and beginning of the new, shorter term applied to the last pre-1916 justice (J. Morgan Stevens) named to the supreme court, whose term had begun in May 1915 and expired in May 1924. That election would be held in 1922.<sup>77</sup> The term of the third pre-1916 judge (Sam Cook) had begun in May 1912 and expired in May 1921, which meant the election would be in 1920.

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73. *State Campaign Brought to a Close*, DAILY CLARION-LEDGER (Jackson, Miss.) Aug. 12, 1916, at 8; *Few Surprises in the Election of Tuesday*, JACKSON DAILY NEWS, Aug. 16, 1916, at 1; *They Claim Victory for Judge Sykes*, JACKSON DAILY NEWS, Sept. 3, 1916, at 3.

74. MISS. CODE ANN. § 6850 (1917). Both in 1916 when the court grew from three to six members, and again in 1952 when the court was expanded to nine justices, all three new positions had full eight year terms following that first election. Coincidentally, 1916 and 1952 were also regular elections for previously existing seats. Thus every eight years following 1916 and every eight years after 1952, there are four positions on the ballot at the same time, two in the central supreme court district in the 1916 cycle, and two in the northern district in the 1952 progression. The constitutional amendment adopted that became effective in 1916 when the court was increased from three to six members gave the legislature the "power to provide that the terms of office of some of the judges first to be elected shall expire in less than eight years." MISS. CONST. art. VI, § 149. That power was not exercised. In creating a new court of appeals in 1993, the legislature decided "to provide that the offices of not more than a majority of the judges of said court" would become vacant at one time. 1993 Miss. Laws ch. 518, § 3; 1994 Miss. Laws ch. 564, § 98. Thus the length of the initial terms was staggered, but terms that began after all subsequent elections would be for a full eight years.

75. MISS. CONST. of 1890 art. VI, § 149.

76. The High Court of Errors and Appeals was abolished by the 1869 constitution, and a new supreme court began, i.e., the previous justices did not just continue in office. The judges' terms under the 1869 constitution began on the day that they were commissioned, and continued for the terms prescribed under the constitution. 1870 Miss. Laws ch. VIII, § 7. The first three justices were all sworn in on May 10, 1870. 1870 MISS. SEN. J. 263. All three justices eventually would have nine-year terms, but the initial terms were staggered, one judge receiving a three-year, another a six, and the final a nine-year term. MISS. CONST. of 1869 art. VI, § 3. The 1890 constitution continued the supreme court, and thus the nine-year terms still commenced in May. MISS. CONST. of 1890 art. VI, § 149 (as adopted October 1, 1890). The 1916 legislature shifted the expiration of terms from May to January by providing "that the term of a judge elected to succeed a present incumbent [all of whose terms expired in May] shall commence on the expiration of the term of such incumbent and shall expire in eight years from the day preceding the first Monday in January next preceding the expiration of the term of such incumbent." MISS. CODE ANN. § 6850 (1917).

77. That lag-time between election and commencement of a new term for these two positions remains today. The District 1, Post 1 seat held by Justice Bill Waller, Jr. beginning in January, 1998, was filled at the 1996 election. The latest election for the District 2, Post 1 seat was won by Justice Chuck McRae in 1994, but the eight-year term did not commence until January 1996.

### a. Central District

Chief Justice Sydney Smith (age 47)<sup>78</sup> of Lexington was challenged by former Governor Andrew Houston Longino (age 62) of Monticello and Jackson. Smith had been appointed by Governor Edmund Noel in 1909 after serving three years as a circuit court judge in Holmes County, Smith's and Governor Noel's home county.<sup>79</sup> In 1914 and 1915, Smith had been president of the Mississippi State Bar Association.<sup>80</sup> The challenger Longino had been governor from 1900-1904. In 1903, Longino lost a race against United States Senator Hernando Money,<sup>81</sup> practiced law in Jackson, and after Woodrow Wilson's election as president in 1912, may have mounted a failed campaign to be appointed to a proposed new federal trial judgeship.<sup>82</sup>

A Jackson newspaper, a week before the primary, said that the candidates were "making a genteel, dignified and harmonious campaign against each other."<sup>83</sup> Some Longino campaign advertisements focused on his record as governor, including the establishment of "Parchman Convict Farm" which had grown from an \$80,000 state investment to being worth a million dollars, and also told voters that he had years earlier served as a chancellor.<sup>84</sup> Chief Justice Smith emphasized his judicial credentials, and the need for continuity on the supreme court.<sup>85</sup> A Smith advertisement printed June 9, 1916 stated that "it was not until a few days ago that he became aware that he would meet with opposition and will not base his candidacy either on personal or factional grounds."<sup>86</sup> One newspaper stated that Longino entered the race late and had not much time to canvass the district.<sup>87</sup> Longino at least had as much time to campaign as Smith, who began an active campaign only after the July 10 recess of the court, though he did some near-Jackson campaigning even in June.<sup>88</sup> In some advertisements Smith referred to the absence of public interest in the race, and argued against the "rule of rotation" in office that should have "no application . . . to Supreme Court judges."<sup>89</sup>

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78. The age, city of residence, and at times other information is given for each candidate. To avoid burdening the Article with even more source references, a summary citation is made here. The information comes from newspaper articles regarding the campaign, biographical sketches of the successful candidates that appear in *The Mississippi Official and Statistical Register* or John Ray Skates, Jr., *A History of the Mississippi Supreme Court*, from biographical files at the Mississippi Department of Archives and History, or from the records of the Mississippi State Bar Association.

79. SKATES, *supra* note 15, at 95 (1973).

80. Skates, *supra* note 15, at 95.

81. KIRWAN, *supra* note 70, at 148-149.

82. Letter of March 3, 1914, in A. H. Longino subject file, Mississippi Department of Archives and History, from an unknown author to President Wilson, copy to Longino, suggesting that Longino be considered for a new federal district judgeship. Besides not revealing the author, the letter also does not suggest whether the contact with President Wilson was at Longino's urging. The position was not created. FRANK E. EVERETT, JR., *FEDERAL JUDGES IN MISSISSIPPI, 1818-1968*, at 7 (1968).

83. *The Judicial Race is Getting Very Lively*, JACKSON DAILY NEWS, Aug. 7, 1916, at 8.

84. *Ex-Governor Longino for Supreme Court Judgeship*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 13, 1916, at 6.

85. Sydney Smith advertisement, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 13, 1916, at 11.

86. *Judge Sydney M. Smith Announces*, JACKSON DAILY NEWS, June 9, 1916, at 8.

87. *Very Few Surprises in the Election of Tuesday*, JACKSON DAILY NEWS, Aug. 16, 1916, at 1.

88. *Supreme Court will Adjourn on July 10 . . .*, JACKSON DAILY NEWS, June 13, 1916 at 8; untitled article, MADISON COUNTY HERALD (Canton, Miss.), June 23, 1916, at 2.

89. *Why Justice Smith Should Be Retained*, MADISON COUNTY HERALD (Canton, Miss.) Aug. 11, 1916, at 5.

The Chief Justice closed his campaign in Jackson on the Monday before the election by returning on the “7:25” train from Newton, where he had spoken after earlier speeches in Decatur and Meridian.<sup>90</sup> It would appear that both candidates ran traditional speech-making, constant-travel campaigns. Smith won the August 15 primary with 10,886 votes to Longino’s 8323.<sup>91</sup>

#### b. Central District

Justice Clayton D. Potter of Jackson (age 36), a state senator who managed Bilbo’s 1915 campaign, was appointed by Governor Bilbo in January 1916 to one of the three new judgeships.<sup>92</sup> By February, Assistant Attorney General and former legislator George Ethridge (age 45) of Meridian, and Canton attorney Harry B. Greaves (age 49) were in the race.<sup>93</sup> Robert Bond Campbell (age 63) of Greenville, oldest son of former Chief Justice J. A. P. Campbell, publicly flirted with running, but eventually declined to do so.<sup>94</sup> Eight members of the Lexington bar “announced” ex-governor Edmond F. Noel (age 60) of Lexington as a candidate in early January; the article implies Noel’s agreement to the race.<sup>95</sup> On March 30, Noel revealed that though he had been making plans to run, demands of his law practice prevented him from doing so.<sup>96</sup> Ethridge had announced for the court even before the governor made his three appointments.

One newspaper said that Greaves was “not an aggressive campaigner” and would not be a factor.<sup>97</sup> Nonetheless, a total of 455 signatures were affixed to a petition circulated in Madison County, including all local attorneys and many public officials, demonstrating public support for him.<sup>98</sup>

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90. *Judge Smith Will Be Re-elected*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 15, 1916, at 4.

91. *Executive Committee Declares Votes*, JACKSON DAILY NEWS, Aug. 23, 1916, at 2. The normal source for election returns in this period, the quadrennial *Mississippi Official and Statistical Register*, does not have primary results for the supreme court races in 1916, 1922, 1924, and 1928. In addition to the *Register* published by the Department of Archives, the secretary of state for decades published a *Biennial Report* that was submitted to the legislature and contained many election returns, some of which were not in the *Register* (there was no *Register* from 1928-1949, and for that period the Secretary’s *Biennial Report* is the only source). The reports for the relevant years provide the missing returns except for those of 1916. The secretary of state’s office has one volume that combines its reports for the 1909-1925 period, bound together many years ago. No *Biennial Report* for 1915-1917 is in that volume, nor does the Department of Archives library have the report. It appears none was printed. Used as a substitute were newspaper reports of the State Democratic Party Executive Committee meetings at which the results were certified a week after the primary and the run-off in 1916.

92. *Potter, Holden, Sykes New Judges*, JACKSON DAILY NEWS, Jan. 26, 1916, at 3; *Very Few Surprises in the election of Tuesday*, JACKSON DAILY NEWS, Aug. 16, 1916, at 1.

93. *Judge Paul Johnson is Not a Candidate*, JACKSON DAILY NEWS, Feb. 10, 1916, at 8. Ethridge was one of a handful of twentieth century justices who never attended law school.

94. *R. B. Campbell May Aspire to Judgeship*, JACKSON DAILY NEWS, Mar. 14, 1916, at 8; *A New Candidate for Supreme Court Judge*, JACKSON DAILY NEWS, Mar. 20, 1916, at 8.

95. *Supreme Judgeships in Limelight*, JACKSON DAILY NEWS, Jan. 5, 1916, at 8. Noel served as governor from 1908-1912. A later article stated that Noel would be a candidate in the northern district, which is not where he lived. *Judge Paul Johnson is not a Candidate*, JACKSON DAILY NEWS, Feb. 10, 1916, at 8. His withdrawal in March noted his consideration of a central district race, but did not state which of the two positions he would have sought. Since Noel had appointed Sydney Smith to the court and both men were from Lexington, I have assumed that Noel was focusing on the seat held by Justice Potter.

96. *Ex-Governor Noel is Not a Candidate*, DAILY CLARION-LEDGER (Jackson, Miss.), Mar. 31, 1916, at 6.

97. *The Judicial Race is Getting Very Lively*, JACKSON DAILY NEWS, Aug. 7, 1916, at 8.

98. *Vote for H. B. Greaves for Supreme Court Justice*, MADISON COUNTY HERALD (Canton, Miss.), Aug. 4, 1916, at 5.

Justice Potter was an appointee of Governor Bilbo. Ethridge was a friend, ally, and employee of Attorney General Ross Collins. The two candidates thus were proteges of men who were at war with each other.<sup>99</sup> It seems likely that a substantial part of the campaign for Potter and Ethridge was coordinated through the Bilbo and Collins network of supporters. Campaigning was underway at least by June, with Greaves “being absent from his home” campaigning the week of June 11.<sup>100</sup> Bar associations and public officials from the eastern part of the state endorsed Ethridge,<sup>101</sup> and similar endorsements were given to the others.<sup>102</sup>

The first primary on August 15 had these results:

George Ethridge	8116
Clayton Potter	6363
Harry Greaves	4935 <sup>103</sup>

Greaves had done surprisingly well. Ten days after the primary, Governor Bilbo issued a statement responding to “certain newspapers and political manipulators,” and said that his assistance to Potter had been limited to writing four or five letters that Potter had requested.<sup>104</sup> Both Potter and Ethridge had sought the appointment to the court that Bilbo gave to Potter, and Bilbo decided upon Potter because Ethridge already had a good state position at the attorney general’s office.<sup>105</sup> He would be happy with either candidate, and was leaving for Biloxi “where [he] hope[d] to remain until the campaign” was over.<sup>106</sup> The Bilbo issue continued to be hammered. On the day of the run-off, a pro-Ethridge advertisement was placed that reprinted a letter allegedly sent by Jackson Mayor Swep Taylor, a Bilbo man.<sup>107</sup> The letter, addressed to “Friend,” stated that Justice Potter needed the help of those who had worked with Taylor in “many exciting and successful campaigns since 1910.”<sup>108</sup> The argument of the advertisement was that this letter proved that the Bilbo “machine,” which also included Lieutenant Governor Lee Russell, was hard at work on Potter’s behalf.<sup>109</sup>

Ethridge alleged that Potter had promised when accepting the governor’s January appointment that he would not be a candidate for a full term, and had even written a letter to Ethridge so stating.<sup>110</sup> Ethridge also alleged that the youthful judge only wanted a short stint on the court to improve his law prac-

99. *Very Few Surprises in the Election on Tuesday*, JACKSON DAILY NEWS, Aug. 16, 1916, at 1; *Bilbo and Collins in a Political Struggle*, JACKSON DAILY NEWS, Sept. 4, 1916, at 8.

100. Untitled article, MADISON COUNTY HERALD (Canton, Miss.), June 16, 1916, at 2.

101. *Candidate for Supreme Court*, MADISON COUNTY HERALD (Canton, Miss.), Aug. 11, 1916, at 1.

102. Ethridge advertisement, JACKSON DAILY NEWS, Sept. 1, 1916, at 2; Potter advertisement, JACKSON DAILY NEWS, Sept. 1, 1916, at 4.

103. *Executive Committee Declares Votes*, JACKSON DAILY NEWS, Aug. 23, 1916, at 2.

104. *Bilbo Refused to be Dragged into Race*, MADISON COUNTY HERALD (Canton, Miss.), Aug. 25, 1916, at 8.

105. *Id.*

106. *Id.*

107. *The Bilbo Faction is Very Active in Supreme Court Judgeship Race*, DAILY CLARION-LEDGER (Jackson, Miss.), Sept. 5, 1916, at 5.

108. *Id.*

109. *Id.*

110. Ethridge advertisement, JACKSON DAILY NEWS, Sept. 1, 1916, at 2.

tice.<sup>111</sup> Unlike Potter, Ethridge asserted that he was paying all expenses of the campaign himself without “powerful influences and office holders.”<sup>112</sup>

In the September 5 run-off primary, Ethridge had a handsome victory:

George Ethridge	9585
Clayton Potter	6182 <sup>113</sup>

#### c. Southern District

Justice John Burt Holden (age 43) of McComb City was appointed to the supreme court by Governor Bilbo on January 26, 1916. In early February, circuit judge and future congressman and governor Paul B. Johnson (age 36) of Hattiesburg announced that he would not run, after having been “regarded as a very likely candidate.”<sup>114</sup> A large meeting was held in McComb City a few days later to pay tribute to Holden. Besides local dignitaries, in attendance were Lieutenant Governor Lee Russell, Speaker of the House Mike Conner, and other officials from Jackson, who then “returned to Jackson on the late train.”<sup>115</sup> Such powerful support did not initially dissuade Circuit Judge William Houston Hughes (age 47) of Raleigh, who declared as a candidate. In early July, Hughes announced that in deference to Justice Holden, who remained in Jackson until the supreme court’s July recess, Hughes had not begun a campaign until then.<sup>116</sup> After “diligent[ly]” sampling public opinion for a few weeks and not liking what he found, he withdrew near the end of July.<sup>117</sup> At the time of Hughes’s withdrawal, Justice Holden had been making a campaign trip through the district.<sup>118</sup> He was in Wayne County, when he received the good news at Vinegar Bend, while on his way to Yellow Rabbit.<sup>119</sup> It appears that he enlisted the former sheriff in his home county to make “a tour” through the district, at least to make political contacts and perhaps to give speeches.<sup>120</sup> Various county bar associations met to adopt resolutions in his favor.<sup>121</sup> Holden ultimately was elected without opposition.

#### d. Northern District

Chancellor James G. McGowen (age 46) of Water Valley and District Attorney Rush H. Knox (age 37) of Houston challenged Justice Eugene Octave Sykes (age 40) of Aberdeen, who was appointed by Governor Bilbo to a new seat in January.

111. *Id.*

112. *Id.*

113. *Committee Refuses to Hear Salty Charges*, JACKSON DAILY NEWS, Sept. 12, 1916, at 1; and vote totals chart at 7.

114. *Judge Paul Johnson is Not a Candidate*, JACKSON DAILY NEWS, Feb. 10, 1916, at 8. Judge Johnson’s rumored selection by Governor Bilbo for the southern district seat if Justice Steven’s confirmation could be blocked is discussed, *supra* notes 60-64 and accompanying text.

115. *Many Pay Tribute to Justice Holden*, JACKSON DAILY NEWS, Feb. 13, 1916, at 6.

116. *Judge Hughes Will Run for Supreme Court*, JACKSON DAILY NEWS, July 9, 1916, at 2.

117. *Judge Hughes is Out of the Race with Holden*, JACKSON DAILY NEWS, July 25, 1916, at 3.

118. *He is Not Worried About the Opposition*, JACKSON DAILY NEWS, July 10, 1916, at 8.

119. *Judge Holden Gives out Statement*, JACKSON DAILY NEWS, July 26, 1916, at 8.

120. *Judge Holden Strong in Home District*, JACKSON DAILY NEWS, July 13, 1916, at 8.

121. *Bar Meets and Indorses Judge Holden for Supreme Court Bench*, *supra* note 67, at 5.

Sykes had been Bilbo's Monroe County chairman in the 1915 governor's race.<sup>122</sup> Circuit Judge Edwin D. Dinkins (age 49) of Charleston announced as a candidate in March, but withdrew a month later.<sup>123</sup>

Justice Sykes had not previously held public office, but his father had been a circuit judge from 1897-1909 and a legislator before that.<sup>124</sup> By mid-July, Sykes was making a speaking tour of the district, and on one perhaps typical Saturday gave four speeches in four different towns.<sup>125</sup> The Oxford newspaper criticized his two opponents for drawing their salaries as a chancellor (\$3000 per year) and a district attorney (\$2400) while campaigning, and argued that both should resign.<sup>126</sup> The paper also said that District Attorney Knox "has never had any experience as judge; his experience as a lawyer has been very limited and, with all due respect to him, no one ever regarded him as a big lawyer by any means."<sup>127</sup> The Oxford newspaper then said the "people of this county know very little of Judge McGowen; we never heard of his being any very superior judge."<sup>128</sup> To close, the newspaper stated that it doubted McGowen or Knox "ever openly favored the election of judges by the people; they have never favored the rule of the people in politics; they have always voted with the old Convention crowd or politicians in this state . . . ."<sup>129</sup> Before the first primary on August 15, 1916, Justice Sykes was under attack as being a "railroad lawyer . . . supported by lawyers who represent railroads . . . ."<sup>130</sup> His supporters admitted that Sykes in private practice had represented the Mobile & Ohio Railroad and several other railroads, but were quick to add that "for more than two years before his appointment to the supreme court he was not an attorney for any railroad but was on the other side of railroad litigation . . . ."<sup>131</sup> Justice Sykes himself published his own message to the voters that addressed the railroad attorney issue along these same lines.<sup>132</sup> He also disputed the "rich man propaganda" that had been circulated, asserting that "unfortunately for me I have never been able to accumulate any money or property . . . ."<sup>133</sup> Sykes promised to complete the term for which he was running; his opponents, serving in other offices and attempting to move into his, were not fulfilling their obligations to their constituents.<sup>134</sup> It was reported that both challengers had "been on the hustings for some time, and have each made a vigorous canvass" of the thirty-one counties in the district.<sup>135</sup>

122. *Potter, Holden, Sykes New Judges*, JACKSON DAILY NEWS, Jan. 26, 1916, at 3.

123. *Justice E. O. Sykes May Not be Opposed*, JACKSON DAILY NEWS, Apr. 23, 1916, at 5.

124. *Judge E. O. Sykes*, TUPELO J., Apr. 28, 1916, at 4; 1917 Miss. Reg. 346 (1918); E. O. Sykes subject file, Mississippi Department of Archives and History.

125. *Judge Sykes to Speak*, TUPELO J., July 14, 1916, at 5.

126. *Why Judge E. O. Sykes Should be Elected Supreme Court Judge*, TUPELO J., Aug. 4, 1916, at 3, reprint of article in OXFORD EAGLE.

127. *Id.*

128. *Id.*

129. *Id.*

130. *A Card*, TUPELO J., Aug. 4, 1916, at 4.

131. *Id.*

132. *Id.* at 5.

133. *To the Voters of the Northern or Third Supreme Court District . . .*, JACKSON DAILY NEWS, Sept. 2, 1916, at 2.

134. *Id.*

135. *The Judicial Race is Getting Very Lively*, JACKSON DAILY NEWS, Aug. 7, 1916, at 8.

Sykes led the August 15 primary:

Eugene O. Sykes	13,690
Rush H. Knox	11,989
James G. McGowen	5581 <sup>136</sup>

The campaigning continued for the top two contenders for another three weeks.<sup>137</sup> Additional bar association endorsements were made and publicized.<sup>138</sup> Knox was said to be from “the old guard,” meaning the conservative establishment and not the populists, and had been hostile both to Governor Bilbo and former Governor James K. Vardaman.<sup>139</sup> Knox would be elected state attorney general in 1923, but he lost this election.<sup>140</sup> Sykes won with 11,035 votes to Knox’s 10,906, the closest supreme court race of all those of the last eighty years.<sup>141</sup>

At the state Democratic Party Executive Committee’s meeting held the following week to certify the results, Knox claimed election fraud and asked for an investigation. His dictated but not yet transcribed petition stated that he was a man “of moderate means and without the support of the public service corporations, the trusts and combines and the monied powers generally. . .”; he then charged that in Sykes’s home of Monroe County many people were allowed to vote who were not qualified electors; that some reports of returns from precincts were oral and not in writing; and that no clerks had been named for some of the balloting.<sup>142</sup> Though Knox made a brief oral statement, his stenographer was not permitted to read her notes of his dictated petition aloud; a motion was abruptly adopted referring the review of the returns to a subcommittee without allowing Knox a hearing or considering his claims.<sup>143</sup> Later in the day after Sykes was certified as the winner, some committee members stated that the proper route for Knox was to sue within twenty days while others correctly argued that the courts had no jurisdiction over the primaries.<sup>144</sup> Both major Jackson newspapers condemned the committee, one saying that “innocent bystanders realized that the

136. *Executive Committee Declares Votes*, JACKSON DAILY NEWS, Aug. 23, 1916, at 2.

137. *Hon. R. H. Knox*, TUPELO J., Sept. 1, 1916, at 5, which shows a five-town speech schedule for Knox for Saturday, September 2.

138. *Oktibbeha County Bar indorses Judge Sykes to the people of the Northern District . . .*, STARKVILLE NEWS, Aug. 25, 1916, at 2.

139. *Sykes and Potter Lost in the Judicial Primary*, JACKSON DAILY NEWS, Sept. 6, 1916, at 1. The article “announced” Knox’s victory, confident that there was “no likelihood whatever that the official returns will give Justice Sykes the nomination.” *Id.* In fact, Sykes did win.

140. 1924-1928 Miss. Reg. 67 (1925). Another 1916 defeated supreme court candidate would be Knox’s immediate predecessor as attorney general, Clayton Potter, who served from 1923-24. *Id.*

141. *Committee Refuses to Hear Salty Charges*, JACKSON DAILY NEWS, Sept. 12, 1916, at 1.

142. *Sykes Declared Nominee for Judge After Stormy Session*, DAILY CLARION-LEDGER (Jackson, Miss.), Sept. 13, 1916, at 5. Sykes’s hometown paper said that “irregularities which he complained, if found to be true, were of the most trivial nature.” *Judge Sykes Declared Democratic Nominee*, ABERDEEN EXAMINER, Sept. 15, 1916, in MDAH E.O. Sykes subject file.

143. *Committee Refuses to Hear Salty Charges*, *supra* note 141.

144. *Id.* 1908 Miss. Laws ch. 136, codified MISS. CODE ANN. § 6426 (1917), gave a judicial candidate the right to raise claims of fraud to the state party committee, and the committee was authorized to investigate. These rules specifically applied to supreme court primaries. 1916 Miss. Laws ch. 161, codified at MISS. CODE ANN. § 6431 (1917). There was then-recent case law that no court could entertain a challenge to a primary election and all “wrongs and frauds” alleged were for the proper committee of the party to resolve. *Brown v. State*, 44 So. 769 (1907); Nolan Fortenbury, *Legal Control of Party Organization and Powers in Mississippi*, IX Miss. L.J. 204, 211-212 (1936).

Bilbo steam roller had steamed up, was oiled to perfection and that someone was due to be crushed if they got in front of it.”<sup>145</sup> No suit was reported during the next three weeks, and Sykes remained on the court until 1925.<sup>146</sup>

## 2. 1920 & 1922 [2 races]

### a. Northern District 1920 [1 race].

Incumbent Justice Sam Cook (age 65) of Clarksdale was challenged by William D. Anderson (age 58) of Tupelo. Cook was appointed by Governor Earl Brewer in 1912 after serving in the legislature and for two terms as a circuit judge. The challenger Anderson held a brief appointment from 1911-12 on the court, had been a state senator, nine-year mayor of Tupelo, chairman of the Democratic Executive Committee of Lee County for ten years, and ran for the United States Senate in 1910 at what was soon called the “secret caucus” of legislators that chose E. F. Noel, a few years before popular election of senators began.<sup>147</sup> He had also been a vigorous opponent of Governor Theodore Bilbo, including being one of two senate prosecutors seeking to expel Bilbo from the state senate in 1910.<sup>148</sup>

Anderson highlighted his accomplishments as a legislator, especially ways in which he bettered the lives of common people: The “Anderson Road Law” which permitted the first hard-surfaced county roads in the state; the statute that abolished the “fellow servant” rule that would bar railroad liability; and the increase in the wrongful death statute of limitations from one to six years.<sup>149</sup> Anderson also mentioned supreme court decisions that he wrote favoring citizens against corporate interests.<sup>150</sup> His slogan, based on a year’s service on the court eight years earlier, was “He made one of the best Supreme Court Judges this State ever had.”<sup>151</sup>

These two experienced politicians ran a “contest devoid of interest and wholly free of personalities” until less than a week before the election.<sup>152</sup> At a joint appearance in Tupelo, Cook criticized Anderson’s political record, while Anderson stated that it was common knowledge that Cook had become lazy and his opinions were carelessly written.<sup>153</sup> The charges continued when Cook accused Anderson of having taught at a “Negro school,” and Anderson’s response was that the charge was true, but “that he was not the only poor white boy who engaged in that work to earn a living.”<sup>154</sup> Cook also alleged that his opponent was

145. *Sykes Declared Nominee*, *supra* note 142. *A Party Disgrace*, JACKSON DAILY NEWS, Sept. 24, 1916, at 4.

146. A later article mentions the committee squabble but not a suit. *Three Judges Take the Oath of Office*, DAILY CLARION-LEDGER (Jackson, Miss.), Jan. 2, 1917, at 8.

147. 1920-1924 Miss. Reg. 89-90 (1923).

148. KIRWAN, *supra* note 70 at 206.

149. *Anderson, Candidate for Bench*, THE MISSISSIPPI SUN (Charleston, Miss.), July 20, 1920, at 2.

150. *Id.*

151. Anderson advertisement, ABERDEEN WEEKLY, Aug. 13, 1920, at 1.

152. *Five Congressmen will be Chosen in Tuesday’s Primary*, JACKSON DAILY NEWS, Aug. 16, 1920, at 1.

153. *Id.*

154. *Uncertain Weather Conditions Prevail in Voting Districts . . .*, JACKSON DAILY NEWS, Aug. 17, 1920, at 1.

soliciting the support of former Governor Russell, while Anderson returned fire by saying Cook was supported by former Governor Earl Brewer.<sup>155</sup>

Anderson won the August 17, 1920 primary, the first one in which women were permitted to vote, with 18,831 votes to Cook's 12,082.<sup>156</sup> The headline in one paper was "Member of the 'Secret Caucus' Has Come Back in Good Fashion."<sup>157</sup>

b. Southern District 1922 [1 race].

William Henry Cook (age 48) of Hattiesburg, appointed by Governor Russell in 1920 to replace John M. Holden when Holden resigned,<sup>158</sup> had been a circuit judge. His opponent was Edgar M. Lane (age 38) of Raleigh, a member of the legislature since 1916. Lane announced by calling himself a reluctant candidate, yielding to "strong pressure [that] has been brought . . . to induce him to enter the race."<sup>159</sup> He opened a headquarters in Hattiesburg, with his brother Professor W. D. Lane of Lorena in charge.<sup>160</sup> Lane's travels were reported in his hometown paper in Raleigh. As early as the third week of June he was in the southeast part of the state during the week, but was home with the family that weekend.<sup>161</sup> He did not spend much time in his home county, though, and near the election printed an apologetic advertisement saying that he had needed to visit places that did not know him.<sup>162</sup>

After the summer recess of the court began on July 10, 1922, Justice Cook spoke in "as many places as it is possible before the primary."<sup>163</sup> Lane campaigned on his legislative record, publishing a letter from State Superintendent of Education Willard F. Bond stating that Lane was a strong supporter of public education in the legislature.<sup>164</sup> Lane also attacked Cook for being an appointee of Governor Russell, while Lane had "never held public office except that given me by the voters."<sup>165</sup> Implying that Cook was beholden to other politicians, Lane said that he "had no powerful influences behind my campaign, such as men

155. *Id.*

156. U.S. CONST. amend. XIX. 1920-1924 Miss. Reg. 395-96 (1923).

157. *Anderson Victory for Supreme Judge, Member of the 'Secret Caucus' Has Come Back in Good Fashion*, JACKSON DAILY NEWS, Aug. 19, 1920, at 6.

158. In October 1920, Stevens and Major W. Calvin Wells began a Jackson law firm. In 1930 Stevens began practicing with his namesake son. When that son died in 1946, he along with son Phineas formed a partnership with Robert Cannada called Stevens & Cannada, which merged in 1952 with Butler, Snow & O'Mara. In 1997, the firm is the state's largest. Conversation with Robert Cannada (Oct. 9, 1997); W.F. Hyer, *Judge John Morgan Stevens*, in II THE STORY OF JACKSON, 120-23 (1953).

159. *Lane Enters Race for Judgeship*, SMITH COUNTY REFORMER (Raleigh, Miss.), June 15, 1922, at 2.

160. Untitled article, SMITH COUNTY REFORMER (Raleigh, Miss.), Aug. 3, 1922, at 2.

161. Untitled article, SMITH COUNTY REFORMER (Raleigh, Miss.), June 22, 1922, at 4.

162. Lane advertisement, SMITH COUNTY REFORMER (Raleigh, Miss.), Aug. 10, 1922, at 2.

163. *The People on Trial*, THE SEMI-WEEKLY LEADER (Brookhaven, Miss.), Aug. 2, 1922, at 4, reprinted from HINDS COUNTY GAZETTE; article is in Supreme Court Elections 1920-1929 subject file, Mississippi Department of Archives and History.

164. *State Superintendent Bond Commends Work of Edgar M. Lane in the Legislature*, HATTIESBURG AM., Aug. 3, 1922, at 11.

165. Lane advertisement, HATTIESBURG AM., Aug. 10, 1922, at 8.

already in public positions lining up their friends.”<sup>166</sup> Both men had endorsements from public officials and bar associations in their areas.<sup>167</sup>

Voters could cast two separate votes in this race, but not all did. One was a choice between the two men for the rest of the partial term Cook was filling until January by appointment. The winner of that vote would serve from January 1923 until May 1924. The other balloting was for the next full term. Justice Cook won a sweeping majority of about 10,000 votes in balloting on the short term, but his majority was 1450 votes less on the long one. A close race could have made that drop-off disastrous for Cook.

Short term: William H. Cook	29,483	Full term: William H. Cook	27,531
Edgar M. Lane	19,726	Edgar M. Lane	19,239. <sup>168</sup>

Cook had been backed by some strong political forces, including Congressman Paul B. Johnson.<sup>169</sup> About three weeks before the election, a news story appeared that the campaign’s “paramount issue is trusts and combines. The issue also seems to be the pregnant one in the race for United States senator. . . .”<sup>170</sup> Representative Lane was described as chairman of the “powerful committee on insurance” and on a “very important conference committee,” while Cook was merely described as a judge who could not do much campaigning until the supreme court recessed July 10. The implication is that Lane was the “trusts and combines” man.<sup>171</sup> After the election, a syndicated columnist wrote that the attempt made by various

trusts and combines in a number of districts throughout the state, to elect judges and chancellors, and a supreme court judge, failed in every instance. Chancellor Stricker of the Fifth Chancery or capital district of Mississippi, who penalized the alleged fire insurance trust sued by State Revenue Agent Stokes V. Robertson, over \$8,000,000, was re-elected and in the southern supreme court district where trusts and combines were an issue, it is stated, Judge W. H. Cook was re-elected by 10,000 majority . . . .<sup>172</sup>

The implication that Lane was big business’s candidate may have been valid, but political assertions in newspapers of this period should be viewed cautiously.

166. *Id.*

167. Lane advertisement, HATTIESBURG AM., Aug. 5, 1922, at 8; Cook advertisement, HATTIESBURG AM., Aug. 11, 1922, at 5.

168. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, OCT. 1, 1921- OCT. 1, 1923 at 128. Two separate votes were needed because an appointment to a vacancy expired the first Monday in January after the election. 1916 Miss. Laws ch. 161. In addition to the election for the vacancy, the regular election for the next full term was in 1922, even though the term did not begin until May 1924.

169. Cook advertisement, FREE PRESS (Poplarville, Miss.), Aug. 10, 1922, at 5; Johnson’s name appears along with Forrest County elected officials and attorneys.

170. *The People on Trial*, *supra* note 163, at 4. “Combines” also allegedly were sponsors of a 1922 initiative that would discourage the State Revenue Agent’s pursuit of anti-trust penalties. Leslie Southwick & C. Victor Welsh, *Methods of Constitutional Revision: Which Way Mississippi?*, 56 Miss. L.J. 17, 46 n.119 (1986).

171. *Id.* *The People on Trial*, *supra* note 163, at 4. If “trusts and combines” wanted to help Lane, it may be because Cook had endorsed the State Revenue Agent’s aggressive assumption of authority to sue under the state’s antitrust laws. *Aetna Ins. Co. v. Robertson*, 88 So. 883,888-890 (Miss. 1921). *See also* note 172.

172. F. R. Birdsall, *News and Views from State Capital*, FREE PRESS (Poplarville, Miss.), Sept. 1, 1922, at 6. The \$8,000,000 fine was levied against 147 fire insurance companies for rate collusion; the supreme court reversed. *Aetna Ins. Co. v. Robertson*, 95 So. 137, 139 (Miss. 1923) (opinion on sugg. of error).

## 3. 1924 [4 races]

## a. Central District

Chief Justice Sydney Smith (age 55), on the court since 1909, was unopposed, the only time in his four races that he had no opposition.<sup>173</sup>

## b. Central District

Justice George H. Ethridge (age 53), finishing his first term, was unopposed.

## c. Southern District

Justice John B. Holden (age 51), appointed and then elected in 1916, was unopposed.

## d. Northern District.

James Greer McGowen (age 54) of Water Valley, for ten years a chancellor, and Charles Phillip Long (age 58) of Tupelo, a circuit judge for five years, ran for the seat being vacated by E. O. Sykes, who was retiring.<sup>174</sup> Judge Long announced by January 1, 1924, saying that "his platform is law enforcement and stability of court decisions."<sup>175</sup> He spent several days campaigning in Greenwood in early January,<sup>176</sup> but no report of his personal campaigning after that was discovered. By the end of January, Judge Long was criticized by a Greenwood columnist called "Th Ole Grouch" for sentencing a ten year-old boy to ten years in prison for burglary. The new governor had just used his first pardon to have the boy released. The writer referred to Long's supreme court aspirations by saying "God pity the state, if the voters can find it in their hearts to elect him."<sup>177</sup> Judge Long wrote a long published response that explained that 1) the boy was almost thirteen; 2) he had committed prior serious criminal acts; 3) the judge had initially sentenced him for the burglary to the state reformatory, but on the same day as sentence was pronounced the boy burned down the jail; and 4) the prison sentence was two years, not ten.<sup>178</sup>

Chancellor McGowen was in the race at least by mid-February. At the opening of McGowen's court in Hernando on February 11, 1924, Judge Long apparently was present and with some levity to his remarks addressed those in attendance. McGowen answered by highlighting his experience on the bench.

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173. Smith served one term by appointment (1909-1918) and won four elections. Once the deadline passed for candidates to file, a Jackson newspaper wrote a glowing article about the three justices who were running unopposed. A. C. Walthall, *Judges Smith, Holden and Ethridge, Three Members State Supreme Court Nominated for Reelection Unopposed*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 5, 1924, at 9.

174. Sykes went into private law practice in Jackson, then in March 1927 was appointed by President Coolidge to the Federal Radio Commission. He remained there until President Roosevelt appointed him the first Chairman of the Federal Communications Commission in 1934. He left office in 1939 and joined a Washington law firm. Edwin Meek, *Eugene Octave Sykes* 36 J. MISS. HIST. 377-87 (1974); E.O. Sykes subject file, Mississippi Department of Archives and History.

175. *Judge C. P. Long Makes Canvass*, GREENWOOD DAILY COMMONWEALTH, Jan. 4, 1924, at 1.

176. *Id.*

177. *Views*, GREENWOOD DAILY COMMONWEALTH, Jan. 26, 1924, at 1.

178. *Judge Long Explains Sentence of Boy*, GREENWOOD DAILY COMMONWEALTH, Feb. 5, 1924, § 2 at 1.

[He then] said to his opponent that the work of this office was a serious undertaking and that he did not want the office on his ability to tell amusing jokes. He criticized his opponent for the light manner in which he appeared to hold the power of the office. A large crowd gave the speech close attention.<sup>179</sup>

What Judge Long said is unknown, but the fact that years later at his death he was labeled “colorful,” “one of Tupelo’s best known and most interesting characters,” and a fascinating raconteur, suggests that he brought life and wit to his talks.<sup>180</sup> McGowen apparently could not take a joke.

Any kind of news on the race was extraordinarily rare. Two local endorsements of McGowen appeared in the spring.<sup>181</sup> In the last issue before the election, a paper in McGowen’s home county urged support for him; the writer knew “nothing of the qualifications of Judge Long,” but was certain that McGowen was well-qualified.<sup>182</sup> However, a review of the newspapers of thirteen different cities in the district, published during the last two months leading up to the election, revealed only three advertisements for either man and no news stories.<sup>183</sup> Two of the ads were McGowen endorsements, one by a Parent Teacher Association and the other, which may have been a news story and not an advertisement (the line between the two was not always clear), by DeSoto County lawyers and elected officials.<sup>184</sup> The third advertisement was “[p]ublished and paid for by the friends of C. P. Long without his knowledge or consent.”<sup>185</sup> The advertisement read: “[Judge Long has served] in the interest of law and order, church and society. He has paid a contribution to the safety of homes and youths that no other man has ever paid in this county. It has cost him heavily by those who oppose his law enforcement program.”<sup>186</sup>

It is apparent that both men engaged in some personal campaigning, but eschewed advertising. Perhaps they even entered into an agreement not to advertise, which may explain the defensive tone of the advertisement placed without

179. *Judge McGowen Speaks*, THE TIMES-PROMOTER (Hernando, Miss.), Feb. 14, 1924, at 1.

180. *Judge C.P. Long Dies Here at 76*, TUPELO DAILY J., June 22, 1940, at 1; though the headline said he was 76, his year of birth was stated to be 1866.

181. *Judge McGowen’s Endorsement*, THE TIMES-PROMOTER (Hernando, Miss.), Feb. 28, 1924, at 1 (local lawyers and officials); *Judge McGowen Endorsed*, NORTH MISS. HERALD (Water Valley, Miss.), Apr. 11, 1924, at 2 (local P.T.A.).

182. *The Candidacy of Judge J. G. McGowen*, THE COFFEEVILLE COURIER, Aug. 15, 1924, at 1.

183. *The Aberdeen Weekly*, *Choctaw Plain Dealer* (Ackerman, Miss.), *Monitor Herald* (Calhoun City, Miss.), *The Conservative* (Carrollton, Miss.), *The Webster Progress* (Eupora, Miss.), *Greenwood Daily Commonwealth*, *The Times-Promoter* (Hernando, Miss.), *New Albany Gazette*, *Oxford Eagle*, *Southern Reporter* (Sardis, Miss.), *Tupelo Journal*, *North Mississippi Herald* (Water Valley, Miss.), and the *West Point Leader*, all published in the district, and the statewide *Jackson Daily News*, all failed to report any details of the race in the June through August period, other than a few in late August which reminded voters that a supreme court election would be held. Some copies of the newspapers were missing from the microfilm collections that were examined. The last two pre-election issues of McGowen’s hometown paper, the *North Mississippi Herald* (Water Valley, Miss.) were missing from the collection examined, and perhaps a story appeared there. One paper outside the district that gave some attention to the race was the *Daily Clarion-Ledger*. Still, it had a story about the low interest in the various political contests, and then listed the United States Senate, congressional, and highway commission races and overlooked that there even was a supreme court race. *Election Tuesday to Bring Only Few Votes to Poll as Little Interest Shown*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 17, 1924, at 3.

184. *P. T. A. Endorses Judge McGowen*, CLARKSDALE DAILY REGISTER, Aug. 12, 1924, at 4.; *Friends Endorse Judge McGowen for the Supreme Court*, CLARKSDALE DAILY REGISTER, Aug. 18, 1924, at 3.

185. *A Fearless Defender of Society*, BOONEVILLE BANNER, Aug. 15, 1924, at 4.

186. *Id.*

Long's "knowledge or consent." As the campaign drew to a close, articles mentioned that "voters are little interested in the outcome" and that "very little attention is being paid to the race for Supreme Court justice . . . ."<sup>187</sup> One article referred to the candidates and stated that "[n]either has engaged in a very active campaign."<sup>188</sup> The Greenwood newspaper said that so few voters "know that the race is on" that the winner would be "according to whichever name is the easier to mark on the ballot."<sup>189</sup> These newspapers ignored the race other than to discuss how much the race was ignored. Citizens had no help from the press in making a decision on this race, but that was the case for many early judicial races.

Judge McGowen, a loser to Justice Sykes in 1916, narrowly succeeded in replacing him in 1924. The vote on August 19 was McGowen 18,468; Long 16,681.<sup>190</sup>

#### 4. 1916-1925 Summary

There were ten elections. One incumbent retired effective at the end of his term (Sykes, 1924), and two people competed for the succession. In the other nine races, four incumbents were unopposed and five were challenged. Of the five, two (Potter, Sam Cook) were defeated. One justice (Stevens) resigned during his term, allowing a successor to be named by the governor. There are no useful contribution or expenditure figures.

#### B. 1926-1935

##### 1. 1928 [2 races]

###### a. Southern District

Justice W. Joe Pack (age 53) had been appointed by Governor Dennis Murphree in January 1928, filling the vacancy caused by Justice J. B. Holden's death. Pack had been in private practice in Laurel and had previously been county attorney.<sup>191</sup> He was challenged by Chancellor Virgil A. Griffith (age 54) of Gulfport, author of the famed *Griffith on Chancery*, and by Judge Richard Wirtz Cutrer (age 52) of Magnolia, a chancellor since 1913.<sup>192</sup> The race was for the remaining four years of Holden's term.

Griffith conducted an active campaign, complete with a campaign manager named Henry Clay Yawn who was a state senator and later would be state trea-

187. *Apathy in the Pending Primary*, ABERDEEN WEEKLY, Aug. 8, 1924, at 4; *County Voters Going to Polls*, GREENWOOD DAILY COMMONWEALTH, Aug. 19, 1924, at 1; *Interest Lags in Tuesday's Primary*, THE COFFEEVILLE COURIER, Aug. 15, 1924, at 1.

188. *Democrats Hold Primary Tuesday*, THE CONSERVATIVE (Carrollton, Miss.), Aug. 15, 1924, at 1. Another paper said that both candidates were "now vigorously campaigning their expansive territory," but considering that the article is an encomium of Justice Sykes, who was retiring, it can be assumed that the writer was not reporting as much as he was praising. *Justice Sykes to Retire in January, Next, Two Lawyers Making Campaign to Succeed*, DAILY CLARION-LEDGER, (Jackson, Miss.), Aug. 7, 1924, at 2.

189. *County Ready for Primaries*, GREENWOOD DAILY COMMONWEALTH, Aug. 18, 1924, at 1.

190. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, OCT. 1, 1923- OCT. 1, 1925 at 113.

191. SKATES, *supra* note 15, at 85. Pack was another supreme court justice who never attended law school.

192. Cutrer advertisement, MCCOMB DAILY ENTER., July 31, 1940, at 5. The first edition of Griffith's book was published in 1925. GEORGE D. WARNER, JR., WARNER'S GRIFFITH MISSISSIPPI CHANCERY PRACTICE at v (1991).

surer, and with at least one assistant manager.<sup>193</sup> There was at least one three-candidate debate, held in Hattiesburg a week before the election, and perhaps others.<sup>194</sup> As usual, local bar associations and public officials endorsed their own.<sup>195</sup> Justice Pack sought some sympathy from the voters by pointing out in advertisements that he had given up a twenty-five year law practice in order to accept the appointment in January.<sup>196</sup>

Griffith's advertisements focused on his substantial contribution to the law, such as "for no personal gain he has written a book on Chancery Procedure," and had codified the state statutes.<sup>197</sup> The first primary campaign that ended on August 21, 1928 had been tame, with these results:

W. J. Pack	18,536
V. A. Griffith	16,767
R. W. Cutrer	10,966. <sup>198</sup>

Two days after the primary, Governor Bilbo in a prepared statement released to the press announced that he would support Chancellor Griffith.<sup>199</sup> Cutrer published an expression of thanks to the voters, but no endorsement of another candidate appeared.<sup>200</sup> Four days after the first primary Griffith's headquarters issued this statement:

Judge Griffith's friends are aroused and indignant of the fact that on election day the report was circulated in certain sections where it was thought that it would be most effective that Judge Griffith was a Catholic. Those who circulated it knew it was false.<sup>201</sup>

As the second primary contest proceeded, Griffith renewed the charges of dirty politics.<sup>202</sup> The whisper campaign that Griffith was Catholic may have been some Pack supporters' attempt to tie into the anti-Catholic sentiment aroused by the Democratic Party's nomination that same summer of Catholic Al Smith of New York for President. In 1924, the Republican President Calvin Coolidge received approximately 8000 Mississippi votes, but in 1928 the Republican Herbert Hoover would receive 27,000 against Smith.<sup>203</sup> The Ku Klux Klan in some states became disturbingly involved in arousing anti-Catholic feeling.<sup>204</sup> Thus it appears the Catholicism issue (as well as the related issue of prohibition) had some impact in Mississippi as in many other states. Governor Bilbo was one of the Democrats speaking out strongly for Smith and decrying making Catholicism

193. *Supreme Court Candidates in Debate Tonight*, HATTIESBURG AM., Aug. 18, 1928, at 8.

194. *Id.*

195. Griffith advertisement, DAILY HERALD (Biloxi, Miss.), Aug. 20, 1928, at 3.

196. *Supreme Court Candidates in Debate Tonight*, *supra* note 193, at 8.

197. Griffith advertisement, DAILY HERALD, *supra* note 195, at 3.

198. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, OCT. 1, 1927 - OCT. 1, 1929 at 134.

199. *Bilbo Declares Griffith Best Man for Judge*, HATTIESBURG AM., Aug. 24, 1928, at 1.

200. Cutrer advertisement, HATTIESBURG AM., Aug. 25, 1928, at 8.

201. *Victory for Griffith Seen*, DAILY HERALD (Biloxi, Miss.), Aug. 25, 1948, at 1.

202. Griffith advertisement, HATTIESBURG AM., Aug. 30, 1928, at 7.

203. STEFAN LORANT, *THE GLORIOUS BURDEN* 1079 (1976).

204. MATTHEW AND HANNAH JOSEPHSON, *AL SMITH: HERO OF THE CITIES*, 381-82 (1969).

an issue. Bilbo said there was “no such monstrosity” as a “Hoover Democrat.”<sup>205</sup> The Governor was not only campaigning for Al Smith, he was publicly speaking for Griffith.<sup>206</sup>

Both Griffith and Pack continued organizational work, such as Pack’s meeting with supporters in the Forrest County courthouse on the Monday after the first primary to organize that strong Pack area.<sup>207</sup> Another kind of organizational approach was discussed by a candidate in the run-off for state highway commissioner, which encompassed the same counties as the supreme court race. Julius Moody stated that he would make no trades to receive votes through other candidates’ campaign network, and that he would not be involved with “‘vote swapping’ in the back room.”<sup>208</sup> Whether that generally occurred was not reported.

The campaign closed with charges and counter-charges. Griffith published advertisements in some weekly newspapers the Thursday before the Tuesday, September 11, 1928 run-off. They accused Pack of violating an agreement both men and Judge Cutrer had signed on July 16 not to use paid campaign workers after that date, nor to pay such workers’ expenses. Other rules that were allegedly violated were that there would be no speeches made other than by the candidate or the campaign manager, nor any literature published the last week of the campaign.<sup>209</sup> The allegation that Pack was spreading the false Catholic charge was renewed.<sup>210</sup> Pack responded that Griffith was making “eleventh hour” charges against him that he categorically denied.<sup>211</sup>

Both Griffith and Pack published notices that they would carry voters to the polls if they would call; the phone number for Griffith headquarters in Hattiesburg was, in that simpler time, 224.<sup>212</sup> Griffith won a narrow victory, 21,497 to Pack’s 19,687.<sup>213</sup> The next year Pack was elected a circuit judge, a position he held until he died in 1939.<sup>214</sup>

The *Daily Herald* lamented the cost of the campaign just passed.<sup>215</sup> After acknowledging a citizen preference to elect public officials, the paper stated that the premise for elections, that the “poor man” got a chance for office, was ludicrous:

On the contrary, he either bankrupts himself, his relatives and friends, for money to make his “try,” or he fails; probably both. At any rate, it would be a small estimate to say that the candidates for Congress in the first primary spent from \$2,000 to \$5,000; those in the run-off spent a total of \$7,000 to \$10,000. It might be more or less, but is ruinous to the three men eliminated, neverthe-

205. *Bilbo Urges Party Loyalty*, DAILY HERALD (Biloxi, Miss.), Sept. 7, 1928, at 1; *Hoover Democrat*, DAILY HERALD (Biloxi, Miss.), Sept. 8, 1928, at 4.

206. *Governor Bilbo Brings His Message to Capacity Crowd*, DAILY HERALD (Biloxi, Miss.), Sept. 8, 1928, at 1.

207. *Judge Pack’s Friends Form Organization*, HATTIESBURG AM., Aug. 28, 1928, at 1.

208. Editorial, *No Trading*, HATTIESBURG AM., Sept. 1, 1928, at 10.

209. Griffith advertisement, HATTIESBURG AM., Sept. 8, 1928, at 9.

210. *Id.*

211. Pack advertisement, HATTIESBURG AM., Sept. 8, 1928, at 3.

212. *Special Notice*, HATTIESBURG AM., Sept. 10, 1928, at 1.

213. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, OCT. 1, 1927 - OCT. 1, 1929 at 141.

214. SKATES, *supra* note 15, at 85.

215. *Id.*

less. The candidates for the Supreme Bench in this district — even those who lost — must have spent from \$10,000 to \$25,000.<sup>216</sup>

#### b. Northern District

Justice William D. Anderson (age 66), on the bench for eight years, was unopposed.

#### 2. 1930 [1 race] Southern District

Justice William Cook (age 56), a justice since 1920, was unopposed.

#### 3. 1932 [4 races]

When the races were over, a Jackson newspaper stated that several of the incumbents were “opposed by some of the best lawyers in Mississippi,” but that the urgings of these lawyers had been rejected.<sup>217</sup> It was not evident from the materials reviewed in what races these “best lawyers” involved themselves to defeat incumbents, but it is an intriguing assertion.

#### a. Central District

Chief Justice Sydney Smith (age 63), on the court since 1909, was challenged by Chancellor James L. Williams (age 55) of Indianola. Smith conducted something of a campaign, as he was reported visiting Kosciusko in August as part of what may have been a district-wide tour.<sup>218</sup> Chancellor Williams did little newspaper advertising that was discovered, but in his home-town paper his only argument was that Justice Smith had been in office long enough:

A public office is a public trust. It belongs to no man or set of men. Life-long tenure in office is not best for the people. Changes are at times necessary and best. Our boys and girls would have very little encouragement to spend years in school and college and thousands of dollars for finished education that prepares them to take up certain lines of work, if they knew that there was not a chance to secure a position because it was already filled by one who has been honored with the office for many years. Rotation in office is proper, just and right and the people should always help a deserving man to reach his goal and by so doing lend encouragement to our thousands of professional men and women to strive on for higher ideals and better things . . . .<sup>219</sup>

What else Williams did in his campaign was neither well-noticed nor effective. Chief Justice Smith won the August 23, 1928 primary with 27,065 votes to 13,941 for Williams.<sup>220</sup>

216. Editorial, *The Cost of the Primary*, DAILY HERALD (Biloxi, Miss.), Sept. 12, 1928, at 4.

217. *People Well-Qualified to Select State Officials*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 25, 1932, at 6.

218. *Judge Sidney Smith will be Overwhelmingly Elected*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 14, 1932, at 18.

219. *Judge J. L. Williams Candidate for Supreme Court Judge*, INDIANOLA ENTER., Aug. 18, 1932, at 2.

220. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1931- JULY 1, 1933 at 122.

### b. Central District

Justice George Ethridge (age 61), on the supreme court since 1917, was unopposed.

### c. Southern District

Justice Virgil Griffith (age 58) was opposed by Circuit Judge Harvey McGehee (age 45) of Columbia. Griffith had four years earlier succeeded in a tough race that unseated an incumbent to win the remainder of an unexpired term, and now Griffith was running for a full eight-year term. The coast bar associations and officials again endorsed and presumably worked for him.<sup>221</sup> His steering committee was headed by Chancellor D. M. Russell, and serving on it were such men as Bidwell Adams, who had been Lieutenant Governor until leaving office in January.<sup>222</sup>

Griffith emphasized his hard work and growing reputation as an exceptional judge. His advertisements included these themes: He had been entrusted by the other justices with writing more than his share of the important cases; four of his opinions had been reprinted in *American Law Reports*, a publication reserved for the most significant of the nation's opinions; that number made him rank fourth in the South and twenty-eighth nationwide among all appellate judges.<sup>223</sup> The latter point was somewhat misleadingly abbreviated at times to state that "the best legal minds of the country . . . rate him fourth among all Supreme Court Justices of the South."<sup>224</sup>

McGehee for his part campaigned energetically around the district. By early August he had campaigned in every county, and was that week working hard in Jones and surrounding counties.<sup>225</sup> He advertised his endorsements by Marion County lawyers and public officials and stressed intelligence, hard work, and judicial temperament.<sup>226</sup> He closed his campaign with criticism of two of Judge Griffith's claims. First, he stated that "[e]very member of the bar" knows that *American Law Reports* did not rate judges and consequently Griffith had not been ranked fourth among southern judges; secondly, Griffith was attacking the principle of free and democratic elections by urging perpetuation of a custom to re-elect judges.<sup>227</sup>

Griffith won with 24,495 to McGehee's 21,262.<sup>228</sup> McGehee thanked the voters, and explained that he lost because of confusion and a light turnout by voters

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221. *Bar Indorses V. A. Griffith*, THE DAILY HERALD (Biloxi, Miss.), Aug. 13, 1932, at 1.

222. *Id.*

223. Griffith advertisement, THE DAILY HERALD (Biloxi, Miss.), Aug. 20, 1932, at 8.

224. Griffith advertisement, HATTIESBURG AM., Aug. 22, 1932, at 7.

225. *Judge McGehee's Election is Assured*, THE COLUMBIAN (Columbia, Miss.), Aug. 11, 1932, at 1.

226. *Home Folks Endorse Candidacy of Harvey McGehee*, HATTIESBURG AM., July 27, 1932, at 10, reprint of editorial in THE COLUMBIAN (Columbia, Miss.), July 14, 1932, at 4.

227. *Harvey McGehee Issues Final Statement to Voters*, HATTIESBURG AM., Aug. 22, 1932, at 6. The Griffith advertisement being criticized appears as *Clean Campaign is Featured by Judge Virgil A. Griffith*, HATTIESBURG AM., Aug. 20, 1932, at 5.

228. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1931- JULY 1, 1933 at 123.

in the part of the district in which he was strongest and that he shared with Congressman J. W. Collier, who had withdrawn from the Democratic primary in a dispute over redistricting.<sup>229</sup>

#### d. Northern District

Justice James G. McGowen (age 62) of Water Valley, on the supreme court since 1925, was challenged by two-term Chancellor Norfleet Sledge (age 44) of Senatobia, who had served as chancellor since 1925.<sup>230</sup> Justice McGowen ran a campaign emphasizing his bar, civic, and judicial credentials, and that he had “contributed two sons to the World War who saw service in France.”<sup>231</sup> He was endorsed by “all Yalobusha County officers, Ministerial Associations, Bar Associations, and a Majority of All Lawyers in the Northern District.”<sup>232</sup>

The challenger Sledge ran a somewhat populist campaign. His advertisements made assertions such as that he was running “on his own merits and [was] not backed by any machine or political clique,”<sup>233</sup> which implied that Justice McGowen was the opposite. A week before the primary, Sledge charged that “a member of my distinguished opponent’s family has deliberately circulated several false statements . . . . The statement was made by the gentleman that my father employed a substitute for me in the army and that later when I did serve it was only for a few days and that I have since received thousands of dollars in compensation.”<sup>234</sup> To the contrary, Sledge said that he had been severely injured in the army and lay flat on his back for months; though he was entitled to compensation, he never applied for it.<sup>235</sup> Other than responding to charges, Sledge’s theme was that one term for a judge did not entitle him to a second. “Who owns this government,” Sledge asked, “the People or the Servant?”<sup>236</sup> Congressmen, senators, presidents, and even state supreme court justices had fixed terms and were not entitled to a second term just because they had gained the first one.<sup>237</sup> The race was close, but McGowen won with 26,047 to Sledge’s 24,254.<sup>238</sup>

#### 4. 1926-1935 Summary

There were seven elections, each with an incumbent. In three, incumbents were unopposed. Of the four incumbents who were challenged, only one

229. *Judge McGehee Thanks Friends*, THE COLUMBIAN (Columbia, Miss.), Aug. 25, 1932, at 1. McGehee’s local newspaper agreed with his analysis. *Harvey McGehee Gets Overwhelming Vote in Marion County*, THE COLUMBIAN (Columbia, Miss.), Aug. 25, 1932, at 1.

230. *A Candidate on His Own Merits and Not Backed By Any Machine*, OXFORD EAGLE, July 28, 1932, at 4. *Sledge Rites to Be Sunday*, DAILY CLARION-LEDGER (Jackson, Miss.), Mar. 13, 1937, at 1. Sledge was in his first year as the United States Assistant Attorney General in charge of the Department of Claims when he died. The author thanks Sandra Nelms of the Tate County Chancery Clerk’s office and N. R. Sledge of Como, Mississippi for providing the dates of birth and death for Chancellor Sledge.

231. McGowen advertisement, CLARKSDALE DAILY REG., Aug. 20, 1932, at 6.

232. *Id.*

233. *A Candidate on His Own Merits*, *supra* note 230, at 4.

234. Sledge advertisement, CLARKSDALE DAILY REG., Aug. 17, 1932, at 3; same advertisement language, OXFORD EAGLE, Aug. 18, 1932, at 4.

235. *Id.*

236. *Id.*

237. *Id.*

238. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1931- JULY 1, 1933 at 124.

lost(Pack). No incumbent retired effective at the end of his term, and thus there were no open seats. An estimate was made in 1928, of what validity is unclear, that it cost \$7000 to \$10,000 to run for Congress in one of the eight Mississippi districts, but that supreme court candidates spent \$10,000 to \$25,000.<sup>239</sup> There are no contribution or expenditure reports available from this period.

### C. 1936-1945

#### 1. 1936 [1 race] Northern District.

Justice William Anderson (age 74), on the bench since 1921, was unopposed.

#### 2. 1938. [1 race]

Justice Harvey McGehee (age 51) was unopposed. He was appointed by Governor Hugh White in 1937, replacing Justice William H. Cook who died on October 5, 1937.<sup>240</sup> McGehee, a circuit judge in Columbia, had run unsuccessfully against Justice Virgil Griffith in 1932.

#### 3. 1940 [4 races]

##### a. Central District

Chief Justice Sydney Smith (age 71) of Lexington was challenged by Vincent J. Stricker (age 65), who had served as chancellor in Jackson ever since being appointed to a vacancy in 1920. Chief Justice Smith may have known his age would be made an issue and addressed it by stating "I am now at my best mentally and physically . . . ."<sup>241</sup> Smith argued that capable incumbent judges had to be re-elected or else judges would start administering "what passes for justice with an ear to the ground and an eye on the ballot box . . . ."<sup>242</sup> The chief justice's campaign also used the commendations received for his long years of service. Advertisements quoting an *American Bar Association Journal* said:

The numbers of Judges habitually writing masterly opinions in the various Supreme Courts in the period studied, was refreshingly large, and should renew and increase our respect for the Bench . . . but honor to whom honor is due; and it seems appropriate to note here the names of those who had the most frequent opportunities to make valuable contributions in their opinions; in Kansas, Burch; in Maryland, Parke; in Louisiana, O'Neill and Wilson; in Mississippi, Smith.<sup>243</sup>

Judge Stricker's campaign manager, Jackson lawyer Vaughn Watkins, issued a press statement on August 25, 1940 that Stricker and his wife had "canvassed

239. Editorial, *The Cost of the Primary*, DAILY HERALD (Biloxi, Miss.), Sept. 12, 1928, at 4.

240. SKATES, *supra* note 15, at 82-83.

241. *Chief Justice Candidate to Succeed Himself*, JACKSON DAILY NEWS, June 23, 1940, at 4; Smith advertisement, JACKSON DAILY NEWS, Aug. 18, 1940, at 16.

242. *Id.*

243. Smith advertisement, *Answering the Only Issue Raised*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 27, 1940, at 16.

thoroughly three times every one of the 21 counties” in the district, while making all his regular terms of court in his chancery district’s three counties.<sup>244</sup> The awkwardness for attorneys who practice before judges running for election is suggested by two events. One is the publishing of a long list of attorneys practicing in Judge Stricker’s chancery district who endorsed him. Many, no doubt, endorsed Stricker because they genuinely wanted to help his candidacy, but one wonders how many felt that discretion compelled them to do so, since presumably they encountered the chief justice much less frequently than the local chancellor.<sup>245</sup> The other is the announcement from Chief Justice Smith that because so many Jackson attorneys practiced in Chancellor Stricker’s court, he would not ask any of them for a public endorsement.

Chancellor Stricker placed in several newspapers around the district large advertisements regarding his accomplishments as a chancellor. He emphasized, here at the winding down of the Great Depression, the “Stricker liquidation record,” meaning his record of doing his utmost as a chancellor to help business owners, stockholders, and creditors minimize their losses in a business or bank failure.<sup>246</sup> His picture suggests that he resembled the actor Raymond Massey or even Abraham Lincoln, who Massey portrayed in a movie released in January of the campaign year. One advertisement emphasized his striking appearance in Lincolnesque terms: “Shaggy Locks Astray, Bushy Eyebrows, a long, lanky figure, verified the statement once made by the subject of this sketch that ‘it is quite evident that I was not built for ornament.’”<sup>247</sup>

By the last week of the primary, Smith’s age was the only issue.<sup>248</sup> Stricker stated that he himself “is now in the very prime of life as a jurist.”<sup>249</sup> In advertisements on the Sunday before the election, Stricker was blunt. “My opponent has been on the Supreme Bench nearly 33 years and wants 8 more.”<sup>250</sup> Smith would be close to seventy-four years old when his present term expired in January 1942, the advertisement continued, and “in his 82nd year” at the end of the new term that he was seeking.<sup>251</sup> He called it “unwise and undemocratic to allow a judge” to serve so long.<sup>252</sup>

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244. *Stricker Victory Seen in Court Races*, JACKSON DAILY NEWS, Aug. 25, 1940, at 2; after his defeat, Stricker said that his “arduous and continuous duties” as a chancellor had limited his campaigning to 20 days. *Stricker Thanks District Voters*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 29, 1940, at 18.

245. Stricker advertisement, JACKSON DAILY NEWS, Aug. 25, 1950, at 2 (resolutions adopted by lawyers in Hinds, Copiah, and Lincoln counties).

246. Stricker advertisement, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 24, 1940, at 3; also in MERIDIAN STAR, Aug. 22, 1940, at 20.

247. *Id.* The movie, *Abe Lincoln in Illinois*, premiered to a segregated audience in Washington, D.C. in January 1940. *Mrs. F.D.R. Runs Picket Line to See Film*, JACKSON DAILY NEWS, Jan. 23, 1940, at 12. The line in Stricker’s ad that his face was “not made for ornament” sounds Lincolnesque to my ear, which may be the way it was intended to sound. If so, it was not an attempt to remind voters of actual words they may have heard in the movie, as it was not part of the dialogue in the movie (I did not hear them on a rental videotape) nor in the play upon which the movie was based. ROBERT E. SHERWOOD, *ABE LINCOLN IN ILLINOIS: A PLAY IN TWELVE SCENES* (1939). Appreciation is expressed to Roger J. Norton who searched for similar words in several volumes of Lincoln quotes, to no avail.

248. Smith advertisement, JACKSON DAILY NEWS, Aug. 21, 1940, at 12.

249. Stricker advertisement, *A Personal Statement by Judge V. J. Stricker*, MERIDIAN STAR, Aug. 25, 1940, at 14.

250. *Id.*; This advertisement also appeared in the DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 26, 1940, at 8.

251. *Judge V. J. Stricker, Candidate for Supreme Court*, JACKSON DAILY NEWS, Aug. 26, 1940, at 10.

252. *Id.*

Chief Justice Smith responded to the attacks on his physical and mental abilities. Smith said that he found it “remarkably strange that as soon as Judge Stricker raised this issue he discontinued the use of his own picture in the papers, thereby making it impossible for many people to judge for themselves for which of the two men is possessed of the greater virility and physical health.”<sup>253</sup> In fact, Stricker’s age was never mentioned in his advertisements as he attacked Smith for being too old. Smith accurately stated that Stricker was only “six or seven” years younger. Smith closed by saying if Stricker’s age argument prevailed, such eminent United States senators from Mississippi as James Z. George, John Sharp Williams, and others could not have served.<sup>254</sup>

The voters may have been somewhat moved by Stricker’s arguments, but not enough. Smith won the August 27, 1940 primary with 27,687 votes to Stricker’s 21,924.<sup>255</sup>

#### b. Central District

Justice George Ethridge (age 69) of Meridian, first elected in 1916, was challenged by Julian P. Alexander (age 53) of Jackson. Alexander had been serving as a circuit judge since 1934. Ethridge ran on his experience, attempting to overwhelm voters with a sense of the magnitude of the knowledge needed. “There are more than 35,000 volumes of law books in the State Library, . . . [and it] is impossible for any person suddenly to acquire the information that is gained over a period of years by hard study.”<sup>256</sup> He then mentioned how long such “great Judges of the country” had served, such as John Marshall, Roger Taney, or John Marshall Harlan.<sup>257</sup> Two weeks before the election he published a full-page length, three-column speech in a Jackson newspaper, and perhaps other places, since “owing to the weather conditions and the absence of public gatherings we cannot reach all of the people.”<sup>258</sup> The speech addressed the duties of judges and functions of courts. Though allowing for different expectations among votes fifty years ago, it is still hard to imagine many people would have read this advertisement, or much less have been moved to vote for Ethridge as a result. Ethridge even tried emphasizing the importance of the circuit court district served by his opponent, and by “the simple expedient of voting for me, the state may have the service and experience in its courts of both myself and him.”<sup>259</sup> The Ethridge newspaper campaign was barely visible and rather stilted, almost as if Ethridge found the election an annoyance.

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253. Smith advertisement, *Answering the Only Issue Raised*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 27, 1940, at 16.

254. *Id.* Stricker was born April 8, 1875, in Fort Adams, Mississippi, and died October 20, 1952, in his 32nd year as a chancellor in Hinds County. W.F. Hyer, *Vincent J. Stricker*, in II THE STORY OF JACKSON 512-14, (1953).

255. BIENNIAL REPORT OF THE SECRETARY OF THE STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1939 - JULY 1, 1941 at 266-67.

256. *Judge Ethridge Appeals to Voters . . .*, JACKSON DAILY NEWS, Aug. 18, 1940, at 16.

257. *Id.*

258. *Judge Ethridge Speaks to Voters of District*, DAILY CLARION-LEDGER (Jackson, Miss.), Aug. 11, 1940, at 9.

259. *Id.*

Circuit Judge Julian Alexander said that his “platform is the same appeal for promotion which was found acceptable and successful by the present incumbent nearly 25 years ago.”<sup>260</sup> Rotation in office “once every generation is a recognition both of the worthy achievement of the incumbent and the worthy ambition of the aspirant.”<sup>261</sup> It may be a quibble, but in 1916 Ethridge actually ran against a judge younger than himself who had been appointed in January of that same year. Ethridge had not won on the rotation in office theme. Judge Alexander informed the voters that he had been “educated under Woodrow Wilson and appointed by him to be United States District Attorney.”<sup>262</sup> He considered himself “young enough to be vigorous and energetic, with the law his ambition. Old and experienced enough to be capable.”<sup>263</sup> There was no subtlety in a final advertisement in which Alexander said that his “opponent will be about 78 years of age when the coming term expires.”<sup>264</sup> The state constitution prohibits life terms for public officials, and instead “public honors should be given to men in the prime of life, as was Judge Alexander’s opponent 24 years ago when first elected.”<sup>265</sup>

By a rather clear margin, 29,403 for Alexander and 20,353 for Ethridge,<sup>266</sup> the people may have decided rotation in office at least every generation was not a bad idea, or at least not when the incumbent was almost seventy years old. The defeat was described by one family member as due in part to Judge Ethridge’s decision not to have an active campaign, that he would remain in Jackson working on the court and whatever the people decided would be acceptable to him.<sup>267</sup>

### c. Southern District

Justice Virgil Griffith (age 66), first elected in 1928, was again challenged by one of his 1928 opponents, Chancellor R. W. Cutrer (age 60) of Pike County. This race had the strongest focus to date on the court opinions of an incumbent.

Judge Cutrer emphasized such achievements as reform of his district’s chancery procedures. As an implied contrast with one of Griffith’s opinions, Cutrer asserted that even before the legislature passed a mortgage moratorium act to help with the distress caused by the Great Depression, he had enjoined foreclosures “and thereby saved hundreds of homes.”<sup>268</sup>

Judge Griffith vigorously defended two of his opinions, but no Cutrer advertisements criticizing them were found. Perhaps the charges were circulated by letters or speeches. One charge was that Griffith had been insensitive to the distress created by the Depression when in 1938 he voted to hold a mortgage mora-

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260. Alexander advertisement, JACKSON DAILY NEWS, Aug. 25, 1940, at 6.

261. *Id.*

262. Alexander advertisement, MERIDIAN STAR, Aug. 25, 1940, at 12.

263. *Id.*

264. Alexander advertisement, MERIDIAN STAR, Aug. 26, 1940, at 9.

265. *Id.*

266. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1939 - JULY 1, 1941 at 266-67.

267. Interview with Thomas Ethridge, former United States Attorney, cousin of George Ethridge and brother of Chief Justice William N. Ethridge (Aug. 27, 1997).

268. Cutrer advertisement, McCOMB DAILY ENTER., July 31, 1940, at 5.

torium statute unconstitutional.<sup>269</sup> The other opinion was *Brown v. State*, in which Griffith voted to reverse a conviction and grant a new trial to three black defendants whose confessions had been beaten out of them.<sup>270</sup> The majority relied on a procedural waiver by defense counsel in affirming.<sup>271</sup> Griffith's dissent refused to sanction the brutal treatment. He closed his opinion by stating that the "Scottsboro Cases are models of correct constitutional procedure as compared with this now before the court."<sup>272</sup>

The United States Supreme Court reversed.<sup>273</sup> In Chief Justice Charles Evans Hughes' opinion for the Court, he quoted at considerable length Justice Griffith's dissent describing the facts of the coerced confessions.<sup>274</sup> The lead editorial in a Washington, D.C. newspaper was entitled "Here is a Judge," and after praising Griffith's "breadth and clarity of intellect," it suggested that he be named to a federal judgeship.<sup>275</sup> Two of the preeminent authorities on criminal constitutional law, Professors Charles H. Whitebread and Christopher Slobogin, identified the United States Supreme Court's opinion on certiorari in *Brown* as the case in which the "Supreme Court gave the 'voluntariness' test constitutional stature, under the Due Process Clause," and abandoned the previous focus solely on a confession's reliability no matter how extracted.<sup>276</sup> The Fifth Amendment was not applied to the states until 1964.<sup>277</sup> *Brown's* analysis under the Due Process Clause started a series of thirty-five Supreme Court cases under that approach which did not end until *Miranda v. Arizona*.<sup>278</sup>

In newspaper advertisements, Griffith defended his opinion:

On these extorted confessions, they were convicted four days later, and sentenced to be hung. I protested against the conviction of any man on a confession which was attained from him by whipping. Four judges of the Supreme Court held that the objection to these confessions was not made in a trial at the proper time, under technical rules, but I contended that no man, even a wretched and helpless Negro, should be hung on a technicality, and the Supreme Court of the United States, the greatest tribunal in all the world, unanimously agreed with me.<sup>279</sup>

269. *Jefferson Standard Life Ins. Co. v. Nobles*, 188 So. 289 (Miss. 1938). The *Biloxi Daily Herald*, *Columbian-Progress*, *Hattiesburg American*, *Laurel Leader-Call*, *Magnolia Gazette*, *McComb Daily Enterprise*, *Natchez Democrat*, and *Woodville Republican* were all examined for charges by Cutrer, but none were found. The closest was that Cutrer described himself as a "judge who puts Common Sense — Justice — Humanity Above Lawyer's TECHNICALITIES." Cutrer Advertisement, *NATCHEZ DEMOCRAT*, August 27, 1940, at 2.

270. *Brown v. State*, 158 So. 339 (Miss. 1935), *rev'd*, *Brown v. Mississippi*, 287 U.S. 278 (1936).

271. *Id.*

272. *Brown v. State*, 158 So. 339 (1935) (Griffith, J., dissenting). The "Scottsboro Cases" are *Powell v. Alabama*, 287 U.S. 45 (1932) (no meaningful representation in a hurried trial of nine black teenagers who were convicted and sentenced to death for raping two white women).

273. *Brown v. Mississippi*, 287 U.S. 278 (1936).

274. *Id.* at 281-85.

275. Robert G. Gillespie, *Virgil Alexis Griffith, 1874-1953*, 37 *J. MISS. HIST.* 267, 274 (1975). The newspaper was the *WASHINGTON DAILY NEWS*.

276. CHARLES H. WHITEBREAD & CHRISTOPHER SLOGBOGIN, *CRIMINAL PROCEDURE* 368 (1993).

277. *Malloy v. Hogan*, 378 U.S. 1 (1964).

278. WHITEBREAD & SLOGOBIN, *supra* note 276, at 369, 379-80; *Miranda v. Arizona*, 384 U.S. 436 (1966).

279. *For Re-Election: V.A. Griffith*, *MCCOMB DAILY ENTER.*, Aug. 23, 1940, at 3.

Griffith's dissent recognized the legal significance of *Brown*, and his campaign recognized and dealt with the political significance. Griffith survived by a fifty-two percent to forty-eight percent margin, 28,030 to 26,173.<sup>280</sup>

#### d. Northern District

James G. McGowen (age 70) of Water Valley, first elected in 1924, was opposed by Fred H. Montgomery (age 57), an attorney in private practice in Clarksdale and former president of the city's Chamber of Commerce. It appears little of consequence occurred during the campaign. As Montgomery's local newspaper put it, he had "no political machine or faction . . . . [He] did not spend large sums of money in an attempt to be elected, and his campaign was more or less quiet, but thorough."<sup>281</sup> It would be surprising if the challenger did not make age an issue, as that was the focus in the two central district contests and the incumbents were McGowen's age.<sup>282</sup>

McGowen ran many more newspaper advertisements than Montgomery, emphasizing his "courtesy, competency, character and his official record."<sup>283</sup>

McGowen won easily, 31,221 votes to Montgomery's 15,929.<sup>284</sup>

#### 4. 1942 [1 race] Northern District.

Justice William Greene Roberds (age 58) was unopposed. He was appointed in 1940 by Governor Paul B. Johnson, Sr., filling the vacancy caused by the death of Justice James G. McGowen.<sup>285</sup> Justice McGowen died after his November 1940 re-election, but before the new eight-year term began. The 1942 election was for the remainder of that term.

#### 5. 1944 [1 election] Northern District

The primary was held on July 4, 1944. The campaign, indeed everything in the country, was secondary to the story that dominated the news starting on June 6, 1944. In the Northern District of Mississippi, one of the first inklings of "D-Day" in Europe was a headline on June 6 in the *Tupelo Daily Journal*: "*Nazi Radio Reports Invasion Underway; Allied Forces Failed to Confirm News.*"<sup>286</sup>

Whether voters were paying attention or not, twenty-five-year court veteran Justice William Dozier Anderson (age 82) was opposed by nine-year Chancellor Lemuel Augustus Smith (age 68) of Holly Springs, who was Chief Justice Sydney Smith's cousin, and by former congressman William Webb Venable (age 64) of Meridian. Venable had served in 1915 as a circuit judge by appointment,

280. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1939 - JULY 1, 1941 at 266-67.

281. *Mr. Montgomery Deeply Pleased at Tribute Here*, CLARKSDALE REG. & DAILY NEWS, Aug. 28, 1940, at 1.

282. Alexander advertisement, MERIDIAN STAR, Aug. 25, 1940, at 12.

283. McGowen advertisement, TUPELO DAILY J., Aug. 6, 1940, at 3.

284. THE BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE, JULY 1, 1939 - JULY 1, 1941 at 266-67.

285. SKATES, *supra* note 15, at 83, 88.

286. *Nazi Radio Reports Invasion Underway; Allied Forces Failed to Confirm News*, TUPELO DAILY J., June 6, 1944, at 1.

then was elected to Congress in a special election in 1916. He was re-elected in 1918, but lost in the 1920 primary to Ross Collins.

Incumbent Anderson's age was his main political handicap, though challenger Smith was only a year younger than George Ethridge had been in 1940 when he was defeated because of his age. Anderson went to extraordinary lengths to limit the impact. After assuring voters of his mental and physical health, he promised to resign if at any time he "should become unable from any cause to do my share of the work" on the court.<sup>287</sup> Venable discussed his twenty-five years as a practicing lawyer and service as a district attorney, circuit judge, and congressman.<sup>288</sup> Chancellor Smith did not in the discovered advertisements mention Anderson's age, but talked about his service as a chancellor and his endorsements by the bar associations in all eleven counties of his district.<sup>289</sup>

Smith led the first primary with 16,973 votes to Anderson's 13,024 and Venable's 6,244.<sup>290</sup> The issue of Anderson's age may have seemed insurmountable to him. On the Saturday after the election he notified the state Democratic Party Executive Committee that he would "renounce the right and decline to enter the second primary . . ." <sup>291</sup> Venable subsequently stated that he wished to take advantage of party rules that would allow him to enter the second primary.<sup>292</sup> Venable ran a campaign, defended himself against complaints that his race was hopeless but was costing \$15,000 to hold, and said that since patriotism was demanding "that our boys fight, suffer wounds, or die for our Country, like patriotism demands that we vote for its best interest."<sup>293</sup> Because of a statutory change that allowed more time for absentee ballots to get to distant soldiers, the run-off was not until August 29, 1944, eight weeks after the first primary. Smith won easily, 10,159 to Venable's 4148.<sup>294</sup>

## 6. 1936-1945 Summary

There were eight elections, all with incumbents. Three incumbents were unopposed, while five were challenged, two of them successfully. On two occasions a judge appointed to fill a vacancy, which was available due to the death of the incumbent, ran unopposed at the next election. No justice resigned, allowing a successor to be named by the governor. There are no useful contribution nor expenditure figures.

287. Anderson advertisement, TUPELO DAILY J., June 26, 1944, at 6.

288. Venable advertisement, TUPELO DAILY J., June 29, 1944, at 6.

289. Smith advertisement, TUPELO DAILY J., July 3, 1944, at 3.

290. BIENNIAL REPORT OF THE SECRETARY OF STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1943 - JULY 1, 1945 at 243.

291. *Anderson Withdrawal Praised by Smith as "Generous Act"*, TUPELO DAILY J., July 10, 1944, at 1. Anderson died January 6, 1952, so he did not quite live out the term he had sought in 1944. He did, ironically, outlive the man who beat him on the age issue. The victor, L.A. Smith, died October 10, 1950.

292. *Id.*

293. *It Happened this week in Northeast Mississippi*, TUPELO DAILY J., July 15, 1944, at 2; Venable advertisement, TUPELO DAILY J., Aug. 28, 1944, at 2.

294. BIENNIAL REPORT OF THE SECRETARY STATE TO THE LEGISLATURE OF MISSISSIPPI, JULY 1, 1943 - JULY 1, 1945 at 244.

### D. 1946-1955

#### 1. 1946 [1 election] Southern District

Justice Harvey McGehee (age 57) of Columbia, on the court since 1937, was unopposed.

#### 2. 1948 [4 elections]

This election was the first significantly impacted by a United States Supreme Court opinion of April 3, 1944, that primaries could not be constitutionally conducted if only white people were allowed to participate, even if the political party itself, not the State, had established the eligibility requirements for membership in the party.<sup>295</sup> The decision was too late to affect the 1944 elections, other than several candidates addressed their appeals specifically to the “white Democratic voters” of the district, and a few blacks did vote.<sup>296</sup> At a special legislative session called by Governor Fielding Wright that commenced March 4, 1947, the legislature considered how to “ensure and guarantee the maintenance of all the rights and privileges of the Democratic Party.”<sup>297</sup> The approach to limit participation was to allow a state party executive committee to authorize county parties “to have a new registration of the members of that party,” and to allow challenges to eligibility to be raised by any person.<sup>298</sup> A law student who would later be in the public arena examined that legislation in light of the Supreme Court rulings regarding white-only primaries, and concluded that “Mississippi stands on ground hardly more firm than that which sunk beneath the feet” of another state whose rules were struck down.<sup>299</sup>

Some candidates again explicitly addressed their appeals to “white voters,”<sup>300</sup> and few blacks participated in the elections.

#### a. Central District

Chief Justice Sydney Smith suffered a heart attack in 1946 and was in declining health thereafter.<sup>301</sup> The primary election for his seat would be in August 1948. On December 31, 1947, the Chief Justice announced that he would retire at the end of his term in January 1950, at which time he would have served forty-one years on the high court.<sup>302</sup> Within ten days both Circuit Judge Percy Lee

295. *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944).

296. *Smith advertisement*, TUPELO DAILY J., June 29, 1944 at 4 and July 3, 1944, at 3.

297. Executive Proclamation, February 24, 1947, 1948 Miss. Laws 883.

298. Mississippi Laws, 1st Spec. Sess., 1947, H.B. No. 36, at 21, codified as MISS. CODE ANN. § 3108.5 (1957).

299. William F. Winter, Comment, XIX MISS. L.J. 245, 246 (1948).

300. *Lee advertisement*, JACKSON DAILY NEWS, Aug. 11, 1948, at 14; *Grover C. Doggett advertisement*, THE COLUMBIAN-PROGRESS (Columbia, Miss.), Aug. 12, 1948, at 2 (large three column full page ad addressed to “The White Democratic Voters of the Sixth Congressional District”).

301. *Justice Critically Ill at Hospital*, JACKSON DAILY NEWS, July 23, 1948, at 1.

302. *Chief Justice Smith to Retire in 2 years*, JACKSON DAILY NEWS, Dec. 31, 1947, at 1. Though Smith did not finish his term, his thirty-six years as chief justice and thirty-nine years on the court was by far the longest service in history. *In Memoriam: Chief Justice Sydney Smith*, 202 MISS. xv-xviii (1948).

(age 55) of Forest<sup>303</sup> and seventeen year Chancellor Malcolm B. Montgomery (age 56) of Yazoo City had qualified to run.<sup>304</sup> The campaign apparently had been rather quiet until the events that began with Chief Justice Smith's heart attack on July 22, 1948<sup>305</sup> and death on Saturday, July 24, 1948.<sup>306</sup> The funeral was Monday, and on Wednesday, Governor Fielding Wright named Chancellor Montgomery to the vacancy.<sup>307</sup> Wright, a popular governor, nationally prominent as one of the leaders of the southern opposition to President Harry Truman, had just been nominated for vice president on July 17, 1948 to run on the States' Rights Democratic ticket with Strom Thurmond.<sup>308</sup> The governor stated that it was "generally known that when Judge Smith gave consideration to resigning some months back, I had said I would appoint Judge Malcolm Montgomery to the Supreme Bench should the vacancy occur."<sup>309</sup> Judge Lee, issuing a lengthy statement the next day expressing "rank astonishment," argued that with the supreme court in recess until September 13 and the primary only four weeks away on August 24, the governor should have waited for the will of the people to be expressed.<sup>310</sup> The issue for the remaining weeks of the campaign was clear.

Newly appointed Justice Montgomery argued that "the governor was compelled" to make the appointment because the vacancy statute stated that he "shall" do so.<sup>311</sup> Moreover, the primary election was not in order to fill the unexpired term, but was for the person who would begin service January 1, 1950, seventeen months later.<sup>312</sup> Montgomery further argued that his "opponent and family opposed the election of Governor Wright last summer [during the gubernatorial primary]. This they had a right to do, and same is no reflection on them or their candidate for governor."<sup>313</sup> One writer stated that Judge Lee "had not been counted among the more ardent Wright supporters last summer," and implied that Paul B. Johnson, Jr. had been the Lee family candidate.<sup>314</sup> A "heated joint debate" occurred between the two men at the Neshoba County Fair on August 11.<sup>315</sup> A point of contention was whether Judge Montgomery had visited the governor to request the appointment, an allegation Lee made and Montgomery

303. *Judge Lee Candidate for Supreme Court*, SCOTT COUNTY TIMES, Jan. 8, 1948, at 1.

304. *Judge Griffith Will Retire After Term Ends in 1949*, JACKSON DAILY NEWS, Jan. 11, 1948, at 1.

305. *Justice Critically Ill at Hospital*, *supra* note 301, at 1.

306. *Judge Sydney Smith Dies*, JACKSON DAILY NEWS, July 25, 1948, at 1.

307. *Name Chancellor as Supreme Judge*, MERIDIAN STAR, July 29, 1948, at 1.

308. Purser Hewitt, *Thurmond, Wright Hoist Dixie Standard*, CLARION-LEDGER (Jackson, Miss.), July 18, 1948, at 1; Richard Dallas Chesteen, *The 1948 States' Rights Movement in Mississippi*, 88-89 (1964) (unpublished M.A. thesis, University of Mississippi).

309. *Wright Appoints Judge Montgomery to Succeed Smith*, JACKSON DAILY NEWS, July 29, 1948, at 3.

310. *Lee Surprised at Opponent's Appointment*, JACKSON DAILY NEWS, July 29, 1948, at 1; *A Personal Message from . . . Judge Percy M. Lee*, SCOTT COUNTY TIMES, Aug. 19, 1948, at 3 (stating that the court recess would be until September 13).

311. *Justice Malcolm B. Montgomery*, JACKSON DAILY NEWS, Aug. 20, 1948, at 8.

312. *Judge Malcolm B. Montgomery, Candidate to Succeed Himself for Full Term*, JACKSON DAILY NEWS, Aug. 6, 1948, at 5. Since the vacancy caused by Smith's death occurred less than nine months from the November election, there was no requirement for a separate vote on the remainder of the term as had been necessary in a similar situation in 1922. See *supra* notes 167-68 and accompanying text.

313. *Id.*

314. James Ewing, *Supreme Court Race Warms a Bit as Congressmen Rail Out with Civil Rights Talk*, JACKSON DAILY NEWS, Aug. 7, 1948, at 1.

315. James Ewing, *Supreme Court Candidates Engage in Heated Debate at Neshoba County Fair*, JACKSON DAILY NEWS, Aug. 11, 1948, at 1.

denied.<sup>316</sup> Perhaps concerned about Governor Wright's present high popularity, Judge Lee "attempted to confine his criticism to Judge Montgomery, rather than to Governor Wright."<sup>317</sup> A five minute rebuttal from Judge Montgomery explained that Judge Lee was just "disappointed because he did not get that appointment."<sup>318</sup> Montgomery closed by saying that his audience were "all friends of Governor Wright and I know you'll regret these remarks by Judge Lee."<sup>319</sup>

Judge Lee's advertisements asked voters: "Do you believe in fair play?"<sup>320</sup> Judge Lee characterized the appointment as resulting from Judge Montgomery's unfair insistence on the fulfillment of a promise made to him by the governor much earlier in the year, without either man expecting then that the vacancy would open so near the primary.<sup>321</sup> On August 24, Judge Lee narrowly defeated Justice Montgomery, 18,284 votes to 16,268.<sup>322</sup> A morning-after analysis cited "political observers around the state Capitol" as believing that the appointment hurt Judge Montgomery.<sup>323</sup> Judge Lee's victory statement included "With charity to all, and with malice toward none, I shall accept this great responsibility with a prayer on my lips . . . ." <sup>324</sup> Justice Montgomery stayed on the court until the expiration of Sydney Smith's term in January, 1950.

#### b. Central District

Incumbent Justice Julian Alexander (age 61), on the court since 1941, was unopposed.

#### c. Southern District

Justice Virgil Griffith (age 74), first elected in 1928, announced that he would not run for another term.<sup>325</sup> Mentioned in the initial speculation were Circuit Judge L. C. Corban of Biloxi, Judge F. Burkitt Collins of Laurel, and Lee D. Hall, "prominent Columbia attorney."<sup>326</sup> No one filed except for Lee Davis Hall (age 56).<sup>327</sup>

#### d. Northern District

Incumbent Justice W. G. Roberds (age 64), appointed in 1940, was unopposed.

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316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

320. *A Personal Message from . . . Judge Percy M. Lee*, JACKSON DAILY NEWS, Aug. 19, 1948, at 2; SCOTT COUNTY TIMES, Aug. 19, 1948, at 3.

321. *Id.*

322. *Judge Lee is Elected to State Supreme Court*, SCOTT COUNTY TIMES, Aug. 26, 1948, at 1.

323. *Supreme Court Race is Decided*, JACKSON DAILY NEWS, Aug. 25, 1948, at 1.

324. *Judge Lee is Elected*, SCOTT COUNTY TIMES, Aug. 26, 1948, at 1.

325. *Judge Griffith Will Retire After Term Ends in 1949*, JACKSON DAILY NEWS, Jan. 11, 1948, at 1.

326. *Id.*

327. *Nominated*, THE COLUMBIAN-PROGRESS (Columbia, Miss.), July 1, 1948, at 12.

## 3. 1951 [1 election]

## a. Northern District

John W. Kyle (age 60) of Sardis, appointed by Governor Wright in October 1950 to fill the vacancy caused by the death of Lemuel A. (“Gus”) Smith, Sr., was unopposed in the special election for the remaining year of the term.

## 4. 1952 [4 elections]

## a. Central District

James G. Holmes (age 69) of Yazoo City, appointed by Governor Fielding Wright to one of the three new positions in January 1952, was unopposed.

## b. Southern District

R. Olney Arrington (age 55) of Hazelhurst, appointed by Governor Fielding Wright to one of the three new positions in January 1952, was unopposed.

## c. Northern District

William N. Ethridge (age 40) of Oxford, a son of George Ethridge’s cousin, was appointed by Governor Wright to one of the three new positions in January 1952. He was unopposed. Ethridge was in a wheelchair as a result of childhood polio, and may have been the first physically handicapped judge on the court.

## d. Northern District

John W. Kyle (age 61) of Sardis, appointed by Governor Wright in 1950 and elected in 1951 for the remainder of a term, was unopposed in 1952 for a full term.

## 5. 1954 [2 elections]

## a. Central District

Robert Gillespie (age 51), was appointed in January 1954 by Governor Hugh White to replace Justice Fred Lotterhos (age 54), who died that month. Lotterhos had been appointed in January 1953 to replace Justice Julian Alexander, who died while attending the Sugar Bowl game between Ole Miss and Georgia Tech on New Year’s Day, 1953.<sup>328</sup> Justice Gillespie, the son-in-law of former Justice Virgil A. Griffith, ran unopposed in the 1954 race for the remaining two years of the term.<sup>329</sup>

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328. SKATES, *supra* note 15, at 60.

329. Gillespie, *supra* note 275, at 267.

b. Southern District

Chief Justice Harvey McGehee (age 67), first appointed to the court in 1937, was unopposed.

6. 1946-1955 Summary

There were twelve elections, all except one with an incumbent. Eleven candidates were unopposed, while one incumbent (Montgomery) was challenged and defeated. One incumbent (Griffith, 1948) retired effective at the end of his term, and his successor was elected without opposition. There are no useful contribution or expenditure figures.

*E. 1956-1965*

1. 1956 [4 elections]

Discovered for this election were the first financial reports still in existence. The four incumbent justices, all of whom ran unopposed, filed the identical statement: "No expenses incurred except for the fee of Fifty Dollars (\$50.00) paid to the Secretary of the State Democratic Executive Committee to have name placed on the ballot."<sup>330</sup>

a. Central District

Percy Lee (age 63), first elected in 1948, was unopposed.

b. Central District

Robert Gillespie (age 53), appointed in 1954 and elected that year in a special election, was unopposed for a full term.

c. Southern District

Lee Davis Hall (age 64), first elected in 1948, was unopposed.

d. Northern District

Incumbent Justice W. G. Roberds (age 72), appointed in 1940, was unopposed.

2. 1960 [4 elections]

a. Central District

James G. Holmes (age 77) of Yazoo City, on the court since January 1952, was opposed by Henry Lee Rodgers (age 57), a circuit judge for ten years in Louisville. The only issue was Justice Holmes' age and health.

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330. Mississippi Department of Archives and History, Record Group 28, Records of Office of Secretary of State, (hereinafter "MDAH, Secretary of State Records"), Campaign Finance Reports, 1956.

Judge Rodgers was respectful, but insistent that it was time for a younger man. Justice Holmes was equally insistent that his health was good. At least one quasi-debate occurred when both men addressed about 150 jurors, county officials and the general public at the opening of circuit court in Yazoo City.<sup>331</sup> Judge Rodgers told the crowd that he had asked Justice Holmes several times not to run again, and that though “I love him . . . [and] he’s made a splendid judge,” the fact that he would be eighty-five at the end of the term that he was seeking was just too old.<sup>332</sup> Justice Holmes countered that this “is no time to tamper with our Supreme Court,” implying Mississippi in the critical times ahead needed experienced judges.<sup>333</sup>

Some of Judge Rodgers advertisements were just small, one-column pictures, with a quote underneath. He quoted the Declaration of Independence on one: “These colonies are, and of right, ought to be free and independent states . . .”, and then stated that he stood for states’ rights.<sup>334</sup> In another he quoted the states’ rights concepts of the Tenth Amendment: “The powers not delegated to the United States by the Constitution . . . are reserved to the states respectively, or to the people.”<sup>335</sup> A campaign technique for Justice Holmes, with the aid of the Yazoo City newspaper that gave him substantial editorial support, was to request anyone “who is planning to travel” in the district to pick up placards and endorsement letters signed by every county public officials and get them distributed.<sup>336</sup>

The race was described as “dignity par excellence,” suggesting that Judge Rodgers’ criticisms were gently made.<sup>337</sup> In the end, slightly more voters sided with Rodgers, who won the June 8 primary with 28,918 votes to Holmes’ 27,242.<sup>338</sup>

#### b. Southern District

Incumbent Justice R. Olney Arrington (age 63) of Hazlehurst, first appointed and then elected in 1952, was opposed by Circuit Judge Lunsford Casey (age 48) of Laurel. Both men ran on their experience as lawyers and judges, their World War II military service, and their integrity.<sup>339</sup> Judge Casey had been an attorney in the office of the United States Attorney General and an Assistant United States Attorney for the Southern District of Mississippi. Judge Casey also called himself a “constitutional advocate” who makes “his decisions in accord with the Constitution and . . . will not attempt to legislate by judicial decree nor change our way of life by decisions that would change the Constitution without the consent of the people.”<sup>340</sup>

331. *Judge Rogers Says He is “Right Age”*, YAZOO CITY HERALD, Apr. 28, 1960, at 1.

332. *Id.*

333. *Judge Holmes Bases Candidacy on Record*, YAZOO CITY HERALD, May 26, 1960, at 1.

334. Rodgers advertisement, YAZOO CITY HERALD, Apr. 28, 1960, at 8.

335. Rodgers advertisement, YAZOO CITY HERALD, May 5, 1960, at 6.

336. *Friends Asked to Help Re-Elect Judge Holmes*, YAZOO CITY HERALD, May 26, 1960, at 1.

337. Charles M. Hills, *Affairs of State*, DAILY CLARION-LEDGER (Jackson, Miss.), May 20, 1960, at 10.

338. 1960-1964 Miss. Reg. 390 (1962).

339. *Judge Arrington Seeks Reelection as Member of State Supreme Court*, LEADER-CALL (Laurel, Miss.), May 26, 1960, at 18; *Vote for Lunsford Casey*, LEADER-CALL (Laurel, Miss.), June 6, 1960 at 14.

340. Casey advertisement, HATTIESBURG AM., June 4, 1960, at 9.

The race was called “vigorous.”<sup>341</sup> Justice Arrington prevailed with 28, 256 votes to Casey’s 21,465.<sup>342</sup>

c. Northern District

William N. Ethridge (age 48) of Oxford, appointed and later elected in 1952, was unopposed.

d. Northern District

John W. Kyle (age 69), appointed to a vacancy by Governor Wright in 1950, was unopposed.

3. 1962 [3 elections]

a. Southern District

Chief Justice Harvey McGehee declined to run for another term. Neville Patterson (age 46) of Monticello, was unopposed to fill the vacancy.

b. Southern District

Justice Lee Davis Hall resigned, and Robert Lee Jones was appointed on February 1, 1962, by Governor Ross Barnett to fill the vacancy. Jones (age 64) was unopposed at the special election held in 1962 to fill the remaining two years of the term.

c. Northern District

Taylor H. McElroy was appointed by Governor Barnett on September 1, 1960 to replace Justice W. G. Roberds, who resigned. McElroy (age 69) was unopposed at the 1962 election.

4. 1964 [5 elections]

In the 1964 legislative session, each supreme court seat was given a number, three posts for each district.<sup>343</sup> Those designations will be used in the remainder of this Article.

a. Central District, Post 1

Percy M. Lee announced his retirement, effective at the end of his term. Chancellor Stokes Robertson, Jr. (age 52) of Jackson announced his candidacy in January, 1964, and sent a personally signed letter to every attorney in the district. Though there were rumors that Circuit Judge Oscar H. Barnett (age 62) of Carthage might run, Robertson ended up being unopposed.<sup>344</sup>

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341. Hills, *supra* note 337, at 10.

342. 1960-1964 Miss. Reg. 392 (1962).

343. 1964 Miss. Laws ch. 361, codified at MISS. CODE ANN. § 3313.5 (1942), and MISS. CODE ANN. § 23-15-993 (1972).

344. Interview with Justice Robertson, (Aug. 26, 1997).

b. Central District, Post 2

Justice Robert Gillespie (age 61) of Meridian, who had been appointed in 1954, was unopposed for another term.

c. Southern District, Post 2

Justice R. Olney Arrington died July 9, 1963. Circuit Judge Thomas Brady of Brookhaven was appointed by Governor Barnett. Justice Brady (age 61) was unopposed in the 1964 election to fill the remaining four years of Justice Arrington's term.

d. Southern District, Post 3

Robert Lee Jones (age 66), who had been appointed in 1961 and then elected without opposition in 1962 for the remaining two years of an unexpired term, was opposed by Circuit Judge Lunsford Casey (age 52) of Laurel. Judge Casey had run against Justice Arrington in 1960.

Judge Casey again called himself a "constitutional advocate" and stated that he would not "change our way of life" by his decisions.<sup>345</sup> Though he cited no cases in which his opponent had tried to reshape Mississippi society, he tied Jones to the United States Supreme Court this way:

Election of an experienced judge to the Mississippi Supreme Court will prevent the same criticism of it that we rightly make of the federal courts when men like [Chief Justice Earl] Warren are appointed without previous judicial experience. Judge Casey's opponent was appointed to the Mississippi Supreme Court without previous judicial experience. He never served as a regular county, chancery or circuit court judge before his appointment. This is an important issue in this race for your decision on June 2, 1964.<sup>346</sup>

Justice Jones ran on his credentials, including 37 years in private practice and being a hard worker as demonstrated by his participation in 600 decisions of the Mississippi Supreme Court; he also assured voters that he was "dedicated to the State of Mississippi and its principles."<sup>347</sup>

Jones won with 36,832 votes to Casey's 33,275.<sup>348</sup>

e. Northern District, Post 3

Justice Taylor McElroy, appointed in 1960 to the court and elected in 1962, announced that he would not run for a full term. William H. Inzer (age 58) of Pontotoc, who had served as chancellor since 1943, ran unopposed to succeed him.

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345. Casey advertisement, HATTIESBURG AM., June 1, 1964, at 14.

346. *Id.*

347. Jones advertisement, HATTIESBURG AM., June 1, 1964, at 9.

348. 1964-1968 Miss. Reg. 448 (1962).

## 5. 1956-1965 Summary

There were sixteen elections. Of the thirteen incumbents who ran, only three were challenged. Holmes was the only incumbent to lose. A total of thirteen races had only one candidate. Seven candidates were unopposed in their first race for the court, four after first being appointed to fill a vacancy and three in running for open seats. There are no useful contribution or expenditure figures.

### *F. 1966-1975*

#### 1. 1966 [1 election] Northern District, Post 2

Justice John W. Kyle died May 3, 1965. Lemuel A. Smith, Jr., of Holly Springs, namesake son of a former justice, was appointed on May 7 by Governor Paul B. Johnson, Jr., namesake son of a former governor. Justice Smith (age 62) was unopposed at the 1966 election to fill the last two years of Kyle's term.

#### 2. 1968 [4 elections]

##### a. Central District, Post

Justice Henry L. Rodgers (age 65), first elected in 1960, was unopposed.

##### b. Southern District, Post 2

Justice Thomas R. Brady (age 65), who had served on the court since 1963, was not opposed for re-election.

##### c. Northern District, Post 1

Chief Justice William N. Ethridge (age 56), on the court since 1952, was unopposed for re-election.

##### d. Northern District, Post 2

Justice L. A. Smith (age 64), appointed to the court in 1965, was unopposed for election to a full term.

#### 3. 1970 [1 election] Southern District, Post 1

Justice Neville Patterson (age 54), first elected in 1962, was unopposed for re-election. Justice Patterson reported that he paid \$200 to get his name on the ballot, and that he received no contributions.<sup>349</sup>

#### 4. 1972 [5 elections]

Some commentators noted that for the first time voters would have to make a decision not only on which candidates to support, but also on which party's pri-

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349. MDAH, Secretary of State Records, Campaign Finance Reports, 1970.

mary to enter. Explanations abounded on the previously irrelevant rules regarding voting only in one party's primary.<sup>350</sup> For example, Trent Lott was running in a four-person Republican primary for Congress, ten people were running on the Democratic side, and all of the congressional district overlapped the Southern supreme court District.<sup>351</sup>

a. Central District, Post 1

Stokes Robertson (age 60) of Jackson, elected without opposition in 1964, was re-elected in the same manner in 1972.

b. Central District, Post 2

Justice Robert Gillespie (age 69), appointed in 1954, was not opposed for re-election.

c. Southern District, Post 3

Justice Robert Lee Jones (age 74) announced that he would not run for another term. Circuit Judge Harry G. Walker (age 47) of Gulfport, Circuit Judge Darwin Maples (age 46) of Lucedale, and former Assistant Attorney General Matthew Harper (age 59) of Laurel all competed for the seat.

Matthew Harper told voters that he was the only candidate who has served as a supreme court judge, since he had been selected as a temporary justice when Justice Jones underwent surgery in 1971. He also touted his eleven years working in the attorney general's office.<sup>352</sup> Judge Maples focused on his nine years as a circuit judge (he used the slogan "Elect a Judge to fill a Judge's place") and the fact that he had been "personally commended by J. Edgar Hoover for conducting his court in keeping with the highest principles of American Justice."<sup>353</sup> Judge Walker for his part listed his credentials as including four years as a county judge, four years on the circuit court bench, a former member of the house of representatives, and a veteran of World War II.<sup>354</sup> Pictures in Walker's newspaper advertisements showed him with his family around him. He was seated in a wheel chair, a result, he explained, of injuries suffered in World War II in the line of duty.<sup>355</sup>

Judge Maples led the first primary on June 6 with 46,064 votes, followed by Walker with 42,064 and Harper with 22,436.<sup>356</sup> For the run-off, Judge Maples condemned courts that "interfere with our local elected officials," and specifically argued "that our School Boards should be able to control our schools, and county officials should be free to administer the county's business." Courts had

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350. See, e.g., *Extra Decision to Make Tuesday*, HATTIESBURG AM., June 5, 1972, at 6.

351. 1972-1976 Miss. Reg. 473-75 (1973).

352. Harper advertisement, LEADER-CALL (Laurel, Miss.), June 1, 1972, at 3.

353. Maples advertisement, HATTIESBURG AM., June 3, 1972, at 3.

354. Walker advertisement, HATTIESBURG AM., June 5, 1972, at 30.

355. Walker advertisement, HATTIESBURG AM., June 1, 1972, at 4.

356. 1972-1976 Miss. Reg. 474 (1974).

to “be fair and impartial, but should strictly enforce our criminal laws. Only in this way can we reduce the violence and increasing crime rate in our country.”<sup>357</sup>

The run-off was called a low-key affair, and Walker won it with 47,475 votes to Maples’s 44,916.<sup>358</sup>

d. Northern District, Post 1

Chief Justice William N. Ethridge died on July 29, 1971. Governor John Bell Williams appointed twenty-year chancellor Robert P. Sugg of Eupora to replace him. Justice Sugg (age 56) was unopposed when he ran for the four remaining years of the Ethridge term.

e. Northern District, Post 3

Justice William Inzer (age 69), first elected to the court in 1964, was unopposed for a second term.

5. 1974 [1 election] Southern District, Post 2

Justice Thomas R. Brady died January 31, 1973. Vernon H. Broom of Columbia was appointed by Governor Bill Waller on February 8, 1973. Justice Broom (age 50) was unopposed when he ran for the last two years of the term in 1974.

6. 1966-1975 Summary

There were twelve elections. Eleven incumbents were unopposed, while for an open seat three aspirants ran. Two appointed justices running for their first supreme court elections were among those unopposed. No useful contribution or expenditure figures exist.

*G. 1976-1985*

1. 1976 [4 elections]

a. Central District, Post 3

Justice Henry Lee Rodgers resigned January 31, 1976, as the last year of his term was commencing. Circuit Judge Roy Noble Lee (age 61) was appointed by Governor Cliff Finch and sworn in on March 1, 1976. Within two weeks Jackson attorney Maurice Black (age 62) had announced his intention to run against Justice Lee in the Democratic primary; neither had been a candidate prior to Justice Rodgers’ resignation.<sup>359</sup>

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357. Maples advertisement, HATTIESBURG AM., June 23, 1972, at 11.

358. 1972-1976 Miss. Reg. 475 (1974).

359. *Maurice Black Candidate for Supreme Court*, SCOTT COUNTY TIMES (Forest, Miss.), Mar. 17, 1976, at 13. Interview with former Chief Justice Roy Noble Lee, (Dec. 22, 1997).

Black was candid that it had been his “lifelong ambition to serve the people of Mississippi as a member of the Supreme Court.”<sup>360</sup> He released his most recent income tax return when he announced, and said that he would furnish his 1975 return as soon as it was finalized.<sup>361</sup> As the election got closer, Black indirectly referred to the fact that Lee had so far only been the governor’s choice, when his slogan became “It’s your choice on June 1st.”<sup>362</sup> That approach had worked for Justice Lee’s father in 1948 in running against a judge appointed a month before an election. However, since the court was in session when Justice Rodgers resigned January 31, 1976, any argument that the governor should have waited for the June primary would not have been compelling.

Justice Lee made a personal campaign through the district. As the election neared he stated that interest in and knowledge of the election were low.<sup>363</sup> Lee overwhelmed his opponent, winning with 43,361 votes to Black’s 16,715.<sup>364</sup> Lee had no opposition in the November general election for a full eight-year term.

Lee reported spending \$14,566, most on “advertising,” while receiving a contribution from one attorney that did not exceed \$50. Black reported spending \$3,164 mainly on television spots, while receiving no contributions.<sup>365</sup>

b. Southern District, Post 2

Vernon Broom (age 52), elected two years earlier to the remainder of a term, was unopposed for a full eight-year term. He reported receiving no contributions and only spending the \$200 filing fee.<sup>366</sup>

c. Northern District, Post 1

Robert P. Sugg (age 60), appointed in 1971, was unopposed in the election for a full term.

d. Northern District, Post 2

Justice L. A. Smith (age 72), who had been on the court for eleven years, was opposed by Joe Lee Tennyson (age 41), who was in private law practice in Charleston.

There was no subtlety to Tennyson’s issue. His campaign advertisements stated:

I am Joe Lee Tennyson of Charleston, Tallahatchie County, Mississippi. I want to be your Supreme Court Judge. My opponent will be 80 years old before the next term expires. He has now past retirement age. Let a young man work for you. I will work long for you, the people of Mississippi.<sup>367</sup>

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360. *Id.*

361. *Id.*

362. Black advertisement, CLARION-LEDGER (Jackson, Miss.), May 30, 1976, at 3A.

363. Jack Elliott, *Court Hopefuls Worried About Turnout*, CLARION-LEDGER (Jackson, Miss.), May 29, 1976, at 1A.

364. 1976-1980 Miss. Reg. 489 (1978).

365. MDAH, Secretary of State Records, Campaign Finance Reports, 1976.

366. *Id.*

367. *J. L. Tennyson is Candidate*, NORTHEAST MISS. DAILY J. (Tupelo, Miss.), May 25, 1976, at 1.

Tennyson pledged to bring the Mississippi Supreme Court “out of the horse and buggy days,” perhaps implying that is where Judge Smith had kept it.<sup>368</sup>

The well respected Justice Smith received more than his share of endorsements from bar associations and local officials.<sup>369</sup> Smith tried to turn the tables at least a little on the relatively youthful Tennyson by stressing his experience and “comparing a man with no experience on the job to an aspiring football coach who had never seen a game or a crop dusting pilot who wanted to fly a jet in Europe.”<sup>370</sup> Humorously, but perhaps with some edge, Smith stated that he was “in good health and you can bet I am not senile.”<sup>371</sup>

At the June 1 Democratic primary, voters went with experience over youth by 35,254 for Smith to 21,748 for Tennyson.<sup>372</sup> Smith had no Republican opponent in November. Tennyson reported receiving no contributions over \$50, and spending \$11,972, mainly on radio and newspaper advertisements. Justice Smith’s contribution report was not discovered, but he reported spending \$10,874 in amounts of more than \$250. He had some paid staff, and spent relatively equal amounts on postage, printing, and television ads.<sup>373</sup>

## 2. 1978 [2 elections]

### a. Central District, Post 2

Chief Justice Robert Gillespie resigned and on August 1, 1977, Circuit Judge Francis Bowling of Jackson was appointed by Governor Finch. Justice Bowling (age 62) was unopposed in the election to fill the remaining two years of the term.

### b. Southern District, Post 1

Chief Justice Neville Patterson (age 62), whose service began in 1964, was unopposed.

## 3. 1979 [1 election]

### a. Northern District, Post 3

Justice William Inzer died on February 21, 1978. On March 15, 1978 Governor Cliff Finch appointed Kermit Roosevelt Cofer of Water Valley, who had been a chancellor since 1959. Justice Cofer (age 71) was unopposed in the 1979 election to fill the remaining year of Justice Inzer’s term.

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368. *Two Judges Defending Offices on Tuesday*, NORTHEAST MISS. DAILY J., May 31, 1976, at 1.

369. Smith advertisement, NORTHEAST MISS. DAILY J. (Tupelo, Miss.), May 29-30, 1976, at 6; *Two Judges Defending Offices on Tuesday*, *supra* note 368, at 1.

370. *Two Judges Defending Office on Tuesday*, *supra* note 368, at 1.

371. *Id.*

372. 1976-1980 Miss. Reg. 489 (1978).

373. MDAH, Secretary of State Records, Campaign Finance Reports, 1976.

## 4. 1980 [4 elections]

## a. Central District, Post 1

Justice Stokes Robertson, who had served two terms, announced that he would not seek a third. The only candidates who qualified were Circuit Judge Dan Lee (age 54) and Chancellor James Arden Barnett (age 55), both of Jackson and both of whom brought illustrious names to the campaign. Dan Lee was not related to the two other Lees, Percy and Roy Noble, who had served on the court, while James Arden Barnett was related to former Governor Ross Barnett — his cousin. An absolute first for the campaign was that Barnett was running in the Republican primary for the supreme court, while Lee was taking the otherwise constant route of running in the Democratic primary. The now irrelevant primaries were on June 3; the contest would not be decided until November 4.<sup>374</sup>

Another name had briefly surfaced when a reporter wrote that two days before the April 4, 1980 qualifying deadline, former Governor Bill Waller (age 54) was “formalizing his plans to seek the Supreme Court judgeship.”<sup>375</sup> Upon being told of former Governor Waller’s possible entry into the race, Judge Dan Lee stated that he would reconsider running even though he had filed his qualifying papers almost a month earlier.<sup>376</sup> Whether Waller in fact ever considered running, he issued a statement that his law practice prevented him from entering the contest.<sup>377</sup> Sixteen years later his namesake son would be elected to the seat.

The “curse” of being a Republican was certainly weakening in Mississippi. The GOP had hopes even for a supreme court candidate with Ronald Reagan heading the ticket on the November ballot and with memories still fresh of Senator Thad Cochran’s election as the first statewide Republican just two years earlier.<sup>378</sup> Both Lee and Barnett had their controversies that were brought to the voters attention in various ways. In 1979, Judge Dan Lee had been an outspoken critic of the management of the Ross Barnett Reservoir north of Jackson, which he and many others said had contributed to the disastrous Easter flood in the city that year.<sup>379</sup> Judge Barnett had ruled in 1979 that the State Tax Commission had to equalize the assessment rolls among all the counties statewide by 1983; after the election that determination was affirmed.<sup>380</sup>

As the fall campaign got started, endorsements became publicized. The Mississippi Trial Lawyers Association supported Judge Lee, though a controversy arose over whether an “endorsement” had occurred.<sup>381</sup> In Barnett’s favor was a poll answered by seventy percent of Hinds County lawyers, the lawyers who practiced in front of both candidates. More lawyers found Barnett to be an

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374. Patrick Larkin, *Fight is on For Seats on High Court*, CLARION-LEDGER (Jackson, Miss.), Apr. 5, 1980, at 3A.

375. Bill Minor, *Hot Supreme Court Race Mixed with Presidential Politics*, CAPITAL REP. (Jackson, Miss.), Apr. 3, 1980, at 1.

376. *Id.*

377. Bill Minor, *Waller is Out, Lee is In*, CAPITAL REP. (Jackson, Miss.), Apr. 10, 1980, at 1.

378. Bill Minor, *Red Hot Court Race*, CAPITAL REP. (Jackson, Miss.), July 3, 1980, at 3.

379. *Id.*

380. *State Tax Comm’n v. Fondren*, 387 So. 2d 712, 724-25 (Miss. 1980).

381. Anne Q. Hoy, *Letter “Endorsing” Lee Sparks High Court Race*, CLARION-LEDGER (Jackson, Miss.), Sept. 12, 1980, at 1A.

“acceptable” prospect for Supreme Court Justice than found Judge Lee to be.<sup>382</sup> Barnett used that rating prominently in his advertisements.<sup>383</sup>

Both candidates had television ads, while Judge Lee seemed more visible than Barnett on bumper stickers and billboards. One Barnett slogan was “It’s a Matter of Good Judgment.”<sup>384</sup> Media publicity was given lawsuits each man had tried.<sup>385</sup> When it was all over, a solid victory for Judge Lee was evident. Lee received 150,953 votes to Barnett’s 108,173.<sup>386</sup>

Judge Lee reported contributions of over \$500 that totaled \$26,300, and expenditures of approximately \$77,464, the bulk of which was for advertising and a telephone WATS line. Barnett had received \$5,740 in contributions greater than \$500, and made expenditures of almost \$49,000, primarily on media advertising.<sup>387</sup>

#### b. Central District, Post 2

Justice Francis Bowling (age 64), who was appointed to the court in 1977 and then elected in 1978, was unopposed for a full eight-year term.

#### c. Southern District, Post 3

Justice Harry Walker (age 56), who had first been elected in 1972, was challenged in the Democratic primary by Circuit Judge James D. Hester (age 56) of Laurel. Near the primary, Judge Hester tried to make an issue out of the obscurity of supreme court justices. Hester argued “if you do not know the name of the man from Gulfport who is seeking re-election . . . don’t feel badly . . . probably only 1 out of 1,000 voters does.”<sup>388</sup> But Hester “will make himself known through voicing his convictions . . .”<sup>389</sup> Hester also attempted to convince voters that Justice Walker was “soft on crime.” He had large newspaper advertisements with pictures of a crowd of children. The headline of the ad was “They Can’t Vote . . . But You Can,” followed by this statement:

Last year the Supreme Court set free a man convicted of fondling a small child—merely because of a legal technicality. Released, WITHOUT ANY PUNISHMENT, he now roams as he pleases. My Opponent was a member of the Court which freed him. (Case No. 50907, Mississippi Supreme Court).<sup>390</sup>

382. Patrick Larkin, *Poll Says Hinds Lawyers Prefer Barnett*, CLARION-LEDGER (Jackson, Miss.), Oct. 22, 1980 at 1B.

383. Barnett advertisement, CLARION-LEDGER (Jackson, Miss.), Oct. 31, 1980, at 14A.

384. Campaign card (in possession of author).

385. Anne Q. Hoy, *Some Disagreement in High Court Race*, CLARION-LEDGER (Jackson, Miss.), Oct. 31, 1980, at 3A.

386. 1980-1984 Miss. Reg. 489 (1982).

387. MDAH, Secretary of State Records, Campaign Finance Reports, 1980.

388. Hester advertisement, HATTIESBURG AM., May 30, 1980, at 14.

389. *Id.*

390. Hester advertisement, HATTIESBURG AM., June 2, 1980, at 7.

The case was *Tatro v. State*,<sup>391</sup> an opinion written by Justice Smith and joined by Justice Walker and a majority of the court. The majority found that the fondling statute which by its terms criminalized the conduct only of males over the age of eighteen, violated the equal protection rights of males.<sup>392</sup> The Hester campaign, after telling the voters the kind of judge Walker was, used the slogan for their candidate "He's the kind of judge you'd rather have."<sup>393</sup>

Both men used television, radio, and newspaper advertising extensively, and both travelled the district for substantial personal campaigning.<sup>394</sup> Walker won by less than 1000 votes; 20,819 to Hester's 19,991.<sup>395</sup> Expenditures for Hester totalled \$22,395, with radio, television, and newspaper advertisements consuming most. He received no contributions over \$500. Walker also received no contributions that were required to be reported, and eighty percent of the almost \$30,000 that he spent went to advertising.<sup>396</sup>

#### d. Northern District, Post 3

Justice Kermit Cofer declined to run for a full term, after being appointed to the court in 1978. Unopposed in the Democratic primary was Houston attorney Armis Hawkins (age 59), who was twenty-years past being a two-term district attorney and an unsuccessful candidate for lieutenant governor in 1959. In 1960 Hawkins was state manager of the Kennedy-Johnson presidential campaign. Justice Hawkins later said that there was no organized effort by the bar or other groups to rally behind him prior to the filing deadline; he explained simply that no one else filed.<sup>397</sup> No Republican qualified. In 1980, Independents could qualify as late as sixty days prior to the November election.<sup>398</sup> In August, Tunica attorney Jack N. Tucker (age 59) qualified to run.<sup>399</sup> For nineteen years Tucker had been a state senator, but in 1979 his seat was redistricted in such a way that he did not even run.<sup>400</sup>

Tucker argued that non-partisan races for the court were preferable, perhaps thereby justifying his independent candidacy as a philosophical matter. Hawkins stated that running as a Democrat "is the time-honored and traditional way . . .

391. 372 So. 2d 283 (Miss. 1979).

392. *Id.* at 285. The dissenters agreed with the problem, but stated that the court itself could correct it by striking the word "males" from the statute, thereby making it applicable to both sexes. *Id.* (Sugg, J., dissenting).

393. Hester advertisement, HATTIESBURG AM., June 2, 1980, at 7.

394. Patrick Larkin, *Walker Apparent Winner in Court Election*, CLARION-LEDGER (Jackson, Miss.), June 4, 1980, at 3A.

395. 1980-1984 Miss. Reg. 555 (1982).

396. MDAH, Secretary of State Records, Campaign Finance Reports, 1980.

397. Interview with Armis Hawkins, (Aug. 29, 1997); ERLE JOHNSTON, POLITICS: MISSISSIPPI STYLE 147 (1993).

398. 1978 Miss. Laws, ch. 429, § 1. Subsequently, the date for an Independent to file a petition with an adequate number of signatures was made the same as for a candidate for a party nomination, i.e., 60 days before party primaries. MISS. CODE ANN. § 23-15-359 (Supp. 1996). For judicial elections, that has been changed yet again. Candidates in non-partisan judicial elections, which are part of the November general elections, must qualify by the first Friday after the first Monday in May. MISS. CODE ANN. § 23-15-977(1) (Supp. 1996).

399. Anne Q. Hoy, *Supreme Court Election Fought on Nature of Post*, CLARION-LEDGER (Jackson, Miss.), Oct. 31, 1980, at 3A.

400. Jane Miller, *Hawkins, Tucker Running Dignified Races*, NORTHEAST MISS. DAILY J. (Tupelo, Miss.), Oct. 24, 1980, at 1.

and it never would have occurred to me to run in any other way.”<sup>401</sup> One account in late October stated that the race “has been without issues, inexpensive and non-controversial.”<sup>402</sup> They ran on their qualifications, which made for a “lack-luster”<sup>403</sup> and predictable outcome. Hawkins won 164,075 votes to Tucker’s 42,398.<sup>404</sup>

Hawkins had no contributions that had to be reported. He had expenditures of slightly over \$8,500 for postage, newspaper ads, and printing. Tucker reported no contributions and only a \$336 printing bill for cards.<sup>405</sup>

## 5. 1983 [2 elections]

### a. Northern District, Post 1

On October 28, 1982, Justice Robert P. Sugg announced that he would resign from the court. James L. Robertson of Oxford was appointed by Governor William Winter to the vacancy on January 17, 1983. Robertson was the first Ole Miss law professor named to the supreme court since Billy Ethridge in 1952. Robertson (age 43) was unopposed in the 1983 elections for the remaining year of Sugg’s term.

### b. Northern District, Post 2

Justice Lemuel Augustus Smith, Jr. took a leave of absence from the court in April-May, 1982 because of surgery. New Albany attorney Leslie Darden (age 71) was named as acting justice during that illness.<sup>406</sup> After returning to the bench, Smith announced his resignation, effective June 30, 1982.<sup>407</sup> Chancellor Lenore Loving Prather of Columbus was appointed by Governor William Winter on July 1 after his Judicial Nominating Committee had screened applicants. Judge Prather indicated that she had not initially applied, but someone else submitted her name.<sup>408</sup> She was appointed the first woman to serve on the state supreme court exactly one year after President Ronald Reagan on July 1, 1981 had determined to name Sandra Day O’Connor the first woman on the United States Supreme Court.<sup>409</sup> Prather (age 52) was unopposed in the 1983 election for the remaining one year of the term.

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401. Hoy, *supra* note 399, at 3A.

402. *Id.*

403. *Id.*

404. 1980-1984 Miss. Reg. 567 (1982).

405. MDAH, Secretary of State Records, Campaign Finance Reports, 1980.

406. Kevin Haney, *Ill Justice is Replaced During Recovery*, CLARION-LEDGER (Jackson, Miss.), Apr. 9, 1982, at 3A.

407. Martin Zimmerman, *Smith to Relinquish Seat on State Supreme Court*, CLARION-LEDGER (Jackson, Miss.), June 1, 1982, at 1A.

408. Joy McIlwain, *1st Woman on State Supreme Court “Grew Up with Law”*, CLARION-LEDGER (Jackson, Miss.), July 12, 1982, at 1A.

409. RONALD REAGAN, AN AMERICAN LIFE 280 (1990).

## 6. 1984 [4 elections]

## a. Central District, Post 3

Justice Roy Noble Lee (age 69), who had served one term, was unopposed for re-election.

## b. Southern District, Post 2

Justice Vernon Broom announced that he would retire February 15, 1984, with ten months left in his term. Prior to Judge Broom's intention to resign becoming public, Chancellor Mike Sullivan of Hattiesburg stated that he would be a candidate. Judge Sullivan received the endorsement of the Mississippi Trial Lawyers Association and a regional bar association.<sup>410</sup> A judicial appointment committee conducted interviews of some of those interested in replacing Justice Broom, and Judge Sullivan was one who applied and was interviewed. On the day that Justice Broom retired, Governor Bill Allain appointed Sullivan to the court.<sup>411</sup> Justice Sullivan (age 46) was unopposed in the 1984 election.

## c. Northern District, Post 1

Justice Robertson (age 44), serving since his appointment in 1982, was opposed in the June 5, 1984 Democratic primary by Calhoun County Circuit Judge W. W. "Bill" Brown (age 59). The first controversy that arose was in early April, when the Mississippi Trial Lawyers Association president sent a letter urging members to contribute to Justice Robertson's campaign, stating that "Robertson's opinions have, and will, make you money."<sup>412</sup> Brown criticized Robertson for continuing to teach at Ole Miss instead of being a full-time justice; Robertson's response was that other justices used their spare time to play golf, and certainly teaching was at least as useful.<sup>413</sup>

The intellectual Robertson, a description earned by his demeanor as well as his Harvard education and law school teaching, was the target of a populist campaign by Brown. "Harvard-liberal" was one of the labels Brown allegedly was placing on Robertson.<sup>414</sup> One reporter listed Brown's charges as that Robertson opposed the death penalty, that he had no judicial experience, that he was not a full-time justice because of his teaching, and that he was a liberal.<sup>415</sup> Robertson took special exception to the charge that he was against the death penalty, the political potency of such a depiction being too severe to ignore. "I get rather

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410. *Sullivan Files as Candidate for High Court*, CLARION-LEDGER (Jackson, Miss.), Jan. 15, 1984, at 4B; interview with Justice Sullivan, August 26, 1997.

411. Tom Brennan, *Sullivan Named to High Court*, CLARION-LEDGER (Jackson, Miss.), Feb. 16, 1984, at 1B.

412. Tom Brennan, *Lawyers' Group Defends Fund-Raising Effort*, CLARION-LEDGER (Jackson, Miss.), Apr. 12, 1984, at B2.

413. Tom Brennan, *Robertson Blasts Brown's "Politics of Innuendo"*, CLARION-LEDGER (Jackson, Miss.), at B1; Irene Page, *Judicial Candidate Wants Court Changes*, NORTHEAST MISS. DAILY J. (Tupelo, Miss.), Apr. 25, 1984.

414. Bill Minor, *Supreme Court Race is Meanest in Years*, CLARION-LEDGER (Jackson, Miss.), May 20, 1984, at G3.

415. Kevin Kittredge, *Contrasting Paths Led Two to High-Court Race*, COMMERCIAL APPEAL (Memphis, Tenn.), June 2, 1984.

angry at the suggestion," Robertson said, and argued that "life is not that cheap to be played with like a political football."<sup>416</sup>

Robertson was generally credited with conducting a positive campaign despite the criticisms. He highlighted the "very favorable" rating he received from Governor Winter's judicial selection committee.<sup>417</sup> He admitted that he was trying to ignore his opponent, as incumbents generally attempt to do.<sup>418</sup>

Robertson's victory was a comfortable one, 28,871 to Brown's 16,027.<sup>419</sup> Brown reported \$14,000 in contributions and \$19,000 in expenditures. Robertson received contributions totaling about \$87,500, and made expenditures of nearly \$90,000.<sup>420</sup>

#### d. Northern District, Post 2

Justice Lenore Prather (age 53), who had served on the court for two years, was unopposed for election to a full eight-year term.

### 7. 1976-1985 Summary

There were seventeen elections. Fifteen incumbents ran for election. Eleven were unopposed, while four were challenged. Two open seats drew multiple contenders. This ten-year period has the first significant contribution and expenditure figures. The strongly contested races of 1980 and 1984 had expenditures in the \$80,000-\$90,000 range. Many candidates spent much less than that, usually in a losing cause.

### H. 1986-1996

#### 1. 1986 [2 races]

##### a. Central District, Post 2

Justice Francis Bowling resigned effective December 31, 1984. Governor Bill Allain appointed Circuit Judge Reuben V. Anderson of Jackson to the court, making him the first black on the court. At the June 5, 1986 Democratic primary Justice Anderson (age 44) was challenged by Richard Barrett (age 42), in private practice in Learned (Hinds County).

Barrett was an extremely controversial activist. He stated that he was "running against quota makers. I am running against reserving a seat on the Mississippi Supreme Court for the NAACP or for the bankers' lobby."<sup>421</sup> Barrett denied

416. Greg Kuhl, *Robertson Wins State High Court Bid*, JACKSON DAILY NEWS, June 6, 1984, at C3.

417. *Id.*; Kevin Kittredge, *Robertson Credits Big Win to Smooth Campaign*, COMMERCIAL APPEAL (Memphis, Tenn.), June 7, 1984.

418. Steve Riley, *Supreme Court Hopesfuls are Dissimilar*, CLARION-LEDGER (Jackson, Miss.), June 3, 1984, at A1.

419. 1984-1988 Miss. Reg. 498 (1985).

420. MDAH, Secretary of State Records, Campaign Finance Reports, 1984.

421. Tom Brennan, *Campaign For Central Has Racial Overtone*, CLARION-LEDGER (Jackson, Miss.), May 25, 1986, at 1B. Justice Anderson, besides his NAACP ties, was also a member of the board for Trustmark Bank—thus the "bankers' lobby" allusion.

being a white supremacist, but said "I prefer to say I am for the majority, not the minority, while respecting the minority."<sup>422</sup> Barrett's reputation may have been a factor in such incidents as a trial judge not permitting him to address people gathered in a court room, as is required by state statute.<sup>423</sup> The supreme court ordered the circuit judge to provide an opportunity.<sup>424</sup>

Justice Anderson promoted his candidacy by referring to his ten years on the county and circuit court benches in Hinds County, resulting in his being "much more capable and qualified than my opponent is."<sup>425</sup> Barrett's issues, besides his criticism of the NAACP and of Anderson as a liberal, were the unusual ones for a judicial race of lowering utility rates, interest rates and taxes.<sup>426</sup> The frequent media characterization of the campaign was that the choice was between a competent black judge and a flamboyant, divisive white racial activist.<sup>427</sup>

Justice Anderson won with 59,168 to Barrett's 21,467.<sup>428</sup> Contribution and expenditure reports on this campaign were not discovered.

#### b. Southern District, Post 1

Chief Justice Neville Patterson declined to run for another term. Circuit Judge Ruble Griffin (age 63) of Gulfport, who had been appointed as circuit judge fourteen years earlier to replace Judge Harry Walker when the latter was sworn in to the supreme court, was challenged by Jon Swartzfager (age 45) of Laurel.

Avoiding tripping over the intricacies of the judicial election rules was a problem for both candidates. Each personally signed fund-raising letters, as opposed to having members of a committee do that for them.<sup>429</sup> One of the area newspapers interviewed lawyers who spoke of the difficulty they face when approached by a judge for funds.<sup>430</sup>

Swartzfager appears to have sought some advantage from his relative youth. At a NAACP forum attended by both men, he "said that the people must elect an experienced candidate with the mental and physical energy to lead Mississippi into the 20th Century."<sup>431</sup> Griffin promised to apply his thirteen years of experience as a progressive circuit judge, and also to make his court opinions as brief and concise as possible.<sup>432</sup> He thought that someone "who has been in the trenches, someone with a proven career" would make the better choice for

422. *Id.*

423. MISS. CODE ANN. § 23-15-973 (Supp. 1996); *Barrett Says Campaign Restricted*, CLARION-LEDGER (Jackson, Miss.), Apr. 1, 1986, at 1B.

424. *Lawyer's Stump Speech OK'd*, CLARION-LEDGER (Jackson, Miss.), Apr. 12, 1986, at 1B.

425. Brennan, *supra* note 421, at 1B.

426. *Id.*

427. Sid Salter, *Barrett Using Divisive Tactics in His Try to Unseat Anderson*, CLARION-LEDGER (Jackson, Miss.), June 1, 1986, at 3H; *Vote for Anderson*, CLARION-LEDGER, June 2, 1986, at 6A; *Out Front: Stupidity, Racism Lost in Tuesday's Vote*, CLARION-LEDGER, June 5, 1986 at 16A.

428. 1988-1992 Miss. Reg. 427 (1989).

429. Nathan Johnson, *Judges Find Soliciting Creates Trouble*, HATTIESBURG AM., May 27, 1986, at 1; MISSISSIPPI CODE OF JUDICIAL CONDUCT Canon 7B(2), prohibits direct soliciting of campaign funds.

430. *Id.*; Editorial, *Bar Should Plan Ahead With Judges*, HATTIESBURG AM., June 3, 1986.

431. Susana Bellido, *Candidates Focus on Education, Government Waste*, HATTIESBURG AM., May 30, 1986, at 3A. Unfortunately, Griffin did not have long to live, dying in late 1988.

432. *Id.*

judge.<sup>433</sup> Both men answered the standard hot button question in a judicial race by saying that they would enforce the death penalty.<sup>434</sup>

Griffin won the election with 39,586 votes to Swartzfager's 36,480.<sup>435</sup> Shortly after Griffin won the primary, Chief Justice Patterson resigned on June 30, 1986. Governor Bill Allain appointed Griffin to the vacancy.

Griffin reported a total of \$50,000 in contributions, none in amounts over \$500.<sup>436</sup> He had expenses of \$46,000, with over half spent on television advertisements.<sup>437</sup> Swartzfager spent \$95,000, mainly on media advertisements, and raised no contributions in amounts greater than \$250.<sup>438</sup> He reported personal loans that he made to his campaign of a little under \$57,000.<sup>439</sup>

## 2. 1988 [4 races]

The 1986 Mississippi legislature granted the two political parties the option to conduct a presidential preference primary in March of presidential election years, three months earlier than the normal June congressional primaries.<sup>440</sup> If a party chose that option, the primaries for other offices, including supreme court justice, would be held on the same day.<sup>441</sup> Both parties decided to join the Mississippi local primaries with the multi-state, principally southern "Super Tuesday" primaries of March 8, 1988, between George Bush, Bob Dole, Pat Robertson, and Jack Kemp for the Republican presidential nomination, and with such Democrats as Mike Dukakis, Al Gore, Gary Hart, Jesse Jackson, and Dick Gephardt.

### a. Central District, Post 1

Justice Dan Lee was unopposed.

### b. Central District, Post 2

Justice Reuben Anderson was unopposed.

### c. Southern District, Post 3

Chief Justice Harry G. Walker announced that he would resign due to health problems. Circuit Judge Joseph Zuccaro of Natchez was appointed to the vacancy by Governor Bill Allain in October 1987.<sup>442</sup> Justice Zuccaro declined to run for a full term in the 1988 elections. Former Treasurer, Secretary of State,

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433. Tom Brennan, *Experience Said to be the Key in South Race*, CLARION-LEDGER (Jackson, Miss.), May 25, 1986, at 1B.

434. *Id.*

435. 1988-1992 Miss. Reg. 431 (1989).

436. MDAH, Secretary of State Records, Campaign Finance Reports, 1986.

437. *Id.*

438. *Id.*

439. *Id.*

440. 1986 Miss. Laws, ch. 495, § 320, codified at MISS. CODE ANN. § 23-15-1081 (1990).

441. MISS. CODE ANN. § 23-15-1083 (1990).

442. Jeff Copeskey, *Natchez Judge Gets Seat on High Court*, CLARION-LEDGER (Jackson, Miss.), Oct. 2, 1987, at 1A.

Attorney General, and defeated 1987 gubernatorial candidate Edwin Pittman (age 53) of Hattiesburg, District Attorney Alonzo H. Sturgeon (age 56) of Woodville, Eugene Fair (age 41) of Hattiesburg, state representative J. B. Van Slyke (age 46) of Hattiesburg, and Jon Swartzfager (age 47) of Laurel, who had run in 1986, all competed in the Democratic primary. Van Slyke withdrew before the primary and before raising or spending any money on the campaign.<sup>443</sup>

John Crouch (age 47) of Long Beach was unopposed for the Republican nomination.

Gene Fair, who had been vice-chairman of the Mississippi Ethics Commission, highlighted his service on the Commission, and his experience since 1972 in a wide-range of cases at all levels of the courts.<sup>444</sup> The almost unavoidable use of his name that he chose for a slogan was "Mississippi is calling for a Fair Judge."<sup>445</sup> Pittman talked about the voters' receiving a "return on their investment" from the many public offices that he had held.<sup>446</sup> He criticized the supreme court for being too liberal in criminal matters, and specifically criticized the court's overturning a sentence in a child molestation case.<sup>447</sup> District Attorney Sturgeon said that "Good Supreme Court judges are not born as such," but required the kind of background that he had: thirty years as a lawyer and public official.<sup>448</sup> Sturgeon said he favored the death penalty as a legitimate deterrent to crime, and pledged to be "a patient, attentive, courteous, fair, firm and decisive judge who can work with the other eight judges on the court."<sup>449</sup> Swartzfager, a former Laurel municipal judge, stressed his twenty-two years experience as a practicing lawyer, and his service by appointment from Chief Justice Patterson to a term on the Board of Bar Admissions which allowed him to understand the vital role played by the supreme court in attorney discipline.<sup>450</sup>

The results of the first primary were Pittman 57,279, Swartzfager 23,902, Fair 18,644, and Sturgeon 16,116.<sup>451</sup> At first it appeared that former Attorney General Pittman had gained a narrow majority. Then it was discovered that Claiborne County, which was no longer supposed to be part of the Southern District, had Southern District candidates on the ballot anyway.<sup>452</sup> Without the Claiborne County votes, a run-off was required. For the first primary, Eugene Fair reported raising a little over \$35,000 and spending about \$55,000.<sup>453</sup>

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443. MDAH, Secretary of State Records, Campaign Finance Reports, 1988.

444. Jeff Copeskey, *Ethics Vice Chairman Seeks State Supreme Court Seat*, CLARION-LEDGER (Jackson, Miss.), Jan. 19, 1988, at 3B.

445. Fair advertisement, NATCHEZ DEMOCRAT, Mar. 6, 1988, at 9A.

446. *Four Seek Democratic Nomination to Supreme Court: Ed Pittman*, HATTIESBURG AM., Mar. 5, 1988, at 10A.

447. Jeff Copeskey, *High Court Candidates Can Make No Promises*, CLARION-LEDGER (Jackson, Miss.), Mar. 20, 1988, at 1A.

448. Sturgeon advertisement, HATTIESBURG AM., Mar. 4, 1988, at 5A.

449. *Four Seek Democratic Nomination to Supreme Court: Alonzo Sturgeon*, HATTIESBURG AM., Mar. 5, 1988, at 10A.

450. *Four Seek Democratic Nomination to Supreme Court: Jon Swartzfager*, HATTIESBURG AM., Mar. 5, 1988, at 10A.

451. 1988-1992 Miss. Reg. 545 (1989).

452. Jerry Mitchell, *Error Forces Runoff for Supreme Court Seat*, CLARION-LEDGER (Jackson, Miss.), Mar. 10, 1988 at 1A.

453. MDAH, Secretary of State Records, Campaign Finance Reports, 1988.

Billboards and television advertisements consumed the bulk of his funds. Alonzo Sturgeon raised no money in contributions over \$500, and spent almost \$16,000, mainly on television and newspaper ads.<sup>454</sup>

Swartzfager, the clear underdog, considering the first primary vote totals challenged Pittman to a debate.<sup>455</sup> Pittman ignored the challenge. Swartzfager tried to downplay the relevance of Pittman's various prior political offices as experience for the supreme court, and argued that his own courtroom experience was far more useful.<sup>456</sup> Later he said that Pittman was an administrator "who just so happens to have a law degree."<sup>457</sup>

Pittman said that his opponent's charge was "ludicrous" that he lacked legal experience.<sup>458</sup> He bemoaned the slow pace of the criminal justice system. Pittman argued for administrative changes in handling appeals, and thought an intermediate appellate court was a useful option. He also stated that he would not be seeking "literary prizes, but will write decisions that are legally accurate and correct — Plain Jane in a way."<sup>459</sup> Pittman characterized his experience positively. "I administered and executed all the corporate laws, the securities laws, all your commercial laws when I was secretary of state. That's a wealth of experience. Then I have the experience of having practiced in all the Mississippi courts."<sup>460</sup> During the run off, Swartzfager received the endorsement of the AFL-CIO,<sup>461</sup> and of the Jackson newspaper.<sup>462</sup>

Pittman won handily on March 29, with 43,328 to Swartzfager's 27,210.<sup>463</sup> Pittman reported almost \$33,000 in contributions over \$500 and \$39,000 in expenditures in amounts greater than \$250 in his last report before the March 29 run-off. Swartzfager's final report before the run-off primary revealed \$47,800 in contributions and \$36,000 in expenditures. No final report was discovered.<sup>464</sup>

For only the third time in Mississippi history, there was a November election for the Democratic supreme court nominee to face.<sup>465</sup> That Pittman was in fairly secure shape nonetheless is reflected in his Republican opponent's statement the day after the Democratic run-off; it will be "an uphill battle for me — a David-and-Goliath type thing," attorney John Crouch said.<sup>466</sup>

Crouch's only experience in public office was as a member and then-president of the Long Beach School Board. He argued that his corporate law experience

454. *Id.*

455. Jerry Mitchell, *Pittman, Swartzfager May Meet in 1st-ever Debate in Court Race*, CLARION-LEDGER (Jackson, Miss.), Mar. 10, 1988 at 1A.

456. *Id.*

457. Janet Braswell, *Two Lawyers Clash in Court Race*, HATTIESBURG AM., Mar. 27, 1988, at 1B.

458. M. E. Williams, *Swartzfager Charges Provoke Pittman*, HATTIESBURG AM., Mar. 19, 1988, at 1A.

459. Beverly Pettigrew, *Pittman: Stand on Speedier Appeals Helped Race for Court Seat*, JACKSON DAILY NEWS, Mar. 9, 1988, at 3A.

460. Braswell, *supra* note 457, at 1B.

461. Jerry Mitchell, *Dem. Candidates For High Court Seek Big Voter Turnout*, CLARION-LEDGER (Jackson, Miss.), Mar. 20, 1988, at 1B.

462. Editorial, *Elections: Swartzfager for Supreme Court*, CLARION-LEDGER (Jackson, Miss.), Mar. 27, 1988, at J4.

463. 1988-1992 Miss. Reg. 552-53 (1989).

464. MDAH, Secretary of State Records, Campaign Finance Reports, 1988.

465. Dan Lee and Armis Hawkins in 1980 were the other two.

466. Beverly Pettigrew, *Pittman Handily Wins Court Nomination*, JACKSON DAILY NEWS, Mar. 30, 1988, at 1A.

would bring a unique and needed perspective to the supreme court. Crouch stated that if elected he would be strongly business-oriented, a necessity "to make Mississippi attractive for business."<sup>467</sup>

As the fall campaign progressed, Crouch began to attract some support from traditional Republican groups; Crouch hoped that a big victory for George Bush in the presidential race and for Trent Lott for the Senate would help propel him as well.<sup>468</sup> Crouch tried to distinguish himself from Pittman by stating that he was not a politician, and that he would bring a "conservative, non-political, non-nonsense business background" to the court.<sup>469</sup>

Democratic candidate Pittman stated that supreme court justices "need to be supportive of the lower courts" and not "just seek out ways to reverse the lower court."<sup>470</sup> His campaign was much more low-key than in March. After spending what he said was about \$100,000 in the Democratic primary, Pittman said he would spend only \$10,000 for the fall election. He was trying to avoid overconfidence,<sup>471</sup> but there did seem reason for optimism.

Pittman won with 219,970 votes to Crouch's 93,760.<sup>472</sup> The total reported contributions (over \$500) for Pittman throughout the primary and general election were about \$44,000, while reported expenditures were \$57,000. Crouch spent about \$9000, using the money for campaign flyers and bumper stickers, and for a small amount of media advertising. He had no contributions larger than \$500.<sup>473</sup>

#### d. Northern District, Post 3

Justice Armis Hawkins (age 68), first elected in 1980, was unopposed for a second term.

#### 3. 1990 [1 election] Southern District, Post 1

Justice Ruble Griffin died on December 29, 1988.<sup>474</sup> Governor Ray Mabus appointed Gulfport attorney Joel Blass to the vacancy, and he was sworn in on February 27, 1989.<sup>475</sup> Justice Blass (age 72) was challenged in the 1990 Democratic primary by Chuck McRae (age 51), a Gulfport attorney who was active in state and national trial lawyer associations. No Republicans qualified for the election. Justice Blass had been in private practice in Gulfport when he was appointed.<sup>476</sup>

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467. *Id.*

468. Andy Kanengiser, *Crouch Seeks to Gain Votes from GOP Backers in High Court Race*, JACKSON DAILY NEWS, Oct. 21, 1988, at 5A.

469. Crouch campaign card (in possession of author).

470. Jerry Mitchell, *Pittman Says Court Should Attune to Public*, CLARION-LEDGER (Jackson, Miss.), Oct. 27, 1988, at 1B.

471. *Id.*

472. 1988-1992 Miss. Reg. 560 (1989).

473. MDAH, Secretary of State Records, Campaign Finance Reports, 1988.

474. Deborah Skipper, *Supreme Court Justice Ruble Griffin is the 4th State Judge to Die in a Month*, CLARION-LEDGER (Jackson, Miss.), Dec. 30, 1988, at A1.

475. James Ricketts, *Blass Sworn in to High Court, Says He'll Run in '90*, CLARION-LEDGER (Jackson, Miss.), Feb. 28, 1989, at 1B.

476. Jeff Copeskey, *Coast Lawyer Appointed to High Court*, CLARION-LEDGER (Jackson, Miss.), Feb. 9, 1989, at B1.

Justice Blass ran on his long record of legal experience. For eight years he had been in the legislature and for six years taught at Ole Miss Law School.<sup>477</sup> Not emphasized in this Democratic primary was the fact that he was the first cousin of three-time Republican state-wide office nominee Gil Carmichael.

Near the primary, endorsements started to be announced. McRae received the support of the Mississippi Prosecutors Association and the Mississippi Trial Lawyers Association; Blass received the public support of the Harrison County Bar Association and four officials, Harrison County Sheriff Joe Price, District Attorney Cono Caranna, and prosecuting attorneys Robert A. Payne and Margaret Alfonso.<sup>478</sup> The gulf coast's *Sun Herald* newspaper also endorsed Blass.<sup>479</sup>

The most controversial aspects of the campaign were the amount of money spent and some of the messages. One newspaper stated that "McRae has saturated the Southern District with television and newspaper advertisements promising that he will be a 'Tough Judge for these Tough Times.'" <sup>480</sup> One famous television advertisement was a scene of a supposed inmate arriving at his cell, and as the iron bars closed the prisoner was encouraged to alert his cell-mates, "Tell them Chuck sent you." Blass' ads called him a "soldier, lawyer, statesman, teacher, judge who will continue a tradition of service."<sup>481</sup> Blass criticized McRae's advertisements as indicating prejudgment of cases.

McRae's exceptionally hard work during the campaign season, leading him to every county in a journey that he estimated to be 17,000 miles, certainly must have played a role in his success.<sup>482</sup> On the other hand, though Justice Blass made some forays out on the campaign trail, he remained at the supreme court working on cases during most of the political contest. At the June 5 primary, the vote was McRae 25,765, Blass 20,770.<sup>483</sup>

Reports filed after the election showed that Justice Blass had raised \$16,600 in contributions in amounts over \$500, and spent \$100,500. Chuck McRae's final report revealed \$183,350 in expenditures and \$34,500 in contributions over \$500.<sup>484</sup>

#### 4. 1991 [1 election] Central District, Post 2

Justice Reuben Anderson resigned from the court effective on December 31, 1990.<sup>485</sup> Circuit Judge Fred Banks, Jr. of Jackson, who had been appointed to

477. Grace Simmons, *Blass Spells Out Qualifications in Bid to Regain Seat on State's High Court*, CLARION-LEDGER (Jackson, Miss.), May 16, 1990, at 4B.

478. Terry R. Cassreino, *McRae, Blass receive Endorsements in Quest for Supreme Court*, SUN HERALD (Biloxi, Miss.), May 31, 1990, at A8.

479. Editorial, *Joel Blass is the Best Choice for State Supreme Court*, SUN HERALD (Biloxi, Miss.), June 3, 1990, at A14.

480. Tammie Cessna Langford, *Vying for State's High Court*, SUN HERALD (Biloxi, Miss.), June 3, 1990, at B1.

481. *Id.*

482. Tammie Cessna Langford, *McRae Unseats Blass*, SUN HERALD (Biloxi, Miss.), June 6, 1990, at A1.

483. 1992-1996 Miss. Reg. 376 (1993).

484. MDAH, Secretary of State Records, Campaign Finance Reports, 1990.

485. Jerry Mitchell, *State to Lose Only Black High Court Justice*, CLARION-LEDGER (Jackson, Miss.), Nov. 3, 1990, at 1A.

succeed Anderson as circuit judge, now succeeded him as supreme court justice. Appointed by Governor Ray Mabus, Banks was sworn in on January 7, 1991. Justice Banks (age 49) was challenged by Chancellor W. O. Dillard (age 61) of Clinton for the remaining five years of the term. Neither had opposition in their respective primaries.

Chet Dillard was a long-time Democrat who switched to the Republican Party to run for the supreme court. He stated that he “just had a change in philosophy and [felt] like it’s time I should run as a Republican.”<sup>486</sup>

The campaign was relatively quiet until campaign advertisements and other messages started to emerge near the November election. Dillard emphasized his experience as Jones County District Attorney in the 1960’s, as Public Safety Commissioner in the early 1970’s by appointment of Governor Waller, and as a chancellor since 1988, appointed by Governor Allain. He acknowledged not being “popular with some people, and that’s the way a judge should be.”<sup>487</sup>

Justice Banks also discussed experience, as he had been a state representative from 1976-1985, and then was appointed circuit judge in 1985 and supreme court justice in 1991.<sup>488</sup> He used television advertisements that had such prominent individuals as former Justice Reuben Anderson, Jackson businessman Leland Speed, and former Governor William Winter endorsing him and describing his abilities.<sup>489</sup>

The campaign became hot when Judge Dillard ran newspaper advertisements, beginning one week before the election, that included a picture both of Dillard and of Banks. The words used in the ad characterized Dillard as “tough” — tough by education, tough by military, tough as a prosecutor, and tough as a judge.<sup>490</sup> What caused the controversy, though, was Judge Dillard’s use of Justice Banks’ picture, showing that he was a black man. Some Banks supporters called this a “calculated race-baiting effort.”<sup>491</sup> Dillard’s response was

I can’t run a campaign against a ghost. People have a right to know who the candidate is . . . . Throughout the campaign, (former) Governor (William) Winter, Leland Speed, and Anderson have endorsed a candidate, but nobody has shown a picture of the candidate. Since he chose not to put his picture in, I had no choice but to put it in.<sup>492</sup>

With this last-minute flurry of attention, supposedly many more voters became aware of the race than otherwise would have been the case. Justice Banks won an extremely close election with 118,122 votes to Dillard’s 112,249.<sup>493</sup>

486. Beverly Pettigrew Kraft, *Chet Dillard to Enter Race for State Supreme Court*, CLARION-LEDGER (Jackson, Miss.), May 29, 1991, at 1B.

487. Carole Lawes, *Dillard Wants Background, Training, Experience Put to Use*, CLARION-LEDGER (Jackson, Miss.), Oct. 24, 1991, at 1B.

488. Carole Lawes, *Banks Says Lawyers, Judges Want Him Right Where He Is*, CLARION-LEDGER (Jackson, Miss.), Oct. 24, 1991, at 1B.

489. Carole Lawes, *State High Court Hopeful Dillard Concerned Over Ad Feedback*, CLARION-LEDGER (Jackson, Miss.), Nov. 2, 1991, at 1B.

490. Dillard advertisement, CLARION-LEDGER (Jackson, Miss.), Oct. 29, 1991, at 6A.

491. Carole Lawes, *Banks’ Supporters Blast Court Race Opponent’s Ad*, CLARION-LEDGER (Jackson, Miss.), Oct. 30, 1991, at 1B.

492. *Id.*

493. Copies of returns were provided by the Office of the Secretary of State, Elections Division.

## 5. 1992 [4 elections]

## a. Central District, Post 3

Justice Roy Noble Lee announced that he would retire at the end of his term. County Judge Jim Smith (age 49) of Brandon, former County Judge James Bell (age 38) of Jackson, and Chancellor W. O. Dillard (age 62) of Clinton competed in the Republican primary. Laurel Weir (age 63), a Philadelphia lawyer in private practice, and Frank Barber (age 63) of Jackson, a former state senator and aide to United States Senator James Eastland, ran in the Democratic primary.

Democrat Laurel Weir had years earlier been a Neshoba County prosecuting attorney. Weir talked about hard work. "I'm not criticizing anyone. I'd rather take time and do things right, but I always get up at 5:00 every morning and I can turn out a lot of work."<sup>494</sup> A slogan he used during the campaign was "have gavel, will travel."<sup>495</sup> Fellow Democrat Frank Barber, whose service as secretary of the state senate had ended when new Republican Lieutenant Governor Eddie Briggs took office in January, wanted people to see him as someone with "judicial temperament and the intuitive and writing skills necessary to make meaningful legal decisions."<sup>496</sup>

On the Republican side, Judge Bell ran on his experience as a county court judge and his frequent special appointments in other cases.<sup>497</sup> Chancellor Dillard, narrowly defeated the previous year for the supreme court and still probably well-remembered, said his second race would give his supporters "two votes for the price of one."<sup>498</sup>

Judge Smith had substantial support from religious groups. He and his wife Shirley were active Pentecostal Church members. Some news stories resulted from the fact that Judge Smith, along with Chancellor Denise Sweet Owens of Jackson, were participants in four educational television programs about child abuse, called *Together Forward*. Judge Smith's Youth Court work, including being chairman of the state Council of Youth Court Judges in 1991-1992 made him one of the best-known public officials on child abuse and crime issues. That earned him the invitation to be on the program before the election was underway.<sup>499</sup> Three programs aired during the primary campaign and other candidates complained. Chancellor Dillard and former senator Barber filed a protest with the Federal Communications Commission.<sup>500</sup> The station refused the request for equal time because it was not made as required by federal regula-

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494. Bill Minor, *I Supreme Court Candidate's Stormy Past Not Easily Forgotten*, CLARION-LEDGER (Jackson, Miss.), Mar. 8, 1992, at 7G.

495. *Id.*

496. *Id.*

497. Butch John, *Ex-Hinds Judge Seeks High Court Seat*, CLARION-LEDGER (Jackson, Miss.), Jan. 9, 1992 at 3B.

498. Carole Lawes, *Hinds County Chancellor Takes Second Chance to Step Up to High Court*, CLARION-LEDGER (Jackson, Miss.), Jan. 11, 1992, at 3B.

499. Cathy Hayden, *ETV Owes High Court Hopeful Dillard Airtime, He Says*, CLARION-LEDGER (Jackson, Miss.), Mar. 21, 1992 at 1A.

500. Cathy Hayden, *Court Candidate Files FCC Protest Against METV*, CLARION-LEDGER (Jackson, Miss.), Mar. 31, 1992, at 2B.

tions within seven days of Judge Smith's appearances.<sup>501</sup> Judge Smith decided not to appear in the final program because of the controversy, and Judge Dillard declined an invitation to appear in that program since he felt the participants were pro-Smith.<sup>502</sup>

The Rankin County GOP Women sponsored a debate among all the candidates on March 6. Moderator was former state senator Barbara Blanton. Among positions taken at the debate, Judge Smith criticized plea bargaining, saying courts were "tougher on the children than we are on adults."<sup>503</sup> Former Senator Barber spoke supportively for plea bargaining, indicating its utility for resolving weak cases. Weir opposed forming intermediate appellate courts to reduce the supreme court case backlog problem.<sup>504</sup>

Frank Barber won the two-candidate Democratic primary on March 10 easily, with 37,126 votes to Weir's 14,320.<sup>505</sup> On the Republican side, Smith led with 23,314 votes followed by Dillard with 19,401 and Bell with 14,574.<sup>506</sup> This was the only primary the Republicans ever held for the Mississippi Supreme Court, and more people voted in it than in that year's Democratic one.

In the run-off, turnout was the biggest worry with so little on the ballot.<sup>507</sup> Smith won the March 31 run-off with 19,282 votes to Dillard's 8204.<sup>508</sup>

Financial reports for the primaries revealed this information. Laurel Weir had no reportable contributions, and spent almost \$20,000. Frank Barber's report for the primary indicated \$15,000 in contributions and \$10,400 in expenditures. On the Republican side, W. O. Dillard's final report was not discovered, but his report for the Friday before the March 31 run-off showed \$30,000 in contributions and expenditures. James Bell's final report indicated \$39,000 in contributions and in expenditures, with much of the money spent on television and radio. Jim Smith for the primaries spent approximately \$45,000 and had reportable contributions of \$42,750.<sup>509</sup>

Judge Smith put together an impressive group of people knowledgeable and experienced in political campaigns. Co-chairmen of the campaign were three well-known stalwart Republicans: Former state party finance chairman W.D. Mounger, former congressional nominee Liles Williams, and future state GOP chairman Billy Powell. Also active and of critical assistance was Robbie Hughes of Jackson. Perhaps most helpful of all was Judge Smith's energetic wife Shirley.

Judge Smith's service as youth court judge, an aspect of his duties as a county court judge, was a central theme. One advertisement resulted from a girl coming

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501. Cathy Hayden, *Free Airtime Denied to 2 Rivals of Candidate on ETV Special*, CLARION-LEDGER (Jackson, Miss.), Mar. 28, 1992, at 3B. Interview with Justice Smith, (Aug. 28, 1997); Beverly Pettigrew Kraft, *Experts' Estimates Conservative on New Justices*, CLARION-LEDGER (Jackson, Miss.), Nov. 5, 1992, at 1B.

502. Hayden, *supra* note 499, at 1A.

503. Deborah D. Douglas, *Supreme Court Hopefuls Take Witness Stand*, CLARION-LEDGER (Jackson, Miss.), Mar. 8, 1992, at 1B.

504. *Id.*

505. 1992-1996 Miss. Reg. 447 (1993).

506. *Id.* at 441.

507. Beverly Pettigrew Kraft, *Runoff Rivals Concerned About Low Turnout*, CLARION-LEDGER (Jackson, Miss.), Mar. 30, 1992, at 1B.

508. 1992-1996 Miss. Reg. 441 (1993).

509. MDAH, Secretary of State Records, Campaign Finance Reports, 1992.

forward whom he had sentenced as a juvenile, whose praise for Judge Smith's role in turning her life around was powerful. He ran in the general election as the one candidate with judicial and prosecutorial experience, who had handled over 16,000 cases and 2,000 trials, with a 97% conviction rate with "no plea bargains, period!"<sup>510</sup> Among other endorsements, Judge Smith was supported by the *Scott County Times* as a worthy successor to retiring Scott County native, Roy Noble Lee.<sup>511</sup>

Former Senator Barber was in extremely poor health in 1992. He had surgery for an aneurism in July, and his campaigning was limited well into the fall. He was unable to give his scheduled address at the Neshoba County fair. Barber recovered sufficiently that he was able in late October to attend a fund-raiser in Washington, D.C. organized for him by his daughters Amanda and Melanie, with author John Grisham as the host.<sup>512</sup> Barber proposed judicial reform, such as to limit the number of successive appeals that someone sentenced to death could take.<sup>513</sup> One of his newspaper advertisements asked whether voters liked that hardened criminals "are free to be in bars," instead of being "behind bars"; a vote for Barber would "help install a deadbolt lock on the revolving door at Parchmen."<sup>514</sup> Barber received public support from some state NAACP members both in the primary against Laurel Weir, and in the general election.<sup>515</sup>

Smith won the November 3 general election with 174,006 votes to Barber's 124,616.<sup>516</sup> He was the first Republican ever elected to the supreme court, and also the last because judicial elections became non-partisan in 1994. Barber would be elected to the Court of Appeals in 1994.

Frank Barber's total expenditures for the primary and general election were about \$70,000, with contributions of \$72,000. Jim Smith reported total expenditures for the primary and general election campaign of \$109,000, and raised the same amount of money.

#### b. Southern District, Post 2

Justice Mike Sullivan (age 54), named to the court in 1984, was unopposed.

#### c. Northern District, Post 1

Justice James L. Robertson (age 52), on the court since his 1983 appointment, was opposed in the Democratic primary by Chancellor James L. Roberts (age 47) of Pontotoc. No Republicans filed, so the Robertson-Roberts winner would secure the position.

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510. Jim Smith advertisement, PORT GIBSON REVEILLE, Oct. 29, 1992, at 6.

511. *Supreme Court We Back Smith*, (advertisement reprinting endorsement), CLARION-LEDGER (Jackson, Miss.), Nov. 2, 1992 at 3B.

512. Lois Romano, *The Reliable Source: And the Brief Goes On*, WASHINGTON POST Oct. 2, 1992, at B3; conversation with Mary Jane Barber, (Oct. 8, 1997); copy of Grisham invitation.

513. Beverly Pettigrew Kraft, *Supreme Court Hopefuls Target Backlog*, CLARION-LEDGER (Jackson, Miss.), Oct. 13, 1992, at 1B.

514. Frank Barber advertisement, CLARION-LEDGER (Jackson, Miss.), Nov. 2, 1992, at 2A.

515. Aaron Henry letter supporting Barber against Weir, (Feb. 24, 1992); *Advocate Endorses*, JACKSON ADVOCATE, Mar. 5-11, 1992, at 4A.

516. 1992-1996 Miss. Reg. 464 (1993).

One subsequent writer called an endorsement of Chancellor Roberts on January 23, 1992, by the Mississippi Prosecutors Association, “perhaps the most dramatic event of the campaign.”<sup>517</sup> The prosecutors took the position that the supreme court was unreasonably restricting their ability to obtain convictions, a trend that was leading to “chaos.”<sup>518</sup> An anonymous circular was disseminated throughout the campaign, a document distributed by others and not by Chancellor Roberts, that focused on different opinions by Justice Robertson on criminal cases.<sup>519</sup> One case was *Clemons v. State*.<sup>520</sup> Justice Robertson’s dissent was said to reflect his belief that someone who shot an unarmed pizza delivery boy did not deserve the death penalty, when in fact the dissent focused only on the always problematic jury instruction about the crime being “especially heinous, atrocious or cruel.”<sup>521</sup> Several other cases were criticized for similar “soft on crime” reasons.<sup>522</sup> This perception resulted in some groups and individuals, including victims and families, working energetically against Justice Robertson.<sup>523</sup> Hinds County District Attorney Ed Peters may have spoken for other prosecutors when he said “I talked against Robertson every chance I got.”<sup>524</sup>

The money spent on the race was significant. Pre-primary reporting showed approximately \$70,000 collected and \$50,000-60,000 spent by each candidate, while final reports were much higher.<sup>525</sup> The confusion engendered by the names of the candidates — incumbent James L. Robertson and challenger James L. Roberts, both nicknamed “Jimmy” — led to memory tricks being told to voters, such as to vote for the short, or long, or first, or last name.<sup>526</sup>

Chancellor Roberts won the March 10 Democratic primary with 39,601 votes to Justice Robertson’s 29,632.<sup>527</sup> Justice Robertson’s reported total contributions, including those under \$500, of \$154,370, with expenditures of almost \$153,000. Chancellor Roberts’ final report revealed \$124,000 in contributions and the same in expenditures.<sup>528</sup>

#### d. Northern District, Post 3

Justice Lenore Prather (age 61), who became a justice in 1982, was unopposed.

517. David W. Case, *In Search of an Independent Judiciary: Alternatives to Judicial Elections in Mississippi*, 13 MISS. C. L. REV. 1, 16 (1992) (hereinafter referred to as “Case, *Independent Judiciary*”).

518. Case, *supra* note 517, at 16.

519. Case, *supra* note 517, at 16.

520. 535 So. 2d 1354 (Miss. 1988), *rev’d*, 494 U.S. 738 (1990).

521. *Id.* at 1367, 1371 (Robertson, J., dissenting); Case, *supra* note 517, at 18.

522. Case, *supra* note 517, at 18-19.

523. Carole Lawes & Beverly Pettigrew Kraft, *High Court Judge Coddled Criminals, Critics Say*, CLARION-LEDGER (Jackson, Miss.), Mar. 13, 1992, at 1B.

524. *Id.*

525. Beverly Pettigrew Kraft, *Northern High Court Hopefuls Rank High on Campaign Spending*, CLARION-LEDGER (Jackson, Miss.), Mar. 9, 1982, at 1B.

526. Conversation between author and delta political worker, (1996); Beverly Pettigrew Kraft, *What’s In a Name? Votes, Say 2 Candidates*, CLARION-LEDGER (Jackson, Miss.), Mar. 10, 1992, at 1B.

527. 1992-1996 Miss. Reg. 446 (1993).

528. MDAH, Records of the Secretary of State, Campaign Finance Reports, 1992.

## 6. 1994 [1 race] Southern District, Post 1

Justice Chuck McRae (age 55), who was unopposed in the June Democratic primary, was initially challenged by Gulfport attorney and state senator Mark Garriga (age 34) (the youngest candidate ever to run), who was unopposed for the Republican nomination.

On May 24, 1994, Garriga was named by Governor Kirk Fordice to replace his first chief of staff, Andy Taggart.<sup>529</sup> Garriga withdrew from the judicial election on June 15, allowing the Republican state executive committee to name a new nominee.<sup>530</sup> What was unclear, however, is whether the judicial elections would be held under the long-established partisan rules, or whether a pending statute that would cancel party elections and institute non-partisan judicial elections would be approved by the United States Department of Justice under the Voting Rights Act.<sup>531</sup> The filing deadline under the proposed procedures, still not in effect when Garriga withdrew, had been May 6. In August, Natchez attorney Bob Latham (age 41) was substituted as the GOP nominee by the State Republican Executive Committee under statutory procedures.<sup>532</sup> On September 6, 1994, the statute providing for non-partisan elections became effective. A court challenge to Latham's ability to be a substitute under that statutory scheme was successful; the supreme court on a 5-3 vote found that the new statute had no mechanism for substituting candidates.<sup>533</sup> Thus, ultimately Justice McRae was unopposed. His final campaign finance report indicated \$82,300 in contributions and almost \$100,000 in expenditures, paid largely to campaign and media consultants.<sup>534</sup>

## 7. 1996 [4 elections]

One of the central issues to which candidates and the press gave considerable attention in all the races concerned whether the Business and Industry Political Education Committee (BIPEC) was improperly trying to rally support, and encourage substantial contributions, to one candidate in each of the four supreme court races.<sup>535</sup> Most of the candidates submitted answers to a questionnaire provided by BIPEC. One candidate, Gerald Hosemann, objected to the questionnaire in its entirety, and a few others refused to answer certain questions. Almost all responded, however. The questions were similar to attitude inquiries on employment questionnaires.<sup>536</sup> Besides general background questions — family, schools, honors, offices held, memberships in a plaintiff or a defense lawyer

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529. Emily Wagster, *Lawyer is Fordice's Chief of Staff*, CLARION-LEDGER (Jackson, Miss.), May 25, 1994, at 1B.

530. Emily Wagster, *Fordice Chief of Staff to Withdraw from State Supreme Court Race*, CLARION-LEDGER (June 15, 1994), at 3B.

531. *Latham v. Molpus*, 642 So. 2d 1340, 1341 (Miss. 1994).

532. Beverly Pettigrew Kraft, *Attorney from Natchez Announces Candidacy for State Supreme Court*, CLARION-LEDGER (Jackson, Miss.), Aug. 19, 1994, at 3B.

533. *Latham*, 642 So. 2d at 1342-43 (McRae, J., not participating).

534. MDAH, Secretary of State Records, Campaign Finance Reports, 1994.

535. Beverly Pettigrew Kraft, *Business Exerts Influence in Supreme Court Races*, CLARION-LEDGER (Jackson, Miss.), Nov. 2, 1996, at 1A.

association — there were questions about what the candidate considered to be high income and what level to be middle income. What did the candidate believe was the normal level of return for money invested in business? Did the candidate have an explanation for what was causing the increase in numbers of lawsuits? The candidate's views on the role of the judicial branch and possible ways to improve the image of the judiciary were also sought. In July the group endorsed Mills, Terry, Hood and Southwick.

Total reported contributions to supreme court candidates by the largest business political action committee (which is the Improve Mississippi PAC, as BIPEC itself is not a political action committee), were \$83,000. Smaller, but significant amounts were contributed by other business-oriented political action committees, including the Mississippi Manufacturers Association PAC and the Medical Association PAC. These contributions generally were made to candidates. BIPEC also spent substantial sums on an education program, preparing a glossy eight-page booklet on the supreme court elections, with short biographies of each candidate and a statement of the importance of the races. There were also small cards listing the four BIPEC-endorsed candidates printed and sent as gummed pads to BIPEC members and others, for distribution.

Reported expenditures by one organization raising money from plaintiff lawyers, the Institute for Consumers and the Environment PAC or ICE-PAC, were \$101,000. It is not clear how much of the money was spent on court races, and some contributions were made to campaign consultants.<sup>537</sup> ICE-PAC did not publicize endorsements.

These figures do not include what individual business-oriented or plaintiff-oriented lawyers contributed.

#### a. Central District, Post 1

Chief Justice Dan Lee (age 70) of Jackson, who was finishing his second term on the court, was challenged by Mississippi Court of Appeals Judge Billy Bridges (age 62) of Brandon, former Chancellor W. O. Dillard (age 66) of Clinton, County Judge Gerald Hosemann (age 44) of Vicksburg, Municipal Judge Bill Waller, Jr. (age 44) of Jackson, former Circuit Judge Ed Williamson (age 50) of Philadelphia, and Court of Appeals Judge Leslie Southwick (age 46) of Jackson. Chief Justice Lee withdrew on May 30<sup>538</sup> and Mr. Williamson withdrew on June 5.<sup>539</sup>

One televised debate involving all five candidates (and also Justice Banks in the other central district race) occurred in Meridian, and was broadcast over educational television stations. Most of the five candidates used newspaper and radio advertisements, and Bridges, Hosemann, Waller and Southwick had television ads. All gave speeches at the Neshoba County Fair in August, and appeared at a few joint forums around the district.

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536. This summary is drawn from a copy of the questionnaire that is in the author's possession.

537. MDAH, Secretary of State Records, Campaign Finance Reports, 1996.

538. Jerry Mitchell, *State's Chief Justice Won't Run Again*, CLARION-LEDGER (Jackson, Miss.), May 31, 1996, at 3B.

539. *Williamson Withdraws from Judgeship Race*, NESHOPA DEMOCRAT (Philadelphia, Miss.), June 5, 1996, at 1.

Former Chancellor Dillard had no reported contributions, and his campaign media effort was therefore limited. At the Neshoba County Fair and other stops he handed out copies of one of his two books on his experiences in politics and the law. He also had photocopied and distributed his opinion as a chancellor, issued on April 22, 1994, in the suit by former Jackson public school principal Bishop Earl Knox against the Jackson School Board. Knox had been removed as principal because he allowed a prayer to be said over the school's intercom. Chancellor Dillard's opinion focused on religious freedom, and ordered the school board to rehire Knox and to prepare guidelines on the religious freedom issue. The Mississippi Supreme Court subsequently reversed Judge Dillard and upheld the action of the school.<sup>540</sup>

Judge Hosemann pointed out that no person in this century had served on the supreme court from Vicksburg. That the state's first chief justice, William Sharkey, and two others from 1869-1878 had served was apparently not good enough. He had a point. Hosemann stressed his long service as a county court judge, and his unique service among these candidates as a youth court judge, making him a specialist on the critical issues of youthful offenders. He urged voters to "join the fight for judicial excellence."<sup>541</sup>

Judge Billy Bridges of the court of appeals ran on his long service as a chancellor, district attorney, and county attorney, as well as his two years on the appellate court. He sent a mailer to voters that said he had been tough on crime, the only true conservative, and a strong advocate of the death penalty. He had effective, fifteen-second television advertisements that showed only his name — a fifteen-second bumper sticker with a voice-over message. In a race that in the end depends as much on name identification as anything else, it was a good approach.

Judge Waller resigned his municipal judgeship at the start of the campaign, a move that received favorable publicity. His television and newspaper advertisements focused on his National Guard service, his family, and his range of practical experience as an attorney and municipal court judge. He may have logged more miles, visited more towns, attended more openings of court and other events than any other candidate. His success was hard-earned.

Giving an explanation of campaign strategy has been difficult for these nearly forty races spread over eighty years, but there is one campaign that the author can address with some personal knowledge, if suspect candor. The 1996 Southwick campaign had three themes: (1) need for change on the supreme court; (2) the candidate's hard work and success as a judge on the court of appeals, which might translate into voters' belief that he would do the same on the supreme court; and (3) the candidate's strong rulings as a judge in criminal cases. Through television and radio advertisements showing concerned citizens talking about the court, and by other advertisements highlighting the candidate's work on the court of appeals, these themes were presented.

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540. *Board of Trustees v. Knox*, 638 So. 2d 1278, 1283 (Miss. 1994).

541. *Join the Fight for Judicial Excellence*, tabloid inserted in many district newspapers, (copy in possession of author).

On reflection, the candidate should not have engaged in implied and explicit criticisms of the supreme court. Saying that the supreme court “was a mess” and highlighting dissension and prior negative news about the court undermined both the image of the judiciary, and the institutional need of subordinate courts and judges to work with the supreme court. In effect the campaign criticisms of the court were part of the problem and no part of the solution.

A summer-time decision was also made for the candidate to walk the district. The same approach, if a different direction, route, and distance was taken when Southwick won his court of appeals race in 1994. Though criticized in both campaigns as gimmicky, the walk from the candidate’s perspective was a helpful way to meet and talk with people he otherwise would never have seen, and to have those people, and perhaps the media, spread news about a campaign that otherwise would have been ignored.<sup>542</sup> This time the route was from Cleveland to Greenville, imprudently done in the worst heat of July, followed later by a trek from the shoreline at the Mississippi River in Vicksburg along Highway 80 to the state line east of Meridian, for a total of 200 miles.

Television advertisements were placed in the Jackson, Meridian, and Greenville stations, and radio and newspaper ads were also purchased. Fund-raisers were held in Jackson, Meridian, Indianola, Vicksburg and Brandon. Besides the Neshoba County Fair, smaller fairs and events were attended in other towns — starting with the Fourth of July Fair in Lena.

Criticisms of Southwick’s candidacy focused on the BIPEC money, the possible resulting or even pre-existing allegiances to business, the partisanship implications of using a picture of George Bush in campaign material in order to symbolize Southwick’s work in the Bush Administration, and the fact that Southwick was born and grew up in Edinburg, Texas, and did not move to Mississippi until 1976. Another partisanship issue arose on the last weekend of the campaign, when the Mississippi Republican Party sent out a card urging support for Republican candidates, and also for each of the business-endorsed supreme court candidates.

In the first election on November 5, the vote was as follows:

Bill Waller, Jr.	91,328
Billy Bridges	63,924
Leslie Southwick	55,941
Gerald Hosemann	37,200
Chet Dillard	28,707. <sup>543</sup>

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542. Though the 200-mile walk allowed the candidate to receive some media attention in addition to its other benefits, the less than stellar finish in the race allowed for a little media fun-poking. In some of the state-by-state reporting done on that presidential election night, a minor race was also spotlighted in each state. The Associated Press early in the evening reported on the victories of Senator Thad Cochran and Third District Congressman Chip Pickering, then for human interest stated that Southwick “hiked in sneakers across 22-county district to meet voters in campaign for open seat on state Mississippi Supreme Court.” *National Returns*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Nov. 6, 1990, at 37A. When the results became clear, the report was “Southwick finishes third after hiking in sneakers across . . .,” *From Presidency to Bear Hunting*, AUSTIN AM. STATESMAN (Austin, Tex.), Nov. 7, 1996, at A10. There was an error in the reporting, however. The shoes were Rockports, not “sneakers.”

543. 1996-2000 Miss. Reg. 479 (1997).

In the run-off Waller won with 36,627 votes to Bridges 19,791 votes.<sup>544</sup>  
Reported contributions and expenditures were as follows:

	<i>contributions</i>	<i>expenditures</i>
Billy Bridges	\$49,800	\$73,200
Chet Dillard	none reportable	\$6,180
Gerald Hosemann	\$45,000	\$47,000
Leslie Southwick	\$149,000	\$150,000
Bill Waller, Jr.	\$265,600.	\$253,000. <sup>545</sup>

b. Central District, Post 2

Justice Fred Banks (age 54), serving on the court since 1991, was challenged by former Assistant Attorney General Ryan Hood (age 44) of Jackson. Justice Fred Banks in 1996 did largely what he did in 1991 — engaged in personal campaigning, had a hard-working organization, and ran television advertisements that consisted of endorsements by such people as Reuben Anderson, Jackson businessman Leland Speed, and Jackson attorney Ed Brunini, Jr.

Ryan Hood also ran television advertisements; at least two different ads using family members of victims who criticized votes cast or opinions written by Justice Banks.<sup>546</sup> One of the advertisements stated that Justice Banks cast the deciding vote in a decision that overturned twenty-two capital cases. The decision intended was probably *Clemons v. State*.<sup>547</sup> Justice Robertson in 1992 had to contend with criticisms of his decision in an earlier appeal of the case, while Justice Banks participated after remand from the United States Supreme Court. The decision held that a jury must again sentence Clemons because the original jury was given the “especially heinous, atrocious and cruel” instruction.<sup>548</sup> *Clemons* has been relied upon in many subsequent cases to reverse and remand for resentencing, which apparently is the source for the wording of the advertisement that twenty-two cases were overturned. From as early as mid-summer, Ryan Hood criticized Judge Banks as “soft on crime . . . [and] basically anti-death-penalty,”<sup>549</sup> a matter elaborated upon as the campaign progressed. Hood campaign mailers and newspaper inserts showed Hood’s and Banks’ pictures and stated their separate positions on a range of points such as philosophy, death penalty, crime, and racial quotas.<sup>550</sup>

Banks won with 155,518 votes to Hood’s 131,873.<sup>551</sup> Justice Banks reported contributions of \$152,500 and expenditures of \$160,000. Ryan Hood had reported contributions of \$125,000 and reportable expenditures of \$88,000.<sup>552</sup>

544. *Id.* at 481.

545. MDAH, Secretary of State Records, Campaign Finance Reports, 1996, through December 31, 1996.

546. Editorial, *Court Races*, CLARION-LEDGER (Jackson, Miss.), Nov. 10, 1996, at 4G.

547. 593 So. 2d 1004 (Miss. 1992).

548. *Id.* at 1007.

549. Mac Gordon, *Candidate for State Supreme Court Calls Current Justice “Soft on Crime,”* CLARION-LEDGER (Jackson, Miss.), July 17, 1996, at 3B.

550. *What’s the Difference Between the Two Candidates for Mississippi Supreme Court?*, Hood large campaign postcard, (in possession of author).

551. 1996-2000 Miss. Reg. 479 (1997).

552. MDAH, Secretary of State Records, Campaign Finance Reports, 1996.

c. Southern District, Post 3

Justice Edwin Pittman (age 61) of Hattiesburg, on the court since 1989, was challenged by Circuit Judge Jerry Terry (age 62) of Gulfport.

The challenger in his speeches as well as in newspaper and television advertisements, charged that the incumbent had been part of the supreme court's too-frequent reversal of criminal cases. He cited frustration "with the constant change in the law and not being able to rely on precedents" as a major reason for his entry. Judge Terry also touted his own experience. He collected support from about seventy-five lawyers in the district whose names appeared in advertisements that praised Terry for being "fair, impartial, and guided by a sense of historical values."<sup>553</sup> He had been a lawyer on the coast for thirty-four years, a circuit judge for nine, and had gained in that time a reputation "for being tough, but I've seen some of the worst criminals in my court room."<sup>554</sup>

Justice Pittman responded that any charge that he had voted to reverse large numbers of convictions was untrue. He had on occasion voted to reverse a criminal conviction because of significant error, but he also voted to affirm eighty-five percent of criminal convictions, and seventy-five percent of all decisions by the trial courts.<sup>555</sup> Taking a swipe at the BIPEC assistance to Terry, he also stated that he had "steadfastly maintained his independence from special interest groups."<sup>556</sup> His campaign told voters that "You Can Trust His Judgment on the Supreme Court."<sup>557</sup> The trust started with Judge Pittman's election to other offices, which he reminded the voters were State Senator, Treasurer, Secretary of State, and Attorney General. He was "The Man You Know [and] The Man You Trust."<sup>558</sup>

Pittman was the man the Southern District trusted, as he won easily with 196,333 votes to Terry's 97,216.<sup>559</sup> The January 1997 financial reports revealed that Justice Pittman received contributions of \$198,000 and had expenditures of \$219,000; the January 1998 report showed contributions of \$241,500 and expenditures of \$291,500. Jerry Terry received \$152,000 in contributions and spent \$148,000.<sup>560</sup>

d. Northern District, Post 3

Chief Justice Armis Hawkins resigned in December 1995, and Governor Kirk Fordice appointed Mike Mills of Fulton. Mills (age 40) was challenged in the 1996 election for a full term by Judge Thomas Gardner (age 60) of Tupelo.

Former Chief Justice Hawkins endorsed Mills in his race.<sup>561</sup> Mills ran an energetic campaign that covered all his district. He raised the most money, with-

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553. Janet Braswell, *Frustration Leads to Challenge for Judgeship*, HATTIESBURG AM., Oct. 20, 1992, at 3C; Terry advertisement, SUN HERALD (Biloxi, Miss.), Nov. 3, 1996, at A11.

554. Terry advertisement, SUN HERALD (Biloxi, Miss.), Nov. 4, 1996, at A2.

555. Pittman advertisement, SUN HERALD (Biloxi, Miss.), Nov. 1, 1996, at A2.

556. *Id.*

557. Pittman campaign card, (in possession of author).

558. *Id.*

559. 1996-2000 Miss. Reg. 480 (1997).

560. MDAH, Secretary of State Records, Campaign Finance Reports, 1996.

561. Philip Mouldon, *A Race for Justice: Gardner Challenges Mills for High Court Post*, NORTHEAST MISS. DAILY J. (Tupelo, Miss.), Oct. 27, 1996, at 1A.

out personal loans, of any of the eleven supreme court candidates who ran in 1996, raising it early, kept raising it, and put it to good use. His twelve years as a state legislator, including chairmanship of the Judiciary Committee and his prominent role in adoption of important court legislation, helped establish his credibility as a supreme court justice despite his relative youth. Justice Mills took the position that a supreme court seat should be appointive and a justice should be limited to one term.<sup>562</sup>

Circuit Judge Tommy Gardner of Tupelo had a strong initial base for election. The seven counties in his circuit court district all lay within the supreme court district. Judge Gardner also ran a strenuous campaign. He argued that his background of sixteen years as a judge was far more important than Justice Mills' more political offices. "I'm not running for governor or any other position," he said.<sup>563</sup> "I'm not going to quit and run for something else."<sup>564</sup> Gardner stated that he supported the death penalty, and urged voters to consider that "I'm the only candidate who has sent anyone to jail."<sup>565</sup> Gardner argued that Mills had no experience as a judge, but only as a legislator. Gardner's record was as someone tough on criminals, and he could be depended upon to continue in that manner if elected to the supreme court.<sup>566</sup>

On the Friday before the election, Gardner called on Mills to return the political action committee money, saying the "unprecedented spending and the intense third party campaign activities of these groups poses a great threat."<sup>567</sup> In addition to a substantial television presence by both candidates, many observers thought that Justice Mills far exceeded the competition in blanketing large parts of the district with highway or yard signs.

The returns showed Gardner's vote was strongest near Tupelo, and dwindled with distance from that base. The final tally was Mills with 142,169 votes and Gardner 119,910, with Mills carrying twenty-six of the thirty-three counties.<sup>568</sup>

The campaign financial reports of Justice Mike Mills revealed that he had spent \$248,000 and raised \$249,000. Judge Gardner raised \$75,000 and spent \$137,000.<sup>569</sup>

## 8. 1986-1996 Summary

There were seventeen elections. Five incumbents were unopposed, while nine were challenged counting Justice McRae in 1994, who lost his opponents, and also including Chief Justice Lee in 1996, who himself later withdrew. Of the nine incumbents who drew opponents, three lost or withdrew from the race. All three times there were open seats, multiple contenders entered the race. Chief

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562. Beverly Pettigrew Kraft, *Justice Candidate Says Post Should be Appointive, One Term*, CLARION-LEDGER (Jackson, Miss.), May 2, 1996, at 4B.

563. Mouldon, *supra* note 561, at 1A.

564. *Id.*

565. *Id.*

566. *Id.*

567. *Gardner, Mills Clash over PAC Donations*, SUN HERALD (Biloxi, Miss.), Nov. 3, 1996, at B2.

568. 1996-2000 Miss. Reg. 480-481 (1997).

569. MDAH, Secretary of State Records, Campaign Finance Reports, 1996.

Justice Hawkins resigned a year before the end of his term, in part to ease the selection of a successor, but four other times the incumbent stayed in office at least until after a new justice was elected: Chief Justice Patterson resigned after Ruble Griffin was chosen in the 1986 primary; Joseph Zuccaro, Roy Noble Lee, and Dan Lee all finished their terms.

There are contribution and expenditure figures for these elections. The trend, simply put, is up. The 1990 McRae-Blass race had stories of dismay that over \$114,000 had been spent by Chuck McRae prior to the election. Just six years later, three candidates — Mike Mills, Ed Pittman, and Bill Waller, Jr. — spent at least \$250,000 each in winning efforts, though Waller's total was for the regular election and a run-off. There were no political action committee expenditures before this decade, but in 1996 business groups and plaintiff-lawyer groups each spent more than \$100,000 on the four campaigns.

#### IV. CONCLUSIONS

A starting point for summarizing some of this information is to note that until the last ten or fifteen years, the press gave little coverage to supreme court races, while giving great attention to the congressional and United States Senate races that were occurring at the same time. Even if a voter subscribed to several different newspapers in the district, during some elections he would have learned absolutely nothing about the choices for the highest court in the state. Since media and other providers of goods and services try to adjust to what their customers want, presumably editors and publishers decided that the voters were not interested in court races. Perhaps also there was not much to report.

For as long as Mississippi has had judicial elections, incumbent judges have been challenged for re-election. In the earlier period of popular election of judges in Mississippi, 1833-1868, one of the first three judges elected in 1833 was defeated the first time he ran for re-election. Justice Cotesworth P. Smith was defeated by P. Rutilius R. Pray in the 1837 election, but in 1849 (after some interim appointed service on the court), Smith returned by defeating Justice J. S. B. Thacher. Explanations for those election outcomes have not been found, but an incumbent was defeated in 1853 allegedly because of opposition to an opinion that he had written. Justice William Yerger authored an opinion upholding the validity of bonds issued by the Mississippi Union Bank and sold largely in England.<sup>570</sup> These bonds were issued in 1838 on the credit of the state in order to finance a new bank. Arguably the legislature did not follow constitutional requirements in issuing the bonds. The bank failed and the State repudiated the bonds in 1842. A century and a half of controversy began that *may* have ended when the United States Supreme Court refused in 1997 to grant certiorari to the Mississippi Supreme Court, which had upheld the denial of payment.<sup>571</sup> Much earlier, only a year after an 1852 decision holding that the bonds were properly

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570. *Mississippi v. Johnson*, 25 Miss. 625 (1852).

571. *Grant v. State*, 686 So. 2d 1078 (Miss. 1996), *cert. denied*, *Grant v. Mississippi*, 117 S. Ct. 1844 (1997).

issued and could not be repudiated, William Yerger, one of the two justices so holding, was defeated on that issue.<sup>572</sup>

Reasons that incumbents have been challenged have varied: ambitions of opponents (the "rotation in office" issue); perception of overall inadequacy of a judge (incompetence, senility); and indignation over some emotionally-charged issue. Crime has always been a potential issue; a populist big-business versus common citizen approach was used in the first elections and frequently since; racial issues have been used from as early as 1920. Still, only nine of the twenty-nine incumbents who were challenged were defeated. Four times, the age of the incumbent appeared to be the dominant issue raised by the challenger. Ethridge (age 69) in 1940, Anderson (age 82) in 1944, and Holmes (age 77) in 1960, were all too old; Clayton Potter (age 36) in 1916, was too young and inexperienced. Crime as an issue appeared to control in two races: in 1992, the focus was on incumbent Justice James L. Robertson's votes in criminal cases; in 1990, challenger Chuck McRae's strong anti-crime image may have led to his success. The 1948 race in which challenger Percy Lee ousted Malcolm Montgomery was basically for an open seat, with Lee having the issue that Montgomery should not have been appointed four weeks before the election. No clear cause is evident for two of the early defeats of incumbents: Cook in 1920 and Pack in 1928. Both were appointees who had never run for the court. Most likely it was traditional political reasons such as quality of campaigns and candidates that caused those two results.

From 1916 until 1944, sixteen out of thirty elections were contested. During the middle period of 1946-1974, however, there were forty elections and only five were contested. In the last twenty years, the frequency of contests has reverted to what it was like in the first thirty years. Out of thirty-three positions up for election, eighteen were contested. One factor that may have reduced competition in the middle period is that from 1935 until 1978 contributions could only be made by attorneys and were limited to fifty dollars. Thus campaigns were largely candidate-funded. A pattern that was especially pronounced during the first half of the period is that there was almost always an incumbent on the ballot. From 1916 until 1960, only twice in forty-five elections was there no incumbent in a race. From 1960 through 1996, only eight races out of fifty-four had no incumbent.

Civil justice issues occasionally have been the campaign focus. Justice V. A. Griffith during the 1940 election was alleged to be cold toward the suffering of debtors during the Great Depression because of his vote in a mortgage moratorium case.<sup>573</sup> An issue used against Chancellor James Arden Barnett in the 1980 race for an open supreme court seat was his decision ordering equalization of assessments. Another civil case that was the focus of an opponent's attack was a dissent by court of appeals Judge Southwick that refused to find civil liability for a sheriff for the criminal actions of a jail trusty while on weekend furlough.<sup>574</sup>

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572. SKATES, *supra* note 15, at 23.

573. See *supra* note 269 and accompanying text.

574. *Banks v. E. L. G.*, 691 So. 2d 1048 (Miss. Ct. App. 1996) (mem.), *cert. dismissed*, 691 So. 2d 1031 (Miss. 1997).

Much more frequent than a focus on civil matters are arguments based on criminal cases. The allegation that a justice is a coddler of criminals had to be dealt with by, among many others, V. A. Griffith in 1940, Harry Walker in 1980, James L. Robertson in 1992, and Fred Banks and Edwin Pittman in 1996.

A candidate's choice of clients as a private attorney has from the beginning of elections been a frequent subject of negative campaigning. Justice E. O. Sykes in 1916 had to dispel charges that he was in the hip-pocket of big corporations because he had represented railroads in private practice. In 1996 the opposite, though more euphemistically phrased, argument was made that one of the candidates in each of the four supreme court races was the friendliest towards business and most opposed to frivolous litigation.

Campaigns throughout the period can raise the same themes — big business domination, an opponent's opinions in criminal cases — but there have been unique campaign themes because the circumstances for a particular message arose. On the eve of a contested two-person judicial primary in 1948, Governor Fielding Wright appointed one of the candidates, who unsurprisingly was a friend and political ally. The other candidate, Circuit Judge Percy Lee, challenged the appointment as an attempt to thwart the people's will and argued that it would have been more democratic to wait until the people had spoken and appoint the winner. Other justices have been appointed to vacancies that arose during the election year, but never did the appointment get made so near the election.<sup>575</sup>

Governor Wright's endorsement of a 1948 candidate by appointing him to a vacancy is far from the only time that present and former elected officials became involved in races. The role of Governor Bilbo behind the scenes for his three appointees in the first races in 1916 was a frequent question, as was the role of Bilbo adversaries. During his next term as governor, Bilbo publicly endorsed and gave speeches for V.A. Griffith in 1928. In 1932, just-retired Lieutenant Governor Bidwell Adams helped Griffith with his re-election. Congressman Paul B. Johnson Sr., publicly supported Justice William Cook in 1922. Former Governor William Winter assisted candidates: he publicly supported Justice Joel Blass in 1990, appeared in television commercials to endorse Justice Fred Banks in 1991, and aided Justice Robertson's campaign in 1992. The greatest impact from an endorsement may have been gained by Frank Barber with the public support of novelist John Grisham in 1992. The *Code of Judicial Conduct* explicitly authorized the use of public endorsements.<sup>576</sup>

No evidence was found that supreme court justices used to be all but anointed by those most familiar with the possible candidates, namely, the lawyers. Bar associations endorsed candidates in many elections, but that invariably was the local candidate's being endorsed by the bars in his region. The first elections in 1916 are excellent examples of that. In one of the Central District races, apparently every Madison County lawyer endorsed the candidate from their county,

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575. Examples include Justice Roy Noble Lee, Percy Lee's son, who was appointed on March 1, 1976, three months in advance of that year's Democratic primary. Circuit Judge Mike Sullivan was a candidate to succeed Vernon Broom when Broom resigned; Sullivan was appointed March 15, 1984, and he drew no opposition.

576. MISS. CODE OF JUDICIAL CONDUCT Canon 7B(2) (1997). Conversation with former Governor Winter, Dec. 22, 1997, and with former Governor Ray Mabus, January 21, 1998.

even though few elsewhere considered him a serious contender. Near-unanimity was gained from lawyers and local officials by the other two candidates from their regions. These appeared to be courtesy endorsements made after a candidate presented himself. Neither Stokes Robertson who ran unopposed for an open seat in 1964, nor Armis Hawkins who did the same in 1980 until an independent entered near the date of the election, credits the bar associations as having played a role in the failure of other contenders to run.

One factor clearly changing over the years is the amount of money spent, but that has at least something to do with the renewed competition for supreme court seats. Though meaningful reports of expenditures were not found until recent elections, there were at least some news accounts that a supreme court race in the early part of the century was more expensive than congressional races. Then during 1946 until 1974 there were almost no contested races, even for open seats. That has changed, and money has returned to the races. The \$250,000 spent by each of three candidates in 1996 was a new level — the \$250,000 barrier was breached before the \$150,000 had become the norm. What might be ahead is suggested by what occurred in neighboring Alabama the same year. There, two candidates for the supreme court (elections are statewide) spent a total of \$4.97 million.<sup>577</sup> All eleven candidates in Mississippi spent “only” \$1.6 million.

Reform statutes that addressed campaign contributions and other election practices have been adopted. From 1935 until 1978 contributions could be no greater than \$50, could only be made by attorneys, and had to be disclosed by the candidate. This restriction on contributions was removed as the reform focus shifted to the disclosure of the amount and source of contributions. In an attempt to maintain the dignity of the judicial campaigns, limits on what a judicial candidate can say have also existed through the years, both by statute and more recently by the *Canons of Judicial Conduct*. In 1994, this concept of prohibiting certain campaign messages was expanded to bar a candidate’s mentioning his own or an opponent’s past political party. Regardless of such rules of gentility, anonymous fliers and letters, rumor mongering, criticisms of opponents, and other negative campaign tactics have been used throughout the period examined.

Voting eligibility has moved from a small, white male only prerogative in 1916 to a white male and female privilege in 1920, to a small opening for blacks in 1944 and then the dramatic increase in participation by all races after the 1965 Voting Rights Act. Campaigning logistics and technology have progressed from their early reliance on stump speeches, railroad transportation, and newspaper ads to radio, bill boards, direct mail, television, sport utility vehicles for transportation, and even the internet.

What has been constant through the years is the purpose of a campaign. With few exceptions, the judicial candidate — like other political candidates — wishes to impress and be remembered.

Election rules, events of elections, issues raised by campaigns, expenditure figures, frequency of challenges to incumbents, and the other facts arising from this

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577. Roger Parloff, *Is This Any Way to Run a Court?*, AMERICAN LAW., May 1997 at 50, 56.

review are the precedents to use in trying to reach conclusions. It must be admitted that the important questions may not be answered by this information. At least two come to mind: What do we want in a justice? What system most ably selects that kind of person? The essential purpose of a supreme court justice selection process should be maximizing the likelihood that the best possible people will serve on the state's highest court. Determining whether such judges ever are chosen is a subjective analysis. To ponder whether the justices of the 1930's or the 1950's were better than those of today is immediately to realize the problem. Do the names Sydney or Lemuel Smith, George or Billy Ethridge, Virgil Griffith, Percy M. Lee or other favorites evoke a modicum of respect (those few who are remembered at all) only because these are names from so long ago that contemporary criticisms are forgotten?

And if good and bad justices are elected, doubt can exist on whether benefits or shortcomings of the election system in any ascertainable way led to the differing results. That is because one conclusion this survey does support is that we have had with no fundamental change the same kind of elections for the past eighty years. Variation in quality of justices is an apparently inevitable result of every kind of selection system. Rating of United States Supreme Court justices, all chosen by presidential appointment, indicate a large number of judges whom legal scholars, with their own biases of course, believe were unworthy of the court.<sup>578</sup> This does suggest that both appointment and election lead to failure some percentage of the time.

Arguments have been made that a higher percentage of the time, appointment leads to a qualified, capable judge than does election. In other words, both systems lead to mistakes, but the number is reduced with appointments. It is for a different analyst to determine whether in Mississippi our justices who were first appointed are on balance any better than those who arrived at the court only because of election. Those who favor appointment might also argue that even though Mississippi has many justices appointed, that rarely has resulted from anything akin to the "merit selection" or Missouri-type plan. Only under Governors Winter, Allain, and Mabus did a panel first review applicants and then present a list of names to the governor.<sup>579</sup>

Though this article has not tackled the question of whether capable men and one woman have risen to the high court, what is discussed is substantial — some might say tedious — evidence of what it takes to elect a justice. For eighty years it has taken these elements:

- 1) raising and spending money;
- 2) hard, time-consuming work by the candidate and others on the campaign trail; and
- 3) finding a winning theme, including opposition to some issue that is then-frustrating to Mississippians, or focusing on the shortcomings of an opponent and only tangentially on the candidate's own stellar qualities.

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578. ALBERT P. BLAUSTEIN & ROY M. MERSKY, *THE FIRST ONE HUNDRED JUSTICES* 37-40, 47-48 (1978) This published poll exalts judicial activists; some might reverse that aspect of the rankings and thereby find different judges unworthy of selection.

579. Mary Libby Payne, *The Mississippi Judiciary Commission Revisited: Judicial Administration: An Idea Whose Time Has Come?*, 14 MISS. C. L. REV. 413, 484-87 (1994); Case, *supra* note 517, at 26.

The objections to judicial elections focus on all three of these requirements: candidates raise and spend too much money and may be obligated to the donors; incumbents spend too much time on the campaign trail and ignore their work during the political season; candidates raise the wrong issues that demean the dignity of courts. Yet, can anything useful be done about those three problems? Whether 500,000 voters in a Supreme Court district will know anything about a candidate quite simply depends on money. As to the potential loss of public official time from the public's business, asking the voters to choose between candidates, but crafting meaningful restrictions on the amount of time an incumbent spends with the voters, seems almost schizophrenic. The price for incumbents in any office who ignore their official duties in order to campaign is best paid at the ballot box.<sup>580</sup> Finally, present restrictions on what judicial candidates can say may well violate First Amendment rights.<sup>581</sup> Adding any more limitations might just cause deeper encroachments into unconstitutional territory.

From the first year of modern judicial elections, commentators have recognized the problems. After the 1916 elections were over, a state bar committee found that "judicial campaigns too frequently degenerate into mere ordinary political or personal scrambles much below the dignity" that should be demanded.<sup>582</sup> Some observers had predicted that result even before those first supreme court elections were held. A few days before the 1916 primary, a Canton newspaper quoted a reader's letter: "Politics ought not to cut any figure in the selection of judges. The candidate best fitted ought to be reelected regardless of his politics." The editorialist then said "This is sound reasoning, yet the fact remains that politics cuts, and will continue to cut, a very conspicuous figure 'in the selection of candidates for judges.' It is just impossible to eliminate politics from popular elections."<sup>583</sup>

Eighty years of elections prove that the 1916 editorialist was perceptive. Despite many "reforms," the predicted costs have continued to be exacted year-by-year. These expenditures of time, money, and propriety are made in elections for all offices. The analysis that should be made when the question of converting to judicial appointments arises is whether the tab paid for judicial elections is too high, and whether the different costs of appointment alternatives are more acceptable. What is hard to justify is the view that a few more procedural changes will free judicial elections from election politics. Mississippi's experience has confirmed the obvious — elections and politics go hand in glove, and even hand in gavel.

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580. A judge who runs for any office other than a judicial one must resign. MISS. CODE OF JUDICIAL CONDUCT Canon 7A(3) (1997).

581. *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989) (banning political party endorsements violated First Amendment rights of parties); *Buckley v. Illinois Judiciary Inquiry Bd.*, 997 F.2d 224, 230-31 (7th Cir. 1993) (regulation of speech of judicial candidates struck down as overbroad); *Stretton v. Disciplinary Bd. of Supreme Court*, 944 F.2d 137, 144 (3d Cir. 1991) (rule barring a judicial candidate's statement of views on issues valid only if limited to issues likely to come before the court).

582. REPORT OF THE TWELFTH ANNUAL MEETING OF THE MISSISSIPPI STATE BAR ASSOCIATION 56, (1917).

583. Untitled Article, MADISON COUNTY HERALD (Canton, Miss.), Aug. 11, 1916, at 5.

## V. APPENDIX

## Mississippi Supreme Court Justices 1833-1998\*

[Following each name is a parenthetical indicating whether a judge was first elected or appointed; from 1867-1915, there were no judicial elections. The second notation reveals whether the judge died in office, resigned before the end of a term, retired at the end of a term without running for re-election or being reappointed, or was defeated.]

*A. District 1*

## 1. Original 1832 position (Post 1; most recent term began January, 1998)

William Sharkey (elected; resigned)	1833-1851 C.J. 1833-51	Warren
Colin S. Tarpley (appointed, resigned)**	November-December 1851	Hinds
William Yerger (elected; defeated)	1852-1854	Hinds
Alexander Handy (elected; resigned)	1854-1867 C.J. 1863-67	Madison
Ephraim Peyton (appointed; resigned)	1867-1876 C.J. 1870-76	Copiah
H.H. Chalmers (appointed; died)	1876-1885 C.J. 1881-82	De Soto
James Arnold (appointed; resigned)	1885-1889 C.J. 1888-89	Lowndes
Thomas Woods (appointed; retired)	1889-1900 C.J. 1889-91; 1896-1900	Kemper
S.S. Calhoon (appointed; died)	1900-1908	Madison
Robert Fletcher (appointed; retired)	1908-1909	Panola
Sydney Smith (appointed; died)	1909-1948 C.J. 1912-48	Holmes
Malcolm Montgomery (appointed; defeated)	1948-1950	Yazoo
Percy Lee (elected; retired)	1950-1966 C.J. 1964-66	Scott
Stokes Robertson (elected; retired)	1966-1982	Hinds
Dan Lee (elected; retired)	1982-1998 C.J. 1995-98	Hinds
Bill Waller, Jr. (elected)	1998-	Hinds

## 2. 1916 position (Post 2; most recent term began January, 1997)

Clayton D. Potter (appointed; defeated)	1916-1917	Hinds
George Ethridge (elected; defeated)	1917-1941	Lauderdale
Julian Alexander (elected; died)	1941-1953	Hinds
Fred Lotterhos, Sr. (appointed; died)	January 1953 -January 1954	Hinds
Robert Gillespie (appointed; resigned)	1954-1977 C.J. 1971-77	Lauderdale
Francis Bowling (appointed; resigned)	1977-1984	Hinds
Reuben Anderson (appointed; resigned)	1985-1990	Hinds
Fred Banks (appointed)	1991-	Hinds

## 3. 1952 position (Post 3; most recent term began January, 1993)

James G. Holmes (appointed; defeated)	1952-1961	Yazoo
Henry L. Rodgers (elected; resigned)	1961-1976	Winston
Roy Noble Lee (appointed; retired)	1976-1993 C.J. 1987-93	Scott
Jim Smith (elected)	1993-	Rankin

*B. District 2*

## 1. Original 1832 position (Post 1; most recent term began January, 1996)

Cotesworth Smith (elected; defeated)	1833-1838	Wilkinson
Rutulius Pray (elected; died)	1838-1840	Hancock
Cotesworth Smith (appointed; defeated)	1840-1841	Wilkinson
Ed Turner (elected; retired)	1841-1844	Adams
J.S.B. Thacher (elected; defeated)	1844-1850	Adams
Cotesworth Smith (elected; died)	1850-1863 C.J. 1851-63	Wilkinson
David Hurst (elected; retired)	1863-1865	Amite
Harry T. Ellett (elected; resigned)	1865-1867	Claiborne
Elza Jeffords (appointed; retired)	1867-1869	Issaquena
George F. Brown (appointed; new const.)	1869-1870	Warren
H.F. Simrall (appointed; retired)	1870-1878 C.J. 1876-78	Warren
James Z. George (appointed; resigned)	1878-1881 C.J. 1878-81	Carroll
Tim Cooper (appointed; resigned)	1881-1896 C.J. 1885-88; 1894-96	Copiah
Thomas Stockdale (appointed; retired)	1896-1897	Pike
Samuel Terral (appointed; died)	1897-1903	Clarke
James H. Price (appointed; resigned)	March-August 1903	Pike
Jeff Truly (appointed; retired)	1903-1906	Jefferson
Robert Mayes (appointed; resigned)	1906-1912 C.J. 1910-12	Copiah
Richard F. Reed (appointed; retired)	1912-1915	Adams
J. Morgan Stevens (appointed, resigned)	1915-1920	Forrest
William Cook (appointed; died)	1920-1937	Forrest
Harvey G. McGehee (appointed; retired)	1937-1964 C.J. 1949-64	Marion
Neville Patterson (elected; resigned)	1964-1986 C.J. 1977-86	Lawrence
Ruble Griffin (elected/appointed;*** died)	1986-1988	Hancock
Joel Blass (appointed; defeated)	1989-1991	Harrison
Chuck McRae (elected)	1991-	Jackson

## 2. 1916 position (Post 3; most recent term began January, 1997)

John B. Holden (appointed; died)	1916-1928	Pike
W.J. Pack (appointed; defeated)	1928-1929	Jones
V.A. Griffith (elected; retired)	1929-1949 C.J. 1948-49	Harrison
Lee Davis Hall (elected; resigned)	1949-1961	Marion
Robert Lee Jones (appointed; retired)	1961-1973	Lincoln
Harry Walker (elected; resigned)	1973-1987 C.J. 1986-87	Harrison
Joseph Zuccaro (appointed; retired)	1987-1989	Adams
Ed Pittman (elected)	1989-	Forrest

## 3. 1952 position (Post 2; most recent term began January, 1993)

R. Olney Arrington (appointed; died)	1952-1963	Copiah
Thomas Brady (appointed; died)	1963-1973	Lincoln
Vernon Broom (appointed; resigned)	1973-1984	Marion
Mike Sullivan (appointed)	1984-	Forrest

*C. District 3*

## 1. Original 1832 position (Post 2; most recent term began January, 1993)

Daniel W. Wright (elected; resigned)	1833-1838	Monroe
James Trotter (appointed; resigned)	1838-1842	Monroe, Marshall
Reuben Davis (appointed; resigned)	April-August 1842	Monroe
Alexander M. Clayton (elected; defeated)	1842-1852	Marshall
Ephraim Fisher (elected; resigned)	1852-1858	Yalobusha
William Harris (appointed; resigned)	1858-1867	Lowndes
Thomas Shackelford (appointed; new const.)	1867-1870 C.J. 1868-70	Madison
Jonathan Tarbell (appointed; retired)	1870-1876	Scott
J.A.P. Campbell (appointed; retired)	1876-1894 C.J. 1882-85; 1891-94	Attala
Albert H. Whitfield (appointed; resigned)	1894-1910 C.J. 1900-10	Lafayette
William Anderson (appointed; resigned)	1910-1911	Lee
William McLean (appointed; retired)	1911-1912	Grenada
Sam Cook (appointed; defeated)	1912-1921	Coahoma
William Anderson (elected; defeated)	1921-1945	Lee
Lemuel A. Smith, Sr. (elected; died)	1945-1950	Marshall
John W. Kyle (appointed; died)	1950-1965	Panola
Muel A. Smith, Jr. (appointed; resigned)	1965-1982	Marshall
Lenore Prather (appointed)	1982- C.J. 1998-	Clay/Lowndes

## 2. 1916 position (Post 3; most recent term began January, 1997)

Eugene O. Sykes (appointed; retired)	1916-1925	Monroe
James G. McGowen (elected; died)	1925-1940	Yalobusha
William Roberds (appointed; resigned)	1940-1960	Clay
Taylor H. McElroy (appointed; retired)	1960-1965	Lafayette
William Inzer (elected; died)	1965-1978	Pontotoc
Kermit Cofer (appointed; retired)	1978-1981	Yalobusha
Arms Hawkins (elected; resigned)	1981-1995 C.J. 1993-95	Chickasaw
Mike Mills (appointed)	1995-	Itawamba

## 3. 1952 position (Post 1; most recent term began January, 1993)

William N. Ethridge (appointed; died)	1952-1971 C.J. 1966-71	Lafayette
Robert P. Sugg (appointed, resigned)	1971-1983	Webster
James L. Robertson (appointed; defeated)	1983-1992	Lafayette
James L. Roberts (elected/appointed)****	1992-	Pontotoc

\* A three-judge High Court of Errors and Appeals existed under the 1832 Constitution until replaced by the three-judge Supreme Court under the 1869 Constitution. Various sources have been used to determine the judicial successions, which have not been charted before. Most useful was John Ray Skates, *Mississippi Supreme Court*, *supra* note 15, and Dunbar Rowland, *Courts, Judges and Lawyers of Mississippi 1798-1935* (1935). One ambiguity on the successions relates to whether the judgeships for District 2 and District 3 in the 1867-1870 period are properly shown, or whether the designations should be switched. All three justices resigned in 1867 and the military governor named three new ones. No record was found indicating which seat each new justice filled.

\*\* Actually, Jackson attorney Colin Tarpley (1802-1860) may never have been a justice of the high court. He was appointed to a vacancy by acting Governor James Whitfield, who as president pro tempore of the senate succeeded to the governorship when the senate term expired of the previous acting Governor, John I. Guion; the elected-Governor, John A. Quitman, had resigned in February 1851 because of a federal charge (ultimately dismissed) of criminal assistance to "filibusterers" who wished to seize Cuba. John Edmond Gonzales, *Flush Times, Depression, War and Compromise*, in RICHARD AUBREY MCLEMORE, *A HISTORY OF MISSISSIPPI*, 284, 304,309 (1973); ROBERT E. MAY, JOHN A. QUITMAN: *OLD SOUTH CRUSADER* 249-51 (1985). The appointment occurred between November 24, the day Whitfield became governor, and December 1, 1851. Untitled article, *VICKSBURG TRI-WEEKLY SENTINEL*, Dec. 2, 1851, at 2; Whitfield only served as acting governor from November 24, 1851-January 10, 1852. 1992-1996 Miss. Reg. 51 (1993). According to the 1832 Mississippi Constitution, a governor was granted the power to fill a vacancy by appointment only if less than a year was left in the term; otherwise a special election had to be called. MISS. CONST. of 1832, art. IV, § 5. Sharkey's term did not expire until the end of 1853, and thus even without the question of whether an acting governor could appoint, even a regularly-elected governor could not have named a justice to replace Sharkey. Untitled article, *THE MISSISSIPPIAN* (Jackson, Miss), Dec. 12, 1851, at 2 (saying Sharkey had been elected in November, 1847 for a six-year term). Before December 9, Tarpley had resigned and the governor had announced an election to be held January 19, 1852. *Id.*; *VICKSBURG TRI-WEEKLY SENTINEL*, Dec. 9, 1851, at 2; untitled article, *HINDS COUNTY GAZETTE* (Raymond, Miss.), Dec. 4, 1851, at 2. One judge on the high court argued that the constitution might permit an appointment by the governor for a short period until an election if "the public interest might imperatively require" it. *Sam v. State*, 31 Miss. 480, 484, 487 (1856) (Handy, J., dissenting). The death of Circuit Judge Guion, the former acting governor, created the vacancy in *Sam*. A later case took the position that even if a governor did not have constitutional authority to appoint, an appointee was at least a *de facto* judge. *Pringle v. State*, 67 So. 455, 457 (Miss. 1915).

\*\*\* Judge Griffin was elected at the June 1986 Democratic primary for a term that would not begin until January 1988; the incumbent, Chief Justice Patterson, resigned on June 30, 1986, and Griffin was appointed to the vacancy.

\*\*\*\* Chancellor Roberts defeated Justice Robertson in the March 10, 1992 primary. Effective August 31, 1992, Justice Robertson resigned. Governor Kirk Fordice appointed Roberts to fill the remaining four months of Robertson's term. Beverly Pettigrew Kraft, *Roberts to Take State Supreme Court Oath in Hometown*, *CLARION-LEDGER* (Jackson, Miss.), Sept. 28, 1992, at A1.