

## **“What a life!”: A Former Clerk Remembers Justice Joseph W. Hatchett**

**By: Robert T. Benton<sup>1</sup>**

We have lost a giant. A kind, generous, unassuming, authentic human being who remained unflappable as history swirled around and through him.

What a life! Army officer, civil rights lawyer, federal prosecutor, United States Magistrate, Lieutenant Colonel, United States Marine Corps Reserve, Justice of the Supreme Court of Florida, judge on two federal appeals courts, Chief Judge of the United States Court of Appeals for the Eleventh Circuit, and finally a lawyer with the Akerman firm.

The rule is to use the title of the highest office a person attained. In most cases, the choice is clear. Not so here. Let us also remember that he was awarded no less than four honorary doctorates. Maybe we should call him Dr. Hatchett.

But I come down in favor of Justice Hatchett. I think I can make a respectable case, on federalism grounds, that the highest office he attained was that of Justice of the Supreme Court of Florida. Maybe I am biased because that is where I worked with him. I got to know him best when he was a justice of that Court.

I first met him in Jacksonville before he became a justice, while he was serving as United States Magistrate; and in his “spare time” as ombudsman helping to bring the Duval County Jail into the twentieth century in accordance with Judge Scott’s<sup>2</sup> decree. I was working as a law clerk to Judge McRae,<sup>3</sup> who was the Chief Judge of the Middle District of Florida, and had been, when the District Court named Justice Hatchett magistrate. Judge Tjoflat<sup>4</sup> told us yesterday that Justice Hatchett might have been the first person in the United States appointed magistrate under the new statute.

After I left Jacksonville, I did a couple of different things, including arguing a half dozen cases before the Supreme Court of Florida. But, as soon as I learned from Hugh MacMillan<sup>5</sup> that Governor Askew planned to appoint Justice Hatchett to the Supreme Court, I called him up and applied to be his law clerk. Fortunately for me, Justice Hatchett was too busy to do much of a talent search, and he took me on.

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<sup>1</sup> This article is adapted from remarks given by Judge Benton at former Justice Joseph W. Hatchett’s funeral on May 8, 2021, at Bethel Missionary Baptist Church in Tallahassee, Florida.

<sup>2</sup> Charles Ray Scott served on the U.S. District Court for the Middle District of Florida from 1976 to 1983.

<sup>3</sup> William Allan McRae, Jr., served on the U.S. District Court for the Southern District of Florida from 1961 to 1962 and on the U.S. District Court for the Middle District of Florida from 1962 to 1973.

<sup>4</sup> Gerald Bard Tjoflat is a senior judge on the U.S. Court of Appeals for the Eleventh Circuit. He served on the U.S. Court of Appeals for the Fifth Circuit from 1966 to 1981, when he was transferred by law to the Eleventh Circuit. He spoke at a lying-in-state ceremony for Justice Hatchett on May 7, 2021, in the Rotunda of the Florida Supreme Court Building.

<sup>5</sup> Hugh MacMillan served as a legislative liaison for former Governor Reubin Askew

When I say busy, I mean busy. Just the logistics of the Investiture were overwhelming. Invitations needed to go out, and there were a lot of them. Much of the work fell on Dot Bradley,<sup>6</sup> but Justice Hatchett did all the planning. He had to wrap things up at work in Jacksonville, and at home, and prepare for the move to Tallahassee. Being the person he was, he felt he had a lot of people he had to thank.

As a federal prosecutor and magistrate, he hadn't been in state court in almost a decade so there was all that substantive law to get up to date on. The inner workings of the Supreme Court were new to him and a clear priority: they had to be mastered by day one. Justice Hatchett asked me to start at the Supreme Court a week before he did to get a handle on internal procedures and chart the flow of cases.

I would be willing to bet that there were more black citizens at Justice Hatchett's Investiture than had ever before gathered in a Florida courtroom, certainly not for such a joyful occasion.

When I think about the scene at the Supreme Court at Justice Hatchett's Investiture, I remember a story he told me about the Marion County school desegregation case. Bryan Simpson<sup>7</sup> was still on the District Court then and presiding. The federal courthouse in Ocala was not that big and, for whatever reason, almost every black person who had come to watch had been excluded from the courtroom. When Justice Hatchett complained, Judge Simpson ordered that half the seats be given to black spectators, he told me.

Nothing fazed Justice Hatchett. On top of everything else, he had to win a competitive, statewide election in a little over a year's time to keep his seat on the Supreme Court. There were no guarantees, but there was no reason not to try his best. For him and for the State of Florida, Howell Ferguson<sup>8</sup> stepped forward to head the campaign, which ended in a historic victory.

As his law clerk and a state employee, I was obliged to leave the politicking to others during working hours. But when I learned that Justice Hatchett had agreed to attend a meeting of the League of Women Voters one evening in Panama City, where I grew up, I asked if I could go along. During the drive over, he was cool, calm and collected, as usual, even though he was to debate his opponent, Harvey Duval, a Miami circuit judge, I think for the first time.

What I saw that night made me realize what a gifted trial lawyer Justice Hatchett must have been. At the debate, Harvey Duval spoke first, and went on and on about his family, telling us that Duval Street in Key West, not to mention Duval County, was named for one or another of

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<sup>6</sup> Dorothy Bradley was Justice Hatchett's long-time Judicial Assistant. She worked for Justice Hatchett as a secretary in Jacksonville and came over with him to Tallahassee.

<sup>7</sup> John Milton Bryan Simpson served on the U.S. District Court for the Southern District of Florida from 1950 to 1962 and on the U.S. District Court for the Middle District of Florida from 1962 to 1966.

<sup>8</sup> Howell L. Ferguson previously had served on the staff of Governor Askew.

his ancestors. When it was Justice Hatchett's turn, he began, very calmly in a matter of fact way, "My family has been in Florida for 150 years and nothing is named for them." You could just feel it. He had everyone in the room eating out of his hand.

Maybe the experience at the debate that night—and the hospitality Dick Smoak<sup>9</sup> showed him—had something to do with Justice Hatchett's decision to buy a condominium in Panama City later on, after he left the bench. In town, too, not at the beach. I was gobsmacked when I heard. There are a lot of good people over there but there are a few rascals, too. He just seemed to be able to get along with everybody.

Justice Hatchett contributed to the profession in many ways. He voluntarily took on all kinds of things, including for the American Bar Association (ABA) which, among other things, accredits law schools. After the initial accreditation, ABA representatives visit law schools periodically to be sure that law libraries and student: faculty ratios and the like continue to meet accreditation standards. When the time came, he and Sandy D'Alemberte<sup>10</sup> visited Harvard Law School on behalf of the ABA.

At last report, Harvard remained accredited. The New England School of Law in Boston has a different history. That is the law school Virgil Hawkins attended after he was denied admission to the College of Law of the University of Florida.

Why was he denied admission in Gainesville? Because of the color of his skin. In Justice Sebring's<sup>11</sup> words:

Virgil D. Hawkins, is a Negro citizen and resident of the State of Florida. He possesses all the scholastic, moral and other qualifications, except as to race and color, prescribed by the laws of Florida and the rules and regulations of the State Board of Control for admission to the first year class of the College of Law of the University of Florida.

*State ex rel. Hawkins v. Board of Control*, 47 So. 2d 608, 609 (Fla. 1950). From Rashad's<sup>12</sup> biography of his grandfather, I learned that Justice Hatchett, then on a high school field trip, was in the courtroom and heard the oral argument that preceded that ruling. Arguing for Virgil Hawkins that day was Alexander Akerman, Jr. of Orlando.

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<sup>9</sup> John Richard Smoak, Jr., was a lawyer in private practice at the time. He was appointed to the U.S. District Court for the Northern District of Florida in 2005; he now holds senior status.

<sup>10</sup> At the time, Talbot "Sandy" D'Alemberte was Dean of the Florida State University College of Law and a member of the ABA Section on Legal Education.

<sup>11</sup> Harold Leon Sebring served on the Florida Supreme Court from 1943 to 1955.

<sup>12</sup> Rashad Green, a Tallahassee lawyer, is a grandson of Justice Hatchett.

After Justice Sebring's 1950 opinion, the Hawkins case went up and down to the United States Supreme Court over a period of several years and, indeed, at one point back to John A. H. Murphree, Sr., a circuit judge in Gainesville.

The justices in Washington told the Florida Supreme Court to order Hawkins' admission to the UF law school, but the Florida Supreme Court never did. In 1957—remember that is three years after *Brown v. Board of Education*<sup>13</sup>—the Florida Supreme Court handed down a disgraceful and defiant ruling, over the dissents of Justices Thomas<sup>14</sup> and Sebring, who were unwilling to go along with the majority's unconstitutional insubordination. The Justice who wrote the 1957 majority opinion<sup>15</sup> was still sitting on the Florida Supreme Court in 1975 when Justice Hatchett joined the Court.

Meanwhile, Virgil Hawkins had gone to Boston for law school and, only the year before Justice Hatchett was sworn in, the Florida Supreme Court had decided another interesting case. In that case, the Court admitted one Benjamin Harris Ervin to The Florida Bar eighteen years after he graduated from law school, even though he had flunked the bar exam three times.<sup>16</sup>

The rule used to be that anybody who graduated from law school in Florida could practice, without taking the bar exam, by virtue of what was called the diploma privilege. Ervin argued that, but for the Korean War, he would have acted on his intention to start law school in time to have the benefit of the diploma privilege.

After the Ervin case was decided, Virgil Hawkins filed yet another petition, this one reciting that he had sought to sit for the bar exam but was turned away because the New England School of Law did not obtain accreditation until after he graduated. Hawkins contended in his new petition that he was entitled to admission to the Florida Bar because he was unable to avail himself of the diploma privilege, not because of the Korean War, but because he had been denied admission to the UF law school in violation of the Equal Protection Clause, not to mention the Supremacy Clause.

In a brief, unsigned but unanimous, per curiam opinion, the Florida Supreme Court waived the bar examination and the law school accreditation requirements for Virgil Hawkins.<sup>17</sup> That was 1976. If I told you the case would not have gone that way if Justice Hatchett had not been on the Court, it would not be idle speculation.

Justice Hatchett had such a range of interests. He was a musician, and not just a trombonist. I remember when he had that gigantic organ installed in his house. The main reason

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<sup>13</sup> *Brown v. Bd. of Educ.*, 346 U.S. 483 (1954).

<sup>14</sup> Elwyn Thomas served on the Florida Supreme Court from 1938 to 1969.

<sup>15</sup> Bonnie Kaslo "B.K." Roberts served on the Florida Supreme Court from 1949 to 1976.

<sup>16</sup> *In re Fla. Bd. of Bar Exam'rs*, 290 So. 2d 9 (Fla. 1974).

<sup>17</sup> *In re Hawkins*, 339 So. 2d 637 (Fla. 1976).

he got the condominium in Panama City, I believe, was so he could go fishing at the jetties. I think I'm right that he outfitted a son-in-law as a commercial fisherman. He himself owned a herd of cattle, forty head I think, on land out near Wacissa.

He also grew grapes there and made wine. To those of you who never tasted that wine, I say to you, "You missed a bullet." But if you really want a taste, my guess is there is a lot left over.

Justice Hatchett was a great lawyer and a great judge. He was a great man. He did not deal in stereotypes. He had no need to get even with anybody. His focus was on individual human beings, on helping when he could, on showing gratitude, on moving forward to a better day. He was a great mentor and a loyal friend, and the world is not the same without him.