

David Walker Harwell

CHIEF JUSTICE OF THE SOUTH CAROLINA SUPREME COURT, 1991-1994

PREPARED FOR THE SOUTH CAROLINA SUPREME COURT HISTORICAL SOCIETY BY THE HON. R. BRYAN HARWELL



Introduction

David Walker Harwell was born January 8, 1932, in Florence, South Carolina to Baxter Hicks Harwell, Sr. and Lacy Rankin Harwell. He grew up in the farming community of Mars Bluff located a short distance from the Great Pee Dee River. In fact, the bridge over the river, which joins Florence County with Marion County, is named for him. This is most appropriate considering the early part of his judicial career was spent as a resident judge on the Twelfth Judicial Circuit, which is comprised of Florence and Marion Counties. Even more so, that bridge was symbolic of his personality that enabled him to achieve much recognition and success later in life after he retired from the Supreme Court, and became a mediator building bridges between adversaries and resolving civil disputes.

Youth

As a young man, David was eager to enjoy the outdoors, and growing up on a farm with four brothers and one sister, he had the opportunity to learn to hunt every kind of game. From squirrels to quail, duck, and dove, he rarely missed a chance to hunt. He also enjoyed freshwater fishing, but without question hunting was his favorite activity and he took great pride in being a good shot. As a teenager, he had some prowess as a baseball pitcher in high school, and he even later joined the Navy with hopes that he might be able to play on their military league exhibition team. While growing up on a farm that was labor-intensive and included both livestock and crops, David quickly learned that farming was not exciting enough for him and like many young people, he dreamed of adventure away from the farm. After high school, and willing to satisfy his mother and do anything to escape the farm, he agreed to attend Sewanee, the college his older brother (who became a minister) had attended. He quickly decided after a year at Sewanee that there was more to do and see, so he packed up and went to Texas where some family members lived and then enrolled at the University of Texas to study geology. After another year of youthful exploration, he joined the Navy and spent a couple of years there. Upon his discharge, he returned to the Florence area, where he worked part time and enrolled at Coker College. Upon going to the local courthouse and seeing various court hearings, he finally decided his path. He would always say, "In those days, the best drama was seen in the courthouse, and it was as good as any picture show." In the 1950s, a law school applicant needed ninety hours of college credit to apply, and from his courses at Sewanee, the University of Texas, and Coker College, he had enough credit hours so off to the races he went. He excelled at the University of South Carolina School of Law and was a member of the editorial board of the *South Carolina Law Review*. Like many of his fellow classmates, he benefitted from the GI Bill and at the time was married with a small child while attending law school.



In his younger days

Young Lawyer

David flourished in law school, and after graduating law school in 1958, he was recruited by the highly successful and nationally renowned trial lawyer Senator J.P. "Spot" Mozingo. Many young lawyers who later became prominent attorneys or judges in South Carolina began their legal careers under the tutelage of Senator Mozingo in the Pee Dee region.

He was at home in the courtroom as well as the Pee Dee area. He quickly became a member and leader of just about every local civic and fraternal organization. From the Shriners to the Jaycees to the Masons, he was involved with a wide range of organizations and individuals. This active community involvement served him well in his development of his own law practice, which he started in the early 1960s, and served him even better when he was first elected to the South Carolina House of Representatives. He was known for his affable and gregarious nature, and while he received numerous awards from his various civic/fraternal organizations, he most cherished repeatedly leading the ballot and being the top vote getter in his political races for the House of Representatives for Florence County. He served on the Judiciary, Ways and Means, and Agriculture Committees. Never losing his sense of adventure, he would often joke that other legislators would want to be on the Agriculture Committee with him because they knew he would arrange for them to go on a trip to a foreign county to study and see firsthand an agricultural issue. He served from 1963 to 1973 in the House of Representatives.

He practiced law for many years with his younger brother Hicks Harwell in the firm of Harwell and Harwell. He fondly referred to Hicks as his "baby" brother even though Hicks was three inches taller and seventy-five pounds heavier at 6'4" and close to 300 pounds. They made an interesting pair, with Hicks known for his colorful suits, David for his more disciplined nature, and both for their extroverted personalities. The two were never known as shrinking violets.

Resident Circuit Judge

In 1973, upon the death of Circuit Judge Badger Baker, David decided to run for the seat and was unanimously elected as the Resident Circuit Judge of the Twelfth Judicial Circuit for Florence and Marion Counties. He always acknowledged that his most enjoyable times were serving as a circuit judge and traveling the circuit. It was a chance to socialize in the evenings after work with friends all across the state. In those days, there were just a handful of circuit

judges, and when a judge came to town to hold a term of court, it was a big deal. It was also a time for the local bar association to socialize with the judge after court. At the end of court, dinners and cocktails with both plaintiff and defense lawyers were the norm.

During his time as a circuit judge, David graduated from the National College of Trial Judges from the University of Nevada in 1973 and from the American Academy of Judicial Education at the University of Colorado in 1976. He not only saw these courses as a chance for improving his skills as a trial judge, but also as a chance to meet and socialize with other trial judges. Taking advantage of the geographic locations of these courses was not unusual for him. If he had the chance to go snow skiing on the weekend in Colorado, he did it. If he had a chance to go golfing or visit a casino with another judge while in Nevada, he did it. If a quick hunting trip could be worked in, he did it. He would be the first to get up to go snow skiing and the last to come in at night. He was not an Olympic skier, though he would sometimes indicate otherwise, but he did give full effort on the slopes. He was not a golf professional, yet he played on as many courses as he could. He never shot a quail or dove with a BB gun or a sling shot, although he liked to say so, but he was a fairly good shot with a 20-gauge shotgun. From hunting in Canada or Mexico, and even convincing the general at Shaw Air Force Base to let him ride as a passenger in a fighter jet, he sought out adventure. Grass did not grow under his feet whether he was in South Carolina or anywhere else.



Bird hunting in Saskatchewan



Flying tandem in a fighter jet

Notable Trials

As a trial judge, he presided over several death penalty cases. In December 1977, two young men indicted on multiple counts of murder, rape, kidnapping, and related charges pled guilty before Judge Harwell in Richland County, South Carolina. These defendants were Joseph Carl Shaw and James Terry Roach, who had shot and killed one teenager and brutally raped and executed another. The sentencing proceeding before Judge Harwell was nonjury, which meant he alone had to decide whether to impose the death penalty upon the defendants. He was confronted with being the first circuit judge to apply the brand new death penalty statutes enacted by the South Carolina legislature following the U.S. Supreme Court's 1976 decision in *Gregg v. Georgia*, which had essentially ended the four-year moratorium on the death penalty imposed by *Furman v. Georgia*. Shaw and Roach were the first defendants in South Carolina to face the death penalty after it was reinstated.

At the sentencing hearing, Judge Harwell heard evidence concerning extenuation, mitigation, and aggravation. He found three statutory circumstances of aggravation beyond a reasonable doubt, and subsequently imposed death sentences upon both Shaw and Roach. On appeal, the South Carolina Supreme Court affirmed the defendants' death sentences, noting, "The able trial judge went the second mile to insure that the guilty pleas were given knowingly and voluntarily." *State v. Shaw*, 273 S.C. 194, 199, 255 S.E.2d 799, 801 (1979). The court also upheld the new death penalty statutes and Judge Harwell's application of them, finding that he correctly permitted the State to introduce evidence establishing the aggravating circumstances and that the evidence supported his related findings.

Five months later, and back in his home circuit of Florence, Judge Harwell began jury selection in a death penalty case involving perhaps the most notorious mass murderer in South Carolina history, Donald Henry "Pee Wee" Gaskins, Jr. This capital trial, unlike the *Roach/Shaw* case, was to involve both a guilt phase and a sentencing phase under the new death penalty statutes, and with a jury this time. Gaskins stood accused of murdering John Henry Knight, a teenager whose body had been found in a shallow grave in Prospect, South Carolina (where numerous other bodies had also been exhumed). Grady Query, one of Gaskins' attorneys in the case, wrote a book entitled *Pee Wee: Serial Killer or Homicidal Maniac Volume II* documenting his memories of the jury selection and related proceedings over which Judge Harwell presided. The following anecdote is taken from Mr. Query's book at pages 217-232 and 353.

After five jurors had been seated at jury selection, Judge Harwell posed the routine question to a young female asking if she was opposed to the death penalty. When she responded in the affirmative, the judge then asked if her opposition would preclude her from listening to the evidence and making a decision based solely upon that evidence. The young lady answered she could indeed decide Gaskins' guilt based solely on the evidence, and the lawyers then conducted their own examination of the potential juror. After both the State and Gaskins declined to have her excused for cause, Judge Harwell asked the State whether it wanted to present or excuse the juror. Surprisingly, the solicitor did not use a peremptory strike and instead said, "Please present the juror."

In his book, Query describes his firsthand observations of Judge Harwell's (as well as Gaskins') reaction to the solicitor's decision not to strike the juror. After the remaining jurors had been seated and court had recessed, Judge Harwell was leaving the courthouse when the solicitor ran into the elevator out of breath asking whether under the new statute one jury was used for both phases of trial or whether two different juries (i.e., one for the guilt phase and another for the sentencing phase) were used. Judge Harwell, "utterly and completely exasperated," informed the solicitor that "just one" jury was used. The next morning, "a decidedly grim" Judge Harwell did not mince words when he lectured the solicitor that he should have read the statute rather than relying on the newspapers' interpretation. The judge then adopted a "more conciliatory" tone and suggested the solicitor sit down with Gaskins' attorneys and attempt to work something out, given the amount of money spent on the case and the fact that Gaskins was already in prison serving consecutive life sentences.

Thereafter, Gaskins negotiated a plea deal whereby he disclosed all murders in South Carolina in which he had been involved in exchange for the State not seeking the death penalty for any of those murders. Gaskins confessed to killing Knight and six other victims whose bodies had been unearthed in Florence County—and following administration of a truth serum, he also admitted to other murders. Following his tell-all, Gaskins pleaded guilty to the murders that had occurred in Florence County, and Judge Harwell sentenced him to consecutive life sentences to be served in the state Central Correctional Institution.

Editor's Note: Those familiar with Gaskins know his murderous tendencies did not end with the proceedings before Judge Harwell. In 1982, Gaskins killed an inmate housed on death row with a homemade bomb, and he was tried, convicted, and executed for this murder.

South Carolina Supreme Court

In 1980, David was elected as an Associate Justice of the South Carolina Supreme Court, and he served in that capacity until his election as the twenty-eighth Chief Justice in 1991. He served as Chief Justice for three years until his retirement on June 30, 1994. One of Justice Harwell's goals was to introduce cameras into courtrooms. At the time, South Carolina was one of only a handful of states to ban cameras from courtrooms. He believed that the adoption of a rule allowing media coverage would assist the public in seeing how their courts operated and the important tasks that they were assigned. After an experimental period, Rule 605 of the South Carolina Appellate Court Rules was ultimately adopted in 1993. As a result of his efforts, Justice Harwell received the Reid Montgomery Freedom of Information Award from the South Carolina Press Association for opening South Carolina's courtrooms to cameras.

Following his election to the South Carolina Supreme Court, Justice Harwell heard hundreds of cases as both an Associate Justice (1980-1991) and the Chief Justice (1991-1994). He frequently authored majority decisions, and at other times he concurred in separate opinions, voiced his contrary viewpoint in dissents, and joined per curiam decisions. Lawyers and judges alike find Justice Harwell's brevity, diction, and jurisprudence make his decisions easy to digest and enjoyable to read. A Westlaw search generates 423 published opinions authored by Justice Harwell. His opinions encompass a variety of legal issues, and while every decision is important, some are particularly significant and summarized below.

One of Judge Harwell's earliest decisions addressed the novel issue involving whether children under seven are primarily liable in tort. In *Standard v. Shine*, Justice Harwell answered yes and ruled the standard of care in this context is "that a minor's conduct should be judged by the standard of behavior to be expected of a child of like age, intelligence, and experience under like circumstances." 278 S.C. 337, 339, 295 S.E.2d 786, 787 (1982). In so holding, he implicitly recognized that "minors of tender years" are indeed "capable of either negligence or an intentional and malicious tort." *Id.* at 338, 295 S.E.2d at 787.

Justice Harwell confronted the "antiquated" tort of alienation of affections in *Russo v. Sutton*, 310 S.C. 200, 422 S.E.2d 750 (1992). He noted this "heart balm" cause of action and its cousin, criminal conversation, "foster bitterness, promote vexatious lawsuits, put marriages on the marketplace, and use marriages as a means of character assassination." *Id.* at 204, 422 S.E.2d at 753. Recognizing

"[t]he common law changes when necessary to serve the needs of the people," Justice Harwell, joined by three other justices, abolished alienation of affections because it had "outlived any usefulness" in the modern era.

As his holding in *Russo* indicates, Justice Harwell was cognizant of the constantly evolving nature of the law. His unanimous decision in *State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986), is illustrative of this fact. He observed "the emerging trend" in many other jurisdictions was to allow expert testimony on battered woman's syndrome because such testimony is relevant to a defendant's claim of self-defense. *Id.* at 399-400, 339 S.E.2d at 122. In *Hill*, the court joined these jurisdictions in permitting such expert testimony.

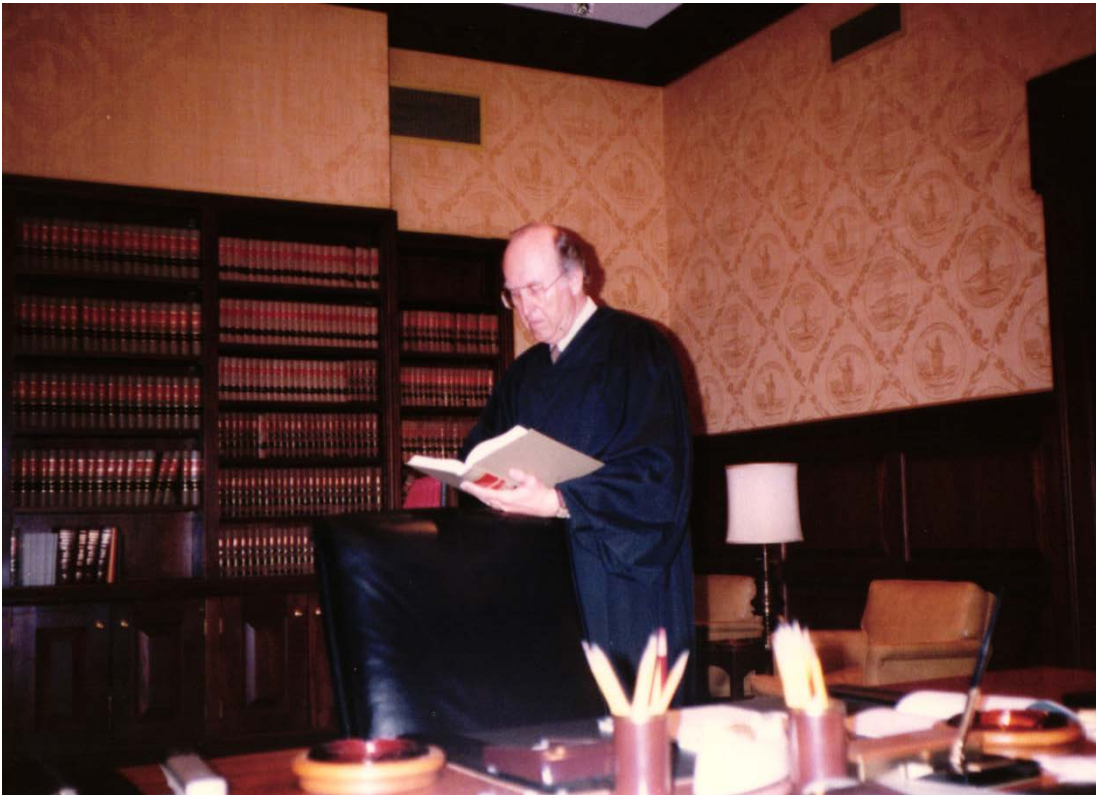
In *Southern Plastics Co. v. Southern Commerce Bank*, Justice Harwell authored a unanimous decision setting forth the two-step analysis that now guides South Carolina courts in determining whether exercise of personal jurisdiction over a nonresident is proper. 310 S.C. 256, 258, 423 S.E.2d 128, 129 (1992). Through Justice Harwell's opinion, the South Carolina Supreme Court adopted the United States Supreme Court's due process analysis.

A brief survey of Justice Harwell's other notable decisions include *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992) (explicitly recognizing the tort of negligent supervision); *Peay v. U.S. Silica Co.*, 313 S.C. 91, 437 S.E.2d 64 (1993) (holding "injuries that are substantially certain to result from an employer's act" are not exempted from the exclusivity provision of the Workers' Compensation Act); *State v. McCaskill*, 300 S.C. 256, 387 S.E.2d 268 (1990) (recognizing the defense of accident encompasses an unintentional shooting); *Donahue v. Donahue*, 299 S.C. 353, 384 S.E.2d 741 (1989) (involving several novel issues in family law including professional goodwill, reservation of alimony, and reimbursement alimony); and *State v. Peele*, 298 S.C. 63, 378 S.E.2d 254 (1989) (holding *Miranda* warnings are not automatically required for field sobriety tests conducted pursuant to a routine traffic stop).

One of Justice Harwell's most important decisions came, ironically, via a dissent in *Lucas v. South Carolina Coastal Council*, 304 S.C. 376, 404 S.E.2d 895 (1991), *rev'd*, 505 U.S. 1003 (1992). Disagreeing with the majority of his colleagues, Justice Harwell opined that a governmental regulation restricting use of a landowner's property amounts to a taking and requires payment of just compensation consistent with the state and federal Constitutions. The United States Supreme Court agreed with Justice Harwell and cited his dissent in its

landmark decision reversing the South Carolina Supreme Court. *See* 505 U.S. at 1010.

The above cases are just a snapshot of the many important decisions handed down by the South Carolina Supreme Court through Justice Harwell's written opinions. He authored hundreds of other cases, virtually all of which have been cited or relied upon in state and federal courts in South Carolina and beyond.



In chambers



Justice Harwell's first term of court at the Supreme Court (pictured from left to right: David Harwell, Bubba Ness, Bruce Littlejohn, George Gregory, Lee Chandler)

Law Clerks' Memories & Anecdotes

Justice Harwell hired law clerks to assist him during his tenure as a trial judge and appellate judge. These clerks fondly remember their time with him and the many (in)valuable lessons they learned. Several clerks have graciously shared their own experiences and anecdotes, told in their own words.

- **David Mills (law clerk from 1987-1989)**

Justice Harwell did not "babysit" his law clerks, nor did he need them to cater to his personal whims. He was at all times courteous and professional and friendly, but he was business-like. I heard his mantra no less than a dozen times during my clerkship: "Work hard while you are here, then go home. There's no reason you can't be a lawyer and still have a life outside the law!" And he walked his own talk; he was totally committed in chambers and on the bench. He researched, he studied, he carefully considered briefing and oral arguments, and he caucused with his colleagues. But when the term ended, he did not

agonize over his opinions. He made his best call and then went hunting.

I recall with perfect clarity, some thirty years later, the advice he gave me after a particular lawyer appeared at oral argument. I commented to him that I did not find the lawyer's presentation compelling; in fact, I found it distracting from the purely legal issue the court was called upon to decide in the appeal. No one used the term "teachable moment" in those days, but he obviously saw this as one for me. He told me: "Let me tell you something about that fella. He has the unique ability to make people angry when he walks in the room. When he tries a case, within five minutes he has the judge mad; the jury mad; opposing counsel mad; his own client mad, heck even the bailiffs are put out with him. That's not the lawyer you want to be. It IS distracting. You can be an effective advocate for your client without making everyone in the room angry. You can disagree without being disagreeable. You'll do a better job for your clients and you'll live longer if you treat people with respect.

He lawyered that way, judged that way, and lived that way. He did not bear grudges, nor was he disrespectful to colleagues who challenged his opinions. I saw him have lunch with fellow justices an hour after testy dissents were circulated. I saw him set golf matches with circuit judges whose orders he had just reversed on appeal. That's how he lived and how he carried himself as a man and a judge.

Anecdote #1: It was 1988 or '89. I was 26 years old. He showed me a letter from Justice Ness, who had recently retired. Actually, he tossed the letter at me across the desk and said simply, "Read this." I did. My eyes got bigger as I read. The details of the letter itself are lost to me in time, but not the following line: "I miss all my brethren, although only Ernest [Finney] has had the time, desire, or courtesy to contact me." Oh man. Justice Harwell did not seek my input. He did not ask me to weigh in. In fact, he didn't say a word. He just reached for the phone. Justice Ness (ret.) answered. There was no "hello," no "how ya doin'?" The first words out of Justice Harwell were: "Look here you crewcut son of a b----, that train runs both ways. . . ." I sat frozen, trying not to move a muscle. The conversation concluded. When he hung up, I expected him to unleash a torrent of abuse. Nah.

He just looked at me, smiled, and said, "That's just Bubba being Bubba!"

Anecdote #2: I also remember these words of wisdom after thirty years as if I heard them yesterday: "David, take care of the law for ten years, and it will take care of you." He must have noted the puzzled look on my face, so he explained that which is very clear to me now: be a serious student of your craft for ten years, and it will provide a good career for you and a good living for your family. What makes this especially poignant for me is that not only did I remember those words, but I reminded him of them twenty years later when our paths crossed at the SC Bar Convention in Charleston. I saw him in the lobby of the old Omni and made a beeline for him. We spent a moment catching up, and then I asked him: "Remember what you taught me, you know, take care of the law for ten years and it will take care of me?" He was touched that I had remembered, and he remembered, too. But I wanted the last word, so I told him: "Well, that was the biggest damn lie anyone ever told me! I've been at it for twenty years since I left you and I still have to bust my hump as a lawyer every day!!!" He roared. He loved it. But he was ready for me, and he got the last word, saying, "Looks like you forgot about inflation!"

- **Flo Lester Vinson (1985-1987)**

I knew I was fortunate to get a clerkship with a justice on the South Carolina Supreme Court, and especially with Justice Harwell, but I didn't really realize how significantly it would impact my entire legal career. Justice Harwell would very often (especially in the early months) write an encouraging note on the top of my brief, such as "A+" or "Great job." I had not gotten that type of positive feedback since kindergarten. It was amazing how much it meant to me.

I will always remember his ability to review complex, detailed matters and quickly discern the bottom line. He used common sense and his knowledge of people to fashion a wise solution. He treated everyone with respect, no matter how low or how high the person's station in life. Judge Harwell kept a great balance of work and play. Once he completed his court work, he was off to the golf course, the ski trail,

or to enjoy time with friends. He was a wise, kind, and gentle man. I wish I could hear his laugh again.

Anecdote #1: The most memorable experience for me actually involved my mom, Polly Lester. Mom, who is almost 95, was only 65 then. She came to Judge Harwell's Florence chambers to meet me for lunch. She had recently had a birthday, so the Judge jokingly said, "Well hello there old lady!" My mom, never a shrinking violet, replied, "Old? Who are you calling old? I can do things you can't do." Judge Harwell, never a shrinking violet himself, said, "Oh yeah? Name something." "Well, well . . . I can stand on my head!" Polly exclaimed. From that point on, it was like watching a fisherman reel in his catch. Judge Harwell kept saying there was no way Mom could stand on her head, and Mom kept declaring that she could. Seeing the direction that things were heading, I did all I could to get Mom out the door to lunch. Judge Harwell got up from behind his desk and said in a double-dare tone of voice, "I know full well that you cannot stand on your head!" The fish swallowed the bait. Mom set her purse on the floor and proudly stood on her head on the very first try. She got back up, gave a quick "I told you so" nod of her head, and picked up her purse. The Judge then bellowed that wonderfully deep belly laugh of his and said, "Well, I will be damned!" Years later, at the 2009 SC Bar Convention in Myrtle Beach, Mom and I ran into Judge Harwell. After exchanging pleasantries, the Judge asked Mom if she remembered standing on her head in his office. Judge Harwell got that twinkle in his eye and told her that he had shared that story many times over the years, except that he had tweaked it a bit to add that she was wearing a dress that day! My horrified mother began stammering and stuttering, saying that he knew good and well that she had on slacks! The more flustered my mom became, the louder that melodious belly laugh became.

Anecdote #2: I was fortunate to be clerking for Judge Harwell the year he was the portrait recipient from the South Carolina Trial Lawyers (now the South Carolina Association for Justice). As Judge Harwell was making his speech after receiving his portrait, he introduced the members of his staff. When he introduced me, my three lawyer brothers cheered. Judge Harwell said, "I hear those Lester boys in the back of the room. I was friends with their father and I promised him

that I would make a good lawyer out of one of his children. That's why Flo is clerking for me."

Anecdote #3: During one of the early terms of court in Columbia, the judges told the law clerks that they were taking us with them to lunch that day. I tried to imagine what ritzy venue the Justices of the Supreme Court dined at for lunch. The Palmetto Club? The Summit Club? Dianne's? When court concluded, we all walked down to lunch at the K & W Cafeteria.

- **Mary Layton Wells (1983-1985)**

I will always remember Justice Harwell's big booming laugh, sense of humor, and courteous and professional treatment of all attorneys and litigants. I recall working on a case involving a claim for breach of contract to marry. [*See Bradley v. Somers*, 283 S.C. 365, 322 S.E.2d 665 (1984)] I had written a draft of the opinion that did not contain much detail about the facts. Justice Harwell suggested that I revise the draft to include details setting forth facts such as that the church was full of guests, and the organ kept playing, but the ceremony did not occur because the groom did not appear. This case provided some lighter moments for us in contrast to the many serious criminal cases that were before the court. I also knew Justice Harwell in later years, and he continued his love of adventure and retained his wonderful sense of humor.

- **Porter Stewart (1979-1981)**

I first met Judge David W. Harwell in the spring of 1979 as I was approaching the end of my last year of law school at USC. One of my best friends, Toy Nettles (E. LeRoy Nettles, Jr.), was a law school classmate who had finished a semester early in December 1978 and had gone to work for the Judge as his law clerk. Toy had really taken me under his wing. During our school years, we would occasionally break from the grind and fly over to Lake City, grab a car at the airport, and go to a tobacco market or find the nearest Pee Dee barbeque spot. Toy was the best ambassador that Florence County

has ever had and, I think, had been recruiting me to come over to find home in the Pee Dee.

Toy had indicated that he was only going to clerk with Judge Harwell for a few months and was going to move on to the family law practice in Lake City (Nettles, Turbeville & Reddick) by the time I was going to finish up the bar exam. He encouraged me to follow up with the Judge and to seriously consider working as his clerk, if offered. (I cannot fail to note that Roy Nettles, that is, E. Leroy Nettles, Sr., Toy's father, one of the finest lawyers ever to practice in the Pee Dee—or anywhere else—was known to have visited with the Judge shortly after Toy returned to the family practice and to have wondered aloud how his son had improved his golf game so much in those most recent days. It was a real mystery, indeed.)

Interviewing with the Judge meant that I also had to pass muster with Bebe Huggins, the Judge's long-time secretary there in his office in Florence. Miss Bebe gave the green light, so things worked out and I came to Florence to work with the Judge. The only caveat in all of that was the Judge's good-natured (I think) admonition to pass that bar exam and not embarrass him. I could have lived a little better without that reminder! Fortunately, the misery of awaiting exam results saw a happy ending in November.

I had never met anyone quite like the Judge before. His personality filled any room that he occupied. He enjoyed being around people and he put everyone at ease around him. He enjoyed hearing good stories and telling good ones, too. He loved traveling, meeting people, and reacquainting himself with old friends around the state as he traveled the circuit.

We had anticipated that my clerkship with him would be for a year and then I would move on to private practice. Things changed, though, and I stayed on as his clerk for two years. As it turned out, in the course of my first six months on the job, Justice Rhodes of the South Carolina Supreme Court announced his intention to retire from the bench, which led to the process thereafter whereby the Judge was elected to that seat on the Supreme Court. During that process, it was evident to me that the Judge remained the same person throughout its duration. That is, the outgoing, gregarious, "people person" he had

always shown himself to be with the man off the street, on the dock, or on the panel in the local courtroom, was the same person he was with those occupants of the venues of power over in the Statehouse. He always exuded that personal, down-home touch. His personification of Carolina hospitality translated well in the courtroom, too.

Within that personality, though, he was a man of principle, with quick mind and legal understanding, with the skills that enabled him to communicate and negotiate effectively with colleagues on the bench, and with a confidence that enabled him to reach judgments and decisions in a learned but compassionate way. In other words, the Judge was blessed with a competence and a decisiveness that allowed him to make decisions in a timely manner so that the judicial system, insofar as he had leadership in it, could function effectively.

I was struck early on how this man that could joke and enjoy so much the liveliness of the moment could, when the work button was pressed, focus on those tasks and have an almost immediate command of the facts and issues of a case before him and move with dispatch into the necessary process of discernment and judgment. He did not elevate himself above others, nor seek to exercise his authority in a way that demeaned them. Even when those that might appear before him could have, and perhaps should have, been better prepared, I never knew the Judge to be disrespectful or mean-spirited. This essence within the character of the Judge, I think, was literally born within the soil of the Mars Bluff community in Florence County. The Judge was blessed to have been born into a proud family of the land at "The Columns." He was one of six children who had the experience of coming of age on a working farm that grounded him in the old traditions of South Carolina. The family also, however, was active in "city life" over in Florence, with business interests and with membership in the First Presbyterian Church. The Judge's life experiences were the stuff that many of the leaders of South Carolina of his generation carried within them. I think that the State was deeply enriched from the leadership offered from those perspectives.

While I clerked for him, it was pleasure and privilege to have become acquainted with the Judge's mother, Miss Lacy, and his aunt Miss Nina, who were still living in the home place back then. I remember

Miss Bebe telling me from the outset that the Judge had absolute, unconditional love for his mother and his aunt, and at any time and in anyway, would always make sure that they were looked after, safe, secure, and cared for. Striking was it all the more to see tiny Miss Lacy with four of those sons of hers, the Judge among them, who as big men were absolutely huge next to her small frame.

I do think that the heritage of the family place, together with his mom still being there, really did serve to ground him even as he had gone forth living life fully, as he ranged around and about our State. Certainly, I think, "down-home in Mars Bluff" nurtured within him an unfading sense of place and of an orientation for caring that is so very necessary for a good judge. It also made for the good mentor that he was for me as a young man. I was greatly blessed to have had as friends David Harwell and Toy Nettles, two true sons of South Carolina. I miss them both.

- **Amy Rothschild (1989-1991)**

Despite being one of the most accomplished and brightest judges on the bench, Justice Harwell had an incredibly modest and unassuming nature. With the exception of his hearty laugh, he was often reserved, although one never had to guess what was on his mind. He was honest and sincere in his actions and words. He was a wonderful mentor and friend to me throughout my entire professional career. He always made time for me and others whether the issue was personal or professional. You could be assured that whatever you entrusted to him would remain confidential and without judgment. No matter who called with a question or a problem, he was always quick to say, "What can I do to help?"

Judge Harwell believed in fairness and impartiality. To that end, he was one of the most influential persons to spearhead an ad hoc judicial sentencing committee to facilitate the elimination of disparate sentencing. His efforts commenced in the late 1970s and continued through the 1980s when he was appointed as the Chairman of the South Carolina Sentencing Guidelines Commission. While many in the legal profession—including other judges, prosecutors, and defense attorneys—opposed the changes, Judge Harwell pressed for the

removal of biases and implementation of uniformity in sentencing. His work in this regard was instrumental in impacting sentencing reform in the State.

Judge Harwell had tremendous foresight, and was innovative and forward-thinking. He encouraged the ideas and thoughts of others, and embraced positive change. With the progression of time, the law evolved as did he. He was visionary in terms of arbitration and mediation, and was the architect of what has come to be South Carolina's system of alternative dispute resolution.

Judge Harwell was respectful of and tried to be accommodating to others. While he could have continued his service as Chief Justice for several more years, he took early retirement so that the Honorable A. Lee Chandler (who was ten years his senior) would have the opportunity to serve as Chief Justice.

Family was important to Judge Harwell. He never declined to accept a call from a family member and particularly from his brother, the Honorable B. Hicks Harwell, Jr., with whom he frequently talked. Their conversations were often "colorful" and "lively" at least from his end.

Anecdote #1: On one occasion, he hung up the phone and asked me if I knew what four words in the English language that a man fears most hearing from a woman. When I asked what those words were, he replied, "We need to talk."

Anecdote #2: He had a saying that "if you take care of the law for ten years, it will thereafter take care of you." Later in life I told him that I did not appreciate the fabrication!

Anecdote #3: There was a certain week of November (I believe it was the second week or the week before Thanksgiving) of each year during which no term of court could be held because of his annual trip to Saskatchewan for Canadian goose hunting

Anecdote #4: After a day of court, the justices and their law clerks would often go to lunch together. Chief Justice Gregory's first choice was always the S & S Cafeteria that used to be located on Gervais

Street near the Clarion Hotel. Judge Harwell would hem and haw and mutter under his breath that only old people went there.

Anecdote #5: When Judge Harwell had signed off on an order for which he was responsible for writing, it was the law clerk's responsibility to shepherd it to each judge to make sure that it was signed and then filed. On more than one occasion, a justice would review the order and politely tell me things like, "If you delete this sentence, I will sign the order," or "if you add a paragraph that says, 'x, y, and z,' I will sign the order." On each of these occasions, I would return to Judge Harwell and relay the message, and he would oblige. After it had occurred on several occasions, in frustration, Judge Harwell said to me, "You tell them if they don't like it, they can write her own. It's called a concurring opinion or a dissent." I respectfully told him that I would defer to him to relay the message.

"Retirement" / Post-Judicial Career

After retiring in 1994 from twenty-one years of service on the bench, David continued to practice law and worked in association with different law firms. Most significant was his involvement with alternative dispute resolution (ADR) services. He developed a national reputation for his work and received numerous awards including the Order of the Palmetto and the C.C. "Cotton" Harness III Peace Award by the South Carolina Bar for his leadership in ADR. He participated in the John Manville Trust Arbitration Training as well as the Fibreboard Corporation Trust Training and served as an arbitrator for the John Manville Trust, the Eagle Picher Trust, and the Celotex Asbestos Settlement Trust. He was a Fellow in the American College of Civil Trial Mediators and served as a neutral in all areas of complex civil litigation, including high-level personal injury, employment, construction, environmental, product liability, business interruption, commercial, and all types of contractual disputes. He was the former Co-Chairman of South Carolina's ADR Committee and served as a mediator trainer for the U.S. Department of Justice at the National Advocacy Center. His laugh, humor, and affable nature could be disarming to even the most difficult of lawyers or parties dealing with a dispute that needed to be resolved.



**"Retired" / Mediator /
Arbitrator**

Conclusion

David Harwell died on September 30, 2015, at the age of 83 from a heart-related illness. As fate would have it, his death coincided with the beginning of the 1000-year flood that struck South Carolina and resulted in over two feet of rain over the state, with one meteorologist conservatively calculating over 4.4 trillion gallons of water falling from the sky over South Carolina. Sadly, this devastating flood prevented many friends and colleagues from saying goodbye. *USA Today* referred to the event as "biblical flooding," and The Weather Channel stated, "The catastrophic floods striking South Carolina will go down in history books. . . . By the time the last raindrop is counted, the October 2015 storm will go down as one of the most prolific rainfall events in the modern history of the United States." Likewise, David Harwell, like many fine jurists before him, will go down in the history books of South Carolina jurisprudence. More importantly, he will also go down as influencing the lives of many young lawyers as well as his own family members, who he encouraged to choose a path in the law.



Pictured left to right: Magistrate Jim Harwell, Attorney Baxter Harwell, U.S. District Judge Bryan Harwell, Chief Justice David Harwell, Circuit Judge Hicks Harwell