

HISTORIA JURIS



Newsletter of the
Florida Supreme Court Historical Society

March 2005

Tallahassee, Florida

Supreme Court history, 1918-1972

Vol. II goes to publisher

The manuscript has been completed for the second volume in the Florida Supreme Court Historical Society's anticipated series of hard-cover books chronicling the history of the Supreme Court of Florida. Professor Walter Manley, II, project coordinator and co-author with Dr. Canter Brown, Jr., reports that the manuscript is now in the hands of the University Press of Florida in Gainesville and arrangements for publication are expected to be completed soon.

Volume I, entitled *The Supreme Court of Florida and Its Predecessor Courts, 1821-1917*, was published by the Society in 1997. The highly acclaimed 454-page book received many outstanding reviews. *The Journal of Southern History* heralded it as "the most comprehensive treatment of any state supreme court during the nineteenth century." *The Florida Bar Journal* noted that the book "is more than just a history of Florida's highest court; it also constitutes the best legal history of the State available." And *The Florida Historical Quarterly* called it "the first significant history of the Florida Supreme Court ... a work that deserves a wide audience."

"Volume I is an outstanding presentation of our state's early legal and judicial history. But look out: Volume II is even better," said Mark Hulsey of Jacksonville. Hulsey served as the Board of Trustees' "designated reviewer" for the book. He is a past president of the Society and The Florida Bar.

"The prose portraits painted in Volume II are explicit and interesting," Hulsey noted. "The book faithfully portrays the mores and folkways of many notable people in Florida's judicial system. It will be an insightful read for everyone -- especially lawyers and judges." The book is a superb general history of Florida, since the authors have used the state's history as a backdrop for the legal history.

Manley and Brown believe the new book is likely to receive an even better reception than Volume I. "Since Volume II covers a time period that extends into the fairly recent past, it should strike a responsive chord with many readers who remember many of the people portrayed in the book," Manley said. "Readers will be able to relate to many of the subjects and situations described in Volume II and, because of that, they should find it extremely engaging."

Release of the new book is expected within the next 12 months. Society members will receive further information about advance orders at a special pre-publication price.

HAVE YOU PAID YOUR DUES?

Dues statements for 2005 have been mailed to all Society members. If you haven't submitted your payment, please remember to do so. You can pay by check, Visa or MasterCard.

If you are not a member and would like to join, please call 850/222-3703, write P. O. Box 11344, Tallahassee, FL 32302-3344, or e-mail fschs@earthlink.net. We'd love have you.

Some seats still available

Gov. Askew headlines April 7 Society dinner

Former Governor Reubin Askew is the headliner for the annual dinner of the Florida Supreme Court Historical Society on April 7 in Tallahassee. Society Trustees decided to resume holding the annual dinner this year after an absence of several years.



Gov. Reubin Askew

"In previous years, the annual dinner was quite successful and well attended," said Trustee and former Society President Bob Ervin. "The dinners provided an opportunity for members to get together and discuss matters of mutual interest and concern, to hear a notable speaker and visit with the Justices of the Florida Supreme Court. For example, one year our speaker was former U. S. Attorney General Griffin Bell."

The appearance of Governor Askew this year continues that tradition.

Throughout his career of public service, Askew has championed the importance of a strong, independent judiciary – even before his two terms as Florida's chief executive (1971-1978). He was one of the state's first leaders to advocate filling judgeships through the merit selection and retention process. The Pensacola native presently teaches at Florida State University's School of Public Administration and Policy, which has been named in his honor.

The April 7 dinner will be held at Tallahassee's Governor's Club at 7:15 p.m., following a reception there beginning at 6:30 p.m. Earlier in the day, the Society Board of Trustees will meet at the Supreme Court Building (2:00 p.m.) and the Court's annual Pro Bono Service Award ceremony will take place (3:30 p.m.). Society members are invited to attend the ceremony.

Early response to the dinner has been good – but at press time some seats were still available. Interested persons can contact the Society office at 850/222-3703 (telephone or fax) or by e-mail at fschs@earthlink.net.

PRESIDENT'S PERSPECTIVE

If not us ... who?

These simple words capture the challenge we face – and the commitment we make – as members of the Florida Supreme Court Historical Society. We have stepped forward to preserve the history of Florida's judicial system and educate the public about the important role of the courts in ensuring our cherished freedoms as Americans.

Today it seems that courts at all levels are under increasing attack. The attack comes from seemingly well-intentioned leaders espousing the importance of the rights of the majority. In a recent symposium on judicial independence the Chief Justice of the United States noted that: "Judicial independence is one of the touchstones of our constitutional system of government." And that the creation of an independent court with the authority to declare unconstitutional laws passed by the legislature was "probably the most significant single contribution the U. S. has made to the art of government."

To be sure, we live in very busy, demanding times. Many of us today are so focused on taking care of present needs and obligations that we have little or no time to think about the past. Thus we either accept blindly or take for granted the experiences and lessons of history that have gotten us where we are today. Perhaps this is inevitable – but there's danger in failing to understand and appreciate the past. Amidst the very real threat to the doctrine of separation of powers, and the independence of the judiciary, organizations like ours help preserve the memory of our forebearers' experiences and the valuable lessons of the past. By increasing public knowledge and appreciation for our own judicial history, we are attempting to play a role in fighting the apathy that could increase our vulnerability to such attack.

That's why the Society's work is important – and why we need your participation and support. We hope you will step forward and encourage your friends and associates to join us in this mission.

It is a privilege for me to lead this organization at this time. Florida's tremendous growth and rapid influx of new residents only serves to intensify the challenge we face. But we have many dedicated people on our team and the following individuals have agreed to head key committees for the Society this year:

- **Membership:** Howard Coker (*Jacksonville*), chair; Russell Troutman (*Winter Park*) & Sylvia Walbolt (*Tampa*), vice chairs.
- **Volume II Supreme Court History:** Mark Hulsey (*Jacksonville*), chair; Ben Hill (*Tampa*), vice chair.
- **Bi-Annual Meeting of Trustees:** Tom Cardwell (*Orlando*), chair; Dexter Douglass (*Tallahassee*), vice chair.
- **Publications:** Frank Bedell (*Orlando*), chair; Tom Elligett (*Tampa*), vice chair.
- **Acquisitions:** Linda Wells (*Tallahassee*), chair; Paul Lester (*Coral Gables*), vice chair.
- **Special Gifts:** Jim Cobb (*Jacksonville*), chair; Pat Emmanuel (*Pensacola*), vice chair.
- **Oral History:** Dexter Douglass (*Tallahassee*), chair; Bob Ervin (*Tallahassee*), vice chair.

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President John DeVault

LATE JUSTICE HONORED

Richard W. Ervin: the "Great Dissenter"

Floridians had a rare opportunity this past October to look inside the personal life of one of our state's great jurists – former Justice Richard W. Ervin – when a memorial ceremony was held at the Florida Supreme Court. Ervin died in August 2004 at age 99.

The Florida Bar News observed that "(t)he rotunda area was a history museum dedicated to Ervin's life – everything from a videotaped oral history to one of six hole-in-one trophies he won doing his favorite pastime of golf." The videotaped interview with Ervin was conducted in 1998 by Russell Troutman, former president of the Society and The Florida Bar. The tape is in the Society's archives. (A complete list of the Society's oral history programs can be found on page 4.)

Inside a crowded courtroom, the Justices sat in ceremonial session in memory of their late colleague who had become known as the "Great Dissenter." A parade of notable Floridians paid tribute to Justice Ervin, who wrote more than 600 opinions during his 11 years on the Court (1964-1975). Within those opinions, 220 dissents reflected the views of a Justice who was ahead of his time.

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Bob Ervin (left) and Justice Harry Lee Anstead shared memories of Justice Richard Ervin following the ceremony.

-- Courtesy of *The Florida Bar News*

Florida Supreme Court Historical Society

A 501 (c) (3) non-profit organization

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Court Liaison: Justice R. Fred Lewis

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Under the Dome

Chief Justice
Barbara J. Pariente,
Florida Supreme Court



Trial by jury has been a central feature of Anglo-American law for roughly a thousand years. First guaranteed in England by *Magna Carta* and in the Florida Constitution continuously since 1838, the right has become the foundation of justice in our state. We have remained committed to the jury system for one vital reason: It places a group of ordinary citizens between the vast power of the State and the fate of individuals accused of crimes or seeking redress for wrongs. This is yet another check on governmental power in a system premised on checks and balances. And along with voting, it is the most direct way the people participate in government. It is an institution that deserves celebration.

That is why I want to take this opportunity to ask all of you to pay special attention to this year's Law Day celebrations in Florida and throughout the nation, which will occur throughout the month of May. The American Bar Association has announced that the theme of this year's Law Day activities is "The American Jury: We the People in Action." You can find detailed information, planning guides, lesson plans, and other materials at abanet.org under the Education Link.

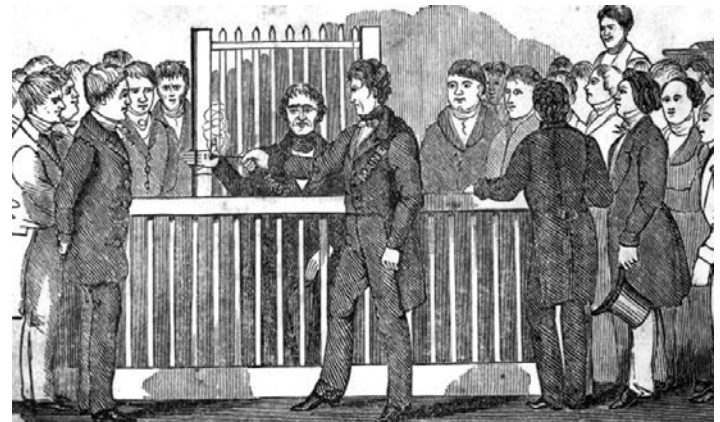
The ABA is challenging us, and I am challenging you, to go out into your communities in the month of May and participate in Law Day public educational programs. They are calling it a Dialogue on the American Jury, and it is something I enthusiastically endorse. It also is a matter that clearly falls within the mission of the Historical Society, which helps to preserve the rich history of this Court -- including its supervision of the integrity of our state jury system and its role in preserving the right to trial by jury.

We in the Florida courts can rightly be proud that Justice James B. Whitfield, writing for the Court in 1908, outlawed the then-common practice of trying African Americans in a criminal justice system that virtually guaranteed juries would be all-white. "[E]very person being tried in a court of justice," wrote Justice Whitfield, "is entitled to have a jury selected and summoned without illegal discrimination of any character." Considering the time when that decision was made, it was a breathtakingly bold affirmation of civil rights and the inviolability of the jury. And it justifiably earned Justice Whitfield praise 40 years later when U.S. Supreme Court Justice Hugo Black noted the fact "that Judge Whitfield should have written it in 1908 is a tribute to his courage and his character."

In fact, this Court's unyielding determination to protect the right to jury trial dates to the earliest years of our history. In 1848, just three years after statehood, Florida's first Chief Justice Thomas Douglas confronted a state law authorizing a judge to order seizure and public sale of vessels plying the Apalachicola River system -- then an important cotton trading route -- for payment of the owners' debt. Surprisingly, the law made no mention of trial by jury, and a case inevitably arose in which a judge without benefit of a jury verdict ordered the sale of a steamboat called the *Magnolia* because of debts owed by the Flint River Steam Boat Company.

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The planned *Evolution of Justice* living history exhibit will portray Florida's rich judicial history, including events such as Territorial Judge Dillon Jordon sentencing abolitionist Jonathan Walker to be pilloried and branded for attempting to free seven slaves in Pensacola (depicted in drawing below).



Under the Dome (continued) ...

Our first Chief Justice's opinion striking down this law, though couched in the flowery language of his era, remains as true today as it was then. "When however it is remembered," he wrote, "with what jealous and scrupulous regard 'the right of trial by jury' has ever been cherished and preserved by our Anglo Saxon ancestors, and by the Fathers of the revolution of 1776, a regard transmitted to us their descendants not only with unabashed attachment, but if possible with increased interest and regard -- *A Magna Charta* shielding every one in the enjoyment of life, liberty and property: When these things are borne in mind and a Legislative act in its terms abridges this hallowed right, . . . the duty of the Court, though unpleasant and even painful, is too obvious to be doubted or denied."

It was of vital importance that the Court took this "painful" action in its infant days. Many of us forget that in Chief Justice Thomas' time, the U.S. Constitution's Bill of Rights did not apply to any of the states, only to the federal government. The Sixth and Seventh Amendment guarantees of trial by jury would not come to bind the states until after the Civil War, through passage of the Fourteenth Amendment.

In 1848, in other words, Chief Justice Thomas based his ruling solely on guarantees contained in Florida's own Constitution. He would not yield the point even though, had he done so, there would have been no higher authority to correct him. This thus was the first recorded crisis involving our state jury system, and the first of many times our Supreme Court would intervene, engage in the dialogue, and find ways to end the problem.

Our work with the Florida continues today as we face the challenges of broadening representation on juries through the Motor Voter law. We do this while also dealing with budgetary constraints, a rapidly changing society, and problems getting enough jurors to respond to summonses. As in the past, we again have engaged in the dialogue, this time through Court committees seeking to find ways of addressing these 21st Century problems.

The jury system remains one of the most essential and enduring features of our Court system. And it is the continuation of a practice begun a millennium ago when the English Crown first began experimenting with the concept of the jury as a device for seeking community-based justice.

We who work in the law owe it to our communities to continue this thousand-year dialogue and celebrate our ordinary citizens who serve as jurors. I urge you all to do so as we celebrate Law Day 2005 and celebrate May 2005 as Jury Appreciation Month.

Court Honors Justice Ervin

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"Dissents can be the mark of moral courage," noted Chief Justice Barbara Pariente. "In one of his final cases ... Justice Ervin forcefully argued that Florida's recently revised death penalty statute was unconstitutional. This was not a popular position then or now. He stood alone in that dissent, but it was consistent with his visions of a merciful society, as well as his view of the law."

Other speakers paid tribute in their own words:

- Tallahassee Bar Association President **Nina Ashenafi** called Ervin "a great man ... a living legend ... humble and unassuming ... never talking down to anyone or putting on airs." She noted that he profoundly influenced the Tallahassee Bar by his early advocacy of *pro bono* service as a condition of membership.
- **Sandy D'Alemberte**, former president of the Society, the American Bar Association and Florida State University, said: "The remarkable thing is that Justice Ervin voiced his opinion while he was on the bench ... he did not have to regret his failure to speak out when he was in office. We will miss this kind man ... who had such a wonderful spine and conscience, this great public servant ... (with such) a wonderful sense of humor."
- Justice **Harry Lee Anstead** said Ervin was one of his heroes. "I was so honored to have him swear me in as Chief Justice ... What came out clearly from reading ... his opinions was his view that the law was really only relevant when it served the people."
- Current Florida Bar President **Kelly Overstreet Johnson**, who worked as a young attorney in Ervin's law firm after he retired from the bench, called him "a humble servant of the people and a great Floridian ... a well-known advocate for social equality ... embrac(ing) diversity long before any of us understood what diversity would come to mean in our lives or in our profession."
- Former Governor **Reubin Askew** said: "Dick Ervin was ... instinctively (a people person). He went for the marginalized in our society ... he empathized with them ... and he used the power given to him, whether as attorney general or Supreme Court justice ... to (help them as best he could)." Ervin served as Florida's Attorney General from 1949-1964.
- **Bob Ervin**, Justice Ervin's younger brother who has served as president of the Society and The Florida Bar, spoke on behalf of the family. "Dick strongly believed that the primary function of government at all levels, and the duty of its officials, is to respond to the needs of the governed and to serve them. That was the thread that ran through his entire career."

The memorial session honoring Justice Ervin can be viewed online at www.flcourts.org. Click on Supreme Court, then go to Public Information. Under Supreme Court Cases, click on Archived Arguments, and then click on Archived Audio and Videos. Next, click on 2004, and then click on October 26.

PRESIDENT'S PERSPECTIVE (cont'd from page 2)

- **Evolution of Justice:** Herman Russomanno (*Miami*), chair.
- **Docents:** Jane Harding (*Tallahassee*), chair; Sue Mancuso (*Tallahassee*), vice chair.
- **Budget & Finance:** Sid Stubbs (*West Palm Beach*), chair; Mike Rosen (*Tampa*), vice chair.

We welcome the assistance and support of all Society members in pursuing these important tasks.



Speakers paying tribute to the late Justice Richard Ervin included (left-to-right) Justice Harry Lee Anstead, Bob Ervin, Nina Ashenafi, Kelly Overstreet Johnson, Sandy D'Alemberte and former Governor Reubin Askew.

— Courtesy of *The Florida Bar News*

NEW SOCIETY MEMBERS

The Florida Supreme Court Historical Society is pleased to welcome the following new members:

Life Members

Joseph P. Milton, *Jacksonville*

Searcy Denney Scarola Barnhart & Shipley, PA, *West Palm Beach*

Members

Glenn Boggs, *Tallahassee*

Dr. Charlotte Maguire, *Tallahassee*

Adrian R. Castro, *Tampa*

John J. Upchurch, *Daytona Beach*

Raymond T. Elligett, Jr., *Tampa*

Sylvia Walbolt, *Tampa*

Stephen C. Emmanuel, *Tallahassee*

Society Oral History Programs

1. Senator Claude D. Pepper (*May 15, 1985, Tallahassee*)
2. Justice Richard W. Ervin (*Oct. 24, 1985, Tallahassee*)
3. Justice B. K. Roberts (*Oct. 30, 1986, Tallahassee*)
4. Justice Alto Adams (*May 19, 1987, Tallahassee*)
5. Justice Stephen C. O'Connell (*Nov. 12, 1987, Tallahassee*)
6. Justice Arthur J. England, Jr. (*Mar. 11, 1988, Miami*)
7. Justice Campbell Thornal (*Dec. 2, 1988, Orlando*)
8. Justice James C. Adkins (*Oct. 27, 1989, Gainesville*)
9. Justice Joseph W. Hatchett (*May 2, 1990, Tallahassee*)
10. Justice H. L. "Tom" Sebring and Justice E. Harris Drew (*Nov. 2, 1990, St. Petersburg*)
11. Justice Raymond Erlich (*May 31, 1991, Jacksonville*)
12. Justice James E. Alderman (*May 29, 1992, West Palm Beach*)
13. Justice Justice Joseph A. Boyd, Jr. (*Apr. 23, 1993, Miami*)
14. Justice Parker Lee McDonald (*Sept. 30, 1994, Orlando*)
15. Justice Rosemary Barkett (*Apr. 19, 1996, Miami*)
16. Justice Stephen H. Grimes (*Apr. 24, 1998, Lakeland*)
17. Justice Ben F. Overton (*May 28, 1999, Clearwater*)
18. Justice Gerald Kogan (*Mar. 31, 2000, Miami*)
19. Justice Major B. Harding (*Feb. 20, 2003, Jacksonville*)
20. Justice Leander J. Shaw, Jr. (*May 30, 2003, Orlando*)