

# HISTORIA JURIS



Newsletter of the  
**Florida Supreme Court Historical Society**

May 2006

Tallahassee, Florida

## Attendance doubles from 2005

### **Rogers, Pariente headline successful annual dinner**

The Society enjoyed a successful second renewal in its series of annual dinners on February 16 at Tallahassee's University Center Club when 200 people turned out to honor legendary Congressman Paul Rogers and listen to Florida Chief Justice Barbara Pariente. The annual dinner was resumed in 2005 after a lapse of several years and this year's attendance doubled last year's turnout.

Current and former justices of the Florida Supreme Court joined members of The Florida Bar Board of Governors, members of the Society and guests for the dinner and preceding reception. Herman Russomanno of Miami, Society first vice president, welcomed guests and former president Dexter Douglass, of Tallahassee, was master of ceremonies.

Another former Society president and long-time friend of Congressman Rogers, Mark Hulseley of Jacksonville, presented a Society resolution saluting the Congressman for his career of public service and leadership in the field of healthcare legislation. Chief Justice John Roberts of the U. S. Supreme Court, a friend and former colleague of Rogers, spoke to the gathering via large-screen video before the Congressman's response to his recognition by the Society.

In her keynote address, Florida Chief Justice Pariente echoed the sentiments of former Florida Governor Reubin Askew at the 2005 Society dinner when she stressed the importance of maintaining a strong, independent judiciary in a governmental balance of power. The audience listened intently when she began by stating that "Forgetfulness and ignorance are two of the worst enemies of the justice system." (See *Under the Dome*, page 2, for highlights of Chief Justice Pariente's remarks.)



**U.S. Chief Justice Roberts spoke via video hookup**

## **More annual dinner coverage on page 3.**

Former President Ben Hill of Tampa, who co-chaired the event with Douglass, expressed appreciation to the sponsoring organizations and individuals. Douglass summarized: "We were extremely pleased with the turnout, the program and the enthusiasm surrounding this year's dinner. The word is spreading. People are hearing about the annual dinner from those who have attended and enjoyed themselves. I think the event has a very bright future."

## Volume II offered at discount

### ***Society back on Bar dues statement***

When the 78,000 members of The Florida Bar receive their annual fee statements within the next few weeks they will have a "check-off" opportunity to support the Florida Supreme Court Historical Society.

The accompanying letter from incoming Bar President Hank Coxe will ask Bar members to consider three options for supporting the Society. Two of the options offer a copy of Volume II of the Florida Supreme Court history -- scheduled for release in October -- at a special pre-publication discount price.

The three options are: (a) a \$100 contribution, which provides a one-year membership for *new* Society members and the book; (b) a \$50 contribution, which provides the book only; or (c) a monetary contribution of some other amount.

The Society previously appeared on the Bar fee statement as a check-off opportunity in 2001 and 2002. In 2001 Bar members contributed about \$32,000 to the Society via the check-off and about half that amount the following year.

## **Annual Meeting set June 22 in Boca**

The 24<sup>th</sup> annual meeting of the Florida Supreme Court Historical Society will be held Thursday, June 22, at 10:00 a.m. in the Galleria North Room at the Boca Raton Resort and Club. As in the past, the Society meeting will be held in conjunction with the annual meeting of The Florida Bar.

All Society members are encouraged to attend the meeting and to visit the FSCHS booth in the exhibit area at the Bar convention.

## **Books, Prints, DVDs for sale**

As noted above, the Society is accepting advance orders for the forthcoming second volume of the Supreme Court history (1918-1972) at a pre-publication discount price of \$50, including tax and shipping. Early reviews suggest that the new hardcover book should be a "best-seller" within its historical genre. A special "package" of both Volume II and the highly acclaimed Volume I (covering the 1821-1917 period) is available for \$92, inclusive.

Another popular item available from the Society is a limited edition lithograph of an original watercolor of the Florida Supreme Court Building by noted Georgia artist Anni Moller. The print is priced at \$33, plus tax and shipping.

In addition, DVDs of the Society's 20 oral history programs and other events are available at \$15 each, plus tax and shipping.

Orders can be mailed to FSCHS, P.O. Box 11344, Tallahassee, FL 32302. Personal checks, Visa and MasterCard are accepted.

# Under the Dome

**Chief Justice  
Barbara J. Pariente,  
Florida Supreme Court**



*(EDITOR'S NOTE: Following are excerpts of the Chief Justice's remarks at the Society's February 16 annual dinner.)*

Forgetfulness and ignorance are two of the worst enemies of the justice system.

In 1906, the philosopher George Santayana famously noted: "Progress, far from consisting of change, depends on retentiveness ... those who cannot remember the past are doomed to repeat it." More than a century earlier, Thomas Jefferson touched on a similar theme when he wrote: "If a nation expects to be ignorant and free, it expects what never was and never will be."

Santayana was talking about ignorance of the lessons of the past, Jefferson about ignorance of the circumstances of the present. These thoughts are especially relevant to an organization devoted to illuminating the history of the Florida Supreme Court, which by the very nature of its mission has one foot in the past -- precedent -- and another in the present -- the disputes that come before us.

Thomas Jefferson's words in particular should hold special meaning to all of us just after the release of the results of ABA and Florida Bar polls showing a large swath of the public has only the dimmest understanding of how our government -- and we -- work.

In Florida, for instance, the good news is that 90 percent of our adult residents agree that separation of powers are important principles in our government, but less than half knew what that meant and only slightly more than half could correctly name the three branches of government. And these results were from a multiple choice list. Those findings were not much different from the national average.

Some 10 years ago a similar survey found only 20 percent of Floridians could name all three branches if asked the question without the help of a multiple choice list. In a national conference on civic education I attended last year, we learned that more high school students could name the *Three Stooges* than the three branches of government. And more than one lawyer-legislator has lamented to me that fellow legislators don't really understand either.

If both our students and adults lack even basic civics knowledge, we can bet they surely don't appreciate the genius of our government. And without that perspective, how can they appreciate the lessons of our own history -- especially the reason for an impartial judiciary separated from the other branches?

I look particularly at the selection process of our judges.

At this nation's founding, the American people still had fresh in their memories the abuses heaped upon them by royal judges serving at the pleasure of a fickle Crown. So we enshrined in our federal Constitution the system of life tenure that characterizes the federal court system today, along with the constitutional guarantee that federal judges' salaries may not be diminished during their tenure.

But just years later in our nation's history, during the populist movement that swept Andrew Jackson into the presidency, the states began to favor systems of electing their judges. Florida's statehood in 1845 reflected the times, although our very first Supreme Court was elected by the Legislature.

*(Continued on Page 4)*

## Another former law clerk:

# Remembering the Justices

*By Winifred L. (Winnie) Wentworth  
Retired Judge, First DCA*

My sharpest memories of Chief Justice Harold L. (Tom) Sebring during his last three years on the Court are those that showed him as a man of many talents -- architecture, football coaching, gardening and dean of the Stetson law school, as well as international acclaim as a judge in the post-World War II war crimes trials.

In 1952, after he had interviewed me for employment but before I reported to work, I was standing in line at a Tallahassee garden shop with my six-month-old daughter in my arms. She kept pulling away from the dusty, grimy back of the man ahead of us, who was carrying a sack of something like cement or fertilizer. He suddenly turned abruptly toward us. My daughter grabbed my neck -- and, with shock, I recognized the stern face of Justice Sebring from my recent interview. Somehow I managed a respectful greeting without the slightest reference to his attire. He overlooked my baby's frightful reaction. The incident helped prepared me to accept with equilibrium the many paths his mind could follow, while remaining in complete command of any situation that arose.

Justice Stephen O'Connell had a calm and tolerant attitude toward the many controversies surrounding a judge. But we didn't know that as we awaited his arrival in Tallahassee. An exhibit of loaned artwork had arrived and a large painting of an unclothed woman was placed inside the office prepared for him. On the day he arrived, he walked into his office with a small group. He opened the door, flipped the light switch, and the painted lady stared down in all her glory. Hesitating only slightly, he sat down and spoke to his guests about something totally unrelated to the decor. I never heard him object to the painting, but a few days later it was quietly moved to a different location before his four children came for a visit.

Justice E. Harris Drew, for whom I clerked more than 10 years, was known as "Mr. 440" among workers' compensation lawyers because of his opinions dealing with that chapter of the state statutes. He often hosted boiled shrimp dinners for the court staff at his home, doing the cooking himself. Sometimes he allowed us to view the huge boat he was constructing in his basement. We never found out how he managed to get it outside, but somehow he did.

## Florida Supreme Court Historical Society

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

P. O. Box 11344, Tallahassee, FL 32302-3344

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**Court Liaison:** Justice R. Fred Lewis

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# FRED LEWIS NAMED NEXT CHIEF JUSTICE

R. Fred Lewis will be sworn in as the 52<sup>nd</sup> Chief Justice of the Florida Supreme Court on Friday, June 30, in a "Passing of the Gavel" ceremony in Tallahassee. His term begins on July 1, when he will succeed current Chief Justice Barbara J. Pariente.

A West Virginia native, Lewis has served on the Supreme Court since January 1999, following appointment by the late Governor Lawton Chiles. Previously he practiced law in Miami, where he specialized in civil trial and appellate litigation. He is a graduate of Florida Southern College and the University of Miami School of Law.



**Justice Fred Lewis**

Justice Lewis has been very active in teaching children about the justice system and he has served as the Court liaison to the Historical Society.

He and his wife Judy, a Society trustee, have two daughters, Elle and Lindsay.

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## MEMBERSHIP APPLICATION

### Florida Supreme Court Historical Society

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**Annual Membership:**

- Student, \$25
- Individual, \$100
- Contributing, \$500
- Patron, \$1,000

**Life Membership:**

- Benefactor, \$5,000 within 5 years

**Payment by:**  check;  Visa;  MasterCard

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Expiration: month \_\_\_\_\_, year \_\_\_\_\_

Signature \_\_\_\_\_

Please mail completed form and check (payable to FSCHS) or credit card information to:

Florida Supreme Court Historical Society  
P. O. Box 11344  
Tallahassee, FL 32302-3344

... OR FAX completed form to: (850) 222-3703

Dues and contributions are deductible to the extent allowed by law. 100% of each contribution is received by this organization. SC-09634

### RESOLUTION HONORING PAUL GRANT ROGERS

**WHEREAS**, Paul Grant Rogers has devoted his entire adult life to public service, including 24 years as a member of the United States House of Representatives serving his constituents and the entire State of Florida, and

**WHEREAS**, for the past 57 years Paul Grant Rogers has distinguished himself as a practicing lawyer, a leader in the practice of health law, and an officer of the court, and

**WHEREAS**, Paul Grant Rogers has been steadfast in his advocacy of the separation and balance of powers among the three branches in our American system of government, and

**WHEREAS**, his leadership and influence on environmental and healthcare legislation in Congress have been unmatched, since he was directly responsible for passage of more than 50 laws recognizing the critical role of government in improving the health of our citizens, and

**WHEREAS**, he has embodied the very best of the legislative branch, while supporting and enabling the judicial branch to adjudicate independently and fairly the farsighted laws he helped create, and

**WHEREAS**, for over half a century this great man has crafted and influenced policy that has improved the quality of air we breathe, the clean water we drink, the protection of the public's health, the provision of basic medical services, and the scientific research that makes progress possible;

**THEREFORE BE IT RESOLVED**, that the Florida Supreme Court Historical Society does hereby recognize and honor Congressman Paul Grant Rogers for his exemplary career of public service and his unparalleled contributions to this state and nation.

— Adopted in Tallahassee this Sixteenth Day of February, Two-Thousand, Two

### Thanks to the following annual dinner supporters:

**Gold Level Sponsors:** Coker Myers Schickel Sorenson & Green PA; Hill Ward & Henderson PA; Hogan & Hartson LLP (also for copies of biography of Congressman Rogers).

**Silver Level Sponsors:** Akerman Senterfitt; Avera & Avera LLP; Bedell Dittmar DeVault Pillans & Coxe PA; Carlton Fields; Colson Hicks Eidson; Credit Union National Assn.; Hon. & Mrs. Major B. Harding; Harrell & Harrell PA; Jones Foster Johnston & Stubbs PA; Liles Gavin Costantino & George; Nance Cacciatore Hamilton Barger Nance & Cacciatore; Stanley & Susan Rosenblatt; Herman Russomanno; Sheldon Schlesinger; Searcy Denney Scarola Barnhart & Shipley PA; Smith Hulsey & Busey; Spohrer Wilner Maxwell & Matthews PA; Terrell Hogan; Jeff Trammell, Robert Trammell, Meredith Trammell Roop; Troutman Williams Irvin Green Helms & Polich PA; Bill Wagner.

**United States Supreme Court** for video of Chief Justice John Roberts.  
**WFSU-TV / The Florida Channel** for videotaping the event.

## Society changes 'dues year'

The Society's "dues year" has been changed from the calendar year to the July 1-June 30 fiscal year. The change means that members' current dues payments will cover an 18-month period -- from January 1, 2006, through June 30, 2007.

Treasurer Ruth McDonald said: "We felt this was a logical change, since a large number of our members are attorneys who pay Bar dues for the fiscal year. Also, since the Society's budget and the budgets of the organizations we deal with are based on the fiscal year, it makes bookkeeping easier and more consistent."

Dues statements for 2006-2007 are being mailed in early May.

### The Society recognizes . . .

**New Members:** Fred L. McCord, Jr., Tallahassee; Judge George S. Reynolds, III, Tallahassee; Gary L. Sasso, Tampa.

**Memorial Gifts:** Arthur J. England, Jr., Miami, in memory of Marilyn Overton; Sylvia Walbolt, Tampa, in memory of Fran Coker.

**Matching Gifts:** Fred L. McCord, Jr., Tallahassee (& Bank of America).

## Under the Dome (Continued from Page 2) . . .

Florida's first popular election for Supreme Court justices was held in 1853, but that did not necessarily mean the courts yielded to the Legislature. In fact, Thomas Douglas, our first chief justice, struck down a law that infringed on the right of trial by jury in the State Constitution, stating that it must be remembered "with what jealous and scrupulous regard 'the right of trial by jury' has ... been cherished and preserved by our ... ancestors in the Magna Carta and by the fathers of the revolution of 1776. When these things are borne in mind," he stated, "and a legislative act ... abridges this hallowed right ... the duty of the Court, though unpleasant and even painful, is too obvious to be doubted or denied."

The Civil War Constitution of 1861 moved Florida back toward the federal model, providing for gubernatorial appointment and Senate confirmation of Supreme Court justices and circuit judges for six-year terms. This move was a political one -- likely intended to prevent the election of Unionist judges by pro-Union voters. The 1868 Constitution retained appointment by the governor and confirmation by the Senate, but changed justices' terms from six years to "good behavior," moving us even closer to the federal model. Constitutional qualifications were added -- a justice had to be at least 25 years of age and a practicing attorney.

Florida retained this appointment system until 1885, when citizens voted to weaken the executive branch and elect Supreme Court justices in partisan races. Born in an agricultural state with first-hand memories of the Civil War and Reconstruction, this arrangement remained in place until the 1970s.

This system, shared with many other states, led Dean Roscoe Pound to warn in 1906 that "compelling judges to become politicians ... has almost destroyed the traditional respect for the bench." At that point Florida had six Supreme Court justices, an increase from three under a 1902 constitutional amendment.

Pound's famous speech a century ago to the American Bar Association, in which he discussed the causes for dissatisfaction with the administration of justice, indicates that such dissatisfaction is as old as law itself. He pointed to Lord Campbell's 18th Century complaint that the bench was occupied by "legal monks utterly ignorant of human nature and of the affairs of men."

Pound also observed that "lack of interest ... makes jury service a bore." He deplored "putting ... courts into politics by judicial elections ... and the public ignorance of the real workings of courts due to ignorant and sensational reports in the press." And, of course, that was long before *Judge Judy*, *Court TV* and 24-hour cable news and talk shows.

So the causes of popular dissatisfaction with the administration of justice are at least a century old. Roscoe Pound's fervent attempt to change the method of selecting judges met with only limited success.

Today, 39 states elect at least some of their judges and 85 percent of all state judges are elected. Many appellate judges are elected. Eight states hold partisan elections for at least some of their appellate courts, and 15 states hold nonpartisan elections. Florida is among the 19 states with merit retention elections.

Florida retained its system of partisan elected judges until the 1970s, when we experienced the worst scandal in our state's judicial history -- four of the seven Supreme Court justices were under investigation. That crisis and Governor Askew's leadership

spurred great constitutional change. A 1976 constitutional amendment eliminated appellate judicial elections after a 1972 amendment had mandated nonpartisan judicial elections.

We believed this would take politics out of the selection process. Yet, considerable pressure has arisen in our state and nation to continue politicizing our courts -- when it is clear that taking politics out of the appellate courts has benefitted Floridians by helping maintain the separation of powers. We are aware of the 2001 legislative change that gave the governor control of all selections to the judicial nominating committees.

We have heard outcries after every controversial Court ruling -- the 2000 presidential election, the Terry Schiavo case, the school voucher case. Vocal legislators and members of the public call for removal of justices anytime there is disagreement with the Court.

A prominent state Senate leader has vowed to fight "liberal judges, the radical ACLU and the anti-God left" ... by impeaching any judge in Florida who votes to overturn a constitutional amendment initiative entitled *The Boy Scouts and Pledge of Allegiance Protection Act*.

Such threats are nothing new, but they should not be taken lightly. They may be escalating in intensity. A group in South Dakota has succeeded in putting an initiative on the ballot called *Jail 4 Judges*, which would allow a non-lawyer grand jury to overturn court opinions.

In some states that have contested appellate court elections, there is a huge influx of special-interest money financing judges' campaigns -- and we've seen some really dirty campaign ads.

Money is playing an increasing role in the election of some Florida trial judges. Some incumbent judges feel they must gather large war chests, often from the very lawyers who practice before them, to ward off challenges. Consultants and publicists are hired for large sums merely to keep them from working for an opponent.

When appellate judges face merit retention, they run solely on their records. But when a legislative leader threatens to unseat a judge who rules a certain way, it's clear that merit retention is no protection against partisan politics. After the school voucher decision, a state representative declared that he plans to unseat the three justices up for merit retention who voted against the school voucher program. "I'm against all three of them. Please give me the names so I can start a political committee."

It is axiomatic that our individual rights and liberties depend on the concept of separation of powers -- something most Floridians want but may not understand. A politicized judiciary -- answerable to the other branches of government -- can never be independent.

We must preserve our history as an institution to bring the lessons of the past to bear on the present. We must bring that history to light in the most compelling ways so we gain allies in the public who *may not know* the basics of civic education ... but *do want* courts that protect individual rights by upholding the Constitution ... who *do want* access to justice and fair and impartial judges ... and who *don't want* interference with the courts from politicians.

This is why the Historical Society's work is so important. By keeping the Court's history alive, you bring into the present a body of knowledge that is essential to our democracy. With your help, we can all learn from the past rather than merely repeat it.